



New Criminal And Tax E-Court Features Coming To NJ In 2015

By Martin Bricketto

Law360, New York (October 20, 2014, 11:53 AM ET) -- New Jersey courts remain more than a year away from electronic filing in regular civil cases, but attorneys next year could see new "e-court" features in criminal and tax matters as the judiciary secures an influx of funding from proposed fee increases, a top administrator for the courts told Law360.

Grappling with limited funding and old systems, the judiciary is incrementally moving forward with a "digital transformation" that will eventually cover electronic filing, case management, storage and record dissemination across its various courts, according to Judge Glenn A. Grant, acting administrative director of New Jersey courts.

"What we're talking about is truly trying to eliminate paper in terms of how you conduct your business on a day-to-day basis," Judge Grant said.

Those efforts are getting a boost through \$10 million in dedicated, annual funding via fee hikes **proposed in September**. Lawmakers tried and failed to push through e-court funding in the past, but the state Legislature and Gov. Chris Christie authorized the fee increases as part of broader bail reform legislation that was signed in August.

The measure also earmarked \$22 million from the revised fees for a statewide pretrial services program and \$10.1 million for the assistance that Legal Services of New Jersey provides to indigent parties in civil matters. The judiciary could use any remaining funds for the pretrial services program or court information technology.

The fee increases — which have drawn criticism from some as a tax on litigants who won't benefit from all the funded programs — are up for public comment through Oct. 21. They are expected to take effect on Nov. 17, and the judiciary will be able to use a prorated portion of the funds during the current fiscal year.

While the judiciary in 2012 estimated that a fully integrated e-court program would take about five years and \$100 million, and would cost about \$10 million annually to maintain, Judge Grant declined to provide an overall price tag, though he acknowledged that \$10 million is a relatively small sum given the judiciary's expansive technology needs. Still, he said he was grateful for legislators and Christie stepping up to the plate.

"Technology is expensive, change is expensive and we're prepared to live within our means," Judge Grant said. "We're prepared to make incremental progress wherever we can."

New Jersey has already taken steps toward a more digital future, including the electronic handling of traffic tickets and other municipal violations and its Judiciary Electronic Filing System, which allows attorneys to electronically file documents in special civil part cases —

disputes involving less than \$15,000 — and foreclosure actions.

The judiciary this year also allowed prosecutors and public defenders — who are exempt from filing fees — to electronically file motions in criminal cases, according to Judge Grant.

By January, the judiciary hopes to extend those e-court improvements in the criminal division to the private defense bar and expand e-courts to probation, with an e-filing front end and an electronic jacket that would cover things like probation violations, according to Judge Grant.

One larger expense for the judiciary will be integrating e-court improvements with existing systems that are still working but can't meet today's expectations, officials said, adding that the improvements also touch on issues ranging from electronic payment and how the systems interface with different devices to filer identification and security protections. Another key for the judiciary is ensuring it can leverage the improvements it has already made.

"We want to make sure those models will be reusable when we get to tax court and when we get to civil so we're not reinventing the wheel with every new case type," said Jennifer Perez, the judiciary's chief of automated trial court services.

By the spring of 2015, the judiciary hopes to create an e-filing front end and electronic case jackets for the state's tax court, which would give attorneys the ability to electronically view documents in a case, according to Judge Grant. The judiciary next fall wants to build up its analysis with respect to civil court e-filing and eventually expand e-courts to the state's pretrial release and risk assessment programs by January 2016, he said.

The judiciary has made progress without new fees, and the e-court improvements in the tax court, for example, aren't entirely dependent on the revenue from the bail reform legislation and likely would have happened anyway, according to judiciary spokeswoman Tamara Kendig. However, the funding will aid the development of the e-court improvements and speed things up, she said.

There's no estimated date for when the state may unveil new e-court services for civil division cases, though it won't be within the next year, according to officials.

"We don't want to just reapply the paper process and make it digital," said Jack McCarthy, the judiciary's director of information technology. "We want to really re-engineer the whole process and take advantage of the technology that we're putting in and eliminate the inefficiencies."

Officials did suggest that the judiciary would continue opening up e-court functions to attorneys before the general public, which they said would help them reconcile privacy and transparency interests.

"By doing this first for attorneys and by keeping in mind that we would want a public access system in the future, it allows us to learn before we would open up that system," Perez said.

While the fee increases have raised some eyebrows, attorneys used to dealing with the federal courts' PACER system are eager for something similar at the state level.

"You get more immediate access to information and are able to manage that information

more efficiently," said William Mergner, a co-managing partner of Leary Bride Tinker & Moran and a member of the New Jersey State Bar Association and the judiciary's joint advisory committee on e-courts.

And while many attorneys might cringe at the prospect of additional micromanaging based on the increased digitization of case management, it could also help the judiciary save time and money, according to Mergner, who said he personally wouldn't have a problem with the judiciary using such centralized information to identify repeat offenders who constantly seek deadline extensions and may need time-management training.

For Mergner, any civil e-court system has to include the ability to file anything an attorney would otherwise file in court without leaving his or her office, up until midnight on the day that filing is required. Additionally, those filings should automatically result in service to adversaries, which could be especially useful in arbitration disputes, he added.

"One of the rules that you can't get around in New Jersey is related to arbitration and the filing of a timely rejection of an arbitration award," Mergner explained. "It's a trial de novo request, and you have 30 days to file and to serve that, and if you fail to do either of those things, it's not relaxed in almost any circumstance."

Mergner pointed to the timely posting of decisions as another critical element of any civil e-court system, while Andrea J. Sullivan, a litigation partner with Greenbaum Rowe Smith & Davis LLP, said attorneys must have access to the entire case jacket electronically for the system to provide true value.

Such "musts" seem to gel with the judiciary's thinking. Officials envision a civil e-court system with e-filing, electronic case jackets, an electronic payment system, anytime and anywhere access, and electronic noticing and order dissemination, Kendig said. The judiciary also wants to develop business rules to reflect that new technology, she added.

On the funding itself, Sullivan said it would be more appropriate to bankroll the e-court work through the state's general fund, but that won't happen given New Jersey's budget woes. In the end, the fee increases are probably the only realistic way to pay for the improvements, but the state should be wary of their impact, she cautioned.

"We have to be careful that we don't price out smaller cases and people who otherwise don't have access to the system by making it more onerous," Sullivan said.

New Jersey isn't unique in the balancing act it has had to strike, according to Ronald Hedges, a former U.S. magistrate judge who has served as an arbitrator, mediator and special master and frequently speaks on the topic of electronic information and courts.

"I think every state is grappling with restricted budgets and at the same time they're dealing with restricted budgets, they're also facing technological problems and issues," he said.

However, court systems in New Jersey and elsewhere will see pressure to keep up with the times, according to Hedges.

"Courts are service providers, and we're in a society where you're dealing with more and more technology," he said. "To be a good service provider, you have to be able to provide services in the way that people expect them."