

Proposal 24-06

Offered by the Supreme Court Commission on Access to Justice

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:

- (i) through an approved electronic filing service provider (EFSP) to the e-mail address(es) entered by the party into the EFSP or to the e-mail address(s) in the party's filed appearance;
- (ii) to the e-mail address(es) identified by the party's filed appearance in the matter; or
- (iii) to the e-mail address(es) provided by the party orally to the court and entered into the court record during a court proceeding as an address designated for service of legal documents for purposes of Rule 11(c)(1).

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;
- (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.

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.

(e) 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).

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 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:
 - 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.
 - 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.
 - c. 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, 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, a filing party acts consistently with their obligation of fairness embodied in Illinois Rule of Professional Conduct 3.4 by offering to send electronic copies of any 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.

6. 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.

7. If the receiving party is self-represented, but later retains counsel, a filing party acts consistently with their obligation of fairness embodied in Illinois Rule of Professional Conduct 3.4 by offering to send electronic copies of any 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.

8. 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.

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.