

At Heart of Access to Justice: Pa. Needs Uniform Electronic Filing, Retrieval System

It's about time.

That's the sentiment shared by the PBA Task Force on Statewide Electronic Filing and Retrieval.

Spearheaded by new PBA President Jay N. Silberblatt, the goal of a unified statewide electronic filing, or e-filing, system is not only to create efficiencies in court operations and save costs, but provide Pennsylvania citizens with improved access to justice.

"Pennsylvania is very far behind in providing access to justice for its citizens, because we are unable to access the court system electronically," said Judge Carl A. Solano (ret.), task force co-chair with past PBA President Sara A. Austin, Austin Law Firm LLC, York. "We are dependent on having to go physically to different courthouses in the 67 counties throughout the state to file and access records. That is not an efficient

legal system for life in the year 2022 or even 20 years ago."

An e-filing system would allow Pennsylvania judicial courts to get up to speed with counterparts in Texas, Michigan, Florida and New Jersey.

Blame the need in part on the changes wrought by the COVID-19 pandemic.

"We had a crisis situation where lawyers were not permitted to be in their offices by order of Gov. Tom Wolf," Silberblatt said. "We were required to work remotely. Many of our courthouses across the state had reduced staff, and some had closed altogether. There was a total inability, in many cases, to get legal papers filed of record."

The few counties with e-filing were able to keep operating, Silberblatt said. But for those counties that did not have e-filing, lawyers had two choices: they



Jay N. Silberblatt



Judge Thomas I. Vanaskie



Bryan S. Neft

could use the mail and take the chance that the U.S. Postal Service would be able to continue delivering and picking up the mail on time, or attorneys could risk leaving their homes in the middle of a pandemic and travel to the courthouse in order to personally deliver papers, he said. That meant the courthouses had to be open for in-person business, but many were not.

Judge Solano said the pandemic brought this issue "front and center" because we realized during the pandemic "that a number of courts had to shut down.

"You were unable to get to the courthouse to file papers, to do other things that you needed to do. That made it very hard on not just lawyers but litigants. If there were an electronic system, we may not be dealing with those problems, at least certainly not to the same extent."

Statewide System

Judge Thomas I. Vanaskie (ret.), Stevens & Lee, Philadelphia, served

as chair of the PBA Task Force on the Continuity of Delivery of Legal Services formed during the COVID-19 pandemic. It was his task force that, in its final March 2021 report, recommended the creation of a statewide electronic filing system.

"I thought to myself: there has to be a better way," Silberblatt said. "The task force report revealed the better way: to create an electronic filing system that would enable lawyers to sit in their offices, at their computers, and, with a few keystrokes, file a record, a document in any court in the commonwealth."

There is an access-to-justice angle when it comes to e-filing, he said.

"What can't you do online these days?" Silberblatt said. "You can pay a traffic ticket online. But if you want to litigate that traffic ticket, you have to go to a courthouse and file papers that, in many instances, can't be filed online. There seems to be something

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unfair about that. We have to show that it is simply good business to have a streamlined, efficient court system, as opposed to a fragmented one.”

“We have become accustomed to living in an electronic world, and yet we have a judicial system that doesn’t work in that world,” Vanaskie said. “And it doesn’t make any sense.”

All federal district courts have an e-filing system called the Case Management and Electronic Case Filing system, or CM-ECF. Vanaskie said he was involved at the ground level, “at the level of building the system and installing it. And we had some districts that had their own systems in place. But they ultimately switched over to the national system.”

CM-ECF began in the early 2000s, according to Vanaskie. It was installed in the Middle District of Pennsylvania in the 2003-2004 time frame, he said.

“It took several years to roll it out across the nation,” Judge Vanaskie said. “But once they started, and we all worked together, we sent teams out to other districts. We had a very effective team come to us from the Northern District to help us install it.”

Before CM-ECF, there were 94 U.S. District Courts, with “each one doing things differently, and each one convinced the way they do it is the right way to do it,” Judge Vanaskie said. “And yet we were able to achieve it.”

Hoping to bring some of his experience in rolling out a system, Judge Vanaskie was chair of the Information Technology Committee of the Judicial Conference of the United States when CM-ECF was launched nationally.

“I am hoping my experience will be helpful in moving Pennsylvania in this direction,” he said.

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“The landscape will be much different.”

Asbestos mass-tort cases fueled the adoption of CM-ECF.

The cases “were overwhelming courts,” Vanaskie said. “You couldn’t keep up with the paperwork, and needed an electronic solution. The volume of paper coming in was the initial impetus behind it.”

Unified Mandate

Technically, Pennsylvania’s judicial system has a unified mandate.

“About 30 years ago, there was a decision the Pennsylvania Supreme Court came up with: a unified judicial system,” said Bryan S. Neft, Spilman Thomas & Battle PLLC, Pittsburgh, co-chair (with Judge Solano and Judge Vanaskie) of the PBA Judicial Administration Committee.

The first decision from the Supreme Court came out in 1987 (*County of Allegheny v. Commonwealth*). That decision required the General Assembly to fund the Unified Judicial System. However, full funding has never been implemented, and counties still overwhelmingly fund the courts.

“The unified judicial system was created through a constitutional amendment in 1968,” Neft said. “But a unified judicial system has never been implemented to the fullest extent. So, when the opinion came out, the changes that were made at that point, the county judges became part of the unified judicial system but


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UJS Issues Policy Q&A Guide

The Pennsylvania Unified Judicial System (UJS) has issued a question-and-answer guide to bring awareness to the Policy on Nondiscrimination and Equal Employment Opportunity. The policy aims to ensure that all individuals having business with the courts are treated in a respectful and nondiscriminatory manner.

Individuals covered by the policy are expected to treat others with respect while working for the UJS in a court facility, and in turn should be treated in a similar manner.

Read the Q&A guide at <https://www.pabar.org/pdf/2022/QA%20Guide%20for%20Non-Discrim.pdf>.

Read the policy at <https://www.pacourts.us/Storage/media/pdfs/20210211/021959-nondiscriminationpolicy-000214.pdf>. 

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the county courts did not.”

Neft said with 60 different county-level court systems, “even though we are supposed to have a unified judicial system, we will have to coordinate with all of the counties to enact statewide electronic filing.”

Neft said that computer infrastructure for the trial courts is handled by each particular county. Appellate courts use e-filing through their own web system, which criminal courts use as well. The counties themselves are left to create e-filing in civil, family law and orphan’s court matters out of their own budgets.

“Some of it is politically minded, where you have elected prothonotaries and registers of wills, and they are the ones charged with creating the systems for filing,” he said.

Neft noted there are many “hands in the process,” he said. “We have to work with all of the parties to ensure a system that works for all of the constituencies.”

The biggest problems to implementing an e-filing system, according to Silberblatt, “are the reluctance that the 60 judicial districts, with 60 president judges and 60 prothonotaries will likely have to make a change,” he said. “And if they do, we’ll still need to convince the Legislature to provide some funding.”

‘Money, Money, Money’

The roadblock to the implementation of e-filing comes down to “money, money, money,” Austin said. “It’s not the only factor, but it is huge.”

“It’s going to take significant funding to put this into place,” Judge Solano said. “Money for the judiciary

has been tight, with a lot of competing needs. This has not been a high-priority item with the Legislature.”

Making uniform e-filing a reality is going to take cooperation from a host of disparate organizations.

“One of the challenges will be getting all of those 60 judicial districts to play nicely in a single sandbox,” Silberblatt said.

“Historically, the courts around the commonwealth — the county courts, the trial courts — have functioned independently,” Judge Solano said. “Even though they are part of the unified judicial system, they each have been responsible for setting up their own court systems. They have not set up uniform systems throughout the commonwealth. And I think that has been one of the problems in establishing an electronic system statewide. You just have these multiple systems, and it will take a lot of work and money to try to coordinate them and integrate them.”

“We have to do some education,” Austin said. “We have to explain to the various stakeholders why this is important, and why it is a necessary thing for the various stakeholders, not just the attorneys but the judiciary, all of the people who use the system, the businesses, every possible stakeholder. We have to educate as to why this is important, and then I think we start looking at the funding for it.”

It’s not just fact-finding, but fact-finding “as to what all the stakeholders think the system is or does currently, and fact-finding as to what they want it to be able to do and how they think it’s going to be able to be accomplished, where they think the funds are going to come from and how to put all of the pieces together,” she said. “There is a lot of moving pieces.”

The earlier task force for the Continuity of the Delivery of Legal Services was formed to examine the effects of the pandemic on the legal system “and made everyone realize that we really need to bring Pennsylvania into the 21st century when it comes to this type of work,” Judge Solano said.

“Before we can talk about asking for appropriate funding, we need to try to get a better idea as to what kind of system we need, how it would work and what it would cost. We need to make sure the system is something that will benefit everyone throughout the commonwealth.”

Integrate Stakeholders

Silberblatt noted that task force subcommittees were organized early this month to look for ways to integrate stakeholders into the process, to research how other states have implemented e-filing and to help fund it.

“We need to define what we’re talking about,” Judge Solano said. “Once we have done that, then I think we can talk money. I think we need to do some exploratory work on what the system would need, what the system would look like,

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Court Summaries

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Com. v. Miller, 2022 PA Super 88 (May 11, 2022) — No abuse of discretion in imposing 55-years-to-life sentence for first-degree murder committed when defendant was 17 years old, finding that court considered presentence investigation report and all other evidence.

RESTITUTION — direct sentence — Section 1106 — Crimes Code — 18 Pa.C.S. 1106 — simple assault — medical expenses of victim — health care coverage — self-insured employer — self-funded employee benefit plan — NOT VICTIM — judgment of sentence vacated

Com. v. Wright, 2022 PA Super 101 (May 31, 2022) — Restitution for medical bills of victim of assault by defendant improperly ordered to group that is merely recovery and reimbursement subrogation vendor for the employer of victim when employer funds employee healthcare benefits through self-funded employee benefit plan.

SEXUAL OFFENDERS

Superior Court

REGISTRATION — indecent assault conviction — after December 2012 — Sex Offender Registration and Notification Act (SORNA) — defendant found not to be a sexually violent predator (SVP) — CONSTITUTIONALITY — due process — AUTOMATIC REGISTRATION REQUIREMENT — *Com. v. Torsilieri* — unsupported challenge — lack of scientific evidence to find presumption not universally true — judgment of sentence affirmed

Com. v. Wolf, 2022 PA Super 98 (May 27, 2022) — Registration requirements of SORNA not found to violate due process by use of automatic presumption, though person is not an SVP; since defendant presented no evidence to show consensus of scientific evidence to find presumption not universally true nor clearest proof required to overturn Legislature statements that registration provisions are not punitive. ⚖️

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what the best way is to put this system together because, right now, no system exists. We need to do some factual exploration about that.”

“The way our court system operates now, funding for individual judicial districts comes from the counties as opposed to coming from the state,” Silberblatt said.

Some counties in large metropolitan areas of the state, near Pittsburgh and Philadelphia, and a few others throughout the state, already have some form of e-filing.

“In Allegheny, you can file just about anything electronically,” Silberblatt said. “Allegheny is a good model, with a few improvements here and there. If you studied Philadelphia and Allegheny systems, between the two of them, you could come up with a fairly robust system that could be implemented and utilized statewide.”

However, for the counties, funding is fragmented, from 60 individual funding sources, he said.

“The president-judge in each county has a particular way of doing things over time that has worked for that individual county,” Silberblatt said. “Sixty individual president judges are reluctant to be controlled from above by the Supreme Court and by the Administrative Office of Pennsylvania Courts.”

For other states, funding has come from various filing and user fees. That could also work in Pennsylvania, according to the task force. Importantly, the Legislature would need to help fund a unified e-filing system.

“So far, only about 16 or 17 counties have electronic filing, and each system is different,” Neft said. “There are a lot of counties that have electronic access to the docket, but they don’t necessarily have the filing system. Each county court operates under different rules, and it may need to change so each county does it uniformly.”

New Jersey, Texas and Michigan have online filing for all their courts.

“It would be nice if we can get

the General Assembly on board to provide some funding,” Judge Vanaskie said. “But there might be other innovative ways to provide the necessary funds to come up with installation of an electronic case filing system. You can do a surcharge on filings that are made in the court, where the people who use the system end up helping to support it. In the federal system, they were able to pay for the system through the fees they charge for electronic access to court records. There is no fee to file in federal court. But if you want to access records, there is a fee. That supports the e-filing system. It raises a fair amount of money.”

The “data scrapers” find great value in this information and they are willing to pay, he noted. They account for a large percentage of the revenues that are generated.

“But it’s also attorneys accessing files, things of that nature,” Judge Vanaskie said. “There can be exemptions for it. You never have to pay for a court opinion in the federal system. You can access it, download and get it, but you don’t have to pay for it.”

“Our Legislature has been reluctant to increase the funding to the Supreme Court and the Administrative Office of Pennsylvania Courts,” Silberblatt noted. “In the last several years, there have been no funding increases in the operations of our unified judicial system by the Legislature.”

Part of the education will be convincing the General Assembly that a modern court system cannot effectively and efficiently operate without an e-filing system.

Loss of Jobs

Some critics believe a roadblock to implementing e-filing could be a potential loss of countywide clerical and other jobs.

But Silberblatt disagrees about the potential negative impacts on jobs.

“There may be a shifting of jobs from one department to another within the court system,” Silberblatt said. “We may not need as many personnel at the desks at each of the prothonotaries, but we will



PBA Task Force on Statewide Electronic Filing and Retrieval co-chairs Sara A. Austin and Judge Carl A. Solano (ret.).

need back office people who will receive those electronic documents, ensure they are in the right format and make sure their digital image is saved in the computer system in the right way. It may involve shifting people from one side of the counter to another, with a need for more high-tech people and fewer paper pushers.”

Filing revenues could generate a way to fund unified e-filing in the state.

In a July 2016 issue brief from the Legislative Budget Board staff of the state of Texas, estimated annual revenue collection from filing fees and court costs amounted to \$45.5 million.

“It would save so much money,” Judge Vanaskie said. “You no longer are working with paper. You have instant access to the court filings from wherever you are. You never have a lost file. You can create hyperlinks throughout the court electronic filing records.”

Judge Vanaskie remembers the changes made in the past, with lawyers who resisted the change.

“Their view was: It’s not broken, so why fix it?” he said. “First, it was broken, they just didn’t realize it was broken, in terms of the inefficiencies of it.”

“Lawyers will find this to be a lot more efficient, a lot more effective, for them to have a uniform statewide filing system. It took us a lot of time to get 94 District Courts on board,

but we all worked together to get to it. It can be done.”

The time frame from funding approval until final launch of uniform e-filing: more than two years, according to Judge Vanaskie.

“Texas has done it,” he said. “Michigan has done it. Other states have used vendors to work together with the state court administrators and put together an effective electronic statewide case filing system. If Texas can do it, we can do it.”

“It’s an access-to-justice issue for people,” Judge Solano said. “It’s an important issue for businesses, and it’s certainly important for lawyers and how they practice law, and it’s therefore important for everyone in the commonwealth. And we need to establish that.”

“One silver lining that has come out of the pandemic is that it has made many people realize that this is no longer a luxury,” Austin said. “It really is a necessity.”

In the end, “it would make it a lot more efficient for people to have access to what’s being decided in the courts,” Judge Vanaskie said. “It improves the quality of justice.”