

Supreme Court of Texas

Misc. Docket No. 23-9071

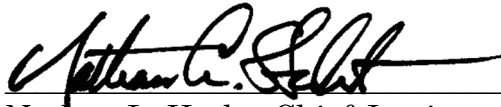
Preliminary Approval of Amendments to Texas Rules of Civil Procedure 21, 165a, 239a, 246, 297, 298, 299, 299a, and 306a; Texas Rule of Appellate Procedure 9.2; and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases

ORDERED that:

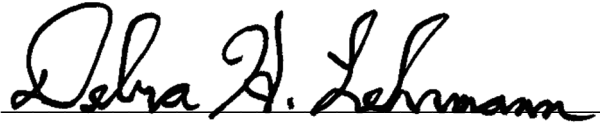
1. On August 7, 2023, in Misc. Dkt. No. 23-9053, the Court proposed amendments to Texas Rules of Civil Procedure 21, 165a, 246, 298, 299, 299a, and 306a. This Order amends and supersedes Misc. Dkt. No. 23-9053.
2. The Court invites public comments on amendments to Texas Rules of Civil Procedure 21, 165a, 246, 298, 299, 299a, and 306a; Texas Rule of Appellate Procedure 9.2; and Rule 2.7 of the Statewide Rules Governing Electronic Filing in Criminal Cases.
3. To effectuate the Act of May 28, 2023, 88th Leg., R.S., ch. 861 (H.B. 3474, codified at TEX. GOV'T CODE § 80.002(b)), the amendments are effective immediately. But the amendments may later be changed in response to public comments. The Court requests public comments be submitted in writing to rulescomments@txcourts.gov by January 1, 2024.
4. For purposes of Texas Rule of Appellate Procedure 9.2, the Texas Appeals Management and E-filing System ("TAMES") is an approved e-filing system.
5. As soon as practicable, the Judicial Committee on Information Technology is directed to study and make recommendations on copying court orders, notices, and other documents in civil cases to re:SearchTX.
6. As soon as practicable, the Office of Court Administration is directed to implement measures to copy court orders, notices, and other documents in civil cases to re:SearchTX and to issue guidance to clerks.

7. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

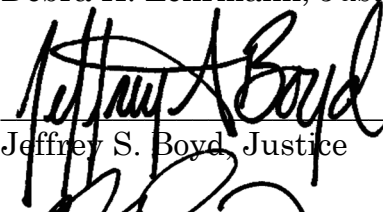
Dated: September 8, 2023.



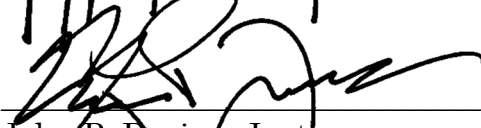
Nathan L. Hecht, Chief Justice



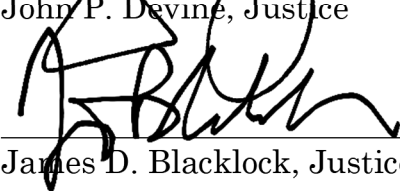
Debra H. Lehrmann, Justice



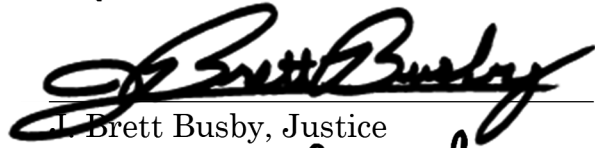
Jeffrey S. Boyd, Justice



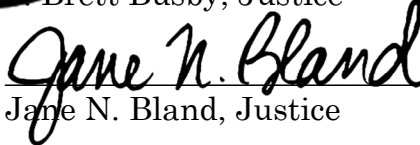
John P. Devine, Justice



James D. Blacklock, Justice



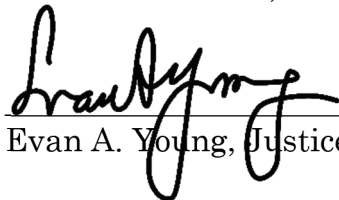
Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF CIVIL PROCEDURE

RULE 21. FILING AND SERVING PLEADINGS AND MOTIONS

- (a) **Filing and Service Required.** Every pleading, plea, motion, or application to the court for an order, whether in the form of a motion, plea, or other form of request, unless presented during a hearing or trial, must be filed with the clerk of the court in writing, must state the grounds therefor, must set forth the relief or order sought, and at the same time a true copy must be served on all other parties, and must be noted on the docket.
- (b) **Service of Notice of Court Proceeding.** An application to the court for an order and notice of any court proceeding, as defined in Rule 21d(a), not presented during a court proceeding, must be served upon all other parties not less than three days before the time specified for the court proceeding, unless otherwise provided by these rules or shortened by the court. Notice of any court proceeding must contain the information needed for participants, as defined in Rule 21d(a), to participate in the proceeding, including the location of the proceeding or instructions for joining the proceeding electronically, the court's designated contact information, and instructions for submitting evidence. A court must publish the information needed for participants to participate in its proceedings.
- (c) **Multiple Parties.** If there is more than one other party represented by different attorneys, one copy of each pleading must be served on each attorney in charge.
- (d) **Certificate of Service.** The party or attorney of record, must certify to the court compliance with this rule in writing over signature on the filed pleading, plea, motion, or application.
- (e) **Additional Copies.** After one copy is served on a party, that party may obtain another copy of the same pleading upon tendering reasonable payment for copying and delivering.
- (f) **Electronic Filing.**
 - (1) **Requirement.** Except in juvenile cases under Title 3 of the Family Code and truancy cases under Title 3A of the Family Code, attorneys must electronically file documents in courts where electronic filing has been mandated. Attorneys practicing in courts where electronic filing is available but not mandated and unrepresented parties may electronically file documents, but it is not required.

- (2) Email Address. The email address of an attorney or unrepresented party who electronically files a document must be included on the document.
- (3) Mechanism. Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration.
- (4) Exceptions.
 - (A) Wills are not required to be filed electronically.
 - (B) The following documents must not be filed electronically:
 - (i) documents filed under seal or presented to the court in camera; and
 - (ii) documents to which access is otherwise restricted by law or court order.
 - (C) For good cause, a court may permit a party to file other documents in paper form in a particular case.
- (5) Timely Filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except:
 - (A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and
 - (B) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date that the motion is granted.
- (6) Technical Failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court. If the missed deadline is one imposed by these rules, the filing party must be given a reasonable extension of time to complete the filing.

- (7) **Electronic Signatures.** A document that is electronically served, filed, or issued by a court or clerk is considered signed if the document includes:
- (A) a “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
 - (B) an electronic image or scanned image of the signature.
- (8) **Format.** An electronically filed document must:
- (A) be in text-searchable portable document format (PDF);
 - (B) be directly converted to PDF rather than scanned, if possible;
 - (C) not be locked; and
 - (D) otherwise comply with the Technology Standards set by the Judicial Committee on Information Technology and approved by the Supreme Court.
- (9) **Paper Copies.** Unless required by local rule, a party need not file a paper copy of an electronically filed document.
- (10) **Electronic Orders, Notices, and Other Documents From the Court.**
- (A) Except as provided in (B), the clerk ~~may~~ must send orders, notices, ~~orders,~~ ~~or~~ ~~and~~ other ~~communications~~ ~~about~~ ~~the~~ ~~eased~~ ~~documents~~ to the party ~~ies~~ electronically through an electronic filing service provider certified by the Office of Court Administration. A court seal may be electronic.
 - (B) The clerk need not send orders, notices, or other documents electronically:
 - (i) when sealed or when access is otherwise restricted by law or court order; or
 - (ii) when an unrepresented party has not provided an e-mail address.
- (11) **Non-Conforming Documents.** The clerk may not refuse to file a document that fails to conform with this rule. But the clerk may identify

the error to be corrected and state a deadline for the party to resubmit the document in a conforming format.

- (12) **Original Wills.** When a party electronically files an application to probate a document as an original will, the original will must be filed with the clerk within three business days after the application is filed.
- (13) **Official Record.** The clerk may designate an electronically filed document or a scanned paper document as the official court record. The clerk is not required to keep both paper and electronic versions of the same document unless otherwise required by local rule. But the clerk must retain an original will filed for probate in a numbered file folder.

Notes and Comments

Comment to 2013 Change: Rule 21 is revised to incorporate rules for electronic filing, in accordance with the Supreme Court's order - Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164 - mandating electronic filing in civil cases beginning on January 1, 2014. The mandate will be implemented according to the schedule in the order and will be completed by July 1, 2016. The revisions reflect the fact that the mandate will only apply to a subset of Texas courts until that date.

Comment to 1990 change: To require filing and service of all pleadings and motions on all parties and to consolidate notice and service Rules 21, 72 and 73.

Comment to 2023 change: Rule 21(b) is amended to clarify requirements for notices. Rule 21(f)(10) is amended to implement section 80.002(b) of the Government Code. Nothing in Rule 21(f)(10) prohibits the clerk from sending orders, notices, and documents to parties by additional methods, and the clerk is strongly encouraged to use additional methods when a party is unrepresented. If a party has not provided an e-mail address and consequently compliance with Rule 21(f)(10) is impossible, then the clerk should use an alternative method to send orders, notices, and documents to that party.

RULE 165a. DISMISSAL FOR WANT OF PROSECUTION

1. **Failure to Appear.** A case may be dismissed for want of prosecution on failure of any party seeking affirmative relief to appear for any hearing or trial of which the party had notice. Notice of the court's intention to dismiss and the date and place of the dismissal hearing ~~shall~~must be sent by the clerk to ~~each attorney of record, and to each party not represented by an attorney and whose address is shown on the docket or in the papers on file,~~ by posting same in the ~~United States Postal Service~~the parties as provided in Rule 21(f)(10). At the

dismissal hearing, the court ~~shall~~must dismiss for want of prosecution unless there is good cause for the case to be maintained on the docket. If the court determines to maintain the case on the docket, it ~~shall~~must render a pretrial order assigning a trial date for the case and setting deadlines for the joining of new parties, all discovery, filing of all pleadings, the making of a response or supplemental responses to discovery and other pretrial matters. The case may be continued thereafter only for valid and compelling reasons specifically determined by court order. ~~Notice of the signing of t~~The clerk must send any order of dismissal shall be given as provided in Rule 306a ~~to the parties as provided in Rule 21(f)(10).~~ Failure to ~~mail~~send notices and orders as required by this rule ~~shall~~does not affect any of the periods mentioned in Rule 306a except as provided in that rule.

RULE 239a. NOTICE OF DEFAULT JUDGMENT

At or immediately prior to the time an interlocutory or final default judgment is rendered, the party taking the same or his attorney ~~shall~~must certify to the clerk in writing the last known email address and mailing address of the party against whom the judgment is taken, which certificate shall be filed among the papers in the cause. Immediately upon the signing of ~~the a~~ default judgment, the clerk ~~shall mail~~must send written notice thereof to the party against whom the judgment was rendered ~~at as provided in Rule 21(f)(10) and to the mailing address shown in the certificate,~~ and note the fact of such mailing on the docket. The notice ~~shall~~must state the number and style of the case, the court in which the case is pending, the names of the parties in whose favor and against whom the judgment was rendered, and the date of the signing of the judgment. Failure to comply with the provisions of this rule ~~shall~~does not affect the finality of the judgment.

RULE 246. CLERK TO GIVE NOTICE OF SETTINGS

The clerk ~~shall~~must keep a record ~~in his office~~ of all cases set for trial, ~~and it shall be his duty to inform any non-resident attorney of,~~ upon written request, must send the parties the date of setting of any case upon request by mail from such attorney, accompanied by a return envelope properly addressed and stamped as provided in Rule 21(f)(10). Failure of the clerk to ~~furnish~~send such information on proper request ~~shall be~~is sufficient ground for continuance or for a new trial when it appears to the court that such failure has prevented ~~the attorney a~~ party from preparing or presenting ~~his~~ the party's claim or defense.

RULE 297. TIME TO ~~FILE~~SEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

Within twenty days after a timely request is filed, T~~he court shall file~~must send its findings of fact and conclusions of law ~~within twenty days after a timely request is filed. The court shall cause a copy of its findings and conclusions to be mailed to each party in the suit~~to the parties as provided in Rule 21(f)(10).

If the court fails to ~~file~~send timely findings of fact and conclusions of law, the party making the request ~~shall~~must, within thirty days after filing the original request, file with the clerk and serve on all other parties in accordance with Rule 21a a “Notice of Past Due Findings of Fact and Conclusions of Law” which ~~shall~~must be immediately called to the attention of the court by the clerk. Such notice ~~shall~~must state the date the original request was filed and the date the findings and conclusions were due. Upon filing this notice, the time for the court to ~~file~~send findings of fact and conclusions of law is extended to forty days from the date the original request was filed.

Notes and Comments

Comment to 1990 change: To revise the practice and times for findings of fact and conclusion of law. See also Rules 296 and 298.

RULE 298. ADDITIONAL OR AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

After the court ~~file~~sends original findings of fact and conclusions of law, any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings ~~shall~~must be made within ten days after the ~~filing of court sends~~ the original findings and conclusions ~~by the court~~. Each request made pursuant to this rule ~~shall~~must be served on each party to the suit in accordance with Rule 21a.

Within ten days after such request is filed, T~~he court shall file~~must send any additional or amended findings and conclusions ~~that are appropriate within ten days after such request is filed, and cause a copy to be mailed to each party to the suit~~to the parties as provided in Rule 21(f)(10). No findings or conclusions shall be deemed or presumed by any failure of the court to make any additional findings or conclusions.

RULE 299. OMITTED FINDINGS

When findings of fact are ~~filed~~sent by the trial court they ~~shall~~must form the basis of the judgment upon all grounds of recovery and of defense embraced therein. The

judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact; but when one or more elements thereof have been found by the trial court, omitted unrequested elements, when supported by evidence, will be supplied by presumption in support of the judgment. Refusal of the court to make a finding requested ~~shall be~~ is reviewable on appeal.

RULE 299a. FINDINGS OF FACT TO BE SEPARATELY FILED SENT AND NOT RECITED IN A JUDGMENT

Findings of fact ~~shall~~ must not be recited in a judgment. If there is a conflict between findings of fact recited in a judgment in violation of this rule and findings of fact made pursuant to Rules 297 and 298, the latter findings will control for appellate purposes. Findings of fact ~~shall~~ must be ~~filed with the clerk of the court~~ sent as a document or documents separate and apart from the judgment.

Notes and Comments

Comment to 1990 change: To require that findings of fact be separate from the judgment and that such separate findings of fact are controlling on appeal.

RULE 306a. PERIODS TO RUN FROM SIGNING OF JUDGMENT

3. **Notice of Judgment.** When the final judgment or other appealable order is signed, the clerk of the court must immediately ~~give notice~~ send the judgment or order to the parties ~~or their attorneys of record electronically or by first class mail advising that the judgment or order was signed~~ as provided in Rule 21(f)(10). If the judgment awards monetary damages, the notice must state: “If you are an individual (not a company), your money or property may be protected from being taken to pay this judgment. Find out more by visiting www.texaslawhelp.org/exempt-property. / *Si usted es una persona física (y no una compañía), su dinero o propiedad pudieran estar protegidos de ser embargados como pago de esta deuda decretada en juicio en contra suya. Obtenga mayor información visitando el sitio www.texaslawhelp.org/exempt-property.” Failure to comply with the provisions of this rule shall not affect the periods mentioned in paragraph (1) of this rule, except as provided in paragraph (4).*

TEXAS RULES OF APPELLATE PROCEDURE

Rule 9. Documents Generally

9.2. Filing

- (a) *With Whom.* A document is filed in an appellate court by delivering it to:
 - (1) the clerk of the court in which the document is to be filed; or
 - (2) a justice or judge of that court who is willing to accept delivery. A justice or judge who accepts delivery must note on the document the date and time of delivery, which will be considered the time of filing, and must promptly send it to the clerk.

- (b) *Filing by Mail.*
 - (1) **Timely Filing.** A document received within ten days after the filing deadline is considered timely filed if:
 - (A) it was sent to the proper clerk by United States Postal Service or a commercial delivery service;
 - (B) it was placed in an envelope or wrapper properly addressed and stamped; and
 - (C) it was deposited in the mail or delivered to a commercial delivery service on or before the last day for filing.

 - (2) **Proof of Mailing.** Though it may consider other proof, the appellate court will accept the following as conclusive proof of the date of mailing:
 - (A) a legible postmark affixed by the United States Postal Service;
 - (B) a receipt for registered or certified mail if the receipt is endorsed by the United States Postal Service;
 - (C) a certificate of mailing by the United States Postal Service;
or

(D) a receipt endorsed by the commercial delivery service.

(c) *Electronic Filing.*

- (1) Requirement. Attorneys in civil cases must electronically file documents. Attorneys in criminal cases must electronically file documents except for good cause shown in a motion filed in the appellate court. Unrepresented parties in civil and criminal cases may electronically file documents, but it is not required.
- (2) Mechanism. Electronic filing must be done through the electronic filing manager established by the Office of Court Administration and an electronic filing service provider certified by the Office of Court Administration.
- (3) Exceptions. Documents filed under seal, subject to a pending motion to seal, or to which access is otherwise restricted by law or court order must not be electronically filed. For good cause, an appellate court may permit a party to file other documents in paper form in a particular case.
- (4) Timely Filing. Unless a document must be filed by a certain time of day, a document is considered timely filed if it is electronically filed at any time before midnight (in the court's time zone) on the filing deadline. An electronically filed document is deemed filed when transmitted to the filing party's electronic filing service provider, except:
 - (A) if a document is transmitted on a Saturday, Sunday, or legal holiday, it is deemed filed on the next day that is not a Saturday, Sunday, or legal holiday; and
 - (B) if a document requires a motion and an order allowing its filing, the document is deemed filed on the date the motion is granted.
- (5) Technical Failure. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from the court.
- (6) Confirmation of Filing. The electronic filing manager will send a filing confirmation notice to the filing party.

(7) Electronic Orders, Notices, and Other Documents From the Court.

(A) In Civil Cases.

(i) Except as provided in (ii), the clerk ~~may~~ must send orders, notices, ~~orders, or~~ and other communications about the ~~case~~ documents to the parties electronically through an electronic filing service provider certified by the Office of Court Administration or an electronic filing system approved by the Supreme Court. A court seal may be electronic.

(ii) The clerk need not send orders, notices, or other documents electronically:

(a) when sealed or when access is otherwise restricted by law or court order; or

(b) when an unrepresented party has not provided an e-mail address.

(B) In Criminal Cases.

(i) The clerk may electronically send notices and other documents to the parties. A court seal may be electronic.

(ii) Except as provided in (iii), the clerk must send orders to the parties electronically through an electronic filing service provider certified by the Office of Court Administration or an electronic filing system approved by the Supreme Court. A court seal may be electronic.

(iii) The clerk need not send orders electronically:

(a) when sealed or when access is otherwise restricted by law or court order; or

(b) when an unrepresented party has not provided an e-mail address.

Notes and Comments

Comment to 1997 change: This is former Rule 4. Subdivision 9.4, prescribing the form of documents filed in the appellate courts, is changed and the form to be used is stated in significantly more detail. Former subdivisions (f) and (g), regarding service of documents, are merged into subdivision 9.5. Former Rule 6 is included as subdivision 9.6, but no substantive change is made. Other changes are made throughout the rule. Electronic filing is authorized by §§ 51.801-807 of the Government Code.

Comment to 2002 change: The change [to Rule 9.5(a)] clarifies that the filing party must serve a copy of the document filed on all other parties, not only in an appeal or review, but in original proceedings as well. The rule applies only to filing *parties*. Thus, when the clerk or court reporter is responsible for filing the record, as in cases on appeal, a copy need not be served on the parties. The rule for original civil proceedings, in which a party is responsible for filing the record, is stated in subdivision 52.7.

Subdivision 9.7 is added to provide express authorization for the practice of adopting by reference all or part of another party's filing.

Comment to 2008 change: Subdivision 9.3 is amended to reduce the number of copies of a motion for extension of time or response filed in the Supreme Court. Subdivision 9.8 is new. To protect the privacy of minors in suits affecting the parent-child relationship (SAPCR), including suits to terminate parental rights, Section 109.002(d) of the Family Code authorizes appellate courts, in their opinions, to identify parties only by fictitious names or by initials. Similarly, Section 56.01(j) of the Family Code prohibits identification of a minor or a minor's family in an appellate opinion related to juvenile court proceedings. But as appellate briefing becomes more widely available through electronic media sources, appellate courts' efforts to protect minors' privacy by disguising their identities in appellate opinions may be defeated if the same children are fully identified in briefs and other court papers available to the public. The rule provides protection from such disclosures. Any fictitious name should not be pejorative or suggest the person's true identity. The rule does not limit an appellate court's authority to disguise parties' identities in appropriate circumstances in other cases. Although appellate courts are authorized to enforce the rule's provisions requiring redaction, parties and amici curiae are responsible for ensuring that briefs and other papers submitted to the court fully comply with the rule.

Comment to 2012 Change: Rule 9 is revised to consolidate all length limits and establish word limits for documents produced on a computer. All documents produced

on a computer must comply with the word limits. Page limits are retained for documents that are typewritten or otherwise not produced on a computer.

Comment to 2013 Change: Rule 9 is revised to incorporate rules for electronic filing, in accordance with the Supreme Court's order - Misc. Docket No. 12-9206, amended by Misc. Docket Nos. 13-9092 and 13-9164 - mandating electronic filing in civil cases in appellate courts, effective January 1, 2014. In addition, Rule 9.9 is added to provide privacy protection for all documents, both paper and electronic, filed in civil cases in appellate courts.

Comment to 2023 Change: Rule 9.2(c)(7) is amended to implement section 80.002 of the Government Code. Nothing in Rule 9.2(c)(7) prohibits the clerk from sending orders, notices, and documents to parties by additional methods other than through an electronic filing service provider certified by the Office of Court Administration or an electronic filing system approved by the Supreme Court. Indeed, the clerk is strongly encouraged to use additional methods when a party is unrepresented. If a party has not provided an e-mail address and consequently compliance with Rule 9.2(c)(7) is impossible, then the clerk should use an alternative method to send orders, notices, and documents to that party.

STATEWIDE RULES GOVERNING ELECTRONIC FILING IN CRIMINAL CASES

PART 2. FILING MECHANISM

Rule 2.7 Electronic Orders, Notices, and Other Documents from the Court

- (a) **Notices and Other Documents.** The clerk may electronically send notices, ~~orders, or and~~ other communications ~~about the case~~ documents to the partyies ~~electronically~~. A court seal may be electronic.
- (b) **Orders from the Court.** Except as provided in (c), the clerk must send orders to the parties electronically through an electronic filing service provider certified by the Office of Court Administration.
- (c) **Exceptions to Electronic Delivery of Orders from the Court.** The clerk need not send orders electronically:
- (1) when sealed or when access is otherwise restricted by law or court order; or
 - (2) when an unrepresented party has not provided an e-mail address.

Comment to Rule 2.7: This rule is amended to implement section 80.002 of the Government Code. Nothing in Rule 2.7(b) prohibits the clerk from sending orders by additional methods, and the clerk is strongly encouraged to use additional methods when a party is unrepresented. If a party has not provided an e-mail address and consequently compliance with Rule 2.7(b) is impossible, then the clerk should use an alternative method to send orders to that party.