

Supreme Court of Kentucky

2013-16

ORDER

In Re: Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project for the 48th Judicial Circuit, Franklin County Circuit Court

Under Section 116 of the Kentucky Constitution and SCR 1.020, it is HEREBY ORDERED that the following Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project for the 48th Judicial Circuit, Franklin County Circuit Court, are approved:

Section 1. Citation to Rules

These rules will be known as the “Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project for the 48th Judicial Circuit, Franklin Circuit Court,” and may be cited as the “eFiling Rules.”

Section 2. Authority

These rules are adopted under the authority granted to the Kentucky Supreme Court by Section 116 of the Kentucky Constitution to promulgate rules and issue orders of practice and procedure for the Kentucky Court of Justice. This Order does not abridge, enlarge, or modify the substantive rights of any litigant.

Section 3. Scope, Application, and Effective Date

(1) Cases commenced on or after the effective date. These rules apply to designated case types in civil actions commenced in Franklin County Circuit

Court on or after December 15, 2013, by any attorney participating in this pilot project.

(2) Cases pending prior to the effective date. Cases pending prior to December 15, 2013, will not be subject to the requirements of these rules. However, any attorney participating in this pilot project may by agreed order begin electronically filing documents into an existing case.

(a) After entry of the agreed order, the case will be governed by the requirements of these rules. Any such order must include provisions to ensure that eFiled documents comply with the redaction requirements related to protected information contained in Section 9.

(b) If the parties wish to create an entirely electronic record for ease of use by both the court and the parties, counsel may check out an existing case file in order to scan documents filed conventionally prior thereto. The parties may agree to share the costs of such scanning, but in any event, the agreed order must specify which party or parties bear(s) the costs. Scanned images of documents must be provided to the Court in accordance with the court's clerical and technical requirements.

(3) Self-represented parties. A self-represented party is not authorized to file electronically for purposes of this pilot project. Self-represented parties must file all documents conventionally.

Section 4. Integration with Other Rules; Precedence in Event of Conflict

These rules supplement the Kentucky Rules of Civil Procedure ("CR") and the Local Rules of Court for the 48th Judicial Circuit approved by this Court pursuant to SCR 1.040(3)(a) ("Local Rules of Court"). The filing and service requirements set out herein are deemed to comply with the Rules of Civil Procedure and the Local Rules of Court. To the extent these eFiling Rules are inconsistent or otherwise conflict with the Rules of Civil Procedure or the Local Rules of Court, these rules will control in cases subject to electronic filing.

Section 5. Definitions

- (1) "AOC" means the Administrative Office of the Courts.
- (2) "Case entry" means an entry created within the court's case management system which records each document filed or entered in a case.
- (3) "Clerk" means the circuit court clerk.
- (4) "Conventionally filed" means the filing of paper documents with the clerk, pursuant to the Kentucky Rules of Civil Procedure, as is done in cases that are not eFiling cases.
- (5) "Documents" means pleadings, motions, exhibits, declarations, affidavits, memoranda, papers, orders, notices, and any other filings to or by the court. The term does not include, for purposes of this pilot project, the following which must be filed conventionally: (i) any document in a sealed case; (ii) any document ordered sealed in an otherwise public record; (iii) a motion to seal and any document that is the subject of that motion, including any document requested to be reviewed *in camera*; (iv) discovery requests and responses as identified in CR 5.06, unless ordered by the court, used at trial, necessary to a pretrial motion, or agreed to by stipulation; (v) depositions upon oral examination required by CR 30.06(1) to be delivered to the clerk by the officer taking the deposition; (vi) depositions upon written questions required by CR 31.02 to be filed by the officer taking the deposition.
- (6) "eFiler" means an individual who is authorized by Section 6(1) of these rules to file documents electronically through the electronic filing system.
- (7) "Electronic filing (eFiling)" means the electronic transmission to the court of a document using the court's electronic filing system, together with the transmission from the court of a notice of electronic filing containing an electronic hyperlink to the filed document. Sending a document to the court via email or facsimile does not constitute "electronic filing."
- (8) "Electronic filing (eFiling) system" means the automated system approved by the Kentucky Supreme Court for the filing and service of documents via electronic means.

- (9) “Electronic identity” means the combination of the eFiler’s login ID/user name, password, and profile.
- (10) “Electronic service” means the electronic transmission of documents to a party via the court’s eFiling system. Electronic service does not include service of process or summons to gain jurisdiction over persons or property, or service of subpoenas. Registration with the eFiling system constitutes consent to electronic service of all documents as defined in these rules in accordance with the Kentucky Rules of Civil Procedure and the Local Rules of Court, other than service of process or summons and service of subpoenas, via the eFiling system.
- (11) “Electronic signature” means the electronic symbol “/s/ typed name” attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.
- (12) “Envelope” means the package of electronically transmitted data and attachments which constitute an eFiling submission.
- (13) “Hyperlink” means an electronic connection or reference to another place in the document which, when selected, shows the portion of the document to which the hyperlink refers.
- (14) “Jurisdictional deadline” means a deadline set by statute or rule that the court may not extend or change.
- (15) “Nonconforming document” means a document which does not conform to the formatting and technical requirements set out in Section 7.
- (16) “Notice of Electronic Filing (NEF)” means a notice automatically generated by the electronic filing system at the time a document is filed with the system, containing the date and time of filing in Eastern Time and an electronic hyperlink to the document filed.
- (17) “PDF” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.
- (18) “PDF/A” means an ISO-standardized version of the Portable Document Format (PDF) specialized for the digital preservation of electronic documents.

(19) "Protected information" means information required to be redacted pursuant to CR 7.03 and in accordance with Section 9 of these rules.

(20) "Scanned document" means an electronic image created by scanning a paper document.

(21) "Self-represented party" means a party who represents himself or herself without the assistance of an attorney.

(22) "Technical failure" means failure of the court's hardware, software, and/or telecommunications facility which results in the impossibility for an eFiler to submit a filing electronically. Technical failure does not include malfunctioning of an eFiler's equipment.

Section 6. Registration and Responsibilities of eFilers

(1) Authorized eFilers. Registration is limited to:

(a) Licensed attorneys in good standing with the Kentucky Bar Association who have agreed to participate in this pilot project;

(b) Judges and their staff; and

(c) Court administrative staff, including technical support staff.

(2) Self-represented parties. Self-represented parties are not authorized to register for purposes of this pilot project.

(3) Registration.

(a) The eFiler's login ID/user name, password, and profile will constitute the eFiler's electronic identity and user account for purposes of this eFiling rule. eFilers must register online through the Kentucky Court of Justice's website.

(b) The eFiler will be subject to the terms of the eFiling system user agreement.

(c) Registration with the eFiling system constitutes consent to electronic service of all documents as defined in these rules in accordance with the Kentucky Rules of Civil Procedure and the Local Rules of Court, other than service of process or summons and service of subpoenas, via the eFiling system.

(4) Responsibilities of eFilers.

(a) If an eFiler believes that the security of his or her electronic identity has been compromised or that a threat to the system exists, the eFiler must notify the AOC eFiling website administrator.

(b) It is the responsibility of the eFiler to have a valid and working email address that has not exceeded its size limitation in order to receive orders and other documents served electronically. It is not the responsibility of the court, the clerk, or the AOC to ascertain whether an eFiler is receiving notifications from the eFiling system via email.

(c) If an eFiler's email address, phone number, or other information provided in the eFiler's profile has changed, the eFiler must promptly make the necessary changes to his or her profile.

Section 7. Format and Technical Requirements

(1) Conversion to PDF/A or PDF format required. Electronically filed documents must meet the same requirements of format and page limits as paper documents conventionally filed pursuant to the Kentucky Rules of Civil Procedure and the Local Rules of Court, including page and word limits.

(a) Documents must be converted to PDF/A or PDF format before they are filed in the eFiling system. PDF/A is the preferred format for purposes of this pilot project.

(b) In addition to the caption requirements set out in CR 10.01, each document filed electronically must also indicate in the caption that it has been electronically filed.

(c) The eFiler must ensure that the filing is an accurate representation of the document and is complete and readable.

(2) Envelope size limitation. eFiling envelopes, including all attachments, must not exceed fifty (50) megabytes.

(3) Format. Documents filed electronically must comply with the following format requirements:

(a) 8 ½" x 11" size;

- (b) At least 200 dot-per-inch (DPI) resolution;
 - (c) No unintelligible images (e.g., no all-black images);
 - (d) Documents must not be secured, password-protected, or have other features limiting access;
 - (e) No document shall contain any external hyperlinks;
 - (f) Only readable word and viewable pictures or images, and valid, non-corrupted tables shall be included;
 - (g) Documents must not be corrupted (e.g., a corrupt file having -0- bytes of data);
 - (h) Documents must comprise the complete image or file. The eFiler must ensure and verify that uploads to the eFiling system are properly completed; and
 - (i) Internet Explorer 8 and above and most other modern browsers will be supported.
- (4) Nonconforming documents. Documents which do not conform to the above requirements or which cannot be scanned and converted to a PDF or PDF/A (i.e., video or audio recordings, large maps, etc.) must be filed conventionally, with electronic notice to all parties.
- (5) Color documents. Exhibits or attachments containing color images may be eFiled, but must also be conventionally filed for the record.
- (6) Hyperlinks. No electronically filed document may contain hyperlinks other than internal hyperlinks to the document itself.

Section 8. Electronic Filing

(1) Notice of Electronic Filing.

(a) Upon the filing of a document, a Notice of Electronic Filing (NEF), with a hyperlink to the electronic document, will be automatically generated by the eFiling system, and sent via email to the email addresses of all parties who have registered in the case. The NEF will record the date and time of the filing of the document in Eastern Time.

(b) All notices of electronic filing and other system notifications will be viewable in the eFiling system under the “Notifications” screen.

(2) Filing. The electronic transmission of a document to the eFiling system in accordance with the procedures specified in these rules, together with the generation and transmission of a Notice of Electronic Filing from the court with a hyperlink to the electronically filed document, constitutes filing of the document for all purposes of the Kentucky Rules of Civil Procedure and the Local Rules of Court.

(a) A document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing from the court, regardless of when the eFiler actually transmitted the document.

(b) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed BEFORE MIDNIGHT, eastern time, in order to be timely filed. However, if time of day is of the essence, the presiding judge may order a document filed by a certain time.

(c) Emailing a document to the clerk’s office or to the presiding judge does not constitute filing the document. A document will not be considered filed until the eFiling system generates a Notice of Electronic Filing with a hyperlink to the electronically filed document.

(d) While the eFiling system is designed to accept filings 24 hours a day, it may not always be available due to scheduled maintenance or technical difficulties experienced by the eFiler or system. eFilers are encouraged to file documents in advance of filing deadlines and during normal business hours in the event assistance or support is needed from the AOC’s eFiling help line.

(3) Case entries. The clerk receiving an electronic filing will create a case entry using the information provided by the eFiler to record the document filed. If errors in the filing or case entry are discovered by the clerk, the clerk may:

(a) make minor corrections to the case entry, with or without notifying the parties;

(b) notify the filer of the error and advise the filer of what further action, if any, is required to address the error; or

(c) disregard the error.

(4) Proposed or tendered documents.

(a) If the filing of an electronically submitted document requires leave of court, such as an amended complaint or a document to be filed out of time, the eFiler should attach the proposed document as an attachment to the motion requesting leave to file. If the court grants the motion, the eFiler is responsible for electronically refiling the proposed document.

(b) If the eFiler is submitting a proposed order or other proposed or tendered documents such as, but not limited to, judgments, findings of fact and conclusions of law, or jury instructions, the order or other documents may be submitted in PDF or PDF/A format as well as in an editable format capable of being read by Microsoft Word, and should be identified as "proposed."

(5) Attachments and exhibits. Attachments and exhibits which do not conform to the requirements set out in Section 7 or which cannot be scanned and converted to a PDF or PDF/A (i.e., video or audio recordings, large maps, etc.) must be filed conventionally, with electronic notice to all parties. A party must serve conventionally filed materials on other parties as if not subject to these electronic filing procedures.

(6) Official court record.

(a) For purposes of this pilot project, the clerk will print documents which have been electronically filed and continue to maintain a paper file in each case. The paper file will constitute the official court record.

(b) When the law requires the filing of an original document, such as a will, voucher, bond, oath, mortgage document, birth certificate, foreign judgment, or other certified or verified document, the eFiler must scan the original document and file the scanned document in the eFiling system. The filer must either (i) retain the original document in accordance with Section 14, Retention Requirements; or (ii) file the original with the appropriate agency or officer as may be required by law.

Section 9. Redaction Requirements

(1) Compliance with CR 7.03.

(a) All eFilers must comply with the redaction requirements set out in CR 7.03, “Privacy protection for filings made with the court.” These requirements apply to all documents, including attachments and exhibits. *The clerk will not review filings for compliance with this rule. The responsibility to redact filings rests with the eFiler.*

(b) eFilers are cautioned, in accordance with CR 7.03(7), that failure to redact information deemed private by CR 7.03 and/or the inclusion of irrelevant personal information in a document, attachment, or exhibit filed electronically with the court may subject the eFiler to the disciplinary and remedial powers of the court, including sanctions pursuant to CR 11.

(2) Improperly included private or protected information.

(a) A party may move to redact improperly included private or protected information from an eFiled document and may request an immediate order from the court temporarily deleting the document from the system pending notice and opportunity to be heard by all parties.

(b) If, after hearing, the court finds that private or protected information was improperly included in an eFiled document, the court may order the clerk to permanently delete the document from the system and require the filing party to file a redacted copy of the document.

(c) If, after hearing, the court does not find that private or protected information was improperly included and the document has been temporarily deleted from the system under paragraph (a), the filing party is responsible for refiling the document electronically.

Section 10. Signatures

(1) Generally. A document electronically filed using the eFiling system must bear the electronic signature of the filing party’s attorney, as more fully described in paragraphs (a) and (b) below. The electronic signature of the filing party’s attorney will be treated as a personal signature and will serve as a

signature for purposes of CR 11, all other Kentucky Rules of Civil Procedure, any applicable statutes, the Local Rules of Court, and any other purpose for which a signature is required in connection with proceedings before the court.

(a) An electronically filed document must include a signature block setting forth the name, mailing address, phone number, fax number, and email address of the filing party's attorney.

(b) In addition, the name of the filing party's attorney must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. A handwritten signature is required for any document filed in paper.

(c) Affidavits and exhibits to pleadings with original handwritten signatures must be scanned and filed in PDF or PDF/A format.

(2) Signatures of more than one party required. A document requiring signatures of more than one party must be filed either by:

(a) representing the consent of the other parties on the document by inserting in the location where each handwritten signature would otherwise appear the typed signature of each person, other than the filing party, preceded by an "/s/" and followed by the words "by permission" (e.g., "/s/ Jane Doe by permission"); or by

(b) electronically filing a scanned document containing all necessary signatures.

(3) Signatures of judges and other court officials. If the signature of a judge or other court official (e.g., a court commissioner or clerk) is required on a document, an electronic signature may be used. The electronic signature shall be treated as the judge's or court official's personal signature for purposes of CR 11, all other Kentucky Rules of Civil Procedure, any applicable statutes, the Local Rules of Court, and any other purpose for which the signature is required in connection with proceedings before the court.

(4) Documents required to be notarized, acknowledged, verified, or made under oath. The signature on any document required to be notarized, acknowledged, verified, or made under oath must be handwritten and scanned into the eFiling system. The court will maintain the scanned document as the official court

record, and the filing party must retain the originally executed copy in accordance with Section 14, Retention Requirements. The court may require the filing party to produce the original paper document if validity of the signature is challenged.

(5) Challenging or disputing authenticity.

(a) 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 signatures themselves, must file an objection to the document within fourteen (14) days of service of the document.

(b) 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.

(c) 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.

Section 11. Electronic Service of Documents

(1) Notice of Electronic Filing. Upon the electronic filing of a document, the court's eFiling system will automatically generate and send a Notice of Electronic Filing (NEF) to all eFilers/parties associated with that case, along with a hyperlink to the electronic document. Transmission of the NEF with a hyperlink to the electronic document constitutes service of the filed document under CR 5. No other service on those parties is required.

(a) The Notice of Electronic Filing will only be sent to eFilers associated with the case, and will continue to be sent to them until they have filed a proper withdrawal of appearance in a case and, if applicable, obtained an order allowing the withdrawal.

(b) The NEF will include the date and time of filing in Eastern Time, along with an electronic hyperlink to the document filed.

(c) If the eFiler learns or has reason to know that the NEF was not transmitted successfully to a party, electronic service is not effective. The filer must serve the electronically filed document by traditional methods pursuant to CR 5 immediately upon discovering that the notice was deficient or that transmission was otherwise unsuccessful.

(2) Exception - Service of process. Electronic service of process is not permitted for purposes of obtaining jurisdiction over persons or property, i.e., CR 4 service. Service of process must be effected in the traditional manner. The plaintiff or petitioner need not present the summons to the clerk along with the initiating document; the clerk will generate the summons and issue it as set out below in paragraphs (a) and (b).

(a) Summonses will be issued as follows:

(i) For service by certified mail under CR 4.01(1)(a), the clerk will issue the summons, and cause service of the summons and complaint to be made via certified mail;

(ii) For service by the sheriff under CR 4.01(1)(b), the clerk will issue the summons and cause the summons and complaint to be transferred to the sheriff for service;

(iii) For service by a process server or other authorized person under CR 4.01(1)(b), other than the sheriff, the summons will be issued by the clerk and electronically returned to the initiating party for service; or

(iv) At the request of the initiating party, in accordance with CR 4.01(1)(c), the clerk will issue the summons and electronically return it to the initiating party for service.

(b) For service of process through the Secretary of State in accordance with KRS 454.210, the clerk will issue the summons, and cause two copies of the summons and two attested copies of the initiating party's complaint to be transferred to the Secretary of State.

(c) If the opposing party has (or parties have) waived service, the plaintiff or petitioner must indicate waiver of service in the filer envelope and include the waiver as an attachment.

(d) The return of service must be imaged in a PDF or PDF/A format and electronically filed by the party at whose request the summons was issued and served if proof of service is returned to that party.

(3) Exception – Service of subpoenas. Subpoenas issued pursuant to CR 45 must be served as provided in CR 45.03(1) and not by use of the eFiling system. Notices required to be served on each party pursuant to CR 45.03(3) may be served electronically by mutual consent consistent with CR 5.02, but not via the court's eFiling system.

(4) Certificate of Service. A certificate of service must be included with all documents filed electronically.

(5) Additional time after electronic service. Service by electronic means under this rule is treated the same as service by mail under CR 6.05 for the purpose of adding three (3) days to the prescribed period.

(6) Service on parties who are not registered eFilers. Parties must serve a paper copy of any eFiled document on a party or other person entitled to service who is not a registered eFiler in the manner required by CR 5.

(7) Exchange of discovery materials. The eFiling system will not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court. Parties may exchange discovery materials electronically by mutual consent consistent with CR 5.02, but not via the court's eFiling system.

Section 12. Fees Payable to the Clerk

(1) Filing fees. A filing fee is due and payable at the time of the transmission of the electronic document unless the fee is waived by order of the court, the fee is not due or payable, or the court makes alternative arrangements with the filer.

(2) Refunds. A refund of a fee collected upon filing is generally prohibited. In the event a fee is erroneously collected via credit card, the refund will be processed through the electronic credit card system. The court will not issue a refund by check.

(3) Other costs. Other costs may be assessed through the eFiling system for service of process, such as for printing and mailing.

Section 13. Entry of Orders and Notice of Entry

(1) Entry of orders. All orders, decrees, judgments, and any other documents entered or issued by the court may be filed in accordance with these rules.

(a) Such filing will constitute entry by the clerk pursuant to CR 58 and CR 79.

(b) An order containing the electronic signature of a judge will have the same force and effect as if the judge had affixed a signature to a paper copy of the order and the order had been entered in a conventional manner.

(2) Notice of entry.

(a) Immediately upon the entry of an order or judgment in an action, the clerk will transmit to eFilers in the case, in electronic form, a Notice of Electronic Filing (NEF), with a hyperlink to the electronic document. Electronic transmission of the NEF, along with a hyperlink to the electronic document, constitutes service of the notice in accordance with CR 77.04.

(b) The clerk must serve notice in paper form to an attorney or party who is not a registered eFiler to the extent notice is required.

Section 14. Retention Requirements

(1) Original documents and documents containing original signatures.

An original document such as a will, voucher, bond, oath, mortgage document, birth certificate, foreign judgment, or other certified or verified document which has been scanned and filed in the eFiling system pursuant to Section 8(6)(b), and any document requiring or otherwise containing an original signature other than that of the eFiler which has been scanned and filed in the eFiling

system must be maintained in paper form by counsel and/or the firm representing the party on whose behalf the document was filed until after all periods for appeals expires. Upon the request of the court or other party, counsel must provide the original document for review or inspection.

(2) Discovery documents. Pursuant to CR 5.06, the party responsible for service of a discovery document not filed of record, including interrogatories, requests and answers and responses thereto, notices, and subpoenas will be the custodian and must retain the original document. The custodian must provide access to all parties of record during the pendency of the action.

Section 15. Technical Difficulties; System Unavailability

(1) Jurisdictional deadlines. Some deadlines are jurisdictional and cannot be extended. A technical failure, including a failure of the eFiling system, will not excuse a failure to comply with a jurisdictional deadline. The eFiler must ensure that a document is timely filed to comply with jurisdictional deadlines and, where necessary to comply with such deadlines, the eFiler must file the document conventionally accompanied by a certification of the necessity to do so in order to meet a jurisdictional deadline.

(2) Technical failures.

(a) If the eFiling site is unable to accept filings continuously or intermittently for more than one (1) hour occurring after 12:00 noon Eastern Time that day, the clerk shall deem the court's eFiling web site to be subject to a technical failure.

(b) If an eFiler experiences a technical failure as defined herein, the eFiler may file the document conventionally, provided that the document is accompanied by a certification signed by the eFiler, that the eFiler has attempted to file the document electronically at least twice, with those unsuccessful attempts occurring at least one (1) hour apart after 12:00 noon Eastern Time that day. The clerk may require the document to be accompanied by a disk or CD-Rom which contains the document in PDF or PDF/A format.

(c) The initial point of contact for an eFiler experiencing technical difficulty filing a document electronically will be the AOC's eFiling help line at the number(s) listed on the Court of Justice's website. The help line will be available during the AOC's regular business hours, 8:00 a.m. until 4:30 p.m. Monday through Friday (excluding holidays).

(d) An eFiler who suffers prejudice as a result of a technical failure as defined herein or an eFiler who cannot file a time-sensitive document electronically due to unforeseen technical difficulties, other than a document filed under a jurisdictional deadline, may seek relief from the Court. Parties may also enter into an agreed order deeming a document, other than one filed under a jurisdictional deadline, timely filed.

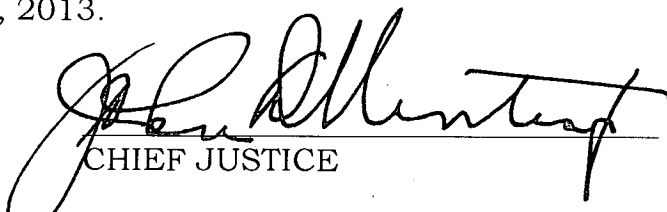
(3) Anticipated system maintenance and downtime. When the eFiling system will not be available due to scheduled maintenance, eFilers will be notified and a notice will be posted on the court's website of the date, time, and anticipated length of the unavailability.

(4) Unanticipated downtime. When the eFiling system is unexpectedly unable to accept filings continuously or intermittently for more than one hour, eFilers will be notified of the problem by email or by the posting of a notice of the problem on the court's website.

Section 16. Technical Assistance

An eFiler experiencing technical difficulty filing a document electronically may contact the AOC's eFiling help line at the number(s) listed on the Court of Justice's website. The help line will be available during the AOC's regular business hours, 8:00 a.m. until 4:30 p.m. Monday through Friday.

ENTERED this 12th day of November, 2013.


CHIEF JUSTICE