

Serving Discovery Requests by Email

Many lawyers today no longer go to court with a pager on their belt, but a BlackBerry or iPhone. Partners can email directions to associates from the courthouse and associates can ping a paralegal for help at a deposition. Sending email is a normal part of the practice of law.

Can a lawyer properly serve discovery requests by email? One court answered yes.

Federal Rule of Civil Procedure 5(b)(2)(D) states, in relevant part, that a party may serve pleadings or discovery on an adverse party by, "delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; . . ." *Alliance Communs. Coop., Inc. v. Global Crossing Telcomms., Inc.*, 2009 U.S. Dist. LEXIS 16467, 27-28 (D.S.D. Feb. 27, 2009).

In *Alliance Communs. Coop., Inc. v. Global Crossing Telcomms., Inc.*, the Plaintiff served the Defendant discovery requests by email. The Defendants challenged the service by email claiming they never consented in writing to electronic service. *Alliance Communs. Coop., Inc.*, 27.

The Court rejected the Defendant's arguments they never consented to electronic service of process. The Court highlighted the fact that when the defense attorneys signed the Defendants' Opposition to Plaintiffs' Motion to Compel they also completed an attorney registration form for electronic court filing. The attorney registration form included a provision for "consent to service by electronic means as substitute for service..." *Alliance Communs. Coop., Inc.*, 28.

The Court found the Defendant had consented in writing to receive service of process by email because of the attorney registration form the attorneys completed. Further, there was no evidence of any prejudice by receiving the discovery requests by email. *Alliance Communs. Coop., Inc.*, 29.

Email is a fact of life. Receiving service of pleadings by email will probably one day be the norm. Baring incidents of spam filters removing attachments, electronic service of process is a quick and effective way to exchange pleadings, discovery and other moving papers.