

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE TENNANT**

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

2010 OCT 14 PM 3:14

OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OF INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§11-10-5 and 11-10-5e

RULE TYPE: PROCEDURAL _____ INTERPRETIVE X

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE (s) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES X NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 27

TITLE OF RULE BEING AMENDED: Service of Notice

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS November 15, 2010


John C. Musgrave
Secretary of the Department of Revenue

17.40

**TITLE 110
INTERPRETIVE RULE
STATE TAX DEPARTMENT**

**SERIES 27
SERVICE OF NOTICE**

2018 OCT 14 PM 3:15

WEST VIRGINIA
SECRETARY OF STATE

§110-27-1. General.

1.1. Scope. -- This rule sets forth the interpretation, practice and procedure established by the West Virginia State Tax Department concerning service of notice, electronically or by certified mail, of particular assessments, notices, statements of account or other Tax Department documents administered under Chapter 11, Article 10 of the West Virginia Code.

1.2. Authority. -- W. Va. Code §11-10-5.

1.3. Filing Date. --

1.4. Effective Date. --

§110-27-2. Service of Notice.

2.1. Subject to Service Rules. The following Tax Department Documents are subject to the service of notice requirements outlined in this rule.

2.1.1. Notice of Assessments. All notices of assessments shall be subject to the notice requirements of this rule.

2.1.2. Certain Business Registration Certificate Documents. All denials, revocations, and refusals to renew a Business Registration Certificate shall be subject to the notice requirements of this rule.

2.1.3. Certain Refund Documents. All denials of refunds, denials of interest, denials of claims for refund, and rejections of refund shall be subject to the notice requirements of this rule.

2.1.4. Amended Return Not Processed. All notices of Amended Returns that are not processed shall be subject to the notice requirements of this rule.

2.1.5. Other Required Documents. All documents required by the United States, or any agency, authority, commission or instrumentality of the United States, to be sent by certified mail shall be subject to the notice requirements of this rule to the extent this rule is in compliance with such requirements.

2.2. Method of Service. All documents outlined in Section 2.1 of these

regulations shall be served upon the taxpayer by personal or substituted service or by certified mail, unless such mail is refused or not claimed, upon which it may be served by regular mail. Each of these methods of service may be used at the discretion of the Tax Department and have no preference over the other method of service.

2.2.1. Service by personal or substituted service shall be valid if made by any method authorized by Rule 4 of the West Virginia Rules of Civil Procedure.

2.2.2. Service by certified mail shall be valid if accepted by the taxpayer, or if addressed to and mailed to the taxpayers usual place of business or usual place of abode or last known address on record with the Tax Department and accepted by any agent, officer, partner, employee, spouse, parent, stepparent, or child of the taxpayer over the age of eighteen.

2.2.2.1. Any document addressed and mailed in the above manner and accepted by any person shall be presumed to be accepted by such person unless proven otherwise by the taxpayer.

2.2.2.2. Any document addressed in the above manner, and which is refused or not claimed may then be served by regular mail if such notice is subsequently mailed by first class mail, postage prepaid, to the same address; and date of posting in the United States mail shall be the date of service.

2.3. Optional Method of Service. In lieu of the method of service of notice provided in Section 2.2 of this rule, the person to be audited may agree in writing to have all documents outlined in Section 2.1 of this rule served electronically.

2.3.1. To facilitate the electronic service of the various notices described in this rule, the Tax Department shall develop a secure paperless audit source web site.

2.3.1.1. The Tax Department shall develop and provide to the Taxpayer appropriate written instructions to assist the Taxpayer in using the secure paperless audit source web site.

2.3.2. Prior to the electronic service of any documents, the person to be audited and the authorized representative of the Tax Department shall sign the State Tax Department Agreement Consenting to Service of Notice of Tax Audit(s) Documents by Electronic Service.

2.3.3. At the time the person to be audited signs the State Tax Department Agreement Consenting to Service of Notice of Tax Audit(s) Documents by Electronic Service, the person to be audited shall provide to the Tax Department representative the name, title, telephone number and e-mail address of the individual or individuals authorized to receive all electronic communications.

2.3.4. The 60 day period for appealing the assessment, or amended or

supplemental assessment, provided in West Virginia Code § 11-10-8 shall commence on the day immediately following the day that the audit clerk by e-mail notifies the person designated in section 2.3.3 of this rule that the audit is complete, and that the work papers are on the web site and ready to be downloaded.

110 C.S.R. 27
Service of Notice
Comment and Response

One document was received on September 9, 2010 from the West Virginia Chamber of Commerce stating concerns with the proposed interpretive rule. Following are the comments contained therein.

Comment: The Chamber believes that notices of assessment and denials of claims for refund, which trigger the running of a 60-day appeal period, should continue to be served by certified mail, return receipt requested, unless they are served by personal service or unless the taxpayer refuses to accept the certified mail.

Response: Participation in electronic service of notice is entirely voluntary. For those taxpayers that choose not to participate, notices will continue to be served by certified mail, return receipt requested, unless they are served by personal service or unless the taxpayer refuses to accept the certified mail.

Comment: The Chamber is opposed to shortening the time for responding to a notice of assessment or denial of a claim for refund. Under the proposed rule, the time to protest begins on the day after the day an e-mail is sent to the taxpayer notifying the taxpayer that the notice of assessment or denial of the claim for refund may be downloaded from the Tax Department's secure website. The sending of an e-mail is not the equivalent of receiving notice of the Tax Commissioner's action that triggers the start of 60-day appeal period. Therefore, the Chamber believes that sending an e-mail to the taxpayer is not sufficient under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United State Constitution. If electronic service is in fact used, then the 60-day appeal period should not begin to run until the taxpayer physically downloads a copy of the notice of assessment or denial of a claim for refund from the Tax Department's secure website. In the event the document is not accessed and downloaded from the Tax Department's website within a reasonable time after the email is sent, the Tax Department should be required to send the notice by certified mail, return receipt requested.

Response: The Tax Department is of the opinion that regardless of whether the appeal period begins the day after the email is sent or when the taxpayer receives the notice by certified mail, the appeal period remains 60 days. The appeal period is not shortened.

Comment: The proposed amendments suggest that when a taxpayer agrees to accept a notice of assessment by electronic service, taxpayer's agreement may extend to other documents issued by the Tax Commissioner, as provided in WVCSR §110-27-2.1. The Chamber believes the agreement should be limited to the taxes for which the audit is being made and then only for those documents that directly pertain to that audit period.

Response: The electronic service of notice applies to all documents to which service otherwise applies under the rule. The only difference is that service is accomplished electronically, not by certified mail, return receipt requested.

Comment: The optional service of notice agreement and program should at all times comply with the requirements of the Uniform Electronic Transactions Act set forth in WV Code §39A-1-1 *et seq.*

Response: The Tax Department agrees and has no intent to violate West Virginia law.

Comment: Prior to beginning the optional method of service program, the terms of the model agreement between the Tax Department and the taxpayer that the Tax Commissioner intends to use should be published in the State Register and be subject to at least a 30-day public comment period.

Response: Because the electronic service of notice is entirely optional, the Tax Department is of the opinion there is no necessity to subject the agreement to public comment. If the taxpayer disagrees with the agreement, the taxpayer can choose to not participate in the program.

Comment: A taxpayer who declines to enter into an agreement for service electronically should not be subject to any negative consequences, and a taxpayer that elects to enter into such an agreement should not be the beneficiary of any preference. For example, the waiver of additions to tax should not be used as either a carrot or a stick to influence a taxpayer's decision to enter into an optional service agreement.

Response: The treatment accorded to a taxpayer will not be dependent upon whether the taxpayer participates in the program. All taxpayers will be treated in the same manner.

Comment: The optional service agreement must at all times be revocable by the taxpayer.

Response: The agreement is revocable. Additionally, the agreement only applies to the specific audit and does not extend beyond the audit.

Comment: Currently, a signed certified mail return receipt card is *prima facie* evidence that the notice of assessment or denial of a claim for refund was received by the taxpayer. What document or documentation will replace the certified mail return receipt card when electronic service is used? The proposed amendments are silent on this important subject.

Response: The emailed notice will be web mailed and emailed to the person designated by the taxpayer and the notice will be time and dated stamped when it is sent. Additionally, the Tax Department system will provide notification when the taxpayer opens the audit materials.

Comment: The Chamber has not been able to identify any revenue agency of any other state that presently uses electronic service to serve documents that must be appeal within a specified time, such as to a board of review or court, or else they become final and conclusive of the rights of the taxpayer with regard to that matter. We are aware that some states' revenue agencies do use electronic service to provide taxpayers with audit work papers and other documents none of which affect the taxpayer's Due Process rights.

Response: The Tax Department received the idea for the electronic service of notice program when representatives attended a meeting at which there was a presentation by Ohio.



WEST VIRGINIA CHAMBER

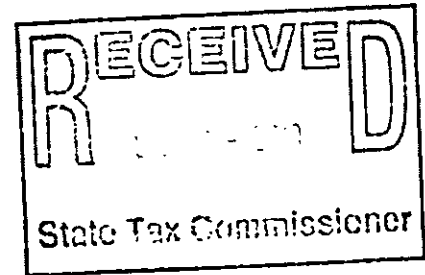
2010 - 457

September 7, 2010

RECEIVED

Craig A. Griffith, Commissioner
WV Tax Department
1001 Lee Street East
Charleston, WV 25301

WV TAX DEPARTMENT
LETTER DIVISION



Re: Public Comments of the West Virginia Chamber of Commerce on Proposed Amendments to WVCSR §110-27-1 *et seq.*

Dear Commissioner Griffith:

On August 9, 2010, a notice of proposed amendments to WVCSR §110-27-1 *et seq.* was filed with the Secretary of State for publication in the State Register, as required by W. Va. Code § 29A-3-4. The public was advised that in lieu of a public hearing, written public comment could be filed during the public comment period that ends September 9, 2010 at 5:00 PM.

The West Virginia Chamber of Commerce, with a membership of more than 5,000 members, is the recognized voice of business in West Virginia. In that role, it strives to encourage public policies that foster a fair tax system including, but not limited to, a system that provides administrative due process for all taxpayers for businesses, whether small or large, and for all taxpayers. We have reviewed the proposed amendments to WVCSR §110-27-1 *et seq.* and offer the following comments for your consideration.

I. Background

Service of notices of assessment, other notices, statements of account and other Tax Division documents is governed by WV Code §11-10-5s (service of notice). WVCSR §110-27-1 explains how the statutory notice provisions will be applied by the Tax Commissioner.

WV Code §11-10-5e (service of notice), as amended in 2009, reads:

Notwithstanding any other provision of this code, the Tax Commissioner may designate those assessments, notices, statements of account or other Tax Division documents which shall be sent by personal service or United States Postal Service regular mail, or certified mail or registered mail or by any other means at the discretion of the Tax Commissioner, pursuant to any provision of this chapter. Any service of notice addressed by United States Postal Service regular mail is presumed to be accepted upon mailing unless proven otherwise by the taxpayer. Any service of notice by certified mail shall be valid if accepted by the taxpayer or if addressed to

and mailed to the taxpayer's usual place of business or usual place of abode or last known address and accepted by any officer, partner, employee, spouse or child of the taxpayer over the age of eighteen. Any notice addressed and mailed in the above manner and accepted by any person shall be presumed to be accepted by such person unless proven otherwise by the taxpayer. (Emphasis added.)

Prior to its amendment in 2009, WV Code §11-10-5e (service of notice) read:

Notices of assessments and administrative decisions shall be served upon the taxpayer either by personal or substituted service or by certified mail. Service of notice by personal or substituted service shall be valid if made by any method authorized by Rule 4 of the West Virginia Rules of Civil Procedure. Service of notice by certified mail shall be valid if accepted by the taxpayer, or if addressed to and mailed to the taxpayer's usual place of business or usual place of abode or last known address and accepted by any officer, partner, employee, spouse or child of the taxpayer over the age of eighteen. Any notice addressed and mailed in the above manner and accepted by any person, shall be presumed to be accepted by such person unless proven otherwise by the taxpayer. Any notice addressed and mailed in the above manner, and which is refused or not claimed, may then be served by regular mail if such notice is subsequently mailed by first class mail, postage prepaid, to the same address; and date of posting in the United States mail shall be the date of service. (Emphasis added.)

As a result of the 2009 amendments to §11-10-5e, and due to the pending increase in postal rates by the United States Postal Service, the Tax Commissioner is proposing to amend WVCSR §110-27-1 *et seq.*

WVCSR §110-27-1 *et seq.* sets forth the interpretation, practice and procedure established by the Tax Department concerning service of notices of particular assessments, notices, statement of accounts and other Tax Department documents administered under the West Virginia Tax Procedure and Administration Act, WV Code §11-10-1 *et seq.*

The service of notice rules are set forth in WVCSR §110-27-2. Subsection 27.2.1 describes the documents subject to the service of notice rules, and Subsection 2.2 specifies the method of service of these documents. These subsections read:

2.1. *Subject to Service Rules.* The following Tax Department Documents are subject to the service of notice requirements outlined in this rule.

2.1.1. *Notice of Assessments.* All notices of assessments shall be subject to the notice requirements of this rule.

2.1.2. *Certain Business Registration Certificate Documents.* All denials, revocations, and refusals to renew a Business Registration Certificate shall be subject to the notice requirements of this rule.

2.1.3. *Certain Refund Documents.* All denials of refunds, denials of interest, denials of claims for refund, and rejections of refund shall be subject to the notice requirements of this rule.

2.1.4. *Amended Return Not Processed.* All notices of Amended Returns that are not processed shall be subject to the notice requirements of this rule.

2.1.5. *Other Required Documents.* All documents required by the United States, or any agency, authority, commission or instrumentality of the United States, to be sent by certified mail shall be subject to the notice requirements of this rule to the extent this rule is in compliance with such requirements.

2.2. *Method of Service.* All documents outlined in Section 2.1 of these regulations shall be served upon the taxpayer by personal or substituted service or by certified mail, unless such mail is refused or not claimed, upon which it may be served by regular mail. Each of these methods of service may be used at the discretion of the Tax Department and have no preference over the other method of service.

2.2.1. *Service by personal or substituted service shall be valid if made by any method authorized by Rule 4 of the West Virginia Rules of Civil Procedure.*

2.2.2. *Service by certified mail shall be valid if accepted by the taxpayer, or if addressed to and mailed to the taxpayers usual place of business or usual place of abode or last known address on record with the Tax Department and accepted by any agent, officer, partner, employee, spouse, parent, stepparent, or child of the taxpayer over the age of eighteen.*

2.2.2.1. *Any document addressed and mailed in the above manner and accepted by any person shall be presumed to be accepted by such person unless proven otherwise by the taxpayer.*

2.2.2.2. *Any document addressed in the above manner, and which is refused or not claimed may then be served by regular mail if such notice is subsequently mailed by first class mail, postage prepaid, to the same address; and date of posting in the United States mail shall be the date of service.*

Before adoption of the 2009 amendment to WV Code §11-10-5e and under existing W.V.C.S.R. § 110-27-1 *et seq.*, notices of assessment were clearly required to be served by personal service or certified mail, return receipt requested. It was only when a notice of assessment sent by certified mail was refused that a notice of assessment could be sent by regular mail. This hierarchy was changed in 2009, when §11-10-5e was amended. Under current law, personal service and service by certified mail, return receipt requested, are no longer the statutorily preferred methods of service. The Tax Commissioner has broad authority to specify the manner of service, and the only curb on the Commissioner's authority is that the method selected must provide the taxpayer with Due Process, which is guaranteed to the taxpayer by the Fifth and Fourteenth Amendments to the United States Constitution.

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), the United States Supreme Court established minimum requirements that must be met to satisfy the constitutional notice requirement. "[A]t a minimum [The Due Process Clause] requires] that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case. . . . The fundamental requisite of due process of law is the opportunity to be heard." 339 U.S. at 313-314. Consequently, the interest of the Tax Commissioner must be balanced against the taxpayer's individual interest sought to be protected by the Fourteenth Amendment," *see Id.* at 314, because the right to be heard is rendered useless if the taxpayer is not informed of the assessment or denial of taxpayer's claim for refund, *see Id.*

Rules of the West Virginia Supreme Court of Appeals for Trial Courts of Record do not allow a complaint in a civil action to be served by electronic service. *See* Appendix A, W. Va. R.C.P. §4 for relevant rules. Moreover, even in the limited circumstances where the Supreme Court of Appeals does allow electronic service, the relevant rule expressly prohibits the initiation of a civil action or service on a new party by electronic service. West Virginia Trial Court Rules §15.02(b). All of §15 is reproduced in Appendix B.

II. Proposed Amendments to Rule

The Tax Department proposes to make two amendments to WVSCR §110-27-1 *et seq.* First, it proposes to amend the description of the scope of the rule in Subsection 110-27-1.1 to include electronic service of notice of particular assessments, notice, statements of account or other Tax Department documents administered under the West Virginia Tax Procedure and Administration Act, WV Code §11-10-1 *et seq.*

Second, the Department proposes to add a new Subsection 2.3 to the rule that would make electronic service an optional method of service. The proposed new subsection reads:

2.3. Optional Method of Service. In lieu of the method of service of notice provided in Section 2.2 of this rule, the person to be audited may agree in writing to have all documents outlined in Section 2.1 of this rule served electronically.

2.3.1. To facilitate the electronic service of the various notices described in this rule, the Tax Department shall develop a secure paperless audit source web site.

2.3.1.1. The Tax Department shall develop and provide to the Taxpayer appropriate written instructions to assist the Taxpayer in using the secure paperless audit source web site.

2.3.2. Prior to the electronic service of any documents, the person to be audited and the authorized representative of the Tax Department shall sign the State Tax Department Agreement Consenting to Service of Notice of Tax Audit's Documents by Electronic Service.

2.3.3. At the time the person to be audited signs the State Tax Department Agreement Consenting to Service of Notice of Tax Audit's Documents by Electronic Service, the person to be audited shall provide to the Tax Department representative the name, title, telephone number and e-mail address of the individual or individuals authorized to receive all electronic communications.

2.3.4. The 60 day period for appealing the assessment, or amended or supplemental assessment, provided in West Virginia Code §11-10-8 shall commence on the day immediately following the day that the audit clerk by e-mail notifies the person designated in Section 2.3.3 of this rule that the audit is complete, and that the work papers are on the web site and ready to be downloaded.

III. Discussion of Proposed Amendments

The West Virginia Chamber of Commerce understands the desire of the Tax Department to reduce its expenses, particularly postage expense, but the Chamber believes other options for cost savings should be explored before notices of assessments and denials of claims for refund which heretofore have always been service by certified mail, return receipt request, are now served by electronic service, even if such method of service may only be used if the taxpayer agrees to that method of service before the audit commences. The standard methods of service used heretofore were designed to ensure that the method of service used was in conformity with requirements of the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

A notice of assessment becomes final and, by law, is not subject to administrative and judicial review unless a taxpayer files a petition for reassessment within 60 days after receipt of the notice of assessment. WV Code § 1-10-8. Similarly, a denial of taxpayer's claim for refund becomes final and is not subject to administrative or judicial review unless taxpayer files a petition for refund within 60 days after receipt of the notice of denial of taxpayer's claim for refund. WV Code §11-10-14. Except for jeopardy assessments, no other documents issued by

the Tax Department have the same potential finality as a notice of assessment or denial of a claim for refund. For this reason, the Chamber believes that these important documents should continue to be served by certified mail, return receipt requested, or personal service as provided in WV Code §11-10-5s.

Notwithstanding the enactment of Committee Substitute for Senate Bill No. 540 in 2009, the West Virginia Legislature, during its 2010 Regular Session, recognized the importance of certified mail, return receipt requested, as a method of choice for ensuring that owners of delinquent real property be accorded their Due Process rights before their property is irrevocably taken for nonpayment of real property taxes. See Committee Substitute for Senate Bill No. 232, which among other sections amends WV Code §11A-3-22 (service of notice to redeem real property) to provide that even when the current address of the owner of the property is unknown, the notice to redeem must be sent by certified mail, return receipt requested, to the last known address of the owner. Additionally, if the property is class II property, notice must be sent by regular mail addressed to "occupant" at the address of the property. These service requirements are in addition to publishing the notice as a Class III-O legal advertisement.

With the preceding as a preface, the Chamber offers the following comments regarding the language of the proposed amendments to WVCSR § 10-27-1 *et seq.*:

1. The Chamber believes that notices of assessment and denials of claims for refund, which trigger the running of a 60-day appeal period, should continue to be served by certified mail, return receipt requested, unless they are served by personal service or unless the taxpayer refuses to accept the certified mail.

2. The Chamber is opposed to shortening the time for responding to a notice of assessment or denial of a claim for refund. Under the proposed rule, the time to protest begins on the day after the day an e-mail is sent to the taxpayer notifying the taxpayer that the notice of assessment or denial of the claim for refund may be downloaded from the Tax Department's secure website. The sending of an e-mail is not the equivalent of receiving notice of the Tax Commissioner's action that triggers the start of 60-day appeal period. Therefore, the Chamber believes that sending an e-mail to the taxpayer is not sufficient under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United State Constitution. If electronic service is in fact used, then the 60-day appeal period should not begin to run until the taxpayer physically downloads a copy of the notice of assessment or denial of a claim for refund from the Tax Department's secure website. In the event the document is not accessed and downloaded from the Tax Department's website within a reasonable time after the email is sent, the Tax Department should be required to send the notice by certified mail, return receipt requested.

3. The proposed amendments suggest that when a taxpayer agrees to accept a notice of assessment by electronic service, taxpayer's agreement may extend to other documents issued by the Tax Commissioner, as provided in WVCSR §110-27-2.1. The Chamber believes the agreement should be limited to the taxes for which the audit is being made and then only for those documents that directly pertain to that audit period.

4. The optional service of notice agreement and program should at all times comply with the requirements of the Uniform Electronic Transactions Act set forth in WV Code §39A-1-1 *et seq.*

5. Prior to beginning the optional method of service program, the terms of the model agreement between the Tax Department and the taxpayer that the Tax Commissioner intends to use should be published in the State Register and be subject to at least a 30-day public comment period.

6. A taxpayer who declines to enter into an agreement for service electronically should not be subject to any negative consequences, and a taxpayer that elects to enter into such an agreement should not be the beneficiary of any preference. For example, the waiver of additions to tax should not be used as either a carrot or a stick to influence a taxpayer's decision to enter into an optional service agreement.

7. The optional service agreement must at all times be revocable by the taxpayer.

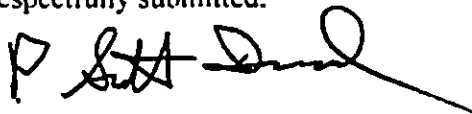
8. Currently, a signed certified mail return receipt card is *prima facie* evidence that the notice of assessment or denial of a claim for refund was received by the taxpayer. What document or documentation will replace the certified mail return receipt card when electronic service is used? The proposed amendments are silent on this important subject.

9. The Chamber has not been able to identify any revenue agency of any other state that presently uses electronic service to serve documents that must be appeal within a specified time, such as to a board of review or court, or else they become final and conclusive of the rights of the taxpayer with regard to that matter. We are aware that some states' revenue agencies do use electronic service to provide taxpayers with audit work papers and other documents none of which affect the taxpayer's Due Process rights.

IV. Conclusion

We look forward to working with the Department to make appropriate changes to WVCSR §110-27-1 *et seq.*

Respectfully submitted.



P. Scott Icard
304-965-5597

APPENDIX A.

Select Portions of West Virginia Rules of Civil Procedure for Circuit Courts of Record

Rule 4. Summons.

(Note: By Order entered January 24, 2007, Rule 4(d)(1)(E) was amended, effective July 7, 2007.)

(a) *Form.* — The summons shall be signed by the clerk, bear the seal of the court, identify the court and the parties, be directed to the defendant, and state the name and address of the plaintiff's attorney or, if unrepresented, of the plaintiff. It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint. The court may allow a summons to be amended.

(b) *Issuance.* — Upon the filing of the complaint, the clerk shall forthwith issue a summons to be served as directed by the plaintiff. A summons, or a copy of the summons if addressed to multiple defendants, shall be issued for each defendant to be served.

(c) *Service with complaint; by whom made.* — (1) A summons shall be served together with a copy of the complaint. The plaintiff is responsible for directing the clerk in the manner of service of the summons and complaint within the time allowed under subdivision (k).

(2) Service may be effected by any person who is not a party and who is at least 18 years of age.

(3) At the request of the plaintiff and upon payment of the applicable fees and costs of service, the clerk shall:

(A) Deliver the summons and complaint to the sheriff for service as directed by the plaintiff; or

(B) Make service by either certified mail or by the first class mail as directed by plaintiff; or

(C) Forward a copy of the summons and complaint to the Secretary of State, as statutory attorney-in-fact, for service as specified by any applicable statute.

(d) *Manner of service.*—Personal or substituted service shall be made in the following manner:

(1) *Individuals.* — Service upon an individual other than an infant, incompetent person, or convict may be made by:

(A) Delivering a copy of the summons and complaint to the individual personally; or

(B) Delivering a copy of the summons and complaint at the individual's dwelling place or usual place of abode to a member of the individual's family who is above the age of sixteen (16) years and by advising such person of the purport of the summons and complaint; or

(C) Delivering a copy of the summons and complaint to an agent or attorney-in-fact authorized by appointment or statute to receive or accept service of the summons and complaint in the individual's behalf; or

(D) The clerk sending a copy of the summons and complaint to the individual to be served by certified mail, return receipt requested, and delivery restricted to the addressee; or

(E) The clerk sending a copy of the summons and complaint by first class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 14 and a return envelope, postage prepaid, addressed to the clerk.

The plaintiff shall furnish the person making service with such copies of the complaint or order as are necessary and shall advance the costs of service. For service by certified mail, the plaintiff shall pay to the clerk a fee of twenty dollars for each complaint to be served. For service by first class mail, the plaintiff shall pay to the clerk a fee of five dollars for each complaint to be served.

Service pursuant to subdivision (d)(1)(D) shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a return envelope showing refusal of the registered or certified mail by the defendant. If delivery of the summons and complaint pursuant to subdivision (d)(1)(D) is refused, the clerk, promptly upon receipt of the notice of such refusal, shall mail to the defendant, by first class mail, postage prepaid, a copy of the summons and complaint and a notice that despite such refusal, the case will proceed and that judgment by default will be rendered against the defendant unless the defendant appears to defend the suit. Any such default or judgment by default shall be set aside pursuant to Rule 55(e) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by or delivery was refused by an unauthorized person. The notice and acknowledgment of receipt of the summons and complaint pursuant to subdivision (d)(1)(E) shall be executed in the manner prescribed on Form 14. Unless good cause is shown for failure to complete and return the notice and acknowledgment of receipt of summons and complaint pursuant to subdivision (d)(1)(E) within twenty (20) days after mailing, the court may order the payment of cost of personal service by the person served. Service pursuant to subdivision (d)(1)(E) shall not be the basis for entry of default or a judgment by default unless the record contains a notice and acknowledgment of receipt of the summons and complaint. If no acknowledgment of service pursuant to subdivision (d)(1)(E) is received by the clerk within twenty (20) days after the date of mailing, service of such summons and complaint shall be made under subdivisions (d)(1)(A), (B), (C), or (D).

(2) *Infants and incompetents under 14 years.* — Upon an infant or incompetent younger than 14 years of age, by delivering a copy of the summons and complaint to the infant's or incompetent's guardian or conservator resident in the State; or, if there be no such guardian or conservator, then to either the infant's or incompetent's father or mother if they be found. If there is no such guardian or conservator and if the father or mother cannot be found, service of the summons and complaint shall be made upon a guardian ad litem appointed under Rule 17(c). But if any of the persons upon whom service is directed to be made by this paragraph is a plaintiff, then service shall be upon the person who stands first in the order named in this paragraph who is not a plaintiff.

(3) *Infants and incompetents 14 years or older.* — Upon an infant or incompetent 14 years of age or older, by making service as provided in paragraph (2) above, and in addition by making service upon the infant or incompetent as provided in paragraph (1) above.

(4) *Convicts.* — Upon a person confined in the penitentiary of this or any other state, or of the United States, by delivering a copy of the summons and complaint to that person's committee, guardian, or like fiduciary resident in the State; or, if there be no such committee, guardian, or like fiduciary, or if the committee, guardian, or like fiduciary is a plaintiff, service of process shall be made upon a guardian ad litem appointed under Rule 17(c).

(5) *Domestic private corporations.* — Upon a domestic private corporation,

(A) by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to an officer, director, or trustee thereof; or, if no such officer, director, or trustee be found, by delivering a copy thereof to any agent of the corporation including, in the case of a railroad company, a depot or station agent in the actual employment of the company; but excluding, in the case of an insurance company, a local or soliciting agent; or

(B) by delivering or mailing in accordance with paragraph (1) above a copy thereof to any agent or attorney in fact authorized by appointment or by statute to receive or accept service in its behalf.

(6) *Domestic public corporations.* — (A) Upon a city, town, or village, by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to its mayor, city manager, recorder, clerk, treasurer, or any member of its council or board of commissioners;

(B) Upon a county commission of any county or other tribunal created to transact county business, by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any commissioner or the clerk thereof or, if they be absent, to the prosecuting attorney of the county;

(C) Upon a board of education, by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to the president or any member thereof or, if they be absent, to the prosecuting attorney of the county;

(D) Upon any other domestic public corporation. (i) by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any officer, director, or governor thereof, or (ii) by delivering or mailing in accordance with paragraph (1) above a copy thereof to an agent or attorney in fact authorized by appointment or by statute to receive or accept service in its behalf.

(7) *Foreign corporations and business trusts qualified to do business.* — Upon a foreign corporation, including a business trust, which has qualified to do business in the State, by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint as provided in Rule 4(d)(5).

(8) *Foreign corporations and business trusts not qualified to do business.* — Upon a foreign corporation, including a business trust, which has not qualified to do business in the State,

(A) by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any officer, director, trustee, or agent of such corporation; or

(B) by delivering or mailing in accordance with paragraph (1) above copies thereof to any agent or attorney in fact authorized by appointment or by statute to receive or accept service in its behalf.

(9) *Unincorporated associations.* — Upon an unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to any officer, director, or governor thereof, or by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any agent or attorney in fact authorized by appointment or by statute to receive or accept service in its behalf; or, if no such officer, director, governor, or appointed or statutory agent or attorney in fact be found, then by delivering or mailing in accordance with paragraph (1) above a copy of the summons and complaint to any member of such association and publishing notice of the pendency of such action once a week for two successive weeks in the newspaper of general circulation in the county wherein such action is pending. Proof of publication of such notice is made by filing the publisher's certificate of publication with the court.

(e) *Constructive service.* — (1) Service by publication.—If the plaintiff shall file with the court an affidavit:

(A) That the defendant is a foreign corporation or business trust for which no officer, director, trustee, agent, or appointed or statutory agent or attorney in fact is found in the State upon whom service may be had; or

(B) That the defendant is a nonresident of the State for whom no agent, or appointed or statutory agent or attorney in fact is found in the State upon whom service may be had; or

(C) That the plaintiff has used due diligence to ascertain the residence or whereabouts of the defendant, without effect; or

(D) That process, delivered to the sheriff of the county in which the defendant resides or is, has twice been delivered to such officer and has been returned without being executed; or

(E) That there are or may be persons, other than those named in the complaint as plaintiff and defendant, interested in the subject matter of the action, whose names are unknown to the plaintiff and who are made defendants by the general description of unknown defendants; then clerk shall enter an order of publication against such named and unknown defendants. Every order of publication shall state the title of the action; the object thereof; the name and address of the plaintiff's attorney, if any; that a copy of the complaint may be obtained from the clerk; and that each named and unknown defendant must appear and defend on or before a date set forth in the order, which shall be not fewer than 30 days after the first publication thereof; otherwise, that judgment by default will be rendered against the defendants at any time thereafter. Every such order of publication shall be published once a week for two successive weeks (or for such period as may be prescribed by statute, whichever period is longer) in a newspaper of general circulation in the county wherein such action is pending. Proof of service by publication is made by filing the publisher's certificate of publication with the court.

(2) *Service by mailing.*—When plaintiff knows the residence of a defendant upon whom service has been unsuccessfully attempted as described in Rule 4(e)(1)(D), or when plaintiff knows the residence of a nonresident defendant or the principal office of a nonresident defendant foreign corporation or business trust for which no officer, director, trustee, agent, or appointed or statutory agent or attorney in fact is found in the State upon whom service may be had, plaintiff shall obtain constructive service of the summons and complaint upon such defendant by the method set forth in Rule for (d)(1)(D). The summons in such instance shall notify the defendant that the defendant must appear and defend within thirty days of the date of mailing pursuant to Rule 4(d)(1)(D); otherwise, that judgment by default will be rendered against the defendant at any time thereafter. However, service pursuant to Rule 4(d)(1)(D) shall not be the basis for the entry of a judgment by default unless the record contains a return receipt showing acceptance by the defendant or a return envelope showing refusal of the certified mail by the defendant. If delivery of the summons and complaint sent by the certified mail is refused, the clerk, promptly upon notice of such refusal, shall mail to the defendant, first class mail, postage prepaid, a copy of the summons and complaint and a notice that despite such refusal the case will proceed and that judgment by default will be rendered against defendant unless defendant appears to defend the suit. If plaintiff is unable to obtain service of the summons and complaint upon such defendant by use of the method set forth in Rule 4(d)(1)(D), then, upon affidavit to such effect filed with the court, the clerk shall issue an order of publication, and the procedures described in subdivision (e)(1) shall be followed to effectuate constructive service.

(f) *Personal service outside State.* — Personal service of a copy of the summons and complaint may be made outside of this State on any defendant. If any such defendant be then a resident of this State and if the plaintiff shall during the pendency of the action file with the court an affidavit setting forth facts showing that the defendant is such a resident, such service shall have the same effect as personal service within this State and within the county of the defendant's residence; otherwise, such service shall have the same effect as constructive service. In either case, the summons shall notify the defendant that the defendant must appear and defend

within 30 days after service, otherwise judgment by default will be rendered against the defendant at any time thereafter.

(g) *Summons; service thereof in addition to constructive service.* — The plaintiff may, at any time before judgment, have a copy of the summons and complaint served on a defendant in the manner provided by subdivisions (d) or (f) of this rule, although constructive service under subdivision (e) of this rule has been made. After such service under subdivision (d) of this rule, the action shall proceed as in other cases of personal or substituted service within the State; and after such service under subdivision (f) of this rule, the action shall proceed as in other cases of personal or constructive service.

(h) *Process part of record.* — Summonses, complaints, proofs of service and returns endorsed thereon, all orders and notices served or published, all proofs of service and certificates of publication, and all other papers filed relating to such process, orders, and notices, are a part of the record of an action for all purposes.

(i) *Proof of service or publication.* — The person serving the process or order or publishing a notice or order shall make proof of service or publication to the court promptly and in any event within the time during which the person served must respond to the process, notice, or order. If service is made by a person other than the sheriff or clerk, that person shall make proof thereof by affidavit. Failure to make proof of service or publication within the time required does not affect the validity of the service of the process, notice, or order.

(j) *Amendment.* — At any time in its discretion and upon such terms as it deems just, the court may allow any process, notice, or order, or proof of service or publication thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process, notice, or order issued or was entered.

(k) *Time limit for service.* — If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effective within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Rule 4.1. Service of other process.

(a) *Generally.*—Whenever an order of court provides for service of a rule, or order in lieu of summons or a rule, upon a party, service shall be made in the manner provided in Rule 4(d), unless the order prescribes a different mode of service. Rule 45 governs the service of subpoenas.

(b) *Process part of record.* — Original, mesne, and final writs and process of every nature, and proofs of service and returns endorsed thereon, and all orders and notices served or

published, and all proofs of service and certificates of publication and all other papers filed in relation to such process, orders, and notices, are a part of the record of an action for all purposes.

Rule 5. Service and filing of pleadings and other papers.

(Note: By Order entered October 9, 2008, Rule 5(e) was amended.)

(a) *Service: when required.* — Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. For purposes of this rule, guardians ad litem are considered parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) *Same: how made.* — Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or party; or by mailing it to the attorney or party at the attorney's or party's last-known address, or, if no address is known, by leaving it with the clerk of the court; or by facsimile transmission to the attorney or party pursuant to the West Virginia Supreme Court of Appeals Rules for Filing and Service by Facsimile Transmission (see Editor's Note). Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or party's office with a clerk or other person in charge thereof; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some member of the person's family above the age of 16 years. Service by mail is complete upon mailing.

(c) *Same: numerous defendants.* — In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) *Filing: certificate of service.* — (1) All papers after the complaint required to be served upon a party together with a certificate of service, shall be filed with the court within a reasonable time after service.

(2) Unless filing is required by the court on motion or upon its own initiative, depositions, interrogatories, requests for admissions, requests for production and entry, and answers and responses thereto shall not be filed. Unless required to be filed for issuance of a subpoena for a deposition, a notice of deposition need not be filed. Certificates of service of discovery materials shall be filed.

(3) Unless otherwise stipulated or ordered, the party taking the deposition or obtaining any material through discovery is responsible for its custody, preservation, and delivery to the court if needed or ordered. Such responsibility shall not terminate until one year after final disposition of the action. The responsibility shall not terminate upon dismissal of any party while the action is pending. The custodial responsibility of a dismissed party may be discharged by stipulation of the parties to transfer the custody of the discovered material to one or more of the remaining parties.

(e) *Filing with the court defined.* — The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, who shall note thereon the filing date, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk; the notation by the clerk or the judge of the filing date on any such paper constitutes the filing of such paper, and such paper then becomes a part of the record in the action without any order of the court. Filing by facsimile is permitted pursuant to the West Virginia Supreme Court of Appeals Rules for Filing and Service by Facsimile Transmission. Electronic filing and service is permitted in limited circumstances pursuant to Trial Court Rule 15. (Emphasis added.)

We note the electronic filing and service is not allowed in the circuit courts of this State except in the limited circumstances prescribed in Trial Court Rule 15, which expressly provides that "E-filing and service shall not be used to initiate a civil action or to serve a new party with an amended complaint or a third-party complaint." W. Va. T.C.R. § 15.02(b).

APPENDIX B.

Select Portion of West Virginia Trial Court Rules

15. ELECTRONIC FILING AND SERVICE

(Note: By Order entered October 9, 2008, Trial Court Rule was approved, effective immediately.)

Rule 15.01. Application.

Trial Court Rule 15 governs electronic filing and service of documents and maintenance of case-related information in the circuit courts of West Virginia in certain Mass Litigation referred to the Mass Litigation Panel ("Panel") under Trial Court Rule 26, and as further provided by Trial Court Rule 15.02(c). This rule does not preclude future application of electronic filing and service in other types of actions.

Rule 15.02. General Provisions.

(a) The electronic filing and service of documents and the electronic receipt of associated case information in the circuit courts of West Virginia may be referred to as e-filing and service.

(b) E-filing and service shall not be used to initiate a civil action or to serve a new party with an amended complaint or a third-party complaint. (Emphasis added.)

(c) If the Panel determines it is appropriate for Mass Litigation or proceedings therein to be subject to e-filing and service, the Panel Chair shall enter an order designating such Mass Litigation or proceedings therein for e-filing and service.

(d) Where requirements of the Rules of Civil Procedure are satisfied by e-filing and service procedures, Trial Court Rule 15 shall specifically so state. All filings, whether electronic or paper, shall otherwise comply with the Rules of Civil Procedure and the Trial Court Rules.

(e) The process for e-filing and service shall utilize an e-filing and service provider designated by the Supreme Court of Appeals.

Rule 15.03. Authorization and Signature.

(a) Each e-filed document shall be deemed to have been signed by the attorney, or by the party not represented by an attorney who authorized the filing, and shall bear a facsimile or typographical signature of such person, e.g. "/s/ Adam Attorney." Each document e-filed by or on behalf of a party shall also include the address and telephone number of the attorney or unrepresented party filing such document. Attorneys shall also include their West Virginia State Bar Identification Number or a notation that the attorney has been admitted *pro hac vice*.

(b) No lawyer shall authorize anyone to e-file or serve on that lawyer's behalf, other than an employee of his or her law firm or a service provider retained to assist in e-filing and service. No person shall utilize, or allow another person to utilize, the password of another in connection with e-filing or service.

(c) The e-filing of a document by a lawyer, or by another under the authorization of a lawyer, shall constitute a signature of that lawyer under Rule 11(a) of the Rules of Civil Procedure.

Rule 15.04. Filing and Service.

(a) Except where otherwise provided, every e-filed document shall be e-served. Unless otherwise ordered, the e-service of a document, in accordance with these rules, shall be considered service under Rule 5 of the Rules of Civil Procedure. Electronic service shall be treated the same as service by mail for purposes of Rule 6(e) of the Rules of Civil Procedure.

(b) Parties who are granted a waiver under Trial Court Rule 15.06 shall be served in accordance with Rule 5 of the Rules of Civil Procedure, or by utilizing the U.S. Mail feature of the e-filing and service system.

(c) The Presiding Judge may direct the parties to provide a courtesy copy of filings to the Presiding Judge in accordance with Trial Court Rule 6.03, either by U.S. Mail or by utilizing the Courtesy Copy via U.S. Mail feature of the e-filing and service system.

(d) For documents that have been e-filed, the electronic version of the document constitutes the official court record, and e-filed documents have the same force and effect as documents filed by traditional means. Documents filed and served in accordance with these rules are deemed to be in compliance with Trial Court Rule 10.01.

Rule 15.05. Orders and Civil Docket.

(a) Orders issued by the Presiding Judge shall bear a typographic signature and an official e-filing court stamp, and shall be e-filed and served. The date of the official e-filing court stamp shall constitute the date of entry of the order.

(b) Parties who are granted a waiver under Trial Court Rule 15.06 shall be served in accordance with Rule 5 of the Rules of Civil Procedure, or by utilizing the U.S. Mail feature of the e-filing and service system.

(c) E-filed orders maintained as part of the online register of actions shall satisfy the requirements of Rule 77(d) of the Rules of Civil Procedure.

(d) An electronic register of actions, with associated documents and filing receipts, shall be maintained as part of the e-filing and service system and shall constitute the civil docket and satisfy the requirements of Rule 79 of the Rules of Civil Procedure.

Rule 15.06. Waiver of E-filing and Service Requirements.

All parties who are unable to utilize e-filing and service may file a written motion with the Presiding Judge seeking a waiver of e-filing and service requirements, which motion may be granted for good cause shown. All parties who have obtained such waiver shall file documents in accordance with Trial Court Rule 10.01, and serve documents in accordance with Rule 5 of the Rules of Civil Procedure. Such documents shall be uploaded and made available within the e-filing and service system by the circuit clerk in the circuit where the Mass Litigation subject to e-filing is pending.

Rule 15.07. Public Access.

The circuit clerk in the circuit where the Mass Litigation subject to e-filing is pending shall make a Public Access Computer Terminal available to the general public to allow access to the Court's electronic docket, pleadings and other documents that are not sealed or otherwise confidential. Copies made from the Court's electronic records shall be printed by the Clerk's Office, and standard copying fees shall be charged.

Rule 15.08. Case Management Order.

Additional procedures specific to Mass Litigation or proceedings therein subject to e-filing and service may, in the discretion of the Presiding Judge, be set forth in a case management order.

15.09. Registration and Fees.

The e-filing and service system requires parties to be registered participants to file and serve, receive service, access the register of actions, and use the system. Each participant shall register with the e-filing and service provider, provide the information necessary to load a case and its parties into the e-filing and service system and pay the fees billed by the e-filing and service provider at rates approved by the Supreme Court of Appeals.

15.10. Form of documents electronically filed.

(a) Each e-filed document shall be submitted in a file format that is acceptable to the e-filing and service provider. To the extent practicable, each e-filed document shall be formatted in accordance with Trial Court Rule 6.01 governing formatting of paper documents. A document may exceed page limitation rules to a maximum of two additional pages when the additional pages are attributed to the electronic conversion or filing process. The e-filing and service system shall automatically convert all document formats accepted by the e-filing and service provider to a PDF format.

(b) All e-filed documents relating to a single pleading or document submitted in the same electronic transaction shall be "electronically stapled" using the "main" and "supporting"

functionality of the e-filing and service system so multiple related documents, such as a motion and proposed order, are linked logically together and identified as a single transaction.

(c) All e-filed documents or pleadings directly relating to a previously e-filed document, or pleading shall be linked to the previously e-filed document or pleading, using the "linked document feature" in the e-filing and service system.

(d) Proposed orders filed for the consideration of the Presiding Judge shall be filed in a Rich Text Format document or ".rtf."

(e) A document that is required to be executed by the parties or counsel, verified, acknowledged or made under oath shall be e-filed only as a scanned image. Any such document that is to be attached to an e-filed document shall be scanned and e-filed and served along with the underlying document.

15.11. Time of electronic filing and service.

(a) A document shall be considered filed with the Clerk once electronic transmission is successfully completed, as recorded in the e-filing and service system.

(b) An e-filed document is deemed served for purposes of Rule 5 of the Rules of Civil Procedure only upon selection of participants to be served and completed submission of the electronic filing. If an individual or entity required to receive service is a participant in the e-filing and service system, then the person e-filing a document shall provide e-service. The associated filing receipt shall list the participants selected and give proof of date, time and method of service. If a party is unable to receive service of an e-filed document electronically, the document shall be served in accordance with Rule 5 of the Rules of Civil Procedure, or by utilizing the U.S. Mail feature of the e-filing and service system, and a copy of the certificate of service evidencing non-electronic service shall be filed in the e-filing and service system.

(c) It is the responsibility of the participant to check his or her online inbox to view e-filed and served documents. Courtesy e-mail notification of a filing shall not constitute service.

15.12. Filing of sealed documents.

A motion to seal documents shall be e-filed and served. However, any documents that are the subject of a motion to seal shall be filed with the court enclosed in sealed envelopes to be opened as directed by the court pursuant to Rule 26(c)(8) of the Rules of Civil Procedure, and a copy of the documents that are the subject of the motion to seal shall be provided to the Presiding Judge for review.

15.13. System or participant errors.

If a document cannot be e-filed with the circuit clerk or e-served due to: (a) an error in transmission of the document to the e-filing and service provider that was unknown to the

sending participant; or (b) a failure to process the e-filing when received by the e-filing and service provider; or (c) rejection by the Clerk; or (d) other technical problems experienced by the filer; the Court may, upon satisfactory proof, enter an order permitting the document to be filed or served *nunc pro tunc* to the date it was first attempted to be e-filed and served.

15.14 . Obligation of participants to maintain proper delivery information.

E-filing and service system participants shall notify the e-filing and service provider within 10 days of any change in firm name, delivery address, fax number or e-mail address. Participants who have set an e-mail notification preference are solely responsible for providing an accurate, up-to-date e-mail address and for ensuring that the e-mail account is properly configured to receive e-mail notifications for the e-filing and service system.