

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on September 12, 2019, the following order was made and entered:

RE: Adoption of Amendments after Request for Public Comment on Amendments to Rules Relating to Electronic Filing, Specifically, Trial Court Rules 11.02 and 15A and Rule 6 of the Rules of Practice and Procedure for Family Courts No. 19-Rules-11

On this day the Court proceeded to consider proposed amendments to the rules relating to electronic filing, specifically, Trial Court Rules 11.02 and 15A and Rule 6 of the Rules of Practice and Procedure for Family Courts.

The Court has jurisdiction pursuant to Article VIII §3 of the West Virginia Constitution. Upon review, the Court is of the opinion that the proposed amendments should be adopted as set forth below, effective November 1, 2019. The Court thanks the Defense Trial Counsel of West Virginia and the Circuit Clerk's Liaison Committee for their Comments.

The proposed amendments are set forth below. Proposed additions are indicated by underscoring, and deletions are indicated by strikethrough.

Trial Court Rules

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Rule 11.02. Format.

Every order shall designate the date of the proceeding and shall be double spaced. In addition, every order shall set out clearly and distinctly, in its last substantive paragraph, any and all directives to the clerk; and the clerk shall make a notation in the margin as to when those directives have been completed. For orders electronically filed under Rule 15 or 15A of these Rules, the Clerk shall note the parties served outside of the E-Filing system in the Order docket entry. The "Notice of Electronic Filing" electronic transmittal for an Order served electronically via WV e-File notification shall constitute notation of service upon the parties.

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Rule 15A. Electronic Filing and Service of Circuit and Family Court Actions
(excluding Mass Litigation)

Rule 15A.01. Application.

Trial Court Rule 15A, which may also be referred to as "E-Filing ~~Pilot~~ Rules," shall govern electronic filing and service of documents and maintenance of case-related information in the circuit courts and family courts of West Virginia ~~in those Actions selected for participation in the Pilot Program pursuant to Rule 15A.04 in any Action before a circuit court or family court in a Pilot County.~~ This rule does not preclude future application of electronic filing and service in other types of actions. Trial Court Rule 15 governs electronic filing and service in certain Mass Litigation.

Rule 15A.02. Definitions.

(a) "Action" Any ~~civil~~ matter, issue, or proceeding filed or pending before a circuit court or family court.

(b) "Active Counties" The counties where the E-Filing System has been implemented.

(c) "Credentials" The unique account username and password assigned to each E-Filing System User.

~~(d)~~ "Document" Any pleading, motion, notice, or other document intended to be filed in an Action.

~~(e)~~ "E-File Case" Any Action ~~meeting the requirements of Rule 15A.04~~ in which Documents will be electronically filed and served.

~~(f)~~ "E-Filing ~~Pilot~~ Rules" This Trial Court Rule 15A.

(g) "E-Filing Receipt" The electronic document generated by the E-Filing System upon proper filing of a Document electronically.

~~(h)~~ "E-Filing System" The applications electronic and information technology infrastructure that supports electronic filing and service in the courts in West Virginia, as designated by the Supreme Court of Appeals.

~~(i)~~ "E-Filing System Provider" ~~The entity that provides the E-Filing System and related support systems, as designated by the Supreme Court of Appeals.~~

~~(j)~~ "Notice of Electronic Filing" The electronic document generated and emailed to Users in an Action notifying Users when a Document is electronically filed.

~~(k)~~ "Pilot Project" ~~The project to establish an e-filing pilot program in Pilot Counties directed by administrative order of the Supreme Court of Appeals.~~

(j) "Pilot Counties" The counties specified by the Supreme Court of Appeals for participation in the Pilot Project.

(kj) "User" A person who is approved by the E-Filing System Provider Supreme Court of Appeals to participate in the E-Filing System.

(l) "User Identity" The unique electronic credentials generated and assigned to a User by the E-Filing System Provider.

Rule 15A.03. Purpose.

~~These E-Filing Pilot Rules are adopted to implement the Pilot Project in the Pilot Counties. These E-Filing Pilot Rules are intended, upon completion of the Pilot Project, to serve as the basis for changes in rules applying to electronic filing and service and are therefore matters of statewide concern. The Supreme Court of Appeals hereby adopts~~ adopted these E-Filing Pilot Rules on effective May 1, 2014, to implement the Pilot Project for E-Filing in the counties designated by the Court. These Rules now serve for all active and future E-Filing counties statewide.

Rule 15A.04. Filing of Actions ~~Selection of Cases for Participation in Pilot Program.~~

Electronic filing is mandatory for all Actions in Active Counties and shall be subject to these E-Filing Rules. ~~Within the Pilot Counties, participation of Actions in the Pilot Project shall not be mandatory, except as otherwise provided within this rule. Actions before circuit courts or family courts within Pilot Counties shall be subject to these E-Filing Pilot Rules by~~

~~(a) the party initiating the Action filing the Complaint via the E-Filing System, unless the judge presiding over the Action later orders that the Action proceed pursuant to traditional filing and service methods in other rules or statutes; or~~

~~(b) the judge presiding over any Action, sua sponte or upon the motion of the party against whom the action is filed, entering an order designating the Action for E-Filing under these rules.~~

~~Circuit court judges and family court judges are encouraged to facilitate as much participation in the Pilot Project as practical in order to provide a sound basis for implementation of e-filing rules and procedures. Within the Pilot County of Marion County, participation of Actions in the Pilot Project shall be mandatory in all Actions filed on or after December 1, 2014, with two exceptions, those being Domestic Relations cases involving the Department of Health and Human Resources Bureau for Child Support Enforcement and Mental Hygiene cases. Participation in Domestic Relations cases involving the Department~~

~~of Health and Human Resources Bureau for Child Support Enforcement shall be mandatory in all such actions filed on or after February 1, 2015. Participation of Mental Hygiene cases in the Pilot Project shall be mandatory in all such actions filed on or after January 1, 2016. Within the Pilot County of Jefferson County, participation of Actions in the Pilot Project shall be mandatory in all Actions filed on or after September 1, 2015, with one exception, that being Mental Hygiene cases. Participation of Mental Hygiene cases in the Pilot Project shall be mandatory in all such actions filed on or after January 1, 2016. A party represented by counsel must e-file documents in accordance with these E-Filing Pilot Rules. Persons not represented by counsel may e-file documents, but e-filing is not required.~~

Parties not represented by an attorney must file all Actions with the circuit clerk's office, who shall electronically file the Actions upon receipt.

~~Once participation of actions in the Pilot Project is mandatory, e~~ Electronic filing in an Active County is mandatory. Courts and clerks ~~in Active Counties must~~ shall not offer to attorneys any alternative electronic document filing transmission system (including facsimile filing), except in the event of emergency. ~~Courts or clerks who cannot comply with this rule by the implementation date may petition the Supreme Court of Appeals for an extension, for good cause shown. Further mandatory participation of Actions will be added in due course.~~

Rule 15A.05. Integration with Other Rules.

The filing and service of Documents in an E-File Case in accordance with these E-Filing ~~Pilot Rules shall constitute compliance with the Rules of Civil Procedure and Rules of Practice and Procedure for Family Court governing filing and service. If a~~ compliance with the Rules of Civil Procedure and Rules of Practice and Procedure for Family Court governing filing and service. ~~If a~~ conflict exists between these E-Filing ~~Pilot Rules and any other rules or statutes, the E-Filing Pilot Rules shall govern. All filings, whether electronic or paper, shall otherwise comply with the Rules of Civil Procedure, Rules of Practice and Procedure for Family Court and the Trial Court Rules.~~

Rule 15A.06. Becoming an Authorized User; User Identities Credentials; Payment of Filing Fees.

~~The E-Filing System requires parties to complete training and become registered participants in order to file and serve, receive service, access, and use the system. Each participant shall register with the E-Filing System Provider, provide the information necessary to complete registration, and pay the fees billed by the E-Filing System Provider at rates approved by the Supreme Court of Appeals. Upon completion of the registration, the E-Filing System Provider shall issue a User Identity to the User.~~

The Supreme Court of Appeals of West Virginia requires Users to complete training before initial access to the E-filing System. Each User shall complete registration and pay all applicable fees required. Users receive credentials by email upon completion of registration.

Rule 15A.07. User Responsibility to Maintain Up-to-Date Accurate Information.

Users shall ~~notify~~ maintain accurate information within the E-Filing System; to include ~~Provider within 10 days of any change in firm name,~~ delivery address, fax number or ~~e-mail~~ email address. Participants who have set an email notification preference are solely responsible for providing an accurate, up-to-date ~~e-mail~~ email address and for ensuring that the ~~e-mail~~ email account is properly configured to receive Notices of Electronic Filing.

Rule 15A.08. User Responsibility for Security.

Each User is responsible for the confidentiality, security, and use of their User Identity Credentials. If a User becomes aware that ~~a User Identity Credentials~~ has ~~has~~ become compromised, the User shall ~~immediately notify the E-Filing System Provider and request~~ take immediate measures to change in ~~username,~~ Credential password, or profile information.

Rule 15A.09. User Responsibility for Compliance with Rules.

Use of ~~a User Identity Credentials~~ shall constitute; (a) an agreement by the User to comply with the E-Filing ~~Pilot~~ Rules and ~~that~~ any filings made under their User Identity Credentials will comply with the E-Filing Rules; ~~and~~ as well as (b) an acknowledgement that the User's email address is current, ~~working~~ functional, and capable of receiving Documents served electronically. ~~;~~ ~~and.~~

Rule 15A.10. User of User Identity Credentials by Others.

~~A User shall not authorize anyone to e-file or serve on that User's behalf, other than an employee of their 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 User Identity of another in connection with e-filing or service. A User may authorize another User to file on their behalf provided that each User utilizes their unique credentials.~~

Rule 15A.11. Signatures.

Each 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 typographical 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. Attorneys shall also include their West Virginia State Bar Identification Number or a notation that the attorney has been admitted pro hac vice. The e-filing of a Document by a lawyer, or another under the authorization of a lawyer, signed in the manner described in this Rule shall constitute a signature of that lawyer under Rule 11(a) of the Rules of Civil Procedure and Rule 11(a) of the Rules of Practice and Procedure for Family Court.

Any Order prepared, proposed by, or agreed to, shall include a paragraph providing attorney address, telephone number, bar identification number, and an agreed order shall indicate approval by all attorneys to entry of the order.

Rule 15A.12. Authenticity.

Documents filed electronically in accordance with these E-Filing ~~Pilot~~ Rules and accurate printouts of such documents shall be deemed authentic.

Rule 15A.13. Preservation of Originals.

Where original documents exist, parties not represented by an attorney and attorney the User shall retain ~~originals of such~~ original documents until five (5) years following the final disposition, including appeals, of an Action. ~~When necessary, any~~ Any court may order production of original documents. For these purposes, retention includes either paper or portable document format (pdf).

Rule 15A.14. Form of Document.

All Documents must be ~~in Portable Document Format (.pdf) and~~ produced in a format and resolution that is both legible and that is legible acceptable within the E-filing System. If a Document is unable to be ~~converted-produced to a .pdf file in a legible manner, according to these standards, or if a Document is unable to be converted to a .pdf format~~ (audio recordings, videos, large maps, etc.), then the Document must be filed conventionally with the circuit clerk. Except as described in these E-Filing ~~Pilot~~ Rules, all Documents filed electronically shall comply with other rules or statutes.

Rule 15A.15. Title and Description of Document.

All Documents filed electronically shall be appropriately titled and described by the User ~~in~~ within the E-Filing System's ~~system~~. Titles contain generic document types generated by the E-Filing System, and the User must ~~select appropriately~~ the appropriate title, e.g., Motion to Compel, Motion for Summary Judgment. Descriptions are ~~inputted~~ entered by Users into text fields, and the User must accurately describe the Document, e.g., Defendant Jane Doe's Motion for Summary Judgment on Count I of Plaintiff's Amended Complaint.

Rule 15A.16. E-Filing Receipts; Effect of E-Filing; Date and Time of E-Filing.

Once a Document is properly filed, the E-Filing System shall generate an E-Filing Receipt for that Document. A filing is not completed ~~for the purposes of these E-filing Pilot Rules~~ until the User making the filing has received the E-Filing Receipt. The Document shall be deemed filed with the circuit clerk in the Action on the date and time noted on the E-Filing Receipt. It is the responsibility of the User to check their ~~online inbox~~ registered email to view e-filed documents. Courtesy ~~e-mail~~ email notification of a filing shall not constitute service.

Rule 15A.17. _Complaint and Summons.

Complaints or other initiating Documents filed electronically shall be filed with the Action number blank. The E-filing System ~~will~~ automatically assigns an appropriate Action number upon completion of electronically filing the Complaint or other initiating Documents. Where required, the E-Filing System will automatically generate Civil Case Information Sheets or other Case Information Sheets based upon information provided by the User at the time of filing. in an Action shall be completed and electronically filed by the User filing the initiating Document. Any Document initiating an Action in the E-Filing System will automatically generate a Summons after the User has filed the action; and will include the type of service the User has requested. by electronic filing shall include the appropriate summons or other process for issuance by the circuit clerk. The circuit clerk shall forthwith issue the original summons as directed by the User initiating the Action upon payment for the action (including service fees) or approved fee waiver.

Rule 15A.18. _Electronic Service.

Except where otherwise provided, every e-filed document shall be e-served. The E-Filing System shall generate a Notice of Electronic Filing and email it to the email address of record of the filing User and any ~~parties~~ attorney Users who have appeared in the Action who are also Users of the E-Filing System. The Notice of Electronic Filing will include the Document filed as an attachment or a link to download the Document. Upon receipt of the Notice of Electronic Filing, service is complete and effective to those parties who are Users of the E-Filing System as of the date and time listed on the Notice of Electronic Filing and shall be considered service under Rule 5 of the Rules of Civil Procedure and Rule 10 of the Rules of Practice and Procedure for Family Court. Electronic service shall be treated the same as service by mail for purposes of the Rules of Civil Procedure and the Rules of Practice and Procedure for Family Court. It is the responsibility of the User to check their ~~online inbox~~ registered email to view e-filed and served documents. Courtesy copies not generated by the E-Filing System email notification of a filing shall not constitute service.

Rule 15A.19. _Certificates of Service.

The Notice of Electronic Filing does not constitute a valid Certificate of Service under the E-Filing Rules when the Rules of Civil Procedure or Rules of Practice and Procedure for Family Court require specific service, e.g. service by Sheriff, Secretary of State, or certified mail under the E-Filing Pilot Rules or the Rules of Civil Procedure or Rules of Practice and Procedure for Family Court. Where required ~~by the Rules of Civil Procedure or Rules of Practice and Procedure for Family Court,~~ a User making a filing on the E-Filing System must complete a Certificate of Service that complies with the Rules of Civil Procedure and Rules of Practice and Procedure for Family Court and include it with any Document filed electronically, noting the manner in which each party was served.

Rule 15A.20. Exceptions to Electronic Service.

Documents required to be served in conformity with Rule 4, Rule 4.1, or Rule 45 of the Rules of Civil Procedure and Rule 9(b) of the Rules of Practice and Procedure for Family Court or where personal service is otherwise required by rule or statute, including without limitation, complaint, new party amended complaint, or third-party complaint, summonses and subpoenas, may not be served pursuant to these E-Filing ~~Pilot~~ Rules and must instead be served in conformity with those rules or statutes.

Rule 15A.21. Service to Parties who are not Users of the E-Filing System.

A User making a filing on the E-Filing System must determine if any parties in the Action are not Users and therefore not capable of receiving electronic service. If any such non-User has appeared as a party in the Action, the User making an e-filing must provide service to the non-User using traditional service methods in accordance with the Rules of Civil Procedure and Rules of Practice and Procedure for Family Courts.

Rule 15A.22. Unavailability of E-Filing System.

If a party misses a filing deadline because of an inability to electronically file Documents based upon the unavailability of the E-Filing System, the party may submit the untimely Document, accompanied by a sworn declaration stating the reason for missing the deadline no later than 12:00 p.m. of the first day on which the circuit clerk's office is open for business following the original filing deadline.

Rule 15A.23. Filing of Sealed Documents.

A motion to seal documents shall be e-filed and served. ~~However, a~~ Any documents that are ~~the subject to~~ of a motion to seal shall be delivered to the Clerk who shall electronically file said documents under seal and return the originals. ~~filed with the court enclosed in sealed envelopes to be opened as directed by the court pursuant to Rule 26(e)(8) of the Rules of Civil Procedure or Rule 6 of the Rules of Practice and Procedure for Family Court, and a copy of the documents that are the subject of the motion to seal shall be provided to the judge for review.~~

Rule 15A.24. Private Information.

Unless expressly required by law, Users shall not e-file any ~~Document which is~~ publicly available Document which contains any person's complete social security number, employer taxpayer identification, drivers' license, state identification, passport, checking account, savings account, credit card, or debit card number, or personal identification (PIN) code or passwords. Redactions, where necessary, shall ensure complete privacy of the information. It shall be the sole responsibility of the User filing a Document to comply with this Rule. Neither the court nor the circuit clerk shall be responsible for reviewing Documents for compliance with this Rule.

Rule 15A.25. _Entry of Order and Judgements; Notice thereof.

Orders issued by the court shall bear a typographic signature and an official e-filing court stamp, and shall be e-filed and served. Non-Users shall be served in accordance with the Rules of Civil Procedure. The date of the official e-filing court stamp shall constitute the date of entry of the order. E-filed orders maintained as part of the electronic register of actions shall satisfy the requirements of Rule 77(d) of the Rules of Civil Procedure and Rule 5 of the Rules of Practice and Procedure for Family Court. An electronic register of actions, with associated documents and filing receipts, shall be maintained as part of the E-Filing System and shall constitute the electronic docket and satisfy the requirements of Rule 79 of the Rules of Civil Procedure and Rule 5 of the Rules of Practice and Procedure for Family Court. Documents that are e-filed constitute the official court record, and e-filed documents have the same force and effect as documents filed by traditional means and are deemed to be in compliance with Trial Court Rule 10.01.

Rule 15A.26. _Public Access to Court Records.

The circuit clerk ~~in the Pilot County~~ where an E-File Case is pending shall make available to the general public access to the electronic docket, pleadings and other documents that are not sealed or otherwise confidential. Paper Copies made from the electronic records shall be printed by the circuit clerk's office, and standard copying fees shall be charged.

Rules of Practice and Procedure for Family Courts

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Rule 6. Court files; confidentiality; access; proceedings.

(a) General provisions. — All orders and indices are public records. All pleadings, recordings, exhibits, transcripts, or other documents contained in a court file are confidential, and shall not be available for public inspection; but unless the file is sealed pursuant to this rule or access is otherwise prohibited by order, any document in the file shall be available for inspection and copying by the parties, attorneys of record, guardians ad litem, designees authorized by a party in writing, and any person with standing to modify or enforce a support order. A family court judge or circuit judge may open and inspect the entire contents of the court file in any case pending before the judge's court. When sensitive information has been disclosed in a hearing, pleading, or document filing, the court may order such information sealed in the court file. Sealed court files shall be opened only by order.

Clerk's Comment: Current limitations with electronic filing prevent orders in family court cases from being available electronically. Family court orders and indices are available for public inspection at the circuit clerk's office.

* * *

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court

