

# **South Carolina Judicial Department**

## **Summary of E-Filing Comments and Responses**

On May 25, 2016, the South Carolina Judicial Department requested written comments from attorney E-Filers regarding the Pilot Program for Electronic Filing in the Court of Common Pleas. Below is a summary of the most significant comments, with an explanation or instructions for E-Filing attorneys and their staff.

### **Hyperlinks in the Notice of Electronic Filing**

*A significant number of commenters requested that the Notice of Electronic Filing (NEF) that is emailed to all E-Filers in the case when a document is submitted for E-Filing either: (1) contain a hyperlink to be used to immediately access the E-Filed document; or (2) contain the E-Filed documents as an attachment to the NEF.*

This issue, which was reviewed extensively prior to implementation, is technically problematic because E-Filed documents migrate to another database for permanent storage in the E-Filing Document Management System once formally accepted by the Clerks of Court. Therefore, any hyperlink in the NEF would become a "dead link" as soon as the document is accepted by the clerk, which would result in a great deal of confusion. Additionally, attaching E-Filed documents to the NEF would be unwise due to the significant risk of NEFs being rejected by attorney servers based on size or because spam filters and anti-virus programs reject the emails.

It is recommended that E-Filers use the "Notifications" tab on the E-Filing Home Page to review NEFs. The Notifications tab contains all NEFs sent to the attorney for the last ninety days and contains up-to-date hyperlinks to view the documents referenced in each NEF. Please see the videos entitled [\*Filings, Notifications and Drafts\*](#) and [\*E-Service\*](#), as well as the relevant Attorney Reference Guides for further information.

### **Service Concerns**

*Several commenters were concerned about the perceived inability to immediately access documents E-Filed by other parties, since Section 4(e)(2) of the E-Filing Policies and Guidelines states the E-Filing of a document, together with*

*transmission of an NEF, constitutes proper service under Rule 5, SCRCF, as to all other E-Filers in the case. One commenter complained that she cannot access E-Filed documents until the after clerk approves them and they appear on the Public Case Index.*

It appears this concern has been caused by confusion about how the E-Filing System operates. Although E-Filed documents are not available on the Public Index or in the case record you see in the E-Filing System until after they have been reviewed and approved by the Clerk of Court, they are always immediately available to all E-Filers in the case in the E-Filing System under the Notifications tab.

As soon as a document is E-Filed, it is available for viewing, downloading, and printing by any other E-Filer in that case by accessing the Notifications tab from the E-Filing Home Page. This is true regardless of whether the document is a pleading, motion, or a proposed order. After accessing Notifications, find the NEF relevant to the case, and click the name of the document to access it. If you access Notifications before the Clerk has reviewed and accepted the document, the document will not yet be file-stamped; however, if you access the document after it has been accepted, it will be file-stamped, and it will also be available on the Public Case Index and in the case record you see in the E-Filing System. Please see the videos entitled [Filings, Notifications and Drafts](#) and [E-Service](#), as well as the relevant Attorney Reference Guides for further information.

### **Why is the Notice of Appearance Necessary?**

*Several commenters have requested that the requirement that they E-File a notice of appearance before E-Filing initial responsive pleadings be eliminated.*

Unfortunately, neither the E-Filing System nor the trial court Case Management System can accept an E-Filed document in an existing case unless the attorney E-Filing the document is connected to the case as counsel for one or more parties. In early testing, a hidden electronic notice of appearance was embedded in the answer and other possible initial responsive pleadings; however, test parties who E-Filed time-sensitive initial pleadings using this process, such as an answer or a Rule 12(b)(6) motion to dismiss, did not receive the NEF as proof of service because the Case Management System did not recognize them as being associated as counsel until after the answer was formally accepted by the Clerk of Court. Moreover, the E-Filing System must be more flexible because an attorney may elect to E-File a pleading other than an answer or a motion to dismiss as the initial responsive

pleading. Therefore, embedding the electronic notice of appearance in all the correct actions—or failing to add it to all the actions a defendant might choose as the initial responsive pleading—would result in a large number of E-Filing failures or repetitive additions of attorneys to the case record.

In order to ensure documents are not rejected by the E-Filing System and that the E-Filer receives the NEF via email as proof of service, the process of permitting an E-Filer to make an "electronic" notice of appearance, with no corresponding pleading required to be created, was generated. It was hoped that attorneys would be able to save time by making this process electronic, rather than requiring a formal, written notice of appearance to be created and E-Filed together with an initial responsive pleading in a matter.

The electronic notice of appearance can be E-Filed prior to E-Filing an answer or other initial responsive pleading, which will ensure the E-Filer receives an NEF via email once the initial responsive pleading is submitted. Alternatively, an E-Filer may E-File the notice of appearance together with an initial responsive pleading, in which case no NEF will be transmitted to the E-Filer by email, although the E-Filer can always access the NEF in the E-Filing System by clicking on the "My Filings" tab. Keep in mind that the plaintiff—and all other E-Filers connected with the case—will always receive an NEF via email, regardless of how any other E-Filer chooses to E-File the notice of appearance and associate himself or herself with the case.

### **Clerk Rejection/Deficiency Notices**

*Some commenters stated that they preferred the Federal District Court's E-Filing System because the Federal Court sends deficiency notices to the party, rather than rejecting the document outright, which allows the E-Filer to correct any errors and "save" the time of filing or service.*

This process was carefully examined during implementation and ultimately rejected. Principally, the E-Filing software is not capable of substituting one document for another and retaining the same date and time stamp. Therefore, where there is a problem with an E-Filed document, an E-Filer cannot remove one document and replace it with a different document and retain the original date and time stamp. In order to allow a party to replace a deficient document with a corrected document, the Clerk of Court would need to be allowed to alter the file-stamp. It was believed that attorneys would be strongly opposed to granting Clerks of Court the power to alter a time stamp.

Furthermore, a document will ultimately receive a time-stamp with the exact time the document was submitted by an E-Filer, regardless of when that document is reviewed by the Clerk of Court. The NEF will also be transmitted via email upon submission, rather than at the Clerk's acceptance. This ensures that documents which are timely submitted are deemed timely served and filed, regardless of whether they are reviewed and formally accepted by the Clerk of Court that day or on a subsequent day.

### **Storing Credit Card Information**

*Several commenters expressed a desire for the E-Filing System to store their credit card information so that they do not have to input their credit card information every time they file a document that requires payment of a filing fee.*

Based on security concerns, there is no method of retaining attorney credit card information. The vendor who accepts payment for filing fees, SCGov, will not retain credit card information out of concern that any database that retains the information could be breached and credit card information compromised. Therefore, attorneys should establish office policies and practices to account for this.

### **Accessing Documents in Cases through E-Filing**

*Several commenters complained that, although the E-Filing System allowed them to see documents filed in cases where they are counsel of record within the E-Filing System, it does not allow them to see documents filed in cases where they are not representing a party.*

The E-Filing System does permit E-Filers to view the case record in actions where they are not counsel of record. The only method to search for and access a case where the attorney E-Filer is not already counsel of record is by entering the case number in the case number search field (i.e., 2016CP2300001).

E-Filers—and members of the public—may utilize the Case Management System Public Index to search by case name or other fields. For instance, if you do not know the case number of a matter and need to search by party name or by using other criteria, simply use the Public Index and limit your search by county. You may access the Public Index at <http://www.sccourts.org/caseSearch/>.

## **Combination Motion/Proposed Orders**

*A commenter stated that the E-Filing System does not clearly accommodate the use of a single document as a combination motion and proposed order.*

When E-Filing a proposed order, an E-Filer currently has two options. First, the E-Filer may E-File a written motion in PDF and a separate proposed order in Word format. Second, the E-Filer may E-File an Order Coversheet in PDF as a substitute for a formal, written motion, and a combination motion/proposed order in Microsoft Word format. In the latter example, no written motion is required, but the Order Coversheet connects the combination motion/proposed order to any required filing fee and allows the combination motion/proposed order to be processed correctly.

Please note that in an upcoming E-Filing enhancement, the Judicial Department plans to eliminate the requirement that a party create and E-File a PDF document for the Order Coversheet. Rather, E-Filers will be able to fill out the information currently on the Order Coversheet in an electronic format, similar to the electronic coversheets attorneys now use when E-Filing a summons and complaint or E-Filing a motion. It is hoped that this will save E-Filers time and avoid any confusion about preparing combination motion/proposed orders. The Judicial Department will make an announcement concerning the effective date of this change.

## **Legal Assistant Access to the E-Filing System and the Attorney Information System (AIS)**

*Several attorneys expressed concern about providing their paralegals or other legal assistants access to their AIS user names and passwords in order to E-File on their behalf. Other attorneys requested that paralegals be given their own user names and passwords, which would connect to the attorney.*

At this time, there is no technical method to allow a paralegal or other legal assistant to E-File documents on behalf of an attorney, other than using the attorney's AIS information. Only licensed attorneys are included in the AIS database, from which current contact information is pulled each time an E-Filing is submitted and a Notice of Electronic Filing or other communication is sent. Any inclusion of paralegals would require substantial technical upgrades to the AIS. The Judicial Department will continue to examine the use of AIS and the

possibility of allowing paralegals and legal assistants to utilize separate login information for E-Filing as the Pilot Program moves forward.