

BACK STORY

HEY, WHAT'S YOUR SIGN? THE LOWDOWN ON SIGNING E-FILED DOCUMENTS IN STATE AND FEDERAL COURT

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“Ok,” you say to yourself, “I’ve applied my slash-s-slash John Hancock, published to pdf and uploaded my document for e-filing.” Or, more likely, perhaps, if you are a state court filer, you’ve signed the final version of the document prepared by your secretary and, determined to announce to the world your firm’s lack of technological savvy, handed it back to your secretary for old-fashioned scanning and then uploading for e-filing. In either case, you say to yourself, “Everything is *copasetic*,” and move on to the next project. But is it?

Did you save a hard copy with your original signature? Yes, I’m talking to you, Ms. Do-It-Your-Self. Do you need to? And what about that faxed signature page from opposing counsel on the stipulation? You have the original signature too, right? In your office? And you included your third-party-signature certification (if you’re in federal court)? Don’t know what I’m talking about? Ok. Read on.

The United States District Court for the District of Nevada, the Second Judicial District Court (Washoe County), Eighth Judicial District Court (Clark County), and the Nevada Supreme Court have each adopted electronic filing procedures. The District of Nevada and Clark County have adopted their own local rules. Washoe County and the Nevada Supreme Court follow the procedures set forth in the Supreme Court’s order in Administrative Docket (ADKT) 404, also known as the “Nevada Electronic Filing Rules.”

Document Retention Requirements for E-Filed Documents

U.S. District Court: Pursuant to section VII(A) of the District of Nevada’s “Electronic Filing Procedures” (Special Order 109, as amended August 24, 2006), an electronically filed document *other than that of the filing user* must be maintained in original paper form “for the duration of the case or any subsequent appeals.” Upon request, the original document must be provided to other parties or the court for review (Id. at § VII(B)).

Clark County: Pursuant to Rule 8.08(a) of the Eighth Judicial District Court’s rules for “Electronic Filing and Service” (E.D.C.R. Part VIII), unless otherwise ordered by the court, an original paper form of *all documents filed electronically*, including original signatures, “shall be maintained by the filing party for a period of two years after the final resolution of the action, including the final resolution of all appeals.” The rule further provides that, the document shall be made available, upon reasonable notice, for inspection by other counsel or the court.

Washoe County/Nevada Supreme Court: The “Nevada Electronic Filing Rules” (N.E.F.R.) (effective March 1, 2007) do not contain any provision concerning the retention of electronically filed documents. Nevertheless, I would suggest

prudence dictates that you conform your practice at least to the requirements of the District of Nevada rule and maintain original, paper versions of any e-filed document containing signatures other than that of the filing user for the duration of the case and any subsequent appeal.

Signature Requirements for E-Filed Documents

U.S. District Court: Pursuant to section V(A) of the District of Nevada’s “Electronic Filing Procedures,” an electronic signature (*i.e.*, “/s/ [name]” or “a facsimile of a handwritten signature”) is sufficient for all purposes, even for the signature of a third party (*i.e.* a “Non-Filing User”) (Id. at § V(C)). However, whenever there are *multiple signatures* on a document, the filing user “shall attest to the consent of the other parties and apply electronic signatures for each of the parties” (Id. at § V(D)). The original paper form of the e-filed document must be maintained by the attorney e-filing the document (Id. at § V(C); V(D)).

Clark County: Pursuant to E.D.C.R. Part VIII Rule 8.07(a) and (b), e-filed documents may contain either a typographical (*e.g.*, “/s/ John. L. Smith”) or facsimile signature, and a typographical signature is treated as a personal signature for all purposes. This includes signature of a notary, so long as the notary, before filing, has signed a printed form of the document (Rule 8.07(c) and (d)); signatures under penalty of perjury, so long as the declarant, before filing, has signed a printed form of the document (Rule 8.07(e)); and the signatures of “opposing parties” so long as the filer “first obtain[s] the original signatures of all opposing parties on a written form of the document” (Rule 8.07(g)).

Washoe County/Nevada Supreme Court: The Nevada Electronic Filing Rules permit typographical signatures for registered users. However, pursuant to N.E.F.R. Rule 11(b) and (c), documents signed under penalty of perjury, requiring the signature of a notary public, or requiring the signatures of opposing parties, must be e-filed with facsimile signatures only. In other words, the documents must be signed, then scanned, then submitted for e-filing “in a format that accurately reproduces the original signatures and contents of the document” (*See Id.*)

Note: These rules do not apply to signature requirements for court orders.

And there you have it. Go out an e-file with confidence. ■



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