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TO: Chief Justice Gerald W. VandeWalle
FROM: Sally Holewa, State Court Administrator *SHT*
SUBJECT: Mandatory E-filing of Subsequent Civil Filings
DATE: May 22, 2012

On February 24, 2012, the Court Technology Committee discussed mandating the electronic filing of district court documents into the Odyssey system.

After discussion, the committee is recommending that the Supreme Court amend Administrative Order 16 to mandate that after April 1, 2013, all subsequent pleadings must be filed electronically. Subsequent pleadings are all documents except for those filed for the purpose of initiating a court case.

Currently, the court receives between 4,000 and 5,000 electronic filings per week. Approximately 84% of those filings are subsequent filings into existing cases, and the remaining 16% are initial case filings. From discussions with the district judges and clerks of court, there are still a high number of subsequent filings that are received over the counter or by mail that must be manually scanned by the clerks.

If e-filing is mandated, it will reduce the amount of time the clerks now spend on scanning documents into existing cases and these documents will become available to the court sooner. Since e-filing captures documents in electronic form, e-filing produces a clearer image of the document than printing and scanning can produce.

Because the case already exists in Odyssey, subsequent filing is a simpler process than initiating a new case through e-filing and therefore has a smaller chance for a technological or user error to occur. The committee believes that mandating the use of e-filing for only the subsequent filings at this time will be a positive step towards introducing the e-filing process to those attorney firms that have been reluctant to use the system. As these firms become more familiar with the system, we hope they will use it for initial filings as well. At some point in the future, the court may want to mandate that all filings must be made using the e-filing process.

The committee also discussed whether self-represented litigants should be required to e-file subsequent documents but decided not to include them in the recommendation at this time.

I have attached a draft amendment to Administrative Order 16 that incorporates mandatory e-filing.

Attachment

ORDER 16. ELECTRONIC FILING IN THE DISTRICT COURTS

A. Electronic Filing.

1. Documents ~~may be filed electronically in the district courts. Where the Odyssey(R)~~
~~electronic filing is available the Addendum to Administrative Order 16 controls: must be~~
submitted through the Odyssey® electronic filing system. In any matter filed after April 1,
2013, all documents after the initiating pleadings must be filed electronically.

2. A document filed electronically has the same legal effect as a paper document.

3. ~~The name or facsimile signature on a document filed electronically has the same~~
~~effect as an original manually affixed signature. Any signature on document filed~~
electronically is considered that of the attorney or party it purports to be for all purposes. If
it is established that the documents were transmitted without authority, the court must strike
the filing.

B. Filing Formats. ~~Documents filed electronically must be submitted by facsimile~~
~~transmission or e-mail to the district court clerk unless otherwise ordered by the court. A~~
~~directory of district court fax numbers and e-mail addresses for electronic filing is available~~
~~online at <http://www.court.state.nd.us/court/email/frclerks.htm>. E-mailed documents must~~
~~be in portable document format (.pdf) or approved word processing format:~~

1. ~~Approved word processing formats for documents filed electronically are~~
~~WordPerfect, Word, and ASCH. Parties must obtain permission from the district court clerk~~
~~in advance if they seek to submit documents in another word processing format.~~

22 1. Approved formats for documents filed electronically are WordPerfect (.wpd), Word
23 (.doc or.docx), Tagged Image File (.tif), Portable Document File (.pdf) and ASCII (.txt).

24 2. All paragraphs must be numbered in documents filed electronically. Reference to
25 material in such documents must be to paragraph number, not page number.

26 C. Time of Filing.

27 1. A document in compliance with the rules and submitted electronically to the district
28 court clerk by 11:59 p.m. local time ~~will be~~ is considered filed on the date submitted.

29 2. ~~Upon~~ On receiving a document filed by e-mail, the district court clerk will issue an
30 e-mail confirmation that the document has been received.

31 ~~3. A party filing a document electronically must pay any required filing fee within~~
32 ~~seven days. If fees are not paid within seven days of submission, the document will be~~
33 ~~returned by the district court clerk and the party will be required to refile the document.~~

34 3. Any required filing fee must be paid by credit card or debit card at the time the
35 document is received.

36 D. Confidentiality. In documents prepared for filing with the court, information that
37 would otherwise be included in the document but required by N.D.R.Ct. 3.4 to be redacted
38 in court documents must be separately filed in a reference sheet (confidential information
39 form, see appendix) and may be included in those documents only by reference. Any
40 document not complying with this order is subject to N.D.R.Ct. 3.4(g).

41 ~~D.~~ E. Electronic Service.

42 1. ~~If a party files a document by electronic means, the party~~ A party who files a

43 document electronically must serve the document by electronic means if the recipient
44 consents to accept documents served electronically. Service by electronic means is not
45 effective if the party making service learns that the attempted service did not reach the person
46 to be served.

47 2. A party may designate a fax number or an e-mail address as their address for the
48 purpose of accepting electronic service.

49 3. If a recipient does not consent to accept electronic service of a document, service
50 by another means specified in the rules is required.

51 4. For purposes of computation of time, any document electronically served must be
52 treated as if it were mailed on the date of transmission.

53 E. Effective Date. This Order is effective March 1, 2006, and remains in effect until
54 further order of the Court.

55 EXPLANATORY NOTE

56 Adopted effective March 1, 2006. This order was amended, effective March 1, 2008;
57 March 1, 2009; August 1, 2010; March 1, 2011; _____.

58 ~~Section C3 was amended, effective March 1, 2011, to increase the time to pay the~~
59 ~~filing fee from five to seven days after submission.~~

60 Order 16 was amended, effective _____, to incorporate the provisions
61 of the Order 16 Addendum (Filing in the District Court where Odyssey® Electronic Filing
62 is Available) and Order 18 (Filing in Counties Using the Odyssey® Case Management
63 System).

64 Sources: Joint Procedure Committee Minutes of April 29-30, 2010, page 21; April
65 24-25, 2008, pages 12-16; October 11-12, 2007, pages 3-5; April 26-27, 2007, pages 16-18;
66 January 25, 2007, pages 15-16; Sept 23-24, 2004, pages 18-27.