



REPORT ON E-FILING ISSUES

To: Appellate Lawyers Association Officers and Directors
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I. Preliminary Statement

In 2019, the Appellate Lawyers Association (“ALA”) created a Special Committee on E-filing (the “Committee”) to solicit input from the ALA’s membership about Illinois’s e-filing system. The Committee members shared their own experiences with the system and administered a survey to the ALA’s membership seeking feedback on the system’s usage. This report summarizes the Committee’s findings and recommendations.

II. Background

In September 2002, the Illinois Supreme Court adopted a permissive e-filing pilot program for circuit courts across the state. *See Ill. S. Ct. M.R. 18368* (Sept. 19, 2002) at 1. Initial participation was limited. *See Ill. S. Ct. M.R. 18368* (Jan. 22, 2016) at 1. During the program’s first decade, only five counties opted in. *Id.*

In October 2012, to encourage the expansion of e-filing, the supreme court concluded the pilot status of civil e-filing and authorized permanent e-filing upon a circuit court’s request and the supreme court’s approval. *Id.* Between October 2012 and January 2016, however, only 15 of 102 Illinois counties sought, and were granted, e-filing approval. *Id.*

To overcome the challenges of adopting e-filing on a circuit-by-circuit basis, the Illinois Supreme Court entered an order on January 22, 2016, mandating e-filing in all civil cases pending



before it, as well as before the Illinois Appellate Court and the Illinois circuit courts. *See id.* Under the order, civil e-filing became mandatory in the supreme court and the appellate court on July 1, 2017, and in the circuit courts on January 1, 2018. *Id.* at 2. Other key requirements of the order were as follows:

- In the Illinois Supreme Court and the Illinois Appellate Court, e-filing in civil cases would occur “consistent with applicable policies, guidelines, and/or standards authorized by the Supreme Court and through the utilization of a centralized electronic filing manager (EFM) authorized by the Supreme Court.” *Id.* The centralized EFM would be “integrated with the Supreme Court Clerk and the five Illinois Appellate Court Clerk case management systems.” *Id.*
- In circuit courts that had not yet implemented e-filing as of the date of the supreme court’s order, e-filing in civil cases would occur through a centralized EFM authorized by the supreme court. *Id.* at 2–3. The centralized EFM would be “integrated with each Circuit Court’s case management system.” *Id.* at 3.
- In circuit courts that had already implemented e-filing as of the date of the supreme court’s order, e-filing in civil cases would occur “through the utilization of an [EFM] authorized by the Chief Circuit Judge and Circuit Clerk or the centralized EFM authorized by the Supreme Court,” with the supreme court to designate “a future date certain” for using the centralized EFM. *Id.* The centralized EFM would be “integrated with each Circuit Court’s case management system.” *Id.*
- Except in emergencies, or as otherwise provided by rule, once courts became subject to mandatory e-filing, attorneys and self-represented litigants would be required to e-file all documents in civil cases pending before those courts. *Id.* Furthermore, except in emergencies, courts could not accept, file, or docket any documents filed by attorneys or self-represented litigants that were not filed in compliance with the supreme court’s mandatory e-filing order. *Id.*
- Effective July 1, 2017, all records on appeal would be prepared electronically and transmitted from each circuit court to its respective reviewing court using the central EFM service. *Id.*



Following the entry of the supreme court’s January 2016 order, in August 2016, the Administrative Office of the Illinois Courts selected Tyler Technologies Inc. (“Tyler”) to provide a statewide e-filing system, to be known as “eFileIL,” using Tyler’s Odyssey File & Serve platform.¹ At the time, Illinois’s courts were operating more than a dozen different case-management software systems. *Id.* The eFileIL e-filing system was designed to interface with each existing system. *Id.*

On May 30, 2017, the supreme court entered a new order “with the goal of further facilitating full statewide e-Filing for Illinois courts.” *See* Ill. S. Ct. M.R. 18368 (May 30, 2017). The May 2017 order contained the following requirements:

- By July 1, 2018, all circuit courts with standalone e-filing systems would complete migration from those systems to eFileIL. *Id.* at 1.
- By July 1, 2018, all courts would make their case documents and information available “to the statewide remote access system known as re:SearchIL.” *Id.*
- Circuit courts could e-file “criminal case types . . . and juvenile case types . . . in a permissive manner through eFileIL.” *Id.* Permissive e-filing in criminal and juvenile cases would apply only to filings after the cases were initiated and assigned a case number. *Id.* Criminal and juvenile case initiation would continue under current practices. *Id.*
- E-filing in criminal cases pending before the Illinois Supreme Court and the Illinois Appellate Court, which began on a permissive basis during the interim between the January 2016 order and the May 2017 order, would be allowed to continue under current practices. *Id.* at Ann., ¶ 5.

Over three years have now passed since mandatory e-filing began in the supreme court and the appellate court. And nearly three years have passed since it began in the circuit courts. The appellate bar regularly uses the e-filing system at all three levels of the court system. Notices of appeal, record requests, and transcript requests, for example, are filed in the circuit courts; motions and briefs are filed in the appellate court and the supreme court. This broad usage of the e-filing system gives appellate practitioners a unique perspective on its strengths and weaknesses, as discussed below.

¹ 8/9/16 Press Release, *available at*: <https://www.businesswire.com/news/home/20160808005067/en/> (last visited on July 12, 2019).



III. Findings

A. Overview

ALA survey respondents reported they have e-filed documents in all districts of the appellate court, in the appellate court's Workers' Compensation Commission Division, and in the supreme court. Most respondents use Odyssey eFileIL as an Electronic Filing Service Provider ("EFSP"). But File & Serve Illinois, File & Serve Xpress, i2File, and GreenFiling, among others, are also in use.

Overall, 48.65 percent of survey respondents reported a positive experience with e-filing, 27.03 percent reported a negative experience, and 24.32 percent reported a neutral experience. Consistent with these percentages, specific comments on the system ran the gamut from unqualified endorsement (e.g., "I really like the e-filing system") to outright rejection (e.g., "Scrap the whole thing and do it the old-fashioned way").

Below is a summary of these comments. On balance, they demonstrate that, although appellate practitioners have embraced the system and appreciate the professionalism and courtesy of the clerks they communicate with for assistance, there is room to improve the system's administration at both the court and EFSP levels.

B. Positive Feedback

Several survey respondents commented on their positive experiences with the e-filing system. Among other things, practitioners like e-filing because:

- E-filing reduces filing costs.
- E-filing facilitates last-minute edits to briefs.
- E-filing is generally simpler and more straightforward than paper-and-mail filing.
- Clerks are responsive to e-filers' concerns and consistently do their best to provide help.

The e-filing system provides a level of convenience that did not exist before its adoption. Appellate attorneys no longer have to coordinate potentially cumbersome in-person filings or filings by mail under Illinois Supreme Court Rule 373. *See* Ill. S. Ct. R. 373 (amended to reserve filings by mail for "incarcerated, self-represented litigant[s]"). Illinois state-court practice is gradually evolving to resemble federal practice under the Public Access to Court Electronic



Records (“PACER”) system, which has been in effect for nearly two decades and is widely perceived as the e-filing gold standard. As one survey respondent aptly put it, Illinois’s system seems to “need[] evolutionary change, not revolutionary change.”

C. Criticisms

Criticisms of the e-filing system fall into nine categories: (1) uniformity and clarity of the e-filing rules, (2) acceptance and rejection of filings, (3) docket access, (4) service, (5) menu options, (6) distribution of orders and opinions, (7) the record on appeal, (8) courtesy copies, and (9) technical issues. Each category is discussed below.

1. Uniformity and Clarity of E-Filing Rules

The Illinois Supreme Court has adopted numerous rules and standards governing mandatory e-filing since the system’s inception in 2016. *See, e.g.*, Ill. S. Ct. M.R. 18368 (Jan. 22, 2016); Ill. S. Ct. M.R. 18368 (May 30, 2017); *eFileIL Electronic Document Standards* (Nov. 2017, v. 1.2); *Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal* (June 2017, v. 1.1); *Electronic Filing and Procedures and User Manual for the Supreme Court of Illinois* (July 27, 2018). Yet various local rules and practices at the appellate- and circuit-court levels remain in place. *See, e.g.*, Clerk of the Circuit Court of Cook County, *Special Instructions for E-Filing in Cook County*,² *Fourth District Appellate Court Electronic Filing Procedures and User Manual* (Nov. 14, 2017).

The lack of uniformity in e-filing rules among the circuit courts and appellate districts makes it more difficult for practitioners to ensure compliance with the rules. Although some local variations may be inevitable, not every court expressly summarizes its local practices. As a result, practitioners often rely on trial and error to file documents in courts where they previously have not used the e-filing system.

In certain instances, the rules are simply unclear. For example, there is confusion over whether filings in the Illinois Supreme Court must be accompanied by notices of filing. And there is confusion across courts over whether multiple documents—such as multiple simultaneously filed motions; multipart filings containing a notice of filing, brief, and appendix; or multipart filings containing a notice of filing, motion, and proposed order—can be filed in the same electronic “envelope.” In isolation, these items may seem trivial. But each can result in the rejection of a filing, which can have serious consequences for an appeal.

² Clerk of the Circuit Court of Cook County, *Special Instructions for E-Filing in Cook County*, available at: www.cookcountyclerkofcourt.org/NewWebsite/efile-Information-Portal.aspx (last visited on July 12, 2019).



2. Acceptance and Rejection of Filings

Practitioners' single biggest concern with the e-filing system is clerks' nonuniform acceptance and rejection of filings. The system's acceptance/rejection feature relies on clerks' discretion to determine whether filings should be accepted. This raises several issues.

First, different clerks apply different standards to determine whether filings should be accepted. The lack of uniformity leads to inconsistent acceptances and rejections and leaves practitioners guessing about which filings will pass muster. Attorneys who do not regularly handle appeals find themselves hindered by unanticipated rejection issues. And even veteran appellate practitioners who frequently file documents in the appellate court and the supreme court experience difficulties.

Second, in some courts, the delay between the time a document is submitted and the time it is accepted or rejected remains problematic. To be sure, processing times have decreased since e-filing was initially rolled out. But delays still occur. And delays can prevent practitioners from correcting deficiencies in their filings before their deadlines have elapsed. Indeed, even where filings are accepted, delayed acceptances create disruption and uncertainty in the filing process.

Third, and most critically, there is no mechanism for backdating corrected versions of rejected filings. If a filing is rejected based on a nonsubstantive technicality, like the color of a cover page or the wording of a certificate of service, then the corrected document is stamped as being filed on the date the document is resubmitted. In cases where a filer files a document on the due date and does not receive a rejection notice until the following day, the corrected filing will be considered untimely.

Issues with untimeliness range from irritating to devastating. At best, an attorney may have to prepare a motion for leave to file a rejected document instanter and explain to a client why the document was rejected. At worst, an untimely filing may have jurisdictional implications, or perceived jurisdictional implications, that cannot be corrected. In one anecdote provided to the Committee, a petition for rehearing was rejected because the cover was the wrong color. The petition was filed on the day it was due; the rejection notice was not issued until the following day. When the petitioner sought leave to refile the document with a corrected cover, the appellate court denied leave for lack of jurisdiction on the basis that the motion for leave was filed after the filing deadline for the petition.

Fourth, some documents are rejected without explanation based on technical EFSP problems outside the control of clerks or attorneys. In these situations, there is no way to file the document in the reviewing court since paper filings are no longer allowed.



3. Docket Access

Lawyers who practice in federal court are familiar with the PACER system's electronic docket sheets, which provide attorneys and members of the general public with concise, organized lists of filings, orders, and notifications in each pending case. At least one Illinois county, Kane County, operates an online docket with similar features, allowing users who log on with their eFileIL credentials to access all civil dockets and download file-stamped copies of all docket materials for free. Other states' trial-level courts—New York's and New Jersey's, for example—have a similar system.

Illinois's e-filing system, by contrast, currently does not provide full access to centralized docket sheets for each case. To access a docket sheet through re:SearchIL, an attorney must have an appearance on file. And even appearances do not automatically guarantee that counsel will receive access to re:SearchIL's docket information. Additionally, the docket information in re:SearchIL includes only pleadings, not orders or other notifications.

Docket sheets are a valuable resource. They provide contact information for service purposes. They eliminate the need to call clerks' offices for docket updates. They provide accurate chronological information for appellate attorneys seeking to familiarize themselves with new cases. And they provide access to PDF versions of pleadings and orders. Complete, reliable access to electronic docket sheets is an important feature of a successful e-filing system.

4. Service

Illinois Supreme Court Rule 11 requires electronic service by EFSP or, if EFSP service is unavailable, by email. *See* Ill. S. Ct. R. 11(c). As a result, each EFSP has a service function. Unfortunately, EFSP service is frequently unreliable.

Common service problems include (1) populating the service list for a particular case with the email addresses of all opposing counsel of record, given that one attorney cannot enter another attorney's email address into a service list if the address has not been included in eFileIL's master service database; (2) establishing the same attorney as a service contact for multiple parties in a multiparty appeal where not all the parties are displayed by the EFSP; (3) receiving service emails for other attorneys' cases, where, once someone becomes a service contact on a particular case, they become a service contact for all cases handled by their firm; and (4) failing to receive service emails, despite being identified as a service contact.

These issues often make it difficult to comply with Rule 11's electronic-service requirement using an EFSP. Instead of fully relying on EFSP service, many practitioners continue to serve opposing counsel by email as a backup.



5. Menu Options

EFSP menu options provide categories for practitioners to use in e-filing documents. Accurate categories can decrease user error by ensuring that each type of filing has an appropriate designation. They can also help clerks identify the nature of filings and the deadlines and other requirements associated with them. Additionally, accurate filing categories result in accurate re:SearchIL docket entries.

EFSP web pages do not include comprehensive drop-down menus. For example, there is no category for oral-argument confirmations. Nor is there a category for letter filings, which several appellate districts use to receive notice that counsel is unavailable for oral argument. Nor is there a category for miscellaneous filings, other than miscellaneous motions. Enhanced drop-down menus would facilitate e-filings on both the user side and the court side by allowing e-filers to categorize their submissions more accurately.

6. Distribution of Orders and Opinions

Illinois's e-filing system currently does not transmit court orders or opinions to attorneys. In the appellate court, each district uses its own email system to notify counsel of its decisions. In the First District, certain orders continue to be sent by regular mail, occasionally resulting in situations where orders either do not reach attorneys at all or do not reach them in a timely way.

Missing and late orders are a great concern for practitioners. Adapting the e-filing system to distribute court orders and opinions, like PACER does in the federal system, would alleviate this concern and promote more efficient case administration.

7. The Record on Appeal

After the Illinois Supreme Court entered its January 2016 order on mandatory e-filing, the court adopted a set of standards and requirements governing the electronic filing of records on appeal. *See Supreme Court of Illinois Standards and Requirements for Electronic Filing the Record on Appeal* (June 2017, v. 1.1). Records currently are available through re:SearchIL. But access is unpredictable.

For example, in some instances, circuit clerks' offices inform counsel that unidentified technical problems have prevented them from uploading records to the appellate court. In others, records are incomplete, are not properly paginated, or are not searchable. These issues can result in lengthy delays.



Additionally, the Circuit Court of Cook County has a separate website for filing certain appellate documents, like transcripts, exhibits, and supplemental records. The separate website is not clearly advertised and creates confusion.³

Finally, email messages transmitting links to records—especially lengthy records—are often duplicative and confusing. Each volume is typically the subject of a separate email. And it is not uncommon for multiple emails to be sent regarding each volume. Instead of receiving a single link to a fully unified record, attorneys must comb through several emails to separately download individual volumes.

8. Courtesy Copies

Despite the adoption of e-filing, the Illinois Supreme Court and the districts of the appellate court still require paper courtesy copies of briefs. Each court has different rules governing courtesy copies. *See, e.g., Electronic Filings Procedures and User Manual for the Supreme Court of Illinois*, ¶ 8; *Administrative and Procedural Rules of the Illinois Appellate Court, First District*, R. 39; *Rules of the Illinois Appellate Court, Second District*, R. 101; *Third District Appellate Court Administrative Order Seventy-Two*; *Fifth District Appellate Court Administrative Order* (Nov. 14, 2017).

Some practitioners think the courtesy-copy requirement is inconsistent with e-filing; some think there should be uniformity in how many courtesy copies each appellate district requires; some think the rules should require providing courtesy copies to opposing counsel; some think it is too difficult to create legible color copies of cover pages containing electronic file stamps. There is no clear consensus on the best practice. There is, however, a desire for a more systematic approach that addresses these issues.

9. Technical Issues

Odyssey eFileIL is the free EFSP provided by Tyler to file documents using Illinois's e-filing system. Several other EFSPs are available as well. Some are free; others are not.

Occasionally, for technical reasons, third-party EFSPs that attempt to access eFileIL are unable to do so. As a result, some filings that should be accepted are not. And some appeals initiated using third-party EFSPs do not appear on re:SearchIL. This leads many filers to use Odyssey eFileIL as an alternative EFSP, even though they prefer other vendors and pay to use those vendors instead of Odyssey.

³ Clerk of the Circuit Court of Cook County, *available at*: <https://appeals.cookcountyclerkofcourt.org> (last visited on July 12, 2019).



10. Miscellaneous

In addition to the nine categories discussed above, survey respondents raised several miscellaneous concerns with the e-filing system. Those concerns included the following:

- The e-filing system cannot adequately accommodate emergency motions. For example, circuit courts typically will not allow emergency motions to be filed until the matters into which they are filed are assigned case numbers. Oftentimes, assigning a case number to a new complaint can take multiple days, delaying litigants' efforts to pursue emergency relief.
- Under Illinois Supreme Court Rule 307, which governs interlocutory appeals as of right, an appellant has thirty days to file a notice of appeal in the circuit court and a supporting record in the appellate court. *See* Ill. S. Ct. R. 307(a). But if the appellant files the notice of appeal on the thirtieth day, then the appellate court cannot accept the supporting record on that day. The appellate court has no "case" into which it can receive the record until it receives the notice of appeal from the circuit court.
- Although most attorneys have access to the equipment necessary to e-file documents (e.g., computers, Internet connections, scanners, and PDF software), some lawyers, and many nonlawyers, still do not have these capabilities.

IV. Recommendations

A well-functioning e-filing system should increase the efficiency of filings, improve the court system's transparency, and promote uniformity in the way appeals are administered across the state. To better achieve these goals, the Committee recommends the changes described below.

Uniformity and Clarity of E-Filing Rules: To address variations in local filing practices, and to provide operational guidelines for courts throughout the state, the supreme court should issue uniform standards governing e-filing, docket access, service, and the distribution of orders and opinions, across all courts at all levels. Some courts have already published e-filing standards. *See, e.g., Electronic Filing and Procedures and User Manual for the Supreme Court of Illinois* (July 27, 2018); *Fourth District Appellate Court Electronic Filing Procedures and User Manual* (Nov. 14, 2017). But those standards are not available for each court. They contain certain general information that, while important, is not necessarily intended to promote the acceptance of individual filings. And because they are court-specific, they are not geared toward unifying e-filing practices throughout the state.



Local variations to e-filing rules may be necessary at the circuit-court level. If so, then each circuit court should be required to publish a “crib sheet” or “summary sheet” specifying exactly how documents must be filed and in what order. Summary sheets setting forth key filing requirements could help reduce filing errors and increase the acceptance rate of filings.

Acceptance and Rejection of Filings: Clerks have always had the discretion to accept or reject filings based on technical deficiencies. But with the advent of e-filing, rejections have become much more common. At a recent ALA seminar, for example, one of the deputy clerks for the First District estimated that the court rejects approximately 17 percent of electronic filings, a far higher percentage than under the traditional paper-and-mail filing system.

The problem with the current e-filing system is not clerks’ discretion per se, but rather the consequences of delayed rejections and the inability to backdate filings to ensure that minor technical deficiencies do not render otherwise acceptable filings untimely. If clerks can reject filings, then published standards should state the exact circumstances under which rejections will happen and give attorneys a specific time frame in which to make corrections. Where corrections are made within that time frame, a filing should automatically be considered timely. This can be accomplished by allowing attorneys to refile a rejected filing into its original “envelope” to preserve the original transmission date and time.

Docket Access: The e-filing system’s re:SearchIL portal is still under development. Once the system is fully operational, it should work much like PACER. If lawyers appear in a case, then they will automatically have docket access; if they do not appear in a case, then they will still be able to search other dockets for a fee. While re:SearchIL remains under development, however, Tyler must ensure that each case in which an attorney appears does, in fact, become accessible on the attorney’s re:SearchIL page. Attorney access should be comprehensive, including docket reports, filings, orders, and opinions.

Service: Service issues arise primarily from difficulties updating service lists and from errors by Tyler in transmitting service emails. Tyler should be given administrative privileges that allow it to add email addresses to the eFileIL service database, rather than relying on counsel to make updates. Similarly, Tyler should be given administrative privileges that allow it to add email addresses to the service contacts for particular cases if it is brought to Tyler’s attention that not all attorneys of record are receiving service notifications in a given case. Additionally, as confirmation of service, the electronic notifications sent to attorneys of record should list all persons on whom electronic service is actually made.

Menu Options: The menu options for e-filings need to be expanded. Options for oral-argument confirmations, letter filings, motions to cite additional authority, and motions to publish Rule 23 orders, for example, should be added to drop-down menus. Most importantly, practitioners should have the ability to independently categorize miscellaneous filings that do not fall neatly



into existing categories. If the “miscellaneous” category is misused, then clerks can send deficiency notices. But it is better to have a flexible “miscellaneous” category than to force a filer to fit a filing into a category clearly not intended to accommodate it.

Distribution of Orders and Opinions: The time for integrating courts’ distribution systems for orders and opinions into the e-filing system is long overdue. The Administrative Office of the Illinois Courts should purchase a technological option that allows direct distribution of orders and opinions through the e-filing system without courts having to distribute their decisions by email or regular mail. This option would make eFileIL more akin to PACER and avoid the delays and inconsistencies that exist under the current system. It also would help integrate orders and opinions into the docket information available through re:SearchIL.

The Record on Appeal: Issues with electronic records on appeal are related, in part, to issues with re:SearchIL. As re:SearchIL evolves, it should be easier for clerks to ensure that records are properly compiled and uploaded. In the meantime, to avoid the confusion resulting from multiple notification emails for multivolume records, clerks’ offices should issue a single email containing a single link to the entire record once the record has been prepared and is ready to be reviewed.

Courtesy Copies: Appellate judges continue to want hard-copy access to briefs and motions, as illustrated by the local rules and standards adopted by the Illinois Supreme Court and the districts of the Illinois Appellate Court. This is understandable. But to minimize confusion among practitioners, there should be uniformity in how many courtesy copies each appellate district requires.

Courts should also amend their courtesy-copy rules to account for the difficulties some practitioners have experienced creating electronic color copies of cover pages for briefs. Although certain PDF software allows users to add and remove colors to and from PDF documents, software functionality varies. Practitioners should be allowed to e-file versions of briefs with white cover pages and then print courtesy copies with color cover pages. This is consistent with the procedure used by the United States Court of Appeals for the Seventh Circuit and other federal courts of appeals.

Technical Issues: Illinois’s e-filing system is designed to give practitioners access to a variety of EFSPs rather than forcing them to rely on only one. This aspect of the system differentiates it from PACER. In principle, allowing practitioners to have multiple options is a good thing. But Tyler needs to ensure that, at a technical level, all EFSPs, not just Odyssey eFileIL, have full access to the e-filing system. Otherwise, there is limited value in opening the system to multiple vendors.



Miscellaneous: Clerks' offices should be allowed to retain limited ongoing capabilities for paper filings to accommodate emergency motion practice, expedited filings, and filings by self-represented litigants with no e-filing credentials. The limited paper backup system could be phased out as the e-filing system is adapted to address these issues. For the time being, though, allowing limited paper filings would help fill certain e-filing gaps.

This could, for example, help address the issue that arises when a record in a Rule 307(a) appeal cannot be accepted on the due date because the appellate court has not yet received the notice of appeal and opened a case number. The ideal solution would be for a Rule 307(a) notice of appeal filed in the circuit court to automatically, and instantaneously, be transmitted to the appellate court. But until the technical aspects of that solution can be developed and implemented, allowing a paper copy of the supporting record to be filed in the appellate court will enable Rule 307(a) appeals to proceed in a timely manner.

Respectfully submitted,

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