

Electronic Court Filing: The Texas Model

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Courts have long been burdened with processing paper, a problem that continues to grow exponentially and largely unabated. After more than 165 years of processing traditional filings, Texas Court Clerks are awash in the state's judicial paper trail. Electronic filing may offer a means to stem the paper tide.

In January 2003, Texas launched a pilot project designed to refine its electronic court filing processes. The pilot ran through March 2004 and, given its successful, was concluded with a decision for statewide implementation.

Shaping the Texas Model

Several factors helped to steer the development of the Texas e-filing model. First were some key statutes. The Texas legislature established the Supreme Court's fifteen-member Judicial Committee on Information Technology (JCIT, www.courts.state.tx.us/jcit) as the leader in defining the e-filing model for Texas. Texas Government Code provides that the JCIT is "to develop minimum standards...to provide for the flow of information within the judicial system in electronic form and recommend rules relating to the electronic filing of documents with courts." The Texas legislature also created Texas.gov (www.texas.gov) as the official electronic government portal for the State and requires that state agencies use the portal for their e-government services. Through Texas.gov, Texans can currently register vehicles, renew driver and professional licenses, as well as pay utility bills, taxes, college tuition, and fines. Given current Texas law, JCIT and Texas.gov were well positioned to develop an electronic court filing solution for the State.

JCIT used national technical and process standards developed by the National Center for State Courts (NCSC) to guide its e-filing program. For data transfer, JCIT adopted the NCSC's proposed [Electronic Court Filing Extensible Markup Language \(XML\) Standard 1.1](#), with only minor changes for local needs. JCIT largely followed the NCSC's [Standards for Electronic Filing Processes \(Business and Technical Approaches\)](#), adapting the guidelines to the needs of the State and its e-government portal capabilities.

There is no getting around the fact that Texas is big, and its size greatly influenced the current e-filing model. With 254 counties and 2,600 independent trial courts, Texas presents a daunting e-filing challenge. For a manageable e-filing pilot effort, JCIT decided to focus on the 442 County

and District Clerks—all of whom are elected officials—who process filings in over 750,000 non-juvenile civil cases pending in the 900 County and District Courts.

Lessons learned from earlier, local e-filing efforts in Texas and other states were very valuable in tailoring the statewide model. JCIT was fortunate in having the results from two Texas counties that had pioneered e-filing in the mid 1990s.

Finally, the rules for the initial e-filing pilot were largely influenced by the attitudes of filers. Their concerns, fears, and doubts had to be mitigated if the program is to be a success.

History of e-Filing in Texas

Two counties blazed the early e-filing path for Texas. In 1995, District Courts in Jefferson County (County Seat Beaumont) initiated e-filing as a means to cope with the large volume of filings in multi-party lawsuits.

Jefferson County contracted with a local electronic filing service provider to process the filings end-to-end, from filer to Clerk. The Jefferson County District Judges adopted local rules that allowed Judges to require electronic filing in selected cases and further provided that filers must use the services of the county's contracted vendor. The Supreme Court of Texas approved the local rules, launching Texas into the world of electronic court filing.

Montgomery County (County Seat Conroe) followed Jefferson's lead two years later in 1997, becoming the second county to implement e-filing as a local solution.

As expected, the system worked very well, greatly reducing the paper handling requirements for the District Clerks involved. The good news is that, as it evolved, the technology worked. Filers were able to electronically file when required. Some of the major criticism of the e-filing process emerged from attorneys in the selected cases. Some were unhappy with the mandated requirement to file electronically through the county's contracted vendor. They complained of having to pay a subscription fee for the services when they had perhaps very few filings to process in a single case. These lessons in Jefferson and Montgomery Counties provided important considerations in JCIT's statewide project.

Rules Development

As charged by the legislature, JCIT produced rules for electronic filing. As could be expected, the process involved researching rules in other states. California and Colorado proved to be excellent sources of ideas and solutions.

JCIT's Standards Subcommittee and the legal staff of the Texas Supreme Court's Office of Court Administration worked closely with interested parties—Clerks, Judges, attorneys, information technology staffs, and vendors—to produce the proposed rules, a process that spanned more than six months.

The proposed rules establish Texas.gov as the court's Electronic Filing Manager (EFM) and provide that filers may use any certified Electronic Filing Service Provider (EFSP) they choose. The e-filing rules further provide that filers may file documents at any time, except as prohibited by another rule. Clerks are required by the rules to act on filings within one business day of receiving the document; otherwise, the filing is deemed accepted.

JCIT presented the draft rules to the Supreme Court in October 2002, and the Court referred them to the Rules Advisory Committee for a recommendation. The fifty members of the Rules

Advisory Committee—including Judges, Clerks, attorneys, legislators, law professors—advise the Court on all rules issues. The Rules Advisory Committee provided several changes to the proposed rules to make them more acceptable to the attorney community.

Some of the key changes made by the Rules Advisory Committee were:

- Time of filing is the time the filer submits the filing, not the time it is accepted by the Clerk.
- Electronic filing is at the option of the filer; it is not mandatory.
- Parties may elect to receive electronic service on a per-case basis.
- Financial liability for filings is placed on the service providers. The courts receive their fees from the providers even if the filer does not pay.
- Application of the e-filing rules must be made without undue prejudice to any person on account of using the e-filing system in good faith.

Following conclusion of the successful pilot, JCIT recommended to the Supreme Court some proposed changes to both the local rules and to the Texas Rules of Civil Procedure to establish permanent rules for electronic court filing. The significant changes include:

- Allowing County and District Judges to order electronic filing on the motion of a party in a case.
- Allowing County and District Judges to order electronic service on the motion of a party in a case.
- Allowing County and District Judges to issue electronic orders.
- Allowing parties to agree to receive electronic service globally rather than on a per-case basis.

Components of the Texas Model

The Texas e-filing model is built along the lines of the conceptual system defined by the National Center for State Courts in its [*Standards for Electronic Filing Processes \(Business and Technical Approaches\)*](#).

In the Texas model, Texas.gov serves as the court's EFM. Typically, commercial vendors act as the EFSPs; however, law firms and solo practitioners may elect to supply their own in-house e-filing services. In each case, the service provider must be certified as meeting the technical standards established by Texas.gov and JCIT. Figure 1 shows the logical connections among the filers, service providers, filing manager (Texas.gov), Clerks of the courts, and case management systems (CMS).

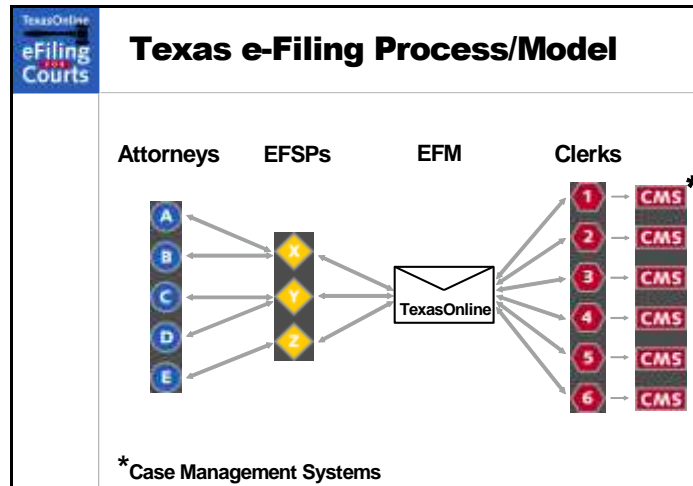


Figure 1. Texas electronic court filing model

JCIT’s strategy and intent are for the service provider market to be open and competitive. EFSPs are free to sell their services at any price the filers will pay. So far, the competition appears to be based on added services offered by the EFSPs. Some EFSPs may include such features as electronic service or archiving in their basic rates. Other EFSPs may offer e-filing as a free add-on to their existing product and service lines. Most are expected to offer a range of price breaks based on the volume of filings.

Electronic Filing Fees

Texas.gov is a partnership between the State of Texas and BearingPoint, its contracted e-Government portal manager. BearingPoint assumes all financial risk, in exchange for the opportunity to make a reasonable profit from assessed transaction fees. Texas shares in the Texas.gov revenue stream, with its share increasing after initial investment costs are recovered. The Texas.gov Authority, appointed by the Governor, oversees BearingPoint’s Texas portal operations and sets any applicable e-government transaction fees.

For e-filing, the Texas.gov Authority has established a \$4 transaction fee per filing. In addition, the Authority has approved a \$2 convenience fee to be collected by participating counties for each filing. The county fee is authorized as a cost recovery means for local governments and may be eliminated once the county achieves its breakeven point for implementing electronic filing.

In addition to the \$6 per filing approved by the Texas.gov Authority, commercial EFSPs may also charge a filing fee. Early pricing shows that the EFSPs’ fees will likely range from zero to \$4 per filing, for a total cost to the filer of \$6 to \$10 dollars for each filing submitted electronically. That is much less than the cost to deliver paper filings to courthouses. As some attorneys have noted, time and distance factors frequently render paper filing an infeasible option, leaving electronic filing as the sole means of meeting deadlines.

Challenges

Texas has experienced both technological and process-related challenges. While Texas faced many of the same technology issues as some other states, we found them to be less daunting than were the processes. The challenges raised by the processes—invariably driven by human factors—have made our technology issues seem almost trivial in comparison.

One of Texas' biggest technology challenges was interface software, including building an EFM application and coordinating application program interfaces (APIs) for court systems. Since the Texas e-filing rules are both new and somewhat unique, no "off-the-shelf" software application was readily available to Texas.gov. Developers from BearingPoint and Microsoft worked closely with the JCIT staff to replicate the defined judicial processes in a working EFM software solution. For the Clerks, API development by major system vendors has progressed slowly, delaying the full electronic integration of case filing data within the courts. Courts with in-house software have incurred some integration costs, but the added costs are recoverable through approved transaction fees for local governments. Internet access and local infrastructure requirements have not yet presented major problems.

Bringing EFSPs into the new network has been slower and more difficult than expected. One explanation is that the Texas e-filing model shifts the providers' primary focus from the government side to the private sector filers, impacting them in at least two ways. First of all, service providers must build or modify their applications to interface with Texas.gov, in compliance with the Texas rules. These application changes take both time and resources for development and testing. Secondly, the providers' sales approach is changed significantly. Previously, service providers sought end-to-end exclusive contractual arrangements with local courts first, then waited for filers to use their services in the contracted jurisdictions. In the Texas.gov model, EFSPs no longer contract with Texas courts, but must instead aggressively sell directly to filers in an open, competitive market. As of June 2004, there are three certified service providers doing business through Texas.gov —CaseFileXpress, ProDoc, and Lexis-Nexis. Several others have indicated their interest and are in various stages of development and certification testing.

Negotiating service level agreements (SLA) with local governments has consumed significant time and staff resources, mostly from BearingPoint. Each SLA must satisfy the terms of the local government, which often results in a major revision for each county. Once negotiated, the SLA must be approved by the local Commissioners Court or City Council before the system can be implemented.

At the request of Clerks and legal services providers, JCIT defined e-filing processes for *pro se* and assisted *pro se* filers. From developing a standard affidavit of indigency to coordinating selected fee waivers, system architects had to evolve a new business process that provides equal access and security for *pro se* parties, while blocking access to unauthorized users.

Filer adoption rates have been lower than anticipated or desired. Some of that can be attributed to the small number of EFSPs, but may also reflect some resistance to change. A few attorneys have stated that they will never file electronically, while others have embraced it quickly. The positive indication is that the numbers of filers and filings continue to grow as the Texas.gov system is presented to law firms, local bar associations, and statewide legal conferences.

Lessons Learned...So Far

Through the first months of the project, we have confirmed that:

- Electronic filing technology works. Documents and associated fee payments can be moved through the system quickly and securely.
- The Texas.gov e-government portal offers Texas courts a workable platform for building a statewide e-filing system. The Texas courts system greatly benefits from the portal's availability and reach, without a corresponding expenditure of investment or operating funds.

- The system allows attorneys to file any time in participating jurisdictions from anywhere there is an Internet access point. The first filing in Bexar County (San Antonio) was from an attorney using the wireless system at a Starbucks. The first filing in Tarrant County was from Dallas County. Using e-filing, an attorney in another county was able to meet an otherwise impossible filing deadline in Bexar County. Recently, a filer in Arizona e-filed a document with El Paso County, again to meet a pending deadline.
- Guaranteed, direct deposit payments are a benefit. The Texas.gov payment system allows Clerks to avoid credit card and collections hassles.
- Application program interfaces take time and resources to develop. To get them going, commercial vendors must be confident of e-filing's future and courts must prioritize their in-house efforts.
- Success demands continued, focused communication. The advantages and pay-off of e-filing must be apparent to Clerks, Judges, and attorneys if it is to gain broad acceptance.
- Desired results are generally achievable, but not always in the short term. Time predictions tend to be overly optimistic.
- Some stakeholders equate electronic filing with public (Internet) access to court records and may, therefore, view e-filing as a privacy concern. It is important—and often difficult—to correct that misperception.

Timeline

The Supreme Court of Texas established metrics and performance objectives for the initial pilot to measure its success. By April 2004, the project achieved almost all of its objectives. Based on pilot results, the Texas Supreme Court and the Texas.gov Authority decided to pursue full, statewide implementation of electronic court filing on April 9, 2004. Over 40 counties are candidates for implementation. JCIT and Texas.gov are also looking ahead to integrating all municipal and justice courts, along with the State's 16 appellate courts.

Summary

Texas had limited, local experience in electronic court filing dating from 1995. Based on those pioneering efforts by courts in two counties, Texas developed a statewide model that is now being tested. The Texas model is built around Texas.gov, the official Texas e-government portal, as the filing manager for courts and on open competition among service providers for filers. Early results are encouraging and appear to deliver on most of the expected benefits. Given a successful pilot phase, full implementation was begun in April 2004.

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