

Serial: 209187

IN THE SUPREME COURT OF MISSISSIPPI

No. 89-R-99041-SCT

FILED

DEC 01 2016

***IN RE: APPELLATE E-FILING
ADMINISTRATIVE PROCEDURES***

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

ORDER

This matter is before the en banc Court on the Court's own motion.

After due consideration, we find that the Appellate E-Filing Administrative Procedures should be amended to require a certificate of service, consistent with Section 3(G) of the Administrative Procedures for Mississippi Electronic Courts, and to include a citation rule.

IT IS THEREFORE ORDERED that the Appellate E-Filing Administrative Procedures are amended as set forth in the attached Exhibit A. The amendments are effective January 1, 2017.

IT IS FURTHER ORDERED that the Clerk of this Court must spread this order upon the minutes of the Court and forward a certified copy to West Publishing Company for publication as soon as practicable in the advance sheets of *Southern Reporter, Third Series (Mississippi Edition)*, and in the next edition of the *Mississippi Rules of Court*.

SO ORDERED, this the 21st day of November, 2016.



JOSIAH DENNIS COLEMAN, JUSTICE
FOR THE COURT

ALL JUSTICES AGREE.

EXHIBIT A

**APPELLATE E-FILING
ADMINISTRATIVE PROCEDURES**

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APPELLATE E-FILING ADMINISTRATIVE PROCEDURES

Section 1. INTRODUCTION AND SCOPE OF ELECTRONIC FILING

The following procedures govern the utilization of the appellate e-filing system with the Clerk of the Supreme Court. These procedures may be amended from time to time. **Persons using the appellate e-filing system should consult the Mississippi Supreme Court's website [www.courts.ms.gov] for the most current procedures.**

A. Participants in Electronic Filing

The system permits attorneys to file documents with the Court from any location over the Internet. While all parties, including those proceeding pro se, have “read only” public access to documents filed, only registered attorneys, as officers of the Court, are permitted to file electronically. Parties proceeding pro se shall not file electronically unless said pro se party is a registered attorney in good standing and admitted to practice in the Court.

B. Training and Technical Assistance

These procedures govern use of the appellate e-filing system and are not intended as a technical guide for the use of the system. Information regarding the equipment needed to participate, as well as information on training and access to computer-based tutorials, can be obtained from courts.ms.gov.

C. Definitions and Instructions

The term “conventional filing” means presentation to the Clerk’s Office of a hard copy of a document which cannot or should not be filed electronically. The hard or paper copy should be accompanied by an electronic storage device with the document in a text PDF file(s), if possible. If not, the document will be scanned for inclusion as an image PDF unless otherwise provided in these procedures. The “image” is not a searchable document; a text PDF is a searchable document.

The term “document” shall include pleadings, motions, exhibits, declarations, affidavits, memoranda, papers, orders, notices, and any other filing by or to the Court, whether or not the document is electronic or a hard or paper copy. “Hard copy” and “paper copy” are used interchangeably in these procedures.

“Electronic filing” means uploading a document in PDF format directly from the registered user’s computer, to file that document in the Court’s case file using the Court’s Internet-based system. **Sending a document or pleading to the Court via e-mail or facsimile does not constitute “electronic filing.”**

The “E-Mail Address of Record” is the Internet e-mail address of each attorney in the case as maintained by the system.

A “Filing User” is an attorney who is registered to use the system.

A “Notice of Electronic Filing” (NEF) is generated automatically by the system upon completion of an electronic filing. The Notice of Electronic Filing, when e-mailed to the e-mail addresses of record in the case, acts as the proof of service.

The term “PDF” refers to Portable Document Format. A PDF document allows anyone to open the converted document across a broad range of hardware and software, with layout, format, links, and images intact.

D. Selection and Designation of Cases for Electronic Filing

Unless otherwise permitted by these administrative procedures or unless otherwise authorized by the Court, all briefs, motions, responses, and compliance documents submitted for filing with the Clerk of the Supreme Court may be filed electronically by a registered attorney beginning July 1, 2013. Beginning January 1, 2014, all briefs, motions, responses, and compliance documents submitted for filing with the Clerk of the Supreme Court shall be filed electronically by a registered attorney or shall be scanned and uploaded to the system by the Clerk’s Office.

Section 2. REGISTRATION

A. Eligibility

Attorneys admitted to practice in the Supreme Court and Court of Appeals, including attorneys admitted to practice in those courts under the *pro hac vice* or *pro bono publicus* provisions of the Mississippi Rules of Appellate Procedure, may register as Filing Users. No other person may register as a Filing User, even if he or she is a party proceeding pro se.

B. Registration

1. Attorneys should register with the system electronically by accessing the Attorney Registration site at courts.ms.gov/mec/mec.html. Each attorney in a law firm must register individually. Registration for the appellate e-filing system shall be the same as for the Mississippi Electronic Courts (MEC) system.
2. Each attorney registering in the system will receive an Internet e-mail message after his or her password has been assigned. This is to ensure that the attorney's Internet e-mail address has been entered correctly in the system and to convey the login and password information to the attorney.
3. An attorney's registration will constitute a waiver of conventional service of documents. The attorney agrees to accept service of notice of the electronic filing by authorized e-mail.
4. Attorneys are responsible for updating their mailing address or e-mail address online through the e-filing system.

C. Passwords

Each attorney registered to participate in MEC is entitled to one system password. An attorney's MEC login and password will be utilized in both the appellate e-filing system and MEC. Attorneys may change their own passwords.

Pursuant to M.R.A.P. 46(d), every petition, motion, brief, and other paper shall be signed by at least one attorney of record. An attorney's password issued by MEC combined with the user's login identification serves as the attorney's signature for Rule 46 and other purposes. Therefore, it is imperative that an attorney protect and secure the password issued by MEC. If there is any reason to suspect the password has been compromised in any way, it is the duty and responsibility of the attorney immediately to notify the MEC helpdesk. In the event of the resignation or reassignment of the person with authority to use a password, the attorney should change the password immediately.

No attorney shall knowingly permit his or her password to be utilized by anyone other than an authorized employee of his or her office. Because the login and password together constitute an attorney's signature regardless of whether the attorney personally uses the login and password or delegates that authority to someone else, the attorney is responsible for safeguarding and protecting his or her login and password at all times. Once registered, the attorney shall be responsible for all documents filed with his or her password.

Section 3. ELECTRONIC FILING AND SERVICE OF DOCUMENTS

A. Electronic Filing

1. Electronically filed documents must meet the same requirements of format and page limits as documents "conventionally filed" (as defined in Definitions and Instructions) pursuant to the Mississippi Rules of Appellate Procedure, except that the title of any brief submitted electronically should be in Times New Roman font with a 30 point font size, and the color requirements for brief covers shall not apply to electronically filed documents.
2. Any requirement in the Mississippi Rules of Appellate Procedure for multiple copies of a document to be submitted with the original filing shall not apply to a document filed electronically in the system.
3. In order to file a document which requires leave of the Court, such as an amicus or supplemental brief, the proposed document shall be attached as an exhibit to a motion. If the motion is granted, **the attorney must electronically re-file the proposed document as an independent document after entry of the Court's order.**
4. Electronic transmission of a document consistent with these procedures will, upon the complete transmission of the same to the Clerk's Office, constitute filing of the document for all purposes of the Mississippi Rules of Appellate Procedure and will constitute entry of that document onto the docket maintained by the Clerk pursuant to M.R.A.P. 45.
5. The attorney filing a document is responsible for ensuring the complete transmission of the document being electronically filed. A receipt acknowledging the complete transmission of the document which has

been filed will appear immediately on the filer's screen. Parties also can verify the filing of documents by inspecting the Court's electronic docket sheet.

6. When a Filing User's document has been filed electronically, the official record is the electronic document stored by the Court, and the filing party is bound by the document as filed.
7. All documents which form part of a single pleading and which are being filed at the same time may be filed electronically together under one document number, e.g., the motion and a supporting affidavit, with the exception of memoranda in support.
8. In filing documents and attachments to documents, a filing party should electronically image, i.e., "scan," a paper exhibit that is less than ten megabytes (10 MB) and submit the exhibit as an attachment in PDF format. Some attached documents, whether a scanned exhibit or other evidence, may exceed the 10 MB size requirement on the system. When this occurs, the document shall be reduced to as many 10 MB "bundles" as required to file the entire document. Each bundle is filed as a separate attachment; the description of each attachment should identify the document type and page numbers, i.e., "Exhibit 1 - Pages 1 - 43" or "Exhibit 2 - Pages 44 - 83." Attorneys are encouraged to file an Exhibit List as the first attachment.

B. Signatures

A pleading or other document requiring an attorney's signature shall identify the attorney in the following manner, whether filed electronically or submitted on disk or CD to the Clerk's Office:

"s/(attorney name)" (e.g., s/Jane Doe)

Jane Doe

Mississippi Bar Number

Firm Name

Firm Address

Telephone Number

Fax Number

E-Mail Address

Electronically represented signatures of all parties and Filing Users described above are presumed valid. An attorney challenging the authenticity of an electronically filed document must file a timely objection to the document. Documents which require more than one party's signature must be filed electronically by submitting a scanned document containing all necessary signatures or by showing the consent of the other parties on the document.

C. Title of Documents

The person electronically filing a pleading or other document will be responsible for designating a filing event for the pleading or other document by using one of the categories contained in the system. The filing event selected serves only as a descriptive reference and does not alter the title which appears on the pleading or document being filed.

D. Filing Deadlines

Filing documents electronically does not alter any filing deadlines or any time computation pursuant to M.R.A.P. 26. All electronic transmissions of documents must be completed (i.e., received completely by the Clerk's Office) prior to **midnight Central Standard (or Daylight Savings) Time**. For the filing to be **completed**, the filer must have received the Notice of Electronic Filing from the Court. The Notice of Electronic Filing reflects the time the electronic transmission of a document is completed. Accordingly, a document will be deemed timely filed if the Notice of Electronic Filing reflects time prior to midnight. However, a judge may order that a document be filed by a time certain, which then becomes the filing deadline. Although documents can be filed electronically 24 hours a day, filers are strongly encouraged to file all documents during office hours.

E. Errors in Filing

Once a document is submitted electronically, it becomes part of the court file, and corrections may be made only by the Court and/or the Clerk's Office. The system **will not permit** the filing party to make changes to the document(s) or docket entry once the transaction has been accepted, and the filer should **not** attempt to refile the documents(s).

As soon as possible after an error is discovered, the party seeking correction should follow the procedure set forth in M.R.A.P. 10(e).

F. Service of Filed Documents on Parties

1. The system will generate a “Notice of Electronic Filing” when any document is filed. This notice represents service of the document on attorneys who are registered participants with the system. Except as provided in Section 4, regarding conventional filing, the filing party shall not be required to serve any pleading or other documents on any party receiving electronic notice.
2. The filing party shall also serve those parties not designated or able to receive electronic notice but who nevertheless are entitled to notice of said pleading or other document in accordance with the Mississippi Rules of Appellate Procedure, except as otherwise provided by order of the Court. If such service of a paper copy is to be made, it shall be done in the manner provided in the Mississippi Rules of Appellate Procedure.
3. Service pursuant to Section 3(F)(1) will constitute service pursuant to M.R.A.P. 25 and will entitle the party being served, as in conventional service by U.S. mail, to the additional three days provided by M.R.A.P. 26.

G. Certificate of Service

A Certificate of Service is still a requirement when filing documents electronically. A sample Certificate of Service is attached as Form 2.

H. Acknowledgment of Service

An acknowledgment of service is still a requirement when filing documents electronically.

Section 4. CONVENTIONAL FILING AND SERVICE OF DOCUMENTS

A. Conventional Filings

As used in these procedures, a “conventionally” filed or submitted document or pleading is one presented to the Clerk or a party on paper or other non-electronic, tangible format.

1. **Sealed Cases and Confidential Cases** shall be not be included as part of the appellate e-filing system. All documents in sealed and confidential cases shall be submitted conventionally to the Clerk's Office for filing. Only authorized Court personnel will be able to view docket entries and documents in these cases. Parties must not use the Court's electronic notice facilities to serve documents in sealed or confidential cases. An NEF will not be sent on documents filed in sealed and confidential cases. Service should be made in accordance with the Mississippi Rules of Appellate Procedure, and an acknowledgment of service must be attached to the filed document.
2. **All documents**, except for briefs, motions, responses, and compliance documents, shall be filed conventionally and not electronically.
3. **Other documents** which also shall be filed conventionally and not electronically unless specifically authorized by the Court:
 - a. **Exhibits and other documents** which cannot or should not be filed electronically by conversion to a legible electronic form shall be filed conventionally. Whenever possible, counsel is responsible for converting filings to an electronic form. However, if that is not possible, counsel shall electronically file a PDF document titled **Notice of Conventional Filing** as a notation on the docket sheet that filings are being held in the Clerk's Office in paper form. A sample **Notice of Conventional Filing** is attached as **Form 1**. If documents are filed in paper format, counsel must provide an original for the Clerk's Office. A paper copy must be served on all parties in the case.
 - b. **Documents filed by pro se litigants** shall be filed conventionally unless said pro se party is a registered attorney. The Clerk's Office will upload these conventionally filed documents into the system.
 - c. **Attorneys may apply to the Court for permission to file documents conventionally.** Even if the Court initially grants an attorney permission to file documents conventionally, the Court may withdraw that permission at any time during the pendency of a case and require the attorney to file documents electronically using the system.

B. Service of Conventional Filings

Pleadings or other documents which are filed conventionally rather than electronically shall be served in the manner provided for in the Mississippi Rules of Appellate Procedure, except as otherwise provided by order of the Court.

Section 5. TECHNICAL FAILURES

A. The Court's System

The Clerk's Office shall deem the public website for the appellate e-filing system to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon that day, in which case filings due that day which were not filed due solely to such technical failures shall become due the next business day.

When unable to file a document in a timely manner due to a failure of the appellate e-filing system, a document **may** be filed conventionally, and the filer shall explain the conventional filing by attaching a Declaration of Technical Difficulties.

B. The Attorney's System

If the attorney is unable to file a document in a timely manner due to technical difficulties in the user's system (e.g., phone line problems, problems with the filer's Internet Service Provider (ISP), or hardware or software problems), the attorney should file the document conventionally and notify the Court of the inability to electronically file. Such notification may be made by attaching a Declaration of Technical Difficulties, wherein he or she explains the inability to file electronically.

Section 6. PRIVACY

A. Obligation to Protect Sensitive and Private Information

To achieve the goal of promoting electronic access to case files while still protecting personal privacy and addressing concerns created by Internet access

to court documents, counsel shall refrain from including, or shall partially redact where inclusion is necessary and relevant to the case, the following personal data identifiers from all pleadings and other papers filed with the Court, including exhibits thereto, whether filed electronically or on paper, unless otherwise ordered by the Court or except where otherwise specifically required by rule or statute:

1. **Social Security numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number should be used.
2. **Names of minor children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
3. **Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used.
4. **Financial account numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review pleadings for compliance with this procedure. Attorneys also are advised to exercise caution when filing documents that contain the following:

- 1) personal identifying number, such as driver's license number;
- 2) medical records, treatment, and diagnosis;
- 3) employment history;
- 4) individual financial information; and,
- 5) proprietary or trade-secret information.

Attorneys are strongly urged to share this notice with all clients so that an informed decision may be made about the inclusion of certain materials in court documents.

Users are cautioned that failure to redact personal identifiers and/or the inclusion of irrelevant personal information in a pleading or exhibit filed electronically with the Court may subject counsel to the disciplinary and remedial powers of the Court, including sanctions pursuant to M.R.A.P. 46.

B. Exemptions From the Redaction Requirement

The redaction requirement shall not apply to the following:

1. The record of a court, tribunal, or administrative proceeding, if that record was not subject to the redaction requirement when originally filed.
2. Documents filed under seal.

C. Filing Documents With Sensitive and Private Information

A party wishing to file a document containing the personal data identifiers listed above may do so in the following manner:

1. **File an unredacted version** of the document under seal, or
2. **File a reference list under seal.** The reference list shall contain the complete personal data identifier(s) used in its (their) place in the filing.

All references to the redacted identifiers in the case included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended without leave of the Court.

The unredacted version of the document or the reference list shall be retained by the Court as part of the record. The Court may, however, still require the party to file a redacted copy for the public file.

D. Waiver of Protection of Personal Data Identifiers

Users who file documents that include the items listed in Section 6(A) above waive the protections of this Section 6. Parties aggrieved by the filing of such information may seek relief by motion to the Supreme Court.

Section 7. TITLE AND CITATION

These procedures are the Mississippi Appellate E-Filing Administrative Procedures and may be cited as MAEAP.

FORM 1

SAMPLE FORMAT

IN THE SUPREME COURT OF MISSISSIPPI

_____ Appellant(s)
vs. Case No. _____
_____ Appellee(s)

NOTICE OF CONVENTIONAL FILING

_____ is in paper form only and is being maintained in the case file in the Clerk's Office. This document has not been filed electronically because [examples: the document or thing cannot be converted to an electronic format, the document or thing is filed under seal, or the party is excused from filing this document or thing by court order.]

If appropriate, the document or thing has been manually served on all parties.

Date: _____

/s/ [Name of Password Registrant]

Name of Password Registrant

Address

City, State, Zip Code

Phone: XXX-XXX-XXXX

Fax: XXX-XXX-XXXX

E-mail: XXX@XXX.XXX

FORM 2

SAMPLE FORMAT

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing pleading or other paper with the Clerk of the Court using the appellate e-filing system, which sent notification of such filing to the following:

Further, I hereby certify that I have mailed by United States Postal Service the document to the following non-registered participants:

This the _____ day of _____, 20__.

/s/ [Name of Password Registrant]
Name of Password Registrant