

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the seventh day of June, in the year two thousand and eighteen:

present,

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| <u>HON. RALPH D. GANTS</u> |) | Chief Justice |
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| <u>HON. BARBARA A. LENK</u> |) | |
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| <u>HON. FRANK M. GAZIANO</u> |) | Justices |
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| <u>HON. DAVID A. LOWY</u> |) | |
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| <u>HON. KIMBERLY S. BUDD</u> |) | |
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| <u>HON. ELSPETH B. CYPHER</u> |) | |
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| <u>HON. SCOTT L. KAFKER</u> |) | |

ORDERED: That Chapter One of the Rules of the Supreme Judicial Court is hereby amended as follows:

Rule 1:25 By inserting the new Rule 1:25,
Massachusetts Electronic Filing Rules, as
attached hereto.

The Interim Massachusetts Electronic Filing Rules are hereby repealed.

The amendments accomplished by this order shall take effect on September 1, 2018.

ORDERED:

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| <u>RALPH D. GANTS</u> |) | Chief Justice |
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| <u>BARBARA A. LENK</u> |) | |
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| <u>FRANK M. GAZIANO</u> |) | Justices |
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| <u>DAVID A. LOWY</u> |) | |
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| <u>KIMBERLY S. BUDD</u> |) | |
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| <u>ELSPETH B. CYPHER</u> |) | |
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| <u>SCOTT L. KAFKER</u> |) | |

S.J.C. Rule 1:25 – Massachusetts Rules of Electronic Filing

Rule 1. Scope

(a) **Scope.** These Rules of Electronic Filing (E-Filing Rules) shall govern the general procedures of electronic filing and service of documents in the participating Massachusetts trial and appellate courts, as supplemented by any procedures specified by a court or a court department relating to its particular case types and requirements. To the extent that any Massachusetts Court Rules and Orders concerning conventional filing methods are inconsistent with these rules, the E-Filing Rules shall govern.

(b) **Court Record.** The official court record in a case shall include electronic records pertaining to that case, together with any documents and exhibits filed under the conventional method.

(c) **Use of These Rules.** All filers shall become familiar with these E-Filing Rules and all training and documentation materials provided for use by the Provider or the court(s).

Rule 2. Definitions

“Clerk” shall refer to the clerk, clerk magistrate, recorder, or register of any court, as well as his/her respective assistants or deputies.

“Conventional method” shall refer to court rules and procedures that would apply in the absence of electronic filing. Parties or counsel who are ordered or opt to proceed “conventionally,” as provided in these E-Filing Rules, must follow the appropriate Massachusetts Court Rules and Orders.

“Electronic record” shall refer to the electronic record maintained on a court’s case management and document management systems.

“Electronic filing,” “e-filing,” or “electronically filed” shall refer to the submission of documents through the e-filing system for purposes of filing in a case. E-mailing or sending a document by facsimile does not constitute “e-filing” a document.

“Electronic filing system” or “e-filing system” shall refer to the Provider’s system of electronic filing and electronic service of documents via the internet.

“Electronic service” or “e-service” shall refer to the electronic transmission of a notice of filing to the electronic mail (e-mail) address of a party who has consented to electronic service through the Provider. The notice will contain a hyperlink to access the document that was filed electronically for the purpose of accomplishing service. E-service according to these E-Filing Rules shall be deemed in compliance with the Massachusetts Court Rules and Orders that govern service and notice. Service of process or summons to gain jurisdiction over persons or property may not be made by e-service.

“Electronic signature” or “electronically signed” shall mean a signature from a User, judge, or clerk, that complies with the requirements set forth in Rule 13, below.

“Envelope” shall refer to a submission containing one or more filings to be filed in a single case by a filing User.

“Massachusetts Court Rules and Orders” shall mean the Rules of Civil, Criminal, and Appellate Procedure, the Rules of the Supreme Judicial Court, Appeals Court, and Trial Court, the Rules of the various Trial Court Departments, and the Rules Governing Time Standards and Case Management, together with all Standing Orders.

“Non-Registered Participant” shall mean a party to a case who has not registered with the Provider.

“PDF” shall mean “portable document format,” the file format compatible with the latest version of Adobe Reader. Types of PDFs include electronically converted PDFs and scanned PDFs.

Electronically converted PDFs are created from an electronic source (MS Word, WordPerfect, etc.) using Adobe Acrobat or similar software. They are text searchable, accessible, and their file size is small. Electronically converted PDFs are preferred.

Scanned PDFs are created from documents run through an optical scanner. Scanned PDFs have a larger file size and lower quality image and should be avoided when possible. Pursuant to Rule 9(a), scanned PDFs must contain optical character recognition of text.

“Provider” shall refer to the Electronic Filing Service Provider designated by the courts.

“Provider Notification” shall mean a provider-generated notice acknowledging activity within the e-filing system.

“Public access terminal” shall mean a publicly accessible computer provided by a court for the purposes of allowing e-filing and viewing public electronic court records. The public access terminal shall be located at the courthouse and will be available during normal business hours.

“Service Contact” shall mean an individual to be served electronically by the electronic filing system.

“User” shall refer to a participant in a case who has properly registered with the e-filing system.

“User ID” shall refer to the e-mail address provided during registration that is used to login to the e-filing system.

“Waiver Account” shall refer to a method whereby court and provider fees may be waived. The acceptance of any document filed under a waiver account shall be subject to the court’s determination that use of the account is appropriate, given the nature of the filing.

Rule 3. Eligibility and Conditions of Registration

(a) Eligibility. Participation in the Electronic Filing Program shall be determined by order of the particular department or court. In general, registration for the Electronic Filing Program may include:

- (1) Attorneys who are members of the Massachusetts Bar.
- (2) Attorneys who are admitted to practice in a Massachusetts court *pro hac vice*.
- (3) Self-represented parties.
- (4) Any non-party who is seeking or has obtained permission of the court to participate in the case (e.g., a witness seeking a protective order, an intervenor, amicus curiae, or court investigator).

(b) Registration. Registration is accomplished by completing the online e-filing system registration, a link to which is available on the Provider's website. An e-mail address will be required for registration.

- (1) Attorneys who are members of the Massachusetts Bar shall register for a firm account and furnish their primary business e-mail address on file with the Board of Bar Overseers, and shall keep their account e-mail up to date.
- (2) Non-attorneys who are representing themselves and attorneys who are not members of the Massachusetts Bar shall register for a self-represented account, unless otherwise ordered.
- (3) An attorney representing him or herself shall register for a self-represented account with a unique e-mail address.

(c) Law Firm or Agency Registration. The Provider shall allow a firm or agency administrator to register a central account profile on behalf of a firm or agency's multiple Users. Once an administrator has completed this central registration, the administrator can add additional Users to that account.

(d) Conditions of Registration. By registering, the User acknowledges that:

- (1) Registration shall constitute consent to receipt of Provider notifications, electronic court notifications, and e-service in all cases.
- (2) It is the User's responsibility to ensure that the court and the Provider have the User's correct e-mail address at all times. Users shall update the Provider within 7 days of any change in the information provided at registration.

(e) User ID. The e-mail address provided during registration will serve as a unique User ID.

(f) User Password. At registration the User must designate a unique password in accordance with the specifications given by the Provider. Users may reset their password for the e-filing system at any time.

(g) Confidentiality of User ID and Password. The combination of the User ID and password shall be used only by the User and any other person that the User authorizes. Use of the User ID and password shall be deemed authorized by the User. Users should contact the court if they believe a filing was submitted falsely under their User ID.

Rule 4. Electronic Filing Procedures

(a) E-filing Through the Provider. E-filing shall be performed only through the Provider's e-filing system. The Provider shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.

(b) Receipt of Provider Notifications. Whenever a User submits a document to the court through the e-filing system, a Provider Notification will automatically generate and transmit to the User, acknowledging the submission. Provider notifications shall also be sent at the time the court accepts or rejects any submitted document.

(c) Determination of Date of Filing and Commencement of Civil Action.

(1) Date of Filing. Any document submitted through the e-filing system by 11:59 P.M. on a business day shall be deemed filed on that date, unless it is rejected by the court. See Rule 4(d). A document submitted on a Saturday, Sunday, or legal holiday shall be considered filed the next business day, unless it is subsequently rejected by the court.

(2) Commencement of Civil Action. The date of filing provided in Rule 4(c)(1) shall constitute the date of filing of any case initiating document or entry fee when determining the commencement of an action under Mass. R. Civ. P. 3.

(d) Clerk's Review of Electronically Filed Documents. Prior to entry upon the docket, the clerk shall review each document submitted through the e-filing system for compliance with these E-filing Rules, the court's Electronic Filing Program, and the Massachusetts Court Rules and Orders. Upon the clerk's acceptance, the document shall be considered "filed" with the court at the time the original submission to the e-filing system was complete, as stated on the Provider Notification transmitted pursuant to Rule 4(b), subject to Rule 4(c), and a Provider Notification of the acceptance will be transmitted. If a filing is rejected, the filing User will receive notice from the Provider, which shall note the rejection and the court's reason(s) therefore.

(e) Correction of Errors. Upon the discovery of any error made during the e-filing process, the User may cancel the transaction while the cancel option is available in the e-filing system. The cancel option is not available once the court begins the review process pursuant to Rule 4(d). After this period, the User should abide by the Massachusetts Court Rules and Orders for correcting filings containing errors.

(f) Exchange of Discovery and Other Materials. The e-filing system may 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. Use of the e-filing system for these purposes should be decided by the parties.

Rule 5. Rejection of Electronic Documents for Technical Nonconformance with the Rules of Court

The clerk may reject any document filed electronically for any technical nonconformance with the Rules of Court and may identify the error to be corrected and may state a deadline for the party to resubmit the document in a conforming format. This rule shall not, however, extend the mandatory or statutory time, including any statute of limitations, for the filing of such document.

Rule 6. Electronic Filing and Service of Civil Case Initiating Documents

(a) Filing of Case Initiating Documents. Where permitted by a court, case initiating documents, such as a complaint or petition, may be submitted for filing through the e-filing system, accompanied by electronic payment of the required filing fee. Motions to waive fees may be submitted through the e-filing system in accordance with Rule 8(d).

(b) Court Action Upon Acceptance of Case Initiating Document. Upon acceptance of a case initiating document for filing, a case number will be assigned and the document will be processed. If the case initiating document is rejected, the User will be informed as provided in Rule 4(d).

(c) Service of Case Initiating Documents Shall Be By Conventional Methods. Unless otherwise determined by the court, or unless the responding party has consented in writing to accept electronic service or service by some other method, case initiating documents shall be served by conventional methods, together with a notice to the responding party stating that the case has been electronically commenced.

Rule 7. Service of Electronically Filed Documents

(a) All Documents E-filed Must Be Served. Except as otherwise provided in the Massachusetts Court Rules and Orders, or as otherwise ordered by the court, all electronically filed documents must be served on all other parties. Any document filed through the e-filing system must include a certificate of service. Subject to a court's specific requirement, the certificate of service may appear as a part of the document being filed or may be filed as a separate document.

(b) Electronic Service Accomplished Through the Electronic Filing Service Provider; Conventional Service Required for Non-Registered Participants. All Users in a case may be served electronically through the e-filing system, even when the parties to a case comprise both Users and Non-Registered Participants. When the parties to a case comprise both Users and

Non-Registered Participants, the User submitting the document for filing through the e-filing system is responsible for serving a copy of the document to all parties who are Non-Registered Participants in accordance with other Massachusetts Court Rules and Orders.

(c) Conventional Service Required If Electronic Service Notification Is Undeliverable. If a filing User receives notice that electronic service on any party was undeliverable, the filing User shall then serve the document on that party by conventional methods.

(d) Electronic Notification Shall Signal Completion of Electronic Service. Electronic service shall be deemed complete at the time of transmission to the e-mail account of the Service Contact.

(e) Calculation of Time To Respond. For the purpose of computing time to respond to documents electronically filed, whenever a User has the right or is required to do some act within a prescribed period after the completion of electronic service of a notice or other documents upon him/her and the notice or document is either served upon him/her by electronic means, or the document was filed electronically and served by conventional methods, three days shall be added to the prescribed period.

Rule 8. Payment of Fees

(a) Provider May Charge Fee for Civil Filings. The e-filing Provider may charge a fee per envelope for its services related to filings in civil cases, in an amount approved by the Supreme Judicial Court. The Provider will provide for one or more methods of electronic payment.

(b) Provider May Charge Fee for Non-Indigent Criminal Defendant Filings. The e-filing Provider may charge a fee for its services related to filings in criminal cases only when counsel is not appointed pursuant to S.J.C. Rule 3:10 and the defendant is not indigent.

(c) Payments Shall Be Made at Time of Filing. All applicable fees are due and payable at the time of e-filing unless waived by the court. Failure to timely pay a required fee may cause the document submitted to be refused by the clerk under Rule 4(d) or stricken by the court. The payment will be debited when the clerk accepts the document.

(d) Payments Shall Be Transmitted Through the E-Filing System. Users shall make any payment due to the clerk through the e-filing system unless otherwise ordered by the court.

(e) Request to Waive Court Fees. Where permitted by the court, Users may submit a motion for waiver of court fees accompanied by a separate affidavit of indigency through the e-filing system. If the court allows a waiver of a court fee, any related Provider fee shall also be waived.

(f) Request to Waive Provider Fees. Upon request, the court shall waive a Provider fee upon a showing the filing party is indigent or is represented by court-appointed counsel. Upon request, the court may waive a Provider fee for multiple envelopes simultaneously submitted in the same case.

(g) Recoverable Costs. The cost of any convenience fees and other administrative fees levied for the ability to pay fees or costs by credit card or other means, including, but not limited to,

Provider fees for electronic filing of documents or pleadings with the court, may be recovered pursuant to any applicable Massachusetts Court Rules and Orders.

Rule 9. Format and Content of Documents

(a) Documents Shall Be Filed in Searchable PDF. Except where specifically provided, all documents submitted for e-filing must be in searchable Portable Document Format (PDF). Documents should be submitted as electronically converted PDFs rather than scanned PDFs whenever possible. Scanned PDFs shall be made searchable using optical-character-recognition software, such as Adobe Acrobat. Documents shall not be locked or otherwise password protected.

(b) Documents Shall Be Formatted in Compliance with Massachusetts Court Rules and Orders. Users shall format all documents in accordance with the Massachusetts Court Rules and Orders governing formatting of paper documents, including page limits and font style and size, unless a deviation has been allowed by court order.

(c) Internal Links Are Allowed. Each document submitted for e-filing may contain electronic links, but only to navigate within the same document.

(d) Paper Filing Required. Each court may identify documents that must be filed by conventional methods in paper form only.

Rule 10. File Size Limitations and Legibility

(a) File Size Limitations. The Provider has set a maximum megabyte size for each document, and a maximum envelope size for all documents contained in one envelope. A User must limit the size of each electronically filed document, and the total size of all the documents filed within one envelope, to comply with the maximum file size and envelope size permitted by the Provider. Documents exceeding those limits cannot be transmitted by the Provider.

(b) Submission of Oversized Documents. Documents or envelopes larger than the maximum allowed file size may be submitted for e-filing if they are broken up into separate segments, each of which complies with the Provider's size restrictions. The User shall indicate in the document "Description" field that a filing is part of multiple parts (for example, "Volume 1 of 2"). The additional envelopes necessary to submit multiple parts may be filed under a waiver account, subject to review by the court.

(c) Scan Settings for Text Documents. To minimize file size, Users must configure their scanners to scan text documents at 200 dpi and in black and white rather than in color.

(d) Color and High Resolution Images. For documents that consist of images beyond text, such documents shall be scanned at sufficient resolution to ensure a legible and accurate representation of the image. Black and white images should be scanned in grayscale. Images should only be scanned in color if color is relevant, such as color photographs used as an exhibit.

(e) Users Must Verify Document Legibility and Orientation. A PDF produced under these rules must be of high quality sufficient to ensure a legible and accurate reading of the entire document. A User must verify the legibility and orientation of scanned documents before submitting them for e-filing.

Rule 11. Filing of Impounded Information

(a) Filing of Impounded Documents. Except as otherwise provided, impounded documents should be filed in hard copy with the clerk's office. Such documents must be clearly labeled as impounded, with the appropriate accompanying notice of impoundment or motion to impound pursuant to the Uniform Rules of Impoundment Procedure, and any other applicable Massachusetts Court Rules and Orders.

(b) Electronic Filing of Impounded Documents. When permitted by a court, impounded documents may be e-filed through the e-filing system. The User shall identify the document as impounded at the time of filing.

(c) Identification of Impounded Documents By User. Where an impounded document is submitted through the e-filing system, the User shall mark the cover or first page of the document as impounded.

(d) Motions to Impound. A User may submit for e-filing a motion to file an impounded document. If the motion is granted, the User shall then submit by conventional methods the impounded document to the clerk's office for filing. A paper copy of the order granting the motion must be attached to documents so filed and delivered to the clerk.

(e) Confidentiality. The confidentiality of an electronic record or an electronic or paper copy thereof is equivalent to that of a paper record. Where an impounded document is scanned or otherwise placed in the e-filing system, access may be permitted only to the extent provided by law.

Rule 12. Protection of Personal Identifying Information

Publicly accessible documents filed with the court shall conform to Supreme Judicial Court Rule 1:24, Protection of Personal Identifying Information in Publicly Accessible Court Documents. A User is responsible for redacting personal identifying information. The clerk will not review filed documents for compliance. See S.J.C. Rule 1:24, § 7.

Rule 13. Electronic Signature

(a) Attorneys. An attorney's use of the e-filing system to file documents shall serve as the attorney's signature for purposes of Mass. R. Civ. P. 11 and for all other purposes under the Massachusetts Court Rules and Orders. In addition, all documents submitted for e-filing must include either a scan of the individual's handwritten signature, an electronically inserted image intended to substitute for a signature, or a "/s/ name of signatory" block, which shall have the

same validity and effect as a handwritten signature, and must set forth the attorney's name, Board of Bar Overseers number, address, telephone number, and e-mail address.

When using the "s" option, the name of the User must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. For example:

/s/ John A. Smith
John A. Smith
BBO#123456
123 Main Street
Boston, MA 02210
617-123-4567
jasmith@internetprovider.com

(b) Self-Represented Litigants. All documents submitted for e-filing must include either a scan of the individual's handwritten signature, an electronically inserted image intended to substitute for a signature, or a "/s/ name of signatory" block, which shall have the same validity and effect as a handwritten signature, and must set forth the individual's name, address, telephone number and e-mail address. When using the "s" option, the "/s/" must be typed in the space where the signature would otherwise appear. For example:

/s/ John B. Doe
John B. Doe
123 Main Street
Boston, MA 02210
617-123-4567
johnbdoe@isp.com

(c) Multiple Signatories. A User who submits a document for e-filing that bears more than one signature (e.g., stipulations, joint motions, joint status reports, etc.) must ensure that all signatures comply with Rule 13(a) and (b).

(d) Signature of Notary; Retention of Original. Notarized documents containing a handwritten signature and physical seal may be submitted for e-filing. The User shall submit a scanned copy of the notarized document through the e-filing system, and the court shall maintain the scanned document as the official court record. The court may require the User to produce the original paper document. The User shall retain the original for future production, if necessary, until two years after the conclusion of the case, including any appeal.

(e) Summons and Complaint. A summons and complaint, petition, or other case initiating document that is signed in compliance with this Rule bears a sufficient signature under any applicable Massachusetts Court Rules and Orders.

Rule 14. Orders and Judgments

(a) Orders and Judgments May Be Electronically Signed. The assigned judge or clerk may electronically sign all orders, judgments, and notifications.

(b) Electronic Signatures Shall Have the Force of Conventional Signatures. Any order signed electronically has the same force and effect as if the judge or clerk had affixed his/her signature to a paper copy of the order and it had been entered on the docket in the conventional method.

(c) Clerk May Enter Orders By Text-Only Entry. A clerk may enter orders, issued by a judge or clerk as the case may be, by a text-only entry upon the docket. The text-only entry shall constitute the court's only order on the matter.

(d) Notification. All Users and Non-Registered Participants of record in the case will receive notification either electronically or by conventional methods.

Rule 15. Technological Failures and Timeliness of Filing

(a) Technological Failure of the Provider May Excuse Untimely Filing. A User whose filing is made untimely as a result of a technological failure of the Provider may seek appropriate relief from the court. The court may enter an order permitting the document to be deemed filed or served as of the date it was first attempted to be transmitted electronically. If appropriate, the court may adjust the schedule for responding to these documents or for the court's hearing, or provide other relief.

(b) Scheduled Maintenance Will Not Excuse Untimely Filing. Notice of known system outages or maintenance will be posted by the Provider in advance on the User login screen. The notice will be posted as soon as the scheduled date and time is confirmed. Users will also receive e-mail notification of the upcoming downtime. Scheduled maintenance will not constitute a technological failure under these E-Filing Rules nor excuse an untimely filing.

(c) User Error Will Not Excuse Untimely Filing. Problems on the User's end, e.g., problems with the User's Internet Service Provider (ISP), hardware, or software problems, will not constitute a technological failure under these E-Filing Rules nor excuse an untimely filing.

Rule 16. Title

These rules may be known and cited as the Massachusetts Rules of Electronic Filing (Mass. R. E. F.).