



# ILLINOIS JUDICIAL BRANCH

## Bench Card: E-Filing and Judicial Discretion

### What is my role with E-filing?

Although e-filing is a delivery system between court patrons and the circuit clerk's office, judges are integral to the success of the system. Several rules and orders reference mandatory e-filing or working with self-represented litigants (SRLs). This benchcard compiles those provisions to offer guidance to the judiciary.

### E-filing Exemptions

Supreme Court Rule 9 lays out the mandatory nature of e-filing while also setting out e-filing exemptions. The Supreme Court lays out **automatic exemptions for e-filing in SCR 9(c) for: 1) currently incarcerated SRLs, 2) wills, 3) documents filed under Juvenile Court Act, and 4) any person with a disability that prevents e-filing.** The Court also defined a good cause exemption to e-filing in SCR 9(c)(5), which is intended to protect the needs of the most vulnerable SRLs by allowing them to file a **certification form exempting those who 1) do not have a computer or internet in their home, 2) have difficulty reading or writing in English, or 3) are filing in a sensitive case.** Additionally, the rule provides for judicial discretion regarding the exemption from e-filing:

#### Illinois Supreme Court Rule 9(c)(5) (relevant portions)

- Judges retain discretion to determine whether good cause is shown. If the court determines that good cause is not shown, the court shall enter an order to that effect stating specific reasons for the determination and ordering the litigant to e-file thereafter.
- Judges retain discretion to determine whether, under particular circumstances, good cause exists without the filing of a certificate and the court shall enter an order to that effect.

Circumstances where a judge may grant a good cause exemption include:

- An "attorney of the day" in a pro bono program who is representing tenants on short notice in court (e-filed documents, including appearances, may take 2-3 days to be processed and accepted by the Clerk's office)
- SRLs who do not know how to use a computer
- An emergency motion that must be heard immediately without delay (see more below)

#### M.R. 18368 (January 22, 2016)

The Supreme Court Administrative Order establishing mandatory e-filing provides:

7. Attorneys and self-represented litigants may not file documents through any alternative filing method, **except in the event of emergency.** Courts may not accept, file or docket any document filed by an attorney or self-represented litigant in a civil case that is not filed in compliance with this Order, **except in the event of an emergency.** (emphasis added)

Although there is not additional guidance on this issue, it would be essential for judges to ensure their courts are exempting e-filing for emergencies.

### E-filing Timing

The Supreme Court Rule also grants judges discretion to, upon good cause, grant relief where a document is untimely filed under certain circumstances.

#### Illinois Supreme Court Rule 9(d)

1. If a document is untimely due to any court approved electronic filing system technical failure, the filing party may seek appropriate relief from the court, upon good cause shown.
2. If a document is rejected by the clerk and is therefore untimely, the filing party may seek appropriate relief from the court, upon good cause shown.

As everyone adjusts to e-filing, technical and unintended human errors may cause delays and missed deadlines. The system is still undergoing improvements and many users have reported challenges using it during the first few months. Again, judges may use their discretion when appropriate to provide relief where good cause exists, especially during this transition period. Note, the timing of this general discretion may be limited by more specific jurisdictional deadlines as discussed in dicta by the Second District in *Peraino v. County of Winnebago*, 2018 IL App (2d) 170368.

For additional information, please contact:

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