

The Top 10 Things You Need to Know When You Use the eFiling System

October 2017

Carla Heyl & Patrick Busch

Legal Counsel Division | State Court Administrator's Office

Why this should matter to you

- Rule violations can result in:
 - Sanctions
 - Losing your case
 - Losing the right to appeal
 - Client privacy violations
- Ethical issues:
 - Competence
 - Duty to supervise staff

Sanctions?

- Award of \$999.00 in attorney's fees after attorney didn't respond to e-served interrogatories

First American Title Ins. Co. v. Nat'l Title Res. Corp.,
No. A15-0664 (Minn. Ct. App. Feb. 1, 2016)

Loss of Appeal?

- By using e-mail instead of e-service, attorney forfeited client's right to appeal termination of parental rights

In re Welfare of the Children of: A.S. and D.A.S., Sr., Parents, No. A16-1725 (Minn. Ct. App. Nov. 22, 2016)

#1: Read the Rules

- General Rule of Practice 11 was amended in 2015
 - Filers are responsible for screening out restricted identifiers
 - Filings may be stricken for non-compliance:
 - Loss of the filing date
 - Potential for additional sanctions by the judge
- Gen. R. Prac. 11.02, 11.04

#1: Read the Rules

- General Rule of Practice 14 was rewritten in 2015:
 - Sets out new requirements for e-filers
- Rules of Public Access to Records of the Judicial Branch
 - Dictate which court documents are and are not public

#1: Read the Rules

- Non-compliance with the e-filing rules may create ethical issues for attorneys:
 - Attorneys have an ethical duty to know and follow the rules
 - Attorneys are responsible for ensuring administrative staff who handle e-filing act in compliance with the rules
- eFS audit logs have been disclosed to OLPR

#2: Public Can Be Everywhere

- Assume the world will see everything you file with the court
- Many confidentiality laws do not apply to court records
- You need a legal basis to make filings confidential

Can't Make Confidential By Agreement

- The late artist Prince was divorced in 2007
- Records were sealed by stipulated order, and the parties relied on confidentiality during the negotiations
- In 2016, the *Star Tribune* petitioned for access to the court records
- Over the objection of the surviving ex-spouse, the records were made public

#2: Public Can Be Everywhere

- Public Access Rule 4 lists non-public case records
- Judges can issue protective orders limiting access to otherwise public case records in individual cases
- However, the judge must “make findings that are required by law, court rule, or case law precedent”
Public Access Rule 4, subd. 2
- Required findings vary based on the case type and the document type

#3: Separate Non-Public from Public

- You control what you file, not court staff
- You are responsible for separating non-public information from public filings
 - Gen. R. Prac. 11.02, 14.06
- Follow the Supreme Court's Rules of Public Access

#3: Separate Non-Public from Public

- Restricted identifiers:
 - Social Security Numbers
 - Employer Identification Numbers
 - Financial Account Numbers
- Remember to use Forms 11.1 and 11.2
 - Form 11.1 is ONLY for restricted identifiers
 - Form 11.2 is ONLY for financial source documents

#3: Separate Non-Public from Public

- “Confidential” ≠ “Sealed”
- You must designate as “Public”, “Confidential” or “Sealed” when you eFile:

Filing Comments*

Is Document Public, Confidential, or Sealed?



- Unless specific rule authorizes confidential filing, need an order

#3: Separate Non-Public from Public

- You need to separate confidential attachments/exhibits from public documents
- For example:
 - Medical reports are generally confidential
 - Custody evaluations are generally confidential
- Need to be separated from public attachments/exhibits and pleadings
- Court staff are not responsible for doing this for you

#3: Separate Non-Public from Public

- Remember to separate public and non-public documents
- Prepare your documents as separate PDFs, and submit them in the same “envelope” when you eFile
- In general, you can quote from non-public documents in public court filings
Public Access Rule 4, subd. 4

What could go wrong?

“The days of attorneys being able to ignore the computer and shift blame to support staff in the event of an error are gone. The consequences are simply too serious. ... It is the responsibility of *counsel* to ensure that personal identifiers are properly redacted.”

(emphasis in original)

What could go wrong?

- Unnecessary personal information in court filings could embarrass your clients
- In a paper world, “practical obscurity” meant many court records were effectively private
- This is no longer the case in an electronic world, where on-demand access is the norm

#4: Document Security Classification

- The courts use a system of document security classifications to ensure appropriate access
- Remember to designate “Public”, “Confidential” or “Sealed” each time you file
- This is your role, as the filer, in ensuring appropriate access to your filings

#5: Use Precise Filing Codes

Select Filing Code*

Affidavit of Service

Affidavit of Service by Posting

Affidavit of Vacancy

Affidavit-Other



#5: Use Precise Filing Codes

Select Filing Code*

Affidavit of Plaintiff

Filing Description*

Affidavit of Jane Doe

Affidavit of Plaintiff

Affidavit of Jane Doe



#6: Correct Filing Fees

- The eFS System makes fees available based on your selection of filing codes
- Filings are rejected if correct fees aren't paid
- Use a fee waiver account if your client has been granted a fee waiver

#7: Allow Time for Processing

- Although you can file right up to the deadline:
 - Staff need to process your filings
 - The judge needs some time to review them
- The judge will not have your filings instantaneously

#8: Protect & Perfect Your Appeal

- Minnesota's appellate courts use a separate e-filing system, E-MACS
- Separate registration is required, and includes a quiz
- Mandatory e-filing for all attorneys since July 1, 2016

Supreme Court orders dated January 27, 2016 and June 30, 2016, ADM09-8006

What could go wrong?

June 13, 2017: Appeal dismissed for lack of jurisdiction because attorney attempted to file appeal by mail; no PFR filed

July 18, 2017: Appeal dismissed for lack of jurisdiction because attorney attempted to file by mail; PFR denied September 19, 2017

August 29, 2017: Appeal nearly dismissed because attorney attempted to file by mail; appeal saved due to procedural irregularity

#9: Stay Current on Filing Requirements

- Mandatory formatting requirements in *Minnesota District Court Registered User Guide for Electronic Filing*

Gen. R. Prac. 14.03(g)

- eFS training materials and best practices guides available at www.mncourts.gov/efile
- E-MACS information available at emacs.courts.state.mn.us under “E-Filing FAQs” and “E-Filing Help”

#10: Create Pleadings Electronically

- *Registered User Guide* formatting requirements include:
 - “Filers should not print documents on paper and scan them before filing them.”
 - OCR is prohibited, because it can cause the documents to be rejected (loss of filing date)
 - Print on paper and scan only when “it is not possible to convert an electronic document directly to PDF format.”

#10: Create Pleadings Electronically

- Scanned documents:
 - Have much larger file sizes
 - Are harder to read
 - Are harder for judges to copy information from
- It is not necessary to sign by hand
 - Gen. R. Prac. 14.04
- It is not necessary to notarize
 - Gen. R. Prac. 15; Minn. Stat. § 358.116
- Consecutive pagination is helpful and is required
 - Gen. R. Prac. 16

#11 (BONUS): Sign up for eService

- In eFS, you still must choose each case on which you want to be a service contact
- Registering for an eFS account is not the same as signing yourself up as a service contact
 - No signing up other parties
- In EMACS, by registering for an EMACS account you are agreeing to be served in future cases:
 - No need to add yourself as a service contact

Questions?

- eFS Support Center
 - 651-227-2002 or 1-855-291-8246
- Resources for district courts:
www.mncourts.gov/efile
- Resources for appellate courts:
emacs.courts.state.mn.us
- Appendix provided at this CLE