

Supreme Court of Vermont
Office of State Court Administrator

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To: Sen. Dick Sears, Chair
Senate Judiciary Committee

FROM: Patricia Gabel, Esq., State Court Administrator

DATE: April 28, 2020

RE: Vermont Judiciary E-Filing User Fees

Dear Senator Sears:

E-filing is an integral part of the Judiciary's Next Generation Case Management System transformation and offers many advantages to our legal community. These include:

- Single, statewide portal to automatically file documents
- 24 x 7 filing access
- Reduced effort to print, copy, store, deliver, and file legal documents
- Integrated document repository with simultaneous viewing
- More time for attorneys to focus on other critical tasks

Our implemented e-filing solution, Tyler Odyssey File and Serve, is a hosted solution used by sixteen state judiciaries and numerous counties throughout the country and is supported directly by the vendor. Tyler not only hosts the program on their servers and network but provides direct training and support on e-filing. Tyler Odyssey File and Serve has over 1.7 million registered users. It hosts over 55 million e-filings per year.

The e-filing use fee is different from a court filing fee. Court filing fees are established by the Legislature in statute, with the revenues from court filings being deposited into the General Fund. E-filing use fees in Vermont are paid directly to the vendor. The arrangement is comparable to the way we manage transcripts of court hearings. We contract with a private vendor to provide transcripts ordered by attorneys based on an established fee structure. The Supreme Court has several kinds of authority to establish such fees, including the provisions of 32 V.S.A. sec. 601. The Judiciary's 2020 Vermont Rules for Electronic Filing, which were

adopted by the Supreme Court and reviewed by the Legislative Committee on Judicial Rules, also make provision for e-filing fees.

Our e-filing use fee was structured in such a way that fees are waived for many filers, including government agencies, filers on criminal cases, and indigent filers who are not otherwise required to pay statutory filing fees.

Anyone who is exempt by statute from paying a court filing fee is exempt under the Judiciary's contract with Tyler from paying an e-filing use fee, which is in accord with the 2020 Vermont Rules for Electronic Filing.

For those who do pay, the fee is \$5.25 for each submission per case, regardless of the number of included documents. E-filing in Vermont is only mandatory for attorneys. Others can still choose to file at the Courthouse using traditional methods.

It was important to establish a sustainable funding model for e-filing, one that would continue to pay for the service after our implementation is complete. We chose and contracted for a per-filing use fee, based on actual volume filed through the system and paid by the users of the service, directly to the vendor. This allowed the Judiciary to avoid paying yearly fees to the vendor, often based on estimated volume, as part of our software maintenance. Some states that chose this model of a set yearly fee based on estimated use found themselves paying Tyler substantially more than actual use justified. Other states choosing the model of a set fee for estimated use found themselves with budget shortfalls as the funds they were relying on to pay Tyler directly (from court filing fees, for example, based on volume of filings) did not have sufficient revenue to cover the negotiated estimated payment to Tyler when the court filings on which they were relying were lower than their estimates.

Since Vermont did not have an identified source of revenue for these costs, and no indication of how e-filing would be used or adopted in Vermont, using the estimated filings approach would have been an unacceptable risk to the Judiciary. While our Technology Fund, which has had its revenues dwindling for many years, will be able to fund NG-CMS software maintenance costs, it could not assume this added burden.

It is important to note that while the above e-filing use fee has been established, we have eliminated the fees associated with public access to court records through our portal. In our legacy system, Vermont Courts Online, an activation price of \$12.50 is required to access case summaries and real-time docket chronologies. This price entitles you access to your account plus five (5) real-time docket lookups. Users may purchase additional lookups at any time after creating an account. These fees went directly to VIC, the Vermont Information Consortium, and not to the Judiciary. We are now providing this service at no cost upon full implementation of NG-CMS.

Note that additional convenience fees exist for various payment methods. These exist today for online payments using VIC.

- Credit card used for e-filing 2.89%
- Credit card used for online payment 2.39%
- Over-the-counter credit card payments 2.39%
- eCheck payment surcharge \$1.00

States approach this e-filing funding issue in different ways. Following are examples from some other States, both Odyssey File and Serve implementations and others:

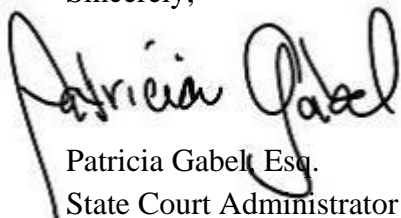
- Massachusetts
 - Fee to e-file
 - Payable to provider
 - Typically, \$7 for each submission (envelope) per case, regardless of the number of included documents
 - May be waived
- New Mexico
 - Per envelope (submission) fee based on the type of e-filing transaction: file and serve \$12; file only \$8; serve only \$0
- Rhode Island
 - One-time per case fee for civil cases, \$17.50 payable to vendor and \$3.25 technology surcharge
 - Also charged when scanned at clerk's counter
- Idaho
 - E-filing fees paid by Court
 - Raised Civil filing fees to fund
 - Revenue has not matched expenditures
- Maine
 - Maine legislature approved plan to raise filing fees and add surcharges to fund
 - adding a surcharge to fines (\$ TBD)
 - setting aside a portion of each e-filing fee in a separate account that will be used to pay vendor e-filing costs
- Maryland
 - In Maryland e-filing is funded through an increase in initial filing fees on all new cases. The fee increase goes into a special fund managed by the AOC
- Michigan
 - Civil e-filing fee: \$5 - \$25 depending on filing type

- Is applied to the “Judicial Electronic Filing Fund”
- Authority: MCL 600.1986(1)(a)
- Connecticut
 - Prior to July 1, 2013, funds to pay for service fees had been appropriated as other expenses in the Judicial Branch’s portion of the state budget, but were removed by the Appropriations Committee and reflected in the Branch appropriations in Public Act 13-247. In accordance with legislative intent, effective July 1, 2013, the Judicial Branch may no longer absorb the service fee associated with all (in-person and Internet) credit card transactions. Therefore, effective September 20, 2013, filers who are using a credit card (MasterCard, Visa, American Express and Discover) to pay electronically for court fees through e-filing will be charged the service fee in accordance with C.G.S. 51-193b. It is currently set at the greater of \$1.00 or 2.2% of the total amount owed. Cash payments and checks are not subject to a service fee. The service fee also applies to payments of court fees or other payments to the court made by credit card at the local courthouses.

The Judiciary’s Next Generation Case Management System Project has been before the Legislature every year since 2014. We have made presentations to numerous legislative committees over the years, but the Senate Institutions Committee and the House Corrections and Institutions Committees were the principal committees with oversight, as the project was substantially funded by the capital bill. In addition, the Joint Fiscal Office of the Legislature engaged an information technology consultant to provide independent review of our project and to report to committees of the Legislature periodically.

For your information, I have included with this Memorandum an example of one of the many presentations that we’ve made over the years to legislative committees regarding the Next-Generation Case Management System project.

Sincerely,



Patricia Gabel Esq.
State Court Administrator

- cc. Sen. Alice W. Nitka, Vice Chair
 Sen. Jeanette K. White
 Sen. Joe Benning
 Sen. Phillip Baruth
 Peggy Delaney, Committee Assistant
 Michele Childs, Legislative Counsel