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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

FEB 14 2005

ILLINOIS AYERS OIL CO., )  
Petitioner, )  
 )  
v. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

STATE OF ILLINOIS  
Pollution Control Board

Nos. PCB 05-048  
(UST Appeal)

NOTICE OF FILING AND PROOF OF SERVICE

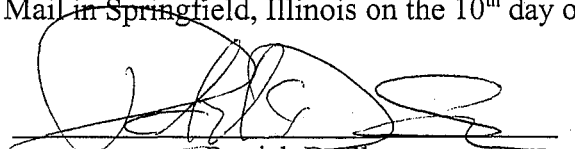
TO: Dorothy Gunn, Clerk  
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PLEASE BE ADVISED THAT we are today filing with the Pollution Control Board by U.S. mail the original and nine copies of Petitioner's Motion for Reconsideration or in the Alternative, for Extension of Time to File Appeal, a copy of which is attached hereto.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon the hearing officer and counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys at their business addresses as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing same in the U.S. Mail in Springfield, Illinois on the 10<sup>th</sup> day of February, 2005.

  
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THIS FILING SUBMITTED ON RECYCLED PAPER

FEB 14 2005

ILLINOIS AYERS OIL CO., )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

STATE OF ILLINOIS  
Pollution Control Board  
PCB No. 05-48  
(UST Appeal)

**PETITIONER'S MOTION FOR RECONSIDERATION**  
**OR IN THE ALTERNATIVE, FOR EXTENSION OF TIME TO FILE APPEAL**

NOW COMES Petitioner, Illinois Ayers Oil Company (hereinafter "Illinois Ayers"), pursuant to Section 101.520 and Section 101.522 of the Board's Procedural Rules (35 Ill. Admin. Code §101.520; §101.522), to seek reconsideration of the Board's order dismissing this appeal, or to extend the appeal deadline herein, stating as follows:

**I. INTRODUCTION**

On January 6, 2005, the Illinois Pollution Control Board (herein "the Board") dismissed this appeal *sua sponte* for want of jurisdiction. A party may file a motion for reconsideration within 35 days of the receipt of any final Board order. (35 Ill. Admin. Code §101.518) In Citizens Against Regional Landfill v. County Board of Whiteside, PCB 93-156 (Mar. 11, 1993), the Board observed that "the intended purpose of a motion for reconsideration is to bring to the [Board]'s attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the [Board]'s previous application of the existing law." With all

due respect to the Board, Petitioner believes that the Board misapplied the principle of jurisdiction in this matter and may have overlooked evidence that accompanied the Petitioner's filing. (See Letter to Dorothy Gunn, attached hereto as Exhibit A).

## II. STATEMENT OF FACTS.

This appeal arises from the Board's earlier decision in Illinois Ayers Oil Co. v. IEPA, PCB 03-214 (April 1, 2004), in which the Agency was ordered to restore certain corrective action costs to the budget for this site in Cass County. After completing the corrective action approved by the Board, Illinois Ayers applied for payment. (Pet. Rev. ¶3) On July 28, 2004, the Illinois Environmental Protection Agency (hereinafter "the IEPA") rejected certain corrective action costs which had been in the approved budget. (Pet. Rev. ¶7 & Ex. A thereto)

On September 1, 2004, the IEPA filed a joint request for an extension of the deadline to appeal its decision. (Req. 90-Day Extension) The IEPA was uncertain of the actual date Petitioner received the IEPA's July 28, 2004, decision, but believed that the date could be no sooner than July 29, 2004. (Id. at ¶2) The IEPA requested a January 5, 2005, deadline, which was probably meant to be December 5, 2004.<sup>1</sup> The Board extended the deadline to December 1, 2004, which was 125 days from July 29, 2004. (Order of Sept. 16, 2004)

On December 1, 2004, Illinois Ayers attempted to file its Petition for Review by filing online using the Clerk's Office On-Line ("COOL") system. (Ex. A) The system would not

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<sup>1</sup> The IEPA mailed its decision on July 28, 2004. "In the case of service by U.S. Mail, service is presumed complete four days after mailing," (35 Ill. Admin. Code §101.300(c)), which in this case would be August 1, 2004. Since August 1<sup>st</sup> was a Sunday, service would be presumed completed on August 2<sup>nd</sup>. (35 Ill. Admin. Code § 101.300(a)) One-hundred-and-twenty-five days thereafter was December 5, 2004.

accept the filing, so Illinois Ayers mailed the petition by overnight delivery (Federal Express) to the Clerk's office. (Ex. A) In the cover letter transmitting the document, Illinois Ayers identified the problem and enclosed a printout of the error message. (Ex. A) The Board received the Petition on December 2, 2004. (Order of Jan. 6, 2005)

On January 6, 2005, the Board dismissed the petition, noting that the Board's procedural rules differ in their treatment between delivery services other than U.S. Mail and concluding that the Board lacked jurisdiction to consider this appeal. (Id.)

### III. ARGUMENT

#### A. The Board's Procedural Rules do not Create a Jurisdictional Requirement.

The term "jurisdiction" as applied to an administrative body refers to "an agency's scope of authority under the statutes." Business & Professional People v. ICC, 136 Ill. 2d 192, 243 (1989). The statute at issue here provides:

**If the Agency refuses to grant or grants with conditions a permit under Section 39 of this Act, the applicant may, within 35 days after the date on which the Agency served its decision on the applicant, petition for a hearing before the Board to contest the decision of the Agency. However, the 35-day period for petitioning for a hearing may be extended for an additional period of time not to exceed 90 days by written notice provided to the Board from the applicant and the Agency within the initial appeal period.**

(415 ILCS 5/40(a)(1) (emphasis added)

Tackling a similar issue of timely filing, the Illinois Supreme Court stated that "[t]he language of section 40 is permissive, not mandatory." M.I.G. Investments, Inc. v. EPA, 122 Ill.2d 392, 396 (1988) When the legislature employs permissive verbs like "may" instead of "must," the requirement is not jurisdictional, but a procedural mechanism. People v. Arnold, 323

Ill. App. 3d 102, 110 (1<sup>st</sup> Dist. 2001). The difference between a jurisdictional provision and a procedural mechanism is that a jurisdictional provision is intended to restrict the discretionary powers of the adjudicative body, while a procedural mechanism permits the judge to employ his or her discretion when a unique factual circumstance is presented. Id.<sup>2</sup>

Consequently, Section 40(a)(1) of the Act does not preclude the Board from accepting a permit appeal commenced on or before a deadline, but actually received after the deadline. In fact, the Board has accepted such a filing before. Interstate Pollution Control, Inc. v. IEPA, PCB No. 86-19 (Mar. 27, 1986). There, a permit appeal was dispatched to the Board via Federal Express on the permit appeal deadline and received by the Board on the following business day. Weighing the equities, the Board adopted the mailbox rule set forth in Supreme Court Rule 373, so that the permit appeal was deemed filed when the petitioner initiated delivery by Federal Express on the deadline. In response to the IEPA's argument that the mailbox rule cannot be used to extend an appeal deadline, the Board recognized that the language in Section 40(a)(1) is permissive and capable of interpretation as to what constitutes a timely petition. Id. The IEPA raised the issue again before the Illinois Supreme Court in M.I.G. Investments, which affirmed the Board's position that the language of Section 40(a)(1) of the Act is permissive and denied the IEPA's motion to dismiss an appeal received by the Board after the appeal deadline. 122 Ill. 2d 392, 396-397 (1988).

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<sup>2</sup> That a time limitation is not mandatory or jurisdictional is not the same as there being no time limit at all. See Panhandle Eastern Pipe Line Co. v. EPA, 314 Ill. App. 3d 296, 304 (4<sup>th</sup> Dist. 2000). There, the Fourth District agreed that Section 40 is "couched in permissive rather than mandatory language," but this did not require the Agency or the Board to permit an appeal nine years later and act as if the permit had never been issued.

A distinction must be drawn between the time periods set forth in Section 40(a)(1) of the Act and the body of administrative rules and rulings which establish the methodology used to determine when a filing is complete. Clearly, the Board has discretion as to the latter category of issues. The Board erroneously ruled that it was without jurisdiction. See Cook County State's Atty. v. Illinois State Labor Rels. Bd., 292 Ill. App. 3d 1, 6 (Ill. App. Ct., 1997) (an agency's refusal to exercise discretion in the erroneous belief that it has no discretion may be deemed an abuse of discretion).

**B. The Board Should Exercise Its Discretion to Review this Appeal on the Merits.**

The Board has discretion to rule on the timeliness of the subject petition based upon the unique factual circumstances presented. People v. Arnold, 323 Ill. App. 3d 102, 110 (1<sup>st</sup> Dist. 2001). In exercising discretionary powers, an administrative body must act judiciously, not arbitrarily. Robert N. Nilles, Inc. v. Pollution Control Board, 17 Ill. App. 3d 890, 894 (1974). Under the circumstances presented here, the Board would be acting judiciously to consider the subject filing to be timely.

**1. Technical Failures in Electronic Filing are Grounds for Relief.**

The Board has authorized and encouraged electronic filing of all documents. Illinois Ayers' technical difficulties in completing the filing pose unique circumstances which should be considered in ruling upon the timeliness of the filing.

Electronic filing holds the potential to increase access to the courts and government agencies, to reduce administrative costs, to provide benefits to the environment and to speed the filing and resolution of legal issues. Weighed against these numerous benefits are the ongoing risk of technical failures in new and not entirely stable technology. Such technical problems can hinder access to the courts. In U.S. Leather, Inc. v. H&W Partnership, 60 F.3d 222, 226 (5<sup>th</sup> Cir. 1995), an ice storm knocked out power and phone lines, trapping post-trial motions inside an attorney's computer. Even though the courthouse was open on the day of the deadline, reprieve from the jurisdictional deadline was given on the grounds that weather or other conditions had made the office of the clerk of the district court inaccessible. Id.

Due to the risk of technical failures in electronic filing (and no doubt also the desire to encourage electronic filing), courts have provided directions for the steps to take in such an event. The Illinois Supreme Court has authorized electronic filing as a pilot project in the circuit courts, but only after explaining to the Court's satisfaction the "procedure to follow in the event of hardware or software failure." (S. Ct. Policy, ¶A(8)(f) (attached hereto as Exhibit B)) The Court did not specify any procedures, but it approved the procedures implemented in the 18<sup>th</sup> Judicial Circuit Court (DuPage County), which are attached hereto as Exhibit C. In pertinent part, the procedures provide:

**If the electronic filing is not filed with the Clerk because of (1) an error in the transmission of the document to the Vendor which was unknown to the sending party, or (2) a failure to process the electronic filing when received by the Vendor, (3) rejection by the Circuit Court Clerk, or (4) other technical problems experienced by the filer, or (5) the party was erroneously excluded from the service list, the Court may upon satisfactory proof enter an order permitting the document to be subsequently filed effective as of the date filing was first attempted.**

(Ex. C, ¶5.14(b))

Federal courts have similarly implemented procedures in the event of technical failure. The Central District of Illinois federal court has lengthy provisions, excerpts from which are attached hereto as Exhibit D. Some of the key features include a statement that “[k]nown systems outages will be posted on the Court’s web site, if possible.” (Ex. D, ¶1 (emphasis added)) In the event of a technical failure, the party should print (if possible) a copy of the error message received and file a declaration that the party was unable to file in a timely manner due to technical difficulties. (Ex. D, ¶1(b)) If a party misses a filing deadline due to technical problems, the document may be conventionally submitted with the declaration by no later than 12:00 noon on the business day following the original filing deadline. (Ex. D, ¶2) Notably, the timing limitations suggests that delivery by U.S. mail would in almost all cases be insufficient. The Court will thereafter “order appropriate relief.” (Ex. D, ¶2(b)) The U.S. District Court for the Northern District of Illinois similarly provides that an untimely filing resulting from technical failure may be relieved by the court “for good cause.” (Ex. E, ¶XIII(A))

To date, the Board has not adopted procedural rules for electronic filing. This does not preclude the Board’s authority to make an adjudicative ruling based upon the facts of this case, as was essentially done in Interstate Pollution Control, PCB 86-19. In exercising its discretion judiciously, the Board should look to judicial precedent. While electronic filing is new, judicial practice consistently recognizes that relief should be given for filings rendered untimely as a result of technical failures outside of the control of a party. The courts require the petitioner to document the problem and at least in the federal courts referenced, bring the problem to the court’s attention “immediately” or by noon the next day. (Ex. D ¶H(2)(B); Ex. E, ¶ XIII(B))



While presentment of the problem as soon as practical may help evidence that the technical difficulties are bona fide, the primary justification appears to be the desire to help the courts fix any technical problems with the system promptly.

Illinois Ayers indicated in its transmittal letter to the Clerk of the Pollution Control Board, the existence of a technical failure that precluded electronic filing, including a printout of the error message received.<sup>3</sup> By filing the petition by overnight mail, Illinois Ayers brought the matter to the attention of the Clerk's Office promptly. In determining how the Board should exercise its discretion judiciously, the Board should consider that the steps taken by Illinois Ayers were consistent with the various judicial procedures for technical failures referenced herein. These judicial procedures indicate that Petitioners' filing would have been deemed timely under these circumstances.

**2. Overnight Delivery is At Least as Good as, if not Better than, Mailing by Regular U.S. Mail.**

For at least fifteen years, the Board's procedural rules treated Federal Express overnight delivery no different than regular U.S. mail. As stated earlier, the Board first adopted the "mailbox" rule for a permit appeal filed by Federal Express. Interstate Pollution Control, Inc. v. IEPA, PCB No. 86-19 (Mar. 27, 1986). The Board subsequently codified this decision. In re Procedural Rules Revision, R88-5(A) (June 8, 1989). The Board accepted filing made by

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<sup>3</sup> The Board may take official notice that counsel for Illinois Ayers has filed documents electronically with the Board previously. E.g., Mather Investment Properties, L.L.C. v. Illinois State Trapshooters Ass'n, Inc., PCB No. 05-29.

Federal Express pursuant to the “mailbox” rule for fifteen years with no reported difficulties. The procedural rules were amended in 2001 to distinguish U.S. mail from other mail delivery services. (35 Ill. Admin. Code §101.300(b)) The change did not appear to give rise to any comment from the Board or the public. See In re Revision of the Board’s Procedural Rules, R97-8, at p. 10 (Oct. 3, 1996) (describing the revised requirements as “mirror[ing] existing ones”)

Under the circumstances of this case, there is no material advantage to mailing the filing by U.S. mail. The Board’s procedural rules presume that U.S. mail will take four days (35 Ill. Admin. Code §101.300(c)), whereas overnight delivery purports to, and in fact did in this case, make deliveries within 24 hours. Further, the Board and its hearing officers often dispense with the “mailbox” rule for internal filing requirements in order to meet decision deadlines. The effect of dispensing with the mailbox rule is to discourage the use of regular mail and its unpredictable delivery times. With respect to proving that filing was actually commenced on the decision deadline, U.S. mail is also no better than Federal Express. The Supreme Court Rules were amended in 1981 to avoid reliance on post marks because of “problems with the legibility of post marks, and delay in affixing them in some cases.” S. Ct. R. 373 (Committee Comments). In adopting Supreme Court Rule 373, the Board similarly noted that postage meters can be modified to stamp envelopes with a date prior to actual mailing. (In re Procedural Rules Revision, R88-5(A), at p. 100-99) In contrast, the Federal Express tracking number makes it possible to track when a package was deposited in the event a dispute arises. The primary purpose of the mailbox rule, however, is not to speed filing or avoid problems of proof, but to provide a convenience to counsel, particularly those located away from the place of filing. The Board previously noted that a liberal “pro-mailing” policy is more equitable for persons not

located in the Chicago area that have the option of using a messenger service to the Clerk's Chicago office. (Id. at 100-99)

Regardless of the comparative merits of mail delivery services, the filing in this case was actually received by the Board on December 2, 2004, no later than it would have been received by U.S. mail. There can be no doubt that the filing was commenced on or before December 1, 2004. Under these circumstances and given the Board's past application of the "mailbox" rule to Federal Express overnight deliveries, the filing should be accepted as timely.

### **3. The Purposes of the Act are Advanced.**

The purpose in allowing a ninety-day extension of time to appeal is to encourage parties to resolve all or some of their disputes between themselves. See E&L Trucking Co. v. IEPA, PCB 02-101, at p. 3 (Mar. 7, 2002) ("This 90-day extension period has been widely accepted as a statutory period of time in which the Agency and the applicant may continue to narrow the issues of the determination that may be the subject of the appeal.") This is particularly important in proceedings in which the Board is under strict statutory time limits. Overly strict application of the time within which settlement discussions must conclude would tend to chill utilization of this valuable procedure.

Furthermore, the general purposes of the Act, i.e. to promote a healthy environment, would be advanced by accepting this appeal. Dismissing this case would pose the potential harm of non-payment for corrective action deemed necessary by the Board to mitigate a threat to human health and/or the environment. In the past, the Board considered the potential harm to the

environment from strictly requiring the IEPA to initiate the enforcement process within 180 days. People v. Crane, PCB 01-76, at pp. 16-17 (May 17, 2001) (interpreting time restriction in Section 31(a)(1) of the Act to be directory). The Board should similarly consider the potential impact of its ruling on the policies found in the Act.

**C. In the Alternative, Petitioner Moves the Board To Extend the Time to Appeal Retroactively.**

Whether or not the Board agrees as to the jurisdictional issue, this case is distinguishable from other appeals which have been dismissed for want of jurisdiction in that there has been no question raised as to the timeliness of the initial filing. Under Section 40(a)(1) of the Act, the Board is vested with jurisdiction upon either the filing of an appeal or upon written notice of an extension of the appeal deadline. (415 ILCS 5/40(a)(1)) The timely filing of a notice vests the Board with jurisdiction to extend the appeal period “for an additional period of time not to exceed 90 days.” (Id.) Accordingly, this case must be distinguished from those situations in which the failure to make an initial filing precluded the judicial body from taking any action. Upon timely filing of the notice, the Board was vested with limited jurisdiction to extend the appeal deadline.

Here, the parties notified the Board that the appeal deadline would be extended to January 5, 2005, an extension that would clearly have exceeded the statutory limitation. The notice alternatively asked for a date “not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA’s final decision.” (Req. 90-Day Extension) Illinois Ayers submits that the Board was, and remains, authorized to extend the appeal deadline to December

5, 2004, utilizing the Board's presumption that service by mail is completed in four days (35 Ill. Admin. Code §101.300(c)) and the rule excluding Sundays when the time to perform an act falls on a Sunday. (35 Ill. Admin. Code § 101.300(a); 5 ILCS 70/1.11) Accordingly, the Board has jurisdiction for the limited purpose of extending the appeal deadline for a period no later than December 5, 2004.

This case is distinguishable from Wei Enterprises v. IEPA, PCB No. 04-23 (Feb. 19, 2004), wherein the petitioner did not ask the Board to extend the decision deadline beyond that which the Board initially granted. Instead, the petitioner argued that the Board had contravened its own regulations in extending the appeal deadline to the precise date specified in the joint notice. Had the petitioner actually moved to extend the decision deadline retroactively, it is not clear that the Board would have granted the relief on the ground given since there was no basis in the argument that the Board had erred.

In the event that the Board rejects Petitioner's argument concerning jurisdiction, Petitioner asks the Board to extend the decision deadline retroactively to December 5, 2004, in light of the special circumstances set forth in this motion. Nothing in Section 40(a)(1) of the Act precludes such relief, so long as the 125-day limitation is not exceeded. Nothing in Section 40(a)(1) of the Act precludes that availability of such relief retroactively. There may be good cause to do so from time to time. For instance, if the parties or the Board inadvertently extend the appeal deadline by only nine days, when ninety days was intended, fundamental fairness may require retroactive extension of the appeal deadline. The Board's procedural rules contemplate extensions of time for good cause shown "either before or after the expiration date." (35 Ill. Admin. Code §101.522)

Here, good cause was shown by virtue of the technical difficulties in attempting electronic filing and the good-faith effort to file the document as soon as possible using overnight mail. While a request for an extension of time is not quite the same as a continuance, the standards are comparable. "A court or administrative body possesses a broad discretion whether to allow or deny a motion for continuance, but it is a discretion which must be exercised judiciously, and not arbitrarily. A continuance should not be denied where clearly it is required by the ends of justice, and a refusal to grant it is an abuse of discretion warranting reversal." Brown v. Air Pollution Control Board, 37 Ill. 2d 450, 454-455 (Ill.1967).

For these reasons, Illinois Ayers requests an extension of the decision deadline to December 5, 2004. As a practical matter, however, an extension of one day would be sufficient to render moot any question of timeliness of the appeal.

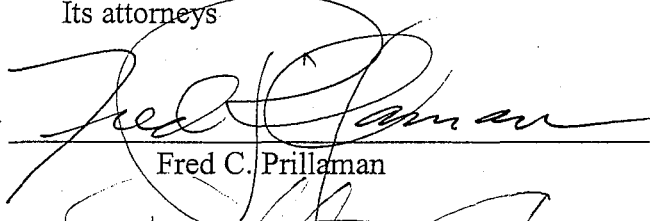
#### **IV. CONCLUSION.**

For the reasons stated herein, Illinois Ayers prays for an order reconsidering the Board's January 6, 2005, order and reinstating this appeal, or in the alternative, an order extending the appeal deadline to December 5, 2005 and reinstating this appeal, or for such other relief as the Board deems meet and just.

ILLINOIS AYERS OIL CO., Petitioner,

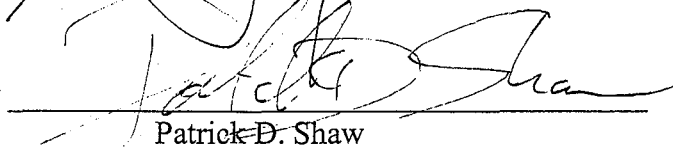
BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI,  
Its attorneys

By



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December 1, 2004

- Via Federal Express -

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
100 West Randolph Street  
State of Illinois Building, Suite 11-500  
Chicago, IL 60601

Re: Illinois Ayers Oil Co. v. IEPA, PCB 04-48

Dear Ms. Gunn:

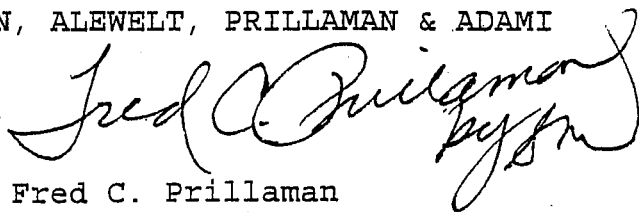
We tried to file the enclosed Petition for Review of Underground Storage Tank Fund Reimbursement Determination, but after entering our credit card information, we received an error message, a copy of which is attached. Therefore, enclosed please find the original and nine copies of Petition for Review, along with our check in the amount of \$75, which I would ask that you kindly file.

Thank you.

Very truly yours,

MOHAN, ALEWELT, PRILLAMAN & ADAMI

By:



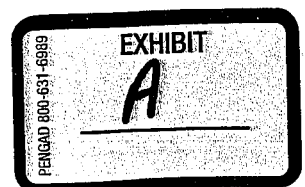
Fred C. Prillaman

WRITER'S EMAIL: [prillaman@mohanlaw.com](mailto:prillaman@mohanlaw.com)

FCP/sew  
Enclosure

cc: Renee Cipriano (w/encl.)  
John Kim (w/encl.)

C:\MAPA\CDAVIS\Illinois Ayers Oil\Ayers III\Gunn 12 01 04.wpd sew 12/1/04



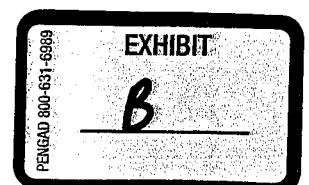


Extension  
Invalid Serial Number.

**POLICY FOR IMPLEMENTATION  
OF AN  
ELECTRONIC FILING PILOT PROJECT IN ILLINOIS' COURTS**

**A) Authority.** The chief judges and clerks of the circuit court may permit documents to be filed electronically on a pilot basis only after approval by the Supreme Court through the Director of the Administrative Office of the Illinois Courts. Electronic filing of court documents is authorized to begin in a pilot county or counties, designated by the Court, and on the recommendation of the Administrative Director, when deemed appropriate by the Administrative Director. Approval of any electronic filing pilot project does not relieve the clerk of the circuit court of their responsibility to insure the security and integrity of court documents.

- 1) Prior to implementation of a system, the clerk of the circuit court shall seek approval of electronic filing by submitting an application to the Administrative Director which shall be signed by the circuit clerk and authorized by the signature of the chief judge.
- 2) The application shall specify the county(ies), division(s), or classes of cases in which the proposed electronic filing system will be used. The application should also identify the documents to be accepted.
- 3) The application shall include a description of the proposed hardware and software, and how it integrates with the case management system.
- 4) The application shall describe how the public will be notified of the pilot project for electronic filing.
- 5) The application should describe the process used to register attorneys and verify that they are in good standing with the court, which incorporates the use of registrant's id's and passwords.
- 6) The application should describe how the electronic filing system authenticates electronic filing participants and transmissions, incorporating digital signatures.
- 7) The application shall include documentation of a successful testing phase.
- 8) The application shall explain the overall procedure for electronic filing including:
  - (a) Operational steps;
  - (b) Hours of Operation;
  - (c) Document format(s) for all filed documents;
  - (d) Medium used to access the electronic filing system, i.e. internet, intranet, dial-up lines;
  - (e) Procedures and requirements within the filed documents, i.e. specific filing procedures, attachments to pleadings;



- (f) Procedure to follow in the event of hardware or software failure;
  - (g) Verification of date and time of filing of documents;
  - (h) Handling of special exchanges, i.e. certificate of service, signature block, sealed documents, confidential documents.
- 9) The application should describe how fees are managed with regard to electronically filed documents.
- 10) The application shall explain how the proposed electronic filing system will meet the following:
- (a) Adequate interchange standards and compatibility with any statewide data access;
  - (b) Integration of electronic with paper aspects of the system;
  - (c) Ease of installation and maintenance;
  - (d) Ease of use by the court, attorneys and parties;
  - (e) Reliability;
  - (f) Security;
  - (g) Data integrity;
  - (h) Reasonable controls;
  - (i) Audit trails;
  - (j) Long-term storage;
  - (k) Cost-effective upgrade or replacement to enable the migration of data as technology changes;
  - (l) Economy of operation;
  - (m) A means of authenticating the source of each document;
  - (n) A means of authenticating the accuracy of transmission of each document;
  - (o) A means of accurately ascertaining the date and time of filing;
  - (p) A means to provide the filing party with verification of the date and time of filing;
  - (q) Type of electronic signature, manner and format in which signature is affixed, and a means to verify electronic signatures;
  - (r) A means to produce paper copies of documents filed electronically;
  - (s) A means to provide a secure back-up of any data storage device that contains documents that have been filed electronically; and
  - (t) A means to make a microfilm reproduction of documents filed electronically.
- 11) The application shall explain how the proposed electronic filing system will meet the following five requirements:
- (a) Filing shall be limited to attorneys or parties who have registered with the clerk of the circuit court in which the filing is made;
  - (b) The form of filing shall not affect the right of public access to court files;

- (c) Printed copies of any filed document shall be made available by the circuit court clerk's office at a reasonable cost or otherwise as directed by statute or rule;
  - (d) The clerk of the circuit court shall remain responsible for making, keeping, and preserving complete records of all circuit court proceedings and determinations in accordance with the Court's General Administrative Order on Recordkeeping in the Circuit Courts; and
  - (e) Filing fees shall be applicable as provided by law.
- 12) The Administrative Director may approve, disapprove, or request modification of the circuit court clerk's proposal, giving notice of her/his action to the chief judge and clerk of the circuit court.

**B) Scope of Filing.**

- 1) Electronic filing is limited to electronic line transfers, excluding transfers of information by means of a facsimile transmission device (fax), and has no effect on any existing statute or Supreme Court rule governing facsimile transmissions.
- 2) The scope of electronic filing in any pilot county is to be defined in the application of the clerk and is subject to the approval of the Administrative Director. Upon the grant of a request to the Administrative Director seeking an exception after a system has been approved and implemented, a chief judge may specify additional documents which may not be filed by electronic means.
- 3) An electronic filing of a verified pleading constitutes an attorney's certification that the original verified pleading is in the attorney's possession. The attorney shall produce the verified pleading for inspection at the request of any party or the court.
- 4) The filing of documents by electronic means does not relieve the filing party of any duty to serve copies required by rule or statute.
- 5) A will or other testamentary document may not be filed by electronic means.
- 6) The filing of documents by electronic means is limited to AR, CH, D, F, L, LM, MR, MC, SC, and TX case categories.

**C) Protocol Requirements.** An electronic filing protocol must include:

- 1) A means of authenticating the source of each document;

- 2) A means of authenticating the accuracy of transmission of each document;
- 3) A means of accurately ascertaining the date and time of filing;
- 4) A specification of documents that may not be filed electronically; and
- 5) A means to produce paper copies of documents filed electronically, including signatures, of sufficient quality to survive in readable form for the period of time that the file to which it relates is required to be retained pursuant to the Court's General Administrative Order on Recordkeeping in the Circuit Courts.

**D) Management of Electronically Filed Documents.** Documents filed electronically shall be subject to the following requirements:

- 1) An office accepting a filing must be able to authenticate the source of any electronic line transfer received.
- 2) The clerk of the circuit court must index any filing as required by the Court's General Administrative Order on Recordkeeping in the Circuit Courts;
- 3) The provisions of the Court's General Administrative Order on Recordkeeping which require that a microfilm copy of documents be produced shall apply to all documents received in electronic form; and
- 4) All devices and software to be used for reproduction must comply with generally accepted legal standards of authentication of documentary evidence.

**E) Oversight Responsibilities.** Any office accepting electronic filings must:

- 1) Assure that nothing contained within the medium received would threaten the integrity of documents maintained by the receiving office in machine-readable form;
- 2) Integrate new filings into an appropriate machine-readable data base in a manner that would permit their retrieval and conversion into paper form as required by this policy;
- 3) Provide adequate security to limit access by persons making filings so that they cannot tamper with other filings or records of the office; and
- 4) Provide documentation and access to the electronic filing system as may be requested by the Director of the Administrative Office of the Illinois Courts.

The Administrative Office of the Illinois Courts shall provide oversight of electronic filing in Illinois' courts and shall report to the Court any non-compliance with this policy.

**F) Supreme and Appellate Courts.** This policy does not authorize electronic filing in the Supreme and Appellate Courts.

**G) Effective Date.** January 1, 2003.

## Article 5: E-Filing

### 5.01 - Authority

(a) By the issuance of Order number M.R. 18368, the Illinois Supreme Court has approved the 18<sup>th</sup> Judicial Circuit Court as the site for the initial implementation of an electronic filing pilot project. The Order, dated October 22, 2003, was effective immediately. The pilot project was scheduled to run until September 30, 2005, or later as extended by Supreme Court Order.

(b) Specific authority for electronic signatures, time of electronic filing, and electronic service has been granted by Supreme Court Order M.R. 18368.

### 5.02 - Effective Date

These rules shall become effective on November 1<sup>st</sup>, 2004, and remain in effect until further order.

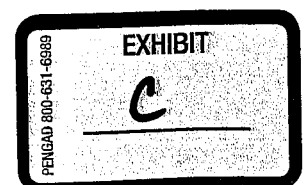
### 5.03 - Designation of Electronic Filing Case Types

(a) This Court hereby authorizes L (Law over \$50,000) cases, AR (Arbitration) cases, and any cases formally transferred into AR, as permissible electronic filing case types. From time to time, with the approval of the Director of the Administrative Office of the Illinois Courts, the Court may authorize, by written Administrative Order, additional types of cases to be processed via electronic filing.

(b) On or after the effective date, each new L case or AR case shall become an e-file case when a Plaintiff files a complaint electronically, or a Defendant files an answer electronically, or when all of the parties to an L or AR case stipulate by written order to the submission of a pending case for inclusion in the e-filing pilot program.

(c) If a case's e-file status is initiated by stipulation, the Clerk shall electronically duplicate the physical file and include it in the e-filing database. Thereafter the file shall be processed electronically pursuant to these rules.

(d) All post-judgment collection proceeding documents and notices shall be filed and served in the conventional manner, and not by means of e-filing.



#### **5.04 - Definitions**

The following terms in these rules are defined as follows:

(a) Conventional manner of filing – the filing of paper documents with the Clerk as is done in cases that are not e-file cases

(b) Electronic Document (“e-document”) - an electronic file containing informational text.

(c) Electronic Filing (“e-file”) - an electronic transmission of information between the Clerk of the Circuit court and a vendor for the purposes of case processing.

(d) Electronic Image (“e-image”) - an electronic representation of a document that has been transformed to a graphical or image format.

(e) Electronic Service (“e-service”) - an electronic transmission of documents to a party, attorney or representative in a case via the vendor. However, e-service is not capable of conferring jurisdiction under circumstances where personal service is required as a matter of law.

(f) PDF - a file format that preserves all fonts, formatting colors and graphics of any source document regardless of the application platform used.

(g) Subscriber – one contracting with a Vendor to use the e-filing system.

(h) Vendor – a company or organization that has an executed Electronic Information Project Agreement with the Clerk of the Circuit Court to provide e-filing services for the 18<sup>th</sup> Judicial Circuit.

#### **5.05 - Authorized Users**

(a) The Court and the Clerk of the Circuit Court shall provide a list of staff members designated to operate the e-filing system within the scope of their duties, and the names of any other individuals, as deemed necessary by the Court. The Vendor or Vendors shall assign a confidential Personal Identification Number (PIN) to the Clerk, which will be used by the listed individuals to access the Vendors' product services. No PIN user shall knowingly authorize or permit the Clerk's PIN to be used by anyone other than staff members designated by the Court or the Clerk of the Court.



(b) Upon receipt by the Vendor of a properly executed E-file Subscriber Agreement, and notification to the Clerk of the Circuit Court in writing, the vendor shall assign to the Subscriber a confidential Personal Identification Number (PIN). The Subscriber shall use this PIN to file, serve, receive, review and retrieve electronically filed pleading, orders and other documents in an assigned case. No PIN holder shall knowingly authorize or permit his or her PIN to be used by anyone other than authorized attorneys or employees of the attorney's law firm or designated co-counsel, where it has been established in writing by the PIN holder that designated counsel may file documents on behalf of the assigning counsel.

(c) Pro-se, or other parties may utilize e-filing through a Vendor on the Internet by means of individual transactional agreements and credit card payment.

(d) Without charge during normal business hours, the Clerk of the Circuit Court shall provide attorneys and parties in e-file cases access to an e-file computer workstation. Any attorney or party of a designated e-file case who is not a Subscriber that requests to file a document shall be given a temporary confidential Personal Identification Number (PIN), and allowed to spend a reasonable time at the workstation in connection with e-filing cases.

#### **5.06 - Method of Filing**

(a) For the purposes of this pilot project, the Circuit Court hereby mandates electronic filing in each of the designated cases as identified in Rule 5.03, above. Once a case becomes an e-file case, the Clerk of the Circuit Court shall only accept and approve subsequent filings electronically through a Vendor or through the Clerk's computer workstation, except as set forth in paragraph (b) hereafter. The Clerk shall refuse any document presented to be filed in paper form, and shall return the document to the filing party with directions to file electronically.

(b) In the interest of justice, the Clerk of the Court may allow the filing of a document or pleading using the conventional manner of filing. The court may permit one or more parties in an e-file case to file in the conventional manner to advance the interests of justice. At no time shall this pilot program prevent or exclude the ability to file any valid case filing with the Clerk of the 18<sup>th</sup> Judicial Circuit Court.

(c) Physical items for which a photograph may be substituted may be electronically imaged and e-filed. Items not conducive to electronic filing, such as Documents under Seal and physical exhibits for which an image will not suffice, shall be filed in their physical form at the Clerk's Office or in the Courtroom, as directed by order of court. The Motion, and Notice of Motion for

permission to file any of these physical items may be done electronically in e-file cases.

(d) The Court through the Clerk of the Court may issue e-filing notices, and other documents electronically in an e-file case.

### **5.07 - Maintenance of Original Documents**

(a) Anyone filing an electronic document that requires an original signature certifies by so filing, that the original signed document exists in the filing person's possession. Unless otherwise ordered by the Court, the filing party shall maintain and preserve all documents containing original signatures that are filed electronically. The filing party shall make those signed originals available for inspection by the Court, the Clerk of the Court or by other counsel in the case, upon 5 days notice. At anytime, the Clerk of the Court may request from the filing party a hard copy of an electronically filed document, which shall be provided within 5 business days upon reasonable notice.

(b) All documents that are required to be maintained and preserved must be kept for one year after the appellate process period has been completed.

(c) During this pilot project, The Clerk of the Court shall create and maintain a paper copy of all e-filings in a parallel manual court file.

### **5.08 - Privacy issues**

Easy access to electronic documents raises many privacy issues, some of which have been addressed in "Electronic Access Policy for Circuit Court Records of the Illinois Courts", Revision effective April 1, 2004. Consistent with that Policy, e-filing users must be sensitive to confidential and personal information not filed under seal. It is the responsibility of counsel and the parties to be sure that all pleadings comply with these rules requiring redaction of personal identifiers. Parties and their counsel shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers from all documents electronically filed with the court, including exhibits thereto, unless otherwise ordered by the Court:

(a) Social Security Number - If an individual's social security number must be included in a document, only the last four digits of the number shall be used.

(b) Names of minor children - If the involvement of a minor child must be mentioned; only the initials of that child's name shall be used.

(c) Dates of Birth - If an individual's date of birth must be included in a document, only the year shall be used.

(d) Financial account numbers - If financial account numbers are relevant, only the last four digits of these numbers shall be used.

(e) In addition to the above, persons filing electronically shall exercise caution when filing documents that contains the following:

- i. Personal identifying numbers, such as a driver's license number.
- ii. Medical records, such as treatment and diagnosis.
- iii. Employment history information.
- iv. Individual Financial Information.
- v. Proprietary or Trade Secret Information.

#### **5.09 - Format of Documents**

(a) All electronically filed pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings. Additionally, each electronically filed pleading and document shall include the case title, case number and the nature of the filing.

(b) Each electronically filed document shall also include the typed name, e-mail address, address and telephone number of the attorney or pro se party filing such document. Attorneys shall include their DuPage County Attorney Number on all documents.

(c) Any electronically filed document must be unalterable, (such as sealed PDF), and be able to be printed with the same contents and formats as if printed from its authoring program. The e-filing vendor is required to make each electronically filed document that is not infected by a virus available for transmission to the Clerk immediately after successful receipt and virus checking of the document.

#### **5.10 - Signatures**

(a) Each electronically filed document, including all pleadings, motions, papers, etc., that require an original signature when conventionally filed, shall bear a facsimile or typographical signature of the attorney, or pro se party, authorizing such filing, (e.g., "/s/ Adam Attorney"), and shall be deemed to have been signed in person by the individual identified.

(b) In the absence of a facsimile or typographical signature, any document electronically filed with a user identification and password, is deemed to have been personally signed by the holder of the user identification and password.

(c) Documents containing signatures of third parties may be filed electronically, and shall bear a facsimile or typographical signature.

(d) Signatures as defined in subparagraphs (a), (b), and (c), above, satisfy Supreme Court Rules and statutes regarding signatures, and give rise to the application of available sanctions when appropriate.

(e) The original signed document that has been electronically filed pursuant to subparagraphs (a), (b), and (c) above, shall be maintained and preserved as required by Rule 5.07.

(f) Where a Clerk is required to endorse a document, the typed name of the clerk shall be deemed to be the clerk's signature on an electronic document.

#### **5.11 - Time of Filing, Acceptance by the Clerk, and Electronic Filing Stamp**

(a) Any document filed electronically shall be considered as filed with the Clerk of the Circuit Court upon review and acceptance, and the transmission has been completed with the Clerk's electronic filing stamp.

(b) A person who files a document electronically shall have the same responsibility as a person filing a document in the conventional manner for ensuring that the document is complete, readable and properly filed.

(c) For the purposes of e-filing, any document filed with a Vendor on a day or at a time when the Clerk is not open for business, unless rejected by the Clerk, shall be deemed to have been accepted on the day and at the opening time of the next business day of the Clerk.

(d) Upon receipt by the Vendor, and submission of an electronic document to the Clerk, the Vendor shall issue a confirmation to the Subscriber. The confirmation shall indicate the time and date of receipt, and serve as proof that the document has been submitted to the Clerk. A Subscriber will receive e-mail notification from the Vendor if a document is not accepted by the Clerk's office. In that event, the Subscriber may be required to re-file the document to meet necessary filing requirements.

(e) Each document reviewed and accepted for filing by the Clerk of Court shall receive an electronic file stamp. The stamp shall be endorsed in the name of the Circuit Clerk by the deputy clerk accepting the filing, and shall include the official time and date of filing, and contain the word "FILED". This file stamp shall

be merged with the electronic document and shall be visible when the document is printed and viewed on-line. Electronic documents are not officially filed without the electronic filing stamp. Filings so endorsed shall have the same force and effect as documents time stamped in the conventional manner.

## **5.12 – Electronic Service, Courtesy Copies and Filing Proof of Service**

(a) Electronic service is not capable of conferring jurisdiction. Therefore regarding electronically filed cases, documents that require personal service to confer jurisdiction as a matter of law may not be served electronically through an e-file vendor, but must be served in the conventional manner.

(b) All other documents may be served upon the other parties or their representatives electronically through the e-file vendor. The filing party or attorney shall be responsible for completing electronic service of these other documents using the vendor's system. By their participation in this e-filing pilot program, Parties, and their designated counsel, consent to receipt of all other documents e-filed and e-served upon them via access to the Vendor's system over the Internet.

(c) If a party or party's designee has not subscribed to a Vendor's services, service of all other documents via facsimile transmission is hereby authorized. In the event of service via facsimile, the Vendor's system will record the date and time the fax transmission was completed in the proof of service for that transaction. If neither e-file nor fax transmission service is possible, the Vendor shall provide service by mail, and charge back the cost to the Subscriber.

(d) E-service shall be deemed complete at the posted date and time listed by the e-file Vendor. However, for the purpose of computing time for any other party to respond, any document filed on a day or at a time when the Clerk is not open for business is deemed to be served on the Clerk's next business day. The electronic service of a pleading or other document shall be considered as valid and effective service on all parties and shall have the same legal effect as personal service of an original paper document.

(e) If electronic service on a party does not occur because of (1) inaccessibility to the Vendor's system; (2) an error in the Vendor's transmission of notice to the party being served, (3) the Vendor's failure to process the electronic filing for service, or (4) the party was erroneously excluded from the service list, the party to be served shall, absent extraordinary circumstances, be

entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

(f) The e-filing Vendor is required to maintain an e-service list for each e-filed case. The Vendor shall immediately update the service list upon being given notice of new contact information. Whenever a document is submitted for service upon other parties by the e-filing Vendor's system, the e-filing Vendor shall use the most current e-service list to perform service.

(g) All Subscribers and other participants must immediately, but not later than ten business days prior to when such a change takes effect, notify other parties, the Clerk and the e-filing Vendor of any change of firm name, delivery address, fax number or e-mail address.

(h) Courtesy copies of documents customarily required to be provided to the court shall continue to be required in e-file cases, absent a specific court order to the contrary.

#### **5.13 - Collection of Fees**

(a) The e-filing of a document requiring payment of a statutory filing fee to the Clerk of the Court in order to achieve valid filing status shall be filed electronically in the same manner as any other e-file document.

(b) At the end of each business day, the Vendor shall electronically transmit to the Clerk's bank account, all statutory filing fees required for that day's electronic filings. The Vendor shall electronically provide the Clerk's Accounting Department a detailed breakdown including case number, type of transaction, and party being billed for the payment for each deposit. The Vendor shall act as a limited agent for the Clerk and collect such required filing fees from the Subscriber through direct billing of that Subscriber, unless the payment of the fee has been waived by court order or law.

(c) Fees charged to e-filing Subscribers by the Vendor for Vendor services are solely the property of the Vendor and are in addition to any statutory fees associated with statutory filing fees.

#### **5.14 - System or User Errors**

(a) The Court and Clerk of the Circuit Court shall not be liable for malfunction or errors occurring in electronic transmission or receipt of electronically filed or served documents.

(b) If the electronic filing is not filed with the Clerk because of (1) an error in the transmission of the document to the Vendor which was unknown to the sending party, or (2) a failure to process the electronic filing when received by the Vendor, (3) rejection by the Circuit Court Clerk, or (4) other technical problems experienced by the filer, or (5) the party was erroneously excluded from the service list, the Court may upon satisfactory proof enter an order permitting the document to be subsequently filed effective as of the date filing was first attempted.

(c) In the case of a filing error, absent extraordinary circumstances, anyone prejudiced by the court's order to accept a subsequent filing effective as of the date filing was first attempted, shall be entitled to an order extending the date for any response, or the period within which any right, duty or other act must be performed.

#### **5.15 - Vendor Conditions**

(a) E-Filing Vendor(s) with Electronic Information Project Agreements executed with the Clerk of the Circuit Court, are hereby appointed to be the agent of the Clerk of the Circuit Court regarding electronic filing, receipt, service, and/or retrieval of any pleading or document via the e-filing Vendor system.

(b) The e-filing Vendor shall make electronically filed documents, and documents being served electronically through the e-filing Vendor's system, available to subscribers and the designated court authorized users through the e-filing Vendor's system in accordance with the current contract between the Clerk and the e-filing Vendor, and consistent with the Supreme Court's Electronic Access Policy for Circuit Court Records of the Illinois Courts.

(c) The e-filing Vendor may require payment of a fee or impose other reasonable requirements by contract with a Subscriber as conditions for processing electronic filings. Pursuant to contract terms, the e-filing Vendor must provide services, but is not permitted to require payment of a fee for government users or parties deemed indigent by the Court.

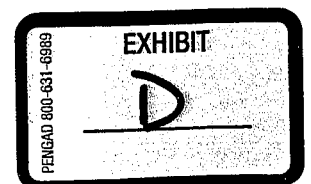
(d) The Chief Judge of the Court or his/her designee, in coordination with the Clerk of the Court, shall review and approve the terms of the Subscriber Agreement. The Vendor shall provide at least 30-days notice prior to the effective date of any Subscriber Agreement changes.

(e) Certified copies of electronically filed documents may not be obtained electronically. The Clerk of the Court will only issue Certified copies in the conventional manner.

party should contact the Clerk's Office with the case number and document number for which the correction is being requested. If appropriate, the Court will make an entry indicating that the document was filed in error. The filing party will be advised *if* the document needs to be refiled.

#### **H. TECHNICAL FAILURES.**

1. The Clerk's Office shall deem the Central District of Illinois CM/ECF site to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 10:00 a.m. that day. Known systems outages will be posted on the Court's web site, if possible.
  - a. Parties are encouraged to file documents electronically during normal business hours, in case a problem is encountered.
  - b. In the event a technical failure occurs, and despite the best efforts of the filing party a document cannot be filed electronically, the party should print (if possible) a copy of the error message received. In





addition, as soon as possible, the party should file a Declaration that Party was Unable to File in a Timely Manner Due to Technical Difficulties. The Court will then order appropriate relief. Sample language for a declaration is attached to these procedures as Form D.

2. Problems on the filer's end, such as phone line problems, problems with the filer's Internet Service Provider (ISP) or hardware or software problems, will neither constitute a technical failure under the procedures nor excuse an untimely filing.
  - a. If a party misses a filing deadline due to such problems, the document may be conventionally submitted, accompanied by a Declaration stating the reason for missing the deadline and a motion for leave to file instanter.
  - b. The motion, document and declaration must be filed no later than 12:00 noon of the first day on which the Court is open for business following the original filing deadline. The Court will consider the matters stated

in the declaration and order appropriate relief.

**I. PRIVACY.**

1. To address the privacy concerns created by Internet access to court documents, litigants shall modify or partially redact certain personal data identifiers appearing in case initiating documents, pleadings, affidavits, or other papers. These identifiers and the suggested modifications are as follows:
  - a. Minors' names: Use the minors' initials;
  - b. Financial account numbers: Identify the name or type of account and the financial institution where maintained, but use only the last four numbers of the account number;
  - c. Social Security numbers: Use only the last four numbers;
  - d. Dates of birth: Use only the year;
  - e. Addresses: Use only City and State;
  - f. Signatures: Use s/name;
  - g. Driver's License numbers: Use only last four numbers; and
  - h. Other data as permitted by order of the court.
2. A party wishing to file a document containing the personal data identifiers listed above shall submit for filing under seal an unredacted document or a reference list. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its(their)

FORM D

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF ILLINOIS

_____	)	
Plaintiff(s),	)	
	)	
vs.	)	Case No.
	)	
_____	)	
Defendant(s)	)	

**Declaration that Party was Unable to File in a Timely Manner  
Due to Technical Difficulties**

Please take notice that [Plaintiff/Defendant, Name of Party] was unable to file the attached [Title of Document] in a timely manner due to technical difficulties. The deadline for filing the [Title of Document] was [Filing Deadline Date]. The reason(s) that I was unable to file the [Title of Document] in a timely manner and the good faith efforts I made prior to the filing deadline to both file in a timely manner and to inform the Court and the other parties that I could not do so are set forth below.

[Statement of reasons and good faith efforts to file and to inform (including dates and times)]

I declare under penalty of perjury that the foregoing is true and correct.

s/ [Name of Filing Attorney]

Name of Filing Attorney

Law Firm Name

Address

City, State, ZIP Code

Phone: (xxx) xxx-xxxx

Fax: (xxx) xxx-xxxx

E-mail: xxx@xxx.xxx

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

GENERAL ORDER ON ELECTRONIC CASE FILING

Meeting in executive session on November 16, 2004, the Court approved the following procedures for Electronic Case Filing (ECF).

**I. Preamble**

(A) Whereas:

(1) this court is expected to implement the Case Management/Electronic Case Filing System in 2005,

(2) Federal Rules of Civil Procedure Rules 5, 77, and 79, and Federal Rules of Criminal Procedure Rules 49 and 55, now permit the creation, retention, and storage of court records and service of notice and court orders by electronic means, and

(3) This court intends to provide for the creation, retention, and storage of court records and service of notice and court orders by electronic means,

(B) The court hereby enters this general order which may be referred to as the "General Order on Electronic Case Filing."

(C) This General Order shall be available through the Court Web Site. Any additional procedures established by the Clerk of the Court pursuant to this General Order should also be available through the Court Web Site.

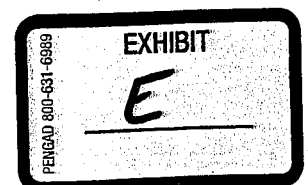
**II. Definitions**

(A) "Electronic Case Filing System" or "ECF" is the court's electronic system for receiving, recording, docketing, filing, and retrieving pleadings and other court documents in electronic form and which also is capable of generating, recording, retrieving, and transmitting court orders and notices in electronic form.

(B) "Filing User" is a person registered to use ECF in the Northern District of Illinois and who has been issued a login and password.

(C) "Notice of Electronic Filing" is the notice generated by ECF upon the completion of an electronic filing.

(D) "Court Web Site" is the official Internet web site of the United States District Court for the Northern District of Illinois, the present address of which is <http://www.ilnd.uscourts.gov>.



(E) A document is in "Compatible Format" if it is in Portable Document Format ("PDF") created by Adobe Acrobat or another similar and compatible program, or in such other format as the Clerk of the Court may designate and post on the Court Web Site.

(F) "Paper," when used in this General Order to describe forms, documents, etc., means a tangible, hard copy version in contrast to electronic versions.

### **III. Scope of Electronic Filing**

(A) (1) All civil, criminal, and admiralty cases are assigned to ECF except those categories of cases specifically excepted below.

- (2) The following categories of cases do not qualify to be assigned to ECF:
- (a) petty offenses;
  - (b) grand jury matters;
  - (c) student loan cases;
  - (d) qui tam actions, until a point in the proceedings that the court may order that it be assigned to ECF;
  - (e) sealed cases, until a point in the proceedings that the court may order that it be assigned to ECF; and
  - (f) any other specific case where the court expressly orders that it not be assigned to ECF, until a point in the proceedings that the court may order otherwise.

(B) (1) Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court in connection with a case assigned to ECF may be electronically filed.

- (2) The following categories of documents are not to be filed electronically:
- (a) the initial documents and all associated documents that begin a case, including, but not limited to, the original complaint in a civil case; the original indictment, complaint, or information in a criminal case; removal petitions in a case removed from state court; or the petition in cases initiated by a petition;
  - (b) charging documents in a criminal case, including superseding indictments, superseding informations, and superseding complaints;
  - (c) warrants for arrest and summons in criminal cases;
  - (d) all documents that require the signature of a criminal defendant;
  - (e) pretrial services reports and presentence reports;
  - (f) administrative records;
  - (g) state court records in a habeas corpus case;
  - (h) bankruptcy appeal records;
  - (i) restricted, sealed, or *in camera* documents;

- (j) *ex parte* motions;
- (k) verdict forms signed by one or more members of the jury;
- (l) bonds;
- (m) letters of request;
- (n) certain documents or components in accordance with § VII(C);
- (o) notices of appeal;
- (p) other designated documents in accordance with procedures established by the Clerk of the Court; and
- (q) documents that the court expressly orders or permits to be filed in paper form.

(3) As to those documents listed in § III(B)(2) and any other documents filed in paper form, the Clerk of the Court may establish procedures for creating and storing electronic versions of such documents. Those procedures (a) may contain provisions for creating redacted versions of documents and (b) shall not provide for the maintenance of electronic versions of pretrial services reports, presentence reports, restricted documents, sealed documents, *in camera* documents, or *ex parte* motions unless the Clerk of the Court specifically determines that the then-current version of ECF contains adequate protections for securing and restricting access to such documents.

(4) The filing of the initial documents and all associated documents that begin a case, including, but not limited to, the complaint, attorney appearance forms, designation sheet, and the issuance and service of the summons in a civil case and the charging documents in a criminal case, will be accomplished in paper form rather than electronically. The Clerk of the Court may establish procedures for providing electronic copies of initial documents. All subsequent pleadings and other documents in a case assigned to ECF must be filed electronically except as provided in this General Order or as otherwise ordered by the court.

(C) Notwithstanding the foregoing, attorneys and others who are not Filing Users are not required to electronically file pleadings and other documents in a case assigned to ECF. This provision is intended to allow for a reasonable period of transition to the ECF system. It is expected that the Court will *require* electronic filing by attorneys at some point in the future, subject to exceptions allowed for by this order.

(D) Prior to filing an emergency motion or matter, as defined in Local Rule 77.2, a Filing User shall contact the judge's courtroom deputy or chambers by telephone or in person. Chambers information, including standing orders, is posted on the Court Website.

#### **IV. Eligibility, Registration, and Passwords**

(A) (1) Attorneys admitted to the bar of this court, including those admitted *pro hac vice*, may register as Filing Users.

(2) Registration shall be in accordance with procedures established by the Clerk of the Court and shall require that the applicant provide his or her name, address, telephone number, Internet e-mail address, and a declaration that the applicant is admitted to the bar

of this court or admitted *pro hac vice*. Registration also requires that the applicant have or obtain an account on the Public Access to Court Electronic Records ("PACER") system.

(B) (1) A party to a pending civil action who is not represented by an attorney may register as a Filing User solely for purposes of the case.

(2) Registration shall be in accordance with procedures established by the Clerk of the Court and shall require that the applicant identify the action as well as the name, address, telephone number, and Internet e-mail address of the applicant. Registration also requires that the applicant have or obtain an account on the Public Access to Court Electronic Records ("PACER") system.

(3) Parties who are in custody are not permitted to register as Filing Users. If, during the course of the action, a party who is registered as a Filing User is placed in custody, the Filing User shall promptly advise the Clerk of the Court to terminate the Filing User's registration as a Filing User.

(4) If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the Clerk of the Court to terminate the party's registration as a Filing User upon the attorney's appearance.

(C) Registration as a Filing User constitutes consent to electronic service of all documents as provided in this General Order and in accordance with the Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure. The Clerk of the Court shall use an electronic and/or paper registration form that contains an express consent to service by electronic means in accordance with Fed. R. Civ. P. 5(b)(2)(D) and Fed. R. Crim. P. 49(b).

(D) The Clerk of the Court may establish registration procedures that require a Filing User applicant complete on-line and/or in-person ECF training prior to being provided full access as a Filing User.

(E) Once registration and/or training is completed in accordance with procedures established by the Clerk of the Court, the Clerk of the Court shall provide the Filing User with notification of the Filing User's login and password.

(F) Filing Users agree to protect the security of their passwords.

(1) A Filing User shall immediately notify the Clerk of the Court if he or she learns that the Filing User's password has been compromised.

(2) Use of the login and password is limited to the Filing User and agents specifically authorized by the Filing User. The Filing User shall be responsible for all applicable charges associated with use of the Filing User's password, and any documents filed by use of the password shall be deemed authorized and signed by the Filing User.

(3) If the Clerk of the Court believes that a Filing User's password has been compromised, the Clerk of the Court shall notify the Filing User. In such instances, the Clerk of the Court may make necessary corrections to ECF and shall issue a new password to the Filing User.

(4) Filing Users may be subject to sanctions for failure to comply with the provisions of this General Order or any ECF procedures established by the Clerk of the Court.

(G) Registered Filing Users may withdraw from participation in ECF by providing the Clerk of the Court with written notice of the withdrawal. Withdrawal is not effective until the Clerk of the Court issues a notice of withdrawal and the withdrawn Filing User shall promptly notify the other litigants in the Filing User's pending cases.

(H) It is the responsibility of the Filing User to maintain adequate facilities and equipment to participate in ECF, including maintaining a current and active e-mail address. The Filing User shall promptly notify the Clerk of the Court and opposing litigants in pending cases of any changes in the Filing User's e-mail address. A Filing User who lacks the necessary facilities, equipment, or active e-mail address, other than for a temporary period of limited duration, shall promptly seek withdrawal from ECF in accordance with § IV(G).

(I) A Filing User may, for cause, be terminated from using ECF. The Clerk of the Court shall establish rules and procedures for such termination, which shall provide for review by petition to the Executive Committee of the court or a designated district judge or magistrate judge.

(J) (1) A Filing User who is transferred to inactive status in accordance with LR 83.18 or suspended or disbarred pursuant to the court's disciplinary procedures, LR 83.25-31, shall have his or her registration as a Filing User automatically terminated.

(2) Following reinstatement under LR 83.18 or LR 83.30, a previously registered Filing User must request reinstatement of his or her registration as a Filing User. Such request must include then-current information as to the Filing User's name, address, telephone number, and Internet e-mail address and any other information that may be required under procedures established by the Clerk of the Court.

## **V. Consequences of Electronic Filing**

(A) Electronic transmission of a document to ECF consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the local rules of this court, and constitutes entry of the document on the docket kept by the Clerk of the Court under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55.

(B) (1) When a document has been filed electronically or created by the court electronically, the official record is the electronic recording of the document as stored by the court,

(2) Except that redacted stored electronic versions of paper documents filed with the court shall not constitute the official record of the court and the paper document shall be maintained as the official record of the court.

(C) The filing party is bound by the document as filed. The clerk of court may, where necessary and appropriate, modify the docket to comply with quality control standards.

(D) Except in the case of documents first filed in paper form and subsequently submitted electronically under § III(B)(4), a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.



(E) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight Central Time in the Northern District of Illinois in order to be considered timely filed that day. To the extent local rule or an order of the court requires filing with the court or service on an opposing party by a specific time of day, the document must be filed or served by that time of day to be timely.

#### **VI. Entry of Court Orders**

(A) (1) All orders, decrees, judgments, and proceedings of the court will be filed in accordance with this General Order which will constitute entry on the docket kept by the Clerk of the Court under Fed. R. Civ. P. 58 and 79 and Fed. R. Crim. P. 49 and 55. All signed orders will be filed electronically by the court or court personnel. Any order filed electronically by the court or court personnel without the original signature of a judge (or, where applicable, the Clerk of the Court) has the same force and effect as if the judge or Clerk of the Court had affixed the judge's or Clerk of the Court's signature to a paper copy of the order and it had been entered on the docket in the manner otherwise provided.

(2) The Clerk of the Court may establish additional procedures for filing, creating, and storing electronic versions of orders, decrees, and judgments.

(B) A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the court requires.

#### **VII. Documents, Attachments, and Exhibits**

(A) Filing Users must file all documents in electronic form, except where this General Order or the court permits otherwise. All electronic documents must be submitted in Compatible Format. Each document filed electronically must be titled using one of the categories contained in ECF.

(B) Documents filed electronically must not exceed 2 megabytes in size. Documents to be scanned into PDF format must not exceed 40 pages. Any document that exceeds these limits must be broken into multiple PDF files and filed as a document and attachments. By way of example, most filings include a foundation document (*e.g.*, motion) and other supporting attachments (*e.g.*, memorandum and exhibits). The foundation document as well as the supporting attachments will each be deemed a separate component of the filing, and each component shall be uploaded separately in the filing process.

(C) Filing Users may be excused from filing a particular component electronically under certain limited circumstances, such as when the component cannot be reduced to an electronic format or exceeds the file size limit described above. Such component shall not be filed electronically, but instead shall be filed with the Clerk of the Court and served upon the parties in accordance with the applicable Federal Rules of Civil Procedure or Federal Rules of Criminal Procedure and the local rules for filing and service of paper documents. Filing Users filing a

paper component shall file electronically a Notice of Paper Filing setting forth the reason(s) why the component cannot be filed electronically.

(D) A Filing User, unless otherwise instructed by the court, may submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane.

(E) (1) Nothing in section VII of this General Order shall override the local rules regarding size limitations on specific types of documents. The pages of electronic documents should substantially comply with the size limitations contained in LR 5.2. Absent leave of court, the page limitations set forth in LR 7.1 apply to briefs filed in electronic form.

(2) Nothing in section VII of this General Order shall prevent the court from ordering that other rules will apply in a particular case.

#### **VIII. Restricted or Sealed Documents**

(A) Restricted or sealed documents must be filed in paper form in accordance with LR 5.8 and 26.2.

(B) (1) A motion for a protective order or to file restricted or sealed documents may be filed electronically unless prohibited by law.

(2) If such a motion itself contains all or part of the proposed restricted or sealed materials, a Filing User may file such a motion in paper form.

#### **IX. Retention Requirements for Documents with Signatures of Persons Other Than Filing Users**

(A) Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until 4 years after all time periods for appeals expire.

(B) On request of the court, the Filing User must provide original documents for review.

## **X. Signatures of Filing Users**

(A) The user login and password required to transmit documents to ECF serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed. R. Civ. P. 11, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block and must set forth the name, address, telephone number and the attorney's bar registration number, if applicable. In addition, the name of the Filing User under whose login and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear.

(B) No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User. Electronic filing may be delegated to an authorized agent, who may use the login and password to transmit a filing. However, use of the login and password to transmit the filing constitutes a signature by the Filing User, even when the Filing User does not perform the physical act of filing.

(C) In cases assigned to ECF, documents requiring signatures of more than one party must be electronically filed either by: (1) transmitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three court days after filing; or (4) in any other manner approved by the court.

## **XI. Service of Documents by Electronic Means**

(A) All Filing Users shall maintain a current and active e-mail address to receive Notices of Electronic Filing through ECF.

(B) When a pleading or other document is filed electronically in a case assigned to ECF, ECF will automatically generate a Notice of Electronic Filing, which will automatically be transmitted by e-mail to all Filing Users in the case.

(C) Subject to the provisions of Fed. R. Civ. P. 5(b)(3), the Notice of Electronic Filing constitutes service under Fed. R. Civ. P. 5(b)(2)(D) and Fed. R. Crim. P. 49(b) as to all Filing Users in a case assigned to ECF.

(D) Parties to a case assigned to ECF, who are not Filing Users or represented by a Filing User and who have not otherwise consented to service by electronic means under Fed. R. Civ. P. 5(b)(2)(D), are entitled to receive a paper copy of any electronically filed document. Service of