

# THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

## E-filing is coming to state court

Electronic filing — e-filing — is being considered for increased use in state courts in Monroe County.

E-filing promises to bring substantial improvements to how court papers are handled in civil cases, saving lawyers and their clients money and time, while also improving public access.

Whether Monroe County should be included in the program is being determined by the New York State Office of Court Administration, and should be resolved in the next few weeks. If approved, the program would begin with required e-filing for limited categories of civil cases.

E-filing is a computerized system of filing and tracking court papers. It would replace many manual steps and make case filing and management easier, while reducing costs. Under the current system, a state court lawsuit is commenced by filing the summons and complaint with the county clerk and paying a fee. The lawyer must obtain a receipt and time-stamped copies of the summons and complaint. Typically there is no judicial involvement at that stage.

When there is a specific request for a court conference or a motion, more papers have to be filed, another fee has to be paid and copies of the papers must be delivered to court and served on all parties.

Once a motion is decided, an order must be submitted, signed and returned, the papers relied upon must be sent to the county clerk, and the order must be filed and served.

Under e-filing, each of those steps is much simpler and easier.

An action is filed by preparing the summons and complaint on a computer and then filing them over the Internet. The fee is paid by credit card or charging an account set up with the county clerk, and a receipt is provided almost instantly to confirm the filing.

Each subsequent pleading or motion can be prepared, filed and served electronically by using a computer with online access to log on to a Web site provided by the court system. A notice confirming the filing of such papers will be generated and served on counsel for all parties to a litigation.

E-filing provides immediate, positive documentation of what was filed, when it was served, and to whom it was sent. There is no “original” in the common sense of the word. Instead, the lawyer filing the paper represents that an original document was duly signed as required by statute, and an electronic copy is filed and functions as the original for all purposes. The filed copy is identical to what is sent to all parties. There can be no dispute

as to potential differences between the filed version and the copies sent to the other parties, and there is nothing to get lost.

Copies of e-filed papers can be made for the convenience of counsel or a judge at any stage, but they are convenience copies only. They are not necessary, because the “original” already is on file.

When a judge decides the motion, an order will be prepared and filed, again by e-filing, and the parties will be sent an immediate e-mail message confirming that the order was filed.

Everything can be accomplished quickly, without confusion, and without making paper copies, buying postage, paying messengers or Fed Ex, or preparing affidavits of service. An electronic listing of all filed pleadings and motion papers is prepared by the clerks on a continuing basis, ensuring a contemporaneous docket is available, showing what has been filed in a case and when.

Another advantage of the e-filing system is that it promotes public access to court records — which is now required by law, with rare exceptions, and is fundamental to our system of justice. E-filing enables court records to be found easily by the parties, the public and the press, although such records still can

be sealed under appropriate circumstances. In those cases, confidentiality can be preserved with judicial approval, just as it is under the manual filing system.

Current law also requires that filed records be redacted to protect privacy, and items such as Social Security numbers, dates of birth and home addresses must be blocked out.

E-filing is available through virtually any computer with basic Internet access for those who are authorized to use the system. While there is a need to become familiar with e-filing rules and procedures, it does not require special computer or technical competence. The advantages of e-filing are available to lawyers whether they practice as solo practitioners, in large law firms or in the public sector. All have the same, instant access to all papers filed. There are no costs or fees for the system beyond those already charged at certain stages of an action, such as to purchase an index number or a motion slip.

E-filing was adopted for most federal cases in the Western District of New York about seven years ago. It was mandatory at the time, and many lawyers at first were apprehensive about what



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appeared to be such a drastic change in practice. Those concerns largely were not valid, and federal e-filing has worked extremely well. It has been in place in federal courts nationwide for several years.

The e-filing system now being proposed for state court is similar to the federal system, but it is easier to use in several important ways, specifically when it comes to how actions are commenced and by not requiring certificates of service.

Because of the huge volume of cases in state court and the variety of cases and practitioners involved, e-filing is being implemented slowly. Practitioners in some areas have been wary of the process, fearful that it will add costs or steps or be difficult to learn. Some judges also have expressed concerns about e-filing. For those reasons, many precautions are planned to ease the transition.

E-filing now is mandatory in certain courts, and by statute there is a three-year pilot program for mandatory e-filing in selected cases in three counties, two of which are New York and Westchester. Mon-

roe County is under active consideration as the third county. If the program is approved here, it would apply only to certain categories of cases, and only after an extensive training program is implemented and all practitioners have had the opportunity to become thoroughly familiar with e-filing as it would operate in state court.

The Monroe County Bar Association has been actively working with the OCA and the county clerk in planning for e-filing, and supports having the pilot program adopted here. E-filing will allow local practitioners to lead the way toward full implementation of e-filing Upstate, to the benefit of all counsel, their clients and the public.

The advantages of e-filing are clear for all concerned. Lawyers in Monroe County should embrace the process and lead the charge to adopt such an excellent and practical set of improvements.

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