

E-FILING FROM AN ATTORNEY SERVICE PERSPECTIVE



Don Hoefnagel, Executive Vice President
First Legal Network
dh@firstlegalsupport.com
213-250-1111

For the past five years First Legal has been following the E-Filing movement not only in California, but across the country. Many states have successfully transitioned to this new technology and have benefited from the “ease of use” this technology brings. In our daily struggle to push the litigation process, however, new procedures that solve some of the traditional problems of getting documents filed at the court, new technological problems and concerns take their place. States like Georgia, Michigan, Arizona and Colorado were some of the first to take the “e” leap and each year since have progressed in minimizing the technological problems connected to E-Filing. With 58 distinct Superior Courts, numerous branches and four Federal Districts to contend with, it would be fair to say that California has unique issues in considering this same leap. In addition, California is the most litigious state in the country; the leap to E-Filing is further complicated by having the most filings, the most law firms and most lawyers per capita.

It is important to know what our courts have done up to this point and where each court plans to be in the near future. First and foremost, the Federal and State Courts act independently of each other and should never be mistakenly considered as similar systems. Although they are trying to accomplish the same results, they are doing it in a very different manner. Each of the four California Federal Districts has rolled out its own E-Filing system in a very different way, even though the internal Electronic Case Filing (ECF) system is shared across the state. USDC Northern District was the first to convert to E-Filing with surprisingly few transitional issues. Although it had a very good support “hotline” for questions and were quite lenient on their filers’ mistakes, we were called on numerous occasions to provide information when the court could not be reached. As a result, we took the initiative to educate ourselves and were able to develop a “secondary” support system

or “hotline” for all E-Filing venues that we maintain today.

Eastern and Southern District followed suit and made their transitions; the Southern District, however, developed a demanding training process for filers. Please understand, the training these courts are giving is very valuable in knowing what is allowed and what is not allowed regarding format requirements, programs and file specifications. The problem that developed was the court’s requirement to attend this training. The Southern District wanted potential filers to take a four-hour “on-line” tutorial, as well as come physically to the court in San Diego to take a final exam to obtain status as an official filer. Then and only then would they be issued the proper “login and pass code” information to E-File their documents. Fortunately, the court quickly realized the impracticality of this protocol and limited their requirements to a shortened on-line tutorial. The Southern District also recognized the qualification in other districts as sufficient registration status.

This would not be the case in the USDC Central District, which began in November of 2007 with Trademark and Copyright filings and now has mandated E-Filing for all civil cases as of the beginning of 2008. The Central District put out a General Order stating the basic requirements to E-File with their courts. This General Order requires that the attorney must go through training to become registered to E-File. It does say that if you are registered in other Districts a “waiver” can be requested to forgo this training. We have since learned that most of the judges are rejecting the waivers and require the attorneys to still take the training. The General Order defines the court rules for E-Filing. These rules, however, are subject to the discretion of the judge. This means that the judge can inject his or her own requirements in addition or instead of the rules within this order. Each specific Judge’s orders must be checked and scrutinized for proper E-Filing requirements on variables such as: waivers, filing deadlines, timelines, format and locations of courtesy copies and their delivery. With E-Filing rules being subjective and constantly evolving, it is critically important that you keep abreast of all new information coming out of the courts.

States such as Colorado and Arizona have developed a continuing education training program to minimize the “trial and error” process of E-Filing. We have created a training

process for secretaries and support staffs of law firms, which is a slimmed-down version of the court’s training program. This training session shows not only the “how to’s of E-Filing” for all the different court venues throughout the state, but is also designed to make sure that the important information the court is trying to convey is specifically laid out. We also add the very important subject of “docket and calendaring in an E-Filing environment,” which is not covered in the courts’ official training modules. When a firm E-Files a document, an electronic confirmation of the filing is sent back to the attorney by the court. No longer is a physical file stamped “conformed copy” that gets “logged” into the docket and calendaring department made available. A new awareness of this procedure must be made internally on the law firm’s end to accommodate this or the potential for disaster is possible.

On the state side, the Judicial Council of California and the AOC (Administrative Office of the Courts) began working on an E-Filing module in the late 1990’s and it has evolved into the current system called “2GEFS,” Second Generation E-Filing Specifications, which is a revised version of the original system introduced in 2000 called CETFS (California Electronic Technical Filing Standards). 2GEFS is currently in place in Sacramento, San Mateo, Contra Costa, Santa Clara and Ventura. Since the year 2000, there have been other independent E-Filing systems in place; however most have been withdrawn because they were not compatible with the statewide CCMS (California Case Management System) or they were too expensive to develop and maintain. CCMS will be the statewide central repository for all electronically filed cases in California and will be mandated in the next 5 – 10 years. Orange County Superior Court / Complex Litigation is the only exception where it was mandated in 2007 to E-File all documents. This is not part of the state endorsed 2GEFS system. It is a “home grown” system and is allowed by the AOC, provided the system is compatible with the CCMS. The requirements for the Orange County system differs from the Federal system and the State endorsed 2GEFS system. It is necessary to be keenly aware of these differences. For example, the Orange County system will not automatically notify opposing counsel of a filing as the 2GEFS and Federal systems do. The E-Filing system in Orange County requires that the filing attorney be responsible for notifying opposing counsel. Please refer to the California Rules of Court 2050–2060 to view all the rules outlined by the State on E-Filing.

Like the Federal Courts, the ultimate concept for the State Courts is to provide litigants a unified system to E-File documents statewide and be able to access case information through the case management system (CCMS). This seems like a very good idea, but the problem is that the state is on a very long time frame to roll this out statewide, mainly because of

funding issues. Many vendors are playing a big role in accommodating the technology needs of the courts. The process will necessitate a “third party filer;” in other words, each court will have a list of vendors through which all lawyers must file.

These vendors will have been pre-approved by the court and will have met all the technological requirements to E-file. The learning curve will be much easier than that of the Federal courts because the vendors will most likely be more “hands on” and accommodating than the court when it comes to training and answering questions. Further, in order to advance fees for your E-Filing, no matter which venue, Federal or State, it is necessary to submit credit card information of either the attorney or of the firm at the time of E-Filing. Many firms and individual lawyers are not comfortable with this proposition for obvious reasons. Moreover, this potentially poses a problem internally in tracking expenses and properly billing it back to a client matter number.

In addition to the vendor specialization in this field, some law firms are developing “E-Filing departments.” I feel it is up to the vendors to continue to do their homework and truly become a working partner with their clients to be the bridge to E-File documents with the courts.

As a traditional attorney service in California, it’s been an interesting journey these past five years understanding our role in this new environment and learning how to keep our clientele on the cutting edge of their practices. I hope you found some of the above information and solutions we’ve discovered valuable. ■