

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION
20-CI-00332

HAYNES PROPERTIES, LLC, et al.

PLAINTIFFS

v.

BURLEY TOBACCO GROWERS
COOPERATIVE ASSOCIATION, et al.

DEFENDANTS


**Response¹ to Motion to, *inter alia*,
Require an Appropriate *Supersedeas* Bond**

This motion relates to the \$99,325.00 at issue in the Objectors' appeal. On September 8, 2023, this Court heard Burley Counsel's motion to release its funds to the settlement administrator. During that motion hour, Class Counsel brought up the supersedeas bond issue. Objectors' Counsel said they would submit one by Friday, September 15. During that same motion hour, Class Counsel insisted that a written order should be issued. Objectors' Counsel did not think that necessary, as it was clear what the Court wanted Objectors' Counsel to do and by when. On September 15, 2023, Objectors' Counsel submitted the supersedeas bond via the Kentucky CourtNet 2.0 eFiling system, listing John Friend and principal and Hank Graddy as surety.

While not directly explaining what the issue is, Class Counsel's underlining and emphasis on Friend and Graddy being principal and surety, respectively, seems

¹ This Response is filed pursuant to RFCC 15(A)(1)

to suggest Class Counsel believes it noteworthy. It is not clear why. The rule simply requires a principal and surety. It does not say who those must be. Also, when Kentucky adopted the new appellate rules it created a new form to simplify the bond process.² Moreover, the form itself *is the bond*. It says so right at the top:³

AOC-155 Doc. Code: BSU Rev. 1-23 Page 1 of 1 Commonwealth of Kentucky Court of Justice www.kycourts.gov RAP 63	 SUPERSEDEAS BOND	Case No. _____ Court _____ County _____
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The total amount currently posted is \$5,950.00, representing one year of statutory interest. Objectors’ Counsel informed Class Counsel that was the amount they intended to post weeks before the motion hour. On August 17, 2023, Objectors’ Counsel sent an email to that effect.⁴ It also noted that if the appeal was to go into a second year Objectors would voluntarily increase the bond.

Kevin Henry, on Burley's behalf, responded that he “ha[d] some disagreement on the adequacy of the proposed bond, but w[ould] defer to Class Counsel” on the issue.⁵ Katie Yunker, on the class representatives behalf, called the bond “patently inadequate” because it did not address “the direct costs of there being a second

² Supersedeas Bond, AOC Form 155, <https://kycourts.gov/Legal-Forms/Legal%20Forms/155.pdf>

³ The circuit clerk not wanting to sign off on the bond without the trial court’s signature makes sense, as the clerk has to serve all appellees.

⁴ Exhibit 1, Email from J. Friend

⁵ Exhibit 2, Email from K. Henry

distribution which [would] occasion other costs...”⁶⁷ Yunker gave no estimate of what that cost might be. But it is not Objectors’ counsel’s job to guess. Without even an estimate from Class Counsel there was no practical way to account for that cost. Objectors Counsel have no access to the Settlement Administrator, who could estimate what those amounts would be. On top of that, if Objectors’ Counsel was to guess on an amount there is always the risk that Class Counsel could just continue to insist it was not sufficient. Class Counsel should, by now, have provided an estimate it would commit itself to, but they have not. This places this Court — once again — in the position of playing referee on a largely empty record.

The undersigned hates to do this, but Class Counsel unfortunately called out Friend specifically for “fail[ing] to serve the” bond notice and form “by email on other counsel or to list the names and addresses for mailed service on the unrepresented objectors.”⁸ Class Counsel should have paid more attention in their e-filing training or at least read the Supreme Court’s administrative eFiling orders. Signing up for e-filing and subsequently filing into a case is the same thing as filing an election of electronic service. This was first noted in the Kentucky Supreme Court’s

⁶ Exhibit 3, Email from K. Yunker

⁷ Ms. Yunker also told Objectors’ Counsel to check their “inputs” because the amount was wrong. Class Counsel has now informed Objectors’ Counsel and the Court that the appropriate amount on one year of interest is \$5,959.50, meaning they believe Objectors’ Counsel is short \$9.50.

⁸ Motion at 3

administrative pilot project order regarding e-filing *nearly nine years ago*⁹ and remains in force today:

(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.

Filing documents with the eFiling system *is* service. By its final iteration in 2022, the definition of electronic service was changed to explicitly state that "no other service" was required when one uses the eFiling system:¹⁰

(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 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. Electronic service of documents is sufficient to provide service in accordance with the Kentucky Rules of Procedure; no other service is required.

The order also makes clear that, as it relates to e-filing and electronic service, it controls over any otherwise "inconsistent" or "conflict[ing]" rules of civil procedure

⁹ Exhibit 4, 2014-09 Administrative Rules of Practice and Procedure for the Kentucky Court of Justice, Electronic Filing Project, readopted by administrative orders 2015-12, 2018-11, and finalized as Exhibit 5, Administrative Rules of Practice and Procedure Electronic Filing in the Kentucky Court of Justice 2022-12

¹⁰ Exh. 5 Sec. 5(10)

or local practices. And, as of 2018, that no trial court in the Commonwealth may issue “orders [] or other policies” that are “inconsistent or otherwise conflict” with the Supreme Court’s eFiling rules.¹¹ This is why when one files, this list appears before one can finalize the electronic packet:

1 General Information 2 Service 3 Attachments 4 Review

Electronic Service Will Be Sent via eFiling to: ?

Party Type Description	Name	Filed As
ATTORNEY FOR PLAINTIFF	MACLIN, ROBERT EDWIN	MACLIN, ROBERT EDWIN
ATTORNEY FOR PLAINTIFF	HOLLON, JASON	HOLLON, JASON
ATTORNEY FOR DEFENDANT	ROGERS, JEREMY S	ROGERS, JEREMY S
ATTORNEY FOR PLAINTIFF	MACLIN, ROBERT E	MACLIN, ROBERT E
ATTORNEY FOR DEFENDANT	BILLINGS, JOHN NATHANAE	BILLINGS, JOHN NATHANAE
ATTORNEY FOR DEFENDANT	HENRY, KEVIN G	HENRY, KEVIN G
ATTORNEY FOR DEFENDANT	BARBER, CHRISTOPHER	BARBER, CHRISTOPHER
ATTORNEY FOR PLAINTIFF	YUNKER, KATHERINE K	YUNKER, KATHERINE K
ATTORNEY FOR DEFENDANT	THACKER, CHRISTOPHER	THACKER, CHRISTOPHER
ATTORNEY FOR DEFENDANT-INTERVENING	RUSH, DOROTHY T	RUSH, DOROTHY T
ATTORNEY FOR DEFENDANT-INTERVENING	GRADDY, IV, W. HENRY	GRADDY, WILLIAM HENRY
ATTORNEY-PRIVATE	TACHAU, DAVID BRANDEIS	TACHAU, DAVID BRANDEIS
ATTORNEY-PRIVATE	MCCAULEY, DAWN	MCCAULEY, DAWN
ATTORNEY	RUSSELL, KATHERINE	RUSSELL, KATHERINE GAIL
ATTORNEY FOR APPELLANT	FRIEND, JOHN	FRIEND, JOHN

If one hovers their mouse over that question mark, this is what appears:

¹¹ Exhibit 6, 2018-11 Administrative Rules of Practice and Procedure for the Kentucky Court of Justice, Electronic Filing Project at Sec. 4(2) and Exh. 3 at Sec. 4(2)

Envelope Number: 6601634 Other Document / Pleading in FAYETTE CIRCUIT COURT (Eastern Time Zone) Status: In Progress Date Started: 9/18/2023 6:48:53 PM Eastern
 Case Number: 20-CI-00332 Case Style: HAYNES PROPERTIES LLC, ET AL VS

1 General Information 2 Service 3 Attachments 4

Electronic Service Will Be Sent via eFiling to: ?

Party Type Description		Filed As
ATTORNEY FOR PLAINTIFF		MACLIN, ROBERT EDWIN
ATTORNEY FOR PLAINTIFF		HOLLON, JASON
ATTORNEY FOR DEFENDANT	ROGERS, JEREMY S	ROGERS, JEREMY S
ATTORNEY FOR PLAINTIFF	MACLIN, ROBERT E	MACLIN, ROBERT E
ATTORNEY FOR DEFENDANT	BILLINGS, JOHN NATHANAEL	BILLINGS, JOHN NATHANAEL
ATTORNEY FOR DEFENDANT	HENRY, KEVIN G	HENRY, KEVIN G
ATTORNEY FOR DEFENDANT	BARBER, CHRISTOPHER	BARBER, CHRISTOPHER
ATTORNEY FOR PLAINTIFF	YUNKER, KATHERINE K	YUNKER, KATHERINE K
ATTORNEY FOR DEFENDANT	THACKER, CHRISTOPHER	THACKER, CHRISTOPHER
ATTORNEY FOR DEFENDANT-INTERVENING	RUSH, DOROTHY T	RUSH, DOROTHY T
ATTORNEY FOR DEFENDANT-INTERVENING	GRADDY, IV, W. HENRY	GRADDY, WILLIAM HENRY
ATTORNEY-PRIVATE	TACHAU, DAVID BRANDEIS	TACHAU, DAVID BRANDEIS
ATTORNEY-PRIVATE	MCCAULEY, DAWN	MCCAULEY, DAWN
ATTORNEY	RUSSELL, KATHERINE	RUSSELL, KATHERINE GAIL
ATTORNEY FOR APPELLANT	FRIEND, JOHN	FRIEND, JOHN

Parties that are registered eFilers will receive service through the eFiling system. You do not need to conventionally serve registered eFilers.

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Put simply, there is no requirement for anyone to separately serve counsel who have e-filed into a case. A CR 5 “Election of Service” is a redundancy if someone registers to e-file and files anything at all in a case because that is *consent to receive electronic service through CourtNet itself*. And no rule of procedure, local practice, or court order can require anything more.¹² If, for some reason or another, Class Counsel is not receiving NEFs, that is their problem because it is their responsibility to ensure their email properly receives the NEFs.¹³¹⁴

¹² *Id.*

¹³ Exh. 5 at Sec.6 (3)

¹⁴ Unfamiliarity with the rules may also explain why Class Counsel was not on the Court of Appeals' electronic service list as of the most recent filing there. In order to do so, one must file an “Entry of Appearance or any other supported document in that case...” Exh. 5 at Sec. 9(1) incorporating Sec. 8(1). Class Counsel filed a CR 5 election in the appeal, which is not a supported document for eFiling purposes at the appellate level.

RES : 000006 of 000013

Class Counsel then states that “[t]here is no sign that the bond has been presented to or approved by the Court...” That is also untrue. Under Section 8 subsection (3) the e-filing rules provide that “electronic transmission” that generates an NEF is the same thing as “filing of the document for all purposes of the Kentucky Rules of Procedure.”¹⁵ On Friday, September 15, 2023, the Fayette Circuit Clerk processed and accepted both the notice and bond at 10:14 am.¹⁶ That means the bond has been presented. If what Class Counsel meant was that it should have been emailed to the Court separately, as many documents have been, the rules specifically state that “[e]mailing 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...”¹⁷ E-mailing a document to chambers is never sufficient and any lawyer relying on that does so at their peril. This Court did not request a separate email from Objectors’ Counsel at motion hour and the undersigned will never presume that a trial court wants direct contact with chambers without a specific order.

As for the actual substance in the motion, the Objectors have never once contended that they would not agree to a higher bond than one year of interest. While there is an argument they could make that no bond should even be required under these circumstances,¹⁸ they have chosen both to obtain one and are willing to discuss

¹⁵ Exh. 5 at Sec. 8(3)

¹⁶ Exhibit 7, NEF Confirmation to J. Friend

¹⁷ Exh. 5 Sec. 8(3)(c)

¹⁸ Among other things, this Court has jurisdiction over the settlement and has the ability to order the \$99,325 be withheld whether a bond is posted or not. This Court

what is reasonable under the circumstances. But without any counter-proposal with actual amounts provided, Objectors' Counsel has no way to assess the reasonability of what kind of bond Class Counsel may suggest. An email with a counter-proposal is generally a good way to handle such a disagreement and it is not objectors' responsibility to solicit one. Class Counsel has had over a month now to come up with some kind of estimate as to the actual cost of a second mailing or other damages and *still* has not provided them. Instead, likely realizing a reasonable bond here would be quite low, they are now trying to bootstrap exorbitant amounts into the bond that have nothing to do with the appeal.

Class Counsel also tries to push the uncertainty issue onto Objectors. They cite to *Brundige v. Sherwin-Williams Co.*, for this proposition: "The appellant (or stay proponent) bears the risk of uncertainty in the amount of resulting costs or damages when it is the stay 'that prevents an exact determination....'"¹⁹ *Brundige* says nothing of the sort. *Brundige* holds only that if damages are certain but the amount itself is uncertain a party may still present a damages case. A factfinder is allowed to award

was understandably concerned about what the practical effect of sending the \$99,325 out if Objectors' Counsel prevails on appeal and the impact that would have on class members. *See e.g., Stars Interactive Holdings Tom Ltd. v. Wingate*, 594 S.W.3d 181, 185 (Ky. 2020)(if no bond is posted a party can execute on a judgment but "does so at his or her own risk because, if the judgment is reversed, any benefits obtained by virtue of the execution must be restored to the adverse party"). Between this Court's fiduciary status vis-à-vis the class members and its ability to issue orders to protect the same, this Court has the ability to order the money not be distributed. *Kloster v. McColl (In re BankAmerica Corp. Sec. Litig.)*, 350 F.3d 747, 751 (8th Cir. 2003)(the trial court acts as a fiduciary who must serve as guardian of the rights of absent class members").

¹⁹ Motion at 3 (citing and quoting *Brundige v. Sherwin-Williams Co.*, 551 S.W.2d 268, 271 (Ky. App. 1977))

damages “as a matter of just and reasonable inference, although the result be only approximate.”²⁰ Ironically, Class Counsel is trying to force the Objectors to take a guess as to costs on a blank slate, which is something that is not permissible. The only time it may be permissible is when the damaged party is seeking damages from a “wrongdoer” whose act caused the uncertainty.²¹ The Objectors have a constitutionally protected right to appeal. They are not "wrongdoer[s]."

Class Counsel appears to misunderstand the purpose of a bond despite appropriately citing cases that note they are only designed to preserve a status quo while an appeal is pending. For example, they imply that only the amount of the bond itself can be withheld from distribution.²² That is incorrect. The behind maintaining a “status quo” is so an appellee will not be worse off **in terms of the judgment itself** due to a failed appeal.²³ But the \$99,325 itself is being safely held by a settlement administrator. That aspect of the “status quo” is quite safe. Put another way, if Objectors’ Counsel put up an additional \$99,325, what would happen to that amount if they lose the appeal? Besides any amounts paid for a second mailing and interest, it would all go back to Objectors’ Counsel. So what would be the point? If that money is not safe, Class Counsel needs to bring that to the Court’s attention now as it raises the question of why they would choose an unsafe place to put class funds.

²⁰ *Brundige*, 551 S.W.2d at 270 (emphasis added)

²¹ *Id.* at 270 (citations omitted)

²² Motion at 3

²³ *Id.*

The rest of Class Counsel's arguments, such as requiring some kind of notice be sent the class members out of Objectors' pocket, should be rejected out of hand. Class Counsel also suggests that Objectors be held responsible for the entire \$855,773.55 not being sent for the last month. The Objectors are *not* responsible for that. Class Counsel has had the right to send out anything besides the \$99,325 at issue in the appeal. These are all just attempts to punish the Objectors for appealing and bear no rational relationship to the appeal itself nor any costs or damages that may stem from it.

What appears to be lost in all of this, at least from Class Counsel's perspective, **is if they had their way there would not even be a "pay me" class to begin with.** Class Counsel submitted the full \$1.5 million to be paid to an entity and taken away from the class members. It seems hardly fair for Class Counsel to now act as though the Objectors are the problem when they were the ones who submitted an unreasonable settlement proposal containing what amount to a de facto automatic reversionary provision²⁴ (where they originally sought about \$7 million for themselves, as well). If they had not done so, none of us would be here today, and this case would be long over.

²⁴ A reversion is a provision that allowed unclaimed funds to go back to a defendant and are an immediate red flag for collusion. *See e.g.*, *Roes v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1049 (9th Cir. 2019). The provision here was not even for unclaimed funds – it was just for money to be paid immediately.

Conclusion

Ultimately, the undersigned will admit bewilderment regarding this strategy. Why Class Counsel would want to distribute the entire amount knowing that there's a (frankly, strong) possibility that the Objectors will prevail on appeal²⁵ and possibly subject their own clients to defendant class action does not seem in keeping with their fiduciary duties.²⁶ Imagine we brought members of the pay-me class in and gave them two options: Option one, they get a check for \$454.56 right now but possibly get sued later and have to send someone a check for \$52.83 or risk a judgment against them personally. Option two, they get a check for \$402.13 now and maybe get another one for \$52.83 at a later date (possibly with some accrued interest as well). It does not take an expert in human behavior to know that the second option would likely be the overwhelming favorite. This Court would be well within its rights to simply order the \$99,325 be held without any bond whatsoever if only to protect class members from possibly becoming a defendant class at a later date.

²⁵ This Court's primary basis for denying the Objectors' fee application was because it had already raised concerns about the \$1.5 million reversion. Federal courts have unanimously rejected that rationale for denying objector fees. *See e.g., Reynolds v. Ben. Nat'l Bank*, 288 F.3d 277, 288 (7th Cir. 2002)(noting objector fees cannot be denied only because a judge had independently decided to reject a provision before the objection). The Objectors here were also the only ones to propose the voting system that created the "pay me" class in the first instance, making their contribution unique.

²⁶*Bell v. Brockett*, 922 F.3d 502, 511 (4th Cir. 2019)("In defendant class actions, an unnamed class member can be brought into a case, required to engage in discovery and even be subjected to a judgment compelling the payment of money or other relief without ever being individually served with a lawsuit").

In order to put this matter to bed for the time being, this Court should order that the \$5,950.00 bond is sufficient for now. Once the Court signs, it can be tendered to the clerk. If the appeal is unsuccessful, Class Counsel can then present what the increased cost and damages actually are, and the Objectors can respond accordingly.

Respectfully submitted,

/s/ John S. Friend

John S. Friend
Friend Law, PSC
908 Minoma Ave.
Louisville, KY 40217
(502)542-2455
johnny@friendlawky.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

Counsel certifies that the foregoing was served on all parties of record via Kentucky CourtNet 2.0. It will also be served concurrently on the non-parties below:

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P. O. Box 47
Means, KY 40346

George M. Darnell
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Cynthiana, KY 41031

Berkley Marks
5399 Paris Pike
Mt. Sterling KY 40353

David Barnes
768 Bowman Mill Road
Berry, KY 41003

Jennifer Darnell
248 Gray Lane
Cynthiana, KY 41031

Bruce Quarles, Steven
Quarles, Travis Quarles
10570 Owenton Road
Frankfort, KY 40601

Jacob Barnes
1088 Bowman Mill Road
Berry, KY 41003

Brent Dunaway
1547 KY Highway 1054 N
Berry KY 41003

Jerry Rankin
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Robert E. Barton
Barton Bros. Farm
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Lexington, KY 40511

William David Furnish
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Richard Sparks
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Ben Clifford
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Cynthiana, KY 41031

Leonard E. Gilkison
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Winchester, KY 40391

Jarrod Stephens
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Cynthiana KY 41031

Lincoln Clifford
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Cynthiana KY 41031

Bill G. Hall
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Means, KY 40346

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Cynthiana, KY 41031

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Mayslick, KY 41055

Dudley Wayne Hatcher
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Morgantown, KY 42261

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Cynthiana, KY 41031

Steve Lang
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Cynthiana, KY 41031

Danny Townsend
Judy Townsend
11620 Main St.
Jeffersonville, KY 40337

/s/ John S. Friend

Counsel for Plaintiff

EXHIBIT 1

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000014 of 000086

EXH : 000001 of 000002



Johnny Friend <johnny@friendlawky.com>

Fay. Cir. 20-CI-0332; 8-4-23 Order directed payments

Johnny Friend <johnny@friendlawky.com> Thu, Aug 17, 2023 at 3:16 PM
To: Kevin Henry <KHenry@sturgillturner.com>
Cc: Katie Yunker <kyunker@mcbayerfirm.com>, "Jason R. Hollon" <jhollon@mcbayerfirm.com>, "hgraddy@graddylaw.com" <hgraddy@graddylaw.com>

Counsel,

Be advised that the objectors intend to post a bond of \$5,959.50 to hold the \$99,325 in escrow. That represents one year of interest at the statutory 6% rate. Given the current posture of the appeal, one year of interest seems sufficient, as we should receive a start order soon. I anticipate they will pass Mr. Henry's motion to the merits panel, as that is generally what I've seen them do with substantive motions. If we come up on a year with no ruling, we will post an additional 6% at that time. Mr. Graddy is currently working to get the bond posted.

Also, we will be sending a proposal to resolve the appeal by COB Monday. Thanks.

[Quoted text hidden]

--



FRIEND
LAW, PSC

John S. Friend

Phone: (502)542-2455
E-mail: johnny@friendlawky.com
Address: 908 Minoma Ave, Louisville, KY 40214

[Quoted text hidden]

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000015 of 000086

EXH : 000002 of 000002

EXHIBIT 2

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000016 of 000086

EXH : 000001 of 000002



Johnny Friend <johnny@friendlawky.com>

Fay. Cir. 20-CI-0332; 8-4-23 Order directed payments

Kevin Henry <KHenry@sturgillturner.com>

Thu, Aug 17, 2023 at 4:01 PM

To: Johnny Friend <johnny@friendlawky.com>

Cc: Katie Yunker <kyunker@mcbayerfirm.com>, "Jason R. Hollon" <jhollon@mcbayerfirm.com>, "hgraddy@graddylaw.com" <hgraddy@graddylaw.com>, "Robert E. Maclin, III" <remaclin@mcbayerfirm.com>

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I have some disagreement with the adequacy of the amount of the proposed bond, but will defer to Class Counsel on that. You should proceed to respond to BTGCA's motion to dismiss the appeal, which I hope will be addressed and not merely passed to a full briefing. Thanks for the update. Regards, Kevin Henry

[Quoted text hidden]

[Quoted text hidden]

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000017 of 000086

EXH : 000002 of 000002

EXHIBIT 3

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000018 of 000086

EXH : 000001 of 000008



Johnny Friend <johnny@friendlawky.com>

Re: Fay. Cir. 20-CI-0332; bond against 8-4-23 Order directed payments

Katie Yunker <kyunker@mcbayerfirm.com>

Fri, Aug 18, 2023 at 10:35 AM

To: Johnny Friend <johnny@friendlawky.com>, "hgraddy@graddylaw.com" <hgraddy@graddylaw.com>

Cc: Kevin Henry <KHenry@sturgillturner.com>, "Jason R. Hollon" <jhollon@mcbayerfirm.com>, "Robert E. Maclin, III" <remaclin@mcbayerfirm.com>

It is patently inadequate. It addresses only the time value of the \$99k reserved (please check your inputs, your output is wrong) and not other damages from delay, e.g.:

- the direct costs of there being a second distribution at some later date which
- will occasion other costs (that would not otherwise have been incurred) due to Class members changing address or dying, dissolving, or otherwise needing a successor payee and for other things like keeping the website operational and tax/informational returns for the QSF

These direct and consequential costs were discussed in the phone call between Johnny Friend, Hank Graddy, Jason Hollon and me toward the end of July. I think they should be covered fully (not just 6% interest thereon). These costs cannot be exactly determined before the 2nd distribution is actually made, and cannot be projected with precision now.

In addition, there will be some cost of "safekeeping" the money and (unless in a fully-insured account) some risk that it won't be there at all or in a timely manner when the appeal is over. Kevin Henry has been adamant that the Co-op / its dissolution committee not hold assets after September 30, and we usually give money for the Settlement Administrator only right before it is to be distributed (not to hold for such a long period of time).

I suggest that Appellants not skimp on the amount bonded — the uncertainties and "what ifs" are due to the appeal and are the very risks that a bond should cover even if not fully actualized. Also, given that a second distribution would not be complete until at least four months after the appeal was over, I suggest that two years be covered, not one.

Katie Yunker (859-231-8780 x1137)

From: Kevin Henry <KHenry@sturgillturner.com>

Date: Thursday, August 17, 2023 at 4:03 PM

To: Johnny Friend <johnny@friendlawky.com>

Cc: Katie Yunker <kyunker@mcbayerfirm.com>, Jason R. Hollon <jhollon@mcbayerfirm.com>, hgraddy@graddylaw.com <hgraddy@graddylaw.com>, Robert E. Maclin, III <remaclin@mcbayerfirm.com>

Subject: RE: Fay. Cir. 20-CI-0332; 8-4-23 Order directed payments

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I have some disagreement with the adequacy of the amount of the proposed bond, but will defer to Class Counsel on that. You should proceed to respond to BTGCA's motion to dismiss the appeal, which I hope will be addressed and not merely passed to a full briefing. Thanks for the update. Regards, Kevin Henry

Kevin G. Henry
Member
khenry@sturgillturner.com



Sturgill, Turner, Barker & Moloney, PLLC
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From: Johnny Friend <johnny@friendlawky.com>
Sent: Thursday, August 17, 2023 3:17 PM
To: Kevin Henry <KHenry@sturgillturner.com>
Cc: Katie Yunker <kyunker@mcbayerfirm.com>; Jason R. Hollon <jhollon@mcbayerfirm.com>; hgraddy@graddy.com
Subject: Re: Fay. Cir. 20-CI-0332; 8-4-23 Order directed payments

Counsel,

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Also, we will be sending a proposal to resolve the appeal by COB Monday. Thanks.

On Wed, Aug 16, 2023 at 3:20 PM Kevin Henry <KHenry@sturgillturner.com> wrote:
Filed 20-CI-00332 09/21/2023 Vincent Riggs, Fayette Circuit Clerk

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I will hold my email to Traditional Bank giving wire instructions until Friday pending any decision by the appealing Objectors whether they will post a supersedeas bond to require escrowing the \$99,000 (approx..) sought by the Graddy law firm from the Fund that was ordered to be distributed August 4. Please let me know Yea or nay on the decision about any bond. Thank you, Kevin Henry

Kevin G. Henry

Member

khenry@sturgillturner.com



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p: 859.255.8581 | f: 859.231.0851
sturgillturner.law | [bio](#)

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From: Johnny Friend <johnny@friendlawky.com>
Sent: Wednesday, August 16, 2023 2:25 PM
To: Kevin Henry <KHenry@sturgillturner.com>
Cc: Katie Yunker <kyunker@mcbayerfirm.com>; Hank Graddy <hank.graddy@gmail.com>; Jason R. Hollon <jhollon@mcbayerfirm.com>; Robert E. Maclin, III <remaclin@mcbayerfirm.com>; Sarah Jefferson <sjefferson@traditionalbank.com>; Penny Greathouse <pgreathouse1622@gmail.com>; Al Pedigo <apedigo@nctc.com>; D. Gaines Penn <gpenn@elpolaw.com>
Subject: Re: Fay. Cir. 20-CI-0332; 8-4-23 Order directed payments

Katie,

We are going to discuss tomorrow and respond no later than COB. Thanks.

On Wed, Aug 16, 2023 at 2:07 PM Kevin Henry <KHenry@sturgillturner.com> wrote:

I will prepare an email to Sarah Jefferson at traditional Bank with copies of the latest Order, and will copy all of you, Al Pedigo and Penny Greathouse (so Penny can go sign authorizations for the wire transfers to McBrayer, Angeion's QSFT account and Burley and Dark Tobacco Producer Association, Inc.). My email to Sarah will list the different amounts to be wired to each entity. Please let me know if McBrayer needs two separate wires, one for past Class Counsel fees and expenses, and one for the Escrow reserve for future Class Counsel fees and expenses during the Quarles appeal and distribution to the 1881 PayMe group of Class members. Jason, it will be helpful if you can again supply Sarah with the bank and account routing numbers for McBrayer's Escrow account, if applicable, and Angeion's QSFT account. Gaines or Al, to be safe, can you provide Sarah with the wire info for Burley and Dark Tobacco again ? Call me with any questions, and by all means, check my math to make sure it all adds up to \$1,325,000. Thanks, Kevin Henry

Kevin G. Henry

Member

khenry@sturgillturner.com



Sturgill, Turner, Barker & Moloney, PLLC
 333 West Vine Street, Suite 1500
 Lexington, KY 40507
 p: 859.255.8581 | f: 859.231.0851
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From: Katie Yunker <kyunker@mcbayerfirm.com>
Sent: Wednesday, August 16, 2023 1:39 PM
To: Hank Graddy <hank.graddy@gmail.com>; Dorothy Rush <dtrush2@gmail.com>; Johnny Friend <Johnny@friendlawky.com>; Kevin Henry <KHenry@sturgillturner.com>
Cc: Jason R. Hollon <jhollon@mcbayerfirm.com>; Robert E. Maclin, III <remaclin@mcbayerfirm.com>; Holly Lewis <hlewis@mcbayerfirm.com>
Subject: Fay. Cir. 20-CI-0332; 8-4-23 Order directed payments

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Counsel: The window having closed for CR 59.05 motions or anything else that would keep the principal 8-4-23 Order in a sub-final state and its directives now being executable, Class Counsel intend to request by an email sent to Kevin Henry as counsel for the Co-op, and copying all you other counsel, that the Co-op follow the directives for

its pay outs from the remaining \$1.325 Fund — including to the Settlement Administrator for its distribution to the 1881 electing Class members.

I have spoken with Hank Graddy and left a voicemail with Kevin Henry to give a “heads up” about this.

With Hank, I checked whether there was a bond about to be tendered/filed to stay execution and he did not tell me there was one.

Katie Yunker (859) 231-8780 x1137

Direct Dial: 859-551-3661

Please leave a voicemail if you want me to call you back



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(1) notify the sender of the error, and (2) Destroy this communication entirely, including deletion of all associated attachment files from all individual and network storage devices. Thank you.

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AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000025 of 000086

EXH : 000008 of 000008

EXHIBIT 4

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000026 of 000086

EXH : 000001 of 000018

Supreme Court of Kentucky

2014-09

ORDER

**IN RE: ADMINISTRATIVE RULES OF PRACTICE AND PROCEDURE
FOR THE KENTUCKY COURT OF JUSTICE, ELECTRONIC
FILING PILOT PROJECT**

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” 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) These rules shall apply to supported case types, in courts designated by the Kentucky Supreme Court to participate in this pilot project, by any attorney who has received training and is certified to eFile.
- (2) Any certified eFiler may eFile into an action even if the original action was filed conventionally and if other parties to the action are not participating in the pilot project; however, service must be conventionally made for all parties not participating in the pilot project.
- (3) Converting a convention file to an electronic file. 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. Scanned images of documents must be provided to the court in accordance with the court's clerical and technical requirements.

(4) Self-represented parties. A self-represented party is not authorized to file electronically for purposes of this pilot project, except as provided in section (5).

(5) Self-represented attorneys who are certified to eFile may file electronically.

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 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, which when selected, takes the reader to another place in the document or to a location outside the document.

- (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) "Notification of Court Processing (NCP)" means a notice automatically generated by the electronic filing system indicating that an eFiled document has been processed by the clerk. The NCP will indicate whether the filing has been accepted or rejected.
- (17) "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.
- (18) "PDF" means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.
- (19) "PDF/A" means an ISO-standardized version of the Portable Document Format (PDF) specialized for the digital preservation of electronic documents.
- (20) "Protected information" means information required to be redacted pursuant to CR 7.03 and in accordance with Section 9 of these rules.
- (21) "Scanned document" means an electronic image created by scanning a paper document.
- (22) "Self-represented party" means a party who represents himself or herself without the assistance of an attorney.
- (23) "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.
- (24) "Uniform Resource Locator (URL)" means letters and symbols that comprise the address of a website.

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 and have completed eFile certification;
- (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; however, URL citations are permissible;

(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 and allows the proposed document, the eFiler must refile the proposed document to make it part of the record.

(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 an editable format in .doc 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 refileing 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 conventionally filed document.

- (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 received an NCP that indicates a document or filing was rejected by the clerk, he or she shall correct any deficiencies and re-file the document.

(d) 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. A certificate of service must show parties who received conventional service and parties who received electronic service.

(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 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. 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.

(b) 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).

(c) 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.

Effective this 1st day of May, 2014.



CHIEF JUSTICE

EXHIBIT 5

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000044 of 000086

EXH : 000001 of 000022

Supreme Court of Kentucky

2022-65

AMENDED ORDER

In Re: Administrative Rules of Practice and Procedure Electronic Filing in the Kentucky Court of Justice

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” 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 and Application

- (1) These rules shall apply to supported case and filing types, in civil, criminal, domestic, juvenile, probate, and other matters in trial and appellate courts.
- (2) Authorized eFilers may electronically file into a supported action even if the original action was filed conventionally. Service shall be conventionally made for all other parties who are not eFilers in an action.
- (3) Certain actions may be designated as mandatory electronic filing case types by separate order of this Court.

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

(1) These rules supplement the Kentucky Rules of Civil Procedure (“CR”), the Kentucky Rules of Criminal Procedure (“RCr”), the Rules of Appellate Procedure (“RAP”), the Kentucky Family Court Rules of Procedure and Practice (“FCRPP”), Juvenile Court Rules of Procedure and Practice (JCRPP), and the Local Rules of Court approved by this Court pursuant to SCR 1.040(3)(a) (“Local Rules of Court”)(All hereinafter broadly referred to as “Kentucky Rules of Procedure”).

The filing and service requirements set out herein are deemed to comply with the Kentucky Rules of Procedure. To the extent these eFiling Rules are inconsistent or otherwise conflict with the Kentucky Rules of Procedure, these rules will control in cases subject to electronic filing.

(2) No local rules, practices, procedures, orders, or other policies of any district or circuit may conflict with or controvert these rules; further, to the extent that any such local rules, practices, procedures, orders, or other policies are inconsistent or otherwise conflict with these rules, these rules shall prevail.

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, or Clerk of the Supreme Court or the Court of Appeals if the electronic filing is made in an appellate court.

(4) “Conventionally filed” means the filing of paper documents with the clerk, pursuant to the Kentucky Rules of 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.

(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 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. Electronic service of documents is sufficient to provide service in accordance with the Kentucky Rules of Procedure; no other service is required.

(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. The term may also include an electronic image of original handwritten signatures.

(12) “Envelope” means the package of electronically transmitted data and attachments which constitute an eFiling submission.

(13) “Hyperlink” means an electronic connection, which when selected, takes the reader to another place in the document or to a location outside the document.

(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) “Notification of Court Processing (NCP)” means a notice automatically generated by the electronic filing system indicating that an eFiled document

has been processed by the clerk. The NCP will indicate whether the filing has been accepted or rejected.

(17) “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 and an electronic hyperlink to the document filed.

(18) “PDF” means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

(19) “PDF/A” means an ISO-standardized version of the Portable Document Format (PDF) specialized for the digital preservation of electronic documents.

(20) “Protected information” means information required to be redacted pursuant to CR 7.03 and in accordance with Section 10 of these rules.

(21) “Scanned document” means an electronic image created by scanning a paper document.

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

(23) “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 can also include the malfunctioning of an eFiler’s equipment.

(24) “Uniform Resource Locator (URL)” means letters and symbols that comprise the address of a website.

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 completed eFiling certification;
- (b) Judges and their staff;
- (c) Court administrative staff, including technical support staff;
- (d) Government employees and law enforcement with authorized access to eFile in cases relating to their functions; and

(e) Self-represented parties permitted to electronically file, subject to authentication and training requirements imposed by the AOC. Nothing in this subsection shall be construed to convey a right to file electronically if authentication or training requirements are not available or have not been completed by a self-represented party.

(2) 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~~ the eFiling rules. eFilers must register online through the Kentucky Court of Justice's KYeCourts website.

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

(c) A Commonwealth or County Attorney may elect to use an office account to receive notifications for all eFiled documents in criminal cases within their jurisdiction. Creation and use of an office account under this subsection constitutes consent to electronic service of all documents as defined in these rules.

(3) 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 Procedure, 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) 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) Only readable word and viewable pictures or images, and valid, non-corrupted tables shall be included;

(f) Documents must not be corrupted (e.g., a corrupt file having -0- bytes of data); and

(g) Documents must comprise the complete image or file. The eFiler must ensure and verify that uploads to the eFiling system are properly completed.

(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.

Section 8. Electronic Filing in District and Circuit Courts

(1) In order to become an eFiler in a supported action, the eFiler must electronically file an Entry of Appearance or any other supported document in that case, or the eFiler may use a supported feature for the purpose of opting into cases. Registering as an eFiler does not automatically opt an eFiler into the eFiler's other existing cases. Registration is not complete until the ~~Circuit Court Clerk~~ clerk transmits a Notification of Court Processing accepting the filing. Electronic service through the eFiling system will not be made on parties associated with the case who are not registered eFilers.

(2) 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 the time zone of the receiving court.

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

(c) In addition to the caption requirements set out in CR 10.01, each document filed electronically will receive a stamp by the eFiling system indicating the document has been electronically filed.

(3) Filing. Except for filings pursuant to Section 9 of this Order, 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 Procedure.

(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 or when the clerk actually processed the envelope.

(b) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed BEFORE MIDNIGHT, in the time zone of the receiving court, 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.

(4) 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) return the envelope to the eFiler indicating what further action, if any, is required to address the error. Filers notified of an error through a Notification of Court Processing shall make corrections within two (2) business days of receiving the returned envelope from the clerk.

Corrections shall be made in good faith and limited to the specified error(s) identified in the Notification of Court Processing. Timely correction shall preserve the original date and time found on the Notice

of Electronic Filing. Failure to make corrections could result in a failure to comply with applicable deadlines. Local rules regarding motion hour deadlines are unaffected by this subsection; or

(c) disregard the error.

(5) 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 and allows the proposed document, the eFiler must refile the proposed document to make it part of the record.

(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 an editable format in .doc format capable of being read by Microsoft Word, and should be identified as “proposed.”

(6) 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.

Section 9. Electronic Filing in Appellate Courts

Electronic filing in the appellate courts shall substantially conform with the provisions of section 8, except as follows:

(1) 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

- the submission of a tendered document to the appellate courts. The clerk of the appellate court shall review all electronic filings for conformity pursuant to RAP 27(E) to determine whether filings may be docketed.
- (2) The eFiling system will generate a Notice of Court Processing indicating whether a tendered document has been accepted for review. The clerk will send a separate receipt notice from the case management system indicating the document(s)' filing status.
 - (3) If the clerk determines a filing is deficient, corrected filings shall be re-submitted using a new envelope.
 - (4) An untimely filing that is not accompanied with a motion for enlargement of time may be rejected by the clerk.
 - (5) The clerks of the appellate courts may adopt additional formatting and technical requirements for the electronic filing of briefs and, if so adopted, post information regarding the requirements in a conspicuous location for reference.

Section 10. Discovery and Sealed Documents

- (1) Discovery requests and responses as identified in CR 5.06 and RCr 7.24 shall not be electronically filed unless ordered by the court, used at trial, necessary to a pretrial motion, propounded at the onset of an action pursuant to CRs 33.01(2), 34.01(2), and 36.01(2), or agreed to by stipulation.
- (2) 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.
- (3) The following documents must be conventionally filed: (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) depositions upon oral examination required by CR 30.06(1) to be delivered to the clerk by

the officer taking the deposition; and (v) depositions upon written questions required by CR 31.02 to be filed by the officer taking the deposition.

Section 11. 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) The provisions of CR 7.03 apply to all eFiled documents regardless of the case type.

(c) 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 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 refileing the document electronically.

Section 12. Signatures

(1) Generally. A document electronically filed using the eFiling system must bear the electronic signature of the filing party's attorney or the filing party, if self-represented, as more fully described in paragraphs (a) and (b) below. The electronic signature of the filing party's attorney or the filing party, if self-represented, will be treated as a personal signature and will serve as a signature for purposes of CR 11, and all other Kentucky Rules of 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 or the filing party, if self-represented.

(b) In addition, the name of the filing party's attorney or the filing party, if self-represented, must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. An electronic image of a handwritten signature may be applied to a signature line. A handwritten signature is required for any conventionally filed document.

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

(d) An eFiler may not submit a document on another person's behalf without the intent to represent a party or participate in the case.

Electronically filing a document without the intent to represent a party or participate in the case could result in CR 11 sanctions.

(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 17, 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. An objection to the document shall place a burden on the non-moving party to prove authenticity. Failure to prove authenticity by the non-moving party will result in the filing being stricken from the record.

(b) 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 and show cause for the delayed challenge. If the challenge to authenticity is allowed by the

court, the non-moving party shall have the burden to prove authenticity. Failure to prove authenticity by the non-moving party will result in the filing being stricken from the record.

Section 13. 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 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.

(2) Parties must serve a paper copy of any eFiled document in the manner required by CR 5 on a party or other person entitled to service who is not a registered eFiler. It is the responsibility of the eFiler to review the list of parties who will receive electronic service as indicated by the eFiling system and determine which parties, if any, require conventional service.

(a) The Notice of Electronic Filing will only be sent to eFilers who have associated themselves 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 the time zone of the receiving court, along with an electronic hyperlink to the document filed.

(c) If the eFiler received an NCP that indicates a document or filing was returned by the clerk, he or she may correct any deficiencies and refile the document.

(d) 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.

(3) Service of process. Electronic service of process is not permitted for purposes of obtaining jurisdiction over persons or property, i.e., CR 4 service, with the exception of the service of summons on a cross, counter, or third-party complaint where the defendant to such complaint has already eFiled in the case and therefore consented to receive electronic service. All other 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). The summons shall bear the date and time indicated on the Notice of Electronic Filing, regardless of when the clerk processes the filing and issues a Notification of Court Processing.

(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.
- (v) For service by warning order attorney under CRs 4.05, 4.06, and 4.07, the party requesting the warning order attorney shall upload a copy of the affidavit as provided by CR 4.06. Such affidavits shall be filed as stand-alone documents and not included within the body of an initiating document or pleading. The clerk shall appoint a practicing attorney of the court to serve as warning

order attorney for the defendant pursuant to CR 4.07. The eFiling system may assess a non-refundable deposit for the warning order attorney, which may or may not constitute the entirety of his or her legal fees under CR 4.07(6).

(vi) 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.

(b) 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.

(4) 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. Proof of service pursuant to CR 45.03(1) and RCr 7.02 may be filed via the court's eFiling system.

(5) Certificate of Service. A certificate of service must be included with all documents filed electronically. A certificate of service must show parties who received conventional service and parties who received electronic service.

(6) 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.

Section 14. 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), styled as a Notice of Entry, 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 15. Court Record

(1) The clerk will print documents which have been electronically filed and maintain a paper file in each case. The paper file will constitute the official court record.

(2) Conventionally filed or court generated documents may be scanned by the clerk. The original documents will be maintained in the paper file.

(3) 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 17, Retention Requirements; (ii) file the original with the appropriate agency or officer as may be required by law; or (iii) submit conventionally to the court when necessary for actions involving original documents.

(4) Electronic receipts may be generated for financial transactions. In the event a receipt is generated, the court's file copy shall be retained in electronic format.

(5) Notwithstanding subsection (1) of this Section, the Kentucky Supreme Court may designate pilot counties where the electronic court record may be designated as the official court record.

Section 16. Access to Electronic Record

- (1) Authorized users may view eFiled documents, scanned images, and electronic case entries through the CourtNet 2.0 application.
- (2) Authorized users of CourtNet 2.0 may be assessed a subscription fee and additional costs for accessing electronic images; however, registered eFilers are permitted to electronically file and access images in an action at no cost.
- (3) Certain categories of documents containing sensitive information may be designated as protected images and may only be viewable to parties associated with the case in CourtNet 2.0.
- (4) Access to confidential cases in CourtNet 2.0 is available to persons entitled by statute, except that non-government parties may be required to eFile into a confidential case in order to access the entire record. Sealed cases are not eligible for eFiling and are not viewable in CourtNet 2.0.

Section 17. Fees, Costs, and Payment Methods

- (1) Fees, including but not limited to filing fees, bond fees, and judicial sale fees are due and payable at the time of electronic filing unless the fee is waived by order of the court, the fee is not due or payable, the filer submits an affidavit to proceed in forma pauperis, or the court makes alternative arrangements with the filer. Payments of filing fees and other court costs must be made by credit card or electronic check through the KCOJ payment systems vendor.
- (2) Other costs.
 - (a) Service of process. In actions where certified mail, sheriff service, and Secretary of State service is requested, printing cost shall be \$0.10 per page.
 - (b) Transaction fees for electronic payments may be assessed by the KCOJ payment systems vendor.

(3) All fees and costs listed in this section shall be taxed as costs in the action pursuant to CR 54.04 and shall be recoverable by the prevailing party.

(4) The AOC's centralized printing and mailing facility may be designated to print and distribute documents.

(5) Electronic payments received through the eFiling system, including payments made pursuant to RAP 2(H), are deemed to have been made at the time the filing was submitted.

Section 17. 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 14(3), and any document requiring or otherwise containing an original signature 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. Original documents are not required to be retained if the signature is that of an attorney or named party in the case who may personally verify and give proof as to the authenticity of the signatures. 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 18. 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 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. 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.

(b) 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 5:30 p.m., eastern time, Monday through Friday (excluding holidays).

(c) 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 19. 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 5:30 p.m., eastern time, Monday through Friday.

This Order shall be effective upon entry, and until further Order.

Entered this 20th day of December 2022

All sitting; all concur.



CHIEF JUSTICE

EXHIBIT 6

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000066 of 000086

EXH : 000001 of 000018

Supreme Court of Kentucky

2018-11

AMENDED ORDER

In Re: Administrative Rules of Practice and Procedure for the Kentucky Court of Justice Electronic Filing Pilot Project

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” 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 and Application

(1) These rules shall apply to supported case and filing types, in civil, criminal, domestic, juvenile, probate, and other matters in trial courts.

(2) Authorized eFilers may electronically file into a supported action even if the original action was filed conventionally. Service shall be conventionally made for all other parties who are not eFilers in an action.

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

(1) These rules supplement the Kentucky Rules of Civil Procedure (“CR”), the Kentucky Rules of Criminal Procedure (“RCr”), the Kentucky Family Court Rules of Procedure and Practice (“FCRPP”), Juvenile Court Rules of Procedure and Practice (JCRPP), and the Local Rules of Court approved by this Court pursuant to SCR 1.040(3)(a) (“Local Rules of Court”)(All hereinafter broadly referred to as “Kentucky Rules of Procedure”). The filing and service requirements set out herein are deemed to comply with the Kentucky Rules of Procedure. To the extent these eFiling Rules are inconsistent or otherwise conflict with the Kentucky Rules of Procedure, these rules will control in cases subject to electronic filing.

(2) No local rules, practices, procedures, orders, or other policies of any district or circuit may conflict with or controvert these rules; further, to the extent that

any such local rules, practices, procedures, orders, or other policies are inconsistent or otherwise conflict with these rules, these rules shall prevail.

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 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.
- (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 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. Electronic service of documents is sufficient to provide service in accordance with the Kentucky Rules of Procedure; no other service is required.
- (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. The term may also include an electronic image of original handwritten signatures.

(12) "Envelope" means the package of electronically transmitted data and attachments which constitute an eFiling submission.

(13) "Hyperlink" means an electronic connection, which when selected, takes the reader to another place in the document or to a location outside the document.

(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) "Notification of Court Processing (NCP)" means a notice automatically generated by the electronic filing system indicating that an eFiled document has been processed by the clerk. The NCP will indicate whether the filing has been accepted or rejected.

(17) "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 and an electronic hyperlink to the document filed.

(18) "PDF" means an electronic document filed in a portable document format which is readable by the free Adobe® Acrobat® Reader.

(19) "PDF/A" means an ISO-standardized version of the Portable Document Format (PDF) specialized for the digital preservation of electronic documents.

(20) "Protected information" means information required to be redacted pursuant to CR 7.03 and in accordance with Section 10 of these rules.

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

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

(23) "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 can also include the malfunctioning of an eFiler's equipment.

(24) "Uniform Resource Locator (URL)" means letters and symbols that comprise the address of a website.

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 completed eFiling certification;
- (b) Judges and their staff;
- (c) Court administrative staff, including technical support staff;
- (d) Government employees and law enforcement with authorized access to eFile in cases relating to their functions; and
- (e) Self-represented parties may be permitted to electronically file subject to authentication and training requirements imposed by the AOC. Nothing in this subsection shall be construed to convey a right to file electronically if authentication or training requirements are not available or have not been completed by a self-represented party.

(2) 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 KYeCourts website.
- (b) The eFiler will be subject to the terms of the eFiling system user agreement.
- (c) A Commonwealth or County Attorney may elect to use an office account to receive notifications for all eFiled documents in criminal cases within their jurisdiction. Creation and use of an office account under this subsection constitutes consent to electronic service of all documents as defined in these rules.

(3) 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 Procedure, 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) 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; however, URL citations are permissible;

(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); and

(h) Documents must comprise the complete image or file. The eFiler must ensure and verify that uploads to the eFiling system are properly completed.

(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) In order to become an eFiler in a supported action, the eFiler must electronically file an Entry of Appearance or any other supported document in that case, or the eFiler may use a supported feature for the purpose of opting into cases. Registering as an eFiler does not automatically opt an eFiler into the eFiler's other existing cases. Registration is not complete until the Circuit Court Clerk transmits a Notification of Court Processing accepting the filing. Electronic service through the eFiling system will not be made on parties associated with the case who are not registered eFilers.

(2) 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 the time zone of the receiving court.

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

(c) In addition to the caption requirements set out in CR 10.01, each document filed electronically will receive a stamp by the eFiling system indicating the document has been electronically filed.

(3) 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 Procedure.

(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 or when the clerk actually processed the envelope.

(b) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed BEFORE MIDNIGHT, in the time zone of the receiving court, 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.

(4) 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) return the envelope to the eFiler indicating what further action, if any, is required to address the error. Filers notified of an error through a Notification of Court Processing shall make corrections within two (2) business days of receiving the returned envelope from the clerk. Corrections shall be made in good faith and limited to the specified error(s) identified in the Notification of Court Processing. Timely correction shall preserve the original date and time found on the Notice of Electronic Filing. Failure to make corrections could result in a failure to comply with applicable deadlines. Local rules regarding motion hour deadlines are unaffected by this subsection; or

(c) disregard the error.

(5) 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 and allows the proposed document, the eFiler must refile the proposed document to make it part of the record.

(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 an editable format in .doc format capable of being read by Microsoft Word, and should be identified as “proposed.”

(6) 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.

Section 9. Discovery and Sealed Documents

(1) Discovery requests and responses as identified in CR 5.06 and RCr 7.24 shall not be electronically filed unless ordered by the court, used at trial, necessary to a pretrial motion, propounded at the onset of an action pursuant to CRs 33.01(2), 34.01(2), and 36.01(2), or agreed to by stipulation.

(2) 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.

(3) The following documents must be conventionally filed: (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) depositions upon oral examination required by CR 30.06(1) to be delivered to the clerk by the officer taking the deposition; and (v) depositions upon written questions required by CR 31.02 to be filed by the officer taking the deposition.

Section 10. 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) The provisions of CR 7.03 apply to all eFiled documents regardless of the case type.

(c) 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 refileing the document electronically.

Section 11. Signatures

(1) Generally. A document electronically filed using the eFiling system must bear the electronic signature of the filing party's attorney or the filing party, if self-represented, as more fully described in paragraphs (a) and (b) below. The electronic signature of the filing party's attorney or the filing party, if self-represented, 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, the Kentucky Rules of Criminal Procedure, the Kentucky Family Court Rules of Procedure and Practice, the Juvenile Court Rules of Procedure and Practice, 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 or the filing party, if self-represented.

(b) In addition, the name of the filing party's attorney or the filing party, if self-represented, must be preceded by an "/s/" and typed in the space

where the signature would otherwise appear. An electronic image of a handwritten signature may be applied to a signature line. A handwritten signature is required for any conventionally filed document.

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

(d) An eFiler may not submit a document on another person's behalf without the intent to represent a party or participate in the case. Electronically filing a document without the intent to represent a party or participate in the case could result in CR 11 sanctions.

(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, the Kentucky Rules of Criminal Procedure, the Kentucky Family Court Rules of Procedure and Practice, the Juvenile Court Rules of Procedure and Practice, 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 17, 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. An objection to the document shall place a burden on the non-moving party to prove authenticity. Failure to prove authenticity by the non-moving party will result in the filing being stricken from the record.

(b) 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 and show cause for the delayed challenge. If the challenge to authenticity is allowed by the court, the non-moving party shall have the burden to prove authenticity. Failure to prove authenticity by the non-moving party will result in the filing being stricken from the record.

Section 12. 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 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.

(2) Parties must serve a paper copy of any eFiled document in the manner required by CR 5 on a party or other person entitled to service who is not a registered eFiler. It is the responsibility of the eFiler to review the list of parties who will receive electronic service as indicated by the eFiling system and determine which parties, if any, require conventional service.

(a) The Notice of Electronic Filing will only be sent to eFilers who have associated themselves 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 the time zone of the receiving court, along with an electronic hyperlink to the document filed.

(c) If the eFiler received an NCP that indicates a document or filing was returned by the clerk, he or she may correct any deficiencies and refile the document.

(d) 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.

(3) Service of process. Electronic service of process is not permitted for purposes of obtaining jurisdiction over persons or property, i.e., CR 4 service, with the exception of the service of summons on a cross, counter, or third-party complaint where the defendant to such complaint has already eFiled in the case and therefore consented to receive electronic service. All other 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). The summons shall bear the date and time indicated on the Notice of Electronic Filing, regardless of when the clerk processes the filing and issues a Notification of Court Processing.

(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.

(v) For service by warning order attorney under CRs 4.05, 4.06, and 4.07, the party requesting the warning order attorney shall upload a copy of the affidavit as provided by CR 4.06. Such affidavits shall be filed as stand-alone documents and not included within the body of an initiating document or pleading. The clerk shall appoint a practicing attorney of the court to serve as warning order attorney for the defendant pursuant to CR 4.07. The eFiling system may assess a non-refundable deposit for the warning order

attorney, which may or may not constitute the entirety of his or her legal fees under CR 4.07(6).

(vi) 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.

(b) 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.

(4) 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. Proof of service pursuant to CR 45.03(1) and RCr 7.02 may be filed via the court's eFiling system.

(5) Certificate of Service. A certificate of service must be included with all documents filed electronically. A certificate of service must show parties who received conventional service and parties who received electronic service.

(6) 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.

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), styled as a Notice of Entry, 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. Court Record

(1) The clerk will print documents which have been electronically filed and maintain a paper file in each case. The paper file will constitute the official court record.

(2) Conventionally filed or court generated documents may be scanned by the clerk. The original documents will be maintained in the paper file.

(3) 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 17, Retention Requirements; (ii) file the original with the appropriate agency or officer as may be required by law; or (iii) submit conventionally to the court when necessary for actions involving original documents.

(4) Electronic receipts may be generated for financial transactions. In the event a receipt is generated, the court's file copy shall be retained in electronic format.

(5) Notwithstanding subsection (1) of this Section, the Kentucky Supreme Court may designate pilot counties where the electronic court record may be designated as the official court record.

Section 15. Access to Electronic Record

(1) Authorized users may view eFiled documents, scanned images, and electronic case entries through the CourtNet 2.0 application.

(2) Authorized users of CourtNet 2.0 may be assessed a subscription fee and additional costs for accessing electronic images; however, registered eFilers are permitted to electronically file and access images in an action at no cost.

(3) Certain categories of documents containing sensitive information may be designated as protected images and may only be viewable to parties associated with the case in CourtNet 2.0.

(4) Access to confidential cases in CourtNet 2.0 is available to persons entitled by statute, except that non-government parties may be required to eFile into a

confidential case in order to access the entire record. Sealed cases are not eligible for eFiling and are not viewable in CourtNet 2.0.

Section 16. Fees, Costs, and Payment Methods

(1) Fees, including but not limited to filing fees, bond fees, and judicial sale fees are due and payable at the time of electronic filing unless the fee is waived by order of the court, the fee is not due or payable, the filer submits an affidavit to proceed in forma pauperis, or the court makes alternative arrangements with the filer. Payments of filing fees and other court costs must be made by credit card or electronic check through the KCOJ payment systems vendor.

(2) Other costs.

(a) Service of process. In actions where certified mail, sheriff service, and Secretary of State service is requested, printing cost shall be \$0.10 per page.

(b) Transaction fees for electronic payments may be assessed by the KCOJ payment systems vendor.

(3) All fees and costs listed in this section shall be taxed as costs in the action pursuant to CR 54.04 and shall be recoverable by the prevailing party.

(4) The AOC's centralized printing and mailing facility may be designated to print and distribute documents.

(5) Electronic payments received through the eFiling system, including payments made pursuant to CR 73.02, are deemed to have been made at the time the filing was submitted.

Section 17. 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 14(3), and any document requiring or otherwise containing an original signature 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. Original documents are not required to be retained if the signature is that of an attorney or named party in the case who may personally verify and give proof as to the authenticity of the signatures. 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 18. 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 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. 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.

(b) 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 5:30 p.m., eastern time, Monday through Friday (excluding holidays).

(c) 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.

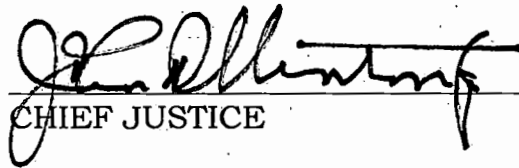
(4) Unanticipated downtime. When the eFiling system is unexpectedly unable to accept filings continuously or intermittently for more than one hour, eFilers will be notified of the problem by email or by the posting of a notice of the problem on the court's website.

Section 19. 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 5:30 p.m., eastern time, Monday through Friday.

This Order shall be effective August 1, 2018, and until further Order of this Court.

ENTERED this 21st day of June 2018.


CHIEF JUSTICE

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000083 of 000086

EXH : 000018 of 000018

EXHIBIT 7

AB946E4D-BE51-4D4F-A8B9-35B330669B75 : 000084 of 000086

EXH : 000001 of 000003



Johnny Friend <johnny@friendlawky.com>

NCP (for eFiler) FAYETTE 20-CI-00332, HAYNES PROPERTIES LLC, ET AL VS. BURLEY TOBACCO GROWERS COOP Envelope # 6587941

1 message

noreply@kycourts.net <noreply@kycourts.net>
To: johnny@friendlawky.com, friend@arwhitelaw.com

Fri, Sep 15, 2023 at 10:14 AM

Notification of Court Processing

The circuit clerk has processed and ACCEPTED the following filing.

Date and Time Processed: September 15, 2023 at 10:14AM Eastern

eFiler: FRIEND, JOHN (ATTORNEY FOR APPELLANT)

Court: FAYETTE (CIRCUIT)

Case Caption: HAYNES PROPERTIES LLC, ET AL VS. BURLEY TOBACCO GROWERS COOP

Case Number: 20-CI-00332

Envelope Number: 6587941

Notice has been electronically mailed to:

- Maclin, Robert Edwin - remaclin@mcbayerfirm.com
- Maclin, Robert E - remaclin@mcbayerfirm.com
- Billings, John Nathanael - nbillings@blfky.com
- Yunker, Katherine K - kyunker@mcbayerfirm.com
- Henry, Kevin G - khenry@sturgillturner.com
- Tachau, David Brandeis - dtachau@tachaulaw.com
- Rush, Dorothy T - dtrush2@gmail.com
- McCauley, Dawn - dawnspalding@windstream.net
- Thacker, Christopher - cthacker@aya.yale.edu
- Rogers, Jeremy S - jeremy.rogers@dinsmore.com
- Hollon, Jason - jhollon@mmlk.com
- Barber, Christopher - cmbarber@blfky.com
- Graddy, William Henry - hgraddy@graddy.com
- Russell, Katherine Gail - grussell@tifordlaw.com
- Friend, John - johnny@friendlawky.com

Scheduled Event:
No scheduled events

The following document(s) were included in this eFiling:
NOTICE - OTHER
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EXH : 000002 of 000003

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