

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 12- **9208**

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## ORDER REQUIRING ELECTRONIC FILING IN CERTAIN COURTS

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This order mandates electronic filing (“e-filing”) in civil cases, including family and probate cases, by attorneys in appellate courts, district courts, statutory county courts, constitutional county courts, and statutory probate courts pursuant to a detailed implementation schedule.

Disputes in court require the exchange of information. The primary medium of that exchange has been paper. Texas courts have struggled for over a century to process, manage, and store court documents. With the information age, it is now possible to receive and store those documents digitally. Texas courts first experimented with this new medium in the 1990s when two district courts urged lawyers to file documents electronically. The benefits were immediate. With electronic filing, storage expenses decreased dramatically. Clerks that formerly spent time sorting and file-stamping documents could be assigned to more productive activities. Documents were no longer damaged or lost. The public, lawyers, and judges could instantly access vital pleadings, accelerating the progress of litigation. These efficiencies prompted the judiciary to initiate a pilot project in January 2003 to test and refine the e-filing model. That model was instituted statewide in 2004 through the state’s Texas.gov<sup>1</sup> internet portal. Since that time, a growing number of trial and appellate courts have implemented e-filing.

Currently, the following courts in Texas accept e-filing:

- Supreme Court of Texas (mandatory);
- 9 of the 14 courts of appeals (4 mandatory);

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<sup>1</sup> The portal was originally named TexasOnline.

- 236 district courts and 81 county courts covering 51 counties and more than 80% of the state's population (mandatory in a few district courts);
- 7 statutory probate courts covering 7 counties; and
- 28 justice courts covering 12 counties.

While most of these courts have accepted e-filings through the Texas.gov portal, several courts have adopted systems that diverge from the Supreme Court's e-filing exemplar. As a result, Texas litigants and attorneys confront several different systems and must master the requirements for each. Without a centralized and uniform portal for accessing court case information, the advantages of filing electronically are greatly diminished.

The federal courts, including the bankruptcy courts, district courts and courts of appeals, offer e-filing through a unified, nationwide system, and most of those courts require lawyers to file electronically. Twenty-three states mandate e-filing to varying degrees. These courts have reported dramatic improvements in efficiency and decreased costs.

This Court convened a hearing on December 8, 2011, to assess the benefits and drawbacks of creating a uniform statewide e-filing system. The Court received testimony from the Chair of the Judicial Committee on Information Technology, a district judge, four district clerks, a representative of the current e-filing vendor, a representative of an e-filing service provider and a law firm technology officer. The Court also received numerous written comments. Almost all of the individuals who testified at that hearing and submitted written comments supported mandatory e-filing and implementation of a uniform statewide system.

The testimony revealed a number of benefits to e-filing in Texas courts, including quicker access to e-filed documents; increased efficiency for attorneys and litigants; reduced printing and mailing costs for attorneys and litigants; reduced storage costs for clerks; greater security of court documents in the event of disaster; more efficient use of court staff, as employees typically assigned to accept documents at the clerk's office counter can be retrained for higher skilled positions; and increased transparency and access to the courts. Information can generally be found more quickly in an e-filed document because of the capacity to search for words and phrases. Documents can also be easily cross-referenced and hyperlinks can facilitate direct citation to other filings, legal databases, and exhibits. All of this enhances the quality of legal advocacy and the quantity of information the tribunal possesses when deciding the case.

The testimony also revealed a number of concerns, including the high cost of e-filing associated with the "toll-road" structure of the current system, which requires litigants to pay a fee each time a document is e-filed; the current system's inability to allow certain government<sup>2</sup> and indigent filers to e-file documents at no cost; the decentralized nature of the current system

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<sup>2</sup> Government filers referenced here are those which are not statutorily required to pay filing fees.

and accompanying local e-filing rules; and the inability of the current technology to handle an increase in filings.

While considering the information received at the hearing, the Court learned that the vendor who managed the Texas.gov system would not renew its contract. Accordingly, unless appropriate measures were taken, e-filing would expire in Texas in August 2012.<sup>3</sup> The Court, the Judicial Committee on Information Technology (“JCIT”), the Department of Information Resources, and others determined that it would be prudent to seek a new vendor. The Office of Court Administration (“OCA”) procured and recently signed a contract with a new vendor to provide e-filing to all Texas courts through a system called “TexFile.” The TexFile system follows the “toll road” model, but drastically reduces<sup>4</sup> the cost of e-filing and electronic service. To further reduce costs, OCA and the Court continue to pursue alternative funding models for the new system. In support of these efforts, the Texas Judicial Council has requested that the Texas Legislature lower e-filing fees by adopting a one-time, per-case e-filing fee to replace the “toll-road” model’s per-document or per-transaction fee.<sup>5</sup> TexFile will also permit indigent and certain government filers to submit documents at no cost. Finally, the new system will be scalable to handle as many filings as necessary and will allow for better integration with existing case management software in the courts.

This Court relies on JCIT to develop policy recommendations for the Judiciary on matters relating to technology. JCIT has spent the last several years evaluating the existing e-filing structure and determining how to improve service to the courts and citizens of Texas. After much study, JCIT recommended that the Court “mandate a statewide, uniform system of e-filing for all courts with a phased implementation starting with the most populous counties.”

After considering the testimony, both oral and written, provided at the Court’s hearing, along with the recommendations of JCIT regarding e-filing, the Supreme Court of Texas concludes that mandatory e-filing in civil cases will promote the efficient and uniform administration of justice in Texas courts.

Accordingly, it is **ORDERED** that:

1. This Order governs e-filing in all civil cases, including family and probate cases, at the Supreme Court of Texas, courts of appeals, district courts, statutory county courts, constitutional county courts, and statutory probate courts.

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<sup>3</sup> An eighteen month extension was negotiated between DIR and the current vendor to allow for a transition to a new vendor.

<sup>4</sup> The e-filing fees are reduced by up to 48 percent under the new contract. With additional filing volume, the e-filing fees could be reduced by up to 66 percent.

<sup>5</sup> Available at <http://www.courts.state.tx.us/tjc/pdf/AdequateFundingCourteFilingSystem.pdf>.

2. E-filing will be mandatory in the Supreme Court of Texas and in civil cases in the courts of appeals effective January 1, 2014.
3. E-filing will be mandatory in civil cases in the district courts, statutory county courts, constitutional county courts and statutory probate courts according to the following implementation schedule based upon the counties' 2010 Federal Census population:
  - a. Courts in counties with a population of 500,000 or more – January 1, 2014
  - b. Courts in counties with a population of 200,000 to 499,999 – July 1, 2014
  - c. Courts in counties with a population of 100,000 to 199,999 – January 1, 2015
  - d. Courts in counties with a population of 50,000 to 99,999 – July 1, 2015
  - e. Courts in counties with a population of 20,000 to 49,999 – January 1, 2016
  - f. Courts in counties with a population less than 20,000 – July 1, 2016
4. Once a court is subject to mandatory e-filing under this Order, attorneys must e-file all documents in civil cases, except documents exempted by rules adopted by this Court, through TexFile, the e-filing portal provided by OCA. Attorneys must not file documents through any alternative electronic document filing transmission system (including fax filing), except in the event of emergency. Persons not represented by an attorney may e-file documents, but e-filing is not required.
5. Once a court is subject to mandatory e-filing under this Order, courts and clerks must not offer to attorneys in civil cases any alternative electronic document filing transmission system (including fax filing), except in the event of emergency. And courts and clerks must not accept, file, or docket any document filed by an attorney in a civil case that is not filed in compliance with this Order, except in the event of emergency.
6. The Supreme Court will adopt rules governing e-filing and e-service in accordance with the mandate schedule above.
7. Courts or clerks who believe they cannot comply with this Order by the implementation date specified may petition the Supreme Court for an extension, which may be granted for good cause shown.

SO ORDERED, this 11<sup>th</sup> day of December, 2012.

Wallace B. Jefferson

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht

Nathan L. Hecht, Justice

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David M. Medina, Justice

Paul W. Green

Paul W. Green, Justice

Phil Johnson

Phil Johnson, Justice

Don R. Willett

Don R. Willett, Justice

Eva M. Guzman

Eva M. Guzman, Justice

Debra H. Lehrmann

Debra H. Lehrmann, Justice

Jeffrey S. Boyd

Jeffrey S. Boyd, Justice