

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN THE MATTER OF:
RESTRICTED FILER PROCEDURE

18-MC-00004-09

ADMINISTRATIVE ORDER

This Administrative Order supersedes prior district court orders that direct the Clerk's Office not to file a new lawsuit by a restricted filer, orders the Clerk's Office to open a civil case when a restricted filer seeks to initiate a new case, and orders the Clerk's Office to accept pleadings from restricted filers for filing into an existing case.

A "restricted filer" is an individual who previously filed a case with the District of New Mexico and for whom a judge ordered that any future filings by the individual be restricted regarding either what documents the individual is permitted to file in a specific case, or what steps the individual must follow before he or she may initiate a new case or new filing within the District of New Mexico.

The Tenth Circuit allows the District Court to impose filing restrictions stating:

"[E]ven onerous conditions" may be imposed upon a litigant as long as they are designed to assist the district court in curbing the particular abusive behavior involved. **The conditions cannot be so burdensome, however, as to deny a litigant meaningful access to the courts.** See *Bounds v. Smith*, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977).

Tripati v. Beaman, 878 F.2d 351, 352 (10th Cir. 1989) (**emphasis added**). Court orders of restriction directing the Clerk not to accept future lawsuits from restricted filers, and the current restricted filer procedure of not opening a new civil case, appear to run afoul of the Tenth Circuit's limitation on filing restrictions quoted above. See *Cook v. Baca*, Doc. 186-1 at 18-20, No. 10cv1173 (D.N.M. October 2, 2015) (Tenth Circuit Order modifying filing restrictions that

entailed an outright bar on pro se litigation against certain defendants unlimited by subject matter); *In re Billy L. Edwards*, Doc. 18 at 5, No. 15cv631 (D.N.M. September 22, 2015) (finding that the Court's current procedure effectively denies some restricted filers meaningful access to appellate review because, being not well versed in the law, they may not realize that they can petition the Court of Appeals for a writ of mandamus).

To avoid denying restricted filers meaningful access to the Courts, the Court will adopt a procedure similar to that of the Court of Appeals for the Tenth Circuit.¹ The Clerk's Office must open a new civil case when a restricted filer wishes to initiate a new case, including those

¹ The docket in *Cotner v. McCollum*, No. 14-6127, illustrates the procedure used by the Tenth Circuit for Mr. Cotner, who is a restricted filer. That procedure is summarized as follows:

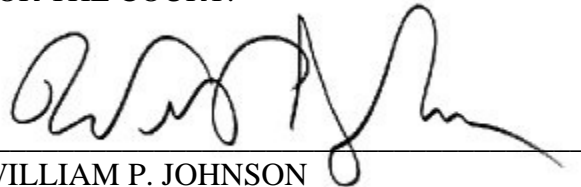
- 6/13/14 Notice of Appeal filed. 10th Cir. opens appellate case.
- 6/16/14 Clerk enters order *sua sponte* instructing Cotner to (i) pay filing fee in full or show why the three-strikes provision of the IFP statute does not apply, AND (ii) cause a licensed attorney to enter an appearance or file a petition to proceed pro se, as described in the Order and Judgment setting forth filing restrictions. *See Cotner v. Boone*, No. 01-7096, 48 Fed.Appx. 287, 2002 WL 31045393 (10th Cir. Sept. 13, 2002); *Cotner v. Boone*, No. 01-7096 (10th Cir. Oct. 4, 2002) (Order denying Cotner's motion/objection to the Order and Judgment setting forth filing restrictions). Order gives notice that case will be dismissed if Cotner does not timely comply with both requirements.
- 6/30/14 Cotner files petition to proceed pro se.
- 7/11/14 Chief Circuit Judge files (docket says filed by Chief Circuit Judge, signature line says "entered for the court" by the Clerk, signed by counsel to the Clerk) order denying petition to proceed pro se and instructs Cotner to, within 21 days, (i) cause a licensed attorney to enter an appearance on Cotner's behalf, and (ii) pay the full \$505.00 filing fee. The order states that unless both conditions are satisfied within the 21 days, the matter will be dismissed without further notice pursuant to Tenth Circuit Rule 42.1 [dismissal for failure to prosecute].
- Cotner does not respond to the 7/11/14 Order.
- 8/5/14 Order by Clerk dismissing case for lack of prosecution.

restricted filers whom the Court has previously ordered may not initiate new cases. When opening the new case, the Clerk's Office will add a staff note to the docket to notify the judges assigned to the case that the litigant is a restricted filer. The staff note will reference this Order and the district court Order imposing filing restrictions. The Clerk's Office will file the materials in the newly opened case for review by the judges assigned to that case.

A similar procedure will be followed for litigants who have been restricted from filing in their existing cases. However, the Clerk's Office will accept for filing into existing cases **ONLY** the following pleadings: (i) an entry of appearance of a licensed attorney on behalf of the restricted filer; (ii) a petition to proceed pro se; and (iii) a notice of appeal. Any other papers submitted not meeting this specific criteria will not be filed nor will they be returned to the litigant.

DONE at Albuquerque this 14th day of February, 2018.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'William P. Johnson', written over a horizontal line.

WILLIAM P. JOHNSON
CHIEF UNITED STATES DISTRICT JUDGE

Notices[1:18-mc-00004 Administrative Orders](#)**U.S. District Court****District of New Mexico - Version 6.2.1****Notice of Electronic Filing**

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Filer:

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Docket Text:

ADMINISTRATIVE ORDER: In the Matter of Restricted Filer Procedure. (kmk)

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