



PAPERLESS COURTS

Are you ready for the e-filing mandate?

BY DAVID SLAYTON AND MEGAN LAVOIE

The Lone Star State's first adventure with electronically filing court documents took place in Jefferson County in 1995 on the precipice of the Internet age.¹ The district clerk at the time was not aiming to start a revolution but thought e-filing would be the best way to tackle the overwhelming amount of files in multi-party lawsuits. Jefferson County put the necessary infrastructure and rules in place, and with one click, attorneys could file cases digitally. At the time, it was a means to end a burdensome paper trail. But an idea was born and the Texas judicial system would never be the same.

Texas Supreme Court mandates e-filing

Building on Jefferson County's success, the Texas Supreme Court began the process of implementing e-filing statewide in 2003. It launched a pilot program that grew to cover 51 counties—more than 80 percent of the state's population—and e-filing transactions swelled to roughly 45,000 a month. Still, without a mandatory e-filing requirement, the system varied county-by-county and the process lacked efficiency.

A different Jefferson, then-Texas Supreme Court Chief Justice Wallace B. Jefferson, led the efforts to fully

embrace the digital movement and create a centralized and uniform system. He famously said, "The era of big paper is over," and, under his leadership, in December 2012, the movement to do away with paper began in earnest. That month, the Texas Supreme Court mandated statewide electronic filing by attorneys in civil cases (including family and probate) for the Supreme Court, 14 appellate courts, district courts, statutory county courts, constitutional county courts, and statutory probate courts.² The Court of Criminal Appeals followed with a mandate in criminal appellate filings.³

The mandate is effective Jan. 1, 2014, for all case types in the Supreme Court, Court of Criminal Appeals, and appellate courts, as well as in all non-juvenile, non-criminal filings in the courts in the state's 10 most populous counties: Bexar, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Hidalgo, Tarrant, and Travis. Every six months, more counties will make the change from paper to digital until all courts throughout the state are fully e-filing civil cases by 2016.

Ready or not, e-filing is here, and it is important that Texas attorneys are prepared to make this transition to take the justice system into the 21st century.

How do I e-file?

The state's new Web portal for e-filing is known as eFileTexas, available at efiletexas.gov. From there you will be directed to choose an Electronic Filing Service Provider. In the simplest terms, an EFSP is like an electronic courier meant to deliver your filing to the court. To start e-filing, attorneys *must* choose an EFSP. The service providers listed on efiletexas.gov have met the certification requirements outlined by the Texas Office of Court Administration, meaning that the EFSPs will work with the statewide system. Each EFSP offers varying services. From the fee structure, hours of support, and back-end firm billing integration to other value-added services, there are plenty of options for every Texas filer.

After you have selected an EFSP, all you need is Internet access, your EFSP login information, case information, and the documents to be filed. Gone are the days of rushing to the courthouse to meet a 5 o'clock deadline or scheduling a vacation around the date when a response to a motion for summary judgment is due. You can e-file 24 hours a day, from anywhere in the world where there is Internet access.

Will the system be the same in every court?

While the basic system will be the same in every court in the state, courts and clerks are given some latitude to configure the system to best meet local needs. Therefore, filers may see differences in document and other code choices within the system. In addition, courts are authorized to have local rules providing for paper courtesy

HISTORY OF e-FILING

1995—e-filing begins in district courts in Jefferson County

2003—Statewide e-filing pilot program is initiated by the Supreme Court and the Office of Court Administration

2012—In December, the Supreme Court mandates e-filing in civil cases in all courts on a rolling schedule

2014—In January, e-filing mandatory for all case types in the Supreme Court, Court of Criminal Appeals, appellate courts, and in all non-juvenile, non-criminal filings in Texas's top 10 most populous counties: Bexar, Collin, Dallas, Denton, El Paso, Fort Bend, Harris, Hidalgo, Tarrant, and Travis

1995

2000

2005

2010

2015

1997—e-filing begins in district courts in Montgomery County

2012—51 counties are e-filing with 45,000 transactions monthly

2013—Court of Criminal Appeals mandates e-filing in criminal appellate filings

2016—All courts e-filing in civil cases

copies of certain documents. Attorneys should check the local rules or with local clerks to determine whether those rules apply in the county in which they are working. A copy of the Supreme Court's rules for electronic filing with amendments to the Texas Rules of Civil Procedure and Texas Rules for Appellate Procedure are located on page 70 of this issue of the *Texas Bar Journal* and can also be found on the Supreme Court's website, supreme.courts.state.tx.us.

How is e-filing funded?

Since its inception, e-filing has been a fee-for-service or "toll road" model, meaning that filers had to pay a transaction fee each time they submitted a document. The eFileTexas Web portal is funded through a civil filing fee and a criminal court cost created by House Bill 2302 in the 83rd legislative session. The civil filing fee is \$10 in justice courts and \$20 in all other courts. The fee is charged when a petition or other original document is filed and at the filing of other documents such as counterclaims. A \$5 criminal court cost is assessed upon conviction in district and county-level courts.

Under HB 2302, counties can collect a \$2 fee on e-filing transactions to recoup costs associated with electronic filing. It is estimated that with this new fee structure and eFileTexas system, the cost of e-filing should decrease by up to 94 percent in civil cases.⁴ This is because the new system eliminates the toll road structure used in the past. Under eFileTexas, there is one fee associated with each case. Filers are then left with the fee of their chosen EFSP, a local county option fee of \$2, or both.

How will it increase efficiency and decrease costs?

Longtime family law attorney Mark Unger was the

first lawyer in Bexar County to e-file nearly 10 years ago. He did so as a hot beverage warmed his hand from the comfort of a local Starbucks. "E-filing allowed me to increase my efficiency by at least 30 percent," said Unger. He acknowledges there will be a learning curve for attorneys who are new to e-filing but said the mandate will require all lawyers to rethink their work flow. "This includes rethinking things like file-naming constructions, folder and file organization, electronic transmission of documents to and from clients almost exclusively, and time in the courthouse just for things like filing and setting matters."

"Filing Day" has completely changed for appellate attorney Don Cruse since he began e-filing. He no longer has to rely on the scheduling quirks of print shops, courier services, or the post office. "For complex briefs that would otherwise have high printing costs, e-filing has been cheaper for my clients," he said. "The best thing about e-filing is that nearly everyone serves papers electronically. With appellate courts also starting to send notices electronically, the flow of physical paper in my office has slowed to a trickle."

The allure of slowing that flow of paper in and out of the office is a big draw for clerks and counties, not just in Texas, but across the nation. Clark County, Nev.,

home to Las Vegas, mandated e-filing in its courts in 2010. By reconstituting space previously required to store and process millions of documents, Clark County court officers said the county was able to build eight new courtrooms.

In the Harris County District Clerk's Office, e-filing is viewed as a win-win situation. "The cost savings in true paperless courts is in the millions of dollars annually in paper, time, and personnel," said Chris Daniel, district clerk for Harris County. "Once fully implemented, e-fil-

BENEFITS OF e-FILING

- * Quicker access to e-filed documents
- * Increased efficiency for attorneys and litigants
- * Reduced printing and mailing costs
- * Reduced storage costs for clerks
- * Greater security of court documents in the event of disaster
- * More efficient use of court staff
- * Increased transparency and access to the courts

**Texas Supreme Court Order mandating e-filing*

ing will speed up justice and allow citizens to resolve disputes much faster.”

Other district clerks are viewing e-filing as a tool to assist in annual budgets. “It can be particularly beneficial during a time when counties throughout the state are seeking different and new alternatives for reducing department budgets and spending,” said Laura Hinojosa, district clerk of Hidalgo County. “The ability to reduce costs on the purchase of paper, document folders, printing, storage space, and other costs associated in maintaining a records archive is advantageous.”

The future of e-filing

The Texas Supreme Court and the Office of Court Administration will continue to work to bring all counties and courts online with the new eFileTexas system and in accordance with the mandate schedule, said Supreme Court Chief Justice Nathan Hecht.

He said in the future the system will support the search of cases and documents statewide, and will also connect to existing case and document search engines. “E-filing promotes the efficient and uniform administration of justice,” said Chief Justice Hecht. “In the 21st century, we no longer can rely on an 18th- or 19th-century vision for our systems. I think historians will look

back on this time period and see that e-filing revolutionized our courts for the better.”

For a list of the mandatory e-filing deadlines by county, go to texasbar.com/efiling. **TBJ**

NOTES

1. Peter Vogel and Mike Griffith, *Electronic Court Filing: The Texas Model*, <http://www.courts.state.tx.us/jcit/efiling/pdf/TheTexasModel.pdf>.
2. See Misc. Dkt. No. 12-9208 available at <http://www.supreme.courts.state.tx.us/miscdocket/12/12920600.pdf>.
3. See Misc. Dkt. No. 13-2 available at http://www.cca.courts.state.tx.us/pdf/TRAP_AMEND_13-2.pdf.
4. This is assuming that at least 10 documents are filed using the eFileTexas portal.



DAVID SLAYTON

is the administrative director of the Office of Court Administration and the executive director of the Texas Judicial Council. He is a graduate of Texas Tech University and Troy University, is a fellow of the Institute for Court Management, and is the president of the board of the National Association for Court Management.



MEGAN LAVOIE

is the director of public affairs and special counsel for the Office of Court Administration. She previously served as general counsel and communications director for State Senator Robert Duncan. LaVoie is a graduate of Texas Tech University and St. Mary's University School of Law.

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