

e-Filing Fees

by **Kevin M. Oeffner**
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As many readers know, the Circuit Court's e-filing pilot program was launched last August for civil cases assigned to Judge Michael Warren. The pilot program was expanded on January 1 to include civil cases assigned to Chief Judge Wendy Potts, Judge Fred Mester and Judge Colleen O'Brien.

At a recent OCBA Circuit Court Committee meeting, the issue of e-filing fees arose. Questions arose such as, "Why must I pay a fee to e-file documents on a circuit court case when e-filing in federal court is free?" and "Why are the fees for filing in circuit court so high?"

When we first ventured into the e-filing arena back in 2006, the State Court Administrative Office had offered an e-filing application courtesy of IBM, with whom it had partnered to provide e-filing to courts in Michigan. Litigants in courts who participated in the program were able to file documents electronically at no cost, largely because the application was underwritten by the State of Michigan.

The legal community in Oakland County was interested in e-filing, so our circuit court took advantage of the state's program. Our foray into e-filing ended almost as soon as it began when the state stopped the program due to little interest in e-filing by other courts at that time.

With the state's system no longer an option, courts that wanted to continue with e-filing or develop new e-filing initiatives were presented with a dilemma – how to develop an application (vendor product or in-house build) and how to fund it. Abandoning e-filing was not an option in Oakland County as our legal community wanted the service to continue.

With that in mind, several organizations in Oakland County (including the OCBA through an appointed representative) determined that the best course of action was to purchase an e-filing product rather than build one from scratch. A request for proposal was created, bids were received, and unanimous agreement obtained to purchase the e-filing product of a company called Wiznet.

Most, if not all, governmental entities in Michigan are experiencing economic challenges in the wake of budget deficits in Lansing and a precarious economic climate in this state. Oakland County is no exception. Our challenge was to provide e-filing services to litigants in a fiscally responsible manner. Having the taxpayers foot the bill for such services was not an option. By default then, some sort of fee structure would have to be developed to reimburse Oakland County for the expense of using Wiznet's product.

We explored an option to turn over fees for e-filing to the vendor in lieu of a cash payment for its product. The vendor agreed and a deal was made. The first \$200,000 in

revenue generated from e-filing fees goes to the vendor. After that, revenue would be split between the vendor and Oakland County according to a sliding scale that decreases the vendor's percentage each year and increases the percentage for Oakland County. This deal was huge for Oakland County because it meant that no expenditure was necessary to buy Wiznet's product – good news for a county facing budget difficulties.

An initial cost of nearly \$100,000 was borne by Oakland County to build an interface between the vendor's e-filing product and the Circuit Court's case management system, which is a county-built system dating back to the 1970s. Annual costs are also borne by the county in the form of ongoing Information Technology project management support. The purpose of earmarking revenue from e-filing for Oakland County is to ensure reimbursement for the interface and ongoing project management support.

A balance was struck to establish a fee that was fair and attractive to users, but also sufficient to ensure enough revenue to pay Wiznet for its product and to reimburse Oakland County for its costs as described above.

Representatives from the court, Clerk's Office and IT Department spent hundreds of hours researching, exploring, testing and evaluating the options. The legal community was represented in this effort. A consensus was reached that attorneys and litigants would save money, time and energy by using the e-filing system – even with the inclusion of a fee.

Expectations were such that printing, copying, developing exhibits, runner fees and postage costs for litigants and attorney would be reduced. No more time would need to be spent standing in line at the Clerk's Office or racing to the court to beat the 4:30 p.m. filing deadline. The benefits were considered to be significant and the costs minimal.

The resulting fee was set at \$5 for each electronic filing, irrespective of the number of pages associated with each filing. The \$5 fee is mandatory and is charged for each transaction, which is defined as a stand-alone document. As a service to litigants, a \$3 fee is charged for those who want to serve documents electronically. The e-service fee is discretionary. The filer of an electronic document must pay the \$5 filing fee, but retains discretion to serve electroni-



cally or by traditional means. The e-service fee is fixed regardless of the number of parties on a case.

When a complaint is filed and the resulting case is assigned to one of the pilot program judges, my office contacts the attorneys/parties to inform them that they must e-file all subsequent case documents. We offer training on how to use the system and how to package documents to avoid excess fees.

As mentioned earlier, a concern was expressed at the Circuit Court Committee meeting that the \$5 e-filing fee is too high. The \$5 e-filing fee was established to generate sufficient revenues to pay for Wiznet's product and to reimburse Oakland County for the cost of building the interface and providing IT project management services. Oakland County is not trying to generate a profit; it is trying to recover costs. We intend to revisit the fees when the two-year contract expires to determine if a downward adjustment is warranted.

A legal practitioner should think about the \$5 fee in relation to the life of a case. In fact it is imperative to think about fees over the life of a case because doing so drives the realization that e-filing saves the litigant money. We reviewed a sampling of civil cases that are in the e-filing pilot program. Most civil cases are resolved within one year of the original complaint. Our pilot program is not yet one year old, so we examined the sample of cases and did some estimating. We project that about 40 documents will be filed, on average, per case.

I know that things are not necessarily this simple, but for the sake of making a point, let's assume that the typical case involves two parties and that there is approximately an even split between the number of documents filed between the parties. In our sample of cases, about 20 documents would be filed by the plaintiff and another 20 documents filed by the defendant. Let's also assume that each document is a "stand alone" document, meaning that each filing results in a mandatory \$5 fee. The total cost to each party for all electronically filed documents over the life of the case is \$100. The amount would be as high as \$160 per party if the e-service option (\$3 per transaction) were chosen in every instance. But e-service is voluntary; the only mandated expense for e-filing, over the life of the case, would be \$100 in our example above.

As I mentioned earlier, we offer training to attorneys on how to package documents to avoid excess fees. In explanation, suppose an attorney wants to file an answer and a Motion for Summary Disposition. These are considered two stand-alone documents. The filer would be assessed two \$5 charges even if these documents were filed at the same time.

Now suppose that as part of the SD motion the filer wanted to include a 1) notice of hearing, 2) motion, 3) brief, 4) one or more affidavits, 5) proof of service, and 6) praecipe. These attachments are not stand-alone documents, but are related to the SD motion. All of these attachments could be filed along with the SD motion for a one-time charge of \$5. The documents would have to be filed at the same time. They could also be electronically served on all the other parties on the case for a one-time charge of \$3, but bear in mind that the e-service fee is discretionary. The filer can serve the SD motion and attachments by traditional means.

I can understand that someone might be frustrated to pay \$5 to e-file a simple proof of service, or another \$5 for a stipulation and order for adjournment. My suggestion is to instead look at the cost to e-file over the life of the case. I submit – and many attorneys from sole proprietorships to large firms agree – that e-filing saves time and money. Think of the expenses that can be avoided thanks to e-filing. Think of the convenience that can be had by e-filing from your office or home.

Here's the bottom line: Attorneys have asked for this service, and we are now providing it in a pilot program basis. The purpose of a pilot is to determine if there is merit to continue the program and even expand it. Users will have a say in whether we move forward with e-filing on a permanent basis. But in the meantime, we need time to determine if e-filing meets the expectations of users, produces efficiencies, reduces costs for attorneys and the court, provides convenience to users, and is user-friendly and technologically sustainable.

The initial results have been positive. A recent survey shows that a large majority of users have found the system to be beneficial. We are even now receiving requests by many lawyers to expand e-filing to all judges in this circuit.

Before closing, I want to address the comparison that was mentioned at the Circuit Court Committee meeting between "free" e-filing at federal district court versus the \$5 mandatory e-filing fee at circuit court. The e-filing service provided by federal court is a component of the federal court's case management system that was rolled out to all federal courts nationwide. The e-filing component was built by the federal government and paid for by tax dollars. One may be able to e-file without paying a fee, but the system is not free.

In Oakland County, the best approach for our e-filing effort was to buy a reliable product from a proven vendor. Given the budget situation in Oakland County and the reluctance to make taxpayers responsible for acquisition of the product, it was determined that a modest \$5 fee would be sufficient to allow the county to "buy" the product, be reimbursed for various other expenses, and yet make it a financially viable service for litigants and attorneys. We solicited comments from large law firms, mid-sized law firms, partnerships and sole proprietors, and the overwhelming request was that we deliver e-filing services. Responses obtained from lawyers and litigants who have gone through e-filing and paid the corresponding fees are overwhelmingly positive. In fact, despite the imposition of a mandatory e-filing fee, the vast majority of respondents to surveys have indicated that this service has saved them money and time.

The issue of fees is important to me and I want to be sure that folks understand why a fee was established, why the fee was set at \$5, how the resulting revenue will be distributed, and what the future may hold in terms of fees should the pilot program be successful and a decision made to continue e-filing indefinitely. If after reading this article you have questions or comments, you are welcome to contact me at 248-858-0345. I would be happy to discuss this issue with you in greater detail.

Until next time...