

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

**ORDER ADOPTING A NEW RULE 79
OF THE COURT OF COMMON PLEAS
RULES OF CIVIL PROCEDURE GOVERNING E-FILING**

This 17th day of April 2008, IT IS ORDERED that:

- 1) The Rules of Court of Common Pleas are amended by adopting a new Civil Rule 79 as follows:

Rule 79. Electronic Filing.

- (a) The electronic filing of documents in the Court of Common Pleas shall be referred to as "e-File" or "e-Filing." Electronic filing is the process of uploading a document from a user's computer, or the Court's public access computers, utilizing the Court's Internet- and browser- based Case Management and Electronic Case Filing system, known as "e-Flex" or any subsequent system adopted by the Court, to file the document in the Court's case file. E-Flex accepts documents only in common portable document format (PDF) readable by free PDF document readers. Any rules of this Court addressing e-Filing shall be known as the Court e-Filing Rules.
- (b) Any civil matter may be initiated by e-Filing in compliance with the Rules of the Court. All civil matters and subsequent documents filed by any attorney in a matter initiated by e-Filing shall be e-Filed. The Court may by Administrative Directive of the Chief Judge require certain category of cases to be e-Filed.
- (c) Paper documents presented to the Court by pro se litigants in e-Filed initiated cases shall be scanned and converted to PDF format and e-Filed by the Clerk of the Court. The e-Filed version of the document shall constitute the original and shall be the filed document in the matter, and the paper version of the document shall be destroyed.

- (d) No Delaware lawyer shall authorize anyone to e-File on that lawyer's behalf, other than an employee of his/her law firm or service provider retained to assist in e-Filing.
- (e) No person shall utilize, or allow another person to utilize, the password of another in connection with any e-Filing.
- (f) 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 Court of Common Pleas Civil Rule 11.
- (g) All e-Filings must be signed by a member of the Delaware Bar or party not represented by an attorney in accordance with their Rule.
- (h) Unless otherwise ordered, the electronic service of a document, in accordance with the e-Filing Rules shall be considered service under Civil Rule 5.
- (i) The rules governing and pertaining to artificial entities shall apply this rule.
- (j) A technology surcharge of 50 cents per document shall be assessed in each e-File case for the purpose of a fund to operate the e-Filing system. This technology fee is not imposed on filings by the Department of Justice or by indigent parties or their counsel. The Court shall expend the funds solely for the purpose of operating and maintaining the Court's case management and e-File system.

Rule 79.1 Procedures.

- (a) Registration. Any person intending to use e-Flex must register with the Clerk of the Court and obtain an "e-Signature" and password.
- (b) e-Signature. (1) The user log-in and password required to submit documents to e-Flex shall serve as that user's signature for purposes of the Rules of this Court. All e-Filed documents must include a signature block and must set forth the user's name, address, telephone number and email address. The name of the user under whose log-

in and password the document is submitted must be preceded by a “/s/” and typed in the space where the signature would otherwise appear.

(2) Multiple Signatures. The filer of any document requiring more than one signature (e.g., stipulations, joint status reports) must list thereon all the names of other signatories by means of a “/s/” _____ block for each. By submitting such a document, the filing user certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filing attorney has their actual authority to submit the document electronically. The filing user shall retain any records evidencing this concurrence for future production, if necessary, until two (2) years after the expiration of the time for filing a timely appeal. A non-filing signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures must file an objection to the document within ten days of the date of the filing of the objected document or notice of such filing.

(c) Minimum Technical Requirements. Any person intending to use e-File must use hardware and software meeting the minimum technical requirements for e-Filings established by Administrative Directive of the Chief Judge of the Court of Common Pleas.

(d) *Form of Documents e-Filed.*

(1) Format. Each e-Filed document shall be in PDF format. To the extent practicable it shall be formatted in accordance with the applicable rules governing formatting of paper documents, and in such other and further format as the Clerk may require from time to time. A document may exceed page limitation rules to a maximum

of two (2) additional pages when the additional pages are attributed to the electronic conversion or filing process.

(2) *Title of Documents.* The title of each electronically filed document shall conform to the format set forth in Form 1 of these Rules and include:

- (i) Party or parties filing the document,
- (ii) Descriptive title of the document,
- (iii) Party or parties against whom relief, if any, is sought, and
- (iv) Nature of the relief sought (e.g., Defendant ABC Corporation's Motion To Affirm).

(3) *Signature.*

- (i) Each electronically filed document shall be deemed to have been signed by the attorney or party not represented by an attorney authorizing such filing by use of the registered e-Signature and password, 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, telephone number and e-mail address of the attorney or unrepresented party filing such document. Attorneys shall include their Delaware bar number.
- (ii) Each electronically filed declaration and affidavit shall be deemed to have been signed by the declarant or affiant if an attorney or party not represented by an attorney has authorized such filing. The original affidavit or declaration filed or served electronically, shall be maintained by the party filing the affidavit during the pendency of the appeal, and shall be made available, upon

reasonable notice, for inspection by other counsel, the Clerk or the Court.

(4) *Filing Related Documents.*

- (i) All electronically filed documents relating to a single pleading or paper shall be electronically linked or “stapled” as a single filing event or transaction in accordance with the functionality of the e-Filing system.
- (ii) All electronically 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, utilizing the “linked document feature” in the e-Filing system.
- (iii) Failure to properly link a document may result in rejection of the filing by the Clerk, and assessment of additional costs.

(5) *Sealed Documents.*

- (i) Documents filed under seal **MUST** be formatted with a footer stating the following:

THIS DOCUMENT IS CONFIDENTIAL AND FILED UNDER SEAL. REVIEW AND ACCESS TO THIS DOCUMENT IS PROHIBITED EXCEPT BY PRIOR COURT ORDER.

This footer must appear on every page of the document. Additionally, the first page or cover page of the document must be in the following format:

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE

[Name of first plaintiff], :
v. : No. []
[Name of first defendant]. :

**YOU ARE IN POSSESSION OF A DOCUMENT FILED IN THE COURT
OF COMMON PLEAS FOR THE STATE OF DELAWARE THAT IS
CONFIDENTIAL AND FILED UNDER SEAL.**

**If you are not authorized by the Court order to view or retrieve this
document read no further than this page. You should contact the following
person:**

[filing attorney's name]

[firm name of filing attorney]

[address of filing party]

[telephone number of filing party]

[e-mail address of filing party]

No other information should appear on the cover page.

- (ii) The filing details and document title will appear in the e-Flex system. The document can be viewed only by the Court, the filer, and those case participants who received service of that particular document. A participant that was not served with the document

can see only the document title in the case details, however, that participant is not able to open or view the document.

- (iii) Public versions of sealed documents shall be filed in accordance with Rule 9.

(e) *Time of e-Filing and Service.*

- (1) Any document filed electronically by 11:59 pm ET shall be considered e-Filed with the Clerk as of that date once the transmission is successfully completed (“authorized date and time”) as documented in the e-Flex system.
- (2) Any document e-Filed and requiring the issuance of writs and service thereof by the Sheriff of the county or counties specified in the praecipe or to a person especially appointed by the Court to serve it shall be printed by the Clerk of the Court and forwarded with the issued writs to the Sheriff or other appointed person for service of process. All other e-Filed documents shall contain a certificate of service certifying by the filing party that the document has been electronically transmitted via e-mail to the registered e-mail address of the party upon whom service is required by the Rules of the Court. An e-Filed document is deemed served via e-mail on the next business day following the date of certification of service. Participants unable to receive e-mail service at a registered e-mail address may also be served with a paper copy of the e-Filed document via U.S. Mail in accordance with the Rules of the Court. No other certificate or proof of service shall be required for e-Filed documents.
- (3) Where a document is served electronically and is returned as a result of an invalid account, it shall be served by proper copy and the recipient shall bear an additional cost for such subsequent service.

(f) *Public Access to the Docket.*

(1) The general public shall have access to the Court's electronic case record in all e-Filed cases, in accordance with the Rules and Administrative Directives of the Court regarding access to records, and all applicable privacy, confidentiality and identity protection laws. Access fees will be charged for any electronic downloading or other capturing e-Filed documents in accordance with the Rules and Administrative Directives of the Court.

(2) The Clerk shall make Public Access Terminals available to the general public to allow access to the Court's electronic case record in all e-Filed cases, and to allow *pro se* e-Filings. Copies made from the Court's electronic case records shall be printed by the Clerk's Office and copying fees will be charged in accordance with the Rules of the Court.

(g) *Privacy Issues.*

Easy access to electronic documents raises many privacy issues. E-File users must be sensitive to confidential and personal information not filed under seal. Parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all documents filed with the Court, including exhibits thereto, unless otherwise ordered by the Court.

(1) **Social Security Numbers.** If an individual's social security number must be included in a document, 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 document, 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. In addition, exercise caution when filing documents that contain the following:

- (i) Personal identifying number, such as a driver's license number
- (ii) Medical Records, treatment and diagnosis
- (iii) Employment History
- (iv) Individual Financial Information
- (v) Proprietary or Trade Secret Information

It is the sole responsibility of counsel and the parties to be sure that all pleadings comply with the Rules of this Court requiring redaction of personal identifiers. The Clerk will not review each pleading for redaction.

(h) *System or User Filing Errors.*

If the electronic filing is not filed with the Clerk or served because of (1) an error in the transmission of the document to the Court which was unknown to the sending participant, or (2) a failure to process the electronic filing when transmitted to the Court, or (3) rejection by the Clerk, or (4) 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 sent electronically.

(i) *Obligation of Registered e-File Users to Maintain Proper Delivery Information.*

- (a) Participants who register to e-File with the Court shall notify the Court within 10-days of any change in user or firm name, delivery address, fax number and e-mail address.

2) This rule amendment is effective September 1, 2008.

Chief Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge

Judge

Rule 79 April 08