



ARE YOU READY FOR e-FILING?

Introduction

Information technology is available today that can revolutionize and completely transform the practice of law. The burgeoning use of this technology is altering the way we communicate, learn, and transact business. In business, it is now common for vendor payments to be made electronically. In banking, bank balance and transaction history is viewed online, and deposits, withdrawals, and account transfers are made on the Internet. Tax returns are now filed electronically with federal and state governments. In medicine, digital images of x-rays are routinely electronically transmitted and read by physicians anywhere in the world. In education, college courses and continuing professional education are readily accessible to anyone with a personal computer. We share interests, hobbies, and professional activities through a growing number of listservs.

In the legal profession, we can also change the way we operate and conduct business to keep pace with the digital world. Imagine creating all legal documents in electronic form. Imagine transmitting all documents, pleadings, and filings to the courts and to all parties on the case by pointing and clicking. Envision serving all parties with a single keystroke, and then viewing all case filings on the Internet. Imagine all discovery requests, motions, and court orders transmitted over the Internet directly to or from your computer. Imagine no paper files, only electronic files—all with instant access from any computer in any location. Imagine the ability to research other court cases and view all supporting documents in the case without leaving your office. All this is currently possible, and is already being used in some manner in courts across the country.

In Michigan, we are just beginning to explore the possibilities for using information technology to interface between attorneys and the courts. This article explores the progress towards electronic filing (e-filing) in Michigan courts—advancing the practice of law into the 21st century.

What is e-Filing?

In its basic form, e-filing can be limited to electronically transmitting documents (pleadings, motions, discovery, complaints, etc.) over the Internet to the local court instead of mailing or hand delivering those documents.

However, a more robust definition might *also* include the following attributes and processes:

- **Service of process**—The ability to electronically serve other parties with all documents filed with the court, and to notify all other parties electronically that documents have been filed with the court.
- **Online inquiry and retrieval**—The ability to view and retrieve court filings online using the Internet.
- **Court orders**—The ability for the court to electronically transmit court orders to all parties in a case, and for anyone to view court orders and decisions online.
- **Court processing of cases**—The ability for courts to process and store all cases, and all documents created in a case, in electronic format, and to have all information in a case captured electronically at the source. Court staff would not handle or create paper or manage cases manually. All information would be handled electronically by computer.

Sophisticated or not, an e-filing system can benefit attorneys by: 1) time saved in transmitting documents; 2) the ability to file later in the process and to file after court hours; 3) cost savings in printing and mailing/delivery of documents to the court and other parties; and 4) the ability to view filed documents without visiting court offices. Most of these benefits translate to convenience and savings in time and money. An e-filing system will also enable courts to process lawsuits more quickly and more efficiently.

Attorneys practicing in courts that offer e-filing are able to file documents directly with the court over the Internet. The CM/ECF system accepts documents in Portable Document Format (PDF) and is accessed using standard computer hardware, an Internet connection, and a browser. After logging onto the court's website with a court-issued password, the filer enters basic information relating to the case and document being filed, attaches the document, and submits it to the court. A notice verifying court receipt of the filing is generated automatically, and other parties in the case then automatically receive e-mail notification of the filing.

Electronic access to court data is available through the Public Access to Court Electronic Records (PACER) program. Litigants receive one free copy of documents filed electronically in their cases; additional copies are available to attorneys and the general public for a fee.

e-Filing in Other States

In addition to the federal courts, courts in a growing number of states are implementing electronic filing and Internet access to court documents. For example, in addition to Michigan, e-filing capability has been introduced in some form in a number of courts in Alabama, Arizona, California, Colorado, Delaware, District of Columbia, Georgia, Illinois, Indiana, Maryland, Mississippi, Missouri, New Jersey, New York, New Jersey, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Washington, West Virginia, and Utah.

The state courts are typically structured so that each local court has its own case management system, unique rules, and methodology, making it difficult for practitioners to operate consistently from court to court in the same state. A balkanized environment can make it difficult to establish a uniform e-filing system—not

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e-Filing in Federal Courts

The federal courts are keeping up with the technology curve. Both the Eastern and Western United States District Courts in Michigan allow attorneys to file and retrieve documents electronically using the federal Case Management/Electronic Case Files (CM/ECF) docketing system.

Implementation of the federal CM/ECF system continues in district and bankruptcy courts across the country. CM/ECF replaces the courts' aging electronic docketing and case management systems, and also provides courts the option to maintain case file documents in electronic format, and to accept filings over the Internet.

According to the federal judiciary, CM/ECF systems are now in use in 80 district courts, 85 bankruptcy courts, the Court of International Trade, and the Court of Claims. Most of these courts are accepting electronic filings, including the Eastern and Western United States District Courts in Michigan. More than 20 million cases are on CM/ECF systems, and more than 150,000 attorneys and others have filed documents over the Internet.

only because of local rules and systems, but because funding for courts is typically on a local basis as well. However, one state—Colorado—has a statewide court system that facilitates e-filing on a large scale. Colorado has been online since 2000, and all district courts for civil and domestic relations cases, as well as water courts and probate courts, are e-capable.

e-Filing in Michigan Courts

In Michigan, the Supreme Court, under the leadership of Justice Robert Young, has taken the lead in establishing an e-filing system that provides a uniform look and feel to e-filing users, while interfacing to the different case management systems installed at the various courts. Rules are being established to help support the changes from paper filing to electronic filing.

The e-filing system uses an Internet portal—called the eFiling Portal—located on servers at the Supreme Court. The costs of launching the project were funded from the judicial budget. The Supreme Court anticipates managing the system into the future,

provided that interest and use of e-filing continues to grow. Attorneys can use the system to electronically file cases in selected courts that have an interface, as well as view documents and cases that have been filed through the eFiling Portal. Citizens, attorneys, judges, and court employees can file, manage, and access court documents with a mouse click. The forms currently available in the e-filing program include filings in general civil cases, such as the Summons and Complaint, Jury Demand, Answer, and a generic e-filing cover sheet to which other pleadings can be attached for filing. Marc Dobek, Director of Judicial Information Systems for the Michigan Supreme Court, is the person with oversight responsibility for the Michigan eFiling Portal project.

One of the limitations of the eFiling Portal is that the parties using the system must still provide service manually. E-filing service providers, such as LexisNexis, have the capability to serve all parties electronically or by mail, as necessary, for a fee. Provision of some type of electronic service on other parties is under consideration by courts involved in the eFiling Portal project. Another limitation of the current system is that, because it is voluntary, some documents are still filed manually with the local courts and are not captured electronically and uploaded into the online system where they would be accessible via the Internet.

Current e-filing projects in Michigan that use the eFiling Portal include:

- The 38th District Court in Macomb County was the first of more than 150 district courts in the state to institute e-filing processes, allowing residents to file their pleadings in civil matters electronically—without having to set foot in the courthouse. The court began accepting electronic filing of general civil lawsuits in November 2004. The system allows for online filing of the complaints, answers, jury demands, and motions, as well as payment of the associated fees. Users can view the status of their filed pleadings online with 24-7 access. As a service to those who e-file with the 38th District Court, the Portal provides access to the court's case management system, which contains each docketed entry on a case.
- The Court of Appeals—After working closely with the Supreme Court in the development of the statewide eFiling Portal, the Court of Appeals began a pilot project accepting e-filed documents in Michigan Public Service Commission (MPSC) cases in June 2005. Upon registering with the system, anyone involved in an MPSC appeal may electronically file a claim of appeal, docketing statement, motion, brief, answer, etc. using a generic cover sheet. The filer is prompted to enter credit card information to cover filing fees, if applicable. The cover sheet and attachments are forwarded to the court and placed in an electronic “workbasket” pending clerk's office approval. E-mail notifications are sent to the filer indicating the arrival of the filing at the court as well as acceptance by the court. The court intends to broaden the scope of the pilot project in the near future to further expand the case types that can be e-filed.

In the future, the eFiling Portal will include Eaton and Oakland Circuit Courts.

Current e-filing projects in Michigan that use LexisNexis File & Serve include:

- The Ottawa County Circuit Court in Grand Haven is accepting e-filings for any general civil case.
- The Wayne County Circuit Court is accepting e-filings concerning asbestos cases.

Additionally, the Michigan Public Service Commission's Electronic Case Filings System provides for the electronic submission of filed documents and online access of documents submitted in select cases before the Commission. All documents are available in PDF files. These files can be searched, and text can be copied directly from the file for later reference. Documents available from this system mirror the filed paper copies, which are still required and remain the legal/official copy at this time. Additional cases will be added over time leading to full-scale availability.

Even though e-filing projects are being initiated in some state courts, there are still many barriers to large-scale development and use in Michigan because trial courts are primarily locally funded, and they currently use 41 different case management systems. A likely course of development is that the state will continue to develop the e-filing infrastructure through the eFiling Portal, and individual trial courts will modify their automated case management systems to enable the acceptance, storage, and transmission of documents and the conversion of paper documents.

What the State Bar of Michigan is Doing

The State Bar of Michigan's strategic plan was updated by the Board of Commissioners on June 10, 2005. It reaffirmed the State Bar's support for e-filing initiatives:

Goal 1.5: Participate in the establishment of efficient and user-friendly state court e-filing, and educate members to use it effectively.

At the January 29, 2005 meeting of the Supreme Court Technology Advisory Group, its chair, Justice Robert Young, requested that the State Bar of Michigan survey the legal profession's needs for e-filing and the interest of State Bar members in using an e-filing system for the state courts. A clearer understanding of the legal profession's needs will assist the judiciary in allocating scarce resources to further e-filing initiatives.

In response to this request, the State Bar's Electronic Filing Task Force was reconstituted and reconvened. In late March, the Task Force and State Bar staff began work on a survey, which was sent in June to a statistical sample of all active State Bar members in Michigan, and to all active members with e-mail addresses on record with the State Bar. The survey sought information on respondents' technological capability and their perceived needs for e-filing, and requested comments and suggestions to be considered in moving forward with e-filing at the state level.

The findings from the survey from the statistical sample included:

- 1) Over 80 percent of respondents were in firms with 10 or fewer attorneys; half of those were solo practitioners.

The State Bar of Michigan's strategic plan, updated by the Board of Commissioners on June 10, 2005, reaffirmed the State Bar's support for e-filing initiatives:

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- 2) Approximately 80 percent of respondents file pleadings at least weekly and about 13 percent file electronically (primarily through the PACER system for the federal courts).
- 3) About 90 percent of respondents are able to access the Internet from their desks, and of those, close to 90 percent have high-speed access. About 70 percent of respondents are connected to a network.
- 4) Over 80 percent of respondents have their own e-mail accounts, and close to 95 percent check it daily.
- 5) Approximately 75 percent indicated that they are comfortable or proficient in using their computers for most tasks.
- 6) Respondents who currently e-file indicated the duty is primarily performed by the secretary or attorney, and to a lesser extent, a paralegal.
- 7) Nearly 85 percent of respondents indicated that if they could view electronically filed documents filed with the court, they would e-file with the court; and 85 percent indicated they would e-file if they could inquire on the status of a case. Of the 85 percent who would e-file:
 - a. Nearly 55 percent would e-file 100 percent of the time, and close to 90 percent would e-file at least 50 percent of the time.
 - b. 65 percent would be willing to pay a nominal fee to e-file (however, there was some debate by the respondents as to what "nominal" means).
 - c. The most important attributes of e-filing cited by the respondents were: 1) viewing the status of service online; 2) viewing documents and supporting documents; 3) retrieving a register of actions online; 4) retrieving electronic court records; 5) the ability to file subsequent pleadings; and 6) secure document transfer.
- 8) The 15 percent who would not e-file had concerns that would need to be addressed before they would consider e-filing, including:
 - a. Concerns with security and privacy of e-filing.
 - b. Concerns with reliability of the e-filing system, including the reliability of their own computer system.
 - c. Concern that the system is optional and that they can still use paper.
 - d. Need for training and education.
 - e. Need for upgrading the member's own technology and computer capability.
- 9) Other comments and suggestions included:
 - a. Many benefits were noted, including time savings, convenience, and cost savings.
 - b. Making the system uniform and patterned after the Federal Court PACER e-filing system was desired.

It should be noted that the survey results of the e-mail sample were similar to the statistical sample; however, the number of those interested in e-filing was larger in the e-mail sample.

Key Recommendations

In addition to providing the detailed survey responses to the Supreme Court for review, the Electronic Filing Task Force recommends the following:

- 1) Post the report on the State Bar website with a press release, and notify members, Board of Commissioners, Representative Assembly, sections, and committees of its availability.
- 2) Publish the report in the *Michigan Bar Journal* and use the *Michigan Bar Journal* to educate members about e-filing capability and what the state judiciary is doing in this regard.
- 3) Make e-filing assistance a component of the State Bar's newly created Practice Management Resource Center.
- 4) Consider ways to provide a process of identifying the desired functions and features required by State Bar members in the e-filing system.
- 5) Provide assurances to State Bar members that the e-filing system will be reliable, secure, and contain back-up systems.
- 6) To the extent possible, consider ways to make the system similar to the Federal Court PACER e-filing system currently used in the Eastern and Western District Courts in Michigan.
- 7) Consider programs like low-interest loans to help enable law practitioners to upgrade their technology and computer capability.
- 8) Revise court rules to allow electronic communication and e-filing.

The complete survey results are posted on the State Bar of Michigan's website on the Reports and Forms page at www.michbar.org/generalinfo/reportsforms.cfm under "Other Reports."

The Electronic Filing Task Force stands ready to assist the State Bar and the judiciary in educating attorneys in Michigan, conducting more surveys, and proposing court rule changes. It is important that the Task Force and the State Bar identify the desired functions and features required by members in the e-filing system, and provide assurances to State Bar members that state court e-filing systems will be reliable, efficient, economical, and secure. ♦

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