

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**IN RE: PROPOSED PROVISIONAL RULE 46, RULES OF
THE TENNESSEE SUPREME COURT**

Filed: February 13, 2006

ORDER

On November 19, 2004, the Court filed an order establishing the Tennessee Supreme Court's Task Force on Electronic Filing in the Appellate Courts ("Task Force"). The Court directed the Task Force to study the feasibility of electronic filing in the appellate courts of this State and to report its findings and recommendations to the Court on December 31, 2006. At the Task Force's request, the Court subsequently extended the reporting date to January 31, 2006.

On January 31, 2006, the Task Force submitted its "Report and Recommendations" to the Court, along with a proposed Provisional Rule 46, Tenn. Sup. Ct. R., which would establish a two-year pilot project for voluntary electronic filing in the appellate courts. The Court is hereby publishing the Task Force's proposed Provisional Rule 46 and soliciting written comments from interested parties. The proposed Provisional Rule 46 is attached as Appendix A to this order.

The Court hereby solicits written comments concerning the proposed provisional rule from judges, lawyers, bar associations, members of the public, and any other interested parties. The deadline for submitting written comments is Monday, May 8, 2006. Written comments should be addressed to:

Mike Catalano, Clerk
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

The Clerk shall provide a copy of this order, including Appendix A, to LexisNexis and to Thomson-West. In addition, this order, including Appendix A, shall be posted on the Tennessee Supreme Court's website. The Task Force's "Report and Recommendations" also shall be posted on the Court's website.

IT IS SO ORDERED.

FOR THE COURT:

WILLIAM M. BARKER, CHIEF JUSTICE

APPENDIX A

TASK FORCE ON ELECTRONIC FILING IN THE APPELLATE COURTS [PROPOSED] PROVISIONAL RULE 46, TENN. SUP. CT. R.

A. General Provisions

1. Short Title

This rule may be cited as the “E-Filing Rule.”

2. Definitions

- a.. “Administrative Office of the Courts” or “AOC” means the Information Technology Division of the Administrative Office of the Courts which provides information technology support for the judicial branch of state government including the Appellate Court Clerk’s Office.
- b. “Appellate Record” or “Record” means the record generated by the trial court clerk and transmitted to the Appellate Court Clerk pursuant to Tenn. R. App. P. 25.
- c. “Clerk” means the Clerk of the Appellate Courts.
- d. “Clerk’s Office” means any Supreme Court building in Nashville, Knoxville or Jackson designated by the Clerk.
- e. “Court” means the Tennessee Supreme Court, Tennessee Court of Appeals, and Tennessee Court of Criminal Appeals, and all justices and judges thereof.
- f. “Electronic Filing Service Provider” (EFSP) means the vendor selected by the Electronic Filing Task Force for electronic filing and electronic service of documents filed in the appellate courts.
- g. “Document Management System” or “DMS” means a computer system owned and in the custody of the Clerk’s Office which maintains all electronic and scanned paper-documents filed in the appellate courts in electronic form.
- h. “E-File” or “E-Filing” means the electronic transmission of documents to the appellate courts and from the appellate courts for the purpose of filing with such courts.

- i. “Electronic Filing Task Force” or “Task Force” means the Task Force on Electronic Filing in the Appellate Courts established by this Court in an order filed on November 19, 2004.
- j. “E-Service” means the electronic transmission of documents to a party, attorney or representative under these rules.
- k. “Litigant” means any person, corporation, partnership, business or governmental entity who is a party in an appeal pending in the appellate courts and is represented by an attorney in that appeal.
- l. “Paper copy” means the version of a document reduced to typewritten or handwritten form and filed with the Clerk in such format.
- m. “Portable Document Format” or “PDF” means a computer file format developed by Adobe Systems for representing documents in a manner that is independent of the original application software, hardware, and operating system used to create those documents.
- n. “Registered user” means an “authorized user” as set forth in Section (B)(3), *infra*, who has properly registered with the Clerk to e-file and e-serve documents with the appellate courts through the EFSP.

B. Scope of the Rule

1. Permitted Electronic Filing

- a. Except as provided in this rule, litigants through their counsel may e-file any document that would otherwise be filed with the Clerk’s Office in accordance with the Tennessee Rules of Appellate Procedure.
- b. Such e-filings shall constitute the official filing of such documents in compliance with the Tennessee Rules of Appellate Procedure.
- c. Neither litigants nor trial court clerks may e-file appellate records, including transcripts and exhibits, with the Clerk’s Office during this pilot project. However, the Clerk may in his or her discretion scan appellate records into electronic form for the convenience of the Court and the parties, subject to the availability of resources.

2. Paper Filing

- a. Litigants may continue to file paper copies of documents in accordance

with the Tennessee Rules of Appellate Procedure. Once paper copies are filed, the Clerk shall scan such documents into electronic form and file such documents in the same DMS as documents directly filed by counsel through the EFSP. The Clerk has the discretion to scan or not scan paper documents filed by pro se litigants.

- b. Litigants who choose to file paper copies with the Clerk shall pay a scanning fee in an amount established by the Clerk based upon the revenues necessary to fund the scanning process. The scanning fee shall be based upon the actual cost of scanning, but the fee shall be not less than the fee established by the EFSP for e-filing. The Clerk shall establish the method for collection of such a fee.
 - c. Litigants who choose to file paper copies with the Clerk shall include an additional copy beyond the number of copies otherwise required by the Court. This additional copy shall be unstapled and only bound in the upper left-hand corner with a clamp for scanning purposes
3. Authorized Users - The following persons may e-file documents through the EFSP upon completion of the registration requirements of this Rule:
- a. Attorneys licensed to practice law in Tennessee;
 - b. Pro hac vice attorneys;
 - c. All appellate court judges and their staff; and
 - d. All deputy clerks of the Clerk's Office;
4. Authorized Accessors - During this pilot project, any person may access via an internet web site established by the EFSP all documents e-filed through the EFSP. The Clerk may also authorize access of scanned documents in electronic form through the EFSP if the Clerk and the EFSP are able to agree to arrange such access.
5. Prohibited E-Filed Documents - Documents in the following categories may not be e-filed:
- a. Parental termination appeals;
 - b. Juvenile appeals;
 - c. Criminal appeals from convictions of the following

provisions of the Tennessee Code Annotated: § 39-13-305(a)(2) (especially aggravated kidnaping where the victim is less than thirteen years old); § 39-13-502(aggravated rape, where the victim is less than eighteen years old); § 39-13-503(rape where the victim is less than eighteen years old); § 39-13-504(aggravated sexual battery where the victim is less than eighteen years old); § 39-13-505(sexual battery where the victim is less than eighteen years old); § 39-13-506(statutory rape); § 39-13-522(rape of a child); § 39-13-527(sexual battery by an authority figure); § 39-13-528(solicitation of a minor); § 39-13-605(unlawful photographing in violation of privacy if the victim is less than eighteen); § 39-13-607(observation without consent where the victim is less than eighteen years old); § 39-15-302(incest if the victim is less than eighteen years old); § 39-15-401(child abuse and neglect); § 39-15-402(aggravated child abuse and neglect); § 39-17-902(distribution to or employment of minors regarding obscene material if the victim is less than eighteen years old); § 39-17-911(sale, loan, or exhibition of obscene material to minors); § 39-17-914(display for sale or rental of material harmful to minors); § 39-17-1003(sexual exploitation of a minor); § 39-17-1004(aggravated sexual exploitation of a minor); § 39-17-1005(especially aggravated sexual exploitation of a minor); § 39-13-109(criminal exposure to HIV).

- d. Appeals in which the entire record is sealed pursuant to court order or statute.

Upon the filing of the Notice of Appeal, registered users are under a duty to inform the Clerk on a form provided by the Clerk that the appeal falls within one of the above categories.

- 6. Redaction of Information - In order to maintain the privacy rights of persons involved in appeals before the appellate courts, it is the responsibility of counsel who e-files any document under this Rule to redact the following information from any document e-filed with the court, unless otherwise ordered by that court. The Clerk's Office will not review each document for compliance with this subsection. The following information shall be redacted from any document e-

filed and posted on the internet web site of the EFSP:

- a. Social Security numbers - If an individual's social security number must be included in a document, only the last four digits of that number may be used.
- b. Names of minor children - If the involvement of a minor child must be mentioned, only the initials of the child may be used.
- c. Dates of birth - If an individual's date of birth must be included in a document, only the year may be used.
- d. Financial account numbers - If financial account numbers are relevant, only the last four digits of these numbers may be used.
- e. Home addresses - If home addresses must be included in a document, only the city and state may be used.

C. Filing and Service Procedures

1. Registration Requirements

- a. An authorized user who desires to e-file and/or e-serve shall register with the Clerk. Upon receipt of a properly executed user registration agreement, the Clerk shall assign to the authorized user a confidential login and password to the e-file system. No attorney or other user shall knowingly authorize or permit another unauthorized person to use the registered user's name or password. Except as expressly permitted in this rule, the document shall be e-filed using the registration of the registered user who signed the document.
- b. Registered users of the e-file system shall notify the Clerk by e-mail or regular mail within 10 days of any changes in firm name, delivery address, fax number or e-mail address.

2. Time and Effect of E-Filing

- a. Any document filed electronically shall be considered as filed with the Clerk's Office when the transmission from the EFSP is received by the Clerk's Office. Any document received by the Clerk before Midnight local time of the Clerk's Office where the document is e-filed shall be deemed filed on that date if such document otherwise meets all the requirements for filing under the relevant rules of court.

- b. When the EFSP receives electronic confirmation from the Clerk's Office that the e-filing has been received by that office, the EFSP shall electronically transmit to the registered user a receipt confirming that the e-filing has been received by the Clerk's Office. The confirmation receipt shall serve as proof of filing. In the event the Court rejects the submitted document following review, the document shall not become part of the official record, and the Clerk shall notify the registered user of the rejection and the reason for the rejection. Users may be required to re-file documents to meet necessary filing requirements.

3. Format of Documents

- a. Absent leave of Court, all e-filed and e-served documents shall be formatted in accordance with the applicable rules of the Tennessee Rules of Appellate Procedure governing formatting of paper-filed documents in the appellate courts, subject to the following exception: the requirement regarding the colors of brief covers and the requirement that briefs be fastened on the left side shall not apply to e-filed documents..
- b. The electronic title of each document shall include all information required by the applicable rules of the Tennessee Rules of Appellate Procedure governing the particular document.
- c. All original documents that are e-filed shall be prepared through direct conversion from the word processing file to Portable Document Format and not through scanning. All attachments and appendices containing photocopies of documents may be scanned into Portable Document Format. Furthermore, PDF documents may not contain embedded files, scripts, tracking tags and/or executable files.

4. Payment of Filing Fees

- a. Registered users who voluntarily e-file shall pay e-filing fees established by the EFSP as set forth in the contract between the EFSP and the Clerk.
- b. The Clerk shall not charge any additional fee for a registered user to e-file documents under this Rule.
- c. Court costs assessed by a Court under Tenn. Code Ann. § 8-21-501 shall still apply to all documents e-filed under this Rule.
- d. A prevailing party may recover e-filing or scanning fees in the same manner as recoverable costs on appeal set forth in Tenn. R. App. P. 40(c).

- e. Counsel appointed to represent indigent defendants under Supreme Court Rule 13 shall be reimbursed for the scanning or e-filing/e-service fee as a miscellaneous expense under Section (4)(I) of that Rule.

5. Signatures

- a. Every pleading, document and instrument electronically filed or served shall be deemed to have been signed by the justice, judge, clerk, attorney or declarant and shall bear a scanned facsimile or typographical signature of such person, along with the typed name, address, telephone number and number assigned by the Board of Professional Responsibility, if applicable. Typographical signatures shall be in the form of a conforming signature (“/s/ _____”).
- b. Documents filed by registered users shall be deemed signed, provided that such documents are filed using the User Name and Password of the signatory.
- c. In the case of a signatory who is a registered user but whose User Name and Password will not be used in the e-filing of the document, as in the case of documents requiring multiple signatures, the filer of the document shall list thereon all the names of any other signatory or signatories. The filer shall attest that concurrence in the filing of the documents has been obtained from each of the other signatories, or from the single signatory, which shall serve in lieu of their signature(s) on the document. The filer’s attestation may be incorporated in the document itself or take the form of a declaration to be attached to the document.
- d. Any filing made under this rule shall bind the signatory as if the document were physically signed and filed and shall function as the signatory’s attestation to the truthfulness of an affidavit, declaration, certification or any other purpose consistent with the Tennessee Rules of Appellate Procedure or any other appellate court rule.
- e. Unless otherwise ordered by the Court or Clerk, a paper copy of all documents filed or served electronically, including original signatures, shall be maintained by the party filing the document and shall be made available, upon reasonable notice, for inspection by other counsel, the Clerk, or the Court. Parties shall retain originals of documents until final disposition of the case and the conclusion of all appeals. The Clerk may request a paper copy of any electronically filed document at any time.

6. Electronic Service

- a. Delivery of e-service documents as permitted under these rules to other registered users shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through the ESFP.
- b. E-service is accomplished by use of the recipient attorney's correct and current electronic mail address as registered with the Clerk's Office. A "Notice of Electronic Filing" is generated automatically by the EFSP system upon completion of an electronic filing. The "Notice of Electronic Filing" acts as proof of service when e-mailed to the e-mail addresses of record in the case.
- c. E-service shall be deemed complete when the transmission to the EFSP is completed.
- d. E-service shall only be permitted during the pilot project when all of the parties to an appeal agree to participate in providing service of documents via e-service.

7. System or User Filing or Service Errors

If the electronic filing or electronic service does not occur because: (1) an error occurred in the transmission of the document to the EFSP or served party that was unknown to the sending party; (2) the EFSP failed to process the electronic document when received by the EFSP; (3) the served party was erroneously excluded from the service list; or (4) the filer or recipient experienced other technical problems, the Court may upon satisfactory proof enter an order permitting the document to be filed nunc pro tunc to the date the document was first attempted to be filed electronically. In the case of service, the served party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or period within which any right, duty or other act must be performed.

D. Effective Date

This rule shall take effect on _____.

E. Evaluation

Upon the effective date of this Rule and before e-filing begins, the Clerk with the assistance of the AOC shall develop the evaluation process as part of the request for proposal for obtaining the services of the EFSP so that the evaluation process shall be in effect at the time e-filing begins under this Rule. The evaluation process shall include both an objective data component and a survey of users. One year after e-filing begins the Clerk shall submit the results

of the evaluation process to the Court along with recommendations on the following issues: (1) whether e-filing should be made mandatory; (2) if so, the suggested date upon which e-filing should be made mandatory; and (3) whether there are any changes or improvements in the e-filing system that would make it a more effective and efficient process.