

FACSIMILE FILING RULE FOR KETTERING MUNICIPAL COURT

The provisions of this local rule are adopted under Civ.R.5.(E), Civ.R.73(J), and, Crim.R.12(B).

Pleadings, motions and other documents other than the original complaint may be filed with the Clerk of Court by facsimile transmission to 937-534-7017 subject to the following conditions:

APPLICABILITY

- 1.01 These rules apply to Civil, Traffic, Criminal proceedings in the Kettering Municipal Court.
- 1.02 These rules do not apply to Small Claims. In these proceedings no facsimile transmission of documents will be accepted.
- 1.03 Original criminal and civil documents requiring a filing fee or cost will not be accepted for fax filing.

ORIGINAL FILING

- 2.01 A document filed by fax shall be accepted as the effective original filing. The person making a fax filing need not file any source document with the Clerk of Court but must, however, maintain in his or her records and have available for production on request by the Court the source document filed by fax, with original signatures as otherwise required under the applicable rules, together with the source copy of the facsimile cover sheet used for the subject filing. **FAX FILINGS MAY NOT BE SENT DIRECTLY TO THE JUDGE OR BAILIFF FOR FILING.**
- 2.02 The source document filed by fax and confirmation of a successful facsimile shall be maintained by the person making the filing until the case is closed and all opportunities for appeal have been exhausted.

DEFINITIONS

As used in these rules, unless the context requires otherwise:

- 3.01 A "facsimile transmission" means the transmission of a source document by a facsimile machine that encodes a document into optical or electrical signals, transmits and reconstructs the signals to **print** a duplicate of the source document at the receiving end.
- 3.02 A "facsimile machine" means a machine that can send and receive a facsimile transmission.
- 3.03 "Fax" is an abbreviation for "facsimile" and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

COVER PAGE

- 4.01 The person filing a document by fax shall also provide therewith a cover page containing the following information: [See appendix for sample cover page form.]
1. the name of the Court;
 2. the caption of the case;
 3. the case number;
 4. the assigned judge;
 5. the title of the document being filed (e.g. Defendant Jones' Answer to Amended Complaint; Plaintiff Smith's Response to Defendants' Motion to Dismiss; Plaintiff Smith's Notice of filing Exhibit "G" with Plaintiff Smith's Response to Defendants' Motion to Dismiss);
 6. the date of transmission;
 7. the transmitting fax number;
 8. an indication of the number of pages included in the transmission, including the cover page;
 9. if a judge or case number has not been assigned, state that fact on the cover page;
 10. the name, firm, address, telephone number, fax number, Supreme Court registration number, if applicable, and e-mail address of the person filing the fax document if available.
 11. Next Court date; (if applicable)
- 4.02 If a document is sent by fax to the Clerk of Court without the cover page information listed above, the Clerk may, at his or her discretion:
1. enter the document in the Case Docket and file the document; or
 2. deposit the document in a file of failed faxed documents with a notation of the reason for the failure; in this instance, the document **shall not** be considered filed with the Clerk of Court.
- 4.03 The Clerk of Court is not required to send any form of notice to the sending party of a failed fax filing. The burden of confirming the receipt of a completed facsimile transmission is on the sending party.

SIGNATURE

- 5.01 A party who wishes to file a signed source document by fax shall either:
1. fax a copy of the signed source document; or
 2. fax a copy of the document without the signature but with the notation "/s/" followed by the name of the signing person where the signature appears in the signed source document.
- 5.02 A party who filed a signed document by fax represents that the physically signed source document is in his/her possession or control.

EXHIBITS

- 6.01 Each exhibit to a facsimile produced document that cannot be accurately transmitted via facsimile transmission for any reason must be replaced by an insert page describing the exhibit and why it is missing. Unless the Court otherwise orders, the missing exhibit shall be filed with the Court, as a separate document, not later than three (3) business days following the filing of the facsimile document. Failure to file the missing exhibits as required by this paragraph may result in the Court striking the document and/or exhibit.

- 6.02 Any exhibit filed in this manner shall be attached to a cover sheet containing the caption of the case which sets forth the name of the Court, title of the case, the case number, name of the judge and the title of the exhibit being filed (e.g., Plaintiff Smith's Notice of Filing Exhibit "G" with Plaintiff Smith's Response to Defendants' Motion to Dismiss), and shall be signed and served in conformance with the rules governing the signing and service of pleadings in this Court. [See appendix for sample exhibit cover sheet.]

TIME OF FILING

- 7.01 Subject to the provisions of these rules, all documents sent by fax and received by the Clerk shall be filed with the Clerk of Court as of the date and time the Clerk time-stamps the document received, as opposed to the date and time of the fax transmission. The office of the Clerk of Court will be deemed open to receive facsimile transmission of documents on the same days and at the same time the Court is regularly open for business.
- 7.02 Fax filing may **NOT** be sent directly to the Court for filing but may only be transmitted directly through the facsimile equipment operated by the Clerk of Court.
- 7.03 The risks of transmitting a document by fax to the Clerk of Court shall be borne entirely by the sending party. Anyone using facsimile filing is urged to verify receipt of such filing by the Clerk of Court through whatever technological means are available, including checking the Court's website.

FEES AND COSTS

- 8.01 No document filed by facsimile that requires a filing fee shall be accepted by the Clerk for filing. Documents tendered to the Clerk without payment of Court cost and fees or which do not conform to applicable rules will not be filed.
- 8.02 No additional fee shall be assessed for facsimile filings.

LENGTH OF DOCUMENT

- 9.01 Facsimile filings shall not exceed 25 pages in length. The filer shall not transmit service copies by facsimile.

EFFECTIVE DATE

- 10.01 These local rules shall be effective **February 2, 2009** and shall govern all proceedings in actions brought after they take effect and also further proceedings in pending actions, except to the extent that, in the opinion of the Court, their application in a particular action pending on the effective date would not be feasible or would work an injustice, in which event, the former procedure applies.