

REPORT AND RECOMMENDATION OF THE TASK FORCE ON ELECTRONIC FILING IN THE APPELLATE COURTS TO THE SUPREME COURT

I. Recommendations

The Task Force on Electronic Filing in the Appellate Courts (Task Force) recommends to the Court the adoption and implementation of electronic filing (e-filing) in the appellate courts of this State. The Task Force believes that electronic filing in the appellate courts of this State will promote justice in Tennessee by making the appellate process more visible and accessible to the citizens of Tennessee, greatly enhancing the efficiency of the appellate courts, and once fully implemented, should reduce the overall expense of appeals.

Specifically, the Task Force recommends that this Court adopt a Supreme Court Rule establishing an e-filing pilot project for two years. A proposed Pilot Project Rule is attached to this Report and Recommendation.

The Task force further recommends that the Pilot Project should:

- (1) be phased in on a court-by-court basis beginning with the Supreme Court;
- (2) permit but not require attorneys to e-file all documents with the appellate courts during the Pilot Project; and
- (3) require the Appellate Court Clerk to develop an evaluation process for the Pilot Project with the assistance of an outside consultant, if necessary.¹

II. General Description

The proposed e-filing system can best be described as a hybrid of a vendor-based system and an in-house system. E-filing would begin on a permissive basis with attorneys submitting electronic appellate documents to a vendor who charges a fee for e-filing. Basically, the vendor would electronically transmit the document to the Clerk's Office for review and filing. Included in the vendor's e-filing fee to the attorney should also be the cost of copying appellate briefs by the vendor to be sent to the Clerk's Office for distribution. All other documents would be in

¹The Clerk with the assistance of the AOC should develop the evaluation process as part of the request for proposal for obtaining the services of the e-filing vendor so that the evaluation process should be in effect at the time e-filing begins under the Pilot Project Rule. The evaluation process should include both a objective data component and a survey of users. One year after e-filing begins, the Clerk should submit the results of the evaluation process to the Court along with recommendations on the following issues: (1) whether e-filing should be made mandatory; (2) if so, the suggested date upon which e-filing should be made mandatory; and (3) whether there are any changes and/or improvements in the e-filing system that would make it a more effective and efficient process.

electronic form with judges, their staff and the Clerk's Office having the ability to print out copies if necessary. In order to ensure a fair and unbiased selection process, the vendor should be chosen based on a Request for Proposal (RFP) developed by a staff person from Office of Information Resources (OIR). Once chosen, the vendor is responsible for developing and implementing an e-filing system in cooperation with all affected parties.

During the Pilot Project, the Clerk's Office would scan any hard-copy documents filed so that all documents would be in electronic form. If the Pilot Project becomes mandatory, then there will no longer be a need to scan documents filed with the appellate courts. The Clerk staff who were scanning such documents could then start scanning the technical record and exhibits, and the transcripts could be electronically filed. As for pro se litigants, they would not be permitted to electronically file during the Pilot Project. However, if the system becomes mandatory for attorneys, the issue of permitting pro se litigants to e-file should be addressed at that time. The official documents would be the electronic version maintained by the Clerk's Office in a document management system (DMS) with back-up tapes stored off-site in a secure location.

Documents e-filed with the vendor will be made available to any person at a website maintained by the vendor. The Appellate Court Clerk may also authorize the electronic version of paper-documents filed and scanned by his or her office to also be made available at the vendor's website if vendor and the Clerk and reach an agreement for such an arrangement.

III. Potential Long-Term Benefits of E-Filing

The Task Force finds the following potential long-term benefits² of e-filing in the appellate courts applicable to judges, attorneys, Clerk staff, litigants, media and the public:

A. Judges

1. E-filed documents would be available soon after acceptance and filing by the Clerk's staff. There would be no need to wait for the documents to be placed in the case file and distributed to the judges.
2. Electronic documents would also be available during non-business hours and even from remote locations if posted on the Internet. Judges and/or their staff would not have to wait for the Clerk's Office to open in order to obtain access to a document.
3. Judges and/or their staff would be able to copy and paste language from electronic documents filed by the parties to draft opinions and orders,

²The Task Force acknowledges that during the start-up and transition from present paper-filing to e-filing that there will be added costs in money and time.

reducing the preparation time and insuring the accuracy of the quotation.

4. There would be no lost or misplaced briefs or motions because a copy can easily be generated from the electronic version of the brief or motion.
5. It would be easier to find a particular argument or point of law in a long brief because the e-filed version of the document can be searched.
6. If at some time in the future records are e-filed, Judges and their judicial staff would have access to the record during non-business hours.

B. Lawyers

1. In the long-term, less staff time and resources would be spent e-filing and e-serving documents than is spent for conventional paper filing and service. Furthermore, long-term costs for e-filing and e-service should be lower as compared to copying and preparing documents for service and using messengers, mail or other delivery methods.
2. Attorneys would be able to “copy and paste” language from other documents to draft new documents, proposed orders or responses to opposing counsel. This can significantly reduce the time to prepare documents.
3. Attorneys would have greater control over the timing of filings and there would be more certainty about when filing and service of documents occurs. It would also be easier to document when service occurred and there would be less opportunity to manipulate service to the party’s advantage.
4. After electronic documents are filed and available on the vendor’s computer server, they would be available after business hours for attorneys in the appeal to view. Thus, there will be no need to wait for the Clerk’s office to open to obtain a copy of a document or check the status of filing or service.
5. Attorneys would have the ability to review a document in a case remotely or without being physically present where the actual document or case file is located.
6. There would be no lost documents or files in the Clerk’s office that might necessitate a request to postpone a hearing or might delay a court’s decision.

7. If both parties to an appeal e-serve each other, having all documents that have been served available in an online case file would provide a more complete record of what was served and when.
8. If both parties to an appeal e-file, electronic service of documents would be easier, more reliable and more secure than service by any of the traditional methods. Because of the significant number of documents that are served on other parties but not filed with the court, the benefits of e-service are greater to attorneys than to the court.
9. If at some time in the future records are e-filed, attorneys and their staff would have access to the record during non-business hours. Therefore, attorneys would not have to wait on opposing counsel or the court to return the record to the Clerk's Office in order to be able to access the record in preparing their briefs and oral arguments.

C. Clerk of the Court

1. There would be substantially less Clerk staff time required for data entry into the court's CMS if the e-filing system transfers the data directly into the court's CMS. If e-filing and e-service were mandatory, there would be no need for paper-generated notices by Clerk staff for every filing. Such notices could be automatically transmitted to the e-mail box of counsel for litigants.
2. Fewer documents would need to be returned by the Clerk's office to attorneys because of errors such as lack of signature. Less staff time would be spent answering litigant questions regarding documents with problems.
3. Less staff time would be spent pulling files for the public and re-shelving them. Savings are immediate with respect to new documents and cumulative as more electronic documents are filed.
4. Several staff would be able view an electronic document at the same time; whereas, only one person at a time can presently look at documents in a paper file.
5. In the long term, there would be substantial reduction in the volume of paper case files that need to be maintained.
6. There would be no lost or misplaced documents or files. No staff time would be spent trying to locate or replicate lost documents or files. A

back-up feature in the e-filing system means there should always be a copy of the document; it cannot be lost.

7. There would be less risk to the integrity of the case file. All documents in a file would be available without people having the ability to remove a document. Nor could documents be written on or altered. Clerk staff would be able to print out their own copies of a document on which to make notes without compromising the integrity of the original document.
8. If e-service becomes mandatory, it could be used by the Clerk to serve court orders and judgments, avoiding the need to maintain service lists and the time and costs associated with making and serving copies.
9. In the long term, electronic filing would ease the problem with lack of space for storage of documents in the Supreme Court buildings and ultimately when the documents are archived in electronic form instead of hard copy.
10. If e-filing becomes mandatory for attorneys, there would be substantially less Clerk staff resources required for document intake. Staff would spend substantially less time reviewing and accepting documents with e-filing than with conventional paper filing.

D. Litigants

1. In the long term, there would be lower costs for e-filing and e-serving documents for litigants outside of Nashville, Knoxville and Jackson.
2. In the long term, there would be lower costs for document preparation and improved quality of attorney representation.
3. There would also be lower public costs and more efficient operations in the judicial system.

E Public

1. If e-filed documents are posted on the internet, public access to documents would be greatly enhanced.
2. There would be few, if any, lost documents in the Clerk's office.

IV. Funding for Pilot Project

Start-Up Costs	Amount	Possible Source of Funding
RFP Consultant	\$50,000	Clerk's Office
Project Manager	\$125,000	Court Technology Fund
JITS Modifications	Unknown	Court Technology Fund
Additional computer servers	\$50,000	Court Technology Fund
High-Speed Scanners	\$15,000	Court Technology Fund
Doc. management software	Unknown	Court Technology Fund
Total	\$240,000	

Recurring Costs		Possible Source of Funding
Clerk's Office - 3 Staff Clerks	\$100,000/yr	Addition of Clerk Fee for Scanning until mandatory. Then, increase in Clerk's fees under Tenn. Code Ann. 8-21-501 for continued funding.
AOC - 1 Tech Staff	\$60,000/yr	Unknown
Total	\$160,000/yr	

V. Security and Access

A. Who should have access to e-filed documents?

- Attorneys
- Litigants
- Media
- Public

B. What should the process be for registration of persons permitted to e-file?

Register on line with confirmation of password via hard copy mail

C. Should any documents be excluded from e-filing? If so, which documents?

- Parental Termination Appeals
- Juvenile Appeals
- Criminal Appeals from convictions of certain crimes involving child victims (See list in Pilot Project Rule)
- Appeals in which the entire record is sealed pursuant to court order or statute

D. What information should be redacted from documents prior to e-filing?

Pursuant to the Pilot Project Rule, attorneys should be under an obligation to redact the following information from documents e-filed with the appellate courts:

- Social Security numbers
- Financial account information
- Dates of birth
- Names of minor children
- Home addresses

E. Who should be permitted to access documents e-filed on the internet?

Anyone

F. Should there be a charge of any sort to access or print documents e-filed on the internet?

No

G. Should documents that are e-filed be required to have an electronic signature?

Yes, see the proposed section in the Pilot Project Rule which is based on the rule in the Territory of Guam

H. Are there any general technical safeguards that should be included in maintaining the security of the server?

- The initial submission of a document will go through vendor's server and then will be transmitted to court's server.
- There should be a specified period of time after which passwords for persons registered to e-file documents should be changed.
- Format of all documents should be in the industry standard of Portable Document Format so that they cannot be readily altered and there is little or no metadata for a hacker to obtain.

VI. Pilot Project Rule

A. Which rules of court should be amended in order to implement an E-Filing Pilot Project in the appellate courts?

In the past, the Court has promulgated a new Supreme Court Rule for the implementation of a pilot project. For example, Supreme Court Rule 37 established a pilot project for workers' compensation mediators on appeal. The Task Force recommends the adoption of a Supreme Court Rule for the implementation of a pilot project for e-filing in the appellate courts.

2. What matters should be included in the Pilot Project Rule?

Based upon rules on e-filing from other appellate courts, the following are matters that should be included in the rule:

- Registration process to e-file
- Filing and service of documents
- Authentication and certification
- Prohibited e-filed documents
- Authorized users

- Payment of e-filing fees
 - Claimed Failure of the e-filing system by filer
 - Official Record
 - Official Time
 - Signatures
3. The proposed Pilot Project E-Filing Rule is attached as an appendix to this Report and Recommendation.

VII. Implementation

The following is a tentative time-line for implementation of the E-Filing Pilot Project program:

Date	Event
1/31/06	E-Filing Task Force submits report and recommendations to the Supreme Court along with proposed Supreme Court Rule implementing E-Filing Pilot Project.
Unknown	Pilot Project Rule is published for public comment.
Unknown	Supreme Court adopts Pilot Project Rule, incorporating public comments as appropriate, and authorizes E-Filing Task Force to continue and to implement recommendations.
+ 30 days	Clerk retains RFP consultant from the Office of Resource Information of the Department of Finance and Administration to draft RFP.
+ 60 days	Project manager is hired to coordinate the Pilot Project from RFP stage through submission of evaluation report and recommendation one year after e-filing begins.
+ 180 days	RFP issued for an e-filing pilot project - The pilot project is simply a permissive filing program to be implemented in phases.
+ 210 days	Contract with vendor is executed for an e-filing pilot project.

- + 240 days Purchase of necessary hardware including servers, scanners and PCs for e-filing pilot project by AOC from Court Technology Fund.
- + 270 days Training of persons participating in e-filing pilot project begins. Such persons include judges, court staff, Clerk's staff, attorneys, etc.
- + 330 days Beta testing of e-filing pilot project begins
- + 360 days Phase I - Supreme Court is implemented
- + 390 days Phase II - Court of Appeals is implemented
- + 420 days Phase III - Court of Criminal Appeals is implemented making the Pilot Project fully operational
- + 785 days Clerk in conjunction with AOC submits evaluation and recommendation to the Supreme Court as to (1) whether e-filing should be made mandatory; (2) if so, the suggested date upon which e-filing should be made mandatory; and (3) whether there are any changes or improvements in the e-filing system that would make it a more effective and efficient process.
- + 785 days As part of the mandatory decision, legislation will need to be introduced to provide for permanent funding of 3 additional staff for Appellate Court Clerk's Office to scan the technical record and exhibits. E-filing of transcripts will also be considered.