

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 09-CI-1671



COMMONWEALTH OF KENTUCKY, EX REL.  
JACK CONWAY, ATTORNEY GENERAL

PLAINTIFF

v.

MERCK & CO., INC.

DEFENDANT

**ELECTRONIC FILING CASE MANAGEMENT FILING ORDER**

This Court, having determined that it is appropriate for the above-captioned matter to be subject to electronic filing (“e-filing”) and electronic service (“e-service”), and e-service having been instituted in this matter on August 27, 2012, this Court orders that this action is subject to electronic filing (“e-filing”) beginning on March 1, 2013.

To facilitate expeditious and efficient communication by and among counsel, as well as case management, document retrieval, and case organization, the parties will utilize the service of LexisNexis® File & Serve for providing electronic filing and service, notification, storage and delivery of court-filed documents through a secure website.

The Court has determined that certain procedures must be followed when e-filing and serving documents in this case. The Court hereby orders the following procedures to be followed by all counsel when e-filing and e-serving documents in this action:

**1. Registration and Training for LexisNexis® File & Serve**

Training for e-filing and service is *mandatory* even if a party has registered with LexisNexis and received training for e-filing and service in other cases, as there is specific training for e-filing and service in this litigation that all parties must receive. To make arrangements for training, contact Angela Melton at LexisNexis, [amelton@fileandservexpress.com](mailto:amelton@fileandservexpress.com). Counsel are responsible for regularly checking the LexisNexis Resource Center for updates posted by LexisNexis to assist parties with the appropriate procedures and best practices for successful e-filing and service, and for paying the fees billed by the e-filing and service provider at rates approved by this Court.

LexisNexis will provide training and support to the Franklin Circuit Court and staff regarding procedures and best practices for e-filing.

## **2. Addition of New Parties**

The filing party is responsible for updating LexisNexis File & Serve with party information as outlined below, and if applicable, for notifying national counsel of its responsibility to register with LexisNexis File & Serve.

Within five business days of serving an amended complaint, a third-party complaint, or a motion or pleading seeking to add a new party, the moving party shall add the new party's information to the LexisNexis File & Serve using the Case & Party Management feature. A new party shall not be served with an amended complaint or a third-party complaint using e-filing and service, but shall be served pursuant to Rule 5 of the Rules of Civil Procedure.

## **3. Updating Party Information**

Within five business days of withdrawal or substitution of counsel, or any other event that changes case information, the moving party shall update the LexisNexis File & Serve system with the information necessary to effect the change in case or party status using the Case & Party Management feature. The moving party must provide LexisNexis with verification of the change in party information, either by providing LexisNexis with the transaction ID Number of the order or other document that verifies the change, or by uploading a copy of the order or document that verifies the change.

## **4. General Provisions**

- a. Authorization and Signature.** Each e-filed document shall be deemed to have been signed by the attorney, or by the party not represented by an attorney who authorized the filing, and shall bear a facsimile or typographic signature of such person, e.g., "/s/Adam Attorney." Each document e-filed by or on behalf of a party shall also include the address and telephone number of the attorney or unrepresented party filing such document.
  - i.** No lawyer shall authorize anyone to e-file or serve on that lawyer's behalf other than an employee of his or her law firm or a service provider retained to assist in e-filing and service. No person shall utilize, or allow another person to utilize, the password of another in connection with e-filing or service.
  - ii.** The e-filing of a document by a lawyer or by another under the authorization of a lawyer, shall constitute a signature of that lawyer under Rule 11 of the Kentucky Rules of Civil Procedure.
  - iii.** A document requiring signatures of more than one party must be filed either by:
    - (1) electronically filing a scanned document containing all necessary signatures; or
    - (2) representing the consent of the other parties on the document; or
    - (3) identifying on the document the party whose signature is required and by the submission of a notice of endorsement by the other parties no later than seven (7) days after filing; or



(4) any other manner approved by the Court.

iv. A non-filing signatory or party who disputes the authenticity of an electronically filed document with a non-attorney signature, or the authenticity of the signature on that document; or the authenticity of an electronically filed document containing multiple signatures or the authenticity of the signature themselves, must file an objection to the document within fourteen (14) days of service of the document.

v. Any party challenging the authenticity of an electronically filed document or the attorney's signature on that document must file an objection to the document within fourteen (14) days of service of the document. If a party wishes to challenge the authenticity of an electronically filed document or signature after the fourteen (14) day period, the party shall file a motion to seek a ruling from the court.

**b. Filing and Service**

- i. Except where otherwise provided, every e-filed document shall be e-served. Unless otherwise ordered, the e-service of a document in accordance with these rules shall be considered service under Rule 5 of the Rules of Civil Procedure. In accordance with CR 6.05, service by electronic means is treated the same as service by mail for the purposes of adding three days to the prescribed period to respond.
- ii. For documents that have been e-filed, the electronic version of the document constitutes the official court record, and e-filed documents have the same force and effect as documents filed by traditional means. To the extent the Rules of Civil Procedure and/or this Court's Local Rules require an "original" document be filed or certified, the electronic version of the document shall constitute the original. All filings, whether electronic or paper, shall otherwise comply with the Rules of Civil Procedure and this Court's local rules.

**c. Orders and Civil Docket**

- i. Orders issued by the Court shall bear a typographic signature and an official e-filing court stamp and shall be e-filed or entered and served, and such shall have the same force and effect as if the Court had affixed a signature to a paper copy of the Orders and will satisfy the requirements of Rule 58 of the Kentucky Rules of Civil Procedure. The date an order is electronically filed shall constitute the date of entry of the order.
- ii. E-filed orders maintained as part of the electronic docket shall satisfy the requirements of Rule 77 of the Kentucky Rules of Civil Procedure.

- iii. An electronic register of actions, with associated documents and filing receipts, shall be maintained as part of the e-filing and service system and shall constitute the civil docket and constitute the requirements of Rule 79 of the Kentucky Rules of Civil Procedure.

**d. Time of Electronic Filing and Service**

- i. A document shall be considered filed with the clerk once electronic transmission is successfully completed as recorded in the e-filing and service system. For purposes of complying with the civil rules relating to the time for filing of documents, service and filing is complete at the time of successful electronic filing through LexisNexis File & Serve, and the document shall be considered filed as of the time on the electronic filing transaction receipt. The e-filing deadline is 11:59 p.m. on the date the document is due. The filing transaction receipt shall list the participants selected and give proof of date, time, and method of service, through use of an e-file stamp feature created for the clerk of the Franklin Circuit Court by LexisNexis. Such filing transaction receipt shall satisfy the requirements of Civil Rule 77.04(2).
- ii. It is the responsibility of the participant to check his or her online inbox to review e-filed and served documents. Courtesy e-mail notification of a filing shall not constitute service.

**e. System or Participant Errors**

If a document cannot be e-filed with the circuit clerk or e-served due to 1) an error in transmission of the document to the e-filing and service provider that was unknown to the sending participant, or 2) a failure to process the e-filing when received by the e-filing and service provider, or 3) rejection by the clerk, or 4) other technical problems experienced by the filer, then the Court may, upon satisfactory proof, enter an order permitting the document to be filed or served nunc pro tunc to the date it was first attempted to be e-filed and served.

**5. Procedures for E-Filing**

- a. All e-filed documents relating to a single pleading or document submitted in the same electronic transaction shall be "electronically stapled" using the "main" and "supporting" functionality of File & Serve so multiple related documents, such as a motion and proposed order, are linked logically together.
- b. All e-filed documents or pleadings directly relating to a previously e-filed document or pleading shall be linked to the previously e-filed document or pleading, using the "linked document feature" of File & Serve.
- c. Proposed orders filed for the consideration of the Presiding Judge shall be filed in an editable format



- d. A document that is required to be executed by the parties or counsel, verified, acknowledged, or made under oath shall be e-filed only as a scanned image. Any such document that is to be attached to an e-filed document shall be scanned and e-filed and served along with the underlying document. When e-filing and/or e-serving a document, the following information shall be provided in the document title section of File & Serve to enable the Court and the parties to search for information in the system: 1) the party or parties filing or serving the document; 2) a descriptive title of the documents; 3) the party or parties against whom relief is sought, if any; and 4) the nature of relief sought. A standard list of abbreviations that should be used in titling documents in the document title section of the e-filing and e-service system is attached as Exhibit A. A sample of document titles and descriptions is attached as Exhibit B.
- e. Each document being electronically filed in a transaction that requires a file stamp from the Clerk needs to be uploaded as a separate document within the transaction. For example, if a Motion, Proposed Order, and a Supporting Memorandum are included in one transaction, they should be uploaded as separate documents within the same transaction so the Clerk can stamp each one appropriately.
- f. No one document should be larger than 5MB, and no one transaction should be larger than 60MB. If a document is larger than 5MB, the filing party should break it into multiple documents and upload the pieces in one transaction. The document title fields should include an indicator that there is more than one part to the document such as (Part x of Y).

## **6. Historical Documents**

The parties are ordered to cooperate in providing to the clerk of the Franklin Circuit Court, via pdf, file-stamped copies of relevant pleadings and other papers already filed in the state court action, including the Complaint [DE # \_\_\_], Answer [DE # ], and Scheduling Order [DE # ], which will then be uploaded and made part of the electronic docket in this matter.

The parties are responsible for providing the Court with any pleadings and other papers that are part of the MDL proceeding which they cite to or rely on, and these papers may be uploaded and made part of the electronic docket in this matter.

## **7. Oversized Documents, DVDs, and Other Items That Cannot be Filed and Served Electronically**

Oversized documents, including but not limited to maps or charts, DVDs, manuals and other items that cannot be filed and served electronically, shall be filed conventionally in the office of the clerk of the Franklin Circuit Court and served conventionally. The filing party will select the document type "Oversized Document/Item," select "submitted conventionally" from the access drop-down menu, and enter a document title description.

## 8. Sealed Documents

A motion to seal documents shall be e-filed and e-served. However, any documents that are the subject of a motion to seal shall be filed directly with the Court enclosed in sealed envelopes to be opened as directed by the Court, and a copy of the documents that are the subject of the motion to seal shall be provided to the judge for review.

## 9. Personal Data Identifiers

- a. **E-Service of Documents Containing Personal Data Identifiers.** If a party wishes to serve counsel of record with pleadings or other documents that contain Personal Data Identifiers or other confidential information, the parties shall use the “serve only – private” feature in LexisNexis File & Serve. This will cause the document to be accessible only by the File & Serve users of the served firms.
- b. **E-Filing and Service of Documents Containing Personal Data Identifiers.** To promote electronic access to documents while also protecting privacy and other legitimate interests, counsel and the parties shall refrain from including, or shall partially redact where inclusion is necessary, the following Personal Data Identifiers from all pleadings filed with the Court, including exhibits attached to pleadings, whether filed electronically or in paper, unless otherwise ordered by the Court. Responsibility for redacting Personal Data Identifiers rests solely with counsel and the parties. **The clerk and/or Lexis Nexis will not review each pleading for compliance regarding redaction of Personal Data Identifiers.**

### i. Social Security Numbers

If an individual’s social security number must be included in a pleading, only the last four digits of that number should be included.

### ii. Dates of Birth

If an individual’s date of birth must be included in a pleading, only the year should be used.

### iii. Financial Account Numbers

If financial account numbers are relevant, only the last four digits of those numbers should be used.

### iv. Names of Minor Children

If the involvement of a minor child must be mentioned, only the initials of that child should be used.

### v. Medical Information




If medical information that includes patient identifying information is intended to be disclosed in any public filing, the party intending to disclose such information shall give the party whose personal medical information is the subject of such disclosure ten days' notice of such intended disclosure, including identification of specific medical information the party intends to disclose. If the party whose personal medical information is intended to be disclosed believe such additional information requires the additional protection with filing with the Court under seal. That party shall identify the personal medical information it believes should be filed under seal to the party who intends to disclose the information as soon as practicable, but no later than ten days after receiving notice of such intended disclosure. If the parties are unable to agree as to the extent of additional protection, if any, to be applied, the party whose medical information is intended to be disclosed to file a motion to seal with the Court for a determination as to whether, and to what extent, the identified medical information shall be sealed or otherwise further protected.

**10. Record on Appeal**

On appeal, the parties shall jointly stipulate to the contents of the record for a reviewing court. The parties shall stipulate the contents of the record on appeal, and shall print out a hard copy of the stipulated record, which shall be filed with the Circuit Clerk. The parties, in conjunction with the Circuit Clerk or her designee, shall prepare a record of the case in accordance with CR 75.07.

**11. Public Access**

Electronic access to electronic docket sheets and all documents filed in the system, unless sealed, is available to the public for viewing at no charge during regular business hours at the courthouse. The parties shall ensure that the Circuit Clerk, and any deputy designated by her, shall receive training in operation of the electronic filing system, and the Clerk shall be assigned a password to allow public access to the LexisNexis File and Serve account for this case. Public access for all filings shall be made fully available, unless a filing is subject to a protective order. Electronic downloads in PDF format are available at no charge. A copy fee, in the amount of 10 cents per page, is required for paper reproduction.

  
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PHILLIP J. SHEPHERD, JUDGE  
FRANKLIN CIRCUIT COURT