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ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

ZYGMONT A. PINES, ESQUIRE  
COURT ADMINISTRATOR OF PENNSYLVANIA

March 5, 2008

Steven Maniloff, Esq.  
Montgomery, McCracken, Walker & Rhoads  
23 South Broad Street  
Philadelphia, PA 19109-1029

Dear Mr. Maniloff:

I am writing to thank you for your interest and guidance on the subject of electronic filing in the courts.

For your information, I have enclosed a memorandum provided to all judicial districts in Pennsylvania on the subject.

Sincerely,

A handwritten signature in black ink, appearing to read "Z. Pines".

**ZYGMONT A. PINES**  
Court Administrator of Pennsylvania

Enclosure

SUPREME COURT OF PENNSYLVANIA

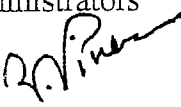


ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS

ZYGMONT A. PINES, ESQUIRE  
COURT ADMINISTRATOR OF PENNSYLVANIA

**MEMORANDUM**

**TO:** President Judges - Courts of Common Pleas  
District Court Administrators

**FROM:** Zygmunt A. Pines   
Court Administrator of Pennsylvania

**DATE:** February 22, 2008

**RE:** Electronic Filing

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As some of you are well aware, the planning and development of an electronic filing system is no small feat. Many court systems have grappled with the resource and policy issues that arise with such initiatives, resulting in some having to go back to the drawing board. Last month the *Legal Intelligencer* reported the filing of a federal class action lawsuit alleging that the mandatory electronic filing system in Georgia's Fulton County courts violates state and federal constitutional due process and equal protection provisions (article enclosed). *See also, McCurdy v. State of Georgia*, 1:07-CV-3098, USDC-Northern District of Georgia.

We understand that five judicial districts have already instituted systems for civil, family and/or orphans' court cases. An informal survey conducted by AOPC's Judicial Programs Department indicates that approximately nine additional judicial districts plan to implement e-filing systems in the near future. The purpose of this memo is to provide you with information that hopefully will be helpful as you implement e-filing processes in your courts.

The trend in e-filing for courts seems to be moving away from proprietary, vendor-based systems to either *systems that are designed in-house* or *open, non-proprietary systems*. Several years ago, national standards for electronic filing processes were promulgated by the Joint Technology Committee of the Conference of

State Court Administrators and National Association of Court Management. The standards provide a “road map” for policies, rules, technological approaches and functional criteria related to e-filing systems, and most importantly propose a common approach to implementing such systems in the courts.

In terms of best practices, courts should adhere to a few basic principles in developing e-filing systems:

- ♦ “Platform independent” systems, which means that someone with an Apple Mac computer can use the system just as easily as someone using a computer with Microsoft Windows.
- ♦ Systems should use or support applications based upon nationally-accepted standards (such as the COSCA/NACM Joint Technology Committee recommendations mentioned above) rather than proprietary solutions. While the latter usefully is accomplished more quickly and at a lesser cost, the court -- to its potential detriment -- becomes dependent on the viability and future success of a single vendor’s product.

Some of the important factors that court systems have considered in designing their approach to e-filing include:

- ♦ Access to the courts should be promoted by the e-filing processes;
- ♦ Court control over its own records should be preserved;
- ♦ Systems should have consistent functionality, compatible protocols and rules to facilitate statewide practice (and perhaps even complement the federal courts’ e-filing system);
- ♦ Processes for *pro se* litigants should be defined to provide equal and secure access to the system;
- ♦ Issues involving public access to e-documents, and the sensitive data that may be contained therein, should be fully studied before the e-filing system is developed;
- ♦ Payment of any required filing fees should be accomplished via electronic methods;
- ♦ Bi-directional exchange of data should be facilitated between e-filing and case management systems; and
- ♦ Maximum flexibility in the design of a system should be sought to accommodate future evolutions of technology.

*The AOPC will keep these best practices and principles in mind when the time comes to plan and develop a statewide civil system.* In the meantime, we must strive for **interoperability** amongst the systems, through common technology and policy approaches. We want to avoid the painful lesson of being pennywise but pound foolish. Ultimately, we want to ensure that the processes you adopt will facilitate integration in a statewide system and benefit the public we serve.

There have been many pioneers in electronic filing for the courts, from whom we can learn. Enclosed with this letter are a summary of e-filing initiatives by Pennsylvania courts and a short list of resources on the subject. I hope that you find this information useful.

Enclosures

Cc: The Honorable Ronald D. Castille  
Chief Justice of Pennsylvania

All Justices  
Supreme Court of Pennsylvania

Andrea B. Tuominen, Esq.  
Assistant Court Administrator

Amy Ceraso, Esq.  
Director of Judicial Automation

Joe Mittleman, Esq.  
Director of Judicial Programs

## Electronic Filing Initiatives in Pennsylvania Courts

	Existing System	Case Type(s)	Vendor/ In-house design	Planned Future System	Case Type(s)	Vendor/ In-house design	Projected Completion Date
Adams	NO			NO			
Allegheny	YES	civil	vendor	YES	expansion of civil	vendor	TBD
Armstrong	NO			YES	civil	vendor	Feb. 2008
Beaver	YES	civil	vendor	NO			
Bedford	NO			NO			
Berks							
Blair	NO			discussion only			
Bradford	NO			NO			
Bucks	NO			NO			
Butler	NO			NO			
Cambria							
Carbon	NO			NO			
Centre	NO			NO			
Chester	NO			YES	civil	vendor	2009
Clarion	NO			NO			
Clearfield	NO			NO			
Clinton	NO			NO			
Columbia							
Crawford	NO			NO			
Cumberland	NO			YES	civil	in-house	undecided
Dauphin	NO			YES	civil	vendor	2009
Delaware	NO			ON HOLD	civil	vendor	
Elk/Cameron	NO			NO			
Erie	NO			NO			
Fayette	NO			NO			
Franklin/Fulton	NO			NO			
Greene	NO			NO			
Huntingdon	NO			YES	civil	undecided	unknown
Indiana	NO			NO			
Jefferson	NO			NO			
Lackawanna	NO			YES	civil	vendor	end of 2009
Lancaster	YES	civil & family	vendor				
Lawrence	NO			NO			
Lebanon	NO			NO			
Lehigh	NO			YES	civil/family	vendor	2008?
Luzerne	NO			NO			
Lycoming	NO			NO			

## Electronic Filing Initiatives in Pennsylvania Courts

	Existing System	Case Type(s)	Vendor/ In-house design	Planned Future System	Case Type(s)	Vendor/ In-house design	Projected Completion Date
McKean							
Mercer	NO			NO			
Mifflin	NO			NO			
Monroe							
Montgomery	YES	civil & family	vendor & in-house	NO			
Montour	NO			NO			
Northampton	NO			NO			
Northumberland	NO			NO			
Perry/Duniata	NO			NO			
Philadelphia	YES	MC small claims/LT/codes	vendor	YES	CPcivil	in-house	2008
Philadelphia		orphans	in-house				
Pike							
Potter	NO			NO			
Schuylkill	NO			NO			
Snyder/Union	NO			NO			
Somerset	NO			NO			
Sullivan/Wyoming	NO			NO			
Susquehanna	NO			NO			
Tioga	NO			NO			
Venango	NO			NO			
Warren/Forest	NO			NO			
Washington	NO			NO			
Wayne	NO			NO			
Westmoreland	NO			YES	county tax claims & mental health	undecided	
York	NO			YES	civil	vendor	

## NATIONAL NEWS

## Ga. Solo Sues LexisNexis Over E-Filing Fees

BY GREG LAND

ALM

**P**laintiffs attorney Steven J. Newton is no stranger to the Fulton County, Ga., courts; a quick search of court records reveals nearly two dozen cases in state and Superior Court in which the Atlanta sole practitioner has assumed a role.

But it was not until last summer that he first used the computerized filing system required in many Fulton State Court and some Fulton County Superior Court cases.

Newton was helping a friend, Norcross attorney W. Phillip McCurdy III, file an emergency motion in a personal injury case in Fulton State Court.

"I had sent a courier down with the motion, and he came back and said all these type cases had to be e-filed," recalled Newton, who fired up his computer and went online.

He said he found the LexisNexis File & Serve Web site relatively user-friendly and didn't have any trouble creating an account and filing his documents.

"I thought it was wonderful," said Newton, "until I got the invoice. I had three \$7 charges, and I didn't know what they were for."

A call to LexisNexis told him that he was being charged \$7 for each document he had filed – and that in some cases, per-document fees could run even higher.

"I thought, 'Do I have to pay \$7 for every one-page certificate of service I file? It's not unusual to file 20 or 30 documents per case, even in minor cases,'" said Newton. "And they were charging the same rate, whether

it's one page or 100."

Next, Newton called the Clerk of the State Court's office.

"I asked them how they could charge these fees, and they said 'LexisNexis sets the price,' I said, 'I don't think that's constitutional.'"

"There was kind of a stunned silence," said Newton, and he was finally told that the court had approved of the arrangement.

Newton, on Dec. 13, went to federal court to file a potential class action alleging that the program is illegal. He named as lead plaintiffs McCurdy, McCurdy's client

*In addition to class certification, the suit also requests an injunction barring further collection of the File & Serve fees.*

Michael, Shane Cawthon and Nelson W. Picklesimer, whose asbestos litigation Newton handled in Fulton County Superior Court.

The defendants are LexisNexis Courtlink Inc., Fulton County State Court Chief Clerk Mark N. Harper, State Court Chief Administrator Stephanie R. Searcy, Fulton County Superior Court Clerk Cathelene "Tina" Robinson, the Fulton County Board of Commissioners and the State of Georgia. In addition to class certification, the suit

also requests an injunction barring further collection of the File & Serve fees.

According to Newton's complaint, filing fees and costs for civil actions are set by statute, and – unless specifically authorized – no other "fees, assessments or other charges may be assessed or collected."

The File & Serve fees, he argues, amount to a "litigation toll booth" that imposes unauthorized fees. The filing rules also violate state and federal constitutional guarantees of due process and equal protection, since some legal documents cost more to file in Fulton courts than in other jurisdictions.

Newton added that the original order establishing the program in Fulton State Court, issued by the clerk of the Supreme Court, does not bear the signature of any high court justice, and there is no indication that it has been approved by a majority of the court.

But his biggest gun, he said in an interview, may be a Georgia statute stating that "[a]ny pleading or other document filed in any court of record may be prepared on letter-sized paper, and no clerk of any court of record shall refuse to accept for filing any pleading or other document for the reason that it is on letter-sized paper."

"They've illegally taken away the ability to mail in pleadings in Fulton County," he said.

Newton also notes that attorneys must subscribe to the online system for access, and he is not mollified by the public access terminals in the clerks' offices, he said.

"I've either got to send a courier or another lawyer down to file, pay for parking ... it's even more expensive than the

LexisNexis continues on 6

## N.Y. Panel Orders New Trial; Faults Defense Counsel

BY DANIEL WISE

ALM

In a scathing opinion, a unanimous New York state appeals panel has ordered a new trial for a prisoner whose defense was "doomed" by his lawyer's mistakes.

Justice Luis A. Gonzalez, writing for the Appellate Division, 1st Department, said the prisoner's lawyer, Edward W. Land, made two critical mistakes: inept preparation that led to the admission of highly prejudicial testimony and failure to challenge his client's confession.

The ruling means the prisoner, Louis Cyrus, who was sentenced as a persistent violent felon in 2003 to a minimum of 20 years in jail for robbing a Duane Reade drugstore on Manhattan's Upper West Side, will be given a new trial at which he will have a shot at proving that the maximum sentence he should have received was one year in jail. To date, Cyrus has served five years of his term.

Land said in an interview last week that he was "delighted" the court had ordered a new trial for Cyrus. At the time the case was tried in the fall of 2003, Land said, "I was relatively inexperienced in handling 'felony cases' and 'my performance' was not the 'effective assistance of counsel' Mr. Cyrus was entitled to."

"Now that I am more experienced," he added, "I wouldn't make those mistakes again."

Mark Dwyer, the chief of appeals in the Manhattan District Attorney's office who

filed privilege applies. The Supreme Court recently ruled in *Bochetto v. Gibson* that an attorney's sending a copy of a filed complaint to a reporter was an extrajudicial communication that was not protected by the absolute privilege. Although the court noted that a qualified privilege would likely apply, the court's refusal to extend the privilege to the distribution of a complaint to the press, without more, makes no sense. Reporters don't always have the time or resources to go to the courthouse. This could make it more likely

## LexisNexis

continued from 4

File & Serve fees," he said. Efforts to reach the defendants or their attorneys were unsuccessful.

Because LexisNexis Courtlink, a division of global publishing giant Reed Elsevier, is a private contractor, it is not shielded by any government immunity, noted Newton. According to its Web site, File & Serve is in use, to some extent, in courts in 16 states, and handles more than 70 million online filings annually.

Newton said he has not been able to find any previous challenges to court-ordered e-filing naming the company.

Efforts to reach LexisNexis' corporate communications office and separate media department, via telephone and e-mail, were unsuccessful. But according to the Fulton County rate sheet attached to Newton's complaint, per-filing costs are \$7 per transaction for general civil filings, \$9 for mass torts and \$11 for complex litigation. For multiple-case filings, \$2 per filing is added to those rates.

In a series of orders beginning in 1999, approved by the Fulton County Board of Commissioners and signed by State Court Chief Judge Albert L. Thompson, cases requiring e-filing involve asbestos, Pen-Pen, mer-

clients, in the course of settlement discussions, or to third-party witnesses.

A few years ago, I served a third-party subpoena that attached a newspaper article that was the subject of the pending defamation lawsuit. My opposing counsel strongly objected to my so-called "republishing" of the defamation, but he was wrong. That communication was clearly privileged.

During discovery, you learn about another product sold by the company and think you may have grounds for another lawsuit. You

curry or lead, silicosis, welding-rods, medical or legal malpractice, personal injury, cases with four or more plaintiffs or defendants, cases in which more than \$50,000 in damages is being sought, torts cases and those in which no specific dollar figure is demanded.

In Superior Court, certain asbestos and silicosis cases must e-file, and all filings in the criminal case against accused Fulton County Courthouse shooter Brian Nichols are also required to be e-filed.

Thompson was unavailable for comment. But Fulton State Court Judge Henry M. Newkirk IV, who helped launch the original File & Serve pilot program in 1999, pronounced himself a big fan of the system — "the first e-file program east of the Mississippi," he said proudly, even as he acknowledged the extra costs.

"There are certainly some expenses associated with it," said Newkirk, "but it's also saving the county a lot of money in time and the space downstairs to hold all those documents." And attorneys, said Newkirk, also save in terms of convenience and time.

"It's very convenient for lawyers, who can file from their laptops in Atlanta or London or anywhere, anytime," he said.

In conversation with lawyers, said Newkirk, "I'd say about 97 or 98 percent have been favorably inclined. And I've asked a lot of lawyers about it."

enterprise run amok, you decide to report this to law enforcement in hopes that criminal charges will be brought. Privileged?

The judicial proceedings privilege applies to statements made to law enforcement officials for the purpose of initiating criminal proceedings.

In short, while the general parameters of the judicial proceedings privilege are clear enough, there are aspects of it that are not well defined and present a risk to attorneys who are not extremely careful.

As e-filing spreads to other jurisdictions and other courts, he said, the state may well adopt a less costly system, such as that used by the federal courts.

"But I see it being contracted out to a third party for the foreseeable future."

Newkirk said he was unaware of any previous legal challenges to the system.

Fulton Superior Court Chief Judge Doris L. Downs said she's heard "a lot of complaints" about the fees and doesn't understand why they're so high.

"You can run up a lot of money," she said, noting that some attorneys have said they brought smaller cases to the Superior Court in part because of the fees.

"I think it's something we really should look at," she said.

For his part, Newton also thinks e-filing is a beneficial option; he just doesn't like the hefty fees and lack of state oversight that goes into their promulgation.

"I can't believe the [Georgia] Supreme Court would say, 'We need greater access to the courts,' then double or triple the filing costs," he said.

The case, in the Northern District of Georgia, is *W. Phillip McCurdy, et al v. the State of Georgia, et al.*

This article originally appeared in the Fulton County Daily Report, a publication of ALM.

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### ***Resources for Information on Electronic Filing in the Courts***

1. Joint Technology Committee of the Conference of State Court Administrators and the National Association of Court Management, website located at [http://www.ncsconline.org/D\\_Tech/jtc/](http://www.ncsconline.org/D_Tech/jtc/). Standards for Electronic Filing Processes, located at [http://www.ncsconline.org/D\\_Tech/standards/](http://www.ncsconline.org/D_Tech/standards/).
2. Electronic Filing Standards, Advisory Committee on Technology and the Courts – Supreme Court of Ohio, located at <http://www.sconet.state.oh.us/actc/SGR/EFiling.pdf>. Local Ohio courts have instituted in-house e-filing programs, but with the adoption of these standards, Ohio anticipates development of a statewide system that is based on the open, multi-service provider model.
3. California Electronic Filing Technical Standards Project, located at <http://www.courtinfo.ca.gov/reference/cefts.htm>. California is reported to be developing a statewide e-filing system based on open standards that will facilitate multiple electronic filing service providers.
4. Task Force Report on E-Filing in Oregon State Courts, located at <http://www.osbar.org/docs/resources/EFnov2006.pdf>. While Oregon has not implemented e-filing yet, the task force report recommends development of a central, Internet-based system that is standards-based, and not tied to any particular software or application system.
5. Texas' Judicial Committee on Information Technology, website located at <http://www.courts.state.tx.us/jcit/EFiling/EFilingHome.asp>. Texas offers e-filing through the TexasOnline website, and approximately 50 courts in 29 counties are presently participating. E-filing users can select from among seven different electronic filing service providers that have been certified by the Judicial Committee on Technology and TexasOnline.