

# Chicago Daily Law Bulletin®

Volume 161, No. 157

## Cost and time savings with e-mail service in state courts

The cost of mailing court papers is by no means the greatest drain on the sole practitioner's bottom line, but few would deny that service obligations can be bothersome and expensive.

Cases with large service lists or frequent filings can devour stationery, postage and labor, while materials received from other parties must be manually scanned for later use.

Worse yet, mailed items can arrive late — or sometimes not at all.

Thanks to the foresight of our state's rule makers, solos can trade their paper cuts for mouse clicks. As Illinois moves closer to the federal model for global electronic filing, consensual service by e-mail now is permitted by state rules.

The requirements for e-mail service are not complex, but must properly be followed for effective service.

### Constructive consent

Supreme Court Rule 11(b)(6) permits e-mail service of all court filings besides "process and complaints," where the attorney or party has "consented to e-mail service" and provides a "designated e-mail address of record."

Consent to e-mail service may be actual or constructive under the rules.

Actual consent arises under Supreme Court Rule 131(d), where court filers may recite, in "documents filed in any cause or served upon the opposite party," that "service via e-mail will be accepted at [e-mail address]."

Constructive consent occurs under Supreme Court Rule 11(b)(6), when an attorney or party lists "a

designated e-mail address on documents" or otherwise engages in the "use of e-mail service" in the case.

The term "designated e-mail address of record" is not specifically defined in the rules and presumably includes any e-mail address specified under Rules 131(d) or 11(b)(6).

Lastly, Rule 11(b)(6) allows for withdrawal of consent by written notice, but the rescinding party loses the right to serve others by e-mail going forward.

### Certificate of service

Under Supreme Court Rule 12(b)(6), the attorney serving by e-mail must file a certificate stating "the time and place of transmission to a designated e-mail address of record." Non-attorney filers must include the same information in affidavit form. Proofs of service should include all required recitations under Rule 12(b)(6).

E-mail service is complete the first court day following transmission, pursuant to Rule 12(f).

### *Supreme Court Rule 11(d) makes e-mail service compulsory in any circuit that adopts mandatory e-filing procedures.*

### Appellate cases

Supreme Court Rule 11 extends to service in the reviewing courts, and therefore, e-mail service rules apply. But make sure to follow all appellate service requirements.

For example, if three copies of an appellate brief must be served on opposing counsel per Supreme Court Rule 341, make sure to serve three separate PDF copies by e-mail and draft your certifi-

### SOLE SPEAK

#### GLENN E. HEILIZER



*Glenn E. Heilizer is a veteran litigator and sole practitioner based in Chicago and is the founder of the Sole Practitioners Bar Association of Illinois. He handles commercial disputes in the federal, state and appellate courts in Illinois and Wisconsin. He welcomes all questions and comments, and he can be reached at [glenn@heilizer.com](mailto:glenn@heilizer.com).*

cate of service accordingly, to comply with the letter of the appellate rule.

### Delivery receipts

If you have a case where some or all participants have not already consented to e-mail service, or you are unsure, consider

preparing and filing your own custom agreement. Make sure each party expressly consents and include his or her designated e-mail address of record. For added protection, have participants acknowledge they will respond to delivery-receipt requests, to ensure all e-mailed documents are received.

### In Cook County

Cook County is one of a grow-

ing number of circuit courts that accepts electronic filings and has promoted e-mail service through that program. At initial registration, participants have the option to give blanket consent for e-mail service in all cases where documents are filed electronically.

Consenting attorneys and parties receive e-filed documents automatically in any case where they have appeared, and the clerk's office furnishes the filer with a certificate reflecting that e-mail service was accomplished.

Cook County additionally promotes e-mail service for non-participant counsel and parties, by including the Rule 131(d) consent language on appearance forms and civil cover sheets. Any person may add his or her e-mail address to the form, thus consenting to e-mail service in the given case.

According to Elena Shea Demos, general counsel for the Cook County Circuit Court clerk's office, Clerk Dorothy A. Brown is committed to promoting e-mail service by filers. The clerk's efforts "have been well-received," Demos said.

### Mandatory e-mail service

Supreme Court Rule 11(d) makes e-mail service compulsory in any circuit that adopts mandatory e-filing procedures. No circuit has yet implemented mandatory e-filing, but the writing is on the wall.

So, on your next case, consider arranging for e-mail service with your opposing counsel. Not only will electronic service make your practice more efficient in the present, but you also will be ready for future compulsory requirements of the digital age.