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Mandatory Statewide Electronic Filing: The Supreme Court of Illinois Really Means It Now

On January 22, 2016, the Supreme Court of Illinois ordered mandatory, statewide electronic filing in civil cases, expressly abandoning its prior policy of encouraging Illinois courts to voluntarily adopt such systems. (M.R. 18368.) In less than two years, each court of Illinois *must* implement an electronic filing system for civil cases; and participants, both lawyers and *pro se* litigants, will not be allowed to file anything in a civil case other than through the court's electronic system, "except in the event of an emergency." (*Id*. at 3.)

In 2002, the court noted, it began an effort to encourage a voluntary transition away from paper-based filing systems in favor of electronic filing systems. However, several years after 2002, only five counties were participating in that voluntary effort, according to the order. There are 102 counties in Illinois.

The high court also noted that it further encouraged the transition in 2012 by adopting standards and principles of electronic filing systems that were intended to guide and assist in the transition. The court noted with apparent dismay that as of the date of its order -- January 22, 2016 -- only 15 counties successfully adopted an electronic filing system. The court called the current use of electronic filing systems in Illinois "scant." The court did not mention that the clerks of the circuit courts are elected by the citizens residing in each circuit, nor did it expressly claim (for itself or the judges of the circuit courts) supervisory authority over those elected circuit clerks. The clerks of the appellate and supreme courts are not elected officials, but appointees of their respective courts.

The court did acknowledge barriers to a statewide adoption of electronic filing, including variations in the ability of various circuit courts to access the necessary financial and technological resources, and the fact that there are currently 13 different case management systems in use by various parts of the state's judicial system. Ultimately, the court agreed that "statewide e-filing efforts *will develop if courts are mandated to e-file* . . . ." (*Id*. (emphasis added).)

The court declared that its efforts to encourage voluntary adoption of electronic filing had not achieved the desired goal of statewide e-filing on civil matters. (*Id*. at 2.) Accordingly, it concluded that "e-filing in civil cases in Illinois *must be made mandatory*." (*Id*. at 2 (emphasis added).) The court's conclusion was based on "the recommendations of multi-disciplinary committees, boards, and court staff who have spent years evaluating this issue." (*Id*.)

The court's order is addressed to all three levels of the Illinois court system, and requires the high court itself, and the appellate court, to make e-filing mandatory for civil cases by July 1, 2017. E-filing of civil cases will be mandatory in all circuit courts on January 1, 2018. Any circuit court that had not implemented its own e-filing system by January 22, 2016, must use a centralized electronic filing system that will be authorized by the court, and integrate their system with the centralized, statewide system.

In addition to requiring all of the courts of Illinois, including itself, to implement mandatory e-filing, the Supreme Court required that those courts "must provide designated space, necessary equipment, and technical support for self-represented litigants seeking to e-file documents

during normal business hours." (*Id*. at 3.) The court did not address what must be provided to attorneys to assist them with their e-filing needs, such as training or technical support.

Once each court is subject to mandatory e-filing, "attorneys and self-represented litigants *may not file documents* [in civil cases] through any [other] filing method, *except in the event of an emergency.*" (*Id*. (emphasis added).) "Emergency" is not defined in the order.

The very last sentence of the order provides the court with the power to extend the time for those courts that "cannot comply" with the deadline imposed on them. But those courts must petition the Supreme Court for an extension of time. (*Id*. at 3.) Such extensions "*are not favored* but *may* be granted for good cause shown." (*Id*. (emphasis added).) The order does not specify what, if any, consequences might be imposed on courts that do not comply in time and fail to get an extension.

In retrospect, perhaps the court could have reached this conclusion significantly earlier. Federal courts succeeded in making e-filing the norm many years ago, and it would be easy to conclude that the federal courts would not have succeeded without making e-filing mandatory. Of course, the federal courts are not analogous to our state courts. Few small-claim cases are filed in federal court. No officials of the federal courts are elected to their office. And the federal government likely has a greater ability to provide equal access to the necessary financial and technical resources necessary.

If you have any questions about this alert, please contact the author listed below or the Aronberg Goldgehn attorney with whom you normally consult.

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ABOUT THE AUTHOR

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Larry assisted in the development of the pilot program when the Supreme Court of Illinois authorized the Appellate Court of Illinois for the Second District to set up electronic exchange of information from the Circuit Court of DuPage County to the appellate court for appeals taken from DuPage County to the appellate court.