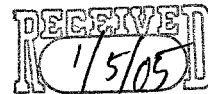


04-CV-071



Director
<director@prisonservicesproject.com>

01/05/2005 12:39 PM

To Rules_Comments@ao.uscourts.gov

cc

bcc

Subject Comment on Proposed Amendment to Rule 5(e)

Peter G. McCabe,
Secretary,
Administrative Office of the U.S. Courts,
One Columbus Circle, NE, Washington, DC 20544

Dear Mr. McCabe:

I would like to comment on Proposed Amendment to Rule 5(e) "Filing with the Court Defined" as Director of the Prison Services Project.

The Prison Services Project is a tri-level service (1) to assist prisoners find counsel, (2) to assist attorneys overcome tough technological challenges to provide better service to their prisoner clients and (3) to assist courts administer prisoner cases. One service we anticipate is to serve as a clearinghouse for electronic discovery provided to prisoners and as an agency for filing electronic documents by prisoners. I am an attorney, licensed in the State of Michigan, with experience in federal and state courts. I am also a programmer of Internet applications and an advocate for open-source legal software.

Preliminarily, I note that the advantages of electronic filing are clear. Case management is greatly simplified through logical and uniform processes; notifications are nearly instantaneous; the open-source PDF format solves cross-platform printing issues and the paper trail is replaced with an electronic trail. As most American lawyers practice in small law firms and organizations, they save significant time, energy and money by filing court documents electronically.

However beneficially to lawyers, Proposed Rule 5(e) will have a significant impact upon access to justice for the 4 million person incarcerated in United States federal and state institutions (prisons, jails and mental institutions). Further, it will have a tremendous impact upon pro se litigants, already faced with the herculean task of navigating the federal court system.

Prisoners do not have access to computers. They do not have access to the Internet. They can not vote. Yet, no population has greater need for access to courts to protect their Constitutional rights than the 4 million people whose freedom has been circumscribed by the government. This is not an issue of guilt or innocence, rehabilitation or punishment, but of the Constitution and the Bill of Rights.

In an ideal world, pro se prisoners would be provided a secure method for filing legal documents with federal and state courts and agencies. Many facilities already have methods by which prisoners may appear in court through video, thereby saving the cost of transportation.

Prisoners are not trained attorneys and prison law libraries are usually woefully inadequate. Thus, it is hardly surprising that they often make mistakes in filing documents with the courts and need to amend their documents.

Electronic filing could make this process nearly seamless. Prison staff would no longer have to manage the great majority of prisoner mail, which is legal in nature. Frivolous claims could be quickly identified and meritorious claims could be presented in a uniform fashion, freeing judges and magistrates to consider the merits of valid claims.

Any Rule which mandates (or, permits individual courts to mandate) electronic filing, MUST include a provision providing a blanket exception for filings by prisoners who are not represented by counsel. The only other solution to this problem is to mandate that every prison, jail and mental institution provide not only meaningful computer access to prisoners with legal needs, but also the requisite Internet service without interference or intrusion.

Prior to enactment of a Rule which would serve as such a dramatic impediment to access to justice, please consider on a specific level that 4 million people with on-going legal needs will be directly affected. Their fundamental rights should not vary by local order or procedure.

While I agree that it is a reasonable solution to require that attorneys file dockets electronically in federal court, putting an advisory in the Note is insufficient. It takes no imagination to foresee that a local rule would be challenged in every jurisdiction as fundamentally unfair, a result which can easily be avoided by providing an exception for prisoners without counsel.

A more flexible rule might be warranted with respect to non-prisoner pro se litigants, although any court which makes such a requirement should at a minimum provide 1) computer and scanner facilities for local litigants and 2) permit non-local litigants to file electronically from their own local federal courthouse.

Thank you for the opportunity to comment upon this Rule.

Sincerely,

Regina Mullen, Esq.
Director, Prison Services Project
2232 South Main Street #364
Ann Arbor, Michigan 48103-6983

Telephone: 734-576-4444
Fax: 208-475-7358