

Legal Communication & Rhetoric: JALWD

Fall 2015 / Volume 12

ARTICLES & ESSAYS

**Ready or Not Here We E-Come:
Remaining Persuasive Amidst the Shift
Towards Electronic Filing**

R. Lainie Wilson Harris, Esq.

Ready or Not Here We E-Come

Remaining Persuasive Amidst the Shift Towards Electronic Filing

R. Lainie Wilson Harris, Esq.*

I. Introduction

“Suppose someone terribly precious to you lay dying, and the doctor offered to try a new ‘miracle drug’ that he could not guarantee but that seemed to have a 50–50 chance of saving your beloved friend’s life. Would it be reasonable to try it, even if it cost a little money? And suppose it were free—wouldn’t it be utterly reasonable to try it and unreasonable not to?”¹ *Wouldn’t the answer be an unequivocal yes?* Pascal was betting with his life on the unanswerable question, Does God exist? Dr. Peter Kreeft in his modern example morphs the wager into a different but still fitting context. Let’s tweak Dr. Kreeft’s example—what if your dying friend had won a lawsuit at trial that is now being appealed, and you are writing the answer brief that, according to new rules, must be filed electronically. Your friend’s entire damage award is at stake on appeal—if you lose, your friend doesn’t just lose the money needed to cover years of medical bills, but may also be exposed to a claim for appellate and trial-court attorneys’ fees. Would you write your brief using the same techniques you use for paper filings and hope the court would still be persuaded by your arguments? Of course you wouldn’t. The risk of losing far outweighs the cost adapting to the new technology.

If only the shift away from paper toward digital were as sure a bet as Pascal’s wager. What many thought would be instantaneous, like a flipped switch, is instead a complex process with frustratingly inconsistent progress.² The process is complex because we humans like paper, despite

.....
* Visiting Instructor, Georgia Southern University.

¹ Peter Kreeft, *Argument from Pascal’s Wager*, PETERKREEFT.COM, <http://www.peterkreeft.com/topics/pascals-wager.htm> (last visited Mar. 15, 2015).

² ABIGAIL J. SELLEN & RICHARD H. R. HARPER, *THE MYTH OF THE PAPERLESS OFFICE* 6–7 (2002).

its limitations.³ We like our established systems and processes, and those systems and processes, because they were created before the new possibilities of digital media, do not and cannot accommodate these new possibilities. And let's not even digress into the vast choices of technology available. There isn't just one path to digital interaction; there are an infinite number of variations—all with some of the same but many different obstacles slowing progress. Add to that mixture someone whose business success depends upon not spending too much on overhead and not wasting any billable time on learning and implementing technology that will be obsolete or incompatible before they've mastered it, and you have a pretty good explanation for why some lawyers resist electronic filing, especially mandatory electronic filing.

Progress is further frustrated in part because a successful shift is reliant upon compatibility and can't be accomplished by individuals alone. With this reliance upon each other comes inevitable disagreement about preferred software, devices, and technology in general. Despite the difficulties, which are beyond the scope of this article, the shift from paper to electronic filing in state courts, although uneven and decidedly “patchwork” in nature, continues, and the future will only be more digital. It is a process and a continuing shift from the old paper-only interaction to paperless interaction. As yet, there aren't any reliable indicators of the degree to which judges interact digitally with filings in courts.⁴ In the same way, there are few labels for e-filing and related components that are used consistently. In federal court, electronic filing is more uniform than in state courts. In state court systems, different jurisdictions use different, often proprietary, software, and different words and labels to describe their e-filing capabilities and components. On the whole, while the movement toward more electronic interaction continues, it is advancing at different rates in different regions, and it looks very different from one state to another. It's like a patchwork quilt—stitched and held together by many contributing hands in as many different forms as there are people involved with its creation. As some state courts implement electronic filing in steps or by category of cases or types of filing within a case, it is increasingly necessary for practitioners to be prepared for e-filing and diligent in tracking rule changes to, at a minimum, remain compliant with applicable court rules. This patchwork movement makes it difficult to get

³ *Id.* at 49.

⁴ *But see* David Nuffer, *Judges + iPads + Perfect Fit?*, 3 GEEKS AND A LAW BLOG (June 12, 2012) <http://www.geeklawblog.com/2012/06/judges-ipads-perfect-fit.html> (a law blog addressing the foci of three intrepid law geeks, specializing in their respective fields of knowledge management, internet marketing, and library sciences, melding together to form the Dynamic Trio). Judge Nuffer, guest blogger, is a federal bankruptcy judge in Utah who cited recent statistics measuring judges' use of iPads: 58% of judges and 70% of bankruptcy judges use an iPad for their work.

a general sense of the status of e-filing in all state courts. Practitioners and the judicial community need to know the status in order to function within the system today and prepare for changes that are coming.

E-filing is being used and is often required for submission of court filings in many jurisdictions across the United States. Unlike other changes in the past that were limited in impact to the mere delivery of filings (i.e., the availability of facsimile and then email), e-filing facilitates total digital interaction with filings, and as such, it opens up new possibilities for legal writing. Although a new frontier is now open for legal writing, it isn't a blank canvas. There is a new capability for multidimensional writing, as one scholar calls it,⁵ and to piggyback on her phrase I suggest that there is also a new risk of multidimensional confusion when documents are written for paper but read on a screen.

Reading in digital media, or "screen-reading," is different than paper-reading. More importantly, a document written for paper-reading (e.g., without bookmarks, headers, and hyperlinks and no emphasis on "chunking" or "front-loading" information) that is simply "dumped" into a digital format is harder to read on a screen. Some judges are already reading court filings on a screen.⁶ As the e-filing shift continues, screen-reading will increase. It is axiomatic that a goal of legal writing is to be clear and not confusing.⁷ The opposite is also true—legal writing should never make it harder for the audience to understand or agree with the writer's premise.⁸ More analysis and research is needed to map the best practices for legal writing in electronic media, but, in the meantime, because e-filing is already in use and some judges are reading these filings on a screen,⁹ legal writers cannot continue to write with a disregard for the needs of screen readers and remain effective. We need to accommodate screen-reading in our writing so that we do not lose valuable ground simply due to form.

The good news is that screen-reading can be accommodated¹⁰ with a few simple steps and is pretty easy to do with widely used technology. Unlike Pascal, legal writers aren't usually betting with their lives, but often, for a lawyer in the middle of a case, it feels like life and death are on the

⁵ Ellie Margolis, *Is the Medium the Message? Unleashing the Power of E-Communication in the Twenty-First Century*, 18 LEGAL COMM. & RHETORIC 1, 4 (2015).

⁶ Nuffer, *supra* note 4.

⁷ ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 23-24 (2008).

⁸ *Id.* at 24.

⁹ Nuffer, *supra* note 4.

¹⁰ "Accommodate" is used here to convey that the suggestions here are merely the starting points for writing effectively in electronic media. Moreover, the tips in this article are defensive rather than proactive. Proactive best practices are needed to maximize the multidimensional platform available for legal writers now in electronic media.

line. There is a real, present, and increasing risk of multidimensional confusion that will only grow as the shift toward e-filing continues. For this reason, legal writers need to know if court filings are being read on a screen. But due to the patchwork nature of e-filing rules in state courts, to the lack of consistent language in the shift toward e-filing, and to the lack of accurate indicators as yet for measuring a court's electronic interaction with court filings, this knowledge is elusive. Under all these circumstances, it seems logical and responsible to write court filings in a way that accommodates screen reading rather than hinders it—and unreasonable not to.

II. What E-filing Is, and How It Impacts Interaction with Court Filings

Electronic filing (e-filing)¹¹ is the submission and acceptance of documents filed with a court in a fixed digital format. In a typical (or ideal) e-filing system, filers prepare the document using conventional word-processing software and then save it as a PDF file. “The filer then (1) logs onto the court’s e-filing interface with a court-issued username and password, (2) enters basic information relating to the case and the document, (3) uploads the document, (4) submits it to the system, and (5) pays any applicable filing fees online.”¹²

In the late 1990s and early “aughts,”¹³ the Administrative Office of United States Courts developed and installed a new case-management system, “CM/ECF,” which included the capability for electronic document storage, internet-based electronic filing and remote access.¹⁴ The system started as a solution for one federal court’s crowded asbestos-litigation docket and was piloted by thirty-one different federal courts by the end of

¹¹ William A. Fenwick & Robert D. Brownstone, *Electronic Filing: What Is It? What Are Its Implications?*, 19 SANTA CLARA COMPUTER & HIGH TECH. L. J. 181, 182 (2002).

¹² DAVID SCHANKER, E-FILING IN STATE APPELLATE COURTS: AN APPRAISAL (WHITE PAPER) 3, (Feb. 5, 2010), available at http://www.appellatecourtclerks.org/publications-reports/docs/NCACC_E-Filing_White_Paper.pdf.

¹³ Rebecca Mead, *What Do You Call It?*, THE NEW YORKER, Jan. 4, 2010, available at <http://www.newyorker.com/magazine/2010/01/04/what-do-you-call-it>.

¹⁴ See SCHANKER, *supra* note 12, at 2 (stating that federal system allowed remote access anywhere in the world); United States Courts, *25 Years Later, PACER, Electronic Filing Continue to Change Courts*, THE THIRD BRANCH NEWS (Dec. 9, 2013), <http://news.uscourts.gov/25-years-later-pacer-electronic-filing-continue-change-courts> (“In September 1988, the Judicial Conference of the United States approved a new way of opening information to the public, through a service known as PACER—Public Access to Court Electronic Records. PACER now celebrating its 25th anniversary, and Case Management/Electronic Case Files (CM/ECF), an electronic case[-]management system that began in the late 1990s, have together fundamentally changed how federal courts, and the lawyers, judges[,] and staff who work in them[,] perform their jobs.”).

¹⁵ Peter W. Martin, *Rewiring Old Architecture: Why U.S. Courts Have Been So Slow and Uneven in Their Take-up of Digital Technology*, Cornell Law School Research Paper No. 11-12, Apr. 11, 2011, at 6, available at <http://ssrn.com/abstract=1807188>.

2001.¹⁵ By 2010, electronic filing had been implemented in every federal district court in the United States and in several federal courts of appeal.¹⁶

As of today, all federal district courts use electronic filing.¹⁷ Because there are federal district courts in every state within the U.S. and because all of those courts use electronic filing, it is accurate to state that electronic filing has spread to every state. But, while true, that statement doesn't reflect the actual status of e-filing in a state, since most cases are filed in state courts rather than federal courts.¹⁸ Moreover, unlike federal courts, among state courts there is no central controlling force or pool of money to drive uniform development of electronic filing systems,¹⁹ and states have addressed e-filing in different ways. Some states like Florida and Texas have standardized e-filing throughout all state courts and have made it mandatory.²⁰ California tried to unify e-filing, but ultimately abandoned the effort, opting instead to allow individual state courts to adopt their own rules and requirements for e-filing.²¹ Because development of e-filing in state courts is inconsistent and patchy, some may dismiss it as something that will need to be addressed in the future but not the present.²² And, understandably, many practitioners and judges are more than willing to dismiss e-filing because, in part, it is a radical change and, as Arizona Court of Appeals Judge Espinosa observed, getting people to change is hard.²³

In support of his conclusion that getting people to change is one of the largest challenges for courts implementing e-filing, Judge Espinosa

¹⁶ FED. R. CIV. P. 5(d)(3) (allowing federal courts to mandate e-filing by local rule).

¹⁷ TIMOTHY A. GUDAS, E-FILING IN STATE APPELLATE COURTS: AN UPDATED APPRAISAL (SEPTEMBER 2014) 2 (Sept. 2014), available at http://www.appellatecourtclerks.org/publications-reports/docs/NCACC_E-Filing_White_Paper_September2014.pdf (updating and revising SCHANKER, *supra* note 12).

¹⁸ SEAN P. MELVIN, THE LEGAL ENVIRONMENT OF BUSINESS: A MANAGERIAL APPROACH 53 (2010).

¹⁹ SCHANKER, *supra* note 12.

²⁰ See *infra* section III, summarizing status of e-filing in states.

²¹ Jon Streeter, *The Death of CCMS Leaves Technology Vacuum*, CAL. B.J. (Apr. 2012), <http://www.calbarjournal.com/April2012/Opinion/FromthePresident.aspx>. See also Judicial Branch of California Press Release, Judicial Council Approves E-filing in Civil Cases (June 28, 2013), available at <http://www.courts.ca.gov/22655.htm> (announcing the Judicial Council decision to allow civil courts to require electronic filing); *Electronic Filing/Submissions*, JUDICIAL BRANCH OF CAL., <http://www.courts.ca.gov/8872.htm> (last visited Apr. 8, 2015) (describing forms and types of documents that should be e-filed).

²² Jan Pudlow, *Manatee Launches E-Filing System*, FLA. B. NEWS (June 15, 2001), <https://www.floridabar.org/divcom/jn/jnnews01.nsf/Articles/EDC203CF9BB75BEA85256AEA0057F874>. Four years after the Florida Supreme Court officially opened the door for courts to initiate electronic filing programs, Manatee County clerk Chips Shore launched e-filing for criminal cases through a secure online system. In 2001, Shore was quoted as having said that electronic filing is "a big help to us in the clerk's office, too, because it reduces the traffic into the courthouse. It's the wave of the future." *Id.* Anecdotally, Manatee County was one of the last counties to use the statewide portal for e-filing when it became mandatory in 2013.

²³ Jan Pudlow, *Arizona's e-filing pioneer: Biggest Barrier is Changing People*, FLA. B. NEWS (July 1, 2009), <http://www.floridabar.org/DIVCOM/JN/JNnews01.nsf/Articles/B8634C1962C5EDBC852575DA0066B855> (hereinafter Pudlow, *Arizona's E-filing Pioneer*).

described a situation that occurred when he was chief judge. A fellow judge who was “[c]linging to his old ways”²⁴ asked the clerk to print all electronic filings and send them to chambers, but Judge Espinosa intervened and asked the clerk not to. Despite the other judge’s anger, at Judge Espinosa’s request, he agreed to try electronic filing. As Judge Espinosa observes, “It’s easy to use. You start to see it’s more trouble to go get the paper.”²⁵ With electronic court files, accessibility for lawyers, judges, clerks, and clients is no longer limited to paper copies and paper files, and the convenience that comes with this accessibility cannot be overstated.²⁶

The shift to e-filing is different from other changes in the past, like courts making delivery of court filings possible by facsimile or email. Unlike those changes, e-filing facilitates the judges’ electronic interaction with court filings. Electronic interaction ranges from none—for example, state courts in Maine that do not yet accept any filings in electronic form²⁷—to some interaction—in jurisdictions like the North Carolina, where e-filing is allowed pursuant to an ongoing pilot project, but not required,²⁸—to nearly complete electronic interaction in jurisdictions like the federal bankruptcy court in Utah, where e-filing is required and 70% of judges review filings on an iPad.²⁹ The level of electronic interaction matters because as courts move toward paper-less operation, as is the goal of many state court e-filing systems, more and more judges and clerks will be reading court filings on screens rather than paper. The best indicator of a state court’s level of electronic interaction with court filings in this stage of the e-filing movement, other than direct data on how judges read court filings, is whether the state has mandatory e-filing.

As many state court leaders are implementing e-filing in their courts, they are realizing that in order to reap the greatest benefit from shifting to e-filing, it must be mandatory for lawyers. The Clerk of the Wyoming Supreme Court Judy Pacheco (now retired) observed that when e-filing was in development in her state, the bar was polled on whether e-filing should be required, and 70% responded that it should be voluntary.³⁰ She astutely concluded that their response was precisely why state court leaders decided to make e-filing mandatory from the beginning—because

24 *Id.*

25 *Id.* (quoting Judge Espinosa (internal quotation marks omitted)).

26 Douglas I. McQuiston, *Your “Paperless” Future*, FOR THE DEFENSE, July 2012, at 32 (publication of the Defense Research Institute (DRI)).

27 See An Act to Modernize and Improve the Efficiency of Maine’s Courts, 4 ME. REV. STAT. § 1610-G (2014); see also

infra notes 90–91 and accompanying text, discussing status of e-filing in Maine.

28 See *infra* notes 125–27 and accompanying text, discussing e-filing in various North Carolina courts.

29 Nuffer, *supra* note 4.

30 SCHANKER, *supra* note 12, at 19.

they knew they could not realize the full benefit of e-filing if only a few participated.³¹ Similarly, the Wisconsin Chief Judge’s Subcommittee on eFiling Implementation has recommended that Wisconsin’s current voluntary rule become mandatory. Based on the results of a study, the committee concluded that the best results come from making e-filing mandatory.³² Specifically, the committee quoted in its report the observations of Larry Murphy, who was the former Chief Information Officer of the Iowa court system and is now a technology consultant for the National Center for State Courts (NCSC), that “[t]he best recommendable practice from a nationwide standpoint is to make eFiling mandatory after the pilot phase of the project, to obtain a better return on the investment in developing the eFiling system.”³³ Development of an e-filing system is a major expense,³⁴ and many states need the projected savings from efficiencies and e-filing fee revenue, if any, to recover those costs. These states cannot afford for lawyers not to use the system. In order “to achieve these [expected] efficiencies, eFiling must be the norm and not the exception.”³⁵

Many jurisdictions require electronic filing in some courts or categories of cases. In fact, as will be demonstrated by the snapshot of the status of e-filing in each U.S. state in the next section, more than half already require e-filing in some form.³⁶ However, as is evident from a cursory look at the status of e-filing in different states, mandatory e-filing does not yet necessarily indicate that the state-court system interacts electronically with court filings. And it is this interaction facilitated by e-filing, rather than e-filing itself, that brings the new frontier of electronic media for legal writing and the hazard of multidimensional confusion for screen-readers. For example, in Massachusetts, e-filing by email is required, but this process differs fundamentally from “e-filing” as defined in this article. Specifically, in Massachusetts Appeals Court single justice dockets,

31 *Id.*

32 SUPREME COURT OF WISCONSIN, IMPLEMENTATION OF MANDATORY ELECTRONIC FILING: REPORT OF THE CHIEF JUDGES’ SUBCOMMITTEE ON E-FILING IMPLEMENTATION 2, (Aug. 2014), *available at* <https://www.wicourts.gov/ecourts/docs/efileproposed14.pdf>.

33 *Id.*

34 Gary Blankenship, *Court Plans to Embrace Technological Innovations: E-Filing and Online Access are at the Top of the Agenda*, THE FLA. B. NEWS, (Mar. 1, 2008), http://www.floridabar.org/DIVCOM/JN/JNNNews01_WORK.nsf/8c9f13012b96736985256aa900624829/f28aa955143af162852573f8005bc6c0!OpenDocument.

35 SUPREME COURT OF WISCONSIN, *supra* note 32, at 2.

36 According to the NCSC 2014 report, thirty-three states have implemented some version of appellate e-filing. “Of the remaining seventeen states . . . , eleven have e-filing projects in the works, and many of those are expected to be in operation within the next two years.” GUDAS, *supra* note 17, at 2. Thirty-one of the fifty states require e-filing in some state courts or category of cases. They are Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawai’i, Iowa, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming. *See id.* at 81 (surveying state appellate court e-filing); *infra* section III (summarizing status of state e-filing).

lawyers must submit an Adobe portable document format (PDF) copy of a paper-filed document by sending an email to the court. This kind of process, also used in Alabama appellate courts and a handful of other states,³⁷ is more like archiving than e-filing, and the electronic documents may be nothing more than a back-up for paper files. Electronic back-up is not necessarily an indicator of electronic interaction. This disconnect over the key terms associated with e-filing further illustrates that the e-filing shift lacks cohesion. Without a common lexicon, it is hard to gauge the progress of state courts toward e-filing, and, as a result, legal writers may not be aware of the audience (i.e., screen- or paper-readers) for which their legal document is written.³⁸ Screen-readers' needs are different from paper readers' needs,³⁹ and e-filing makes screen-reading possible and to some extent probable, depending on the electronic interaction of the judges in the jurisdiction.

The data reported in the next section, which demonstrates a continuing "patchwork" of progress that varies in every state, also shows that every U.S. state is either using e-filing already or planning to implement e-filing in the near future.⁴⁰ NCSC reported in 2014 that

[s]ince 2010, the number of states that have implemented some version of appellate e-filing has more than doubled, bringing the total to thirty-three states. . . . Of the remaining seventeen states that do not currently have appellate e-filing of any kind, eleven have e-filing projects in the works, and many of those are expected to be in operation within the next two years.⁴¹

Additionally, shown below, many states have begun mandatory or voluntary e-filing in trial courts. All of these observations support the conclusion that e-filing is not just the future, but it is here now, already in use.

III. Snapshots of E-filing Status in U.S. State Courts

Alabama appellate courts have voluntary e-filing through the "ACIS" system, but must also mail or deliver paper copies to the court.⁴² Alabama

37 See, e.g., GUDAS, *supra* note 17, at 20.

38 SCALIA, *supra* note 7, at 5.

39 See *infra* section. IV.

40 See *infra* section III; see also GUDAS, *supra* note 17, at 2. According to the NCSC 2014 report, thirty-three states have implemented some version of appellate e-filing and "[o]f the remaining seventeen states . . . , eleven have e-filing projects in the works, and many of those are expected to be in operation within the next two years." *Id.*

trial courts require that practitioners e-file documents relating to collection of fees for providing defense in indigent cases, or request an exception from the e-filing process. E-filing is allowed and encouraged in other categories of cases, including criminal and juvenile cases.⁴³ In April 2011, in order to ease a budget crisis, then Chief Justice Cobb of the Alabama Supreme Court required all active practicing members of the Alabama bar to register for Alafile, the electronic filing system.⁴⁴ However, according to the editor for *The Last Word*, the e-newsletter for the Alabama State Bar, electronic filing is strongly encouraged and required in indigent cases, but is not required for all filings.⁴⁵

According to the website for the **Alaska** court system and the NCSC, Alaska has chosen a vendor for electronic filing within the state courts, ImageSoft, and projects that from April to June 2015, “ImageSoft will begin to deliver mock ups of the screens that will be used by judges.”⁴⁶ The Alaska Court System website also reports that, as of June 2014, ImageSoft had built a limited e-filing system for domestic violence protective orders and “prove[d] that [the] system works successfully in Anchorage, Kotzebue, and Kenai” and that, as of December 2014, “[m]ost of the hardware needed for the e-filing system ha[d] been installed and tested.”⁴⁷

Arizona began piloting electronic filing in 1998 in the Arizona Court of Appeals, Division Two (Judge Espinosa’s court), and e-filing became operational in that court in 2001.⁴⁸ Arizona has expanded its use of e-filing to include the Superior Court of Maricopa County (2008), and the Arizona Supreme Court and Court of Appeals, Division One (2010). On January 5, 2012, the Supreme Court entered an order requiring electronic filing for lawyers in the Arizona Supreme Court and the Court of Appeals, Division



41 GUDAS, *supra* note 17, at 2 (updating SCHANKER, *supra* note 12); *see also* SCHANKER, *supra* note 12, at 6 (examining state appellate e-filing based on a 2009 survey).

42 GUDAS, *supra* note 17, at 20.

43 *See, e.g.*, Supreme Court of Alabama, Order (Apr. 4, 2012) (authorizing e-filing pilot program for juvenile court orders through February 28, 2013), *available at* <http://www.alacourt.gov/pdfppt/Enabling%20Order%20Administrative%20Procedures%20for%20JU%20E-Filing.pdf>; Supreme Court of Alabama, Order (Apr. 20, 2011) (authorizing criminal e-filing pilot program through May 31, 2012).

44 Laura Calloway, *AlaFile Registration Is Now Mandatory*, ALA. ST. B., Apr. 19, 2011, <http://www.alabar.org/news/2011/04/alafire-registration-is-now-mandatory/>.

45 Telephone Interview with Laura A. Calloway, editor, *The Last Word* (date unknown).

46 *Information About Lynx*, ALASKA COURT SYSTEM, <http://courts.alaska.gov/lynx/lynx.htm#schedule> (last visited May 6, 2015) (go to Project Milestones).

47 *Id.*; *see also* ALASKA COURT SYSTEM ANNUAL REPORT FY 2014 35 (2015), *available at* <http://courts.alaska.gov/reports/annualrep-fy14.pdf> (reporting that Alaska Court System selected ImageSoft, a Michigan-based software management and design company, to implement its e-filing system and that ImageSoft “successfully worked through the first substantial proof of concept for the new system”).

48 GUDAS, *supra* note 17, at 22; *see also* Pudlow, *Arizona’s E-filing Pioneer*, *supra* note 23, discussing Judge Espinosa’s efforts to promote e-filing.

One, using “AZTurboCourt.” Electronic filing is not yet required in the lower courts.⁴⁹

Arkansas has taken a holistic approach to state-court electronic filing, requiring all courts to use the same case-management system, “Contexte,” and prohibiting courts from initiating their own electronic-filing solutions.⁵⁰ As of May 1, 2015, one county is using electronic filing (Pulaski), eight counties are in progress for electronic filing, circuit courts in ten counties have requested implementation of an e-filing project, and thirty-eight counties are on Contexte.⁵¹

California tried to standardize electronic case management with CCMS, an effort that was recognized as “Herculean” yet worthy as recently as 2010, but the system was ultimately abandoned by the Judicial Council for the state.⁵² NCSC reports that the California Supreme Court allows submission of an electronic copy of briefs and petitions in addition to the required paper filings, and electronic filing is operational in all districts of the California Court of Appeals, albeit lacking in uniformity from district to district.⁵³ As of July 1, 2013, California civil courts have the authority from the Judicial Authority to make electronic filing mandatory. There is at least one pilot program for mandatory electronic filing ongoing, and there are rules governing electronic filing, but the process itself is not uniform throughout the California state courts.⁵⁴ Pro se filers are exempt from any mandatory electronic-filing requirements, but are encouraged to participate.⁵⁵

Colorado has completed the conversion from “Lexis File and Serve” to their new electronic filing system, the “Integrated Colorado Courts E-Filing System” or “ICCES.” On October 6, 2014, the Colorado courts began transitioning to e-filing in criminal cases, including felony, juvenile delinquency, misdemeanor and traffic cases; however, the chief judge of each judicial district decides independently whether e-filing is mandatory in

49 In re Implementing Mandatory E-Filing in the Arizona Supreme Court and Court of Appeals, Division One, Administrative Order No. 2012-2 (Jan. 5, 2012), available at <http://www.azcourts.gov/Portals/22/admorder/orders12/2012-2.pdf>.

50 See Arkansas Supreme Court, Admin. Order 21 (Mar. 29, 2013), available at <https://courts.arkansas.gov/rules-and-administrative-orders/administrative-orders>.

51 *Arkansas Courts on Contexte*, ARK. JUDICIARY, <https://courts.arkansas.gov/administration/acap/contexte/courts> (last visited May 6, 2015).

52 Nancy McCarthy, *Courts’ Case Management System Earns Kudos and Criticism*, CAL. B. J. (May 2010) (“Although the courts are a very long way from being paper-free, the Administrative Office of the Courts is implementing an electronic California Case Management System (CCMS) as part of an effort to standardize, with a single application, the way case types are managed in every court. Both court users and observers agree that it’s a Herculean undertaking.”), <http://www.calbarjournal.com/May2010/TopHeadlines/TH1.aspx>.

53 GUDAS, *supra* note 17, at 23-30.

54 See *supra* note 21, citing Judicial Branch of California press release and e-filing procedures; see also Streeter, *supra* note 21 (discussing failure of CCMS).

55 See ADMIN. OFFICE OF THE COURTS, QUESTIONS AND ANSWERS FROM THE PRE-PROPOSAL CONFERENCE AND THE SOLICITATION MAILBOX 7 (RFP Number: ITSO-2013-01-DCA, revised Mar. 19, 2013) (pro se filers are exempt).

criminal cases. As of April 2015, criminal e-filing was available in the Third, Eighth, Tenth, Fifteenth, Sixteenth, and Seventeenth Judicial Districts only.⁵⁶ Electronic filing is also mandatory in various noncriminal case types in most of the twelve judicial districts.⁵⁷ In some courts where electronic filing is mandatory, like the Second Judicial District, pro se filers may file in paper format and the court clerk will scan and upload the documents.⁵⁸

Connecticut allows electronic filing and provides detailed instructions for even pro se users to understand and exercise the process.⁵⁹ The State of Connecticut Judicial Branch announced on August 8, 2014, that as of September 1, 2014, attorneys must electronically submit briefs and appendices in appeals to the Supreme Court and Appellate Court, but emphasized that “THE ELECTRONIC SUBMISSION OF A BRIEF AND/OR APPENDIX DOES NOT CONSTITUTE A FILING. . . . [and an] original paper brief and appendix with the requisite copies must be filed with the court after the electronic submission.”⁶⁰

In 1991, **Delaware** became the first state in the United States to implement an electronic filing and docketing system, which it called “CLAD” or “Complex Litigation Automated Docket.” After CLAD, Delaware migrated to a LexisNexis-browser-based electronic filing system, now known as “File & ServeXpress.” Since 2002, the Superior Court’s President Judge has “designated” various categories of cases as “eFile” cases, and in January 2008, the Delaware Superior Court “expanded e-filing directing that all new Civil Complaints, Mechanic’s Liens, and Mortgage cases filed with the Prothonotary in any county . . . were to be filed and/or served electronically using the File & ServeXpress e-filing system.”⁶¹ E-filing is mandatory for attorneys in Delaware Supreme Court, but paper copies are also required.⁶²

56 *Criminal E-filing Tentative Implementation Schedule*, COLO. JUDICIAL BRANCH (Apr. 6, 2015), https://www.courts.state.co.us/userfiles/file/Administration/IBITS/PAS_ICCES/Criminal_EFiling_Timeline.pdf.

57 *See generally E-Filing*, COLO. JUDICIAL BRANCH, <https://www.courts.state.co.us/Administration/Unit.cfm?Unit=efile> (last visited May 6, 2015); *ICCES Pilot*, COLO. JUDICIAL BRANCH, <https://www.courts.state.co.us/Administration/Section.cfm?Section=efilepilot> (last visited May 6, 2015); *see also, e.g.*, Order Regarding Mandatory Electronic Filing for District Court Civil Cases (Denver Cnty. Dist. Ct. Nov. 17, 2009) (ordering mandatory electronic filing in civil cases as of January 1, 2010).

58 Order Regarding Mandatory Electronic Filing for District Court Civil Cases (Denver Cnty. Dist. Ct. Nov. 17, 2009).

59 *Self-Represented Parties*, CONN. JUDICIAL BRANCH, <http://www.jud.ct.gov/external/super/e-services/efile/selfrepresented.htm> (last visited Apr. 8, 2015).

60 *E-Services News Archive*, CONN. JUDICIAL BRANCH, http://www.jud.ct.gov/external/super/e-services/news_archive.htm (last visited Apr. 8, 2015).

61 *Technology in Superior Court*, DEL. STATE COURTS, http://courts.delaware.gov/Superior/elitigation/tech_efile.stm (last visited Apr. 8, 2015).

62 GUDAS, *supra* note 17, at 33.

Florida began mandatory electronic filing in all circuit civil courts throughout the state on April 1, 2013.⁶³ In 2008, the Florida Legislature passed a law requiring all circuit court clerks to develop and implement a system for electronic filing within a certain period. An order from the Florida Supreme Court followed, setting deadlines for mandatory electronic filing in various courts. As of February 3, 2014, Florida also requires e-filing through the same statewide e-filing portal for all criminal filings, with some exceptions, and appellate filings.⁶⁴ E-filing is also mandatory for the Supreme Court and courts of appeals.⁶⁵

Georgia's Supreme Court began allowing electronic filing in 2010, and after August 1, 2013, required that all matters filed by attorneys in the Georgia Supreme Court be filed electronically unless the attorney is granted an exemption.⁶⁶ Outside the Georgia Supreme Court, electronic filing is not yet required. On April 1, 2014 the Next Generation Courts Commission for the state released its final report and in it recognized the need for statewide electronic filing in the near future.⁶⁷

Hawai'i responded to the National Center for State Courts' 2009 electronic-filing survey by announcing that it would be offering electronic filing in 2010.⁶⁸ As of September 27, 2010, the Hawai'i Supreme Court and Intermediate Court of Appeals began accepting electronic filings.⁶⁹ Appellate electronic filing is mandatory for attorneys and permissive for pro se parties.⁷⁰ As of August 13, 2012, the Hawai'i State District Courts began accepting electronic filings in criminal cases.⁷¹

Idaho responded to the NCSC 2009 electronic filing survey that it plans to offer e-filing within two years.⁷² The Administrative Director of

63 The Florida Bar, *Time to Get up to Speed on E-Filing*, THE FLA. B. NEWS (Feb. 1, 2013), <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/f21c10f22f0a736c85257afb00471f13?OpenDocument>.

64 In re Amendments to the Florida Rules of Civil Procedure, Case No. SC11-399 (Nov. 28, 2012) (revising the schedule for mandatory electronic filing).

65 GUDAS, *supra* note 17, at 34–43.

66 Supreme Court of Georgia, Order (June 12, 2013), *available at* http://www.gasupreme.us/rules/amended_rules/ORDER_%20mandatory%20efile_%20FINAL%20.wpd.pdf.

67 *Next Generation Courts Commission Releases Final Report*, JUDICIAL COUNCIL OF GA./ADMIN. OFFICES OF THE COURT (Apr. 1, 2014), <https://www.georgiacourts.gov/index.php/component/content/article/56-news-a-reference/225-next-generation-courts-commission-releases-final-report>.

68 The results of the survey are available at *Hawaii State Court Resources*, NCSC: NAT'L CTR. FOR STATE CTS. <http://www.ncsc.org/Information-and-resources/Browse-by-State/Profiles/Hawaii.aspx?major=Techno&topic=ElFile> (last visited March 15, 2015); see also Phillip R. Brown, *Electronic Filing in Hawaii*, HAWAII ATTORNEY BLOG, Sept. 25, 2010, http://legalblog.hawaii-attorney.net/2010/09/25/electronic-filing-in-hawaii/#.VNjt_nF-So (practicing-attorney blog post describing the e-filing process in Hawaii federal courts, encouraging practitioners to be more "paperless" and lamenting that state courts do not yet offer electronic filing).

69 Susan Pang Gochros, *Electronic Filing in the State Courts*, 15 HAW. B.J. 9, 9 (March 2011).

70 *Id.*

71 *Efiling*, HAW. STATE JUDICIARY, http://www.courts.state.hi.us/legal_references/efiling.html (last visited May 11, 2015).

state courts has asked the Idaho legislature for funding to purchase and implement a new technology system, “Odyssey” by Tyler Technologies, which will include electronic filing and case management. Pursuant to the current “rollout” plan, the “first go-live will be in Twin Falls County in May 2015.”⁷³

Illinois does not offer a uniform system for e-filing. E-filing is voluntary in the Illinois Supreme Court, but paper copies must also be filed.⁷⁴ As of January 1, 2013, the pilot phase for electronic filing in Illinois circuit courts ended.⁷⁵ The Illinois Supreme Court issued standards allowing each state circuit court “to pursue systems that manage digital submission of paperwork in civil cases.”⁷⁶

Indiana responded to the NCSC 2009 electronic-filing survey that it plans to offer electronic filing within two years, and it does offer e-filing in some courts.⁷⁷ The state is taking steps to unify its electronic-filing system. On July 31, 2014, the Indiana Supreme Court Division of State Court Administration issued a Public Notice of Contracting Opportunity for Statewide Electronic Filing Manager. This notice is a request for proposals for software and or hardware solutions to centrally manage electronic-filing receipt and storage from state courts throughout the state. Responses were due September 15, 2014.⁷⁸

As of March 2015, **Iowa** offered electronic filing in approximately 83 counties, 3 counties were “in Rollout,” and the remaining 13 counties were scheduled for conversion in 2015.⁷⁹ In the counties where e-filing has been implemented, use of the electronic document-management system is

72 *Idaho State Court Resources*, NCSC: NAT’L CTR. FOR STATE CTS., <http://www.ncsc.org/Information-and-Resources/Browse-by-State/Profiles/Idaho.aspx> (select “Technology,” then select “Electronic Filing”) (last visited Apr. 8, 2015).

73 Betsy Z. Russell, *New Idaho Court Technology System Would Bring Electronic Filing and Access to Court Documents*, 24/7, THE SPOKESMAN-REVIEW, Feb. 6, 2014, <http://www.spokesman.com/blogs/boise/2014/feb/06/new-idaho-court-technology-system-would-bring-electronic-filing-and-access-court-documents-247> (quoting Patti Tobias, administrative director of Idaho courts).

74 GUDAS, *supra* note 17, at 47.

75 Maria Kantzavelos, *Legal Technology: E-filing Gets the Green Light*, 101 ILL. B. J. 20 (Jan. 2013), available at <http://www.isba.org/ibj/2013/01/efilinggetsthegreenlight>.

76 *Id.*

77 *Indiana State Court Resources*, NCSC: NAT’L CTR. FOR STATE CTS., <http://www.ncsc.org/Information-and-Resources/Browse-by-State/Profiles/Indiana.aspx> (select “Technology,” then select “Electronic Filing”) (last visited Apr. 8, 2015).

78 Indiana Supreme Court Division of State Court Administration, Public Notice of Contracting Opportunity: Statewide Electronic Filing Manager (issued July 31, 2014), available at <http://www.in.gov/judiciary/admin/files/stad-pnco-efiling-manager-2014-0731.pdf>. In the RFP, the Division of State Court Administration explains that it is seeking “statewide E-Filing Manager Application (EFM) for use in the Indiana trial and appellate courts. The EFM shall be the central component of the Indiana E-Filing System (IEFS), a system of networked hardware, software, and service providers approved by the Indiana Supreme Court for the filing and service of pleadings and other court documents or information via the internet, into and from case management systems used by Indiana courts.” *Id.* at 3.

mandatory for all judicial officers, lawyers, self-represented litigants, and other uses in all cases, with only rare exceptions.⁸⁰ The Iowa appellate courts, which began e-filing on a pilot basis in February 2014, are working on integration of the appellate and trial court e-filing system.⁸¹

According to the website for the Kansas Judicial Branch, **Kansas** has plans to replace paper filing with electronic filing in all state courts. A pilot program was completed in 2013 in the Kansas Supreme Court, appellate courts, and select district courts. As of April 2015, electronic filing was available for Kansas licensed attorneys only in certain cases in district courts in the following counties: Atchison, Barton, Bourbon, Butler, Clay, Dickenson, Douglas, Elk, Ellsworth, Finney, Geary, Greenwood, Greeley, Hamilton, Kearny, Leavenworth, Linn, Marion, Miami, Morris, Ottawa, Reno, Rice, Riley, Russell, Saline, Scott, Sedgwick, Shawnee, Stafford, Wichita and Wyandotte. Johnson County District Court operates its own separate electronic-filing system.⁸²

Kentucky responded to the NCSC 2009 e-filing survey that it would be offering electronic filing more than two years in the future.⁸³ According to the website for the Kentucky Court of Justice, e-filing was made available first in civil cases, then in criminal cases, and will be available in state courts for all 120 counties by December 2015.⁸⁴ The Kentucky Supreme Court established rules for the e-filing pilot project recognizing that practitioners would be permitted to e-file into active “conventional” (paper-filed) cases in addition to electronically initiating new cases.⁸⁵

Louisiana is currently offering electronic filing in the Louisiana Supreme Court, e-filing is being planned in several of the circuits, all of

79 See *eFiling Overview*, IOWA JUDICIAL BRANCH, <http://www.iowacourts.gov/eFiling/Overview/index.asp> (updated Mar. 23, 2015) (color-coded map of counties depicting e-filing status).

80 See IOWA CT. R. 16.302, available at <http://www.iowacourts.gov/wfdata/files/EDMS/OnlineDocumentation/GeneralCommentary030112clean.pdf> (last visited Mar. 15, 2015).

81 GUDAS, *supra* note 17, at 49.

82 See *Kansas Courts Electronic Filing*, KAN. JUDICIAL BRANCH, <http://www.kscourts.org/Cases-and-Opinions/e-filing/default.asp> (last visited Apr. 8, 2015).

83 *Kansas State Court Resources*, NCSC: NAT’L CTR. FOR STATE CTS., <http://www.ncsc.org/Information-and-Resources/Browse-by-State/Profiles/Kentucky.aspx> (select “Technology,” then select “Electronic Filing”) (last visited Apr. 8, 2015).

84 *eFiling Coming to Kentucky State Courts*, KY. COURT OF JUSTICE, <http://courts.ky.gov/efiling/Pages/default.aspx> (last visited Apr. 8, 2015).

85 In re Administrative Rules of Practice and Procedure for the Kentucky Court of Justice, Electronic Filing Pilot Project, Order 2014-09 (Supreme Court of Kentucky, May 1, 2014), available at http://courts.ky.gov/courts/supreme/Rules_Procedures/201409.pdf.

86 SUPREME COURT OF LOUISIANA, ANNUAL REPORT 2103 OF THE JUDICIAL COUNCIL OF THE SUPREME COURT 23, available at http://search.lasc.org/press_room/annual_reports/reports/2013_Annual_Report.pdf; see also *Louisiana State Court Resources*, NCSC: NAT’L CTR. FOR STATE CTS., <http://www.ncsc.org/Information-and-Resources/Browse-by-State/Profiles/Louisiana.aspx> (select “Technology”) (last visited Mar. 15, 2015).

the circuits use an electronic case-management system, and an e-notification system is in use in three circuits.⁸⁶ Electronic filing is voluntary in the Louisiana Supreme Court and First Circuit Court of Appeal, it is available only in the Louisiana Supreme Court for members of the Louisiana Bar in good standing,⁸⁷ and access in the Twenty-fourth District Court is provided through access to the “JeffNet” (Jefferson Parrish) system for registered attorneys.⁸⁸

Maine does not currently offer e-filing in any state courts, although briefs and appendices may be submitted via email to the Supreme Judicial Court in addition to required paper filings.⁸⁹ In her 2014 “State of the Judiciary” address, however, Chief Justice Leigh Ingalls Saufley identified e-filing as the “biggest resource need we [the Judiciary in Maine] face today.”⁹⁰ Justice Saufley explained that the judiciary has worked with the NCSC and is creating a request for proposals for a new case-management and electronic-filing system. The Maine Legislature enacted LD 1789 on April 26, 2014, which authorized funding for the development of an e-filing system in Maine to continue.⁹¹

In the Prince George County District Court in **Maryland**, Landlord and Tenant cases may be electronically filed using Lexis File and ServeXpress. This is a pilot project described as “an important part of bringing the State of Maryland and its Court system into the age of information.”⁹² Though e-filing is “strongly recommended” for Landlord and Tenant cases in the pilot program, it is not required.⁹³

The *Boston Globe* reported in April 2014 that **Massachusetts** would be “turning on” its electronic-filing system “this summer.”⁹⁴ The Massachusetts Appeals Court, Supreme Court and trial courts require some “electronic submissions,” but the process described is the requirement or acceptance of a searchable PDF attached to an email, which differs fundamentally from the electronic file-management systems

87 See Order at 3 (La. S. Ct. July 2012) (amending court rules to provide for voluntary e-filing for attorneys in good standing), available at [https://cdx.lasc.org/Public%20 Documents/COURTRULES/RULE%20XLII.pdf](https://cdx.lasc.org/Public%20Documents/COURTRULES/RULE%20XLII.pdf); GUDAS, *supra* note 17, at 51.

88 See *Filing Civil Documents Electronically in the 24th Judicial District Court*, JEFFERSON PARISH CLERK OF COURT, <http://www.jpclerkofcourt.us/courts/24th-judicial-district-court/e-filing/> (last visited Mar. 15, 2015).

89 GUDAS, *supra* note 17, at 54.

90 Leigh I. Saufley, *The State of the Judiciary: A Report to the Joint Convention of the Second Regular Session of the 126th Legislature*, 29 ME. B.J. 86, 87 (2014), available at <https://www.mainebar.org/UserFiles/files/MB/spring2014lr.pdf>.

91 See An Act to Modernize and Improve the Efficiency of Maine’s Courts, 4 ME. REV. STAT. § 1610-G (2014).

92 See *Electronic Filing- Prince George’s County*, MARYLAND COURTS, <http://www.courts.state.md.us/district/efile/efilemain.html#doi> (last visited Mar. 15, 2015).

93 *Id.*

94 Michael B. Farrell, *Mass. Courts Step into Digital Era*, THE BOSTON GLOBE, Apr. 22, 2014, available at <http://www.bostonglobe.com/business/2014/04/21/massachusetts-courts-tip-toe-into-digital-age/YQj3cGV3E9CXLJWzapSLML/story.html>.

and processes of other states. The Appeals court still requires that briefs be submitted in paper format.⁹⁵

In the Sixth Circuit Court for Oakland County, **Michigan**, a pilot e-filing program was authorized by Administrative Order 2007-3, to run from August 1, 2007 to June 2015. Different from other pilot programs, the Sixth Circuit program is described as “mandatory” in the Administrative Order, and after April 30, 2012, initiating documents in certain designated types of cases could no longer be submitted on paper. The rules governing the project also allow for extreme circumstances when a filer cannot submit electronically, in which case the filing can be mailed to the Clerk’s Office, and the Clerk’s Office will submit it electronically. The system used is Tyler Technologies Odyssey file and serve, formerly known as Wiznet.⁹⁶ Electronic filing is available, but not mandatory, in the Michigan Supreme Court and Court of Appeals, both of which initially used Tyler Technologies, but now use a different web-based system called “TrueFiling.”⁹⁷ In the Twentieth Circuit Court for Ottawa County, Michigan, another e-filing pilot program, which also uses TrueFiling, was started on November 17, 2011.⁹⁸

As of September 1, 2012, electronic filing became mandatory in the Second and Fourth Judicial Districts of **Minnesota** for most civil cases and all family court cases, using the Odyssey file-and-serve system.⁹⁹ The Judicial Council of Minnesota announced in January 2012 that it will move state courts “from a framework of paper files to an electronic information environment. It will take several years to rollout EcourtMN statewide.”¹⁰⁰

Mississippi has initiated a uniform electronic-filing format called “Mississippi Electronic Court” (MEC). E-filing is mandatory for attorneys in the Mississippi Supreme Court and Court of Appeals (depending on document type).¹⁰¹ As governed by the Administrative Procedures for Mississippi Electronic Courts, e-filing has been implemented on a rolling basis in various county circuit courts. The individual chancery, circuit, and county courts of Mississippi may adopt the Administrative Procedures by

⁹⁵ *Electronic Submissions*, MASS. CT. SYS., <http://www.mass.gov/courts/court-info/appealscourt/appeals-court-help-center/appeals-electronic-submissions.html> (last visited Mar. 15, 2015).

⁹⁶ *Tyler: eFiling Court Records*, OAKLAND CNTY. MICH., <https://www.oakgov.com/clerkrod/Pages/efiling/default.aspx> (last visited Apr. 8, 2015).

⁹⁷ *E-Filing Guidelines*, MICH. CTS., <http://www.courts.mi.gov> (select “E-Filing”) (last visited Apr. 8, 2015).

⁹⁸ *Ottawa County Courts E-Filing*, MIOTTAWA.ORG, <https://www.miottawa.org/Departments/Clerk/efiling.htm> (last visited May 12, 2015).

⁹⁹ *E-File and E-Serve*, MINN. JUDICIAL BRANCH, <http://www.mncourts.gov/ecourtmn> (last visited Mar. 15, 2015).

¹⁰⁰ *Id.*

¹⁰¹ GUDAS, *supra* note 17, at 58.

local rule, which authorizes the individual court to offer electronic filing through MEC.¹⁰²

Missouri began a pilot program for electronic filing in the fall of 2011. As of April 2015, the state offers electronic filing in 65 counties, and is scheduled to implement it in 27 more counties in 2015.¹⁰³ In Missouri, during the pilot phase, electronic filing is free. As counties implement electronic filing, it becomes mandatory in that county. Electronic filing is also mandatory in the Missouri Supreme Court and Courts of Appeal in the Eastern, Southern and Western districts.¹⁰⁴

More than fifteen years ago, the **Montana** legislature passed a law authorizing electronic filing,¹⁰⁵ but it was not until 2012 that a request for proposals was created. In 2013 a contract for creating a statewide voluntary electronic-filing system was awarded to LT Court Tech. According to a presentation published on the Montana Judicial Branch website, a pilot program began in January 2014 with prosecutor-initiated filings for the first six months, with the addition of general civil cases with attorney representation by the close of 2014. The courts implementing the pilot are the Montana Supreme Court; courts in Missoula and Mineral counties (Fourth Judicial District); Fifth Judicial District courts (Madison, Beaverhead and Jefferson counties); courts in Fergus, Judith Basin and Petroleum counties (Tenth Judicial District); and the Yellowstone County Justice Court.¹⁰⁶

Nebraska offers electronic filing for subscribers to Nebraska.gov, which is used for other “e-services” like case searches and payment of fees. Electronic filing is available in all county and district courts.¹⁰⁷ According to Nebraska Supreme Court Chief Justice Michael G. Heavican, “[c]ourt documents can conveniently be e-filed and viewed online instead of necessitating travel to one of Nebraska’s 93 courthouses.”¹⁰⁸

¹⁰² *Mississippi Electronic Courts (MEC)*, STATE OF MISS. JUDICIARY, <https://courts.ms.gov/mec/mec.html> (last visited Mar. 15, 2015); see also State of Mississippi Judiciary Administrative Office of Courts, Administrative Procedures for Mississippi Electronic Courts: Electronic Means for Filing, Signing, Verification, and Service of Pleadings and Papers (eff. July 1, 2012), available at <https://courts.ms.gov/mec/mec.html> (select “Administrative Procedures”).

¹⁰³ *Missouri Electronic Filing Implementation Schedule*, YOUR MO. CTS., <http://www.courts.mo.gov/page.jsp?id=46524> (last visited Apr. 8, 2015) (color-coded map showing status of electronic filing).

¹⁰⁴ *Electronic Filing*, YOUR MO. CTS., <http://www.courts.mo.gov/page.jsp?id=46542> (last visited Mar. 15, 2015); see also *Frequently Asked Questions About Electronic Filing*, YOUR MO. CTS., <http://www.courts.mo.gov/page.jsp?id=46525> (last visited Apr. 8, 2015).

¹⁰⁵ MONT. CODE ANN. § 3-1-115 (West, WestlawNext through chapters eff. Feb. 27, 2015, 2015 Sess.).

¹⁰⁶ INTRODUCTION: MONTANA COURTS—ELECTRONIC FILING PORTAL 37, available at <http://www.courts.mt.gov/efile/default.mcp.x> (last visited Mar. 15, 2015) (select “High Level overview (powerpoint)”).

¹⁰⁷ *Nebraska Supreme Court EFILING*, NEBRASKA.GOV, <https://www.nebraska.gov/apps-EFILE/login/index> (last visited Mar. 15, 2015).

¹⁰⁸ CHIEF JUSTICE MICHAEL G. HEAVICAN, STATE OF THE JUDICIARY: 2015 NEBRASKA STATE OF NEBRASKA 6, available at <http://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/reports/courts/State-of-Judiciary-2015.pdf>.

Effective December 30, 2011, the Secretary of State for **Nevada** issued a regulation permitting the Secretary to implement procedures for receiving various filings electronically.¹⁰⁹ Pursuant to rules adopted by the Nevada Supreme Court, any court in Nevada may implement its own electronic-filing system, and even make the system mandatory for all or select categories of cases, provided the system complies with the uniform electronic-filing rules.¹¹⁰ E-file and Serve through Odyssey is available for the Eighth Judicial Circuit for Clark County, and e-filing is mandatory for the Las Vegas Township Justice Court.¹¹¹ Electronic filing is also available for all case types in the Second Judicial Circuit Court for Reno¹¹² and the Nevada Supreme Court.¹¹³

New Hampshire's “e-Court” project began on March 15, 2012. The project includes development of a unified system for accepting and managing electronic filings and connecting varying case-management systems, including Odyssey in trial courts and C-Track for the Supreme Court.¹¹⁴ On July 30, 2014, electronic filing became mandatory for small claims actions filed under RSA 503 in the Second Circuit—District Division—Plymouth and the Sixth Circuit—District Division—Concord.¹¹⁵

New Jersey uses the “Judiciary Electronic Filing and Imaging System” (JEFIS), which allows attorneys to register and file documents electronically in two types of lower court actions: foreclosure and Special Civil Part cases with DC docket numbers (actions where the amount in controversy is \$15,000 or less). For law firms that file over 400 DC complaints in the Special Civil Part per year, electronic filing in those cases is now mandatory.¹¹⁶ JEFIS-registered attorneys are also required to submit filings in foreclosure actions electronically.¹¹⁷ E-filing is also available in the New Jersey Appellate Division through “eDATA.”¹¹⁸

109 NEV. ADMIN. CODE 77.005 (West, WestlawNext through Sept. 30, 2014, Supplement 2014-4).

110 In re Adoption of Statewide Electronic Filing Standards and Rules, Order Adopting Nevada Electronic Filing Rules, ADKT 404 (Sup. Ct. Nev., Mar. 1, 2007), available at <https://www.leg.state.nv.us/CourtRules/NEFCR.html>.

111 See *General Information, Las Vegas Township Justice Court*, CLARK CNTY. CT., <http://www.clarkcountycourts.us> (last visited Mar. 15, 2015).

112 *Electronic Filing Rules*, SECOND JUDICIAL DIST. CT. OF NEV., <http://www.washoecourts.com> (last visited Mar. 15, 2015).

113 GUDAS, *supra* note 17, at 60.

114 *Electronic Services*, N.H. STATE JUDICIAL BRANCH, <http://www.courts.state.nh.us> (last visited Mar. 15, 2015).

115 State of New Hampshire Circuit Court Administrative Order 2014-29, District Division Small Claims Electronic Filing Pilot Project (July 18, 2014), available at <http://www.courts.state.nh.us/circuitcourt/adminorders.htm>.

116 *JEFIS Special Civil Part—DC Docket*, N.J. CTS., http://www.judiciary.state.nj.us/jefis/scp_dc.html (last visited Mar. 15, 2015).

117 *Id.*

118 GUDAS, *supra* note 17, at 61.

Electronic filing is not available in the **New Mexico** Supreme Court,¹¹⁹ but pursuant to Rule 1-005.2, district courts may, by local rule, implement mandatory electronic filing, and at least nine district courts have done so.¹²⁰ Where implemented, electronic filing is accomplished through Tyler Technologies File and Serve system.¹²¹

New York trial courts use the “New York State Courts Electronic Filing” (NYSCEF) system. On February 19, 2013, e-filing through NYSCEF became mandatory in all cases commenced in the Supreme Court (lower court), Civil Branch, New York County, except those involving Article 78, election law, matrimonial disputes, and mental hygiene.¹²² Filers in the Court of Appeals (highest reviewing court in New York) must submit electronically using Court-PASS, a separate system linked to NYSCEF.¹²³ According to NCSC, at least one of New York’s intermediate appellate courts requires email submission of briefs in addition to filing of paper copies.¹²⁴

As of April 2015, **North Carolina** has a pilot electronic-filing system available in Alamance, Chowan, Davidson, and Wake counties only. The system is powered by “eFlex from Tybera.”¹²⁵ Pursuant to Rule 5.1 of the Supreme Court of North Carolina Second Supplemental Rules of Practice and Procedure for the North Carolina e-filing Pilot Project, amended August 27, 2013, the pilot electronic-filing program is permissive.¹²⁶ E-filing in the Supreme Court and Court of Appeals is also available on a voluntary basis.¹²⁷

The **North Dakota** Supreme Court issued Administrative Order 14, entitled, “Electronic Filing Pilot Project,” in 2003.¹²⁸ The Court subse-

119 *Frequently Asked Questions*, N.M. SUP. CT., <https://nmsupremecourt.nmcourts.gov/index.php> (last visited Mar. 15, 2015) (select “Frequently Asked Questions”).

120 See STATE OF NEW MEXICO FREQUENTLY ASKED QUESTIONS 3 (Feb. 2013), available at http://content.tylerhost.net/docs/nm/help/OFS_NewMexico_FAQ_3047.pdf (electronic filing is mandatory in the First, Second, Fourth, Fifth, Seventh, Tenth, Eleventh, and Thirteenth Judicial District Courts); *Welcome to Third Judicial District Court*, THIRD JUDICIAL DIST., <http://www.thirddistrictcourt.com> (last visited Apr. 8, 2015) (select “E-Filing” at top left of screen) (electronic filing is also mandatory for civil and probate cases in the Third District Court).

121 See, e.g., *Login*, STATE OF N.M., <https://newmexico.tylerhost.net> (last visited Apr. 8, 2015).

122 State of New York Unified Court System, First Judicial District, Supreme Court, Civil Branch, *Notice to the Bar—Expansion of Mandatory E-Filing* (May 7, 2013), available at <http://www.nycourts.gov/courts/1jd/supctmanh/EF-Mandatory-Notice-5713.pdf> (notifying bar of administrative order effective Feb. 13, 2013).

123 *Id.*

124 GUDAS, *supra* note 17, at 63.

125 *Welcome eFiling*, N.C. CT. INFO. SYS. (last visited May 12, 2015), <http://www.efiling.nccourts.org>.

126 *Id.* (select “eFiling Rules”) (last visited Apr. 8, 2015).

127 GUDAS, *supra* note 17, at 64.

128 *In re Electronic Filing Pilot Project*, Admin. Sup. Ct. No. 20070205, Order 14 (N.D. Sup. Ct. amended eff. Mar. 1, 2008), *repealed*, available at <http://www.ndcourts.gov/rules/Administrative/AO14.obs4.htm>.

quently transferred the contents of the now obsolete order to the North Dakota Rules of Appellate Procedure.¹²⁹ The rules require documents submitted in electronic format be in an approved word processing format or PDF format attached to an email.¹³⁰ Submission of a filing by email is fundamentally different from e-filing as that term has been used in this article. E-filing facilitates and supports full digital interaction with filings while submission by email does not. As a practical matter, when a court allows “electronic” transmission by email that means merely that a digital copy is sent to the court. There is often no accommodation in the case-management system to accept payment of fees online or to automate service of court filings, which is routinely accomplished with electronic-filing systems and necessary functions of paperless courts. After June 1, 2013, electronic filing using the Odyssey electronic-filing system became mandatory in district courts in civil, non-juvenile cases.¹³¹

The Supreme Court of **Ohio** issued a working draft of Standards for Electronic Filing Processes in 2006 and, effective January 1, 2015, amended the Court’s rules of practice to allow all attorneys qualified under the rules to use the Court’s “E-Filing Portal.”¹³² In Summit County, all civil cases must be filed electronically using the Summit County Clerk of Courts e-filing system.¹³³ According to Ohio’s response to the NCSC 2009 e-filing survey, electronic filing is also used in Butler, Delaware, Hamilton, Lake, and Montgomery counties.¹³⁴

The **Oklahoma** Supreme Court issued an order on June 21, 2012, that established rules for electronic filing in Oklahoma courts selected as pilot courts.¹³⁵ As described in an article written by Brant M. Elmore and published in the Oklahoma Bar Journal, Oklahoma is implementing both a uniform case-management system, the Oklahoma Unified Case

129 See *id.*; see also N.D. R. APP. P. 25, available at <http://www.ndcourts.gov/court/rules/appellat/rule25.htm>.

130 N.D. R. APP. P. 25, available at <http://www.ndcourts.gov/court/rules/appellat/rule25.htm>.

131 N.D. R. CT. 3.5, available at <http://www.ndcourts.gov/court/rules/ndroc/rule3.5.htm>.

132 See Supreme Court of Ohio Standards Subcommittee of the Advisory Committee on Technology and the Courts, Draft Recommended Standards (July 20, 2006), available at <http://www.supremecourt.ohio.gov/Boards/ACTC/SGR/EFiling.pdf>; OHIO SUP. CT. PRAC. R. 2.10, available at [http://www.supremecourtsofohio.gov/ruleamendments/documents/Proposed%20Amendments%20to%20the%20Supreme%20Court%20Rules%20of%20Practice%20\(Final\)1.pdf](http://www.supremecourtsofohio.gov/ruleamendments/documents/Proposed%20Amendments%20to%20the%20Supreme%20Court%20Rules%20of%20Practice%20(Final)1.pdf).

133 DANIEL M. HARRIGAN, COUNTY OF SUMMIT CLERK OF COURTS, IMPORTANT NOTICE (stating that, effective Mar. 1, 2014, e-filing will be mandatory in civil cases except stalking cases, miscellaneous discovery matters, wage garnishment and bank attachments), available at <http://www.cpclerk.co.summit.oh.us/news/scclin.pdf>; see generally Summit County Clerk of Courts, Attorney’s Manual (ver. 1.0.20130520), available at https://www.cpclerk.co.summit.oh.us/efiling/Documentation/efiling_Instructions.pdf.

134 *Electronic Filing State Links*, NCSC: NAT’L CTR. FOR STATE CTS., <http://www.ncsc.org/Topics/Technology/Electronic-Filing/State-Links.aspx> (jump to “Ohio”) (last visited Apr. 11, 2015).

135 In re Rules for Electronic Filing in the Oklahoma Courts Selected as Pilot Courts, Case No. SCAD-2012-36 (Ok. Sup. Ct., June 21, 2012) (not released for official publication), available at <http://law.justia.com/cases/oklahoma/supremecourt/2012/scad-2012-36.html>.

Management System (OUCMS), and a new e-filing system developed by American Cadastre LLC (AMCAD). The e-filing pilot program was expected to begin in July 2013.¹³⁶ According to the helpdesk for the Oklahoma Administrative Office of Courts, there was a setback in the forward momentum of the pilot program relating to the original case-management system, but, as of September 2014, the pilot program was moving forward and e-filing was available in Noble County for participating attorneys.¹³⁷

Oregon is in the process of transitioning from an online paid subscription service called “OJIN” to the Tyler Technologies product “Odyssey File and Serve.”¹³⁸ The Oregon Judicial Department set a date of December 1, 2014, for mandatory e-filing in eleven circuit courts that were already using Odyssey File and Serve.¹³⁹ The plan called for Uniform Trial Court eFile Rules to be adopted on or before December 2014.¹⁴⁰ In courts that have not yet implemented electronic filing, the plan indicates that e-filing will be permissive for the first 30 days after the “go live” date and will become mandatory after 60 business days.¹⁴¹

The Supreme Court of **Pennsylvania** authorized electronic filing in the appellate courts using PACFile, by Order dated October 24, 2012, and amended January 6, 2014.¹⁴² Pennsylvania also initiated a pilot e-filing program in the First Judicial District Court of Common Pleas, Trial Division—Criminal Section and the Philadelphia Municipal Court, Criminal Section on February 6, 2013, and subsequently extended the pilot program through April 2015.¹⁴³ According to the National Center for State Courts website, electronic filing is also available in the Fifth Judicial

136 Brant M. Elmore, *E-Filing in Oklahoma*, 84 OKLA. B.J. 8 (Mar. 16, 2013), available at <http://www.okbar.org>; see also Administrative Office of the Courts, Electronic Filing in District and Appellate courts in Oklahoma (ver. 1.12, Jan. 29, 2013) (slideshow explaining ongoing e-filing projects, including related statute and rule changes).

137 Telephone Interview with Tad Chapman, helpdesk staff, Oklahoma Administrative Office of the Courts (Sept. 5, 2014) (notes on file with author). Tad also reported that the pilot program is moving forward and, when the system is ready, it will be rolled out in more counties.

138 OREGON eCOURT INFORMATION FOR ATTORNEYS, GOVERNMENT AGENCIES & COMMUNITY PARTNERS 1-2, available at <https://www.mbar.org/assets/ecourtrollouttimeline.pdf> (last visited Apr. 11, 2015).

139 MANDATORY EFILE IN 11 CIRCUIT COURTS STARTS DECEMBER 1, 2014 (Nov. 11, 2014), available at <http://www.courts.oregon.gov/OJD/OnlineServices/OJDeFiling/Pages/index.aspx>. (select “Mandatory eFiling Notice for Attorneys”).

140 FREQUENTLY ASKED QUESTIONS ABOUT MANDATORY E-FILING IN OREGON Q3, available at <http://courts.oregon.gov/OJD/OnlineServices/OJDeFiling/Pages/index.aspx> (last visited Apr. 11, 2015) (select “Frequently Asked Questions About Mandatory eFiling”).

141 *Id.* at Q2.

142 Electronic Filing System in the Appellate Courts, Order, Judicial Admin. Doc No. 418, (Penn. Sup. Ct., Jan. 25, 2014), available at <http://www.pabulletin.com/secure/data/vol44/44-4/183.html>.

143 See In re Extension of Pilot Program for Electronic Filing, Order, Crim. Docket No. 449 (Mar. 28, 2014), available at <http://www.pacourts.us/assets/opinions/Supreme/out/449crim.pdf?cb=1>.

District for Allegheny County, Thirty-First Judicial District for Lehigh County, and the Thirty-Third Judicial District for Armstrong County.¹⁴⁴

Rhode Island has begun implementation of statewide case management and e-filing systems using Tyler Technologies Odyssey technology. The Workers' Compensation court has already implemented the case management component and e-filing is expected to be "implemented shortly."¹⁴⁵ In November 2014, the CMS for civil cases in the Civil, Family, and District Courts was scheduled for conversion with the EFS (electronic-filing system) to be implemented shortly thereafter. It is anticipated that all courts and case types will convert to the new CMS and EFS systems by 2016.¹⁴⁶

South Carolina awarded the contract for development of a statewide electronic filing system to the Tybera Corporation of Oren, Utah, effective July 1, 2013.¹⁴⁷ Additionally, all counties were already "live" with the statewide case-management system (CMS) as of June 2011, and 32 counties were hosted in the South Carolina Judicial Department (SCJD) data center as of February 2012.¹⁴⁸

South Dakota is in the process of converting all state courts to the Odyssey system for case management and electronic filing. Electronic filing became mandatory for attorneys in criminal subsequent case filings as of January 28, 2015, and in civil initial and subsequent case filings as of February 25, 2015.¹⁴⁹

Electronic filing has been available in some **Tennessee** courts since August 1, 2006. Pursuant to Tennessee Rule of Civil Procedure 5B, which became effective July 1, 2010, courts in Tennessee may, by local rule, adopt their own electronic filing systems.¹⁵⁰

Electronic filing became mandatory in **Texas** in the Supreme Court and in all civil appeals on January 1, 2014. Mandatory electronic filing is being implemented in courts in Texas counties over a number of years depending on the population size of the county as follows: Mandatory electronic became mandatory on January 1, 2014, for courts in counties

144 *Electronic Filing State Links*, NCSC: NAT'L CTR. FOR STATE CTS., <http://www.ncsc.org/Topics/Technology/Electronic-Filing/State-Links.aspx> (jump to "Pennsylvania") (last visited Apr. 11, 2015).

145 *Electronic Filing*, R.I. JUDICIARY, <https://www.courts.ri.gov/efiling/Pages/default.aspx> (last visited Apr. 11, 2015).

146 *Id.*

147 *Vendor Selected for the South Carolina Judicial Departments e-Filing Project*, S.C. JUDICIAL DEP'T (July 1, 2013), available at <http://www.judicial.state.sc.us/whatsnew/displayWhatsNew.cfm?indexId=879>.

148 S.C. JUDICIAL DEP'T, STATE OF THE JUDICIARY 9 (Feb. 8, 2012) (slideshow), available at <http://www.judicial.state.sc.us/whatsnew/SOJ2012/SOJPowerPoint.pdf>.

149 *In re the Adoption of Universal Circuit Court Electronic Filing Rules*, Order, (S.D. Sup. Ct., Sept. 18, 2014), available at http://ujs.sd.gov/media/odyssey/mandatory_order.pdf.

150 TENN. R. CIV. P. 5B (West, WestlawNext through Dec. 1, 2014).

with a population of 500,000 or more, on July 1, 2014, for courts in counties with a population of 200,000 to 499,999, and on January 1, 2015, for courts in counties with a population of 100,000 to 199,999, and will become mandatory on July 1, 2015, for courts in counties with a population of 50,000 to 99,999, on January 1, 2016, for courts in counties with a population of 20,000 to 49,999, and on July 1, 2016, for courts in counties with a population of less than 20,000.¹⁵¹ Once electronic filing becomes mandatory in a jurisdiction, attorneys must e-file all documents in civil cases unless an exemption applies.¹⁵²

In **Utah**, electronic filing is available to lawyers in all types of cases in all courts. Electronic filing is mandatory in civil, probate and domestic cases, and beginning January 1, 2015, information in criminal cases must be filed electronically.¹⁵³

In **Vermont**, after January 26, 2011, electronic filing became mandatory for attorneys in all civil actions and proceedings initiated in the Superior Court, Civil Division, Rutland, and Windsor County Units except small-claims actions, small claims appeals, and stalking and sexual assault actions.¹⁵⁴

As stated by Chief Justice Cynthia D. Kinser of the **Virginia** Supreme Court in her state of the judiciary address in May 2014, the “Virginia Judiciary E-Filing System [VJES] went live in the Circuit Court of the City of Norfolk in April 2013. Thirteen circuit courts and 623 attorneys are currently using the Virginia Judiciary E-Filing System. To date, over 3,000 cases have been e-filed through the system.”¹⁵⁵ Moreover, “[a] project is underway to permit circuit courts to transmit records electronically to the Supreme Court of Virginia and to the Court of Appeals of Virginia. Document standards are being reviewed and, so far, test electronic records have been accepted from circuit courts in two different appeals.”¹⁵⁶

In **Washington**, county courts may adopt local rules mandating or permitting electronic filing, and numerous courts have done so.¹⁵⁷ For

.....

151 Order Requiring Electronic Filing in Certain Courts, Misc. Docket No. 12-9208 (Tex., Dec. 11, 2012), *available at* <http://www.supreme.courts.state.tx.us/miscdocket/12/12920600.pdf>, *amended by* Amended Order Requiring Electronic Filing in Certain Courts, Misc. Docket No. 9032 (Tex., June 24, 2013), *available at* http://www.dallascounty.org/distclerk/media/DraftSupremeCourt_eFiling_May13.pdf.

152 TEX. R. CIV. P. 21(f) (West, WestlawNext through Mar. 15, 2015).

153 *E-filing*, UTAH CTS., <http://www.utcourts.gov/efiling/> (last visited Mar. 15, 2015).

154 *Electronic Services: eFiling/eCabinet*, VERMONT JUDICIARY, <https://www.vermontjudiciary.org/MasterPages/eservices-efiling.aspx> (last visited Apr. 11, 2015); *see also* VT. R. ELEC. FILING R. 1 (West, WestlawNext through Feb. 15, 2015) (applicability of mandatory e-filing rules).

155 2014 STATE OF THE JUDICIARY ADDRESS 10 (May 2014), *available at* http://www.courts.state.va.us/courts/scv/state_of_the_judiciary_address.pdf (last visited Mar. 15, 2015).

156 *Id.*

157 WA. GEN. APPLICATION CT. R. 30 (West, WestlawNext through Mar. 1, 2015).

example, electronic filing is mandatory for attorneys in the Clark County District Court, King County Superior Court, and Pierce County Superior Court.¹⁵⁸ In contrast, in Chelan County Superior Court, Thurston County Superior Court e-filing is available but not mandatory.¹⁵⁹ Documents required to be filed in “non-electronic media” like original wills and negotiable instruments, may not be electronically filed.¹⁶⁰

As set forth in the **West Virginia** trial court rules, in certain mass litigation, the panel hearing the case may order that the proceeding is subject to e-filing.¹⁶¹ For example, per the West Virginia Supreme Court’s December 20, 2012, Order, registration and training for e-filing and service with File and ServeXpress is mandatory for Mountain State University Litigation and Carbon Monoxide Exposure Litigation.¹⁶² On April 23, 2014, the Supreme Court of Appeals issued an order establishing a Uniform Electronic Filing system and adopting West Virginia Supplemental Trial Court Rules for the West Virginia E-Filing Pilot Project. The rules indicate electronic filing is offered in pilot counties, but is not mandatory within those courts.¹⁶³

The **Wisconsin** e-filing system allows attorneys and parties to electronically file new cases and documents for civil, family, and small claims cases in the Wisconsin circuit courts. In fall 2014, a proposal to make voluntary e-filing mandatory was submitted to the Wisconsin Supreme Court by the Chief Judge’s Subcommittee on e-filing Implementation.¹⁶⁴ As of April 2015, however, use of e-filing in Wisconsin courts remains voluntary.¹⁶⁵

E-filing is mandatory in **Wyoming** for members of the Wyoming State Bar filing in the Wyoming Supreme Court, which offers electronic

¹⁵⁸ WA. R. CLARK DIST. CT. L.G.R. 30(B) (West, WestlawNext through Aug. 15, 2014); WA. R. KING SUPER. CT. L.G.R. 30 (West, WestlawNext through Aug. 15, 2014); WA. R. PIERCE SUPER. CT. L.G.R. 30 (West, WestlawNext through Aug. 15, 2014). *But see Electronic Filing*, CLARK CNTY., http://www.clark.wa.gov/courts/clerk/electronic_filing.html (last visited May 10, 2015) (electronic filing is not mandatory in Clark County Superior Court).

¹⁵⁹ WA. R. CHELAN SUPER. CT. L.R. 5 (West, WestlawNext through Aug. 15, 2014); WA. R. THURSTON SUPER. CT. L.G.R. 30 (West, WestlawNext through Aug. 15, 2014).

¹⁶⁰ *See* WA. GEN. APPLICATION CT. R. 30(b)(2) (West, WestlawNext through Mar. 1, 2015); *see also id.*, cmt. (suggesting that courts should not require filers to provide a paper copy).

¹⁶¹ W. VA. TR. CT. R. 15.02(c) (West, WestlawNext through Dec. 1, 2014).

¹⁶² *In re* Mountain State Univ. Litigation, Civil Action No. 12-C-9000 (Dec. 20, 2012), *available at* <http://www.courtswv.gov/lower-courts/mlp/mlporders/mountain-state/Order-Electronic-Filing.pdf>.

¹⁶³ W. VA. TR. CT. R. 15.02(c) (West, WestlawNext through Dec. 1, 2014).

¹⁶⁴ IMPLEMENTATION OF MANDATORY ELECTRONIC FILING: REPORT OF THE CHIEF JUDGE’S SUBCOMMITTEE ON EFILING IMPLEMENTATION (Aug. 2014), *available at* <http://www.wisbar.org/SiteCollectionDocuments/Publications/eFiling-report-rule-8-18-14.pdf>.

¹⁶⁵ WIS. STAT. ANN. § 801.17(2)(b) (West, WestlawNext through Mar. 24, 2015).

¹⁶⁶ *See E-Filing*, WYO. JUDICIAL BRANCH, <http://www.courts.state.wy.us/Home/EFiling> (last visited Mar. 15, 2015).

filing using C-Track.¹⁶⁶ District courts in Wyoming have not yet implemented e-filing.¹⁶⁷

IV. E-filing Is Here; Why Does It Matter?

When the court's official collection of filings in a case, called the record, is electronic, judges can access the court file from a computer on the bench.¹⁶⁸ Instant and guaranteed access to the court file is a benefit, considering there have been times in many courts when a hearing had to be rescheduled because the clerk could not locate the file.¹⁶⁹ This electronic access also means that judges may be reading filings on a screen rather than on paper. Legal writing scholar Ruth Anne Robbins wrote in 2010 that even in jurisdictions where attorneys submit documents electronically, "hard copies are nevertheless being printed by those people who have to read them."¹⁷⁰ Robbins concluded that computer screen reading was just not feasible yet for long documents, and predicted that "[u]ntil we can all afford and are ready to use personal document readers, we will realistically still have a world where we prefer to read longer documents in hard copy."¹⁷¹ It is noteworthy that research has shown no significant difference in reading performance between paper- and on-screen reading, despite a preference for reading on paper.¹⁷²

Five years after Robbins' observation, we now live in a world where most attorneys and judges can afford¹⁷³ and are ready to use personal document readers for reading briefs, and that is exactly what many judges

¹⁶⁷ See *id.*

¹⁶⁸ David Nuffer, *The View from the Electronic Bench*, 17 UTAH B.J. 8, 8 (June/July 2004) (Judge Nuffer's bench in his courtroom has dual computer screens and "[n]o papers in sight!"), available at https://www.utahbar.org/wp-content/uploads/2014/10/2004_june_july.pdf; see also Douglas McQuiston, *It's Not "All or Nothing": Your 'Paperless' Future*, FOR THE DEFENSE, July 2012, at 32, 34, available at <http://dritoday.org/ftd/2012-07E.pdf> (McQuiston, a lawyer practicing in Denver, Colorado, suggests dual monitors to have a document open on one and another free for your working document.).

¹⁶⁹ JANE S. CARTER, IS GOING PAPERLESS IN A CONSOLIDATED LIMITED JURISDICTION COURT FEASIBLE OR NOT?, 8-9 (May 2014) (Carter works in court management at the Pima County Consolidated Justice Court in Tucson, Arizona and describes a story of a plaintiff in a domestic-violence case set for trial who endures the inconvenience and anxiety of rearranging her own work schedule and child care only to arrive at the court and be told that the hearing cannot go forward that day because the court file is missing.), available at <http://www.ncsc.org/~media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2014/Paperless%20Consolidated%20Limited%20Jurisdiction%20Court.ashx>.

¹⁷⁰ Ruth Anne Robbins, *Conserving the Canvas: Reducing the Environmental Footprint of Legal Briefs by Re-imagining Court Rules and Document Design Strategies*, 7 J. ALWD 193, 194 (2010).

¹⁷¹ *Id.*

¹⁷² Andreas Holzinger et al., *Investigating Paper vs. Screen in Real-Life Hospital Workflows: Performance Contradicts Perceived Superiority of Paper in the User Experience*, 69 INT'L J. HUMAN-COMPUTER STUDIES 563, 563-570 (2011).

¹⁷³ Nuffer, *The View*, *supra* note 168, at 9 (reporting that tablet sales reached about 60 million units in 2011, and of those, 38 million were iPads, and that "[t]ablet sales are forecasted to outpace PC sales in 3 years").

are doing. Utah Judge David Nuffer authored a guest blog post in June 2012 in which he wrote,

iPads have replaced laptops for many judges, and . . . most judges use an iPad for general reading because electronically filed documents are all PDF format. Apps such as PDF Expert, iAnnotate and Goodreader work well with these PDF documents. The documents can be annotated while reading and the annotations persist when the document is returned to chambers storage servers. Judges appreciate the ability to take voluminous documents with them in the same device they use for email. This results in less printing of electronically filed papers.¹⁷⁴

Of course, there are judges who still read briefs on paper, and will read briefs on paper no matter what. But the number of “paper readers” as attorney and author Robert Dubose calls them, is lower today than it was even two years ago.¹⁷⁵ This downward trend will continue as technology takes a stronger hold in courts and continues to advance making screen reading even easier.¹⁷⁶

A problem for practitioners is that a brief written to be read on paper is not as persuasive when it is read on screen.¹⁷⁷ Legal writers seek to educate and persuade the audience, which is generally the judge or judicial clerk.¹⁷⁸ This persuasion is dependent on the substance of the arguments presented, which must be written for the appropriate audience,¹⁷⁹ and also upon the visual presentation of those arguments.¹⁸⁰

It should go without saying that the purpose of legal documents filed electronically is still to educate and persuade. Now, as more judges are reading filed documents on screen, their needs, in order to be persuaded, are also changing.¹⁸¹ To be persuaded, judges need a clear idea of what is being asked of them, whether on screen or paper.¹⁸² A “dumped”

174 Nuffer, *supra* note 4 (discussing recent statistics measuring judges’ use of iPads).

175 Robert Dubose, *Writing Appellate Briefs for Tablet Readers*, APPELLATE ISSUES, Spring 2012, at 9, available at http://www.americanbar.org/content/dam/aba/publications/appellate_issues/2012sprng_ai.authcheckdam.pdf (published by the Council of Appellate Lawyers).

176 *Id.*

177 Steven L. Emmert, *Hyperlinking in the Appellate Arena*, APPELLATE ISSUES, Spring 2012, at 16, available at http://www.americanbar.org/content/dam/aba/publications/appellate_issues/2012sprng_ai.authcheckdam.pdf.

178 Maria Perez Crist, *The E-Brief: Legal Writing for an Online World*, 33 N.M. L. REV. 49, 70 (2003).

179 SCALIA, *supra* note 7, at 5–7.

180 Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 J. ALWD 108, 111 (2004) (available on the United States’ Seventh Circuit Court of Appeals website, <http://www.ca7.uscourts.gov>).

181 Nuffer, *The View*, *supra* note 168, at 70.

182 *Id.*

document, that is, one written for paper that has been dumped into PDF format to comply with mandatory e-filing requirements with no changes to its content, can be so hard to read that it is counterproductive. On screen, the clarity of even the best legal prose may be lost if the document does not contain navigational tools to prevent the screen reader from getting “lost” in the document. Because the audience’s needs are different, legal writers might not be persuasive without adjusting to this change.

Fundamentally speaking, when a document is read on a screen, there are no physical pages.¹⁸³ Without physical pages, the document can look like one long page as the reader scrolls through it. According to Blake Hawthorne, author of “Guide to Creating Electronic Appellate Briefs,” which is posted on the website for the Supreme Court of Texas, every judge who was asked preferred reading a brief with bookmarks in it over reading one without bookmarks.¹⁸⁴ Bookmarks appear in a side pane, typically on the left side of the screen, and are accessible to the reader no matter where they are in the document. Bookmarks fulfill the function of the table of contents and statement of issues in a paper brief. Bookmarks allow the screen-reader to navigate the document. They are anchors for the reader to use to jump from one section to another, and even to keep up with what section they are in in the document, which is not always apparent. There is a need for scholarship to begin to map the practice of effectively using bookmarks in e-filed court documents. At a bare minimum, bookmarks should guide the screen-reader through the document and provide anchors to facilitate the screen-readers’ movement through the document. These anchors are necessary to keep screen readers from multidimensional confusion. For example, without any navigational help, the screen-reader may get lost scrolling through a lengthy document. Likewise, screen-readers may become frustrated trying to find arguments or issues for comparison without the benefit of a table-of-contents page that allows quick and easy reference. Some scholars suggest that if it is known the audience will be using an iPad or other e-reader with a smaller screen, it is helpful to keep the length of bookmarks short.¹⁸⁵ For bookmarks to be useful, they should be visible in the left pane for the screen-reader; but because the bookmarks are collapsible, the screen-reader can open and collapse them and sub-bookmarks and navigate the document directly from this bookmark map.

183 See Margolis, *supra* note 5, at 18 (noting how this task affects organization and reading patterns).

184 BLAKE A. HAWTHORNE, 2013 GUIDE TO CREATING ELECTRONIC APPELLATE BRIEFS 1 (Apr. 22, 2013), available at <http://federalcourthyperlinking.org/wp-content/uploads/2013/05/guidetocreatingelectronicappellatebriefs.pdf>.

185 See, e.g., Dubose, *supra* note 175, at 14.

Hyperlinks are like bookmarks, but instead of facilitating navigation within just the e-filed document, hyperlinks provide instant access to documents and sources outside the e-filed document. Hyperlinks are a tool that allows legal writers to make the most of the new multidimensional frontier of e-filed documents rather than one necessary to avoid multidimensional confusion. If practitioners have limited time to learn new technology for e-filing, they should start with bookmarks and advance to hyperlinks.

Hyperlinks, embedded in the e-filed document, create a link for the screen-reader to click and instantly read the reference for the argument cited in the filing. Westlaw, WestlawNext, and LexisNexis provide subscription services that allow legal writers to create a link to a case in an e-filed document that when read on a screen, allows the screen-reader to go directly to the pin-point-cited page of the case.

There are also navigational hyperlinks, which take the reader to another part of the same document, for example to an attached appendix, and associative hyperlinks, which take the reader to another document in the docket. Navigational hyperlinks are most like bookmarks, but, unlike bookmarks, they appear throughout the body of the text, amongst citations. The benefits of navigational hyperlinks will continue to grow as courts continue to shift away from paper to electronically filed documents and court files become increasingly populated with e-filed motions, pleadings and briefs.¹⁸⁶ As with bookmarks, further scholarship is needed to map the best practices of hyperlinks in e-filings.

Reading on screen is a “discontinuous or non-linear process” in contrast to sequential reading.¹⁸⁷ Screen-readers tend to focus in an “F-shaped” pattern, such that they will spend the most time on the top and left side of the screen. The F-shaped pattern suggests that screen-readers are more likely to “[l]ook for headings and summaries of content; [r]ead the first paragraph of text more carefully than the rest of the text; [r]ead the first sentence of a paragraph, but skim the rest of the paragraph; and [l]ook for structural cues down the left side of the page.”¹⁸⁸

Some studies show that people read 10 to 30 percent slower on screens than on paper.¹⁸⁹ But that may not be a bad thing, since studies

186 Some jurisdictions speed up this transformation by scanning and converting paper files to electronic files, so that not just current cases contain electronic court filings, but older cases and filings are accessible electronically, too.

187 Wendy Sutherland-Smith, *Weaving the Literacy Web: Changes in Reading from Page to Screen*, 55 THE READING TEACHER 665 (April 2002).

188 Robert Dubose, *Legal Writing for the Rewired Brain: How to Communicate in a Paperless World* 9 (June 11, 2010) (paper presented at State Bar of Texas Annual Meeting, Law Practice Management CLE), available at http://www.texasbar.com/flashdrive/materials/managing_your_law_practice/Special_ManagingYourLawPracticeCLE_LegalWritingRewiredBrain_Dubose_FinalArticle.pdf.

also show that general reading comprehension increases when an individual reads more slowly.¹⁹⁰ A long document on screen can be disorienting to the reader, making it difficult for the reader to see how the arguments fit together. To combat this disorientation, readers need bookmarks so they can navigate the document.¹⁹¹ There is room for new practices in legal writing, as well, that shift focus away from paragraphs and pages, toward chunks of information. Screen-readers drift through a document and are often anchored by packages of information smaller than traditional paragraphs. Research also supports that in the F-pattern, screen-readers spend more time on the first sentence of a paragraph than on the rest. For this reason, scholars suggest that legal writers “front-load” paragraphs.¹⁹² This process is not inconsistent with traditional tenets of legal writing. Legal writers can make their documents more screen-friendly by beginning paragraphs with concise “workhorse” sentences that make the writer’s main point.¹⁹³

Legal writers need to “be kind” to their audience and accommodate the differences between screen and paper,¹⁹⁴ because “[e]very capable attorney understands the value of making things easy for our briefs’ ultimate consumers”—the judges and clerks reading them.¹⁹⁵ It is not difficult to adjust the document to make it persuasive on screen, and arguably the adjustments will not detract from the reading experience of paper readers.¹⁹⁶

189 *Id.* at 9 (citing Sri H. Kurniawan & Panayiotis Zaphiris, *Reading Online or on Paper: Which is Faster?*, August 2001, available at http://users.soe.ucsc.edu/~srikur/files/HCIL_reading.pdf; cf. Holzinger et al., *supra* note 172, at 566 (concluding, in a different experiment conducted in a real work environment, that there was no significant difference between reading speed on paper and on a screen).

190 Mary C. Dyson & Mark Haselgrove, *The Influence of Reading Speed and Line Length on the Effectiveness of Reading from Screen*, 54 INT’L J. HUMAN-COMPUTER STUDIES 585–86, 603–05, 608 (2001) (citing studies and empirically testing relationship between onscreen reading speed and comprehension; concluding that specific details are recalled better at normal and slower reading speeds).

191 See Dubose, *supra* note 175, at 14.

192 See, e.g., *id.* at 11 (observing that the practical reality of the “F” screen reading pattern is that the words right outside the “F” are seldom read and words at the end of paragraphs “are not likely to be read by anyone”). I learned early in my career as an appellate law clerk, benefitting from kind and valuable instruction from Linda Bulecza and Tim Lewis, to pack the first few sentences of the summaries I prepared for judges with relevant information, so as not to waste valuable attention-grabbing real estate on the page. This good legal writing advice is even more appropriate now when research and experience suggest that screen readers may not even read the end of the paragraph. Front-loading is thus even more important in the multidimensional digital environment than it was for traditional paper.

193 See generally Anne Enquist, *Topic Sentences—Potentially Brilliant Moments of Synthesis*, 14 No. 3 PERSP.: TEACHING LEGAL RES. & WRITING 139 (2006) (“Sophisticated topic sentences, then, are one more hallmark of excellent legal writing. They are the result of the intersection of a high level of critical thinking and skillful writing. In short, they are potentially brilliant moments of synthesis.”).

194 Gerald Lebovits, *E-Filing: Mastering the New Tech-Rhetoric*, 83 N.Y.S.B. ASS’N J. 64, 56 (May 2011).

195 Emmert, *supra* note 177, at 16.

196 Lebovits, *supra* note 194, at 58 (observing that “good writing is still good writing” and advising lawyers who are writing for onscreen reading not to overuse the technology, but simply to add structure to accommodate screen-reading)

Thus, just as Dr. Kreeft suggested that trying the new miracle drug would be “utterly reasonable” and failing to try it would be “unreasonable”¹⁹⁷ because there is no risk and the potential “return” is infinite,¹⁹⁸ adjusting writing to be persuasive when read on screen is also utterly reasonable and failure to do so is unreasonable. Although adjusting writing for on-screen reading isn’t “free,” there is a risk of losing persuasiveness if a filing is written for paper but read on screen.

Electronic filing is no longer just something lawyers will adjust to in the future. Now, in many state jurisdictions, it is required. As e-filing continues to take hold across the country, judges like the Honorable Phillip Espinosa and David Nuffer, who read filings on screen, are no longer the exception.

Incidentally, because many judges are reading on an iPad or other personal reading devices, which are designed to look like paper, writers should remember the recommendations of legal writing scholar Ruth Anne Robbins from her article “Painting with Print,” posted on the United States Seventh District Court website. These and other tips are compiled in the next (and final) section of this article.

V. Ten Tips for Remaining Persuasive in Digital Media

1. **Use bookmarks.**¹⁹⁹ These are easy to insert into a PDF, they appear on the left of the screen, and they allow the reader to jump from a heading in the table of contents to the corresponding heading in the brief. These bookmarks are essentially a roadmap for the reader to navigate the document. To accommodate iPad- and personal-document-reader use, where the left-side pane display is smaller, keep bookmarks short.²⁰⁰
2. **Use hyperlinks.** These can be either navigational (taking the reader to parts of the same document or included appendix) or associative (taking the reader to a website or anything outside the document). Be concise and accurate.²⁰¹ Use hyperlinks to confirm what is in the document without requiring the reader

197 Kreeft, *supra* note 1.

198 *Id.*

199 See HAWTHORNE, *supra* note 184, at 1 (reporting that “one-hundred percent of Texas Justices like briefs that are thoroughly bookmarked”).

200 A.B.A. Council of App. Law., APPELLATE ISSUES 14 (Spring 2012).

201 Emmert, *supra* note 177 (As the judge reading your brief follows accurate hyperlinks in your brief and confirms support for what you have written, “by the end of the brief he or she will believe that what you say is likely to be the truth. Where one advocate enjoys this degree of judicial confidence and the other does not, the scales are already significantly tilted.”).

to read more than is necessary. Generally, it is recommended that legal writers use navigational hyperlinks heavily and associative ones sparingly.²⁰² As with legal writing for paper-reading, it is also advisable to avoid string cites, when one citation will confirm the argument.²⁰³

3. **Always use the native digital document, and avoid scanning unless it is necessary.** If you must scan, run OCR (optimal character recognition) on the document before scanning so that the PDF will be searchable.²⁰⁴ In many jurisdictions, OCR-enabled PDF documents are required.
4. **Chunk information.** Use frequent headings throughout the document.²⁰⁵ Use short paragraphs.²⁰⁶ Using short paragraphs and chunking also makes more white space, which makes a document more readable.²⁰⁷
5. **Include an outline.**²⁰⁸
6. **Write using topic sentences.** Since screen readers are more likely to read the first sentence of a paragraph more carefully than the rest, write so that your topic sentence is the first sentence in the paragraph.²⁰⁹
7. **“Front load” your writing.** This means you should “inject as much important material early in the argument as the human mind can quickly absorb.”²¹⁰
8. **Avoid WordPerfect.**²¹¹
9. **Be mindful of screens when setting up margins, font-type, and line leading (or line spacing).** Most jurisdictions control these details, and they may be adjusted by the reader on an

202 *Id.*

203 JUDGE DARRYL C. CASANUEVA, SUGGESTIONS FOR APPELLATE BRIEF WRITERS 2, seminar material prepared for and presented to appellate lawyers in Florida’s Second District Court of Appeal in Spring 2010, adapted from older appellate-brief-writing materials compiled by various judges on the court. Copy is on file with author.

204 Nuffer, *supra* note 4.

205 Crist, *supra* note 178, at 75.

206 Lebovits, *supra* note 194, at 56.

207 Robbins, *supra* note 180, at 124.

208 Dubose, *supra* note 175, at 14; *see also* Chris W. Altenbernd, *Briefly Stated: The True Confessions of a Legal Grease Monkey*, THE RECORD: JOURNAL OF THE APPELLATE PRACTICE SECTION, June 2002, at 1, 6, available at <http://www.flabarappellate.org/record/app-0602.pdf>. Judge Altenbernd offers a step-by-step approach to brief writing, and number six is to prepare an outline.

209 Dubose, *supra* note 175, at 14.

210 Altenbernd, *supra* note 208, at 14.

211 Nuffer, *supra* note 4 (noting that WordPerfect documents may be read on an iPad, but not edited).

electronic reader, but to the extent the legal writer can choose, researchers recommend 55 characters per line (cpl) or 250 to 350 pixels wide,²¹² which varies depending on font, so adjust font and margins to accommodate the magic 55 cpl standard if possible. Although serif fonts are proven to be more readable on paper, researchers have concluded that for screen reading, the distinction is insignificant.²¹³

10. Add graphics, video links and color wisely when it will advance the argument.²¹⁴

²¹² Dyson & Haselgrove, *supra* note 190, at 608.

²¹³ Michael L. Bernard et al., *Comparing the Effects of Text Size and Format on the Readability of Computer-Displayed Times New Roman and Arial Text*, 59 INT'L J. HUMAN-COMPUTER STUDIES 823–25, 833 (2003) (concluding that preference for serif font, Times New Roman in paper did not translate to screen where the “cross-stroke” characteristic of serif font appears differently depending on screen resolution and display characteristics).

²¹⁴ See generally Mark T. Boonstra, *Video Hyperlinks: An Effective Tool in Appellate Advocacy*, APPELLATE ISSUES, Spring 2012, at 18, available at http://www.americanbar.org/content/dam/aba/publications/appellate_issues/2012_sprng_ai.authcheckdam.pdf.