

**SPECIAL COMMITTEE ON TECHNOLOGY AND THE PRACTICE OF LAW**

*Clyde R. Christofferson, chair*

The Committee on Technology and the Practice of Law is continuing to assess prospects for resolving conflicts between rights of privacy and rights of public access with respect to electronic court records and pleadings. These issues substantially affect the practical availability of electronic filing to Virginia lawyers.

The committee presented its report to the Virginia State Bar Council at the council's October 2004 meeting, sent a copy to the executive secretary of the Supreme Court of Virginia and notified the chair of the appropriate legislative committee that the report was available. The report proposed placing the burden on litigating parties to redact private or personal information in filings. Appropriate court rules or statutes identifying specific information that would support a protective order would reduce the need for a hearing on redaction issues. Finally, the report recommended a balanced procedural mechanism for minimizing the potential burden upon the courts of protective order hearings on information not covered by rule or statute.

The report also recommended that the rules be amended to permit electronic filing to be used by any party to the litigation rather than requiring consent of the parties, so that law firms would be able to develop regular procedures for filing electronically. This aspect of the report generated controversy at a Virginia State Bar Council meeting. The concern was that the prospect of electronic filing of, and public Internet access to, a paper containing embarrassing allegations in a divorce litigation could be used by a party as leverage in negotiations. Current practice avoids this issue because documents filed electronically are not available to the general public, under the terms of Supreme Court Rule 1:17(c)(3).

The committee will continue to monitor developments affecting use of electronic court records and pleadings. For example, new § 20-121.03 of the *Code of Virginia* requires that certain information in a divorce case that makes a party vulnerable to identity theft be excluded from any filing available to the public, and instead be included in a separate addendum. This raises practical issues for the use of technology in the practice of law—practical issues whose resolution merits continued attention. The committee will continue to pursue these issues and to cooperate with other committees also interested in preparing the bar to address impending changes in the practice of law

