

**PROPOSED ADMINISTRATIVE RULE
FOR THE GENERAL DIVISION OF THE MONTGOMERY COUNTY
COURT OF COMMON PLEAS**

COMMENTS DUE BY SEPTEMBER 24, 2008

COMMENTS REQUESTED: The proposed Administrative Rule for Electronic Filing is being published for a forty-five day comment period beginning Monday, August 11, 2008, through Wednesday, September 24, 2008.

Comments on the proposed Administrative Rule can be submitted via email to rulecom@montcourt.org or in writing to:

James W. Drubert, Court Administrator
Montgomery County Common Pleas Court, General Division
41 N. Perry Street
P.O. Box 972
Dayton, OH 45422

**COMMENTS MUST BE RECEIVED BY 4:30 P.M. ON
WEDNESDAY, SEPTEMBER 24, 2008**

*To view the Administrative Rule, visit www.montcourt.org under
“Court News & Announcements.”*

*Additional information and discussion can be found at the General Division’s
E-Filing blog at <http://www.montcourt.org:8080/wordpress/>*

PROPOSED ADMINISTRATIVE ORDER

**IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
GENERAL DIVISION**

**IN RE: ELECTRONIC FILING ADMINISTRATIVE ORDER
OF COURT DOCUMENTS**

Pursuant to Ohio Sup.R.27, Ohio Civ. R.5 (E), Ohio Civ. R. 11, Ohio Crim R. 12(B), Ohio Supreme Court Advisory Committee on Technology and the Courts’ proposed standards for electronic filing, and as approved (provisionally) by the Ohio Supreme Committee on Technology and the Courts on October 15, 2006, all filings submitted for case types designated by the General Division of the Montgomery County Common Pleas Court as eFile case types for the Court’s Electronic Filing Pilot Project shall be filed electronically through the court’s authorized electronic filing system beginning on or after November 1, 2008, and shall be governed by this administrative order. With the completion of the successful electronic filing project, mandatory electronic filing will continue with all civil and criminal cases under this administrative order or other orders and court rules issued to implement electronic filing court-wide. These administrative orders and/or court rules shall supplement and complement the Ohio Rules of Civil Procedure, the Ohio Rules of Criminal Procedure, the Ohio Revised Code and any other applicable authority.

Supplemental administrative orders shall be issued regarding the implementation of this order.

IT IS THEREFORE ORDERED:

30

31 **I. APPLICATION OF ADMINSTRATIVE ORDER**

32 Commencing on or after November 1, 2008, the Montgomery County Common Pleas Court,
33 General Division and the Montgomery County Clerk of Courts shall establish and maintain an
34 electronic filing system. The Montgomery County Clerk of Courts shall make the system
35 available to those parties involved with cases that have been designated for mandatory e-filing.
36 Where documents are not filed in an electronic format, the Clerk of the Court shall scan or
37 otherwise convert these paper documents to an electronic format.

38

39 **II. DEFINITION OF TERMS**

40 The following terms in this Order shall be defined as follows:

41 **A. Clerk Review:** A review of electronically filed documents by the Clerk of Courts in
42 accordance with court rules, policies, procedures, and practice. Court clerks may retrieve
43 the data and documents electronically submitted to ensure compliance with court rules,
44 policies, procedures and practices before creating a docket entry or before docketing the
45 case.

46

47 **B. CMS:** Case Management System. A court case management system manages the
48 receipt, processing, storage and retrieval of data associated with a case and performs
49 actions on the data.

50

51 **C. Court Electronic Record:** This is any document that a court will receive in
52 electronic form, record in its case management system and store in its document

53 management system. This will include notices and orders created by the court as well as
54 pleadings, other documents and attachments created by practitioners or parties. It will not
55 include physical exhibits brought into the courtroom for the court's or jury's edification,
56 which are not susceptible of capture in electronic form.

57

58 **D. Court Initiated Filings:** These are official court documents entered into the docket
59 or register of actions, such as notices or orders. The term "court initiated filings" is a
60 simplification to indicate that documents will be submitted as part of the electronic court
61 record, but could be submitted using exactly the same process as external filings if the
62 court so desires.

63

64 **E. Document:** A filing made with the Court or by the Court in either electronic format
65 or paper form becoming the court's official record.

66

67 **F. DMS:** Document Management System. A DMS manages the receipt, indexing,
68 storage and retrieval of electronic and non-electronic documents associated with a case.

69

70 **G. Electronic Filing (E-Filing):** The electronic transmission, acceptance, and processing
71 of a filing. An eFile consists of data, a document, and/or an image. This definition of
72 electronic filing does not apply to facsimile or email.

73

74 **H. Electronic Service (E-Service):** The electronic transmission of an original document
75 to all other designated recipients via the electronic filing system. Upon the completion of

76 any transmission to the electronic filing system, a certified receipt shall be issued to the
77 sender acknowledging receipt by the electronic filing system.

78

79 **I. Electronic Image (E-Image):** An electronic file of a document that has been scanned
80 or converted to a graphical or image format.

81

82 **J. Original Document:** The electronic document received by the court from the filer.

83

84 **III. ELECTRONIC FILING OF PLEADINGS AND OTHER DOCUMENTS**

85 On and after November 1, 2008, all pleadings, motions, briefs, memoranda of law, deposition
86 transcripts, transcripts of proceedings, orders or other documents submitted in designated eFile
87 case types shall be filed electronically through the Court's authorized electronic filing system.

88 For those cases pending prior to the commencement date of electronic filing, all documents shall
89 be electronically filed on the date specified when the case type is designated as an eFiled case
90 type. The Clerk shall not accept or file any document in paper form in mandatory eFile cases
91 from litigants represented by counsel.

92

93 **IV. ELECTRONIC FILING AND SERVICE OF ORDERS AND OTHER PAPERS**

94 For designated eFile case types, the Court shall issue, file, and serve notices, orders, and other
95 documents electronically, subject to the provisions of this Order and court rules.

96

97 **V. DESIGNATION OF ELECTRONIC FILING CASES**

98 Upon an order designating any case type as an eFile case, parties to an assigned eFile case, who
99 are represented by counsel, shall promptly take steps to allow their counsel to file, serve, receive,
100 review, and retrieve copies of the pleadings, orders and other documents filed in the case(s)
101 electronically. By definition, parties filing electronically or receiving electronic service of any
102 documents filed must become participants in the Court's electronic filing system.

103

104 **A.** For designated eFile case types, the Court shall not accept or file any pleadings or
105 instrument in paper form. Parties shall electronically file a document either:

106

107 1. By registering to use the Court's authorized electronic filing system;

108

109 2. In person, by electronically filing through the Public Access Terminal; Parties
110 filing in this manner shall be responsible for furnishing the pleading or instrument
111 in a format compatible with the Clerk's office-system to be uploaded in person.

112

113 **VI. CONFIDENTIAL AND UNIQUE ELECTRONIC IDENTIFIER**

114 The Court's authorized electronic filing system shall assign to the party's designated
115 representative(s) a confidential and unique electronic identifier that must be used to file, serve,
116 receive, review, and retrieve electronically filed pleadings, orders, and other documents filed in
117 the assigned case. Each person to whom a unique identifier has been approved shall be
118 responsible for the security and use of such identification. All documents filed electronically will
119 be deemed to be made with the authorization of the party who is assigned to the specific unique

120 electronic identifier, unless the party demonstrates to the satisfaction of the Court by clear and
121 convincing evidence that the contrary is demonstrated.

122

123 **VII. PRO SE LITIGANTS**

124 Pro se litigants shall be accommodated in one of the following ways.

125

126 **A.** All filings by parties appearing pro se may be filed and served conventionally in
127 paper form, unless the party chooses to file and serve electronically, in which case the
128 party may do so through the Court's authorized electronic filing system.

129

130 **B.** The Clerk of Courts shall provide a secured Public Access Terminal from which pro
131 se or other litigants will be permitted to upload electronic documents to the Clerk of
132 Courts for electronic filing. Pro se litigants filing in this manner shall be responsible for
133 furnishing the pleading or document in a format compatible with the Clerk's office
134 system to be uploaded in person.

135

136 **C.** Pro se litigants shall be allowed to present a paper copy of a document to the Clerk of
137 Courts. The Clerk of Courts shall scan the document and return the paper copy to the pro
138 se litigant.

139

140 **VIII. OFFICIAL COURT RECORD**

141 For case types designated for electronic filing, parties shall file all pleadings, motions, briefs,
142 memoranda of law, deposition transcripts, transcripts of proceedings, orders or other documents

143 electronically through the Court's authorized electronic filing system. For documents that have
144 been electronically filed or documents filed in paper format that have been scanned and uploaded
145 to the authorized electronic filing system, the electronic version constitutes the official court
146 record. Electronically filed papers have the same force and effect as those filed by traditional
147 means.

148

149 **IX. FORM OF DOCUMENTS ELECTRONICALLY FILED**

150 **A. Format of Electronically Filed Documents.** All electronically filed pleadings shall,
151 to the extent practicable, be formatted in accordance with the applicable rules governing
152 formatting of paper pleadings, and in any other format as the Court may require from
153 time to time. A filed document shall not contain links to other documents or references in
154 the Court's case management system, unless they are incorporated into the filed
155 document. External links are prohibited.

156

157 **B. Portable Document Format.** All electronically filed documents, pleadings, and
158 papers shall be filed with the Clerk in Portable Document Format (PDF) with the
159 exception of proposed orders. Proposed orders must be submitted in Word [.doc] or
160 WordPerfect [.wpd] and reference the specific motion to which it applies. The electronic
161 filing system will electronically transmit the proposed order to the assigned judge or
162 magistrate.

163

164 **C. Size of Filing.** Submissions shall be limited to four megabytes (4MB) in size. No
165 combination of PDF files in one transmission may accumulate to more than 16
166 megabytes (16MB) in size.

167

168 **D. Signatures.**

169 **1. Attorney/Filing Party Signature.** Documents filed electronically with the
170 Clerk that require an attorney's or filing party's signature shall be signed with a
171 conformed signature of "/s/ (name)." The correct format for an attorney signature
172 it as follows:

173 /s/Attorney Name

174 Attorney Name

175 Bar Number 1234567

176 Attorney for (Plaintiff/Defendant) XYZ Corporation

177 ABC Law Firm

178 Address

179 Telephone

180 Email

181 Fax

182 The conformed signature on an electronically filed document is deemed to
183 constitute a signature on the document for purposes of signature requirements
184 imposed by the Ohio Rules of Superintendence, Rules of Civil Procedure, Rules
185 of Criminal Procedure and/or any other law.

186 **2. Multiple Signatures.** When a stipulation or other document requires two or
187 more signatures:

188 **a)** The filing party or attorney shall confirm that the content of the
189 document is acceptable to all persons required to sign the document. The
190 filer will indicate the agreement of other counsel or parties at the
191 appropriate place in the document, usually on the signature line.

192
193 **b)** The filing party or attorney then shall file the document electronically,
194 indicating the signatories, e.g., /s/ Jane Doe, /s/ John Smith, etc.

195
196 **3. Third-Party Signatures:** Documents containing signatures or third-parties
197 (i.e., unopposed motions, affidavits, stipulations, etc.) shall be electronically filed
198 only as a scanned image.

199
200 **4. Judge/Judicial Officer Signature.** Electronic documents may be signed by a
201 judge or judicial officer via a digitized image of his or her signature combined
202 with a digital signature. All orders, decrees, judgments and other documents
203 signed in this manner shall have the same force and effect as if the judge had
204 affixed his or her signature to a paper copy of the order and it had been entered on
205 the docket in a conventional manner.

206

207 **X. TIME FOR FILING AND EFFECT OF USE OF EFILE**

208 **A.** Any document filed electronically shall be considered as filed with the Court when
209 the transmission to the Court’s authorized electronic filing system is complete
210 (“authorized date and time”). An electronic filing may be submitted to the Clerk twenty-
211 four (24) hours a day, seven (7) days a week. Any document filed after 11:59 p.m.
212 Eastern Standard Time or Eastern Daylight Time shall be deemed to have been filed on
213 the next court day. The Court’s authorized electronic filing system is hereby appointed
214 the agent of the Montgomery County Clerk of Courts for the purpose of electronic filing,
215 receipt, service and retrieval of electronic documents.

216

217 **B.** Upon receipt of a filing, the Court’s authorized electronic filing system shall issue a
218 confirmation that the filing has been received. The confirmation shall include the date
219 and time of receipt and serve as proof of filing. A filer will receive subsequent
220 notification from the Clerk of Courts that the filing has been accepted or rejected by the
221 Clerk’s office for docketing and filing into the General Division’s case management
222 system. Upon acceptance by the Clerk, an electronic file stamp will be affixed to the
223 electronic filed document. This stamp will include the date and time that the filer
224 transmitted the document to the Court’s authorized electronic filing system as well as the
225 unique confirmation number of the filing. In the event the Clerk rejects a submitted
226 document following review, the document shall not become part of the official court
227 record and the filer may be required to re-file the document to meet necessary filing
228 requirements.

229

230 **XI. SYSTEM OR USER FILING ERRORS**

231 If the electronic filing is not filed with the Court because of an error in the transmission of the
232 document to the Court's authorized electronic filing system, the Court may upon satisfactory
233 proof enter an order permitting the document to be filed nunc pro tunc to the date it was sent
234 electronically.

235

236 **XII. ELECTRONIC SERVICE OF FILINGS AND OTHER DOCUMENTS**

237 All parties shall make service upon other parties who are represented by counsel electronically
238 through the Court's authorized electronic filing system. Parties, or their designated counsel,
239 shall receive all documents electronically filed and electronically served upon them via access to
240 the Court's authorized electronic filing system.

241 **A. Service of Original, Counterclaim, or Third Party Complaint and Related**

242 **Documents.** Upon filing the original or counterclaim or third party complaint
243 electronically, the filing party shall also file instructions for service electronically. The
244 clerk shall issue a summons and process the method of service in accordance with Ohio
245 Civil Rules.

246

247 **B. Effect of Electronic Service of Subsequent Filings.** The electronic service of a
248 subsequent pleading, filing or other document in eFile case shall be considered as valid
249 and effective service on all parties and shall have the same legal effect as an original
250 paper document served under current rules. Pro se parties who have not subscribed to the
251 Court's authorized electronic filing system shall be served traditionally, in accordance
252 with the applicable Ohio Court rules.

253

254 **C. Service on Parties: Time to Respond or Act.** EService shall be deemed complete at
255 the time a document has been received by the Court’s authorized electronic filing system
256 as reflected by the authorized date and time appearing on the electronic transmittal.
257 Effective with the commencement date of electronic filing, any period of time to respond
258 to the served document or perform any right, duty, or act shall be strictly governed by the
259 applicable rules of the Court. For the purpose of computing time to respond to documents
260 received via eService, any document served after 5:00 p.m. Eastern Standard Time or
261 Eastern Daylight Time shall be deemed served on the next day that is not a Saturday,
262 Sunday, or legal holiday.

263
264 **D. Failure of Electronic Service:** If electronic service on a party does not occur, the
265 party to be served may be entitled to an order extending the date for any response or the
266 period within which any right, duty or act must be performed.

267
268 **XIII. CONVENTIONAL FILING OF DOCUMENTS**

269 Notwithstanding the foregoing, the following types of documents may be filed conventionally,
270 unless expressly required to be filed electronically by the Court:

271
272 **A. Documents Filed Under Seal.** A motion to file documents under seal shall be filed
273 and served electronically. However, the documents to be filed under seal shall be filed in
274 paper form unless otherwise directed by the Court.

275

276 **B. Documents to be Presented to a Court in Camera.** Documents to be presented to a
277 Court in camera, solely for the purpose of obtaining a ruling on the discoverability of
278 such documents shall be filed in paper form unless otherwise directed by the Court.

279
280 **C. Exhibits.** Exhibits or other items that may not be comprehensibly viewed in an
281 electronic format may be filed and served conventionally.

282
283 **D. Courtesy Copies.** Paper courtesy copies of documents filed electronically shall not
284 be delivered to the Court.

285

286 **XIV. COLLECTION OF FILING DEPOSIT AND FEES**

287 **A.** Any document requiring payment of a filing deposit or a fee to the Clerk of Courts in
288 order to achieve valid filing status shall be filed electronically in the same manner as any
289 other eFile document.

290

291 **B.** The authorized electronic filing system will establish a means to accept payment of
292 deposits and fees electronically, including the process for filing an affidavit of indigency.

293

294 **XV. PUBLIC ACCESS TERMINAL**

295 The public can view and print electronically filed documents on a Public Access Terminal
296 located in the Clerk's Office. Users shall be charged for printed copies of documents at rates
297 established by the Clerk; and it is further,

298

299 **ORDERED**, that this Administrative Order shall become effective immediately; and it is

300 further,

301
302 **ORDERED**, that eFiling in civil _____ cases filed by _____ will commence on
303 _____, 2008 at _____.

304 **SO ORDERED:**

305
306

**JUDGES OF THE COMMON PLEAS COURT, GENERAL DIVISION
MONTGOMERY COUNTY, OHIO**