

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

**KAREN McPETERS**, individually, and on §  
behalf of those individuals, persons and entities §  
who are similarly situated §  
Plaintiff §

vs. §

CIVIL ACTION NO. 4:10-CV-01103

**JURY**

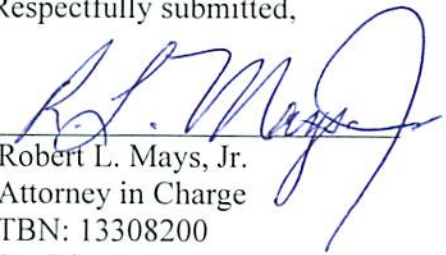
**THE HONORABLE FREDERICK E.** §  
**EDWARDS; BARBARA GLADDEN** §  
**ADAMICK, DISTRICT CLERK;** §  
**MONTGOMERY COUNTY, TEXAS, and** §  
**REED ELSEVIER, INC. d/b/a LexisNexis** §  
Defendants §

**PLAINTIFF'S HEARING BRIEF No. 4 -**  
**ARE THE E-FILE ORDERS APPROVED?**

1. Plaintiff Karen McPeters submits the attached brief as the law and evidence in support of her request that Defendants' Rule 12(b)(6) motions be denied.

Date: December 9, 2010

Respectfully submitted,



Robert L. Mays, Jr.  
Attorney in Charge  
TBN: 13308200  
So. Dist. ID: 11606  
8626 Tesoro Drive, Suite 820  
San Antonio, Texas 78217  
Phone: 210-657-7772  
FAX: 210-657-7780

CERTIFICATE OF SERVICE

I certify that I hand delivered a copy of this "Plaintiff's Hearing Brief No. 4 – Are the E-File Orders Approved?" on December 9, 2010 to each counsel for Defendant present at the hearing.

  
Robert L. Mays, Jr.

**Did the Texas Supreme Court Approve the E-filing Which Karen McPeters Now Claims is Unconstitutional?**

This question raises an excellent distinction between what was approved and what has actually occurred.

**The 1997 Local Rule---Submitted and Approved**

- Signed by Judge Edwards as Administrative Judge.
- Allows a judge to select cases for EFILE system and issue an Order to that effect; parties to comply upon receipt of the Order.
- Conventional filing applies to all documents filed before the Order is issued that assigns the case to the EFILE system.
- No mention of fees, charges, or authority to impose fees or charges not set forth in the Government Code.

**The 2003 Order---Not Submitted or Approved or Filed**

- Designates all civil cases in the 9<sup>th</sup> District Court (leaves a blank for particular cause numbers).
- References Local Rule (above) as the governing rule.
- “In short, parties will be presented with two options.”... (no motion for paper filing is listed).
- “...a minimal fee is assessed for each filing and service delivery made through the system.” (*Fees* are legally authorized; these fees not *authorized* or *minimal*.)
- “Any documents submitted in paper form will be rejected....”
- “If the electronic filing is not filed...the Court may...enter an order...” (There is *no* option to seek a paper filing; the relief is *only* to correct a vendor or technical error).

**IN THE SUPREME COURT OF TEXAS**

Misc. Docket No. 97- 9155

---

**APPROVAL OF  
LOCAL RULE FOR ELECTRONIC FILING AND SERVICE OF PLEADINGS  
IN THE DISTRICT COURTS AND COUNTY COURTS AT LAW,  
MONTGOMERY COUNTY, TEXAS**

---

**ORDERED that:**

Pursuant to Texas Rule of Civil Procedure, the Supreme Court of Texas approves the following local rules:

Local Rule of Civil Procedure for Electronic Filing and Service of Pleadings in the District Courts, and the County Courts at Law having concurrent jurisdiction with the District Courts, Montgomery County, Texas, dated May 2, 1997

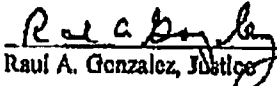
---

The approval of these rules is temporary pending further orders of the Court.

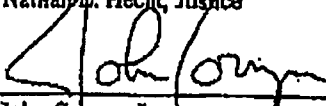



SIGNED AND ENTERED this 16<sup>th</sup> day of Sept., 1997.

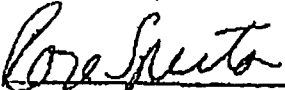
  
Thomas R. Phillips, Chief Justice

  
Raul A. Gonzalez, Justice

  
Nathan L. Hecht, Justice

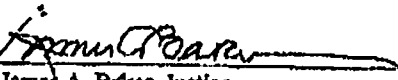
  
John Cornyn, Justice

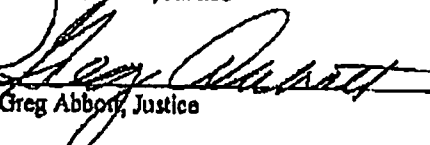
  
Craig T. Enoch, Justice

  
Rose Spector, Justice

---

  
Priscilla R. Owen, Justice

  
James A. Baker, Justice

  
Greg Abbott, Justice

RULE ELECTRONIC FILING AND SERVICE OF PLEADINGS

The following rules govern the electronic filing and service of pleadings and other documents in all designated electronic filing cases pending before the District Courts of Montgomery County, Texas and the County Courts at Law having concurrent jurisdiction with District Courts.

DESIGNATION OF ELECTRONIC FILING CASES A District Court in Montgomery County, or a County Court at Law having concurrent jurisdiction may, from time to time, by written order, select and designate those cases which shall be assigned to the electronic filing system, as created and contemplated by the April 21, 1997, Service Agreement between LAWPlus™ and Montgomery County, Texas, or any successor system, all collectively hereinafter referred to as EFILE. Upon receipt of any such Order, parties not then having access to the EFILE system shall promptly take steps to allow their counsel to electronically file, serve, receive, review and retrieve copies of the pleadings, orders, and other documents filed in the assigned case, either by a subscription agreement with LAWPlus or the then-current vendor ("the Vendor"), or by using the public-access terminal in the District Clerk's office, or by any other means reasonably assuring reliable access to the said system.

ASSIGNMENT BY THE VENDOR OF PERSONAL IDENTIFICATION NUMBERS Upon receipt by the Vendor (LAWPlus or its successor) or a properly executed Subscriber Agreement, the Vendor shall assign to the party's designated representative a confidential Personal Identification Number ("PIN"), which may thereafter be used by such representative to obtain access to the EFILE system. This PIN will permit the attorney or party appearing pro se to file, serve, receive, review, and retrieve electronically filed pleadings, orders, and other documents filed in the assigned case.

ELECTRONIC FILING OF PLEADINGS AND OTHER DOCUMENTS Except as expressly provided in Local Rule No.   D below, all pleadings, motions, memoranda of law, orders, or other documents filed in any case assigned to the EFILE electronic filing system shall, to the extent practicable, be filed and served electronically through the system.

CONVENTIONAL FILING OF DOCUMENTS Notwithstanding the foregoing, the following types of documents shall be filed conventionally and shall not be filed electronically, unless express permission is granted by the Court or the District Clerk:

all pleadings or other documents filed in the case before an Order is issued assigning the case to the EFILE system;

a motion to file documents under seal shall be filed and served electronically.  
However, the documents to be filed under seal shall be filed conventionally.

appendices and exhibits to motions, memoranda of law, or other documents that are not readily amenable to electronic scanning may, at the option of the filer, be filed and served conventionally.

SERVICE OF CONVENTIONAL FILING Copies of all documents except sealed documents that are filed conventionally and are not filed electronically shall be served on all other parties pursuant to the provisions of Rule 21, Texas Rules of Civil Procedure.

UTILIZATION OF PIN No attorney shall knowingly authorize or permit his/her PIN to be utilized by anyone else, other than authorized attorneys or employees of the attorney's law firm. Furthermore, no person shall knowingly use a PIN or cause or permit another person to use a PIN without express permission from the holder of the PIN.

REPRESENTATIONS BY USING A TYPOGRAPHICAL SIGNATURE Every pleading, document, and instrument filed in the EFILE system shall bear a facsimile or typographical signature of at least one of the attorneys of record, along with the typed name, address, telephone number, and SBOT number of said attorney. Typographical signatures shall be treated exactly as personal signatures under the Texas Rules of Civil Procedure.

EFFECT OF ELECTRONIC SERVICE The electronic service of a pleading or other document in EFILE shall be considered as valid and effective service on all designated recipients pursuant to Rule 21a, Texas Rules of Civil Procedure, and shall be construed in the same manner as a telephonic document transfer for purposes of such Rule, except that any such service completed by 11:59 p.m. local time shall be deemed service on that date.

ELECTRONIC FILING OF AFFIDAVITS AND OTHER SWORN DOCUMENTS Unless specifically ordered by the Court, original signature pages on affidavits, verifications, or other documents in cases assigned to EFILE shall not be filed in paper form, but shall be maintained and made available, upon reasonable notice and during business hours, to other counsel and to the court.

FORMAT OF ELECTRONICALLY FILED DOCUMENTS All electronically filed pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings, and in such other and further format as the Court may require from time to time.

TIME FOR FILING AND EFFECT OF USE OF EFILE Any pleading filed electronically shall be considered as filed with the District Clerk on the date it is first transmitted to EFILE. The Vendor shall be and is hereby appointed the agent of the District Clerk as to the electronic filing, receipt, service, and/or retrieval of any pleading or document in EFILE, and neither the Vendor nor any attorney or party shall have any additionally-imposed liability because of the use of or participation in the EFILE system.

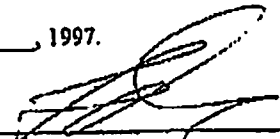
ELECTRONIC FILING AND SERVICE OF COURT ORDERS AND OTHER PAPERS The Court intends to issue, file, and serve orders, rulings, and other documents in the assigned cases electronically, rather on paper. Parties who have not subscribed to the VENDOR'S System, or whose rights to use the VENDOR'S System have been suspended or terminated, are responsible for keeping themselves timely apprised of any orders, rulings, or other

documents that the Court chooses to file and serve electronically in any of the assigned cases.

**TITLE OF PLEADINGS AND OTHER DOCUMENTS** The title of each electronically filed pleading or other document ("papers") shall contain sufficient information to enable the Court to ascertain from the title of the paper (a) the party or parties filing the paper, (b) the nature of the paper, (c) the party or parties against whom relief, if any, is sought, and (d) the nature of the relief sought (i.e., "John Doe, et al.'s Motion to Compel Discovery and for Sanctions against Jim Smith").

**PUBLIC ACCESS TO ELECTRONICALLY FILED DOCUMENTS** The District Clerk's office shall make available, without charge and during normal business hours, to members of the general public at least one computer screen capable of searching and reviewing documents filed of public record in the assigned cases. The District Clerk shall make copies of any publicly filed documents available on EFILE.

Adopted this 2 day of May, 1997.

  
\_\_\_\_\_  
Fred Edwards, Administrative Judge,  
Montgomery County, Texas.



**ORIGINAL**

Cause No. 07-09-09142

9<sup>th</sup> JUDICIAL DISTRICT COURT  
MONTGOMERY COUNTY, TEXAS

RECEIVED AND FILED  
FOR RECORD  
8 O'clock  
FEB 10 2003  
BARBARA GLADEN  
MONTGOMERY COUNTY CLERK  
BY: [Signature]

**ORDER REGARDING E-FILE DESIGNATION AND LIVE DATE**

As of January 1, 2000, all civil cases filed in the 9th District Court of Montgomery County will be electronically filed as described and governed by the Local Rules Regarding Electronic Filing. Consequently, the Court, sua sponte, hereby designates the cause number, \_\_\_\_\_ in the Ninth District Court of Montgomery County, Texas, as such an e-file case. Accordingly, the Court orders that in this cause the District Clerk implement fully the Local Rule Regarding Electronic Filing, approved by the Supreme Court on September 16, 1997. A copy of the Local Rule Regarding Electronic Filing can be obtained in the office of Judge Edwards or the Montgomery County District Clerk's Office.

**What Must be Filed Electronically.** No pleadings or party-generated documents may be filed in paper form, but must be filed electronically through the e-file system, unless a document meets one of the exceptions named below.

**All answers must be filed electronically.** Answers filed in paper form will not be accepted.

**Documents That Need Not be Filed Electronically.** Documents may still be filed conventionally if 1) a party has leave of Court to do so, 2) the document is the Original Petition or a Return of Service, or 3) the document is an exhibit, appendix, or "image" document exceeding 50 pages in length (see explanation below). Actions brought by the State of Texas or Child Protective Services as well as Adoption Actions are exempt from e-filing.

**Exhibits.** Original exhibits to documents filed electronically must be "scanned in" and filed electronically as well if the *exhibits* number less than fifty pages. If the exhibits total over fifty pages in length, they may be marked clearly as to which motion they pertain and filed with the District Clerk.

A party wishing to file voluminous exhibits conventionally should 1) electronically file a notice indicating that there are conventional "paper" exhibits on file in the District Clerk's Office, 2) file the exhibits in the District Clerk's Office, and 3) serve other parties with copies of the conventionally-filed exhibits as normally required by the Texas Rule of Civil Procedure.

Please note that according to the Local Rule for E-filing, any original signature page on affidavits, verifications, or other sworn documents that is not filed with the Clerk in paper form "shall be maintained and made available, upon reasonable notice and during business hours, to other counsel and to the court."

EXHIBIT "O"

**Minute** PAGE 5 OF 7  
Date: 12-13-06

**New Divorce and Annulment Cases That Are Resolved Within 90 Days.** As of January 1, 2001, all original petitions for divorce or annulment that are resolved within 90 days are not required to be filed electronically.

In addition, inventories and appraisal documents in all family law cases may no longer be electronically served with the Court, due to privacy concerns. Please exchange this information to opposing counsel, but without actually serving the Court via e-filing. However, you must serve the Court with a letter noticing that the exchange of documents was made and on what date.

**How to File Electronically.** For information on how to use electronic filing, parties are instructed to contact CourtLink Customer Service at 1-888-529-7587.

In short, parties will be presented with two options. They may either: 1) become a subscriber through the Internet to the e-file system or 2) bring their filings in the form of 3-1/2" IBM (or compatible) formatted disc to the public terminal located in the District Clerk's Office and upload the pleadings at no charge.

Although there is no fee involved in subscribing to the e-file system through the Internet, a minimal fee is assessed for each filing and service delivery made through the system. The e-filing system will "serve" all parties and the court through the Internet or via facsimile, so it will not be necessary for a party choosing to become a subscriber to serve other parties in paper form.

However, parties wishing to exercise their option to file through the public terminal must still serve copies on other parties *in paper form*, as is usually required by the Texas Rules of Civil Procedure.

**Consequences of Failure to File in Accordance with this Order.** The District Clerk shall not accept any pleadings in paper form, and shall not use imaging technology to convert documents from paper to electronic form for the parties. Any documents submitted in paper form will be rejected by the District Clerk without further notice to submitting counsel. *Documents so rejected will be regarded as "unfiled," even if the clerk, in error, file-stamps the incorrectly filed documents.*

If the electronic filing is not filed with the Court because of 1) an error in the transmission of the document to the Vendor which was unknown to the sending party, or 2) a failure to process the electronic filing when received by the Vendor, or 3) other technical problems experienced by the filer, the Court may upon satisfactory proof enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

If there are any questions regarding e-filing, please contact the following:

- CourtLink Customer Service at (888)529-7587;
- Donna Owen, Briefing Attorney, 9th District Court at (936) 539-7866
- Christian Brown, CourtLink eFile Project Consultant, (770) 919-7571
- The Official Website for Montgomery County, [www.co.montgomery.tx.us](http://www.co.montgomery.tx.us)

Signed this 10th day of February, 2003.



JUDGE FRED EDWARDS

The Honorable Fred Edwards