



The Wave of the Future - Electronic Case Filing in Maryland

By Keith D. Forman

The Maryland Judiciary is set to embark on a five year mission to bring electronic case filing to all Maryland state courts. What does this mean for Maryland practitioners? How does the proposed system compare to the systems of our neighboring jurisdictions and the federal court system? What can you do to prepare? This article examines the answers to those questions, and more.

What Exactly is e-filing?

Electronic filing, or e-filing, is the process by which pleadings and other documents are filed electronically with the Court, as opposed to traditional paper filing. Nearly all electronic case management systems have a unique website where documents (most often converted to adobe .pdf files), are uploaded to the court and stored in the court's electronic database. Users are assigned a password and login, and attorneys are linked to the cases in which their appearance has been entered.

If you have never filed a case electronically, you may want to examine how other jurisdictions operate their electronic filing systems to gain a general sense of how electronic filing works. For example, the federal courts utilize the CM/ECF system and each federal jurisdiction has its own website for electronic filing (i.e., the United States District Court for the District of Maryland has its own e-filing website). If you go to <http://www.mdd.uscourts.gov/cmecf/documentation.html> you will find a number of tutorials and instructional videos designed specifically for cases filed in the United States District Court for the District of Maryland. These training materials, while unique to the United States District Court for the District of Maryland, have broad application to all electronic case filing. Accordingly, they can be exceptional tools for developing a general understanding of electronic case filing and management, regardless of whether you are a novice or a regular electronic filer.

What Are the Pros and Cons of e-filing?

The most obvious benefit to electronic filing is its convenience. With a click of a button, e-filing allows you to simultaneously file a pleading with the court, while serving it on all parties to the case (and in some instances even the judge assigned to the case), all from the comfort of your office, and without the burden and expense of having to make copies to serve on opposing counsel. This saves both time and money. One state court, Nevada, prepared a cost-benefit chart for e-filing on their system (WizNet) versus traditional filing. See http://wiznet.wiznet.com/clarknv/pages/pdf/EFS_and_DAP_Pricing.pdf. According to their analysis, over six dollars was saved for filing and serving one 15-page document on one opposing attorney by using e-filing versus paper filing.

E-filing also comes with a "guarantee" you do not get with paper filing. When you deposit a paper pleading in the mail, the presumption is that it is going to get to its destination in a timely fashion, without interruption. But, the United States Postal Service, UPS and FedEx are not infallible and documents get lost in the mail all of the time.

With e-filing, most systems alert the filer immediately to let the filer know: (1) that the document has been received by the court; and (2) that it has been served on opposing counsel. Short of hand-delivering a pleading to the courthouse yourself; e-filing is as close to a guarantee you are going to get when it comes ensuring that the pleading has actually been filed. As one Illinois attorney appropriately observed, electronic filing "lessens the stress of one of the most tedious and yet important tasks of

the young litigation associate: ensuring that motions, orders, memorandums, notices, etc., are promptly filed or lodged with the court and served on all parties to an action." Daniel T. Fenske, *E-filing in Federal Courts: How to Avoid Common Mistakes*, Pretrial Practice & Discovery, Volume 17, Number 2 (2009).

Another benefit to electronic filing is having an up-to-date online docket and online repository of all of the documents filed in the case. With paper filing, it is almost inevitable that a document is going to get lost or misplaced. Having an up-to-date online docket and repository provides an accessible source to confirm whether the file in your office is accurate.

The other major advantage to electronic filing is that the courthouse technically never closes - the majority of electronic filing systems permit filings to be made 24 hours a day. Even better, most systems consider a filing "timely" if it is filed on or before 11:59 p.m. on the date it is due. While most practitioners try to avoid filing pleadings at the last minute, it is undoubtedly a common occurrence. In that regard, having the ability to file pleadings and documents 24 hours a day, seven days a week, is truly invaluable.

Despite these benefits, there are a few disadvantages to e-filing. Most significantly, with *electronic* filing you are at the mercy of an *electronic* system. This can create serious problems when software or hardware malfunctions make it impossible to file a pleading or to retrieve a document that has been filed by an opposing party. Even though these situations occur infrequently, it can be nerve-racking when they do occur - especially if you are running up against an important deadline. However, a few



jurisdictions, such as Delaware, have promulgated rules that protect the filer in the event of a software or hardware malfunction. *See* Administrative Directive No. 2007-6, Section 10 (2007) (available at http://courts.delaware.gov/Courts/Superior%20Court/pdf/?Administrative_Directive_2007-6.pdf).

Another problem with e-filing is that it requires both small and large law firms to invest in additional technology. Because most systems require that all documents be in adobe .pdf

format for filing, you will need the software and/or the hardware necessary to convert Word and Wordperfect documents to pdf. Some law firms already have this technology at their disposal, but many do not. For a small law firm or a solo practitioner that needs to purchase additional technology, e-filing could be a potentially expensive enterprise.

Even though there are some unfavorable aspects to e-filing, most practitioners I know prefer e-filing to traditional paper filing. The general

sentiment is that e-filing saves time and money, while providing a higher level of organization not possible with paper filing. Maryland practitioners should be excited about the Maryland Judiciary's plans to integrate e-filing statewide.

Delaware, the District of Columbia and the federal courts in both Maryland and the District of Columbia have utilized e-filing for many years. Each system is markedly different from the other, and each system has its flaws.

How Does the Proposed Maryland System Compare?

Optional v. Mandatory e-Filing

Notwithstanding a few limited exceptions, e-filing in civil cases is mandatory in Delaware, the District of Columbia and the federal courts in both Maryland and the District of Columbia. By contrast, the Maryland system is going to be entirely optional – at least at the onset. For the segment of the Maryland bar that is completely opposed to e-filing, this should be a welcome aspect of the Maryland Judiciary's plan. Per Chief Judge of the District Courts of Maryland, Ben C. Clyburn, the reasoning behind the optional system is that the Maryland Judiciary does not want to put any solo practitioner or small firm out of business. This presumes, however, that e-filing will be more expensive than traditional paper filing, which is unclear at this point.

There are some risks associated with an optional system. For instance, what happens if the initial reaction by the practitioners who do opt to use the system is negative? This could

create a backlash right from the onset and may sway those practitioners “on the fence” to avoid the system completely.

The federal courts and Delaware systems began as optional, but ultimately shifted to mandatory; whereas the District of Columbia started out as being mandatory. It would be surprising if the Maryland system did not eventually transition to mandatory since there is the added burden and expense of accepting paper filings and then scanning them into the system, which is the method the Maryland Judiciary is currently proposing.

Fees and Document Retrieval

The Maryland Judiciary is proposing a \$5.00 surcharge for e-filing, which would be in addition to the regular filing fees. The Maryland Judiciary does not intend to charge the parties for reviewing and retrieving the documents online, nor will there be any charges for service of electronic pleadings on opposing counsel.

This proposed fee structure seems entirely reasonable when compared to the e-filing fees of neighboring jurisdictions. Delaware charges a \$.50 surcharge for each document filed. But LexisNexis File & Serve, the vendor who manages the Superior Court of Delaware’s electronic filings, charges an additional “service fee” of \$12.00 per document.

The District of Columbia’s system is quite expensive. For example, filing a Motion to Compel in the District of Columbia costs \$35.92. There is a \$20.00 fee for filing the motion itself; a \$5.00 CaseFileXpress fee; a \$6.92 e-file processing fee; and a \$4.00 e-service fee. That same Motion would cost \$5.00 to file and serve under the proposed Maryland system.

The federal system does not have a per document surcharge, not does it charge for service on opposing counsel. Rather, the federal system charges \$.08 page for document review and retrieval, not to exceed \$2.40 on any document. This cost, however, is slightly misleading since parties to a case are allowed to view every document served on them once for free and in essence, makes the cost completely avoidable. While the federal system may appear cheaper on the surface, keep in mind that the filing fee for a civil case in the United States District Court for the District of Maryland is \$350.00. This is more than double what it costs to file a civil suit in Maryland and the District of Columbia.

The Software

The Maryland Judiciary has yet to identify the software vendor that will provide the basic case filing services to the courts and to Maryland practitioners. There are a dozen or so vendors who provide these services to state courts. Delaware Superior Courts utilize the LexisNexis File & Serve system, the District of Columbia utilizes the CaseFileXpress system, and the federal courts use the CM/ECF system.

Unlike Delaware, the District of Columbia and the federal courts, Maryland is opting for a dual vendor approach. What this means is that in addition to the basic service provided by the Maryland Judiciary, law firms and lawyers will be able to contract with separate vendors for additional e-filing services.

What Can You Do to Prepare for e-filing?

The Maryland Judiciary hopes to launch a “pilot program” in Anne

Arundel County by 2012, with statewide integration by 2015. Accordingly, Maryland practitioners have anywhere from two to five years to get ready for e-filing in Maryland – if they choose to participate. The five steps below will help to ensure that you are ready whenever e-filing comes to the jurisdiction or jurisdictions in which you practice.

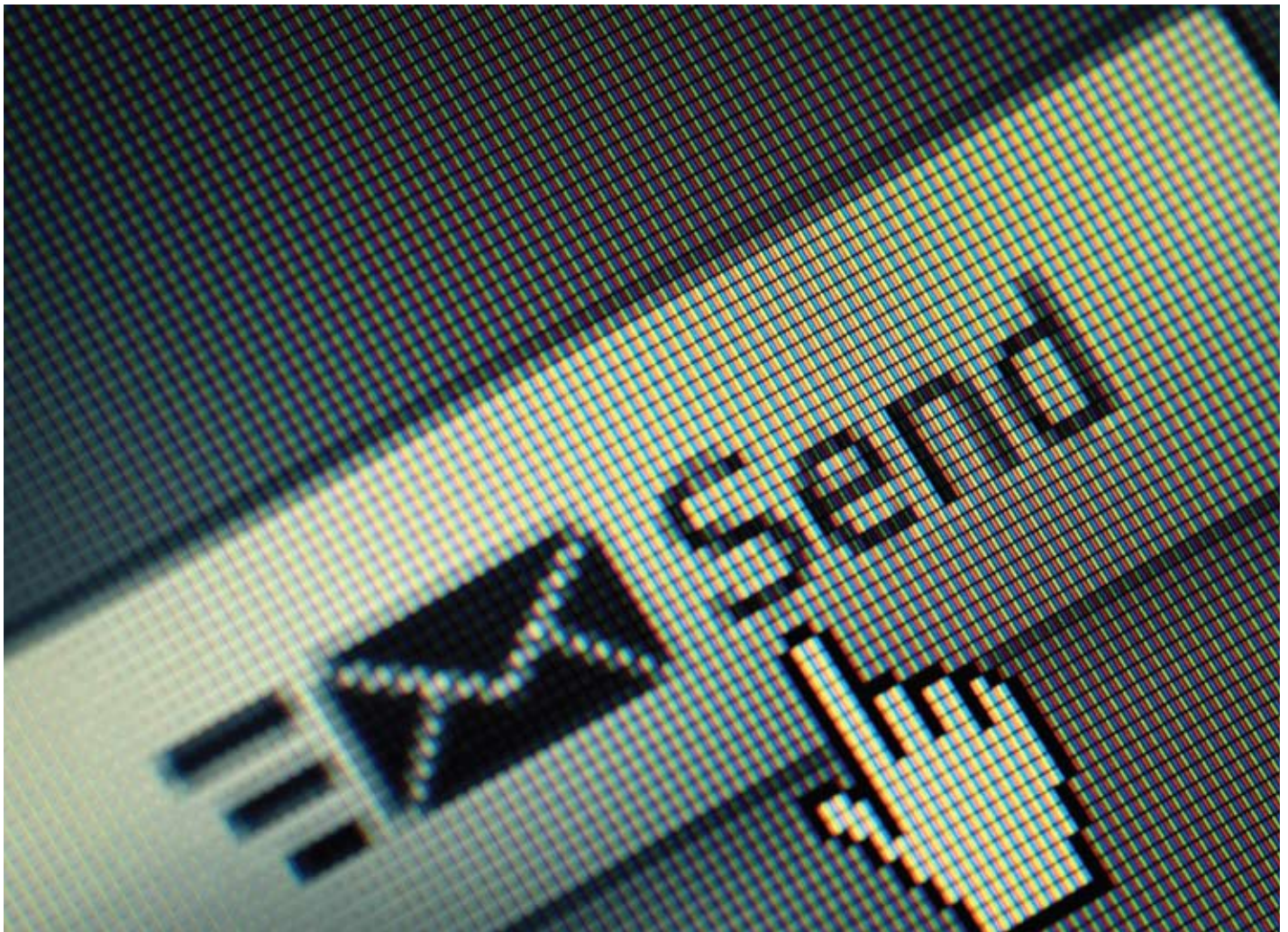
Review other e-filing systems

As was discussed in the beginning of this article, there are a plethora of resources available to gain a general understanding of e-filing. You can start by investigating the websites of other courts with e-filing, such as the United States District Court of Maryland or the District of Columbia. Additionally, the Maryland Judiciary has launched its own website called Maryland Electronic Courts. The website is located at <http://www.courts.state.md.us/mdec/index.html> and it contains a wealth of information about the Maryland Judiciary’s plan to bring e-filing to the state.

Moreover, once a software vendor is selected for the Maryland system, it will be beneficial to: (1) see if any other jurisdictions in the country utilize the system; and/or (2) do some independent research to learn about the system. If the system is being utilized by another jurisdiction, it may also be helpful to contact local practitioners in that jurisdiction to get additional tips and tricks on how to navigate the website and the system.

Learn the rules

Despite the many benefits of e-filing, it can be much more complicated than one might presume. There is a significant learning curve associated with becoming proficient at e-filing, especially if a practitioner that has never done it before. Thankfully,



almost every jurisdiction that has adopted electronic filing has promulgated a set of rules dictating how practitioners are to use the system. The United States District Court for the District of Maryland has a 100-page manual specifically designated for their PACER system. If you are going to endeavor to become proficient at e-filing, you must learn the rules.

Maryland will undoubtedly adopt new rules for e-filing in the state courts. When this happens, there are a number of ways you can go about learning the rules. Obviously, you can start by reading the rules. The most helpful educational tool, however, will be the seminars and classes that the Maryland Judiciary intends to set up to teach Maryland practitioners about the e-filing sys-

tem. Both the federal courts and the District of Columbia still offer weekly workshops to the members of their bars who wish to become more proficient at e-filing. If e-filing is something you intend to integrate into your law firm, attending the seminars and classes is a must.

Learn the case law

Not surprisingly, a number of reported appellate decisions dealing with e-filing errors and mishaps adversely affecting the outcome of a case, have been published in the past half-decade. One of the more recent decisions, *McDowell-Bonner v. District of Columbia*, 668 F. Supp. 2d 124 (D.C. 2009), is illustrative. In *McDowell-Bonner*, it was clear that the plaintiffs' attorney had little to no understanding of the federal

court's electronic filing system.

According to the court, the plaintiffs' attorney missed the deadline for filing responses to motions for summary judgment. The plaintiffs' attorney argued that she had problems electronically filing the responses on the evening they were due, and in her motion for reconsideration after dismissal, argued that the missed deadlines constituted excusable neglect. The court disagreed and denied the motion for reconsideration.

Another exemplary case is *American Boat v. Unknown Sunken Barge*, 567 F.3d 348 (8th Cir. 2009). In *American Boat*, counsel for the losing party at trial claimed to have never received from the court, the electronic notification indicating that an appealable order had been entered. As such, counsel never filed a timely notice of

appeal. After an evidentiary hearing, the eight circuit ultimately concluded that the law firm *did* receive notice on the date the notice was sent. Even though the court concluded that an individual in the firm must have accidentally deleted the electronic notification, the court held that the plaintiffs failed to satisfy the rebuttal presumption of delivery of an electronic filing. This should be every attorney's worst nightmare when it comes to e-filing.

Both *Mc-Dowell Bonner* and *American Boat* underscore the importance of knowing the rules and making sure you regularly check the on-line docket to confirm that you are not missing any important filings. Learning this case law, and researching other similar issues, could easily prevent you from making a similar mistake.

Invest in updated office technology

The two most important pieces of office technology required for e-filing are: (1) a computer program that can convert your Wordperfect and Word files to adobe .pdf; and (2) an office scanner. These two tools will permit you to maintain every piece of paper on a file in electronic format. Without these tools, e-filing could prove quite difficult. But with them, you can virtually run a paper free office.

Conclusion

Maryland practitioners should be excited about e-filing coming to Maryland. It is clear from the Maryland Electronic Courts website and from reviewing the systems of our neighboring jurisdictions, that the Maryland Judiciary has invested substantial time and effort to bring

an efficient and user-friendly system to the Maryland courts. Even though the proposed system is going to be optional, the time and cost saving benefit to e-filing should persuade even small firms and solo practitioners to utilize the system.

It cannot hurt to start preparing for e-filing now by reviewing other e-filing systems, keeping abreast of the Maryland Judiciary's progress, doing some research and investing in the technology required to e-file. Once Maryland's system is in place, learn the rules and take the seminars. Welcome to the future.

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