



IN THE CIRCUIT COURT OF KANWHA COUNTY, WEST VIRGINIA

IN RE: UNIVERSITY COMMONS LITIGATION

Civil Action No. 13-C-7000

THIS DOCUMENT APPLIES TO ALL CASES

ELECTRONIC FILING AND SERVICE CASE MANAGEMENT ORDER

By order of the Mass Litigation Panel (“Panel”) entered on May 23, 2013, all civil actions in the University Commons Litigation are subject to electronic filing and service (“e-filing and service”) beginning on **June 24, 2013**.

To facilitate expeditious and efficient communication by and among counsel, as well as case management, document retrieval and case organization, the parties will utilize the services of File & Serve*Xpress*¹ to provide electronic filing and service, notification, storage and delivery of court-filed documents through a secure website.

Consistent with the requirements of West Virginia Trial Court Rule 15.01 *et seq.*, the Court has determined that certain procedures must be followed to facilitate uniformity of case captions, case numbering and designation, and to maintain case and party information when e-filing and e-serving documents in the University Commons Litigation. Pursuant to Trial Court Rule 15.08, the Court hereby **ORDERS** the following procedures to be followed by all counsel when e-filing and e-serving documents in the University Commons Litigation.

1. Registration and Training for File & Serve*Xpress*. As set forth in the Court’s May 23, 2013 Order, **registration and training for e-filing and service is mandatory**. If a party is not registered with File & Serve*Xpress* by **June 24, 2013**, the party will not receive e-service of documents in the University Commons Litigation. Even if a party has registered and received training for e-filing and service in other Mass Litigation cases, there is specific training for e-

¹ On November 14, 2012, LexisNexis File & Serve and Texas-based CaseFile*Xpress* were acquired by a newly formed company, File & Serve*Xpress*. The Court is advised that this transfer of ownership has no impact on your File & Serve account, and your log on to File & Serve remains the same.

filing and service in the University Commons Litigation that all parties must receive. To register with File & Serve*Xpress* and to make arrangements for training contact the **File & Serve*Xpress* Customer Service Department at 1-888-529-7587** or at the following hyperlink: <http://lexisnexis.com/fileandserveextranet/Training.aspx>.

Counsel are responsible for regularly checking the File & Serve*Xpress* Resource Center for updates to West Virginia Attorney Special Instructions, Frequently Asked Questions, File & Serve*Xpress* Newsletters, and any other resources periodically posted by File & Serve*Xpress* to assist parties with appropriate procedures and best practices for successful e-filing and service.

2. Previously-filed Complaints or Third Party Complaints, Civil Case Information Statements, and Answers to Complaints or Third Party Complaints. Within **ten (10) business days** after the entry of this Order, plaintiffs are **ORDERED** to e-file the “Filed” stamped copy of any previously-filed complaint or third party complaint and civil case information statement in .pdf format into File & Serve*Xpress* using only the document types “Filed Complaint” and “Civil Case Information Statement – Complaint” in the transaction.

Within **ten (10) business days** after the entry of this Order, defendants are **ORDERED** to e-file the “Filed” stamped copy of any previously-filed answer to a complaint or to a third party complaint and civil case information statement in .pdf format into File & Serve*Xpress* using only the document types “Filed Answer” and “Civil Case Information Statement – Answer” in the transaction.

There will be no File & Serve*Xpress* transaction fee associated with this transaction. While File & Serve*Xpress* may send a courtesy email notifying plaintiffs that a new case has been uploaded and is available on File & Serve*Xpress*, it is the parties’ responsibility to check File & Serve*Xpress* in order to determine when the previously-filed complaints, third party

complaints, civil case information statements and answers to complaints and third-party complaints have been uploaded.

3. Updating Case and Party Information. Within **five (5) business days** of a case or party being dismissed, a withdrawal or substitution of counsel, or any other event that changes case or party information, the moving party is **ORDERED** to update the File & Serve*Xpress* system with the information necessary to make the change in case or party status using the Case & Party Management feature. The moving party must provide File & Serve*Xpress* with verification of the change in case or party information, either by providing File & Serve*Xpress* with the Transaction ID Number of the order or other document that verifies the change, or by uploading a copy of the order or document that verifies the change.

4. Case Captions. The cover page of each pleading shall contain the following information in the order listed below:

- a. The name of the court where the pleading is being filed (i.e., In the Circuit Court of Kanawha County);
- b. The name of the Mass Litigation case type and number (i.e., In re: University Commons Litigation, Civil Action No. 13-C-7000);
- c. A notation indicating whether the pleading applies to all cases or only a subset of cases (i.e., THIS DOCUMENT APPLIES TO ALL CASES or THIS DOCUMENT APPLIES TO:);
- d. A list of the short case title and case number of each case to which the document applies, including the initiating case number and three-letter county identifier (i.e., Mary E. Rogers v. ABC Corp., et al. Civil Action No. 12-C-123 MON).
- e. If applicable, the caption shall also state whether the filing is related to cases in a particular trial group (i.e., 2013 June Trial Group);
- f. A title stating the party and subject matter of the document (i.e., Defendant XYZ Corporation's Motion for Summary Judgment).

Specific examples of case captions are attached as **Appendix A**.

5. Master Case File. The University Commons Litigation has a Master Case File bearing the caption: "In Re: University Commons Litigation Civil Action No. 13-C-7000." **The Master Case File shall contain only pleadings or documents of general applicability to the entire University Commons Litigation**, such as trial calendars, case management orders, other orders of general applicability, notices of deposition if they are not case-specific, master pleadings, master discovery and other similar documents.

When a document is intended to be applicable to all cases within the University Commons Litigation, the title page of the document shall contain the notation "THIS DOCUMENT APPLIES TO ALL CASES" and the document shall be filed in the Master Case File. See Appendix A.

6. Individual Case Files. When a document is intended to be applicable to a specific case the title page of the document shall contain the notation "THIS DOCUMENT APPLIES TO" and the case shall be listed separately using the initiating case number(s) with the three-letter county identifier. See Appendix A.

7. Document Title Section in the File & ServeXpress E-Filing System. When e-filing and/or e-serving a document, the following information shall be provided in the document title section of File & ServeXpress to enable the Court and the parties to search for information in the system:

- a. the party or parties filing the document;
- b. a descriptive title of the document;
- c. the party or parties against whom relief is sought, if any;
- d. the nature of relief sought;

- e. the initiating case number(s) with the three-letter county identifier if the document applies to a specific case or cases (i.e., DEF ABC Corp.’s MOT FOR SJ, Civil Action No. 09-C-85 MON; PL Robert Robinson’s MOT to COMP DISC from DEF XYZ Corp, Civil Action No. 10-C-637 MON).

A standard list of abbreviations which should be used in titling documents in the document title section of the e-filing and e-service system is attached as **Appendix B**. A sample of document titles and descriptions is attached as **Appendix C**.

8. Stapling and Linking Documents. West Virginia Trial Court Rule 15.10(b) requires all e-filed documents relating to a single pleading or document submitted in the same transaction to be “electronically stapled” together using the “main” and “supporting” functionality of the e-filing and service system. This enables multiple related documents, such as a motion, memorandum of law in support, and proposed order to be kept together and identified in one transaction.

West Virginia Trial Court Rule 15.10(c) requires all e-filed documents or pleadings directly related to a previously e-filed document or pleading to be “linked” together using the “linked document feature” in the e-filing and service system. Use the “link to” column every time a responsive pleading is e-filed. For example, a response or a reply must be linked to the original motion, a joinder must be linked to the document or pleading to which a party is joining, and an answer must be linked to a complaint **if** the complaint has been uploaded into the e-filing and service system.

By linking documents together, the Court can go to one location to view all directly related documents or pleadings. It is better to take a liberal approach to the “link to” column. Any time pleadings are directly related or “go together,” they should be linked together so the

Court can easily access all the relevant pleadings. **Failure to appropriately link a document or pleading directly related to a previously e-filed document or pleading may result in the Court not considering the document or pleading.**

Except for answers to complaints, the Circuit Court Clerk will reject a document or pleading that is not linked to the previously e-filed document or pleading. If the previously e-filed document or pleading was filed prior to the case becoming subject to e-filing and service, state that the document or pleading is “directly related to” and include the title and date of the previously filed document or pleading in the document title section of File & Serve*Xpress*.

9. Proposed Orders. West Virginia Trial Court Rule 15.10(d) requires proposed orders filed for the consideration of the Presiding Judge to be filed in Rich Text Format. This enables the Court to revise proposed orders, as necessary.

10. Referencing Transaction ID Numbers in Documents. Every document filed in File & Serve*Xpress* is assigned a Transaction ID number. The Transaction ID number is located in the upper right hand corner of the document, below the date and time of e-filing. Any time a previously e-filed document is referenced in a motion, response or other document, filers shall state the Transaction ID number of the document in parentheses.

11. Discovery Materials. “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.***” (emphasis added) Rule 5(d)(2) of the West Virginia Rules of Civil Procedure. Certificates of service of discovery materials shall be e-filed. *Id.* Discovery materials may be **e-served** using the “Serve Only-Private” feature in File & Serve*Xpress*.

12. Oversized Documents and Other Items That Cannot Be E- Filed and Served.

Oversized documents, including but not limited to maps or charts, and DVDs, manuals and other items that cannot be filed and served electronically shall be filed conventionally in the office of the Clerk of the Monongalia County Circuit Court and served conventionally. Within twenty-four (24) hours of conventionally filing such oversized document or other item, the filing party is **ORDERED** to e-file a “docket entry transaction” in File & Serve*Xpress* providing the date of filing and a full description of the oversized document or item filed and served conventionally. There will be no File & Serve*Xpress* transaction fee associated with e-filing the docket entry transaction, however, the docket entry transaction must be a separate transaction and not included with other documents.

To file the docket entry transaction the filing party will go through the File & Serve*Xpress* process, but instead of uploading the oversized document or other item, the filing party will select the document type “Oversized Document/Item,” select “Submitted conventionally” from the access drop down, and enter a document title description in accordance with the requirements of Section 7 of this Order.

If the oversized document or item is an exhibit to an e-filed document, the Transaction Identification Number of the e-filed document shall be placed in the upper right-hand corner of the exhibit, (i.e., Exhibit A to Transaction ID 12345678) and the docket entry transaction shall be linked to the e-filed and served document using the “linked document feature”. See Section 8 of this Order.

13. *Pro Hac Vice* Motions. A motion for admission to practice *pro hac vice* shall not be filed in the Master Case or in multiple cases as one transaction. The motion shall be filed in each individual case in which counsel seeks admission to practice. See Rule 8.0(b) of the Rules for

Admission to the Practice of Law. If a motion for admission to practice *pro hac vice* is filed into the Master Case or using the multi-case feature, the Clerk's Office shall reject the filing.

14. Documents Filed Under Seal. "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 a sealed envelope 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." See Rule 15.12 of the West Virginia Trial Court Rules.

15. Procedure For Submitting A Confidential Document Through File & ServeXpress After The Court Has Determined A Document Is Confidential Or Confidential, Subject To A Protective Order. All three steps **must** be completed for e-filing and service to be complete. If all three steps are not completed, the confidential document may not be considered properly e-filed and served.

Step 1: E-file ONLY a transaction with the **redacted** version of the document and/or exhibit(s) by completing the following:

- Upload the redacted documents and complete the "Sending Parties" tab.
- Do not select any participants on the "Service" tab.
- On the "Review & Submit" tab, select "**File with the Court and Serve Selected Parties.**" There will be a red text box indicating no parties have been selected for service and the transaction is being sent File Only.

If the entire document and/or exhibit(s) are confidential, **E-file ONLY** a **cover sheet** containing the caption of the case, the title of the document and/or exhibit(s), and a statement that the entire document and/or exhibits are determined by the Court to be confidential or confidential, subject to a protective order. Filers must accurately enter the document title in the document title field

on File & Serve*Xpress* and should indicate in the document title field that the document is confidential or confidential, subject to a protective order.

Step 2: E-Serve ONLY-Private a separate transaction with the **un-redacted** version of the confidential document and/or exhibit(s) upon all counsel by completing the following:

- **On the “Documents” tab, select the document type “Unredacted Document (for Serve Only – Private)”** and change the setting on the Access drop down to **“Sealed.”** This setting ensures that only those parties e-served with the document(s) will be able to view the document(s). **Use the Document Access “Sealed” setting ONLY for e-service.** The “Sealed” Document Access should not be used when e-filing into the Court file.
- Complete the “Sending Parties” tab.
- Select counsel for service on the “Service” tab.
- Select the Judges who will be ruling on the document(s), and the Mass Litigation Manager using the “Additional Recipients” tab. Enter the Judges’ and the Mass Litigation Manager’s names into the name fields and click search. Check the box to the left of their name to serve them online via their File & Serve INBOX.
- **On the “Review & Submit” tab, select the Delivery Option “Serve Only – Private.”** This ensures that only those who are actually served will have the ability to see the transaction and view the document(s).

Step 3: File a hard copy of the confidential document and/or exhibit(s) in a sealed envelope with the Court. **The sealed envelope must state:**

- the appropriate Case Caption (See Section 6. Case Captions);
- the contents are Confidential or Confidential, Subject to Protective Order;
- that a redacted version of the contents were e-filed;
- the e-filing date and Transaction ID number of the e-filing; and
- a general description of the envelope’s contents (i.e., exhibits).

16. Documents Containing Personal Data Identifiers.

a. E-service. If a party wishes to e-serve counsel of record with pleadings or other documents that contain personal data identifiers, the party shall **use the “serve only – private” feature** in File & Serve*Xpress*. This will cause the document to be accessible **only** by the parties selected to be served.

b. E-filing and Service. To promote electronic access to case files while also protecting personal privacy and other legitimate interests, counsel and the parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all pleadings filed with the Court, including exhibits attached to pleadings, whether filed electronically or in paper, unless otherwise ordered by the Court. **Responsibility for redacting personal data identifiers rests solely with counsel and the parties. The Clerk will not review each pleading for compliance regarding redaction of personal data identifiers.**

- 1. Social Security numbers.** If an individual's social security number must be included in a pleading, only the last four (4) digits of that number should be included.
- 2. Dates of birth.** If an individual's date of birth must be included in a pleading, only the year should be used.
- 3. Financial account numbers.** If financial account numbers must be included in a pleading, only the last four (4) digits of those numbers should be used.
- 4. Names of minor children.** If the involvement of a minor child must be included in a pleading, only the initials of the child should be used.
- 5. Medical information.** If medical information is intended to be disclosed in any public filing, the party intending to disclose such information shall give the party whose medical information is the subject of such disclosure ten (10) days notice of such intended disclosure, including identification of the specific medical information the party intends to disclose. If the party whose medical information is intended to be disclosed believes such information requires the additional protection of filing with the Court under seal, that party shall identify the medical information it believes

should be filed under seal to the party who intends to disclose the information as soon as practicable, but no later than ten (10) days after receiving notice of such intended disclosure. If the parties are unable to agree as to the extent of additional protection, if any, to be applied, the party whose medical information is intended to be disclosed shall file a motion to seal with the Court for a determination as to whether, and to what extent, the identified medical information shall be sealed or otherwise further protected.

ENTER: June 24, 2013

/s/ Derek C. Swope
Lead Presiding Judge
University Commons Litigation

APPENDIX A

EXAMPLES OF CASE CAPTIONS

For a document that applies to all cases:

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
IN RE: MOUNTAIN STATE UNIVERSITY LITIGATION CIVIL ACTON NO. 12-C-9000

THIS DOCUMENT APPLIES TO ALL CASES

CASE MANAGEMENT ORDER

For a document that applies to specific cases:

Example 1:

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
IN RE: UNIVERSITY COMMONS LITIGATION CIVIL ACTON NO. 13-C-7000

THIS DOCUMENT APPLIES TO:

University Commons Riverside Home Owners Association, Inc.
v. University Commons Morgantown, LLC, et al. Civil Action No: 09-C-85 MON

PLAINTIFF'S MOTION TO COMPEL

Example 2:

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
IN RE: UNIVERSITY COMMONS LITIGATION CIVIL ACTON NO. 13-C-7000

THIS DOCUMENT APPLIES TO:

University Commons Riverside Home Owners Association, Inc.
v. R.E. Crawford Construction, Inc., et al. Civil Action No: 10-C-637 MON

DEFENDANT ABC CORPORATION'S MOTION TO DISMISS

APPENDIX B

STANDARD LIST OF ABBREVIATIONS FOR USE IN THE DOCUMENT TITLE FIELD OF THE E-FILING AND SERVICE SYSTEM

ABST	ABSTRACT
A	ADMINISTRATIVE
ADM	ADMISSION
AFD	AFFIDAVIT
AMD	AMENDED
AGRMT	AGREEMENT
AMOTH	AMONG OTHER THINGS
ANS	ANSWER
ATTY	ATTORNEY
COS	CERTIFICATE OF SERVICE
CC	CERTIFIED COPY
CM	CERTIFIED MAIL
CMC	CERTIFIED MAIL CARD
CLK	CLERK
CIR	CIRCUIT
CIV	CIVIL
COMP	COMPEL
CONF	CONFERENCE
CPY	COPY
C OF R	COUNSEL OF RECORD
CNTR-CLM	COUNTERCLAIM
CT	COURT
CP	CREDIBLE PERSON
CR CL	CROSSCLAIM
DEFS	DEFENDANTS
DISCOV	DISCOVERY
DISCL	DISCLOSURE
DISM	DISMISSAL
DOCS	DOCUMENTS
EXH	EXHIBIT
GAL	GUARDIAN AD LITEM
GRT	GRANTED/GRANTING
HRG	HEARING
ID	IDENTIFY/IDENTIFICATION
INSTR	INSTRUCTIONS
INTERR	INTERROGATORIES
ISD	ISSUED
JDG	JUDGE
JUDG	JUDGMENT
JRY	JURY

JV	JURY VERDICT
LET	LETTER
MEMO	MEMORANDUM
MOT	MOTION
NOT	NOTICE
NOT APP	NOTICE OF APPEARANCE
NOT HRG	NOTICE OF HEARING
NOS	NOTICE OF SERVICE
NPT	NUNC PRO TUNC
OBJ	OBJECTION
OPPOS	OPPOSITION
OBO	ON BEHALF OF
O	ORDER
PET	PETITION
PLS	PLAINTIFFS
POD	PRODUCTION OF DOCUMENTS
PROT O	PROTECTIVE ORDER
REC	RECEIVE
REPS	REPRESENTATIVE
REQ	REQUEST
RESP	RESPONSE
R/S	RETURN OF SERVICE
SCHED	SCHEDULING/SCHEDULED
SO	SCHEDULING ORDER
S	SETTLEMENT/SETTLE
S/F	SIGNED FOR
SH	SHERIFF
SOS	SECRETARY OF STATE
STIP	STIPULATION
SUBP	SUBPOENA
SUBP DT	SUBPOENA DUCES TECUM
SJ	SUMMARY JUDGMENT
SUPP	SUPPLEMENTAL
TRANS	TRANSCRIPT
TRANSF	TRANSFER
TR	TRIAL
TD	TRIAL DATE
VERD	VERDICT
VERIF	VERIFICATION
W/	WITH
W/D	WITHDRAW
W/O	WITHOUT
WIT	WITNESS

APPENDIX C

EXAMPLES OF DOCUMENT TITLE DESCRIPTIONS

“Defendants ABC Corporation’s and XYZ Corporation’s Motion for Summary Judgment”

Document Title Description:

DEFS ABC Corp.’s and XYZ Corp.’s MOT for SJ

“Plaintiff’s Certificate of Service of Interrogatories and Request for Production of Documents on ABC Corporation”

Document Title Description:

PLS COS of INTERR and REQ for POD to ABC Corp.