

HA
Brian Carr
11301 NE 7th St, Apt J5
Vancouver, WA 98684

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

Brian P. Carr
Plaintiff

versus

The State of Oregon through Hardy Myers in his official
capacity as Attorney General of the State of Oregon and
the City of Portland through Linda Meng in her official
capacity as City Attorney of the City of Portland
Defendants

Civil No. 3:08-CV-398-HA

Memorandum of Law
In Support of
Motion to Reconsider
Access to the Court's
CM/ECF System

1. It is beyond question that 'Every court has supervisory power over its own records and files' Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978). However, this power is constrained by the sound discretion of the court. As an impartial authority, the court can not arbitrarily give preferential treatment to one party or another.
2. The constitutional provisions of due process guarantees the right of the affected individual to be heard before an impartial authority, presented with the evidence against them, given the opportunity to present evidence on their own behalf, and the right to appeal.
3. The foundation of our adversarial judicial process is that all parties are given an equitable forum where they can present the evidence and arguments supporting their positions. Each party is expected to present their arguments with the greatest possible clarity in both content, style, and presentation. It is prejudicial to prevent one party from clearly presenting their

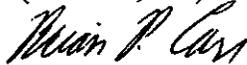
arguments and evidence in the same fashion as the other parties without good cause.

4. While the electronic record of the case may not be of great significance in this court, there is certainly a reasonable possibility of an appeal to the circuit court given the gravity of the issues raised and the history of the related case, Civil No. 3:07-cv-5260 Judge Robert J Bryan in Western Washington Federal District Court. In an appeal, it is the electronic record which is the basis for the appeal and it would be prejudicial if the portions of the record submitted by one party are degraded, inaccurate and less readable than that for other parties.
5. At this time the Plaintiff must file all documents with the clerk of the court while the other parties are required to file documents via the court's CM/ECF system. However, the clerks office closes at 5PM while the court's CM/ECF is accessible until 11:59PM. This effectively gives the others parties a full day longer to prepare papers as the plaintiff's schedule precludes the preparation of legal papers during normal work hours so that papers must be completed the evening before in order to be submitted the following day. It is prejudicial to grant certain parties more time to prepare papers than other parties without good cause.
6. While the court could attempt to redress this discrepancy by adjusting the required filing time to be equitable between the parties, it is questionable if the court has jurisdiction to adjust the required filing time for certain critical documents such as a Notice of Appeal.
7. According to Local Rule 5 (c), filing of papers outside of the court's CM/ECF require two copies of the documents while electronic filing only requires one copy (Local Rule 100.4 (b)). Further if the a party without access to the court's CM/ECF system wishes to submit an electronic copy (to insure that the papers provide easy electronic access), then the submitting party must file the electronic version on a diskette or CD. The expense of the additional copy and the media are not incurred by parties who are permitted access to the court's CM/ECF system.

8. While the Plaintiff has submitted two previous requests for access to the court's CM/ECF system, those requests may have been premature as there were no other parties in this matter at that time. In the absence of other parties, the court's function is largely administrative without any requirement to provide an impartial authority. The previous motions were substantially administrative in function seeking to resolve certain details prior to the adjudication of the actual case. As there are now other parties in this matter, equitable treatment of the parties is no longer moot, but instead a central requirement of due process.

9. It is clear that the court has supervisory powers of its own records, but the court must have good cause for preferential or prejudicial treatment to any party.

Respectfully submitted, May 15, 2008 (Portland, OR).


s/ Brian P. Carr

Signature of Plaintiff

Brian Carr

11301 NE 7th St., Apt J5

Vancouver, WA 98684

503-545-8357