

Judicial Survey:

Electronic Filing in
U.S. State Trial Courts



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Introduction

Electronic filing of legal documents is being implemented across the country in state and federal courts and is becoming a transformational process. The judicial community benefits from improved operations and law firms benefit from more effective litigation management.

To assess this growing trend of e-filing, The National Judicial College commissioned Lieberman Research Worldwide to conduct a national survey of nearly 6,000 state trial court judges. The LexisNexis File & Serve product group provided funding and logistical support for this survey.

There were 1,506 judges who responded to the survey—a response rate of 25 percent and nearly five times the average for such a study—indicating the high level of interest in e-filing. This report details the insights from the survey and confirms the current status of such projects within the judicial community.

1. Summary of Key Findings

Overall, it is clear that state trial court judges recognize a problem with increasing caseloads and the growing volume of paper that must be managed. There is also an understanding of how e-filing can address those issues and why it is superior to the conventional paper-based approach. This perspective is reinforced by the fact that courts who have implemented e-filing expect to see an increase.

- **Courts Recognize a Continuing Problem with Caseloads and Managing Paper.**
Courts are truly overwhelmed with the volume of paper that they have to manage from litigation. Seventy-three percent of judges said caseloads were growing, and eighty-five percent said that the resulting volume of paper was an increasing problem.
- **Momentum is Clearly Growing for E-filing.**
Courts that have already implemented e-filing strongly believe that the use of e-filing will increase. Eighty percent of judges expect an increase while only nineteen percent think the level will remain constant. Many judges mention the importance of mandatory rules for e-filing and involvement of the state supreme courts in the decision to implement such initiatives.

Roughly one in four judges indicated that they have plans to implement e-filing, and the majority of those with plans expect to do so in the next 12 – 18 months. Over eighty percent of judges see e-filing as superior to paper and almost ninety percent expressed interest in learning more about e-filing. Further, more than two-thirds of judges see reduced paper volumes, better access to information, and improved clerk efficiency as benefits of e-filing.

- **Support from Clerks and Legal Community Expected.**
Judges strongly believe that clerks and attorneys will support e-filing. Over seventy-five percent believe clerks are receptive, and nearly ninety percent believe that attorneys are receptive to e-filing initiatives. This is critical since both groups are highly influential stakeholders in the process and the court would not move forward without their support.
- **E-filing May Provide a New Source of Non-tax Funding.**
As courts continue to face difficult economic times, e-filing provides potential sources of supplemental cost recovery funds. To mitigate any financial impact on the courts, e-filing vendors, who establish a public-private partnership with the courts, return a portion of the funds generated by the project. Over eighty percent of judges expressed interest in this opportunity.
- **Potential Barriers Identified.**
While there is strong support for e-filing, many courts have not taken advantage of such an initiative. Three of the most common reasons for not yet implementing e-filing are 1) concern over budgets, 2) staffing requirements, and 3) technology limitations. Any viable e-filing solution must address these issues in order to be successful.

Conclusion

After years of pilot projects and theoretical discussions, many members of the judicial community express strong interest in learning more about how to improve court operations by implementing e-filing. Greater understanding of the options available to courts, and more education about rules changes, case type selection, cost recovery, and best practices for how to get started will smooth the way to more rapid adoption.

Survey Participants and Methodology

Participants in this survey were drawn primarily from state trial courts across the United States and identified themselves as judge, magistrate, justice, or commissioner. Distribution of responses across the country was relatively equal from the West, Midwest, South, and somewhat lower from the Northeast. The survey was mailed to nearly 6,000 individuals who at one time had attended or expressed interest in courses offered by the National Judicial College. Responses were confidential and individual names and court names are not identified.

2. E-filing Interest and Usage

Dealing with Growing Caseloads and Volume of Paper

Clearly there is a perception among judges that their courts are facing a staggering challenge in dealing with an ever-increasing caseload. The majority of judges responding to the survey indicate caseloads are growing while only a fraction sees a decline and just over a quarter of the group expect stability. The concern about increasing caseloads is further complicated by the perception by nearly all judges in the survey, that the volume of paper flowing through the judicial system is also a growing problem.

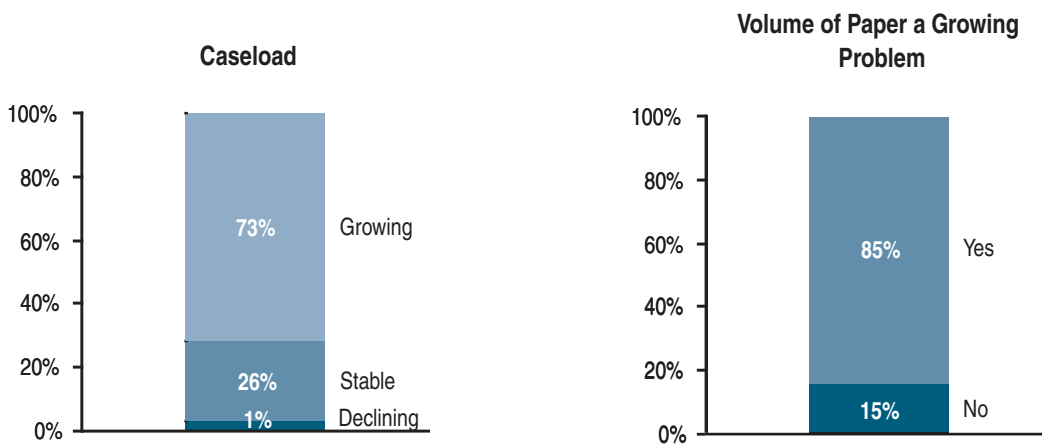


Chart 2.1: Perceptions of growing caseloads and perceptions of paper volumes

Significant Opportunity for Greater Adoption Among Courts

A modest number of courts around the country have implemented some form of e-filing to date. On one hand, this indicates that a fair number of courts are moving forward. On the other hand, the vast majority of courts have not yet taken advantage of e-filing—pointing to the tremendous opportunity still to be realized for courts to improve operations.

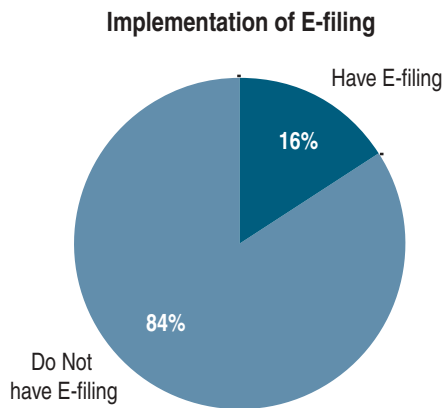


Chart 2.2: Percentage of judges whose courts have implemented e-filing initiatives

Awareness of E-filing

There is reasonably good awareness of e-filing among judges with over half saying they are somewhat or very familiar. The opportunity for greater adoption of e-filing is illustrated by the fact that an even greater number of judges in the survey perceive e-filing as superior to a paper-based approach.

Nearly one-third of judges indicate that they believe e-filing is significantly better than paper for managing filing activity and well over one-half believe it is at least somewhat better.

This is an important finding considering the degree to which well established procedures can sometimes be entrenched in the judicial process—this data indicates that there is strong underlying support for change.

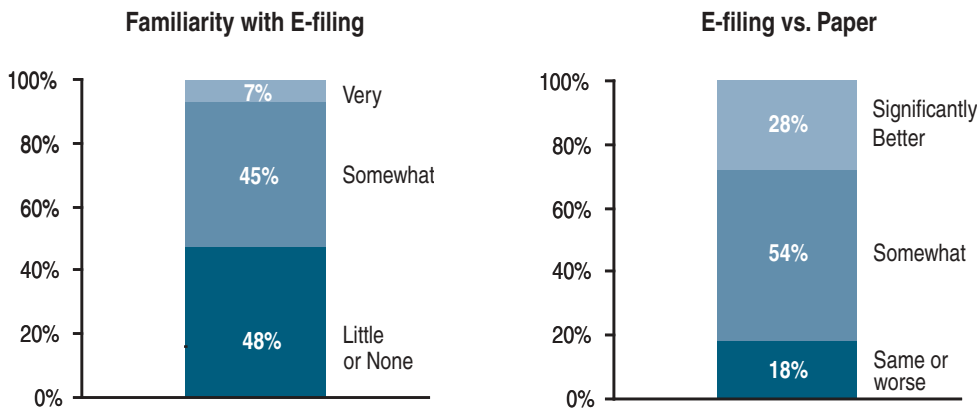


Chart 2.3: Preference of e-filing over paper-based methods

Expectations for Growth

The strongest evidence of the growing momentum of e-filing is the expectation that e-filing will continue to increase. Among those who currently have e-filing projects, the overwhelming majority expect to see more activity this year while virtually no one expects a decline. The following quotes represent the general sentiment about the expectations for continued growth of e-filing.

“It has increased over the last three years at a steady rate— 12 – 15% a year.”

“Our local federal court has fully developed this process.

Our supreme court is pushing for its full implementation.”

“Will issue Admin order bringing whole court to e-filing over 18 months – 2 years.”

“The demand by the bar is growing.”

“We plan on making it mandatory for all civil and water law cases.”

“We are implementing new local rules which will require that all briefs be e-filed with the court.”

“The number of civil cases continues to increase and the use of e-filing for civil is now mandatory.”

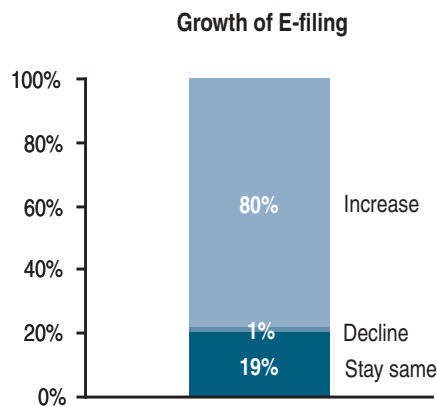


Chart 2.4: E-filing expected to grow in 2005

There are a number of drivers for an expected increase. Many trial courts are responding to direction from their state supreme court. Others are seeing a growing interest from law firms who want more cases online.

More Courts are Moving Forward

More than twenty-five percent of judges responding to the survey who didn't already have e-filing initiatives underway, indicated that they have plans to start such a project. That means fully one-quarter of the courts represented intend to have active e-filing projects. And the majority of those with plans expect to do so in the next 12 – 18 months, indicating the momentum for e-filing is indeed growing. With what some see as the "inevitability" of e-filing, this of course raises a number of questions for the remaining courts who do not have current plans.

And finally, there is an enthusiasm for e-filing that offers some insight into the commitment of judges for moving forward. Judges participating in the survey have said:

"We are committed to e-file as the only way."

"It is inevitable."

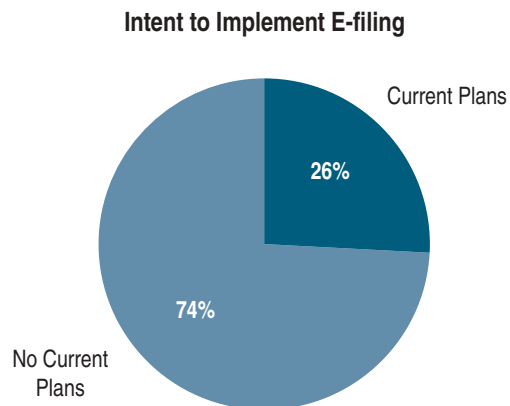


Chart 2.5: Courts are actively planning for e-filing implementation

3. Incentives and Potential Barriers to Implementation

Benefits from E-filing

It is instructive to look at the benefits that courts expect from e-filing. There is a strong perception that e-filing will improve the process for managing paper and accessing case information—factors that impact the bench directly—and that clerks will see improvements in productivity as well. The survey also revealed that judges are conscientious about keeping their courts up-to-date with current technology. And of course, there is a physical benefit that courts expect related to reducing their overall storage needs through the use of electronic documents.

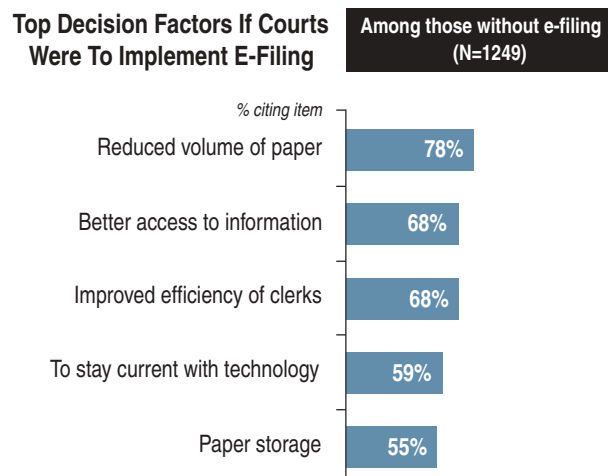


Chart 3.1: Expected e-filing benefits

Expectations of Support from Clerks and the Legal Community

Judges strongly believe that clerks and attorneys will support e-filing. Over seventy-five percent believe clerks are receptive, and nearly ninety percent believe that attorneys are receptive to e-filing initiatives. This is critical since both of those groups are highly influential stakeholders in the process and the court would not move forward without their support. Such firmly held beliefs should re-enforce the decision to move ahead with e-filing initiatives and may give those courts on the sidelines some additional motivation.

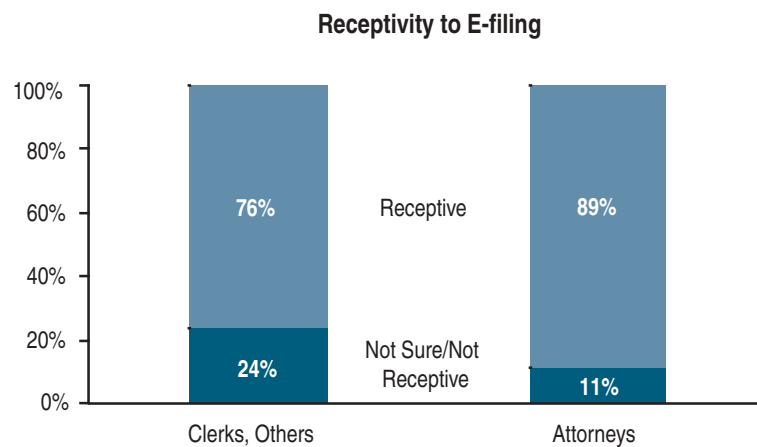


Chart 3.2: Strong support expected from clerks and law firms

Cost Recovery Programs Benefit the Court and Eliminate Obstacles

As has been well documented in the public press, state courts continue to face very challenging economic times. This is perhaps one of the reasons that a large number of judges indicated an interest in the financial benefits of implementing an e-filing system.

On the expense side, there is certainly an expectation that e-filing will provide productivity improvements for clerks, law clerks and judges in terms of managing the flow of paper through the courthouse. But as some courts have found, e-filing can provide additional sources of supplemental funds. E-filing vendors, who have established public-private partnerships with the courts, provide a portion of the funds generated by the project back to the court to mitigate any financial impact (infrastructure costs, staffing etc). The vast majority of judges expressed interest in taking advantage of this type of opportunity.

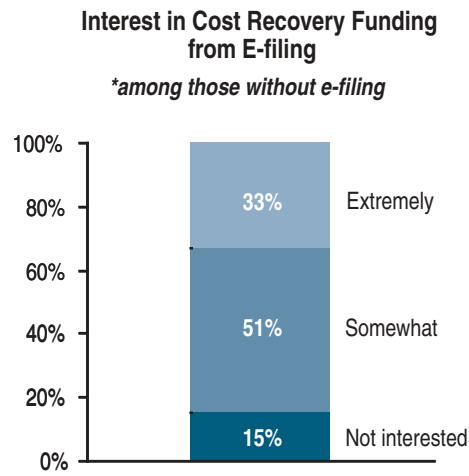


Chart 3.3: Interest in cost recovery opportunities

Potential Barriers

Approximately one-half of judges responding to the survey indicate a concern for court budgetary constraints as a cause of delay in implementing e-filing. Almost the same number of judges also cite technology limitations as well. The third most prominent reason given for why e-filing has not yet been implemented is a belief that courts do not have enough staff complete the project. These three factors must be addressed by any e-filing solution if there is to be further adoption by courts.

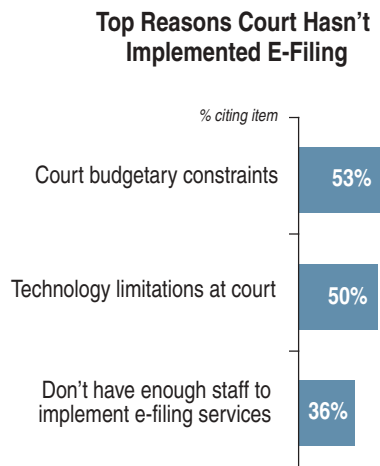


Chart 3.4: Potential barriers that must be addressed by e-filing providers

One potential consideration for courts is to look to non-traditional approaches for implementing an e-filing solution. The large-scale enterprise software projects that have historically been undertaken with case management system implementations sometimes cost millions of dollars and take years to complete. But there are other business models now offered by e-filing vendors and others in the industry that utilize Internet technology to shift the burden away from the courts.

4. Demand for Greater Education

Judges Want to Learn More About E-filing.

Further re-enforcing the notion that there is growing momentum, nearly all of the judges responding to the survey indicated an interest in learning more about e-filing—more than one-third stated that they were extremely interested. These results potentially reflect the possibility that even more courts than noted earlier will consider launching e-filing projects. It is also likely that this interest in learning more about e-filing is related to the involvement of higher courts and the implied pressure on trial courts to follow suit.

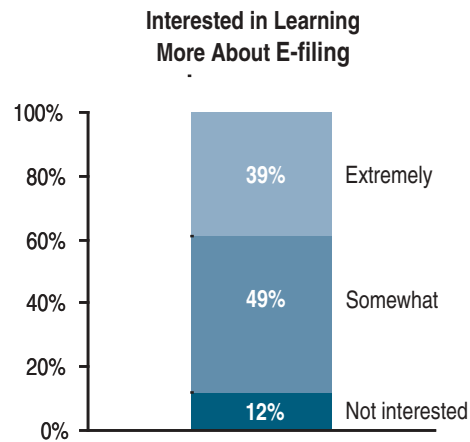


Chart 4.1: Strong interest in learning more about e-filing

Great Interest in Practical “How to” Lessons.

Judges indicated a strong interest in learning more about specific areas that can help a court implement an e-filing initiative. Changes to the local rules of procedure to enable electronic filing and service are likely to be required. Judges identified this as one of the key subjects on which to gain greater insight.

Similarly, judges expressed interest in learning more about how to develop a framework for implementation and about how to select the right cases with which to proceed. Further, there was also a high level of interest in learning about what other courts are doing around the country based on industry standards, such as those from the American Bar Association and the Conference of State Court Administrators.

Interest in Learning About Various Aspects of E-filing (% Extremely/Somewhat interested)	Total Respondents
Changes required to rules of procedure when instituting e-filing	85%
Gaining insights into a framework for implementing an e-filing initiative	81%
Learning about how to select the right cases to put online with e-filing	82%
Learning about the ABA or COSCA e-filing standards	74%

Chart 4.2: Strong interest in learning how to move forward with e-filing initiatives

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Since 1963, The National Judicial College has awarded more than 70,000 professional judicial education certificates. With courses held onsite, across the nation and around the world, the College offers an average of 90 courses annually with more than 2,700 judges enrolling from all 50 states, U.S. territories and more than 150 countries.

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For information on The National Judicial College:

Judicial College Building/MS 358

University of Nevada, Reno

Reno, NV 89557

www.judges.org

1.800.255.8343

For more information on the LexisNexis File & Serve service:

13427 NE 16th Street

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For information on Lieberman Research Worldwide:

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