

FINAL REPORT OF SUBCOMMITTEE ON E-FILING LOCAL RULES

SUMMARY

The Judicial Committee on Information Technology and the Office of Court Administration have proposed, in cooperation with the Bexar County District Clerk, the Fort Bend County County Clerk, and the state agency, TexasOnline, to run pilot projects which would allow attorneys to both “e-file” and “e-serve” legal documents in certain civil matters in those counties. These programs are materially different in scope and cost than two earlier “e-filing” programs operated in Jefferson and Montgomery County. The ultimate goal of the program is to allow statewide “e-filing” and “e-service” if the pilots are successful.

The Subcommittee has reviewed proposed local rules relating to “e-filing” and “e-service” and find that they appropriately address issues raised by the proposed process. The subcommittee recommends the adoption of the proposed rules. The subcommittee believes that, if adopted, the local rules will provide an adequate set of guidelines to cover the common problems likely to be faced by a party seeking to use the “e-filing” and “e-service” system and gives adequate guidance to clerks, practitioners, and judges on the effects and operation of the system. With these rules in place, the subcommittee strongly supports “test driving” these two pilot programs and examining the results.

HISTORY AND TECHNICAL DESCRIPTION

JCIT and the Office of Court Administration (OCA) have proposed the implementation of two pilot projects in Bexar and Fort Bend County. The project would allow an attorney to file initial pleading and most other documents electronically (“e-filing”) and would allow an attorney to send or receive documents to other attorneys electronically (“e-service”). A description of how “e-filing” and “e-service” works is set out below. A technical description of the proposal is attached as Exhibit B.

After the technical aspects of the “e-filing” and “e-service” were fleshed out, JCIT and OCA, in cooperation with the Fort Bend and Bexar County clerks and judges, worked to create a set of model local rules to govern the effects of the two electronic transactions. Their proposal were forwarded to the Supreme Court for approval. A preliminary review of the rules raised some issues with the operation and effect of the rules. Because of the desire of the Court to have a successful project and the large number of cases and documents that may be affected by the pilot projects (in 2001, Bexar County district courts had 46,000 civil cases filed and Fort Bend County county courts had 1,300 civil cases filed), the Court requested that a subcommittee of the Supreme Court Advisory Committee (SCAC) briefly examine the rules.

The Subcommittee was chaired by Judge Peeples and was composed of SCAC members Richard Orsinger, Robert Meadows, Bonnie Wolbrueck, Andy Harwell, members of the Fort Bend and Bexar County bar and clerk’s office (Reagan Greer, Dianne Wilson, James Kincade) and members of JCIT and OCA (Peter Vogel, Alicia Key, Margaret Bennett, Mike Griffith, and Ted Wood). The Subcommittee meet on Monday, October 28 and considered the local rules. The Subcommittee suggested several changes be made to the proposed local rules. Exhibit A is a redlined/strike out version of the local rules offered and the subcommittee’s suggested changes.

SUMMARY OF PROPOSED LOCAL RULES

The proposed local rules contain four principal components:

1. General Provisions (Rules 1-2, 7);
2. E-filing (Rules 3-4);
3. E-service (Rule 5); and
4. Clerk's record retention issues (Rule 6).

The general provisions of the rules set out the types of cases (non-family law civil cases) that can be filed electronically. These rules also contain the definitions used in the rules and make clear who will settle disputes about the rules. The remaining three components are described below.

DESCRIPTION OF STEPS TO E-FILING

1. If a lawyer seeks to use e-filing, the lawyer initially contacts TexasOnline and registers as an e-filer. The lawyer also makes arrangements with an Electronic Filing Services Provider (EFSP). An EFSP is a service provider that take the lawyer's e-filing and transmits it to TexasOnline, using the standards and formats required by JCIT. The EFSP may assess a fee for its service.
2. The lawyer seeking to electronically file a document prepares the document as a .pdf or .tiff document. The document must be in the format as specified by TexasOnline and be formatted for printing on letter-sized paper. Each e-filing may consist of only 1 document, but may include another document, such as a brief in support of a motion, as an attachment. The lawyer also must include the lawyer's e-mail address.
3. Verified, notarized, acknowledged, or sworn-to documents or documents made under oath, including affidavits, may be electronically filed only as a scanned image. A document requiring the signature of an opposing party may be electronically filed only as a scanned image. Any affidavit or other paper, that is attached to a document may be scanned and electronically filed along with the underlying document. Where a filer has electronically filed a scanned image, 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.
4. The lawyer attaches a unique digital code to the document and transmits it to an electronic filing service provider (EFSP).
5. The EFSP takes the document and sends it to TexasOnline. TexasOnline checks the document for proper formatting. It also checks whether the lawyer's account or credit card has sufficient funds to cover any filing fees and service fees. If the document is not properly formatted or insufficient funds exist, TexasOnline will not accept the document

and will send a warning, declining the filing, to the EFSP . If the document is properly formatted and funds exist, Texas OnLine then transmits the document to the Clerk and transmits an electronic acknowledgment to the filer's EFSP that TexasOnline received a properly-formatted, electronically transmitted document . The acknowledgment will note the date and time of the receipt of the document by TexasOnline.

6. Not later than the first business day after receiving a document from TexasOnline, the clerk decides whether the document will be accepted for filing. The district clerk shall accept the document if the document is not misdirected, complies with all filing requirements, and all filing fees have been paid. If the clerk fails to act within the time period, the document is deemed to have been filed. Electronically filed indigent cases will be handled in the same manner as other Rule 145 cases.

7. If the clerk accepts the e-filing, the district clerk shall, on the same day, note the date and time of filing, which will be deemed as the date and time that TexasOnline received the document. TexasOnline will, on the same day, pass the confirmation and a "file-marked copy" of the first page of the document on to the e-filer's EFSP. The EFSP will transmit the confirmation to the filer. The only exception to the "deemed" date of filing is that Rule 6 will be applied to documents filed on Sunday and in some cases, those documents will be presumed to be filed the following Monday.

8. If the document is rejected by the clerk, the clerk informs TexasOnline of the action and reasons for the action, TexasOnline passes the message as an "alert" to the filer's EFSP. The EFSP will electronically transmit the alert to the filer.

9. The filer is responsible for any difficulty transmitting a properly formatted document to TexasOnline; the filer is not responsible for any problem once TexasOnline receives the document until it is transmitted to the clerk.

10. E-filing does not alter any filing deadlines.

DESCRIPTION OF E-SERVICE

1. A filer may "e-serve" a document on another party in the case by electronically transmitting the document to that party at the party's email address.

2. A document may be "e-served" only if the party has agreed to receive electronic service by filing and serving notice that the party will accept electronic service in a case.

3. A party "e-filing" a document does not have to "e-serve" the document. A filer may "e-serve" a document when the document is traditionally filed.

4. "E-service" is complete upon sending the document to the party at the other party's email address. The date of service is deemed to be the date the electronic

service is complete, unless the electronic service is completed after 5pm, recipient's time, then the date of service is deemed to be the next day that isn't a Saturday, Sunday, or legal holiday.

5. "E-service" adds three days to the prescribed period of time to take some act within a prescribed period after the service.

6. "E-served" documents shall be served before the time the document is filed.

7. A party "e-serving" a document shall make a written certification of the service that shall accompany the document when that document is filed. The written certification shall include the filer's e-mail address or fax machine number, the recipient's email address, the date and time of electronic service, and a statement that the document was electronically served and the electronic transmission was reported as completed.

CLERK'S ACTIONS RETAINING DOCUMENTS OR ALLOWING ELECTRONIC VIEWING OF DOCUMENTS

Rule 4.7(b) allows the clerk to electronically scan a traditionally-filed document. The scanned document then may serve as the official copy of the document. Rule 6.1(b) allows the district clerk to scan court orders. Rule 6.2(c) allows the district clerk to allow the public to electronically view documents or court orders that have been electronically filed or scanned.

SUMMARY OF ALL RULES

The e-filing rules of the Bexar County District Courts and the Fort Bend County Courts are almost identical. They are summarized below and any differences are noted.

1. Rules 1 and 2- Outline general provisions (name and title of rules) and the standard definitions for the rules

2. Rule 3.1- Applies to the filing of documents in all non-juvenile civil cases, including appeals from lower courts. Also applies to matters assigned to associate judges or similar judicial authorities. (Applies to all statutory county courts and the constitutional court in Fort Bend County)

3. Rule 3.2- Applies only to filing with the Bexar County District Clerk (or the Fort Bend County Clerk). Does not apply to Rule 74 filings.

4. Rule 3.3- All documents that can be filed in a traditional manner with the district clerk may also be filed electronically, except citations or writs bearing the seal of the court, returns of citation, bonds, subpoenas, proof of service of a subpoena, in camera documents (if presented solely for the purpose of obtaining a ruling on discoverability),

documents sealed under Rule 76a, and “*documents to which access is otherwise restricted by law or court order.*” (Fort Bend County adds “wills” to the list of exclusions)

Documents that are required to be verified, notarized, acknowledged, sworn to, or made under oath may be electronically filed. The filer is required to retain the original signature page. The court may require the document to be filed and the document shall be made, on reasonable notice, to the other parties. A party filing a paper is required to maintain the document for at least two years after the final resolution of the action, including the final resolution of all appeals.

5. Rule 4.1- Outlines TexasOnline’s duties. Describes indirect method of filing. Allows JCIT to set filing standards (initially, files must be in .pdf or .tiff formats) and transmission standards. Allows TexasOnline to collect filing fees and TexasOnline and the clerk to collect convenience fees.

6. Rule 4.2-Creates unique identification number for each filer. The identification number acts as a “digital signature” and satisfies the signature requirements of the Rules of Civil Procedure. The code also acts as an authorization to pay fees.

7. Rule 4.3-Outlines the method for determining when a document is filed. During the course of a normal filing, lawyer sends the document to an EFSP. The EFSP send it on to Texas Online. At that point, TexasOnline does two things: First, it send an acknowledgment that the document has been “received” to the EFSP and sends the document on to the district clerk. On the first business day after receiving the document, the clerk shall decide if the document will be accepted for filing.

The document shall be filed if it was not misdirected, complies with the filing requirements, and all filing fees have been paid. If accepted for filing, the date of filing is presumed to be the date and time TexasOnline received the electronic document. The clerk notifies TexasOnline, which in turn notifies the EFSP of the confirmation. If the document is not accepted for filing, the clerk notifies TexasOnline of the action, which alerts the EFSP.

Except for the exceptions contained in Rule 6, civil suits are deemed to not to have been filed on a Sunday, but the succeeding business day.

8. Rule 4.4- A lawyer is responsible for everything that goes on until the document reaches TexasOnline. Once it reaches TexasOnline, the filer is not responsible for any electronic transmission issues. The clerk is responsible for making sure that notice of the clerk’s action is sent back to the filer’s EFSP

9. Rule 4.5- E-Filing does not alter any filing deadlines

10. Rule 4.6- Only one document per transmission, although the rule allows other documents to be submitted as attachments (e.g. a motion to which a brief in support is attached is ok)

11. Rule 4.7-A district clerk’s file may contain both e-filed documents and traditionally

filed documents. Clerks may scan traditionally filed documents. These scanned documents then may serve as the official copy of the document.

12. Rule 4.8- Requires e-filers to also include their e-mail address on pleadings, in addition to the requirements of Rule 57.

13. Rule 4.9- Documents must be formatted as required by TexasOnline. A properly formatted document is considered in compliance with Rule 45.

14. Rule 5.1- Electronic service of documents is also allowed. Documents may be electronically served on a party only if the party has agreed to receive electronic service.

15. Rule 5.2- Electronic service is complete and considered served upon transmission of the document to the party at the party's email address. If transmitted after 5:00pm, it considered received on the next business day.

16. Rule 5.3- Service by email adds an additional three days to response time.

17. Rule 5.4- Documents must be electronically served before they are filed. Documents that are filed must contain a written certification that the service was sent and "a statement that the document was electronically served and that the electronic transmission was reported as complete".

18. Rule 6.1- Courts may not make electronic orders. Clerks may scan order and that scanned order becomes official copy.

19. Rule 6.2- The electronic filing of a document does not make the document electronically viewable. An EFSP may choose offer filers a chance to archive and review their documents. A district clerk may choose to provide filers and the public with the ability to electronically view documents. If the clerk allows electronic viewing, this paragraph does not allow viewing of documents that are confidential.

20. Rule 7.1-In Bexar County, the local assignment court will resolve disputes. In Fort Bend, the assigned court of the presiding judge will resolve any disputes.

EXHIBIT A
SUBCOMMITTEE MODEL LOCAL RULE PROPOSAL

[----]= SUBCOMMITTEE DELETIONS FROM BEXAR AND FORT BEND LOCAL RULES

NEW= SUBCOMMITTEE ADDITIONS

1. GENERAL PROVISIONS

Rule 1.1 Purpose

The purpose of these rules is to set forth procedures pertaining to the electronic filing of court documents with the Bexar County District Clerk.

Rule 1.2 Authority

These rules are adopted pursuant to Rule 3a of the Texas Rules of Civil Procedure.

Rule 1.3 Title and Citation

These rules shall be known as the A Bexar County Local Rules of the District Courts concerning the Electronic Filing of Court Documents.@

Rule 1.4 Effect on Existing Local Rules

These rules are adopted in addition to any other local rules of the district courts in Bexar County. These rules do not supersede or replace any previously-adopted local rules. More specifically, these rules are in addition to current local rules, Part 4 electronic court documents (fax filing).

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 Bexar 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, Government Code.
- (e) *Electronic Filing Service Provider (EFSP)* is a business entity that provides electronic filing services and support to its customers (filers).

(f) *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.

(g) *Electronically File* means to file a document by means of electronic filing.

(h) *Electronically Serve* means to serve a document by means of electronic service.

(i) *Filer* means a person who files a document, including an attorney.

(j) *Party* means 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.

(k) *Regular Filing Fees* are those filing fees charged in connection with traditional filing.

(l) *Rules* are the Bexar County Local Rules of the District Courts concerning the Electronic Filing of Documents.

(m) *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 *Acounsel@* shall apply to an individual litigant in the event a party appears *pro se*.

3. APPLICABILITY

Rule 3.1 Courts

(a) These rules apply to the filing of documents in all non-juvenile civil cases, including cases that are appeals from lower courts, before the various district courts with jurisdiction in Bexar County.

(b) These rules apply to the filing of documents in cases before the various district courts referred to in paragraph (a) above that are subsequently assigned to associate judges or any other 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

(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 a 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.

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

(c) 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. ~~[but the filer is required to maintain the original signature page of the document. A court may require a filer to promptly file the document in a traditional manner with the district clerk. [The document shall be made available, upon reasonable notice and during business hours, to other counsel].~~

(d) A document that requires the signatures of opposing parties (such as a Rule 11 agreement [an agreed statement of facts, see TEX. R. CIV. P. 263]) may be electronically filed only as a scanned image. ~~[but the filer is required to first obtain the signatures of all opposing parties on a written form of the document. A court may require a filer to promptly file the document in a traditional manner with the district clerk. [The filer is required to maintain the original signed document and shall make it available, upon reasonable notice and during business hours, to other counsel.]~~

(e) Any affidavit or other paper, that is to be attached to a document may be scanned and electronically filed along with the underlying document. ~~[A court may require a filer to] promptly file the document in a traditional manner with the district clerk. [If the affidavit or other paper contains a signature, that affidavit or other paper shall be maintained by the filer and he or she shall make it available, upon reasonable notice and during business hours, to other counsel.] A third party may request the court in which the matter is pending to allow inspection of a document maintained by the filer.]~~

(f) 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.

Rule 4. FILING MECHANICS

Rule 4.1 TexasOnline

(a) Texas Online is a project of the TexasOnline 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 TexasOnline. The procedure can be accessed from TexasOnline's website at 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 TexasOnline which then electronically transmits the document to the district clerk.

(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 district clerk 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 TexasOnline 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 [~~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 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. A filer is not in any way limited to

electronically transmitting documents only during hours that the district clerk's office is physically open for business.

(b) Upon receiving a properly-formatted, electronically-transmitted document from a filer's EFSP and verification that the filer has a sufficient credit card balance or valid ACH routing number to complete the transaction, TexasOnline will electronically transmit to the filer's EFSP an Acknowledgment@ that the document has been received by TexasOnline. The EFSP will electronically transmit the acknowledgment to the filer. The acknowledgment will note the date and time that the electronically-transmitted document was received by TexasOnline. If the document is not properly formatted or if TexasOnline determines that the credit card balance is insufficient or the ACH routing number is invalid, TexasOnline will transmit a warning to the filer's EFSP and the document will not be forwarded to the district clerk.

(c) Upon receiving a properly-formatted, electronically-transmitted document from a filer's EFSP and verification of the sufficiency of the filer's credit card balance or ACH routing number, TexasOnline will electronically transmit the document to the district clerk.

(d) Not later than the first business day after receiving a document from TexasOnline, 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, complies with all filing requirements and all filing fees have been paid. 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.

(e) If the document is accepted for filing, the district clerk shall note the date and time of filing which, with the exception of subsection (g) below, shall be the date and time that TexasOnline received the electronically-transmitted document as noted on the acknowledgment described in subsection (b) above. The district clerk 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 district clerk. 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 district clerk considers the document to have been filed.

(f) If the document is not accepted for filing, the district clerk 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.

(g) 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 TexasOnline on Sunday. Such documents will be deemed to have been filed on the succeeding Monday.

~~Rule 4.4 Risk of Electronic Transmission Failures~~

~~(a) The filer is responsible for any difficulty in electronically transmitting a properly-formatted document to TexasOnline].~~

~~(b) [Once a properly-formatted document has been electronically transmitted to TexasOnline, the filer is not responsible for any problem TexasOnline may encounter in electronically transmitting the document to the district clerk].~~

Rule 4.5 Filing Deadlines not Altered

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

Rule 4.6 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 4.7 Official Document

(a) The district clerk's file for a particular case may contain a combination of electronically-filed documents and traditionally-filed documents. ~~[A document that is electronically-filed serves as the official copy of that document.~~

~~(b) The district clerk may electronically scan a traditionally filed document. The scanned document may then serve as the official copy of that document. The clerk is not required to electronically scan documents to create an official electronic document. Electronic scanning of traditionally filed documents is at the option of the district clerk.]~~ ***The district clerk may maintain and make available electronically-filed documents in any manner allowed by law.***

Rule 4.8 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 4.9 Document Format

(a) Electronically-filed documents must be formatted as specified by TexasOnline. *See* Rule 4.1(d) above.

(b) Electronically-filed documents must be formatted for printing on 8 1/2 inch by 11-inch paper.

(c) A properly-formatted, electronically-filed pleading is deemed to comply with TEX. R. CIV. P. 45 which requires that pleadings be on paper measuring approximately 8 1/2 inches by 11 inches.

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 e-mail 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 to receive electronic service. Such agreement may be evidenced by filing and serving a notice that the party will accept electronic service ~~[in a particular case]~~. ~~[Such agreement may also be evidenced by the party=s electronic filing of one or more documents in a particular case. By virtue of electronically filing a document in a case and thereby providing an e-mail address, a filer agrees to accept electronic service of documents at that e-mail address in the particular case.]~~

(c) By virtue of electronically filing a document and thereby providing an e-mail address, a filer additionally agrees to provide information regarding any change in his or her e-mail address to TexasOnline, the district clerk, and all parties in the case.

(d) A filer 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.

Rule 5.2 Completion of Service and Date of Service

(a) Electronic service shall be complete upon transmission of the document to the party ~~at the party=s e-mail 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 him 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 [served] before the time 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 e-mail address or telecopier (facsimile machine) number;
 - (ii) the recipient's e-mail 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.

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 court orders, judgments, rulings, notices and other court-produced documents (Acourt 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 electronic filing of a document through the TexasOnline system does not make the document electronically viewable by either filers or the general public.
- (b) An electronic filing service provider (EFSP) may choose to provide a service whereby a filer can electronically view documents the filer has electronically filed.
- (c) Independent of the TexasOnline system, 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. Where such provision has not been made, persons wishing to view documents or court orders that have been electronically filed or scanned may arrange to have a paper copy of the document or court order printed by the district clerk.
- (d) Nothing in paragraph (c) above serves to allow for the electronic viewing of documents or court orders that are legally confidential (*e.g.*, papers in mental health proceedings).

7. RESOLUTION OF DISPUTES

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, a district court assigned in accordance with local assignment procedures shall decide any dispute.

EXHIBIT A
JCIT/OCA TECHNICAL DESCRIPTION OF PROJECT

JCIT/OCA's work paper may also be viewed at:
<http://www.courts.state.tx.us/jcit/standards/Efiling/WhitePaper.htm>

State of Texas
Office of Court Administration
and
Judicial Committee on Information Technology

e-Filing Project

Electronic Filing Project White Paper: Frequently Asked Questions

August 23, 2002

1 Executive Summary

Implementation of e-Filing capability, i.e., electronic transference of data and payment transaction processing, within the Texas Courts systems will provide a more efficient means of conducting conventional, court-related business functions and service provisions in a more expedient and efficient manner. The ability to file documents electronically will increase public access and simplify the filing process for all involved.

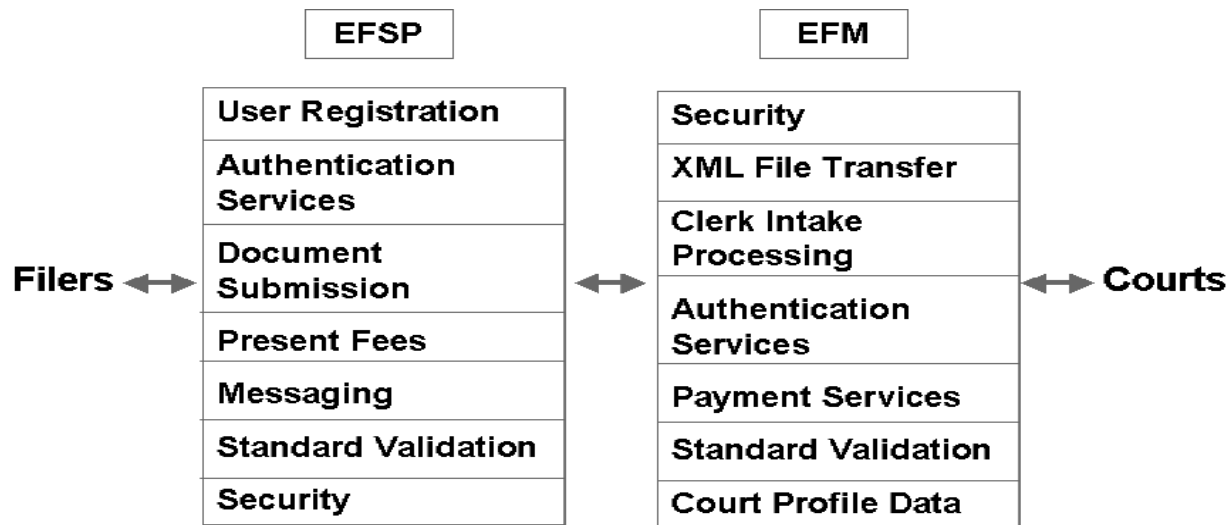
The Legislature created TexasOnline to provide an e-Government portal for the citizens of Texas. Part of the TexasOnline effort has been to automate several existing paper-driven processes to deliver more expedient, effective information and services to the public through electronic media. The legal and judicial communities of Texas are poised to benefit from e-Filing, which will provide the capability of filing documents with the courts electronically.

The successful implementation of e-Filing requires a concerted effort among TexasOnline, the State Bar of Texas, KPMG Consulting, the Judicial Committee on Information Technology (JCIT), the Office of Court Administration (OCA), and participating counties. TexasOnline/KPMG Consulting has the responsibility to deliver the functionality to the state. Additionally, policies, guidelines, standards and rule recommendations associated with the functionality are provided by JCIT and local courts, as well as approved by the Supreme Court of Texas. The courts and the State Bar have the responsibility of defining their specific requirements associated with the successful implementation and integration of e-Filing within their environment.

The strategy for the e-Filing Project is to utilize a multi-phased implementation approach that allows for a pilot phase and the use of launch partners to facilitate mid-course correction and functional additions to deliver a sound e-Filing solution to the State.

2 Introduction

The State of Texas is increasing electronic government processes to provide more expedient, accessible and efficient information and services to the public. One such process is the e-Filing Project that, upon completion, will deliver the capability of filing documents with the courts electronically for the legal, judicial and pro se communities. This will be achieved by building an application, which includes the Electronic Filing Manager (EFM) and Electronic Filing Service Providers (EFSPs), that will provide a secure path for filers to submit documents to the courts to enable data/file exchange, ultimately reducing significantly the existing paper-driven process. The application will provide functionality in the forms of notifications, fee handling and, eventually, docket access, and through continued support and maintenance, will meet current standards, statutes, and rules.



KPMG Consulting is providing the funding for the project and TexasOnline, under the TexasOnline contract to the Department of Information Resources (DIR), has been engaged to facilitate the e-Filing project. The project is subject to the TexasOnline Authority approval. The JCIT, through coordinated efforts with the TexasOnline Authority, will establish statewide policies, guidelines and standards associated with e-Filing. OCA will support the JCIT by providing staff, administration and fiscal services.

2.1 Background

Texas is transforming its government services to meet public access needs. The transformation is comprised of automating manual, paper-driven processes and delivering more efficient, effective exchange of information, funds, benefits and transaction of services through electronic media to the public and private sectors. The transformation is called Electronic Government (e-Government) and in order to meet the end goal of automation, Texas has enacted several initiatives including:

- September 1997 – Judicial Committee on Information Technology (JCIT) was created by the Legislature.
- May 1999 - Senate Bill 974 - Established the e-Government Task Force. The Task Force was mandated to assess the feasibility of establishing a common electronic system using the Internet through which state and local governments can send documents, receive applications, and receive required payments.
- December 1999 - The E-Government Task Force issued a Request for Offer (RFO) for a Framework for Electronic Government.
- May 2000 - KPMG Consulting was awarded the contract to develop and operate the portal for the State of Texas. The portal pilot agencies were the Comptroller of Public Accounts, Railroad Commission, Real Estate Commission, Department of Licensing and Regulation, Department of Insurance, and the Natural Resources Conservation Commission.
- July 2000 – Department of Information Resources released the results of the Texas state agency survey, which explored perceived benefits and barriers to state agency participation in online government, identified agencies' needs to participate in online government, and documented agencies' progress to providing services online. The report is entitled *Survey of State Agency Initiatives*

http://www.dir.state.tx.us/egov/Surveys/Agency_Survey/index.html.

- September 2001 - Senate Bill 187 - Established a 15-member authority to provide vision, leadership, and operational oversight for the TexasOnline portal project and requires the Authority to report to the Legislature on the feasibility of allowing the sale and placement of advertising on TexasOnline.
- December 2001 - Judicial Committee on Information Technology e-Filing Strategy adopted.
- January 2002 - The first meeting of the TexasOnline Authority occurred.

- March 2002 – TexasOnline/KPMG Consulting hosted the e-Filing Project Kick Off Meeting.
- January-April 2002 – Extensive project planning, system requirements gathering, and system design work performed by TexasOnline/KPMG Consulting.
- May 2002 – System development work commenced by KPMG Consulting.
- Fall, 2002 – Pilot portion of the Project will be initiated by introduction of the system into production within selected counties.

The 76th Legislature initiated the TexasOnline Pilot Project to determine the most expedient, cost-effective solution to implementing e-Government within the state and address the security, availability, citizen privacy assurance, fund management and cost issues associated with the implementation. The objectives were met by determining that the most beneficial solution would be to construct a common infrastructure, TexasOnline that all governmental entities could utilize, thus providing a cost and resource effective solution. The 77th Legislature endorsed the use of TexasOnline by all state agencies as their foundation for e-Government implementations and created the TexasOnline Authority as the governing body of TexasOnline. Still in its relative infancy, TexasOnline has already achieved provision of thirty online services, with an additional thirty in development, processing 800,000 transactions per month and supporting 36,000 visits to the website per day. Further, TexasOnline has supported ten agencies in implementing e-Government initiatives within two years of its inception. Some of the functions currently supported include online vehicle registration, citation payment, driver license and identification card renewals, occupational and professional licensing, and tax payments.

The JCIT was created by the Legislature in 1997 to “establish standards and guidelines for the systematic implementation and integration of information technology into the trial and appellate courts in Texas.”

¹ The committee is composed of fifteen representative members of the judiciary, plus other liaison and advisory members representing specialized expertise and organizations. OCA is a state agency that provides administrative support and technical assistance to all of the courts of Texas. The agency was created in 1977 and operates under the direction of the Chief Justice of the Supreme Court of Texas.² Due to the success of TexasOnline and the goals of the JCIT, it is a natural match to coordinate the efforts of these organizations and leverage the TexasOnline infrastructure to develop and implement an e-Filing System for the State of Texas. KPMG Consulting has extensive collective knowledge and experience in implementing solutions within the legal field.

2.2 Purpose

The purpose of this document is to provide a conceptual overview and answers to frequently asked questions associated with the e-Filing Project.

3 Electronic Filing Manager (EFM) Registration and Process

Initially, parties interested in participating in the electronic transfer of court-related data, i.e., filers, clerks, courts, county officials and state agencies, etc. will be required to complete the prerequisite registration process with the EFM relative to their type of usage of the system.

Once registered with the EFM, the public will access the application through an Electronic Filing Service Provider of their choice. TexasOnline may also provide an EFSP and may charge

¹ Excerpt from the Status of Approved Projects Document FY 2002-03, February 28, 2002, Judicial Information Technology Standards, URL: <http://www.courts.state.tx.us/jcit/standards/Efiling>

² Excerpt from Judicial Committee On Information Technology, Electronic Filing Strategy, adopted December 14, 2001, amended March 12, 2002, URL: <http://www.courts.state.tx.us/jcit/standards/Efiling>

competitive rates in order to offer services. The model for the associated rates/fees and services will be determined by economic conditions and be driven by market competition among the vendor community.

3.1 Initial Registration of Clerks

Participating courts and clerks initiate the e-Filing Process by registering with the EFM. This requires submission of a TexasOnline Opportunity Proposal to the County Commissioner's Court and submission of local e-Filing rules to the Supreme Court for approval. Once the proposal and rule requirements are satisfied, the TexasOnline EFM Administrator will provide the designated Clerk Administrators with authentication information, at the Clerk Administrator's discretion, additional users within the court can get logon IDs and passwords. The Court will need to provide profile information consisting of applicable fees, rules, name and address of the Court, etc. which will enable the Electronic Filing Service Provider (EFSP) to enter the filings and the EFM to direct the filings to the appropriate Court.

3.2 Initial Registration of Filers

A filer, i.e., attorney, state and county agency or pro se, initiates the e-Filing Process, by completing a one-time, intuitive, online registration with the EFM by providing suitable identification that can be authenticated. Once the information provided is confirmed, the filer will specify a PIN and password, which will suffice as their electronic signature. The filer will have the option of designating surrogate filers that may access the EFM under the same PIN. These users must register separately in order for the system to differentiate between users. The only time a filer will be cognizant of the EFM is the interaction required during the registration process. Upon completion of the process, the use of the EFM becomes transparent to the user who will utilize an EFSP thus simplifying e-Filing transactions.

3.3 e-Filing Process

Once registered with the TexasOnline EFM, the filer will select a participating EFSP (pre-registered with EFM) and submit filings to the EFSP in the XML format standard approved by the JCIT. If the EFM deems that the filing is incomplete or incorrect, the EFM returns the filing to the EFSP. If the EFM deems that filing is in the JCIT approved XML format, the filing is forwarded by the EFM to the correct clerk of the court for review. The clerk of the court will render a decision based on state and local filing rules of whether to accept or reject the filing and the clerk of the court then sends notification of the filing status to the filer. The EFM also processes the applicable fees by using filer information provided by the EFSP.

The courts will maintain the official copy of filings. The EFSPs and Courts may provide the service of viewing filings. The EFSPs may impose charges for viewing filings. The documents viewed in this medium are considered to be unofficial, courtesy copies only. The TexasOnline EFM will not provide additional viewing functionality for clerks, filers, or the public. Clerks may view previously filed documents through access to local systems. Filers and the public may view non-record files through services established by EFSPs. Filers and the public may view record files through services established by the clerks' offices.

4 Benefits of Implementing the EFM Model

There are several benefits associated with the implementation of a statewide EFM Model as an e-Filing solution. The State of Texas, Counties, the State Bar, JCIT and filers will design the system through a collaborative effort ensuring that county specific filing needs are met. Upon completion, the State will retain ownership of the system thereby decreasing the risk of business failure. The EFM Model provides the opportunity to leverage a statewide infrastructure and standards at a local level while increasing EFSP vendor participation opportunities resulting in more competitive rates, better service and greater flexibility for the legal community and counties. Utilizing a single EFM will standardize interfaces between courts and allow opportunities for improved and more consistent

access to data. Although there are alternative methods available for e-Filing implementation, the JCIT perceives the single EFM Model to be the most advantageous due to the aforementioned opportunities to set and enforce standards.

Additional benefits associated with the EFM Model are as follows:

- Counties can realize additional revenue through the use of fees provided for in Section 2054.259 of the Government Code, which authorizes to be established by the TexasOnline Authority.
- Counties' needs and concerns will be addressed through participation in the development of a common set of rules and policies, which will govern the e-Filing process.
- Counties can establish service using the state master contract.
- Counties can establish e-Filing services without incurring costs. (DMS or CMS integration could incur costs, but these may be offset through additional revenue stream).
- Ultimately, Counties can allow electronic transference of cases in a change of venue or appellate process.
- Filers will be provided with a choice of open market service providers who meet a standard set of policies and rules. Counties and filers will be provided more flexibility by enabling the use of multiple EFSPs.
- Users will be provided with a single, consistent portal to state and local governments.
- Counties will be provided a secure path for court related data transference and payment transactions.
- Counties will be provided a proven process.
- Counties will participate in a true public and private sector alliance.

5 Approach and Strategy

The approach and strategy of the e-Filing Project are to deliver an effective electronic filing capability to the courts in phases.

5.1 e-Filing Approach

The TexasOnline/KPMG Consulting approach to the e-Filing Project includes several steps:

- Establish a single electronic filing manager (EFM), implement application program interfaces (API) for case management system software, and establish the specific court system EFM software configuration, security and connectivity installation.¹
- Establish interfaces with electronic filing service providers (EFSP).
- Establish a service level agreement with each county.
- Automate the filing process within selected courts during Fall 2002.
- Proceed with statewide implementation.

5.2 e-Filing Strategy

The JCIT strategy² for the e-Filing Project shall include the following:

- Coordinate with TexasOnline in the role of "advisor" for electronic filing, including establishing policies, guidelines, and standards.
- Identify to TexasOnline the requirement for JCIT to:
 - Establish document standards.
 - Establish data interface standards.

¹ Excerpt from the Status of Approved Projects Document FY 2002-03, February 28, 2002, Judicial Information Technology Standards, URL: <http://www.courts.state.tx.us/jcit/standards/Efiling>

² Excerpt from Judicial Committee On Information Technology, Electronic Filing Strategy, adopted December 14, 2001, amended March 12, 2002, URL: <http://www.courts.state.tx.us/jcit/standards/Efiling>

- Establish statewide rules.
- Define requirements for state and local fees and state profit sharing.
- Allow counties to establish fees and revenue/profit-sharing terms with TexasOnline/KPMG Consulting
- Consulting through individual service level agreements.
- Approve TexasOnline/KPMG Consulting electronic filing project manager.
- Identify to TexasOnline the requirement for TexasOnline/KPMG Consulting to:
 - Fund and deliver APIs for required case management system software, including document format interfaces and transmission envelope data using approved standards (such as pdf and LegalXML), as part of service level agreements.
 - Install connectivity to courts and clerks as required.
 - Establish a single electronic filing manager (EFM).
 - Provide an open architecture that allows filers to use any electronic filing service provider (EFSP) that meets JCIT standards and coordinate the interface with each EFSP as required.
 - Collect and disburse state and local fees as authorized by law.
 - Use only those standards approved by JCIT.
 - Adhere to rules of the courts.
 - Agree that all case filing data filed through the EFM are owned by the respective court and may not be sold, released, or otherwise shared by TexasOnline/KPMG Consulting without written approval of the court.
 - Submit project manager candidates to JCIT for approval.
 - Not assess filing fees for government filers, including but not limited to district and county attorneys, the Office of the Attorney General, and public defenders.
- Coordinate, through the Standards Subcommittee, with selected stakeholders to develop and recommend draft rules.

6 E-Filing Responsibility

JCIT will develop and adopt standards for filing by electronic means. The objective standard will define interface specifications and requirements, suitable for defining the statements of work in local and statewide contracts for case management software, including civil, criminal and family relations applications.¹ The JCIT role does not include direct or sole program oversight or management. OCA will provide a program administrator to support the JCIT role and interests.²

6.1 Responsibility

Texas Online/KPMG Consulting has the primary responsibility of delivering the e-Filing Project to the State of Texas. The JCIT serves as advisor for the project while OCA is responsible for administratively supporting the JCIT. The participating counties have the responsibility of defining and communicating their electronic filing requirements in Service Level Agreements, local rules and policies.

6.1.1 TexasOnline/KPMG Consulting Responsibilities

TexasOnline responsibilities are to:

Provide hardware, software, connectivity and related components as needed to deliver electronic filing to the clerks of the court.

¹ Excerpt from the Status of Approved Projects Document FY 2002-03, February 28, 2002, Judicial Information Technology Standards, URL: <http://www.courts.state.tx.us/jcit/standards/Efiling>

² Except from Judicial Committee On Information Technology, Electronic Filing Strategy, adopted December 14, 2001, amended March 12, 2002, URL: <http://www.courts.state.tx.us/jcit/standards/Efiling>

Provide project management to include: project planning, communication planning and execution, requirements definition, architectural design, application design, infrastructure build out, application development, system and integration testing, training and rollout.

Provide system operations including daily management of administration, security, back up and recovery and availability.

Provide marketing to the legal community to introduce and raise awareness of the services.

Provide Customer Relationship Management (CRM) through the provision of a bilingual call center for the public and a technical call center for the courts.

Provide benchmarking for use in Legislative reporting.

6.1.2 JCIT Responsibilities

JCIT responsibilities are to:

- **Establish policies, guidelines, and standards; recommend rules; and advise TexasOnline of their determinations.**

6.1.3 OCA Responsibilities

OCA responsibilities are to:

- **Provide a program administrator to support the JCIT role and interests.**

6.1.4 Participating Counties' Responsibilities

Participating counties' responsibilities are to:

- **Define local rules.**
- **Obtain Supreme Court order approving local rules.**
- **Define data configuration elements.**
- **Coordinate with case/data management software vendors for interfacing filings, as desired.**
- **Define Service Level Agreement (SLA) specifications.**
- **Integrate electronic filings into local systems.**

7 Key Issues

The main objective of the e-Filing Project is to provide a means of conducting conventional, court-related business functions and service provisions in a more expedient and efficient manner while not sacrificing the integrity of legal processing and/or data. Some of the key issues related to this objective are discussed in the following sub-sections.

7.1 Receipt of Filing

The EFM will be "open for business" 24 hours a day, seven days a week which means that filers could submit documents at any time, except during planned maintenance periods. The date in which the documents are filed, however, remains in the purview of the courts as specified by local or state rules. In consideration of filers outside of the county it is important that local rules be posted.

After a filer has submitted a document to the court, there are several actions that can be taken by the court. If the clerk chooses to accept the filing it will be electronically stamped and the EFM will send a receipt to the EFSP. If the clerk declines the document, the reason for the declination will be returned to the EFSP. Responses are carried through the JCIT approved court filing standard confirmation envelope that is sent to the EFSP by the EFM. The EFSP then sends the appropriate message to the filer via an e-mail or EFSP inbox letter.

7.2 Time Stamping

The EFM remits multiple time stamps back to the EFSP, as a filing proceeds through the e-Filing Process. The stamps will occur during the following: arrival at the EFM, review by the Court, acceptance or denial by the Court, and acceptance or denial during payment authorization.

7.3 Revenue

By implementing the TexasOnline EFM Model, counties can realize revenue from the collection of court filing and court convenience fees. These, and additional fees, can be established under a provision set forth in the Government Code, which states, “A state agency or local government that uses the project may charge a fee if the fee is necessary to recover the actual costs directly and reasonably incurred by the agency or local government because of the (TexasOnline) project; and the (TexasOnline) Authority approves the amount of the fee.”

¹

Revenue that is generated by these fees could, at the county's discretion, be applied toward offsetting the cost of case and document management systems implementations. Filers who choose to file electronically through TexasOnline will be charged an estimated \$6.00 convenience fee per filing, during the pilot phase, including a \$2.00 fee to the county and a \$0.37 fee to the state. Additional charges may be incurred depending upon the fee structures of the EFSP and court selected.

7.4 Payment Methods

TexasOnline provides a proven payment processing system that is available to all counties in Texas. The system can process credit cards and electronic checks via automated clearinghouses (ACH) to pay EFSP, EFM and court based filing fees.

In the case of a credit card dispute, the credit card company will send a letter to the county, informing them of the dispute. Upon contact from the county, TexasOnline will assist the county in researching the type of charge and amount, ensuring its validity and providing proof of the transaction to the credit card company to resolve the dispute.

7.5 Case and Document Management Systems

TexasOnline will provide, at no cost to the counties, a standard data set based on XML to enable interfacing with their case and document management systems. Additionally, TexasOnline will provide the counties with a data dictionary for the standard interface and provide knowledge transfer and assistance to the county's IT staff and vendors responsible for implementing the standard interface. The JCIT will establish and approve court-filing standards and all interfaces will adhere to those standards. The counties will provide specification input during the JCIT standards development process.

Counties that do not have document management systems have the following options for file retention:

- **Print the files after acceptance and retain in a paper filing system.** TexasOnline can provide printer specifications required to meet the basic needs of e-Filing. The specifications will vary depending upon the anticipated printing volume of the Court. The use of high resolution, laser printers should be anticipated.
- **Contract with a vendor that provides outsourced document management services.** If this option is chosen, the county can maintain an electronic copy of the file in a network server but may have to use the outsourced service to produce certified copies.
- **Save the electronic files locally to a directory system.**

7.6 System Reliability

TexasOnline system reliability is 98.5% at this time. The JCIT is developing recommended State and local rules to govern e-Filing liability in the event that a system failure is sustained. There are three potential points of failure within the system:

- **EFSP transmission to EFM – Until the EFM receipt is received, the Filer will bear the**

¹ Government Code, section 2054.111

responsibility to complete filing.

- EFM transmission to CMS – The EFM is responsible to ensure the transfer of data is successful and the clerk is responsible to ensure that the load into the CMS is successful.
- EFM response to EFSP –The EFM bears the responsibility to ensure that responses are transmitted back to the correct EFSP.
- EFSP response to Filer - The EFSP bears the responsibility to ensure that responses are transmitted back to the filer.

7.7 Data Retention

TexasOnline and the county will establish a Service Level Agreement which will outline the specific terms regarding data retention, i.e., how long the data will be kept before being deleted, what type of certification will be issued, liability, etc. In general, the EFM will make a filing available for ten days following an acceptance or rejection decision rendered by the Court. At that point, the EFM will delete the data and the date/time will be recorded in a permanent log within the EFM. The Texas Department of Information Resources can perform technical audits on the TexasOnline system at any time.

7.8 Disaster Recovery

The EFM is a data transference and court filing fee payment engine and will only maintain files for the time required to process the filing document from one portal to the next and await clerk acknowledgment. KPMG Consulting is developing the EFM using a “high availability” architecture meaning that redundant servers and databases will be implemented. KPMG Consulting is housing the EFM in a fire and tornado proof facility in San Angelo, Texas. Clerks and courts will typically have disaster recovery plans for local document and case management systems.

7.9 Archiving

The EFM Model provides a series of portals for transference of data and court fee payments. The EFM will retain documents for ten days following an acceptance or rejection decision rendered by the court. The model does not provide any type of online/offline retention or storage in which to archive files. The court could either continue to use the same archiving strategy currently in place for paper documents or independently contract with TexasOnline for archival or long-term retention functions. The county could elect to execute a separate retention contract but it would be beyond the scope of the Electronic Filing agreement.

8 Appendix A: Frequently Asked Questions Submitted By Counties

e-Filing Questions Presented By The Counties

1. What is the main benefit to the counties to proceed with the proposal of an Electronic Filing Manager?

- The TexasOnline e-Filing project is a collaborative effort between the State of Texas, Counties, State Bar, JCIT, and Filers. The system will be owned by the State of Texas, so there is a decreased risk of business failure.

The following additional benefits are available to counties who use the statewide Electronic Filing Manager solution:

- Counties' needs and concerns will be addressed through participation in the development of a common set of rules and policies which will govern the e-Filing process.
- Counties can establish service using the state master contract.
- Counties can realize additional revenue through the use of fees provided for in Section 2054.259 of the Government Code, which authorizes to be established by the TexasOnline Authority.
- Counties can establish e-Filing services without incurring costs. (DMS or CMS integration could incur costs, but these may be offset through additional revenue stream).
- Ultimately, the Counties will be able to allow transference of cases in a change of venue or appellate process.
- Filers will be provided with a choice of open market service providers who meet a standard set of policies and rules.
- Counties and filers will be provided more flexibility by enabling the use of multiple EFSPs.
- Counties will be provided with a single, consistent portal to state and local governments.
- Counties will be provided a secure path for court related data transference and payment transactions.
- Counties will be provided a proven process.
- Counties will participate in a true public and private sector alliance.

2. Why should the counties use the EFM model when they could make their own deal with DIR, go with one or more EFSPs and retain the entire filing fee?

- Why should the counties choose the statewide EFM model over a single vendor EFSP model?
EFSP models are typically exclusive and all filers may be locked into a single EFSP dictated by a court. The EFM model provides the best opportunity to leverage a statewide infrastructure and standards at a local level. Under the statewide EFM model, an increased opportunity for EFSP vendor participation will result in more competitive rates and better service as well as greater flexibility for the county. Similarly, the use of a single EFM will standardize interfaces across courts and allow opportunities for improved and more consistent access to data. The use of TexasOnline to provide the EFM also enables the counties to participate in a revenue stream from Electronic Filing.
- Why should the counties choose the EFM model if the counties then do not retain the entire court-filing fee?

Under the statewide model the county retains the entire court filing fee. Additional revenue can be established through the provisions of Section 2054.259 of the Government

Code, which authorizes fees in conjunction with TexasOnline. The EFM will charge a service fee in addition to the court filing fee.

3. What will constitute the proof of receipt of filing?

- The filer will receive notification via email that the document was filed. They will also have access to a “stamped” electronic copy of the filing through the EFSP. There will be a chain of notification available to the filer and the clerk documenting status at the filer’s location, the EFSP, EFM, and the clerk.

4. How does proof of receipt reach the filer?

- Just as a filer will be able to submit a document to the court, once the clerk has taken an action on that document, the response will travel along a reverse path back from the clerk to the EFM to the EFSP to the filer. If the clerk chooses to accept the filing it will be electronically stamped. If the clerk declines the document the reason for the decline will be returned to the filer. This response is carried through the JCIT approved court filing standard confirmation envelope that is sent to the EFSP by the EFM. The EFSP then sends the message to the filer via an e-mail or EFSP inbox letter.

5. At what point does a file receive a time stamp, i.e., when the first page is sent, when the last page is received?

- All pages will be time stamped as part of the same file. From the standpoint of the application, TexasOnline will be able to provide a timestamp of the document for each transfer event. Events will include (1) time submitted by filer to EFSP, (2) time received by EFM, and (3) time accepted by clerk.

6. What happens if the system “goes down” during a transmission? Is it considered the filer’s problem or the clerks’?

- Local or State rules will dictate how an electronic filing is handled. This will be part of the state standards that are being developed as part of this project. Three potential points of failure include:
 - EFSP transmission to EFM – Until the EFM receipt is received, the Filer will bear the responsibility to complete filing.
 - EFM transmission to CMS – The EFM is responsible to ensure the transfer of data is successful and the clerk is responsible to ensure that the load into the CMS is successful.
 - EFM response to EFSP –The EFM bears the responsibility to ensure that responses are transmitted back to the correct EFSP.

7. What hours/days are the filers allowed to file, i.e., until close of business of the court, midnight of that day, etc.? What about Sundays and holidays (not currently allowed to file on those days)?

- Local or State rules will dictate filing deadlines. Filers will be able to submit documents to the EFM 24x7; however, the court will set the date that they are considered filed. For example, courts may choose to end the day at 5:00 p.m. In such a case, even through a document is submitted by a filer at 6:15 p.m. on Monday, it may only be considered filed on Tuesday. Since filers will be using these systems in multiple counties it is important that local rules be posted.

8. Will there be a charge for filers to view files after they have been filed?

- Viewing filings will be a service offered by EFSPs, as well as the clerks, and not the EFM. EFSPs may choose to charge filers for the right to view files after they have been filed. EFSPs typically charge based on the number of pages, or the amount of storage each filer requires for their document. The TexasOnline EFSP will have to charge competitive rates to offer services. These documents will not be the official copies, as official documents are still provided by the clerks.

9. What payment method alternatives does a county have?

- The TexasOnline framework provides a proven payment processing system that is available to all counties in Texas. It can be used for electronic checking or credit cards. Automated Clearing Accounts (ACH) is the equivalent of an electronic check.
- Credit card payment will also be offered for payments, where filers have agreed to pay the credit card discount fees, which will be posted (typically 2.3% of the amount).
- In future phases, the system will also support the counties' ability to use escrow accounts for the payment of court based filing fees.

10. Which entity resolves a credit card dispute and what is the process?

- In the case of a credit card dispute, the credit card company will send a letter to the county, informing them of the dispute. Upon contact from the county, TexasOnline will assist the county in researching the type of charge and amount, ensuring its validity and providing proof of the transaction to the credit card company to resolve the dispute.

11. What assurance does the county have that the data have been expunged and do not reside on a server somewhere?

- Through the Service Level Agreement established between TexasOnline and the county, the terms regarding data purging will be determined.
- The TexasOnline system is available for technical audits by the Texas Department of Information Resources at any time.

12. How long will data be kept before being expunged?

- The specific terms regarding data retention, i.e., how long the data will be kept before being deleted, what type of certification will be issued, liability, etc. will be outlined individually within a Service Level Agreement established between TexasOnline and the county. In general, a filing will be available within the EFM for ten days following an acceptance or rejection decision rendered by the Court. At that point, the data will be deleted and the date/time will be recorded in a permanent log within the EFM. The TexasOnline system is available for technical audits by the Texas Department of Information Resources at any time.

13. What certification will be issued to the county that the data have been destroyed? Who will be liable if it is not?

- Through the Service Level Agreement established between TexasOnline and the county, the terms regarding data purging will be determined.
- The TexasOnline system is available for technical audits by the Texas Department of

Information Resources at any time.

14. Will counties have input into the specifications of required interfaces to their Case Management Systems?

- **Yes, the counties will have input through the JCIT standards adoption process. TexasOnline will provide a standard interface based on XML for counties to use to interface with their case management systems. The interface will adhere to the court filing standards approved by the JCIT. Additionally, TexasOnline will provide the counties with a data dictionary for the standard interface, and provide knowledge transfer and assistance to the county's IT professionals and vendors responsible for implementing the standard interface.**

15. Will the interfaces be standardized or will they be county specific?

- **TexasOnline will provide a standard interface for counties to use to interface with their case management systems. The interface will adhere to the court filing standards approved by the JCIT. Additionally, TexasOnline will provide the counties with a complete data dictionary for the standard interface, and provide knowledge transfer and assistance to the county's IT professionals and vendors responsible for implementing the standard interface.**

16. Will counties have input into the specifications of required interfaces to their Document Management Systems?

- **Yes, the counties will have input through the JCIT standards adoption process.**

17. How will the courts “house “ the data to ensure the success with the attorneys if they do not have a Document Management System?

- **Courts that do not have an electronic document management system will have the option of (1) printing the filings out after acceptance and filing them in the paper filing system or (2) forming an agreement with a vendor that provides outsourced document management services. If the latter is used the county can maintain an electronic copy of the file in a network server but would have to use the outsourced service to produce certified copies or (3) saving the documents locally to a directory system.**

18. What is the definition of disaster recovery in regard to e-Filing?

- **EFSPs will have separate disaster recovery definitions, so this question will be addressed from the standpoint of the EFM. The EFM is a transfer and payment engine. It will only maintain files that are in the process of being filed and pending clerk acknowledgement. Disaster recovery ensures the viability of this process in the case of a disaster, while maintaining data and file integrity.**
- **The EFM is being built in a “high availability” architecture using redundant servers and databases. System failure in one server will not affect other servers.**

19. What is the timeline for disaster recovery?

- **The EFM is housed in a fire-proof, tornado proof facility in San Angelo, Texas. The TexasOnline disaster recovery plan deals with all levels of availability.**

20. What entity establishes this timeline?

- **The TexasOnline Disaster Recovery plan is approved by the Department of Information Resources.**

21. What is the definition of archiving in regard to e-Filing?

- **Archiving typically denotes some type of offline or near-online retention of files. In the case of a standard TexasOnline Electronic Filing arrangement, no archiving would take place. Documents are retained until court receipt, and then for a short period, typically ten days, thereafter. No long term, or archival, requirements are necessary. The court will use its own archiving strategy, as it does now with paper documents.**
- **A county could choose to independently contract with TexasOnline for archival or long-term retention functions. However, that contract would be outside of the Electronic Filing agreement and would be executed on a county-specific basis.**

22. What is the timeline of archiving; at what point does it begin?

- **TexasOnline will not provide archiving services, except those provided for by separate contracting services. The court should develop its own archiving strategy, as it does now with paper documents.**

23. What type of printers will be required to meet the needs of basic e-Filing functionality?

- **Print specifications would be based on daily volumes. TexasOnline can provide a minimum specification for different levels of anticipated volume. The use of high resolution, laser printers should be anticipated.**