

**Supreme Court of Vermont
Office of State Court Administrator**

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FREQUENTLY – AND INFREQUENTLY – ASKED QUESTIONS
TYLER FILE-AND-SERVE E-FILING USE FEE

Q. Why did we choose our funding model? How were fees arrived at?

- We chose our model to minimize the cost to Vermonters and risk to the Judiciary by developing a sustainable funding model.
 - Odyssey File and Serve is a hosted software as a service model, run, supported, and hosted by Tyler Technologies. For this, they charge either users or court systems amounts based on expected volume and adoption rates
 - When contracting with Tyler, we had only initial estimates for rollout plans, including regions, e-filing rollout schedule, etc
 - Instead of agreeing to a fixed amount borne by the Judiciary, regardless of rollout or adoption rate, we chose a smaller per-filing use fee supported by users of the system. This came with broad-based waivers to relieve from paying this use fee any filings exempted from paying court filing fees by the legislature, such as criminal filings, filings by government lawyers, filings on behalf of litigants who meet certain income guidelines, and the like. Self-represented litigants are not required to e-file. The fee negotiated with Tyler is also based on our making e-filing mandatory for attorneys who are not otherwise exempt.
 - This approach allowed us to design a predictable, **sustainable** funding model. This was demanded of us by the Legislature. We were counseled to pick an off-the shelf, proven solution (Tyler) and a sustainable long term funding model.
 - Tyler's estimates of 2.5 average filings per case would result in e-filing use fees averaging \$13.13 for those who pay.
- The contract term, which expires, subject to renewal option, in June of 2022, allows Vermont to gain experience with e-Filing, which was just rolled out, as Vermont proceeds through the implementation of the electronic case management system project and adjust funding models as needed. The project will be fully rolled out early in 2021, after which data can be collected about the impact of the fee and its relation to the cost of e-filing services.

Q. I've heard that the Public Utility Commission offers "free" eFiling. How do they do that, and why doesn't the Judiciary do that?

- The funding model of the Public Utility Commission is traditionally based on a gross receipts tax imposed on utility bills. Recently, the Commission has enacted application fees for projects whose applicants are not subject to this tax. This fee may range from \$100 - \$10,000 or more
- No State General Funds are used for operations
- The PUC fears shortfalls in 2021 because of anticipated lower gross receipts taxes. A needed system upgrade may be put on hold due to these issues.
- Yearly volume is approx. 13,000 "non-State-gov" filers.

Q. I heard Rhode Island "got a better deal" than Vermont? Is that true?

- Rhode Island has a per-case eFiling use fee, rather than per-filing, charge of \$17.50. This is paid to Tyler. They add a \$3.25 technology fee per case that funds Tyler yearly maintenance. Credit card fees are the same as Vermont.
- Rhode Island has about 60,000 civil filings a year. This results in approx. \$1MM paid to Tyler in eFiling use fees.
- Using Tyler's estimates, Rhode Island users are paying MORE on average than Vermonters

Q. I've heard that PACER, the legacy federal e-filing system, is free. Why don't we have a model like that?

- PACER is not free. There is a cost for each search and each document viewed. (We do not charge for searches or views of documents, at all). The fee schedule for the federal system can be found here: https://www.pacer.gov/documents/epa_feesched.pdf
- PACER does not charge a per-filing or per-case fee, but does charge for access to files and documents, and many users believe that these fees are excessive and unwarranted. There will be no similar fee for access to files and documents in the Vermont system.

Q. I thought the Legislature established fees. What is the authority of the Judiciary to establish fees?

The Legislature has explicitly recognized the Supreme Court's broad discretion "under their general rulemaking power . . . [to] . . . establish uniform rules to govern the allowance of fees not specified by law for services and expenses in the courts of the State." 32 V.S.A. sec. 1403 (emphasis added). Pursuant to that authority, the Supreme Court's Administrative Order 19 authorizes the Court Administrator to establish fees to be paid for transcripts, and the Court Administrator, under her broad authority for "all fiscal operations" of the courts, has in turn entered into contracts with transcription services requiring appellants to pay the service directly for the transcripts within limits specified in the contract. See V.R.A.P. 10(b)(7) and Reporter's Notes to the 2013 Emergency Amendment.

The circumstances here are closely analogous to the payment of transcription fees. The contract with Tyler Technologies authorizes direct payment of an e-filing use fee—a fee that is not otherwise "specified by law"—and the requirement is memorialized in the Electronic Filing Rules promulgated by the Court and reviewed by the legislative Committee on Judicial Rules. See Vt. Rules for Electronic Filing, Rule 10 (providing for payment of "court fees and e-filing fees" and setting forth payment exemptions). As discussed, the Supreme Court's

authority to provide by rule for such a fee “for services” is clearly recognized in 32 V.S.A. sec. 1403, and the Court Administrator is broadly authorized to act at the Court’s direction to contract for their payment to the vendor.

The Vermont Supreme Court’s power to make and promulgate such rules governing the administration of the courts finds express recognition in the Vermont Constitution, Chapter II, Section 37, as well as 32 V.S.A. section 1403, which codifies the Court’s residual constitutional authority to make general rules for the imposition of fees. That power has been widely held to include the inherent judicial authority to compel the payment of fees reasonably necessary to carry out the Judiciary’s core responsibilities. Indeed, case law has expressly recognized that courts must retain the “inherent judicial power” to “charge and collect reasonable filing fees” or risk being rendered “ineffectual.” Blackjack Bonding v. city of Las Vegas Municipal Court, 14 P.3d 1275, 1280 (Nev. 2000). Similar holdings have recognized the Judiciary’s inherent authority to charge and collect reasonable attorney registration fees, even in the absence of enabling legislation, pursuant to the court’s core responsibilities for attorney licensing and discipline. See, e.g., Board of Overseers of the Bar v. Lee, 422 A.2d 998, 1003 (Me. 1980) (holding that the Supreme Judicial Court “has inherent power not only to regulate attorneys . . . but also to impose . . . such registration fees as are reasonably required to enable the Court to carry out its responsibilities”).

Accordingly, the Court’s power to enact the e-filing use fee in question is well-established.

Q. I’ve heard that there was no advance disclosure of the Tyler File and Serve e-filing use fee before the pilot program was begun. Why was this hidden from attorneys?

- The fact that there would be a per e-filing envelope use fee was disclosed and discussed with the bar in the following public contexts, available to VBA members (and others):
 - January 2019—Mid-Winter Thaw—presentation by Andrew Stone, Judge Kate Hayes, Michael Kennedy.
 - March 2019—VBA spring meeting – seminar—presentation by Andrew Stone, Laura LaRosa of Vermont Trial Court Operations, and Judge Kate Hayes.
 - Each Newsletter sent by Patricia Gabel, State Court Administrator—in April, July and December 2019 contained links to the website with FAQs that included detailed information about the fees.
 - Summer 2019--- Trial court operations staff met with the county bar associations and State agencies in Windsor, Windham, and Orange Counties to discuss and describe the plan for the project and answer any questions.
 - E-filing Rules Committee—the e-filing rules required substantial review and revision, and a new committee was created to engage in that process, beginning in January 2019. VBA Executive Director Teri Corsones, Sue Steckel, and Eric Avildsen, who are all members of the VBA were all members of the committee. The fact that there were going to be per-case-filing fees payable to the vendor was discussed many times during these meetings. There were more than 15 meetings over a 12 month period, and the rules were reviewed in detail and amended to reflect the suggestions of all members, including the bar.

Q. The fees are unfair. Why penalize litigants who need to file more documents?

- All litigants who are eligible for court fee waiver are also eligible for waiver of the e-filing payments to Tyler, no matter how many documents they file. Self-represented litigants are not required to e-file. Civil attorneys who represent clients who are not eligible to have court fees waived will not have the e-filing fee waived either. The policy follows the legislative regime for who should pay fees.
- The e-filing rules have exceptions that enable litigants to avoid e-filing of extremely voluminous, cumbersome, or awkward documents that would be better filed by some other method. No e-filing fee would be charged for anything that is filed non-electronically with court's permission.

Q. Why is the \$5.25 e-filing user fee so high – it amounts to more than the cost of stamps?

- There is one \$5.25 fee per “envelope.” It's recommended that the total amount of documents in the filing not exceed 25 mg (about 100 pp). Estimated cost of postage alone for a single 20 pp document-- \$1.75. (leaving aside stationery, large envelopes, and staff time to prepare them).

Q. So Attorneys will have to pass on or absorb the fees in filings that are not exempt from the use fee?

- This is true, just as they have to pass on or absorb fees for postage, envelopes and stationery, messengers, UPS and Fedex costs. Those costs will be significantly lower due to the availability of e-filing.

Q. Isn't this fee imposition system totally arbitrary—family, civil and probate litigants will bear disproportionate amount of costs—juvenile and criminal litigants will not pay?

- Cases and filers who have been exempted from paying court filing fees by the legislature are exempted from paying Tyler e-filing use fees. It is not arbitrary. It is based on policy decisions made by the legislature. In general, costs are imposed on the litigants who are able to pay filing fees. Litigants who cannot afford to pay fees may file waiver applications no matter what docket they file in. Criminal, juvenile, and mental health case litigants are provided counsel at state expense; as a matter of public policy it would not make sense to require them to pay e-filing fees. Self-represented litigants are not required to e-file.

Q. Don't these fees amount to a tax on attorneys?

- These costs are not a tax. The fee is the cost of the service provided by Tyler to provide electronic filing. Attorneys whose clients can afford to pay them will pay these fees. Attorneys whose clients cannot afford to pay them will be able to apply for and obtain waivers of these fees.

Q. The Judiciary has had a protocol set up in a couple of county unit civil divisions called E cabinet that does not impose fees. Why not handle the e-filing the same way?

- E-cabinet was a very early, primitive and inadequate pilot program. It has served an invaluable function in assisting the bar and the court in very limited case types, in limited areas. It has not enabled the court to eliminate paper files; it has not enabled easy e-service of documents or full e-access to court files. The court has charged for the services available to Courts Online. In

Odyssey, there will no longer be a charge for the access to court files that Courts Online provides.

Q. The Judiciary said that there are also FAQs and answers posted on the Judiciary website. What do those FAQs say?

- Filing Fees

All filing fees are paid through OFS at the time of filing. Filers create a payment account to pay with a MasterCard, Visa, or Discover credit card or with e-checks.

In addition to case-related filing fees paid to the Court, there is a fee of \$5.25 system use fee for each “envelope” (an assemblage of documents filed together at one time in one case) submitted to the court. This fee is charged by the system vendor and is not paid to the Court.

Government agency filers and others who are statutorily exempt from paying filing fees may file via a “waiver” account that can be set up for each registered user. A waiver account would also be used by anyone filing an Application to Waive Filing and Service Fees (formerly IFP/In Forma Pauperis). Filers upload the completed application along with their other filing(s) and are notified after court review whether the application has been granted.

Case filing fees paid to the Court are established by statute. Current fees and authorizing statutes are available at <https://www.vermontjudiciary.org/fees> .

- Electronic Filing Questions

Attorneys and self-represented litigants will use Odyssey File & Serve to electronically file documents with the court via a secure, web-based portal. Electronic filing will be permitted on every case type in every division. Odyssey File & Serve will be available 24 hours a day and 7 days a week. Odyssey File & Serve is also known as eFileVT.

- How do I access Odyssey File & Serve?

- You can access File & Serve directly through the following link: <https://vermont.tylerhost.net/ofswb>

- Do I have to electronically file (aka efile)?

- Attorneys are required to efile where Odyssey has been implemented. Self-represented litigants will have the option to efile. To learn more about efilings requirements, please review the promulgated efilings rules:

[2020 Vermont Rules for Electronic Filing](#)

- When can I begin efilings?

- Users will be able to efile in a region about 30-60 days after the region's trial courts transition onto Odyssey. The date will be announced with as much advanced notice as possible. Efiling will begin in the Orange, Windham and Windsor trial courts on April 20, 2020 and in the Judicial Bureau on April 27, 2020.
- Will mandatory efilings be phased in gradually?
 - No. Once a date has been established for a region that has transitioned onto Odyssey, electronic filing for attorneys will be mandatory from that date forward. Advance notice will be provided.
- Is there a cost associated with efilings?
 - Filing fees are determined by statute and will not be impacted by Odyssey. However, Odyssey File & Serve does have a processing fee of \$ 5.25 for use of the system (i.e. every time a filing is submitted), as well as a credit card service charge of 2.89% of any filing fees paid. This will automatically be added any applicable filing fee, unless the filer has an approved fee waiver application, or is exempt by Rules of Electronic filing, such as a government agency.
- Why was I charged the processing fee (\$5.25) twice?
 - Tyler Technologies' charges a \$5.25 processing fee "per envelope." Upon initial submission, there's a pre-authorization of the charges and a hold for the charges placed against the credit card. If the entire submission is rejected, then the hold is dropped and the card is never charged. When a submission includes multiple filings, but some filings are rejected, a new envelope is created when the corrected filings are submitted resulting in multiple charges when two or more envelopes are accepted.
- What case types will have efilings?
 - Efilings will be available for all divisions and all case types. This even includes mental health cases and guardianship cases.
- Who do I contact when I have technical problems with efilings?
 - When Odyssey File & Serve goes live, you will need to contact our vendor partner, Tyler Technologies, for technical questions. They can be reached via email or phone at efiling.support@tylertech.com or **1-800-297-5377**.
- What is the process for filing documents under seal?
 - A provision for the filing of confidential documents or sealed documents will be made in the Odyssey system. Currently, however, configuration of Odyssey is ongoing, so detailed instructions are not available.
- If an e-filer includes confidential information by mistake, will the filer be able to correct it?
 - Corrections will be allowed. However, as configuration of Odyssey is ongoing, detailed instructions are not yet available.

- Can my staff and/or associates efile documents on my behalf?
 - Yes. After establishing a firm account in File & Serve, you can add users with different levels of permission.
- What will users be expected to do if Odyssey File & Serve is temporarily non-operational?
 - If there is a prolonged system outage, the court will make accommodations regarding filing deadlines. We are always prepared to accept paper filings in emergency situations.
- How many megabytes can I efile at one time?
 - It is recommended that each document be no larger than 5 megabytes and that each “envelope” be no more than 25 megabytes/
- If I registered in the Public Portal, do I still have to register in Odyssey File & Serve?
 - Yes. You must register separately for the portal and for File & Serve.
- Do I have to keep paper copies of documents that I have efiled?
 - Retention of paper copies is not required by the court, though there may be separate statutes or rules that continue to require this.
- Will Odyssey File & Serve allow users to send documents to other parties in the case?
 - Yes, one of its functions is electronic service. Subject to other rules and statutes governing service, you can set up a service contact in Odyssey File & Serve.