

## Beware of These Traps in E-Filing and E-Notices

Two different federal appellate courts recently dismissed cases in which the attorneys did not comply with e-filing rules. Here are a couple of tips based on the rulings in those cases.

**Make Sure You Are Filing the Right Document.** In the first case, the plaintiff filed what it thought was a notice of appeal on December 26, five days before the deadline on December 31. However, the document was instead a request for oral argument that had mistakenly been filed. The electronic docket showed that the plaintiff had been notified of its mistake and that the plaintiff had refiled within five working days (in accordance with local rules). The 5th Circuit ruled that the plaintiff's appeal had to be dismissed without any consideration on the merits because the request for oral argument did not constitute a notice of appeal and because the local rule did not operate to extend the applicable deadline. (*Kinsley v. Lakeview Reg'l Med. Ctr.*, 5th Cir., June 3, 2009.)

**An Accidentally Deleted E-mail Is Not an Excuse for Missing a Deadline.** In the second case, the losing party claimed to have not received the e-mail notifying it that the trial court had issued a final order. At an evidentiary hearing, the court determined that the losing party's e-mail system had received the e-mail, and that someone at the law firm must have accidentally deleted the e-mail, leaving no record of it. The 8th Circuit determined that this was not a legitimate excuse for failing to file a notice of appeal in a timely fashion. (*American Boat Co. v. Unknown Sunken Barge*, 8th Cir., June 4, 2009.)

E-notices from courts are also fraught with pitfalls. Here are a couple of helpful tips.

### Spam and Junk E-Mail Filters Can Block Court Notices.

An attorney who failed to appear in Colorado was required to pay the opposing party's attorney fees when his firm's spam filter inadvertently blocked e-notice of a settlement conference. *Pace v. United Serv. Auto. Ass'n*, 2007 U.S. Dist. LEXIS 49425 (D. Colo. July 9, 2007). To avoid this trap, set spam or junk e-mail filters to allow receipt of e-notices from the courts in which you practice. Otherwise, you may miss an important deadline or notice. You may need to make this change at the Internet Service Provider (ISP) level and in the settings of your specific e-mail program. Example: Assume Verizon is your ISP and Microsoft Outlook® is your e-mail program. Log on to your e-mail account with Verizon at [www.verizon.net](http://www.verizon.net), and change the spam settings using Verizon's "Spam Detector." Do the same with Outlook by changing your junk e-mail options (specific steps vary depending on which version of Outlook you are using). These steps ensure that neither your ISP (Verizon) nor your e-mail program (Outlook) will block e-notices from the court.

### Keep Staff Informed by Automatically Forwarding Court E-Notices.

In the "good old days," staff docketed deadline dates from the U.S. postal mail. By opening, date-stamping, and processing court notices and other deadline-related documents, they automatically knew the status of the attorney's cases and were able to keep the docket up-to-date. In today's law office, e-mail from opposing counsel and courts, along with electronic case filing, has replaced much of the paper. While going paperless is beneficial in many ways, it does have an unintended side effect: cutting staff out of the loop.

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Consider creating agents or rules in your e-mail program to duplicate and forward copies of court notices to staff. You may want to do the same with e-mail from opposing counsel or clients. This will keep staff informed and allow them to immediately and automatically docket deadline dates. If you are ill, on vacation, or simply get buried with work and don't have time to go through your inbox, staff can continue to monitor incoming e-mail.

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*Source of information about federal appellate cases:  
Fastcase blogspot, June 11, 2009.*