Last amended by Order dated March 1, 2011; effective May 2, 2011.

RULES OF SUPREME COURT OF VIRGINIA
PART ONE
RULES APPLICABLE TO ALL PROCEEDINGS

Note: While the structure of newly adopted Rule 1:17 tracks prior Rule 1:17 and some of the content remains the same, the changes to the Rule are too extensive to be adequately illustrated in a track changes format. Thus the entirety of new Rule 1:17 as adopted by March 1, 2011 Order appears below.

Rule 1:17. Electronic Filing and Service.

(a) *Scope of Electronic Filing Rules.* Pursuant to § 8.01-271.01 and Article 4.1 (§§ 17.1-258.2 et seq.) of Chapter 2 of Title 17.1 of the Code of Virginia, this Rule shall be applicable in any court that has established an electronic filing system under the standards and procedures set forth in subdivision (c) of this Rule, and applies in civil cases in circuit court as provided in Rule 3:3, in criminal cases in circuit court as provided in Rule 3A:23, in general district court proceedings as provided in Rule 7A:7(c), and in juvenile and domestic relations district court proceedings as provided in Rule 8:8(f).

(b) *Definitions*.

(1) "**Electronic Document**" means any defined set of textural matter, graphic content or other encoded information in an approved format, that can be read, printed, and stored or retained as electrical, magnetic or optically encoded signals in some medium and that can be transmitted by a data-link.

(2) "**Data-link**" refers to any means of electronic transmission of a document in a coded form such that the document can be received, read, printed, and stored by the recipient.

(3) "**E-Filing Portal**" means the electronic web site maintained by the Supreme Court of Virginia designated as the facility for electronically filing documents, or an alternative which meets the standards set forth in this Rule and is made available by individual circuit courts.

(4) "**Electronic filing**" means the official filing of an electronic document on the court's docket and case files in electronic form by transmission over a data-link.

(5) "**Electronically Filed Case**" means a case in which pleadings, motions, notices and other filings are made electronically in accordance with these rules.

(6) "**Hyperlink**" means an electronic connection or reference to another place in the document, such that when the hyperlink is selected the user is taken to the portion of the document to which the link refers. It is not in itself a part of the document.

(c) *System Operational Standards.* In addition to the obligations and procedures set forth in subdivision (d) of this Rule, electronic filing systems under this Rule shall meet these requirements:

(1) Electronic documents must be stored without loss of content or material alteration of appearance.

(2) Files capable of carrying viruses into court computers must be scanned for viruses prior to being written to disk in the clerk's office.

(3) The electronic filing system must be capable of securing the document upon receipt so that it is protected from alteration.

(4) The electronic filing system must be capable of establishing the identity of a sender of a document by means of a registered user identity and password, or by digitally encrypted electronic signatures, or by any other means reasonably calculated to ensure identification to a high degree of certainty.

(5) Remote electronic access to documents submitted in an electronically filed case and stored electronically shall be limited to judges, court personnel, any persons assisting such persons in the administration of the electronic filing system, and to counsel of record, including parties appearing pro se, who have complied with the registration requirements to use the electronic filing system.

(6) If the court accepts payment of fees by credit card, debit card, debit account, or electronic funds transfer, registration for the user identity shall include submission of all information required to effect the payment of fees. Electronic submission of this information shall be deemed a signature by the cardholder sender, authorizing the payment of document filing fees. This information shall be kept confidential. There shall be an electronic confirmation from the clerk of any charge to or the debit from the user's account.

(7) No unauthorized person shall be permitted access to other court networks, data

or applications unrelated to electronic filing. Administrative access to computer equipment and networks handling electronic filing will be restricted to designated court employees or authorized maintenance personnel.

(8) Electronic filing systems must reasonably protect filed documents against system and security failures and must provide, at a minimum, for daily backup, periodic off-site backup storage if feasible, and prudent disaster recovery mechanisms.

(d) *Electronic Service and Filing Practice and Procedures.*

(1) In an Electronically Filed Case, all pleadings, motions, notices and other material filed with the court shall be in the form of Electronic Documents except where otherwise expressly provided by statute or the Rules of Court, or where the court orders otherwise in an individual case for good cause shown.

(2) Each attorney admitted to practice in the Commonwealth shall be entitled to a registered User ID and password issued by the clerk, or access using any comparable identification system approved by the Supreme Court, for the electronic filing and retrieval of documents.

(3) The clerk shall provide a means, in the courthouse or other designated location, for the parties, counsel and the public to review and copy electronic records from the electronic file during normal business hours.

(4) The format for electronically filed material shall be the Portable Document Format (PDF). Notice will be provided if any other format is approved.

(5) (i) Subject to the provisions of subsections (d)(6) and (7) of this Rule, an electronic document shall be filed by following the procedures of the applicable E-Filing Portal, and shall be deemed filed on the date that it is received in the E-Filing Portal. Filings will be accepted during normal business hours and until 11:59:59 p.m. on any day the clerk's office is open.

(ii) Upon electronic filing of a document, an electronic confirmation shall be transmitted to the filing party indicating that the document has been successfully filed through the E-Filing Portal. In addition, the court to which the document is directed shall promptly transmit an electronic acknowledgement of its receipt of the electronically filed document, specifying the identity of the receiving court, the date the document was received by the court, and a court-assigned document

reference or docketing number.

(6) A person who files a document electronically shall have the same responsibility as a person filing a document in paper form to ensure that the document is properly filed, complete, and readable. However,

(i) if technical problems at the E-Filing Portal result in a failure to timely file the electronic document, counsel shall provide to the clerk of the court on the next business day all documentation which exists demonstrating the attempt to file the document through the E-Filing Portal, any delivery failure notice received in response to the attempt, and a copy of the document, and

(ii) in the event that the E-Filing Portal was not available due to technical problems during the last filing hours of a business day, the office of the clerk of the court to which the document is directed shall be deemed to have been closed on that day solely with respect to that attempted filing and the provisions of Virginia Code § 1-210(B) and (C) shall apply to that particular attempted filing for purposes of computing the last day for performing any act in a judicial proceeding or the filing of any legal action.

(7) (i) If the clerk of court determines that an electronically filed document is defective because of an incorrect or missing filing fee or missing signature or required verification, notice shall be sent electronically to the filing party, who shall have a period of five business days after such notice is transmitted in which to cure the defect. A copy of this notice will be retained in the permanent electronic case file maintained by the court. The document remains validly filed during the period afforded for curing such defects and until an order of the court provides otherwise.

(ii) If the defect in an electronically filed document set forth in a notice transmitted pursuant to subsection (d)(7)(i) is not cured within the permitted period, or if any other defect considered grounds for rejection or striking of a filed document are identified by the clerk, the clerk shall prepare and transmit electronically to all parties a notice that the defect will be presented to a judge of the court at a specified date and time for consideration of an order striking the document from the court records or directing other action. The hearing date specified in the notice under this subsection shall be at least 10

calendar days after transmission of the notice for that hearing.

(8) The clerk's office must accommodate the submission of non-electronic documents in an Electronically Filed Case if filing in electronic form cannot, as a practical matter, be achieved. Such documents shall be imaged to facilitate the creation of a single electronic case file to the extent reasonably possible. An outsized document that is capable of being imaged shall be retained in the form submitted.

(9) When a judge enters an order, the judge or clerk will update the electronic record to indicate the identity of the judge entering the order and the date it was entered, and shall send a notification to counsel of record that the order has been entered, along with a copy of the order or an electronic link providing access to such order. If the entry of an order is done on a paper copy of the order, a digital image of such order shall be made a part of the electronic record, and the endorsed original paper shall be retained for the record.

(10) Hyperlinks between two portions of a filed document or between two or more documents filed in the same case, are permissible, but hyperlinks to other documents, or to external websites, are prohibited. A hyperlink is not itself a part of the official filed document and each hyperlink must contain a text reference to the target of the link.

(e) *Application of, and Compliance with, Other Rules*. In an Electronically Filed Case:

(1) Unless otherwise agreed by all parties, or ordered by the court in an individual case for good cause shown, all documents required to be served – after the initial service of process – may be served by electronic transmission, or by delivering, dispatching by commercial delivery service, transmitting by facsimile, or mailing, a copy to each counsel of record on or before the day of filing. Such service shall be effective as provided in Rule 1:12.

(2) Annotation by the clerk as provided in Rule 1:4(h) is not required to be made physically upon the face of the pleading and – if it is made by a separate document – it shall specify the pleading to which such annotation pertains.

(3) An e-mail address of the counsel of record shall be included in the electronic documents filed as required by Rule 1:4(l).

(4) The approved electronic identification accompanying the document when filed shall constitute that person's signature on the document for purposes of Rule 1:5 and Virginia Code § 8.01-271.1.

(5) The provisions of Article 4.1 (§§ 17.1-258.2 et seq.) of Chapter 2 of Title 17.1 of the Code of Virginia shall be applicable where a document is to be notarized, sworn, attested, verified, or otherwise certified, or if any sworn signatures, stamps, seals or other authentications relating to the document are required by any statute or Rule, and an electronic or digitally imaged document with such accompanying entries shall be filed in the clerk's office. Electronic notarization in compliance with the Virginia Notary Act (§§ 47.1-1 et seq.) may also be employed with the filing.

(6) An acceptance of service or a certificate of counsel that electronic copies were served as this Rule requires, showing the date of delivery, shall electronically accompany the served papers and shall satisfy Rule 1:12.

(7) In compliance with Rule 1:13, drafts of orders, decrees and notices shall be served on each counsel of record. Such service may be by electronic transmission and shall make provision for electronic endorsement by multiple parties where applicable. Objections or other notations by the parties shall be entered upon the drafts so circulated, or appended to such drafts by specific cross-reference or other unambiguous association. Endorsed drafts shall be submitted electronically whenever possible, and shall be accompanied by proof of service or acceptance of service when required by the rules of court. If there is no practical means of submitting an electronic or digitally imaged endorsed draft, the manually endorsed document shall be filed in the clerk's office. The clerk shall accommodate the imaging of the document into electronic form and shall retain the original endorsed document.