

e-Filing Report

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Top of the News

No More Free Ride for Federal E-Filing

As of July 1, the federal courts will begin charging people to view documents filed using the Case Management/Electronic Case Files (CM/ECF) system. Until now, the system has been free to users. The fee will be seven cents a page. Parties involved in the case will have "one free look," and if they download the documents onto their system at that time, they will of course be able to access their own copies of the documents on their hard drives at no charge. Although many people anticipated that the federal system would eventually begin charging after the e-filing system completed its pilot phase, and the fee amount was announced in 1998, some organizations, especially law library associations, have voiced concern and displeasure. A person involved with the federal e-filing system (who requested anonymity) said, "Anyone with half a brain will download the document and not have to pay again." This person added that the Judicial Conference will be taking up the matter of fees when it meets in September. Fees collected will go to the maintenance and expansion of CM/ECF in the federal courts.

First Florida E-File Mandate for Complex Cases

On May 21, 2001, Chief Judge Donald R. Moran of Duval County Circuit Court in Jacksonville, Florida, mandated the use of electronic filing to manage the 4,000 complex asbestos cases that the court is handling. The 90-day pilot project is one of the first e-filing projects in Florida. Judge Moran, who chairs the court's electronic filing pilot project, stated that he hope that e-filing, using Bellevue, Washington-based CourtLink's system, would streamline the case management of complex cases for the court and attorneys.

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court near you, he says. "Most of the problems, even the big ones like privacy, have solutions and workarounds."

Mr. Bockweg predicts that all federal courts—district, federal, bankruptcy and appellate—will have e-filing in place in some form by late 2004 or

early 2005. "Back in 1996 [when e-filing began to take root in the federal system], those of us who were working on it thought we'd be further than we were right now. But I'm content with where we are," he says. ●

They Call It Paper Love

by **Judge Alex Koziniski**

Call me a Mastodon. Please! But I love paper.

I love to read paper. I love to handle paper. I love to hear the scratching sound of my ink pen as I edit my paper drafts, or mark up paper briefs.

Paper is easy on the eyes. Paper is easy to navigate. When you have piles and piles of paper documents, you can flip through them quickly. You can browse a paper record, reading a paragraph here, skimming a page there. You can attach paper clips, and paste on yellow (paper) stickies, and fold over the corners on paper pages. You don't have to wait for paper to load, and you don't have to scroll through paper pages, either at a snail's pace or much too fast to read.

You can still read paper when your computer crashes or when you are in the middle of a rolling blackout. On paper, you don't have to guess where the footnotes are (they're always at the bottom of the page), or how far it is to the end of the document (it's the next tab), or where the file ends (it's where the stack of paper ends and your mahogany table begins). When you look through a paper record you get the complete picture. With a little bit of experience and diligence, you can master a full paper record and feel you haven't missed a thing.

Electronic records are as dense as plutonium and about as user-friendly. Just the other day we got the record in a death penalty case.

"Um, where are the boxes," I asked.

"No boxes," my law clerk chirped, "Just this CD. Welcome to the twenty-first century."

Well, I'd rather be back in the twentieth, thank you. The CD contained 187 unlabeled PDF files, consisting of anywhere from two to two hundred pages each. Have you ever tried to navigate something like that? It's like trying to find your way

around the Pentagon blindfolded while dragging a ball and chain. Every page takes eons to load, like the computer is on Quaaludes. You have no idea where the next document starts or what it's about. There is no way to look for a particular document you know exists. And how do you get back to something you didn't think was important the first time you looked, but now realize is crucial? You can't just flip back a few pages. No siree-bob. You have to do the whole thing all over again.

So what did we do? We ordered the paper record. Oh, sure, they pretended it didn't exist but we knew they were lying, and eventually it arrived—box after glorious box. My colleague who was writing the opinion had been buffaloes by the nay-sayers, but that didn't quell his paper lust: He handed the CD to his secretary and had her print out the files. And then she had to find some way to bind them. So that's what electronic records do: They force judges and their staffs to become document printers and binders. Or maybe they create an incentive not to read the record at all. If you're really busy that day, or if you can't afford to have your printer tied up for seventeen hours printing 6,000 pages of documents, maybe you'll say: "The hell with it. If the lawyers say it's in there, it must be true."

I know what you're thinking: I'm just an old curmudgeon—probably still use a typewriter (in fact I do). I must not know that there are lots of nifty ways of indexing records and briefs to help find what you want, or about the other advantages of e-filing . . . the pictures, the hyperlinks (yes, I do know what a hyperlink is—it's what you call Zelda's

Alex Koziniski is a judge on the Ninth Circuit Court of Appeals. He runs an e-mail list and builds all his own computers

boyfriend after he's visited Starbucks), the ability to word-search documents, the ability to carry zillions of pages of text on a disk no larger than a tea saucer, the feeling of being "with it" and on the cutting edge, hair swept back, robe fluttering in the wind. See <http://www.lifemag.com/Life/eisies/1999/legend/portrait2.htm>.

Yes, I want to feel as hip as the next judge. And, sure, I know electronic gadgets can help improve the process of lawyering and judging. After all, I do allow word processing, and Lexis and Westlaw into my chambers, even though they didn't exist while I was going to law school. But the word processor makes drafting easier; it doesn't replace it. Lexis and Westlaw are fine as a supplement to treatises and annotations, but they don't take their place. The problem with electronic records and briefs is that you don't even have the pretense that they are supplements to paper. The whole point is that they will (soon, we are told) replace paper. You want a paper brief? Print it. You want a paper record? We'll force you to do without it because only idiots and Mastodons will want paper when they can get a nifty CD instead. The people pushing this technology are in such a hurry to save the trees and reduce file cabinet space, they don't stop to ask what effect it will have on the art of judging . . . which is the real point of the exercise.

Well, I've got news for all of you non-paper pushers out there: This is going to have a *big* effect, and not a good one. Judges and their staffs are already working at the limit of their capacity

dealing with the crushing caseload. This will not make things any easier for us. Instead, it will make things harder—it's already begun. And I haven't even gotten into the esoteric but vexing problems posed by inconsistent font-height settings on different printers, which throws off the pagination so that your page 6 looks like my pages 8-9. If I am right that electronic documents simply are not an adequate substitute for the paper kind, what you will have is short-staffed courts having to take on the burden of printing and binding documents—a job previously done by lawyers. Or, you'll have much slower processing of cases, as judges and their staffs try to navigate through large chunks of e-documents with the speed and agility of one-legged chickens.

Maybe technology eventually will solve these problems. Maybe we'll get computers so fast that you can jump from one document to another in the blink of an eye. And maybe we'll have electronic books where you can actually flip the pages—in which case, why not use paper instead—it's thinner, lighter and cheaper? Or maybe we'll figure out a way to use virtual reality to give the illusion that you're sitting there flipping paper when you're in fact just sitting at an empty desk. But those advances are far in the future and it's not clear they'll ever be feasible. In the meantime, the e-filing groupies are selling the courts a bill of goods, and the courts are buying, and buying big. I'm afraid that when the bill comes due, it will be paid by the litigants. Some may pay with their lives. ●

Electronic Filing in the Nation's Capital

by **Judge (Retired) Arthur M. Monty Ahalt**

On May 1, 2001—National Law Day—Washington, D.C.'s Superior Court launched an electronic filing pilot project. The project culminated a six-year effort by the Superior Court, which has one of the highest per capita caseloads in the country, to introduce an e-filing service for its "Civil One Division" cases, aiming to streamline the complex civil litigation that fills that division's docket. The pilot, which will run for one year, requires that the attorneys in the six hundred or so cases assigned to that court file only electronically. If the pilot is successful, e-filing will be extended to other civil matters.

The Court's e-filing efforts began in 1995, when the Technology Committee for the Superior Court, headed by Judge Rufus King, who is now chief judge, visited neighboring Prince George's County, Maryland. The Circuit Court there had initiated the first national electronic filing pilot project in partnership with the National Center

Judge Ahalt retired from the Circuit Court for Prince George's County, Maryland in 1999 after 17 years. He currently serves on the Board of Directors and as Chief Industry Advisor for CourtLink.