



## JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY

Peter Vogel  
Chair

June 28, 2004

The Honorable Thomas R. Phillips  
Chief Justice, Supreme Court of Texas  
201 West 14<sup>th</sup> Street, Suite 104  
Austin, Texas 78701

Re: Recommended Changes to the Texas Rules of Civil Procedure (TRCP) for Electronic Court Filing

Dear Chief Justice Phillips:

Attached for your consideration are the recommended changes to the Rules of Civil Procedure (TRCP) to incorporate electronic court filing. The recommended TRCP changes are consistent with the standard local rules template agreed by the Court in November 2002 and revised by the Court in June 2004.

These proposed changes to incorporate electronic court filing

- a. Allow courts to order electronic filing on the motion of a party in a case (Rule 167),
- b. Allow courts to order electronic service on the motion of a party in a case (Rule 167),
- c. Allow judges to issue electronic orders (Rule 19a), and
- d. Allow electronic service (Rule 21a).

JCIT greatly appreciates the Court's recent agreement to revise the standard local rules for use by Texas courts until the Texas Rules of Civil Procedure are amended.

If you have any questions or comments, please contact me at 214-999-4422 or Mike Griffith at 512-463-1641.

Respectfully submitted,

Peter Vogel  
Chair, Judicial Committee on Information Technology

cc: The Honorable Nathan L. Hecht, Justice, Supreme Court of Texas  
The Honorable Wallace B. Jefferson, Justice, Supreme Court of Texas

# **Proposed Additions and Amendments to the Texas Rules of Civil Procedure in order to Allow for the Electronic Filing (E-Filing) of Documents**

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June 2004

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## **Rule 4. Computation of Time**

In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays and legal holidays shall not be counted for any purpose in any time period of five days or less in these rules, except that Saturdays, Sundays and legal holidays shall be counted for purpose of the three-day periods in Rules 21 and 21a, extending other periods by three days when service is made by registered or certified mail, or by telephonic document transfer, or by electronic transmission, and for purposes of the five-day periods provided for under Rules 748, 749, 749a, 749b, and 749c.

## **Rule 11. Agreements To Be in Writing**

Unless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record. A written agreement between attorneys or parties may be electronically filed only as a scanned image.

## **Rule 19a. Judge's Orders**

A judge signs an order by applying his or her handwritten signature to a paper order or by applying his or her digitized signature to an electronic order. A digitized signature is a graphic image of the judge's handwritten signature.

## **Rule 21. Filing and Serving Pleadings and Motions**

Every pleading, plea, motion or application to the court for an order, whether in the form of a motion, plea or other form of request, unless presented during a hearing or trial, shall be filed with the clerk of the court in writing, shall state the grounds therefore, shall set forth the relief or order sought, and at the same time a true copy shall be served on all other parties, and shall be noted on the docket.

An application to the court for an order and notice of any hearing thereon, not presented during a hearing or trial, shall be served upon all other parties not less than three days before the time specified for the hearing unless otherwise provided by these rules or shortened by the court.

If there is more than one other party represented by different attorneys, one copy of such pleading shall be delivered or mailed to each attorney in charge.

The party or attorney of record, shall certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion or application. In the case of a pleading, plea, motion or application that is electronically filed, a certification is deemed to be signed by the filer's use of a confidential and unique identifier when electronically filing the pleading, plea, motion or application.

After one copy is served on a party that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.

## **Rule 21a. Methods of Service**

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the filing of a cause of action and except as otherwise expressly provided in these rules, may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record, as the case may be, either in person or by agent or by courier receipted delivery or by certified or registered mail, to the party's last known address, or by telephonic document transfer to the recipient's current telecopier number, or by electronic transmission to the recipient's e-mail address, or by such other manner as the court in its discretion may direct. Service by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Service by electronic transmission to the recipient's e-mail address may only be effected where the recipient has agreed to receive electronic service or where the court has ordered the parties to electronically serve documents. Service by telephonic document transfer or by electronic transmission after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon by mail, ~~or by telephonic document transfer, or by electronic transmission,~~ three days shall be added to the prescribed period. Notice may be served

by a party to the suit, an attorney of record, a sheriff or constable, or by any other person competent to testify. The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filed instrument. In the case of service by electronic transmission, a certification is deemed to be signed by the filer's use of a confidential and unique identifier when electronically filing the pleading, plea, motion or other form of request. Every certification of service by electronic transmission must include the filer's e-mail address, the recipient's e-mail address and the date and time of service. A certificate by a party or an attorney of record, or the return of an officer, or the affidavit of any person showing service of a notice shall be prima facie evidence of the fact of service. Nothing herein shall preclude any party from offering proof that the notice or instrument was not received, or, if service was by mail, that it was not received within three days from the date of deposit in a post office or official depository under the care and custody of the United States Postal Service, and upon so finding, the court may extend the time for taking the action required of such party or grant such other relief as it deems just. The provisions hereof relating to the method of service of notice are cumulative of all other methods of service prescribed by these rules.

## **Rule 45. Definition and System**

Pleadings in the district and county courts shall

- (a) be by petition and answer;
- (b) consist of a statement in plain and concise language of the plaintiff's cause of action or the defendant's grounds of defense. That an allegation be evidentiary or be of legal conclusion shall not be grounds for objection when fair notice to the opponent is given by the allegations as a whole;
- (c) contain any other matter which may be required by any law or rule authorizing or regulating any particular action or defense;
- (d) ~~be in writing, on paper or~~ be electronically filed with the clerk by transmitting them through TexasOnline.

Paper pleadings shall ~~measuring~~ measure approximately 8½ inches by 11 inches, and shall be signed by the party or his attorney, and either the signed original together with any verification or a copy of said original and copy of any such verification shall be filed with the court. The use of recycled paper is strongly encouraged.

When a paper copy of the signed original is tendered for filing, the party or his attorney filing such copy is required to maintain the signed original for inspection by the court or any party incident to the suit, should a question be raised as to its authenticity.

Electronically-filed pleadings shall be formatted for printing on 8½ inch by 11 inch paper, and shall be signed by the party or his attorney in the manner specified by Rule 57.

All pleadings shall be construed so as to do substantial justice.

## **Rule 57. Signing of Pleadings**

Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, with his State Bar of Texas identification number, address, telephone number, and, if available, telecopier number and e-mail address. In the case of an electronically-filed pleading of a party represented by an attorney, the attorney's use of a confidential and unique identifier when filing the pleading constitutes the signature of the attorney whose name appears first in the pleading's signature block unless the pleading states that the use of the identifier constitutes the signature of a different attorney in the signature block. A party not represented by an attorney shall sign his pleadings, state his address, telephone number, and, if available, telecopier number and e-mail address. In the case of an electronically-filed pleading of a party not represented by an attorney, the filer's use of a confidential and unique identifier when filing the pleading constitutes the signature of the party.

## **Rule 74. Filing With the Court Defined**

The filing of pleadings, other ~~papers~~ documents, and exhibits as required by these rules shall be made by filing them with the clerk of the court; A -except that the judge may permit the papers paper documents to be filed with him, in which event he shall note thereon the filing date and time and forthwith transmit them to the office of the clerk. A judge may not accept electronically-transmitted documents for filing. This rule does not prohibit judges from accepting and considering pleadings submitted on electronic media during trial.

### **Rule 74a. When Electronically-Filed Document is Considered Filed**

(a) Except as noted in part (c) of this rule, a person who electronically files a document is considered to have filed the document with the clerk at the time the filer electronically transmits the document to an electronic filing service provider (EFSP). A report of the electronic transmission of the document from the filer to the EFSP shall be prima facie evidence of the date and time of the transmission.

(b) When a clerk accepts an electronically-transmitted document for filing, the clerk shall place an electronic file mark on the front page of the document noting the date

and time the document was filed which, except as noted in part (c) of this rule, shall be the date and time that the filer electronically transmitted the document to an EFSP.

(c) Except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, an electronically-filed document that serves to commence a civil suit will not be considered to have been filed on Sunday when the document is electronically transmitted to an EFSP on Sunday. Rather, such a document will be considered to have been filed on the succeeding Monday.

### **Rule 74b. Documents That May Not be Electronically Filed**

All documents that may be filed in paper form may be electronically filed with the exception of the following:

- (a) documents in juvenile cases;
- (b) documents in mental health cases;
- (c) documents in proceedings under Chapter 33, Family Code;
- (d) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;
- (e) bonds;
- (f) wills or codicils thereto;
- (g) subpoenas;
- (h) affidavits of inability to afford court costs.

### **Rule 93. Certain Pleas to be Verified**

(a) A pleading setting up any of the following matters, unless the truth of such matters appear of record, shall be verified by affidavit.

1. That the plaintiff has not legal capacity to sue or that the defendant has not legal capacity to be sued.
2. That the plaintiff is not entitled to recover in the capacity in which he sues, or that the defendant is not liable in the capacity in which he is sued.
3. That there is another suit pending in this State between the same parties involving the same claim.
4. That there is a defect of parties, plaintiff or defendant.
5. A denial of partnership as alleged in any pleading as to any party to the suit.

6. That any party alleged in any pleading to be a corporation is not incorporated as alleged.
7. Denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit shall be sufficient if it states that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority. In the absence of such a sworn plea, the instrument shall be received in evidence as fully proved.
8. A denial of the genuineness of the indorsement or assignment of a written instrument upon which suit is brought by an indorsee or assignee and in the absence of such a sworn plea, the indorsement or assignment thereof shall be held as fully proved. The denial required by this subdivision of the rule may be made upon information and belief.
9. That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.
10. A denial of an account which is the foundation of the plaintiff's action, and supported by affidavit.
11. That a contract sued upon is usurious. Unless such plea is filed, no evidence of usurious interest as a defense shall be received.
12. That notice and proof of loss or claim for damage has not been given as alleged. Unless such plea is filed such notice and proof shall be presumed and no evidence to the contrary shall be admitted. A denial of such notice or such proof shall be made specifically and with particularity.
13. In the trial of any case appealed to the court from the Industrial Accident Board the following, if pleaded, shall be presumed to be true as pleaded and have been done and filed in legal time and manner unless denied by verified pleadings:
  - (a) Notice of injury.
  - (b) Claim for compensation.
  - (c) Award of the Board.
  - (d) Notice of intention not to abide by the award of the Board.
  - (e) Filing of suit to set aside the award.

- (f) That the insurance company alleged to have been the carrier of the workers' compensation insurance at the time of the alleged injury was in fact the carrier thereof.
- (g) That there was good cause for not filing claim with the Industrial Accident Board within the one year period provided by statute.
- (h) Wage rate.

A denial of any of the matters set forth in subdivisions (a) or (g) of paragraph 13 may be made on information and belief.

Any such denial may be made in original or amended pleadings; but if in amended pleadings the same must be filed not less than seven days before the case proceeds to trial. In case of such denial the things so denied shall not be presumed to be true, and if essential to the case of the party alleging them, must be proved.

14. That a party plaintiff or defendant is not doing business under an assumed name or trade name as alleged.

15. In the trial of any case brought against an automobile insurance company by an insured under the provisions of an insurance policy in force providing protection against uninsured motorists, an allegation that the insured has complied with all the terms of the policy as a condition precedent to bringing the suit shall be presumed to be true unless denied by verified pleadings which may be upon information and belief.

16. Any other matter required by statute to be pleaded under oath.

(b) 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.

(c) Where a filer has electronically filed a scanned image under this rule, a court may require the filer to promptly file the document in a traditional manner with the county clerk.

### **Rule 167. Orders Regarding Electronic Filing**

Upon the motion of a party and for good cause shown, a court may order electronic filing and service of documents other than those documents that may not be electronically filed as set forth in Rule 74b.