

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 24th day of April, 2008, the following order was made and entered:

RE: REQUEST FOR PUBLIC COMMENT ON PROPOSED RULES RELATING TO ELECTRONIC FILING AND SERVICE IN CASES REFERRED TO THE MASS LITIGATION PANEL

On this day came the Clerk of the Court, at the request of the Mass Litigation Panel, and presented to the Court proposed rules relating to electronic filing and service in cases referred to the Mass Litigation Panel. Three matters were presented: first, a proposed amendment to Rule 5(e) of the Rules of Civil Procedure that would generally authorize electronic filing and service; second, a new proposed Trial Court Rule 15 that would more specifically set forth rules relating to electronic filing and service; third, a Manual for Electronic Filing, that would govern more technical and procedural aspects of implementing electronic filing and service. Upon consideration whereof, the Court is of the opinion to and does hereby approve a period of public comment of thirty days on all three matters presented, with the **public comment period to conclude on Tuesday, May 27, 2008**. All comments should be filed in writing with the Clerk of the Court. The text of proposed Rule of Civil Procedure 5(e), proposed Trial Court Rule 15, and the proposed Manual for Electronic Filing is set forth below:

PROPOSED AMENDMENT TO RULE 5(e) of the Rules of Civil Procedure
(additions indicated by underlining)

“RULE 5. Service and Filing of Pleadings and other papers.

(e) *Filing with the court defined.* — The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, who shall note thereon the filing date, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk; the notation by the clerk or the judge of the filing date on any such paper constitutes the filing of such paper, and such paper then becomes a part of the record in the action without any order of the court. Filing by facsimile is permitted pursuant to the West Virginia Supreme Court of Appeals Rules for Filing and Service by Facsimile Transmission. Electronic filing and service is permitted in limited circumstances pursuant to Trial Court Rule 15.”

PROPOSED ADDITION TO THE WEST VIRGINIA TRIAL COURT RULES
(all language is new, no underlining is used)

“RULE 15. Electronic Filing and Service.

Rule 15.01. Applicability.

This rule authorizes electronic filing and service of documents in the circuit courts of West Virginia in cases referred to the Mass Litigation Panel under Trial Court Rule 26.

Rule 15.02. General Provisions.

(a) The electronic filing and service of documents and the electronic receipt of associated case information in the circuit courts of West Virginia may be referred to as e-filing.

(b) When the circuit court determines that it is appropriate for any existing case, or category of existing cases, to follow the procedures for e-filing, the court shall so designate by order. Electronic filing shall not be utilized to initiate a civil action unless specifically ordered by the Mass Litigation Panel.

(c) The process for e-filing shall utilize a third-party electronic filing system, LexisNexis File & Serve, and shall be governed by the MANUAL FOR ELECTRONIC FILING, which may be updated from time to time by the Supreme Court and shall be made generally available to the public and the bar.

(d) Documents filed and served in accordance with these rules and the MANUAL FOR ELECTRONIC FILING shall be deemed to be in compliance with Trial Court Rule 10.01.

Rule 15.03. Authorization and Signature.

(a) No lawyer shall authorize anyone to e-file on that lawyer's behalf, other than an employee of his or her law firm or a service provider retained to assist in e-filing. No person shall utilize, or allow another person to utilize, the password of another in connection with e-filing.

(b) The e-filing of a document by a lawyer, or by another under the authorization of a lawyer, shall constitute a signature of that lawyer under Rule 11(a) of the Rules of Civil Procedure.

Rule 15.04. Service.

(a) Every document that is e-filed shall be electronically served. Unless otherwise ordered, the electronic service of a document, in accordance with the MANUAL FOR ELECTRONIC FILING, shall be considered service under Rule 5 of the Rules of Civil Procedure. Service by electronic means shall not be treated in the same manner as service by mail for the purposes of Rule 6(e).

(b) Parties who are unable to receive service electronically shall be served in accordance with Rule 5 of the Rules of Civil Procedure, or by utilizing the U.S. Mail feature of the electronic filing system.

(c) The presiding judicial officer may direct the parties to provide a courtesy copy of filings in accordance with Trial Court Rule 6.03, either by U.S. Mail or by utilizing the Courtesy Copy via U.S. Mail feature of the e-filing system.

Rule 15.05. Orders and Civil Docket.

(a) Orders issued by the presiding judicial officer in cases subject to e-filing shall bear a typographic signature and an official e-filing court stamp, and shall be electronically filed and served. The date of the official e-filing court stamp shall constitute the date of entry of the order.

(b) An electronic register of actions, with associated documents and filing receipts, shall be maintained as part of the e-filing system and shall constitute the civil docket and otherwise satisfy the requirements of Rule 79 of the Rules of Civil Procedure.

(c) Orders or judgments electronically filed and served, and maintained as part of the online register of actions, shall satisfy the requirements of Rule 77(d) of the Rules of Civil Procedure.

Rule 15.06. Public Access.

(a) In counties where e-filed cases are pending, the circuit clerk's office shall make a public access terminal available where members of the public can search and view the civil docket for e-filed cases. Copies of documents may be printed by the circuit clerks and copying charges will apply in accordance with Trial Court Rule 10.04(d). Charges for copies of

transcripts prepared by official court reporters will be governed by the Official Court Reporter's Manual.

(b) Self-represented litigants who are unable to e-file may file a written motion with the presiding judicial officer seeking a waiver, which may be granted for good cause shown. Self-represented litigants and parties who have obtained a fee waiver may file papers in accordance with Trial Court Rule 10.01. Such papers shall be uploaded and made available within the electronic filing system by the circuit clerk.”

PROPOSED MANUAL FOR ELECTRONIC FILING
(all language is new, no underlining is used)

“MANUAL FOR ELECTRONIC FILING

1) Purpose and Scope

- a. *Purpose.* The MANUAL FOR ELECTRONIC FILING was promulgated by the Court on May __, 2008, to govern the process for electronically filing and serving documents, orders and maintaining case-related information in matters referred to the Mass Litigation Panel under Trial Court Rule 26.
- b. *Scope.* The procedures set forth in the MANUAL should be utilized in conjunction with the Rules of Civil Procedure and the West Virginia Trial Court Rules. Where requirements of the Rules of Civil Procedure are satisfied by electronic filing procedures, this Manual and/or Trial Court Rule 15 will specifically state. All filings, whether electronic or paper, shall otherwise comply with the Rules of Civil Procedure and the West Virginia Trial Court Rules.
- c. *Case management order.* In cases made subject to e-filing by entry of an order under the provisions of Trial Court Rule 15.02(b), specific procedures may, in the discretion of the presiding judicial officer, also be made subject to a case management order.

2) Registration and Fees

- a. *Registration.* Any person intending to utilize electronic filing and service must register with LexisNexis File & Serve at the following address:
<http://www.lexisnexis.com/fileandserve/>
- b. *Fees.* Fees for electronic filing and service will be billed by LexisNexis using the billing arrangements established through the LexisNexis registration process. The standard fees are \$8 to file and \$12 to serve, and \$2 to file and serve in each additional case. Multiple documents may be filed and served in one case in a single transaction.

3) Documents that must be electronically filed; exceptions

Each document that must be filed in a case subject to e-filing shall be filed electronically unless otherwise ordered by the Court. If a party who has been granted a waiver under Trial Court Rule 15.06(b) delivers to the Court paper for filing in cases subject to e-filing, the circuit clerk in the county where the case is pending will upload such documents to the e-filing system.

4) Case Numbering & Designation

- a. *Master Case.* If authorized by the presiding judicial officer, a master case designation may be used to refer to certain pleadings, exhibits or other case-related material. The e-filing system will use a special master case number to refer to these materials. (*i.e.* 03-MC-8888). Typically, a master case only contains a small subset of key documents. Prior to e-filing, a master case number may have been used on all papers filed, in addition to a case number assigned when the case was initiated. There will no longer be a need to use a master case number on routine filings; only specific pleadings permitted by the presiding judicial officer may be filed in the master case, subject to the provisions of the case management order.
- b. *Case Numbering.* Because cases are initiated outside the e-filing system, each case later made subject to e-filing will have a number assigned by the circuit clerk where the case was filed, called the initiating case number. The initiating case number, along with a three-letter county identifier, will be used to designate each case within the electronic filing system. (*i.e.*, “08-C-187 MAR” refers to a 2008 case filed in Marshall County).
- c. *Case Captions.* The cover page of each pleading shall contain the initiating case number along with the county identifier, as well as a parenthetical description of the mass litigation case type. For example, an asbestos personal injury case originally filed in Marshall County would be captioned as follows:

SMITH

vs.)

JONES

08-C-187 MAR

(Asbestos Personal Injury)

- d. *Case Groups.* The presiding judicial officer may designate certain case groups to be utilized within the e-filing system (*i.e.* October 2008 Asbestos trial group), and may further require liaison counsel to confer and maintain those case groups.

5) Addition of New Cases or New Parties – Responsibilities

- a. *Generally.* In order to function, the e-filing system requires certain case information to be loaded and requires parties to be registered users in order to receive service, access the register of actions, and use the system to file and serve documents. In general, the filing party is responsible for communicating with LexisNexis File & Serve to provide the information necessary to load a case and its parties into the system.
- b. *New cases.* Once a case type has been made subject to e-filing by entry of an order under Trial Court Rule 15.02(b), each new case of that type shall be accompanied by a mass litigation case information sheet to be attached to the complaint and served. Within forty-eight hours of filing a new case subject to electronic filing, plaintiffs' counsel shall: (1) contact LexisNexis File & Serve to initiate the electronic case docket or initiate it directly onto the system; and (2) map to the case docket all defendants (who have a registered user) named in the case. It shall be the responsibility of defense counsel to map any additional users whom they wish to receive service for any defendant(s).
- c. *New parties.* When a party serves a motion or pleading seeking to add new parties to a case, the serving party shall, within forty-eight hours of serving the motion or pleading, request that LexisNexis File & Serve map to the case docket all parties (who have a registered user) sought to be added. If a party sought to be added does not have a registered user, the moving party shall serve the motion or pleading pursuant to Rule 5 of the Rules of Civil Procedure.

6) Form of documents electronically filed

- a. *Format.* Each e-filed document shall be submitted in a file format acceptable to the third party vendor. To the extent practicable it shall be formatted in accordance with the applicable rules governing formatting of paper documents. A document may exceed page limitation rules to a maximum of two additional pages when the additional pages are attributed to the electronic conversion or filing process. The e-filing system will automatically convert Word, WordPerfect or TIFF files to a PDF format, and the original format document will be available for download. For documents that have been e-filed, the electronic version of the document constitutes the official court record, and e-filed documents have the same force and effect as documents filed by traditional means.
- b. *Signature.* Each e-filed document shall be deemed to have been signed by the attorney or party not represented by an attorney who authorized the filing, and shall bear a facsimile or typographical signature of such person, e.g. "/s/ Adam

Attorney." Each document e-filed by or on behalf of a party shall also include the typed name, address and telephone number of the attorney or unrepresented party filing such document. Attorneys shall also include their West Virginia bar number or a notation that the attorney has been admitted *pro hac vice*.

- c. *Filing related documents.* All e-filed documents relating to a single pleading or paper shall be "electronically stapled" using the "main" and "supporting" functionality of the e-filing system. In this way, multiple related documents, such as a motion and proposed order, are linked logically together and identified as a single transaction. All e-filed documents, papers or pleadings directly relating to a previously-filed document, paper or pleading shall be linked to the previously filed document, paper or pleading, using the "linked document feature" in the e-filing system.
- d. *Proposed Orders.* Proposed orders filed for consideration by the presiding judicial officer must be filed in an editable format (preferably as a Rich Text Format document, ".rtf").
- e. *Documents Containing Signatures.* A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath may be e-filed only as a scanned image. A document that requires the signatures of opposing parties may be e-filed only as a scanned image. Any affidavit or other paper that is to be attached to an e-filed document may be scanned and e-filed along with the underlying document.

7) Time of electronic filing and service

- a. *Filing time.* Any document filed electronically by 11:59 pm Eastern Time shall be considered filed with the Clerk once transmission is successfully completed as recorded on the LexisNexis File & Serve System as the "authorized date and time."
- b. *Electronic service.* An e-filed document is deemed served for purposes of Rule 5 of the Rules of Civil Procedure only upon selection of participants to be served and completed submission of the electronic filing. If an individual or entity required to receive service is a participant in the e-filing system, then the person e-filing a document shall provide electronic service. Individuals unable to receive online service may be served via U.S. Mail or by utilizing the U.S. Mail feature of the e-filing system. The associated filing receipt will list the participants selected and give proof of date, time and method of service. No other certificate or proof of service is required for e-filed documents.
- c. *Paper service.* Participants that do not utilize the U.S. Mail service option of the e-filing system and/or parties who are not listed on the associated filing receipt shall be served a paper copy of any e-filed pleading or other document. Service of such paper copy shall be made by the filing party in accordance with Rule 5

of the Rules of Civil Procedure. A copy of the certificate of service evidencing non-electronic service shall be filed in the e-filing system.

- d. *E-mail notification.* Participants using the e-filing system who receive online service have the option of setting an e-mail notification preference that will deliver an e-mail notification that a document has been served and is available for viewing in his or her File & Serve Online Inbox. The e-mail notification feature does not constitute service, and is provided only as a convenience to participants in the system. Whether or not a participant sets an e-mail notification preference, it is the responsibility of the participant to check his or her File & Serve Online Inbox to view e-filed and served documents.

8) Access to electronic documents; confidential information.

- a. *Electronic access.* Except as provided in these rules, a court must provide registered users in a case with access to electronic documents to the same extent it provides access to paper documents. Electronic access to such documents is required for registered users who are parties or attorneys in a case. The court may provide electronic access to registered users who are not parties or attorneys in a case.
- b. *Confidential records.* The confidentiality of electronic records is the same as for paper records. The e-filing system must permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record shall release the information to any other person unless provided by law.
- c. *Identification of confidential documents.* The filing party must identify documents made confidential by statute, court rule, or court order. The electronic filing system shall make the document available only to registered users and only as provided by law.
- d. *Protection of personal information.* A document containing personally identifiable information shall be so designated by the party filing the document. If a paper is designated as containing personally identifiable information, only registered users for the case may access the document electronically. The document will remain available for public inspection at the courthouse unless otherwise sealed by the court or held confidential by law. The circuit clerk will not review documents for redaction.
- e. *Temporary sealing of documents.* For information not made confidential by statute, court rule, or court order, users may electronically submit documents under temporary seal pending court approval of the user's motion to seal.

9) Public access to the docket

The circuit clerk in the county where the case is pending shall make a Public Access Terminal available to the general public to allow access to the Court's electronic case record in all e-filed cases that are not sealed or otherwise confidential. Copies made from the Court's electronic case records shall be printed by the Clerk's Office and standard copying fees will be charged.

10) System or participant filing errors

If an electronic filing is not filed with the circuit clerk or not served due to: an error in the transmission of the document to LexisNexis which was unknown to the sending participant; or a failure to process the electronic filing when received by LexisNexis; or rejection by the Clerk; or other technical problems experienced by the filer, the Court may upon satisfactory proof enter an order permitting the document to be filed or served *nunc pro tunc* to the date it was first attempted to be filed and served electronically.

11) Obligation of participants to maintain proper delivery information

Participants who register to use the File & Serve system shall notify LexisNexis within 10 days of any change in firm name, delivery address, fax number or e-mail address. Participants who have set an e-mail notification preference are solely responsible for providing an accurate, up-to-date e-mail address and for ensuring that the e-mail account is properly configured to receive e-mail notifications for the File & Serve system.”

A True Copy

Attest:



Rory L. Perry II, Clerk of Court