

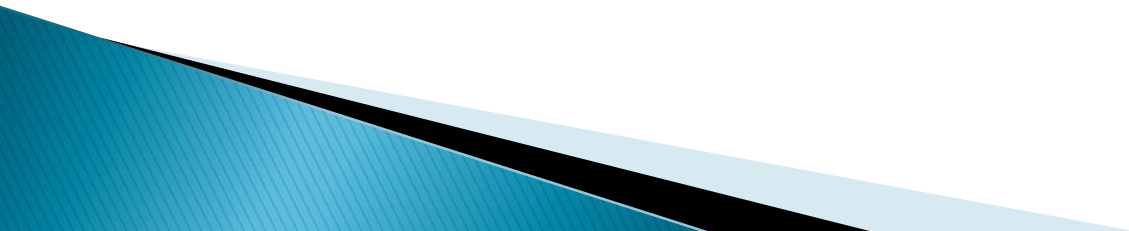
# Review of Electronic Filing Rules, Procedures and Practice Tips



# Electronic Filing Rules

## 103.01 Electronic Filing

Rule 103 and Court Operating Rule 27 govern all matters subject to electronic filing.



# Electronic Filing Rules

## 103.03 Files of the Court

*(a) When a court accepts an electronic document for filing, the electronic document is the official court record.*

(b) If a court digitizes, records, scans, or otherwise reproduces a document that is filed in paper into an electronic record, document, or image, the electronic record, document, or image is the official court record. The court may then destroy the paper document unless that document is required to be preserved by law or court order.

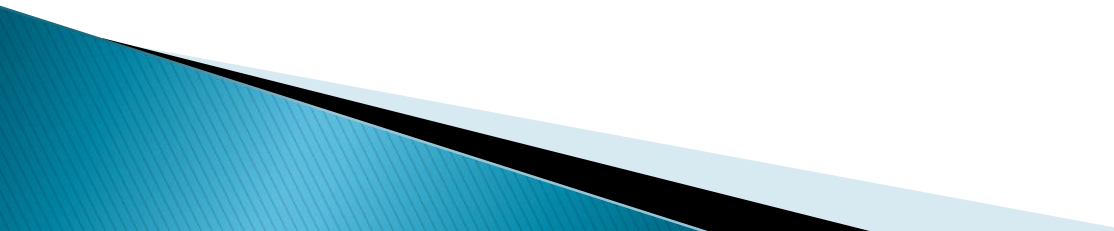
# Electronic Filing Rules

## 103.04 Format of Electronically Filed Documents

...

(b) Electronic documents that are part of the official court record shall be self-contained and shall not contain hyperlinks *other than those generated by the electronic filing system*.

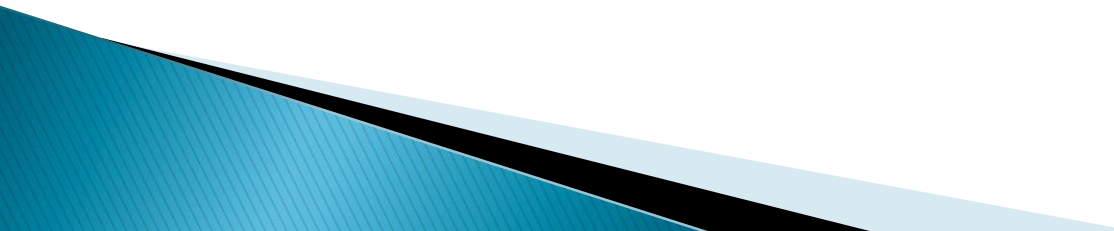
....



# Conflicts

## Rule 19.01

Rules 19 to 36, inclusive, govern the procedure in all courts of this state having jurisdiction of criminal proceedings. Rule 41.08, Rule 103, and Court Operating Rule 27 shall apply to all matters subject to electronic filing. *To the extent there is a conflict between Rule 103 and Rules 19 to 36, Rule 103 shall apply.*

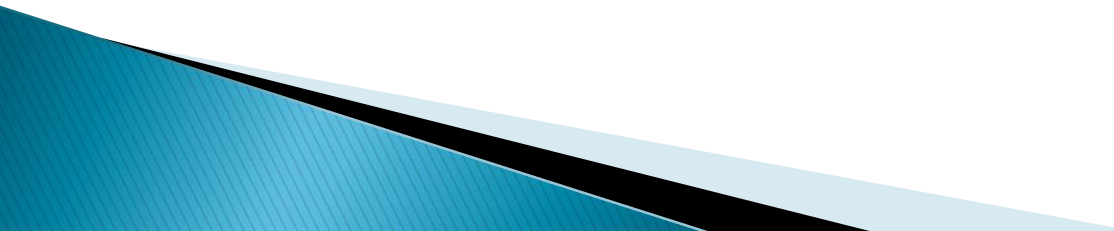


# Conflicts

## 41.01 Rules – When Applicable

...

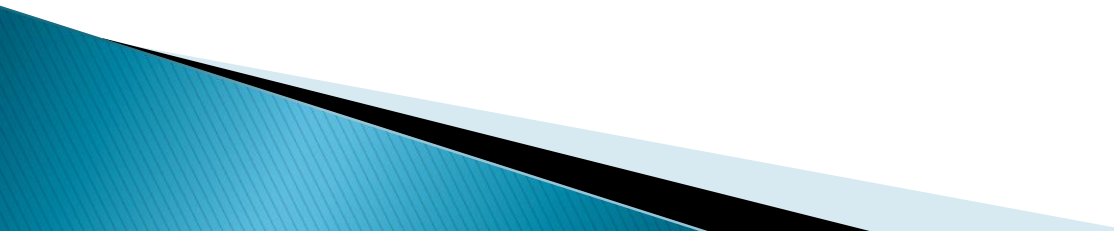
(e) Rule 103 and Court Operating Rule 27 shall apply to all matters subject to electronic filing. To the extent there is a conflict between Rule 103 and Rules 41 to 101, Rule 103 shall apply.



# Conflicts

## Rule 110.01

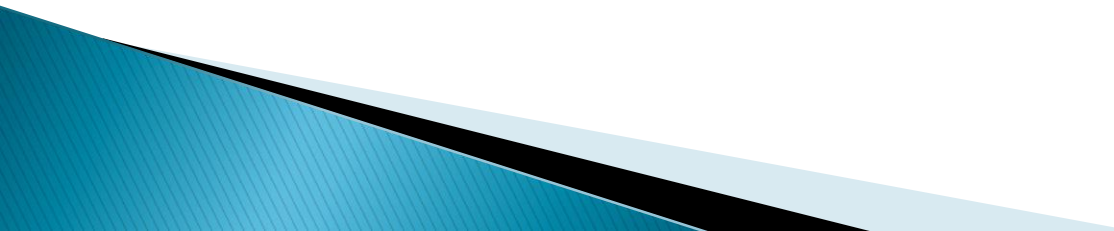
Rules 110 to 129 shall govern practice and procedure in the juvenile court and family court divisions of the circuit court under sections 210.125, 210.160, 210.166, 210.700 to 210.760, RSMo, and chapter 211, RSMo. Rule 103 and Court Operating Rule 27 shall apply to all matters subject to electronic filing. *To the extent there is a conflict between Rule 103 and Rules 110 to 129, Rule 103 shall apply.*



# Electronic Filing Rules

## Rule 81.005

**(a) Electronic Filing.** Except as otherwise specifically provided, this Court and the court of appeals require most documents to be electronically filed. *Rule 103 and Court Operating Rule 27 govern the electronic filing of documents and apply if there is a conflict with any other rule.* When filing a document in an appellate court, Rule 103 and Court Operating Rule 27 should be reviewed as well as the local rules of the court in which the document is to be filed. If a document is filed electronically, no paper copies are required to be filed except as provided by local court rule.



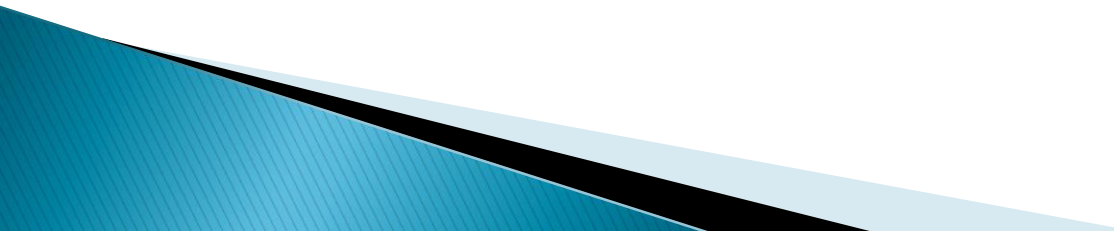


# Court Operating Rule 27: Electronic Filing

## **COR 27.01 Electronic Filing System**

**(a)** The Missouri Court Automation Committee shall establish an electronic filing system.

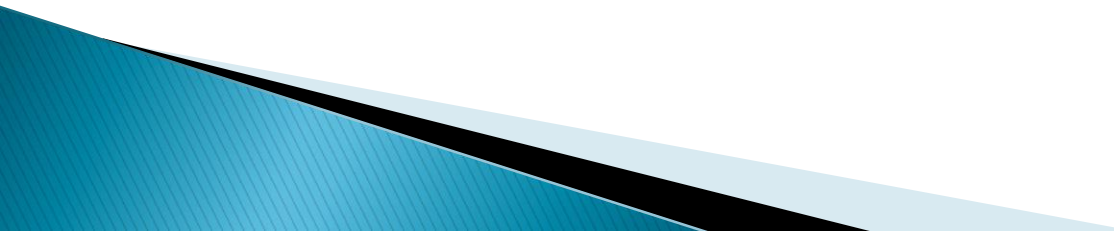
**(b)** The system shall be phased in as the committee determines and can be applied to particular courts, counties, circuits, or case types.



# Court Operating Rule 27: Electronic Filing

## **COR 27.01 Electronic Filing System**

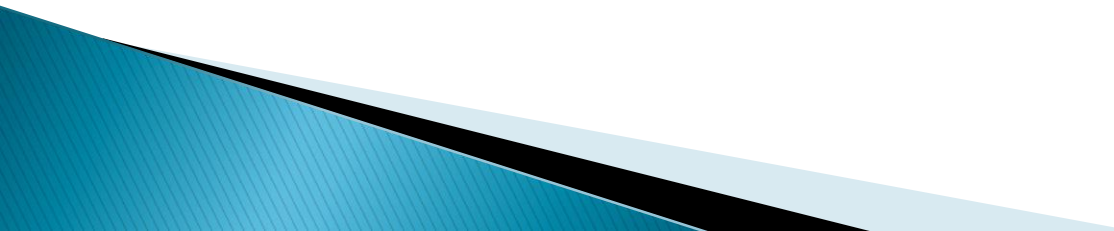
**(c)** The presiding judge of each circuit and the chief judge of each court of appeals district shall cooperate with the committee to implement electronic filing. All other judges and staff shall cooperate and assist with the implementation of electronic filing.



# Court Operating Rule 27: Electronic Filing

## **COR 27.04 System–Generated Legal File**

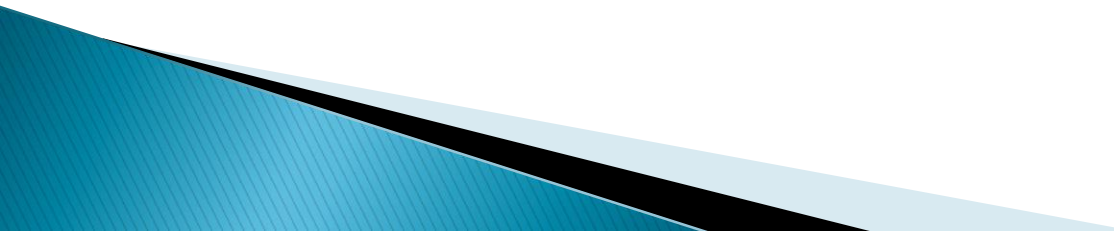
(a) The state courts administrator shall provide in the electronic filing system for the creation of a system–generated legal file. The system shall allow registered users to designate documents in the trial court record for inclusion in the legal file and a legal file index. That index, which shall be filed with the appellate court, shall contain hyperlinks to the designated trial court documents.



# Court Operating Rule 27: Electronic Filing

## **COR 27.04 System–Generated Legal File**

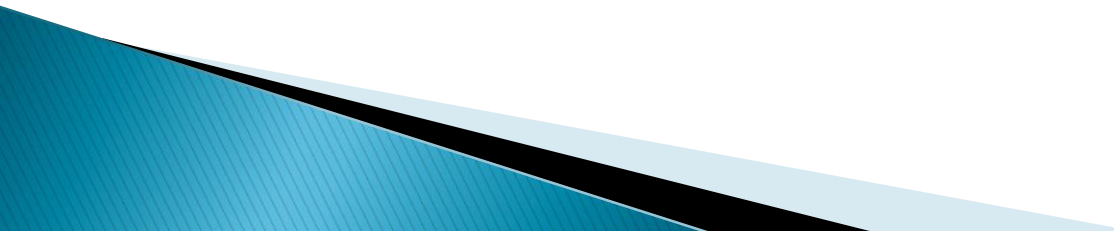
**(b)** After a notice of appeal is filed, the trial court record that existed before the notice was filed shall not be altered without leave of the appellate court.



# Rule 81.12: Record on Appeal

## Rule 81.12(b)

**Legal File.** The appellant shall prepare the legal file. *If the electronic filing system permits creation of a system-generated legal file as provided in Rule 81.12(b)(1) and Court Operating Rule 27.04, that method shall be used.* If that method cannot be used, the legal file shall be prepared as provided in Rule 81.12(b)(2).




# Rule 81.12: Record on Appeal

## Rule 81.12(b)(1)

**(A) Contents of Legal File.** The legal file shall consist of the legal file index generated by the system and all of the hyperlinked documents referenced therein.


**(B) Document Designation.** Appellant shall designate trial court documents for inclusion in the legal file and submit such designations for filing in the manner provided by the system for the generation of the legal file index.



# Rule 81.12: Record on Appeal

## Rule 81.12(b)(1)

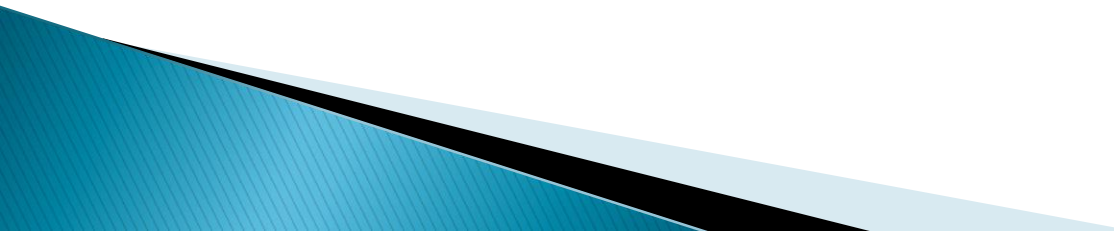
**(C) Matters Included.** Pleadings and other portions of the trial record previously reduced to written form may be designated for inclusion in the legal file. The legal file shall always include by designation: the pleadings upon which the action was tried, the verdict, the findings of the court or jury, the judgment or order appealed from, motions and orders after judgment, and the notice of appeal.



# Rule 81.12: Record on Appeal

## Rule 81.12(b)(1)

**(D) Matters Omitted.** .... If any pleading is amended, the legal file shall include the last amended pleading and shall not include any abandoned pleadings or abandoned part of the record not introduced in evidence. ....






# Rule 81.12: Record on Appeal

## Rule 81.12(b)(1)

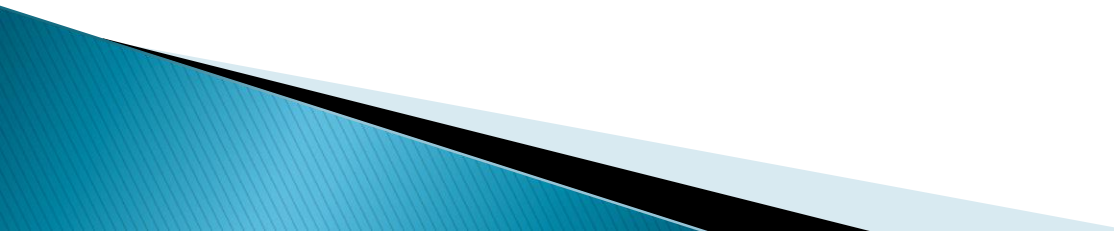
(E) Documents Unavailable for Designation. If any document in the trial court record is not available for designation, appellant shall file with the clerk of the trial court, within 10 days after the notice of appeal is filed, a written request that those unavailable documents be entered into the system. Such request shall specifically identify each requested document by reference to the case number, document title, and date of filing. The clerk shall promptly make the requested documents available for designation through the system and shall make a record of such availability with an appropriate docket entry.



# Rule 81.12: Record on Appeal

## Rule 81.12(g)

**(g) Preparation of the Supplemental Record.**  
The provisions of this Rule 81.12 relating to designation, generation, certification, and correctness of the record on appeal shall apply also to any supplemental record filed pursuant to this Rule 81.12.




# System-Generated Legal File Tips

1. If documents from one or more circuit court cases are required for the appeal, identify the correct case numbers for all such cases *as soon as possible after the notice of appeal is filed.*

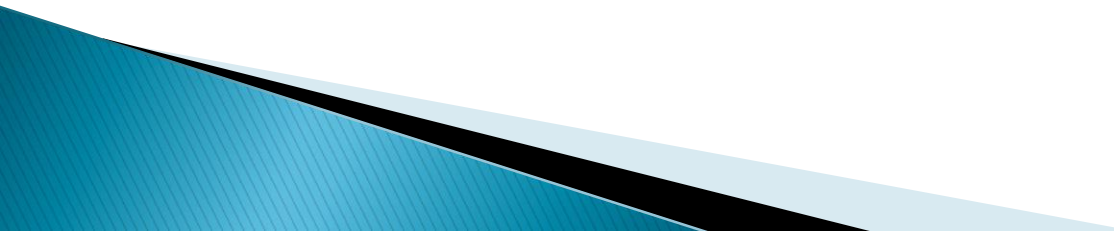
# System-Generated Legal File Tips

2. Once the correct circuit court case numbers have been determined, check Case.net *quickly after the notice of appeal is filed* to determine whether there are any documents the clerk must scan into the trial court record in order to be available for designation when you create the legal file. *See* Rule 81.12(b)(1)(E).

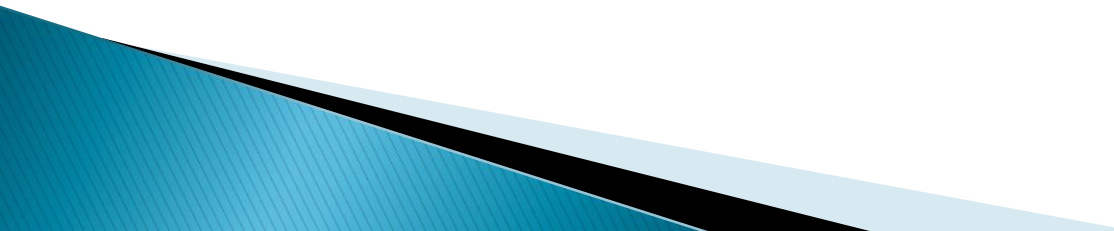
# System-Generated Legal File Tips

3. If any confidential documents are needed from the underlying circuit court case or a related case, you will not be able to designate such documents until you enter your appearance in each circuit court case containing such confidential documents *before you create the legal file*. Consider the applicability of Rule 4-1.2 for a limited scope representation entry of appearance for the sole purpose of representation in this appeal.
- 

# System-Generated Legal File Tips

4. When creating the legal file, make sure the Rule 81.12(b)(1)(C) required items are designated.
  5. Other than required documents, only designate the documents you need for resolution of the issues on appeal. If you omit something, it is easy to file a supplemental legal file.
- 

# System-Generated Legal File Tips

6. Remember that the **appeal document numbers** are system-assigned and may not follow an unbroken chronological sequence. The only importance of the appeal document number is that it is uniquely system-assigned to only one document in the legal file.
- 

# System-Generated Legal File Tips

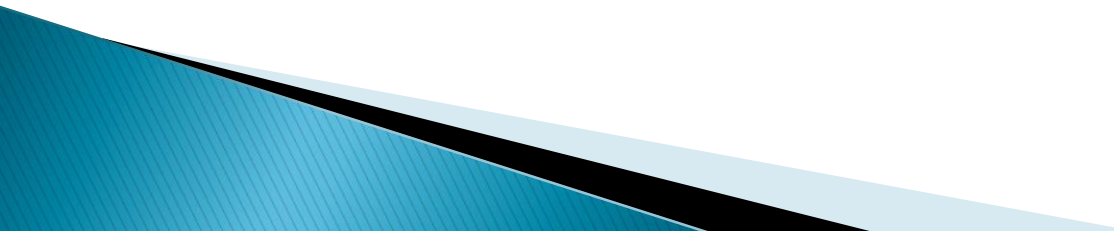
7. Use **Legal File Viewer** for viewing, downloading and printing documents from the legal file to ensure that those electronic or paper documents have the appeal document number and page stamp in the upper left-hand corner.



# Use of Electronic Court Records During Trial

The State relies on Section 490.130 to argue that because electronic records contained in a statewide court automated record-keeping system, like JIS, are admissible without certification, testimony describing those electronic records is sufficient without physical printouts. In this case of first impression, we agree with the State.

*State v. Ralph*, 521 S.W.3d 673, 679 (Mo. Ct. App. E.D. 2017)



# Use of Electronic Court Records During Trial

Unlike the FCC, JIS contains records of court proceedings as set forth in Missouri Operating Rule 1. Thus, while section 490.130 applies to JIS, it does not apply to the FCC.

*B.K. v. Missouri State Highway Patrol*, 561 S.W.3d 876, 881 (Mo. Ct. App. W.D. 2018)

# Filings During Trial

We have had some instances in which motions filed during the trial itself aren't included in the documents available for selection for the legal file.

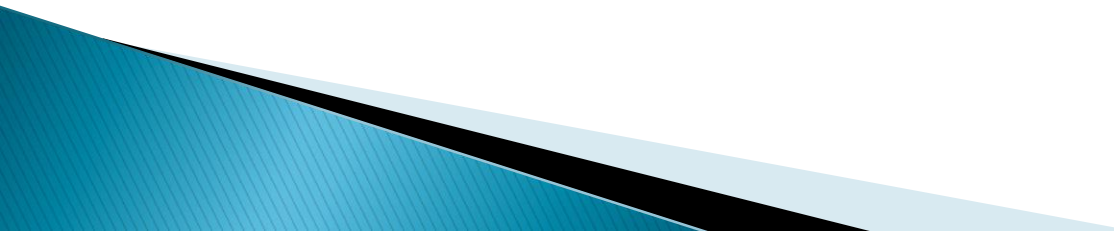
Make sure these get e-filed so they are part of the record on appeal.

What do you do in case of a dispute?



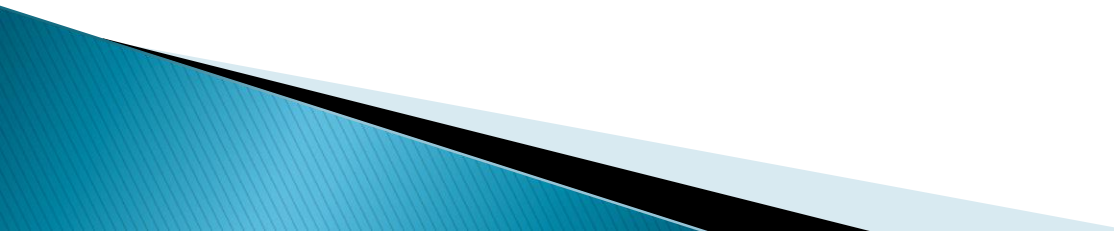
## Rule 81.15

**(b) Disputes about the Record.** If there is any dispute concerning the completeness of the record on appeal, additional parts of the record on appeal may be filed pursuant to Rule 81.12. The filing of the legal file or the transcript shall not operate as a waiver by the filing party of the right to dispute the correctness thereof. If there is any dispute concerning the correctness of any legal file or transcript, the party disputing the correctness thereof shall designate in writing to the appellate court those portions of the legal file or transcript that are disputed. (Cont'd)



## Rule 81.15

(Cont'd) Such designation shall be filed with the appellate court within 15 days after the legal file or the transcript, whichever is in dispute, is filed. The appellate court, either on application or on its own motion, may enlarge the time within which any such designation shall be filed. The appellate court shall direct the trial court to settle the dispute and to certify the correct contents of such portion to the appellate court, and such certification by the trial court shall become a part of the record on appeal.



# Refused Filings

Ess's motion for new trial was due on January 9, 2014. Defense counsel's secretary attempted to file the motion that day; however, the circuit clerk's office informed her that the motion could not be accepted *because the accompanying affidavit did not include a notary's stamp*. This issue could not be rectified until the following morning, January 10, 2014. ... [T]he circuit clerk refused Ess's filing in the absence of some clear prohibition in law, court rule, or specific court order. The circuit clerk was obligated to accept the filing....


State v. Ess, 453 S.W.3d 196, 201 (Mo. banc 2015)



# Refused Filings

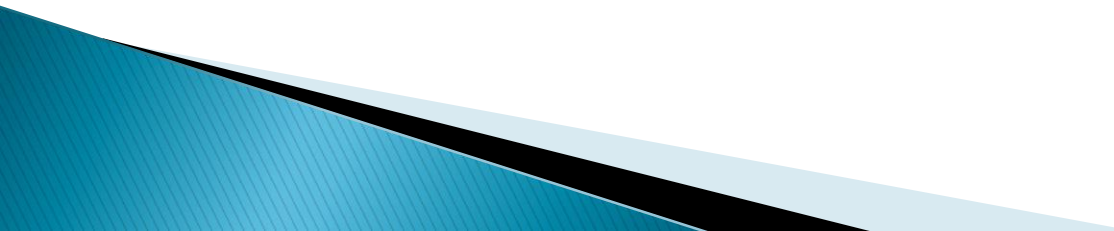
[W]e find no reason to diverge from the legal standard espoused in *Ess* merely because the document at issue was presented to the court clerk by means of electronic filing. Here, the petition submitted for filing by Plaintiff was in proper form. ... We are aware of no law, court rule, or specific court order authorizing the court clerk to reject the filing of the petition for such a minor technical deficiency. ... Under *Ess*, the clerk was obligated to accept the filing.

*State ex rel. Isselhard v. Dolan*, 465 S.W.3d 496, 499 (Mo. App. E.D. 2015)



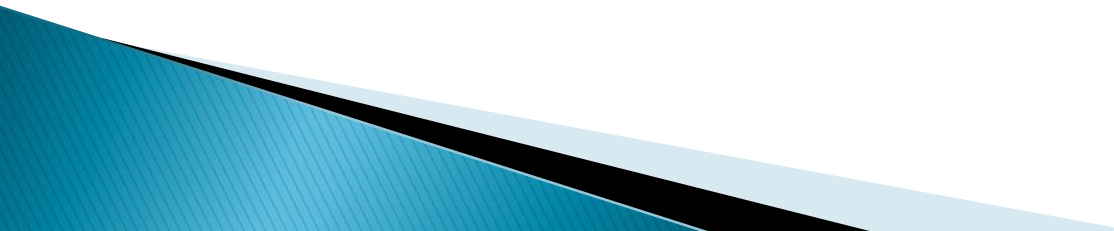
# E-Filing System Unavailability

## 103.06 Electronic Filing Deadlines

- (a) Electronic filing is permitted at all times when the electronic filing system is available. If the electronic filing system is unavailable at the time the user attempts to file a document, the registered user shall make reasonable efforts to file the document as soon as the unavailability ends.
  - (b) If a registered user believes the unavailability of the electronic filing system prevented a timely filing to the party's prejudice, the registered user may submit a motion to the court within ten days of the user's first unsuccessful attempt to file the document. The motion shall state the date and time of the first unsuccessful attempt to file the document electronically and why the delay was prejudicial.
- 

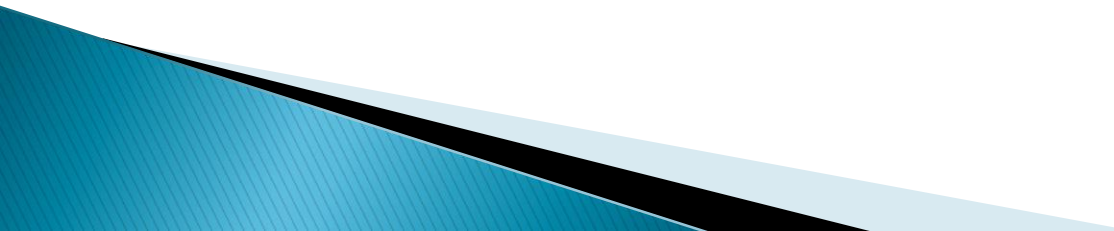


# Electronic Filing Rules

- (c) If the court determines that the unavailability of the electronic filing system prevented the court from receiving the filing, the court shall deem the document filed on the day that the user initially attempted to file the document.
  - (d) The filing deadline for any document filed electronically is 11:59:59 p.m. central time.
  - (e) A document is submitted for filing when the electronic filing system receives the document and sends a confirmation receipt to the filer. The electronic filing system will issue a confirmation receipt that includes the date and time.
- 

# Electronic Filing Rules

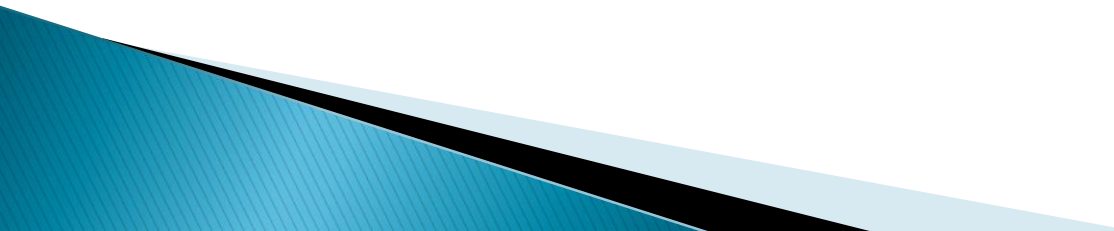
(f) If the clerk accepts a document for filing, the date and time of filing entered in the case management system shall be the date and time the electronic filing system received the document. The electronic filing system will affix the date and time of filing on the document.



# Paper Copies in Appellate Courts

## 103.11 Filing of Copies in this Court and Court of Appeals

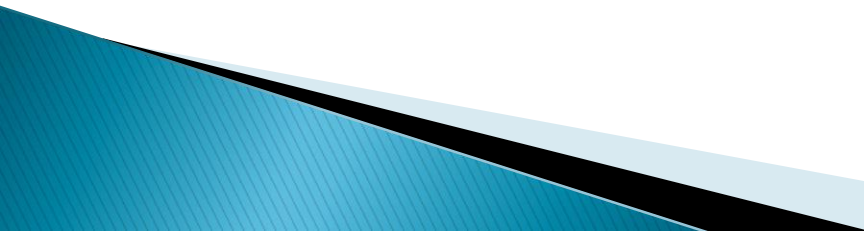
If a document is filed electronically in this Court or the court of appeals, **no paper copies are required to be filed except as provided by local court rule.**



# Electronic Filing Rules

## Rule 81.005

**(a) Electronic Filing.** Except as otherwise specifically provided, this Court and the court of appeals require most documents to be electronically filed. Rule 103 and Court Operating Rule 27 govern the electronic filing of documents and apply if there is a conflict with any other rule. When filing a document in an appellate court, Rule 103 and Court Operating Rule 27 should be reviewed as well as the local rules of the court in which the document is to be filed. If a document is filed electronically, *no paper copies are required to be filed except as provided by local court rule.*



# Court of Appeals' Local Rules

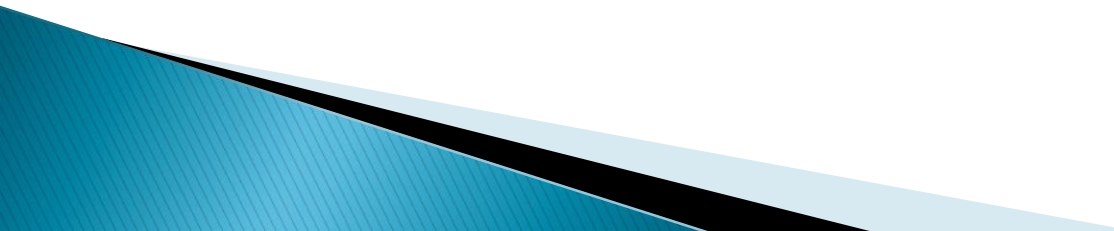
## ED Special Rule 333

- (b) Still requires paper transcript in e-filed appeal
- (c) Still requires paper copies of briefs
- (d) Still requires color coded covers for briefs

# Court of Appeals' Local Rules

## WD Special Rule 12

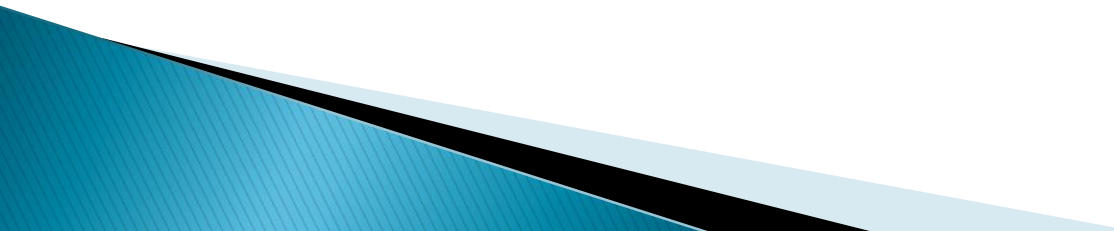
**(b)** Still requires paper transcript in e-filed appeal and paper copies of briefs when SGLF is used. Non-SGLF also requires paper copy of LF.



# Court of Appeals' Local Rules

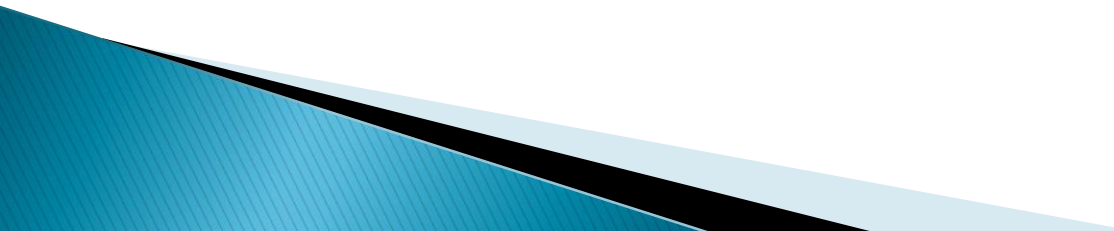
## SD Special Rule 18

**(a) Applicable Rules.** Unless otherwise ordered by this court, electronic filings shall be made as provided in Rule 103, Court Operating Rule 27 and this rule and no paper copies of electronic filings are required.



# Survey Responses

Even though I enter a limited entry of appearance, I still do not have access to very important documents, such as jury instructions, questions from the jury, etc. I need to complete the legal file. And gaining access to these documents are extremely time consuming.



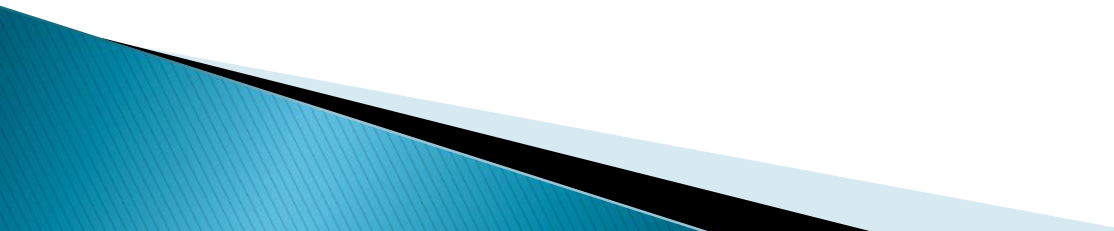


# Survey Responses

Make sure the clerk has received and accepted your e-filed entry of appearance because that could affect the level of access you have on a case.

# Survey Responses

The majority of lower court clerks do not understand the rule requirements. Access levels are set so high that attorneys of record cannot access many case filings they should be able to see (such as exhibits, jury questions, instructions, probation violation reports, mental health reports, etc.). If you are an attorney of record, you should be able to view and access these documents. Also, court clerks do not want to change the security access settings to make these items available to electronically file the record on appeal that is required.



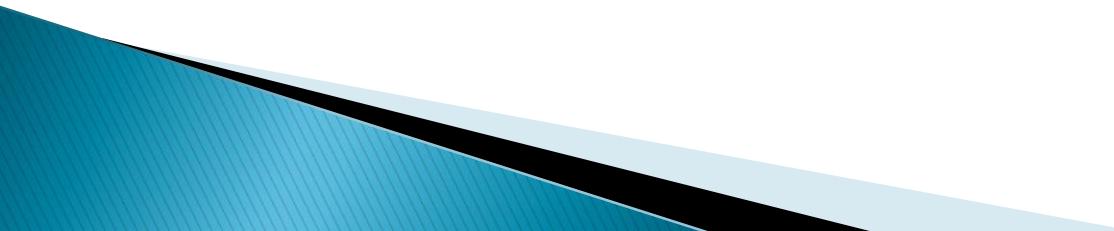
# Survey Responses

Clerks should be following OSCA default security settings on documents and case types.

If the settings are wrong, contact the clerk.

If the clerk won't take action, file a motion to get the matter before the trial court.

If the trial court won't act, file a motion with the appellate court.

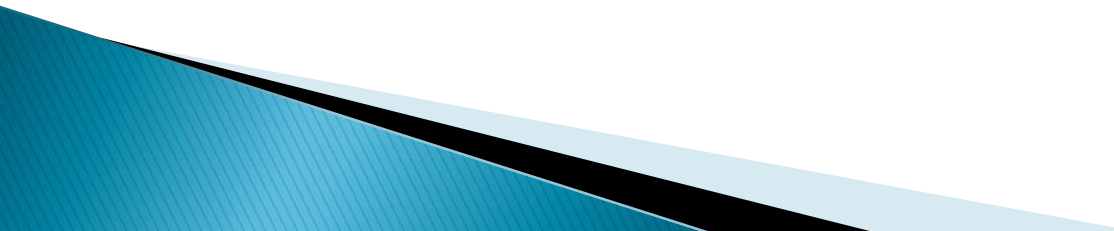


# Survey Responses

The SD will not transfer the ROA from the direct appeal to a PCR appeal.

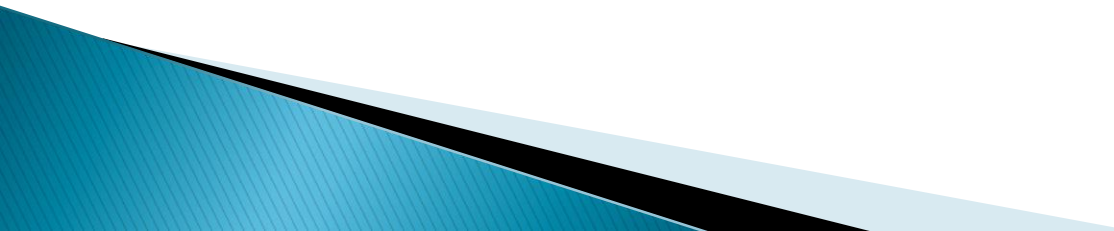
# Survey Responses

We do not transfer the entire ROA from the underlying criminal case because all of it is not usually required for the PCR appeal. Additionally, if both the criminal case and the PCR case involve a system-generated legal file, the appellant can add both to the legal file when setting it up.



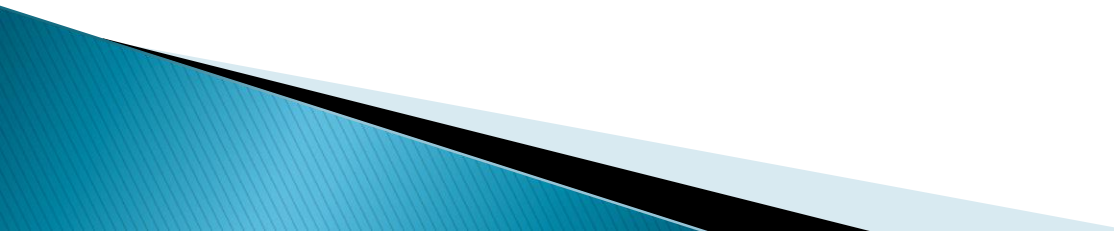
# Survey Responses

Even where the legal file in the direct appeal is the old single PDFs, the appellant in the PCR case can simply select the direct appeal as an additional case in the system-generated legal file for the PCR and then click on the Legal File and the Transcript in the direct appeal case to include them in the system-generated legal file for the PCR case.



# Survey Responses

The parties are able to incorporate records from prior, related cases in the system-generated legal file. By including these documents in the system-generated legal file, they are compiled and organized together with all of the other records in the legal file, which streamlines the record. The parties are able to be selective about what is included, which actually could make the record smaller than if we transferred.



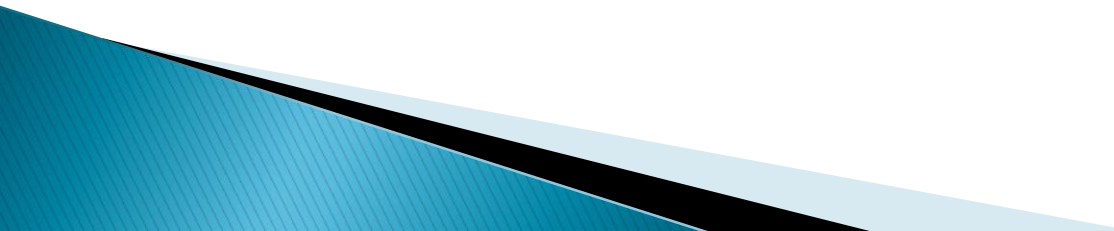
# Survey Responses

Case.net is sometimes a little weird in the evenings and you can get tossed off in the middle of e-filing. It particularly runs pretty slow right around midnight.



# Survey Responses

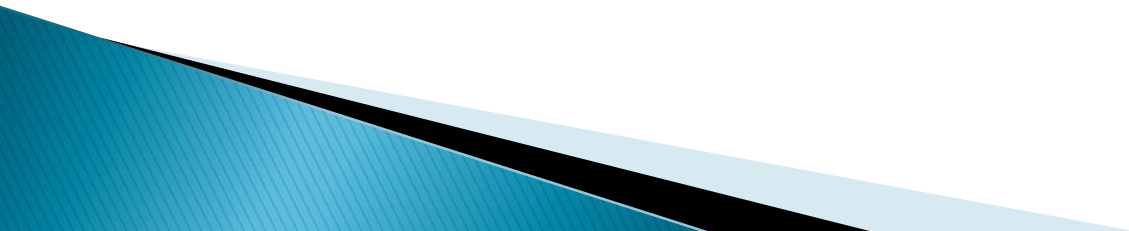
There are occasional outages for various reasons. OSCA attempts to publish any planned complete outages ahead of time and communicate quickly to the attorneys when an unplanned outage occurs. There are deployments that may occur monthly on the evening of the third Thursday of the month that could cause very brief outages or loss of sessions. There could also be emergency deployments to resolve any unexpected issues that need resolution before the next scheduled monthly deployment.



# Survey Responses

One other thing that occurs just after midnight is a process where we reload the Attorney file from MOBAR which allows the eFiling system to check Attorney MOBAR status.

This is a quick process, but it is possible that it could cause brief interruption for an attorney that is logged in.



# Survey Responses

Not being able to get into e-filing by clicking on e-notice email

OSCA Note: Users are required to log in so we can't bring them all the way in from a link in an email.

Questions or Comments?