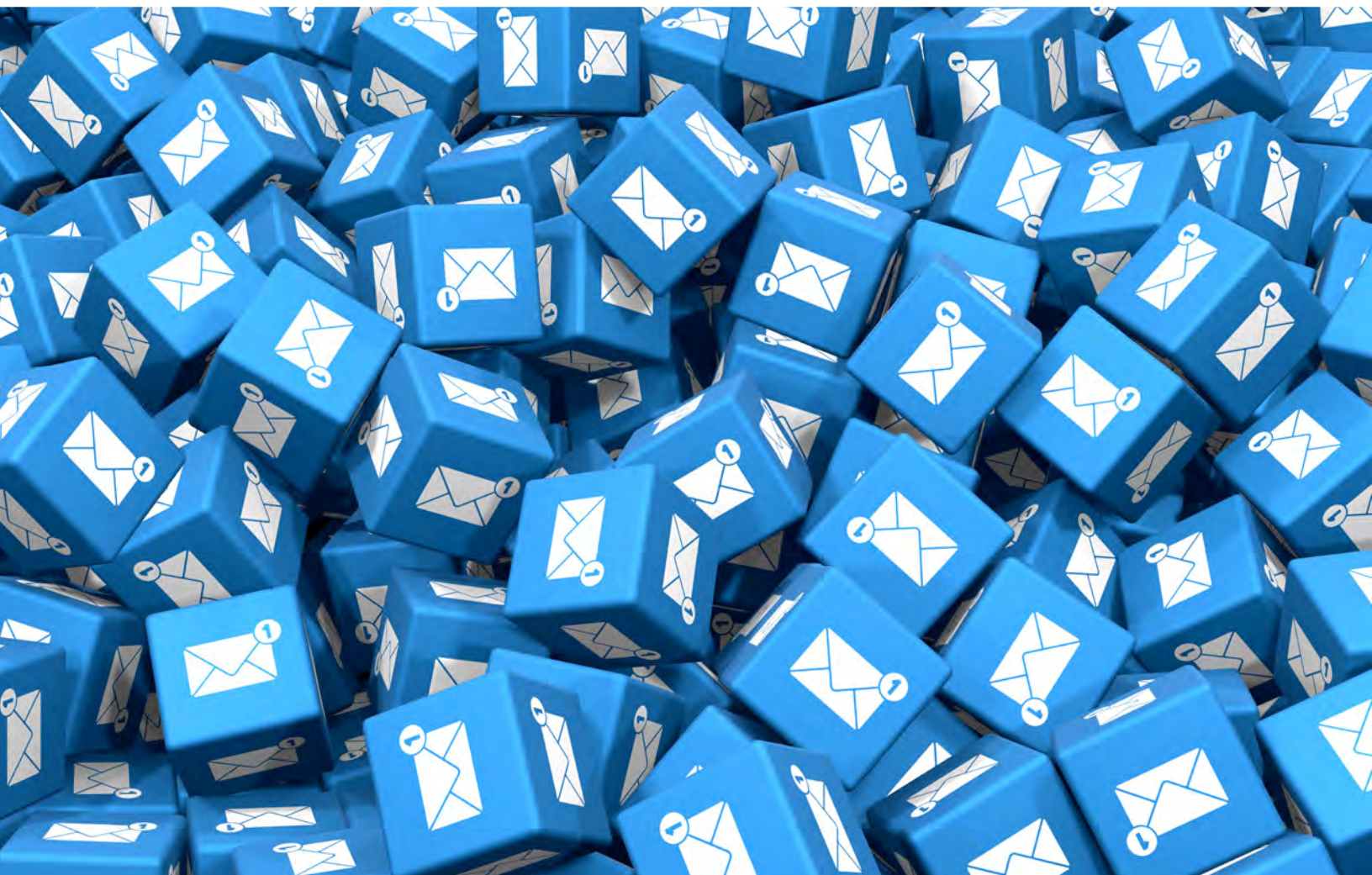
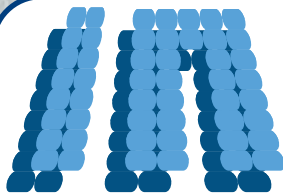


LETTING EMAILCE

A Step-by-Step Primer

By Scott L. Sternberg





2021, the Louisiana Legislature made significant revisions to Louisiana Code of Civil Procedure Article 1313, the article relating to service.

After significant input from the Louisiana Supreme Court's Technology Commission and the Louisiana State Law Institute, finally, e-service has come to Louisiana. In addition, the Legislature and Supreme Court changed the law to require that attorneys list an e-mail address in their signature blocks on all pleadings.

Unfortunately, e-service, like so many things associated with the practice of law in our state, will be a slow climb. To start, there is no unified electronic filing system, or "ECF," like in other states or the federal courts, and there is already confusion over who serves whom, where service is proper, and what "delivery" actually means.

The New Law

The smaller, simpler addition to the "new" e-service law was a requirement that most lawyers were already fulfilling: a revision to Code of Civil Procedure Article 863 that a lawyer shall include an "e-mail address for service" on each and every pleading. For those last few holdouts, it's time to get an e-mail address! It's the law.

Article 1313 states that every pleading "subsequent to the original petition" may be served by the sheriff or numerous other means, including e-mail. The law previously *allowed* for service of pleadings and other documents via e-mail, although not of Rules to Show Cause or Orders that set hearing dates (unless, of course, the lawyers simply agreed to waive service).

This new revision *provides* for service of a rule date by e-mail. That provision has the potential to save time and money for lawyers and their clients. The new Article 1313(C), created by Acts 2021, No. 68, §1, and effective Jan. 1, 2022, states:

C. Notwithstanding Paragraph A of this Article, if a pleading or order sets a court date, then service shall be made by registered or certified mail or as provided in Article 1314, by actual delivery by a commercial courier, **or by emailing the document to the email address designated by counsel or the party. Service by electronic means is complete upon transmission, provided that the sender receives an electronic confirmation of delivery.**

The bolded portion of 1313(C) is the relevant portion and, in classic Louisiana tradition, presents a conundrum for the attorneys involved: what does "an electronic confirmation of delivery" really mean? And who is supposed to "deliver" — just attorneys, or, can the court or clerk deliver by e-mail?

Service by E-mail: The Key is Delivery

E-mails can be read, and many e-mail systems have some sort of "read receipt" option. Microsoft Outlook has a specific setting so that you can get delivered read receipts when your intended recipient views or opens an email. But just because you've read an e-mail doesn't mean that you've reviewed the attachment and calendared the date therein. Does that comply with "delivered" under the new law? Good question. Fortunately, the law also provides that upon delivery, it is incumbent upon the lawyer (just like the times of old) to "file in the record a certificate of the manner in which the service was made." (La. C.C.P. art. 1313(B)). If you are concerned about complying with delivery, a solution is simply to file a certificate into the record once you are assured delivery is made by e-mail — not just with the initial filing of the motion.

It should be noted that the article also theoretically allows for the court or the clerk to serve via e-mail. Article 1313 is a hodgepodge of *alternatives* to sheriff service. In theory, when a court's clerk e-mails a Rule to Show Cause to an e-mail address listed on a pleading, that service is good if the e-mail is delivered. This already occurs in practice in many courts across the state. So, best to be on guard. As any attorney with a significant federal practice already knows, this means you must check your Spam folder frequently.

Perhaps the biggest conundrum this law presents is the "if-this-then-that" problem. The *event* of service itself is notable. When the sheriff or certified mail arrives with a Rule to Show Cause attached, it is undeniable that there is an immediate reaction (the review of the Rule, the calendaring of the date, the opposition date calculation, the rush of adrenaline, if you will).

The answer, in this humble author's opinion, is a mix of professionalism and best practices.

Professionalism

Before the revisions, it was common for attorneys to "waive" service and simply receive the date via e-mail. Today, the focus on professionalism is even greater. A conference between the counsel at the onset of a case about service is a great start and should be a must-have. At the conference, you can agree what e-mail addresses are to be used for service, and how service will be effected. For example, the parties could agree to respond to each and every e-mail containing a rule date with "Received, thank you." These three words will undoubtedly qualify as "delivery" under the new 1313(C).

Best Practices

While there is no one-size-fits-all approach, these tips can be used in whole or in part to ensure you're ready for the onset of e-service in Louisiana — and to ensure your cases are not delayed or upset by this new law.

You may be practicing in a court that wishes to effect service of rule dates via 1313(C). Having a chat with the clerk of court is probably a good practice as well.

As noted earlier, the best practice you can engage in is

simply replying to e-mails that serve you with a rule or order. Replying cements the service in your head and affords you the ability to copy a paralegal or even use the e-mail to calendar the date, if you are tech-forward enough to have auto-calendaring.

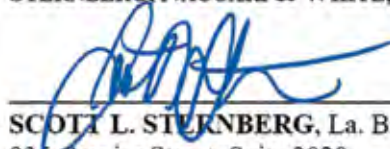
Further, you can take steps as a firm or organization to apply uniform rules to e-service at your firm. At Sternberg, Naccari & White, we have created a new e-mail group called serve@snw.law.

We ask opposing counsel to send all e-served rules to that address. That way, if we are sent a rule by opposing counsel and they forget to copy the “serve” e-mail, we can simply hit the “forward” button and send it to serve@snw.law, or copy that e-mail address on our reply to opposing counsel. On our “serve” e-mail group are our staff members and a few key litigators — so that nothing will hopefully be missed on the calendar.

Our signature block on pleadings has changed to include the e-mail address (or addresses) we have designated for service. An example here:

Respectfully submitted:

STERNBERG, NACCARI & WHITE, LLC



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E-mail for service: serve@snw.law, scott@snw.law

Counsel for Capital City Press, LLC

The ever-evolving e-mail signature, which usually includes some sort of disclaimer and privilege warning, should probably be modified as well. Consider changing your e-mail signature to instruct opposing counsel on e-mail service. By example, my signature has been changed to say this:

[Scott L. Sternberg](mailto:scott@snw.law)

Managing Partner



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251 Florida Street, Suite 203 | Baton Rouge, LA 70801

Direct: (504) 324-1887 | Cell (504) 331-0888 | Fax: (504) 534-8961

scott@snw.law | www.snw.law

Attorneys: Pursuant to the new La. C.C.P. art. 1313(C), please serve scott@snw.law and serve@snw.law if you are attempting to serve a rule date. I will respond in order to facilitate proof of delivery.

Clients: the attorney-client privilege protects this e-mail. Other attorneys; we may have a joint representation, defense or prosecution agreement that could create a privilege. No matter who you are, please keep this e-mail confidential. If you've received it in error or by mistake, please let me know and delete the message.

Next, you may consider standardizing how you will send service e-mails. This is how service e-mails will now look at my firm. I've used my friend Tom Arceneaux in Shreveport as my example.

[Tom Arceneaux \(bwor.com\)](mailto:tom@bwor.com), Service (serve@snw.law)

LA CCP 1313 EMAIL SERVICE: RULE TO SHOW CAUSE (DOE V. CAPITAL CITY PRESS, LLC)

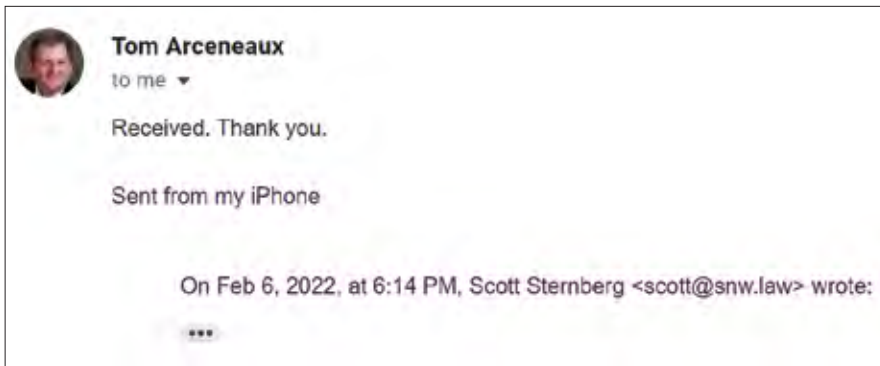
Good morning Tom, please see attached and kindly acknowledge receipt of the attached Rule so that I can file into the record a certificate of electronic delivery service by La. C.C.P. art. 1313(C).

[Scott L. Sternberg](mailto:scott@snw.law)

Managing Partner

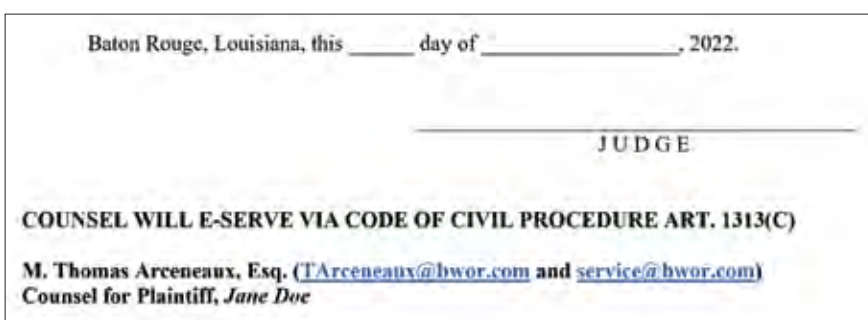


Fortunately, Tom is as professional as the day is long, and, in this hypothetical, he was happy to acknowledge service, perfecting the delivery portion of the new 1313(C):



Having a standardized subject line and copy line (perhaps to an assistant or a group of assistants/paralegals/colleagues) will allow you and your opposing counsel to establish rules and easily identify when important service e-mails go out and come in. Also, having the “1313 E-MAIL SERVICE” in the subject line will cause a bell to go off somewhere, for sure.

Finally, it’s a belt-and-suspenders approach to modify your “Please Serve” language on any rule to show cause. You should tell the court (and the clerk) that you’re going to e-serve via the new 1313(C) in big, bold letters:



These best practices aren’t a fix-all, and they’re not perfect, but this is what we’ve developed as our best practices in the first two months of a wide-open-world of e-mail service.

Conclusion

Obviously, a uniform e-service system like the federal ECF would be much more efficient for us all. That is still years away. The new law makes the definitive service via electronic means possible but could present a problem if we do not think the process through and develop best practices. Professionalism cannot be legislated, but it’s the way to go. Also, adopting a uniform policy across your firm, or across your local bar, can help ease the uninitiated into the wonders of electronic service.

The author would like to thank 24th Judicial District Court Judge Scott U. Schlegel for his input and advice regarding the “best practices” in this article.

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