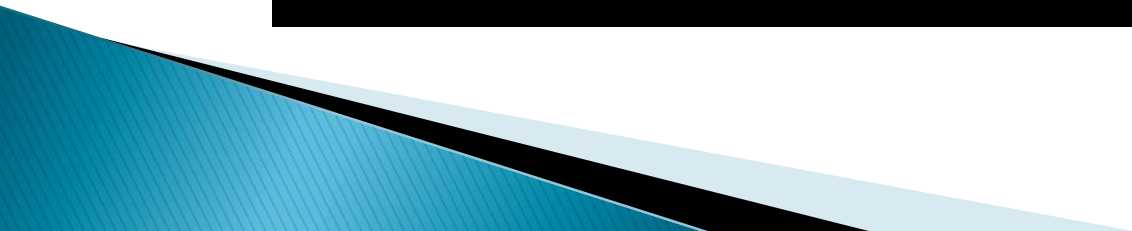
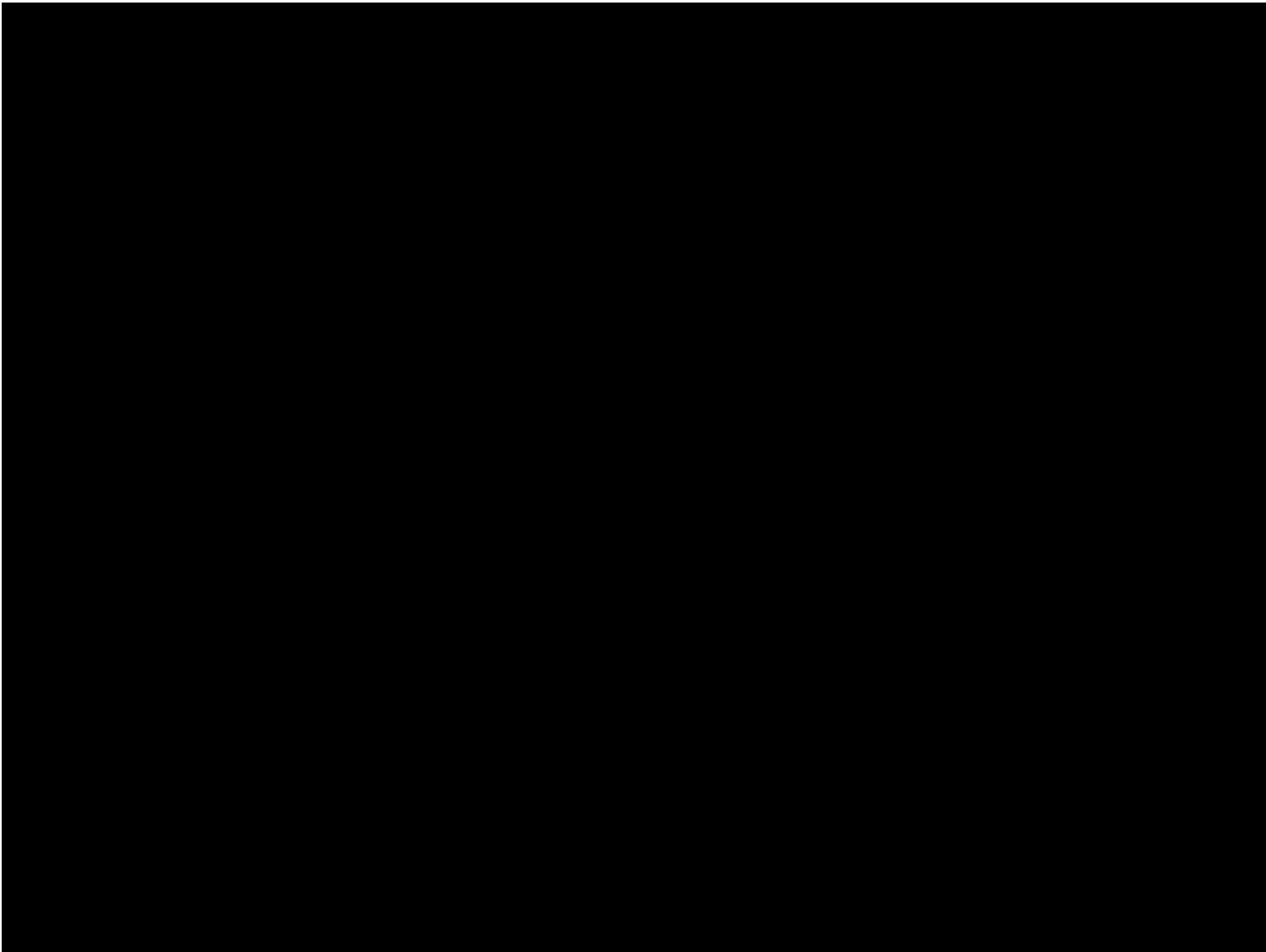


# E-Filing In Criminal Cases

Jose M. Gonzalez  
Associate Judge (65<sup>th</sup> District Court)

August 23 and 31, 2016



# How does the e-file system work?

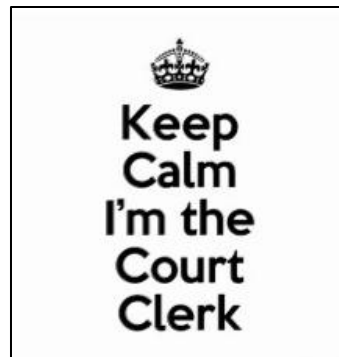
## The non-techie ver



(EFSP)  
Electronic File  
Service Provider



E-File Computer System



# History of E-filing Rule Implementation

- June 9, 2015 Supreme Court issued initial e-filing rules indicating they were subject to change based on public comments. (Sup. Ct. Misc. Dkt # 15-9090, Ct. Crim. App Misc Dkt # 15-002)
- October 1, 2015 Supreme Court issued revised e-filing rules. As per Rule 1.2 can file electronically or by paper filing. (Sup. Ct. Misc. Dkt # 15-9205, Ct. Crim. App Misc Dkt # 15-004)
- June 30, 2016 Ct. of Crim. Appeals **mandates** e-filing in criminal cases effective July 1, 2017 for El Paso County, Texas. Indicates that they will adopt e-filing rules pursuant to mandate. (Ct. Crim. App Misc Dkt # 16-003)
- June 30, 2016 El Paso Council of Judges requires e-filing implementation on graduated schedule beginning September 1, 2016. (Tx. Rules of Judicial Administration, Rule 4)

# Texas Supreme Court (Misc. Dkt. No. 16-9095)

By October 1, 2016, each member of the State Bar must add an electronic service address to the member's attorney profile on the State Bar website in accordance with Article III, Section 3, as amended.

## **Section 3. Member Contact Information; Duty to Keep Updated**

- A. Each member must provide to the State Bar and keep updated any contact information requested by the State Bar, including the member's:
- registered mailing address;
  - preferred email address;
  - electronic service address; and
  - telephone number.
- B. If a member fails to designate an electronic service address, the member's preferred email address will be deemed to be the member's electronic service address.
- C. A member must update the member's registered mailing address, preferred email address, and electronic service address on the State Bar website within 30 days of a change to any address.
- D. Service of any notice to a member by the State Bar is deemed to be effective if the notice is sent to the member's registered mailing address or preferred email address.

# Texas Bar Journal April 2016

## Answering your questions

The Texas Supreme Court issued an order on June 14, 2016, requiring that Texas attorneys provide the State Bar with an electronic service email address. Below are answers to some common questions about the requirement.

### **I'm an attorney—what do I have to do to comply?**

Simply go to [texasbar.com/eservice](http://texasbar.com/eservice) and provide the email address you would like to use as your electronic service address. Electronic service addresses will "go live" in the e-filing system on October 1, 2016. If you do not designate an electronic service address by that date, then your preferred State Bar email address currently on file with the State Bar will be used as your electronic service address.

### **What's the purpose of this requirement?**

The requirement will improve the e-filing system by creating a single, official electronic service email address for each attorney in Texas. Currently, the e-filing system is hampered by multiple accounts being created in some attorneys' names.

### **I rarely or never use the e-filing system, because of the nature of my practice. Do I still have to provide an electronic service email address?**

Yes, the requirement applies to all Texas lawyers. In addition to their use in the e-filing system, the electronic service email addresses may also be used by the court system—both statewide and locally—to send important notices such as after a disaster.

### **What if my law firm uses a "clearinghouse" email address for e-service?**

If you are with a law firm that uses a "clearinghouse" address or addresses for e-service or would like to find out about setting up a "clearinghouse" email address, the State Bar can help. For assistance, please contact our Membership Department at (800) 204-2222, ext. 1383.

Provide your electronic service address today at  
**[texasbar.com/eservice](http://texasbar.com/eservice)**

If you have questions or need more information, contact (800) 204-2222, ext. 1383, or email [memmail@texasbar.com](mailto:memmail@texasbar.com).

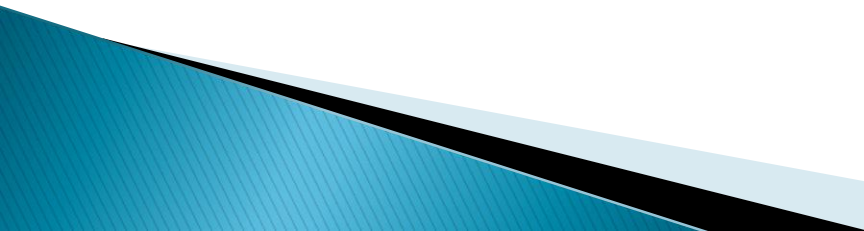
## Rule 1.3 Documents That May Be Electronically Filed

Any document that can be filed in paper form must be electronically filed except:

1. Charging Instruments
2. Documents filed under seal or presented in camera
3. Documents to which access is restricted by rule, law or court order.

## Rule 2.4 Official Record

The clerk may designate an electronically filed document or scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions.



# Your filing must be in PDF Format

## Two Basic Types of PDFs

1. Searchable – Those are the documents created in Word/Word Perfect and saved as PDF.
2. Scanned – those that are created when you scan a document to PDF.

Generally PDFs have to be in the “Searchable” Format.

### Exceptions

Rule 1.4 (b) if a document has to be notarized, sworn to , or made under oath

Rule 1.4 (c) – If a paper document requires the signature of opposing party.




# Non-Conforming Documents

Rule 2.5 - The clerk may not refuse a document that fails to conform to e-filing rules however the clerk may identify the error and give the filer time to comply.

Comment to Rule 2.5 – the clerk’s error notification is “. . . *inconsequential to a judicial determination regarding whether the document submitted violates these rules, and does not constitute an extension of time to file the document.*” The clerk’s correction deadline should general not exceed 72 hours.

# When Is A Document Considered Filed (Rule 2.3)

- A document is considered timely filed if it is electronically filed at any time before midnight (in the Court's time zone) on the day of the filing deadline UNLESS a statute, rule or court order specifies a time.
  - A document is deemed filed when it is submitted to the Electronic Service Provider UNLESS filed on a Saturday, Sunday or legal holiday then it is deemed filed on the next day that is not a Saturday, Sunday or holiday. Also if you need a motion to file your document, then deemed filed when motion granted.
  - If untimely filed because of technical error or a system outage, “the filing party may seek appropriate relief from the court.”
- 

# Digital Signatures (Rule 1.4)

A document that has been electronically, filed, served or issued by a court or clerk is considered signed if the document includes –

1. The following typed into the signature line – “/s/ Jose M. Gonzalez.” Exception - if the document is notarized or sworn.
2. An electronic image or scanned image of the signature. (FYI The free version of Adobe Reader allows you to digitally sign a document and you can scan your signature into the software.)

## Rule 3.1 Electronic Service

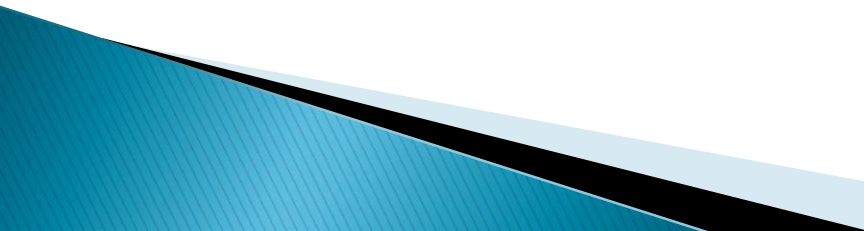
A document filed electronically must be served electronically if the email address of party is on file. If not, service may effectuated as permitted by law.

## Rule 3.2 Electronic Service Complete

Service is complete upon submission to EFSP.

## Rule 3.3 Proof of Service

Filer shall certify that document was served electronically however nothing shall preclude any party from offering proof that the document or notice was not received. Court may extend a deadline if show that did not receive or grant any other relief that it deems just.



# Privacy Protection

**Rule 5.2** A pleading or document may not be filed if it contains sensitive data. Exception – when sensitive data is required to be included as per statute, rule or administrative regulation. If data is required must put Rule 5.4 notice in document i.e. “NOTICE – THIS DOCUMENT CONTAINS SENSITIVE DATA”)

## Rule 5.1 Sensitive Data

<u>Personal</u>	<u>Financial</u>	<u>Minors when suit filed</u>
Driver's license number	Bank account number	Name (Use first initials)
Passport number	Credit card number	Date of Birth
Social Security number	Other financial account number	Address
Tax ID number		
Government-issued ID number		

# Privacy Protection (Redacting)


## Rule 5.3 Redaction and Retention Requirements

Must place an “X” in place of each omitted character or in a manner indicating data has been removed.

Redacting party must keep un-redacted version during pendency of case and any appellate proceeding filed within 3 years of date judgment signed.

## Rule 5.5 Non-Conforming Documents

The clerk may not refuse a document that contains sensitive data.



# Court Orders

## Rule 4.1

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

Other than this provision, there are no rules addressing Court orders, but just wait . . .

# Court E-File Procedures

The Courts are discussing uniform e-file policies and procedures.

IN THE DISTRICT COURT OF EL PASO COUNTY,  
41<sup>ST</sup> JUDICIAL DISTRICT

STANDING ORDER §  
MANDATORY E-FILING § ALL CIVIL AND CRIMINAL CASES

STANDING ORDER ON MANDATORY E-FILING FOR ALL CASES  
BEFORE THE 41<sup>ST</sup> JUDICIAL DISTRICT COURT

In addition to complying with the applicable provisions of State and local rules regarding mandatory e-filing in civil and criminal cases, IT IS HEREBY ORDERED that litigants abide by the following procedures in all cases, both criminal and civil, pending before the 41<sup>st</sup> Judicial District Court.

1. When a litigant electronically files any pleading, motion, brief, appendices, or proposed order, the filing litigant must include electronic courtesy copies of the said document(s) to this court.
2. Electronic courtesy copies of e-filed documents shall be provided to the court via inclusion of this email at the time of e-filing: [41DCeFile@epcounty.com](mailto:41DCeFile@epcounty.com)
3. Any party that electronically files a document containing more than twenty (20) pages (including appendices, briefs and/or attachments) SHALL PROVIDE the Court with a **courtesy paper copy** of the entire document within **three days** of the electronic filing.

SO ORDERED and SIGNED this the 12 day of August, 2016.

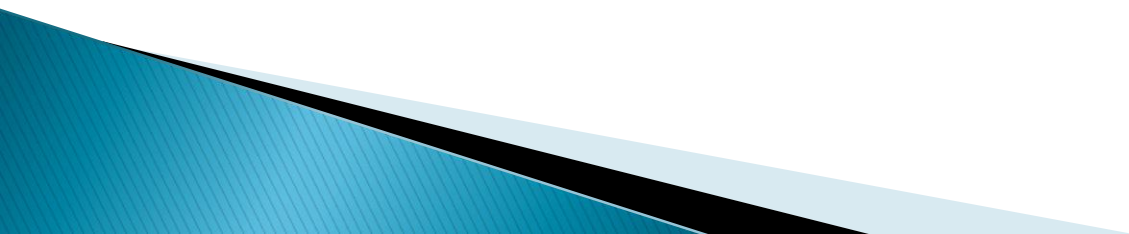
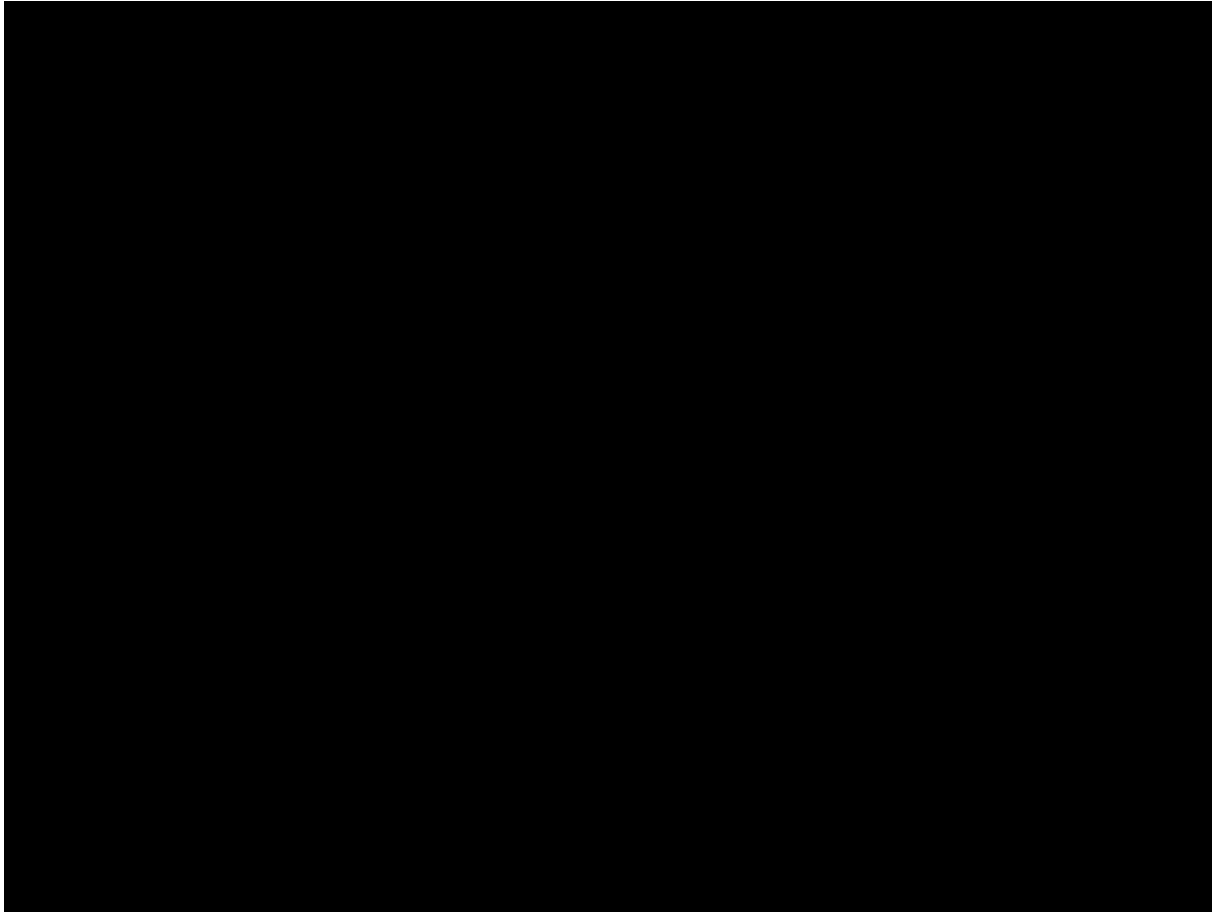
  
ANNABELL PEREZ  
Judge, 41<sup>st</sup> District Court of Texas

41<sup>st</sup> District Court  
Standing Order

The 41<sup>st</sup> District Court currently requires you to courtesy copy the Court when you file any pleadings, motions, briefs, appendices, or proposed orders. Also requires you to provide hard copy of document over 20 pages long.



# Help Is Available !



# DISTRICT ATTORNEY EMAIL ADDRESSES

Felonies and Misdemeanors

[dacriminal@epcounty.com](mailto:dacriminal@epcounty.com)

Appeals

[DAAppeals@epcounty.com](mailto:DAAppeals@epcounty.com).

Extradition Cases

[fniethamer@epcounty.com](mailto:fniethamer@epcounty.com).

Questions?