IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 12-9019

APPROVAL OF LOCAL RULES FOR ELECTRONIC FILING IN THE STATUTORY PROBATE COURT OF GALVESTON COUNTY

ORDERED that:

Pursuant to Texas Rule of Civil Procedure 3a, the Supreme Court of Texas approves the following local rules governing electronic filing in the statutory probate court of Galveston County.

Dated: January 24, 2012.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Dale Wainwright, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Eva M. Guzman, Justice

Debra H. Lehrmann, Justice

GALVESTON COUNTY

RULES AND STANDING ORDER OF THE PROBATE COURT

concerning the

ELECTRONIC FILING OF COURT DOCUMENTS

PART 1. GENERAL PROVISIONS

Rule 1.1 Purpose

These rules govern the electronic filing and service of court documents, by any method other than fax filing, in Galveston County. These rules are adopted pursuant to Rule 3a of the Texas Rules of Civil Procedure and may be known as the "Galveston County Local Rules of the Probate Court Concerning the Electronic Filing of Court Documents."

Rule 1.2 Effect on Existing Local Rules

These rules are adopted in addition to any other local rules of the Probate Court in Galveston County. These rules do not supersede or replace any previously adopted local rules.

Rule 1.3 Electronic Filing Optional Unless Ordered by Court

(a) Except as provided by subsection (b) below, the electronic filing and serving of court documents is wholly optional.

(b) Upon the motion of a party and for good cause shown, the Probate Court may order the parties in a particular case to electronically file and serve court documents that are permitted to be electronically filed under Rule 3.3.

PART 2. DEFINITIONS

Rule 2.1 Specific Terms

The following definitions apply to these rules:

(a) "Convenience fee" is a fee charged in connection with electronic filing that is in addition to regular filing fees. A Convenience Fee charged by the County Clerk will be considered as a court cost.

(b) "County Clerk" means the County Clerk of Galveston County.

(c) "Digitized signature" means a graphic image of a handwritten signature.

(d) "Document" means a pleading, plea, motion, application, request, exhibit, brief, memorandum of law, paper, or other instrument in paper form or electronic form. The term does not include court orders.

(e) "Electronic filing" is a process by which a filer files a court document with the county clerk's office by means of an online computer transmission of the document in electronic form. For purposes of these rules, the process does not include the filing of faxed documents which is described as the "electronic filing of documents" in Section 51.801, Government Code.

(f) "Electronic filing service provider (EFSP)" is a business entity that provides electronic filing services and support to its customers (filers). An attorney or law firm may act as an EFSP.

(g) "Electronic order" means a computerized, non-paper court order that a judge signs by applying his or her digitized signature to the order. A digitized signature is a graphic image of the judge's handwritten signature.

(h) "Electronic service" is a method of serving a document upon a party in a case by electronically transmitting the document to that party's e-mail address.

(i) "Electronically file" means to file a document by means of electronic filing.

(j) "Electronically serve" means to serve a document by means of electronic service.

(k) "Filer" means a person who files a document, including an attorney.

(l) "Party" means a person appearing in any case or proceeding, whether represented or appearing pro se, or an attorney of record for a party in any case or proceeding.

(m) "Regular filing fees" are those filing fees charged in connection with traditional filing.

(n) "Rules" are the Galveston County Local Rules of the Probate Court concerning the Electronic Filing of Documents.

(o) "Traditional court order" means a court order that is on paper.

(p) "Traditional filing" is a process by which a filer files a paper document with a clerk or a judge.

Rule 2.2 Application to Pro Se Litigants

The term "counsel" shall apply to an individual litigant in the event a party appears pro se.

PART 3. APPLICABILITY

Rule 3.1 Scope

(a) These rules apply to the filing of documents in all probate cases/matters before the Probate Court with jurisdiction in Galveston County.

(b) These rules apply to the filing of documents in cases/matters before the Probate Court referred to in paragraph (a) above that are subsequently assigned to associate judges or any other similar judicial authorities.

Rule 3.2 Clerks

These rules apply only to the filing of documents with the county clerk. These rules do not apply to the filing of documents directly with a judge as contemplated by TEX. R. CIV. P. 74.

Rule 3.3 Documents That May Be Electronically Filed

(a) A document that can be filed in a traditional manner with the county clerk may be electronically filed with the exception of the following documents:

i) citations or writs bearing the seal of the court;

ii) bonds;

iii) wills and codicils thereto;

iv) subpoenas;

v) proof of service of subpoenas;

vi) documents to be presented to a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;

vii) documents sealed pursuant to TEX. R. CIV. P. 76a; and

viii) documents to which access is otherwise restricted by law or court order, including a document filed in a proceeding under Chapter 33, Family Code.

(b) A motion to have a document sealed, as well as any response to such a motion, may be electronically filed.

Rule 3.4. Documents Containing Signatures

(a) A document that is required to be verified, notarized, acknowledged, sworn to, or made under oath may be electronically filed only as a scanned image.

(b) A document that requires the signatures of opposing parties (such as a Rule 11 agreement) may be electronically filed only as a scanned image.

(c) Any affidavit or other paper described in Rule 3.4(a) or (b) that is to be attached to an electronically filed document may be scanned and electronically filed along with the underlying document.

(d) Where a filer has electronically filed a scanned image under this rule, a court may require the filer to properly file the document in a traditional manner with the county clerk. A third party may request the court in which the matter is pending to allow inspection of a document maintained by the filer.

PART 4. FILING MECHANICS

Rule 4.1 Texas.gov

(a) Texas.gov is a project of the Department of Information Resources Board, a state entity charged with establishing a common electronic infrastructure through which state agencies and local governments may electronically send and receive documents and required payments.

(b) To become registered to electronically file documents, filers must follow registration procedures outlined by Texas.gov. The procedure can be accessed from Texas.gov's website at "www.Texas.gov"

(c) Filers do not electronically file documents directly with the county clerk. Rather, filers indirectly file a document with the county clerk by electronically transmitting the document to an electronic filing service provider (EFSP) which then electronically transmits the document to Texas.gov which then electronically transmits the document to the county clerk. A filer filing or serving a document must have a valid account with an EFSP and with Texas.gov

(d) Consistent with standards promulgated by the Judicial Committee on Information Technology (JCIT), Texas.gov will specify the permissible formats for documents that will be electronically filed and electronically served.

(e) Filers who electronically file documents will pay regular filing fees to the county clerk indirectly through Texas.gov by a method set forth by Texas.gov.

(f) An EFSP may charge filers a convenience fee to electronically file documents. This fee will be in addition to regular filing fees.

(g) Texas.gov will charge filers a convenience fee to electronically file documents. This fee will be in addition to regular filing fees and will be in an amount not to exceed the amount approved by the Department of Information Resources Board.

(h) The county clerk may charge filers a convenience fee to electronically file documents. This fee will be in addition to regular filing fees, credit card fees, or other fees.

Rule 4.2 Signatures

(a) Upon completion of the initial registration procedures, each filer will be issued a confidential and unique electronic identifier. Each filer must use his or her identifier in order to electronically file documents. Use of the identifier to electronically file documents constitutes a "digital signature" on the particular document.

(b) The attachment of a digital signature on an electronically-filed document is deemed to constitute a signature on the document for purposes of signature requirements imposed by the Texas Rules of Civil Procedure or any other law. The person whose name appears first in the signature block of an initial pleading is deemed to be the attorney in charge for the purposes of Texas Rules of Civil Procedure 8, unless otherwise designated. The digital signature on any document filed is deemed to be the signature of the attorney whose name appears first in the signature block of the document for the purpose of Texas Rules of Civil Procedure 13 and 57.

(c) A digital signature on an electronically-filed document is deemed to constitute a signature by the filer for the purpose of authorizing the payment of document filing fees.

Rule 4.3 Time Document is Filed

(a) A filer may electronically transmit a document through an EFSP to Texas.gov 24 hours per day each and every day of the year, except during brief periods of state-approved scheduled maintenance which will usually occur in the early hours of Sunday morning.

(b) Upon sending an electronically-transmitted document to a filer's EFSP, the filer is deemed to have delivered the document to the county clerk and, subject to Rule 4.3(h), the document is deemed to be filed. If a document is electronically transmitted to the filer's EFSP and is electronically transmitted on or before the last day for filing the same, the document, if received by the county clerk not more than ten days tardily, shall be filed by the county clerk and deemed filed in time. A transmission report by the filer to the filer's EFSP shall be prima facie evidence of date and time of transmission.

(c) On receipt of a filer's document, the filer's EFSP must send the document to Texas.gov in the required electronic file format along with an indication of the time the

filer sent the document to the EFSP and the filer's payment information. Texas.gov will electronically transmit to the filer an "acknowledgment" that the document has been received by Texas.gov. The acknowledgment will note the date and time that the electronically-transmitted document was received by Texas.gov.

(d) Upon receiving a document from a filer's EFSP, Texas.gov shall electronically transmit the document to the county clerk. If the document was not properly formatted, Texas.gov will transmit a warning to the filer's EFSP.

(e) Not later than the first business day after receiving a document from Texas.gov, the county clerk shall decide whether the document will be accepted for filing. The county clerk shall accept the document for filing provided that the document is not misdirected and complies with all filing requirements. The county clerk shall handle electronically-transmitted documents that are filed in connection with an affidavit of inability to afford court costs in the manner required by TEX. R. CIV. P. 145. If the county clerk fails to accept or reject a document within the time period, the document is deemed to have been accepted and filed.

(f) If the document is accepted for filing, the county clerk shall note the date and time of filing which, with the exception of subsection (h) below, shall be the date and time that the filer transmitted the document to the filer's EFSP. The county clerk shall inform Texas.gov of its action the same day action is taken. Texas.gov shall, on that same day, electronically transmit to the filer's EFSP a "confirmation" that the document has been accepted for filing by the county clerk. The EFSP will electronically transmit the confirmation to the filer. This confirmation will include an electronically "file-marked" copy of the front page of the document showing the date and time the county clerk considers the document to have been filed.

(g) If the document is not accepted for filing, the county clerk shall inform Texas.gov of its action, and the reason for such action, the same day action is taken. Texas.gov shall, on that same day, electronically transmit to the filer's EFSP an "alert" that the document was not accepted along with the reason the document was not accepted. The EFSP will electronically transmit the alert to the filer.

(h) Except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings, documents that serve to commence a civil suit will not be deemed to have been filed on Sunday when the document is electronically transmitted to the filer's EFSP, Texas.gov, or the county clerk on Sunday. Such documents will be deemed to have been filed on the succeeding Monday.

Rule 4.4 Filing Deadlines Not Altered

The electronic filing of a document does not alter any filing deadlines.

Rule 4.5 Multiple Documents

(a) Except as provided by subsection (b) below, a filer may include only one document in an electronic transmission to Texas.gov.

(b) A filer may electronically transmit a document to Texas.gov that includes another document as an attachment (e.g., a motion to which is attached a brief in support of the motion).

Rule 4.6 Official Document

(a) The county clerk's file for a particular case may contain a combination of electronically-filed documents and traditionally-filed documents.

(b) The county clerk may maintain and make available electronically-filed documents in any manner allowed by law.

Rule 4.7 E-mail Address Required

In addition to the information required on a pleading by TEX. R. CIV. P. 57, a filer must include an e-mail address on any electronically-filed document.

Rule 4.8 Document Format

(a) Electronically-filed documents must be computer-formatted as specified by Texas.gov. Electronically-filed documents must also be formatted for printing on 8½-inch by 11-inch paper.

(b) An electronically-filed pleading is deemed to comply with TEX. R. CIV. P. 45.

PART 5. SERVICE OF DOCUMENTS OTHER THAN CITATION

Rule 5.1 Electronic Service of Documents Permissible

(a) In addition to the methods of serving documents (other than the citation to be served upon the filing of a cause of action) set forth in TEX. R. CIV. P. 21a, a filer may serve documents upon another party in the case by electronically transmitting the document to that party at the party's email address. Service in such a manner is known as "electronic service," and is permissible in the circumstances set out in paragraph (b) below.

(b) Documents may be electronically served upon a party only where that party has agreed to receive electronic service or where the court has ordered the parties to electronically serve documents.

(c) By virtue of electronically filing a document or serving a document or by agreeing to accept service, a filer additionally agrees to provide information regarding any change in his or her e-mail address to Texas.gov, the county clerk, and all parties in the case.

(d) A party who electronically files a document is not required to electronically serve documents upon other parties unless the court has ordered the parties to electronically serve documents.

(e) A filer may electronically serve a document in instances where the document is traditionally filed as well as in instances where the document is electronically filed.

Rule 5.2 Completion of Service and Date of Service

(a) Electronic service shall be complete upon transmission of the document by the filer to the party at the party's e-mail address.

(b) Except as provided by subsection (c) below, the date of service shall be the date the electronic service is complete.

(c) When electronic service is complete after 5:00 p.m. (recipient's time), then the date of service shall be deemed to be the next day that is not a Saturday, Sunday or legal holiday.

Rule 5.3 Time for Action After Service

Whenever a party has the right or is required to do some act within a prescribed period of time after service of a document upon the party and that document is electronically served, then three days shall be added to the prescribed period of time.

Rule 5.4 Certification of Service

(a) Documents to be electronically served upon another party shall be served before the time or at the same time that the document is filed.

(b) A filer who electronically serves a document upon another party shall make a written certification of such service that shall accompany the document when that document is filed. The written certification shall include, in addition to any other requirements imposed by the Texas Rules of Civil Procedure, the following:

(i) the filer's e-mail address or telecopier (facsimile machine) number;

(ii) the recipient's e-mail address;

(iii) the date and time of electronic service; and

(iv) a statement that the document was electronically served and that the electronic transmission was reported as complete.

PART 6. ELECTRONIC ORDERS AND VIEWING OF ELECTRONICALLY-FILED DOCUMENTS

Rule 6.1 Courts Authorized to Make Electronic Orders

(a) A judge may electronically sign an order by applying his or her digitized signature to the order. Judges are not required to electronically sign orders.

(b) Upon electronically signing an order, the judge shall electronically forward the order to the county clerk who may treat the electronic order as the official copy of the order. Alternatively, the county clerk may print the electronic order and treat the printed order as the official copy of the order.

(c) The county clerk may electronically scan a traditional court order. The scanned court order may then serve as the official copy of the court order. The county clerk is not required to electronically scan traditional court orders in order to create official electronic court orders. Electronic scanning of traditional court orders is at the option of the county clerk.

Rule 6.2 Viewing of Electronically-filed Documents

(a) The county clerk shall ensure that all the records of the court, except those made confidential or privileged by law or statute, may be viewed in some format by all persons for free.

(b) Independent of the Texas.gov system and the requirement of viewing access described in subsection (a), the county clerk may choose to provide for both filers and the general public to electronically view documents or court orders that have been electronically filed or scanned. Where such provision has been made, persons may electronically view documents or court orders that have been electronically filed or scanned.

(c) Nothing in this rule allows for the viewing of documents or court orders, in any form, that are legally confidential (e.g., papers in mental health dealings) or otherwise restricted by judicial rule or order.

PART 7. MISCELLANEOUS PROVISIONS

Rule 7.1 Assigned Court to Resolve Disputes

In the event a dispute should arise involving the application of these rules or various electronic filing issues, the court assigned to the case in which the dispute arises shall decide any dispute.

Rule 7.2 Rule Guiding Interpretation

These rules shall be liberally construed so as to avoid undue prejudice to any person on account of using the electronic filing system or sending or receiving electronic service in good faith.

ADOPTION OF RULES

The foregoing "Galveston County Local Rules of the Probate Court concerning the Electronic Filing of Documents" are hereby adopted by the undersigned judge in Galveston County on this the 19th day of January, 2012 and submitted to the Supreme Court of Texas for approval.

These rules shall become effective upon their approval by the Supreme Court of Texas.

Hon. Kimberly Sullivan
Probate Court
Galveston County, Texas

FILED

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COUNTY CLERK
GALVESTON COUNTY, TEXAS