



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: -CO-14-05

Title

Judicial Council Report to the Legislature:
Evaluation of the Superior Court of Orange
County's Mandatory E-Filing Pilot Project

Action Requested

VOTING MEMBERS ONLY: Vote and
return by fax. Additionally, return original
signature page.


Rules, Forms, Standards, or Statutes Affected

None

Please Respond By


5 p.m. on September 29, 2014

Recommended by

Hon. James E. Herman, Chair 
Judicial Council Technology Committee

Date of Memorandum

September 23, 2014

Jody Patel 
Chief of Staff
Judicial Council

Contact

Patrick O'Donnell, 415-865-7665
patrick.o'donnell@jud.ca.gov

Executive Summary

The Judicial Council Technology Committee (JCTC) recommends that the Judicial Council approve and submit to the Legislature the attached report evaluating the Superior Court of Orange County's mandatory electronic filing pilot project under Code of Civil Procedure section 1010.6(d)(2). This report was due to the Legislature on or before December 31, 2013; however, delays in receiving the information on which the evaluation is based have caused the report to be late. To expedite the council's review and submission of the report to the Legislature, voting is being conducted via circulating order memorandum.

Recommendation

The JCTC recommends that the Judicial Council:

1. Approve for submission to the Legislature the *Report on the Superior Court of Orange County's Mandatory E-Filing Pilot Project: Report to the Legislature as Required by Code of Civil Procedure Section 1010.6(d)(2)*; and
2. Direct Judicial Council staff to transmit the report to the Legislature.

The proposed report to the Legislature is attached to this memorandum.

Previous Council Action

The Judicial Council has a long history of supporting electronic filing and service of documents. To promote e-filing and e-service, the council has sponsored legislation and adopted rules and forms.¹ Until recently, electronic filing and service in civil cases has been either by consensus or by court order in more complex or complicated cases. However, by enacting Assembly Bill 2073 in 2012, the Legislature amended Code of Civil Procedure section 1010.6 to authorize courts to require electronic filing in all civil cases. Section 1010.6(d), as amended, also authorized the Superior Court of Orange County to establish a mandatory electronic filing pilot project by local rule. And it authorized the Judicial Council to adopt rules permitting mandatory electronic filing in all types of civil cases.²

Rationale for Recommendation

The Superior Court of Orange County established a mandatory electronic filing pilot project by adopting Local Rule 352, which became effective January 1, 2013. This rule requires electronic filing in all limited, unlimited, and complex civil actions, unless the parties are excused by the court. Because the court established a pilot project for mandatory electronic filing in civil cases, the Judicial Council is required to evaluate the project and submit its findings to the Legislature.

Specifically, Code of Civil Procedure section 1010.6(d)(2) provides that the Judicial Council must conduct an evaluation of the pilot project and report its findings to the Legislature. This provision also specifies that the council must review the cost-effectiveness of the program for the

¹ See, for example, Judicial Council report for the December 15, 2009 meeting recommending council sponsorship of amendments to Code of Civil Procedure section 1010.6 to make the statute more flexible and effective (available at http://www.courts.ca.gov/documents/121_509item4.pdf) and three reports for the October 23, 2009 meeting recommending the adoption of rules and forms to assist the public with electronic filing and service (available at <http://www.courts.ca.gov/documents/102309itema18.pdf>; <http://www.courts.ca.gov/documents/102309itema19.pdf>; <http://www.courts.ca.gov/documents/102309itema20.pdf>).

² To implement the legislation, the council amended the rules of court, effective July 1, 2013, to allow all superior courts by local rule to require parties to file and serve documents electronically, subject to certain conditions in the statute and rules. The report for the June 28, 2013 council meeting is available at <http://www.courts.ca.gov/documents/jc-20130628-itemC.pdf>.

court, the cost of the program to participants, the effect on unrepresented parties and parties with fee waivers, and the ease of use for participants.

To assist the council in conducting its evaluation, the Superior Court of Orange County prepared a report, *Preliminary Evaluation of the E-Filing Pilot Project of the Superior Court in and for the County of Orange*.³ The court based its findings on information gathered from surveys it conducted of litigants and electronic filing service providers, interviews with court staff, and data collected by the court about electronic filings. The court's information and evaluation of the pilot project was not received by the Judicial Council until July 2014.

The JCTC reviewed the information and preliminary evaluation provided by the court about the pilot project. Based on the court's information and evaluation and the committee's own discussions, JCTC recommends that the council approve the *Report on the Superior Court of Orange County's Mandatory E-Filing Pilot Project* evaluating the project that is attached to this circulating order and direct that the report be submitted to the Legislature. Because of the delays in preparing this report and the interest of the Legislature in the subject, the submission of the report is urgent and it is appropriate for the Judicial Council to approve the report by circulating order.

Comments, Alternatives Considered, and Policy Implications

The report was not circulated for comment. Because the Judicial Council is required by statute to evaluate the Superior Court of Orange County's pilot project and submit a report to the Legislature, no alternative recommendations were considered.

Implementation Requirements, Costs, and Operational Impacts

This report, originally due to the Legislature by December 31, 2013, is now ready for submission. There are no significant related costs. Only minimal resources will be expended in submitting the report to the Legislature.

Attachments

1. Draft transmittal letter to the Legislature
2. Draft report summary
3. *Report on the Superior Court of Orange County's Mandatory E-Filing Pilot Project: Report to the Legislature as Required by Code of Civil Procedure Section 1010.6(d)(2)* (with attachment, *Preliminary Evaluation of the E-Filing Pilot Project of the Superior Court in and for the County of Orange*)
4. Voting instructions
Vote and signature pages

³ A copy of the court's preliminary evaluation is attached to the report to the Legislature.



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HON. DAVID M. RUBIN
Chair, Litigation Management Committee

HON. KENNETH K. SO
*Chair, Policy Coordination and
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HON. JAMES E. HERMAN
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Hon. Charles D. Wachob
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HON. STEVEN JAHR
Administrative Director,
Judicial Council

September 30, 2014

Ms. Diane F. Boyer-Vine
Legislative Counsel
State Capitol, Room 3021
Sacramento, California 95814

Mr. Gregory P. Schmidt
Secretary of the Senate
State Capitol, Room 400
Sacramento, California 95814

Mr. E. Dotson Wilson
Chief Clerk of the Assembly
State Capitol, Room 3196
Sacramento, California 95814

Re: Report on the Superior Court of Orange County's Mandatory E-Filing Pilot Project, as required under Code of Civil Procedure section 1010.6(d)(2)

Dear Ms. Boyer-Vine, Mr. Schmidt, and Mr. Wilson:

Attached is the Judicial Council report on the Superior Court of Orange County's mandatory e-filing pilot project, as required under Code of Civil Procedure section 1010.6(d)(2).

If you have any questions related to this report, please contact Patrick O'Donnell at 415-865-7665, patrick.o'donnell@jud.ca.gov.

Very truly yours,

Steven Jahr
Administrative Director
Judicial Council of California

SJ/PO/xx
Attachment

Ms. Diane F. Boyer-Vine
Mr. Gregory P. Schmidt
Mr. E. Dotson Wilson
September 30, 2014
Page 2

cc: Members of the Judicial Council
Margie Estrada, Policy Consultant, Office of Senate President pro Tempore Darrell
Steinberg
Fredericka McGee, Deputy Chief of Staff, Office of Assembly Speaker Toni G. Atkins
Anita Lee, Fiscal and Policy Analyst, Legislative Analyst's Office
Tina McGee, Executive Secretary, Legislative Analyst's Office
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HON. STEVEN JAHR
Administrative Director,
Judicial Council

Report title: *Report on the Superior Court of Orange County's
Mandatory E-Filing Pilot Project: Report to the
Legislature as Required by Code of Civil Procedure
Section 1010.6(d)(2)*

Statutory citation: Stats. 2012, ch. 320, § 1

Code section: Code of Civil Procedure section 1010.6(d)(2)

Date of report: September 29, 2014

The Judicial Council has submitted a report to the Legislature in accordance with Code of Civil Procedure section 1010.6(d)(2).

The following summary of the report is provided under the requirements of Government Code section 9795.

In 2012, the Legislature enacted Assembly Bill 2073, which amended Code of Civil Procedure section 1010.6 to allow electronic filing of court documents in all civil cases. The Superior Court of Orange County subsequently adopted Local Rule 352, effective January 1, 2013, which mandated electronic filing, in all limited, unlimited, and complex civil actions, unless excused by the court.

The attached report provides the Judicial Council's evaluation of the court's pilot project based on the statute's criteria: (1) cost-effectiveness for the court, (2) cost to participants, (3) effect on unrepresented parties and parties with fee waivers, and (4) ease of use for participants. The council based its evaluation on data provided by the Superior Court of Orange County; this preliminary analysis by the court is included as an attachment to this report to the Legislature.

Overall, the data gathered by the Superior Court of Orange County (1) showed that the pilot project resulted in significant cost savings for the court and was generally less or equally expensive for litigants and (2) demonstrated the project's relative ease of use and convenience for represented and self-represented litigants. There were limitations in the

data collection regarding the effect on self-represented litigants; however, any potential issues were likely addressed by the subsequent amendments to the rules of court exempting all self-represented litigants from mandatory electronic filing.

The Judicial Council is encouraged by the pilot project's success thus far. The Superior Court of Orange County's experience with mandatory electronic filing, including lessons learned, will help inform the council's efforts as mandatory electronic filing expands to other courts throughout California.

The full report can be accessed here: www.courts.ca.gov/7466.htm

A printed copy of the report may be obtained by calling 415-865-7684.

Report on the Superior Court of Orange County's Mandatory E-Filing Pilot Project

REPORT TO THE LEGISLATURE AS
REQUIRED BY CODE OF CIVIL
PROCEDURE SECTION 1010.6(d)(2)

SEPTEMBER 23, 2014

DRAFT - NOT APPROVED BY THE
JUDICIAL COUNCIL



JUDICIAL COUNCIL
OF CALIFORNIA

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Hon. Tani G. Cantil-Sakauye
*Chief Justice of California and
Chair of the Judicial Council*

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Report on the Superior Court of Orange County's
Mandatory E-Filing Pilot Project:
Report to the Legislature as Required by
Code of Civil Procedure Section 1010.6(d)(2)

September 23, 2014

Introduction

The Judicial Council submits this report to the Legislature under Code of Civil Procedure section 1010.6(d)(2) to provide its evaluation of the Superior Court of Orange County's mandatory electronic filing pilot project.

In enacting Assembly Bill No. 2073 in 2012, the Legislature amended Code of Civil Procedure section 1010.6, the statute governing the electronic filing and service of court documents. Relevant to the present report, the Legislature authorized the Superior Court of Orange County to establish a pilot project mandating the electronic filing of court documents in all civil cases. Because the Superior Court of Orange County subsequently established the pilot project by local rule, the Judicial Council is required by section 1010.6(d)(2), to evaluate the project and report its findings to the Legislature.

Scope of the Evaluation

Code of Civil Procedure section 1010.6(d)(2), provides that "the Judicial Council shall conduct an evaluation of the pilot project and report to the Legislature, on or before December 31, 2013, on the results of the evaluation."¹ The Legislature identified the following areas of inquiry for the Judicial Council to review in its evaluation of the pilot project: (1) cost-effectiveness for the court, (2) the cost of the program to participants, (3) effect on unrepresented parties and parties with fee waivers, and (4) ease of use for participants.²

Background

Before the enactment of AB 2073, Code of Civil Procedure section 1010.6 allowed for electronic filing of court documents by consent of the parties or by court order in certain types of civil cases. AB 2073 expanded the scope of electronic filing by permitting courts to mandate e-filing in civil cases. Specifically, AB 2073 amended Code of Civil Procedure section 1010.6 to allow courts to require electronic filing in all civil cases under certain conditions.

¹ Code Civ. Proc., § 1010.6(d)(2).

² *Ibid.*

The legislation directed the Judicial Council to adopt uniform rules to permit mandatory electronic filing and service.³ At its June 28, 2013 meeting, the council adopted rules to implement the legislation, effective July 1, 2013.⁴ In addition, AB 2073 added a subdivision to Code of Civil Procedure section 1010.6 authorizing the Superior Court of Orange County to establish by local rule “a pilot project to require parties to specified civil actions to electronically file and serve documents.”⁵

Under section 1010.6(d), the Superior Court of Orange County established a pilot project by adopting Local Rule 352, effective January 1, 2013. The local rule mandates electronic filing in “all limited, unlimited, and complex civil actions,” unless the parties are excused by the court.⁶ It permits after-hours filing, with all documents received electronically before midnight deemed filed as of that day.⁷ All electronic filings must use a court-certified electronic filing service provider (EFSP).⁸ Because the court established a pilot project, the Judicial Council must evaluate the project and submit a report to the Legislature.⁹

The impact of the pilot project on civil filings has been significant. During the first 18 months of the project, parties filed a total of 1,168,709 documents with the court. Ninety-one percent of these documents were filed electronically; the parties filing the remainder were either exempted or excused from electronic filing under the local rule. Since implementing the pilot project, the court has certified 14 EFSPs, including one nonprofit.

To assist the Judicial Council in evaluating the pilot project, the Superior Court of Orange County conducted a review of its experience with mandatory electronic filing and drafted the report summarizing its findings: *Preliminary Evaluation of the E-Filing Pilot Project in the Superior Court in and for the County of Orange*.¹⁰ In preparing its report, the court conducted surveys of represented and self-represented litigants and EFSPs in the spring of 2013, shortly after the pilot project was initiated. The court sent an invitation to complete the survey to over 9,000 e-mail addresses of attorneys and litigants, and paper versions of the survey were available in the court’s self-help centers. Both represented and self-represented litigants had a response rate of approximately 14 percent: of the 7,200 represented litigants who were e-mailed invitations, 1,004 completed the survey; and of the 2,100 self-represented litigants (SRLs), 303 did. The surveys of represented litigants were completed by an attorney or paralegal, and most were filled out online. Information was also gathered from court staff involved in implementing and maintaining the electronic filing system.

³ Code Civ. Proc., § 1010.6(f).

⁴ The Judicial Council report on the mandatory e-filing rules considered at the June 28, 2013 council meeting is available at <http://www.courts.ca.gov/documents/jc-20130628-itemC.pdf>.

⁵ Code Civ. Proc., § 1010.6(d)(1).

⁶ Super. Ct. Orange County, Local Rules, rule 352.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Code Civ. Proc., § 1010.6(d)(2).

¹⁰ The court’s preliminary evaluation is attached to this report.

Cost-Effectiveness for the Court

The court's review of its pilot project shows that implementing mandatory electronic filing in all civil cases has resulted in clear cost savings for the court. The court reported that it realized significant savings by eliminating staff time spent entering data into the case management system, screening documents to determine if they needed expedited or special handling, scanning and filing documents, and processing mail. Additional savings were gained by streamlining document review.

The court made projections of the pilot project's impact. Based on the average number of staff minutes required to file each document, the court estimated that by instituting mandatory e-filing it could reduce the size of the staff specifically devoted to filing documents. The evaluation by the court demonstrates that, by reducing the time needed to complete filings, e-filing has in fact meant that fewer staff members have been required to work at the counter and in the back office. The Judicial Council notes that this change in duties means that more staff can assist the court in areas outside the area of filing documents and so they are available to provide improved services and greater access to the public in this time of scarce resources.

Other savings resulted from the decrease in foot traffic to the courthouse due to the reductions in in-person filings and mail and delivery services. With fewer people visiting the court on a daily basis, the court saw a decline in its security needs and wear and tear on court facilities.

The court also reported on the cost-effectiveness of using multiple EFSPs in lieu of developing and implementing its own electronic filing system.¹¹ On balance, the court concluded that multiple EFSPs resulted in cost savings because it was relieved of funding the development of an electronic filing system, establishing and maintaining a training program for users, providing customer support, and responding to complaints. However, the court recognized that it did bear some additional costs related solely to using the EFSP model, including the significant IT and operations staffing resources needed to certify multiple EFSPs, the staffing resources needed to establish internal processes for coordinating and managing multiple EFSPs, and the time that accounting staff spent daily reconciling fee payments.

Based on the information gathered by the court, it is clear that the court realized significant cost savings through the pilot project. Any additional costs from implementing the pilot project were offset by the gains received by reducing staff hours spent filing documents and processing mail.

Cost of the Program to the Parties

The survey results also demonstrated that electronic filing was generally cost-effective for both represented and self-represented litigants. Depending on the prior filing method, saved costs for litigants could include travel expenses, parking fees, and postage, as well as the time required to print out documents, make copies, assemble the filing or mailing, travel to the court during

¹¹ The court did not have the option of using only one EFSP during the pilot project. Code of Civil Procedure section 1010.6(d)(1)(B) requires that the court either use multiple EFSPs or provide electronic filing access directly.

business hours, and wait in line at security and the counter. New costs resulting from electronic filing include the EFSP's fee and the time spent inputting data about each case and filing.

Thirty-four percent of represented parties responded that lower cost was a benefit of electronic filing. When specifically asked about the cost of the vendor filing fee compared with the travel, parking, and other expenses associated with physically filing court documents, 55 percent thought that electronic filing was less expensive or somewhat less expensive, whereas 27 percent thought it was more expensive.

Only 19 percent of SRLs indicated that lower cost was a benefit of electronic filing. Yet, when asked specifically about the cost of the vendor filing fee compared with the travel, parking, and other expenses associated with physically filing court documents, 34 percent thought it was less expensive, 24 percent thought it was more expensive, 34 percent were uncertain, and 8 percent perceived no difference. Additionally, 9 percent of SRLs said they were discouraged from filing electronically because of the costs, although the survey did not reveal whether those costs were directly related to electronic filing.

Based on the information obtained by the court, it appears that electronic filing was generally less costly than paper filing for represented and self-represented litigants. Distinct from its measures of cost savings gained by the court, however, the court did not attempt to quantify the relative costs of electronic versus paper filing for represented and self-represented litigants. And the data gathered in the surveys does not lend itself to quantification. In the future, the Judicial Council may further explore the costs of electronic filing for litigants and any potential barriers it could impose on them, especially SRLs.

Effect on Unrepresented Parties and Parties with Fee Waivers

The survey reflected that SRLs and parties who received fee waivers were generally satisfied with electronic filing. Among the benefits of electronic filing, SRLs found that it was more convenient (75 percent), was less time-consuming (51 percent), and allowed late-night filing (50 percent). Other benefits included that electronically filed documents were received more quickly (40 percent), processed more quickly (34 percent), available online sooner (25 percent), and rejected less frequently (8 percent).

Roughly half of SRLs did experience issues with electronic filing, although some may not have been directly related to electronic filing. Twenty-seven percent indicated that their filings were rejected, and 17 percent said they had issues receiving confirmation that their filing was received. Difficulties experienced by a relatively small number of SRLs included problems paying (6 percent), finding a suitable EFSP (5 percent), accessing a computer with an Internet connection (4 percent), submitting documents by the deadlines (4 percent), and submitting a fee waiver (3 percent).

Twenty-four percent of SRLs indicated that they were discouraged because of the electronic filing requirement, even though all had electronically filed at least once. Of those, 63 percent felt discouraged because the process was unclear or confusing, although it was unclear from the

survey results what caused the process to be unclear or confusing for these SRLs. In its preliminary evaluation the court observed that the surveys were distributed in the spring of 2013 (i.e., shortly after mandatory e-filing was instituted) and that earlier experiences would be likely to expose a greater lack of familiarity, possible frustration, and less appreciation for benefits than a survey conducted after more extensive use. To clarify this matter, the Judicial Council may revisit this issue in the future to identify the sources of confusion and update the survey information.

In addition, the court's preliminary evaluation shows that 36 percent of those SRLs who were discouraged felt this way because of cost, 23 percent because of problems associated with the payment process, 19 percent due to difficulties accessing the Internet, and 18 percent due to selecting an EFSP. Issues described by the 12 percent who submitted open-ended responses included how the electronic filing process was too complicated, the EFSP service was too expensive, and document submission took too long.

Even though two-thirds of SRLs were aware of the fee waiver option and 49 percent described the process of applying for a fee waiver as easy or very easy, just 16 percent applied. Eighty-one percent of those who did apply received a fee waiver. Fewer SRLs were aware there was a hardship exemption to the electronic filing requirement. Only 41 percent knew the exemption existed. Of those who knew of the exemption, only 10 percent applied. Exemptions were granted to more than 60 percent of applicants.

Limitations in the data collection restrict our ability to draw firm conclusions from these survey results. In addition to e-mailing 2,100 survey invitations to SRLs who had provided an e-mail address as part of the electronic filing process, the court made paper versions available at its self-help centers. However, it was unable to estimate how many paper versions were distributed. Of the 303 SRLs who completed the survey, it is unclear how many completed the survey online in response to the e-mail invitation versus on paper after visiting a self-help center. It stands to reason that those who have an e-mail address are more likely to have access to a computer with an Internet connection and to have a greater familiarity with computers and the Internet. Moreover, only those who had already electronically filed a document with the court were e-mailed an invitation to complete the survey. The survey may have been unable to measure whether any potential litigants had been completely deterred from filing by the mandatory electronic filing requirement. Thus, the survey results, while encouraging, should be viewed in light of these potential limitations.

Although the Judicial Council may desire to explore such access questions further, the most significant issues have probably been addressed by changes in the California Rules of Court, effective July 1, 2013. Subsequent to conducting the survey of SRLs, the Judicial Council amended the rules of court to provide that all SRLs are exempt from any mandatory electronic filing requirements adopted by the courts.¹² Additionally, while the Superior Court of Orange County's Local Rule 352 provided for a hardship exemption at the time of the survey, the rules

¹² Cal. Rules of Court, rule 2.253(b)(2).

of court were also amended to provide an exemption to those parties required to electronically file documents under the rule who are able to show undue hardship or significant prejudice.¹³

Ease of Use

Overall, electronic filing proved relatively easy to use for the parties and the court. Seventy-four percent of represented parties indicated that electronic filing was more convenient, and 53 percent thought it took less time. Two-thirds appreciated being able to file at any time, even though only 21 percent of all electronic filings were actually filed after hours.

In contrast to physical filing, the burden is on the litigant to input data about the case and filing prior to submitting documents electronically. Nevertheless, close to 80 percent of represented parties reported electronic filing to be at least as fast as paper filing, and 59 percent thought it was less time-consuming.

Represented parties were also generally satisfied with document review times, even though they did not immediately learn if a document had been rejected for filing or the reason for the rejection. For the first six months of 2014, staff reviewed documents within 24 hours of filing 65 percent of the time. The court noted that it had not been able to increase the speed of document review in light of severe budget reductions.

Two-thirds of represented litigants did not perceive any appreciable difference in the rate of rejections. They did lose the benefit of an in-person explanation and clarification of any deficiencies in their filings. From survey responses, the court learned that when staff rejected electronic filings, they were only specifying one basis for the rejection instead of identifying all reasons. Litigants expressed frustration if their filing was again rejected after fixing the issue that had caused the initial rejection. The court took measures to correct this oversight through staff training.

Given the electronic filing limit of 35 megabytes per document or 60 megabytes per transaction, another concern is the potential for filings to be rejected due to their size. Although only 10 percent of represented litigants had issues with oversized documents, those issues proved difficult or very difficult to resolve for 26 percent of them; 13 percent found it was easy or very easy to resolve these issues.

The use of multiple EFSPs also proved beneficial to litigants because the EFSPs were able to offer customer support service 24 hours a day, 7 days a week, in addition to providing a greater variety of services. Among the various training options offered by EFSPs were manuals, webinars, live training sessions for law firms and professional organizations, video tutorials, public workshops, dedicated phone support, MCLE classes, and self-teaching user interfaces. In addition, one-third of the reporting EFSPs specialized by client type and served niche markets. They were able to tailor their services to fit their clients' particular needs by developing new features through applications and providing other enhancements. Half of the reporting EFSPs

¹³ *Id.*, rule 2.253(b)(4).

offered language resources to non-English-speaking filers by translating documents and providing agents fluent in other languages. Three EFSPs provided services in Spanish, one did in Tagalog, and another in Vietnamese. EFSPs were also able to offer a greater variety of payment options than the court could have.

Mandatory electronic filing provided nonmonetary benefits to the court, including greater quality assurance in the filing process and management flexibility in staffing. Because electronic documents can be viewed anywhere, the court was better able to monitor the volume, flow, timing, and accuracy of filings. Consistency in file review practices increased across courthouses by implementing specialized and centralized review processes. Employee morale improved as staff members were offered alternate work schedules.

Having the filer input information about the case and filing eliminated the need for staff to review the filing to assess whether it needed expedited review. Mistakes made during data entry, including the misidentification of documents, did adversely affect the processing priority assigned to documents. The court made efforts to address this issue by communicating with EFSPs and filers and by adding a “pick box” to allow users to identify documents that required expedited handling. Problems diminished after these measures were implemented.

On balance, the pilot project’s electronic filing system did not present any significant challenges to users and imparted benefits that the court could not otherwise provide. Although there were some issues with conveying the reasons for rejecting filings and identifying priority filings, the court took action to address them.

Conclusion

The pilot project in the Superior Court of Orange County was a success. Mandatory electronic filing resulted in significant cost savings for the court and was generally less expensive for represented and self-represented litigants. Electronic filing also offered ease of use and convenience for litigants. And when issues arose, the court responded to address those issues. Similarly, changes to the California Rules of Court ameliorated any latent access issues by exempting SRLs from the mandatory electronic filing requirement.

The Judicial Council is encouraged by the pilot project’s success thus far. The Superior Court of Orange County’s experience with mandatory electronic filing, including lessons learned, will help inform the council’s efforts as mandatory electronic filing expands to other courts throughout California. Further review may help explain why some SRLs were discouraged by the electronic filing process and found it unclear and confusing. Although SRLs are now exempt from mandatory electronic filing, this information could be used to improve the electronic filing process for SRLs who might otherwise want to participate.

Attachment

**PRELIMINARY EVALUATION OF THE E-FILING PILOT PROJECT
IN THE SUPERIOR COURT IN AND FOR THE COUNTY OF ORANGE
July 12, 2014**

SCOPE OF REPORT

In 2012, AB 2073 amended Code of Civil Procedure section 1010.6 by adding a new subsection (d)(2). The new subsection required the Judicial Council to prepare a report evaluating Orange County Superior Court's e-filing pilot project that was implemented pursuant to the amended statute. The subsection described the scope of the evaluation report as follows:

If a pilot project is established pursuant to paragraph (1), the Judicial Council shall conduct an evaluation of the pilot project and report to the Legislature, on or before December 31, 2013, on the results of the evaluation. The evaluation shall review, among other things, the cost of the program to participants, cost-effectiveness for the court, effect on unrepresented parties and parties with fee waivers, and ease of use for participants.

The purpose of this report is to provide information to the Judicial Council to aid them in preparing their evaluation.

DEFINING E-FILING

The term "e-filing", as used in this report, focuses on the business processes whereby a litigant files a document electronically with the court as opposed to delivering a document to the court in paper form. Specifically, e-filing means the document being delivered is electronic and is accompanied by metadata (information about the document) and authorization to pay any court filing fees, which allows the court to 1) update its case management system, 2) store the document in a document management system with a link to the case management system, and 3) update its fee accounting system with little, if any, data entry by court staff.

The report does not address the creation of an electronic version of a document. The document can be prepared electronically by the filer or converted into electronic form by the filer. However produced, the document must be in electronic form to be e-filed.

In addition, the report does not discuss electronic service. Documents e-filed with the court can be served in the traditional manner or via e-service. The manner of service by a party does not impact the benefits of e-filing to the court, lawyers, or litigants. Additional savings could be realized by parties and the court if documents were e-served, but e-service by the parties or the court was not considered an essential element of e-filing for purposes of this report.

Finally, e-filing, as discussed in this report, is not the only way to obtain electronic versions of documents to establish an all-electronic court record. Documents can be filed by litigants in paper form and scanned by court staff to an electronic form that becomes the official record. Documents in electronic form can also be e-delivered to the court, for example, as an attachment to an email, or faxed

to the court, and the fax image captured as an electronic document. While all of these methods provide the court with an electronic version of a document, court staff must still make data entries into the case management system about the document, upload the document to the document management system, link it to the case in the case management system, and collect and account for any required filing fee.

SOURCES OF INFORMATION FOR THE REPORT

Information contained in this report came from two sources. One source was information gathered by staff who implemented or now maintain the court's e-filing system. The second source was surveys of lawyers and litigants who had e-filed in the Orange County Superior Court after it became mandatory. In order to assess user's experiences and satisfaction with e-filing, three separate surveys were developed and distributed. Two surveys were developed to assess litigants' experiences related to ease of use, convenience/hardship of e-filing, satisfaction with e-filing costs, and the speed of acceptance of e-filed documents. One survey was drafted for litigants represented by an attorney and the second for self-represented litigants (SRLs). The survey questions were designed to compare the user's experience with the e-filing process to the traditional paper filing procedures. A third survey was developed specifically for the e-filing service providers (EFSPs). The EFSP survey asked about topics such as billing and accounting issues, e-filing training, enhanced and/or specialized services, and customer service and feedback. The key findings from these surveys are discussed below.

The user surveys were distributed by two different methods. If a SRL or lawyer had provided an email address, an email was sent with a link to an electronic version of the survey. A paper version (in English, Spanish, and Vietnamese) was made available at the court's Self-Help Centers where SRLs obtain assistance in filling out forms and preparing their cases. Invitations to complete the survey were sent electronically to more than 9,000 unique email addresses of litigants and attorneys (7,200 represented litigants and 2,100 SRLs). A total of 1,004 of the represented litigants and 303 of the SRLs completed the survey, resulting in a response rate for each group of 14%.

The surveys were distributed in the Spring of 2013. Since mandatory e-filing had only begun in January of 2013, the responses of those who had not taken advantage of optional e-filing before that date would reflect only early experiences with e-filing. Early experiences would likely expose a greater lack of familiarity, possible frustration, and less appreciation for benefits than a survey conducted after more extensive use.

KEY FINDINGS – BENEFITS AND IMPACTS

SUPERIOR COURT

- E-filing is clearly cost effective for the court. Significant cost savings were achieved from reductions in staff, due to elimination of data entry, scanning, and filing of documents, and due to streamlined document review.
- Document review happens sooner for a larger proportion of documents.
- Use of multiple EFSPs is cost effective for the court. It shortens the time for implementation and provides more options and benefits to lawyers and litigants.
- There is less foot traffic into courthouses, reducing security needs and wear and tear on court facilities.

ATTORNEYS AND REPRESENTED LITIGANTS

- Attorneys quickly adapted to the e-filing requirement and now prefer it; mandating e-filing is OK.
- E-filing is clearly cost effective for attorneys and represented litigants.
- Litigants and lawyers appreciate being able to e-file document any time, day or night.
- The quick and efficient review process eliminates the need for attorneys to routinely provide courtesy copies to judges.

SELF-REPRESENTED LITIGANTS (SRLs)

- SRLs were as satisfied with e-filing as lawyers were.
- There is an added, but not insurmountable, burden to the small population that does not have ready access to a computer connected to the internet.

GENERAL PUBLIC

- Civil documents are available to the public sooner, in particular for remote viewing, because court processing takes less time for e-filed document than paper filed documents.
- E-filing reduces the public cost of courts to process filings.
- E-filing reduces paper consumption.
- E-filing reduces trips to the courthouse.

INTRODUCTION

HISTORY LEADING UP TO MANDATORY E-FILING PILOT PROJECT

The pilot project to mandate e-filing for all civil cases in the Orange County Superior Court was the logical next step in the court's progression from the traditional practice of filing paper documents and maintaining paper files to an all-electronic court record. The conversion began with the court scanning paper documents when they were filed and storing them in a document management system for use by judges, court staff, and litigants. New probate filings were the first category of cases to be scanned, beginning in 1990. In December 2000, document imaging was implemented for new family law cases and in 2001 the court started imaging traffic citations. In August 2001, the court implemented document imaging for civil unlimited and complex cases. Imaging small claims case documents began in 2007, and in April 2008 the Court began document imaging for new juvenile cases. The court began imaging all pending criminal cases, misdemeanors and felonies, in December of 2013. While imaging allowed the court to shift to use of an electronic court record, the delivery of documents to the court was still primarily paper based.

The progression to electronic delivery of documents began in 2003 when the court developed an "eDelivery" process for the delivery of documents to the clerk's office in complex civil cases. The eDelivery process was a simple and convenient filing process whereby attorneys sent an email to the court with electronic documents attached. The advantage to the court was that the process eliminated the need to scan the often lengthy papers associated with complex civil matters. However, the court still had to enter information about the filing into the case management system and store the document in the document management system. EDelivery was successful and, based on surveys of lawyers, so well received that eDelivery of documents was made mandatory in all complex civil cases. This was done initially through an Electronic Filing Order signed by the Supervising Judge of Complex, followed by the adoption of a local rule mandating eDelivery in all complex civil cases as of January 1, 2008.

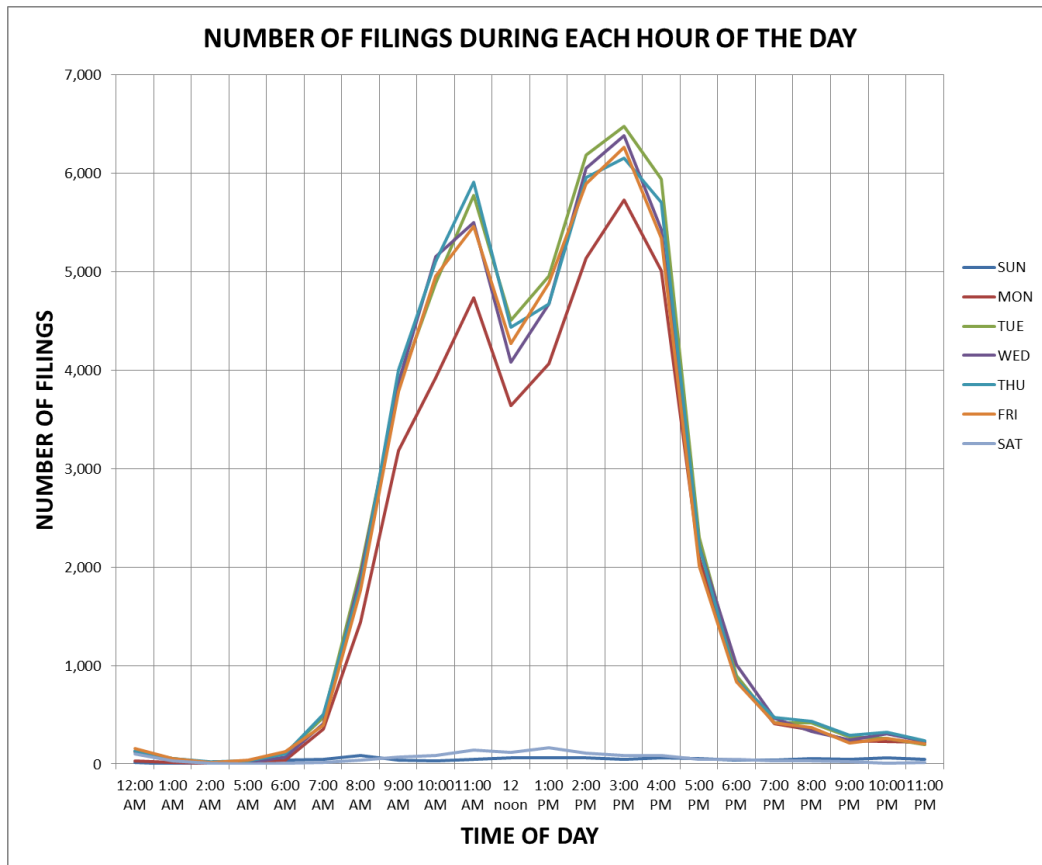
Mandatory e-filing of documents in all consolidated cases became effective July 5, 2011 (Administrative Order 11/03). Mandatory e-filing in breach of contract cases (limited and unlimited) became effective on November 2, 2011 (Administrative Order 11/04). On October 1, 2012, mandatory e-filing was instituted in limited and unlimited cases designated "Tort – Auto" and "Tort – Other (Personal Injury/Property Damage/Wrongful Death)" (Administrative Order 12/06).

Prior to the pilot project, the statute authorizing e-filing did not authorize a court to mandate e-filing in all civil cases. A court was allowed to mandate e-filing in a group of cases, which led to the incremental approach described above. In order to authorize mandatory e-filing in all civil cases, a statutory change was sought from the Legislature. AB2073 was introduced and adopted, amending CCP 1010.6 to authorize broad mandatory e-filing. Pursuant to the amendments, the Orange County Superior Court amended its e-filing local rule to mandate e-filing in all civil limited, unlimited, and complex cases effective January 1, 2013 (Orange County Superior Court Local Rule 352).

EXPERIENCES OF THE PILOT PROJECT

In the first 18 months of mandatory e-filing, a total of 1,168,709 documents were e-filed. The monthly average was 68,748 documents e-filed, of which 32,466 were in unlimited civil cases and 36,282 in limited civil cases. E-filed documents represented 91% of all filings. The remainder was paper documents where the parties were either exempted or excused from e-filing, or the document type was exempted.

After the initial phase of e-filing, the court permitted filers to file any time of the day, any day of the week, as authorized by CCP section 1010.6(d)(1)(D) and Local Rule 352 (Administrative Order 12/10, effective January 14, 2013). Looking at the actual times of filings, and the survey results discussed below, it appeared that this option was appreciated, but not extensively used. The chart below shows when filings arrived at the court for review by hour of the day for the first six months of 2014. The peaks were between 11 AM and noon and 3 PM and 4 PM (the clerk's office closes at 4 PM). Only 21% of filings occurred after 4 PM. Several attorneys commented that they appreciated having the option to file until midnight, but did not plan on using it regularly.



FILING OF DOCUMENTS – COMPARISON OF PAPER VERSUS ELECTRONIC DELIVERY

In order to simplify discussion of the impact of the pilot project, the following table provides a side-by-side comparison of the steps from preparation of a document, through filing, to incorporation of the document and information about it in the court record and court case management system. The objectives of the table are to: 1) identify the key steps in the filing of a document; and 2) compare how each step was handled in the paper world with how it is now handled in the e-filing pilot in Orange. The table addresses the 'typical' document filed. Not all documents and circumstances are 'typical', but this provides a framework for evaluation.

Color coding is used in the table to indicate the benefits (in green) of one methodology over the other, and to indicate the disadvantages (in red) such as slower or more resource intensive processes. The benefits and disadvantages can be either to the court or to parties filing documents.

ACTIVITY	PAPER FILING	ELECTRONIC FILING
Preparation of document to be filed	Litigant or attorney prepares document and any attachments for filing using either a forms package (Judicial Council or a private vendor) or a word processor.	Unchanged.
Preparation of document for filing	If the document is prepared electronically, it must be printed out, signed (if required), copies made, tabs inserted to separate exhibits (if required), and sets of documents assembled for filing with the court and service on all parties.	If the document is prepared electronically, it may need to be converted to the form required by the court. The EFSP may take care of any conversion required. If the document is in paper form (for example, forms completed by hand or existing paper document(s) to be attached to the filing), the paper documents must be scanned to a form acceptable to the court for e-filing.
Filing of document with court	Attorney or litigant must arrange for the package of documents to be delivered to the court during the hours the court is open either by: a) Mail, using USPS; OR b) Delivering to, or having it picked up by, a private delivery service (for example, FedEx, UPS, or attorney messenger service); OR	Attorney or litigant gets on the internet, goes to home page of their chosen EFSP, and: a) Enters data about the filing; b) Uploads the document(s). Filing can be done 24/7.

	c) Delivered to the court by someone from the attorney's office or a non-party person.	
Payment of filing fee	Attorney or party must estimate amount of filing fee, if any, and include either a check or a money order for the estimated amount or a 'not to exceed' amount. If the document is taken to the court, there is also the option to use a credit card or cash.	Based on information provided by the filer about the document, the fee is determined by the e-filing system and charged to the EFSPs account. Payment is made by EFSP to court and EFSP is reimbursed by the filer according to the arrangement between filer and EFSP made when the filer 'signs up' with the EFSP.
Service on other parties by the filer	Manual delivery of documents either by process server, delivery service, or USPS.	Same, plus option of e-service by EFSP.
Confirmation of delivery of documents to delivery service	Where attorney or litigant physically delivers the document to a service or leaves for pick-up in a delivery service's 'drop box', written or electronic notice of pick-up may or may not be part of delivery service.	Electronic confirmation sent by EFSP to filer immediately upon receipt of document at the EFSP's system.
Confirmation of delivery of documents to the court	If delivered is via USPS, there is no confirmation of delivery unless proof of receipt is requested by attorney or litigant. If delivery to the court is via a paid service, there is no confirmation unless the service informs attorney or litigant by phone, email, or personal notice of delivery.	Electronic confirmation sent to EFSP by court as soon as it is received by the court's server.
Review of document and filing by the court	a) If mailed, court staff opens mail, sorts documents based on type of filing, tallies and bundles all money received for audit and tracking purposes, and delivers documents to appropriate desk for processing. Staff at desks review documents, and file if complete and proper fee is included.	As documents arrive at the court's server, they are automatically sorted into work queues based on the type of document as indicated by the filer at the time submitted to EFSP for filing. Court staff reviews the document, and either accepts or rejects.

	<p>If accepted for filing, the document is file stamped, and the conformed copies are stamped and returned to the filer by mail. Information about the document is entered into the case management system, and information about the fee paid is posted to the fee accounting system.</p> <p>If a paper file is the court's official record, staff must find the case file, pull the case file, insert the new document, and return the case file to the proper place in the filing system.</p> <p>If the court has decided to use electronic records, instead of, or in addition to, maintaining a paper file, the document is scanned, stored in the document management system, and linked to the case management system.</p> <p>If the filing is rejected, notation is made of the defect, and documents are returned to the filer by mail.</p> <p>b) <u>If the document is offered for filing at the filing counter,</u> counter staff reviews the documents and filing fee.</p> <p>If accepted, the document is file stamped, and conformed copies are given to the person at the window.</p> <p>Depending on the business practices of the court, either the counter staff or 'back office staff' enter information about the document into the case management system and fees</p>	<p>If accepted, the system electronically file stamps the document, updates the case management system and document management system, posts fees to the fee accounting system, and sends conformed copies to the filer through their EFSP.</p> <p>If the filing is rejected, the reason for rejection is typed in a message by court staff which is sent to the filer immediately through their EFSP.</p>
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	<p>are posted to the fee accounting system.</p> <p>If a paper file is the court's official record, staff must find the case file, pull the case file, insert the new document, and return the case file to the proper place in the filing system.</p> <p>If the court has decided to use electronic records, instead of, or in addition to, maintaining a paper file, the document is scanned, stored in the document management system, and linked to the case management system.</p> <p>If the filing is rejected, notation is made of defect, and documents are returned to the filer at the window.</p>	
<p>Confirmation of filing by the court</p>	<p>Confirmed when conformed copies are received by attorney or litigant by return mail or handed to person at filing window for delivery to the litigant or attorney.</p>	<p>As soon as document is accepted by the court, confirmation and conformed copies are sent electronically to the EFSP and the filer.</p>

POLICY CHOICES IN IMPLEMENTATION

A number of key policy decisions were made in the planning and implementation of mandatory e-filing in the Orange County Superior Court. The following discussion identifies the more critical policy decisions that are relevant to assessing the pilot program.

E-FILING STANDARD(S)

There are currently two standards in use for e-filing. One is the 2GEFS (Second Generation Electronic Filing Specification), and the other, newer, standard is the ECF (Electronic Court Filing) standard. When the court began e-filing in complex cases, the case management system being used for civil cases, V3 CMS, incorporated the 2GEFS standard. Consequently, the court used the 2GEFS e-filing standard for the pilot project.

USE OF E-FILING SERVICE PROVIDER (EFSP)

There are at least three possible business models for structuring the delivery of electronic documents to the court. One approach is for the court to develop the portal through which documents are filed and all the technical infrastructure, software, business practices, and training needed to accept documents electronically, and incorporate them into a case management system and a document management system. This is the approach adopted by the Federal District Courts. A second approach is to engage a single e-filing service provider (EFSP) to build the interface and portal and serve as an intermediary between the filers and the court. Several Superior Courts in California have adopted this approach for complex cases or other categories of cases. A third alternative is to have multiple EFSPs, each developing their own services to filers and interacting with the court through one portal. For the reasons outlined below, the court chose the third alternative.

In the pilot project, the role of each EFSP is to serve as the interface between the filer and the court. The EFSP is responsible for developing the web portal, software, and technical infrastructure through which a filer files a document. The EFSP's system must be compliant with the court's requirements about format and content of information delivered to the court about a document, as well as the document itself. The requirements are spelled out in a "policy file" maintained by the court (the policy file can be accessed at: <http://www.occourts.org/online-services/e-filing/policy.html>). The EFSP is also responsible for training filers how to use their system, for customer support during the filing process, and for trouble shooting problems associated with getting the filing to the court's portal. Finally, the EFSP is responsible for collecting any court filing fee.

When the e-filing pilot began, a decision was made to start with just one EFSP in order to set up the functionality. The first EFSP was selected through an RFP process. Once the e-filing process was operating smoothly, other entities were invited to become certified. A total of 14 EFSPs have been certified, including one non-profit. Each of the subsequent for-profit entities who wanted to become certified paid the court for the court staff time required to become certified.

The EFSPs are the gateway to the e-filing process and thus a critical partner to the overall customer experience. They provide the web interface, handle fees, provide customer service, and provide other value added services. There are both advantages and disadvantages to using a multiple EFSP model. The major findings of the pilot project in this regard are as follows.

Advantages of Multiple EFSPs

- EFSPs build the interface with which the lawyers will interact. Not only does this relieve the court of having to build the interface, it allows the interface to evolve at the speed and resources available to the EFSP, as opposed to the court. The implementation phase e-filing can be shortened to the extent the court and EFSP can simultaneously develop their piece of the structure, rather than the court having to develop the entire structure. The EFSPs can also fund the cost of their development out of future fees, relieving the court of funding this development.
- The EFSPs train the filers (lawyers, law office staff, and self-represented litigants) and provide customer support for the initial steps of the e-filing process. The court does not have to establish or maintain a training program for filers. All six EFSPs surveyed reported that they offer multiple e-filing training resources to their customers. Over half of the EFSPs offer training manuals and/or webinars. The majority of EFSPs are also providing live training to law firms and professional organizations. Some of the other methods of training noted in the survey are video tutorials, public workshops, dedicated phone support, MCLE courses, and self-teaching user interfaces. There did not seem to be any consensus in the survey results on which training method was most effective. However, as one EFSP noted, this may be indicative of the need to fit a variety of training resources and materials to the different needs of their customers.
- The EFSPs are the ‘first responders’ to complaints and help desk calls from filers; court staff does not have to do this.
- When the court wants to modify or improve its e-filing processes, it is much easier to promulgate changes in practices and procedures. The court need only tell the EFSPs, and does not have to communicate with thousands of filers – that is the EFSP’s role.
- The EFSPs can offer and charge for establishing services and for different or additional services that the court might not be able to afford to offer. Because there are multiple EFSPs, the pricing of these services is competitive.
- Having the option of multiple EFSPs allows filers to choose the EFSP that best meets their needs at a price point that is reasonable to the filer.
- Value added services – multiple EFSPs have the potential to offer the filers a much richer feature set than would likely be provided by the court. EFSPs, being closer to a smaller group of clients, are in touch with problems and desired features and can develop apps and other enhancements that their clients request. This relieves the court of the burden of setting up a process of identifying what services clients might want, choosing between options desired by filers, or denying enhancements as not within the court’s purview, budgeted resources, or capacity to build. An obvious example is that EFSPs specialize in a particular case or client type, providing a suite of services that may be particularly beneficial to these subgroups. To determine if this is

actually occurring, the EFSPs were asked if they specialize in any case/client type and what these specializations are. Two of the six EFSPs reported specializing in case types, with one in family law and small claims and the other in unlawful detainer and collections cases.

- EFSPs can serve niches in the market, for example, small firms, collections firms, unlawful detainer cases, etc., which the court cannot afford to do. An EFSP can develop interfaces directly linking a specialized product, such as a law firm's case management system, with the Court's portal, avoiding the need to 'download' information from the firm's system into documents that are then uploaded to the court. Another example would be building a forms completion package whose output can be electronic documents ready to be e-filed to the court.
- One of the benefits of using EFSPs, as opposed to using a single, court controlled and operated portal, was that the EFSPs could share in the responsibilities in providing these accessibility resources. The EFSP survey captured what kind of additional resources the EFSPs may be offering in this arena. Half of the reporting EFSPs said that they offered additional language resources for non-English speakers. While 3 EFSPs offered Spanish services, one also offers Vietnamese and another offers Tagalog. The language resources themselves were reported to be in the form of translated documents and/or agents fluent in the language.
- Each EFSP can offer 24/7 customer service to filers, relieving the court from having to staff this capability.
- If other courts adopt a similar business model and certify the same EFSPs, a law firm would only need to work with one EFSP and be able to file in multiple courts with different case management systems and document management systems.
- EFSPs are responsible for financial transactions related to fees. As a non-governmental agency, an EFSP can offer more options regarding payment methods and plans than a government entity could offer, for example, billing a firm at the end of the month for all filings that month.
- EFSPs offer redundancy as against equipment and communication failures. Multiple EFSPs means that if one EFSP goes down, filers can file through another EFSP. Similarly, if the court's system goes down, the EFSPs can still accept filings and send them to the court when it is operating again.

Disadvantages of Multiple EFSPs

- Each EFSP must be certified by the court to be compliant with the court's business practices and policy file. Certification involves significant IT and operations staff resources, and the staff and work associated with certifying an EFSP are very different from staff and work associated with the traditional paper document processes.
- The court must establish processes for coordinating and managing multiple EFSPs, including:
 - (a) Identifying and certifying EFSPs;
 - (b) Maintaining the policy file, coordinating changes with EFSPs, and validating that each EFSP has made appropriate changes to remain compliant with the court's system and policy file;
 - (c) Developing policies on EFSP vendor contracts and amendments to the contract;

- (d) Regularly meeting with EFSPs to resolve issues, hear about needed changes, and promulgate changes;
 - (e) Providing information to EFSPs about the court's performance – response time, rejection rate, reasons for rejection, etc., that can be shared with filers.
- There is a significant amount of activity for the court's accounting staff to work with multiple EFSPs to reconcile fee payments on a daily basis. It is more complicated to reconcile multiple transactions from each EFSP than individual transactions from filers.
 - There can be conflicts about whether an outage or inability to e-file is the fault of the EFSP or the court.

To gauge the EFSP perspective on the e-filing experience, the vendors were surveyed on issues regarding customer needs and partnering with the courts. Six of the 7 EFSPs that were providing e-filing services to the public at the time the surveys were sent out completed the surveys. The EFSP survey responses indicated that they provided some important benefits to the e-filing process. They appeared to quickly resolve user problems (that is, within 24 hours), provided language assistance, provided a wide variety of training resources, and provided additional specialized services to specific market segments. Notably, this was with little added burden to the court's resources, as all of this was EFSP driven. The EFSPs themselves seemed satisfied overall with the process integrating with the court's e-filing environment.

The e-filing environment in the Court is highly standardized and all EFSPs must go through a rigorous certification process to ensure that their interface was fully compatible with the court's systems. As the partnership with EFSPs were essential to e-filing, the EFSPs were asked about their own experiences with the certification process and if it could be improved upon in any way. Half of the EFSPs reported being satisfied with the process and the other half being very satisfied. There was only one comment and that was that the certification requirements changed midstream. This was not especially surprising, as this was the first batch of vendors to join the e-filing transition and the early requirements were revised as the pilot project evolved.

REVIEW OF DOCUMENT BEFORE FILING

In the paper world, all documents are reviewed by a clerk before being file stamped. When shifting to electronic filing, there are two options regarding the process for reviewing documents offered for filing. One option is to have the e-filing system automatically file stamp documents when they are received by the court and a clerk reviews the documents later. The other option is for a clerk to review each document before it is filed. The Federal District Court e-filing system chose the first option. The court chose the second. Since there are only a few bases to reject a filing, and experience indicates very few documents are rejected, the difference basically comes down to when the filer learns of a rejection. The court's approach requires the filer to wait until the document is reviewed before learning whether it is rejected. Generally this occurs within 24 hours of filing, but for less critical documents, or those requiring a review by a judge, it may take longer. For the direct filing option, the filer has an initial indication of filing being accepted, but may receive a rejection one or two court days later. There is no reason for the rate of rejection to be any different based on the approach, so there is no clear advantage to either approach.

Although many documents offered for filing require review before filing, others do not. These documents do not trigger activity by the court staff (for example, the need to calendar a requested hearing), and generally do not involve filing fees. The types of filings that are amenable to 'no review needed' filing include case management statements, some types of notices (such as notice of entry of judgment or dismissal), proofs of service, mandatory settlement conference statements, declarations, opposition, replies, memorandum of points and authorities, etc. If sufficient detail about the nature of a filing is included in the e-filing package, the e-filing system can be programmed to file stamp these documents, add to the docket, and file in the document management system without clerk review, thereby saving additional clerk's office resources.

DOCUMENT REVIEW PROCESS

In the paper world, documents arrive at the courthouse either by delivery at the filing window or delivery by the Post Office or other delivery service. In order to expedite getting documents to courtrooms for a pending hearing, procedures have to be set up to identify time critical documents and route them as needed. For documents delivered by the Post Office or a delivery service, clerk staff must look at every document and assess the need for expedited or special handling. Once sorted, the documents are delivered to clerks for processing. At the filing window, the clerks look at documents to identify the need for expedited or special handling.

The pilot project decided to automate this process, to the extent possible, to skip the step of someone screening every document before processing could begin. The business practice chosen was to have the filer identify the documents being filed in a way that allowed the e-filing system to automatically queue the documents for processing based on the urgency or special handling needs of that type of document. Because it is automated, it was possible to develop very fine grained sorting of documents for processing. However, the weak point in the process was that it relied on the filer to properly identify a document when filing it. If the filer misidentified a document, it could adversely affect the processing priority. For example, if a filer identified a document as a "Motion for Discovery", with a hearing date 60 days away, instead of identifying it as "Opposition to Discovery", where the hearing might only be a few days away, the document might not be processed in time for adequate review by the court prior to the hearing. As problems with this became apparent, the EFSPs and filers were informed of the need to be as specific as possible in identifying the document when filing (a "pick list" is used). In addition, there is a box in the e-filing process wherein a filer can indicate the need for special or urgent processing. Although the problem still occurs, the frequency has diminished substantially.

The nature of the review process and the choice to review documents before filing highlights the significance of the review time. In the paper world, someone who filed a document at the counter knew immediately if the document was accepted, or, if not, what the reason for rejection was. If the document was mailed or delivered by a service, there was no particular expectation about how soon the document would be reviewed. However, with e-filing, the instantaneous filing of the document created an expectation of instantaneous review. Since the arrival of documents is not evenly spread across the day, and the review time varies with the nature of the document (does it have a fee? does it relate to a hearing in the next week?, etc.), it would be fiscally inefficient to always have sufficient staff at any point

in time to provide instant review no matter how many cases were e-filed in a given time period. Moreover, instant review would be a far higher service level than was provided in the paper world, as a document mailed might take a few days to arrive at the courthouse (especially if a weekend or court holiday occurred after mailing) and not necessarily be processed the day it arrived. As noted below, filers are generally satisfied with review times. For the first six months of 2014, the Court was able to review 65% of documents within 24 hours of receipt of the filing. However, the severe funding reductions experienced by the court have made it difficult to provide faster review times, even though the review times were already faster than existed in the paper world.

One of the significant advantages of the review process adopted and the relatively quick review cycle is that the court does not require filers to provide courtesy copies of documents to judges on a routine basis. Courtesy copies are required for in limine motions and other activity immediately preceding trial (see Local Rule 317) and, at the request of some judges, for very long documents or attachments, particularly in complex cases.

IMPACT AND COST-EFFECTIVENESS FOR THE COURT

DIRECT COST SAVINGS TO THE COURT

The pilot project contemplated mandatory filing of both limited and unlimited civil cases. In order to project the potential impact of e-filing, staffing studies were made of the typical amount of time required to accept, review, data enter, scan, and accept fees with paper documents. The following table provides the average time spent for five categories of activities associated with the filing of documents. Not every document required each activity, for example, if there were no fee associated with a document, no time would be spent cashiering.

ESTIMATED TIME SAVINGS FROM E-FILING

Activity	Average Savings in minutes, per document	
	Unlimited Civil	Limited Civil
Data entry into case management system	2	2
Imaging Document	0.5	0.5
Adding Parties*	1.5	0.5
Cashiering*	0.5	0.5
Checking Hearing Date*	0.5	0.5

* Not needed in every case.

Multiplying the savings per activity in the above table by the estimated number of documents requiring each activity was used to generate an estimate of the staff savings from e-filing. Based on the number of documents then currently being filed and the typical distribution of activities for these documents, the estimates of staff savings ranged from 20 staff at 75% e-filing to 26 staff at 100% e-filing. Since 100% compliance was not possible (for example, because of exemptions from the e-filing requirement) the higher number represented a high estimate of savings. The actual savings were at least as great as estimated. Because new filing review was spread across several units and courthouses, it is not possible to identify the savings attributable only to e-filing. However, the overall staffing level for processing civil cases clearly shows substantial savings. The following chart compares the number of staff for processing civil work in 2011, before the start of mandatory e-filing, but after e-filing was required in some case types, to current staffing levels in 2014. "Back-office" work included processing mail delivered filings as well as other activities.

CHANGE IN STAFFING LEVELS FOR CIVIL CASE PROCESSING

ACTIVITY	2011	2014	CHANGE	PERCENTAGE CHANGE
Counter	33	8	-25	-76%
e-filing	5	33.5	+28.5	+570%
Back-office	63.5	23	-35.5	-56%
TOTAL	103.5	64.5	-39	-38%

The Estimated Time Savings table above only captured activities directly associated with the review, acceptance, and scanning of a document. There were savings in other areas as well. When sacks of mail were delivered by the Post Office, the mail needed to be opened, documents needed to be sorted according to the priority of processing (for example, papers associated with pending motions were processed ahead of others), checks needed to be accounted for, and documents needed to be physically moved to desks where they would be processed. When there were still paper files for cases, there was also the need to locate the file, insert the newly filed documents, and reshelve the file. If the document was going to be scanned, there was a need to prep the document for scanning, including adding bookmarks, and verifying the scanned images. All of these activities disappeared when e-filing was implemented.

A few other changes were also implemented during this same time period, for example, improved work flows for the review process and allowing parties to select motion dates on the internet rather than over the phone, but the great bulk of the reduction in staff was attributable to e-filing.

OTHER BENEFITS TO THE OPERATION OF THE CLERK OF COURT OPERATIONS

In addition to direct cost savings, there are other significant benefits in the document filing function of the Clerk of Court operations realized from e-filing. Benefits include improved quality assurance in the filing process and greater management flexibility in staffing filing activities. In part, the benefits arise because electronic documents can be viewed from any location, whereas with paper documents reviewing staff must be located where the physical documents are located, or staff need to move documents to where reviewing staff are located. Additional benefits arise because, being electronic, it is possible to monitor the volume, flow, timing, and accuracy of actions taken regarding documents with a detail that is not feasible with paper documents. More specifically, operational benefits include:

- Increased consistency of filing review practices across all courthouses and increased procedural fairness, since fewer people are needed for review and it is easier to monitor review activities.
- Review activities can be centralized, allowing better oversight and reduced need for supervision.
- Review activities can be specialized. For example, a court may be required in a paper world to have a clerk in every court location where filings are accepted that knows the nuances of unlawful detainer (UD) filings. With e-filing, a single clerk can handle all UD filings for the entire county. Such specialization will likely reduce overall turnaround time and improve accuracy and consistency of filing review.
- Remote processing of documents (from any location) is possible, allowing for greater flexibility in managing staff and workload.
- Verification of basic case information by the e-filing system prior to a filing being accepted eliminates documents being misfiled because of errors in case information provided by the filer.

- The case management system allows for a detailed oversight of the document review processes, including audits of staff work, thereby allowing management to more easily identify and work with staff to correct any quality assurance concerns.
- Document rejections have been reduced, thereby avoiding resubmission of filings.

BENEFITS TO OTHER ASPECTS OF COURT OPERATIONS

E-filing has impacts on other aspects of court operations. Since there is no longer a need for anyone to bring paper documents to the courthouse, there are fewer people physically entering the courthouse. Fewer people entering the court house means fewer resources are needed to provide security screening, and lines are shorter at screening entry points. It also means less wear and tear on courthouse facilities, especially older courthouses. No more paper filing also significantly reduces postal and other messenger service deliveries to the courthouse. Fewer trips to the courthouse also mean fewer people driving to the courthouse, reducing traffic and parking congestion – a benefit to community as well as the court.

OTHER IMPACTS ON COURT OPERATIONS

The change to electronic filings has other impacts which have beneficial aspects as well as changes that require some adjustments. For example, the nature of the review process for documents changed. Before, clerks who reviewed documents offered for filing at the window needed to have people skills, as well as knowledge of filing laws and policies and cashiering. With electronic filing, there is little human contact with filers, and much more sitting in front of a computer screen reviewing documents. This change in work practices shifts the skill set and training needed for document reviewers. Some staff who preferred interacting with people, who were uncomfortable working at a computer, or were uncomfortable with an all electronic record, were moved to other positions involving more contact with people or less computer time.

Another benefit is that e-filing allows clerk's office staff to work an alternative schedule. Prior to e-filing, clerk's office staff typically worked from 8:00 a.m. to 5:00 p.m. Offering alternative shifts increased morale, as the flexibility allowed staff to avoid rush hour traffic, better utilize public transportation, reduce child care cost, and increase availability to take care of elderly relatives and/or continue their education. The variety of shifts also provides better support for the judges, as staff come in at 6:00 a.m. and are able to process urgent last minute filings, for example, filings received after 5 p.m. the previous day.

Reduction in public contact at the counter also allows operations to increase joint team meetings, releasing staff for classes that enhance career development, and hold group training sessions, all of which contribute to increased procedural fairness and accuracy.

EXPERIENCES OF REPRESENTED PARTIES

The primary source for information about the e-filing experiences in cases in which the party was represented by an attorney was an online survey. The survey was completed by an attorney in 41% of those returned. The remainder of the surveys were completed by a legal assistant or paralegal. Respondents were asked about their e-filing practices since January 1, 2013, when the pilot project began. Specifically, they were asked about the frequency of e-filing. About 38% of the respondents had filed 10 or fewer times at the time they completed the survey. Almost 62% had e-filed more than 10 times, with 21% had e-filed more than 50 times.

As mentioned in the introduction of this report, the court had e-filing capability for a number of years prior to mandating it in all civil cases, thus many attorneys were already accustomed to e-filing. In fact, during 2012, the year prior to mandated e-filing, roughly one-third of new unlimited civil cases were initiated via e-filing, excluding complex civil cases where e-filing was already mandatory. By November 2012, over half of all documents filed in unlimited civil cases were being e-filed.

OVERALL EXPERIENCE

To capture a single overall measure of the e-filing experience, attorneys were asked how their actual experiences with the e-filing process matched up with their expectations. The results were largely positive with almost 60% of the respondents reporting that e-filing either met or exceeded expectations. Another 26% indicated the experience was about the same as expected. The remaining said the experience was worse (14%) or much worse (under 4%) than expected.

GENERAL BENEFITS

One survey question asked: *“From your perspective, which of the following items do you see as benefits of e-filing?”* Multiple responses were allowed as the question asked to select all that applied. The responses are indicated in the following table, ranked from greatest to least beneficial. Represented parties found e-filing to be more convenient on a number of dimensions. Almost three-quarters found e-filing more convenient and over half found it to take less time. Two-thirds found the ability to file after-hours to be a benefit. Note that it cannot be inferred from these percentages the level of dissatisfaction, discussed below. For example, 74% found e-filing to be more convenient generally. The remaining 25% found that e-filing was either just convenient, less convenient, or had no opinion.

BENEFITS OF E-FILING FOR REPRESENTED PARTIES

<u>Benefits of e-filing</u>	<u>Response Percent</u>
e-filing is more convenient	74%
e-filing allows late night filing	66%
e-filing is less time-consuming	53%
e-filed documents are received more quickly	53%
e-filed documents are processed more quickly	44%

e-filed documents are available online sooner	37%
e-filing is less expensive	34%
e-filed documents are rejected less frequently	14%

Number of responses: 975

COST OF E-FILING

Comparing the cost of e-filing with the cost of physically delivering a document to the courthouse for filing is not as simple as it seems. Partly it depends on the means of physical delivery. If a document was mailed to the court, someone’s time was required to print out the documents and make copies, assemble the mailing, determine and include applicable filing fees, attach proper postage, and put it in the mail. To physically file a document at the courthouse, someone (either the lawyer, a law firm staff person, or the delivery service) has to drive or use public transit to get to the courthouse during hours it was open, go through security screening, wait in line at the filing window, and, possibly, pay for parking when finished. This consumes a finite amount of someone’s time and involves actual costs, for example, parking and the cost of gas. For comparison, the added costs for e-filing are the time required to enter data, to upload the document, and the EFSP fee.

As the table above indicates, only about 34% of respondents indicated the cost of e-filing was lower. However, another survey question asked: *“Is the vendor fee for e-filing more or less than what you would have spent taking the documents to the courthouse in person? (e.g., travel cost, parking fees, time from work, etc.)”* In response to the more specific question, 55% of the respondents said that e-filing was somewhat less or much less expensive. An additional 12% of respondents said that e-filing cost was about the same as the cost of paper filing. Approximately 27% answered it was more expensive and 7% were not sure of the comparative cost.

METHOD OF PAYMENT OF FILING FEES

Several forms of payment were accepted to pay filing fees, from cash to credit card to electronic exchange of funds (ACH). Some EFSPs ‘fronted’ the fees and billed the party and some represented parties also had fee waivers. When setting up an account with an EFSP, a filer indicates which form of payment they will use. The survey indicates that the majority of represented parties, 78%, used a credit card to pay fees for at least one filing. The next most common form of payment was payment by the EFSP, who then billed the party (20%). The balance was by ACH (6%), cash (1%), and fee waivers (4%).

TIME REQUIRED TO SUBMIT AN E-FILING

Another impact was the amount of time required to complete and submit a document. This was of special interest since filers must now enter data about the case and document before e-filing, whereas there was no data entry with paper filing. Despite the extra work, nearly 80% of respondents reported e-filing to be at least as fast as paper filing, with 59% stating that e-filing was less time consuming, and another 18% indicating e-filing takes about the same amount of time. Only 20% indicated e-filing was more time-consuming than paper filing.

Some respondents complained about the new burden of data entry required for e-filing. The complaints were about the amount of time required, a comment that they were doing the work the clerk had previously done, or that it was sometimes difficult to find the document category from the pick list. The data entry time concerns have been partially addressed by pre-populating data based on the attorney and case number. While selecting the correct document type can take time, the resulting benefit was that the code was used to queue arriving documents, allowing Court staff to more promptly review documents with deadlines or other urgency, thereby avoiding the need for courtesy copies.

SPEED OF CONFIRMATION OF FILING

One of the survey questions asked how satisfied the respondent was with the speed at which an e-filing was accepted, measured from submission of the document to confirmation of filing. Over 68% of the respondents were satisfied or very satisfied. Another 17% were neutral. Less than 15% indicated they were dissatisfied or very dissatisfied. Generally, comments about dissatisfaction with speed of confirmation were associated with concerns about filings near the statute of limitations or a deadline, or apparent inconsistencies in how fast confirmation of filing was received.

REJECTION OF DOCUMENTS

As one of the concerns expressed about e-filing was rejected documents, there were specific questions for represented parties about this. Difficulties using the new e-filing portal could result in an increase in rejected filings. The survey included items asking if the respondent had filings rejected since mandatory e-filing began, how many filings were rejected, and the level of satisfaction with the reasons provided for rejections. An additional question asked how the rate of e-filing rejections compares to the rate with paper filings.

It was not unusual for filings to be rejected. Approximately 56% of the respondents indicated they had at least one filing rejected since the start of mandatory e-filing. When asked if they had a paper filing rejected prior to January 1st, a nearly identical percentage, 57%, indicated they had at least one paper filing rejected. Since the time frame for the e-filing survey was much shorter (between January 1, 2013 and the close of the survey on July 18th, 2013) than the experience with paper filing, it's possible that the rates of rejection were not strictly comparable. On the other hand, it is likely that there will be fewer rejections with e-filing as users become more familiar with the procedures, so the long term rejections rate could be lower.

A separate question asked litigants to estimate which filing method resulted in more rejections. Two-thirds indicated there was no difference in the frequency of rejections between e-filing and paper filing. While 17% responded that e-filing had more rejections, 16% responded that e-filing had fewer rejections. Based on these survey responses, it appears that when filers become accustomed to the electronic environment, they are able to complete and submit their documents completely and accurately without any increase in rejections.

REASONS FOR REJECTION

Previously, when a paper filing was rejected by a clerk at the counter, the filer would often have the benefit of an immediate explanation for the rejection and would have the opportunity for further clarification. With e-filing and with paper filings mailed or delivered by someone other than the law firms, this person-to-person interaction was lost and the reasons for rejection were returned in writing. An incomplete or unclear explanation can lead to confusion or further rejections.

Respondents were asked to rate their level of satisfaction with the reasons provided by the court for rejected documents, with options ranging from “Very satisfied” to “Very dissatisfied”. The majority of attorneys (57%) reported being “Satisfied” or “Very satisfied” with the reasons provided for rejected documents. Only 14% of attorneys were “Dissatisfied” and 7% reported being “Very dissatisfied”. The balance was neither satisfied nor dissatisfied.

In response to open-ended questions litigants indicated that, in some instances, the reasons for rejection were not always comprehensive, that is, covering all errors in the document. When litigants corrected the document based on the reason provided by the court, the documents were sometimes rejected again for a different reason. Based on these survey results, court clerks have been instructed to review the entire document and identify all items that will result in a rejection.

One possible basis for rejection in e-filing, but not in the paper world, is the size of the data file. While the e-filing limit (35 megabytes per document or 60 megabytes per transaction) far exceeds the size of typical civil documents, some very large documents, such as those occasionally filed in complex civil or those that were scanned, as opposed to converted word processor files, can exceed the limit. The size limit is estimated to allow a 2,300 page document converted from Word to PDF. However, a *scanned* document exceeds the limit at roughly 200 pages. Survey results indicate that file size limit was a relatively infrequent issue with represented party filers; just 10% indicating they encountered a problem submitting oversized documents. While oversized documents were uncommon, attorneys indicated that it was often difficult to resolve. For the few filers who had documents rejected because of size, 26% indicated that it was “Difficult” or “Very difficult” to submit oversized documents, but 13% stated it was easy or very easy to resolve. Reported resolutions to file size limitations include breaking the file into several smaller documents, using software to compress the file, requesting the EFSP to submit the filing, removing exhibits, and arranging for an attorney service to hand deliver the document.

EXPERIENCES OF SELF-REPRESENTED LITIGANTS AND PARTIES WITH FEE WAIVERS

As their experiences and survey responses were different, each category of party is discussed separately below.

SELF-REPRESENTED LITIGANTS (SRL)

The court conducted a survey of SRLs who had e-filed documents approximately three months after e-filing became mandatory. If the SRL had provided an email address as part of the e-filing process, an email was sent with a link to an electronic version of the survey. A paper version (in English, Spanish, and Vietnamese) was also made available at the court’s Self-Help Centers where many self-represented litigants obtained assistance. Invitations to complete the survey were sent electronically to 2,100 SRLs. A total of 303 SRLs completed the survey.

When looking at the survey responses as a whole, e-filing does not appear to present difficulties to SRLs. Most have access to a computer with internet access; only 5% had difficulty finding a computer. The costs associated with e-filing also do not appear to reduce access to justice, as the majority believed the e-filing was actually less expensive than filing by paper at the courthouse. While a relatively small group of SRLs indicated that costs discouraged them from filing, it was not certain that these concerns were necessarily associated to e-filing costs specifically, that is, vendor fees, or costs related to filing fees in general. Moreover, two-thirds of SRLs were aware of the fee waiver option, but only a small percentage (5%) actually applied, despite it being considered “Not difficult” to do so.

Benefits of E-filing Generally

One survey question asked: “From your perspective, which of the following items do you see as benefits of e-filing?” Multiple responses were allowed as the question asked to select all that apply. The responses are indicated in the following table, ranked from greatest to least beneficial. Clearly, SRLs found e-filing to be more convenient on a number of dimensions. On other dimensions, which were more outside their control or knowledge, they did not report as strong a benefit, for example, how fast documents were processed or copies were received by them. Note that it cannot be inferred from these percentages the level of dissatisfaction. For example, 75% of SRLs found e-filing to be more convenient. The remaining 25% found that e-filing was either just convenient, less convenient, or had no opinion.

BENEFITS OF E-FILING FOR SELF-REPRESENTED PARTIES

<u>Benefits of e-filing</u>	<u>Response Percent</u>
e-filing is more convenient	75%
e-filing is less time-consuming	51%
e-filing allows late night filing	50%
e-filed documents are received more quickly	40%

e-filed documents are processed more quickly	34%
e-filed documents are available online sooner	25%
e-filing is less expensive	19%
e-filed documents are rejected less frequently	8%

Number of responses: 288

The survey also included an open-ended question that allowed respondents an opportunity to describe any issues they may have had with their e-filing experience thus far. The open-ended responses were categorized by type of complaint. As some comments discussed more than one issue, some comments were assigned into multiple categories. About 12% of survey respondents gave a response to the open-ended question about difficulties. The three highest frequency complaints were: 1) process was too complicated, 2) service was too expensive, and 3) document submission took too long. None of the open-ended responses covered new issues not already brought up in other survey questions.

Cost of E-filing

Comparing the cost of e-filing with the cost of physically delivering a document to the courthouse for filing is not as simple as it seems. Partly it depends on the means of physical delivery. If a document was mailed to the court, someone’s time was required to print out the documents and make copies, assemble the mailing, determine and include applicable filing fees, attach proper postage, and put it in the mail. To physically file a document at the courthouse, someone had to drive or use public transit to get to the courthouse when it was open, go through security screening, wait in line at the filing window, and, possibly, pay for parking when finished. This consumed a finite amount of someone’s time, possibly including taking time off from work, and actual costs, for example, the cost of gas and parking. By comparison, the added costs for e-filing were the time required to enter data and upload the document and the EFSP fee.

As the table above indicated, 19% of SRLs indicated the lower cost of e-filing was a benefit. Another survey question asked more specifically: *“Is the vendor fee for e-filing more or less than what you would have spent taking the documents to the courthouse in person? (e.g., travel cost, parking fees, time from work, etc.)”* The table below indicates the responses. Of those who had an opinion, a greater proportion thought that e-filing was less expensive than physical delivery. However, a third were not sure of the comparative cost. Excluding the “Not sure” responses, over half (52%) of the responses indicated e-filing was less expensive.

COMPARATIVE COST OF FILING METHODS

<u>Cost of e-filing compared to cost of physical delivery</u>	<u>Response Percent</u>
More	24%
Less	34%
Not sure	34%
No difference	8%

Number of responses: 284

Method of Payment of filing fees

Several forms of payment were accepted to pay any fees, from cash to credit card to electronic exchange of funds (ACH). In addition, some SRLs had fee waivers. When setting up an account with an EFSP, a filer indicated which form of payment they would use. The survey indicated that the vast majority of SRLs, over 90%, used a credit card to pay fees for at least one filing. The next most common form of payment was ACH, at 5%, and about 1% paid in cash. Nine percent of SRLs had fee waivers.

Speed of Confirmation of Filing

One of the survey questions asked how satisfied the SRL filer was with the speed at which an e-filing was accepted, measured from submission of the document to confirmation of filing. Over 68% of the respondents were satisfied or very satisfied and. Another 11% were neutral. Less than 20% indicated they were dissatisfied or very dissatisfied.

Difficulties Using E-filing

During the first few months of mandatory e-filing, users reported a number of problems with e-filing. In order to capture the extent of these problems, one of the survey questions listed the problems and asked whether the respondent had experienced any of them. Almost half of the respondents had not experienced any of the problems listed. The following table lists the problems reported, and the frequency of SRLs experiencing them. The most common problem reported was rejection of a filing. Because paper documents offered for filing were also rejected, it was difficult to determine whether this percentage was higher or lower than would be the case with paper documents.

The next most common problem reported related to receiving confirmation of the filing. Since the process established was to have confirmations go from the court back to the EFSP that would, in turn, notify the filer, this seems to be an issue of communication and establishing expectations. Filers need to know their documents were filed, suggesting more effort needs to be devoted to make sure they know where to look for confirmation.

PROBLEMS EXPERIENCED WITH E-FILING

<u>Nature of Problem</u>	<u>Response Percent</u>
I've experienced none of the problems listed	50%
Filings were rejected	27%
Receiving a confirmation that my filing was received	17%
Problems with payment process to complete your transaction	6%
Finding a suitable e-filing service provider	5%
Difficulty accessing a computer with internet	4%
Submitting documents by deadlines	4%
Submitting a fee waiver	3%
Other (please explain)	22%

Number of responses: 282

Dissatisfaction with E-filing

A critical problem with e-filing would be if it further discouraged litigants from filing. SRLs were often already discouraged from filing by the variety of forms and procedures they were unfamiliar with, lack of knowledge about the law, and uncertainty about where to obtain help. To measure the potential extent of this problem, SRLs were asked if the requirement to e-file had ever discouraged them from e-filing. Approximately 24% indicated that they had been discouraged, even though they had all e-filed at least once.

If they indicated they had been discouraged, they were asked the reason. The following table indicates the share of SRLs citing each of the multiple choice reasons proposed. Note that they were able to check more than one reason. Percentages are given both for the proportion of those indicating they were discouraged, and the proportion of all respondents to the question of whether they were ever discouraged. Thus, almost 20% of discouraged respondents indicated problems with accessing a computer with internet connection, but these respondents represented less than 5% of all respondents (consistent with the figure in the preceding table). Many of the issues cited can be dealt with by the court providing more information or simplifying business practices.

REASONS FOR BEING DISCOURAGED FROM E-FILING

<u>Reason For Being Discouraged</u>	<u>Percent of Those Discouraged</u>	<u>Percent of All Respondents</u>
Unclear or confusing process	63%	16%
Cost	36%	9%
Problems with payment process to complete transaction	23%	6%
Difficulty accessing a computer with internet	19%	5%
Selecting an e-filing service provider	18%	5%
Other	49%	13%

Number of discouraged respondents: 73; total number of all respondents: 285

Difficulty Accessing an Internet-Connected Computer

E-filing requires access to and the ability to use a computer with an internet connection to complete the e-filing process. Responses to questions regarding access to computers suggested that nearly all SRLs have access to a computer with internet, as only a small percentage indicated computer access problems. This finding was further supported by two additional survey questions. One item specifically asked how difficult it was to find a computer with internet access. In answering this question more than three-quarters responded that finding an internet-connected computer was “Very easy” or that they “Already have a computer with access”. Only 14 respondents, 5%, indicated that locating a computer was “Difficult” or “Very Difficult”. These respondents indicated that they eventually filed from a family or friend’s home (4 respondents), a Self-Help Center (3 respondents), a business center that charges for access (3 respondents), a free public location (e.g., library, community center) (2 respondents), or some other location (2 respondents).

Difficulty Choosing an E-filing Provider

One of the reasons the multiple EFSP business model was chosen was to provide options to filers and to use market competition to keep vendor fees reasonable. However, there was the possibility that too many choices may confuse customers, for example, when trying to compare the benefits of one EFSP versus another. Nearly 38% of SRLs reported that they don't know which EFSP service they used when e-filing, as opposed to 7% for the attorneys. Yet, when asked directly to select any issues that impeded their e-filing experience, only 5% of the SRL respondents reported 'finding a suitable e-filing vendor' as one of the issues. This may suggest that the EFSPs, and their particular value added services, were not especially memorable or important for SRLs, outside of the basic function of being able to file with the court.

PARTIES WITH FEE WAIVERS AND HARDSHIP EXEMPTIONS

Fee Waivers

When a filer has obtained a fee waiver from the court, the court had requested and the EFSPs had agreed to waive all fees related to the filing, including the EFSP's fees, whether the fee is an e-filing fee, a convenience fee based on the method of payment, or any other fee.

Litigants can apply for a fee waiver of e-filing vendor fees as well as court filing fees. Survey results showed that two-thirds of SRL respondents were aware that they could apply for a fee waiver. While a majority of litigants were aware of the option, only 16% of respondents actually applied for a fee waiver, suggesting that fees were not an obstacle for the vast majority of SRLs. Further, the application process for a fee waiver did not appear to present problems for a majority of applicants. Based on the survey results, only 16% of applicants described the application process as "Difficult" or "Very difficult", while 49% indicated that it was "Easy" or "Very easy". If "neutral" responses were included as not having a particular issue with the waiver application process, then 84% felt that applying for a fee waiver was not difficult. Of those who applied for a waiver, 81% did receive the waiver.

Hardship Exemptions

Amendments to the California Rules of Court (CRC) in response to the AB2073 amendments to CCP 1010.6 provided that self-represented parties are exempt from e-filing requirements (CRC, Rule 2.253(b)(2)). It also required e-filing courts to adopt a procedure whereby parties can request to be excused from e-filing requirements upon a showing of "undue hardship or significant prejudice" (CRC, Rule 2.253(b)(4)). These amendments became effective on July 1, 2013, six months after the court began mandatory e-filing and three months after the survey of users. Prior to the amendments to the Rules of Court, the court's local rules already provided for a request for exemption based on hardship.

Based on survey responses, knowledge of hardship exemptions by SRLs was not as extensive as knowledge of fee waivers, but a significant portion of respondents, 41% indicated that they were aware of the option. As discussed above, the survey responses indicated that mandatory e-filing does not present much of a hardship. Overall, very few, 5%, of the survey respondents actually applied for a

hardship exemption. When looking only at those respondents who indicated that they were aware of the hardship exemption, only 10% responded that they had applied for a waiver. The waivers were granted to over 60% of those who applied. The reason why a waiver was not granted is not known, but it may have been due to the application being incomplete or filled out incorrectly, as well as the court ruling that the applicant was not eligible. In any event, hardship exemptions were not present in very many cases and, more likely than not, were granted when requested.

Instructions for Review and Action by Circulating Order

Voting members

- Please indicate your **vote, sign, and return by 5pm, September 29, 2014**, if possible by one of these methods:
 1. Fax the signature pages to the attention of Judicial Council Support, Leadership Services Division at 415-865-4391
 2. Reply to the e-mail message with “I approve,” “I disapprove,” or “I abstain.”
- If you are unable to reply by September 29, 2014, please do so as soon as possible thereafter.
- Additionally, **return the original** signature page to the Judicial Council Support, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, California, 94102-3688. **Please keep a copy for your records.**

Advisory members

The circulating order is being faxed to you for your information only. There is no need to sign or return any documents.

**CIRCULATING ORDER
Judicial Council of California
Voting and Signature Pages**

Effective immediately, the Judicial Council approves for submission to the Legislation the *Report on the Superior Court of Orange County's Mandatory E-Filing Pilot Project* and directs Judicial Council staff to transmit the report to the Legislature.

My vote is as follows:

Approve Disapprove Abstain

Tani G. Cantil-Sakauye, Chair

Marla O. Anderson

/s/
Judith Ashmann-Gerst

/s/
Brian John Back

/s/
Marvin R. Baxter

Richard Bloom

Mark G. Bonino

/s/
James R. Brandlin

/s/
David De Alba

Emilie H. Elias

Noreen Evans

/s/
James P. Fox

/s/
Harry E. Hull, Jr.

/s/
Donna D'Angelo Melby

My vote is as follows:

Approve Disapprove Abstain

/s/
Douglas P. Miller

Gary Nadler

/s/
Debra Elaine Pole

/s/
David Rosenberg

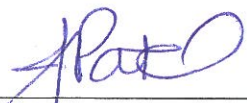
David M. Rubin

/s/
Dean T. Stout

Martin J. Tangeman

Date: September 30, 2014

Attest:



Chief of Staff