



**OFFICE OF THE ATTORNEY GENERAL**  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

July 15, 1999

FILE NO. 99-018

JUDICIAL SYSTEM:  
Electronic Filing  
of Court Records

The Honorable James "Pate" Philip  
President of the Senate  
State House, Room 327  
Springfield, Illinois 62706

Dear Senator Philip:

I have your letter wherein you inquire regarding the electronic filing and docketing of judicial documents. Specifically, you have posed the following questions: (1) are electronic records and electronic dockets, where permitted, to be considered part of the official court record; (2) if there is a conflict between an electronic record and a paper record, which is controlling; (3) who has the primary responsibility for accepting and maintaining a court's electronic records and electronic docket; and (4) is the clerk of the circuit court currently authorized to certify documents electronically? For the reasons hereinafter stated, it is my opinion that: (1) to the extent

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that electronic records, filings and dockets are authorized by Supreme Court Rule or order, then the "papers" which are electronically filed and the electronic docketing system constitute a part of the official court record; (2) the procedures implementing an electronic filing and docketing system should include a provision which addresses the resolution of conflicts between paper and electronic documents; (3) under the pertinent statutory provisions, the circuit court clerk is responsible for accepting and maintaining the court's records, including those that are filed electronically; and (4) current Illinois statutory provisions and Supreme Court Rules do not authorize the clerks of the circuit court to certify documents electronically.

You have indicated that a number of pilot projects are being developed relating to the electronic filing of court documents and the creation of electronic recordkeeping systems. As one example of these projects, you have referred to the Juvenile Enterprise Management System (hereinafter referred to as "JEMS"), which is scheduled for implementation by the Circuit Court of Cook County in early 1999. You have stated that "[t]he JEMS system results from collaboration between the Office of the Chief Judge of the Circuit Court of Cook County and a private firm \* \* \*. JEMS is intended to produce a new, comprehensive court management system which will operate in the Juvenile

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Division of the Cook County Circuit Court. JEMS will, in effect and in several instances, superimpose its own record management team over the circuit court clerk. Records generated by the State[']s Attorney, Public Defender, circuit court, and other support and ancillary divisions and sections of the juvenile court will be reported to, maintained by and subject to the control of JEMS managers, who are not employees of the clerk. The clerk will be subordinated to JEMS managers with respect to the compilation, maintenance, and preservation of, and access to, various juvenile court records." You have suggested that these projects "\* \* \*" appear to erode the exclusive and primary authorities of the clerks of the court with respect to the preservation and maintenance of court records, and the authority of the clerks to monitor access to court records, and to insure their integrity".

In responding to your specific questions, it is helpful to review the role of the clerk of the circuit court and the source of the circuit clerk's powers and duties. The office of the clerk of the circuit court is created by article VI, section 18 of the Illinois Constitution of 1970, which provides:

" \* \* \*

(b) The General Assembly shall provide by law for the election, or for the appointment by Circuit Judges, of clerks and other non-judicial officers of the Circuit Courts

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and for their terms of office and removal for cause.

\* \* \*

"

Further, "[g]eneral administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. \* \* \*" (Ill. Const. 1970, art. VI, § 16.)

Pursuant to article VI, section 18 of the Constitution, the General Assembly has enacted the Clerks of Courts Act (705 ILCS 105/0.01 et seq. (West 1996)), which provides for the selection of circuit clerks (705 ILCS 105/1 (West 1996)), their terms of office (705 ILCS 105/1.1 through 4 (West 1996)) and their removal for cause (705 ILCS 105/15 (West 1996)). In addition, the Act also prescribes specific duties for the circuit clerks including: keeping the seal of their courts (705 ILCS 105/7 (West 1996)); executing all forms of process and notices issued by their offices (705 ILCS 105/8 (West 1996)); attending all sessions of their respective courts, preserving all the files and papers thereof and preserving complete records of all the proceedings and determinations thereof (705 ILCS 105/13 (West 1997 Supp.)); and entering of record all judgments and orders of their courts (705 ILCS 105/14 (West 1996)). The Clerks of Courts Act also enumerates the types of records and books which the clerks are required to keep (see 705 ILCS 105/16, 26 and 27 (West

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1996)) and a general form in which entries into the books are to be made:

" \* \* \*

Unless otherwise provided by rule or administrative order of the Supreme Court, the respective clerks of the circuit courts shall keep in their offices the following books:

1. A general docket, upon which shall be entered all suits, in the order in which they are commenced.

2. Two well-bound books, to be denominated 'Plaintiff's Index to Court Records,' and 'Defendant's Index to Court Records' to be ruled and printed substantially in the following manner:

Plaintiffs	Defendants	Kind of Action	Date Commenced	Record Book	Pages

	Date of judgment		Judgment docket				
			Book	Page			
	Certificate of levy		Certificate of sale		Certificate of redemption	Satisfied or not satisfied	Number of case
Fee Book	Book	Page	Book	Page	Book	Page	

\* \* \*

3. Proper books of record, with indices, showing the names of all parties to any action or judgment therein recorded, with a reference to the page where it is recorded.

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4. A judgment docket, in which all final judgments (except child support orders as hereinafter provided) shall be minuted at the time they are entered, or within 60 days thereafter in alphabetical order, by the name of every person against whom the judgment is entered, showing, in the proper columns ruled for that purpose, the names of the parties, the date, nature of the judgment, amount of the judgment and costs in separate items, for which it is issued, to whom issued, when returned, and the manner of its enforcement;  
\* \* \*

5. A fee book, in which shall be distinctly set down, in items, the proper title of the cause and heads, the cost of each action, including clerk's, sheriff's and witness' fees, stating the name of each witness having claimed attendance in respect of the trial or hearing of such action with the number of days attended. \* \* \*

6. Such other books of record and entry as are provided by law, or may be required in the proper performance of their duties.  
\* \* \*" (Emphasis added.) (705 ILCS 105/16 (West 1996).)

Further, in 1968, the Illinois Supreme Court, acting pursuant to its general administrative authority over the State's several courts, adopted the "GENERAL ADMINISTRATIVE ORDER ON RECORDKEEPING IN THE CIRCUIT COURTS". The order granted to the Director of the Administrative Office of the Illinois Courts the authority to establish a uniform recordkeeping system to be employed by the circuit clerks in counties of the "first and second class", a phrase which includes all Illinois counties except Cook County. (55 ILCS 5/4-1001 (West 1996).) Pursuant to

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this grant of authority, in 1971 the Director of the Administrative Office of the Illinois Courts issued the first "General Administrative Order On Recordkeeping in the Circuit Courts", which describes in great detail those case and financial records which are to be kept by the clerks of the circuit courts and prescribes the form in which the records are to be kept. In addition, the order provides for the submission of certain statistical information regarding the cases to the Administrative Office of the Illinois Courts and creates a record disposal policy. The administrative order adopted in 1971 remains in place; effective January 1, 1996, however, the Director of the Administrative Office of the Illinois Courts issued an amendatory order addressing, inter alia, the advent of an automated recordkeeping system in the circuit clerk's office in several Illinois counties. The amendatory order did not address electronic docketing by the circuit court clerks.

Against this background, you have inquired, firstly, whether electronically filed documents and an electronic docketing system are to be considered a part of the official court record. Based upon the context of your inquiry, I will assume that by using the term "electronically filed document" you did not intend to refer to service or notices of motions or filings by facsimile transmission as referenced in Supreme Court Rule 101

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(166 Ill. 2d R. 101), and I will further assume that the phrase "electronic docketing system" is not intended to refer to the automated recordkeeping system authorized by section 27.3a of the Clerks of Courts Act (705 ILCS 105/27.3a (West 1996)).

As previously noted, under the provisions of the Illinois Constitution "[g]eneral administrative and supervisory authority over all courts is vested in the Supreme Court \* \* \*". Pursuant to this authority, the supreme court has adopted a number of rules governing civil proceedings in the State's trial courts. Supreme Court Rule 137 (155 Ill. 2d R. 137) requires that all pleadings, motions and other papers filed with the court contain the signature of the attorney of record or of the party as appropriate. In addition, Supreme Court Rules 10 and 131 (134 Ill. 2d R. 10 and 145 Ill. 2d R. 131) respectively prescribe that "\* \* \* all papers filed in the courts of this State be 8½ inches by 11 inches \* \* \*" and that "[a]ll papers and copies thereof for filing and service shall be legibly written, typewritten, printed or otherwise duplicated". As used in the Supreme Court Rules, the term "paper" is intended to refer to any "pleading, motion, notice, affidavit, memorandum, brief, petition, or other paper or combination of papers required or permitted to be filed". (134 Ill. 2d R. 2(b)(3).)



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Based upon the foregoing, it must be concluded that the Supreme Court Rules contemplate that documents filed with the State's courts will be in a paper format, will be either handwritten, typed or otherwise printed and will contain the signature of an attorney or party as appropriate. Obviously, when filing documents electronically, it will not be possible to satisfy each of these requirements. Consequently, it is my opinion that pursuant to the current Supreme Court Rules, documents filed electronically would not possess the requisite characteristics of a paper entitled to be filed, and thus would not generally be considered part of the official court record.

In order to respond fully to your specific inquiry, however, it is also necessary to review the provisions of the Illinois Supreme Court's "Administrative Order Based on P.R. 0058" filed on August 7, 1998, which provides:

"It is ordered that on an experimental basis, and until further order of the Court, the Circuit Court of Cook County is authorized to provide by order for the electronic filing and service of pleadings and papers in causes of actions initiated in the Juvenile Justice and Child Protection Department of the Circuit Court of Cook County, provided that such orders establish appropriate procedures to implement electronic filing and service of pleadings and papers consistent with the statutory and constitutional obligations of affected agencies and include the following provisions:

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- 1.) Service of pleadings and papers may be made electronically in lieu of physical filings under Supreme Court Rule 104 if the parties are capable of participating electronically;
- 2.) A party to the cause that does not have the technical capacity to participate electronically shall not be prohibited from filing pleadings and papers manually;
- 3.) Use of an identification or access code for the purpose of filing a pleading or paper shall be deemed to constitute the signature of the person authorized to use such a code as required by Supreme Court Rule 137;
- 4.) Any pleading or paper of a party which is required to be verified, certified, sworn or attested to may be made electronically and will be used in the manner and with the same force and effect as those subscribed and sworn under oath.

The electronic system shall not compromise the integrity or security of any pleadings or papers entrusted to it and it shall ensure the confidentiality of protected pleadings and papers." (Emphasis added.)

Under the language quoted immediately above, the supreme court has authorized, on an experimental basis, "the electronic filing and service of pleadings and papers in causes of actions initiated in the Juvenile Justice and Child Protection Department of the Circuit Court of Cook County". Pursuant to General Order 2.2 of the Circuit Court of Cook County, the

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Juvenile Justice and Child Protection Department of the Circuit Court of Cook County is comprised of the Juvenile Justice Division and the Child Protection Division. As previously noted above, the JEMS is intended to produce an electronic filing and document service system in the Juvenile Division of the Circuit Court of Cook County. In this limited circumstance, the filing of court papers electronically has been authorized by the supreme court. Therefore, it is my opinion that electronic records filed as part of the JEMS will be considered official court records.

With respect to the issue of whether an electronic docket will be considered part of the official court record, I note that the Supreme Court Rules are silent in this regard. Section 1-104 of the Code of Civil Procedure (735 ILCS 5/1-104 (West 1996)), however, provides, in pertinent part:

" \* \* \*

(b) Subject to the rules of the Supreme Court, the circuit and Appellate Courts may make rules regulating their dockets, calendars, and business."

Under section 1-104, the circuit courts may adopt rules regulating their dockets. This grant of authority would appear to encompass the adoption of rules creating an electronic docketing system, should the circuit court so desire. In the absence of a rule or administrative order of the supreme court otherwise providing, however, the circuit clerks would remain under a duty

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to maintain the court's records in accordance with the provisions of section 16 of the Clerks of Courts Act and the "GENERAL ADMINISTRATIVE ORDER ON RECORDKEEPING IN THE CIRCUIT COURTS", dated May 20, 1968. As discussed above, the Director of the Administrative Office of the Illinois Courts is to "\* \* \* pre- scribe the forms to be used for all records \* \* \* to assure that the minimum standards provided by this order are correctly and uniformly employed in each county \* \* \*". Consequently, until such time as the supreme court or the Director of the Administrative Office of the Illinois Courts designates electronic docket- ing systems as the official court record, it is my opinion that an electronic docket is not a part of the official court record.

Your second inquiry concerns those circumstances in which there is a conflict between an electronic record and a paper record. As discussed above, the only circumstance in which an electronic record may currently be filed is as authorized by the JEMS project. A review of the administrative order authoriz- ing the JEMS project indicates that the Circuit Court of Cook County is to establish by order "\* \* \* appropriate procedures to implement electronic filing and service of pleadings and papers \* \* \*". In addition, the supreme court's administrative order requires that the Circuit Court of Cook County include provisions

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in its order providing that "[s]ervice of pleadings and papers may be made electronically in lieu of physical filings \* \* \*".

It is clear that the supreme court contemplated that when electronic filings or service of pleadings are permitted, they are made "in lieu of physical filings". Consequently, in most instances there should not be an electronic record and a paper record which are inconsistent. In those instances in which a conflict between an electronic document and a paper document does occur, however, the supreme court's order requires that the Circuit Court of Cook County establish "appropriate procedures to implement electronic filing". A procedure for resolving possible conflicts between filings which occur in both a paper and an electronic format would be a necessary part of establishing appropriate procedures to implement electronic filing. Consequently, it is my opinion that this issue should be addressed by the Circuit Court of Cook County when establishing procedures for implementing JEMS, and that the provisions of the Circuit Court of Cook County's order will be determinative in resolving possible conflicts.

You have also inquired whether, in those circumstances in which electronic docketing and filing is permitted by the supreme court, the circuit clerk remains responsible for accepting and maintaining the court's electronic records and docket.

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It has long been recognized that the clerk of a court is responsible for the clerical aspect of the business of the court, and that it is the clerk's duty to keep the court's records and seal, issue process, enter judgments and orders and make certified copies from the records. (People ex rel. Vanderburg v. Brady (1916), 275 Ill. 261.) As discussed above, these duties have been codified in the Clerks of Courts Act.

The supreme court has chosen to authorize electronic filings only in the Circuit Court of Cook County and only in the circumstances previously described. The administrative order authorizing such electronic filing requires the Circuit Court of Cook County to establish procedures "\* \* \* consistent with the statutory and constitutional obligations of affected agencies \* \* \*". Clearly, the circuit clerk and his or her office will be affected by the implementation of an electronic filing system. Because the circuit clerk is charged with the responsibility of accepting and maintaining the court's records generally, and because the circuit court's order authorizing electronic filings and service of pleadings must be "consistent with the constitutional and statutory obligations of the affected agencies", it is my opinion that the circuit clerk remains primarily responsible for accepting and maintaining the court's electronic records and docket.

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I must caution, however, that in developing and implementing an electronic filing and docketing system, it is possible that the circuit clerk may not possess the requisite technological expertise. In such an instance, although the circuit clerk remains ultimately responsible for the court's records, it may be necessary to consult with, to obtain the assistance of and to make the court's records open to outside personnel. In this regard, the supreme court's administrative order requires that "[t]he electronic system shall not compromise the integrity or security of any pleadings or papers entrusted to it and it shall ensure the confidentiality of protected pleadings and papers". The clerk cannot abdicate his or her responsibility for maintaining these records in favor of the consultants who are implementing the system.

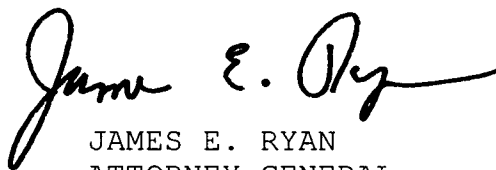
Your final question concerns whether circuit clerks are currently authorized to certify documents electronically. The clerk of the circuit court is authorized to certify documents by both the Supreme Court Rules (see, e.g., 134 Ill. 2d R. 187; 134 Ill. 2d R. 296; 155 Ill. 2d R. 324) and by statutory provision (see, e.g., 10 ILCS 5/28-5 (West 1996); 35 ILCS 200/21-195 (West 1996); 55 ILCS 5/5-31004 (West 1996); and 735 ILCS 5/8-1202 (West 1996).) Nothing in the language of either of these sources of authority grants the clerks of the circuit courts the general

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authority to certify records electronically. Consequently, it is my opinion that documents cannot be certified electronically under current Illinois law or Supreme Court Rules. Thus, in those instances in which an electronic record is the official court record, it will presumably be necessary for the circuit clerk to print a paper copy of the electronic document or record and to certify it in accordance with the office's established procedures.

As a final matter, I note that the General Assembly has recently enacted the Electronic Commerce Security Act (see Public Act 90-759, effective July 1, 1999), section 25-105 of which authorizes the supreme court to adopt rules prescribing minimum security requirements for the use of electronic records and electronic signatures in the judicial branch. In the alternative, the supreme court is authorized to accept the rules adopted by the Department of Central Management Services for the use of electronic records or electronic signatures. The rules that are ultimately adopted may affect the conclusions expressed herein.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in dark ink and is positioned above the printed name and title.

JAMES E. RYAN  
ATTORNEY GENERAL