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# Briefly: E-filing may be easy, but it's not that easy

By: Eric Magnuson and Luke Hasskamp April 13, 2017

You thought this electronic filling stuff was simple, right? Surely, you've got it down by now, or at least your legal assistant does. What's so hard? All you have to do is click a couple buttons and every filing and service requirement is satisfied in seconds, right?

Well, as we continue to see, things aren't quite that easy. Although the Minnesota courts have taken significant steps to simplify both filing and service, they still have rules, and those rules cannot be ignored. Indeed, some of those rules are jurisdictional, meaning that adherence to them is critical; failure to do so can lead to the dismissal of an appeal. Practitioners received yet another reminder of that recently from the Court of Appeals, in the Matter of the Welfare of the Children of A.S. and D.A.S., Sr., Parents, A16-1725.

There, the appellant sought review of an order terminating parental rights in a juvenile protection proceeding. Under controlling juvenile rules, within 20 days the appealing party must file a notice of appeal with the clerk of the appellate courts and also serve that notice on the county attorney. Minn. R. Juv. Prot. P. 47.02, subd. 3.

In Minnesota, service may be made in several ways, including personal service, United States mail, or by use of the appellate court's electronic-filing system (E-MACS). Minn. R. Civ. App. P. 125.03. Electronic service is deemed completed upon confirmation from E-MACS that filing has been approved, provided the filer selects E-MACS Service for a registered user when completing filing on E-MACS. Id. Service by other electronic means, such as e-mail, is permitted but only with the consent of the party to be served. Id.

In the Children of A.S. and D.A.S., because the order had been served by the court administrator via U.S. mail on October 6, the appellant had until October 31, to file and serve the notice of appeal. See Minn. R. Juv. Prot. P. 4.01, 4.02. On October 27, the legal assistant for the appellant's counsel electronically filed the requisite documents, including the notice of appeal, using E-MACS. However, the assistant failed to electronically serve the notice of

appeal on the county attorney's office through E-MACS. Instead, she stated that she was "under the assumption that after you entered the information for all of the parties in the EMACS system that those parties would be served by the system." Unfortunately, the assistant was mistaken. It's not enough to simply file the notice of appeal; an additional step – just a few more clicks – is required to electronically serve it on opposing counsel.

On the same day the notice was filed electronically, the legal assistant also sent – via e-mail – electronic copies of the requisite documents, including the notice of appeal, to the county attorney's office. However, the county attorney's office had not expressly consented to receive service by e-mail. A member of the county attorney's office acknowledged receipt of this email, but she also confirmed that she was never served personally, via U.S. Mail, or through E-MACS.

Surely a technicality, you might think, since the appeal pleadings were in fact served. It turned out to be more than just a technicality. After the appeal was received by the Clerk of Appellate Courts, the Minnesota Court of Appeals issued an order questioning jurisdiction. The county attorney's office also joined the fray, filing a motion to dismiss the appeal and attesting that it was never properly served. The county attorney argued that, without proper service, the court of appeals lacked jurisdiction to hear the matter, a point clearly established by case law. See In re Welfare of Child of T.L.M., 804 N.W.2d 374, 377 (Minn. Ct. App. 2011).

In response, the appellant argued that dismissal of the appeal for improper service would exalt form over substance, as there was no question that the county attorney's office received the documents via e-mail. The appellant's counsel noted that he had been appointed to represent the appellant by order of the district court the day before the appeal was filed. Counsel also noted that his legal assistant was "very familiar" with E-MACS and "to the best of her knowledge she followed the requirements" in filing the appeal. The appellant later argued that by participating in the E-MACS filing system, the county attorney's office had "at least arguably 'consented' to service" by e-mail.

All good arguments, but all to no avail. The court of appeals dismissed the appeal. The court emphasized the requirements of the service rules and concluded that the attempted service via e-mail "was not effective service on the county, because counsel for the county did not consent to such service." The court added that service "in a manner not authorized" by the rules "is ineffective service." Because the timing requirement of Minn. R. Juv. Prot. P. 47.02, subd. 2, is jurisdictional, the appeal was untimely and, thus, had to be dismissed.

The court ended by noting that, because these rules were jurisdictional, it was without power to conclude otherwise, noting that "only the supreme court has inherent authority to extend the deadline for an appeal that is untimely under the applicable rules." This is a position that the court of appeals has taken since it was created; it does not see itself as having the power to ignore the jurisdictional provisions of rules promulgated by the Supreme Court.

The Supreme Court is not so limited. In addition to the rule-making power ostensibly conferred by Minn. Stat. 480A.05, the court has declared that it possesses discretionary authority under the Constitution to exercise its appellate jurisdiction in situations where there is no express statutory or other grant of such jurisdiction. We have written on more than one occasion about the power of the Supreme Court to grant relief from technical errors, and the fact that it sometimes grants relief and sometimes does not. Eric J. Magnuson & Matthew J.M. Pelikan, "In the Interest of Justice," Minn. Lawyer (Feb. 20, 2015) (discussing Supreme Court order granting relief from court of appeals dismissal of appeal served by fax); Eric J. Magnuson & Lisa L. Beane, "Appendix-itis and Other Potentially Fatal Appellate Diseases," Minn. Lawyer (Nov. 16, 2015) (discussing Supreme Court order rejecting petition for review because the attached documents required under Rule 117 were labeled "Appendix" rather than "Addendum"). While it does happen, counting on the Supreme Court to exercise that discretion is a risky proposition.

Unfortunately, in the case of the faulty electronic service, the Supreme Court denied the appellant's petition for further review. That outcome may seem harsh, but it is also one that could have been easily avoided. The rules aren't hard, but they still must be followed. Electronic filing is here to stay and it is mandatory. With it has come convenience and many benefits, including saving time, money, effort, and paper.

Yet, with those benefits come some modest burdens. It is not sufficient to have a general understanding of the system and an assumption that with a few clicks it's all taken care of. Instead, practitioners need technical proficiency on the ins and outs of E-MACS, including the steps required for filing and service of an appeal. Indeed, understanding this technology is your professional responsibility. Comment 8 to Rule 1.1 of the Minnesota Rules of Professional Conduct – the rule outlining an attorney's duty of competence – expressly requires technical competency, reminding lawyers to stay "abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology[.]" And that duty extends to ensuring that your legal assistant understands this technology as well.

It's important to make the effort to continue to educate yourself about these requirements. A great place to start those efforts is on the Minnesota courts website, which has a comprehensive Frequently Asked Questions page.

Beyond that, read the emails received from E-MACS following filing. As the FAQ notes, "After submitting an e-filing, you will receive a confirmation e-mail regarding your submission. This does not, however, mean that your filing has been accepted by the clerk's office. A second e-mail will be sent when the filing has been reviewed and approved by the clerk's office." Receipt of that second email is critical. Until receipt of that confirmation, practitioners should not assume filing and service requirements have been satisfied.

Take the time to get (re-)educated. The courts have done their part in trying to make filing simple and user-friendly. Do your part, too. It's what the courts expect and your clients deserve.

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