



# Boston Bar

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May 22, 2017

Joseph Stanton  
Clerk of the Appeals Court  
John Adams Courthouse  
One Pemberton Square, Room 1200  
Boston, MA 02108

**Re: Comments on the Proposed Amendments to the Interim  
Massachusetts Electronic Filing Rules**

Dear Clerk Stanton,

On behalf of the Boston Bar Association (BBA), we thank you for the opportunity to comment on the proposed amendments to the Interim Massachusetts Electronic Filing Rules and recognize the efforts put forth by the Joint Appellate-Trial Courts Working Group on Electronic Filing in drafting these amendments to the rule.

The proposed initiatives were distributed to all BBA Sections, and the Business and Commercial Litigation Section discussed them at length and proposed the attached comments. Please note that the enclosed document does not constitute a position of the BBA as a whole but rather reflects the views of individual members of the Business and Commercial Litigation Section Steering Committee. We hope that they may be useful to the Working Group as it considers the proposed revisions.

Thank you for providing members of the bar with an opportunity to weigh in on these important proposed revisions, and please feel free to contact me should you have any questions or concerns.

Very truly yours,

Carol Starkey  
President

**Comments of the Boston Bar Association's Business and Commercial Litigation Section  
Steering Committee on Proposed Amendments to the Interim Massachusetts Electronic Filing  
Rules  
(5/22/2017)**

In response to an invitation for comments from the Joint Appellate-Trial Courts Working Group on Electronic Filing ("Working Group"), the Boston Bar Association's ("BBA") Business and Commercial Litigation Section Steering Committee reviewed the proposed amendments to the Interim Massachusetts Electronic Filing Rules.

The BBA notes that these comments do not represent a formal position of the Association but rather are a collection of comments from interested Section members intended to help the Working Group in its consideration of the proposed amendments.

Members of the Business and Commercial Litigation Section Steering Committee noted a few concerns about the Interim E-Filing Rules. Some members felt that the rules are unclear as to the process when one side registers for e-filing and the other does not. Though, these members mentioned this may be clarified as various departments decide if they will participate and create their own rules.

Some members thought that confusion could arise from the continuation of the 3-day mail box rule for e-filed documents. They noted that because the program is voluntary right now, a user could file a document with a court and conventionally serve it on some, all, or no other parties depending on whether or not they had registered for e-filing. Then, if the e-filing does not account for conventionally served documents, parties in the same case could have different responsive due dates, which would cause confusion for the parties and court. These members felt the continuation of the rule still remained the best option for now, but to prevent the continuation of the confusion, it should be eliminated completely when e-filing becomes mandatory.

Some members also raised a concern about the provision, in paragraph 8(a), that the provider may charge an e-filing fee. These members considered where the filing fee would apply (per page, per filing, per MB) and how much the fee would be. They felt that if the fees were significant, litigants may decline to utilize e-filing while it is voluntary and stick with conventional methods of filing.

A number of members of the section also expressed concern that the rule is silent as to whether the e-filed materials would be accessible to the public and hoped for clarity on that matter.

Other members expressed a concern about Rule 5, which provides that the deadlines for filing remain the same if the filing failed for technical nonconformance. They felt this was especially harsh considering the failure could be a technical glitch but the consequences could be significant, including missing a statute of limitations deadline or losing appellate rights if a mandatory notice of appeal is not e-filed on time.