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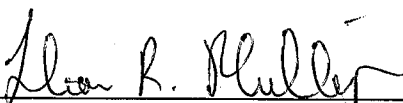
**ORDER OF THE SUPREME COURT OF TEXAS**

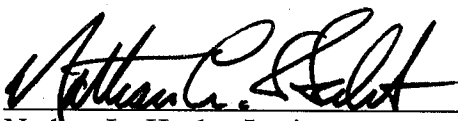
**Approval of the Local Rules for the District Court  
of Cass County, Texas, concerning Electronic  
Filing of Court Documents**

**ORDERED that:**


Pursuant to Rule 3 of the Texas Rules of Civil Procedure, the following Local Rules for the Electronic Filing of Court Documents in the District Court of Cass County, Texas, are approved. This approval is temporary pending further orders of the Court.

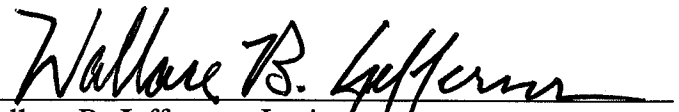
In Chambers, this 10th day of May, 2004.


  
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Thomas R. Phillips, Chief Justice

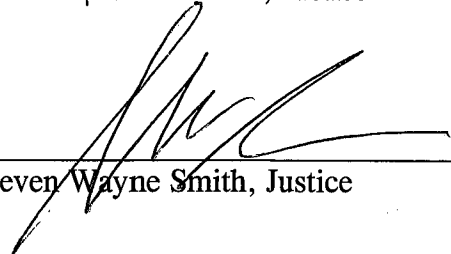
  
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Nathan L. Hecht, Justice

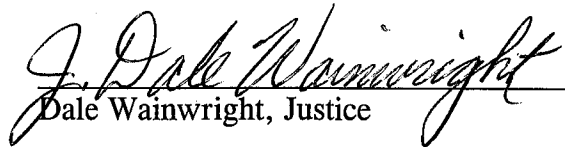
  
\_\_\_\_\_  
Priscilla R. Owen, Justice


  
Harriet O'Neill, Justice

  
Wallace B. Jefferson, Justice

  
Michael H. Schneider, Justice

  
Steven Wayne Smith, Justice

  
Dale Wainwright, Justice

  
Scott A. Brister, Justice

**CASS COUNTY, TEXAS**  
**LOCAL RULES OF THE DISTRICT COURT**  
**CONCERNING THE**  
**ELECTRONIC FILING OF COURT DOCUMENTS**

**PART 1 - - GENERAL PROVISIONS**

**Rule 1.1 Purpose**

These rules govern the electronic filing and service of court documents, by any method other than fax filing, in Cass County. These rules are adopted pursuant to Rule 3a of the Texas Rules of Civil Procedure and may be known as the "Cass County Local Rules of the District Court Concerning the Electronic Filing of Court Documents."

**PART 2 - - DEFINITIONS**

**Rule 2.1 Specific Terms**

The following definitions apply to these rules:

(a) "Convenience fee" is a fee charged in connection with electronic filing that is in addition to regular filing fees. A convenience Fee charged by the District Clerk will be considered as a court cost.

(b) "District Clerk" means the Cass County District Clerk.

(c) "Document" means a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or other instrument in paper form or electronic form.

(d) "Electronic Filing" is a process by which a filer files a court document with the district clerk's office by means of an online computer transmission of the document in electronic form. For purposes of these rules, the process does not include the filing of faxed documents which is described as the "electronic filing of documents" in Section 51.801, Texas Government Code.

(e) "Electronic Filing Service Provider (EFSP)" is a business entity that provides electronic filing services and support to its customers (filers). An attorney or law firm may act as an EFSP.

(f) "Electronic Service" is a method of serving a document by means of electronic filing.

(g) "Electronically Serve" means to serve a document by means of electronic service.

(h) "Filer" means a person who files a document, including an attorney.

(i) "Party" means a person or entity appearing in any case or proceeding, whether represented or appearing pro se, or an attorney of record for a party in any case or proceeding.

(j) "Regular Filing Fees" are those filing fees charged in connection with traditional filing.

(k) "Rules" are the Cass County Local Rules of the District Court concerning the Electronic Filing of Documents.

(l) "Traditional Filing" is a process by which a filer files a paper document with a clerk or a judge.

### **Rule 2.2 Application to Pro Se Litigants**

The term "counsel" shall apply to an individual litigant in the event a party appears pro se.

## **PART 3 - - APPLICABILITY**

### **Rule 3.1 Scope**

(a) These rules are mandatory and apply to all cases designated as Level 3 Discovery Cases under TEX. R. CIV. P. 190, all asbestos cases, and all other cases designated by the Court as Electronic Filing cases.

(b) These rules are permissive in all other non-juvenile civil cases before the District Court in Cass County, Texas, including cases that are appealed from lower courts, where all parties file a Rule 11 agreement with the district clerk to use electronic filing.

(c) In cases where electronic filing is mandatory under paragraph (a) above or elected under paragraph (b) above, the Court may designate the case as a traditional filing case at the request of any party or on its own motion.

(d) These rules apply to the filing of documents in cases before the District Court in Cass County, Texas referred to in paragraph (a) above that are subsequently assigned to associate judges, visiting judges, or any similar judicial authorities.

### **Rule 3.2 Clerks**

These rules apply only to the filing of documents with the district clerk. These rules do not apply to the filing of documents directly with a judge as contemplated by TEX. R. CIV. P. 74.

### **Rule 3.3 Documents That May Be Electronically Filed**

(a) A document that can be filed in a traditional manner with the district clerk may be electronically filed with the exception of the following documents:

- (i) Citations or writs bearing the seal of the court;
- (ii) Returns of citation
- (iii) Bonds
- (iv) Subpoenas
- (v) Proof of service of subpoenas
- (vi) Documents to be presented to the Court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;
- (vii) Documents sealed pursuant to TEX. R. CIV. P. 76a; and
- (viii) Documents to which access is otherwise restricted by law or court order, including a document filed in a proceeding under Chapter 33, Texas Family Code.

(b) A motion to have a document sealed, as well as any response to such a motion, may be electronically filed.

### **Rule 3.4 Documents Containing Signature**

(a) A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath may be electronically filed only as a scanned image.

(b) A document that requires the signatures of opposing parties (such as a Rule 11 agreement) may be electronically filed only as a scanned image.

(c) Any affidavit or other paper described in Rule 3.4(a) or (b) that is to be attached to an electronically-filed document may be scanned and electronically filed along with the underlying document.

(d) Where a filer has electronically filed a scanned image under this rule, a court may require the filer to properly file the document in a traditional manner with the district clerk. A third party may request the court in which the matter is pending to allow inspection of a document maintained by the filer.

## **PART 4 - - FILING MECHANICS**

### **Rule 4.1 Texas Online**

(a) Texas Online is a project of the Texas Online Authority, a state entity charged with establishing a common electronic infrastructure through which state agencies and local governments may electronically send and receive documents and required payments.

(b) To become registered to electronically file documents, filers must follow registration procedures outlined by Texas Online. The procedure can be accessed from Texas Online's website at [www.texasonline.com](http://www.texasonline.com).

(c) Filers do not electronically file documents directly with the district clerk. Rather, filers indirectly file a document with the district clerk by electronically transmitting the document to an electronic filing service provider (EFSP) which then electronically transmits the document to Texas Online which then electronically transmits the document to the district clerk. A filer filing or serving a document must have a valid account with an EFSP and with Texas Online.

(d) Consistent with standards promulgated by the Judicial Committee on Information Technology (JCIT), Texas Online will specify the permissible formats for documents that will be electronically filed and electronically served.

(e) Filers who electronically file documents will pay regular filing fees to the district clerk indirectly through Texas Online by a method set forth by Texas Online.

(f) An EFSP may charge filers a convenience fee to electronically file document. This fee will be in addition to regular filing fees.

(g) Texas Online will charge filers a convenience fee to electronically file documents. This fee will be in addition to regular filing fees and will be in an amount not to exceed the amount approved by the Texas Online Authority.

(h) The district clerk may charge filers a convenience fee to electronically file documents. This fee will be in addition to regular filing fees, credit card fees, or other fees.

### **Rule 4.2 Signatures**

(a) Upon completion of the initial registration procedures, each filer will be issued a confidential and unique electronic identifier. Each filer must use his or her identifier in order to electronically file documents. Use of the identifier to electronically file documents constitutes a "digital signature" on the particular document.

(b) The attachment of a digital signature on an electronically filed document is deemed to constitute a signature on the document for purposes of signature requirements imposed by the Texas Rules of Civil Procedure or any other law. The person whose name appears first in the signature block of an initial pleading is deemed to be the attorney in charge for the purposes of Texas Rules of Civil Procedure 8, unless otherwise designated. The digital signature on any document is deemed to be the signature of the attorney whose name appears first in the signature block of the document for the purpose of Texas Rules of Civil Procedure 13 and 57, and Chapter 9 of the Texas Civil Practices and Remedies Code.

(c) A digital signature on an electronically filed document is deemed to constitute a signature by the filer for the purpose of authorizing the payment of document filing fees.

#### **Rule 4.3 Time Document is Filed**

(a) A filer may electronically transmit a document through an EFSP to Texas Online 24 hours per day each and every day of the year, except during brief periods of state-approved scheduled maintenance which will usually occur in the early hours of Sunday morning.

(b) Upon sending an electronically-transmitted document through a filer's EFSP, the filer is deemed to have delivered the document to the clerk and, subject to Rule 4.3(h), the document is deemed to be filed. If a document is electronically transmitted on or before the last day for filing the same, the document, if received by the clerk not more than ten days tardily, shall be filed by the clerk and deemed filed in time. A transmission report by the filer to the filer's EFSP shall be prima facie evidence of date and time of transmission.

(c) On receipt of a filer's document, the filer's EFSP must send the document to Texas Online in the required electronic file format along with an indication of the time the filer sent the document to the EFSP and the filer's payment information. Texas Online will electronically transmit to the filer an "acknowledgement" that the document has been received by Texas Online. The acknowledgement will note the date and time that the electronically transmitted document was received by Texas Online.

(d) Upon receiving a document from a filer's EFSP, Texas Online shall electronically transmit the document to the district clerk. If the document was not properly formatted, Texas Online will transmit a warning to the filer's EFSP.

(e) Not later than the first business day after receiving a document from Texas Online, the district clerk shall decide whether the document will be accepted for filing. The district clerk shall accept the document for filing provided that the

document is not misdirected and complied with all filing requirements. The district clerk shall handle electronically transmitted documents that are filed in connection with an affidavit of inability to afford court costs in the manner required by TEX. R. CIV. P. 145. If the clerk fails to accept or reject a document within the time period, the document is deemed to have been accepted and filed.

(f) If the document is accepted for filing, the district clerk shall note the date and time of filing, which, with the exception of subsection (h) below, shall be the date and time that the filer transmitted the document to the filer's EFSP. The district clerk shall inform Texas Online of its action the same day action is taken. Texas Online shall, on that same day, electronically transmit to the filer's EFSP a "confirmation" that the document has been accepted for filing by the district clerk. The EFSP will electronically transmit the confirmation to the filer. This confirmation will include the electronically "file-marked" copy of the front page of the document showing the date and time the district clerk considers the document to have been filed.

(g) If the document is not accepted for filing, the district clerk shall inform Texas Online of its action, and the reason for such action, the same day action is taken. Texas Online shall, on that same day, electronically transmit to the filer's EFSP an "alert" that the document was not accepted along with the reason the document was not accepted. The EFSP will electronically transmit the alert to the filer.

(h) Except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, documents that serve to commence a civil suit will not be deemed to have been filed on Sunday when the document is electronically transmitted to the filer's EFSP, Texas Online or the Clerk on Sunday. Such documents will be deemed to have been filed on the succeeding Monday.

#### **Rule 4.4 Filing Deadlines Not Altered**

The electronic filing of a document does not alter filing deadlines.

#### **Rule 4.5 Multiple Documents**

(a) Except as provided by subsection (b) below, a filer may include only one document in an electronic transmission to Texas Online.

(b) A filer may electronically transmit a document to Texas Online that includes another document as an attachment (e.g., a motion to which is attached a brief in support of the motion).



#### **Rule 4.6 Official Document**

(a) The district clerk's file for a particular case may contain a combination of electronically-filed documents and traditionally-filed documents.

(b) The district clerk may maintain and make available electronically-filed documents in any manner allowed by law.

#### **Rule 4.7 E-mail Address Required**

In addition to the information required on a pleading by Tex. R. Civ. P. 57, a filer must include an e-mail address on any electronically-filed document.

#### **Rule 4.8 Document Format**

(a) Electronically-filed documents must be computer-formatted as specified by Texas Online. Electronically-filed documents must also be formatted for printing on 8 inch by 11 inch paper.

(b) An electronically-filed pleading is deemed to comply with Tex. R. Civ. P. 45.

### **PART 5. SERVICE OF DOCUMENTS OTHER THAN CITATION**

#### **Rule 5.1 Electronic Service of Documents Permissible**

(a) In addition to the methods of serving documents (other than the citation to be served upon the filing of a cause of action) set forth in Tex. R. Civ. P. 21a, a filer may serve documents upon another party in the case by electronically transmitting the document to that party at the party's email address. Service in such a manner is known as 'Electronic Service,' and is permissible in the circumstances set out in paragraph (b) below.

(b) Documents may be electronically served upon a party only where that party has agreed, in writing, to receive electronic service in that case. The clerk shall adopt a standard form of agreement which provides that the party has agreed to electronically accept service, sets out the email address where service should be sent, and informs the party of the right to rescind the agreement by subsequent notice to the court. The agreement must be filed with the court and the form must be served on all other parties.

(c) By virtue of electronically filing a document or serving a document or by agreeing to accept service, a filer additionally agrees to provide information regarding any change in his or her email address to Texas Online, the district clerk, and all parties in the case.

(d) A party who electronically files a document is not required to electronically serve documents upon other parties. Electronic service of documents is an optional method of service.

(e) A filer may electronically serve a document in instances where the document is traditionally filed as well as in instances where the document is electronically filed.

(f) A filer may electronically serve a document in instances where the document is traditionally filed as well as in instances where the document is electronically filed.

### **Rule 5.2 Completion of Service and Date of Service**

(a) Electronic service shall be complete upon transmission of the document by the filer to the party at the party's email address.

(b) Except as provided by subsection (c) below, the date of service shall be the date the electronic service is complete.

(c) When electronic service is complete after 5:00 p.m. (recipient's time), then the date of service shall be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

### **Rule 5.3 Time for Action After Service**

Whenever a party has the right or is required to do some act within a prescribed period of time after service of a document upon the party and that document is electronically served, then three days shall be added to the prescribed period of time.

### **Rule 5.4 Certification of Service**

(a) Documents to be electronically served upon another party shall be sent before the time or at the same time that the document is filed.

(b) A filer who electronically serves a document upon another party shall make a written certification of such service that shall accompany the document when that document is filed. The written certification shall include, in addition to any other requirements imposed by the Texas Rules of Civil Procedure, the following:

- (i) The filer's email address or telecopier (facsimile machine) number
- (ii) The recipient's email address;
- (iii) The date and time of electronic service; and
- (iv) A statement that the document was electronically served and that the electronic transmission was reported as complete.

## **PART 6. ELECTRONIC ORDERS AND VIEWING OF ELECTRONICALLY-FILED DOCUMENTS**

### **Rule 6.1 Courts Not Authorized to Make Electronic Orders**

(a) Judges shall continue to sign paper copies of orders, judgments, rulings, notices and other court-produced documents ("Court orders").

(b) The district clerk may electronically scan a court order. The scanned court order may then serve as the official copy of the court order. The district clerk is not required to electronically scan court orders in order to create official electronic court orders. Electronic scanning of court orders is at the option of the district clerk.

### **Rule 6.2 Viewing of Electronically-Filed Documents**

(a) The district clerk shall ensure that all the records of the court, except those made confidential or privileged by law or statute, may be viewed in some format by all persons for free.

(b) Independent of the Texas Online system and the requirements of viewing access described in subsection (a), the district clerk may choose to provide for both filers and the general public to electronically view documents or court orders that have been electronically filed or scanned. Where such provision has been made, persons may electronically view documents or court orders that have been electronically filed or scanned.

(c) Nothing in this rule allows for the viewing of documents or court orders, in any form, that are legally confidential (e.g., papers in mental health proceedings).

## **PART 7. MISCELLANEOUS PROVISIONS**

### **Rule 7.1 District Court to Resolve Disputes**

In the event a dispute should arise involving the application of these rules or various electronic filing issues, the District Court shall decide any dispute.

### **Rule 7.2 Rule Guiding Interpretation**


These rules are designed to govern the conduct of a pilot project. It is likely that these rules may not have contemplated each problem that may arise in the electronic filing or service of court documents. The application of the rules must be consistent with the understanding that the rules were written for the conduct of an initial pilot project, and must be made without undue prejudice to any person

on account of using the electronic filing system or sending or receiving electronic service in good faith.

**ADOPTION OF RULES**

The foregoing "Cass County Local Rules of the District Courts concerning the Electronic Filing of Documents" are hereby adopted by the undersigned district judge in Cass County on this 8<sup>th</sup> day of OCTOBER, 2003, and submitted to the Supreme Court of Texas for approval.

These rules shall become effective upon their approval by the Supreme Court of Texas.

  
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Judge, 5<sup>th</sup> Judicial District Court  
Cass County, Texas