

# Legal Technology

The newsletter of the Illinois State Bar Association's Standing Committee on Legal Technology

## Streamline your practice with e-signatures

BY ANTHONY KOLT

Most Illinois attorneys will be very familiar with provisions permitting a contract to be executed in multiple counterparts, all of which become part of the final agreement. Similarly, many practitioners have become accustomed to inserting clauses providing that electronic signatures, PDF copies, facsimile signatures and other non-“original” signatures are valid and deemed to be originals. While these provisions save time for attorneys – each side of a deal can circulate a signature

page to its own signatories and then assemble a fully-executed version with multiple signature pages – many attorneys are not yet taking advantage of the use of truly electronic signatures (“e-signatures”) to streamline their practices.

Implementing and using e-signature services has become increasingly simple and cost effective, and attorneys should be aware of the benefits of e-signatures for their clients and themselves. Keeping

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## What can Illinois courts learn from PACER?

BY MARK C. PALMER

There is no doubting it, in the Illinois courts and circuit clerks' offices around Illinois' 102 counties, paper is king. But as we quickly approach the 2018 deadline for required electronic filing of documents in all civil cases by Order of the Illinois Supreme Court,<sup>1</sup> the court clerks, lawyers, judges, paralegals, and staff are faced with an enormous task of going paperless by embracing digital storage and access to

information.

Ideally, this transition to technology will make the Illinois court system more efficient, environmentally friendly, and cut overall costs along the way. So with the “when” answered by the Supreme Court's Order, the courts and clerks around the state continue to focus on the “how.” And what better example of an electronic court

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## Streamline your practice with e-signatures

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up to date on developments in legal technology is a part of every attorney's duty of competence, as set forth in comment 8 to Model Rule 1.1, which provides that "to maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology...*"<sup>1</sup> As the use of e-signatures increases, so too does the need for every attorney to become acquainted with this technology.

### Legal Background – Bringing E-Signature to Life with the New Millennium

In July 1999, Illinois enacted its first law regarding electronic records and signatures, the Electronic Commerce Security Act ("ECSA").<sup>2</sup> Contemporaneously, the Uniform Law Commission was completing its preparation of the Uniform Electronic Transactions Act ("UETA")<sup>3</sup> and the U.S. Congress was crafting the Electronic Signatures in Global and National Commerce Act ("ESIGN Act"),<sup>4</sup> which came into effect one year later. The ESIGN Act and UETA are quite broad, generally permitting the use of electronic records and signatures and enunciating the policy that a record or signature should not be held invalid simply because of its electronic form. The Illinois ECSA goes quite a bit further, prescribing specific security measures that must be used, detailed descriptions of the responsibilities of e-signature services and e-signatories themselves, as well as penalties for fraudulent use of e-signatures.

### Common Features of E-Signature Services

Fortunately for practitioners, the e-signature service marketplace has expanded considerably in recent years, with many choices now available. The most widely-used e-signature services include DocuSign, eSignLive, Adobe Sign, and SignNow,<sup>5</sup> though dozens of other services are available with varying feature sets and at varying price points. Most e-signature

service providers offer plans in the range of \$10 per month, but added users and added features usually bring added cost.

Common features of many e-signature services include the ability to allow recipients to add not just their signatures or initials, but to add additional text to "fill in the blanks" in a document, check boxes, select from drop-down menus, and more. Most e-signature services will also allow the sender to automatically capture the date of an e-signature and insert it in the document, providing further verification of the actual date of signing.

Most e-signature services are very user-friendly, both for the sender and for the signatory. For a sender, highlighting fields for signature or other input takes only a few seconds. For a signatory, a notification will arrive by e-mail with a secure link to the document itself. If on a desktop or laptop computer, the signatory can usually draw his or her own with a mouse, or select from a signature-like font. On a smartphone or tablet, the signatory can simply use a finger to draw a signature directly on the screen, then return the executed document with a few taps.

Once all e-signatories to a document have signed, e-signature services will compile a single document including all of the signatures and other information entered by signatories, eliminating the need to cobble together a fully-executed document with multiple signature pages.

### Benefits and Limitations of Use

#### Cost Savings

As many small firms and solo practitioners are working to tighten their belts and streamline their practices, e-signatures remove the need for using postage and mailing supplies, providing measurable cost savings, especially for those practicing in areas that can be particularly signature-intensive, such as real estate.

#### Time Savings

Especially when time is of the essence, e-signatures can be vital. Using

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e-signatures, the turnaround time for sending a document and receiving an executed copy can be a few minutes, rather than the hours it would typically take to send a PDF via e-mail, wait for the signatory to print it, sign it, find a scanner, and e-mail it back. Similarly, the days-long turnaround times for mailing a document and receiving an executed copy can, and should be, eliminated by practitioners where possible for the sake of efficiency and improved client service.

### Security

The Illinois ECSA prescribes a specific verification procedure, known as an asymmetric cryptosystem, for showing that an e-signature is the intended act of the signatory. Each e-signature must be accompanied by a “public key,” a unique set of characters that corresponds to a “private key,” which the e-signature service retains. Only the unique public key can “unlock” the private key to verify the authenticity of the signature. While the two keys must be

mathematically related, the ECSA requires that it be “computationally unfeasible to discover the other key (the private key).”<sup>6</sup>

### Limitations of E-Signature in Illinois

The Illinois ECSA generally provides for the recognition of electronic records and signatures, but contains a few important exceptions, including wills, trusts and powers of attorney for health care, as well as negotiable instruments or other instruments of title where possession of the instrument legally confers title.<sup>7</sup> The Illinois ECSA also provides a catch-all exclusion, where if the law’s “application would involve a construction of a rule of law that is clearly inconsistent with the manifest intent of the lawmaking body or repugnant to the context of the same rule of law,” an e-signature will not be considered valid. However, the ECSA clarifies that simply because a law requires that information be “in writing,” “written,” or “printed” does not establish the requisite intent.

Although many Illinois attorneys

already use e-signature services, further adoption of e-signature by practitioners will continue to streamline their practices, saving time and money and improving the client experience, both in convenience and efficiency. ■

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1. See Sims, Bryan M., “Legal Competence Requires Tech Competence,” ISBA Committee on Legal Technology Newsletter, vol. 23, no. 5 (May 2016).

2. 5 ILCS 175/1-101, *et seq.*

3. 47 states have adopted a form of the UETA, but Illinois has not. New York and Washington (state) are the other non-UETA states. <<http://www.uniformlaws.org/Act.aspx?title=Electronic%20Transactions%20Act>>.

4. 15 U.S.C. §7001, *et seq.*

5. <<https://www.g2crowd.com/categories/e-signature>>.

6. 5 ILCS 175/5-105.

7. 5 ILCS 175/5-115.

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## What can Illinois courts learn from PACER?

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records system to look to for guidance other than the federal government's Public Access to Court Electronic Records (PACER) system.

Since its inception in 1988 (before the birth of the world-wide web), PACER changed how everyone, from pro se litigants to judges, obtains files and tracks federal cases. Yet, while the federal courts have enjoyed all the benefits the federal electronic court systems in all bankruptcy, district, and appellate courts, it has not been a stranger to various criticisms from the legal community and the public alike.

Illinois may have some things to learn from the growing pains of PACER if it is to build a cheaper, faster, more efficient, and environmentally friendly e-filing system. The high cost to access case information using PACER seems to garner the most critiques. The government claims it needs the operational revenues, while the critics say it is unjustly profiting from disproportionate fees that exceed its costs.

While Illinois courts are prohibited from charging any additional filing fees beyond what is currently paid at the counter, the new e-filing standards do not preclude an e-filing vendor from charging fees for electronic filing services to litigants. Thus, as a single Electronic Filing Manager (EFM) is rolled out statewide and is integrated with each court's case management system, a reasonable and justified fee schedule can lead to accessible public data with the appropriate monetary support to maintain and update it.

Additionally, if we want the public and the legal profession to be accepting of a new platform, the technology infrastructure must have statewide uniformity while being user-friendly and able to properly account for data security and privacy. The Illinois courts need to learn how to balance the need for data protection with access to that data in a way that benefits everyone. This usually means coming up with a simple system and sticking to it.

### Prescribed Fees: Reasonable or Excessive?

Since it was launched, PACER required fee revenue to build, operate and maintain the system since there were no appropriations from Congress to provide electronic public access. The PACER access fee in general is \$0.10 per page, including search result pages even if no matches result, with a cap of \$3 (the equivalent of 30 pages) for any single document. For example, accessing a 50-page court-filed document would cost the user \$3. However, attachments to the document are considered separate documents and would require additional fees. While these dollar amounts may seem trivial, they can quickly add up when searching and accessing federal case information on a routine basis.

Illinois has a potpourri of free and fee-based online court case lookup services across its 102 counties. Traditional access to view court documents in-person without any fee remains viable. Should a copy be requested, a nominal fee is often charged to cover the administrative and product costs of making such copies, whether a page or two, or many more. Some Illinois courthouses have gone a bit further by charging for the public to make their own copies by taking photographs of court records. The La Salle County Circuit Clerk's Office is among the courts which allows the public to photograph the records or the public computer screens, but only with payment of the same fees it assesses for copying<sup>2</sup>-- \$2 for the first page, 50 cents a page for the next 19 pages and 25 cents a page thereafter. So, should a nominal fee likewise carryover to online access, at least to cover the overhead costs involved in creating and transmitting that request to the online recipient?

As e-filing becomes mandated, Illinois courts and clerks' offices must balance their relationship with any e-filing vendor and the necessary revenues to develop and maintain their system with a price point that is not prohibitive for the users of our

court system in both filing and accessing information. Clearly unfunded mandates must seek reasonable alternatives to adequately fund their operations. But at what point do fees become overbearing or excessive?

Claims of excessive fees charged by PACER have been ongoing. A recent lawsuit<sup>3</sup> filed in U.S. District Court for the District of Columbia by the Alliance for Justice, the National Veterans Legal Services and the National Consumer Law Center asserts that the Administrative Office of the U.S. Courts is making too much money off the excessive fees charged for PACER. The lawsuit alleges that the fees for using PACER go beyond the actual cost of providing public records, thus preventing access to important court records. Furthermore, the nonprofit organizations claim the administrative office has a practice that discourages waiving Pacer fees for pro se litigants, journalists, researchers and nonprofit organizations.<sup>4</sup>

"Faith in our judicial system depends on transparency and uninhibited access to court documents for all Americans, regardless of the ability to pay," stated Nan Aron, president of the Alliance for Justice, in a press release about the lawsuit. "It's particularly disturbing that the courts themselves are violating a plainly written law, especially one designed specifically to promote public confidence in the judicial system."

These claims of unreasonable costs are nothing new. In 2008, the LLRX, a "small band of law librarians who believe in improved open access" led by Sabrina I. Pacifici, conducted a survey of 58 law firm libraries.<sup>5</sup> The law firms reported an average of \$13,068.48 spent on PACER fees, totaling \$692,629.30 in 2008, with one firm spending almost \$110,000.

The E-Government Act of 2002 provides, with respect to PACER fees, that the "Judicial Conference may, only to the extent necessary, prescribe reasonable fees... to reimburse expenses incurred

in providing these services.” But is a reasonable balance between public access fees and the cost of operating expenses for those same services being struck? While it may be difficult to accurately determine the operating expenses for the PACER system, reports have claimed the gap to be excessive.

The Tucson Sentinel reported<sup>6</sup> that PACER generates revenues “nearly five times what it cost to run the system.” For example, in 2012, PACER had an operational cost of \$22 million while earning \$95 million in fee revenues. When fees were increased to \$0.10 per page in 2012, PACER revenues further increased to \$145 million, “much of which was earmarked for other purposes such as courtroom technology, websites for jurors, and bankruptcy notification systems,” according to the aforementioned lawsuit.

## High Costs Are the Mother of Invention

Such high fees have resulted in some unendorsed alternatives to PACER, such as RECAP (PACER spelled backwards). RECAP is an extension (or “add on”) for the Firefox and Chrome web browsers that allows users to access documents that have been previously downloaded by other RECAP users without having to go beyond PACER’s “paywall” to view them. RECAP does this by creating a free and open repository of public court records when each RECAP user automatically “donates” the documents they purchase from PACER into a public repository.

RECAP is a joint project of the Center for Information Technology Policy at Princeton University and Free Law Project, and is not affiliated with or endorsed by the PACER system or the United States judiciary. In fact, the federal courts have posted warnings<sup>7</sup> on the use of RECAP such as reminding paid users to “be aware that RECAP is ‘open-source’ software, which can be freely obtained by anyone with Internet access and modified for benign or malicious purposes, such as facilitating unauthorized access to restricted or sealed documents.” The ironic solution to such user security warnings would be for the government to directly

connect users to the correct RECAP site.

## Your Digital Footprint on Court Documents

Criticisms over PACER have extended beyond those of excessive costs. Reader privacy, an essential First and Fourth Amendment individual right, often must go denied due to the current framework of online systems like PACER which do not allow for anonymity when accessing digital records. Leaving an intrusive footprint for governmental and private entities is a price that users must be willing to pay.

Legal scholar Julie Cohen starts her landmark article<sup>8</sup> in Internet Law by stating:

A fundamental assumption underlying our discourse about the activities of reading, thinking, and speech is that individuals in our society are guaranteed the freedom to form their thoughts and opinions in privacy, free from intrusive oversight by governmental or private entities.

Balancing an open and accessible resource for the courts, litigants, academics, and the public with accountability creates an understandably difficult challenge for system designers. As PACER and similar systems evolve, open data advocates will continue stressing the “P” in “Public” in eliminating barriers to public information such as excessive fees and providing personal information.

## Focusing on the Court and the Customers

As the Illinois courts build and improve upon the framework of digitally accessed court records, considerations for user access and privacy must be included in the conversation. Laws and policies governing privacy issues that predate the internet need reevaluation for appropriate application to modern mediums of communication and access to information.

While PACER has defined electronic access to all unified federal courts, the 24 judicial circuits of Illinois must find similar commonality in function and cost to build a unified system for the electronic filing

of cases and case documents throughout the Land of Lincoln. Uniform standards and principles may allow the diverse local jurisdictions of Illinois to define their own best models for e-filing regardless if the county serves millions or a few thousand.

The lessons of PACER before us show we cannot wait on a new generation of tech-savvy clerks, judges and politicians to create the appropriate digital court system in Illinois. The discussion must include not just how it is going to work for the *courts*, but how it is going to work for the *people*. ■

1. <<http://www.illinoiscourts.gov/supremecourt/Announce/2016/012216.pdf>>.
2. <[http://www.mywebtimes.com/news/local/taking-photos-of-documents-ill-cost-you/article\\_c17282cd-071a-5e91-938f-b5d5f5115ee5.html](http://www.mywebtimes.com/news/local/taking-photos-of-documents-ill-cost-you/article_c17282cd-071a-5e91-938f-b5d5f5115ee5.html)>
3. <<http://www.afj.org/wp-content/uploads/2016/04/Pacer-Complaint.pdf>>
4. <<http://www.afj.org/press-room/press-releases/alliance-for-justice-sues-the-administrative-office-of-the-u-s-courts-for-charging-excessive-and-illegal-fees-to-access-court-records>>
5. <<http://www.llrx.com/features/pacerspending.htm>>
6. <[http://www.tucsonsentinel.com/nationworld/report/112612\\_pacer\\_fees/pacer-federal-court-record-fees-exceed-system-costs/](http://www.tucsonsentinel.com/nationworld/report/112612_pacer_fees/pacer-federal-court-record-fees-exceed-system-costs/)>
7. <<https://ecf.mad.uscourts.gov/cgi-bin/ShowIndex.pl>>
8. <<https://free.law/2015/09/17/the-right-to-read-anonymously/>>.



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# Can you find it?

BY DONALD E. WEIHL

**Attorneys have to be efficient with electronic storage** to make it possible to organize files for the maintenance of information needed often or not so often but still accessible when needed. The more efficient the organization of the material, the more economical in terms of time the location of information becomes.

The question of how to organize files is mostly an issue of personal preference; however, working in an office where multiple employees may be using the same files, having a system understood by everyone is a must. The system must be uncomplicated but still be well organized and tied to the paper materials necessary for redundancy. If the office is paperless, the backup systems also need to be organized with a system understood by everyone.

Beginning with the assumption it's much easier to locate records you want when they are filed electronically, the next step is to create a simple filing system that insures what you want is easy to find. Dealing with a large number of items that grows larger every day requires the system to be organized in some form of tree system to reduce the number of clicks need to find the exact item. While a number of very good data systems are commercially available, it is not necessary to spend the money for a commercial system. It is preferable to create your own system from both a cost and training standpoint. No training is necessary for a system you create. You understand a system you create without training.

This article will show you how to create your own data system using a Microsoft Word program. The concept explained uses the Word program because it is commonplace to use Word for word processing in most law offices. That notwithstanding, the tree

organization discussion will be applicable with other programs such as Microsoft Excel or Access.

The organization tree begins with an alpha filing system. If the system is going to be used by multiple individuals, the alpha filing system should be placed on the server accessible to everyone. This article will not deal with security issues. The system can be password protected at multiple levels if desired. It is important to note access to the server will be universal to make it possible to access all data once the initial password entry is obtained. This type of organization makes it easy for every user to access every other user's saved items. Every attorney can access his secretary's files as well as the files of every other attorney's secretary and all paralegals and staff files. With this in mind, the password protection put in place should create the limitations desired on access.

If the system is going to be limited to a single user, the alpha filing system should be placed on the C drive or the drive desired by the user. Multiple systems can be put in place on different drives if necessary. As an example, a separate billing system can be created. Similarly, a separate forms system can be created. The hierarchy that works best to make what is wanted easily accessible dictates the number of systems created. It may even be preferable to place the system in the "My Documents" folder, if only a single user is involved.

## What is an alpha filing system?

The alpha filing system consists of the creation of a separate folder entitled, "DATA" under which a separate folder is created for each letter of the alphabet. Subfolders are then nested in each of the alphabet letter folders to contain data or additional folders.

## What is nesting?

Nesting is the creation of downstream subfolders under the main file folder with an organizational system capable of identifying locations logical to what is being stored.

To illustrate how an item can be stored with nesting where the DATA folder has the A-Z subfolders, an additional subfolder would be created in the "L" folder for attorney "Larry." Also created in "L" would be a subfolder "Larry Clients" and another subfolder "Larry Forms" and another subfolder "Larry Personal." Nested in the "Larry Clients" folder would be separate folders for each of Larry's clients listed by last name.

To illustrate further, under each of the Clients subfolders would be additional subfolders by case name, type of work, i.e. Estate Planning, Real Estate, Contact Information, etc.

In each of the Client subfolders Larry would nest additional subfolders for Correspondence, Pleadings, Discovery, Exhibits, Invoices, Jury Instructions, etc.

Under Discovery, separate folders for Plaintiff's, Defendant's, Depositions, etc. with specific titles created by Larry or Larry's secretary or paralegal as he so instructs, will be nested.

Larry doesn't need to be the sole source of the nesting. Larry's secretary can create subfolders under "L" to be regularly used by Larry and others. An example is: "Larry's Envelopes" or abbreviated "Larry's ENV." When she enters an envelope she follows the name with ".env" with Larry using the same convention when he has the occasion to add an envelope. While the envelopes could be placed in the "Contact Information" folder for each client, the "ENV" folder is more quickly reached to be more convenient. This practice is also convenient when the accounting department wants the client's address, or

when another attorney in the office needs the information. While convenience is one factor, it is not the only factor. It would also be appropriate to have the envelope information in the “Contact Information” folder simply to have it for backup purposes, and to have all contact information in a central location.

On the further subject of envelopes, keep in mind other programs like “Outlook” have systems for the maintenance of envelope data that can be used to print envelopes. If the user prefers Outlook’s method of maintaining the user’s envelope data, by all means use the Outlook method. It is not necessary for all of the user’s data to be maintained in the alpha filing system. Being able to find the desired file or data is the important thing. As long as the retention method is consistent, efficiency in recovery will result.

Many tricks are connected with the alpha filing system. One of the practices utilized with it include adding the prefix “a” in the front of a subfolder in a grouping of subfolders to cause that subfolder to be the first one at the list of subfolders in any level. Adding the prefix permits users at that level to mouse click the first folder at the top without having to traverse all of the folders at that level. The prefix is a shortcut for a particular folder in frequent use by multiple users or even by a single user with the need for that particular folder frequently enough to justify it.

Larry’s personal folder can be the repository for items such as a copy of his driver’s license, bar identification card, credit cards, and similar items, utilizing various subfolder nestings. Things like combinations to push button door locks, bowling locker combinations, home safe combinations, birthdays, anniversaries, special event dates, etc. can all be maintained and quickly retrieved using folders only Larry would normally visit. A word of caution is due when dealing with this type of information. The subfolder should be the subject of password protection. If not protected by a password, Larry should use only subfolder

names he alone will recognize to keep unauthorized users from stumbling on the information. If Larry cannot retain the subfolder information sufficiently remotely to be comfortable he alone will access it, another method of retention should be used.

Because the alpha system is based on the Microsoft Word program, it is possible to save PDFs, Excel Files, Photographs, Power Point Presentations, E-mails, and similar items in any of the folders or subfolders. The hierarchy is intuitive based on labels the user names the subfolder and is familiar with. Tagging is unnecessary. If a subfolder is to contain important items also located in other subfolders, there is nothing to prohibit saving the item in multiple places. The practice of saving the same item in multiple places should be minimized or limited to PDFs and similar fixed items unless a version is attached to the name. Revisions to items saved in multiple locations require updating to the item in all of the places the item is located. Being sure the version is the same in all locations becomes problematic unless a convention is in place to keep track of the versions of the item.

There is always the question about where to retain items where there is no specific cubbyhole (subfolder) maintained for that purpose. The alpha system doesn’t need to be modified to resolve locations for such items. A “Miscellaneous” subfolder can be created in the “Clients” subfolder as well as in the “Forms” subfolder or any other subfolder containing a classification of items including Larry’s personal subfolder. Note a “Miscellaneous” folder should not be created in the “DATA” folder containing the A through Z folders. If the “Miscellaneous” folder is to be used so frequently it needs to be reached quickly, naming the Folder “aMiscellaneous” will bring it to the top of the subfolder it is located in when the subfolder is opened. If an item is so insignificant as not to qualify for filing in the “Miscellaneous” subfolder, a subfolder named “Junk” or “Graffiti” or “Worthless” can be added. This type of subfolder should be specific

to the “Larry” subfolder, and having it as a category similar to “Clients,” or “Forms,” would make it quick and handy. While the number of items retained in that type of file should be small, having it handy is still efficient so that little time is spent with placement. Further, this type of file should be culled frequently. Retaining junk or graffiti for any period of time simply takes up drive storage space unnecessarily.

Finally, when dealing with an alpha system, there are numerous helpful hints that can be utilized in the process. While the discussion below is far from all inclusive, keeping the hints in mind on a regular basis is beneficial from an efficiency standpoint.

First, name folders so it is possible to identify the contents without having to open the folder.

Second, use the “Save As” feature to name items early on so the name of the item will identify the contents and dictate where it will be located.

Third, for folders containing items becoming stale by date, include a date in the name. “2013 Invoices,” “2014 Invoices,” “2015 Correspondence” as folder names are self-explanatory.

Fourth, use the “aMiscellaneous” name type to force folders to the top of the list.

Fifth, name folders “Jones” or “Jones – Jack,” not “Jack Jones” using a consistent convention.

Last, work with all users of the alpha system to follow the same naming conventions and folder creation practices across the system so it is not necessary to keep found items in each user’s mind. Having consistent conventions and practices with the alpha system makes finding items easy while creating efficiency in the process. ■

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