

Supreme Court of Vermont
Office of State Court Administrator

PATRICIA GABEL, ESQ., State Court Administrator
patricia.gabel@vermont.gov
Mailing Address:
Office of Court Administrator
109 State Street
Montpelier, VT 05609-0701
Telephone: (802) 828-3278
FAX: (802) 828-3457



GREGG MOUSLEY, Chief, Finance & Administration
gregg.mousley@vermont.gov
JEFFERY LOEWER, Chief Information Officer
jeffery.loewer@vermont.gov
TARI SCOTT, Chief, Trial Court Operations
theresa.scott@vermont.gov
SCOTT GRIFFITH, Chief, Planning and Court Services
scott.griffith@vermont.gov

www.vermontjudiciary.org

TO: Sen. Dick Sears, Chair, Senate Judiciary Committee
Sen. Alice W. Nitka, Vice Chair
Sen. Jeanette K. White
Sen. Joe Benning
Sen. Phillip Baruth

FROM: Patricia Gabel, Esq., State Court Administrator

DATE: June 2, 2020

RE: Update: File and Serve E-Filing Use Fee

Dear Senator Sears:

This Memorandum is submitted to the Senate Judiciary Committee in advance of my fourth appearance before the Committee to discuss the views of the Vermont Bar Association (“VBA”) on the File and Serve e-filing use fee of \$5.25 per envelope of documents.

The purpose of this Memorandum is to update the Committee on additional discussions that have taken place and additional analyses that have been conducted since my third appearance before the Committee two weeks ago. In a separate Memorandum, I will respond to the proposed legislation that Sen. Sears kindly sent to me today for our review.

I assume for the purposes of this Memorandum that the reader has had access to the previous several memoranda and FAQs that have been provided to the Senate Judiciary Committee in advance of my previous three appearances.

As you know from those previous appearances, we continue to review each new assertion made by the Vermont Bar Association (“VBA”) in order to determine whether the Judiciary should take some steps within the context of our contractual responsibilities that are in the better interests of Vermonters, including both the users of the court system and the taxpayers of Vermont, than the contract that is already in place and being performed satisfactorily by both parties. Any changes that might be considered would require that both parties agree to a modification of the contract.

The State of Vermont Judiciary and Tyler Technologies entered into a valid written contract in June of 2017 as the culmination of a formal multi-year procurement process. In these negotiations, the State of Vermont Judiciary was represented by two recognized legal experts in the field of technology contracts from a prominent law firm and also by an attorney in the Vermont Attorney General's Office, who is not only an expert in the field of technology contracts, but who also developed the revised state terms and conditions used in Vermont for contracts of this kind.

In addition, the Vermont Judiciary engaged the National Center for State Courts to assist in the evaluation of different ways that e-filing services were paid for around the country to assess what would be the best model for the State of Vermont, and we relied on this advice in the development of the contract.

There has been correspondence received from and statements made by the VBA that there is "incorrect information" in the contract. This view is a misunderstanding of the terms of the contract.

The contract between the State of Vermont Judiciary and Tyler Technologies, which is over 1,000 pages long, has what is known as a clause regarding an "order of preference," which is common in complex contracts, particularly when each of the parties involved has preferred "standard terms and conditions" and other preferred standard form documents. In this case, both parties had preferred standard forms, and the order of preference guided which form or document was to rule when two of the standard forms were in conflict.

The payment information for e-filing (\$5.25 per envelope) appears in Attachment B of the Contract. The "incorrect" information to which the VBA keeps referring appears in 6.d (Exhibit 4) involving answers submitted by the vendor in response to the RFP. Attachment B takes precedence over Exhibit 4 in the order of preference of the contract. There are many such inevitable conflicts in the documents that are resolved by the order of preference.

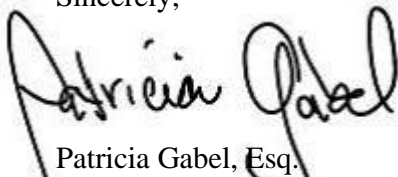
Jeff Loewer, the Judiciary CIO, has been corresponding and speaking with Teri Corsones, the Executive Director of the Vermont Bar Association, regarding case research the VBA requested and suggestions from the Vermont Bar Association for possible changes to the part of the contract dealing with the e-filing use fee, which otherwise, by design, expires in June of 2022. The VBA has suggested other payment models and related pricing. Jeff has also been in contact with Tyler Technologies to discuss the VBA's suggestions. We only heard most recently from Tyler at the very end of the day today.

Jeff's team has also been looking at our very brief experience with e-filing, which has barely just begun, to determine whether we can predict with any reliability how the pricing model is working for the parties and what impact it is having on court users. Our original goal was to wait until e-filing had been rolled out statewide for at least a year before assessing and reconsidering whether the current contract model was the best. One of the questions is whether it is in the interest of Vermont court users to make changes at the very beginning of the first pilot. We could make a change based on minimal data that, in hindsight, may not turn out to be the best for Vermont after review of more robust data over time.

Based on this modest preliminary research and these discussions, it still appears as if the existing contract model yields the best outcome for Vermonters by being the most reasonably-priced model that results in the cost of e-filing being shared by both plaintiffs and defendants. I learned late today that although Tyler is willing to consider the Rhode Island model of having the person who files the case bear the entire cost of e-filing, the cost per case to Vermont would be higher than the cost per case to Rhode Island because the volume of cases in Vermont is lower.

If the Judiciary were to consider a change in the current contract terms, we would need to do a broader review and consultation both internally as to access to justice issues and externally as to whether attorneys and other voluntary users of File and Serve would prefer the Rhode Island model, given that it would add approximately \$20 to the cost of filing each civil and probate case that is not waiver-eligible. This approximately \$20 fee would be on top of the existing \$65 filing fee in a small claims case and on top of the existing \$295 fee in a standard civil case, as examples.

Sincerely,



Patricia Gabel, Esq.
State Court Administrator

cc. Peggy Delaney, Committee Assistant
Michele Childs, Legislative Counsel
Stephanie Barrett, Joint Fiscal Office

