

# IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 17-9039

## FINAL ORDER ADOPTING AMENDMENTS TO STATEWIDE RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

**ORDERED** that:

1. Pursuant to Tex. Const. Art. V, Sec. 31 and Sections 22.004, 22.108, 74.024, and 72.031 of the Texas Government Code, the Supreme Court of Texas, acting concurrently with the Court of Criminal Appeals, amends the Statewide Rules Governing Electronic Filing in Criminal Cases. On February 13 and 14, 2017, the Supreme Court of Texas (Misc. Docket No. 17-9017) and the Court of Criminal Appeals (Misc. Docket No. 17-002) adopted amendments to the statewide rules governing electronic filing in criminal cases and invited public comment. After receiving public comments, the Supreme Court and the Court of Criminal Appeals have made revisions to the rules. This order incorporates those revisions and contains the final version of the rules.
2. The attached Statewide Rules Governing Electronic Filing in Criminal Cases are intended to replace and supplant the Proposed Statewide Rules Governing Electronic Filing in Criminal Cases effective November 1, 2015 (Misc. Docket No. 15-9205, 17-9017).
3. The rules are effective May 1, 2017.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

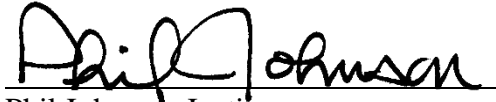
Dated: April 27, 2017.



Nathan L. Hecht, Chief Justice



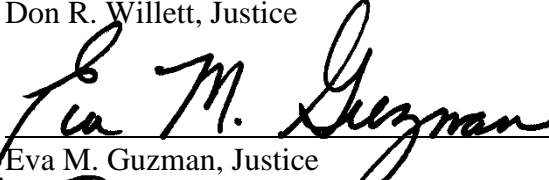
Paul W. Green, Justice



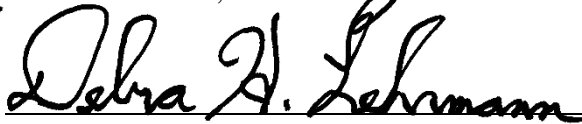
Phil Johnson, Justice



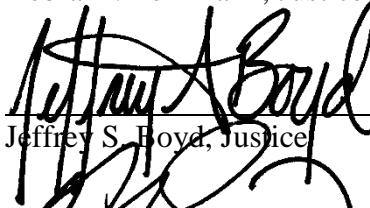
Don R. Willett, Justice



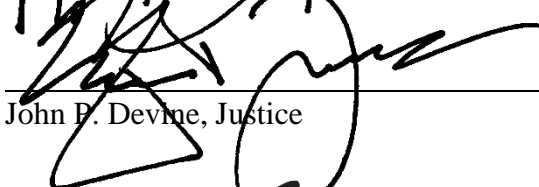
Eva M. Guzman, Justice



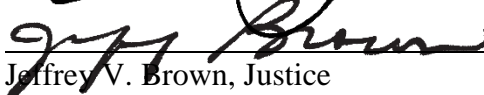
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John F. Devine, Justice



Jeffrey V. Brown, Justice

# IN THE COURT OF CRIMINAL APPEALS OF TEXAS

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Misc. Docket No. 17-005

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## FINAL ORDER ADOPTING AMENDMENTS TO STATEWIDE RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

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**ORDERED** that:

1. On February 13 and 14, 2017, the Supreme Court of Texas (Misc. Docket No. 17-9017) and the Court of Criminal Appeals (Misc. Docket No. 17-002) adopted amendments to the statewide rules governing electronic filing in criminal cases and invited public comment. After receiving public comments, the Supreme Court and the Court of Criminal Appeals have made revisions to the rules. This order incorporates those revisions and contains the final version of the rules.
2. The attached Statewide Rules Governing Electronic Filing in Criminal Cases replace and supplant the Proposed Statewide Rules Governing Electronic Filing in Criminal Cases effective November 1, 2015 (Misc. Docket Nos. 15-004, 15-9205).
3. The rules are effective May 1, 2017.
4. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of the order for publication in the *Texas Register*.

Dated: April 24, 2017.

Sharon Keller  
Sharon Keller, Presiding Judge

Kevin Patrick Yeary  
Kevin P. Yeary, Judge

Michael D. Keasler  
Michael Keasler, Judge

David Newell  
David Newell, Judge

Barbara Hervey  
Barbara Hervey, Judge

Mary Lou Keel  
Mary Lou Keel, Judge

Elsa Alcala  
Elsa Alcala, Judge

Scott Walker  
Scott Walker, Judge

Bert Richardson  
Bert Richardson, Judge

# **STATEWIDE RULES GOVERNING ELECTRONIC FILING in CRIMINAL CASES**

## **PART 1. GENERAL PROVISIONS**

### **Rule 1.1 Scope**

These rules govern the electronic filing of documents with the clerk in criminal cases in appellate courts, district courts, statutory county courts, and constitutional county courts in those counties in which criminal case electronic filing has been implemented pursuant to Rule 1.2 of these rules. A justice court or municipal court may implement criminal case electronic filing. If a justice court or municipal court implements an electronic filing system, the system must comply with these rules.

### **Rule 1.2 Electronic Filing**

Clerks serving Texas appellate courts, district courts, statutory county courts, and constitutional county courts must implement criminal case electronic filing in compliance with the Court of Criminal Appeals' Order Mandating Statewide Electronic Filing in Criminal Cases (Misc. Docket No. 16-003) entered June 30, 2016, and any subsequent orders entered by the Court of Criminal Appeals governing electronic filing. A clerk may implement criminal case electronic filing prior to the mandatory date set out in the Court of Criminal Appeals' Order Mandating Statewide Electronic Filing in Criminal Cases. Once a court becomes subject to mandatory electronic filing, attorneys must electronically file all documents, pleadings, and materials filed in that court through the electronic filing portal provided or approved by the Office of Court Administration, except where these rules or other Texas law allow or mandate non-electronic (paper) filing. Attorneys must not file documents through any alternative electronic document filing transmission system, except in the event of an emergency or where these rules provide for the use of the alternative filing transmission system. Unrepresented parties may electronically file documents but it is not required.

### **Rule 1.3 Exceptions**

The following may not be electronically filed:

- (1) documents filed under seal or presented to the court in camera; and
- (2) documents to which access is otherwise restricted by these rules, law, or court order.

### **Rule 1.4 Documents Containing Signatures**

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

- (1) a "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
  - (2) an electronic image or scanned image of the signature.
- (b) If a paper document must be notarized, sworn to, or made under oath, the filer may electronically file the paper document as a scanned image containing the necessary signature(s).
- (c) If a paper document requires the signature of an opposing party, the filer may electronically file the paper document as a scanned image containing the opposing party's signature.

### **Rule 1.5 Courts Authorized to Make Electronic Orders**

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

**Comment to Part 1:** These rules do not apply to court reporters, charging instruments, exhibits filed in a hearing or trial, or documents, such as plea paperwork, filed directly with a judge, and do not mandate electronic filing of these items. These rules do not authorize a clerk to require electronic filing by persons not represented by an attorney. Clerks should maintain a process for filing paper submissions from such filers. These rules also do not affect whether electronically filed documents may be posted on the internet. Any posting of filed documents, pleadings, or materials to the internet must comply with Part 4 of these rules.

## **PART 2. FILING MECHANISM**

### **Rule 2.1 Office of Court Administration established Electronic Filing Manager**

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

### **Rule 2.2 Format**

An electronically filed document must:

- (1) be in text-searchable portable document format (PDF);
- (2) be directly converted to PDF rather than scanned, if possible;
- (3) not be locked; and
- (4) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court and the Court of Criminal Appeals.

### **Rule 2.3 Timely Filing**

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

- (1) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and
- (2) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date the motion is granted.

(b) If a document is untimely filed due to a technical failure or a system outage, the filing party may seek appropriate relief from the court.

**Comment to Rule 2.3:** This rule addresses when a document is timely filed for purposes of meeting a legal deadline imposed by a statute or a court. A clerk's acceptance of a document on a weekend or legal holiday does not impact whether a document is timely filed under this rule.

**Rule 2.4 E-Mail Address Required**

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

**Rule 2.5 Paper Copies**

At the time of filing, a filer need not provide paper copies of an electronically filed document. A filer should provide paper copies of electronically filed documents upon request by a court.

**Rule 2.6 Non-Conforming Documents**

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

**Comment to Rule 2.6:** The intent of this rule is to establish that a clerk *may not* refuse a document for any perceived violation of these rules. However, the rule permits a clerk the limited authority to identify errors the clerk perceives with whether a filing complies with the Judicial Committee on Information Technology Standards currently in effect. When a clerk notifies a filer of an error, it is inconsequential to a judicial determination regarding whether the document submitted actually violates these rules, and it does not constitute an extension of time to file the document. The purpose of the deadline is to allow for a non-conforming document to be conformed to these rules. The deadline for correction established by the clerk should permit only a reasonable amount of time to allow for the filing to be conformed to the requirements of these rules, and, in general, the deadline should not exceed 72 hours.

**Rule 2.7 Electronic Notices from the Court**

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

**Rule 2.8 Official Record**

The clerk may designate an electronically filed document or a scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions of the same document. However, the clerk must not destroy scanned paper documents and other scanned materials until the clerk has determined that the scanned image is an accurate copy of the paper documents and materials.

**Comment to Rule 2.8:** This rule does not authorize or permit the destruction of original trial or hearing exhibits.

**PART 3. SERVICE OF DOCUMENTS****Rule 3.1 Electronic Service of Documents**

Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served, except as otherwise expressly provided in these rules, must be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record.

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

### **Rule 3.2 Electronic Service Complete**

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

### **Rule 3.3 Proof of Service**

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

## **PART 4. PRIVACY PROTECTION FOR FILED DOCUMENTS**

### **Rule 4.1 Sensitive Data Defined**

Sensitive data consists of:

- (1) a driver's license number, passport number, social security number, tax identification number, or similar government-issued personal identification number;
- (2) a bank account number, credit card number, or other financial account number;
- (3) a birth date, home address, or personal phone number; and
- (4) the name of any person who was a minor when the underlying suit was filed unless, under Texas Family Code Section 54.02, a juvenile court has waived its exclusive original jurisdiction and transferred the individual to a district court.

### **Rule 4.2 Filing of Documents Containing Sensitive Data Prohibited**

An electronic or paper document containing sensitive data may not be filed with a court unless the sensitive data is redacted. Documents containing sensitive data may be filed with a court when the data's inclusion is specifically required by a statute, court rule, or administrative regulation, or when the data is exempt from redaction under Texas Rule of Appellate Procedure 9.10.

### **Rule 4.3 Redaction of Sensitive Data; Retention Requirement**

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

### **Rule 4.4 Notice to Clerk**

If an electronic or paper document must contain sensitive data, the filing party must state on the upper left-hand side of the first page, "NOTICE: THIS DOCUMENT CONTAINS SENSITIVE



DATA.” This notice is not required if the only sensitive data contained in the document is exempt from redaction under Texas Rule of Appellate Procedure 9.10.

#### **Rule 4.5 Non-Conforming Documents**

The clerk may not refuse a document that contains sensitive data in violation of these rules or any other statute, rule, or court order. But the clerk may identify the error to be corrected and state a deadline for the party to resubmit a redacted, substitute document.

**Comment to Rule 4.5:** The intent of this rule is to establish that a clerk *may not* refuse a document for any perceived violation of these rules. However, the rule permits a clerk the limited authority to identify information the clerk perceives to be sensitive data. When a clerk identifies such information to a filer, it does not constitute an extension of time to file the document. The purpose of the deadline is to allow for a non-conforming document to be conformed to these rules. The deadline for correction established by the clerk should permit only a reasonable amount of time to allow for the filing to be conformed to the requirements of these rules, and, in general, the deadline should not exceed 72 hours.

#### **Rule 4.6 Restriction on Remote Access**

Documents that contain sensitive data restricted by these rules or any State or Federal law must not be posted on the internet.