

e-filing

Michigan Courts

Frequently Asked Questions:

Q1: Now that the legislation has been approved and the filing fees are being collected, what's being done to implement the statewide e-filing system?

A: *The successful implementation of statewide e-filing is a top priority of the Michigan Supreme Court and State Court Administrative Office. To this end, SCAO has hired one of the nation's top technology consultants, Gartner, to provide advice regarding the development of a request for proposal (RFP) and to evaluate vendor responses. A critical part of developing the RFP is a thorough understanding of stakeholder needs and expectations. A representative cross section of courts and filers are currently being interviewed to make sure that the requirements listed in the RFP are comprehensive and reflect a clear understanding of the functionality expected by system users. We expect to issue the RFP in August and select a vendor and award a contract by January 2017.*

Q2: My court has already implemented e-filing as a pilot project. Can I continue to collect a fee for using the system and operate as normal?

A: *If your court has an administrative order regarding e-filing and was collecting a fee for e-filing on September 30, 2015, the court or funding unit may continue to collect the following, in addition to the electronic system filing fee, until December 31, 2016: \$2.50 for filing or service; \$5 for filing and service. Since this fee authorized in the legislation expires at the end of 2016, pilot courts will not be able to collect that fee after the expiration date.*

Q3: My court doesn't have an e-filing system yet. Can we implement one now?

A: *No. Courts must receive permission from the Michigan Supreme Court to accept e-filed documents. At this time only those courts with MSC Administrative Orders are allowed to accept e-filed documents. Once the e-filing vendor is chosen, and an implementation plan is developed, we expect courts will be able to begin accessing the system later in 2017.*

Q4: What's the timeline for implementing e-filing in courts that don't currently have an e-filing system?

A: *We are committed to implementing the statewide e-filing system as quickly as possible, but our first and foremost objective is getting the system right, and that takes time given Michigan's complicated system of 242 trial courts and 165 funding units, as well as 83 county clerks with responsibility for handling court records. Because Michigan courts vary so greatly in terms of available resources and capabilities, implementation time will differ from court to court. Starting in 2017, the e-filing vendor will be working closely with SCAO and with individual courts to develop specific implementation plans.*



As shown in the above diagram, there are many time-consuming steps in the process of implementing a statewide e-filing system. Most importantly, we need to understand stakeholder requirements and get your input regarding what the system should look like. Your needs and expectations will shape the RFP that will be used to solicit vendor responses. Once the responses are received, there will be an opportunity for courts to review vendor demonstrations and provide input into the selection process. When a preferred vendor is chosen, a contract will be negotiated and the development of specific court implementation plans will begin in 2017.

Q5. My court does not have an Electronic Document Management System. Will we still be able to participate in statewide e-filing?

A. *The RFP will include requirements that provide for implementation of a statewide EDMS that courts without EDMS systems at present can utilize.*

Q6. My court already has an EDMS. Will we have to use the state system?

A. *As the requirements for the statewide e-filing system and EDMS are developed, criteria will be included to allow courts to continue to use their current EDMS.*

Q7: Are you concerned about issues that could accompany the ability to access legal documents on line, such as children reading their parents' divorce files or the dissemination of mental health information?

A: *E-filing and document access are different and distinct issues, and we expect to address a variety of issues related to document access in the future. Most importantly, the need to resolve access questions need not slow down the implementation of e-filing. Ultimately, the Supreme Court and the State Court Administrative Office (SCAO) will have to grapple with where to draw the line on what documents can be accessed electronically. However, it should be noted that nothing is changing regarding which documents are public or nonpublic.*

Q8: How long will e-filed documents remain available?

A: *This will depend on the cost of storing old documents, the casefile management standards, and the court rule requirements.*

Q9: Will e-filed documents be maintained only at the local level, or will all or some of them be stored at the state level?

A: *Part of the e-filing system authorized and funded by the 2015 e-filing legislation is a state-based electronic document management system. Counties will not be required to use it because some counties already have document management systems, which they can keep if they so choose. Any court that does not have its own document management system or wants a more accessible system will presumably want to join the state-based system.*

Q10: Will we still need to serve opposing counsel by mail, or electronically under MCR 2.107(C), if we are notified by e-mail by the e-filing system that a document has been filed? And what will be the cut-off hour for filing? If midnight, will deadlines to file responsive documents be extended?

A: *The Michigan Court Rules will have to change and recognize the new future of e-filing. We will likely see an initial revision of the court rules addressing how paper-centered processes need to be amended to implement e-filing in the near future, but we don't have answers to those specific questions yet.*

Q11: Are there any plans to have e-filing kiosks in every courthouse?

A: *There is not a specific plan yet, but we must ensure the ability for all those who may not have access to the internet, to file their documents as required by the court rules. One possibility is public kiosks.*

Q12: Can you explain how the new fee system works to fund e-filing implementation?

A: *MCL 600.1986 authorizes an electronic filing system fee that, upon commencement of a civil action, is charged to the party filing the case. This electronic filing system fee went into effect on March 1, 2016. The term civil action is defined in MCL 600.1985 and specifically excludes criminal cases, civil infraction actions, proceedings commenced in the probate court under MCL 700.3982, and proceedings involving juveniles under Chapter 12A of the Probate Code (MCL 712A.1 et seq.). Please note that this fee is charged even if the case is not e-filed.*

Q13: Will e-filing affect the process for requesting a waiver of filing fees?

A: *E-filing will have no effect on the requirements for obtaining or entitlement to a waiver of filing fees, including the electronic filing system fee.*

Q14: When an appeal is filed, is the electronic filing system fee charged to the party filing the appeal?

A: *No, the electronic filing system fee is not charged on an appeal. The electronic filing system fee is only charged once per case when the case is originally filed.*

Q15: Does the court charge the electronic filing system fee when a motion, garnishment, or subpoena is filed in a civil action?

A: *No, the electronic filing system fee is only charged when the civil case is commenced. It does not apply to other filings that take place after the civil case is initiated.*

Q16: Does the statute regulate third party vendor transaction fees that vendors charge directly to users to make credit card or debit card payments on civil infraction or criminal matters?

A: *The statute speaks to fees specifically charged for electronic filing, so it does not regulate vendor systems that facilitate payment of civil infraction or criminal matters. The statute specifically authorizes three fees that may be charged to the party filing a civil action: (1) an automated payment service (APS) fee, (2) an electronic filing system (EFS) fee, and (3) a per transaction fee (which as noted above is only applicable to currently-operating e-filing courts). An APS fee is one that is charged to the court or the court's funding unit by the bank or other electronic commerce business for processing the automated payment. The third party vendor system does not fit the description of an APS fee because neither the court nor its funding unit is being charged a fee. If your court is not currently an e-filing court, then the per transaction fee does not apply.*

For example, under this statute, a person filing a new general civil case and paying by credit or debit card would pay for the initial filing fee of the case, plus the EFS fee and an APS fee that cannot exceed 3 percent of the automated payment or the actual merchant transaction fee, whichever is less, if the court is being charged a fee by the bank or other business for processing the payment. Unless the court was also an e-filing court, no other fees could be assessed to the party.

Q17: The statute provides that clerks may accept automated payment of "any fee" being paid to the court. Does that mean that it may pass on the credit or debit card processing fee to a customer whenever an automated payment is made to the court?

A: *The statute allows a court to accept automated payment of any fee being paid to the court, and allows a court to charge the person paying the fee an additional APS fee (commonly understood as a "credit card fee") if the court or funding unit pays that service fee. This service fee could be assessed on payments for any fee, which would be those charges designated by statute as a "fee," but would not include fines, costs, or any charge designated as something other than a fee. The amount of the APS fee is limited to 3 percent of the automated payment or the actual cost charged to the court or its funding unit to process the payment, whichever is less.*

Q18. Where should courts deposit collections of the electronic filing system fee?

A. *The e-filing legislation provides that the EFS fee collected by a court shall be remitted to the state treasurer to be deposited in the judicial electronic filing fund (JEFF). MCL 600.176. The Treasury account number for the JEFF is 228.56.*