

IN THE COURT OF CRIMINAL APPEALS

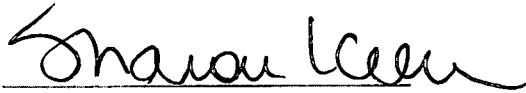
Misc. Docket No. 15-002

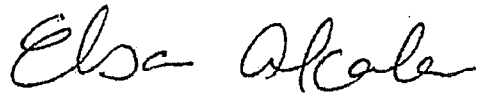
ORDER ADOPTING PROPOSED STATEWIDE RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

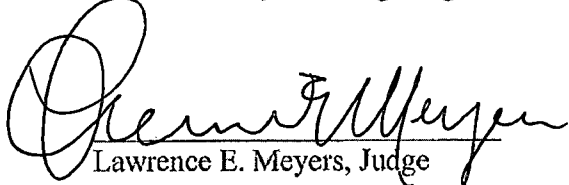
ORDERED that:

- 1) The Statewide Rules Governing Electronic Filing in Criminal Cases are adopted, effective September 1, 2015, for Hidalgo County, Texas, subject to potential changes made after a comment period. See Tex. Gov't Code §§ 24.194, 24.195, 24.241, 24.385, 24.452, 24.478, 24.515, 24.534, 24.543, 24.574, and 24.593.
- 2) For all other counties in Texas, the rules are effective November 1, 2015.
- 3) The Clerk is directed to file a copy of this Order with the Secretary of State and the Texas Register, and to 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*.
- 4) These rules may be changed in response to public comments received before August 30, 2015. Any interested party may submit written comments directed to Abel Acosta, Clerk of the Court, at P.O. Box 12308, Austin, TX 78711, or abel.acosta@txcourts.gov.

Dated: June 9, 2015

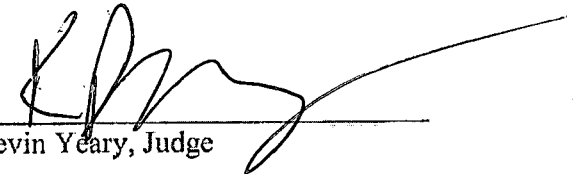

Sharon Keller, Presiding Judge

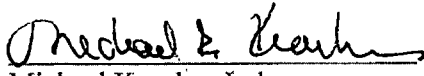

Elsa Alcala, Judge

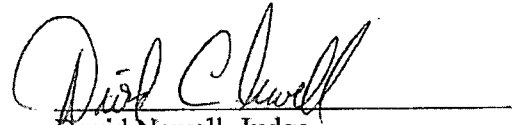

Lawrence E. Meyers, Judge

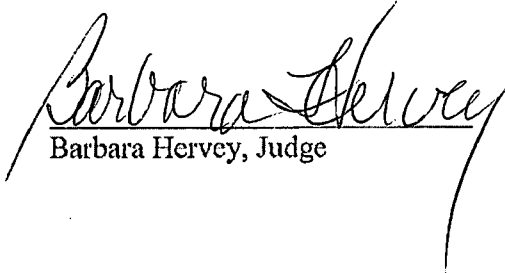

Bert Richardson, Judge


Cheryl Johnson, Judge


Kevin Yeary, Judge


Michael Keasler, Judge


David Newell, Judge


Barbara Hervey, Judge

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 15-9090

ORDER ADOPTING RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

ORDERED that:

1. The Rules Governing Electronic Filing in Criminal Cases are adopted for Hidalgo County, effective September 1, 2015. *See* Acts 2013, 83rd Leg., R.S., ch. 855, 2013 Tex. Gen. Laws 2203, 2203-04 (codified at TEX. GOV'T CODE §§ 24.194(d), 24.195(d), 24.241(d), 24.385(b), 24.452(b), 24.478(b), 24.515(b), 24.534(b), 24.543(b), 24.574(c), 24.593(c)) (effective Sept. 1, 2015).
2. For all other counties, the rules are effective November 1, 2015.
3. These rules may be changed in response to public comments received by August 30, 2015. Any interested party may submit written comments to the Clerk of the Court of Criminal Appeals, Abel Acosta, at P.O. Box 12308, Austin, TX 78711 or abel.acosta@txcourts.gov.
4. 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. submit a copy of the order for publication in the *Texas Register*.

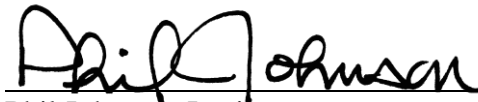
Dated: June 9, 2015.



Nathan L. Hecht, Chief Justice



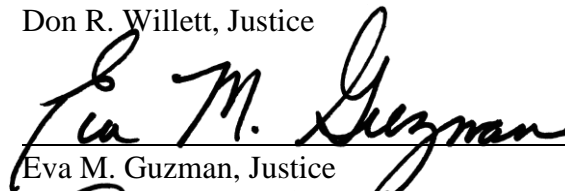
Paul W. Green, Justice



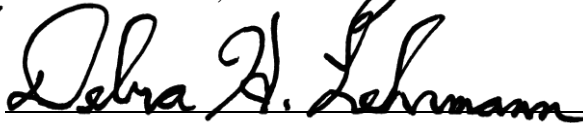
Phil Johnson, Justice



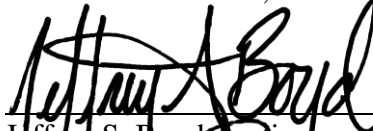
Don R. Willett, Justice



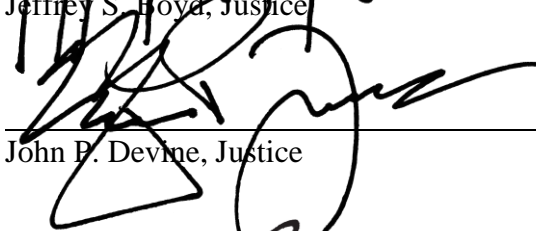
Eva M. Guzman, Justice



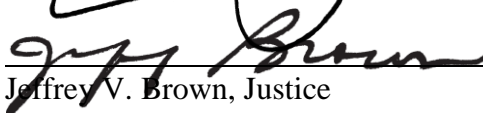
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

PROPOSED STATEWIDE RULES
governing
ELECTRONIC FILING in CRIMINAL CASES

PART 1. GENERAL PROVISIONS

Rule 1.1 Purpose

These rules govern the electronic filing in criminal cases in Justice of the Peace Courts, County Courts, Statutory County Courts and District Courts.

Rule 1.2 Electronic Filing Permitted

Where criminal case e-filing has been implemented in a county, the electronic filing and serving of court documents is permitted.

PART 2. DEFINITIONS

Rule 2.1 Specific Terms

The following definitions apply to these rules:

- (a) “Court” is defined as a Justice of the Peace Court, Constitutional County Court, Statutory County Court and District Court.
- (b) “Clerk” is defined as justice court clerks, county clerks and district clerks.
- (c) “Digital Media” is defined as any files stored in an electronic format. This can include (but is not limited to) text, audio and video files.
- (d) “Electronic signature” is defined as an electronic identifier intended by the person using it to have the same force and effect as a manual signature (see Texas Code of Criminal Procedure § 2.26).
- (e) “Document” is defined as a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, or other instrument in electronic form.
- (f) “Electronic filing” is defined as uploading a document in PDF format using the electronic filing manager via a certified EFSP to file that document. Sending a document to the Clerk via fax or electronic mail (e-mail) as an attachment does *not* constitute “electronic filing”.

- (g) “Electronic Filing Manager” is the electronic filing portal contracted by the Office of Court Administration.
- (h) “Electronic Filing Service Provider (EFSP)” is a business entity that provides electronic filing services and support to its customers (filers). An attorney, law firm, or governmental entity may act as an EFSP once certified by OCA.
- (i) “Electronic order” is defined as a digital, non-paper court order that a judge signs by applying his/her Electronic signature on the order.
- (j) “Electronic service” is a method of serving a document upon a party in a case by electronically transmitting the document through the electronic filing manager to the party to be served using the email address on file with the electronic filing manager.
- (k) “Filer” is defined as a person or entity who files a document, including an attorney.
- (l) “Office of Court Administration (OCA)” is the entity approved by the Supreme Court of Texas to certify EFSP’s.
- (m) “Party” is defined as a person 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.
- (n) “Portable Document Format (PDF)” for the purpose of these standards is the same as defined in the Judicial Committee on Information Technology’s Technology Standards.

PART 3. APPLICABILITY

Rule 3.1 Scope

These rules apply to the electronic filing of documents in all criminal cases, including cases that are appeals from lower courts, before all justice of the peace, constitutional county, statutory county and district courts. Notwithstanding anything else contained in these rules, these rules do not apply to the filing of charging instruments.

Rule 3.2 Clerks

These rules apply to the filing of documents with justice, county and district clerks. These rules do not apply to the filing of documents directly with a judge. Attorneys representing the State of Texas or governmental entities may file documents directly with the Clerk via the county’s internal system or portal.

Rule 3.3 Documents That May Be Electronically Filed

Any document that can be filed with the Court in paper form may be electronically filed with the following exceptions:

- (1) Documents filed under seal or presented to the Court in camera; and

(2) Documents to which access is otherwise restricted by these rules, law, or court order.

Rule 3.4 Documents Containing Signatures

(a) A document that is electronically served, filed, or issued by a Court or clerk is considered signed if the document includes:

(1) a “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(b) If a paper document must be notarized, sworn to, or made under oath, the filer may e-file the paper document as a scanned image containing the necessary signature(s).

(c) If a paper document requires the signature of an opposing party, the filer may e-file the paper document as a scanned image containing the opposing party’s signature.

(d) When a filer e-files a scanned image of a paper document pursuant to paragraph (b) or (c) of this rule, the filer must retain the original paper document from which the scanned image was made until the statute of limitations for the underlying charge has run or the defendant discharges his sentence in the case, whichever is later. If the original paper document is in another party’s possession, that party must retain the original paper document until the statute of limitations for the underlying charge has run or the defendant discharges his sentence in the case, whichever is later.

PART 4. FILING MECHANISM

Rule 4.1 Office of Court Administration established Electronic Filing Manager

Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration.

Rule 4.2 Format

An electronically filed document must:

(a) be in text-searchable portable document format (PDF);

(b) be directly converted to PDF rather than scanned, if possible;

(c) not be locked; and

(d) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court and the Court of Criminal Appeals.

Rule 4.3 Timely Filing

(a) Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except:

(1) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and

(2) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date the motion is granted.

(b) If a document is untimely filed due to a technical failure or a system outage, the filing party may seek appropriate relief from the court. If the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.

Rule 4.4 Official Record

The clerk may designate an electronically filed document or a scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions of the same document.

Rule 4.5 E-Mail Address Required

The email address of any person who electronically files a document must be included on the document.

Rule 4.6 Paper Copies

Unless required by local rule, a party need not file a paper copy of an electronically filed document.

Rule 4.7 Electronic Notices from the Court

The clerk may send notices, orders, or other communications about the case to the party electronically. A court seal may be electronic.

Rule 4.8 Non-Conforming Documents

The clerk may not refuse a document that fails to conform to this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.

PART 5. SERVICE OF DOCUMENTS

Rule 5.1 Electronic Service of Documents Permissible

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served, except as otherwise expressly provided in these rules, may be served by

delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record.

Documents Filed Electronically. A document filed electronically under these rules must be served electronically through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager. If the email address of the party or attorney to be served is not on file with the electronic filing manager, the document may be served on that party or attorney as permitted by law.

Rule 5.2 Electronic Service Complete

Electronic service is complete on transmission of the document to the serving party's electronic filing service provider. The electronic filing manager will send confirmation of service to the serving party.

Rule 5.3 Proof of Service

The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any other person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the document notice or instrument was not received and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just.

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

Rule 6.1 Courts Authorized to Make Electronic Orders

A Judge may electronically sign an order by applying his/her electronic signature to the order. Judges are not required to electronically sign orders.

PART 7. PRIVACY PROTECTION FOR FILED DOCUMENTS

Rule 7.1 Sensitive Data Defined

Sensitive data consists of:

- (a) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;
- (b) a bank account number, credit card number, or other financial account number; and
- (c) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

Rule 7.2 Filing of Documents Containing Sensitive Data Prohibited

Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document containing sensitive data may not be filed with a court unless the sensitive data is redacted.

Rule 7.3 Redaction of Sensitive Data; Retention Requirement

Sensitive data must be redacted by using the letter “X” in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the case and any related appellate proceedings filed within six months of the date the judgment is signed.

Rule 7.4 Notice to Clerk

If an electronic or paper document must contain sensitive data, the filing party must state on the upper lefthand side of the first page, “NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.”

Rule 7.5 Non-Conforming Documents

The clerk may not refuse a document that contains sensitive data in violation of this rule. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

Rule 7.6 Restriction on Remote Access

Documents that contain sensitive data in violation of this rule must not be posted on the Internet.