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*A Guide to Model Rules  
for Electronic Filing and Service*

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*File & Serve*



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## Acknowledgements

This publication is primarily the work of Mr. Travis Olson and Ms. Marsha Edwards, with editorial review and input from the Honorable Judge Arthur Ahalt (ret).

Mr. Olson is National Director of Implementation for LexisNexis File & Serve and has been involved in the development and implementation of nearly 90 jurisdictional e-filing projects and the first-in-the-nation statewide implementation in Colorado. Mr. Olson frequently advises courts across the country that are involved in electronic filing and through his consulting, has been instrumental in the revision of court rules. He is the author of *Judicial Administration: A Guide to Electronic Filing* and is an attorney and member of the Texas State Bar. Mr. Olson has also served as editor to the *Corporate Counsel Review*, published by the Corporate Counsel Section of the Texas State Bar.

Ms. Edwards is a former Court Administrator and is now Senior Manager for Court Development for LexisNexis File & Serve and has been involved in multiple implementation projects. Ms. Edwards served on the committee to develop the Standards for Electronic Filing Processes and has conducted several workshops and seminars. She is a former Court Manager for the Dallas County courts and chaired the court's Information Technology committee. Ms. Edwards has also served on the Board of Directors of the National Association for Court Management (NACM) and is a past chair of the Texas Association for Court Administration (TACA). She is a Fellow of the Institute for Court Management at the National Center for State Courts.

Many other individuals have contributed to the development of these model rules including judges, clerks, attorneys, and other court and law firm staff from jurisdictions around the country. Of special note however, is the guidance and input provided by Judge Arthur M. Monty Ahalt (retired). During and after his fifteen years on the bench in the Circuit Court of Prince George's County, Maryland, Judge Ahalt has spoken and written widely on the benefits and procedures for electronic filing. Judge Ahalt was responsible for organizing the Prince George's County national electronic filing pilot in 1996. He is recognized internationally as an advocate, lecturer and presenter of technology solutions for the judicial and legal community. Judge Ahalt is on the faculty of the Institute for Court Management and has also been a frequent lecturer at the University of Maryland. He has conducted numerous seminars on electronic filing for courts and law firms across the country. In addition, Judge Ahalt has published several articles including *Electronic Filing of Court Documents* and *The Elements of Electronic Filing*.

*As courts move forward with the use of electronic filing initiatives, revisions and additions to the rules of procedure are needed. The purpose of this paper is two-fold: (1) To provide a practical guide for judges, attorneys, court administrators, rules committee members and legislators to develop rules of procedure for electronic filing and service projects; and (2) To provide a basis for standardization of uniform electronic filing and service rules for state courts to adopt.*

## Introduction: Electronic filing and service

In June 2003, the law firm representing software maker J.D. Edwards, filed a \$1.7 billion suit in the Colorado State District Court in Denver, against Oracle Corporation, another software giant. The subject of the suit was related to a hostile takeover bid. What makes this suit of interest to your court is not the size of the action, the parties involved, or the legal precedence—it is the fact that the complaint was filed electronically. That this law firm would prefer to file electronically instead of conventionally by paper, in a case that was so important indicates a high level of trust in e-filing by the legal community and the court. This case provides an example of the acceptance of electronic filing (e-filing) into the mainstream of litigation management.

State courts, Federal courts and law firms across the country are using e-filing more and more to improve access to documents, maximize resources, and streamline filing and service activities. With initial success in reducing the paper and resource burden of complex litigation such as asbestos, tobacco, and firearms, e-filing has had a significant impact with more general litigation such as domestic relations and probate and as well. In the State of Colorado, e-filing is permitted in all State courts for civil, probate, domestic relations, and water rights litigation.

But what is “electronic filing?” In the broadest sense, electronic filing and service, is “the electronic transfer of legal documents to and from the court, and between parties.” Historically this has included Fax filing, CD-ROM data transfer, modem-based online services, and more recently email. These approaches were considered to be crude in terms of information management, and suffered from reliability and security vulnerabilities. With the evolution of Internet technology, e-filing has been redefined. Today, Internet-based electronic filing and service is rapidly replacing other less capable and less dependable approaches. When properly implemented, e-filing is a highly secure and reliable method for sending, receiving, and managing legal documents and case information. At the same time, commercial solutions—available from online services providers—are supplanting customized one-of-a-kind court projects and are offered at little or no cost to the court.

## Use of Model Rules

How can courts implement e-filing initiatives that achieve the necessary level of dependability and reliability? And how can courts assure not just compliance from the legal community, but also enthusiastic support? One factor that increases the chances for a successful project is the development of rules of procedure that address the unique nature of electronic filing and service. Filing and serving in the digital world presents challenges that are not contemplated by rules that govern conventional paper filing. The use of electronic signatures or the extensions of filing deadlines beyond court hours are just two examples of the impact of online technology.

Recognizing the need to change or add rules is only the first step. The process for developing new rules can be time consuming and involve input not only from others in the court but from the legal community as well. And if each court develops its own rules, attorneys must sort out the differences with each filing.

Every court has a diversity of cases and a unique set of requirements and procedures for managing the filing of documents. Model rules provide you with a framework from which to address those local needs. This paper will present key rules that need to be added or revised, and provides actual proposed language for construction of rules for your court. The content for these model rules is based on the experience gained in actually implementing courts that have instituted e-filing in jurisdictions across the country.

## Purposes of the Rules

Fundamentally, there are a handful of reasons why rules are needed for electronic filing and service projects.

- **Define the electronic filing system:** Depending on the who you talk to, electronic filing and service can mean anything from accepting a faxed document at the clerk's office to email delivery of documents, to sending a CD containing electronic copies of briefs to the courthouse. Rules should clearly define the system that is used by the jurisdiction for electronic filing and service. This could include court developed systems, commercial vendor systems, or a combination of both. The rules must provide guidance for where and how to access the system.
- **Authorize electronic filing and service:** Most jurisdictions' rules of procedure are very specific when it comes to defining the mechanical rules of filing and serving documents, down to the level of detail as the size of the paper and the valid methods of delivering documents the courthouse for filing. The purpose of electronic filing and service rules is to add electronic delivery to the existing list of approved methods of document delivery.

- **Clearly Specify the Procedural mechanics:** By clearly outlining the specifics of how to file electronically, security, service and filing deadlines, payment mechanisms and how to sign documents electronically, both attorneys and litigants can more easily and smoothly adapt and embrace this technology. Above all else, jurisdictions should strive for simplicity and avoid complexity in their e-file and e-service rules.
- **Encourage Use of Electronic Filing:** Jurisdictions can influence the use of electronic filing and service through policy and rule commentary that strongly encourages e-filing and e-service. Electronic filing and service are still new enough that some litigants and attorneys are hesitant to give up their “tried and true” paper delivery. If the jurisdiction desires for litigants and attorneys to use electronic filing and service, it should say so. This goes a long way with the filing community in eliminating fear, uncertainty and doubt about the technology.

## **Approaches to Implementing E-file Rules**

Although there are many procedural and approval hurdles for jurisdictions to overcome in enacting electronic filing and service rules, jurisdictions should begin by defining the scope of their rules. Courts around the country have enacted their rules using authority from all levels, including: Statewide rules through Supreme Court rules committees and state legislators, judicial district level through Chief Judges, local jurisdiction rules, and case specific rules issued by individual Judges as case management orders.

Of course, the higher the level of authority and the broader the scope of the rule the less need there is for local rules and case management orders, however state level rules will take longer to introduce to the rules agenda and finally enact. Because each jurisdiction is different in the way their rules adoption process works, this guide is intended to provide model rules for e-filing and e-service that are applicable regardless of the source of authority or the level of enactment. This means jurisdictions will likely need to make edits to the model rules to match their particular application.

## **Timing of E-file Rules**

Before a jurisdiction can begin accepting electronic filings, the rules authorizing electronic filing need be fully ratified and adopted. Because the attorneys and litigants who will be electronically filing into the court need to have time to review and become familiar with the rules, we recommend jurisdictions finalize their rules at least six weeks prior to beginning an e-file project. Although developing a training program for litigants and attorneys is beyond the scope of this paper, the rules play an important part of the training process. The majority of questions that come from users are procedurally related rather than technical. By referring to the rules, many of these questions can be immediately addressed. Depending on the scope of rule implemented in the jurisdictions, lead times for identifying and assembling rules committees and judges should begin much sooner.

# Proposed Model Rules with Commentary

## 1. GENERAL PROVISIONS

### 1-101 Short Title

These rules may be cited as “e-filing rules.”

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#### Commentary

The model rule commentary is principally based upon the **Standards for Electronic Filing Processes-Technical and Business Approaches** (“E-file Standards”) published by the National Center for State Courts. This report is available online at [http://www.ncsconline.org/D\\_Tech/Standards/Standards.htm](http://www.ncsconline.org/D_Tech/Standards/Standards.htm). The Standards for Electronic Filing Processes were developed under a grant from the State Justice Institute. On December 5, 2002, the Joint Technology Committee of COSCA/NACM accepted the report of the National Consortium for State Court automation Standards adopting the E-Filing Functional Requirements as a “recommended standards.” As a result of the action of the Joint Technology Committee, the recommended standard was submitted to the COSCA and NACM Boards of Directors, and they were approved in March 2003.

Points of view expressed in the commentary are those of the authors’ and do not necessarily represent the positions or official policies of the Electronic Filing Subcommittee of the National Consortium for State Court Automation Standards or the State Justice Institute.

### 1-102 Definitions

The following terms in this Rule shall be defined as follows:

- (1) “Electronic Filing Service Provider” (EFSP) means the service provided by the [court or vendor] for e-filing and e-service of documents via the Internet. The service may be accessed at [<http://www...>] or in person at the courthouse using a Public Access Terminal.
- (2) “Public Access Terminal” means a publicly accessible computer provided by the court for the purposes of allowing e-filing and viewing of public court records. The public access terminal shall be located in the [Clerk’s office] at the courthouse and made available during normal business hours.

(3) “Electronic Filing” (e-file) means the electronic transmission of documents to the court, and from the court, for the purposes of filing.

(4) “Electronic Service” (e-service) means the electronic transmission of documents to a party, attorney or representative under these rules. Electronic service does not include service of process or summons to gain jurisdiction over persons or property.

\* \* \*

### Commentary

The definition of EFSP should specify whether the service is provided by the court itself or commercial vendor(s) and include a link to their websites, or alternatively, a link to the court’s web page containing a list of service providers.

The public access terminal provides a “no cost” e-filing alternative for all litigants, including litigants who are not authorized users of the Internet EFSP service. Use of the public access terminal is a way for jurisdictions to make the service available to all users, including pro se users, while at the same time limiting the types of users who may register to e-file remotely over the Internet (See model rule 1-105)

An important incentive for lawyers and court staff to use an electronic filing system is the ability to electronically deliver documents as official service copies. These rules are intended to apply to the routine subsequent service of documents following service of process on defendants (service of process will still require a process server or sheriff to physically serve or subpoena parties). Having service performed electronically enhances the efficiency of the legal process. Jurisdictions that currently require a certificate of service may be able to eliminate this requirement for documents served electronically because the service recipient information is automatically included as part of the electronic transaction for parties served electronically. Consent by registered users to accept electronic service may be optional or required depending on the scope of the court’s e-file project. Consent will also depend on the tiers of functionality provided by the service provider. (See e-file Standards 1.2D).

## 1-103 Authority

The rules in this section are adopted under [ ] and the authority granted under [ ].



## 1-104 Scope of Rules

- (1) As of the effective date of this rule, except as expressly provided herein, all courts within the state [may or shall] accept electronic filing and service of pleadings and other documents designated in this rule as valid.
- (2) The court may at any time mandate electronic filing and service of pleadings in designated cases.
- (3) The court and the clerk's office may issue, file, and serve notices, orders, and other documents electronically, subject to the provision of these rules.

## Alternatives and Additions

### ALT. 1-104

- (1) ... [all or designated] courts shall accept the filing of pleadings and other documents in [all cases, designated cases, designated case types] designated in this rule by e-file.
- (2) ... the court shall publish and maintain a list of courts and cases where e-filing and e-service is permitted and required. This list may be accessed at [http://www...]
- (3) [Mandated E-file Documents] The following pleadings shall be filed and served electronically:
  - a) New case complaint and petitions
  - a) Original Answers
- (4) [Prohibited E-file Documents] The following pleadings may not be e-filed and shall be filed conventionally:
  - b) New case complaint and petitions
  - c) Sealed documents
  - d) Original answers
- (5) For designated cases types, the court shall not accept or file any pleadings or instrument in paper form. Parties shall e-file a document either:
  - (a) By registering to use the EFSP;
  - (b) In person, by electronically filing through the Public Access Terminal. Parties filing in this manner shall be responsible for furnishing the pleading or instrument on an IBM formatted 3 1/2" computer disk, CD ROM, or any other disk compatible with the clerk's office-system to be uploaded in person.

\* \* \*

### Commentary

Courts may choose to implement electronic filing gradually by beginning in selected cases or case types (e.g., mass tort asbestos cases or civil cases only). The rule alternatives allow the court to more specifically define the scope of the electronic filing from a court and case level perspective. The rule also includes a provision that can either require or allow local court jurisdictions to accept e-filed documents.

Courts should also consider whether documents may be e-filed for subsequent filings, case initiation or both. Although the e-file Standards address sealed and confidential documents from a technical perspective, they fail to address from a procedural rules perspective. The model rule clearly states whether sealed documents may or may not be filed electronically. This will largely depend on the functionality provided by the EFSP. (See e-file Standards 1.3A).

The e-file Standards recognize that with the introduction of any new system, there will always be those who will refuse to participate in a voluntary process such as e-filing. This proposed rule allows a court to mandate both electronic filing and service in selected cases. Although the e-file Standards fail to recognize mandated service, courts should consider this so that litigants can see the full benefits of the electronic process.

The e-file Standards suggest circumstances where a court may mandate participation: 1) it offers a free alternative to a fee-based private sector service provider system or institutes a mechanism for waiving fees in appropriate circumstances; 2) it continues to allow persons whose access to the courts would be impeded by being required to file electronically to file on paper; 3) it provides adequate notice; and 4) it provides training assistance for the participants and their staff. (See e-file Standards 1.3B)

The court may also choose to implement a rule that simply allows the court the option to mandate participation in the future rather than specifying mandated cases in the rule. This allows a judge to simply issue a case management order for cases deemed appropriate for mandatory participation.

The Public Access Terminal provisions help the court comply with the e-file Standards' requirement that a court should only mandate electronic filing where provisions are made for a no-cost filing alternative for litigants who choose not to register with an EFSP.

## 1-105 Authorized Users

For the purposes of accessing the EFSP over the Internet, the following users are authorized to register as EFSP users:

- a) Licensed attorneys and their staff, including paralegals, secretaries
- b) Pro hac vice attorneys
- c) Judges and their staff
- d) Court administrative staff, including technical support staff
- e) Pro se [pro per] litigants
- f) Other public users, including media representatives

## Alternatives and Additions

ALT. 1-105

(1) ... the following users are not permitted:

- a) Pro hac vice attorneys
- b) Pro se [pro per] litigants
- c) Other public users not involved in designated e-file cases

(2) Users who are not authorized to access the EFSP over the Internet, may obtain access using the court's Public Access Terminal located in the courthouse to e-file their pleadings and access publicly e-filed documents.

\*\*\*

### Commentary

Courts may choose to implement electronic filing gradually by also limiting the types of users that may access and use the system. Several courts have limited their initial e-file projects to attorneys only, and excluded pro se parties to gain experience using the system before expanding to support all litigants.

## **1-106 Effective Date**

These rules shall become effective on [ ].

\* \* \*

### **Commentary**

By clearly identifying the start date, all litigants and court staff can understand and plan for the process change.

## **1-107 Electronic Case File**

The [Court or Clerk] may maintain the original and official case file in electronic format.

\* \* \*

### **Commentary**

This section is meant to further increase the efficiencies within the court by reducing paper. Jurisdictions will likely need to consider new technologies that are available for converting electronic files to microfilm and other long-term storage media for archival purposes.

**2. FILING AND SERVICE PROCEDURES****2-101 Registration Requirements**

(1) Persons who are authorized users and who desire to e-file or e-serve shall register with the EFSP. Upon receipt by the EFSP of a properly executed click-through user agreement, the EFSP shall assign to the user a confidential login and password to the system. Additional authorized users may be added at any time. No attorney or other user shall knowingly authorize or permit his or her username or password to be utilized by anyone.

(2) Registered users of the system shall notify the EFSP within 10-days of any change in firm name, delivery address, fax number or email address.

\* \* \*

**Commentary**

This rule is consistent with the e-file Standards concept of unique identifiers so that filer authenticity is guaranteed. The rules should explicitly require that each individual have their own login and password combination to ensure proper auditing records are available. (See e-file Standards 1.2B).

For purposes of receiving electronic service, it is important for litigants who register with an EFSP to update their contact information so that they always receive service of documents.

**2-102 Time and Effect of E-Filing**

Any pleading filed electronically shall be considered as filed with the court when the transmission to the EFSP is complete. Any document e-filed by 11:59 p.m. <PT> shall be deemed filed on that date. The EFSP is an agent of the court for the purpose of electronic filing, receipt, service and retrieval of electronic documents. Upon completion of filing, the EFSP shall issue a confirmation receipt that includes the date and time of receipt. The confirmation receipt shall serve as proof of filing. In the event the court rejects the submitted documents following review, the documents shall not become part of the official court record and the filer will receive notification of the rejection. Users may be required to refile the instruments to meet necessary filing requirements.

\* \* \*

### Commentary

There is no issue more important to attorneys and litigants than knowing exactly when their document is filed. The proposed rule is consistent with the e-file Standards that allow courts to define their own filing mechanics for dates. In this rule, the EFSP automatically assigns the date and time once the filer completes the filing submission. The court may choose to review the filing at a later date, however accepted filings will always relate back to the date originally sent as the official file date. This rule ensures litigants that they will meet their statutory filing deadlines, even when the court is closed.

The 11:59 pm deadline should be based on the local time at the courthouse. Although some courthouses physically close at 4:30 or 5:00 pm, extended electronic filing deadlines promote e-filing. In many jurisdictions, the basis for this rule can be tied to other rules that allow for after hours filing of documents by delivering the document directly to the Judge or Clerk even when the court is closed. Or alternatively, some courts may have public policies that explicitly state that the court is always open. (See e-file Standards 1.2C).

By creating a limited agency relationship with the EFSP for receiving e-filed documents, the court may be able to avoid tedious legislative rule changes regarding filing of court documents. Again, this will depend on local jurisdictional procedures and requirements.

Courts may choose to review e-filed documents just as paper filed documents are reviewed. This rule provides information to the filers about what to expect once their document is filed. (See e-file Standard 1.3E).

## 2-103 Format of Documents

- (1) All electronically filed and served pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings.
- (2) The electronic document title of each pleading or other document, shall include:
  - (a) Party or parties filing/serving the document,
  - (b) Nature of the document,
  - (c) Party or parties against whom relief, if any, is sought, and
  - (d) Nature of the relief sought(e.g., Defendant ABC Corporation's Motion for Summary Judgment")

\* \* \*

### Commentary

To minimize the barriers for litigants to file and serve electronically, the model rules mimic the paper-based rules for preparing legal documents. The e-file Standards for document format require electronic documents to be rendered with high fidelity to the originals and may be read with free viewers. PDF files satisfy this requirement. (See e-file Standard 1.1D)

The model rule includes data elements, such as document title, that are discussed in the e-file Standards. Document title is the most important element to ensure that litigants and the court can quickly search, sort and view electronic documents efficiently. Local courts may amend or modify these data elements to assist in managing their litigation. (See e-file Standard 1.1F).

## 2-105 Payment of Filing Fees

(1) Registered users shall pay statutory filing fees for e-filed documents electronically to the Court through their EFSP. Filing fees are due and payable at the time of filing.

(2) An EFSP may charge registered users additional fees to deliver, access and use the service. These fees shall be payable to the EFSP at the time of filing and are in addition to statutory filing fees.

\* \* \*

### Commentary

The mechanics of paying statutory filing fees will depend on the functionality provided by the EFSP. At a minimum, EFSPs should provide immediate electronic funds transfer to the court, credit card collection and monthly billing options for attorneys and litigants. It is also important to distinguish statutory filing fees from EFSP transactional fees.

## 2-106 Signatures

Every pleading, document, and instrument electronically filed or served shall be deemed to have been signed by the judge, clerk, attorney or declarant and shall bear a facsimile or typographical signature of such person, along with the typed name, address, telephone number, and Bar number of a signing attorney. Typographical signatures shall be treated as personal signatures for all purposes under these rules. Documents containing signatures of third-parties (i.e., unopposed motions, affidavits, stipulations, etc.) may also be filed electronically by indicating that the original signatures are maintained by the filing party in paper-format.

## Alternatives and Additions

### ALT. 2-106

(1) Unless otherwise ordered by the court or clerk, a printed copy of all documents filed or served electronically, including original signatures, shall be maintained by the party filing the document and shall be made available, upon reasonable notice, for inspection by other counsel, the Clerk or Court. Parties shall retain originals until final disposition of the case and the expiration of all appeal opportunities. From time to time, it may be necessary to provide the Clerk with a hard copy of an electronically filed document.

\* \* \*

### Commentary

The e-file Standards permit the courts to adopt rules such as those proposed in the model rules for signatures and filer authenticity. The e-file Standards specifically discuss the concern about protecting the electronic signatures of judicial officers. In the authors' experience, the added user tracking and information logging inherent in the electronic filing process alleviates this concern. When drafting signatures rules, it is very important to also include provisions for third-party signatures such as witnesses, parties and stipulations. The requirement that the filing party maintain the originals easily handles this issue. By e-filing a document with typewritten signatures, the filer is stating the original signatures are in their possession and available for inspection.

The ultimate objective of an electronic filing process is to have all court records maintained in electronic form. However, courts may choose to have litigants also keep paper copies of their signed document on file and available for inspection for some period of time. The court should not generally require the litigants to file their paper copies in addition to electronic filing. The effect of requiring litigants to file paper back-up copies discourages use of e-filing technology among the parties.



If the court requires filers to maintain paper copies containing original signatures, the rule should clearly state how long these papers must be maintained. Here, the model rule alternative language requires litigants to keep their paper until the appellate process is complete.

## 2-107 Electronic Service

- (1) Delivery of e-service documents through the EFSP to other registered users shall be considered as valid and effective service and shall have the same legal effect as an original paper document. Recipients of e-service documents shall access their documents through the EFSP.
- (2) E-service shall be deemed complete when the transmission to the EFSP is completed.
- (3) For the purpose of computing time to respond to documents received via e-service, any document served on a day or at a time when the court is not open for business shall be deemed served at the time of next opening of the court for business.

METHOD OF SERVICE:	DEADLINE TO RESPOND:
Electronic Service	<p><i>If served before 5:00 p.m. [PT]</i>            Number of Days provided by Rule + 1 Day</p>
	<p><i>If served after 5:00 p.m. [PT], or during weekends or court holidays:</i>            Number of Days provided by Rule + 2 Days</p>

- (4) Parties who register with the EFSP may consent to receive e-service documents, other than service of subpoenas or summons.

\* \* \*

### Commentary

Traditional email delivery should never be considered as valid e-service because of the lack of security, delivery confirmation, and document compatibility issues. Here, the model rules authorize electronic service via an EFSP as valid e-service. An EFSP should provide the necessary level of security, confirmation of delivery and receipt, and document conversion to a common file format such as PDF to overcome the limitations of email service.

Although the E-file Standards fail to specify when a document is deemed served, we recommend that jurisdictions adopt a rule that documents are electronically served when the filer first submits them to the EFSP. Electronically served documents should be instantaneously available to their recipients once uploaded by the sender to the EFSP. The calculation of deadlines to respond is a separate issue from when a document is deemed served.

The E-file Standards recognize that e-filing is most efficient when litigants are allowed to file and serve at any time of the day or year, all the way up to midnight. This rule also addresses whether e-served documents are deemed served on weekends, holidays and other days when the court and law firms are closed.

Although the e-file Standards imply that no additional time is needed when calculating response deadlines for documents served electronically, the authors' have found the opposite is true when implementing e-file projects around the country. One of the primary concerns about electronic filing projects from the law firm and litigant perspective is calculating their response timelines. The proposed rule treats documents electronically served in a similar way that many jurisdiction handle facsimile served documents for purposes of calculating deadlines. The proposed rule is far more easily translated since it already draws upon existing facsimile service rules. (See e-file Standard 1.2D)

Consent to receive electronically served documents is an important issue for attorneys when beginning an e-file project. Some attorneys may be reluctant to receive service electronically for a number of reasons. The consent provisions will in large measure depend on the functionality and capabilities of the EFSP. The most complete functionality from an EFSP should include electronic service to registered users, and also allow for service to non-registered users via traditional methods of service such as U.S. Mail and facsimile delivery.

## 2-108 System or User Filing Errors

If the electronic filing or service does not occur because of (1) an error in the transmission of the document to the EFSP or served party which was unknown to the sending party, or (2) a failure to process the electronic document when received by the EFSP, (3) the party was erroneously excluded from the service list, or (4) other technical problems experienced by the filer, the court may upon satisfactory proof enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically. Or in the case of service, the party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

\* \* \*

### Commentary

The e-file Standards allow courts to adopt their own legal definitions for the circumstances that will justify a court's providing relief from unknown technical issues. E-filing users rarely experience these issues, however this rule is designed to address those court and lawyers who are skeptical about electronic filing because of the technological uncertainties. (See e-file Standard 1.2E).

The proposed rule also outlines the remedies and circumstances leading to court relief for electronically served document errors.

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