

EXECUTIVE SUMMARY

E-FILING FEES STUDY COMMITTEE REPORT AND RECOMMENDATIONS

The VBA eFiling Fees Study Committee was tasked with making recommendations to the VBA Board regarding the recent imposition of eFiling fees and charges in the Odyssey File and Serve eFiling system. The VBA began receiving complaints about the amount and frequency of the fees as soon as the system went into effect on April 20, 2020 in the Windham, Windsor and Orange Units. The Committee's review of the eFiling fee aspects of the system revealed significant issues of concern. The Committee recommends that the eFiling fee charges in their present form be eliminated and that other funding sources, potentially including CARES funds, be secured. It also recommends that the CAO immediately address the issues of concern and that the Odyssey File and Serve system not be expanded to other counties until those concerns are addressed.

Primary Issues of Concern

The Committee's work revealed the following primary issues of concern:

1. The imposition of the new eFiling fees and charges represents a radical departure from fees historically charged in the Vermont court system.
2. The Judiciary had other options when it selected per-use eFiling fees and charges and did not involve the Legislature or the Bar in the decision-making process.
3. The Judiciary lacked the authority to impose such fees without legislative oversight.
4. The Judiciary did not provide the Bar clear or reasonable notice regarding the amount and frequency of the eFiling fees and charges.
5. Adverse ramifications of the per-use eFiling fees and charges include serious access to justice concerns, Constitutional and ethical implications, an impossibility of projecting court costs and the disparate treatment of represented parties.
6. The per-use eFiling fees and charges will discourage rather than encourage self-represented litigants to use the courts' new eFiling system.

Recommendations

The Committee recognizes the many benefits of an electronic filing system in the courts. It appreciates the Legislature's funding of the system and the Judiciary's work to implement it. The present eFiling fees and charges aspect of the system needs correction in order for the areas of serious concern to be addressed. The Committee's specific recommendations in the immediate term are;

1. That the Office of the Court Administrator, if feasible, immediately halt the imposition of e-filing fee charges in the Odyssey File and Serve system, investigate the use of new CARES monies to pay for the fees in the meantime until funding alternatives are secured, and postpone expansion of the system to other counties until the issues described above are addressed.

2. That the Office of the Court Administrator immediately address the issues described above and engage with the Bar and other court users to determine the best e-filing fees option for Vermont, in order to re-negotiate the terms of the Tyler contract regarding e-filing fee charges. The Legislature is to be kept informed of progress made.

3. That the Vermont Bar Association support any legislative effort that will support these recommendations.

In order to prevent a re-occurrence of the above issues going forward, the Committee also made several recommendations regarding future actions, including when the Tyler Technologies contract expires in 2022. The recommendations include notice and an opportunity to be heard in the initial decision-making process; the solicitation and consideration of input from all categories of court users throughout the decision-making process; and improved notice and training throughout the state once collaborative decision-making has occurred and decisions about modifications to court systems have been made.