

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

**IN RE THE MATTER OF ELECTRONIC)
FILING AND SERVICE OF PLEADINGS) ADMINISTRATIVE
IN PROBATE CASES) ORDER NO. 2004-09**
_____)

1. Authorization of electronic filing in probate cases.

In accordance with Rule 124 of the Rules of the Supreme Court of Arizona and the corresponding Code of Judicial Administration provisions, the Presiding Judge of Arizona Superior Court in Pima County hereby authorizes electronic filing and service in any probate case. Electronic filing in Pima County cases shall be governed by this administrative order.

2. Designation of case as electronic filing case.

- a) Any party in a probate case may use the electronic filing and service system. Such participation is permissive. Probate case for purposes of this rule excludes mental health files with an MH case prefix.
- b) Participants are bound by the provisions of this Order and shall enter into a subscriber agreement with an E-filing vendor approved by this court. By entering into a subscriber agreement with the vendor, a participant is consenting to receive electronic service of documents, other than service of a summons and complaint, from the court and all other electronic filing parties, via the electronic filing system. Participants who enter into a limited “file-only” subscription agreement with an approved electronic filing vendor shall receive service from all other parties in the conventional manner.
- c) The commencement date for the electronic filing and service system pilot project shall be May 12, 2004. A “Best Practices Guidelines” containing further information about the pilot project phases and helpful tips for E-filing will be posted on the Clerk of Court and Superior Court websites. See Rule 3 for website addresses.

3. Approved E-Filing Vendor

Information regarding approved electronic filing vendors will be maintained on the Clerk of Court and Superior Court websites at the following URLs: Clerk of

Court website: <http://www.cosc.co.pima.az.us/> and at the Superior Court website: <http://www.sc.co.pima.az.us/>

4. Definitions of terms

The following terms are defined as follows with regard to this Administrative Order:

- a) Case management system: the system in use by the Clerk of the Superior Court and the court to docket, calendar, assign, and track cases.
- b) Conventionally, in the conventional manner: filing or service of paper documents.
- c) Document management system: the document storage and imaging system, more commonly known as “Record Search”, maintained by the Clerk of the Superior Court to store electronic court documents. Currently, public access to “Record Search” is limited to the public access terminal located in the Legal Records office of the Clerk of Superior Court.
- d) E-file: electronic transmission of original documents to the Clerk of the Superior Court, and from the court, via the electronic filing system for the purposes of filing.
- e) Electronic filing system: that system approved by the Arizona Supreme Court for filing and service of pleadings, motions and other papers (“documents”) via the Internet through the court-authorized service provider.
- f) Electronic Filing Vendor: A private firm or other business entity authorized by the court to provide electronic filing and service services.
- g) Electronic service: Electronic service is electronic transmission of a copy of the document to any party in a case via the electronic filing system. Electronic service does not include service of process or summons to gain jurisdiction over persons or property.
- h) Electronic service list: The list of party and attorney case participants, including their contact information for electronic and/or traditional delivery of documents.
- i) Filing: Original documents submitted to the court for filing with possibly one or more supporting documents attached.

- j) Hyperlink: An electronic connection or reference to another place in the document, such that when selected the user is taken to the portion of the document to which the hyperlink refers.
- k) Original: An original document includes certified copies of documents from other jurisdictions.
- l) Participant: A self-represented litigant, their attorney or the attorney's designated representative using the electronic filing system.
- m) Portable Document Format (PDF): A file format created by Adobe Acrobat that preserves all fonts, formatting, colors, and graphics of any source document, regardless of the application platform used to create it.
- n) Public access terminal: A computer terminal located in the office of the Clerk of the Superior Court through which the public may research and print electronically filed documents. Public access terminals may not be used for E-filing, however, self-represented parties may E-file documents at the Probate Clerk's office. See Rule 17(c).
- o) Scanned document: an electronic image created by scanning a paper document.
- p) TIFF: A standardized file format used to store imaged documents.

5. Lodging Documents

Documents to be lodged with the court and proposed orders may be transmitted electronically to the court and other parties via the electronic filing system.

6. Documents prohibited from electronic filing

The following types of documents shall be filed conventionally, unless the court expressly requires they be filed electronically.

- a) A summons and complaint in an existing probate case may be filed electronically, however, the summons shall be issued by the Probate Clerk in the conventional manner.
- b) Documents filed under seal, confidential documents and courtroom exhibits. (A motion to file documents under seal, however, may be filed and served electronically.)
- c) Audiotapes not expressly authorized by the court for filing electronically.

- d) Original wills or codicils of a decedent, deposited with the court for safekeeping shall be filed conventionally.
- e) Provisional electronic filing of scanned original wills and codicils that accompany an initial petition or application is allowed provided that the original will or codicil is filed within 5 business days of acceptance of the documents by the clerk. Each original will or codicil filed must be identified by case number.
- f) Exhibits and appendices to pleadings may be filed and served electronically, however, courtroom exhibits shall be handled in the conventional manner. Courtroom exhibits shall not be filed electronically.
- g) Applications and orders for deferral or waiver of court fees and/or costs.

7. Authenticity of signatures

- a) The act of electronically filing a document shall constitute a certification by a filer, subject to penalties for perjury, that the document is a true and correct copy of the original.
- b) Every pleading, document and instrument electronically filed or served shall be deemed to have been signed by the judge, court commissioner, registrar, clerk, attorney or declarant and shall bear either a facsimile or typographical signature of such person.
- c) Where a clerk is required to endorse a document, the typed name of the clerk shall be deemed to be the clerk's signature on an electronic document.
- d) Typographical signatures shall be treated as personal signatures for all purposes under these rules.
- e) Documents containing signatures of third-parties (i.e., unopposed motions, affidavits, stipulations, notary seals, bonds, etc.) may also be filed electronically provided the filing party avows that the document containing the original signature is maintained by the filing party in paper-format.
- f) A user ID and password issued by the electronic filing vendor for the purposes of filing documents electronically with the court shall constitute a signature of the registrant on the documents submitted to the court or by the court.

8. Official court record

- a) Conventional paper file: The court file will be maintained in conventional paper format if all documents in a case are filed conventionally. If a case is initiated electronically, an empty conventional paper file will be created and labeled accordingly. If a case contains both conventionally and electronically filed documents, the paper file will only contain the conventionally filed documents, and will be labeled as indicated in Rule 8(b).
- b) Electronically filed documents: If a court file contains electronically filed documents, the conventional paper court file will be labeled with the following notice: “This case contains electronically filed documents, the conventional paper file is incomplete. The complete record must be reviewed in its electronic format.”
- c) Official court record: The electronic format of the court file shall be considered the official court record for any case that contains electronic filings. If a document has been filed electronically, the index of the electronic record shall distinguish documents have been filed electronically. The electronically filed document as it resides on the clerk's electronic document management system (“Record Search”) and printouts of said document shall be considered the original document satisfying the best evidence rule set forth in Rule 1002, Arizona Rules of Evidence.

9. Format of electronic documents

All electronically filed documents shall be formatted in accordance with the applicable rules governing formatting of paper documents, and in conformance with such other formats as the court may require from time to time. The provisions of Arizona Supreme Court Rule 124 (f) Paragraph Numbering will not be applied to electronic documents filed pursuant to this administrative order.

All electronically filed documents shall be formatted in accordance with A.R.C.P. Rule 10 and Pima County Local Rule 9.1(d) and (e). In an e-file case, an e-mail address of the counsel of record shall also be included on each electronically filed document.

10. Hyperlinks, bookmarks and other electronic navigational aids

Electronically filed documents may include hyperlinks, bookmarks and other electronic navigational aids for the convenience of the judge assigned to the case. A hyperlink is not itself a part of the filed document. Each hyperlink must contain a text reference to the target of the link.

The foregoing notwithstanding, hyperlinks are not part of the official court record and will not be preserved in electronically filed documents submitted by the Electronic filing Vendor for storage on the clerk's electronic document management system.

Note: When a litigant files a document using the electronic filing system, the vendor will convert the document to portable document format (PDF). When a document is converted to PDF, hyperlinks are automatically disabled. The PDF document will be filed with the clerk's office, and the litigant's document containing the hyperlinks will be delivered to the judge's electronic in-box.

11. Original signed documents to be maintained

- a) If a statute requires a sworn pleading or affidavit, then the original signed affidavit or pleading must be maintained by the attorney or self-represented litigant and produced in its original form within 5 days at the demand of another party or the court.
- b) Parties shall retain originals until final disposition of the case and expiration of all appeal opportunities.

12. Courtesy copies

Unless otherwise ordered by the court, a party who files any document electronically with the clerk shall not submit a courtesy paper copy of the document to the division.

13. Certified copies

Certified, exemplified or authenticated copies of filed documents may be requested electronically with a clerk's request form, but will be issued in the conventional manner.

14. Approved electronic filing vendor(s)

Information regarding the approved electronic filing vendors will be maintained on the Clerk of Court and Superior Court websites at the following URLs:

Clerk of Court website
<http://www.cosc.co.pima.az.us/>

Superior Court website
<http://www.sc.co.pima.az.us/>

The approved electronic filing vendor is hereby appointed to be the agent of the Clerk of Superior Court as to electronic filing, receipt, service, and/or retrieval of any pleading or documents via the electronic filing vendor system.

The Superior Court and Clerk of Superior Court may, from time to time, solicit bids or request for proposals from other potential electronic filing vendors and submit to the Presiding Judge any recommendations for change in the designation of the electronic filing vendor or the terms of the subscriber agreement.

15. Subscriber Agreement fee changes

The electronic filing vendor may require payment of a fee or impose other reasonable requirements by contract with a subscriber as conditions for processing electronic filings. The approved vendor shall provide at least 30 days notice prior to the effective date of any subscriber agreement changes.

16. User ID and password

Upon receipt by the electronic filing vendor of a properly executed electronic file subscriber agreement at their website, the electronic filing vendor shall assign all participants a user name and confidential password, which may thereafter be used to obtain access to the electronic file system. A litigant may access the system for purposes of document filing only in the event that the litigant is acting as his/her own attorney, and no litigant who is represented by counsel may personally file documents via the e-file system.

The attorney of record or self-represented litigant may file, serve, receive, review, print and retrieve electronically filed pleadings, orders, and other documents filed in the designated electronic file case according to the terms of the subscriber agreement and this administrative order. No participant shall knowingly authorize or permit his/her user ID and password to be utilized by anyone else. Access to information or documents through the e-filing system is limited to parties in any given case.

17. Authorized Users and Obligation to Maintain Current Information

The following case participants may register to use the electronic filing system:

- a. Arizona Attorneys and their staff.
- b. Pro Hac Vice Attorneys and their staff.
- c. Self-represented parties are permitted to E-file documents at the Probate Clerk's desk, however, self-represented parties may not register to use the electronic filing system and they are also not permitted to E-serve documents on other parties to the case.

All participants must notify other parties, the clerk and the electronic filing vendor immediately of any change of firm name, mailing address, fax number or e-mail address, but not later than 3 business days prior to when such a change takes effect. The e-mail address of record must also be included on every document filed in the electronic file case.

18. Method of filing

Each document accepted for filing by the clerk shall be electronically file stamped with the time and date of filing, the names of the Clerk of Superior Court and the deputy clerk accepting the filing, and the word "FILED". This file stamp shall be merged with the electronic document and shall be visible when the document is printed and viewed on-line. Electronically filed documents are not complete without the electronic filing stamp. Filings so endorsed shall have the same force and effect as documents filed in the conventional manner.

19. File formats accepted

The filing party may transmit a document to the electronic filing vendor in any format that vendor accepts, provided that the vendor must convert the document to a format accepted by the clerk prior to transmission of the document to the clerk for filing. The clerk currently accepts PDF and TIFF file formats for any electronic filing. All file formats transmitted to the court must be compliant with all standards set forth in sections 1-504 and 1-506 of the Arizona Code of Judicial Administration.

Scanned documents that are skewed or unreadable will not be accepted for filing and will be rejected by the clerk as defective. The court may require a party to produce the original of a scanned document that has been filed electronically.

20. Confirmation of receipt and filing or rejection of documents submitted for filing

Upon completion of the transmission of a document for filing to the electronic filing vendor's system, the electronic filing vendor shall return an acknowledgment of receipt of the document. After receipt of a document, the electronic filing vendor shall immediately scan the document for viruses. If the document is free from any infection, the electronic filing vendor shall make the document available immediately for transmission to the clerk. If the document is infected, the electronic filing vendor shall discard the document and transmit a notice to the electronic filer that the document was infected and has not been transmitted to the clerk. Upon the acceptance of an electronic document for filing, the vendor shall send the filer notice that the electronically transmitted document has been received and filed by the clerk.

If a document is rejected for filing, the clerk shall promptly notify the filer that the document has been rejected and the notice shall set forth the grounds for rejection. The rejected document will not be maintained in the clerk's electronic document management system, nor will it be docketed. It shall be the responsibility of the filing party to verify acceptance of each document and resubmit any rejected document with appropriate corrections.

21. Date and effect of electronic filing/When filing complete

- a) Any document filed electronically shall be deemed accepted by the clerk on the date and time it is successfully received and stored to disk on the electronic filing vendor's system authorized date, provided that:
 - i. receipt of the document to the electronic filing vendor's system is complete by 11:59 p.m. Mountain Standard Time on a day the court is open for business;
 - ii. all required fees are paid;
 - iii. the clerk subsequently accepts the document for filing.
- b) If a document is received after 11:59 p.m., or on a day the court is not open for business, the time of filing shall be the opening of business on the next business day of the court.
- c) For statistical record keeping purposes, new cases may not be initiated by e-filing after 4:30 p.m. on the last court business day of the month.
- d) Evidence of the date and time the document is successfully received and stored to disk shall be maintained by the electronic filing vendor's system, and transmitted with the document submitted electronically for filing to enable the clerk to determine the time of filing. The electronic filing vendor is required to make any electronically filed document that is not infected by a virus available for transmission to the court immediately after successful receipt and virus checking of the document.

22. Payment of filing fees by subscriber to electronic filing vendor

Any document subject to this administrative order requiring payment of a filing fee to the Clerk of the Superior Court to achieve valid filing status shall be filed electronically in the same manner as any other document in an electronic file case. Filing fees shall be tendered to the electronic filing vendor in accordance with the terms of the subscriber agreement between the electronic filing vendor and the subscriber.

The electronic filing vendor is appointed as limited agent for the Clerk of the Superior Court in Pima County for the collection of filing fees and all other monies payable to the court in the course of an action. Court fees collected by the

electronic filing vendor on behalf of the clerk shall be the sole property of the Clerk of the Superior Court in Pima County.

The electronic filing vendor may require each subscriber to provide funds on account or credit card authorization to guarantee the payment of any fees, subject to such terms and conditions as may be prescribed by the electronic filing vendor.

23. Payment of fees by electronic filing vendor to the Clerk of the Superior Court

The electronic filing vendor shall be liable for payment to the Clerk of the Superior Court of the correct filing fees for any documents submitted for filing through electronic filing vendor's system that are accepted and filed by the clerk. The electronic filing vendor shall transmit any monies due to the Clerk of the Superior Court's bank account via wire transfer in accordance with the terms of the agreement between the Clerk and the electronic filing vendor. Not later than 24 hours after the transfer of funds, the electronic filing vendor must provide the Clerk of the Superior Court a detailed breakdown for each deposit, including the case number, type of transaction, parties, amount and date for each transaction. Fees charged by the electronic filing vendor to subscribers for access to and use of the electronic file system are solely the property of the electronic filing vendor and are in addition to any charges associated with fees required by the Clerk and/or Court.

24. Responsibility for confirming filing

A person who files a document electronically shall have the same responsibility for ensuring that the document is properly filed, and is complete and readable, as if the document were filed in the conventional manner. The filer shall be responsible for any transmission delay, disruption, or interruption of the electronic signals, and accepts the risk that the document may not be properly filed with the clerk as a result.

25. Interruption in service

The court and clerk shall not be liable for malfunction or errors occurring in electronic transmission or receipt of electronically filed or served documents.

Notwithstanding any other provisions of this administrative order, if the electronic filing is not filed with the clerk because of an error in the transmission of the document to the electronic filing vendor which was unknown to the sending party, or a failure to process an electronic filing after receipt by the electronic filing vendor, the court may enter an order permitting the document to be filed *nunc pro tunc* to the date it was sent electronically.

26. Electronic Delivery of Court Orders and Judgments

The Court may issue, file, and serve notices, orders, and other documents electronically in an e-file case, subject to the provisions of this Administrative Order.

27. Electronic service of documents

Service of a summons and complaint within a probate case shall be made pursuant to A.R.Civ.P. Rules 4 and 4.1 and shall be made in the conventional manner.

Except as herein provided, all parties in an electronic filing probate case shall make service as provided by A.R.S. Title 14 upon other parties electronically through the vendor's system of all documents filed electronically. Service on parties who are not registered users or who are registered users of the "file-only" subscription services, shall be made in the conventional manner.

Parties who are registered users of the electronic filing system in a case shall receive service of all documents served by other electronic filing parties via access to the electronic filing vendor's system, except as otherwise provided herein or by order of the Court. Parties who are not registered users or registered users of "file-only" subscription services, shall receive service in the conventional manner.

The electronic service of pleading or other documents through the electronic filing vendor's system shall be considered as a valid and effective service.

28. Electronic service list

The electronic filing system shall store the party and attorney information as entered and maintained by the Court and other registered users. The electronic service provider shall update contact information for its registered users when notice is given by the user or firm. Whenever a document is submitted for service upon other parties by the electronic filing vendor's system, the electronic filing vendor shall use the most current electronic service list to perform service.

29. When service is complete

Service via the electronic filing system shall be deemed complete at the time of transmission of the document to the electronic service list for that case, as recorded by the electronic filing vendor's system, except that where completion of service is after 5:00 p.m. [Mountain Standard Time] or service is recorded on a Saturday, Sunday, or legal holiday. In such case, the document shall be deemed served at 8 a.m. on the next day that is not a Saturday, Sunday or legal holiday. Whenever a party has the right or is required to take some action within a

prescribed period after service of a notice or other paper and such service is made electronically, such service shall be considered service by mail for the purpose of computing time under any rule of procedure. (See Rules of the Supreme Court, Rule 124(g). Counsel so served has a responsibility to view the document.

Proof of service of any document required to be served in an electronic filed case must be filed electronically with the Clerk of the Superior Court.

30. Extension of time

If service on a party does not occur because of:

- a) Inaccessibility of the electronic filing vendor's system;
- b) Error in the transmission of the document to a party, which error was unknown to the serving party or the electronic filing vendor;
- c) Failure to process the electronic document for service when received by the electronic filing vendor, or;
- d) The party was erroneously excluded from the e-service list;

The party to be served shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the time within which any right, duty, or other acts must be performed.

31. Availability of electronic filed documents

The electronic filing vendor shall make electronically filed documents and documents being served electronically through the electronic filing vendor's system available to subscribers and the court through the electronic filing vendor's system in accordance with the current agreement between the court and the electronic filing vendor and this administrative order.

32. Public access

The Clerk of the Superior Court shall make available to members of the public, without charge and during normal business hours, at least one public access computer terminal capable of searching and viewing documents filed of public record in electronic file cases. For the purpose of retrieving documents filed in electronic file cases, access by the public shall be to the Clerk of the Superior Court's electronic document management system, where official electronically filed documents are maintained. The clerk shall make paper copies of any publicly filed electronic documents available at the same rate charged for copies of paper documents.

33. Amendments to Administrative Order, Code of Judicial Administration and Rules of the Arizona Supreme Court

The Presiding Judge of Superior Court in Pima County may amend this Administrative Order, and the Arizona Supreme Court may amend the Code of Judicial Administration and Court Rules from time to time. All parties in cases subject to this order and the electronic filing vendor must comply with current and future provisions of this Administrative Order, the Arizona Code of Judicial Administration and the Rules of the Arizona Supreme Court.

DATED:

Hon. John Leonardo
Presiding Judge

Original: Clerk of Court

Copies: Hon. Clark W. Munger, Presiding Probate Judge
Patricia A. Noland, Clerk of Superior Court
Kent Batty, Court Administrator
Hon. Deborah Ward, Probate Commissioner
Hon. Fred Dardis, Probate Commissioner
Cindy Linnertz, Probate Registrar
Julia Connors, Probate Law Counsel