

**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](http://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:** June 2, 2020, Draft of Proposed Legislation

---

Dear Senator Sears and members of the Committee,

Thank you once again for the opportunity to address the Committee and, in particular, to comment on the text of proposed Section X of the draft legislation dealing with the Tyler File and Serve E-Filing Use Fee of \$5.25 per envelope.

As the notice of this proposal was relatively short, I will attempt to keep my comments relatively brief and to the point.

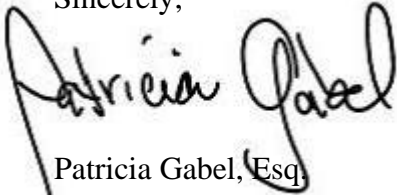
1. As I have stated on several prior occasions, the authority of the Supreme Court to authorize an e-filing use fee derives from its constitutional powers to administer the court system and to enact rules to effectuate the administration of justice.
2. The Court's authority finds expression in legislation, as well, which recognizes the Supreme Court's authority under its rulemaking powers to enact fees. The Court's power is not dependent on legislation, however; it is constitutional in its source and nature.
3. In section 10 of the Rules for Electronic Filing, entitled "Payment of Court Fees and E-filing Fees," the Court enacted procedures for the payment of e-filing fees and for obtaining a waiver of such fees, and delineated certain exceptions for the payment of

such fees. The Reporter's Notes explain clearly that the Rule "addresses . . . a fee to make an e-filing . . . through the electronic filing system imposed by the electronic filing system vendor."

4. As contemplated in Section 10, the Court Administrator, as agent of the Court, entered into a contract with the electronic filing system vendor, Tyler Technologies, to fund its annual operating costs utilizing a fee model that was determined to be the most fair, efficient and economical, placing the principal economic burden on the system's users rather than the public through the general fund. The Judiciary was represented throughout the negotiations by expert independent counsel and by the Attorney General's Office. The parties are now in the middle of performance of this contract, and I know of no legal grounds for the State of Vermont Judiciary to suspend any of its obligations under the Agreement without the mutual consent of the other party.
5. While the Legislature may review and revise Court rules, it may not undertake to direct the Judicial Branch to suspend its own rules or to suspend and renegotiate the terms of a contract which it has duly entered into to implement a rule, in this case the payment of an e-filing fee to the contract vendor to defray the operating costs of the Judiciary's new case management system. Any such legislation would represent a direct and unconstitutional infringement upon the Judiciary's power to administer the courts, and thereby violate the separation of powers principle enshrined in the Vermont Constitution. Any such legislation would, in my judgment, be invalid and unenforceable.
6. As I have previously represented to this Committee, the Judicial Branch takes the views expressed by members of this Committee, as well as those of the Vermont Bar Association, extremely seriously. We already have a robust system of consultation with the Bar within the Judicial Branch. We appreciate the insights that the VBA has provided in its recent reviews of the e-filing use fee, and we will review these and related issues in the context of the Supreme Court's constitutional authority, its commitment to manage the Judicial Branch in a fiscally responsible manner, its commitment to access to justice, and its constitutional regulatory authority over attorneys. We have also heard the objections raised by some that the notice and training concerning the current e-filing use fee were insufficient, and we have taken steps to beef up our guidelines and trainings in this regard. However, the legislative proposal set forth in Section X of the draft legislation represents a step backward from these efforts, and an affront to the comity and cooperation that should and must exist among the branches. I therefore urge the Committee to reject it.
7. The Judiciary does not wish to receive an appropriation of CARES Act Funding for spending that is not an eligible CARES Act expense. If the Legislature believes that attorneys or their clients have legitimate CARES Act bases for relief from paying the

\$5.25 per envelope e-filing use fee, such relief may be made available through an appropriation to a non-profit with a charitable goal of providing access to civil justice.

Sincerely,

A handwritten signature in black ink that reads "Patricia Gabel". The signature is written in a cursive, flowing style.

Patricia Gabel, Esq.  
State Court Administrator

cc. Peggy Delaney, Committee Assistant  
Sen. Jane Kitchel, Chair, Senate Appropriations  
Rep. Kitty Toll, Chair, House Appropriations  
Michele Childs, Legislative Counsel  
Stephanie Barrett, Joint Fiscal Office

