



Robert J. Grey, Jr.
President

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04-AP-003

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04-BK-016

04-CV-168

Peter G. McCabe
Secretary of the Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE
Washington, D.C. 20544

RE: Proposed Amendments to Appellate Rule 25(a), Bankruptcy Rule 5005(a), and Civil Rule 5(e) regarding Mandatory Electronic Filing

Dear Mr. McCabe:

I write to you on behalf of the American Bar Association regarding proposed amendments to the Federal Appellate, Bankruptcy and District Court Rules that would permit local rules to mandate electronic filing. See *Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, and Civil Procedure - Nov. 2004*

We are grateful for the ongoing efforts of the Administrative Office and the Judicial Conference to improve the administration of justice by adopting new technologies. It is clear that electronic filing and improved data management are important to advance efficient operation of our courts. At the same time, we are sure that the Judicial Conference is mindful of the fundamental principle that our legal system must be effective and available for all members of society, regardless of their economic or social condition. We are concerned that the proposed rules may impede full access because they do not require that local rules make some provision for those who might be unable to use an electronic filing system.

The ABA House of Delegates considered the issue of mandatory electronic filing in February 2004. At that time, the House of Delegates adopted as ABA policy Standard 1.65 of the Standards Relating to Court Organization, which specifically addresses court use of electronic filing processes. Standard 1.65(c)(ii) states:

Mandatory Electronic Filing Processes: Court rules may mandate use of an electronic filing process if the court provides a free electronic filing process or a mechanism for waiving electronic filing fees in appropriate circumstances, the court allows for the exceptions needed to ensure access to justice for indigent, disabled or self-represented litigants, the court provides adequate advanced notice of the mandatory participation requirements, and the court (or its representative) provides training for filers in the use of the process.

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We face great challenges both at the bar and within society as a whole in our efforts to provide access to the courts for those of limited means. The ABA has a long and proud history of support for the Legal Services Corporation and advocacy for pro bono services by all lawyers. Notwithstanding our efforts, the poor and those of moderate income face many obstacles to the successful use of the courts to resolve their legal problems and assure the application of the rule of law to all in our society. We face the reality that many litigants represent themselves in our courts, most frequently because they cannot afford a lawyer and the resources of free legal services are insufficient to reach them.

I encourage the Judicial Conference to reexamine the proposed changes to its rules that permit courts to adopt local rules requiring electronic filing. We recommend that the Conference give further consideration to the impact of the rules changes on those who are likely to be harmed by such a change. We ask that the Conference incorporate the safeguards of Standard 1.65 into the black letter of amended rules governing mandatory electronic filings; we do not believe that mere inclusion in the rules commentary is sufficient on this important issue.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert J. Grey, Jr.", with a large, stylized initial "R" and "J".

Robert J. Grey, Jr.
President
American Bar Association