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ELECTRONIC FILING IN NORTH CAROLINA: USING THE INTERNET INSTEAD OF THE INTERSTATE

Deborah Leonard Parker*

I. INTRODUCTION

The story is all too familiar: An attorney has worked down to the wire on an appellate brief and has missed the courier service's deadline. That attorney still faces the race to the clerk's office before the five o'clock deadline. In North Carolina, an attorney who practices in the western part of the state could face more than a seven-hour drive to reach the supreme court clerk's office. An attorney who practices in the eastern part of the state could face a five-hour drive. But the race down the highway, to beat a five o'clock deadline on the day that a brief is due to the state supreme court, is no longer necessary. The North Carolina Supreme Court now allows attorneys to file documents using the Internet instead of the interstate.

In November of 1999, the North Carolina Supreme Court adopted an amendment to the Rules of Appellate Procedure, allowing parties to file appellate records, briefs, and other documents at an appellate court electronic filing site.¹ Even in its

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1. "Filing by Electronic Means: Filing in the appellate courts may be accomplished by electronic means by the use of the electronic filing site at www.ncappellatecourts.org. All documents may be filed electronically through the use of this site. A document filed by use of the official electronic web site is deemed filed as of the time that the document is received electronically." N.C. R. App. P. 26(a)(2) (LEXIS L. Publg. 2000).

announcement of this new rule, the court acknowledged how technology is changing the legal universe, by ordering that the amended rule should be published in the advance sheets *and* “as quickly as practical on the North Carolina Judicial Branch of Government Internet Home Page (<http://www.aoc.state.nc.us>).”² This essay discusses the mechanics and implications of the new e-filing system.

II. WHAT DOES THE NEW RULE ON ELECTRONIC FILING ALLOW?

Briefly, the new rule allows a party to file appellate records, briefs, and other documents at an appellate court electronic filing site and to serve these documents on other counsel by using a correct e-mail address. The text of the new rule that provides for electronic filing is set out below:

Rule 26: FILING AND SERVICE

(a) *Filing.* Papers required or permitted by these rules to be filed in the trial or appellate divisions shall be filed with the clerk of the appropriate court. Filing may be accomplished by mail or by electronic means as set forth in this Rule.

...

(2) *Filing by Electronic Means:* Filing in the appellate courts may be accomplished by electronic means by the use of the electronic filing site at www.ncappellatecourts.org. All documents may be filed electronically through the use of this site. A document filed by use of the official electronic web site is deemed filed as of the time that the document is received electronically.

...

When a document is filed to the electronic filing site at www.ncappellatecourts.org, counsel may either have their account drafted electronically by following the procedures described at the electronic filing site, or they must forward the applicable filing fee for their document by first class mail, contemporaneously with the transmission.

...

2. *Order Adopting Amendment to Rule 26 of the Rules of Appellate Procedure* (N.C. Nov. 4, 1999) (available at <<http://www.aoc.state.nc.us/www/public/aoc/apprul26.htm>>).

(c) *Manner of Service.* Service may be made in the manner provided for service and return of process in Rule 4 of the N. C. Rules of Civil Procedure When a document is filed electronically to the official web site, service also may be accomplished electronically by use of the other counsel(s)'s correct and current electronic mail address(es) or service may be accomplished in the manner described previously in this subsection.

. . .

(g) Form of Papers; Copies. . .

The body of the document shall at its close bear the printed name, post office address, and telephone number of counsel of record, and in addition, at the appropriate place, the manuscript signature of counsel of record. If the document has been filed electronically by use of the official web site at www.ncappellatecourts.org, the manuscript signature of counsel of record is not required.³

This new rule thus creates the possibility of a paperless appeal. One dramatic change wrought by this new rule is found in the provision that a document filed electronically is deemed filed when the document is received electronically.⁴ According to the Clerk of the North Carolina Supreme Court, that means that the clerk's office is now open until midnight.⁵ The attorney who previously sent a staff member to the interstate at ten o'clock in the morning, with a brief to file, can now work on that brief until ten o'clock that night (or even until 11:59 p.m.), as long as the attorney files the brief electronically before midnight on the day it is due.

The new rule allows for electronic filing "in the appellate courts,"⁶ which clearly anticipates electronic filing for both the North Carolina Court of Appeals and the North Carolina Supreme Court. As of the summer of 2000, however, the court of appeals had not established an electronic filing site at www.ncappellatecourts.org. According to the chief judge of

3. N.C. R. App. P. 26 (LEXIS L. Publg. 2000).

4. N.C. R. App. P. 26(a)(2) (LEXIS L. Publg. 2000).

5. Michael Dayton, *Supreme Court Launches Electronic Filing of Documents*, 12 N.C. Law. Wkly. 0993 (Nov. 15, 1999) (quoting Christie Speir Cameron, Clerk of the North Carolina Supreme Court).

6. N.C. R. App. P. 26(a)(2) (LEXIS L. Publg. 2000).

the court of appeals, the intermediate appellate court is observing the electronic filing system at the supreme court and plans to implement a similar system during the coming year.⁷ The court of appeals, with a caseload roughly three times that of the supreme court,⁸ will benefit from watching and learning from the supreme court's experience with electronic filing in a smaller number of cases, before establishing its own electronic filing system.⁹

III. HOW NORTH CAROLINA CREATED ITS ELECTRONIC FILING SYSTEM

In North Carolina, the first steps toward electronic filing came when it was time to replace the outdated printing equipment in the supreme court clerk's office.¹⁰ The new IBM print machines that the court purchased had the ability to print sixty pages of text per minute, as well as the ability to scan in a paper version of a document and store it electronically. With minor adjustments, the software that ran the new high-speed scanner was also capable of accepting electronic files directly into the system, from the Internet, without scanning.¹¹ The system and equipment that make electronic filing possible ended up costing the state "little more than it would have to replace its worn-out copiers—less than \$100,000."¹²

With the equipment in place, the supreme court announced plans to begin accepting electronic filings in early 1999. The chief justice announced that the North Carolina Attorney General's office and some of the state's larger law firms would participate in an experiment, by filing both electronic and paper

7. Telephone Interview with the Honorable Sidney S. Eagles, Jr., Chief Judge, North Carolina Court of Appeals (June 26, 2000).

8. N.C. Judicial Branch, *1999 Annual Report: Preparing for the Next Millennium* 10 (available at <<http://www.aoc.state.nc.us/www/public/adobe/annrep99.pdf>>) (accessed Aug. 4, 2000).

9. Telephone Interview with Chief Judge Eagles, *supra* n. 7.

10. Telephone Interview with Dan Bell, Electronic Filing Consultant, North Carolina Supreme Court (June 28, 2000).

11. Christina Dyrness, *State Supreme Court Offers E-filing*, News & Observer (Raleigh, N.C.) D1 (Dec. 16, 1999).

12. *Id.* (quoting Jim Tremontana, a product manager for IBM).

versions of documents “until the kinks [were] worked out.”¹³ The clerk’s office spent several months working with IBM, to fine-tune the software, and in the summer of 1999, the North Carolina Supreme Court became the first state appellate court to accept an electronic submission of a brief from a private law firm. After several dozen documents had been successfully filed electronically (with duplicate paper versions filed by mail), the court was ready to accept electronic submissions, without follow-up paper documents.¹⁴

The court amended its Rules of Appellate Procedure to allow electronic filing, as of November 15, 1999.¹⁵ That same month, the State Justice Institute¹⁶ awarded a grant to the supreme court to support “The North Carolina Appellate Courts Electronic Filing Project.”¹⁷ The grant is being used to pay the salary for an Electronic Filing Consultant, who continues to work on improving the electronic filing system and answers the questions that arise as attorneys begin to use the electronic filing system. The Electronic Filing Consultant is even available to travel around the state to train attorneys to use the system and to educate law firms about the system.¹⁸

IV. HOW TO “E-FILE”: A USER-FRIENDLY SYSTEM

The court’s electronic filing site offers extensive on-line support, to ensure that both “techie”¹⁹ and “Luddites”²⁰ can file

13. Michael Dayton, *High Court to Launch Electronic Filing for Briefs*, 11 N.C. Law. Wkly. 1243, 1245 (Dec. 14, 1998) (quoting Chief Justice Burley Mitchell).

14. Dayton, *Supreme Court Launches Electronic Filing of Documents*, *supra* n. 5, at 0993.

15. *Order Adopting Amendment to Rule 26 of the Rules of Appellate Procedure* (N.C. Nov. 4, 1999) (available at <<http://www.aoc.state.nc.us/www/public/aoc/apprul26.htm>>).

16. The State Justice Institute was created and is funded by Congress to foster “innovations in judicial administration that would improve the quality of justice in State courts across the nation.” State Justice Institute, *10 Years: Improving the Quality of American Justice, 1987-1997* 1 (1997) (available in PDF format at <<http://www.statejustice.org/material.htm>>) (accessed Aug. 4, 2000).

17. *Spotlight on Appellate Courts*, 10 SJI News 5 (Winter 1999). SJI News is the newsletter of the State Justice Institute.

18. Telephone Interview with Dan Bell, *supra* n. 10.

19. “techie or tekkie — . . . a technical expert, student, or enthusiast, esp. in the field of electronics.” *Webster’s College Dictionary* 1370 (Random House 1995).

20. “Luddite — 1. a member of any of various bands of workers in England (1811-16)

their documents electronically. With a personal computer, an Internet connection, and the address of the appellate court filing site, an attorney can reach a web page entitled *North Carolina Appellate Courts Document Library and Supreme Court of North Carolina Electronic Filing Site*.²¹ The key to enlightenment for a technologically impaired attorney lies in the invitation at the bottom of the screen: "CLICK HERE FOR HELP." The attorney who knows how to "CLICK HERE" will be transported to a help page, entitled "ATTORNEY'S INSTRUCTIONS FOR ELECTRONIC FILING OF DOCUMENTS IN THE SUPREME COURT OF NORTH CAROLINA."²²

The instructions page first tells new users who want to submit documents electronically that they need only a personal computer, Internet access, Adobe Acrobat (Full Version 4.0), and, if an appendix needs to be added to the document, a scanner with an automatic feeder. Then, the instructions page takes a new user, literally step-by-step, through the process of registering with the court, preparing the document to be submitted, and submitting the document electronically.²³ The highlights of the process are set out next.

A. Registering

A new user must register with the clerk's office the first time a document is submitted electronically. When registering, the attorney submits directory information and accepts a randomly assigned password (or designates another password). Within a day or two, the clerk's office contacts the attorney by telephone to verify the attorney's identity, and the attorney

who destroyed industrial machinery in the belief that its use diminished employment. 2. Any opponent of new technologies or of technological change." *Webster's College Dictionary* 807 (Random House 1995). The author is presently trying to shake off her Luddite tendencies by typing phrases like "PDF document."

21. *Document Library and Supreme Court of North Carolina Electronic Filing Site* <<http://www.ncappellatecourts.org>> (accessed July 18, 2000).

22. *Attorney's Instructions for Electronic Filing of Documents in the Supreme Court of North Carolina* <<http://www.aoc.state.nc.us/www/public/sc/suggest.htm>> (accessed July 14, 2000).

23. While the help page discusses an "attorney's" procedure for electronic filing, it is worth noting that a pro se litigant would also be permitted to register and use the system. Telephone Interview with Dan Bell, *supra* n. 10.

receives an e-mail notification that the registration request has been approved. A new user only has to register once.

B. Preparing the Document

An attorney cannot simply send a document to the court as an attachment to an e-mail message. The attorney must process the completed document through Adobe Acrobat software to convert the document to a Portable Document File (“PDF”). The instructions note that a PDF document has two advantages: (1) the document can be viewed and printed by users with other kinds of word processing programs; and (2) the document is secure, because a PDF document is difficult to alter.²⁴ The instructions page links to the Adobe web site, where a user can purchase Adobe Acrobat software online²⁵ and obtain free software to view PDF documents.²⁶

The instructions page then gives detailed directions about how to convert the document to be submitted to a PDF format and how to append any scanned pages of transcript or other additional pages.²⁷ The detail in these directions may not be necessary for a seasoned techie. But a Luddite will appreciate explanations such as: “On the toolbar, go to ‘File’ and then ‘Save As’ (not ‘Save’). You use ‘Save As’ because it compresses the document to the smallest size possible.” There are those of us who need to be told to “be sure to close your document before attaching it.”

C. Submitting the Document

The instructions page leads the attorney through filling out an E-Court Docket Submission screen and uploading the file and accompanying data the attorney is submitting. In the midst of instructions to “click on Submit” and “click on the Upload button” is a reminder that some aspects of filing a document

24. *Attorney’s Instructions for Electronic Filing*, *supra* n. 22.

25. The necessary software is priced at \$249. Adobe Systems, *Adobe Acrobat* <<http://www.adobe.com/store/products/acrobat.html>> (accessed July 14, 2000).

26. Adobe Systems, *Adobe Acrobat Reader* <<http://www.adobe.com/products/acrobat/readermain.html>> (accessed July 14, 2000).

27. *Attorney’s Instructions for Electronic Filing*, *supra* n. 22.

with the court do not change: the Instructions note that an attorney can “continue” through any questions about unsecured transmission, since court documents are public information.

Throughout the instructions, there are constant reminders that attorneys can receive additional help with electronic filing by calling the phone number at the clerk’s office. The final reminder emphasizes that attorneys can call “from 8 a.m. to 5 p.m., Monday through Friday.” What probably draws a desperate attorney’s attention, though, is the very last sentence of the paragraph: “But remember, you may electronically file at any time of the day or night, every day!”²⁸

V. AN ELECTRONIC LIBRARY—AND A BRIEF BANK, TOO!

The appellate court web site²⁹ contains more than the electronic filing site and a help-page. The web site also contains a library of documents that have been filed with the North Carolina Supreme Court since January 1, 1999. Since that time, the documents that have been filed with the court in a paper version have been scanned and stored in this virtual library, and documents filed electronically have been accepted directly into the system without scanning.³⁰

This document library is available to anyone who accesses the web site,³¹ so attorneys, law students, and others nationwide have free access to the documents filed with the court since 1999. In this library, a user can search for a case, using either party’s name, the docket number, the submitting attorney’s name, or the type of document. An attorney who wants a “go-by” for a petition or who would like to read the appellant’s brief in an important case no longer has to go to the supreme court clerk’s office or a law school library. A petition or brief that has been filed since 1999 can be accessed through the Internet.

The document library has also created an easily accessible “brief bank,” which is especially useful for the two “law firms”

28. *Id.*

29. *Document Library and Supreme Court of North Carolina Electronic Filing Site*, *supra* n. 21.

30. Telephone Interview with Dan Bell, *supra* n. 10.

31. *Document Library and Supreme Court of North Carolina Electronic Filing Site*, *supra* n. 21.

that file more briefs in the supreme court than any other firms in the state: the Appellate Division of the Attorney General's Office and the Office of the Appellate Defender.³² These two public agencies can now access their briefs and other filed documents in the supreme court's document library, instead of keeping copies in file cabinets or tying up computer memory.

VI. THE ELECTRONIC FILING SYSTEM AT WORK

Attorneys have now been filing documents electronically with the Supreme Court of North Carolina for more than six months. The North Carolina Supreme Court's Electronic Filing Consultant reports that most of the submissions, so far, have been from the Appellate Division of the Attorney General's Office, the Office of the Appellate Defender, and a few of the large law firms in the state. It is significant that the Attorney General's Office and the Appellate Defender's Office are filing their documents at the court's electronic filing site, since 25% of the filings in the North Carolina Supreme Court come from those two offices.³³ Each of these offices hopes to file almost all of its submissions to the court electronically within a year. As more large firms begin to file electronically, the supreme court hopes to receive 40% of its total submissions electronically within the next year.³⁴

Attorneys who file infrequently with the Supreme Court may not use the electronic filing system as readily as government agencies or large firms, because of the cost of purchasing the Adobe Acrobat software to convert documents to PDF documents. But smaller firms, solo practitioners, and other attorneys who rarely file a document with the Supreme Court can still benefit from the appellate court web site, because everyone with a personal computer and Internet access can view and download documents from the document library.

32. Together, the Attorney General's Office and the Office of the Appellate Defender account for about 25% of the filings in the North Carolina Supreme Court. *Id.*

33. *Id.*

34. Telephone Interview with Robert F. Northrup, Information Systems Director, North Carolina Supreme Court (June 9, 2000).

The North Carolina Supreme Court's electronic filing system has been called "a showcase,"³⁵ although there are some logistical questions about the system that will require some continuing work and evaluation. The court is still working with IBM on how to transfer filing fees electronically, which would eliminate the need for an attorney who is filing electronically to send a check.³⁶

The benefits of electronic filing are many, but those attorneys who choose to file electronically may still face some novel questions that arise from electronic filing. Inevitably, questions of timeliness will arise when either the court's or an attorney's Internet connection is not working. Problems could also arise if a party attempted to serve documents on opposing counsel at an e-mail address that was incorrect. These issues may need to be addressed by further amendment to the North Carolina Rules of Appellate Procedure.³⁷

VII. THE BENEFITS OF ELECTRONIC FILING: TODAY AND TOMORROW

The North Carolina Supreme Court's electronic filing system has put technology to work to address many problems faced by the court and the attorneys who appear before the court. The electronic filing site and the accompanying document library create an opportunity to save time, money, and resources.

The opportunity to save time is particularly enticing to that attorney racing down the highway to beat a five o'clock filing deadline. Because the court can accept submissions from an attorney at any time, night or day, the office hours of the clerk's office have now been extended. Attorneys will also save the time that has been spent locating a copy of a document, because all the documents in an appeal can be found instantly, in the court's document library.

35. Dyrness, *supra* n. 11 (quoting Jim Tremontana, a product manager for IBM).

36. *Id.*

37. The North Carolina Business Court has adopted extensive "General Rules of Practice and Procedure," which provide an example of court rules that anticipate issues that will arise with the use of technology. *General Rules of Practice and Procedure of the North Carolina Business Court* <<http://www.ncbusinesscourt.net/final%20rules.htm>> (last updated May 3, 2000).

The electronic filing system also offers financial savings. The help page that accompanies the electronic filing site notes that filing documents through an electronic medium, rather than a paper medium, “reduces costs to all parties involved, including the taxpayers and the attorneys.”³⁸ A survey by West Publishing found that preparation and delivery of an appellate brief costs from \$22 to \$25. West estimates that electronic filing will cut that cost by one-half or more.³⁹

An enormous amount of paper can be saved with electronic filing. Instead of printing multiple copies of appellate records and briefs, the supreme court justices and their clerks can access these documents online. While some justices and clerks will print paper copies of these documents, others will read and add electronic notes on a computer screen.⁴⁰ After a case is decided, the clerk’s office will have copies of the record, briefs, and other submissions in the document library and will not need to keep paper copies.

Reclaiming physical space devoted to storage is a significant benefit of electronic filing. The clerk’s office can now store filed documents at its web site, instead of in rooms full of file cabinets. The Office of the Attorney General and the Office of the Appellate Defender have discovered that they too can use the appellate court web site as a brief bank.

The electronic filing system and web site also offer new resources to help attorneys prepare their submissions to the court. An attorney who wants to see what arguments were persuasive to the court in a particular case can actually read the appellate briefs from that case. In some ways, the document library can offer the same kind of help that an experienced attorney can offer a new attorney. Almost every new lawyer has needed to stroll down the hall or down the street and ask: “What does a Reply to a Petition for Discretionary Review look like?” The new lawyer can now print a “go-by” from the document library at the court’s web site, at any time.

The appellate court web site gives every attorney the same access to the supreme court clerk’s office that, prior to 1999,

38. *Attorney’s Instructions for Electronic Filing*, *supra* n. 22.

39. Dayton, *Supreme Court Launches Electronic Filing of Documents*, *supra* n. 5, at 0996.

40. *Id.*

only attorneys in the capital city enjoyed. Even attorneys who never file a document electronically can benefit from this access. The institutional benefits to the legal system are significant, but the information and practical assistance that are now available to individual attorneys at the appellate court web site are equally important.

The Chief Justice of the North Carolina Supreme Court, who admits to pulling books off the shelf while his clerks are downloading cases on their computers, enthusiastically endorses electronic filing.⁴¹ In fact, the chief justice has called for electronic filing to spread, noting that electronic filing for the entire North Carolina court system would be “a huge benefit.”⁴² If the chief justice’s call to extend electronic filing throughout the court system is heeded, more time, money, and resources can be saved, and more information can be instantly available to every attorney in the state—all by using the Internet instead of the interstate.

41. Dyrness, *supra* n. 11 (quoting the Honorable Henry E. Frye, Chief Justice of the North Carolina Supreme Court).

42. *Id.*