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MAY 21 2015

KATHERINE M. KEEFE  
McHENRY CTY. CIR. CLK.

**ORDER**

**PROVIDING FOR \_\_\_\_\_**

**AN AMENDMENT TO THE RULES OF PRACTICE OF THE CIRCUIT COURT OF THE TWENTY-SECOND JUDICIAL CIRCUIT, McHENRY COUNTY, ILLINOIS BY PROVIDING FOR REVISIONS AND ADDITIONS TO PART 21 (E-FILING AND E-RECORDS RULES) OF THE LOCAL RULES OF THE TWENTY-SECOND JUDICIAL CIRCUIT**

...  
The Rules of Practice of the Circuit Court of the Twenty-Second Judicial Circuit are hereby amended by adding the following additional rule, to be numbered Rule 21.17 and entitled "Authority for E-Records," and the addition of criminal cases as permissible electronic filing case types, which shall provide as follows:

**AMENDED DRAFT LOCAL RULES**

**PART 21 – E-Filing and E-Records Rules for the 22<sup>nd</sup> Judicial Circuit Court**

**21.01 AUTHORITY**

The Illinois Supreme Court issued Order M.R. 18368 effective January 1, 2013, approving *Electronic Filing Standards and Principles* and has approved the 22<sup>nd</sup> Judicial Circuit Court to accept the electronic filing of documents in civil proceedings effective September 2, 2013. Approval was received to accept the electronic filing of documents in criminal proceedings effective August 3, 2015.

**21.02 EFFECTIVE DATE**

These rules shall become effective on August 3, 2015, and remain in effect until further order \_\_\_\_\_

**21.03 DESIGNATION OF ELECTRONIC FILING CASE & DOCUMENT TYPES**

(a) This Court hereby authorizes all cases with the exception of WI (Will Filing) as permissible electronic filing case types. The Circuit Court Clerk shall direct the phasing in of case types during initial implementation of electronic filing.

(b) Wills or other testamentary documents, exhibits, photographs, or documents that are filed directly with the judge (e.g. proposed orders) shall not be accepted for filing electronically. Any unapproved document type filed electronically by a Subscriber shall be rejected by the Clerk of the Court.

- (c) Any notice of appeal and post judgment enforcement proceeding documents may be e-filed and served in accordance with Supreme Court Rules.

#### **21.04 DEFINITIONS**

The following terms in these rules are defined as follows:

- (a) Conventional manner of filing – The filing of paper documents with the Clerk as is done in cases that are not E-File cases.
- (b) Electronic Document (“E-document”) – An electronic file containing informational text.
- (c) Electronic Filing (“E-file”) – An electronic transmission of information between the Clerk of the Circuit Court and a vendor for the purposes of case processing.
- (d) Electronic Image (“E-image”) – An electronic representation of a document that has been transformed to a graphical or image format.
- (e) Electronic Service (“E-service”) – An electronic transmission of documents to a party, attorney or representative in a case. However, E-Service is not capable of conferring jurisdiction under circumstances where personal service is required as a matter of law.
- (f) PDF – Portable Document Format (PDF) is a file format that preserves all fonts, formatting colors and graphics of any source document regardless of the application platform used.
- (g) Subscriber – One contracting with a vendor to use the E-Filing system.
- (h) Vendor – A company or organization that has an executed *Electronic Information Project Agreement* with the Clerk of the Circuit Court to provide E-Filing services for the 22<sup>nd</sup> Judicial Circuit.

#### **21.05 AUTHORIZED USERS**

- (a) The Clerk of the Circuit Court shall accept and approve filing electronically through a vendor or through the Clerk’s computer workstation.
- (b) The Clerk of the Circuit Court shall allow the filing of a document or pleading using the conventional manner of filing. At no time shall the E-filing program prevent or exclude the ability to file any valid pleading with the Clerk of the 22<sup>nd</sup> Judicial Circuit Court. In those circumstances, the Clerk shall scan conventionally filed documents into the electronic file.
- (c) Prior to filing any document electronically, users are required to register with the Clerk of Court and the Court’s authorized e-filing vendor. Attorneys must submit an E-Filing Registration Form to the Clerk of Court which shall include a minimum of the following information: firm name, attorney names

and ARDC registration numbers, address, phone number, e-mail address for E-service, staff contact information, selected method for paying filing fees.

(d) All other justice community users shall be registered upon confirmation of authorization by the Clerk of Court. Court partner agency users and individual registrations will be used to identify the source of the e-filed document submitted to the court electronically.

(e) The Attorney Registration and Disciplinary Commission number will be used as the identifier for attorneys to ensure that the attorney is licensed and in good standing with the Illinois Supreme Court. The Clerk is authorized to verify whether an attorney who registers as a user is authorized to practice in Illinois.

(f) Pro-se litigants may utilize E-filing through a vendor on the internet by means of individual transactional agreements and credit card payment.

(g) Without charge during normal business hours, the Clerk of the Circuit Court shall provide attorneys and parties in e-file cases access to an e-file computer workstation.

#### **21.06 METHOD OF FILING**

(a) The Circuit Court hereby encourages electronic filing in each of the designated case types as identified in Rule 21.03 above, although conventional filings in these case types will continue to be accepted.

(b) The method of filing shall not affect the right of access to court documents. The Clerk shall maintain public access viewing terminals to allow electronic records and electronic documents to be displayed to the public. Electronic access and dissemination of court records shall be in accordance with the *Electronic Access Policy for Circuit Court Records of the Illinois Courts*.

#### **21.07 FILING OF EXHIBITS**

Physical items for which a photograph may be substituted may be electronically imaged and e-filed. Items not conducive to electronic filing, such as documents under seal and physical exhibits for which an image will not suffice shall be filed in their physical form at the Clerk's office or in the courtroom, as directed by order of court and in conformity with Supreme Court "*Electronic Filing Standards and Principles*." The Motion and Notice of Motion for permission to file any of these physical items may be done electronically.

## **21.08 MAINTENANCE OF ORIGINAL DOCUMENTS**

(a) Anyone filing an electronic document that requires an original signature certifies by so filing, that the original signed document exists in the filing person's possession. Unless otherwise ordered by the Court, the filing party shall maintain and preserve all documents containing original signatures that are filed electronically. The filing party shall make those signed originals available for inspection by the Court, the Clerk of the Court or by other counsel in the case, upon five (5) days' notice. At any time, the Clerk of the Court may request from the filing party a hard copy of an electronically filed document, which shall be provided within five (5) business days upon reasonable notice.

(b) All documents that are required to be maintained and preserved must be kept for one year after the appellate process period has been completed.

## **21.09 PRIVACY ISSUES**

It is the responsibility of the filing party or counsel to insure that documents or exhibits filed electronically do not disclose previously or statutorily impounded or sealed information or private information defined in Supreme Court Rules 15 and 138. The Clerk is not responsible for the content of filed documents and has no obligation to review, redact or screen any expunged, sealed or impounded information.

All documents in confidential, impounded, or sealed cases must be submitted conventionally to the Clerk of Court for filing. A party who has a legal basis for filing a document under seal without prior court order must electronically file a motion for leave to file under seal. The motion must include an explanation of how the document meets the legal standards for filing sealed documents. The document in question may not be attached to the motion as an attachment.

In addition to any other materials referenced in Supreme Court Rules 15 and 138, parties and their counsel shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all documents electronically filed with the Court, unless otherwise ordered by the Court.

- (a) Social Security Number, Driver's License Number & Taxpayer Identification Number – If the number must be included, only the last four (4) digits of the number shall be used.
- (b) Financial Account Numbers, Debit and Credit Card Numbers – If these numbers are relevant, only the last four (4) digits of the numbers shall be used.

The effective date of amended Supreme Court Rule 138 is November 21, 2014.

## **21.10 FORMAT OF DOCUMENTS**

(a) All electronically filed pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of document pleadings. Additionally, each electronically filed pleading and document shall include the case title, case number and the nature of the filing.

(b) Each electronically filed document shall also include the typed name, e-mail address, address and telephone number of the attorney or pro se party filing such document.

(c) A *New Case Information Sheet* shall be required with all new civil case filings. The *New Case Information Sheet* shall be completed by the attorney or pro se filer and submitted electronically in addition to case initiation documents. The Clerk of the Court shall provide electronic access to the required *New Case Information Sheet* both in the office and on the e-filing website.

- a. The minimum data required to be included on a *New Case Information Sheet* for all new case filings is the following: Case Type, Jury Demand (yes or no), First Named Plaintiff, Plaintiff's Attorney (or Pro Se indication), Plaintiff Attorney's Address & Phone Number, First Named Defendant, Defendant's Address, Summons Issued (yes or no), Additional Party Information if applicable.

(d) Documents shall be formatted as follows:

- a. The size of the type in the body of the text must be no less than 12 point font, and footnotes no less than 10 point font;
- b. The size of the pages must be 8 ½ by 11 inches;
- c. The margins on each side of the page must each be a minimum of 1 inch;
- d. The top right 2 inch by 2 inch corner of the first page of each pleading shall be left blank for the Clerk's stamp.

(e) Documents must be submitted in PDF format. When possible, documents must be converted to PDF directly from the program creating the document, rather than from the scanned image of a paper document. Documents only available in paper format may be scanned and converted to PDF for electronic filing.

(f) If a document exceeds the maximum size allowed, the filer will file multiple documents, each under the maximum file size. In such case, the user will be responsible for dividing the document into appropriately sized parts. Currently the maximum file size allowed for each document is 10 MB, with a total maximum size of all documents filed in one transaction at 50 MB. A maximum of 8 documents can be filed in a single transaction. Maximum file size allowances may increase as technology advances allow.

(g) Any electronically filed document must be unalterable (sealed PDF format) and be able to be printed with the same contents and formats as if printed from its authoring program. The e-filing vendor is required to make each electronically filed document that is not infected by a virus available for transmission to the Clerk immediately after successful receipt and virus checking of the document.

(h) Bulk filings of multiple cases or multiple documents combined into one PDF document in civil or criminal case types shall not be accepted. Documents with different civil or criminal case numbers must be filed individually in separate transactions. Filing of individual documents within a civil or criminal case shall be accepted in a single electronic filing transaction. Multiple citations being electronically filed may be transmitted to the Circuit Clerk as a single transaction directly from the law enforcement agency.

(i) Documents filed by attorneys that do not comply with the format specified by the applicable statute or rule may be rejected. Documents filed by *pro se* parties that do not comply with the format specified by the applicable statute or rule shall be reviewed for acceptance by the court prior to rejection. The court shall establish a business practice for this review process.

(j) Electronic documents containing links to material either within the filed document or external to the filed document are for convenience purposes only. The external material behind the link is not considered part of the filing or basic record.

#### **21.11 SIGNATURES AND AUTHENTICATION**

(a) Any document filed electronically, including all pleadings, motions, documents, etc., using a verified user authentication shall be deemed to have been signed by the holder of the user authentication. Documents containing facsimile or typographical signatures may be filed electronically and shall be deemed to have been signed in person by the individual identified.

(b) In the absence of a facsimile or typographical signature, any document electronically filed with a user's identification and password is deemed to have been personally signed by the holder of the user identification and password.

(c) Documents containing signatures of one or more persons or third parties may be filed electronically and shall bear a facsimile or typographical signature. The filing party or attorney must confirm approval of all persons, persons not a party to the case or not registered persons, required to sign the document.

(d) Original signatures of all non-electronic filers must be obtained before filing the document. The document must indicate the identity of each non-registered signatory. The filing party must retain the original document until one year after the date that the judgment has become final by the conclusion of direct review or the expiration of the time for seeking such review.

(e) Where a Clerk is required to endorse a document, the typed name of the Clerk shall be deemed to be the Clerk's signature on an electronic document.

(f) All Judges' and other necessary electronic signatures shall be captured and maintained by the Circuit Court Clerk. Each signature shall be protected by internal system security measures and use security tokens and encrypted password to authenticate the use of the e-signature.

(g) Signatures as defined in subparagraphs (a), (b), (c), (d), (e) and (f) above, satisfy Supreme Court Rules and statutes regarding signatures, and give rise to the application of available sanctions when appropriate.

(h) The original signed document that has been electronically filed pursuant to subparagraphs (a), (b), (c), (d), (e) and (f) above, shall be maintained and preserved as required by Rule 21.08.

#### **21.12 TIME OF FILING, ACCEPTANCE BY THE CLERK AND ELECTRONIC FILING STAMP**

(a) Any document filed electronically shall be considered as filed with the Clerk of the Circuit Court upon review and acceptance, and the transmission has been completed with the Clerk's electronic filing stamp.

(b) A person who files a document electronically shall have the same responsibility as a person filing a document in the conventional manner for ensuring that the document is complete, readable and properly filed.

(c) The transmission date and time of transfer shall govern the electronic filing mark. Pleadings received by the Clerk before midnight on a day the Circuit Clerk's office is open shall be deemed filed that day. If filed on a day the Circuit Clerk's office is not open for business, the document will be deemed filed the next business day.

(d) Upon receipt by the vendor, and submission of an electronic document to the Clerk, the vendor shall issue a confirmation to the Subscriber. The confirmation shall indicate the time and date of receipt, and serve as proof that the document has been submitted to the Clerk. A Subscriber will receive e-mail notification from the vendor if a document is not accepted by the Clerk's office. In that event, the Subscriber may be required to re-file the document to meet the necessary filing requirements.

(e) Each document reviewed and accepted for filing by the Clerk of Court shall receive an electronic file stamp. The stamp shall be endorsed in the name of the Circuit Clerk and shall include the identification of the court, the official time and date of filing and contain the word "FILED". This file stamp shall be merged with the electronic document and shall be visible when the document is printed and viewed on-line. Electronic documents are not officially filed without the electronic filing stamp. Filings so endorsed shall have the same force and effect as documents time stamped in the conventional manner. While the case is pending, the Clerk shall retain an audit trail of submission, acceptance, and filing of electronic documents by recording the dates and times transmitted, received, and accepted or rejected.

### **21.13 ELECTRONIC SERVICE, COURTESY COPIES AND FILING PROOF OF SERVICE**

(a) Electronic service is not capable of conferring jurisdiction. Therefore regarding electronically filed cases, documents that require service of process to confer jurisdiction as a matter of law may not be served electronically, but must be served in the conventional manner.

(b) All other documents may be served upon the other parties or their representatives electronically. The filing party or attorney shall be responsible for completing electronic service of these other documents.

(c) E-service shall be made in accordance with Supreme Court Rule 12, and shall be deemed complete at the posted date and time of transmission listed by the E-service vendor. However, for the purpose of computing time for any other party to respond, any document electronically served is deemed to be served on the first court day following transmission. The electronic service of a pleading or other document shall be considered as valid and effective service on all parties and shall have the same legal effect as personal service of an original paper document.

(d) If electronic service on a party does not occur, the party to be served shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

(e) The E-filing vendor is required to maintain an e-service list for each electronically filed case. The vendor shall immediately update the service list upon being given notice of new contact information.

(f) All Subscribers and other participants must immediately, but not later than ten (10) business days prior to when such a change takes effect, notify other parties, the Clerk and the E-filing vendor of any change of firm name, delivery address, fax number or e-mail address.

(g) Courtesy copies of documents customarily required to be provided to the Court shall continue to be required in E-file cases, absent a specific court order to the contrary.

(h) Copies of any document or certification of same shall be available to the requesting party at a reasonable cost, including all applicable fees as set by rule or statute.

(i) A means of electronic service on registered attorneys in criminal cases may be established as part of the e-filing system. When service is required by the Clerk, the Clerk of the Court may serve electronically to the attorney and shall record in the official court record the effective date and time of service. Service of documents in criminal cases to a *pro se* defendant who is not represented by counsel shall, unless waived, be made as otherwise provided by rule or statute.

#### **21.14 COLLECTION OF FEES**

(a) The e-filing of a document requiring payment of a statutory filing fee to the Clerk of the Court in order to achieve valid filing status shall be filed electronically in the same manner as any other e-file document.

(b) All Subscribers shall establish either a pre-paid draw down account with the Clerk of the Court or maintain a valid credit card on file with the e-filing vendor for the payment of statutory filing fees.

(c) Fees charged to E-filing subscribers by the vendor for vendor services are solely the property of the vendor and are in addition to any statutory fees associated with statutory filing fees.

(d) At the end of each business day, the vendor shall electronically transmit to the Clerk's bank account all statutory filing fees required for that day's electronic filings. The vendor shall electronically provide the Clerk a detailed breakdown including case number, type of transaction and party being billed for the payment for each deposit. The vendor shall act as a limited agent for the Clerk and collect such required filing fees from the Subscriber through direct billing of that Subscriber, unless payment of the fee has been waived by court order or law.

(e) When the electronic filing includes a request for waiver of fees by a petition for indigence, payment of the requisite fees shall be stayed until the court rules on the petition.

(f) Filings initiated by court partner agencies in criminal cases (e.g. State's Attorney, Public Defender, Attorney General, law enforcement) shall be exempted from the payment of filing fees and any vendor fees, when appropriate.

#### **21.15 SYSTEM OR USER ERRORS**

(a) The Court and Clerk of the Circuit Court shall not be liable for malfunction or errors occurring in electronic transmission or receipt of electronically filed or served documents.



(b) If the electronic filing is not filed with the Clerk because of (1) an error in the transmission of the document to the Vendor which was unknown to the sending party or (2) a failure to process the electronic filing when received by the vendor or (3) rejection by the Circuit Court Clerk or (4) other technical problems experienced by the filer or (5) the party was erroneously excluded from the service list, the Court may upon satisfactory proof enter an order permitting the document to be subsequently filed effective as of the date filing was first attempted.

(c) In the case of a filing error, absent extraordinary circumstances, anyone prejudiced by the court's order to accept a subsequent filing effective as of the date filing was first attempted, shall be entitled to an order extending the date for any response, or the period within which any right, duty or other act must be performed.

#### **21.16 VENDOR CONDITIONS**

(a) E-filing vendor(s) with *Electronic Information Project Agreements* executed with the Clerk of the Circuit Court are hereby appointed to be the agent of the Clerk of the Circuit Court regarding electronic filing, receipt, service and/or retrieval of any pleading or document via the E-filing vendor system.

(b) The E-filing vendor shall make electronically filed documents, and documents being served electronically through the E-filing vendor's system, available to subscribers and the designated court authorized users through the E-filing vendor's system in accordance with the current contract between the Clerk and the E-filing vendor, and consistent with the Supreme Court's *Electronic Access Policy for Circuit Court Records of the Illinois Courts*.

(c) The E-filing vendor may require payment of a fee or impose other reasonable requirements by contract with a subscriber as conditions for processing electronic filings. Pursuant to contract terms, the E-filing vendor must provide services but is not permitted to require payment of a fee for government users or parties deemed indigent by the Court.

(d) The Chief Judge of the Court or his/her designee, in coordination with the Clerk of the Court, shall review and approve the terms of the Subscriber Agreement. The vendor shall provide at least 30 days' notice prior to the effective date of any Subscriber Agreement changes.

(e) Ownership of the documents and access to the data associated with all E-filed documents remains with the Court. The electronic documents processed by the E-filing vendor remain the property of the Court and neither the documents nor the data from the documents and/or transactions shall be used by the E-filing vendor for any other purpose other than those specifically authorized by the Chief Judge of this Court or his/her designee, in coordination with the Clerk of the Court.

#### **21.17 AUTHORITY FOR E-RECORDS**

Specific authority for designating the electronic record as the official court record has been granted by Supreme Court Order M.R. 1218, filed October 24, 2012.

(a) Effective date - These rules shall become effective on August 3, 2015, and remain in effect until further order.

(b) Designation of electronic record case types - This Court hereby authorizes all electronic civil court records to be the official court record. This includes all civil (AD, AR, CH, D, ED, F, L, LM, MC, MH, MR, OP, P, SC, and TX) case types, with the exception of Will Filing (WI). The Court may authorize, by written Administrative Order, the electronic records of additional types of civil cases to be the official court record. The Circuit Court Clerk shall direct the phasing in of additional implementation.

(c) Definitions - The following terms in these rules are defined as follows:

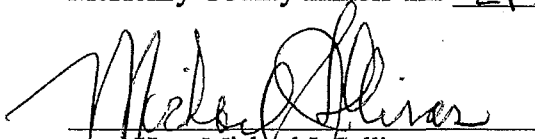
Electronic Record – All official trial court records for a case filed and stored electronically, except all documents required to be maintained in original form.

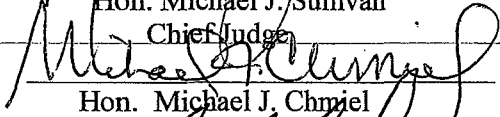
Print On Demand – The ability to print any electronic document for use by judges, court personnel, lawyers, litigants and the public.

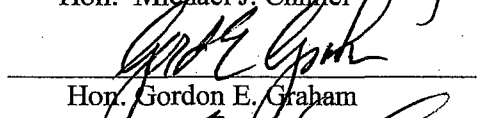
(d) Electronic Access to Records – This Court adopts the Supreme Court’s *Electronic Access Policy*. Access to the electronic court record will be available consistent with this policy. All protected information will be viewable only by the parties of record consistent with the Supreme Court’s *General Administrative Order on Recordkeeping in the Circuit Courts* and applicable laws. The electronic record can be accessed at any time subject to unexpected technical failures, normal system maintenance, or as may otherwise be technically feasible.

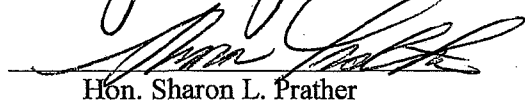
(e) Protecting Electronic Record - The Clerk of the Circuit Court shall ensure the migration and safety of the Court’s records through regular maintenance of the hardware and software, and replication of the data to offsite storage facilities.

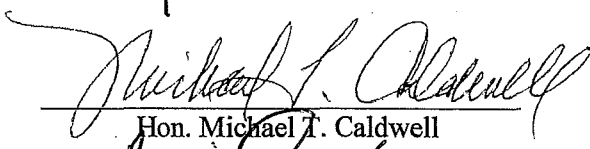
Adopted by the Circuit Judges of the Circuit Court of the Twenty-Second Judicial Circuit, McHenry County Illinois this 21<sup>ST</sup> day of May, 2015.

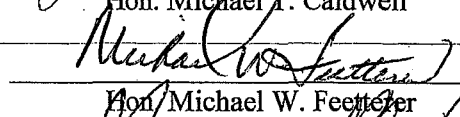
  
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Hon. Michael J. Sullivan  
Chief Judge

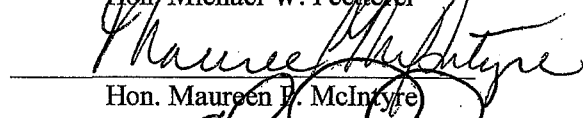
  
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Hon. Michael J. Chmiel

  
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Hon. Gordon E. Graham

  
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Hon. Sharon L. Prather

  
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Hon. Michael T. Caldwell

  
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Hon. Michael W. Feetter

  
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Hon. Maureen E. McIntyre

  
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Hon. Charles P. Weech