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## A Judge's Perspective of E-filing

By Fred Edwards

### Overview

The 9th District Court, presided over by Judge Fred Edwards, requires all civil cases be filed electronically and the District Clerk's office is not permitted to accept paper filings without the Court's approval. Litigants or their attorneys may file utilizing the internet from a public access terminal located at the courthouse, their office, home or where ever access to the internet is available. The 9th District court currently has some 1500 civil cases pending which includes class actions, complex tort cases, personal injury, commercial litigation, asbestos cases, and family law matters.

Currently the 9th District Court is the only court in the State of Texas that requires all civil cases to be filed electronically. The 9th District Court is located in Montgomery County, Texas, which is directly north of Houston. The County has five District Courts and three County Courts-at-Law. The population of the county is approximately 300,000 citizens with the second highest growth rate in the State. The area is a mixture of planned communities, farms, and small cities. It is typical of the suburban sprawls that are found surrounding our major metropolitan cities.

### A. Jurisdiction and Basic Court Structure

The 9th District Court is a general jurisdiction court that hears cases involving criminal and civil matters. In Texas, a district court is the highest trial court in the judicial system. Criminal cases incorporate felony prosecutions, including capital murder. Civil cases include family law matters and civil disputes ranging from \$500.00 to infinity. District Judges are elected State officials and their salary and benefits are controlled by the Texas Legislature. The local county commissioners, however, control the judge's staff's salary and benefits. All equipment for the courts or the clerk's office is funded locally through the county. Although there is an effort to have state funding for computers for all courts, currently, computers and high-tech equipment are available only through state and federal grants for specific programs. The District Court personnel normally consist of a court reporter, court coordinator/secretary and, of course, the judge. Clerks are under the direction of the District Clerk, an elected position, whose budget is under the control of county officials.

### B. Power Structure

Since the State Office of Court Administration does not have control of the funds that would normally be utilized by the courts for personnel or equipment, it does not have the power to dictate or control the courts. The courts are left to their own initiative and authority to obtain such funding. The Texas Supreme Court promulgates rules and procedures. Case management and assignments are handled on a local basis, county by county.

Power has many shapes. It is money; it is information; it is authority. The true definition of power is the authority to control money and information. A Judge or administrator that controls the money and information thus has true power in the justice system.

### C. A Brief History of Information Control

Historically, when cases were filed before a judge for review or a decision, the court controlled not only the disposition of the case, but the actual file itself. A clerk who was charged with the care of the file and documents contained therein assisted the court. The clerk was answerable to the judge. As the number of cases grew, so did

### Exhibit "6"

Defendant The Honorable Frederick E.  
 Edwards's Motion To Dismiss  
 Plaintiff's Second Amended Complaint  
 Under Rules 12(b)(6), 12(b)(1), and 9(b)

the problem of storage and care of the files. Over time, the judge lost control over the clerk and thus the files, how they were stored, the form in which they came before the court, and the manner in which lawyers and litigants dealt with the volume of paper. That loss of control is the primary crisis facing our courts today.

#### **D. The Clerk's Office**

In the Middle Ages the word "clerc" was created to refer to a monk who studied and wrote verse. Its derivative "clerk" has been misused and overused ever since. It can refer to the prestigious position of Clerk of the United States Supreme Court or to a sales clerk at the local convenience store. Whether you are referring to a District Clerk, County Clerk, or file clerk, someone somewhere is responsible for maintaining and storing the files of the courts. The employees of the clerk's office are generally high school graduates without any legal training. They are on the low end of the county's pay scale. After all, in the minds of the commissioners that set salaries, they are only "clerk's". They are often instructed by rote. "We have always done it this way" is the battle cry of most governmental employees and should be engraved in stone above the doors of the courthouse entrance. One person, the judge, is capable of bringing regimented clerks and reluctant staff out of the 19th century.

#### **E. Mass Tort Litigation**

The onslaught of litigation is led by mass torts. It is found in every jurisdiction. It is fen-phen; it is asbestos; it is water rights. Mass torts are the means in which a consumer society survives. The filing of mass tort litigation into the majority of out-of-date clerk's offices around the country is basically e-commerce communicating with cans and string. The legal industry is built upon money. Money is generated by billings. Billings are generated by time sheets, and time sheets reflect filings. Filings are paper, reams of paper, boxes of paper, tons of paper. All this paper is headed to one place, the clerk's office. The clerk's office responds to this onslaught similar to Lucille Ball in I Love Lucy's famous candy factory line sequence in which chaos results. The only response of the clerk's office is to keep accepting the onslaught of paper. They do not index the paper, they do not correlate the paper, and they do not organize the paper. They only store the paper. A clerk's office facing mass tort litigation is similar to the medieval clerk copying *Gone with the Wind* with his ink quill with a one-hour deadline. An effort will be made, but it will be a miserable failure. The solution is to return the control of the paper, the file and the clerk to the one person who is ultimately responsible for the Judiciary economy, the judge.

#### **F. E-filing**

Electronic filing accomplishes that goal. Electronic filing permits the rapid storage of documents in an organized and rational manner. Electronic filing utilizes the web to file documents: exhibits, briefs and other case-related data directly with the court. In the 9th District Court, all civil cases are required to be e-filed. Montgomery County contracted with CourtLink, a private company, to provide service for the courts, the clerk and the lawyers. Currently, three district courts in Montgomery County, Texas require e-filing in selected cases. Courts in Jefferson County, Montgomery County, and El Paso County now require e-filing in complex tort litigation. Once a case is filed in an e-file court, the clerk's office scans in the hard copy paper petition, the case is noted as an e-file case and no further paper is accepted by the clerk's office. Once assigned to an e-file court, the lawyers sign on with CourtLink and all further filings are filed over the Internet. CourtLink charges a few cents per page. The lawyer does not incur postage costs, delivery costs or personal filings by staff. All filings are immediately noticed to the clerk's office, the judge's office, the opposing parties, and any other person or entity requested, which usually is a party that wishes to be kept aware of case progress. Each user is assigned a user name and password. The users are allowed to file documents, and others who pay a fee may have access, but not the ability to file. Each day the court's staff or each attorney's office pulls up the notification page to check for new filings, and whether some action of the court or response from the attorney is required. The public access terminal located in the District Clerk's office allows the general public access to all e-file cases. Non-subscribers can file at the public access terminal with a floppy disc, or they pay a small per-page fee to the clerk's office to scan in the documents. CourtLink established a backup data storage hard drive with the District Clerk. In the event of an unforeseen calamity occurring to CourtLink or the Internet, the clerk's office would be able to download every document ever filed in any case.

Resistance to change is expected, but e-filing is not a change, it is a revolution. Law firms that handle large data-driven litigation welcome any change that cuts cost and reduces lawyer workload. Senior partners are generally from a less-technical era and are typically regimented in the traditional manner in which cases are handled, but hey, money is money. E-filing eliminates the cost of postage, hand deliveries, certified mail, and personal filings. For a few cents, filings are made efficiently, effectively and swiftly.

## G. Implementation

In 1997 the 9th District Court was facing mass tort and complex tort litigation that was literally overwhelming the clerk, the court's staff and the judge with massive paper filings. By implementing e-filing, the court eliminated the problem almost immediately.

The Texas Supreme Court mandates that courts implement rules for the filing and assigning of cases. Within that structure, the local rules govern each jurisdiction. The Judges of Montgomery County, where the 9th District court is located, amended the local rules to permit mandatory e-filing. At first, the 9th Court mandated e-filing on a case-by-case basis. The Court was under the impression that only complex tort cases were appropriate for e-filing. Gradually, the Court became aware that even the smaller less-complicated cases were perfectly suited for e-filing. Amazingly, there were few complaints. Usually, the problems experienced were with outdated hardware or the initial acceptance by lawyers and their staff of a new way of thinking. The lawyers loved it because they had no choice. When given the option to not go on the system, their immediate reaction was negative. Change is difficult for most attorneys. Even when their own staff urged the lawyers for change, the initial reaction was negative.

Fifteen years ago, the Texas Supreme Court, in order to reduce the storage problems being endured by clerk' offices all over the State, mandated that all paper filings would only be accepted on letter size paper. The reaction of the Texas Bar was outright outrage. "How dare they change the time-honored tradition of legal size paper?" They dared because they were the Supreme Court of Texas and what they said was the final word. The hue and cry died down about as quickly as it arose. In a short time, no one even remembered why we filed legal size paper in the first place. The same applies with e-filing. Given a choice, the lawyers will always choose the path that they are accustomed. Why change? Therefore, the solution of implementation is the judge or administrator in charge making a determination that change is not only necessary but mandatory. The role of the administrator or technical advisor to the courts is to devise the appropriate e-filing system to implement and then rely upon the inherent power of the courts to force the issue.

## Conclusion

The individual held to be ultimately responsible for whether justice is denied is the judge. It is the judge's docket and the judge's reputation that is on the line. The judge has the ability to urge and encourage staff members and lawyers to be patient and open-minded. The judge has to be the one to herd, cajole or even threaten the ensemble of participants into the 21st century. Too often, a judge presides over his court in the role of the village resident wise man. He is distant and aloof from those who come before him and does not concern himself with the mundane problems of those who serve him. That judge will eventually be found at his desk with an ink pen in one hand and his body crushed under the weight of files that have been taken under submission. He is in reality not the village wise man but the village idiot. Justice in civil cases must be the opportunity for litigants to have their day in court. Backlog of cases caused by understaffing, poor training and archaic filing systems do not afford justice. Justice delayed is justice denied.

The effect of e-filing is a return of the power structure that never should have been abandoned. Since the court has the responsibility to see that justice prevails, the court should preside not only over the trial of the case but the administration of the case as well. The judiciary has allowed their power and thus the respect of the Bar and the litigants to ebb away like a sand castle being washed away by the rising tide. E-filing allows the judge to return to the helm and direct that the Constitution be followed and the American public be assured that our courts achieve the goal that is engrained in our conscience and expressed, in the conclusion of the American Pledge of Allegiance, "justice for all."

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