

ARTICLE 5: E-FILING

5.01 AUTHORITY

(a) By the issuance of Order Number M.R. 18368, the Illinois Supreme Court has approved the 18th Judicial Circuit Court as the site for the initial implementation of an electronic filing pilot project. The Order, dated October 22, 2003, was effective immediately. The pilot project was scheduled to run until September 30, 2005, or later as extended by Supreme Court Order.

(b) Specific authority for electronic signatures, time of electronic filing and electronic service has been granted by Supreme Court Order M.R. 18368, filed October 28, 2004.

5.02 EFFECTIVE DATE

These rules shall become effective on November 15, 2004 and remain in effect until further order.

5.03 DESIGNATION OF ELECTRONIC FILING CASE TYPES

(a) This Court hereby authorizes L (Law over \$50,000) cases, AR (Arbitration) cases and any cases formally transferred into AR, as permissible electronic filing case types. From time to time, with the approval of the Director of the Administrative Office of the Illinois Courts, the Court may authorize, by written Administrative Order, additional types of cases to be processed via electronic filing. The Circuit Court Clerk shall direct the phasing in of initial implementation.

(b) On or after the effective date, each new L case or AR case shall become an e-file case when a Plaintiff files a complaint electronically or a Defendant files an answer electronically or when all of the parties to an L or AR case stipulate by written order to the submission of a pending case for inclusion in the e-filing pilot program.

(c) If a case's e-file status is initiated by stipulation, the Clerk shall electronically duplicate the physical file and include it in the e-filing database. Thereafter the file shall be processed electronically pursuant to these rules.

(d) All appellate and post-judgment enforcement proceeding documents and notices shall be filed and served in the conventional manner and not by means of e-filing.

5.04 DEFINITIONS

The following terms in these rules are defined as follows:

(a) *Conventional manner of filing* – The filing of paper documents with the Clerk as is done in cases that are not e-file cases.

(b) *Electronic Document (“e-document”)* - An electronic file containing informational text.

(c) *Electronic Filing (“e-file”)* - An electronic transmission of information between the Clerk of the Circuit court and a vendor for the purposes of case processing.

(d) *Electronic Image (“e-image”)* - An electronic representation of a document that has been transformed to a graphical or image format.

(e) *Electronic Service (“e-service”)* - An electronic transmission of documents to a party, attorney or representative in a case via the vendor. However, e-service is not capable of conferring jurisdiction under circumstances where personal service is required as a matter of law.

(f) *PDF* - A file format that preserves all fonts, formatting colors and graphics of any source document regardless of the application platform used.

(g) *Subscriber* – One contracting with a Vendor to use the e-filing system.

(h) *Vendor* – A company or organization that has an executed Electronic Information Project Agreement with the Clerk of the Circuit Court to provide e-filing services for the 18th Judicial Circuit.

5.05 AUTHORIZED USERS

(a) The Court and the Clerk of the Circuit Court shall provide a list of staff members designated to operate the e-filing system within the scope of their duties, and the names of any other individuals, as deemed necessary by the Court. The Vendor or Vendors shall assign a confidential Personal Identification Number (PIN) to the Clerk, which will be used by the listed individuals to access the Vendors’ product services. No PIN user shall knowingly authorize or permit the Clerk’s PIN to be used by anyone other than staff members designated by the Court or the Clerk of the Court.

(b) Upon receipt by the Vendor of a properly executed E-file Subscriber Agreement, and notification to the Clerk of the Circuit Court in writing, the vendor shall assign to the Subscriber a confidential Personal Identification Number (PIN). The Subscriber shall use this PIN to file, serve, receive, review and retrieve electronically filed pleadings, orders and other documents in an assigned case. No PIN holder shall knowingly authorize or permit his or her PIN to be used by anyone other than authorized attorneys or employees of the attorney’s law firm or designated co-counsel, where it has been established in writing by the PIN holder that designated counsel may file documents on behalf of the assigning counsel.

(c) *Pro-se* or other parties may utilize e-filing through a Vendor on the Internet by means of individual transactional agreements and credit card payment.

(d) Without charge during normal business hours, the Clerk of the Circuit Court shall provide attorneys and parties in e-file cases access to an e-file computer workstation. Any attorney or party of a designated e-file case who is not a Subscriber that requests to file a document shall be given a temporary confidential Personal Identification Number (PIN), and allowed to spend a reasonable time at the workstation in connection with e-filing cases.

5.06 METHOD OF FILING

(a) For the purposes of this pilot project, the Circuit Court hereby mandates electronic filing in each of the designated cases as identified in Rule 5.03, above. Once a case becomes an e-file case, the Clerk of the Circuit Court shall only accept and approve subsequent filings electronically through a Vendor or through the Clerk's computer workstation, except as set forth in paragraph (b) hereafter. The Clerk shall refuse any document presented to be filed in paper form, and shall return the document to the filing party with directions to file electronically.

(b) In the interest of justice, the Clerk of the Court may allow the filing of a document or pleading using the conventional manner of filing. The court may permit one or more parties in an e-file case to file in the conventional manner to advance the interests of justice. At no time shall this pilot program prevent or exclude the ability to file any valid pleading with the Clerk of the 18th Judicial Circuit Court. In those circumstances, the Clerk shall scan conventionally filed documents into the electronic file.

(c) Physical items for which a photograph may be substituted may be electronically imaged and e-filed. Items not conducive to electronic filing, such as documents under seal and physical exhibits for which an image will not suffice, shall be filed in their physical form at the Clerk's Office or in the Courtroom, as directed by order of court. The Motion and Notice of Motion for permission to file any of these physical items may be done electronically in e-file cases.

(d) The Court, through the Clerk of the Court, may issue e-filing notices and other documents electronically in an e-file case.

5.07 MAINTENANCE OF ORIGINAL DOCUMENTS

(a) Anyone filing an electronic document that requires an original signature certifies by so filing, that the original signed document exists in the filing person's possession. Unless otherwise ordered by the Court, the filing party shall maintain and preserve all documents containing original signatures that are filed electronically. The filing party shall make those signed originals available for inspection by the Court, the Clerk of the Court or by other counsel in the case, upon five (5) days notice. At

anytime, the Clerk of the Court may request from the filing party a hard copy of an electronically filed document, which shall be provided within five (5) business days upon reasonable notice.

(b) All documents that are required to be maintained and preserved must be kept for one year after the appellate process period has been completed.

(c) During this pilot project, the Clerk of the Court shall create and maintain a paper copy of all e-filings in a parallel manual court file.

5.08 PRIVACY ISSUES

Easy access to electronic documents raises many privacy issues, some of which have been addressed in "*Electronic Access Policy for Circuit Court Records of the Illinois Courts*"; Revision effective April 1, 2004. Consistent with that Policy, e-filing users must be sensitive to confidential and personal information not filed under seal. It is the responsibility of counsel and the parties to be sure that all pleadings comply with these rules requiring redaction of personal identifiers. Parties and their counsel shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all documents electronically filed with the court, including exhibits thereto, unless otherwise ordered by the Court:

(a) *Social Security Number* - If an individual's social security number must be included in a document, only the last four digits of the number shall be used.

(b) *Names of Minor Children* - If the involvement of a minor child must be mentioned, only the initials of that child's name shall be used.

(c) *Dates of Birth* - If an individual's date of birth must be included in a document, only the year shall be used.

(d) *Financial Account Numbers* - If financial account numbers are relevant, only the last four digits of these numbers shall be used.

(e) In addition to the above, persons filing electronically shall exercise caution when filing documents that contains the following:

- i. Personal identifying numbers, such as a driver's license number.
- ii. Medical records, such as treatment and diagnosis.
- iii. Employment history information.
- iv. Individual financial information.
- v. Proprietary or trade secret information.

5.09 FORMAT OF DOCUMENTS

(a) All electronically filed pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings. Additionally, each electronically filed pleading and document shall include the case title, case number and the nature of the filing.

(b) Each electronically filed document shall also include the typed name, e-mail address, address and telephone number of the attorney or *pro se* party filing such document. Attorneys shall include their DuPage County Attorney Number on all documents.

(c) Any electronically filed document must be unalterable (such as sealed PDF), and be able to be printed with the same contents and formats as if printed from its authoring program. The e-filing vendor is required to make each electronically filed document that is not infected by a virus available for transmission to the Clerk immediately after successful receipt and virus checking of the document.

5.10 SIGNATURES

(a) Each electronically filed document, including all pleadings, motions, papers, etc., that require an original signature when conventionally filed, shall bear a facsimile or typographical signature of the attorney or *pro se* party authorizing such filing, (e.g., “/s/ Adam Attorney”), and shall be deemed to have been signed in person by the individual identified.

(b) In the absence of a facsimile or typographical signature, any document electronically filed with a user identification and password is deemed to have been personally signed by the holder of the user identification and password.

(c) Documents containing signatures of third parties may be filed electronically and shall bear a facsimile or typographical signature.

(d) Signatures as defined in subparagraphs (a), (b) and (c) above, satisfy Supreme Court Rules and statutes regarding signatures, and give rise to the application of available sanctions when appropriate.

(e) The original signed document that has been electronically filed pursuant to subparagraphs (a), (b) and (c) above, shall be maintained and preserved as required by Rule 5.07.

(f) Where a Clerk is required to endorse a document, the typed name of the clerk shall be deemed to be the clerk’s signature on an electronic document.

5.11 TIME OF FILING, ACCEPTANCE BY THE CLERK AND ELECTRONIC FILING STAMP

(a) Any document filed electronically shall be considered as filed with the Clerk of the Circuit Court upon review and acceptance, and the transmission has been completed with the Clerk's electronic filing stamp.

(b) A person who files a document electronically shall have the same responsibility as a person filing a document in the conventional manner for ensuring that the document is complete, readable and properly filed.

(c) For the purposes of e-filing, any document filed with a Vendor on a day or at a time when the Clerk is not open for business, unless rejected by the Clerk, shall be deemed to have been accepted at the opening time of the next business day of the Clerk.

(d) Upon receipt by the Vendor, and submission of an electronic document to the Clerk, the Vendor shall issue a confirmation to the Subscriber. The confirmation shall indicate the time and date of receipt, and serve as proof that the document has been submitted to the Clerk. A Subscriber will receive e-mail notification from the Vendor if a document is not accepted by the Clerk's office. In that event, the Subscriber may be required to re-file the document to meet necessary filing requirements.

(e) Each document reviewed and accepted for filing by the Clerk of Court shall receive an electronic file stamp. The stamp shall be endorsed in the name of the Circuit Clerk by the deputy clerk accepting the filing, and shall include the official time and date of filing and contain the word "FILED". This file stamp shall be merged with the electronic document and shall be visible when the document is printed and viewed on-line. Electronic documents are not officially filed without the electronic filing stamp. Filings so endorsed shall have the same force and effect as documents time stamped in the conventional manner.

5.12 ELECTRONIC SERVICE, COURTESY COPIES AND FILING PROOF OF SERVICE

(a) Electronic service is not capable of conferring jurisdiction. Therefore regarding electronically filed cases, documents that require personal service to confer jurisdiction as a matter of law may not be served electronically through an e-file vendor, but must be served in the conventional manner.

(b) All other documents may be served upon the other parties or their representatives electronically through the e-file vendor. The filing party or attorney shall be responsible for completing electronic service of these other documents using the Vendor's system. By their participation in this e-filing pilot program, parties and their designated counsel consent to receipt of all other documents e-filed and e-served upon them via access to the Vendor's system over the Internet.

(c) If a party or party's designee has not subscribed to a Vendor's services, service of all other documents via facsimile transmission is hereby authorized. In the event of service via facsimile, the Vendor's system will record the date and time the fax transmission was completed in the proof of service for that transaction. If neither e-file nor fax transmission service is possible, the Vendor shall provide service by mail, and charge back the cost to the Subscriber.

(d) E-service shall be deemed complete at the posted date and time listed by the e-file Vendor. However, for the purpose of computing time for any other party to respond, any document filed on a day or at a time when the Clerk is not open for business is deemed to be served on the Clerk's next business day. The electronic service of a pleading or other document shall be considered as valid and effective service on all parties and shall have the same legal effect as personal service of an original paper document.

(e) If electronic service on a party does not occur because of (1) inaccessibility to the Vendor's system, (2) an error in the Vendor's transmission of notice to the party being served, (3) the Vendor's failure to process the electronic filing for service or (4) the party was erroneously excluded from the service list, the party to be served shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

(f) The e-filing Vendor is required to maintain an e-service list for each e-filed case. The Vendor shall immediately update the service list upon being given notice of new contact information. Whenever a document is submitted for service upon other parties by the e-filing Vendor's system, the e-filing Vendor shall use the most current e-service list to perform service.

(g) All Subscribers and other participants must immediately, but not later than ten business days prior to when such a change takes effect, notify other parties, the Clerk and the e-filing Vendor of any change of firm name, delivery address, fax number or e-mail address.

(h) Paper courtesy copies of documents customarily required to be provided to the court shall continue to be required in e-file cases, absent a specific court order to the contrary.

5.13 COLLECTION OF FEES

(a) The e-filing of a document requiring payment of a statutory filing fee to the Clerk of the Court in order to achieve valid filing status shall be filed electronically in the same manner as any other e-file document.

(b) At the end of each business day, the Vendor shall electronically transmit to the Clerk's bank account all statutory filing fees required for that day's electronic filings.

The Vendor shall electronically provide the Clerk's Accounting Department a detailed breakdown including case number, type of transaction and party being billed for the payment for each deposit. The Vendor shall act as a limited agent for the Clerk and collect such required filing fees from the Subscriber through direct billing of that Subscriber, unless the payment of the fee has been waived by court order or law.

(c) Fees charged to e-filing Subscribers by the Vendor for Vendor services are solely the property of the Vendor and are in addition to any statutory fees associated with statutory filing fees.

5.14 SYSTEM OR USER ERRORS

(a) The Court and Clerk of the Circuit Court shall not be liable for malfunction or errors occurring in electronic transmission or receipt of electronically filed or served documents.

(b) If the electronic filing is not filed with the Clerk because of (1) an error in the transmission of the document to the Vendor which was unknown to the sending party or (2) a failure to process the electronic filing when received by the Vendor or (3) rejection by the Circuit Court Clerk or (4) other technical problems experienced by the filer or (5) the party was erroneously excluded from the service list, the Court may upon satisfactory proof enter an order permitting the document to be subsequently filed effective as of the date filing was first attempted.

(c) In the case of a filing error, absent extraordinary circumstances, anyone prejudiced by the court's order to accept a subsequent filing effective as of the date filing was first attempted, shall be entitled to an order extending the date for any response, or the period within which any right, duty or other act must be performed.

5.15 VENDOR CONDITIONS

(a) E-Filing Vendor(s) with Electronic Information Project Agreements executed with the Clerk of the Circuit Court are hereby appointed to be the agent of the Clerk of the Circuit Court regarding electronic filing, receipt, service and/or retrieval of any pleading or document via the e-filing Vendor system.

(b) The e-filing Vendor shall make electronically filed documents, and documents being served electronically through the e-filing Vendor's system, available to subscribers and the designated court authorized users through the e-filing Vendor's system in accordance with the current contract between the Clerk and the e-filing Vendor, and consistent with the Supreme Court's Electronic Access Policy for Circuit Court Records of the Illinois Courts.

(c) The e-filing Vendor may require payment of a fee or impose other reasonable requirements by contract with a Subscriber as conditions for processing electronic filings. Pursuant to contract terms, the e-filing Vendor must provide services but is not

permitted to require payment of a fee for government users or parties deemed indigent by the Court.

(d) The Chief Judge of the Court or his/her designee, in coordination with the Clerk of the Court, shall review and approve the terms of the Subscriber Agreement. The Vendor shall provide at least 30 days notice prior to the effective date of any Subscriber Agreement changes.

(e) Certified copies of electronically filed documents may not be obtained electronically. The Clerk of the Court will only issue Certified copies in the conventional manner.