

IN THE SUPREME COURT OF TEXAS

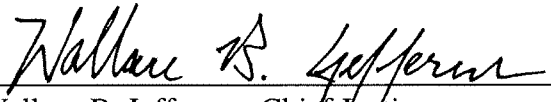
Misc. Docket No. 07-9166


PUBLICATION OF STATEWIDE RULES CONCERNING THE ELECTRONIC FILING AND SERVICE OF DOCUMENTS IN PARTICIPATING JUSTICE OF THE PEACE COURTS

ORDERED that:

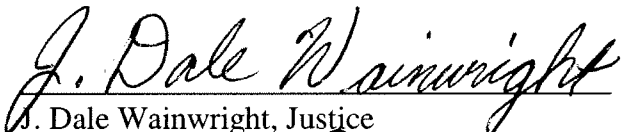
1. As required by the Act of May 3, 2007, 80th Leg., R.S. ch. 63, 2007 Tex. Gen. Laws ____ ("SB 237"), and in accordance with its mandatory deadline, the Court adopts the following Statewide Rules Concerning the Electronic Filing and Service of Documents in Participating Justice of the Peace Courts.
2. These rules, with any modifications made after public comments are received, take effect January 1, 2008. Comments may be submitted to the Court in writing on or before November 30, 2007, directed to: Jody Hughes, Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to him at jody.hughes@courts.state.tx.us.
3. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature;
and
 - d. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

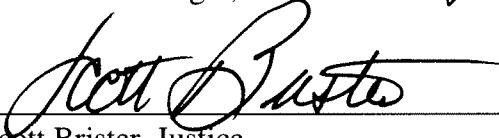
SIGNED this 20th day of September, 2007.

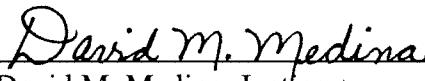

Wallace B. Jefferson, Chief Justice

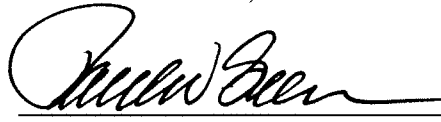

Nathan L. Hecht, Justice

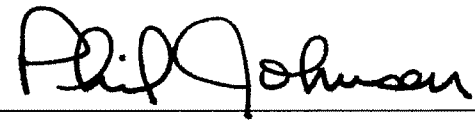
Harriet O'Neill, Justice


J. Dale Wainwright, Justice


Scott Brister, Justice


David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice

STATEWIDE RULES
concerning the
ELECTRONIC FILING AND SERVICE OF DOCUMENTS
in PARTICIPATING JUSTICE OF THE PEACE COURTS

PART 1. GENERAL PROVISIONS

Rule 1.1 Scope

These rules govern the electronic filing and service of documents in civil cases in all participating justice of the peace courts. These rules are adopted pursuant to Texas Government Code §22.004(f), and may be known as the Statewide Rules Concerning the Electronic Filing and Service of Documents in Participating Justice of the Peace Courts.

Rule 1.2 Electronic Filing Optional

In a participating justice of the peace court, a party may electronically file any documents that are permitted to be electronically filed under Rule 3.1.

Rule 1.3. Participation in Electronic Filing By Justice of the Peace Courts

(a) Each justice of the peace in Texas may determine whether the court over which the justice of the peace presides will accept electronically filed documents. These rules do not require any individual justice of the peace to accept electronically filed documents. Documents may be electronically filed only in a participating justice of the peace court.

(b) The county clerk of each county must maintain a current list, available to the public at no charge in the county clerk's office—and, if the county has a website accessible by the public at no cost, on the county's website as well—of participating justice of the peace courts in the county. After a justice of the peace court has begun participating in electronic filing, it must continue to do so until the justice of the peace has notified the county clerk, the county commissioner's court, and TexasOnline that the court will no longer participate and that the TexasOnline account has been closed, at which time the county clerk must promptly update the list to reflect the change. A justice of the peace court must provide advance notice of its decision to cease participating in electronic filing, in the form of (1) a general notice posted in a prominent place in the clerk's office or other location where the

paper filings for the justice of the peace court are made, the county clerk's office, and the county's website, if available, posted in each location for at least 30 consecutive days before the TexasOnline account is closed; and (2) direct notice by e-mail or other means, provided at least 7 days before the TexasOnline account is closed, to every party registered with TexasOnline in a case then pending in the justice of the peace court.

PART 2. DEFINITIONS

Rule 2.1 Specific Terms

The following definitions apply to these rules:

(a) "Civil cases" means all cases filed in small claims court and all non-criminal cases filed in the justice courts. The term does not include matters handled by a justice of the peace acting as a magistrate.

(b) "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 justice of the peace court will be considered as a court cost.

(c) "Digital signature" means a confidential and unique electronic identifier issued to a filer upon registration with TexasOnline. See Rule 4.2.

(d) "Digitized signature" means a graphic image of a handwritten signature.

(e) "Document" means a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or other instrument in paper form or electronic form. The term does not include court orders.

(f) "Electronic filing" is a process by which a filer files a court document with the justice of the peace court 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 described as the "electronic filing of documents" in Tex. Gov't Code §51.801.

(g) "Electronic filing service provider" (EFSP) means a business entity that provides electronic filing services and support to its customers (filers). An attorney or law firm may act as an EFSP.

(h) "Electronic order" means a computerized, non-paper court order that a justice of the peace signs by applying his or her digitized signature to the order.

(i) "Electronic service" is a method of serving a document upon a party in a case by electronically transmitting the document to that party's e-mail address.

- (j) “Electronically file” means to file a document by means of electronic filing.
- (k) “Electronically serve” means to serve a document by means of electronic service.
- (l) “Filer” means a person who files a document, including an attorney.
- (m) “Justice of the peace court” means a justice court or a small claims court, as defined by chapters 27 and 28 of the Texas Government Code and Texas Constitution Article V, §19.
- (n) “Paper filing” and “filing in paper format” describe a process by which a filer files a paper document with a justice of the peace court.
- (o) “Paper court order” means a court order that is generated and signed on paper.
- (p) “Participating justice of the peace court” means a justice of the peace court that has set up a TexasOnline account to accept electronically filed documents and has notified the county clerk and the county commissioner’s court of the court’s participating status.
- (q) “Party” means a person or entity appearing in any case or proceeding.
- (r) “Registered e-mail address” means an e-mail address a filer has registered with TexasOnline for the transmission or receipt of electronically filed documents.
- (s) “Regular filing fees” are those filing fees charged in connection with paper filing.
- (t) “Rules” are the Statewide Rules Concerning the Electronic Filing and Service of Documents in Participating Justice of the Peace Courts.

Rule 2.2 Self Representation

The term “attorney” shall apply to a self-represented party, such as a person representing himself or herself in a justice of the peace court, or a corporate representative who is not a licensed attorney appearing on behalf of a corporation in small claims court as authorized by Texas Government Code §28.003(e).

PART 3. APPLICABILITY

Rule 3.1 Documents That May Be Electronically Filed

(a) A document that can be filed in paper format may be electronically filed with a participating justice of the peace court, 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 a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents; and,
 - vii) documents sealed pursuant to Texas Rule of Civil Procedure 76a.
- (b) A motion to have a document sealed, as well as any response to such a motion, may be electronically filed.

Rule 3.2. Documents Containing Signatures

- (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 an agreement between attorneys or parties pertaining to a pending suit) may be electronically filed only as a scanned image.
- (c) Any affidavit or other paper described in Rule 3.2(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 file the document in paper format.
- (e) When a document is filed as a scanned image under Rule 3.2(a) or (b), the filer must retain the original document from which the scanned image has been made. Upon a party's request, a court shall require a party that electronically filed a scanned image of a document under Rule 3.2(a) or (b) to allow another party to inspect the original document.

PART 4. FILING

Rule 4.1 TexasOnline

- (a) Texas Online is a project of the Texas Department of Information Resources (DIR), a state agency 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 TexasOnline. The procedure can be accessed from TexasOnline's website at www.texasonline.com.

(c) Filers do not electronically file documents directly with the justice of the peace court. Rather, filers indirectly file with the justice of the peace court by electronically transmitting the document to an electronic filing service provider (EFSP), which electronically transmits the document to TexasOnline, which then electronically transmits the document to the justice of the peace court. A filer filing a document must have a valid account with a TexasOnline EFSP.

(d) Consistent with standards promulgated by the Judicial Committee on Information Technology (JCIT), TexasOnline 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 justice of the peace court indirectly through TexasOnline by a method set forth by TexasOnline.

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

(g) TexasOnline 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 DIR Board.

(h) The justice of the peace court may charge filers a convenience fee to electronically file documents, in an amount not to exceed the amount approved by the DIR Board. 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 Rule of Civil

Procedure 8, unless otherwise designated. The digital signature on any document electronically filed 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.

(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 TexasOnline 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 the electronic transmission of a document to a filer's EFSP, the filer is deemed to have delivered the document to the justice of the peace court and, subject to Rule 4.3(h), the document is deemed to be filed. If a document is electronically transmitted to the filer's EFSP on or before the last day for filing the same, the document shall be filed by the court 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 TexasOnline 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. TexasOnline will electronically transmit to the filer an acknowledgment that the document has been received by TexasOnline. The acknowledgment will note the date and time that the electronically-transmitted document was received by TexasOnline.

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

(e) The justice of the peace court shall accept the document for filing provided that the document is not misdirected and complies with all filing requirements. The justice of the peace court must accept electronically-transmitted documents that are filed in connection with an affidavit of inability to afford court costs in the manner required by Texas Rule of Civil Procedure 145. If the justice of the peace court fails to accept or reject a document within one business day, the document is deemed to have been filed.

(f) If the document is accepted for filing, the justice of the peace court 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 justice of the peace court shall inform TexasOnline of its action the same day action is taken. TexasOnline shall, on that same day, electronically transmit to the filer's EFSP a confirmation that the document has been accepted for filing by the justice of the peace court. The EFSP will electronically transmit the confirmation to the filer. This confirmation will include an electronically file-marked copy of the front page of the document showing the date and time the justice of the peace court considers the document to have been filed.

(g) If the document is not accepted for filing, the justice of the peace court shall inform TexasOnline of its action, and the reason for such action, the same day action is taken. TexasOnline 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 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, TexasOnline, or the justice of the peace court on Sunday. Such documents will be deemed to have been filed on the succeeding Monday.

Rule 4.4 Multiple Documents

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

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

Rule 4.5 Official Document

(a) The justice of the peace court's file for a particular case may contain a combination of electronically filed documents and paper documents.

(b) The justice of the peace court may maintain and make available electronically filed documents in any manner allowed by law.

Rule 4.6 Registered E-mail Address Required

A filer must include the filer's registered e-mail address on any electronically filed document, along with the filer's mailing address; telephone number; telecopier (fax) number, if available; and, if the filer is an attorney licensed in Texas, the filer's State Bar of Texas identification number.

Rule 4.7 Document Format

Electronically-filed documents must be computer-formatted as specified by TexasOnline. Electronically-filed documents must also be formatted for printing on 8 1/2-inch by 11-inch paper.

PART 5. SERVICE OF DOCUMENTS OTHER THAN CITATION

Rule 5.1 Electronic Service of Documents Permissible

(a) Texas Rule of Civil Procedure 21a provides that, except for the citation to be served upon the filing of a cause of action and except as otherwise expressly provided in the Rules of Civil Procedure, documents filed with a court or otherwise required to be served upon a party may be served by delivering a copy to the party, or to the party's authorized agent or attorney, in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer (fax) to the recipient's current telecopier (fax machine) number, or by such other method as the court in its discretion may direct. In addition to those methods, a filer may serve documents upon another party in the case by electronically transmitting the document to that party, either through TexasOnline to the party's registered e-mail address or directly to the party at the e-mail address provided by the party upon agreeing to receive electronic service, as updated by the party as provided in paragraph (c) below. Service in either 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 to receive electronic service.

(c) By virtue of electronically filing or serving a document or by agreeing to receive electronic service, a party additionally agrees to provide information regarding any change in his or her e-mail address to TexasOnline, the justice of the peace court, and all parties in the case within 24 hours of the change.

(d) A party who electronically files a document is not required to electronically serve documents upon other parties.

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

Rule 5.2 Completion of Service and Date of Service

(a) Service shall be complete upon the sender's initiation of an electronic transmission of the document under either of the methods of electronic service

specified in Rule 5.1(a). However, nothing in this rule precludes a party from offering proof that the electronic transmission was not timely received for reasons beyond the control of the intended recipient, and upon so finding, the court may extend the time for taking the action required of the intended recipient or grant such other relief as it deems just.

(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 Certification of Service

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

(b) A document served electronically must contain a certificate of electronic service that must include, in addition to any other requirements imposed by the Texas Rules of Civil Procedure, the following:

(i) the filer's e-mail address and, if available, the filer's telecopier (fax machine) number;

(ii) the recipient's e-mail address;

(iii) the date and time of electronic service; and

(iv) a statement either that the document has been electronically served, or that the document is being electronically served concurrent with the electronic filing of the document.

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

Rule 6.1 Courts Authorized to Make Electronic Orders

(a) A justice of the peace may electronically sign an order by applying his or her digitized signature to the order. Justices of the peace are not required to electronically sign orders.

(b) Upon electronically signing an order, the justice of the peace may maintain the electronic order as an official copy of the order or print the electronic order and treat the printed order as an official copy of the order.

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

Rule 6.2 Viewing of Electronically-filed Documents

(a) The justice of the peace court shall ensure that all the records of the court, except those made confidential or privileged by law, rule, or court order, may be viewed in some format by all persons at no charge. Nothing in this rule allows for the viewing of documents or court orders, in any form, that are confidential or privileged by law, rule, or court order.

(b) Independent of the TexasOnline system and the requirement of viewing access described in subsection (a), a justice of the peace court 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.

PART 7. MISCELLANEOUS PROVISIONS

Rule 7.1 Assigned Court to Resolve Disputes

In the event a dispute should arise involving the application of these rules or various electronic filing issues, the justice of the peace court assigned to the case in which the dispute arises shall decide any dispute.

Rule 7.2. Rule Guiding Interpretation

These rules shall be liberally construed so as to avoid undue prejudice to any person on account of using the electronic filing system or sending or receiving electronic service in good faith.