

Chapter 2: Selling the Idea

Electronic filing often initially is perceived as an entirely new technology. Because of the mixed track record of previous automation efforts, it may be difficult for many courts to acquire funding and support for something seen as a bold, unproven venture. In addition, courts usually have many existing needs already competing for scarce funding and support.

The purpose of this chapter is to provide practical and realistic information to help a court promote a plan that satisfies the needs and goals of all constituents. A clear, explicit approach will help to persuade key facilitators to lend support, convince funding bodies to allocate resources to the project, encourage the providers of the necessary products and services, and recruit law firms to serve as partners in the endeavor. Courts should prepare and implement a marketing strategy for their plan.

Define the Audience for Your Plan

Your audience includes those who pay for, support, promote, and use electronic filing. Remember that funding is only part of the equation. Rules and statutes may require modification. Take a moment to create a checklist of the groups and individuals that should have a clear understanding of your goals. The list may include:

- The clerk of court.
- Judges and judicial committees.
- Court administrators.
- Current technology staff.
- Local and state legislators.
- Attorneys.
- Suppliers of products and services to courts.
- The public.

Complete this checklist by deciding what stage of the process involves which of these participants. For instance, depending on your situation, selecting a vendor to supply components of these systems may be perceived as premature, or it may help speed things up by showing the interest your project has generated in the market.

Understand the Dynamic of Your Audience

It is important to understand that individuals within each of these groups will likely react to your plan based on their perception of the risks involved. Some will be enthusiastic about using technology – any technology -- to try to solve problems. Others will be skeptical about the ability of technology to increase efficiency. A few may initially see electronic court filing as a threat to the status quo under which they prosper, and they may work subtly to derail the project. Most, however, will simply want to be convinced that the project can be completed within the planned budget, that existing operations will not suffer during the transition, and that the projected benefits are likely to be achieved.

Using the technology options and financial plans developed through this guidebook, you should be able to articulate clearly the projected impact, timeframes and savings to these groups.

Be Specific about Your Current Costs of Operations

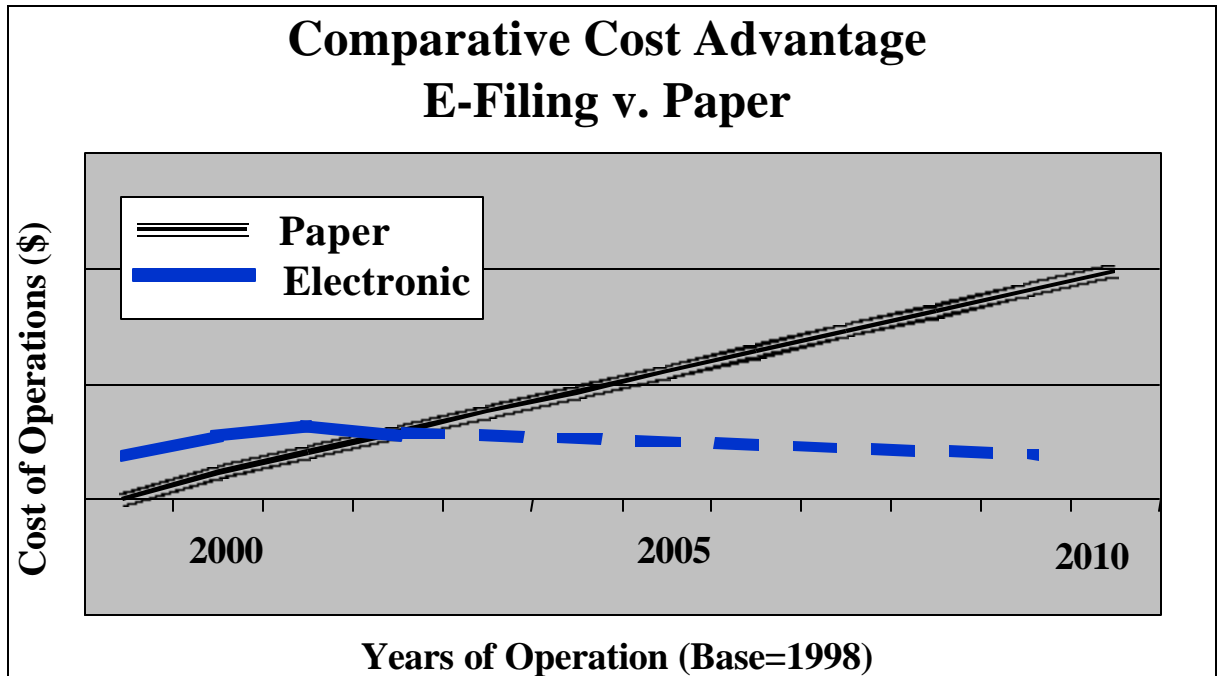
Technology generally receives a significant share of the non-personnel budget today, but existing case management systems, personal computer networks and computer systems also require resources and staff to keep them running. Because electronic filing is a supplement to, rather than a replacement for, a case management system, it is important that there be sufficient funding available to support all of this work.

Also, current staff levels and work classifications need to be charted, and projections made for future operations both with and without electronic filing. All changes that can be reasonably anticipated to occur should be clearly described, including growth in case loads and increases in *pro se/pro per* filings.

Be Specific about Projected Benefits

If the court is prepared to initiate an electronic filing project, the next step is to persuade those who will supply funding. Legislatures, county commissions, boards of supervisors, city councils, or whatever group makes budget decisions should be involved in studying the need for the technology. Most often funding bodies are convinced to provide resources if they see the court studying the issues methodically and making rational choices, rather than if they perceive the court to be on a quest to acquire the latest technology toys.

Selling the idea of electronic filing will require making assumptions based on facts, leading to projections that show the long-term cost advantage of replacing the paper-based process with electronic filing. The following chart shows this projection by contrasting the cost of a paper operation with that of an electronic filing front-end feeding into the case management system.



The chart should be regarded as illustrative only, as circumstances and related cost factors vary widely from court to court. It is based on the premise of level caseloads and reflects, for both methods of operation, non-personnel costs such as:

- Space.
- Utilities.
- Materials.
- Equipment.
- Software.
- Services.

Court managers should be able to project the actual costs of their current operation with a fair degree of accuracy. They know how much they are paying for paper, copiers, storage, utilities, and other expenses. They also can determine what those costs are likely to be in the next few years, based on information from past budgets and current trends.

When electronic filing is implemented, there is an initial increase in the total cost of operations because of the start-up expenses associated with planning, acquiring and implementing the new technology. Chapter 7 identifies the key cost categories that a

court is likely to encounter during this period, and the chart above illustrates this pattern of temporarily rising costs. In subsequent years, however, the total cost of operation begins dropping as the start-up costs are absorbed and operational efficiencies begin to have an impact. At some point the lines on the graph intersect each other, with the electronic operation costing less than the paper one. Depending upon the approach the court takes to implementation, the nature of the conversion process, and other varying factors, the crossing point could be as soon as three years after initial implementation.

While the relative costs of the two operational methods continue to diverge, the actual cost of the electronic filing operation could vary from a slight upward trend to a continual decrease over time. Constantly improving price/performance ratios for technology exert a downward pressure on overall costs. If rising caseloads are factored in and human resources expenses are included, the cost of both types of operations will rise. In that case, however, the gap widens even more dramatically, because the cost of the paper-based operations will rise much more sharply.

Maintain the Interest and Enthusiasm of Supporters

It is important that there be sufficient political support within the court for electronic filing to keep it a high priority for funding for more than a single budget cycle. It may take several years to fully implement electronic filing and to start to receive benefits from the technology.

Explain Benefits to External Users

A major group that needs to be convinced of the value of electronic filing is the attorneys who will be primary users of the system. Often, this is the group that encourages the court to explore the technology, though when presented with the hard

realities of implementation, maintaining a high level of commitment and enthusiasm in this group is not so simple.

It is critical that those law firms who will participate in electronic filing projects be involved in policy discussions and system design, vendor selection and project implementation at every step. Based on early pilot tests of electronic filing, a court that believes it can order attorneys to adopt its technology standards will not succeed. Law firms will expect to be provided with a clear explanation of benefits (i.e., “marketing”), opportunities to receive regular staff training at their firms at convenient times, fast-reliable customer support, and integration with the technology systems that they have in their firms. The law firms should be partners with the judiciary in developing and deploying electronic filing technology.

Explain the Risk Factors

Before promoting your plan, identify as many risk factors as possible and develop plans and alternatives to minimize their impact. Examples of risk factors are those that arise from the technologies and vendors chosen, the new requirements on court staff, the effect of possible changes in project staff or loss of project proponents, and the impact of funding changes.

For instance, depending on the amount of technology and services the court chooses to manage in house *versus* outsource, a court may need to give careful consideration to whether the court can attract and keep necessary technical staff, customer support staff, training staff, marketing staff and so forth.

Promoting the plan also requires investigating other e-filing projects that have been undertaken and determining, for example, whether the court might expect delays in start

up, and inadequate attention to potential users, to be significant contributing factors to the failure of many projects.

Articulate the Goals

An electronic filing project should expect to demonstrate new efficiencies in court administration, and fully leverage investments in computerized back office technology such as case management systems to better serve internal users. The goals also should include designing an approach to electronic filing that gives filers the range of service choices they have today, but with optional computer-based efficiencies. For instance, courts can expect to work with their constituents, existing technology providers and their partners on the following goals:

- Provide e-filing/retrieval access to many divisions of law.
- Ensure security of court back office.
- Utilize advanced architecture and integrate disaster recovery.
- Ensure accurate and timely electronic court fee payment.
- Maintain high availability and accuracy of filing confirmation.
- Require quality support and service.
- Include government agencies needs in development process.
- Develop open standards for electronic filing and retrieval.
- Develop the appropriate *pro se* e-filing modules and the appropriate exceptions to mandatory e-filing.
- Maintain the high quality of services provided today.

Customize a Model Business Case to Your Court

A plan for electronic filing is basically a “business case,” outlining cost *versus* return, risk *versus* benefit. A clear business plan can be used best to convince the constituent groups of the value of the technology, which can be built in several parts. First, it is necessary to explore the benefits of electronic commerce to the courts, the attorneys using it, the parties involved in cases, and the citizens of the state, and their representatives, who must pay for the system. Second, it is important to assess the technology and

services that are available for implementation, and the vendors that supply it. In most cases, there are several alternative approaches to implementing electronic filing. Each should be explored. Third, it is essential to document the life cycle costs of the specific approach or approaches under consideration. With a complete business case, the court is in a better position to sell the project internally and externally. The remainder of this chapter will explore some components of this business case in more detail.

Benefits of electronic filing

A case management system contains only a small amount of important information about a case. This data allows certain functions to be performed, like generating calendars, monitoring caseload growth and tracking restitution payments.

An important component of electronic filing is the document management system, the database of pleadings and other papers prepared by or submitted to the court. When a document management system exists, all case papers and case information is available and searchable electronically. Instead of storing a small fraction of the information from a case file, the document management system makes everything available.

Although the benefits of electronic filing in the justice system need to be categorized in many ways, this section will view the multiple advantages as they relate to documents, staff, attorneys, and management issues.

Documents

Most courts, particularly large ones, expend significant resources on file management. This includes creating files, pulling and filing case jackets for court events, placing new documents in file folders, maintaining indexing systems, monitoring the location of files as they are used by various individuals, purging, microfilming, and

archiving. An important benefit of electronic filing is that all of these activities are eliminated or streamlined.

Storage space, as will be shown later in this document, is expensive. New courthouses are now being built for more than \$300 per square foot in some parts of the country, and leased space can run well over \$15 per square foot annually. Electronic filing eliminates much of the paper in the courthouse, and changes the retention methods and timing for that which remains. For example, the court may still receive papers from parties, but can scan them and store them by date received, rather than being required to track down the case file in which to place them. At the same time, security of records is higher in an electronic system, since no user ever has physical custody of a pleading. Wear and tear on papers and folders also is eliminated, since a digital document does not deteriorate with use.

Staff

Electronic filing eliminates redundant work. In today's systems, an attorney places information in a document and sends it to the court. A clerk reads the paper and records the information in a computer system. In an electronic system, the attorney's keystrokes are transferred to the court's computer, and never have to be repeated. This results in less data entry to support court clerical operations.

Courts that have experimented with imaging technology have documented the tremendous price of paper handling.¹ With electronic filing, since most of the paper is eliminated, so are paper handling costs.

¹ See Lawrence P. Webster and James E. McMillan, Document Imaging in the Orange County, California Superior Court Probate Department: An Evaluation (Williamsburg, National Center for State Courts, 1993).

Another benefit of electronic filing is workflow. Once the court stores documents electronically, it is possible to route them to the appropriate staff immediately, eliminating processes that can add many days to the life of a case.

Attorneys

Electronic filing helps attorneys get documents to the courthouse more quickly. Many steps in the process, such as printing and transporting papers, are eliminated, saving time and money. Postage costs also are reduced, particularly when service also can be completed electronically.

Because the court has an electronic case file, the attorney can access it without leaving his or her office. This may result in the elimination of many paper records in law firms. With the access mechanisms that allow attorneys to see court case files, they also should be able to view calendars and other important records. Many individuals can access these materials simultaneously from different locations, a feat that is impossible in a paper environment.

Court management

In addition to work saved by eliminating some of the data entry associated with document filing, other tasks will be removed because the amount of data collected in case management systems will be reduced. Why transfer information from a document to a case management system if the document is available electronically?

When documents are routed electronically, it will be possible to create workflow paths to increase the efficiency and effectiveness of the entire system. Just as computers enabled court administrators to develop sophisticated case management techniques, like differentiated caseflow management (DCM), electronic filing will allow more intricate control over document processing. For example, the same type of document could follow

many different paths through the courthouse, depending on the data it contained. The processing paths also could be reengineered to reflect the improved capacity of staff using the computer tools.

Another benefit of the automation of any process is increased effectiveness. Once information has been converted to an electronic form, it can be used for other purposes. This will allow courts to provide new services and functions that would not have been practical prior to electronic filing.

As imaging systems have demonstrated, document and workflow management data can be used to monitor staff productivity more carefully. It is possible, though not always desirable, to measure the number of seconds a clerk spends on each step of a document processing activity. This can have many benefits for management purposes, including fine tuning of work processes and disciplining of court employees who are not as productive as their peers.

Technology assessment

Five factors should be considered when assessing the value of any technology.² They are time, cost, availability, risk, and value.

Time

Time is the most critical element of the technology life cycle. Some technologies have value to courts for years or generations, while others may become obsolete within months. Cost, risk and availability also change over time at varying rates. Despite variations in duration, most technologies pass through similar stages. Court leaders never should purchase equipment or software, or select a technology strategy, without a clear understanding of its life expectancy.

Cost

Cost is the most commonly recognized factor in choosing a technology option. Because courts usually cannot afford the latest and greatest innovations, they often settle for lower-cost, smaller, slower, or older alternatives. Court managers often over-emphasize purchase price and ignore more significant expenses; that is, operational and management costs of the technology through its useful life. In assessing technology options for electronic filing, judicial branch leaders should estimate all costs through the expected period of use, not just the price of acquisition. All costs associated with people, space, supplies, and effects on other court work must be considered.

The cost of a technology is usually highest in the early stages of its life cycle. As development costs are recovered, production volume increases and competitors produce similar products, vendors cut prices. As new alternatives appear, the cost may drop dramatically as demand for the product disappears. Finally, as others stop using the equipment or software, maintenance and operational costs may increase as trained personnel and replacement parts become scarce.

Risk

Risk is the probability of success of implementing and using the technology. Excessive risk taking with emerging or aging technologies can lead to failure. It is important to review projects undertaken by other courts, particularly for a new technology like electronic filing. As others gain experience, risk declines. As a technology nears the end of its useful life, risk begins to increase again because of a growing chance that support may not be available.

² Lawrence P. Webster, *Automating Court Systems* (Williamsburg, National Center for State Courts, 1996).

Availability

Availability is a serious problem with very new or very old technologies. Those who have waited months for a product to arrive, after being told by a salesperson that it would ship within days, know these frustrations and headaches. Availability can be a problem very early and, to a lesser extent, very late in the lifecycle.

Value

Value is the most important factor in assessing technology. If a program or product will do the work of the court effectively and efficiently, it does not need to be the latest and greatest option. Too many courts have spent exorbitant amounts of money on enchanting technologies that have not delivered.

The technology life cycle

The technology life cycle consists of four stages: the *future stage*, the *emerging stage*, the *existing stage*, and the *obsolete stage*. While the length of time in any stage will vary, each technology will pass through every stage.

Future technologies are those that are not yet available to the court or other organizations. Cost and risk are not factors, and value may be very high because no one has discovered any problems yet.

Emerging technologies are those that have found success in other organizations, but not in courts. They are usually experimental and expensive. Many less than satisfactory attempts at implementation usually precede a successful application, so risk is very high. As with future technologies, the perceived value of emerging technologies may be inflated due to a lack of experience with the new tools' shortcomings. All of the pieces necessary for successful implementation in a court may not be available.

Existing technologies are those that have found widespread acceptance and use in courts. Most of the difficulties accompanying their installation have been identified and resolved. Costs of these technologies normally decline over time. Availability is high and risks are low.

Obsolete technologies are those that have not adapted to a changing environment or have been superseded by better and more cost-effective alternatives. They are usually inexpensive and carry little risk, other than their short life expectancy.

In general, electronic filing must be considered an emerging technology. Electronic filing systems include a variety of components, e.g., file servers, firewalls, document management software, that individually may cover the full range of the life cycle. Courts should assess every major technology component of their electronic filing project. It doesn't make sense, for example, to try and tie state of the art document management software to an obsolete case management system. In reviewing options, it is advisable to compare the advantages and disadvantages of using service providers for certain parts of the process, much as courts currently rely on the post office and telephone companies in the paper-based world.

Approaches to electronic filing

There are many options to consider when designing an electronic filing system. The computing environment, financial and technical resources, and capabilities of major law firms will dictate some of the choices, so it will not be necessary to assess the hardware and software for all of these methods.

Some of the earliest electronic filing systems used bulletin board software and word processing documents. Users dialed in to the bulletin board and uploaded papers to be

filed for their case. Service, or notification of filing, was accomplished with electronic mail or facsimile.

Another approach is to use personal computer forms packages to generate an electronic cover sheet, to which a word processing document is attached. This provides data for the case management system without keying at the courthouse.

Still another approach is to provide data and documents through electronic mail or work group software. This method can be used in either a private network, or over the Internet.

Still another method, one that may be most attractive presently, is to file documents through the World Wide Web. Browsers can be used as a standard interface, and web-based forms can provide data capture.

Another avenue for filing electronic documents is through kiosks. These multimedia devices allow individuals to receive detailed computer-based assistance in completing and submitting their forms.

A final technique can be combined with several of the approaches listed above to provide formatted data to the case management system that serves as an index to the documents. Tags can be placed on information in the document to identify specific items. These tags are applied in the same manner as one would apply bold, underline, or italic format to a word processing font. The tags would be invisible to the user, but could identify party and attorney names, cause of action, filing date, and other discrete variables needed to populate a database.

Costs of electronic filing

A certain amount of work must be performed whenever information is submitted to the court. It must be read, analyzed, stored, acted upon, and perhaps distributed to others.

This will occur regardless of the medium of exchange, paper or electronic documents. A tremendous amount of work also is required to process the medium, rather than the data. Many of the costs of handling paper are distinguishable from the expenses associated with processing the information it contains. Electronic filing eliminates most of the paper-handling expense. Of course, there are also tasks and costs associated with processing electronic media, but they are typically much lower than for paper. All are part of the cost equation.

As has been mentioned, courts should attempt to document the life cycle costs of components of their electronic filing systems. A solution that costs less initially may cost much more over its useful life.

Components

In general, the court needs a good case management system that can function as an index to documents. A document management system also is necessary. In theory, it would be nice to have the document management system in place and working well before initiating electronic filing. In the real world, most courts cannot afford to manage electronic documents without electronic filing. The paper handling costs are just too high.

Integration of case and document management is necessary. Experience with imaging technology has shown that if the document management system has its own index, then data storage, and possibly data entry, will be duplicated and the systems will never get synchronized.

The electronic filing components that are “behind the scenes” are essential. Though there are other options, this is typically a server (server hardware and server software), or

group of servers, inside and outside of the court security firewall that accepts and does initial processing of the documents.

The other critical component is the network connection to the outside world. This can be a private network or regular phone lines with dialup modems, but the Internet has become a superior choice in almost every circumstance. Courts and their electronic filing service providers should expect to support the user interface with a World Wide Web browser.

The chapters that follow, particularly Chapter 7, will provide specific information for compiling costs for each of these components.

Summarizing the Project Plan

With a clear business case, a court demonstrates that it has given consideration to all realistic approaches that can deliver the benefits of electronic filing to users in law firms, the public and the court. The plan can best be promoted if it can be well summarized.

In summary, there are three basic models for electronic court filing: (1) out-source everything; (2) build and support everything internally; and, (3) maintain tight operational control over the Court's data and technical infrastructure and also encourage private industry to promote new filing/retrieval software services to the public.

Analysis: Outsource All Functions

Most courts in the United States are capable of managing and operating a modern, complex information system for internal users (judges, judicial assistants, and clerks) and providing some information access to external users. Given the critical importance of accurate and reliable court record keeping, most courts today cannot justify "out-

sourcing” these core functions, even if they acquire the software from a commercial vendor.

Analysis: Build and Support Everything

At the same time, however, since courts are not software companies, they are not as well suited to developing and supporting software for private and public attorneys and other citizens.

Based on their frequency of filing, and on their legal specialties, filers will need specialized applications to prepare and submit filings and court fees, to conduct service of process, to electronically retrieve and pay for documents, and perform the many other tasks associated with court filing.

Nor can courts manage the integration of such tools into other law office technologies, such as time and billing systems and attorney case management systems. These realities suggest that many courts will conclude that the resources required to “do everything” are beyond the necessary and appropriate levels required by their Government function. Some well funded courts, however, could probably undertake large parts of these projects.

Analysis: Focus on Core Court Information Systems, Encourage Service Providers

Courts should also conduct research in the marketplace to determine whether the private sector has a new service businesses to develop and support electronic filing/retrieval – connected to, but outside of, a court’s own highly secure infrastructure. In such an arrangement, Courts retain operational control over critical data management functions, such as the case management system and the courts document management system.

Under this type of approach, some courts will conclude that the court and the filing community will benefit by attorneys and citizens having high quality software and customer support available from private companies for document filing and document/information retrieval. Just as courts do not pay couriers to bring paper documents for filing today, courts would not pay to bring documents to its “electronic filing counter” tomorrow. This approach will provide clear separation and security for the Court’s systems while encouraging rapid rollout of e-filing.

Conclusion

Considerable experimentation will occur in the area of electronic filing over the next couple of years. Some courts will purchase the equipment and hire the staff to build, promote, sell, and support electronic filing from the courthouse. Others will outsource everything.

It has been a common goal of courts to establish some standards in this area. These standards will begin to emerge based on successful projects in the future. Many courts likely will conclude that the most appropriate approach is to secure and enhance their internal computer operations and then create an “electronic filing counter” at which potentially many electronic filing service providers deliver filings and court fees, and pick up and disseminate court documents and notices.

Regardless of approach, courts that develop a comprehensive plan explaining why they are taking a particular approach will most likely reach their project goals.

