

## Top 10 E-Filing Mistakes

*Michael Mehall*

Utilizing Idaho's iCourt e-file to file with the court and serve documents has been mandatory in Twin Falls County cases for over a year and in Ada County cases for about 6 months. How's that going for you? I am guessing you are either jumping for joy at the saved costs, increased efficiencies, and reduced stress or . . . well . . . you are less than thrilled. There seems to be two camps. If you are in the latter, here's your next question: Did you go to training? Not, send someone to training, I mean, you, did YOU, go to training? Regardless of your answer, it isn't too late to improve your e-filing game. In this article I will be addressing the Top 10 e-filing mistakes and how to avoid them. The topics addressed below are based upon a survey of the most common rejection reasons and my experience as being the Idaho e-filing resource.

If you are in a county that has not yet rolled out e-filing, the article will still be of value to you as it will help get you prepared to start off on the right foot.

### **Mistake No. 10 - This Is My Assistant's Problem!**

Whether you think you are too big of a deal or scared to death of computers, leaving e-filing to your staff is a mistake. This is not to suggest that you have to be the one loading documents on the computer. But, you should have a basic understanding of how the system work and establish the necessary **business process** to meet your professional obligations. Idaho Rules of Professional Conduct, Rule 5.3 states that you "shall make reasonable efforts to ensure that the [assistant]'s conduct is compatible with the professional obligations of the lawyer." My Oregon Supreme Court counterpart referred me to a malpractice insurance company that has featured articles to avoid "e-filing error" and "iCourt malpractice traps." YES, malpractice, your failure to establish business processes in your office, achieve a basic level of competency with e-filing / e-service, and complying with court rules could expose to you to a malpractice claim.

The federal courts have had mandatory e-filing for quite a while now. A review of federal case law, suggests that courts have not been forgiving when attorneys *e-fail*.<sup>i</sup>

- In *Knox v. Patterson*, 21 Pa. D. & C.5th 149 (Pa.Com.pl. 2011), an attorney left all e-filing (and all email for that matter) to his wife / assistant. When his wife was out because of a temporary disabling injury he missed electronic notice of a scheduled arbitration resulting in an award of Judgment of *Non Pros* for defendant (this was his second failure to appear). The trial court found him negligent for failing to learn the e-filing system and just letting emails "pile up." In result, he lost the right to pursue a \$35,000 fee claim. The court specifically identified the attorney as an "octogenarian" presumably to stress that his age was not an excuse for his failure to act reasonably in our current digital age.<sup>ii</sup>
- In *Kinsley v. Lakeview*, 570 F.3d 586 (2009), plaintiff's attorney intended to e-file a "Notice of Appeal" but instead e-filed a "Request for Oral Argument." The attorney corrected the error but

it was after the deadline to file a notice of appeal had passed. The Court of Appeals dismissed the attorney's appeal as untimely.

- In *American Boat v. Unknown Sunken Barge*, 567 F.3d 348 (8th Cir. 2009), a motion for summary judgment was entered against plaintiff. Plaintiff attempted to revive their action with a Motion to Amend Judgment or in the Alternative for Reconsideration which was also denied triggering a deadline for appeal. Plaintiff took no timely action and lost the right to appeal. Plaintiff initially asserted that they did not receive notice of the court's order. After conducting an evidentiary hearing, the court found a "presumption of receipt" after confirmation that the email made it to the attorney's office's internet service provider. The court therefore concluded that a secretary most likely deleted the email service of the court's order in error. The court was not sympathetic, denied plaintiff's Motion to Reopen the Time to File an Appeal and affirmed the judgment.
- In *Pace v. United*, No. 05-CV-01562-LTBMJW, D. Co., (2007 U.S. Dist. 2007), female employees in plaintiff's counsel's office had complained of receipt of SPAM emails with sexually explicit content. In response, the firm lowered the firm's SPAM filter threshold resulting in the blocking of service email from the court. Plaintiff's counsel failed to appear for a court noticed settlement conference and was ordered to pay defendant's counsel's attorney fees. In its analysis, the court held that the firm should have "white listed" the court's email and / or checked spam folders. They should have had a policy in place regarding changes to the spam filter that would require review by the firm management so to consider potential implications. The court stressed that the attorneys were responsible for their failure to "adopt internal office procedures" to prevent this error.

While the authority above is persuasive and not mandatory for an Idaho court, it sends a clear message consistent with that of Idaho Rules of Professional Conduct, Rule 5.3: you are responsible for not just e-filing and e-service but with providing your staff with the necessary business processes needed to meet your obligations as an attorney. On more than one occasion, after completing training, a managing partner has stated "Wow, it would have been a colossal error to have not come to training. I am going to have to meet with my partners and establish some business processes for the office." What types of decisions must be made?

- Who is going to be my filer? They will not only file but will also receive notice from the system that the filing was accepted or rejected.
- What email will we designate in the system for service from the other parties (service contacts)?
- What email will we designate with the State Bar for service from the trial court?
- Who in our office will receive these emails? Will it be their personal email or a general inbox?
- What will we do with the emails when they come into our office? What will we do with the documents we download? Will we put them on a firm server? Will we print them and two hole punch them and put them in a folder?

- What is our policy with signatures? Will we use “/s/ Firstname Lastname”? If yes, perhaps we should have a policy where only the attorney can convert the document from a word processing document to a .pdf for filing. If we are going to use an electronic image of a signature, how will we secure that signature? Is it our policy that only the attorney can apply that signature and will then convert the document to a .pdf? (Policies such as this will provide the attorney comfort that the version signed was their last reviewed, approved, and signed version. Allowing staff to sign for you is obviously a bad practice.)

The answers to these questions are up to you. What is important is that you have thought through each question, developed answers that are right for you and your office, and implemented (with documentation) and managed the best business process developed.

### **Mistake No. 9 – Illegible Documents**

Look at your document in electronic format before you upload that document. If you have already loaded the document you have an opportunity to review it on the Summary screen before hitting the “Submit” button. Ensure the digital version of your document is completely legible.

The best practice is to save your word processing document as a .pdf file. There are many advantages to this practice: 1) the document will be clean versus a messy scan; 2) the document will be text searchable as required by the Idaho Supreme Court’s e-filing and e-service rule; 3) the file size will likely be smaller in size; and 4) the practice is more efficient vs. unnecessary printing and scanning.

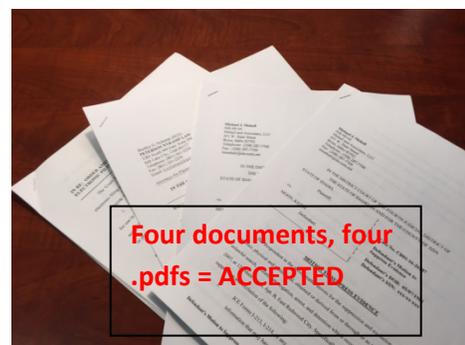
If the document has limited legibility, simply tell the clerk in the Filing Comments. That way they know that the document is as good as it gets versus assuming you were careless with your scanning and document review. They will then allow the document to pass along for scrutiny by the judge and parties.

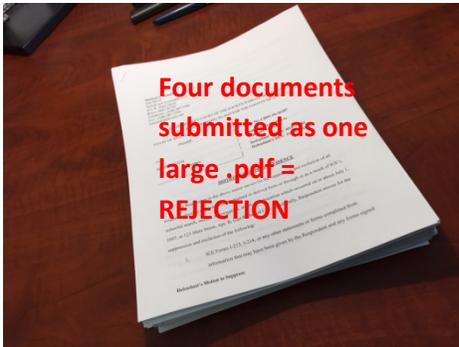
### **Mistake No. 8 – Your Documents are Not Text Searchable.**

Yes, per court rule, your documents must be text searchable (with the exception of exhibits). As suggested above, use e-signatures so you can simply convert your word processing documents to text searchable .pdf documents. Use an advanced .pdf tool to combine your text searchable pleadings in .pdf format with your exhibits. This tool is also useful for redaction of documents. Law firms report purchasing Adobe Acrobat 7.0 or Nuance Power PDF Advanced for this purpose.

### **Mistake No. 7 – Multiple Documents Submitted Improperly.**

We have seen filers’ submissions or “envelopes” rejected simply due to how they are submitted to the court. Each document must be a separate pdf file. Do not lump documents together. Do not separate out exhibits. The easiest way to think of your submissions is: “How would I submit this document if it were paper?” Would I submit these pleadings as separate documents with their own

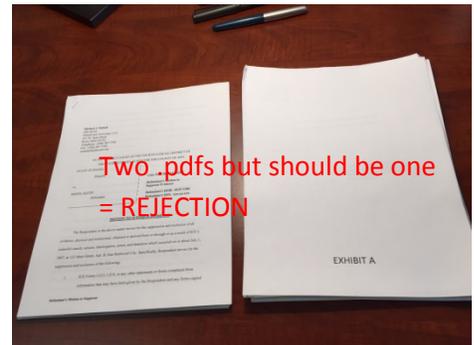




separate staple and receive a separate file stamp from the clerk? If yes, then the documents should be separate .pdf files.

Filer's submissions will also be rejected if they have multiple documents that are submitted in multiple envelopes or submissions. If you are submitting

multiple documents in the same case they should all be in the same envelope. (The only exception would be if the size of the documents surpasses the maximum total envelope capacity of 35MB. The maximum size for individual documents is 25MB.)



### **Mistake No. 6 – Your Document for Court Review and Service is Missing Certificate of Service**

You must provide a Certificate of Service on any pleading for the court's review, signature, and service. If you submit a proposed order and the last page does not have a certificate of service, it will be rejected. The clerk will rely on your certificate to: a) determine where needs to be sent; and b) determine if mailing fee is necessary if you have identified a physical address.

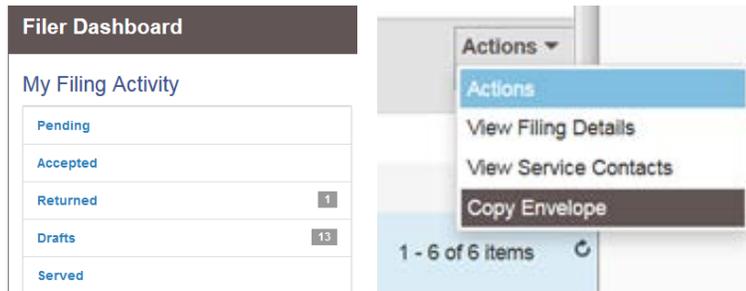
Remember, gone are the days of forwarding extra copies with stamped addressed envelopes. The court will serve your documents via email to the email address attorneys have submitted to the State Bar per the Supreme Court's late 2016 order and Idaho Bar Commission Rules 302 and 303. If you need the court to serve a self-represented party by mail you will need to pay for that physical mailing. To learn more about how to pay for a physical mailing see the section regarding service and optional services below.

### **Mistake No. 5 – Instead of Correcting a Returned Envelope You Start All Over Again**

If your envelope is rejected, do not start all over again. If you do start again, that envelope will be rejected as well. The court rule requires you to copy your envelope. Why? There are a number of reasons:

1. Unlike some states, the Idaho does not pass a per envelope e-filing fee on to users. A copied envelope will not result in an additional envelope fees to be paid by Idaho. Therefore it is essential that you do not create additional envelopes unnecessarily.
2. The e-service / e-filing rule allows you to correct returned filings and still receive the date of your original submission so long as you copy your envelope and request the original date in the "filing comments" with the following text: "Resubmission of filing with payment after denial of fee waiver, request filing relate back to \_\_\_\_\_, the date of original submission."

3. If you copy your envelope the system will recognize it as such and offer the review clerk a simple button to click to provide your original submission date as the filing date.



select the “Copy Envelope” option.

button to click to provide your original submission date as the filing date.

4. Why start all over again when you can address the single error and resubmit?

Simply go to your “Returned” folder, click the black “Actions” button, and

HELPFUL TIP: Sometimes I’ll get calls from panicked filers who say: “The Copy Envelope option is now MISSING??? What happened?” If the “Copy Envelope” option is missing it is because you have already copied it but have not yet resubmitted it to the court. Take a look in the Drafts folder, you will find your copied envelope there now.

### **Mistake Nos. 3 & 4 – Picking the Wrong Filing Code or Case Type / Failing to Make Payment**

Pick the filing code that most closely corresponds to your filing. If you should be paying a filing fee and the fee doesn't appear, you likely picked the wrong code. This is sure to result in a rejection.

Similarly, when you initiate a case you must select the correct case type. To do so, you must select the correct: a) location; b) category; and c) case type. When we started e-filing a common call was from filers who could not find their case type. The solution is always selecting both the correct location (*e.g.* magistrate vs. district) and category (*e.g.* probate vs. civil).

HELPFUL TIP: Consult the Civil Filing Fees Schedule before filing.

([https://isc.idaho.gov/rules/forms/IRCP\\_AppendixA\\_09.16.pdf](https://isc.idaho.gov/rules/forms/IRCP_AppendixA_09.16.pdf)) The filings codes and case types will have fee schedule references to help you pick the correct code. For example the filing code for a third party complaint will include “(K3) - \$14.00.” Remember, Idaho Rules of Civil Procedure Rule 2(a)(10) requires you to reference the filing fee code on any pleading that requires a fee so it is wise to consult the Fee Schedule before filing.

### **Mistake No. 2 – Being Snitty.**

While preparing this article, I asked a couple of clerks if they had any topics to be included or messages they had for filers. One clerk said: “Yes, tell them: ‘Don’t be SNITTY!’” According to Webster’s “snitty” is not a substitute for another “s” word but means “disagreeably ill-tempered.” She went on to say: “Please know that we clerks are trying our best to adapt to this change just like the filers are. Please be courteous. Communicate with the clerks and the Supreme Court regarding problems or concerns. We’ll do our best to help and/or fix the problem.” Good advice.

## **Mistake No. 1 - Service**

Service is really the number one issue people have with the new iCourt e-file / e-serve system. I will identify some of the questions / mistakes and then provide instruction. This topic is so important that I initially planned to start the article off with it. For fear of losing you before I even got to the second “mistake” I moved it to the end. If you have made it this far, hang in there for the most important part of this article.

**Problem:** I am an assistant, I e-filing for my boss the attorney. Unfortunately, never know when a filing is accepted or rejected. That acceptance / rejection e-mail is going to my boss’s email and I am worried we are going to miss something? Why?

**Answer:** You are signing in as your boss instead of yourself. Signing in as yourself is the better practice. That way you will receive the accept / reject email and be able to take timely action (to fix the rejected document, or forward the court stamped summons to the process server, etc.).

**Follow up:** But my boss always wants a copy of everything I file.

**Answer:** Then simply serve your boss as a service contact and your boss will be served a copy of the document along with the opposition.

**NOTE:** Most firms have come to the conclusion that it is NOT best practice to serve your own firm. This is because, like in the paper world, they have already reviewed, approved, and signed their own document, why would they need to blow up their email inbox with things they have already reviewed at risk of missing something important from the court or the opposition. I highly recommend refraining from this practice. A conformed copy will be returned in the “accepted” email to the assistant or attorney who filed the document. That assistant can then place the outgoing document in the firm’s internal case file or server for later review.

**Problem:** Our office is not being served document electronically. We are getting cranky calls from the opposition about service contacts and we have no idea what they are talking about. (OR – We set up service contacts when we started our electronic firm and people say that they are missing.) Please help!

**Answer:** Some have assumed that by building an electronic firm with the system including loading emails will result in documents filed also automatically being served on everyone. This is not the case. Per the Idaho Supreme Court’s E-Filing / E-Service Rule you must designate a “service contact” for EACH CASE. This will not happen automatically, you must designate a service contact the first time you “touch” a case.

To summarize, first make sure your firm has built service contact for your firm. Some firms have only one service contact such as [inbox@lawfirm.com](mailto:inbox@lawfirm.com).

When documents are served on the firm they are then distributed to the appropriate individuals just as if it were physical mail coming into the firm.

Other firms have built a service contact for departments and others have built service contacts for each attorney. If you want a copy to go to an assistant and an attorney, I do NOT recommend building two separate service contacts. Instead, utilize the “Administrative Copy” feature so more than one person can receive service with only one service contact.

Name	Email	Actions
Michael Mehall	mmehall@idcourts.net	Actions
Matt Mehall	mmehall@mail.com	Actions
Ada County Prosecutor	adaprosecutor@mailinator.com	Actions
Susan Smith	ssmith@assistant.com	Actions

Items per page: 10 4 total items

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Firm Name: Mehall & Associates, LLC Email: mmehall@idcourts.net

Administrative Copy: cervin@idcourts.net

When you initiate a case or when you appear for the first time, you MUST select a service contact from your firm that you designate for your client. If you fail to designate you are: a) not following court rule; and b) improperly preventing electronic service by the opposition. Take a look at the instructional video “How to initiate a new case filing.” At the 4:43 mark, you can see the designation of a service contact for your client: <https://icourt.idaho.gov/efile-resources>. (Did you know that such videos exist? They do and they are very helpful.)

**Problem:** I want to serve documents but the other side has not designated a service contact! What do I do now?

**Answer:** Generally you may only designate a service contact for the party you represent, not for other parties. PLEASE never designate a service contact for another party. It is not proper service and can lead to either loading an inappropriate email or incomplete service contacts. If the party you intend to serve is lacking a service contact, contact that party’s attorney to request that they load a service contact as required by Supreme Court’s Electronic Filing Rule. The rule also permits a user to serve the document conventionally if the person being served has failed to designate a service contact.

An exception, however, exists for when the other party is a county prosecutor or public defender. A new feature has been added that will allow you to designate a “Public Service Contact” for county prosecutors and public defenders when they have failed to do so on their own. We anticipate turning this feature on for ALL bar members utilizing the email you designate pursuant to the Supreme Court’s Order in December to provide

the State Bar an email for the purpose of service from the court and a public service contact list. I am hopeful that this feature will be activated for all attorneys by the time this article is published. For instructions on how to designate a service contact for another party who has an attorney of record, please see these step by step instructions: [https://icourt.idaho.gov/efile/Public\\_Service\\_Contact-Instr for PAs and PD.s.pdf](https://icourt.idaho.gov/efile/Public_Service_Contact-Instr_for_PAs_and_PD.s.pdf)

**Problem:** I am getting a million duplicate emails! It is blowing up my inbox and I am concerned that I will miss something important in this confusing mess.

**Answer:** The iCourt File and Serve System offers tremendous flexibility with service. As stated previously a firm could simply have one service contact email or every attorney in the firm could designate a separate service contact. When I get the complaint above, I will ask for a case number to take a look at the service contacts they have designated. What I find is often shocking. For example take a look at this case. Here we see a firm that represents more than one party. For unknown reasons they have



designated more than one service contact for each of their many defendants. If the plaintiff serves a motion on the defense they will not receive one email but NINE! If it is a motion with two supporting affidavits and a proposed order they will receive 27 emails! This is obviously not best practice.

I assume that this practice is either due to the fact that good attorneys are often worried and feel compelled to designate a service contact for each party they represent. I suggest, however, that they recognize that the Odyssey File and Serve system is simply a tool to get documents to court and to and from other parties. It is the court record that controls. If the court record is clear that a firm is attorney of record for various parties that controls. With respect to the



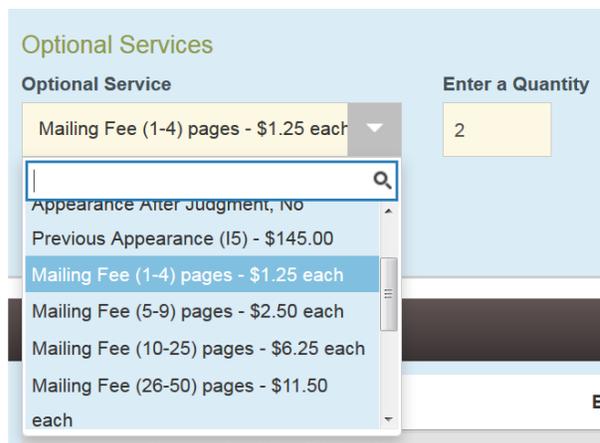
Odyssey File and Serve system it is only necessary to designate a single service contact so that the other parties can serve you with a copy of the document for that attorney of

record. I would not be surprised to see an amendment to our e-filing and e-serve court rule to clarify that it is acceptable to designate one service contact per firm and that it is not necessary to designate one per party.

Here is a final example where this firm has designated 4 service contacts all to the same email. Why? If the other side serves four documents they will receive sixteen emails, all in the same inbox, instead of four.

**Problem:** The court rejected my proposed order because they say I have not paid my mailing fees. How do I do that?

**Answer:** In the paper world when a litigator forwarded a proposed order or notice to the court they complied with Idaho Rules of Civil Procedure, Rule 77(d) which required the filer to also submit extra copies with stamped address envelopes for the court to mail copies back out to the parties. Now in the electronic world the court will serve any signed orders or notice submitted by the parties via email to those attorneys or parties utilizing electronic filing. But what about the case where there are parties who are not participating in electronic filing such as a self-represented litigant or a party who simply never appeared in the lawsuit but per the rules / law requires service? The service of orders in this case will need to be accomplished via paper copies and stuffed stamped addressed envelopes. As such, we ask that litigants select the appropriate copies / mailing fee when they submit documents that require mail service by the court. Select Optional Services to pay for those mailing fees. Again, this is only for those circumstances where you require the court to mail out a document via regular mail.



### Honorable Mention Mistakes

A survey of common mistakes provides a few more worth mentioning.

#### Common Mistake

Incorrect / Incomplete Information:

- Wrong case number
- Wrong case name
- Wrong jurisdiction
- Incorrect Party Names

#### Solution

Check your documents before submission.

Missing Signature

Be sure to sign your documents. Utilizing an e-signature is the best practice. No printing and scanning necessary.

Documents must be filed in paper form.

Some types of document must still be filed conventionally. See Paragraph (f) of electronic filing court rule.

Pleadings and/or submitted clerk's certificate of service fail to include the e-mail address submitted to the State Bar for service from the court to you.

Pursuant to the Supreme Court's e-filing / e-service rule, you must include on your pleadings the email address you submitted to the State Bar for service from the court to you. This same address must also be utilized for any submitted clerk's certificate of service. You may have other e-mail addresses on your pleading's title page in addition to the designated service email but not on the certificate of service.

## Conclusion

Remove these common mistakes from your e-filing / e-service game and you are sure to be an e-fan of iCourt. Be sure to review the e-filing rules as changes are made. For additional resources, including Frequently Asked Questions and training videos, visit the iCourt website (<https://icourt.idaho.gov/efile-resources>). Please also feel free to contact me directly if you have any questions or concerns regarding e-filing / e-service.

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<sup>i</sup> See, *Managing Your Practice; Zero Tolerance for e-Filing Error: Avoid Committing Malpractice, with a Few Clicks of Your Mouse* by Beverly Michaelis.

<sup>ii</sup> I must admit that some of our more senior bar members have indicated to me that the move to e-filing will result in their earlier than intended retirement. I am pleased to report that with some words of encouragement and time coaching, they have learned to successfully navigate the iCourt system.