

Practicing Law in the Information Age

What's in store for Michigan attorneys in the face of statewide e-filing (and beyond)?



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When I attended law school in the late 1980s, only a handful of computer terminals were available for students to sign up to be trained by a Westlaw representative on finding statutes and cases using a Boolean search. But by and large, we did our legal research in the law library using books. We were forewarned that hiding a volume or tearing a page from a book to thwart our classmates' efforts was grounds for disciplinary action.

Today, it's hard to imagine not being able to lay eyes on a statute or case anytime, anywhere, on our desktops, laptops, tablets, and smartphones. I still see law books on shelves in some law offices (what else are you going to put in those beautiful built-in bookcases?), but the law library gave way long ago to legal research databases. Now, we can copy and paste a quote into a brief and the citation is automatically included. We can save our search results and share them with colleagues to save time and minimize the cost of our work, potentially increasing the number of people who can afford our services.

As those of you who use legal research databases know, you cannot access certain

publicly available documents such as law journal articles and cases from other jurisdictions unless you are willing to pay more. It will not surprise me if paid subscriptions to these services become as obsolete as books some day because of the increasing level of interest in (if not insistence upon) online public access to legal information.

In this, the Information Age,¹ when we can press a button on our smartphone to summon an electronic helper, ask a question aloud, and receive an instant answer, there seems to be a growing expectation that all documents legally available to the public should be freely accessible on the Internet. The Free Access to Law Movement, which began in 1992, is an international organization devoted to providing free online legal information.² Legal Hackers is a "global movement of lawyers, policymakers, technologists, and academics who explore and develop creative solutions to some of the most pressing issues at the intersection of law and technology" with eleven chapters across North America, nine in Europe, and two in Asia.³ I encourage our members to dial in to this movement (pun intended) and be aware of platforms being developed in Legal Hackathons⁴ and other creative initiatives nationwide to provide access to legal information, from local township and city ordinances to free, searchable United States Supreme Court opinions.⁵

Eighteen years ago, the federal court system began making federal court filings available to the public through the Public Access to Court Electronic Records (PACER) system. At first, the system could only be accessed via terminals in libraries and office buildings. Starting in 2001, it became available over the web. PACER has been both praised for being superior to many state court systems, including ours, and criticized for being out of date,

hard to use, and demanding fees that are excessive⁶ or for records that are in the public domain.⁷

With the Information Age, legal hacking, and the history of PACER as a backdrop, Michigan now embarks on its statewide e-filing system project, which received the requisite catalyst on December 23, 2015, when Governor Rick Snyder signed Public Acts 230–235 of 2015 into law, creating a reliable, stable funding source for the system. Before that, e-filing was localized and difficult to launch because courts relied on local funding; most counties could not or would not invest in such a project.

To learn more about Michigan's statewide e-filing system, visit <http://courts.mi.gov/Administration/admin/Pages/E-Filing%20Initiative.aspx>.

In an effort to better prepare our members for e-filing in their courts, I recently had the privilege of interviewing Joseph Baumann, then general counsel of the Michigan Supreme Court. Baumann and others testified to the Michigan legislature regarding the package of e-filing bills. Below is a summary of our conversation.

Q: How can practitioners learn when e-filing will begin in the courts in which they practice? How long will it take for the whole state to be on the system?

A: *As of today, the implementation schedule is still being developed. Our plan is to get this project right so that our customers can benefit from a program that reflects the best technology. We assume that once an RFP is let, a contract is signed, and implementation has begun, some counties will be prepared to be early adopters, such as the existing pilot courts, and counties like Washtenaw and Kalamazoo, which have been waiting patiently. The new laws provide fee revenue for five*

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years (before they sunset), so we have a finite amount of funding and time to get it right and get it done.

Q: Will I be able to file documents from my smartphone?

A: *The Court favors and is working to expand the use of smartphones (and other advanced technologies) in all court processes, so I don't know why not, assuming document capabilities are available as well as the capacity to connect on the filing side. A lot of the details obviously require discussion, planning, and implementation, but there is no question that smartphone and other mobile device usage is the future—government must keep up (or at least try).*

Q: Will we still need to serve opposing counsel by mail, or electronically under MCR 2.107(C), if we are notified by e-mail from the e-filing system that a document has been filed? And what will be the cutoff hour for filing? If midnight, will deadlines to file responsive documents be extended?

A: *The rules will have to change and recognize the new future of e-filing. I believe we will see an initial revision of the Michigan Court Rules addressing how paper-centered rules need to be amended to effectuate e-filing in the near future, but the Court has not answered those specific questions yet.*

Q: Are there any plans to have e-filing kiosks in every courthouse?

A: *This has been an effective tool in the e-filing pilot courts. There is not a specific plan yet, but we must ensure the ability for all those who may not have access to the Internet to file their documents as required by the court rules. One possibility is public kiosks at the court or other simpler and easier methods.*

Q: Do you have any suggestions for our readers regarding the types of hardware and software required to accommodate e-filing? What would be outdated and in need of upgrading?

A: *The standards will be national and catch the largest common denominator.*

Q: Are you concerned about issues that could accompany the ability to access legal documents online, such as children reading their parents' divorce files and dissemination of mental health information?

A: *E-filing and document access are different, though related, questions, and we expect to address a variety of issues related to document access in the future. Ultimately, the Court will have to grapple with where to draw the line on what can be accessed electronically and from a remote location. The Court will likely weigh a strong presumption in favor of public access against the question of "What is safe and relevant to release?" Some of these concerns arise from the greater availability and ease of access related to electronic documents when compared with the relative difficulty of going to the counter of the clerk's office in the local courthouse. But this issue will not be resolved without notice and thorough public input. MCR 8.119(H) makes it clear that a court may put its register of actions online and make business court opinions publicly available, but all other access to documents is by request only. I anticipate that when the Court addresses this issue, it will be in the context of court rule amendments under the Court's usual publication and comment procedure.*

Q: How long will e-filed documents remain online?

A: *Again, access to documents is something the Court will look at in the future, but the focus right now is on encouraging and supporting e-filing as quickly and efficiently as possible.*

Q: Will the filed documents be maintained only at the local level or will all or some of them be stored at the state level?

A: *The 2015 e-filing legislation contemplated a state-based document management system. Some courts and funding units already have document management systems and can keep what they have if they desire, but any funding unit that does not have its own document management system and wants a more accessible document system will presumably want to join the state-based system.*

Most importantly, with cloud-based storage, where documents are stored is much less important than the fact that they are in electronic form and easily available to the court when needed.

Q: Any last thoughts?

A: *Stay tuned, because the State Court Administrative Office will be soliciting comments and concerns on what people want from the Bar and its members. The Bar and its members are integral stakeholders on this effort, and because this technological step forward will so fundamentally alter how court business and practice look today and for the next generation of court users, we will need your ongoing help, input, and cooperation.*

If you have comments you would like to share with SCAO about e-filing or electronic access to documents, send them by e-mail to ADMcomment@courts.mi.gov. To comment using U.S. mail, write to: Office of Administrative Counsel, PO Box 30052, Lansing, MI 48909. For more information, visit the Court's web page at <http://courts.mi.gov/courts/michigansupremecourt/rules/court-rules-admin-matters/pages/default.aspx>. ■

ENDNOTES

1. "[A] period in human history characterized by the shift from traditional industry that the Industrial Revolution brought through industrialization, to an economy based on information computerization." Wikipedia, *The Information Age* <https://en.wikipedia.org/wiki/Information_Age>. Read about the human motivation for its genesis in my March Bar Journal column. Buiteweg, *The Intersection of Drive and the Legal Profession*, 95 Mich B.J. 14 (March 2016) <<http://www.michbar.org/file/barjournal/article/documents/pdf4article2837.pdf>>. All websites cited in this article were accessed May 10, 2016.
2. Wikipedia, *Free Access to Law Movement* <https://en.wikipedia.org/wiki/Free_Access_to_Law_Movement>.
3. Legal Hackers <<http://www.legalhackers.org>>.
4. See Rodriguez, *Legal Hackathons: Innovation Labs for the Legal Industry* <<http://www.lawtechnologytoday.org/2015/10/legal-hackathons-innovation-labs-for-the-legal-industry/>>.
5. FindLaw, *United States Supreme Court Cases* <<http://caselaw.findlaw.com/court/us-supreme-court>>.
6. Ambrogio, *Class Action Lawsuit Challenges PACER Fees as Excessive* <<http://www.lawsitesblog.com/2016/04/class-action-lawsuit-challenges-pacer-fees-excessive.html>>.
7. Wikipedia, *PACER* <[https://en.wikipedia.org/wiki/PACER_\[law\]](https://en.wikipedia.org/wiki/PACER_[law])>.