

FAX FILINGS, ORIGINAL SIGNATURES AND MORE RULES AND PROCEDURES

FREQUENTLY ASKED QUESTIONS

1. Question: Does fax filing end with the E-Filing mandate?

Answer: **YES.** #5 of the Supreme Court of Texas Misc. Docket No. 12-9208 (page 11 of the E-File Playbook) "Once a court is subject to mandatory e-filing under this Order, courts and clerks must not offer to attorneys in civil cases any alternative electronic document filing transmission system (including fax filing) except in the event of an emergency.

2. Question: Isn't there a statute that allows fax filings?

Answer: **YES.** GC 51.803(b) – paraphrasing – an instrument may only be filed by receiving electronically transmitted information from an electronic copying device **IF** the system has been approved by the supreme court for your county.

Therefore, you can continue to accept fax filings until the E-File mandate date for your county IF you have previous permission from the Supreme Court.

3. Question: Is a faxed copy considered an Original signature?

Answer: **YES.** GC 51.806 – paraphrasing – a document filed by electronic transmission is considered an original signature if the sending station at the point of origin maintains a hard copy with the original signature affixed that can be produced if a motion is filed requesting such and approved by the court.

4. Question: Are the rules different for fax filings of Criminal Records?

Answer: **YES.** Criminal records are not mandated to be EFiled (YET) so you are still able to accept fax filings of criminal matters **IF** you have previous approval by the Supreme Court.

5. Question: Does anyone know where in the statutes it states we need an original signature?

Answer: **NO.** AG Opinion JM-727 (1987) states - 682 S.W.2d at 588. The courts and this office have repeatedly characterized the powers and duties of the district clerk and county clerk as ministerial functions. It is our opinion that the clerk should file the pleading even though the signature of the attorney (or the party not represented by an attorney) is not on the pleading.

So you don't even need a signature to file a document much less the Original signature.

Now a side note –TRCP Rule 21(7) **Electronic Signatures**. A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes:

- (A) A "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or (B) an electronic image or scanned image of the signature. This is the protocol for EFiled.

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FREQUENTLY ASKED QUESTIONS cont.

6. Question: Can we certify an EFiled document?

Answer: **YES.** Supreme Court Misc. Docket No. 13-003 Rule 21(f) (13) (page 18 of the EFile Playbook) “Official Record” The clerk may designate an electronically filed document or a scanned paper document as the official court record.

Does this include fax filings? YES see question #3.

7. Question: Can I electronically issue a citation through EFile?

Answer: **NO.** Supreme Court Misc. Docket No. 13-9165 Rule 21(a) (page 18 of the EFile Playbook) Methods of Service – “Every notice required by these rules, and every pleading, plea, motion, or other form of request required to be served under Rule 21, other than the citation to be served upon the filing of a cause of action,” may be served by electronic method.

Note: You can send the citation electronically to the attorney/law enforcement requesting the service and they print it along with the petition and have it served but you cannot serve the individual directly.

8. Question: If I am converting my paper records to electronic images do I need to inform the Texas State Library?

Answer: **YES.** All clerks offices should have a “Declaration of Compliance” (SLR 508) filed with the Texas State Library (read Chapter XIII of the district clerks manual for detailed instructions). When you decide to start replacing paper records with electronic images you need to file a SLR 508 to declare you are adopting the States “Electronic Records Standards and Procedures”.

You might have to dig the old SLR 508 out of your records because it was probably filed decades ago!

9. Question: If I file a new “Declaration of Compliance” stating I am adopting the “Electronic Records Standards and Procedures” can I still keep some paper records?

Answer: **YES.** Within the procedures it states under 205.002 Authorization “Any local government record data may be stored electronically in addition to or instead of source documents in paper or other media, subject to the requirements of this chapter and rules adopted under it.”