

**From:** [Eugene G. Doherty](#)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Supreme Court Rules Proposal 24-06 -- Rule 11  
**Date:** Tuesday, July 9, 2024 4:14:59 PM  
**Attachments:** [REV Proposed Amendments to Rule 11 \(redline\) EGD.docx](#)

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Please accept this as my submission of public comment on pending rules Proposal No. 24-06, which will be addressed at the Rules Committee's next public hearing. The proposal was submitted by the Access to Justice Committee (ATJ).

I wish to make clear that the proposal in question was discussed at the last meeting of the Illinois Supreme Court's e-Business Policy Advisory Board, which I chair. Furthermore, several members of the Board discussed the proposal in greater detail at a subsequent meeting. Because I have not had sufficient time to submit my own comments back to my board for approval, however, I think that they should technically be considered to be submitted only on my own behalf, though informed by the process I have described.

The reason for the Board's interest in this proposal is that, while it is intended to address problems particular to self-represented litigants (SRLs), it affects processes that impact *all* litigants. This is of particular interest to our Board when those processes interact with the e-filing system. We support ATJ's initiative, and I wish to recommend only a few minor revisions to ensure that the process envisioned is explained adequately and works smoothly. I have included my comments on the attached mark-up document, but they can be summarized here:

(c)(1) The language of the initial proposal became complex because it allowed email service to either one of two addresses if sent via EFSP, but only to the appearance address if by email. It seems to me that either email address (i.e., listed with the EFSP or in the appearance form) should be a viable email address for service, and so providing made the language of the rule much easier to follow.

Additionally, our committee was concerned about the potential for confusion that would arise from "oral" statements of an email address in court. We felt that the potential for confusion would be greatly reduced if the email address stated in court had to be reduced to writing, either by way of an order or other court-approved form.

#### Comments

2. The original language of comment 2 looked like a near restatement of the rule. I feel it would be much more useful if it highlighted the central

principle being cautioned against: that using some email address *other* than the types described in the rule doesn't create good service.

4. I clarified this comment to make clear what I understood its intention to be.

Thank you for your consideration of my comments.

*Eugene Doherty*  
*Illinois Appellate Court, Fourth District*

**Rule 11. Manner of Serving Documents Other Than Process and Complaint on Parties Not in Default in the Trial and Reviewing Courts**

(a) **On Whom Made.** If a party is represented by an attorney of record, service shall be made upon the attorney. Otherwise service shall be made upon the party.

(b) **E-mail Address.** An attorney must include on the appearance and on all pleadings filed in court an e-mail address to which documents and notices will be served in conformance with Rule 131(d). A self-represented litigant who has an e-mail address must also include the e-mail address on the appearance and on all pleadings filed in court to which documents and notices will be served in conformance with Rule 131(d).

(c) **Method.** Unless otherwise specified by rule or order of court, documents shall be served electronically.

(1) Electronic service may be made on a party via email or through an approved electronic filing service provider (EFSP) to the following email addresses:

(i) through an approved electronic filing service provider (EFSP) to the email address(es) currently listed in the party's filed appearance;

(ii) the e-mail address(es) currently entered by the party into the EFSP; or -or to the e-mail address(es) in the party's filed appearance;

(iii) to the e-mail address(es) identified by the party's filed appearance in the matter;

or

(ii) \_\_\_\_\_  
(iii) (iii) to the e-mail address(es) provided by the party orally to the court as an address designated for service of legal documents purposes of Rule 11(c)(1) and written by the party or the court entered into the court record on an order or other court-approved form that is made part of the record during a court proceeding as an address designated for service of legal documents for purposes of Rule 11(c)(1).

A judge may assign a different email address to a party for the purposes of achieving effective electronic service on that party. Nothing in this rule prevents a judge presiding over a case from assigning a different email address for the purposes of securing electronic service. If service is made by e-mail, the documents may be transmitted via attachment or by providing a link within the body of the e-mail that will allow the party to download the document.

(2) If a self-represented party does not have an e-mail address, or if service other than electronic service is specified by rule or order of court, or if extraordinary circumstances prevent timely electronic service in a particular instance, service of documents may be made by one of the following alternative methods:

(i) *Personal Service.* Delivering the document to the attorney or party personally;

(ii) *Delivery to Attorney's Office or Self-Represented Party's Residence.* Delivery of the document to an authorized person at the attorney's office or in a reasonable receptacle or location at or within the attorney's office. If a party is not represented by counsel, by leaving the document at the party's residence with a family member of the age of 13 years or older;

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**Commented [ED1]:** Our committee had some concerns about reliance on oral statements. Is statement part of the "court record" because it was taken down by a reporter or the court's electronic recording system? That would seem unwise and impractical. Docket entries are part of the record, but I know clerks will not want to be responsible for correctly transcribing an email address; there's a lot of room for error there. We thought a written order, or a court-approved written form (as used in some jurisdictions), would be the ideal balance.

**Commented [ED2]:** The only difference between this and the original proposal is that service can be made via either means (email or EFSP) to either address (listed in EFSP or appearance). This allows the language to be shorter and easier to follow.

(iii) *United States Mail*. Depositing the document in a United States post office or post office box, enclosed in an envelope to the party's address, as identified by the party's appearance in the matter, with postage fully prepaid; or

(iv) *Third-Party Commercial Carrier*. Delivery of the document through a third-party commercial carrier or courier, to the party's address, as identified by the party's appearance in the matter, with delivery charge fully prepaid.

(d) **Multiple Parties or Attorneys**. In cases in which there are two or more plaintiffs or defendants who appear by different attorneys, service of all documents shall be made on the attorney for each of the parties. When more than one attorney appears for a party, service upon one of them is sufficient.

(e) **Notice of E-mail Rejection**. If a party serving a document via e-mail receives a rejection message or similar notification suggesting that transmission was not successful, the party serving the document shall make a good-faith effort to alert the intended recipient of a potential transmission problem and take reasonable steps to ensure actual service of the document.

(f) **Limited Scope Appearance**. After an attorney files a Notice of Limited Scope Appearance in accordance with Rule 13(c)(6), service of all documents shall be made on both the attorney and the party represented on a limited scope basis until: (1) the court enters an order allowing the attorney to withdraw under Rule 13(c) or (2) the attorney's representation automatically terminates under Rule 13(c)(7)(ii).

Amended April 8, 1980, effective May 15, 1980; amended April 10, 1987, effective August 1, 1987; amended October 30, 1992, effective November 15, 1992; amended December 29, 2009, effective immediately; amended Oct. 24, 2012, effective Jan. 1, 2013; amended Dec. 21, 2012, eff. Jan. 1, 2013; amended June 14, 2013, eff. July 1, 2013; amended Dec. 9, 2015, eff. Jan. 1, 2016; amended June 22, 2017, eff. July 1, 2017; amended July 15, 2020, eff. immediately; amended Jan. 26, 2021, eff. immediately; amended June 11, 2021, eff. July 1, 2021.

#### Committee Comments

(---, 2024)

The Committee seeks to clarify good faith practices concerning the electronic service of documents, especially with regards to self-represented litigants. Overall, practitioners should be mindful that self-represented litigants may be unsophisticated in electronic filing ("e-filing"), may not regularly use or have access to their e-mail address for business, or may be have been exempt from e-filing. While e-filing has been an advancement for filing, service, and maintenance of court records, the Committee cautions against using it in a way that could be detrimental to self-represented litigants.

1. A filing party does not obtain effective service of a document on the receiving party when service is sent to an address other than an address listed by the receiving party in either its appearance or the EFSP, or as established by court record as provided above. In other words, service at a different email address is ineffective regardless of whether the party has used that address on other occasions.

a. By e-mail unless the filing party uses an e-mail address that the receiving party has included in a filed appearance document, such as a complaint, appearance, or answer.

Commented [ED3]: Just avoiding the present perfect tense

Commented [ED4]: I thought this comment looked like a negative restatement of the whole rule. It seems to me that if the point is to not use any other email address, it can be made more clear by saying that directly.

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~~b. Through an electronic filing service provider unless the receiving party has previously entered their own e-mail address in an electronic filing service provider or the filing party enters an e-mail address included in a filed appearance document.~~

~~e.1. By using any other known e-mail address of the receiving party, such as an e-mail address that the receiving party shared verbally, informally, or on some other document like a lease or contract.~~

2. A filing party may not enter an e-mail address obtained verbally~~orally~~, informally, or on some other document like a lease or contract into an electronic filing service provider on behalf of the receiving party. Attorneys and self-represented litigants may use different e-mail addresses for different purposes and only service on an address designated for service of legal documents is effective. The filing party may include other e-mail addresses in addition to the e-mail address designated in the appearance document for service of legal documents, but the non-designated address may not be the sole address served for purposes of Rule 11(c)(1).

3. When serving a self-represented litigant by e-mail, a filing party should make clear that the e-mail contains important legal documents such as including that information in the “Subject” line of the e-mail.

4. If the receiving party is self-represented, but later retains counsel, counsel for a filing party acts consistently with the obligation of fairness embodied in Illinois Rule of Professional Conduct 3.4 by offering to send electronic copies of any previously filed documents to the receiving party’s new counsel, especially those documents that the new counsel cannot obtain from the electronic docket, such as discovery requests.

5. The Committee encourages courts to inquire as to self-represented litigants’ receipt of e-mailed documents and to exercise their discretion under the Committee’s July 15, 2020 comments regarding alternative methods of service where appropriate.

**Commented [ED5]:** Consistent with the usage in the proposed rule change, I think oral (i.e., spoken) works better here than verbal (which includes written words).

**Commented [ED6]:** I was confused by this change. It wasn’t clear to me whether counsel was making an “offer” to a party, rather than a party’s attorney. And I think the intention was to make this relate to *previously filed* documents, i.e., documents sent by the filer to the SRL before the SRL was represented. I tweaked a little and hope it is clearer.

#### Committee Comment

(July 15, 2020)

When a self-represented litigant has provided an e-mail address to the court pursuant to subparagraph (b), courts retain discretion to determine if an alternative method of service of documents or notices, either in addition to or instead of e-mail, is needed.

(December 9, 2015)

In amending Rule 11 to provide for e-mail service, the Committee considered whether special additional rules should apply to documents served by e-mail, e.g., specified file formats, scan resolutions, electronic file size limitations, etc. The Committee rejected such requirements in favor of an approach which provides flexibility to adapt to evolving technology and developing practice. The Committee further anticipates good faith cooperation by practitioners. For example, if an attorney serves a motion in a format which cannot be read by the recipient, the Committee expects the recipient to contact the sender to request an alternative electronic format or a paper copy.

#### Committee Comment

(December 21, 2012)

New subparagraphs (b)(6) and (7) were created to allow for service of documents electronically. The amendments facilitate electronic communications among the court, parties, and counsel and complement the expansion of e-filing in the trial courts. However, electronic service may not be appropriate in all instances. For example, absent a secure method for electronic service of documents, other service options should be used for cases or documents filed confidentially.

Committee Comments

(December 29, 2009)

The rules on service and filing have been revised to provide for sending documents via third-party commercial carrier. Under these rules, the term “delivery” refers to all the carrier’s standard pick-up methods, such as dropping a package in a UPS or FedEx box or with a UPS or FedEx contractor.