



STATE BAR OF TEXAS APPELLATE SECTION

Jeff Levinger, Chair

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RE: E-filing and Appellate Rules Update

Good afternoon Texas Appellate Section members,

Before the summer begins, your Appellate Section Rules Committee would like to share a quick update regarding new e-filing standards in Texas trial courts, new briefing rules in the 5th Circuit, and the status of paperless filing in Texas appellate courts.

NEW E-FILING TWEAKS

Since the rollout of the new [e-filing rules](#) in the state's largest metro counties (population of 500,000 or more) on January 1, 2014, several issues arose that quickly became frustrating for practitioners as the discrete—and often times labyrinthine—local e-filing rules varied wildly from county to county that too often resulted in seemingly opaque rejection notices. To address these issues, the Texas Supreme Court [Judicial Committee on Information Technology](#) (JCIT) has come to e-filers' rescue.

Who or what is the JCIT you may ask? Well, many of you may not know that the 75th Legislature created the JCIT in 1997 to—among other things, and with the Texas Supreme Court's express approval—promulgate standards that govern how trial-court clerks process e-filings. The JCIT is comprised of state and county representatives, private practitioners, court clerks, as well as trial judges and appellate justices.

Pursuant to Texas Government Code section 77.031(5), the JCIT issued version 1.3 of its [Technology Standards](#) (the “Standards”) this past March, which the Texas Supreme Court has also expressly [approved](#) as well. The Standards provide mandatory guidelines that district, county court at law, probate, and county court clerks (collectively, “clerks”) must follow in implementing the new e-filing rules. Of particular interest to the Texas appellate bar, these new e-filing standards apply *only* in Texas trial courts, but *not* in the appellate courts.

Some the most useful changes include:

- Standardize the requisite filing codes across counties and district courts that clerks *must* accept. Clerks may not add additional codes, but they may eliminate those that aren't applicable in a given jurisdiction. A standardized list of codes have now been promulgated for civil, family and juvenile, probate and mental health, and multi-district litigation cases. JCIT TECHNOLOGY STANDARDS, §§ 5.2–.5. Previously, some counties required hundreds of different codes for nearly every conceivable type of filing, but now the Standards allow only some twenty different codes.

- Even more helpful to litigants and attorneys alike are the Standards' elimination of some clerks' practice of rejecting a given e-filing with little or unclear explanation. Now, clerks *must* accept all e-filings unless: (1) they are sealed documents (TEX. R. CIV. P. 21(f)(4)); or (2) documents filed by a vexatious litigant (TEX. CIV. PRAC. & REM. CODE § 11.103).
- Clerks may, however, request e-filers correct an e-filed document, but now may do so only for eight established reasons, and clerks must notify e-filers for which of these reasons a given filing was asked to be corrected. Prior to this, some clerks had developed their own technical standards, which lead to less uniformity and increased confusion amongst filers. These eight bases for requested correction, along with the standardized explanatory language for each are below:
 - **Insufficient fees:** Fees submitted are insufficient. Please resubmit your filing with the correct case type / filing type. <provide short summary as to what fees were not included>.
 - **Insufficient funds:** Credit Card was declined. Please resubmit with a valid method of payment.
 - **Document addressed to wrong clerk:** The document is addressed to a court for which this clerk's office does not accept filings. Please correct or re-file with the appropriate clerk's office.
 - **Incorrect/incomplete information:** Please resubmit using the correct: Cause number / Case Type / Case Category / Filing Code / Party Names on document(s).
 - **Incorrect formatting:** Please resubmit the document: By rotating the document so that the file mark will appear in the upper right corner / In text searchable PDF / Directly converted to PDF if possible / With a 300dpi resolution / With a page size of 8.5" x 11" / With no embedded fonts.
 - **PDF documents combined:** You have submitted multiple documents for filing in a single PDF. The file-mark will only appear on documents submitted as lead documents. Please file all lead documents as separate PDF documents.
 - **Illegible/unreadable:** Please resubmit in a format that is legible.
 - **Sensitive data:** Please resubmit in five (5) business days with all sensitive data redacted: DL, SSN, Passport Number, Tax ID Number, Government Issued ID Number / Bank Account Number, Credit Card Number, Financial Account Number / Birth Date, Home Address and name of any person who was a minor when the suit was filed.

- One quick reminder, e-filing will be rolling out to *every* county in Texas according to the following [schedule](#):
 - Counties with population of 200,000 to 499,999—July 1, 2014.
 - Counties with population of 100,000 to 199,999—January 1, 2015.
 - Counties with population of 50,000 to 99,999—July 1, 2015.
 - Counties with population of 20,000 to 49,999—January 1, 2016.
 - Counties with population less than 20,000—July 1, 2016.

SCOTX GOES PAPERLESS

New Texas Rule of Appellate Procedure 9.3(a)(2) allows that, “[u]nless *required by local rule*, a party need not file a paper copy of an electronically filed document.” TEX. R. APP. P. 9.3(a)(2) (emphasis added). This means that any appellate court can still require the filing of paper copies *in addition to* an e-filing.

Somewhat quietly, and as of January 1, 2014, the Texas Supreme Court [eliminated its old local paper-filing requirements](#), now making the Court completely paperless. Indeed, Texas appellate attorneys can consider themselves fortunate that no Texas intermediate appellate court currently requires paper copies of otherwise e-filed documents under Rule 9.3(a)(2) (although at least one has tried to!).

FIFTH CIRCUIT RULES UPDATE

As of December 1, 2013, the Fifth Circuit revised its local rules in two respects of note to appellate practitioners.

Fifth Circuit Rules 28.3(g) and (h) are amended to remove the requirement that an appellant’s brief contain separate statements of the case and of the facts. Instead, the new statement of the case must include the relevant factual and procedural history of the matter, and identify the rulings to be reviewed.

Fifth Circuit Rule 28.2.2 is also amended to prescribe a new form of record citation in briefs that allows the court’s software to automatically hyperlink a given cite to the noted portion of the record.

- For multiple-record cases, parties must use the following format:
 - [ROA].[case number].[page] – “ROA.14-12345.123.”
- For single-record cases, parties must use this format:
 - [ROA].[page] – “ROA.123.”

Of note to Texas state-court practitioners, the Texas Supreme Court has begun preliminary discussions with the Fifth Circuit regarding deploying a similar record-recognition software in Texas appellate courts. We’ll keep you updated as these efforts progress.

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We hope this information, if a little belated, is nonetheless useful for members of the Section. In addition to the intrepid members of our committee and the Section, many thanks are due to Texas Supreme Court Clerk, Blake Hawthorne, and Texas Courts Administrator, David Slayton, each of whom offered their substantive insights on this update. Please don't hesitate to contact me or any other member of the Appellate Rules committee should you have any questions, concerns, or observations going forward.

Very truly yours,



[Dylan O. Drummond](#), Co-Chair

Appellate Rules Committee of the
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DOD/sj

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