



State of New Hampshire Judicial Branch

E-Filing Policy # 2 (Voluntary or Mandatory e-Filing)

Issue: (State the issue and whether it is specific to certain level of court or case type)

Should electronic filing be voluntary or mandatory throughout the court system? What categories of cases, if any, should be exempt if electronic filing is mandatory?

Discussion: (Provide the factual setting or context for the issue):

It was agreed that the system has to be mandatory in order to maximize operational efficiencies, to generate sufficient revenue needed to maintain the electronic filing system and maximize the saving due to decreased paper handling. Jurisdictions that implement e-Filing report voluntary or permissive participation levels peak at 15% while under mandatory rules participation goes up to 97%.

Question: How long will the phase-in be before the Judicial Branch declares that all documents filed in a case type or court must be filed electronically? The path from voluntary to mandatory is an important issue because court operational cost savings will be reduced or delayed if the system use is slow to catch on or fails to become ubiquitous.

Project team must identify the objective criteria that must be met before declaring that mandatory participation is required.

Elevated services will be needed for self-represented litigants who are involved in the majority of cases filed in the NH court system. If the system is not embraced by the NH self represented, the benefit of mandatory e-Filing may not be significant.

(See pp. 21-27 at <http://www.courts.state.nh.us/nh-e-court-project/e-court-issues-choices.htm>.)

Authorities: (references to statutes, rules, codes or administrative orders pertinent to the issue)

Supreme, Superior and Circuit Court rules.

Alternative Solutions: (list all identified alternative solutions for the issue)

Alternative 1 – Mandatory

Mandatory use of e-Filing maximizes the savings due to reduced paper handling in the courts. All documents and forms are e-filed or scanned and submitted and stored electronically. This greatly reduces court staff workload for maintenance of the docket record and case files. In addition to labor savings, it also results in reduced need for floor space, equipment such as FAX machines and copiers, and various supply and facility expenses. Electronically stored documents can also offer additional functionality such as search and cut and paste.

Alternative 2- Permissive

Most e-Filing system implementations have initially used a permissive approach. This strategy allows parties to choose the filing method. This allows for organizational and process transformation. Permissive e-Filing can lessen end-user resistance to change.

Position/Recommendation (does the NH e-Court Advisory Committee have a recommendation on this issue)

1. The court needs a comprehensive change management plan that transitions both courthouse staff and the court user to working with electronic documents. The court staff needs support which enables document review, acceptance, and electronic case file workflow. Court users, including influential judges must buy into the newly designed work flow and unified processes by sign-off or other direct involvement to ensure support and commitment to compliance with the new system.
2. It is imperative that the e-Filing system have the functionality, usability, and support to accommodate attorneys as well as the vast majority of the self represented litigants.

3. There should be a clear path from voluntary to permissive to mandatory e-Filing for all areas implemented. This means planned activities and tasks to ensure a smooth adoption of the system.
4. There should be specific measurable criteria that will indicate readiness for the transition to mandatory e-Filing. These criteria should be developed to measure percent use, user satisfaction, cost, or amount of assistance required. These criteria will be used as a clear indicator to justify the shift to mandatory e-Filing.
5. Mandatory e-Filing will not in any way restrict access to the courts. The court will make accommodations for special situations. While internet based e-Filing is the preferred method for entering documents, the courthouse needs to have the capability to capture all the exceptions so that the system is fully electronic from the clerk's counter in.
6. The courthouse system needs to extend beyond the clerks office to support the Judge and parties at trial.

Decision:

Participation in e-Filing will be mandatory, with some exceptions, once certain criteria are met indicating the court system is ready to transition to mandatory e-filing.

The New Hampshire Judicial Branch Administrative Council recommended that the New Hampshire Supreme Court adopt the recommendations made by the NH e-Court Advisory Committee. The Supreme Court adopted the recommendations.