

New and Amended Supreme Court Rules bring E-Filing; Service by E-Mail; Heightened Protection for Personal Identity Information; the Prohibition of Filing Discovery; and the Redaction of Privileged Documents or Work Product

by Catherine D. Battista, Esq.

With the arrival of 2013, new and amended Illinois Supreme Court Rules take effect that historically change the way civil attorneys practice law in Illinois. The new and amended rules allow courts to electronically file documents in civil cases; allow for service of documents by e-mail; prohibit personal identity information from being filed with the court in civil cases, including family law matters; prohibit the filing of discovery with the court; and allow for the redaction of privileged materials or work product that is inadvertently produced during the course of litigation.

According to an October 24, 2012 press release from the Illinois Supreme Court, the new and amended rules apply only to civil cases and are the product of the Illinois Supreme Court special e-business committee.¹

On December 21, 2012, Rule 11, entitled "Manner of Serving Documents Other Than Process and Complaint on Parties Not in Default in the Trial and Reviewing Courts," was amended to allow service by e-mail. The amendment took effect on January 1, 2013.

While the traditional forms of service are still available to attorneys, (such as, mail, personal delivery, or facsimile), amended Rule 11 states under "Method" of service that documents may also be served:

[B]y transmitting them via e-mail



to the designated e-mail address of record for the attorney or party if the attorney or party consented to e-mail service. The listing of a designated e-mail address on documents or the use of e-mail service shall be deemed consent by that party or attorney to receive e-mail service. Any party may rescind consent of e-mail service in a case by serving a notice on all parties or the attorneys of record. A party or attorney who has rescinded consent to e-mail service in a case may not serve another party or attorney by e-mail in that case; or

[B]y transmission through a service provider that provides an electronic in-box for those parties registered to use the service.²

Amended Rule 11 also goes on to state that:

Mandatory E-Mail Service. The use of e-mail service is mandatory if a local circuit adopts mandatory e-filing pursuant to Illinois

Supreme Court Electronic Filing Standards.³

In other words, "traditional" forms of service shall not be permitted if a circuit adopts mandatory e-filing. To date, no circuit has adopted mandatory e-filing, although DuPage County, the poster child for an effective e-filing program, is on track to make e-filing mandatory in the near future. Cook, Madison, St. Clair and Will Counties also have e-filing programs.

Under the amended rules, if the parties agree to e-mail service, "service by e-mail is complete on the first court day following transmission."⁴ Based upon the plain language of the rule, if an attorney prepares and emails a document for service on a Saturday or Sunday, service is effective on Monday, absent a court holiday.

On January 4, 2013, Rule 131 entitled "Form of Papers" was amended to take immediate effect as follows:

Name, Address, Telephone Number, and **E-mail Address** of Responsible Attorney or Attorneys. All documents filed in any cause or served upon the opposite party shall bear the name, business address, and telephone number of the responsible attorney or attorneys and the law firm filing the same, or the mailing address, and telephone number of the party who appears in his own proper person. If the

responsible attorney or attorneys or the party who appears in his own proper person will accept service by facsimile transmission or **via e-mail**, then the paper document shall also bear the statement "Service [by facsimile transmission] [**via e-mail**] will be accepted at [facsimile telephone number] [**e-mail address**]." ⁵

Moving forward, if an attorney accepts service by e-mail, he or she should include an e-mail address on documents filed with the court.

The adoption of e-filing as the norm raises legitimate concerns about the protection of personal information. In the past, it was not uncommon for a practitioner to file a document with the court that contained a client's date of birth, Social Security number or other personal identity information. Now that documents can be e-filed with the court, the electronic transmission of those documents containing personal identity information may become the prey of hackers and other technology pirates. In response to that concern, the Illinois Supreme Court enacted Rule 138, which takes effect on July 1, 2013.

Rule 138 states that "[i]n civil cases, personal identity information shall not be included in documents or exhibits filed with the court. This rule applies to paper and electronic filings." Rule 138 defines personal identity information as: Social Security numbers; dates of birth; mother's maiden name; driver's license numbers; financial account numbers; and debit and credit card numbers. ⁶ The trial court also has discretion to "order other types of information redacted or filed confidentially, consistent with the purpose and procedures of this rule." ⁷

The trial court may order that certain documents or exhibits that contain personal identity information can be filed with the court. If so, "the information shall be filed under seal in a document titled 'Notice of Personal

Identity Information Within Court Filing.' The notice shall identify the documents or exhibits that contain personal identity information and the order requiring the filing. The notice shall remain confidential, except to parties or as the court may order." ⁸

Rule 138 alleviates any responsibility by the court or the clerk to comply with its terms. ⁹ Rather, the burden is put onto the practitioner or pro se litigant to make sure that no personal identity information is filed with the Court. If a document or exhibit is filed that contains personal identity information, a party or other affected person may file a motion requesting that information be redacted. ¹⁰ If the court finds that the inclusion of personal identity information was willful, the court may award the prevailing party "reasonable expenses" including attorney fees and court costs. ¹¹ The Supreme Court's use of the word "willful" is plainly used to distinguish between personal identity information that is filed inadvertently versus intentionally.

Rule 138 will affect all civil attorneys but arguably will have the greatest impact on family law practitioners, who commonly file documents with the court that contain the personal information of the parties and other individuals. In the Committee Comments to Rule 138, the Court stated that "Supreme Court Rule 138 ... prohibits the filing of personal identity information that could be used for identity theft. For instance, financial disclosure statements used in family law cases typically contain a variety of personal information that shall remain confidential to protect privacy concerns." ¹²

Originally scheduled to take effect on January 1, 2013, the Supreme Court extended the effective date to July 1, 2013 presumably to give practitioners time to adjust to its requirements.

On October 24, 2012, Rule 201 entitled "General Discovery Provisions" was amended to prohibit the filing of

any discovery with the court: "No discovery may be filed with the clerk of the circuit court except by order of court. Local rules shall not require the filing of discovery. Any party serving discovery shall file a certificate of service of discovery document." ¹³ Previously, in some circuits, parties were required to file their discovery responses and answers with the court. Now, absent a court order, parties shall only file a certificate of service with the circuit court clerk. According to the Committee Comments regarding the amendment of Rule 201, "The rule is intended to minimize any invasion of privacy that a litigant may have by filing discovery in a public court file." ¹⁴ Notably, based upon a plain reading of the rule, certificates of service of discovery documents must now be filed in all circuits.

On November 28, 2012, Rule 201 was further amended to allow the redaction of materials inadvertently produced during discovery that are protected by privilege or the attorney work product rule:

Asserting Privilege or Work Product Following Discovery Disclosure. If information inadvertently produced in discovery is subject to a claim of privilege or of work-product protection, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, each receiving party must promptly return, sequester, or destroy the specified information and any copies; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the receiving party disclosed the information to third parties before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must also preserve the information until the claim is resolved. ¹⁵

Both amendments to Rule 201 took effect on January 1, 2013.

The new and amended Supreme Court Rules herald the end of an era in the legal profession that relied upon paper and traditional forms of service and moves Illinois courts to a modern way of practicing law. According to Chief Justice Kilbride, the overall goal for the new and amended rules is to move Illinois into the 21st century when it comes to e-business and e-filing.

"Illinois is behind on using e-business and e-filing in its courts. We know that," said the Chief Justice. "These uniform, statewide standards allow e-filing in our courts; it is no longer part of a wish list. Circuit courts may now use e-filing's greater efficiencies and long-range cost savings in addition to offering a modern way of doing things."¹⁶

E-filing and electronic service not only creates efficiency in the court system, but also helps attorneys cut costs in their respective practices. The cost of postage and paper for any law practice or agency can be exorbitant. E-filing and e-service eliminates those costs. It is also environmentally friendly.

With the adoption of these rules, all attorneys must take a look at how their respective practices or agencies are utilizing (or not utilizing) technology. In another ten years, paper will be a thing of the past and e-filing and e-service will be the accepted norm. Practitioners that ignore or avoid these developments could be left in the dust. Especially on the local level, it is important that we support the members of our Bar Association to become educated about these changes so that we can continue to be competitive and successful within our own community.

I encourage all attorneys to read and become familiar with the new rules and to start making strides towards implementing e-business into your respective practices.

¹ "Chief Justice Thomas L. Kilbride Announces New Statewide Standards for E-Filing in Illinois Trial Courts," Supreme Court of Illinois Press Release, October 24, 2012.

² Illinois Supreme Court Rule 11(b)(6) and (7).

³ Illinois Supreme Court Rule 11(d).

⁴ Illinois Supreme Court Rule 12(f).

⁵ Illinois Supreme Court Rule 131(d), emphasis added.

⁶ Illinois Supreme Court Rule 138(b)(1)(2)(3)(4)(5) and (6).

⁷ Illinois Supreme Court Rule 138(b).
⁸ Illinois Supreme Court Rule 138(c).
⁹ Illinois Supreme Court Rule 138(d) and (g).
¹⁰ Illinois Supreme Court Rule 138(e).
¹¹ Illinois Supreme Court Rule 138(f).
¹² Illinois Supreme Court Rule 138, Committee Comments.
¹³ Illinois Supreme Court Rule 201(m).
¹⁴ Illinois Supreme Court Rule 201, Committee Comments.
¹⁵ Illinois Supreme Court Rule 201(p).
¹⁶ "Chief Justice Thomas L. Kilbride Announces New Statewide Standards for E-Filing in Illinois Trial Courts," Supreme Court of Illinois Press Release, October 24, 2012.



Catherine D. Battista

Catherine D. Battista is a shareholder with Argento Law Group, P.C. in Elgin, Illinois. She concentrates her practice on litigation issues that concern the elderly, impaired, and their loved ones including nursing home malpractice, estate and inheritance disputes, and consumer fraud actions. She can be reached at cat@argento-law.com or (847) 628-8305.

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