

General Order Pertaining to EEOC Hearings Electronic Case Processing System (HECAPS)

⊕ATTENTION⊖

The test protocols and procedures set forth in the General Order are periodically revised. Parties and their representatives are advised to thoroughly read the Order each time it is issued and not rely on their knowledge of the contents of earlier versions, which may have changed.

Section 1: Introduction

¶ **1-1. Purpose** The Commission's Office of Field Programs is currently field testing the Hearings Electronic Case Processing System (HECAPS) in select districts nationwide. The protocols and procedures contained in the General Order are intended to facilitate testing of electronic document filing and recordkeeping and to enable administrative judges (AJs) and hearing participants gain experience using electronic technology in actual hearings settings. The goal of the test pilot is to facilitate processing and adjudication of cases more uniformly, efficiently, expeditiously and cost-effectively than typically can be accomplished employing traditional paper-based methods. When the hearing phase of a case is completed an *entirely electronic* Official Record of Proceedings will have been created consisting of all the orders and pleadings issued and filed in the case, the verbatim hearing transcript and hearing exhibits, the agency investigation file and the closing documents (including the AJ's final decision or order).

¶ **1-2. PDF Standard** The information technology standard adopted for HECAPS is Adobe® Portable Document Format (PDF), the same standard that has been adopted by the federal and state courts and many administrative tribunals in the United States. PDF is a *de facto* universal file format that captures document text, fonts, images and formatting of documents produced from a variety of software applications. A PDF document that is emailed to the AJ, a party or party's representative will look the same on the receiver's computer screen as it does on the sender's, including accurately displaying color information. PDF files are easily recognized by the Adobe  icon and .pdf file extension.

¶ **1-3. Knowledge of Contents Essential** It is essential that parties and parties' representatives become familiar with all the provisions of the HECAPS General Order (Order). Note that while some provisions are merely recommendations or suggestions, other provisions are mandatory. Participating parties and parties' representatives are urged to adopt or endeavor to comply with as many of the recommendations and suggestions contained in the Order as possible. Nevertheless, it is recognized that the AJ, parties and parties' representatives are likely to experience technical and other difficulties during the hearing process, thereby necessitating flexibility on the part of all participants in order to ensure a successful test. The sections that follow introduce the parties and the parties' representatives to the HECAPS protocols and procedures.

Section 2: Additional Agency Responsibilities

¶ **2-1. General** In addition to the requirements applicable to test participants generally, to facilitate fair, efficient and orderly testing, Agencies are expected to assume the following additional responsibilities in HECAPS cases.

¶ **2-2. Complainant Access to Equipment** To help the Complainant prepare for the hearing, if requested and if available and not burdensome to the Agency, the Agency is encouraged (but not required) to permit the Complainant to have access to and use of a computer terminal with which to view the electronic complaint file and other electronic documentation concerning the case. The Agency may (but is not required to) provide the Complainant or Complainant's representative technical assistance or instruction in the use of any computer equipment the Agency makes available to them.

¶ **2-3. Equipment For Hearings** If the Agency intends to use electronic documents or exhibits at the hearing in lieu of paper documents to examine or cross-examine witnesses, the Agency is encouraged (but not required) to ensure that the Complainant, Complainant's representative and any witnesses undergoing examination or cross-examination have access to computer terminals or linked computer monitors with which to view the electronic documents or exhibits. Alternatively, if available, the Agency is encouraged (but not required) to use equipment suitable for projecting images of electronic documents onto a screen in the hearing room. Agency personnel are responsible for setting up and operating any digital projectors or other electronic equipment the Agency may furnish for the hearing.

¶ **2-4. Electronic Verbatim Hearing Transcripts** The Agency will ensure that the court reporting service providers with whom it contracts for evidentiary hearings are capable of providing verbatim hearing transcripts in PDF. When designated the hearing exhibit custodian, if the court reporter does not have the capability to convert "paper" exhibits admitted as evidence at hearings to PDF, the Agency will be responsible for scanning the documents and submitting them to the AJ in PDF. See also, Section 14: Verbatim Hearing Transcripts.

Section 3: Registration as E-filer

¶ **3-1. Mandatory Attorney Participation** Attorneys representing complainants and agencies (and non-attorneys representing agencies) in HECAPS cases must register as e-filers and comply with the provisions of this order to the extent indicated, i.e., registration and participation of these individuals as e-filers are *mandatory*.

¶ **3-2. Voluntary Complainant Participation** Complainants and complainants' representatives who are not attorneys may (but are not required to) register as e-filers, i.e., registration and participation of these individuals as e-filers is *strictly voluntary*.

¶ **3-3. Waiver** If a party or party's representative can show that test pilot requirements will impose an unreasonable hardship on the party or the representative, upon written request, the AJ

may waive some or all of the requirements of the Order.¹

¶ **3-4. E-filer Registration Form** The HECAPS Designation of Representative/E-filer Registration Form is attached (Attachment 1). If received by mail, upon request, the form will be provided in electronic MS Word format. To fill out the electronic form, simply follow the instructions at the top of the form. Representatives are requested, whenever possible, to complete and submit the form electronically, thereby indicating their willingness and ability to comply with the requirements of the Order. Parties or parties' representatives registering as e-filers will complete, convert to PDF and email the form to the AJ within 15 days of receipt. E-filers may but are not required to also submit the standard Designation of Representative form that accompanies the Acknowledgment and Order.

¶ **3-5. Registration in Every Case** At the present time, the Commission does not have a central database where parties and representatives can register as e-filers. Parties and parties' representatives, therefore, must execute and file the Designation of Representative/E-filer Registration form (Attachment 1) with the AJ in each and every case. Once registered as an e-filer, parties and parties' representatives may not withdraw as e-filers without the AJ's consent. If Complainant's representative registers as an e-filer, but Complainant prefers to receive copies of orders, pleadings and other documents in the traditional manner (e.g., U. S. Mail) the Complainant should so inform the AJ.

Section 4: Pleadings and Other Written Submissions

¶ **4-1. General** In order to help the AJ and his or her staff to (1) promptly identify the nature of the action required upon receipt of the pleading, (2) name the pleading in accordance with the uniform naming convention and (3) timely file the pleading in the proper electronic case folder, e-filers are requested to ensure that all pleadings contain in a *single* PDF file:

- a case caption,
- a document title,
- a signature page
- a certificate of service

¶ **4-2. Case Caption and Document Title** Parties are requested to use the case caption of the AJ's initial orders for all pleadings filed in the case. Whatever case caption is used shall include the name of the AJ to whom the case is assigned, the identifier "HECAPS Case", the date and a document title that includes the words "Complainant's" or "Agency's" (e.g., Complainant's Request to Amend Complaint, Agency's Motion for Continuance). Failure to include this information in the case caption may delay timely consideration and filing of the document in the official record of proceedings.

¹ Federal courts have adopted administrative policies and procedures for electronic filing in civil and criminal cases that make electronic filing of documents mandatory, unless the litigant can show cause to the court why e-filing will present a hardship. Many state courts and administrative tribunals also are following the lead of the federal courts.

Section 5: Uniform Document Characteristics

¶ 5-1. Preferred Document Characteristics The use of non-standard fonts, font sizes and font colors or “exotic” symbols can reduce the quality of scanned documents and degrade optical character recognition (OCR). OCR enables the text of a PDF document to be searched using key-words and phrases and to “cut, paste and copy” text. Handwritten PDF documents are particularly problematic and are discouraged. Parties, therefore, are requested (but not required) to incorporate the following document characteristics into all correspondence, pleadings and other submissions.

- For narrative text, Times New Roman, 12-point font is preferred. Other 12-point common business fonts (e.g., Arial) are acceptable.
- Page size should be 8 ½ X 11 inches with at least 1 inch margins on all sides.
- 1.5 line spacing is preferred.
- PDF documents, whenever possible, should be created from electronic source documents (e.g., MS Word) rather than by scanning paper documents.
- Default page magnification-100%
- When scanning paper documents, the documents should be bi-tonal (black and white) and done at a resolution of 300 dots per inch (dpi).² NOTE: Use of color in documents significantly increases file size and is discouraged.

¶ 5-2. Hybrid Pleadings A hybrid pleading is one in which a part of the pleading is submitted electronically and another part is filed by non-electronic means (e.g., mailed). An example would be a motion with exhibits or attachments. The motion is filed electronically while the exhibits or attachments are delivered separately by mail. Hybrid pleadings are administratively burdensome for the AJ and his or her staff and, therefore, are discouraged. Whenever possible, PDF pleadings with accompanying exhibits or attachments should be filed together in a *single* PDF file. NOTE: Pleadings submitted partly by email and partly by CD are not considered hybrid pleadings and are acceptable.

¶ 5-3. Bates Numbers Parties are encouraged (but not required) to sequentially number (Bates-number) pages of lengthy files (those containing more than 10 pages), commencing with the *first* page of the file. Parties are requested to cite to (or include parallel cites) to Bates numbers in pleadings and briefs and at hearings.

¶ 5-4. Searchable Text Parties are requested (but not required) to perform “optical character recognition” (OCR) on all pleadings, briefs or other documents created in or converted to PDF. OCR makes the document printed text searchable using key-words and phrases, permits minor editing of text and allows text to be “cut and pasted” and “copied”.

¶ 5-5. Bookmarking Parties and parties’ representatives are requested (but not required) to electronically bookmark the sections, exhibits and other attachments to PDF files (e.g.,

² Unless the page is scanned or imported at a resolution of 144 dpi and higher, Adobe Acrobat cannot perform optical character recognition (OCR) which, among other things, makes it possible to search the PDF document’s text using key words and phrases and to “cut and paste” or “copy” text.

pleadings, briefs) that are more than five (5) pages in length.

¶ **5-6. Digital Signatures** A digital signature essentially is a “stamp” affixed to data that is unique to the signer. Digital signatures are very difficult to forge and assure that any changes to data that has been digitally signed cannot go undetected. Digital signatures are acceptable. At the present time, however, digital signing technology is not available to AJs.

¶ **5-7. Picture File Signature** All pleadings and other documents submitted electronically requiring a person’s signature will be signed. Signing may be accomplished by digitally scanning the person’s signature and inserting it into the document as a “picture” file or graphic. See following sample signature:



JOHN Q. SMITH
Complainant’s Representative

¶ **5-8. Acceptable Alternative Signatures** The source document also can be signed and then scanned into the filer’s computer system. Another acceptable method is to type in “/s/” and the person’s name. When using the latter method, the signature should be in bold font and be a larger font size than the rest of the document. Example: /s/ **JOHN Q. Smith**.

¶ **5-9. Forged Signatures** Although there has not been a reported instance of a forged “electronic” signature being used in a HECAPS case, parties and parties’ representatives will immediately report to the AJ any suspected forgeries. A party, party’s representative or other individual found to have forged a signature on a document used in a hearing may be sanctioned and is subject to possible additional administrative action or criminal prosecution.

Section 6: Email Submissions

¶ **6-1. Permissible Email Communication** Subject to the provisions of the Order, parties are authorized to file correspondence, pleadings and other hearing-related documents pertaining to this case via email. Parties and parties’ representatives may email the AJ with procedural questions or other non-substantive matters, e.g., to report that the AJ’s transmittal email did not include the attachment (order) mentioned therein. It is improper to email the AJ concerning a substantive matter, such as a request for a continuance or a request to extend a filing deadline. Substantive matters will only be addressed upon written request submitted *as an attachment to a transmittal email* or in a telephone pre-hearing conference call between the AJ and the parties or parties’ representatives.

¶ **6-2. Email Subject Lines** Only documents sent as attachments to transmittal emails containing the information specified below will be accepted for electronic filing by the AJ. The standard email subject line should be “HECAPS Submission” followed by the Complainant’s last name. Failure to include this subject line in emails may result in the document being lost or misplaced or filing delayed. Unless expressly authorized, parties will not send or forward to the AJ any email that is not addressed to the AJ, e.g., copies (cc:) of emails between the parties or involving

third parties. Under no circumstances will a party “blind” copy (bc:) the AJ.

¶ 6-3. Transmittal Emails All transmittal emails will contain the following information:

- EEOC Case No.
- Agency No(s).
- Name of AJ to whom case is assigned
- Names of the Parties (e.g., John Smith vs. Department of the Army)
- Name of Sender (e.g., Elizabeth Jones, Agency Representative)
- Name/telephone number/email address of sender or other contact person
- Name or description of documents submitted for electronic filing (e.g., Agency’s Motion For Summary Judgment)
- Message (e.g., Request Ruling By AJ)

¶ 6-4. Receipt Confirmation At the present time, for both administrative and technological reasons, the AJ and his or her staff cannot email parties confirmation of receipt of filings or submissions.

¶ 6-5. Size Limitations Email messages with attachments exceeding 10 MB may not be deliverable. Large attachments, therefore, should always be submitted on a CD. Use of “compression” techniques (e.g., zipped files) to reduce file sizes is not authorized.

¶ 6-6. AJs’ Email Addresses In order to help ensure that documents filed electronically are properly routed to the AJ to whom the case is assigned, the offices participating in the test pilot have assigned the AJs in their respective offices special email addresses. The parties or parties’ representatives will email documents pertaining to their respective cases to these email addresses only. ☒ **CAUTION:** Documents emailed for filing to any other email address will be rejected.

Section 7: Regulation of Electronic Submissions

¶ 7-1. AJ’s Discretion The AJ has complete discretion to refuse to file or accept any document submitted electronically that is illegible, un-interpretable or otherwise inadequate. The AJ or AJ’s staff assistant may return any email submission that does not comply with test pilot requirements (e.g., email attachment was not converted to PDF form before being sent, email attachment was not signed). Any email attachment containing a virus will be rejected.

¶ 7-2. Terminating E-filer’s Participation Anytime the AJ, a party or a party’s representative encounter repeated or unexplained difficulties filing, serving or receiving electronic documents, the AJ may terminate or restrict electronic submissions of documents by either or both parties. The AJ also may order a party filing electronically to submit the document in paper or printed form bearing a written signature.

Section 8: CD Submissions

¶ 8-1. CD Attributes Any document that a party is authorized to file electronically via email in accordance with this order may be submitted to the AJ via compact disc (CD). PDF documents that are too large to email will be submitted on a CD. The CD label should contain the parties' names and case numbers and description of the contents of the CD. The contents of the CD must be legible and all pages correctly oriented and actual size (100 %). Parties are free to encrypt and password-protect the CD contents so long as the AJ is provided the means to open and save the file in advance of or at the time of receipt of the CD.

Section 9: Perfecting Service Electronically

¶ 9-1. Consent to Email Service A party who files correspondence, pleadings and other documents with the AJ via email in accordance with the provisions of the Order is deemed to have given consent to accepting email service of documents from the opposing party. The AJ also may authorize email service on a party or party's representative even if the party or party's representative has been excused from complying with some or all of the provisions of the Order. For example, in instances where the AJ has excused the agency representative from certain electronic filing requirements, upon request, the AJ may authorize the complainant's attorney to serve the agency via email. Where either or both parties have been excused from HECAPS electronic filing requirements, the AJ nevertheless may serve the parties electronically via email and otherwise continue processing the case electronically.

¶ 9-2. Filing Date The presumption is that a document served by email on the AJ, a party or party's representative, was received by the designated addressee at the approximate time and on the date reflected on the transmittal email. If email service was performed on a week-end or federal holiday, the presumption will be that service was accomplished at 8:00 A.M. the following business day. The presumption of proper and timely service, however, is rebuttable. For good cause, the AJ may excuse an unsuccessful delivery or late filing in order to ensure fairness for the parties.

Section 10: Standard Document Naming Convention

¶ 10-1. Naming Convention In order to achieve a uniform architecture for the Official Record of Proceedings, a standard document naming convention has been adopted using standardized HECAPS abbreviations (Attachment 2). Parties are requested (but not required) to adopt both the naming convention and to use the standardized abbreviations. The AJ will employ the following naming convention when naming (or re-naming) the parties' correspondence, pleadings or other documents filed in the case:

- Date (yyyy/mm/dd) The document date, postmark date or certificate of delivery date, not the date the document is received, will be used. The date allows the file to be listed chronologically in the *4-Pleadings* folder. See Attachment 3.
- Complainant's Last Name Including the complainant's last name allows one to know at a glance when a document has been misfiled in a folder. For example, if a "JONES" file

appears in
a “SMITH” folder, the reader is alerted that the file was incorrectly filed.

- Abbreviated Document Description The AJ will use standard abbreviations when naming a file. An abbreviated party designation (“Agency” or “Com”) will precede whatever document description is used. The word “Order” generally will precede whatever description is given to the AJ’s order. Standard abbreviations have been adopted for HECAPS. See Attachment 2.
- PDF File Extension The .pdf file extension identifies the document as a PDF file.

¶ 10-2. Sample File Names Following are sample file names for a pleading and an order:

- *Agency Motion for Summary Judgment*, dated July 10, 2008, filed in Adam Jones vs. Department of Homeland Security: 2008.07.10_ JONES_ Agency MFSJ.pdf.
- *Order Granting Complainant’s Motion to Re-schedule Pre-hearing Conference*, dated August 15, 2008, filed in the same Jones case: 2008.08.15_ JONES_ Order Re-scheduling PHC.pdf.

Section 11: Ex Parte Communication

¶ 11-1. Parties or parties’ representatives may communicate with the AJ without first contacting the opposing party or representative to discuss technical requirements of the Order, test results or overall progress of the test pilot, or to report technical problems with filing, serving or receiving electronic documents. Parties and parties’ representatives are encouraged to critique, make suggestions and provide feedback regarding the technical aspects of the test pilot. The AJ and other Commission personnel may periodically discuss the progress of the test pilot with agency representatives and other personnel involved in the project, as well as conduct participant satisfaction surveys, etc.

Section 12: Safeguarding Data Transmitted Electronically

¶ 12-1. Safeguarding Information Generally Safeguarding information that is classified, sensitive but unclassified (For Official Use Only), law enforcement sensitive, etc., and personnel, payroll, medical, operational, financial and commercial information protected from unauthorized disclosure by the Privacy Act and other federal statutes, transmitted via email or other electronic means, is a high priority of the Federal Government. The AJ, parties and parties’ representatives are expected to safeguard any such information or data used incident to the hearing in the case.

¶ 12-2. Protective Orders Upon the request of either party, the AJ may issue protective orders prohibiting or restricting unauthorized release or disclosure of information described in ¶ 12-1, as well as proprietary, fiduciary, or privileged information. A party violating a protective order may be sanctioned and is subject to possible additional administrative action or criminal prosecution.

¶ 12-3. Encryption, Passwords, Etc. Parties may encrypt and/or password-protect documents filed via email or on a CD); provided the AJ is given the means to open and copy the file(s) in advance of or at time of receipt. Likewise, the AJ may encrypt and/or password-protect orders and other documents issued electronically. At the present time, orders issued by the AJ electronically via email are encrypted and password protected in Adobe “Security Envelopes.”

Section 13: Confidentiality/Privacy

¶ 13-1. Personal Data Information Unless the AJ orders otherwise, to protect privacy and other legitimate interests of parties or other individuals, parties will refrain from including (or where inclusion is necessary will partially redact) the following personally identifiable information from all correspondence, pleadings and other documents filed electronically:

- Social Security Numbers (SSN) If an individual’s SSN must be included, only the last four digits of the SSN should be used.
- Names of Minor Children If involvement of a minor child must be mentioned only the child’s initials should be used.
- Dates of Birth If an individual’s date of birth must be included only the month and year should be used.
- Financial Account Numbers If financial account numbers must be included only the last four digits should be used.

¶ 13-2. Parties Responsible The parties and parties’ representatives are responsible for redacting personal data identifiers in electronic files and documents. The AJ is not required to review documents submitted electronically for compliance with this requirement.

Section 14: Verbatim Hearing Transcripts

¶ 14-1. PDF Transcript The Agency will ensure that the court reporting service provider with whom it contracts for this case has the capability to provide the verbatim hearing transcript in PDF. If the court reporter is designated the hearing exhibits custodian, all paper hearing exhibits admitted into evidence also must be converted to PDF. Court Reporters may not provide verbatim hearing transcripts in “Real Legal E-Transcript” form (or similar proprietary formats) that require special software downloads from the internet to access (prohibited by the EEOC network administrator).

¶ 14-2. Paper Copies of Transcript The court reporter will *simultaneously* deliver paper or printed copies of the hearing transcript to the parties or parties’ representatives at their designated mailing addresses. In addition, the court reporter will send the printed original of the hearing transcript to the Agency Representative, who is responsible for forwarding it to the Agency Final Action Authority, as necessary.

¶ 14-3. Electronic Copy of Transcript The court reporter shall delivery to the AJ only electronic (PDF) copies of the verbatim hearing transcript, hearing exhibits and bench decision, if any, within ten (10) calendar days after the close of the hearing. If the court reporter requires an extension of the delivery deadline, he or she must request and obtain an extension from the AJ.

The Agency is responsible for ensuring timely delivery of the verbatim transcript in proper form (i.e., PDF) to the AJ.

Section 15: Official Record of Proceedings

¶ **15-1. The Objective** The overall objective of HECAPS is to produce an *entirely electronic* (PDF) official record of proceedings in the case (official record) at the conclusion of the hearing process. An Official Records Certification by the Administrative Judge will accompany the official record. The contents of the official record are described in the Folder Contents Guide. See Attachment 3.

¶ **15-2. Agency Final Action Authority** The Agency Final Action Authority (i.e., the designated Agency official responsible for issuing the final order in the case) will be provided two (2) CDs containing copies of the official record of the case. Unless otherwise ordered, should the Agency be notified that the Complainant is appealing the Agency's final order, or if the Agency appeals after deciding not to fully implement the AJ's decision, the Final Action Authority will provide the Commission's Office of Federal Operations (OFO) a CD copy of the Official Record of Proceedings. In the near future, the Commission is planning to archive all HECAPS closed cases in its Data Management System (DMS), which OFO will have direct access to in the event of an appeal. In this eventuality, the Agency Final Action Authority will be provided one (1) CD copy of the official record.

¶ **15-3. Agency Representative** The Agency Representative will be provided one (1) CD copy of the official record.

¶ **15-4. Pro Se Complainant/ Lay Representative** If Complainant is not represented (*Pro Se*) or is represented by an individual who is not an attorney (lay representative) Complainant and Complainant's representative will be provided printed copies of the closing documents (Final Decision, Order Entering Judgment, Notice to Parties, etc.). Complainant also will be provided one (1) CD copy of the official record. Upon request and a showing of an actual need, the Administrative Judge may provide Complainant printed copies of specific files or categories of files comprising the official record.

¶ **15-5. Complainant Represented by Attorney** If Complainant is represented by an attorney, the attorney will be provided one (1) CD copy of the official record. Complainant will be provided only printed copies of the closing documents (Final Decision, Order Entering Judgment, Notice to Parties, etc.). Complainant's attorney will be responsible for providing Complainant a paper or printed copy of the official record (or selected portions) if he or she desires one.

¶ **15-6. Replacement Copies** In the event of loss, destruction or file corruption, a party, parties' representatives or Agency Final action Authority may request in writing to be provided a replacement CD, which the Commission will provide at no cost.

¶ **15-7. Record Retention and Destruction** At the present time PDF copies of the Official Records of Proceedings are kept for only two (2) years, after which time the files are destroyed in accordance with the Commission's official records retention and destruction policies and

procedures. Any printed copies of the investigation file which agencies may have produced generally are destroyed as soon as the PDF copy is received or scanned in-house. Paper or printed agency investigation files, therefore, cannot be returned to agencies.

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