



STATE BAR OF TEXAS APPELLATE SECTION

Jeff Levinger, Chair

(214) 855-6817

December 19, 2013

RE: E-Filing Tips, Traps, and Workarounds

Good afternoon Texas Appellate Section members,

In cooperation with Texas Courts Administrator, David Slayton, and Texas Supreme Court Clerk, Blake Hawthorne, as well as with substantial assistance from Pam Baron, the Rules Committee of the Texas Bar Appellate Section has prepared the following tips and workarounds regarding recent technical and practical issues many in the Texas appellate bar have experienced since the debut of eFileTexas.gov. We have also noted some traps that may be presented by the final e-filing rules adopted December 13, 2013 by the Court.

E-FILING TIPS

- If you haven't e-filed before, go to eFileTexas.gov and select an electronic service provider. There is a good [comparison chart](#) on the site. Neither the Office of Court Administration (OCA) nor any individual courts can recommend which one to use. Keep in mind that e-filing will be mandatory as of January 1, 2014.
- Learn how to insert bookmarks and links within PDF documents. Now that clerk and reporter records are arriving electronically in the appellate courts, staff attorneys and judges are getting used to and increasingly appreciate easily navigable electronic documents.
- Read the [Joint Committee on Information Technology Standards](#) for electronic documents regarding other applicable restrictions.
- Do not wait until the last minute to e-file. The Supreme Court Clerk's Office has received several reports from attorneys that the process is currently taking significantly longer than it has in the past. Plan ahead and be prepared for the process to take longer than usual.

THINGS WE'RE SEEING

- **Upload-limitations below 35 MB**—Practitioners have expressed concern that some e-filing service providers are limiting the uploaded file size below the standard 35 megabyte (MB) limit eFileTexas is designed to handle.

- o **Workaround**—We have contacted each service provider to inquire about file-size limitations they impose, if any. Only the state-provided EFSP & ProDoc impose artificial filing limitations currently. Specifically, the state EFSP limits each uploaded file to 25 MB, and ProDoc imposes a 20–23 MB total submission/envelope cap. We hope providing this information both to the Texas appellate bar, as well as to the individual providers themselves, will encourage full utilization of the inherent capabilities of eFileTexas.

David Slayton has relayed that he is working as well with the service providers individually to comport with eFileTexas's system capabilities, both through service-level agreements and ultimately through service-provider certification if necessary. In addition, he confirms that the state EFSP will undergo a software upgrade over December 21–22, 2013, that should boost its per-document file-size cap to the system-standard 35 MB.

- **Unable to e-serve opposing counsel**—Currently, attorneys are not required to register for e-filing, and eFileTexas does not automatically pull email addresses from the State Bar rolls. As a result, the new e-filing system does not contain the contact information of all Texas attorneys—only those attorneys who have registered with the system to date. This has led to instances where an e-filing party could not e-serve opposing counsel.

- o **Workaround**—Before filing, call opposing counsel and ask them if they have registered with the system. Encourage them to register if they have not. Remember as well that new Texas Rule of Civil Procedure (TRCP) 21a(1)–(2) allow for email, commercial mail, or fax service without need to resort to a Rule 11 agreement if e-service through an individual service provider is not possible.

Several concerns were raised concerning drawing individual attorney email addresses directly from the State Bar, including whether such email addresses were valid, or whether email addresses were even on file at all for some attorneys. As more attorneys use the eFileTexas system after January 1, 2014, the database of attorney email addresses is expected to quickly grow.

In addition, while it may currently be necessary to enter your e-service contact information for each case in which an e-filing is submitted, changes are being made to the system to store this information so that repeated, individual entry will not be necessary.

- **Cases not found with e-Filing**—When e-filing in an existing case, some providers will show, “Case not found,” or something similar.

- o **Workaround**—Be sure to enter the appellate case number exactly as is (remember dashes and leading zeroes). If it still isn't found, most providers have a button that will allow you to bypass the search, and e-file anyway.
- **Not all filing types being shown**—Some people click on “New Case” when they mean to e-file within an existing case. Obviously, the items you e-file to start a case (like a NOA and docket sheet) are different than what you'd e-file later on in the case (exhibits, briefs, etc.).

In addition, there have been reports that certain types of common appellate filings—such as amicus briefs—are not an available option to select.

- o **Workaround**—First, if your preferred filing type isn't shown, check to be sure you are indeed filing the correct document at the correct stage of the proceeding. Second, Blake Hawthorne informs us that he has directed that amicus briefing be added as a filing-type option for all Texas appellate courts.
- **E-filing service providers providing incorrect info**—We see some service providers are asking e-filers to call a given court if they're having problems with e-filing.
 - o **Workaround**—The court can answer questions only in the event it returns a filing for correction. Court staff aren't trained on each service provider's software, and as a result, they are generally unable to answer questions on the mechanics of e-filing at a given court.

OTHER UPCOMING CHANGES

- All issues regarding artificial MB limits and the unavailability of amicus filings are currently being addressed by both OCA and the Court.
- OCA is working to get eFileTexas to load case information for the appellate courts. This should be completed sometime before the end of the year.
- OCA is working with the e-filing service providers to assist e-filers throughout the process rather than bounce everyone around (which gets frustrating quickly).

FINAL E-FILING RULE TRAPS

- TRCP 4 is amended so that there is no 3-day extension when service is by fax. The extension applies only to service by mail (no longer tethered to certified or registered mail), and does not apply to electronic service.
- TRCP 21(f)(6) requires that, in the event of a technical failure, the court must grant a reasonable extension to complete an e-filing when the deadline is one imposed by the TRCPs. This appears to provide trial courts new authority to extend deadlines that were previously unextendable—for example motions for

new trial. Also note that there is no parallel provision in Texas Rule of Appellate Procedure (TRAP) 9.2 governing deadlines in the courts of appeals.

- Pursuant to TRCP 21(f)(11) and TRCP 21c(e), clerks may not refuse to file a document for non-conformance with the rules, but may return the document for correction. However, TRAP 9.4(k) provides that an appellate court may either strike or permit a party to resubmit in a conforming format by a specified deadline a nonconforming document.

The nomenclature in the system will be changed from “rejected” to “returned for correction.” The procedure that has been discussed is that the document will be entered in the court’s case management system when first received and a notation made in the system if the document is returned for correction. Keep in mind as well that the e-filing system provides a history of all transactions. And remember too that a document is considered filed when transmitted to the e-filing service provider.

- Under TRCP 21a(a)(1), parties must e-serve when counsel has registered for eservice.
- For the first time in history, TRCP 21a(a)(2) and TRAP 9.5(b)(2) will now allow mail service by commercial delivery if e-service is not required. In addition, TRAP 9.2(b)(1)(C) will also allow filing by commercial delivery service, but again, only when e-filing is not mandated.
- Under TRAP 9.4(a), paper copies can no longer be duplexed, but must instead be printed only on one side.

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We hope this information will provide the Texas appellate bar some assistance as both it and the courts move into e-filing statewide. 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
Appellate Section of the State Bar of Texas

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Cc: Jeff Levinger; Chair, Appellate Section of the State Bar of Texas
Marcy Greer; Co-Chair, Appellate Rules Committee of the Appellate Section
David Johnson; Co-Chair, Appellate Rules Committee of the Appellate Section