

ADMINISTRATIVE ORDER NUMBER 21—Electronic Filing

Section 1. Purpose, Scope, and Application.

(a) Purpose. This order establishes statewide policies and procedures governing the electronic filing process in all the courts in Arkansas.

(b) Scope. Electronic filing is a voluntary means of fulfilling the filing requirements of the courts of this state, but any court or clerk that elects to adopt electronic filing pursuant to this order must use the electronic filing system provided by the Administrative Office of the Court (“AOC”). Once an election is made to use the electronic filing system provided by the AOC, then electronic filing shall be the exclusive means of filing in all cases, except as may otherwise be provided in this order or by rule adopted by the Supreme Court.

(c) Application. This order shall be liberally construed to secure the proper and efficient administration of the business and affairs of the court and to promote and facilitate the administration of justice by the court.

Section 2. Definitions.

(a) Case management system. A “case management system” is an electronic database maintained by the court or clerk to track information used to manage the court’s caseload, such as case numbers, party names, attorneys for parties, titles of all documents filed in a case, and all scheduled events in a case.

(b) Case initiating document. A “case initiating document” is the first filing in any matter, including but not limited to the complaint and summons, and any subpoena.

(c) Clerk. The “clerk” means the clerk of the supreme court and court of appeals, circuit court, or district court.

(d) Conventional document. A “conventional document” is a paper document that may be filed or submitted to the clerk for filing in paper form or a paper document that must be converted by a registered user or clerk to an electronic document.

(e) Document management system. A “document management system” is an electronic database containing documents stored in electronic form and structured to allow access to those documents using index fields such as case number, filing date, or type of document.

(f) Electronic case. An “electronic case” is one in which the case documents are electronically maintained in a document management system.

(g) Electronic document. An “electronic document” is an electronic version of a conventional document and has the same legal effect.

(h) Electronic filing. “Electronic filing” is the electronic transmission to or from a clerk of an electronic document by uploading from the registered user’s (or his or her designated agent’s) or clerk’s computer

to the electronic filing system. It does not include submission via e-mail, fax, floppy disks, or other electronic means.

(i) Electronic filing system. "Electronic filing system" refers to the system established pursuant to this order that receives and stores electronic documents.

(j) Electronic service. "Electronic service" is the electronic transmission of an electronic document, or of notice of its filing, to a party, attorney, or representative under these rules. Electronic service may not be used to accomplish service of process or a subpoena to gain jurisdiction over persons or property.

(k) Public access terminal. A "public access terminal" is a computer terminal provided by a clerk for viewing publicly accessible electronic documents. Public access terminals must be available during the clerk's normal business hours and must include access to a printer.

(l) Registered user. A "registered user" is an individual who has been issued a user ID and password to access the electronic filing system.

Section 3. Implementation of Electronic Filing.

(a) Establishment of electronic filing system. The AOC is authorized to develop or contract with a vendor for the development of electronic filing systems for the district, circuit, and appellate courts.

(1) In the district courts, the District Judge(s) shall decide whether to adopt the electronic filing system.

(2) In the circuit courts, the Administrative Judge of the Judicial Circuit, with input from the Clerk, and, if applicable, the Ex Officio Circuit Clerk for the Probate Division, of the counties within the Circuit, shall decide whether to adopt the electronic filing system.

(3) In the appellate courts, the Supreme Court shall decide whether to adopt the electronic filing system.

(4) Every court is encouraged to implement an electronic filing system as soon as practical.

(b) Mandatory electronic filing processes. Once implemented, use of the electronic filing system in all cases or a particular type of case is mandatory only if: (1) the court provides a mechanism for waiving electronic fees in appropriate circumstances; (2) the court allows for the exceptions needed to ensure access to justice for indigent, disabled, self-represented, and other litigants who have special needs; (3) the court provides adequate advance notice of the mandatory participation requirement; (4) the court provides a one-year transition period during which any document may be filed conventionally or electronically, and the court provides notice during the transition period about electronic filing to all parties filing a document conventionally; and (5) the court provides training for filers in the use of the process.

(c) Paper filing exceptions.

(1) Documents may be filed conventionally during the one-year transition period required by section (3)(b)(4) herein, and the clerk must electronically file such documents not later than 48 hours after the conventional filing.

(2) Conventional paper filings shall be permitted, pursuant to the provisions of the policies and procedures manual promulgated by the AOC, by the clerk for specific documents or classes of documents, such as documents not available in electronic form, documents that are too lengthy to electronically image, and documents filed under seal.

(3) Conventional paper filings shall be permitted in the event of electronic filing system errors or other technical problems pursuant to Section 12.

(d) Quality control procedures. The clerk must institute a combination of automated and human quality control procedures sufficient to ensure the accuracy and reliability of their electronic records system.

(e) Archiving electronic documents. The clerk must maintain forward migration processes to guarantee future access to electronic documents.

(f) Effect on Rules of Evidence. This order does not affect any rule of evidence regarding the authentication of a document.

(g) Fee for electronic filing system.

(1)(A) The fee to be charged for use of the electronic filing system shall be as prescribed in this section.

(B) No portion of the electronic filing system fee shall be refunded.

(2) The electronic filing system fee is as follows:

(A) For all civil actions and misdemeanors electronically filed in either the Supreme Court of Court of Appeals.....\$20.00

(B) For initiating a cause of action through the electronic filing system in the civil, domestic relations, or probate division of circuit court, including appeals.....\$20.00

(C) For initiating a cause of action through the electronic filing system in the civil or small claims division of district court.....\$20.00

(3) The fee provided under subdivision (g) of this section shall be remitted by the Clerk of the Supreme Court on or before the fifteenth day of each month to the Administration of Justice Funds Section on a form provided by the Office of Administrative Services of the Department of Finance and Administration for deposit into the Judicial Fine Collection Enhancement Fund established by section 16-13-712.

(4) No fee shall be charged or collected when the court by order, under Rule 72 of the Arkansas Rules of Civil Procedure, allows an indigent person to prosecute a cause of action in forma pauperis.

(5) Prosecuting attorneys filing actions on behalf of the state, with the exception of child-support cases, are exempt from paying fees under this section.

(6) Fees under this section shall not be charged or collected in cases brought in the circuit court under the Arkansas Juvenile Code of 1989, section 9-27-301 et seq., by a governmental entity or nonprofit corporation, including without limitation, an attorney ad litem appointed in a dependency-neglect case or the Department of Human Services.

Section 4. Official Court Record.

(a) Legal effect of electronic documents. An electronic document is the official court record and has the same force and effect as a document filed conventionally.

(b) Form of record. To the maximum extent feasible, the clerk must ensure that all documents filed in electronic cases are maintained in electronic form.

(c) Scanning and disposition. Case-initiating documents and other paper documents may be scanned by the clerk and made part of the electronic record. Once the conventional document has been scanned, the electronic document is the official court record. Once scanned, with the exception of conventional documents identified in Section 5, the conventional document may be destroyed.

(d) Court documents. The court may electronically file or issue any notice, order, judgment, or other document prepared by the court.

Section 5. Preservation of Certain Conventional Documents.

(a) Destruction of original documents. After conversion to an electronic document, a clerk may return or destroy conventional documents.

(b) Statutory requirements. This order does not alter a clerk's statutory obligation to retain conventional documents.

Section 6. Time of Filing, Confirmation, Existing Practice, and File-Mark.

(a) Filed upon transmission. An electronic document shall be considered filed with the clerk when the transmission to the electronic filing system is completed. Upon receipt of the electronic document, the electronic filing system shall automatically confirm to the registered user that the transmission of the electronic document was completed and the date and time of the document's receipt by the electronic filing system. Absent confirmation of receipt, there is no presumption that the electronic filing system received the electronic document. Absent confirmation, the electronic filer is responsible for verifying that the clerk received and filed the document transmitted.

(b) Existing practice maintained. Electronic filing of documents does not change the rules and practice for the acceptance or rejection of documents presented to a clerk for filing.

(c) File mark. The electronic filing system shall affix an electronic file mark that shall have the same force and effect as a manually affixed stamp of the clerk.

(d) Time of filing. Any electronic document received by the electronic filing system before midnight shall be deemed filed on that date.

Section 7. Electronic Service.

(a) Consent to electronic service. Registered users of the electronic filing system consent to electronic service of electronic documents as the only means deemed to constitute service and such notice of filing is valid and effective service of the document on the registered users and shall have the same legal effect as service by conventional means.

(b) Applicability. Complaints, petitions, subpoenas, or other documents that must be served with a summons may not be served electronically.

(c) Service on registered users.

(1) The electronic filing system shall provide notice to all registered users associated with the case that an electronic document has been filed and is available on the document management system. The notice shall be sent electronically to the addresses furnished by the registered users associated with the case.

(2) When the clerk accepts a conventional document for filing pursuant to Section 3(c) and converts it to an electronic document that is stored in the document management system, the electronic filing system shall provide notice of this conventional filing to the registered users associated with the case.

(d) Service on nonregistered recipients. The registered user filing an electronic document shall serve nonregistered parties as otherwise provided by law or rule.

(e) Time of service; time to respond. Electronic service is complete at the time of transmission of the notice required by Section 7(c). For the purpose of computing time to respond to documents served via electronic service, any document served on a day or at a time when the court is not open for business shall be deemed served at the time of the next opening of the clerk for business.

Section 8. Signatures.

(a) Deemed signed. Every electronic document shall be deemed to be signed by the registered user who files it. Each electronic document must bear the identifying information of the registered user as is required by rule or law. Where a statute or court rule requires a signature at a particular location on a form or pleading, the person's typewritten name shall be inserted. In the alternative, a facsimile, typographical, or digital signature may be used.

(b) Documents under penalty of perjury or requiring signature of notary public. Documents required by law to include a signature under penalty of perjury, or the signature of a notary public, may be submitted electronically, provided that the declarant or notary public has signed a conventional form of

the document. The conventional document bearing the original signature(s) must be scanned and electronically submitted for filing in a format that accurately reproduces the original signatures and contents of the document.

(c) Documents requiring signatures of opposing parties.

(1) When a document to be filed electronically requires the signatures of opposing parties, such as a stipulation, the party filing the document must first obtain the signatures of all parties on a conventional document.

(2) The printed document bearing the original signatures must be scanned and electronically submitted for filing in a format that accurately reproduces the original signatures and contents of the document.

(d) Signature of judicial officer or clerk. Electronically filed court documents requiring a court official's signature may be signed electronically. A court using electronic signatures on court documents must adopt policies and procedures to safeguard such signatures and comply with any AOC guidelines for electronic signatures that may be adopted.

Section 9. Format of documents.

An electronic document shall be formatted in accordance with the applicable rules governing formatting of conventional documents, including page limits. Electronic documents shall be self-contained and shall not contain hyperlinks to external papers or websites. Hyperlinks to other electronic documents filed in the case are permitted.

Section 10. Registration requirements.

(a) Registration mandatory. All persons wanting access to the electronic filing system or document management system must become a registered user in order to access the system. The following persons shall be permitted to become registered users: (1) licensed Arkansas attorneys; (2) non-Arkansas attorneys permitted to practice pro hac vice in Arkansas; (3) litigants appearing pro se in a particular case in which the court has mandated electronic filing; and (4) clerk and court personnel. A clerk shall permit persons who are not registered users and who are not authorized to access the document management system to access electronically filed documents via a public access terminal located in the courthouse, subject to the restriction on disclosure of confidential documents provided in Section 11 of this order.

(b) Registration requirements. The AOC shall establish registration requirements for all authorized users and must limit the registration of users to individuals, not law firms, agencies, corporations, or other groups. The AOC must assign to the registered user a confidential, secure log-in sequence. The log-in sequence must be used only by the registered user to whom it is assigned and by agents and employees as the registered user may authorize. No registered user shall knowingly permit his or her log-in sequence to be used by anyone other than his or her authorized agents and employees. The AOC may require users to undergo training prior to authorizing access to the electronic filing system. The AOC is

permitted to collect a fee not to exceed \$100 for training and registration to be deposited in the Bar Account of Arkansas. Attorneys who complete this training shall be entitled to receive one hour of general Continuing Legal Education Credits.

(c) Electronic mail address required. Registered users shall furnish at least one electronic mail address that the electronic filing system will use for electronic service and other notices. It is the registered user's responsibility to ensure that the electronic filing system has the correct electronic mail address.

(d) Misuse of electronic systems. Any registered user who attempts to harm the electronic filing system or document management system in any manner, attempts to alter electronic documents or information stored on the systems, or attempts any unauthorized use of the systems, has committed misuse of the system. Misuse of the electronic filing system or document management system may result in loss of a user's registration and subject the registered user to any other penalty provided by law or rule.

Section 11. Access to Electronic Documents; Confidential Information.

(a) Confidential information not to be filed. All confidential information identified in Administrative Order Number 19 (Section VII – A) shall be redacted from an electronic document before it is filed using the electronic filing system.

(b) Exceptions; filing under seal. Where a registered user reasonably believes that confidential information is necessary and relevant to the case and must be included in an electronic document, then the registered user shall file the unredacted document under seal and shall also file a redacted version of the document pursuant to Administrative Order 19 and related implementing rules. An electronic document or conventional document containing confidential information shall not be a public document.

(c) System requirements. The electronic filing system and the document management system shall segregate unredacted documents containing confidential information and filed pursuant to Section 11(b). Unredacted versions of documents shall be available only to court personnel and registered users associated on the electronic filing system with the case in which such documents are filed. The electronic filing system shall give notice to registered users associated with a case that an unredacted document containing confidential information has been filed in the case.

Section 12. Technical Failures.

(a) Electronic filing system errors. The electronic filing system is deemed subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 8:00 a.m. that day. Anticipated system outages must be communicated to registered users by electronic mail within a reasonable time prior to the outage and must be posted on the web site, if possible. A technical failure of the electronic filing system shall excuse an untimely filing.

(b) Other technical problems. Other technical problems in the nature of an unavoidable casualty, such as problems with the user’s Internet Service Provider (ISP) that prevent a registered user from transmitting an electronic filing, may constitute a technical failure under these procedures excusing an untimely filing.

(c) Conventional filing allowed. In the event of a technical failure of the electronic filing system or other technical problems that prevent a registered user from submitting an electronic filing, documents should be submitted to the Clerk’s office conventionally.

(d) Relief after technical failure. A party whose filing is made untimely as the result of a technical failure of the electronic filing system or other technical problems may seek appropriate relief from the court. Sample language is attached to this order as Form A.

Technical failures of the electronic filing system under subdivision (a) of this Section 12 are excused. For technical problems that are considered to be user-related under subdivision (b) of this section, the court for good cause shown may excuse an untimely filing.

Section 13. Creation of Policies and Procedures Manual.

The AOC is authorized to promulgate a policies and procedures manual for the implementation of this order and for the use and operation of the electronic filing system and the document management system, and shall update policies and procedures and the manual as needed from time to time.

Form A

IN THE _____ COURT OF _____ COUNTY, ARKANSAS

_____Plaintiff(s)

vs. Case No. _____

_____Defendant(s)

DECLARATION THAT PARTY WAS UNABLE TO FILE IN A TIMELY MANNER

[NAME OF REGISTERED USER AND PARTY REPRESENTED] was unable to file [NAME OF DOCUMENT] in a timely manner due to technical difficulties. The deadline for filing the [NAME OF DOCUMENT] was [DATE]. The reason(s) that I was unable to file the [NAME OF DOCUMENT] in a timely manner, and the good faith efforts that I made before the filing deadline to both file in a timely manner and to inform the court and the other parties that I could not do so, are as follows:

[Statement of reasons and good faith efforts to file and to inform]

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s/ _____

Name of Registered User

Address

City, State, Zip Code

Phone:

Email:

History: Sections (3) and (10) amended by per curiam order June 23, 2011.