

PROCEDURES IMPLEMENTING ELECTRONIC CASE FILING [ECF] IN COMPLEX BUSINESS LITIGATION DIVISION CASES

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SECTION 1 - DEFINITIONS

1.1 Official Court Record

The electronic file maintained on the Clerk's server and any physical item or document permitted to be filed in paper format. When a document filed in paper format is scanned and uploaded to the Clerk's server, the electronic file shall constitute the official record. Except as otherwise provided by these procedures, a document in paper format, disk, or CD mailed or delivered to the Clerk to be filed electronically will be destroyed fifteen [15] days after filing unless the filer makes other arrangements satisfactory to the Clerk.

1.2 User Name and Password

Upon receipt of the completed Electronic Filing Registration Form, the Clerk will verify that the attorney is admitted to practice and in good standing with the Florida Bar. The attorney will be able to designate their user name and their password. Email notification will be sent to the attorney at their identified email account advising them that their account has been approved or declined. The selected user name and password enable the attorney to retrieve and file documents electronically and to receive the Notice of Electronic Filing [NEF]. The person to whom the user name and password belong is responsible for any documents filed using that user name and password.

The Electronic Filing Registration Form is available on the Clerk's web site at www.myorangeclerk.com on the ECF welcome screen, in the Civil Division Clerk's Office in the Orange County Courthouse, and is attached to these Procedures as Exhibit 1.

1.3 Electronic Signature

The conformed signature on the document [*i.e.* s/Attorney Name] along with the user name and the password.

s/Attorney Name
Attorney Name
Bar Number: 1234567
Attorney for [Plaintiff/Defendant] XYZ Corporation
SNK Law Firm
123 North Main Street
Orlando, FL 32801
Telephone: 407-835-4339
Email: jdoe@snklawfirm.com

1.4 Electronic

Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

1.5 Electronic Agent

A computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

1.6 Electronic Record

The record created, generated, sent, communicated, received, or stored by electronic means. All electronic records must be capable of being printed as paper, or transferred to archival medial, without loss of content or material alteration of appearance.

1.7 Electronic Security Procedure

A procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record.

1.8 Record

Information inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

1.9 Document

A related and paginated grouping of information items contained on a record.

1.10 Information

Data, text, images, sounds or codes, manipulated manually or by computer hardware and software.

1.11 Information Processing System

A system for creating, generating, sending, receiving, storing, displaying, or processing information on paper or in an electronic medium.

1.12 Electronic Case Files [ECF]

Electronic files on the Clerk's server.

1.13 Portable Document Format [PDF]

Portable document format is an electronic format that can be rendered with high fidelity to the original.

1.14 Notice of Electronic Filing [NEF]

The official notice to case participants of electronic submissions in a case. This notice is automatically generated by the Electronic Case Filing [ECF] system when the submission is received by the Clerk's server. The NEF includes a link to the Log In Screen of ECF which, after entering their user name and password, will allow the recipient access to the newly filed document.

A NEF will NOT be generated when opening a new case. Notification of the new case filing will be available under the Notifications tab on the Tasks List or under the Cases menu item.

SECTION 2 - CASE IDENTIFICATION, AUTHORIZATION CODES AND ELECTRONIC SIGNATURES

2.1 Case Identification Numbers

On assignment of any matter to the Complex Business Litigation Division, the matter shall retain the civil action number assigned. The parties shall include the designation “Complex Business Litigation Division” immediately below the case number on any pleadings filed in the matter.

2.2 Electronic Signatures

The user name and a password along with an electronic signature on the document (*see* Section 1.3 above) will authorize the electronic filing of information by such person in the Complex Business Litigation Division. Electronic signatures are not case specific. The utilization of an electronic signature in connection with any electronic filing in the Complex Business Litigation Division shall constitute (a) the agreement of the person to whom the user name and password belongs that such person shall use the user name and password in compliance with the procedures of the Complex Business Litigation Division for Electronic filing and all other procedures applicable to the Complex Business Litigation Division and (b) an appearance in the matter in which the filing is made of the person to whom the user name and password belongs.

2.3 Recipients of Electronic Identification

Each person to whom a user name and password has been approved (the “Recipient”) shall be responsible for the security and use of such identification. Any

electronic filing made utilizing that user name and password shall be deemed to be made with the authorization of the Recipient, unless and until the Recipient demonstrates to the satisfaction of the Court by clear and convincing evidence that the contrary is demonstrated.

SECTION 3 - SIGNATURES AND AUTHENTICITY

3.1 Signatures

Information filed with the Clerk electronically shall be deemed to be signed by a person (the "Signatory") with a conformed signature (*i.e.* s/Attorney Name) on the paper, provided that such paper is filed by the Signatory using their user name and password, and that the paper contains the name, postal address, email address and State Bar number (if applicable) of the Signatory in the location at which a written signature would normally appear if filed in paper form (*see* Section 1.3 above). Information filed electronically need not be filed in an optically scanned format displaying an actual signature of the Signatory.

3.2 Stipulations or Other Information Involving Multiple Signatures

The following procedure applies when filing a stipulation or other document that requires the signatures of two or more persons representing different parties.

The filing attorney shall initially confirm that the content of the document is acceptable to all attorneys required to sign the document and shall obtain the signatures of all attorneys on the document. For purposes of this procedure, physical, facsimile, or electronic signatures (see Section 1.3 above) are permitted. The filing attorney shall then scan the signed document to a PDF format for filing.

If the document requires the signature of a person who is neither an attorney of record nor an authorized *pro se* filer, the filer shall scan the document to a PDF format

with original signatures and then file it electronically. The filer shall maintain the original document through the pendency of the case to include an appeal. This procedure includes any document notarized or signed under penalty of perjury.

3.3 Original Document

Information (filed electronically in accordance with these Procedures) as it resides in the Clerk's computer system, and true and accurate printouts of such information, shall be considered authentic. The Court may require the party to produce the original of a document, document attachment or exhibit that has been filed electronically. A screen display or paper printout of an electronic filing is equivalent to the electronic original for purposes of the Best Evidence Rule, if the display or printout is at a degree of optical resolution equal to the resolution at which the document is stored in the records of the Clerk.

SECTION 4 - ELECTRONIC FILING AND SERVICE

4.1 Attributes of Acceptable Electronic Filing

In any case assigned to the Complex Business Litigation Division, any information filed with the Clerk shall be filed electronically using its Electronic Case Filing [ECF] System. Electronic filing shall be conducted only through authorized use of a valid electronic signature (*see* Section 1.3 above) in accordance with these Procedures. All electronic filings shall be submitted in portable document format [PDF] with the exception of Proposed Orders (*see* Section 4.15). The manipulation of any file or the use of any technique with the purpose of rendering more difficult than normal the humanly viewable display of any file is strictly prohibited.

4.2 Certification of Electronically Filed Document

For the purposes of Complex Business Litigation Division Procedures, any electronically filed information shall be deemed signed by one or more counsel of record or unrepresented parties (each a “Signatory”) pursuant to Section 1.3 of these Procedures.

4.3 Certificate of Service

A certificate of service must be included with each document filed electronically indicating how service was accomplished on each party. The filer must serve in accordance with the Rules a paper copy of any electronically filed document on a party not registered to file electronically. Sample language for a certificate of service is attached to these procedures as Form A. For case participants filing a paper document, sample language for a certificate of service is attached to these procedures as Form A.

4.4 Notice of Electronic Filing [NEF]

Electronic transmission of a paper to the Clerk’s server in accordance with these Procedures, together with receipt of a Notice of Electronic Filing [NEF], shall constitute filing of the paper for purposes of timing under the Uniform Administrative Policies and Procedures of the Civil Division of the Circuit Court Orange County Florida, and the Procedures of the Complex Business Litigation Division, and shall constitute entry of that paper on the Clerk’s Docket. Persons filing electronically shall immediately thereafter file the identical document in paper form with an original signature of the attorney, party, or other person if a signature is otherwise required by the Rules of Judicial Administration until further notice (*see* Rule 2.090(c)(2)(A) Florida Rules of Judicial Administration).

4.5 Electronic Service

Service of pleadings, other than the initial complaint or petition or where otherwise required by law or Court order, shall be effected on all parties who have registered and been approved to electronically file documents by the Notice of Electronic Filing [NEF].

By signing the Electronic Filing Registration Form, **the filer consents to receive notice electronically**, and waives the right to receive notice by personal service or first class mail of any document filed electronically, except with regard to service of a complaint and summons. This registration form does not constitute consent to electronic service of a document that is not filed with the Court (such as a discovery request), but consent to electronic service of such paper may be given separately, in writing.

Service by email shall be deemed satisfied by transmitting the information by email in a format approved by the Court or agreed upon by the parties. Each person participating in ECF shall be responsible for the timely monitoring of receipt of email messages, the proper operation of the person's email service and for keeping their email address up-to-date and current.

4.6 Date and Time of Electronic Service

Service of an electronically transmitted document shall be deemed to occur when the Notice of Electronic Filing [NEF] is delivered to the recipients email provider. Where service of a document is made by electronic means prior to 5:00 P.M. EST, the time to respond shall be computed in the same manner as for documents that are served by

hand delivery¹, provided that the Court may, upon motion or *sua sponte*, enlarge or shorten the time as it may determine is appropriate in specific instances. If the document is filed after 5:00 P.M. EST or during a weekend or a Court holiday, the response time is calculated as the number of days provided by Rule plus two (2) days.

4.7 Date and Time of Filing

When information has been filed electronically, the official information of record is the electronic recording of the information a stored on the Clerk's file server. The filing date and time is deemed to be the date and time recorded on the Clerk's file server as stated in the Notice of Electronic Filing [NEF].

4.8 Submission of Filing

An electronic filing may be submitted to the Clerk at any time of the day or night, twenty four (24) hours a day seven (7) days a week. For purposes of determining timeliness, a filing shall be deemed filed on the date it is transmitted electronically if filed prior to midnight Eastern Time.

4.9 Form of Filing

All motions shall be filed one motion per submission and accompanied by a memorandum of law except as provided in Complex Business Litigation Division Procedures for the Ninth Judicial Circuit Court, In and For Orange County, Florida Section 5.10. Any memorandum of law shall not exceed 25 pages in length. Motions that are inextricably intertwined and either substantively related or in the alternative may be filed together.

¹ The standard recommends that no additional time be allowed for response to a document served electronically. Court rules typically allow three (3) additional days to respond to a document served by mail, recognizing that the postal service ordinarily requires that period of time for delivery. However, electronic service is more analogous to personal delivery than to service by mail. It is instantaneous. (See National Center for State Courts Standards for Electronic Filing Processes Standard 1.2A)

4.10 Size of Filing

Submissions shall be limited to four megabytes (4 MB) in size. No combination of PDF files in one transmission may accumulate to more than 16 megabytes (16 MB) in size.

4.11 Events Subsequent to Filing

In the event that information is timely filed, electronic filing shall govern the creation or performance of any further right, duty, act or event required or permitted under Florida law or applicable rule, unless the Court determines otherwise.

4.12 Information Not Filed with the Court

The parties shall refer to the Complex Business Litigation Division Procedures for the Ninth Judicial Circuit Court, In and For Orange County, Florida Section 7 as it pertains to information not filed with the Clerk (*e.g.*, discovery).

4.13 Informal Communications

Informal *ex parte* communication with the Court is prohibited. All communication with the Court in Complex Business Litigation Division cases shall be filed electronically.

4.14 Notice and Entry of Orders, Judgments and Other Matters

The Court shall file electronically all orders, decrees, judgments and proceedings of the Court, and all other docket matters, which shall constitute entry of the order, decree, judgment or proceeding on the Clerk's Docket, pursuant to applicable law and procedure. Immediately upon the entry of such matter on the Docket, the Clerk shall transmit to each email address of record a Notice of Electronic Filing [NEF] which includes a link to the Clerk's efilng system where the recipient may sign in and access the filed document. Transmission of such Notice of Electronic Filing [NEF] shall constitute service pursuant to Rule 1.080(h) of the Florida Rules of Civil Procedure.

4.15 Good Faith Efforts with Respect to Electronic Communications

The parties shall make all reasonable endeavors in good faith to resolve technical incompatibilities or other obstacles to electronic communications, provided that no purchase of hardware or software shall be required and no extensive “manual” reformatting of document shall be expected. Parties shall, for example, attempt to identify and correct problems that render content of communications inaccessible and shall save or transmit documents in electronic formats that are mutually available to all parties receiving them. It shall not be consistent with the rules for a party to object to use of electronic communications and fail to cooperate in resolving a problem upon which the objection is based. In the event that a party asserts that it did not receive an email communication or could not fully access its contents, the sending party shall promptly forward the communication to the party by other means. No party shall encrypt the contents of a message or change the electronic format in a manner which prevents a party from having access to all information made available to the Clerk.

4.16 Proposed Orders

Proposed Orders shall be submitted electronically through ECF. The proposed order must be submitted in Word [.doc] or WordPerfect [.wpd] format and reference the specific motion to which it applies. ECF will then electronically transmit the proposed order to the presiding judge.

SECTION 5 - TECHNICAL FAILURES

5.1 Determination of Failure and Effect on Due Date

The Clerk shall deem the Electronic Case Filing [ECF] System to be subject to a technical failure on a given day if the Clerk’s server is unable to receive and accept filings in accordance with these Rules, either continuously or intermittently over the

course of any period of time that, after 12:00 noon on such day, amounts in the aggregate to more than one hour. In the event of a technical failure, filings due that day that were not filed due solely to such technical failures shall become due the next business day. Such delayed filings shall be rejected unless accompanied by a declaration or affidavit attesting to the filing person's failed attempt to file electronically at least two times after 12:00 P.M. separated by at least one hour on each day due to such technical failure.

5.2 Procedure Where Notice of Electronic Filing [NEF] Not Received

If a Notice of Electronic Filing [NEF] is not received from the Clerk in response to a transmission of information for filing, other than case initiation documents, the information will not be deemed filed. The person making the filing must attempt to refile the information electronically until such a Notice is received. Each person using the Electronic Case Filing System is solely responsible for the proper operation of all equipment and facilities used to transmit an electronic filing.

5.3 Retransmission of Electronic Filing

If, within 24 hours after filing information electronically, any party discovers that the version of the information available for viewing through the Electronic Case Filing System is incomplete, garbled or otherwise does not conform to the information as transmitted when filed, such party shall notify the Clerk immediately and retransmit the filing if necessary.

**SECTION 6 - PROTECTIVE ORDERS FOR INFORMATION
DEEMED CONFIDENTIAL OR PROPRIETARY**

6.1 Protective Order Respecting Proprietary Rights

In connection with the electronic filing of any information in the Complex Business Litigation Division, any person may apply by motion for an order prohibiting the electronic filing in the matter of certain specifically identified information on the grounds that such information is subject to a proprietary right or a right of confidentiality and that electronic filing is likely to result in substantial prejudice to those rights. A motion for such an order shall be filed not less than three (3) business days before the information to which the motion pertains is due to be filed with the Clerk. Nothing in this paragraph shall be construed to change any requirement or standard that otherwise would be applicable for issuance of a protective order per se or in connection with information contained in a paper record.

6.2 Sealed Documents

If there is a need to file documents under seal, the filer must submit to the Court prior to filing the document a Motion to Seal and explicitly specify the document they are requesting to be sealed. Upon ruling by the Court, if the motion to seal is granted and the filer is authorized to file the document under seal, the filer will file the above-described document under seal by selecting "Sealed" from the qualifier drop down list. This will seal the document and there will be no docket text that will appear on the docket sheet that will define this document other than the words "Sealed Document." The Notice of Electronic Filing [NEF] will only show the words "Sealed Document" to describe the filing. There will be no link to the document in the Notice of Electronic Filing [NEF] and the document will be unavailable for viewing in ECF.

SECTION 7 - SECURITY

7.1 Confidentiality of Authorization Number and Electronic Signature

Each person shall maintain as confidential, except as expressly provided in these rules, his or her user name and password. Upon learning about information constituting reasonable evidence of the likely compromise of the confidentiality of the password, an individual shall immediately change their password.

7.2 Use of User Name and Password by Additional Person

A person to whom a user name and password has been authorized may allow another person to file a paper using their user name and password; however, the authorized person shall retain full responsibility for any paper so filed or for other use of such number or signature.

7.3 Compromise of Security

Any attempt or effort to avoid, compromise or alter any security element of the Electronic Case Filing System is strictly prohibited. Any person receiving information constituting reasonable evidence of a likely occurrence of such an attempt or effort shall immediately notify and cooperate with the Clerk concerning such information.

ELECTRONIC FILING REGISTRATION FORM

REQUEST A USER ACCOUNT

*Required Fields

User Name: * _____

Password: * _____

Confirm Password: * _____

First Name: * _____

Middle Name: * _____

Last Name: * _____

Bar Number: * _____ State: * _____

Phone: * _____ FAX: * _____

eMail Address: * _____

Use My Law Firm Address

Use My Address

Firm Name: * _____

Address Line 1: * _____

Address Line 2: * _____

City: * _____ State: * _____

Postal Zip Code: * _____ County * _____

Signature * _____

IN THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY FLORIDA

SAMPLE FORMAT - CERTIFICATES OF SERVICE

Sample A - ECF Service

I hereby certify that on _____ (date) _____, I electronically filed the foregoing with the Clerk of the Courts by using the ECF system which will send a notice of electronic filing to the following: _____.
I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-ECF participants: _____.

s/Attorney Name _____
Attorney Name
Attorney Bar Number
Counsel for Plaintiff/Defendant
Law Firm Name
Law Firm Address
Phone Number
Attorney Email Address

Sample B - Paper Filing with the Clerk of Courts

I hereby certify that on _____ (date) _____, I presented the foregoing to the Clerk of the Courts for filing and uploading to the ECF system which will send a notice of electronic filing to the following: _____.
I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-ECF participants: _____.

s/Attorney Name _____
Attorney Name
Attorney Bar Number
Counsel for Plaintiff/Defendant
Law Firm Name
Law Firm Address
Phone Number
Attorney Email Address