

Bruce Pfaff

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[Rulescommittee@illinoiscourts.gov](mailto:Rulescommittee@illinoiscourts.gov)

Re: SCR 9

Dear Committee,

I appreciate the opportunity to comment on the changes to SCR 9 in recent weeks.

### **The *Kilpatrick* Problem**

Please know that I submitted Proposal (24-01) to modify SCR 9(d)(2) on January 16. This was in response to the injustice of *Kilpatrick v. Baxter Healthcare*, 2023 IL App (2d) 230088. In the trial court, plaintiff attempted to e file her complaint on the last day of the limitations period at 1 p.m. Instead of inserting the lawyer's ARDC number on the document as required by Lake County rules, the firm's ID number was inserted. The next day, Odyssey notified the law firm that the filing was rejected for that reason. The law firm made the necessary correction and submitted the modified complaint which was accepted. Defendant's SOL motion was granted, and the Second District affirmed this harsh ruling, finding that plaintiff failed to show "good cause" as required by SCR 9(d)(2). The PLA was denied. If the clerk had not waited a day to reject the complaint, the law firm would have corrected the problem immediately and no harm would have been done. But there is no remedy for the clerk's delay.

*Kilpatrick* is not the first case where SCR 9(d)(2) has done an injustice.

When a rule or law is unjust it should be changed.

Proposal 24-01 that I submitted urged that the Court adopt the language of *FRCP 5(d)*. It says, "[t]he clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice." I hoped that this proposal would be included in the subjects to be discussed at this committee's July 17 hearing. I learned this was not to be on April 25.

That day, Justice Doherty, Chair of the Supreme Court's e-Business Policy Board, sent me a very polite letter advising that the Board has been "wrestling" with this subject for quite some time. He advised the Board finalized a draft rule that would ameliorate some of the harshness of SCR 9(d)(2). Sadly, he noted that "writing a rule and having a filing system that can make it happen are,

unfortunately, two different things.” He related that the filing vendor, Tyler Technologies, is working on it and “we are hopeful you will see this change at some point in 2024.”<sup>1</sup> As a result of the Board’s recommendation, Katie Murphy, secretary of the Rules Committee, advised me on April 26 that the Rules Committee will take no further [sic] action on Proposal 24-01.

On June 12, the Court approved a modified SCR 9(f). It still permits clerks to refuse to file documents but now refers to another document that lists 22 approved reasons why a clerk can refuse to file an electronically submitted document. Having read that list, the approved reasons are technical. This new rule prompted critical commentary in the *Chicago Daily Law Bulletin* on June 20, by Pat Eckler. Mr. Eckler’s commentary prompted Justice Doherty to write. The *Bulletin* published Justice Doherty’s response on June 24.

Justice Doherty noted that there were 429,957 rejected filings in 2021 statewide. He called the number staggering, and I could not agree more. How much time was wasted by court clerks and law firm personnel in this process? He indicated the most common reason was failure to pay the required fee.

### **How does it work in federal court?**

Lawyers file with electronic case filing. New lawsuits require fees. When the filer uploads the document, the “pay to file” screen pops up and the filer knows immediately to pay the fee or the document won’t be filed.

What if the filer in federal court makes some other error in the attempted filing, e.g., missing contact information for the lawyer or illegible pages? The clerk files the document. Full stop. The opposing party or the court could bring the deficiency to the filer’s attention if they so choose, but the clerk must file the document submitted. That is the way it should be.

Missing contact information for the lawyer or including illegible pages are among the reasons to reject a filing as per the newly created Illinois Electronic Filing Rejections Standards for Circuit Courts. So is missing information in a summons or notice. Going forward, if a law firm employee makes one of these minor but predictable errors, a clerk is empowered to reject the filing and might not communicate this decision to the filing party for some days.<sup>2</sup>

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<sup>1</sup> It is not cynical to say that the promises of Tyler do not always match what it delivers.

<sup>2</sup> The court clerk in *Leff, Klein, Kalfen, Ltd. v. Wiczer & Associates, LLC*, 2022 IL App (2d)220089-U, rejected the filing four days after it was submitted, and a jurisdictional deadline expired in the interim.

## Conclusion

It is an uncommon occurrence that a lawyer in the leadership of the Illinois Defense Counsel (Mr. Eckler) and one who chairs the Illinois Trial Lawyers' Association's Amicus Curiae committee completely agree on a proposed rule change. But we do. A rejected filing might make a defense post-trial motion untimely just as it might make a plaintiff's complaint untimely. This is an important issue for trial lawyers on both sides of the "v."

The Court amended *SCR 9(f)* this month without any public input as it has an absolute right to do. The change was intended, with some Tyler Technologies changes that have not occurred, to lessen the harsh effects of a pleading being rejected by a clerk. But those changes do not solve the problem. The changes will not guarantee that there won't be more unjust outcomes like *Kilpatrick* and *Leff*. The best solution is to do what the *FRCP* directs. *SCR 9(f)* should be eliminated and *SCR9(d)(2)* should be modified to read:

(2) Acceptance by the Clerk. The clerk must not refuse to file a document solely because it is not in the form prescribed by these rules or by a local rule or practice.

Respectfully,

A handwritten signature in blue ink, appearing to read "Barry".