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The Promise of e-Court

By: Kristen Senz

Filing system will be more autonomous than ECF/PACER

By November 2019, the New Hampshire Judicial Branch expects that the NH e-Court Project will have reduced staff costs by an amount equal to the total \$8.32 million project price tag.

This "break-even point," explains NH Circuit Court Chief Administrative Judge Edwin Kelly, is a reflection of the Judicial Branch practice in recent years of striving for an economic "return on investment" for all of its activities. It assumes a constant 20 percent reduction in staff across all case types, totaling the equivalent of 96.43 full-time positions by the end of 2019.

To achieve this ROI, which the court expects will occur steadily by regular attrition as each of 12 case types move online over the next few years, the Judicial Branch is building an electronic case-processing system that will operate, as much as possible, without staff review. The federal courts have used electronic case filing for more than a decade, but the Case Management/Electronic Case Files and Public Access to Court Electronic Records (ECF/PACER) systems are much different from the systems the state court is developing, Kelly says.

Where the federal system involves uploading documents for review and docketing by court staff, the state system has attorneys and self-represented litigants, through two different web-based pathways, entering data directly into an electronic court record.

The system is designed to flag and reject incorrect data, but if, for example, a self-represented party chooses the wrong title for a motion, that title will appear in the case index, says Gina Belmont, senior Circuit Court administrator.

"We can live with this tradeoff," she says, "but we have to see how it's going to play out... I don't know if the federal system has the pressure to meet an ROI."

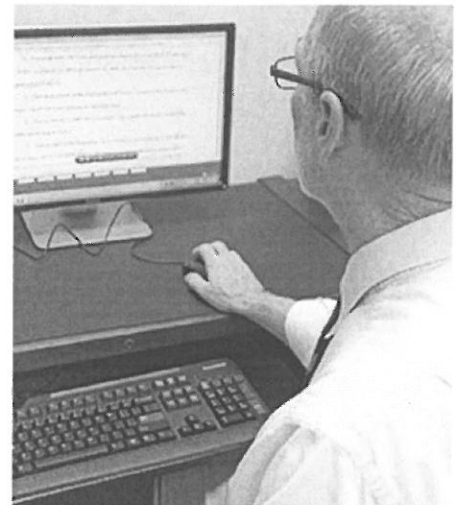
Not a requirement of the NH Legislature, which sets the state budget and is working through that process now, the Judicial Branch practice of working toward an economic ROI is nevertheless appreciated by legislators. Still, some might wonder whether such a major update to case processing ought to fully pay its own way. Kelly says applying the business principle of ROI to the court's initiatives grew out of the recommendations of the Innovation Commission and is part of an approach to resource allocation that seeks to optimize efficiency without sacrificing justice.

"We didn't start out with, 'We need to save money for the state,'" Kelly says; the focus was on increasing access to justice and moving the court system into the 21st century.

How It Works

So far, the e-Court seems to be accomplishing those goals.

Since e-filing became mandatory in small claims cases (the first case type to move online), 154 separate law firms have filed in the electronic system. Cases are often filed at night and on weekends, mostly in batches.



Circuit Court Administrative Judge Edwin Kelly rules on motions in small claims cases from his desk at the Trial Court Center in Concord.

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The small claims process was created about 30 years ago to increase access to the court system for self-represented litigants involved in relatively minor disputes. Today, about 44 percent of small claims cases are filed by attorneys.

"I'm not sure exactly what that says," reflects Kelly, "but I think one thing it shows is that large companies use the small claims system to collect debts."

Most of the lawyers involved in the cases are plaintiffs' attorneys representing companies that are trying to collect small debts from consumers. And the number of lawyers involved in these cases may soon increase.

Starting July 1, the jurisdictional limit for small claims cases will increase from \$7,500 to \$10,000, removing more cases from the district and superior court civil dockets. Just 20 years ago, the jurisdictional limit for small claims cases was \$500.

"In many ways, it substitutes for a civil case," Kelly says. Unless someone has a specific need for a jury trial, the small claims process is usually the most economical way to settle disputes.

Since e-Court launched last summer, about 2,400 small claims cases have been filed online, and Kelly himself has ruled on a large number of motions in those cases as one of two central judges.

In one recent small claims case, a motion filed electronically entered the queue on Kelly's computer, where it sat for exactly one minute before he ruled on it, sending it electronically to the e-filing center down the hall at the Trial Court Center in Concord, so it could be scheduled for a hearing in a local court. A process that used to take weeks now occurs in under five minutes. "It's pretty astounding," says Kelly.

With one click and drag of the mouse, Kelly dismisses a small claims case in which the respondent failed to file an answer within 30 days. Just like that. Case dismissed. Multiple hours of staff time and, in some cases, weeks of processing, mailing and scheduling time are saved. Not to mention postage.

Hundreds of preliminary motions that would have previously gone to local courts are now being diverted. Kelly says the court has received a total of four motions requesting a waiver from the e-filing system – three from state prison inmates and one from a disabled person – and all were granted.

The e-filing center, a large room in the back of the Trial Court Center, now has a few employees handling small claims cases. The court intends to populate several now-empty workstations there as new case types are rolled out.

These developments follow with the overall evolution of a more centralized court system that started in the 1970s. At that time, residents at Town Meeting still voted on salaries for local judges. It wasn't until the 1980s that the court system became statewide as a way to increase consistency and efficiency and to provide for more checks and balances in the system, Kelly says.

Guardianships and Plea-by-Mail

Guardianships and plea-by-mail tickets issued by the NH Department of Safety are the next two case types scheduled to move online this year.

The plea-by-mail ticket processing is largely a back-office change, but will soon result in paper-free trials in the circuit courts and seamless communication between the department of safety and the courts, says Paula Hurley, a court administrator and a lead on the plea-by-mail project.

In guardianship cases, however, having an online system will make a tremendous difference for families in these often long-lasting cases, which can involve minors or incapacitated people.

About 2,500 guardianship cases are filed each year in New Hampshire, usually by a family member. The public and attorney interfaces for filing guardianship cases online will be similar to those used for small claims cases, Belmont says, but there won't be any central judicial function in guardianship matters.

The annual financial reports required in guardianship cases will become much easier and more convenient for parties to file, Belmont said, and there will be fewer opportunities for human error. The creation of online accounting and inventories in these cases will lay the foundation for moving estate cases to the web-based filing system.

"It's a huge burden off the local courts," Kelly says, "because each one (of these filings) is essentially just a math problem." When a problem in a case involves more than math, the case will be scheduled for a hearing in a local court, he adds.

Guardianship cases will "go live" online in early June on a pilot basis in Laconia and Brentwood for a few months, followed by the statewide rollout. The Circuit Court will then focus on tweaking small claims and guardianships while the superior court works toward making all of its civil cases paperless. Civil and marital cases in circuit court will then become the focus, once the rules of civil procedure are implemented in the Circuit Court.

Marital cases are among the most complex, Kelly says, and it's important to get them right. The court will be looking for input from lawyers and other stakeholders to ensure the system functions well as soon as it goes live, he says.

Implications

The focus of the NH Judicial Branch is on serving users of the judicial system, which increasingly means self-represented litigants, who either can't afford a lawyer or don't want one. Accordingly, the court has created a separate online portal for non-lawyers to file cases online using a guided interview process.

Although e-filing is designed to increase access to justice, Kelly says he doesn't think it will result in fewer people hiring lawyers. It might be just the opposite, in fact.

"I don't think people will decide not to get lawyers because the system is online. Maybe more people will decide they need a lawyer after seeing the questions in the online interview," he says. "I guess we'll have to wait and see."

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