

TO: Supreme Court Rules Advisory Committee

August 15, 2007

FROM: Jody Hughes

RE: Draft E-Filing Rules for Justice of the Peace Courts

Government Code §22.004(f), which took effect May 11, 2007 following the passage of Senate Bill 237, requires the Supreme Court of Texas to “adopt rules governing the electronic filing of documents in civil cases in justice of the peace courts” by January 1, 2008. To meet the legislative deadline, the Court created a Task Force on E-Filing in Justice Courts and appointed Justice of the Peace (“JP”) Tom Lawrence as Chair.¹ See Misc. Docket No. 07-9097 (June 18, 2007) (electronic copy attached as Appendix A). As discussed by Justice Hecht at the June 2007 SCAC meeting, the Court has asked the Task Force to develop a set of draft rules to be discussed by the SCAC at the August 24 meeting. After the SCAC makes its recommendation and the Court approves a final version, the rules will be published in the Texas Bar Journal at least sixty days before they take effect, as with civil procedure rules adopted by the Court. See Tex. Gov’t Code §22.004(b). The Task Force hereby submits the attached draft rules to the SCAC in accordance with that schedule.

The Task Force initially discussed via e-mail the procedural approach to drafting JP e-filing rules, including the assumption that it would use as a model the existing templates for e-filing in district and county courts, modified as appropriate for justice of the peace courts.² On

1

In addition to the Task Force members named in the order, Mike Griffith (Bearing Point), Burnett Treat (Travis County District Clerk’s Office), and Ted Wood (Office of Court Administration) also participated—at the Court’s invitation—as members in all respects, including voting on approval of draft rules. A future administrative order will likely recognize these participants’ status as Task Force members.

2

A major preliminary item concerned how to define “justice of the peace court” in the e-filing rules. Although used in Tex. Gov’t Code §22.004(f), the term is not clearly defined in Texas law. The Texas Constitution provides that “Justice of the peace courts shall have original jurisdiction in criminal matters of misdemeanor cases punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is two hundred dollars or less, and such other jurisdiction as may be provided by law.” Tex. Const. art. V, §19. Government Code chapter 27 provides that justices of the peace preside in justice courts, the procedural rules for which are found in the Texas Rules of Civil Procedure. See Tex. Gov’t Code ch. 27; Tex. R. Civ. P. 523-591. However, JPs also preside in small claims courts, the procedural rules of which are found in chapter 28. See Tex. Gov’t Code ch. 28. Justice courts and small claims courts have partially overlapping jurisdiction. Compare Tex. Gov’t Code §27.031 with *id.* §28.003; see also *id.* §28.003(a) (“The small claims court has concurrent jurisdiction with the justice court in actions by any person for the recovery of money in which the amount involved, exclusive of costs, does not exceed \$5,000.”). This dichotomy between justice courts and small claims courts supports the notion that both jointly comprise the “justice of the peace courts.” However, other statutes distinguish between justice of the peace courts and small claims

July 20, the Task Force met in Austin and discussed modifications to the district and county e-filing templates, and over the following week developed draft rules based on the modifications approved at the meeting. Following a vote on July 27, Judge Lawrence noted that a majority of the Task Force approved the draft rules with no members objecting, while recognizing that additional editing would be required. Although votes were not taken on subsequent changes, the revised rules—attached as Appendix B—were circulated to all members for comment and represent the consensus of the Task Force. A redline version showing changes to the district/county e-filing template is attached as Appendix C.

Judge Lawrence will present the Task Force's draft rules at the August 24 SCAC meeting, and several members of the Task Force who were involved in the drafting of the county and district court e-filing rules template will be available to discuss the draft JP e-filing rules. To facilitate the presentation, following is a summary of the significant modifications to the district/county e-filing rules template, discussed first at the general level and then on the basis of changes to specific rules (references to rule numbers at left are to the JP e-filing draft rules, not to the district/county court e-filing template rule):

General changes

Perhaps the most significant change is that these are statewide rules rather than a template to be customized and submitted as local rules for supreme court approval under Tex. R. Civ. P. 3a. Because Rule 3a does not authorize JP courts to submit local rules, and only Harris County's justice courts have statutory local rules authority, the Task Force initially envisioned that the Supreme Court would review and approve individual counties' rules in a process similar to, but separate from, the local rules process under Rule 3a. The Task Force initially conceived the JP e-filing rules as a template that individual counties would submit for approval upon the request of a certain percent—all, perhaps, or a majority—of the justice of the peace with jurisdiction in that county, although a JP's request for approval of local rules for the county would not require that JP court to participate in e-filing. Accordingly, the Task Force also initially drafted a separate set of rules to govern the process of approving local rules applications. However, it later rejected the "local rules" model in favor of a single set of non-modifiable, statewide rules.

courts, indicating that the latter is not a subset of the former. *See* Tex. Civ. Prac. & Rem. Code §31.004(c) (defining "lower trial court" as "a small claims court, a justice of the peace court, a county court, or a statutory county court"); *id.* §31.005 ("A judgment or a determination of fact or law in a proceeding in small claims court or justice of the peace court is not res judicata and does not constitute a basis for estoppel by judgment in a proceeding in a county court or statutory county court . . .").

The legislative history of SB 237 is indeterminate. The Task Force concluded that the Legislature intended the Court to adopt e-filing rules for both justice courts and small claims courts, and it drafted the JP e-filing rules accordingly. A staffer for Sen. Florence Shapiro, the author of SB 237, indicated that the Task Force's conclusion is consistent with legislative intent.

E-filing rules for district and county courts are submitted at the county level because a single elected official, the county or district clerk (or the joint clerk in some counties), generally receives and files pleadings for all of the courts of a given level within the county. However, JP courts are not so served by the district or county clerk. Moreover, although JPs are authorized to hire clerks, the level of clerical assistance varies greatly. Because JP courts process filings themselves and the county or district clerk plays no role, the Task Force saw no need to organize submission of rules at the county level. Also, the Task Force recognized that some JP courts would choose not to participate in e-filing, and that the rules would have to provide for such choice on a court-by-court basis. Accordingly, the Task Force decided to recommend a single set of statewide rules that provide for opt-in participation by individual JP courts. Because no “local rules” process is involved, individual courts or counties do not need approval from the Supreme Court and may not modify the statewide rules. Elimination of the local rules concept required numerous changes to the district/county court template, most of which are not discussed in this memo.

Changes to specific rules

Rule 1.1: The Task Force voted to move the provisions in template rule 3.1 (“Scope”) to rule 1.1, and changed the title of the rule accordingly.

Rule 1.2(b): the language “file, serve, or file and serve” was added to clarify that the court may order parties to electronically file documents independent of electronic service, and vice versa.

Rule 1.3: explains the mechanics of individual JP court participation and notice to the county clerk, who is required to maintain and post a list of JP courts in the county that participate in e-filing.

Rule 2.1: adds new terms to define JP courts and explain participation in e-filing.

Rule 3.1: deletes provisions not applicable to JP courts, which do not have jurisdiction in probate matters or in applications for judicial bypass of parental notification and consent requirements.

Rule 3.2(d): deletes the template rule 3.4(d)’s reference to “third” parties, such that the JP rule authorizes parties—not third parties—to ask the court to allow inspection of a filer’s original document.

Rule 4.1: more accurately states the respective roles of TexasOnline and the Department of Information Resources (DIR), and reflects DIR’s statutory authority to set a maximum fee a court may charge for e-filing through TexasOnline. *See* Tex. Gov’t Code 2054.111.

Rule 4.3(e): Because not all JP courts employ clerks and staffing varies considerably, many Task Force members—particularly JP members—were concerned about the potential ramifications of the rules requiring a court to “accept” any filing that it did not affirmatively reject within one day. To balance this concern with the desire on the part of parties and attorneys to be assured

that e-filed documents have been filed with the court, the Task Force eliminated the first sentence, which required the court to decide whether to accept or reject a filing within one business day. The revised version simply provides that any filing not affirmatively rejected within that period is deemed filed.

Rule 4.4: the Task Force believed that this language, originally added to make parties, judges, and lawyers feel more comfortable about e-filing, is no longer necessary. No substantive change is intended.

Rule 5.1: several provisions have been changed to clarify the circumstances under which documents can be e-served. The draft rules require an e-filing party to register with TexasOnline, thereby making the party's registered address accessible to other registered users. The Task Force chose to explicitly provide that documents may be e-served either through TexasOnline or directly from party to party via e-mail. It was suggested that a provision be added requiring all parties who receive electronic service to register with TexasOnline, thereby making the party's email address available to all e-filing parties and all parties receiving e-service. However, there was a concern that some parties will inevitably agree to receive e-service but then fail to register, thereby potentially availing themselves of an argument that e-service upon a willing (but unregistered) recipient is invalid. One potential solution would be to require registration of all parties who agree to receive e-service but clarify that the recipient's failure to register does not invalidate otherwise valid e-service.

Rule 5.3: The Task Force recognized that the provision in TRCP 21a adding 3 days following service by fax is carried over into Rule 5.3 of the district/county court e-filing template, but it concluded that this provision serves no valid purpose in the e-filing context and should be eliminated in the JP e-filing rules, if not in the district/county court e-filing template as well. The Task Force also recommends several changes to the certificate of service required for electronically served documents, including mandatory inclusion of the filer's e-mail address and revisions to the descriptive statement regarding service.

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 07-9097

APPOINTMENTS TO THE TASK FORCE ON E-FILING IN JUSTICE COURTS

Government Code §22.004(f), which took effect May 11, 2007 following the passage of Senate Bill 237, requires the Supreme Court of Texas to “adopt rules governing the electronic filing of documents in civil cases in justice of the peace courts.” Senate Bill 237 requires these rules to be adopted by January 1, 2008. In accordance with these legislative directives, the Court hereby creates the Task Force on E-Filing in Justice Courts and appoints the following members:

The Honorable Orlinda Naranjo, 419th District Court, Travis County
The Honorable George H. Boyett, Justice of the Peace Court Precinct 3, Brazos County
The Honorable Albert B. Cercone, Justice of the Peace Court Precinct 3-1, Dallas County
The Honorable Jim F. Humphrey, Justice of the Peace, Clay County
The Honorable Tom Lawrence, Justice of the Peace Court Precinct 4-2, Harris County
The Honorable Linda Penn, Justice of the Peace Court Precinct 4, Bexar County
The Honorable Dan Sanchez, Justice of the Peace Court Precinct 7-2, Cameron County
The Honorable Kent Walker, Justice of the Peace Court Precinct 4, Hardin County
Mark P. Blenden, Dallas
R. David Fritsche, San Antonio
Melissa Young Goodwin, Austin
Gary W. Hutton, San Antonio
Bronson T. Tucker, Austin
Peter S. Vogel, Dallas
Dr. Dianne Wilson, Richmond

The Honorable Tom Lawrence is appointed Chair. The Task Force is ordered to submit a report and recommendations to the Court no later than August 13, 2007.

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

PART 1. GENERAL PROVISIONS

Rule 1.1 Scope

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

Rule 1.2 Electronic Filing and Service Optional Unless Ordered by Court

(a) Except as provided by subsection (b) below and subject to Rule 5.1(b), the electronic filing and service of court documents is wholly optional.

(b) A justice of the peace court may order any party or parties in a particular case to electronically file, serve, or file and serve court documents that are permitted to be electronically filed under Rule 3.1.

Rule 1.3. Justices of the Peace To Individually Determine Participation in Electronic Filing

(a) Each justice of the peace in Texas may determine whether the court over which the justice of the peace presides will accept electronically filed documents. These rules do not require any individual justice of the peace to accept electronically filed documents. Documents may be electronically filed and served only in those justice of the peace courts that have set up a TexasOnline account to accept electronically filed documents and have notified the county clerk in the county where the justice of the peace court is located that the court participates in electronic filing.

(b) The county clerk of each county must maintain a current list, available to the public at no charge in the county clerk's office—and, if the county has a website accessible by the public at no cost, on the county's website as well—of those justice of the peace courts in the county that accept electronically filed documents. After a justice of the peace court has begun accepting electronic filings, it must continue to do so until the justice of the peace has notified the county

APPENDIX B

clerk and TexasOnline that the court will no longer participate and that the Texas Online account has been closed, at which time the county clerk must promptly update the list to reflect the change. Each justice of the peace statewide is responsible for notifying the county clerk as to whether that justice of the peace court accepts electronically filed documents and of any subsequent changes to that status.

PART 2. DEFINITIONS

Rule 2.1 Specific Terms

The following definitions apply to these rules:

- (a) “Civil cases” means all cases filed in small claims court and all non-criminal cases filed in the justice courts. The term does not include matters handled by a justice of the peace acting as a magistrate.
- (b) “Convenience fee” is a fee charged in connection with electronic filing that is in addition to regular filing fees. A convenience fee charged by the justice of the peace court will be considered as a court cost.
- (c) “Digitized signature” means a graphic image of a handwritten signature.
- (d) “Document” means a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or other instrument in paper form or electronic form. The term does not include court orders.
- (e) “Electronic filing” is a process by which a filer files a court document with the justice of the peace court by means of an online computer transmission of the document in electronic form. For purposes of these rules, the process does not include the filing of faxed documents described as the “electronic filing of documents” in Tex. Gov’t Code §51.801.
- (f) “Electronic filing service provider” (EFSP) means a business entity that provides electronic filing services and support to its customers (filers). An attorney or law firm may act as an EFSP.
- (g) “Electronic order” means a computerized, non-paper court order that a justice of the peace signs by applying his or her digitized signature to the order.
- (h) “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.
- (i) “Electronically file” means to file a document by means of electronic filing.
- (j) “Electronically serve” means to serve a document by means of electronic service.

APPENDIX B

(k) “Filer” means a person who files a document, including an attorney. (l) “Justice of the peace court” means a justice court or a small claims court, as defined by chapters 27 and 28 of the Texas Government Code and Texas Constitution Article V, §19.

(m) “Participating justice of the peace court” means a justice of the peace court that has set up a TexasOnline account to accept electronically filed documents and has notified the county clerk of the court’s participating status, as provided in Rule 1.3(a).

(n) “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.

(o) “Registered e-mail address” means an e-mail address a filer has registered with TexasOnline for the transmission or receipt of electronically filed documents.

(p) “Regular filing fees” are those filing fees charged in connection with traditional filing.

(q) “Rules” are Statewide Rules Concerning the Electronic Filing of Documents in Participating Justice of the Peace Courts.

(r) “Traditional court order” means a court order that is on paper.

(s) “Traditional filing” is a process by which a filer files a paper document with a justice of the peace court.

Rule 2.2 Application to Pro Se Litigants

The term “attorney” shall apply to an individual litigant in the event a party appears *pro se*.

PART 3. APPLICABILITY

Rule 3.1 Documents That May Be Electronically Filed

(a) A document that can be filed in a traditional manner may be electronically filed with a justice of the peace court that accepts electronically filed documents, with the exception of the following documents:

- i) citations or writs bearing the seal of the court;
- ii) returns of citation;
- iii) bonds;

APPENDIX B

iv) subpoenas;

v) proof of service of subpoenas;

vi) documents to be presented to a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents; and,

vii) documents sealed pursuant to Tex. R. Civ. P. 76a.

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

Rule 3.2. Documents Containing Signatures

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

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

(c) Any affidavit or other paper described in Rule 3.2(a) or (b) that is to be attached to an electronically filed document may be scanned and electronically filed along with the underlying document.

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

PART 4. FILING MECHANICS

Rule 4.1 TexasOnline

(a) Texas Online is a project of the Texas Department of Information Resources (DIR), 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 justice of the peace court. Rather, filers indirectly file with the justice of the peace court by electronically transmitting the document to an electronic filing service provider (EFSP), which electronically transmits the

APPENDIX B

document to TexasOnline, which then electronically transmits the document to the justice of the peace court. A filer filing a document must have a valid account with a TexasOnline EFSP.

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

(e) Filers who electronically file documents will pay regular filing fees to the justice of the peace court indirectly through TexasOnline by a method set forth by TexasOnline.

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

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

(h) The justice of the peace court may charge filers a convenience fee to electronically file documents, in an amount not to exceed the amount approved by the DIR Board. This fee will be in addition to regular filing fees, credit card fees, or other fees.

Rule 4.2 Signatures

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

(b) The attachment of a digital signature on an electronically filed document is deemed to constitute a signature on the document for purposes of signature requirements imposed by the Texas Rules of Civil Procedure or any other law. The person whose name appears first in the signature block of an initial pleading is deemed to be the attorney in charge for the purposes of Texas 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

APPENDIX B

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

(b) Upon the electronic transmission of a document to a filer's EFSP, the filer is deemed to have delivered the document to the justice of the peace court and, subject to Rule 4.3(h), the document is deemed to be filed. If a document is electronically transmitted to the filer's EFSP on or before the last day for filing the same, the document shall be filed by the court and deemed filed in time. A transmission report by the filer to the filer's EFSP shall be prima facie evidence of date and time of transmission.

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

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

(e) The justice of the peace court shall accept the document for filing provided that the document is not misdirected and complies with all filing requirements. The justice of the peace court 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 justice of the peace court fails to accept or reject a document within one business day, the document is deemed to have been filed.

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

(g) If the document is not accepted for filing, the justice of the peace court shall inform TexasOnline of its action, and the reason for such action, the same day action is taken. TexasOnline shall, on that same day, electronically transmit to the filer's EFSP an "alert" that

APPENDIX B

the document was not accepted along with the reason the document was not accepted. The EFSP will electronically transmit the alert to the filer.

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

Rule 4.4 Multiple Documents

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

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

Rule 4.5 Official Document

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

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

Rule 4.6 Registered E-mail Address Required

In addition to the information required on a pleading by TEX. R. CIV. P. 57, a filer must include the filer's registered e-mail address on any electronically filed document.

Rule 4.7 Document Format

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

(b) An electronically filed pleading is deemed to comply with TEX. R. CIV. P. 45.

PART 5. SERVICE OF DOCUMENTS OTHER THAN CITATION

Rule 5.1 Electronic Service of Documents Permissible

APPENDIX B

(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, either through TexasOnline to the party's registered e-mail address or directly to the party at the e-mail address provided by the party upon agreeing to receive electronic service, or as updated by the party as provided in paragraph (c) below. Service in either manner is known as "electronic service" and is permissible in the circumstances set out in paragraph (b) below.

(b) Documents may be electronically served upon a party only where that party has agreed to receive electronic service or where the court has ordered the serving party to electronically serve documents.

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

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

(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) Service shall be complete upon electronic transmission of the document by the filer to the party.

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

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

Rule 5.3 Certification of Service

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

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

APPENDIX B

- (i) the filer's e-mail address and, if available, the filer's telecopier (fax machine) number;
- (ii) the recipient's e-mail address;
- (iii) the date and time of electronic service; and
- (iv) a statement either that the document has been electronically served and that the electronic transmission was reported as complete, or that the document is being electronically served concurrent with the electronic filing of the document.

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

Rule 6.1 Courts Authorized to Make Electronic Orders

- (a) A justice of the peace may electronically sign an order by applying his or her digitized signature to the order. Justices of the peace are not required to electronically sign orders.
- (b) Upon electronically signing an order, the justice of the peace may maintain the electronic order as an official copy of the order or print the electronic order and treat the printed order as an official copy of the order.
- (c) The justice of the peace court may electronically scan a traditional court order. The scanned court order may then serve as the official copy of the court order. The court is not required to electronically scan traditional court orders in order to create official electronic court orders. Electronic scanning of traditional court orders is at the option of the court.

Rule 6.2 Viewing of Electronically-filed Documents

- (a) The justice of the peace court shall ensure that all the records of the court, except those made confidential or privileged by law or statute, may be viewed in some format by all persons for free.
- (b) Independent of the TexasOnline system and the requirement of viewing access described in subsection (a), a justice of the peace court may choose to provide for both filers and the general public to electronically view documents or court orders that have been electronically filed or scanned. Where such provision has been made, persons may electronically view documents or court orders that have been electronically filed or scanned.
- (c) Nothing in this rule allows for the viewing of documents or court orders, in any form, that are legally confidential (e.g., papers in mental health proceedings) or otherwise restricted by judicial rule or order.

PART 7. MISCELLANEOUS PROVISIONS

Rule 7.1 Assigned Court to Resolve Disputes

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

Rule 7.2. Rule Guiding Interpretation

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

[County name] COUNTY

~~LOCAL~~STATEWIDE RULES OF THE DISTRICT COURTS
and

~~STATUTORY COUNTY COURTS~~

concerning the

ELECTRONIC FILING OF COURT DOCUMENTS

in PARTICIPATING JUSTICE OF THE PEACE COURTS

PART 1. GENERAL PROVISIONS

Rule 1.1 PurposeScope

These rules govern the electronic filing and service of court documents, ~~by any method other than fax filing, in [County name] County. These rules are adopted pursuant to Rule 3a~~civil cases in all justice of the Texas Rules of Civil Procedure and may be known as the "[County name] County Local Rules of the District Courts and Statutory County Courts Concerning the Electronic Filing of Court Documents." peace courts that accept electronic filing. These rules are adopted pursuant to Texas Government Code §22.004(f), and may be known as the Statewide Rules Concerning the Electronic Filing of Documents in Participating Justice of the Peace Courts.

Rule 1.2 Effect on Existing Local RulesRule 1.2 Electronic Filing and Service Optional Unless Ordered by Court

~~These rules are adopted in addition to any other local rules~~(a) Except as provided by subsection (b) below and subject to Rule 5.1(b), the electronic filing and service of court documents is wholly optional.

(b) A justice of the district courts and statutory county courts in [County name] County. These rules do not supersede peace court may order any party or replace any previously adopted local rules. These rules are in addition to current local rules, Part 5 electronic court documents (fax filing).

Rule 1.3 Electronic Filing Optional Unless Ordered by Court

(a) ~~Except as provided by subsection (b) below, the electronic filing and serving of court documents is wholly optional.~~

(b) ~~Upon the motion of a party and for good cause shown, a district court or statutory county court may order the parties in a particular case to electronically file, serve, or file and serve court documents that are permitted to be electronically filed under Rule 3.31.~~

Rule 1.3. Justices of the Peace To Individually Determine Participation in Electronic Filing

(a) Each justice of the peace in Texas may determine whether the court over which the justice of the peace presides will accept electronically filed documents. These rules do not require any individual justice of the peace to accept electronically filed documents. Documents may be electronically filed and served only in those justice of the peace courts that have set up a TexasOnline account to accept electronically filed documents and have notified the county clerk in the county where the justice of the peace court is located that the court participates in electronic filing.

(b) The county clerk of each county must maintain a current list, available to the public at no charge in the county clerk's office—and, if the county has a website accessible by the public at no cost, on the county's website as well—of those justice of the peace courts in the county that accept electronically filed documents. After a justice of the peace court has begun accepting electronic filings, it must continue to do so until the justice of the peace has notified the county clerk and TexasOnline that the court will no longer participate and that the Texas Online account has been closed, at which time the county clerk must promptly update the list to reflect the change. Each justice of the peace statewide is responsible for notifying the county clerk as to whether that justice of the peace court accepts electronically filed documents and of any subsequent changes to that status.

PART 2. DEFINITIONS

Rule 2.1 Specific Terms

The following definitions apply to these rules:

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

(b) “Convenience fee” is a fee charged in connection with electronic filing that is in addition to regular filing fees. A Convenience Feeconvenience fee charged by the District Clerk justice of the peace court will be considered as a court cost.

APPENDIX C

- (b) ~~“District clerk” means the [County name] County District Clerk.~~
- (c) ~~“Digitized signature”~~ means a graphic image of a handwritten signature.
- (d) ~~A Document~~ “Document” means a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or other instrument in paper form or electronic form. The term does not include court orders.
- (e) ~~“Electronic filing”~~ is a process by which a filer files a court document with the ~~district clerk’s office~~ justice of the peace court by means of an online computer transmission of the document in electronic form. For purposes of these rules, the process does not include the filing of faxed documents ~~which is described as the “electronic filing of documents” in Section 51.801, Government Code~~ Tex. Gov’t Code §51.801.
- (f) ~~“Electronic filing service provider” (EFSP) is~~ means a business entity that provides electronic filing services and support to its customers (filers). An attorney or law firm may act as an EFSP.
- (g) ~~“Electronic order”~~ means a computerized, non-paper court order that a ~~judge~~ justice of the peace signs by applying his or her digitized signature to the order. ~~A digitized signature is a graphic image of the judge’s handwritten signature.~~
- (h) ~~“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.
- (i) ~~“Electronically file”~~ means to file a document by means of electronic filing.
- (j) ~~“Electronically serve”~~ means to serve a document by means of electronic service.
- (k) ~~“Filer”~~ means a person who files a document, including an attorney. (l) “Justice of the peace court” means a justice court or a small claims court, as defined by chapters 27 and 28 of the Texas Government Code and Texas Constitution Article V, §19.
- ~~(l) “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.~~ (m) “Participating justice of the peace court” means a justice of the peace court that has set up a TexasOnline account to accept electronically filed documents and has notified the county clerk of the court’s participating status, as provided in Rule 1.3(a).
- ~~(n) “Regular filing fees” are those filing fees charged in connection with traditional filing.~~ (n) “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.

APPENDIX C

(n) ~~"Rules" are the [County name] County Local Rules of the District Courts and Statutory County Courts concerning the Electronic Filing of Documents.~~ (o) "Registered e-mail address" means an e-mail address a filer has registered with TexasOnline for the transmission or receipt of electronically filed documents.

(o) ~~"Traditional court order" means a court order that is on paper.~~

(p) "Regular filing fees" are those filing fees charged in connection with traditional filing.

(q) "Rules" are Statewide Rules Concerning the Electronic Filing of Documents in Participating Justice of the Peace Courts.

(r) "Traditional court order" means a court order that is on paper.

(s) "Traditional filing" is a process by which a filer files a paper document with a clerk or a judge~~justice of the peace court.~~

Rule 2.2 Application to Pro Se Litigants

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

PART 3. APPLICABILITY

Rule 3.1 Scope Documents That May Be Electronically Filed

(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 and statutory county courts with jurisdiction in [County name] County.~~ (a) A document that can be filed in a traditional manner may be electronically filed with a justice of the peace court that accepts electronically filed documents, with the exception of the following documents:

(b) ~~These rules apply to the filing of documents in cases before the various district courts and statutory county 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 That May Be Electronically Filed

APPENDIX C

~~(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) ~~wills and codicils thereto;~~

v) ~~subpoenas;~~

vi) proof of service of subpoenas;

vii) documents to be presented to a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents; and,

viii) documents sealed pursuant to ~~TEX. TEX.~~ R. CIV. CIV. P. 76a; ~~and~~

~~ix) documents to which access is otherwise restricted by law or court order, including a document filed in a proceeding under Chapter 33, Family Code.~~

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

Rule 3.4.2. Documents Containing Signatures

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

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

(c) Any affidavit or other paper described in Rule 3.4.2(a) or (b) that is to be attached to an electronically-filed document may be scanned and electronically filed along with the underlying document.

(d) Where a filer has electronically filed a scanned image under this rule, a court may require the filer to ~~properly~~ file the document in a traditional manner ~~with the district clerk.~~ A third-party

may request the court in which the matter is pending to allow inspection of a document maintained by the filer.

PART 4. FILING MECHANICS

Rule 4.1 TexasOnline

(a) Texas Online is a project of the ~~TexasOnline Authority~~ Texas Department of Information Resources (DIR), 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~~ justice of the peace court. Rather, filers indirectly file a document with the ~~district clerk~~ justice of the peace court 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~~ justice of the peace court. A filer filing or serving a document must have a valid account with ~~an~~ a TexasOnline EFSP ~~and with TexasOnline~~.

(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~~ justice of the peace court indirectly through TexasOnline by a method set forth by TexasOnline.

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

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

(h) The ~~district clerk~~ justice of the peace court may charge filers a convenience fee to electronically file documents, in an amount not to exceed the amount approved by the DIR Board. This fee will be in addition to regular filing fees, credit card fees, or other fees.

Rule 4.2 Signatures

APPENDIX C

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

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

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

Rule 4.3 Time Document is Filed

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

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

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

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

APPENDIX C

(e) ~~Not later than the first business day after receiving a document from TexasOnline, the district clerk shall decide whether~~ The justice of the document will be accepted for filing. The ~~district clerk~~peace court shall accept the document for filing provided that the document is not misdirected and complies with all filing requirements. The ~~district clerk~~justice of the peace court 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~~justice of the peace court fails to accept or reject a document within ~~the time period~~one business day, the document is deemed to have been ~~accepted and~~ filed.

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

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

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

Rule 4.4 Filing Deadlines Not Altered

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

Rule 4.5 Multiple Documents

(a) Except as provided by subsection (b) below, a filer may include only one document in an electronic transmission to 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 4.6-5 Official Document

- (a) The ~~district clerk~~justice of the peace court's file for a particular case may contain a combination of electronically~~=~~ filed documents and traditionally~~=~~ filed documents.
- (b) The ~~district clerk~~justice of the peace court may maintain and make available electronically~~=~~ filed documents in any manner allowed by law.

Rule 4.7-6 Registered E-mail Address Required

In addition to the information required on a pleading by TEX. R. CIV. P. 57, a filer must include ~~an~~the filer's registered e-mail address on any electronically~~=~~ filed document.

Rule 4.8-7 Document Format

- (a) Electronically-filed documents must be computer-formatted as specified by TexasOnline. Electronically-filed documents must also be formatted for printing on 8 ~~1/2~~1/2-inch by 11-inch paper.
- (b) An electronically~~=~~ filed pleading is deemed to comply with TEX. R. CIV. P. 45.

PART 5. SERVICE OF DOCUMENTS OTHER THAN CITATION

Rule 5.1 Electronic Service of Documents Permissible

- (a) In addition to the methods of serving documents (other than the citation to be served upon the filing of a cause of action) set forth in ~~TEX. R. CIV. P.~~Tex. R. Civ. P. 21a, a filer may serve documents upon another party in the case by electronically transmitting the document to that party, either through TexasOnline to the party's registered e-mail address or directly to the party at the party's e-mail address: provided by the party upon agreeing to receive electronic service, or as updated by the party as provided in paragraph (c) below. Service in ~~such a~~either manner is known as ~~"Electronic"~~"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 or where the court has ordered the ~~parties~~serving party to electronically serve documents.
- (c) By virtue of electronically filing or serving a document or ~~serving a document or~~ by agreeing to ~~accept~~receive electronic service, a filer additionally agrees to provide information regarding any change in his or her e-mail address to TexasOnline, the ~~district clerk~~justice of the peace court, and all parties in the case within 24 hours of the change.

APPENDIX C

(d) A party who electronically files a document is not required to electronically serve documents upon other parties unless the court has ordered the ~~parties~~party to electronically serve documents.

(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~~ Service shall be complete upon electronic transmission of the document by the filer 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 the party and that document is electronically served, then three days shall be added to the prescribed period of time.~~

Rule 5.4 Certification of Service

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

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

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

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

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

APPENDIX C

(iv) a statement either that the document ~~was~~has been electronically served and that the electronic transmission was reported as complete, or that the document is being electronically served concurrent with the electronic filing of the document.

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

Rule 6.1 Courts Authorized to Make Electronic Orders

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

(b) Upon electronically signing an order, the ~~judge shall electronically forward the order to the district clerk who~~justice of the peace may ~~treat~~maintain the electronic order as ~~the~~an official copy of the order. ~~Alternatively, the district clerk may or~~ print the electronic order and treat the printed order as ~~the~~an official copy of the order.

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

Rule 6.2 Viewing of Electronically-filed Documents

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

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

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

PART 7. MISCELLANEOUS PROVISIONS

Rule 7.1 Assigned Court to Resolve Disputes

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

Rule 7.2. Rule Guiding Interpretation-

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

ADOPTION OF RULES

~~The foregoing “[County name] County Local Rules of the District Courts and Statutory County Courts concerning the Electronic Filing of Documents” are hereby adopted by the undersigned district judges and statutory county court judges in [County name] County on this the _____ day of _____, 2004 and submitted to the Supreme Court of Texas for approval.~~

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

~~{signature blocks}~~