



# National Conference of Appellate Court Clerks

SECRETARIAT: NATIONAL CENTER FOR STATE COURTS, 300 NEWPORT AVE., WILLIAMSBURG, VA 23185

WHITE PAPER

## E-Filing in State Appellate Courts: An Appraisal

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*E-filing has become well-established in federal courts, but state courts, particularly appellate courts, have lagged far behind in developing and implementing e-filing. While the technology required for e-filing is relatively simple and straightforward, the reasons for the states' slow progress toward e-filing are complex and multi-faceted.*

### Introduction

By the end of the first decade of the 21<sup>st</sup> Century, electronic filing had been implemented in every federal district court in the nation and in several federal courts of appeal, while in state appellate courts, electronic filing continued to be discussed far more than it had been realized. E-filing has been the subject of numerous state court task forces, committees, and assessments; requests for proposals have been issued and bids have been offered; and numerous state e-filing projects have been begun and abandoned. Even before the recent economic downturn, which has stifled the development and implementation of court technology projects in every area, the states' progress toward appellate (as well as trial court) e-filing has been agonizingly slow. As of 2010, only fifteen states have implemented appellate e-filing systems of any kind.<sup>2</sup>

This White Paper is based on a survey of electronic filing in state appellate courts conducted by the National Conference of Appellate Court Clerks (NCACC) in the summer and fall of 2009, supplemented with information gathered from state judicial websites. Since its inception in 1973, the NCACC has served as a focal point for the exchange of information among state and federal

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<sup>2</sup> For purposes of this paper, an appellate e-filing system is defined as either (1) an Internet portal used for the transmission of electronically-filed documents from filers to the courts or (2) a scheme for the voluntary or required transmission of electronic documents to the court by e-mail. This definition excludes courts that request or require the submission of an electronic document by enclosure of a CD-ROM or diskette.

appellate court clerks and administrators. Among the missions of the NCACC is to promote fair, efficient, and effective appellate court administration, and furthering the advancement of appellate e-filing is one of the most important challenges facing our appellate courts today. The purpose of this White Paper is to provide a snapshot of the current (and constantly changing) state of appellate e-filing, to suggest reasons for its lackluster growth, and to offer suggestions for sparking greater progress toward widespread implementation of appellate e-filing.

## **Background**

In January 2009, the U.S. District Court for the Western District of Wisconsin became the last federal district court in the nation to implement e-filing. The spread of e-filing in federal courts proceeded smoothly thanks to a highly centralized Administrative Office that oversaw the project from its inception, a willingness to model the system on successful e-commerce applications, and the foresight to keep the system simple and flexible. Moreover, the federal courts made two key decisions correctly early on – first, to make the system available through the Internet, and, second, to require that documents be in Portable Document Format (PDF). These decisions enabled universal access to the e-filing system at any time from anywhere in the world and consistency in the formatting of e-filed documents. In contrast to this uniform and unified federal system, each state has been on its own in determining what type of e-filing system would best fit its laws and legal culture and in gathering the resources and technology to create and implement the system. For better or worse, each state has independently developed its court technology, and the widely varying level of sophistication of that technology reflects of a number of factors, including each state's degree of interest in court automation, its financial health, and its ability to sustain technology projects.

As a practical matter, the creation of a state appellate e-filing system should be a far simpler and more straightforward task than the creation of a trial court system. The number and types of documents filed on appeal, the number and variety of court orders, and the types of fees paid and funds collected are limited. The need for interfaces and data exchanges with law enforcement, family services, and other state agencies does not exist. It would make sense, then, for state courts to initiate e-filing in the appellate courts, refine and perfect the system in its appellate form, and then expand the technology in the trial courts.

One significant reason this has not occurred is the fact that in many states, financing for court information technology is split between revenue from trial court fees, which funds the development of trial court systems, and general program revenue from the state, which funds the technology needs of the appellate courts. The amount of money available for the former is far greater than the latter, and, in many states, the legislation creating the trial court fees prohibits their use on the appellate level. And experience has shown that the availability of funding, rather than need or logic, often drives the development of new technology.

In addition, e-filing on appeal has foundered because of a lack of awareness among the judiciary about the benefits of e-filing. Appellate judges and justices are understandably focused on deciding cases, and appellate e-filing has very little glamour as a court project. In states where the Chief Justice, as the head administrator of the courts, must defend a budget request before the legislature, e-filing projects are often viewed as not worth the expenditure of political capital. Unlike specialized courts, court interpreter programs, mediation, and other such initiatives, it is seen as a mundane technical improvement.

Many appellate courts also carry the weight of an emotional and financial investment in legacy systems that cannot accommodate e-filing. States like Indiana, where the appellate courts continue to use an IBM AS400 system twenty-five years after it was introduced, have struggled with the question of finding a new system that can integrate the old system or at the very least accommodate

data imported from the old system. Such a limitation can significantly drive up the cost of the new system, which must be customized to obsolete technology.

A critical factor in a successful effort to develop and implement e-filing is the existence of an individual within the judiciary – whether a judge, justice, court administrator, or clerk – who has enthusiasm for and expertise in court technology. If a court system lacks the right person in the right position at the right time – someone who is willing to carry the ball in promoting and seeing through an e-filing project – it cannot be accomplished. The public will not drive evolution in court technology; to the extent the public is aware of how courts function, the perception is that the judicial system has functioned for decades, and will continue to function, with or without e-filing or other technologies. As far as the public is concerned, even in 2010, courts could continue to do business, if necessary, with typewriters, copiers, and paper research tools.

Clerks of court and court administrators know, however, that the cost of obsolescence is inefficiency, which translates into an inability to keep pace with increasing case loads and personnel costs. It also places the courts outside the mainstream of the legal profession; if lawyers are using technology in sophisticated ways in the practice of law – employing electronic communications, hyperlinked documents, electronic records, electronic service, etc. – the courts will be perceived to be (and may actually be) out of touch with the way people live and work today.

A more mundane reason for the languishing of e-filing on the appellate level has been the lack of a clear choice in the field of vendors available to help states create e-filing systems or to bring in ready-made e-filing systems. While several vendors have made inroads into the market, no third-party vendor has yet emerged as dominant in the marketing of an appellate e-filing system. The emergence of a dominant vendor could significantly alter the landscape by providing consistency and uniformity. Moreover, the existence of a product in widespread application, with proven reliability and functionality, might give state court systems the confidence they need to commit to e-filing projects.

## **E-Filing Systems**

In fact, the e-filing systems offered by most e-filing vendors resemble each other far more than they differ. Nearly all are based on the federal model and provide interfaces designed with the differing perspectives of filers, the clerk's office, and the courts in mind.

In a typical (or ideal) e-filing system, filers prepare the document using conventional word processing software, then save it as a PDF file. The filer then (1) logs onto the court's e-filing interface with a court-issued username and password, (2) enters basic information relating to the case and the document, (3) uploads the document, (4) submits it to the system, and (5) pays any applicable filing fees online. The filer receives a notice verifying the submission of the document.

The appellate court clerk's office receives notification that the document has been submitted to the system, usually by the appearance of the newly submitted document in an e-filing review queue. A clerk's office employee reviews the document for compliance with the rules and deadlines and either accepts it or rejects it. If the document is rejected, it is returned to the attorney electronically with a note describing the reason for rejection. If it is accepted, (1) the document is file-stamped or receive-stamped with an electronic stamp that is added to the PDF version of the document, (2) the document is added to the electronic case file, (3) the filing is noted on the appellate case docket, and (4) the other parties to the case receive notice of the filing. At that time, the other parties either receive a service copy of the PDF document or are given access to the document on the court's server. If the filing is a motion that requires immediate consideration by the court (e.g., a motion for extension of time), it is transmitted electronically to the appropriate court. The court then issues an order (through the clerk's office) electronically to the parties.

Once the document has been added to the electronic case file, it can also be made available to the public, depending upon the court's policy. In a number of states, documents filed through the e-filing system are available on the court's website, either as part of the appellate docket case search or as a briefs database. In states where the court requires the filing of documents in text-searchable PDF, the database can be configured to be searchable by terms and phrases, making it a valuable tool for attorneys and judges who want to read how other attorneys have handled a particular issue.

If, in addition, the system had an interface with the trial court, it would enable the appellate court to receive not only case information (parties, charges, case type, financial information, etc.) electronically but the trial court record as well. The trial court record could be as simple as a scanned version of the paper record, or it could be a set of links to electronic versions of trial court documents – including e-filed pleadings, scanned exhibits, and electronic transcripts. Most of this material could thereby be in text-searchable form.

The typical interface for judges would provide them with access to the electronic documents associated with a case in a straightforward manner; judges and their law clerks are interested, of course, in the content of the documents, not when and how they were filed. A simple web-based interface would permit a judge (wherever in the world he or she may be) to sign on to the system, enter a case number, and retrieve a list of the electronic documents in that case. Double-clicking on a document would open that document in Adobe Reader. Once open, the document can be saved, printed, downloaded, or e-mailed; it can be copied; pieces of text can be copied from within it; and, if hyperlinks have been included, cases or statutes can be accessed via the Internet from within the document.

### **E-Filing Vendors**

Some of the primary players among appellate e-filing vendors appear currently to be the following: LexisNexis, with its "File & Serve" program; Tybera, with its "eFlex" system; LT Court Tech, with its "C-Track" system; Wiznet, with its "E-File & Serve and Document Access Program"; Image-X, with its "One Click" system; and Tyler Technologies, with its "Odyssey" system.

Vendor-Hosted Systems. The LexisNexis and Wiznet systems are vendor-hosted systems, meaning that the system is managed on a fee-per-filing basis by a private company. Under this model, the company provides a web-based interface accessible to attorneys, the clerk's office, judges, and subscribers. A fee is charged to the filer of the document and may be charged to others who wish to view the document. Access to the system by judges, justices, and the clerk's office would be free of charge, and there would be no development or other charges incurred in starting up the service. The system can be programmed to update a court's internal case management system automatically – in other words, it would take the information entered by the filer of the document and add it to the docket. It could also set deadlines and provide ticklers.

The LexisNexis product has had successes in its statewide implementations in Colorado and Delaware and in local implementations throughout the country, particularly in counties coping with complex civil litigation. LexisNexis appears to have backed away from pursuing the appellate e-filing market, possibly because the start-up costs are high and the volume of potential business on the appellate level is low. Having systems in place in the nation's trial courts is much more profitable for the company.

Wiznet, similarly, has implemented its system in far more trial courts than appellate courts. Its clients include several county courts in Arizona, California, and Michigan and the Michigan Court of Appeals, which has been offering electronic case initiation, filing, and service of pleadings since 2006 for a limited set of cases. As of February 6, 2009, Michigan expanded voluntary e-filing to include all appeals arising from orders entered by the Michigan Public Service Commission and all criminal cases.

Vendor-Created Systems. The other vendors earn their fees by creating systems to be hosted and managed by the court. A court-hosted system would employ purchased or court-developed software to provide the e-filing interface, and documents would be stored on the court's own servers. It would be up to the court to determine whether any fees would be charged to filers.

Tybera is a Utah-based company that offers an e-filing system for trial courts called eFlex; it is a stand-alone e-filing system that can work with an existing case management system or with a case management system created by another vendor. Tybera's system combines many of the features of established e-filing systems (such as CM/ECF and Lexis-Nexis File & Serve), and it has the advantage of being customizable to a particular court setting. The eFlex system includes interfaces differentiated for attorneys/litigants, the clerk's office, and judges, and it accommodates electronic notifications and service. Tybera's first statewide implementation, for the Utah Administrative Office of the Courts in 2003, was followed by projects at the local level in Florida, Nevada, and Ohio, and at the state-wide level in Delaware, Nevada, North Carolina, and Iowa.

Another vendor holding a significant piece of the market is LT Court Tech, which is marketing a system called C-Track, which is an appellate case management system with an e-filing component. Like eFlex and other systems, C-Track's e-filing system allows parties to file documents in the standard word processing formats (Word, WordPerfect, etc.), converts them to PDF, and provides the option of watermarking, file-stamping, and electronic signature. C-Track has been implemented as a case management system without the e-filing component in appellate courts in Minnesota, Montana, Nevada, New Hampshire, Oregon, and the Virgin Islands, and with the e-filing component in Wyoming.

### **Considerations in Choosing an Appellate E-Filing System**

An appellate e-filing system can be as simple as an e-mail address to which documents are sent or as complex as a comprehensive case management/document management/e-filing system accessed through the Internet. In deciding which option to choose, factors to be considered include cost, functionality, and control.

One of the most important policy decisions to be made at the outset of the process is the degree to which the court wants to go "paperless." This term is misleading, of course, in that documents on appeal (particularly briefs and appendices) are likely for the foreseeable future to be needed in paper form to satisfy the needs of the current generation of judges and justices. The question drives a number of important considerations, however, such as (1) whether paper copies should be required to be filed at all, and, if not, who should bear the cost of printing the documents when requested by the court; (2) whether the court's official record is the paper or the electronic version of the document; (3) whether and how to archive the court's case records; and (4) whether, if a third-party vendor is involved, the official record should be under the control of that vendor. Among the many advantages to a paperless system is the ability to store, access, retrieve, and provide electronic copies of the official court record without the cost of printing and transporting paper. It requires a great leap of faith, however, for many judges and attorneys to trust that a virtual folder of electronic documents residing in digital form on a server could constitute the official court record.

In addition to the considerations surrounding the question of paperlessness, the court must determine its priorities in terms of the system's functionality. For most appellate courts, the most basic and therefore most important function of an e-filing system is to permit attorneys to e-file documents with the appellate courts and to serve other attorneys electronically. The second priority is often the function of providing judges and justices with access to documents in electronic form. Third may be the function of enabling the public to access appellate court documents online, and fourth, perhaps, the function of enabling attorneys to pay filing fees online, though for some courts

this priority ranks much higher. Paying fees electronically can greatly reduce the amount of time attorneys and clerks spend handling and accounting for payments.

Factors considered in this prioritization include cost, feasibility, speed of implementation, and whether the court embraces a policy of permitting as much access to court records as is prudently consistent with privacy concerns. Because each additional functionality adds cost and time to the implementation of a system, the courts should consider the likelihood of receiving funding and the amount of such funding before committing to a particular system.

Another important issue is whether to consider using a vendor-hosted system. The temptation is strong – the development and implementation of such a system usually requires little or no up-front cost to the court and minimal personnel expense. Courts may find, however, that working with LexisNexis or Wiznet, while initially attractive, may ultimately involve too many compromises. Several red flags come to mind: First, the court would commit itself to a system where attorneys would pay for e-filing; while it is true that e-filing can save attorneys (and their clients) money (reducing copying and service costs), the fee would be there and would be to some extent within the control of the vendor. Second, the vendor would have a monopoly as the exclusive provider of e-filing services to the appellate courts; courts may be uncomfortable with requiring filers to do business with a particular vendor. Third, the court would cede control of the system and case record data to the vendor; while the vendors provide assurance that safeguards are in place to protect court data, courts would be forced to rely on such assurances. Fourth, members of the public would probably need to provide some identifying information to the vendor to view court documents online, which may run contrary to a court's goals of providing both openness and accountability and privacy to users of court services.

Regardless of the type of system a court chooses, the importance of contract negotiations with vendors cannot be overestimated. Courts must take great care when negotiating contracts to ensure that the product they receive complies with their unique requirements and provides cost-effective service to the public.

### **E-Filing in the Regions**

**The East.** Among the 11 eastern states (Connecticut, Delaware, Maine, Maryland, Massachusetts, Pennsylvania, New Hampshire, New York, New Jersey, Rhode Island, and Vermont) and the Virgin Islands, only Connecticut and Delaware have appellate e-filing as of January 1, 2010.

Connecticut's appellate e-filing requirement was effective March 1, 2009. All counsel-represented parties who file a paper brief in the Connecticut Supreme Court must also file an electronic copy of the brief. Briefs must be e-filed using the e-filing interface available on the judicial branch website and must be in PDF, though text-searchable PDF is not required.

Delaware began e-filing in 2006 using LexisNexis's "File & Serve" system. This system, managed by LexisNexis and funded by fees charged to filers, provides the Delaware courts with electronic filing of any document on appeal, automatic docketing (integrated with the court's existing case management system), and real-time online access to e-filed documents.

A number of eastern states have begun e-filing on the trial court level, but none of these programs is significantly developed. In 2009, the New Jersey Supreme Court issued an RFP for a comprehensive e-filing and case management system for its trial and appellate courts that would replace all existing stand-alone systems.

Rhode Island currently does no e-filing at the lower court or appellate court levels, and budgetary constraints make it unlikely that progress toward a statewide e-filing system will occur within the next four to five years.

**The Midwest.** Among the 12 Midwestern states (Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin), only Wisconsin, North Dakota, and Michigan have appellate e-filing as of January 1, 2010.

Wisconsin began a concerted effort in 2007 to create an appellate e-filing system and implemented its system on July 1, 2009. The amended Wisconsin rules of appellate procedure require an electronic copy of all briefs, no-merit reports, and petitions for review to be filed using the court's e-filing interface. See "E-Filing on Appeal in Wisconsin" in the Appendix.

Since 2004, North Dakota has had a voluntary e-filing program in which parties e-file documents by sending them to a court e-mail address.

South Dakota does not expect to have e-filing at any level before 2013 at the earliest. The state's Unified Judicial System is working with Tyler Technologies on implementing the Odyssey case management system at the trial court level and anticipates that it will eventually include e-filing, but an application at the appellate level is not on the horizon.

Illinois has had pilot e-filing projects in several counties since 2003, but the policy authorizing those projects explicitly does not authorize e-filing in the state's Supreme and Appellate Courts.

Indiana's appellate courts have been interested in initiating e-filing since 2006, when the Indiana Supreme Court authorized a working group to begin discussing how an appellate e-filing system should work and what it might look like in Indiana. It became apparent, however, that an overall evaluation of the state's appellate IT structure and the systems it runs on, including case management, document management, database management, and e-mail, would need to be performed before appellate e-filing could be considered. That process of evaluation, undertaken with the technical assistance of the NCSC, occurred in 2007 and 2008, and as of this writing, Indiana has reorganized its appellate IT structure and is in the process of soliciting e-filing proposals from vendors.

The Iowa Judicial Branch is working on an Electronic Document Management System (EDMS) for the entire court system, and it is expected to be installed in its first pilot county in January 2010. The plan is for EDMS, which includes e-filing functionality, to be implemented in the appellate courts in summer of 2010, but this depends on budget considerations and the impact of furlough days on the IT staff's ability to complete the work. Participation in EDMS will be mandatory. Electronic documents will replace paper, and the system is expected to encompass all documents filed in the trial and appellate courts and all orders and opinions filed by the courts.

In 2009, Kansas appointed a committee to make recommendations to the Supreme Court with regard to e-filing in the trial courts. The long-range plan is to have e-filing fully implemented in the trial courts over the next five years, but the timetable for implementation in the appellate courts remains uncertain. In Nebraska and Ohio, the appellate courts are looking to implement e-filing sometime in the next 2 to 3 years. In Missouri, the state court administration is currently evaluating systems for the trial courts.

**The South.** Among the 14 southern states (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia), North Carolina stands out as a pioneer in appellate e-filing, having begun an optional e-filing system in 1998. More recently, Alabama and Georgia have implemented pilot appellate e-filing programs, and Florida's 5<sup>th</sup> district court of appeals has been doing some e-mail e-filing of briefs. West Virginia, Oklahoma, Kentucky, and Tennessee are currently evaluating systems. Texas has been working on the creation of an in-house e-filing system that it hopes to implement in

May 2010. The system will be mandatory for attorneys, will include all documents, and is likely to include all case types on appeal.

Virginia began an e-filing program limited to petitions for rehearing in 2005; its appellate courts require that all petitions for rehearing be filed as an attachment to an e-mail sent to an address created specifically for that purpose. See “E-Filing on Appeal in Virginia” in the Appendix.

Beginning in 2005, the Mississippi Supreme Court began a measured and comprehensive move to evaluate, test, and implement electronic filing and case management in Mississippi courts. Through a federal grant and an arrangement with the Administrative Office of the federal courts, Mississippi adapted the federal case management and electronic filing system for use in its trial courts. The system (called the Mississippi Electronic Courts (MEC) system) was introduced on a voluntary basis in one county in 2008, where it became mandatory in September 2009, and in a second county in November, 2009. Mississippi currently has no e-filing in its appellate courts.

In North Carolina, the Rules of Appellate Procedure were amended in 1989 to permit the filing of documents by electronic means in lieu of paper filing. E-filing is optional, and when an attorney e-files a document – any document on appeal – it need not be filed conventionally. E-filing also provides the attorney with extra time; documents may be e-filed up to 11:59 PM on the due date. Effective May 15, 2009, North Carolina adopted supplemental rules to govern an e-filing pilot in its circuit courts. The pilot is initially restricted to civil cases and foreclosures in three North Carolina counties.

The Alabama appellate courts have had a pilot appellate e-filing program for several years through its Appellate Court E-Filing System (ACES) website. The system is optional for attorneys and unavailable to pro se litigants, and all electronic filings are in addition to the currently required paper copies. The system includes a component for the electronic dissemination of the court’s orders, notices, and opinions and it accommodates e-service of opposing counsel.

**The West.** Of the 13 western states (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), only Colorado, Arizona, Wyoming, Oregon, and Nevada were e-filing on appeal as of January 1, 2010. In July 2008, the Colorado appellate courts joined the vendor-hosted system, LexisNexis’s “File & Serve,” that had been implemented in Colorado’s trial courts in 2006. See “E-Filing on Appeal in Colorado” in the Appendix. The Arizona appellate courts currently use a variety of programs to receive and transmit electronic documents. See “E-Filing on Appeal in Arizona” in the Appendix. In 2009, Wyoming and Nevada each implemented vendor-created, court-hosted systems: LT Court Tech’s C-Track system in Wyoming and Tybera’s eFlex system in Nevada. See “E-Filing on Appeal in Wyoming” in the Appendix. Due to budgetary concerns, New Mexico is not even considering e-filing, and Alaska, Idaho, Montana, and Utah are currently evaluating systems.

California has had pilot programs in individual districts of its courts of appeal since 2002, when the Second Appellate District began to accept the voluntary e-filing of briefs and records. Rather than using e-mail or an e-filing interface, the system asked parties to file a single CD-ROM containing the reporter’s transcript, a joint appendix, copies of all cited authorities, and all briefs, hyperlinked to each other, to the record, and to the full text of all cited authorities. In 2009, however, the California courts issued a request for information to begin the process of establishing state-level contracts aimed at standardizing electronic filing services for all courts. This request was issued in conjunction with a statewide initiative to create a case management system for all case categories.

The Oregon appellate courts began providing electronic filing and electronic payment services early in 2009. The system is Internet-based and allows Oregon attorneys to file documents with the court and pay filing fees 24 hours a day, 7 days a week. To use the system, attorneys must register online, obtain a user ID and password, and complete free online training prior to using the system.

Hawaii is in the beginning stage of implementing a comprehensive case management system/e-filing solution for trial court criminal cases and for all cases in the courts of appeal. The e-filing component is being developed by Wirevibe, a Texas-based technology consulting company. The state's courts plan to begin e-filing with all cases in the appellate courts in June 2010 and criminal cases in the trial courts in December 2010. The system is designed to automatically docket each document that is submitted, generate electronic notice to all parties who are system users, and generate the required notices to court personnel. It will accommodate all documents on appeal and all case types; filing fees will be payable electronically; electronic documents will replace the paper copies; and orders and opinions of the courts will be disseminated electronically.

### **Paths to E-Filing**

The widely varying experiences of state appellate courts suggest that there is no one path to appellate e-filing and many obstacles to be overcome. The obvious common denominator is perseverance.

The process of moving toward e-filing must begin with the court's attention being brought to the benefits of appellate e-filing for the courts, the bar, and the public, and to the necessity for the courts to maintain technological compatibility with the legal profession and the public. The benefits of e-filing are not difficult to see, and for each court a particular benefit may be more compelling than others. For some courts, the most important benefits may relate to having case materials in electronic form – text-searchability, portability, ease of dissemination by e-mail or on the web, ability to copy and paste, and access to cases and statutes through links in electronic documents, among other things. For other courts, the primary benefit may be the environmental impact and cost-benefit of moving toward a paperless (or a less-paper) system where costs of copying, shipping, postage, and service are greatly reduced. For other courts, the ability to provide instantaneous public access to court documents may be paramount; this not only serves the court's interests in openness and accountability, it can also provide the courts with a great savings of time and expense in fulfilling requests for copies of documents. The court must decide, as discussed above, what its priorities will be for the new system and how those priorities will be expressed in functionality.

It can be useful to involve a wide cast of stakeholders in the decision-making process. Representatives of the state department of justice, the state public defender's office, the appellate practice section of the state bar association, appellate judges and justices, the state legislature, the director of state courts' office, the clerk's office, and the court's information technology agency may have unique perspectives on the logistical and practical impact of e-filing on their agencies. It may be, as well, that the quality of the input provided by such stakeholders is less important than the fact that they were included in the project development and their voices heard. Some courts have convened a stakeholders' or advisors' committee to meet periodically during the pendency of the project and beyond to monitor progress and make decisions about refinements or changes to the system as progress is made.

An important function of this committee may be to recommend a plan of action to the court or the legislature. While the plan itself can be created by an in-house IT group or through a vendor, once the contours and limitations of the system have been established, it can be the job of the stakeholders or their representative to get a commitment to the project from the judiciary or the legislature.

Once a commitment to the project has been received, the next step is to design the system based on the courts' and the stakeholders' identified priorities; this must be done in conjunction with the courts' IT staff and/or the vendor. If the vendor has not yet been identified, the court will now need to write and issue its request for proposals (or similar such document) and hope that a vendor will come forward who will meet the courts' requirements within the proposed budget and time frame.

At this point, four tracks may be set in motion simultaneously. First, the courts' IT agency or the chosen vendor must get to work building the system or adapting an existing system to the appellate courts' needs. Second, if new or amended procedural rules are needed to initiate e-filing, the rules must be written and presented to the court or the legislature for adoption. This task should proceed in conjunction with the creation of the system itself so that the necessary hardware and software can be created or purchased, tested, and implemented before the effective date of the new or amended rules.

Third, while the system is being built and the rules adopted, the bar and the public must be made aware of the coming advent of e-filing and educated in how to use the system. This training should begin with a warning about what is on the horizon – that is, the bar may be informed early on, perhaps in a bar association publication, that the court is considering instituting e-filing, that rule amendments have been proposed, and what the system entails. As the project progresses and more specifics are known, court personnel should teach continuing legal education classes in e-filing, give presentations to paralegal organizations, do training at stakeholder agencies like the department of justice and state public defender, and continue to publish articles on e-filing in bar and private legal publications.

And fourth, court staff – particularly clerk's office staff – must be trained not only in how to use the system from the clerk's office perspective (e.g., accepting and rejecting documents, etc.), but in how to answer the full range of questions that will be received from attorneys who are attempting to register for or to navigate the system for the first time.

Ideally, progress along these tracks should culminate with court staff and the bar well-prepared to use and troubleshoot the e-filing system by the effective date of the new rules.

## **Conclusion**

Unfortunately, there is no single direct and practical action that can be taken to move appellate e-filing forward more quickly in more states. The reasons for this are the same reasons discussed above for the lack of uniform progress among the states in this area – the disparate evolutions of court technology among the states, differing priorities and management philosophies, and differing financial situations, among many other factors.

The sharing of information can make a huge difference, however, by providing court clerks, administrators, judges, and justices – whoever is willing to spearhead the effort – with the tools necessary to advocate strongly for appellate e-filing. Information should be widely disseminated through organizations like the NCACC and the NCSC on how to inform decision makers in state legislatures and the judiciary about the benefits and cost-savings of appellate e-filing and about why states should move on appellate e-filing rather than wait for the trial courts to do it. Courts should share information on their experiences with vendors and freely share drafts of requests for proposals, system requirements, draft rules, and technical information. While the hardware and software that make e-filing systems possible cannot be obtained without high cost, information about this critical technology can be shared cheaply and widely.

## **APPENDIX**

### **State E-Filing Experiences**

- Appendix A: E-Filing on Appeal in Virginia
- Appendix B: E-Filing on Appeal in Wisconsin
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## APPENDIX A

### E-Filing on Appeal in Virginia

by Patricia (Trish) Harrington, Clerk, Supreme Court of Virginia

In 2004, a committee chaired by a Justice of the Supreme Court of Virginia was formed to consider limited e-filing in the appellate courts. It was determined that e-filing of petitions for rehearing would provide a limited version of e-filing that would aid attorneys in becoming comfortable with e-filing, encourage attorneys to update office practices and equipment to make use of current technology, and provide an opportunity for the courts to recognize in a practical setting the issues related to implementing e-filing on a small scale.

Beginning January 1, 2005, both appellate courts required that all petitions for rehearing be filed as an attachment to an e-mail sent to an address created specifically for that purpose. The exceptions to the electronic filing rule were for pro se prisoners and instances in which the Court waived the requirement pursuant to a motion. The amended rules of court were published in a state-wide legal publication, sent to all of the local bar groups, and discussed by the clerks of the court whenever permitted the opportunities in CLEs or bar meetings. However, the transition created a large amount of extra work for the clerks' offices due to attorneys who were not aware of the rule change or who did not know how to create a PDF pleading. The first year or two under the new rules, the courts regularly received requests to waive the e-filing requirements from attorneys who did not feel able to comply and some pro se parties. When the electronic petition for rehearing is received, the date or receipt is noted on a hard copy printed for the file, it is reviewed for compliance with the rules (formatting and word count), then it is forwarded to the Justices with others received on a weekly basis.

In the past few years, the requests for waiver of the e-filing requirement have decreased significantly and usually are only filed by some pro se parties. In addition, the clerk's office staff continues to spend more time processing petitions for rehearing because of various issues encountered either when the documents are received or when it is time to issue orders and e-mail them to counsel or parties. There has been a savings related to the decrease in postage costs to send hard copies of the electronically filed petitions to each Justice. However, each Justice's office prints copies, which they did not have to do when the hard copies were filed directly with the clerk's office and sent to them.

While this initial e-filing project continues, no further e-filing has been authorized in the appellate courts. The Chief Justice did establish an e-filing study group in 2008 that will begin a pilot project in one of the jurisdictions that has a General District Court, Juvenile & Domestic Relations Court, and Circuit Court. The Study Group has recognized the importance of including the appellate courts in the discussion about establishing a trial court level e-filing system and included the clerks of both appellate courts in the Study Group.

## APPENDIX B

### E-Filing on Appeal in Wisconsin

by David Schanker, Clerk, Wisconsin Supreme Court and Court of Appeals

Appellate e-filing arrived in Wisconsin on July 1, 2009, when a revision to the appellate rules made it mandatory for attorneys to file an electronic copy of all appellate briefs, no-merit reports, and petitions for review. E-filing is accomplished using the online electronic filing system developed for the appellate courts by the Consolidated Court Automation Programs (CCAP), the IT agency for the Wisconsin courts (accessible on the Internet at [www.wicourts.gov](http://www.wicourts.gov)). In its first six months, the Clerk's Office e-filed well over 3000 documents, and more than 1000 attorneys registered for the e-filing system.

The e-filing project was a collaborative effort between CCAP, the appellate courts, and the office of the Clerk of the Supreme Court and Court of Appeals. This project, which had been nearly two years in development, involved the drafting and adoption of new procedural rules to govern appellate e-filing, the adaptation of CCAP's trial court e-filing system to the appellate courts, the modification of the appellate case management system to accommodate electronic documents, and the implementation of new Clerk's Office procedures.

Under the new rules, the filing of an electronic copy of all briefs, no-merit reports, and petitions for review (and responses thereto) is mandatory for attorneys and optional for the self-represented. Electronic versions of appendices to these documents may be submitted to the court, but are not required. Once submitted and accepted for filing, e-filed documents are available on-line to judges, court staff, the parties and/or their attorneys, and, in the case of briefs, to the general public.

Under the new rules, e-filed documents must be in Portable Document Format, or PDF. The electronic versions of briefs, no-merit reports, and petitions for review must be in text-searchable PDF. The electronic version of an appendix must be in PDF image format. Attorneys must certify (in both the electronic document and the paper document) that the text of the electronic copy of the brief, no-merit report, or petition for review (and responses thereto) is identical to the text of the paper copy. A similar certification is required in the appendix (if an electronic version is filed). Under the new rules the paper copy of documents filed on appeal remains the official court record.

Attorneys who lack the technological capability to comply with the new rules may file a motion for relief from the electronic filing requirements. The motion must be filed at the time the attorney files the paper document, and in it the attorney must show good cause why it is not feasible for that attorney to comply.

The courts' database on electronic briefs is available to the public online, and it has proved extremely useful to attorneys doing research on Wisconsin law. The system permits the user to search the database for particular terms or phrases. An attorney who wished to view all the briefs containing the phrase "personal injury," for example, could type that phrase into the search engine and retrieve a list of briefs filed by other attorneys that contain that phrase. A brief from the list can then be opened and searched, downloaded, or printed.

The Wisconsin appellate courts are now making plans to develop and implement a second phase of automation. This phase will encompass the following elements:

- Electronic Dissemination of Orders, Notices, and Opinions. When the Court of Appeals or the Supreme Court issues an order (as on a motion), a notice (or acknowledgment), or an opinion disposing of a case, the document will be transmitted to the parties, the attorneys in the case, and the trial court via e-mail.

- Electronic Filing of Notices, Motions, and other Documents. The e-filing system will be expanded to permit the e-filing of the notice of appeal, any motion on appeal, the docketing statement, the statement on transcript, the notice of completion of transcript, and other documents.
- Implement interface between trial courts and appellate courts. The interface will include the electronic transfer of trial court case data for appealed cases to the SCCA case management system. When the appellate court case process is completed, the disposition information will be electronically transmitted back to the circuit courts and the information updated in the circuit court's case management system.
- Electronic payment of appellate filing fees. Attorneys and self-represented litigants will be able to pay filing fees using electronic credit card or automated clearing house (ACH) payments.

The creation and testing of the systems to add this functionality is anticipated to require approximately 18 months to complete, with a goal of implementation by July 1, 2011.

## APPENDIX C

### E-Filing on Appeal in Arizona

by Rachelle Resnick, Clerk, Arizona Supreme Court

The Arizona appellate courts, consisting of the Supreme Court and the Court of Appeals Divisions One and Two, use a variety of programs to receive and transmit electronic documents every day. By using these “e-filing” systems, we reduced our operating costs and now provide better service to our external customers and to our courts. This article gives a brief overview of three of the systems in use today and what is on our horizon.

Electronic Transmission of the Record on Appeal. For all three courts, electronic transmission of the record on appeal was the first foray into the e-filing arena. Division Two, which developed the first system in 1998, now accepts electronic records from the four largest-volume superior courts of the seven superior courts in its jurisdiction. In 2003, the Supreme Court and Division Two agreed that it was no longer necessary for Division Two to transmit its record to the Supreme Court when the record is completely electronic. Instead, Division Two provides a link which allows the Supreme Court to view the documents in Division Two’s case management system. The Supreme Court then registers this link into its case management system, making the link the record for that court. Division Two has agreed to maintain this link indefinitely.

In 2006, Division One implemented its electronic record on appeal program, “Court 2 Court,” as a pilot in one superior court. Today, two of the eight superior courts in Division One’s jurisdiction use Court 2 Court. Because Division One and the Supreme Court share a case management system, “Appellamation,” there is no need to transmit documents or a link between the courts. The Supreme Court registers the documents into its section of Appellamation.

In addition to accepting electronic records from the Court of Appeals, the Supreme Court recently began using Court 2 Court to receive the record on appeal in attorney discipline cases. Both Division One and the Supreme Court plan to expand Court 2 Court in the near future.

Electronic Distribution of Minutes, Orders, Notices, etc. The Arizona Supreme Court issued Administrative Order 2009-43 last April in response to Arizona’s severe budget crisis. This order directs the clerks of all courts to “proceed with electronic distribution of documents as soon as the necessary technology and resources are available.” Fortunately, the appellate courts were already electronically distributing at least some documents at the time of the order.

In 1998, Division Two began distributing court documents through its e-filing program, “e-Filer.” Today, it electronically distributes all court documents, except original mandates, to all registered e-filers.

The Supreme Court began electronically distributing minutes and orders in its rules cases in September 2008. The project quickly expanded and now includes all court documents to all distributees, except those receiving original mandates and a few documents in death penalty direct appeals.

Division One has taken a slightly different approach. Superior court judges and selected state and county agencies receive an email containing a link to the Court’s decision on its website.

Additionally, all three courts use mailing list servers to notify subscribers when opinions have been filed. The Supreme Court also uses mailing list software for minutes and administrative orders.

E-Filing Documents with the Court. E-filing is the “crown jewel” of our courts’ electronic distribution programs. Division Two led the way, developing and implementing its “e-Filer” system in 1998. Initially, the program was open only to selected public agency attorneys, and then to court reporters. It has expanded over time and now includes all case types and all filers, including pro se litigants. If a filing fee is required, the document remains in a queue until the court receives payment.

Division One and the Supreme Court both use an e-filing system that was developed by the Administrative Office of the Courts. Arizona Courts E-Filing (A.C.E.), went live in the Supreme Court in October 2008. Initially open to only the Attorney General’s Office in criminal cases, it has since expanded to criminal cases filed by selected county agencies and appointed attorneys in death penalty direct appeal cases. In the very near future, court reporters in death penalty cases should be able to file their transcripts through A.C.E. After a few modifications, Division One was able to start e-filing through A.C.E. last spring. Currently, Division One is accepting documents from county agencies in the state’s largest county and hopes to expand to other counties in the near future.

What’s In Store? Last winter, the Administrative Office of the Courts entered into a contract with a vendor to develop a state-wide e-filing program. This program, “AZTurboCourt,” will have a single web portal that allows litigants to e-file documents in virtually any court in the state. The appellate courts have been meeting since July and the first phase of the system could be in place for the Supreme Court and Division One by Spring 2010. Initially, the appellate system will include all civil case types and will be available to both attorneys and pro se litigants. Additionally, this system will have the capability of accepting payments for filing fees on line. Eventually, A.C.E. will be phased out as AZTurboCourt moves into the criminal case arena.

E-filing is the future of Arizona courts. It will bring efficiencies for administrators, judges, attorneys, and litigants. With one-stop shopping, the cost savings of e-filing – already considerable – will grow as economies of scale are realized, freeing resources to better serve justice. All citizens will enjoy easier access to their court systems. E-filing is a winning proposition all around.

## APPENDIX D

### E-Filing on Appeal in Colorado

by Polly Brock, Chief Deputy Clerk, Colorado Court of Appeals

Colorado has an integrated state court system, and the Court of Appeals was the latest Court to accept e-filing starting July 1, 2008. The only Court not currently accepting some form of e-filing in Colorado is the Supreme Court. At this point, all civil cases in county court and most civil cases in district court are mandatory e-filing (civil, domestic, and probate) through LexisNexis File & Serve (Lexis). There are two judicial districts that are beta sites for mandatory criminal and juvenile e-filing using a different vendor (File Bound).

At this point, e-filing is permissive in the Court of Appeals for all cases other than juvenile and criminal.

Colorado implemented permissive e-filing when we launched a new case management system (we are the beta site for this JAVA-based case management system). At this point, we are also the only court in Colorado that does not have integration between the case management system and the e-filing system, and integration has been delayed due to budget constraints with the State. Until the time we have integration, we will not be making e-filing mandatory.

We think of e-filing two different ways – e-filed appellate cases and paper-filed appellate cases that have e-filed referring court records. For e-filed appeals, Lexis creates a link and we can easily move between the appellate and lower court record. We have many more cases that just have e-filed records. One of the reasons we were willing to accept e-filed appeals without integrating is that we already were using Lexis and accepting e-filed referring court records.

While I would never recommend starting e-filing before the ability to integrate with the case management system is in place, we did this, primarily because (1) since all district courts have civil e-filing and most have mandatory civil e-filing, attorneys were demanding it; (2) we were already half way there because we have referring courts providing the record through the e-file system; and (3) we thought we would have integration within 4 months of our launch.

For e-filed appeals, if all parties are represented by counsel, we require all service through the e-file system. All pleadings, motions and briefs, including the Notice of Appeal, are filed electronically. Docket fees are assessed through the e-file system. We have the ability to upload all court orders and opinions and serve through the e-file system, and we have the ability to rule upon motions with an electronic stamp and additional comment field. Referring courts, parties and our court can seal individual filings or pleadings or we can seal the entire case, with access to no one or to counsel. We can also determine when a party received the e-file and when a party opened and read it. The time spent stuffing envelopes and the cost saved by mailing have been great.

Because we have a state-wide integrated IT department, we had little control over the decision of whether to buy or build an e-filing system. Currently we use two vendors: LexisNexis and FileBound.

The Court of Appeals charges \$6 for any transaction (multiple documents may be served in one transaction). The cost is shared between Lexis and our State Court Administrator. County courts have a flat rate per case, and district courts have, I believe, the same \$6/transaction. We charge non-parties the same rate as we would for paper to make copies.

Of course, appellate courts and district courts have different needs for an e-filing system. We have discovered that using a referring court record on the LexisNexis system is cumbersome, because

you have open each item in the record one item at a time (it is automatically beautifully indexed). As a result, we now download the entire Lexis referring court record on to a CD, because it is faster and easier to open documents through the bookmarks. We provide a copy to each party and have a copy available for court staff and judges. We have also found that we still require a CD-ROM version of Lexis-filed briefs. Large appendixes cannot be accommodated easily on the e-file system, and are usually broken up. Further, the system “scrubs” hyperlinks. Hyperlinks appear to work best when the link is to a document on the CD.

Lexis provides a transaction report for all e-filed items. The transaction report has a court seal, and it shows when a document was delivered to an e-box and will show when it was opened. When a party asserts that the trial court did not serve a copy of the final order and the order was served through Lexis, we can verify if and when it actual hit the parties inbox and if it was opened.

We require parties to link the appellate e-filed case with the referring court e-file record, and in our system, we can easily open both up or move between the two systems. We have found that reading the referring court record directly through Lexis is awkward, so we download the entire record into Adobe and combine the files into a neat, bookmarked CD. Parties cite to the bookmark page, so it is similar to a Bates-stamped document. The referring court record becomes “official” only once the clerk of the referring court e-files a certificate of electronic filing. All documents in the referring court that are dated prior to that certificate are considered the official record of the referring court. We receive hybrid records—often trial exhibits will come up in binders with all other documents, including transcripts, in the e-file system. The clerk of the referring court has the ability to upload transcripts to the e-file system. The transcripts filed are the same CD versions prepared by the reporter—it is identical to CD or paper.

The system also allows the court to issue orders and opinions electronically. Chambers prepares opinions in proper format, and they are saved as pdf’s and uploaded into the system.

The rules and policies regarding privacy and redaction are the same as in paper. The e-file system has the ability to accept sealed transactions or to have an entire case sealed. If the Court orders a redacted document, the party is responsible for filing the redacted document.

With respect to public access, at this point, if there is public access to an e-filed document or file, we will provide a copy at the same cost as paper and either in paper or CD.

## APPENDIX E

### E-Filing on Appeal in Wyoming

by Judy Pacheco, Clerk, Wyoming Supreme Court

The Wyoming Supreme Court purchased LT Court Tech's C-Track case management system in 2005. We went live with the system in April 2007. Our plan was to move on to the next phase, which included the opinion processing portion of the system for the chambers. However, an attorney legislator who was on the Joint Appropriations Committee, and who had also driven briefs to the Court in a snowstorm, invited us to include an electronic filing system as soon as possible. We then put the opinion processing portion on hold and developed the e-filing system. We had a short pilot project that included only criminal cases with counsel from the Wyoming Public Defender's Office and the Wyoming Attorney General's Office. We did not encounter any problems and went live with mandatory e-filing for the entire bar starting July 2008.

During the development of electronic filing, I wrote an Electronic Filing Administrative Policies and Procedures Manual, which was adopted by General Order. I gathered those rules that were available around the country and from the United States District Court for the District of Wyoming. I borrowed those things that would be requirements no matter what jurisdiction you are in and added rules that were necessary and particular to our practices and procedures. I would encourage those of you who are undertaking this process to consider doing the same thing. By using a General Order, we are able to make any changes that may be necessary, remove those things that may not be necessary after all, and revise once we become more familiar with the process and the users identify anything that may need clarification. It is much simpler than trying to amend rules that have been published in the Court Rules Volume. We do intend to have them published and incorporated into the Wyoming Rules of Appellate Procedure in the near future.

I considered many different ways to train the bar on the system. We decided upon, and wrote, an online training course. I am glad we did. We send a notice out to counsel when a case is docketed that informs them of the e-filing requirements and directs them to the online course. The course is available to them whenever they decide to take it. They get one hour of free CLE for completing the course. Since there is a relatively small group of lawyers who consistently do appellate work, most of them have already become completely familiar with the system. Those who rarely do appeals have not seemed to have any objection, and although we do have a provision to allow a motion to be excluded from the e-filing requirement for good cause, no one has filed such a motion. A poll of the Wyoming State Bar had indicated that 70% of the attorneys thought e-filing should be voluntary. That is precisely why we made it mandatory from the start. You will not have the full benefit of electronic filing if few people participate.

I brought some issues that I thought were important to the justices for their comment and approval. We did not want anyone to have to purchase any new software to e-file, pay any fees for filing documents, or otherwise put a burden on the filers, other than the required training prior to filing. We did not want a "middle man" involved, since we wanted complete control over the documents filed, and wanted them available to the public free of charge. We also made the decision that only Wyoming lawyers in good standing were eligible to be users. This prohibits pro hac vice attorneys from filing without local counsel. We made the decision that no confidential cases or bar disciplinary cases would be subject to electronic filing. However, the system is set up for counsel in confidential cases to have access to the docket for e-filing should we change our decision about that. I am already leaning towards allowing e-filing in confidential cases. We do not allow e-filing by pro se litigants. However, the ability to allow that is already included within the system, should we decide to include them in the future, and would simply entail "turning on the switch" for them. Since most of our pro se litigants are prisoners without access to computers, it is not an issue for us at this time.

We had made some basic decisions about what we wanted the system to provide and how we wanted it to function with the case management system. Our e-filing is fully integrated with the case management system, documents are electronically submitted through our public website, sent to a queue, where we are able to review before accepting, and able to reject those documents that do not comply with the rules, are untimely, or may have other defects. It was important to us to be able to conduct that review before the close of business on the due date, so we made the decision that although documents may be submitted 24/7, anything filed after 5:00 p.m. MST is considered filed the next business day. Upon our acceptance, the system takes us immediately to the docket page to complete the docket entry. The documents then appear on the case docket within moments and are available to the public at the same time. Counsel are sent e-mail notification, which constitutes service.

Our Wyoming Supreme Court opinions have been available on our website the morning of publication for years, but we have never posted unpublished orders entered in cases on motions, petitions, etc. We are now working on a component of our case management system that will allow us to, in effect, be e-filers ourselves, by filing the Court's orders and other notices on the docket page. Our e-filing system will then send electronic notification to counsel, judges and clerks when an order has been filed, and provide a link to the docket page so it can be viewed immediately.

I could not be more pleased with what we now have in place. The advantages become more apparent as the days go by, both inside and outside of the Court. The public docket has become very popular. It also allows attorneys to search our cases by type of case, issues involved, and to read the briefs online. The press is using it more and more to review pleadings filed in cases. We rarely get requests for copies of briefs anymore, except for those that were filed prior to e-filing. Many clients are now following the progress of their cases on their own.

The State of Wyoming has now contracted with LT Court Tech to develop a statewide case management system in all of the trial courts. We were fortunate to have received the funding prior to the economic downturn, and by receiving the appropriation through the Court's budget, all counties are included in the new system, rather than the counties having to try to get funding through the commissioners, and continuing to purchase different systems across the state. When completed, all trial courts will also then move on to e-filing so that, in the future, records will be available electronically rather than sending them through the mail. We do not currently accept petitions and notices of appeal electronically because we do not yet accept fees electronically, but that will no doubt be a future addition. For being such a small state, I believe that Wyoming is now way out in front of the technology curve, and we are proud and happy to be here.