

Proposal 23-03

Offered by the Appellate Lawyers Association

Rule 373. Date of Filing in Reviewing Court.

A. Unless received after the due date, Except as provided in paragraph (B), the time of filing records, briefs or other documents required to be filed within a specified time will be the date on which they are actually received by the clerk of the reviewing court.

B. If received after the due date, the time of mailing, or the time of delivery to a third-party commercial carrier for delivery to the clerk within three business days, for any filing exempt from electronic filing under Rule 9(c) by an incarcerated, self-represented litigant shall be deemed the time of filing. Proof of mailing, or delivery to a third party-commercial carrier shall be as provided in Rule 12(b).

C. This rule also applies to a motion directed against the judgment and to the notice of appeal filed in the trial court.

Amended January 5, 1981, effective February 1, 1981; amended July 1, 1985, effective August 1, 1985; amended December 17, 1993, effective February 1, 1994; amended December 29, 2009, effective immediately; amended September 19, 2014, eff. immediately; amended Oct. 6, 2016, eff. Nov. 1, 2016; amended June 22, 2017, eff. July 1, 2017.

Committee Comments
(Revised July 1, 1985)

Rule 373 was new in 1967. It was designed to make it unnecessary for counsel to make sure that briefs and other papers mailed before the filing date actually reach the reviewing court within the time limit. Receipt of the paper in the clerk's office a day or two later will not delay the appeal. As originally adopted the rule provided that the time of mailing might be evidenced by the post mark affixed by a United States Post Office. Because of problems with the legibility of post marks, and delay in affixing them in some cases, the rule was amended in 1981 to provide for the use of affidavits of mailing or United States Postal Service certificates of mailing.

The 1985 amendment regarding the recording of a filing date was intended to simplify record keeping in the appellate and supreme courts.

Commentary
(December 17, 1993)

The rule is revised to make the method of proof of mailing consistent with practice under Rule 12.

Reference to the notice of appeal coming within the scope of the rule is a reflection of existing law (see *Harrisburg-Raleigh Airport Authority v. Department of Revenue* (1989), 126 Ill. 2d 326).

Committee Comments
(December 29, 2009)

The rules on service and filing have been revised to provide for sending documents via thirdparty 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.

Rule 9. Electronic Filing of Documents

(a) Electronic Filing Required. Unless exempt as provided in paragraph (c), all documents in civil cases shall be electronically filed with the clerk of court using an electronic filing system approved by the Supreme Court of Illinois.

(b) Personal Identity Information. If filing a document that contains Social Security numbers as provided in Rule 15 or personal identity information as defined in Rules 138 or 364, the filer shall adhere to the procedures outlined in Rules 15, 138, and 364.

(c) Exemptions. The following types of documents in civil cases are exempt from electronic filing:

- (1) Documents filed by a self-represented litigant incarcerated in a local jail or correctional facility at the time of the filing;
- (2) Wills;
- (3) Documents filed under the Juvenile Court Act of 1987; and
- (4) Documents filed by any person, including an attorney or a self-represented litigant, with a disability, as defined by the Americans with Disabilities Act of 1990, whose disability prevents e-filing; and
- (5) Documents in a specific case upon good cause shown by certification.
 - (A) Good cause exists where a self-represented litigant is not able to e-file documents for the following reasons:
 - (i) no computer or Internet access in the home and travel represents a hardship;
 - (ii) a language barrier or low literacy (difficulty reading, writing, or speaking in English); or
 - (iii) a self-represented litigant tries to e-file documents but is unable to complete the process and the necessary equipment and technical support for e-filing assistance is not available to the self-represented litigant.

(B) Good cause also exists where any person, including an attorney or self-represented litigant, is filing a pleading of a sensitive nature, such as a petition for an order of protection or a civil no-contact/stalking order.

A Certification for Exemption From E-filing, which includes a certification under section 1-109 of the Code of Civil Procedure, and any accompanying documents shall be filed with the court—in person, by email or by mail, or by third-party commercial carrier. ~~The Certification for Exemption From E-filing and documents may also be filed by other means, such as e-mail, if permitted by the local court.~~ The court shall provide, and parties shall be required to use, a standardized form expressly titled “Certification for Exemption From E-filing” adopted by the Illinois Supreme Court Commission on Access to Justice.

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 the 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.

(d) Timely Filing. Unless a statute, rule, or court order requires that a document be filed by a certain time of day, a document is considered timely if submitted before midnight (in the court’s time zone) on or before the date on which the document is due. A document submitted on a day when the clerk’s office is not open for business will, unless rejected, be file stamped as filed on the next day the clerk’s office is open for business. The filed document shall be endorsed with the clerk’s electronic file mark setting forth, at a minimum, the identification of the court, the clerk, the date, and the time of filing.

(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.

(e) Filer Responsible for Electronic Submissions. The filer is responsible for the accuracy of data entered in an approved electronic filing system and the accuracy of the content of any document submitted for electronic filing. The court and the clerk of court are not required to ensure the accuracy of such data and content.

(f) Effective Date. This rule is effective July 1, 2017 for proceedings in the Supreme Court and the Appellate Court. For proceedings in the circuit court, this rule is effective January 1, 2018.

Adopted June 22, 2017, eff. July 1, 2017; amended Dec. 13, 2017, eff. immediately; amended Dec. 12, 2018, eff. immediately; amended Dec. 19, 2019, eff. Jan. 1, 2020; amended August 14, 2020, eff. immediately; amended Feb. 4, 2022, eff. immediately.

Committee Comments
(December 13, 2017)
(Revised February 4, 2022)

a. The implementation of electronic filing in Illinois courts should not impede a person’s access to justice. If courts are unable to meet their obligation due to an emergency situation under M.R. 18368 to provide “designated space, necessary equipment, and technical support for selfrepresented litigants seeking to e-file documents during regular court hours,” that party is exempted from e-filing under Rule 9(c)(5) and permitted to file in person or by mail. An exempted party may also file through other means, such as e-mail, as permitted by the local court.

b. Where a party has filed a Certification for Exemption From E-filing or the court has granted a good-cause exemption sua sponte, that party may file documents in person or by mail. That party may also file through other means, such as e-mail, as permitted by the local court. Each court should consider establishing a process allowing exempt self-represented litigants to file documents remotely by e-mail to reduce the number of self-represented litigants traveling to the courthouse for the sole purpose of filing documents.

c. Although a document meets the criteria for an exemption (for example, for good cause shown), any document may be electronically filed if that is the filer’s preferred method of filing the court documents.