IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 15-9205

FINAL APPROVAL OF RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

ORDERED that:

1. On June 9, 2015, the Supreme Court of Texas (Misc. Docket No. 15-9090) and the Court of Criminal Appeals (Misc. Docket No. 15-002) adopted rules for 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 rules are effective November 1, 2015.

3. 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: October 1, 2015.

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 P. Devine, Justice

Jeffrey V. Brown, Justice

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

Misc. Docket No. 15-004

FINAL APPROVAL OF RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

ORDERED that:

1. On June 9, 2015, the Court of Criminal Appeals (Misc. Docket No. 15-002) and the Supreme Court of Texas (Misc. Docket No. 15-9090) adopted rules for electronic filing in criminal cases and invited public comment. After receiving public comments, the Court of Criminal Appeals and the Supreme Court have made revisions to the rules. This order incorporates those revisions and contains the final version of the rules.

2. The rules are effective November 1, 2015.

3. 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: October 5, 2015.

Sharon Keller, Presiding Judge

Lawrence E. Meyers, Judge

Cheryl Johnson, Judge

Michael Keasler, Judge

Barbara Hervey, Judge

Elsa Alcala, Judge

Bert Richardson, Judge

Kevin P. Yeary, Judge

David Newell, Judge

PROPOSED 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 district courts, statutory county courts, constitutional county courts, justice courts, and municipal courts in those counties in which criminal case electronic filing has been implemented pursuant to Rule 1.2 of these rules.

Rule 1.2 Electronic Filing Permitted

A clerk may implement criminal case electronic filing in that clerk's office when he or she has the written consent of a majority of the judges in the county who have jurisdiction in criminal cases and who are served by that clerk. Where criminal case electronic filing has been implemented in a clerk's office, a filer may file and serve documents in a case either through the electronic filing system or by paper.

Rule 1.3 Documents That May Be Electronically Filed

Any document that can be filed with a court in paper form may be electronically filed with the following exceptions:

(1) charging instruments;

(2) documents filed under seal or presented to the court in camera; and

(3) 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.

Comment to Part 1: These rules apply to electronic filers who would otherwise have been filing manually with clerks. These rules do not affect court reporters, exhibits filed in a hearing or trial, or documents filed directly with a judge. Further, permitting electronic filing should not be construed as authority to mandate electronic filing. These rules also do not affect whether electronically filed documents may be posted on the internet.

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.

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 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.

Rule 2.5 E-Mail Address Required

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

Rule 2.6 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 2.7 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 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 2.8: 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.

PART 3. SERVICE OF DOCUMENTS

Rule 3.1 Electronic Service of Documents Permissible

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, may 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 may 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. ELECTRONIC ORDERS AND VIEWING OF ELECTRONICALLY-FILED DOCUMENTS

Rule 4.1 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.

PART 5. PRIVACY PROTECTION FOR FILED DOCUMENTS

Rule 5.1 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; and

(3) a birth date, home address, and the name of any person who was a minor when the underlying suit was filed.

Rule 5.2 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 Rules of Appellate Procedure rule 9.10.

Rule 5.3 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 5.4 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 5.5 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 5.5: 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 5.6 Restriction on Remote Access

Documents that contain sensitive data in violation of these rules must not be posted on the internet.