

**Preliminary Report**  
***Best Practices in the Use of Technology  
to Facilitate Access to Justice Initiatives***



**Berkman**

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## Overview

As part of your responsibilities as Special Advisor to the Trial Court for Access to Justice Initiatives,<sup>1</sup> you asked the Harvard Law School Cyberlaw Clinic at Harvard's Berkman Center for Internet & Society to help evaluate the ways that technology could facilitate access to justice, and to help prepare a set of best practices, strategic plans and recommendations for deploying that technology in the Massachusetts Trial Court. This initial draft report describes the methods, progress and results of our research and findings thus far.

## The Berkman Center and the Cyberlaw Clinic

*Who We Are:* The Harvard Law School Cyberlaw Clinic engages HLS students in a wide variety of real-world policy, litigation, licensing, client counseling, advocacy, and legislative projects and cases, covering a broad spectrum of legal issues relating to new technology, intellectual property, and the Internet. The Clinic was the first of its kind in the country and remains the preeminent program. Students enrolled in the Clinic work on a wide variety of matters, many of which integrate student clinical work with the substantive policy and research projects of Harvard's Berkman Center for Internet & Society. The Clinic's projects often involve collaboration with technology entrepreneurs, computer researchers, journalists, social scientists, and other academics operating at the intersection of the internet, law and society. We stress the practical application of technology to solve real-world legal and social problems, and the many legal nuances that can arise from the use of technology.

The Clinic is based at the Berkman Center, the world's leading internet research institution. The Center was founded to explore cyberspace, share in its study, and help pioneer its development. It consists of a network of faculty, students, fellows, entrepreneurs, lawyers, and virtual architects working to identify and engage with the challenges and opportunities of cyberspace. The Center is unique in that it not only conducts rigorous research and teaching, but also develops software platforms and other technologies, including pioneering software and techniques to monitor governments' filtering of their citizens access to the internet, to detect and guard against spyware and other dangerous content online, to create tools that analyze the spread of news reporting between mainstream media sources and alternative outlets such as blogs, and much more.

The Berkman Center has a long interest in and experience with the use of technology in the law, litigation and courts. The Center's co-founder, Harvard Law School Professor Jonathan Zittrain, spoke at the NCSC Court Technology Conference in 1999. In the intervening years, the Center has offered seminars for judges covering issues such as electronic evidence and discovery. One of the Berkman Center's current projects, for which the Cyberlaw Clinic has provided advice and legal support, is the LawLab,<sup>2</sup> which is working in areas that dovetail with

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<sup>1</sup> See Press Release: Special advisor for Access to Justice Initiatives Appointed (June, 8, 2009), available at <http://www.mass.gov/courts/press/pr060809.html>.

<sup>2</sup> <http://lawlab.org/>

the Access to Justice Initiative's focus on technology, including "legal automation" projects such as creating open-source software that provides entrepreneurs with the tools to launch "virtual LLCs" and "virtual corporations" in Vermont and to manage the corporate existence of those entities entirely in digital form,<sup>3</sup> and new models and tools for managing online dispute resolution.<sup>4</sup>

*Project Goals:* You have asked us for assistance in developing a broad assessment and outlook for the role of technology in improving access to justice ("A2J") in the Massachusetts Trial Court. The Cyberlaw Clinic undertook this study to help the Trial Court work toward a comprehensive, holistic strategic plan for maximizing technology's role in the Access to Justice Initiative.

Our aim has been to examine available technologies, review existing uses of these technologies by other courts and legal aid organizations, develop case studies that distill the lessons of those prior experiences, and recommend both general approaches and specific, detailed implementations to take the maximum advantage of the leverage that technology can provide. By reviewing a variety of technological solutions and critically assessing prior examples, we aim to describe an integrated set of tools, techniques and resources that will provide a robust framework for developing and deploying comprehensive, cost effective access to justice technologies going forward. An especially high priority is developing a multifaceted analysis that will help the Trial Court avoid uncoordinated, piecemeal implementations that fail to achieve the synergies and combined benefits that are possible.

*Project Methodology:* We used a variety of means to conduct this initial portion of our analysis. First, we reviewed a substantial amount of existing literature, including reports, guides, articles, etc., relating to access to justice improvements and the role of technology, from sources such as the National Center for State Courts, the State Justice Institute, ProBonoNet, the Self-Represented Litigation Network, SelfHelpSupport.org and others. Second, we began experimenting with some of the most commonly used A2J technologies such as A2J Author. Third, we interviewed national experts in the use of A2J technologies as well as staff in the New York state court system who were deeply involved in planning and implementing NY's extensive use of A2J technology. Fourth, we spoke with representatives of several Harvard Law School clinics who handle cases and clients in areas such as housing and family law where self-represented litigants are most concentrated to help develop an understanding of the most critical unmet legal needs of those parties.

This Report represents the first of what we expect will be several iterative summaries of the information we collect and analyze and the best practices and implementation lessons we develop from that information. It is important to note that in approaching our research and our initial findings we report here, we aimed to identify and describe the best technologies, the best practices and the state-of-the-art solutions based on the perspectives of experts and the real-world experiences of other courts and legal aid organizations that have dealt with various

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<sup>3</sup> See <http://lawlab.org/digital-institutions/vermont-project>.

<sup>4</sup> <http://lawlab.org/digital-institutions/online-dispute-resolution/>.

of these technologies and processes. While we believe that all of our discussions and recommendations are realistic and reflect practical, attainable implementations, we have not limited our analysis to a pre-determined level of resources or funding. Rather, we have looked for the best models of effective use of technology and drawn usable lessons from those models.

## General Observations

Before addressing the specific technologies and implementations we have been evaluating, several overriding considerations should be noted.

*Comprehensive Strategic Planning Is Essential:* There are many different technologies that can play a role in providing court services the public and to self-represented parties and in making these services more efficient and less costly and burdensome for courts. To be most effective, these technologies need to be designed and implemented as a well thought-out package (even if not installed concurrently), rather than as separate, piecemeal projects. Forward-looking strategic planning is critical in order to proactively identify the Trial Court's key needs and opportunities and to develop an integrated plan to address them. Advance planning prevents the Court from going down technology paths that end up conflicting with or excluding other valuable options, and it avoids expensive and wasteful mid-course corrections.

*Opportunity to Create State-of-the-Art Solutions and Demonstrate National Leadership:* It has become apparent to us as we have gotten deeper into our work that the Trial Court's Access to Justice Initiative, in combination with the ongoing work of the Access to Justice Commission and emerging collaboration with local legal aid groups, creates a unique opportunity for the Massachusetts Judiciary to show national leadership through strategic, innovative and integrated decisions about the use of technology. Unfortunately, Massachusetts is currently well behind the leading states that have been active and involved in this area for some time, such as New York, California, Maine and Arizona.

At the same time, few of these states have approached their implementations of A2J technology in a fully holistic and strategic manner. While there has been a lot of forward movement with these technologies, most efforts to date have been somewhat haphazard and ad hoc. Through the efforts of groups like the NCSC, ProBonoNet, selfhelpsupport.org, and others, approaches to access technology are gradually becoming more uniform, streamlined and standardized, but much work remains and there is a real need for strong leadership. Because Massachusetts is mostly starting fresh, it is well positioned to adopt a thoughtful and coherent overall approach that can serve as a national model for best practices in A2J technology.

National experts in the use of technology for access to justice with whom we have been interacting are excited about your Initiative and about the role Massachusetts could play. They have uniformly expressed enthusiasm for and interest in assisting with (and using the results of) our study and your planning. This group includes Tom Clarke at the National Center for State Courts; Mark O'Brien, the Executive Director of probono.net; David Heiner, a senior Microsoft corporate attorney and one of ProBonoNet's board members; Richard Zorza, a long-time



national expert in A2J technologies, and others. In addition, we are working to involve Harvard Law School professor Larry Tribe, recently appointed as the U.S. Department of Justice’s Senior Counselor for Access to Justice,<sup>5</sup> to support this effort and help it become the national model it can and should be.

As one example of the opportunities here, the challenges of implementing an e-filing system that effectively serves self-represented litigants have vexed several major state e-filing initiatives to date and the NCSC, ProBonoNet and others are struggling for solutions. Additional challenges are presented by the need to integrate the output of guided-interview and automated form creation software with court case management and e-filing systems. These e-filing difficulties are one major focus of our research, and the Trial Court’s planning, and successful resolution of these challenges will be enthusiastically received as a model for how other states can succeed. As you know, the recent Technology Innovation Grant (“TIG”) application submitted by the MA legal services entities, in which the Trial Court is a partner,<sup>6</sup> expressly focuses on the need to develop solutions to “the complexities involved in making e-filing an accessible component of a document assembly module for self-represented litigants . . . so that other programs and states may benefit.”<sup>7</sup> The goals of the TIG proposal include establishing best practices and other guidance documents that will highlight the Massachusetts approach as a benchmark for other states to utilize in ensuring self-represented litigants access to e-filing as those states develop their own e-filing projects.<sup>8</sup>

Today, as MassCourts is rolling out in increasingly final form, planning is underway for e-filing and the Trial Court is moving toward A2J technologies, the Court is especially well-positioned to make informed decisions that will establish its position as a national leader in the A2J technology arena. But the timing is critical; the longer the Trial Court waits to develop a comprehensive, strategic approach that integrates the various elements of each technology, the further they will fall behind the national trend and the less likely it will be that their technology decisions will serve as a model for courts in other states.

*Complementary Efforts:* Our results and recommendations should be seen as companion efforts to the work already underway in the Trial Court, including the MassCourts project and the beginnings of the e-filing initiative. The steps we discuss here will not impede or conflict with those ongoing efforts. Rather, our recommendations should enable the existing investments and work to be leveraged further to facilitate the goals of the A2J initiative and to better streamline court operations. In fact, the technologies we assess and the implementations we discuss should be strong complements for the Trial Court’s other efforts to cut costs and become more efficient.

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<sup>5</sup> See [http://www.law.harvard.edu/news/2010/02/26\\_tribe.senior.counselor.html](http://www.law.harvard.edu/news/2010/02/26_tribe.senior.counselor.html).

<sup>6</sup> The Massachusetts Justice Project and three other state LSC-funded legal service providers, in conjunction with several non-LSC funded Mass. legal organizations like Mass Law Reform Institute and in partnership with the Trial Court, submitted a proposal for a Legal Services Corp. Technology Innovation Grant in May, 2010.

<sup>7</sup> Massachusetts Justice Institute, Inc, LSC TIG proposal at 3.

<sup>8</sup> Id.

*Cost-Benefit Considerations:* The Trial Court, like other state courts around the country, incur significant costs from serving the special needs of unrepresented litigants. For example, the SJC’s Steering Committee on Self-Represented Litigants’ November 21, 2008, final report and recommendations on the needs of self-represented litigants<sup>9</sup> noted that the number of self-represented litigants was increasing in the Commonwealth and nationwide and that, among the significant challenges presented by this growing population, such cases “ often require significantly more time from judges and court staff . . . .”<sup>10</sup>

While implementing some of the technologies discussed in this report will require additional investments, those technologies also will save money through greater efficiencies and reduced judge and staff time required to serve self-represented litigants. One aspect of our research focuses on this cost-benefit relationship and the cost savings that can be achieved. While we are still in the process of trying to develop initial cost-benefit data and predictions based on existing uses of technology elsewhere, our work has revealed widespread support for the basic notion that efficient use of technology to aid the unrepresented reduces the time and expense courts need to expend handling such parties. For example, judges in Idaho report that, as a result of their courts’ implementation of an online document assembly system for 160 court forms, “those who use interactive forms are much more likely to have all their paperwork in order so that the case can be completed in one session and with the minimum of assistance from the court.”<sup>11</sup>

Various sources such as the NCSC, the SJI and the LSC National Technology Assistance Project (“NTAP”)<sup>12</sup> have scattered data on costs and benefits, as do individual state courts and vendors with whom we will be speaking. We are working to assemble the best understanding of likely costs and savings based on their experiences.

*The Importance of Collaboration:* The Trial Court is not alone in its efforts to use technology to more efficiently and effectively serve the needs of indigent and self-represented parties with whom they interact. In addition to the national organizations focusing on these issues, many of the Massachusetts legal services organizations are now actively developing technology initiatives for the populations they serve, as evidenced by the recent TIG proposal, which is primarily focused on creating an initial set of automated interviews and document assembly technologies. As we all recognized early in the grant proposal process, however, the proposal creates both opportunities and imperatives for the Trial Court and the legal services groups to ensure that their efforts mesh well and do not lead to conflicts in either the short or long term. Important questions will need to be resolved regarding which organization is in the best position to offer certain technology capabilities and which will be of most benefit. In

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<sup>9</sup> Addressing the Needs of Self-Represented Litigants in Our courts: Final Report and Recommendations 3, Supreme Judicial Ct Steering Comm. on Self-Represented Litigants (Nov. 21, 2008), available at <http://www.mass.gov/courts/sjc/docs/self-rep-final-report.pdf>.

<sup>10</sup> Press Release: Supreme Judicial Court Steering Committee on Self Represented Litigants Presents Final Report and Recommendations to Justices (Jan 6, 2010), available at <http://www.mass.gov/courts/press/pr010609.html>.

<sup>11</sup> Katherine Bladow and Claudia Johnson, ACCESS TO JUSTICE, National Center for State Courts, Future Trends for State Courts 2008 at 46, available at [http://www.ncsconline.org/WC/Publications/KIS\\_Ct\\_Futu\\_Trends08.pdf](http://www.ncsconline.org/WC/Publications/KIS_Ct_Futu_Trends08.pdf)

<sup>12</sup> <http://lsntap.org/>

addition, the Trial Court Law Libraries have thus far been a valuable and proactive source of resources and information for the public overall and self-represented litigants in particular through its web site and online and in-person live-help offerings, initiatives that can be strong complements to the Trial Court's efforts.

Going forward, efficient delivery of A2J services in Massachusetts will require coordination on many fronts, particularly on issues like integration between automated form-creation programs and the Trial Court's case-management and e-filing initiatives, and web site content and resources. Collaboration provides important opportunities to leverage one another's investments to achieve greater access to justice and greater efficiencies than the Court could achieve on its own.

## Technology Can Provide Critical Means of Addressing Access to Justice Needs in the Massachusetts Trial Court

Among the needed resources identified by your court survey and confirmed by your Interim Report to the Commission on Access to Justice,<sup>13</sup> several of those listed as most important but least available were "instructional materials in other languages, and court forms in other languages; technology, including wireless (internet) access in courthouses, MassCourts public access, and court forms that can be completed online . . . ." <sup>14</sup> Various technologies, described in detail in this Report, can significantly help in meeting these needs.

As a starting point for our exploration of useful technologies, we worked to elaborate on the needs identified in the survey and described a number of substantive and procedural areas in which self-represented litigants appear to struggle the most as well as ways in which the Trial Court can most effectively respond to these critical needs. We divided these concerns into three broad categories: informing litigants, assessing legal options, and pursuing their case. We also identified various actions that courts can take in each of these areas in order to facilitate access to justice for self-represented litigants. The full results of this research are set forth in Appendix A.

## Primary Technologies To Facilitate Access to Justice

From the various technologies and uses of technology identified by our research that can help facilitate unrepresented parties' access to the courts and improve the efficiency and lower the costs to the Trial Court of serving such parties, we focus our discussion in this Report

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<sup>13</sup> Honorable Dina E. Fein and Sandra E. Lundy, Esq., Interim Report on Access to Justice Initiatives in the Trial Court 4 (Jan. 8, 2010), available at <http://www.mass.gov/courts/atjreport.pdf>.

<sup>14</sup> *Id.* at 4-5. Your report suggested four priority projects through which the court can proceed: (i) self-help materials (multi-media and multi-lingual); (ii) forms (uniform, multi-lingual, computer generated); (iii) Information desk(s)/court service center(s); and (iv) limited assistance representation ("LAR"). *Id.* at 5.

on four broad categories that have the greatest potential to effectively address the legal needs of self-represented litigants.

Throughout the Report, we have tried to designate places where we offer specific recommendations or action items for the Court's consideration by placing them in blue text boxes such as this one.

## A. Clear, Simple and Up-To-Date Web Content

The most critical foundation for any effort to use technology to enhance access to justice is a clear, simple, well-organized and up-to-date Court web site. Virtually all other technologies a court uses to assist the public and self-represented parties depend heavily on the court's primary web site and self-help pages. A2J technologies typically will be reached by users via the internet through the court's web site; it is the essential entry point or portal into all of the court's information, resources and services.

For example, the Oregon court system's ongoing "e-Court" initiative recognizes as a "key element . . . the creation of a sophisticated, central Web portal that augments the existing 'virtual courthouse' by allowing court stakeholders, case participants, and the public to conduct a significant portion of their court business online, without requiring them to travel to a courthouse."<sup>15</sup> The portal is "the foundation for the fully electronic court" and "a virtual working courthouse and not simply a communication vehicle."<sup>16</sup> Ensuring the availability, accessibility and navigability of up-to-date logistical, procedural and legal information for unrepresented parties is a critical element of any meaningful approach to facilitating access to justice. It is a critical resource for the public and litigants as they navigate the court system in order to determine what their legal options are, what the law is, and what is required of them.

We have conducted a basic review of the web sites of a number of other state court systems in order to develop a set of guidelines and best practices for court web content.<sup>17</sup> A number of features characterize a state-of-the-art, effective court web site that is a useful tool for the public, litigants and lawyers and that serves as a strong platform for other A2J technologies. As the Self Represented Litigation Network concluded in a 2008 Best Practices report funded by a State Justice Institute grant, the most effective web sites are:

well-branded, have comprehensive and current content, are organized and indexed in lay terms, provide multiple language support, are designed to

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<sup>15</sup> Bud Borja, Oregon eCourt: Improving Judicial Outcomes and Services, in National Center for State Courts, Future Trends for State Courts 2009, available at <http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/tech&CISOPTR=718>.

<sup>16</sup> Id.

<sup>17</sup> This section of the Report draws in part on excellent research and analysis in Valerie Moore's June 7, 2010 memo and Jeremy McDermond's December 2009 Trial Court Public Web Site Audit. In this Report we have not attempted a comprehensive audit of the Trial Court's website or a detailed assessment of improvements that need to be made to provide an adequate platform for serving the public and self-represented users.

diagnose the user's issue in terms of problems not laws, include a broad range of links to support services in the courthouse and the community, provide litigants with access to information about their cases, comply with national accessibility standards . . . , are field and user tested to ensure ease of use and accessibility, are planned with access and use by community organizations and others in mind, and are regularly updated and reviewed for accuracy.<sup>18</sup>

In general, the best court web sites typically are:

- Targeted at proper audiences
- Clear, logical and easily navigable
- Comprehensive
- Uniform and coherent
- Coordinated
- Multilingual
- Multimedia
- Up-to-date and easily updatable by appropriate court (not just IT) staff
- Disabled accessible

We address each of these characteristics in turn.

### 1. Targeted at Proper Audiences

A court's home or "landing" page is the court's initial contact or portal to most visitors, the first face it presents to the world. As such, the home page presents a critical opportunity to welcome visitors to the "virtual court" and to direct them quickly and efficiently to the information they seek. In particular, members of the public and self-represented visitors need to be able easily to find links to the resources directed to them. The best court web sites clearly and graphically separate informational and self-help materials intended for the public from other information intended for lawyers and from internal content meant primarily for judges and court staff. Many of these sites provide a prominent content box, large tab or other obvious target on the home page and other main pages with titles such as "General Court Information" and "Self Help Center" or even the simpler functional title "Representing Yourself" used on the New York Court site, shown in Figure 1 below.<sup>19</sup> Similar tabs or access boxes such

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<sup>18</sup> Self Represented Litigation Network ("SRLN"), Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources (2008) at 4, *available at* [http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best\\_practices\\_7-08.pdf](http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best_practices_7-08.pdf). Court web sites present the additional challenge of limiting the content presented to general information on courts, procedures, forms, etc., as well as access to forms and other resources, but not crossing the line into giving legal advice. For one example of a court web site explaining to users what the court can and cannot do, see this page from the Colorado state court system, *available at* [http://www.courts.state.co.us/userfiles/File/Self\\_Help/LegalAdvice.pdf](http://www.courts.state.co.us/userfiles/File/Self_Help/LegalAdvice.pdf).

<sup>19</sup> See <http://www.courts.state.ny.us/>.

as “For Attorneys, “For Jurors,” “For Judges and Court Staff,” etc., greatly simplify access to relevant areas for everyone.

One of the best examples of a web site that cleanly directs different types of visitors to the materials specifically intended for them is the New York Court System home page:

Figure 1



This simplification is achieved without compromising the ability of attorneys or court personnel to access all the information they need. Rather, the initial web portal leads directly to specialized pages customized for lay users and to other, separate pages intended for attorneys and court staff, without confusing lay users by forcing them to sort through complex information not intended for them.

Less helpful court web site home pages often present a confusing mix of information intended for the public, attorneys, judges and other court personnel all together on the initial page. General purpose and self-help information frequently appear alongside complex legal materials and announcements and news feeds for attorneys and court personnel. On many of these sites, the only indication of self-help resources is a small, non-distinctive link embedded in a list of various other links, often in small font tucked in a corner of the screen. This confusing arrangement, not helpful for any visitors, is particularly impenetrable for laymen and self-represented parties who come to the court’s site seeking information or assistance.

## 2. Clear, Logical and Navigable

If a court's web site is not clear, logically organized and easily navigable, it does not matter how rich the information or how useful the resources available on it – it will still fail to meet the needs of the public, self-represented litigants and other users. All the content on the site, but particularly the self-help center and general court information portions of the site, needs to be logically organized and clearly presented in ways that non-lawyers, or even those with poor literacy or limited English, can understand. Accomplishing this requires thoughtful choices of content, coherent groupings and organization of material, simple and logical presentation using graphics and multimedia in addition to text, plain-language textual material<sup>20</sup> and multi-lingual content.

Real accessibility results from basic techniques such as easily readable font type and size; use of simple layout tools such as boxes, headings, sections and columns; use of graphics and color, logical progression from broad, understandable categories and choices to more and more specific detail, etc. Web sites that do not implement these techniques can be difficult to use because, in the first instance, they rely heavily on text, rather than images or graphics, because their basic text size is too small and too difficult to read, and because the organization of their content is haphazard, illogical and hard to follow. Simplicity, clarity and logical layout are of greatest importance on a court's self-help pages, which are specifically directed at non-lawyers who often will be unsophisticated and have poor reading and/or English skill.

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<sup>20</sup> Numerous resources for plain-language drafting exist. One of the most impressive is a service called Transcend (<http://www.transcend.net/>), which is used by many legal services organizations around the country to help make their community legal education materials usable by everyone. Transcend provides resource materials and frequent training programs on plain language techniques.

A particularly strong example of a clearly organized, simply presented and highly accessible web site is the New York CourtHelp page (Figure 2)<sup>21</sup>:



Other excellent examples of simple, well-organized and easily navigable court websites include the California courts statewide self-help web site (Figure 3):<sup>22</sup>



<sup>21</sup> <http://www.courts.state.ny.us/courthelp/>

<sup>22</sup> <http://www.courtinfo.ca.gov/selfhelp/>



the Wisconsin Court System Self-Help Center (Figure 4)<sup>23</sup>:



as well as the Minnesota State Courts (Judicial Branch) web site.<sup>24</sup>

As these examples illustrate, the most effective self-help and court-information pages are created from the perspective of unsophisticated users and unrepresented parties. One helpful way to conceptualize the self-help pages is that they should answer users' questions such as "How do I . . . ?" and "Where do I start for . . . ?" rather than simply presenting a list of links or a barrage of information. One good example of this in Massachusetts is the MA Juror Service Website, which presents an initial page with simple bullet points telling potential jurors what they can do on the site, and then a button titled "Click Here to Begin" that leads the juror through the available services.<sup>25</sup>

An excellent model of this user-centric, need- or task-based approach is provided by the simple and highly intuitive layout of the New York CourtHelp site. As shown in Figure 3, above, the main New York CourtHelp page consists only of a link to the new "DIY (Do-It-Yourself) Forms program and then four broad categories of information, simply presented in four boxes with simple titles and graphics.<sup>26</sup> The four titles and their immediate links are:

<sup>23</sup> <http://www.wicourts.gov/services/public/selfhelp/index.htm>.

<sup>24</sup> <http://www.courts.state.mn.us/>

<sup>25</sup> <http://juryduty.majury.gov/>.

<sup>26</sup> <http://www.courts.state.ny.us/courthelp/>

- *“Court Facts: Addresses, phone numbers, and more,”* which then links to other simple pages: *“Courthouse Information (addresses and contact information),”* *“Alternative Dispute Resolution,”* *“The right court for your problem,”* *“Getting Help at the Courthouse (Information about Court Help Centers, law libraries, how to access public records and what court clerks can do)”* and *“Contact Court Managers”*
- *“The Law: About the law and court procedures,”* which links to *“Family Law,”* *“Civil Law: Housing, Small Claims, and more,”* *“Criminal Law,”* *“Legal Terms: What do they mean?”* and *“Find other law”*
- *“Forms: FREE court forms,”* which leads to 42 forms organized under the categories *“Family Law Forms”* and *“Civil Law Forms”*
- *“Lawyers: Find a Lawyer,”* linking to pro bono and paid referral services

To further aid accessibility, the New York site offers a feature that allows a user to move her mouse over the title of one of the topics on the page, at which point a dialogue box pops up that provides a short description of what the link is – for example, mousing over *“Representing Yourself (Courthelp)”* brings up a box that reads (in both English and Spanish) *“How to find and use the courts if you don’t have a lawyer.”* In addition, the New York CourtHelp page also includes a link to a list of glossaries to help the reader understand legal terms.<sup>27</sup>

### 3. Comprehensive

A definitive 2005 Report by the Conference of State Court Administrators recommended that

court administrators provide ‘one-stop shopping’ for court information and services by establishing access through a single statewide court website. Indeed, the average court user finds it difficult and inconvenient to navigate through various websites for different court levels and jurisdictions. By establishing a central homepage or portal for state court information and e-services, the court provides unified services in a manner more closely oriented with customer needs and expectations.<sup>28</sup>

These recommendations make clear that having complete and comprehensive information readily accessible from simple web site landing pages is essential. Good court web sites we reviewed provided home pages or portals that direct the public and self-represented litigants seeking information or services to a single, coherent self-help Center and/or court

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<sup>27</sup> Further details about the accessibility features of the New York site can be found in an Explanatory video, available at [http://www.lawhelp.org/images/tours/ny/ny\\_english.html](http://www.lawhelp.org/images/tours/ny/ny_english.html).

<sup>28</sup> COSCA, Position Paper on The Emergence of E-Everything. Conference of State Court Administrators (December 2005) at 7-8, available at <http://cosca.ncsc.dni.us/WhitePapers/E-EverythingPositionPaperApprovedDec05.pdf>.

information center. Those “centers” should then permit visitors to easily locate all relevant information and services without having to rummage around a number of separate sites for bits and pieces of what they are seeking. It is critical that these centers be comprehensive in their content and their links to additional content; all essential information (or links directly to such information), should be shown in a logical layout.

While we haven’t attempted to catalog all of the content that should be part of a high-quality home page or self-help site, our review of various states’ sites suggest that, at a minimum, the following types of information and services should be readily accessible to visitors.<sup>29</sup>

**General Court Information:** Organized generally together, this category would include information about each court division or department and courthouse. Rather than mere links, the materials also should describe the different courts and what kind of cases each handles and provide contact information, locations, directions, maps, virtual guided tours, etc.<sup>30</sup> Self-help sites from the Wisconsin<sup>31</sup> and Minnesota<sup>32</sup> state courts provide excellent examples of step-by-step instruction on where and how to file different types of forms and claims. In addition, once the Trial Court establishes the Information desk(s)/court service center(s) recommended in your initial report, each of these physical centers should have a custom web page that provides details about and leverages its services.<sup>33</sup>

**Primary Legal Materials:** Basic legal information such as state statutes, opinions of courts, rules, etc., should be clearly and openly accessible to the public in a clear and well-organized manner.<sup>34</sup> Courts around the country are increasingly making the full range of such materials freely and readily available on their sites. Currently the main Massachusetts SJC page provides direct links to the MA Rules of Court and MA Guide to Evidence, some of the sorts of materials that one would want to be available from the Trial Court’s home page and self-help pages. Another good example of providing access to these resources in Massachusetts is the MA Law Libraries site, which offers in a simple and fairly accessible way an excellent online collection of MA legal materials, many of which are unavailable anywhere else. (As this example suggests, it is our view that the Trial Court Law Libraries can play a very important role in developing and providing some of the content made available to the public by the Trial Court, and extensive collaboration between the Trial Court and the Trial Court Libraries going forward

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<sup>29</sup> The American Association of Law Libraries’ Access to Electronic Legal Information Committee’s five “Core Values Concerning Public Information on Government Websites” provides helpful guidelines for key information available that should be made available. See [http://www.aallnet.org/committee/aelic/AELIC\\_Core\\_Values.pdf](http://www.aallnet.org/committee/aelic/AELIC_Core_Values.pdf).

<sup>30</sup> See, for example, the Santa Clara, California Superior Court web site, “Visit Our Courthouses” section, available at <http://www.sccsuperiorcourt.org/>.

<sup>31</sup> <http://www.wicourts.gov/services/public/selfhelp/index.htm>.

<sup>32</sup> <http://www.courts.state.mn.us/selfhelp/?page=256>.

<sup>33</sup> For one example, see <http://iroquois.illinoislegalaid.org>.

<sup>34</sup> Open access to primary legal materials is an ongoing major initiative focused on both federal and state courts around the country. See [resource.org/law.gov/index.html](http://resource.org/law.gov/index.html).

to integrate and/or seamlessly share web content would provide a good opportunity to magnify the impact of the Court's web offerings).

*Detailed Procedural Guides and Step-by-Step Instructions:* The public, and self-represented litigants in particular, benefit greatly (and courts achieve greater cost-savings in serving these litigants) from simple, plain-language materials that guide them through the primary resources of the courts and the most common procedures -- such as preparing, filing and serving basic forms or making a basic appearance -- that they will need to carry out.<sup>35</sup> Flow charts, other graphics, videos, etc., can be particularly effective ways to walk a litigant through the relevant court procedures. These types of guides lead to more efficient use of the court's and court staff's time and associated cost-savings in serving litigants.

*Court Forms:* Simple, easy-to-use forms are essential for self-help programs and benefit both litigants and courts. Allowing litigants to easily and accurately prepare basic forms improves their access to justice while lessening the current burden on clerks and other court staff to explain the forms, answer questions, review illegible or improperly prepared submissions, etc. The resulting forms are more likely to be legally sufficient and require less time and attention from judges. The court can operate more efficiently and effectively, can more easily and quickly reach the merits of disputes, and can present better data about court operations to decision makers.<sup>36</sup>

Effective court websites typically offer several means of accessing forms (which are *not* mutually exclusive): a single comprehensive forms library, organized by topic or court; a court-specific or topic-by-topic approach that provides links to forms as needed under the related topic in the law; and an integrated listing of forms in a step-by-step guide to how to accomplish a particular task (for example, on a family court page, a litigant might click on "divorce," which would lead to an explanation walking through how a divorce proceeding works, with links to the relevant forms at appropriate steps in the process).<sup>37</sup> However the forms are presented, they will be far more useful if the presentation involves more than long lists of form names or numbers and links; options include short, simple descriptions of each form and when it is used, or "mouseover" text that gives more information on the form. In addition, simple guides and

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<sup>35</sup> Current examples in Massachusetts include a series of brochures from the Probate and Family Court Department intended to help self-represented litigants, including "Before Going Into Court," available at <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/beforegoing.html>, and "Before Asking for Help"), available at <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/beforeasking.html>.

<sup>36</sup> SRLN, Best Practices in Court-Based Programs for the Self-Represented: Concepts, Attributes, Issues for Exploration, examples, Contacts, and Resources (2008).

<sup>37</sup> Currently, the Probate and Family Court's form section is the best-organized set of legal forms among the MA trial court sites. See <http://www.mass.gov/courts/courtsandjudges/probateandfamilycourt/forms.html>. Good examples from other states can be found in the SelfHelpSupport.org library available at [http://www.selfhelpsupport.org/library/folder.126853-Drafting\\_Forms](http://www.selfhelpsupport.org/library/folder.126853-Drafting_Forms) and in links on the NCSC site available at <http://www.ncsonline.org/WC/CourTopics/statelinks.asp?id=64&topic=ProSe>.

plain language instructions for filling out key forms will help self-represented litigants and lawyers complete them efficiently and accurately.

These principles will apply generally whether the available forms are simply pdf versions of forms that can be printed and then manually filled out (as are most forms on the Trial Court site currently), or “fillable pdf’s” that can be completed online and then printed in final form (a reasonable temporary solution for the short term). In either case the form should be accompanied by a completed sample form to serve as an example. Better yet, the form should be available as part of a guided interview and automated form generation program such as those described in the next section of this Report.

*Filing and E-Filing:* Effective court self-help web sites provide simple, step-by-step guidance on how and where to file and serve completed forms. The process of filing and serving papers, even in a purely paper-based system, is often mysterious and intimidating to self-represented litigants, and web sites present an excellent opportunity to convey simple, organized information and guidance that will make the process far more accessible to (and efficient for) them and less time consuming for court staff who otherwise would have to provide most of this guidance directly. As the Trial Court begins to implement e-filing, detailed and easily understood tutorials and instructions on how to use the system, how to apply and qualify for fee waivers, and similar issues will become essential to ensure that e-filing is accessible for all litigants, including self-represented parties, and that the cost savings that e-filing promises are achieved to the greatest degree.

*Specialized information:* Some courts in other states offer specialized information that is specifically tailored to individual groups with special needs in addition to self-represented litigants (or to subsets of self-represented parties). For example, Arizona and Florida offer specialized websites for the elderly.

*Limited Assistance Representation:* Information on the Court’s ongoing initiatives to allow limited assistance representation (“LAR”) may be important to lawyers and to some indigent or self-represented parties and should be available as one element of the Trial Court’s web site and self-help pages. The most useful court sites present simple, basic information for a lay audience about LAR, including topics such as what LAR is and how it works,<sup>38</sup> a list of which courts allow LAR and which do not and the forms necessary for a litigant seeking to use LAR.

*Alternative Dispute Resolution:* Information on ADR services, including simple explanations of what they are, how they work, referral links and instructions on how to find a mediator, etc., are prominently placed on many court self-help web pages, such as New York’s CourtHelp.<sup>39</sup>

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<sup>38</sup> Some existing information at <http://www.scselfservice.org/fam/lsr.htm> may be helpful.

<sup>39</sup> <http://www.courts.state.ny.us/courthelp>.

*Help Finding Lawyers:* One element of self-help web sites in many other states is information about finding lawyers, both for pro bono representation (typically legal aid organizations and law school clinics) and for paid representation (often through bar referral lists or similar groups). As noted earlier, the New York CourtHelp site provides a good example of lawyer referral materials.

#### 4. Coordinated

In many states, including Massachusetts, court web sites and other sources, such as law libraries, legal aid organizations, law school clinics and others each provide a variety of valuable but largely unconnected and uncoordinated sources that contain information, resources and tools for the public and self-represented litigants. Too often, the information on individual sites may be excellent but is difficult to find, is not linked from other sites or, in some cases, is posted repeatedly, with no promise of consistency between sites. A visitor who successfully navigates one site cannot be confident that he has found all the relevant information. To best serve the public overall and the self-represented community in particular, and best achieve the goals of access to justice initiatives, good coordination and collaboration among various sites is critical. For example, as noted above, the Trial Court Law Libraries site currently provides many unique resources of value to self-represented parties. Close coordination and collaboration between the Court's and the Library's web efforts going forward can significantly enhance what either could do acting alone.

#### 5. Uniform, Consistent and Coherent Web Pages

Consistency in the appearance and structure of web sites assists visitors in finding information quickly and easily and navigating smoothly among pages. Consistency includes standard templates and appearances, standard navigation tools and schemes, and standard presentation of content within the different pieces of the site.<sup>40</sup> Less-effective court web sites tend to present information on one component's or division's page in formats different from others' pages. In many cases, information and links on any one page are incomplete and users are required to search around a variety of pages and sources for a complete answer. This kind of presentation of information on inconsistent pages can be confusing to site visitors and hampers easy location of needed information.<sup>41</sup> Note however, that there are good arguments for the benefits of having a separate and distinct-looking self-help web site that is internally uniform but does not necessarily conform to the appearance of other court pages.<sup>42</sup> This can

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<sup>40</sup> For a discussion of efforts to ensure uniformity in legal services web sites, see Ronald W. Staudt. All the Wild Possibilities- Technology that Attacks Barriers to Access to Justice (2009) at 109.

<sup>41</sup> For the Trial Court, a related issue of uniformity to consider is the separate county courthouse web sites which raise issues of standardizing their appearance and linking to appropriate pages of the main Court self-elp site.

<sup>42</sup> One possible current example of this approach is the Trial Court's Jury Information link which, when clicked leads to a page that looks different than the standard Court pages but is internally uniform and consistent. See <http://www.mass.gov/courts/jury/index2.html>.

allow customized and specifically tailored layouts and presentation formats that are most effective for self-represented users but that might not be optimal for the court's other audiences.

## 6. Multilingual

To meet the needs of many of those most in need of courts' web-based materials and services, those sites and materials (or at least key portions) must be available in languages other than English. The best court web sites consistently make much or all of their content available in more than one language, based on local need. In Massachusetts, the need for materials in other languages was identified by 39% the respondents in your court staff survey, and court personnel consistently identified the need for instructional materials and court forms in other languages as one of the most pressing needs of the court.<sup>43</sup>

In most areas, including Massachusetts, Spanish is the highest priority language requirement, but there typically are needs for translation to other languages as well, including Portuguese, Vietnamese, Cambodian, Cantonese, Mandarin or more.<sup>44</sup> Translation of existing and new web site materials is an expensive and time-consuming process, of course, so an incremental approach to both what materials to translate first and which languages to prioritize is often prudent. The best practices we have observed include, for selected materials, the entire page being translatable with the click of a prominent button or users having the choice of viewing the entire site in other languages. Alternatively, even for pages left in English by the user, mouseover text could provide a translation of particular portions.<sup>45</sup> Specific issues often have to be addressed regarding foreign language instructions for forms in English and, ultimately, for foreign-language guided interviews and instructions that lead to the creation of English-language forms.

## 7. Multimedia

Even where court web sites are available in multiple languages, some significant number of litigants will not be well-served by text-based information alone because of impaired vision, limited literacy skills or an inability to absorb complex information by reading. Other states strive to overcome these challenges by using audio, video and PowerPoint training materials to help litigants. These materials can introduce key legal concepts, guide users to relevant materials, show what court is like and introduce the key players, walk litigants through the process of creating or filing forms, etc. Or they can be as simple as a few introductory materials

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<sup>43</sup> Honorable Dina E. Fein and Sandra E. Lundy, Esq., INTERIM REPORT ON ACCESS TO JUSTICE INITIATIVES IN THE TRIAL COURT at 4-5, 20, 22, 25 (Jan. 8, 2010), available at <http://www.mass.gov/courts/atjreport.pdf>.

<sup>44</sup> See Annual Report on the State of the Massachusetts Court System – Fiscal Year 2009, at 23 (listing top 15 languages requested for court translation), available at <http://www.mass.gov/courts/fy09-annual-report.pdf>.

<sup>45</sup> For an example of the mouseover approach, see the New York site at <http://www.courts.state.ny.us/>.

that orient users to the content and layout of the website and the basic services provided.<sup>46</sup> Audio/visual media not only assist lower-literacy and vision-impaired users, but make the website generally more accessible to all. However, all key material presented in AV format should also be available in the text on the website since not every user will find the AV media helpful. The MA Trial Court staff survey indicated that, currently, AV materials are currently available to only 2% of all respondents

PowerPoint presentations are less expensive to produce, can be changed more easily than video formats, and can use graphics and animation to facilitate understanding. Adobe Flash modules provide another tool to create presentations and animation. For one example, see this page<sup>47</sup> from the Illinois Legal Aid site. Other examples include:

- One of the most comprehensive uses of video and PowerPoint to communicate legal access tools for the self-represented is the Contra Costa, California Virtual Self-Help Center.<sup>48</sup>
- Orange County, California Superior Court's PowerPoint presentations for their *How to Start a Divorce*, *How to Respond to a Divorce*, and *How to Respond to a Temporary Restraining Order* workshops.<sup>49</sup>
- Videos and a tutorial from the 4th Judicial District Court (Hennepin County) in Minnesota.<sup>50</sup>
- Illinois Legal Aid Online's<sup>51</sup> instructional videos for self-represented litigants, including:
  - *Going to Court on Your Own*<sup>52</sup>
  - *Going to Eviction Court in Chicago*<sup>53</sup>
  - *How to Get an Order of Protection*<sup>54</sup>
  - *What do I do if I Get a Traffic Ticket?*<sup>55</sup>

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<sup>46</sup> See SRLN, Best Practices in Court-Based Programs for the Self-Represented- Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources (2008), available at

[http://www.abanet.org/legalservices/sclaid/atiresourcecenter/downloads/best\\_practices\\_7-08.pdf](http://www.abanet.org/legalservices/sclaid/atiresourcecenter/downloads/best_practices_7-08.pdf).

<sup>47</sup> See [http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp\\_Content&contentID=1768](http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_Content&contentID=1768).

<sup>48</sup> <http://www.cc-courthelp.org/>.

<sup>49</sup> See description in SRLN, Best Practices in Court-Based Programs for the Self-Represented- Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources (2008) at 50, available at

[http://www.abanet.org/legalservices/sclaid/atiresourcecenter/downloads/best\\_practices\\_7-08.pdf](http://www.abanet.org/legalservices/sclaid/atiresourcecenter/downloads/best_practices_7-08.pdf).

<sup>50</sup> <http://www.mncourts.gov/selfhelp/?page=1913>.

<sup>51</sup> <http://www.illinoislegalaid.org/>.

<sup>52</sup> [http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp\\_content&contentID=5394](http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=5394).

<sup>53</sup> [http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp\\_content&contentID=5552](http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=5552).

<sup>54</sup> [http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp\\_content&contentID=5897](http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=5897).

<sup>55</sup> [http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp\\_content&contentID=5696](http://www.illinoislegalaid.org/index.cfm?fuseaction=home.dsp_content&contentID=5696).



- New York City Civil Court videos and community seminar series for civil, housing and small claims topics<sup>56</sup>
- Additional examples of videos produced for self-help programs can be found in the SelfHelpSupport.org library.<sup>57</sup>
- LawHelp.org/NY Explanatory video<sup>58</sup>
- Kern County, California Law Library videos<sup>59</sup>

## 8. Up-to-Date

The Conference of State Court Administrators 2005 Position Paper recognized that, for court web sites,

It is fundamental that court administrators establish procedures to ensure that their websites are well managed and kept up-to-date. Wrong information or missing links erode public confidence in the ability to provide effective services. The original model, still in widespread use, is to place website management under the court system's technology group. However, given that the court website increasingly represents the public face of the state's judiciary, it is advisable to transfer website management to operational staff or have web development staff report directly to the state court administrator. In any event, a clear best practice in this area is to develop effective procedures to routinely review changes in laws, rules, judicial assignments, staff, addresses, telephone numbers and any other court information provided on the court's website.<sup>60</sup>

To ensure current and useful content, effective court web sites, including all self-help and court-information pages, should be easy to update and the system should allow updates to be made by the court staff who are in the best position to act quickly and accurately. The ideal approach is a web site built on a content management system that allows those directly responsible for developing information (i.e., attorneys and staff, rather than a webmaster or other IT personnel) to easily add and edit content. Distributing ownership of web pages or areas to the people most familiar with the legal or procedural issues covered in each page and eliminating the need for a webmaster to take any steps for the material to be published can eliminate the bottlenecks and delays that frequently cause stale web site content. These delays

<sup>56</sup> <http://nycourts.gov/courts/nyc/housing/videos.shtml>.

<sup>57</sup> <http://www.selfhelpsupport.org/library/folder.82240>.

<sup>58</sup> [http://www.lawhelp.org/images/tours/ny/ny\\_english.html](http://www.lawhelp.org/images/tours/ny/ny_english.html).

<sup>59</sup> <http://www.kclawlib.org/media.php?PHPSESSID=9fc357fbc5d83ff5a47568e898d6cea4>.

<sup>60</sup> COSCA, Position Paper on The Emergence of E-Everything (December 2005) at 8, available at <http://cosca.ncsc.dni.us/WhitePapers/E-EverythingPositionPaperApprovedDec05.pdf>.

not only result in out-of-date content but may in fact discourage the correct people from developing new content in the first place. Empowering relevant attorneys and staff to update content in their areas of responsibility and expertise can also ensure that the most significant and timely materials are presented quickly and with the right emphasis.

Notwithstanding the above, best practices recognize that, whenever possible, updates to public areas of court web sites benefit from the assistance of or review by a web site specialist who understands and can implement the key principles of clarity, simplicity, logical organization and uniformity described above. In addition, any lengthy or detailed content should be reviewed by a plain-language specialist to ensure that it conforms to plain language guidelines and will be understandable by people with limited English proficiency or literacy.<sup>61</sup>

## 9. Disabled Accessible

Related to the multimedia concerns, all portions of a court's web site should conform with relevant statutory and policy requirements for making content accessible to persons with disabilities.

## 10. Priorities for Improving the Trial Court's Web Site

We understand that the Trial Court is well aware that their current web site is not presently able to implement many of the best practices described above that most effectively permit users to locate the information and resources they need and allow effective delivery of access to justice services through the technologies described in this report.<sup>62</sup> We also understand the Court has identified and recognizes many key improvements that could be made to the web site but is constrained by significantly limited financial resources and by the need to utilize those resources in the first instance to maintain core functions and projects.

With that understanding of the current situation firmly in mind, we offer the following recommendations and proposals for a number of more limited steps that can be taken in the short and medium term, as resources allow, that will require relatively little time and investment but that will dramatically improve the effectiveness of the site in serving the needs

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<sup>61</sup> Once an updated content protocol is established, modern content management systems provide a number of tools that can be critically helpful for keeping websites up-to-date. Specifically, a content management system can automate the process of passing documents through each stage, track the current stage of pending documents, provide statistics about how quickly documents move through each stage, ensure that documents are not published until they have undergone a proper review, automate the process of flagging old documents to ensure that legal information is up-to-date, and identify bottlenecks anywhere along the line of development. Further, they can allow users to edit content directly from their web browser without having to install special programs, and they can provide sophisticated tools for determining who can edit a web page or how the content protocol will operate.

<sup>62</sup> See, e.g., Administrative Office of the Trial Court, *Enhancing the Delivery of Quality Justice: Interim Report on the Access and Fairness Survey Project* (July 2008) at 12 (only 55% of respondents described the Court web site as "useful"), available at <http://www.mass.gov/courts/metrics-report-interim.pdf>.

of litigants and lawyers who use the site and in serving as a platform for the Court's other important implementations of technologies to facilitate access to justice. Our recommendation is that these initial changes should not wait, but should be implemented as quickly as possible.

Some of those more improvements include, in the *immediate* term:

- Replacing the font on the pages of the Trial Court's site with a larger and more readable font that is easier for all users
- Redesigning the Trial Court's main landing page so that it separates out and directs different audiences to their appropriate destinations in a way that is clear, simple and logical, while reducing the heavy reliance on text and employing simple layouts and effective use of graphics to help unsophisticated users.
- Creating a new set of pages for the Trial Court's primary Self-Help Center and Court Information Center, consistent with the principles set forth above. In particular, the initial pages should present, in clear and logical fashion using accessible layouts and ample graphics, ready access to the primary materials listed in the "Comprehensive" discussion above. One option would be to create a completely new series of self-help and court information pages that are under your control and that present an accessible set of key A2J resources.<sup>63</sup>
- Posting in a well-organized, common-sense, problem-oriented fashion, a full set of all common court forms. Critically, as forms are revised or updated by the A2J Task Force on Forms those forms should quickly appear on the site.

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<sup>63</sup> One example of this is the New York Courts' "CourtHelp" page, which has a distinct location and look from the main court pages. See <http://www.courts.state.ny.us/courthelp>.

In the *medium* term, as additional resources allow, additional straightforward improvements might include:

- Starting with the most commonly used forms, such as the MA Affidavit of Indigency, Form 209A, the new stalking/harassment forms under Chapter 258(e), the plaintiff and defendant summary process forms used in multiple court departments (e.g., Housing, BMC, District Court,) etc., create and place online “fillable pdf” versions of the forms that can be completed over the internet and then printed (see Easy Completion of Forms section, *infra*). Accompany these, where appropriate, with completed examples of the form. This should be an ongoing process until most forms commonly used by self-represented litigants in the various Trial Court Departments are available in this format
- Again starting with the most commonly used forms described above, create and post programs that allow guided interviews and automatically generated form creation (see *infra*).

## B. Easy Completion of Court Forms Online

### Basic Options

One of the primary areas in which technology can effectively save court personnel time and costs while increasing access to the courts for self-represented litigants is the completion of common court forms and filings electronically on the internet. This capability can be provided in a number of ways, each progressively easier for self represented parties and providing more cost saving for courts and court personnel. These range from:

- (1) simply putting copies of all (or at least all commonly used) forms online so litigants can print them out and complete them manually, to
- (2) putting forms online as “fillable pdf’s” – digital versions that permit users to type information into each box and then print the completed form, to
- (3) Guided interviews and automated form creation, to
- (4) Guided interviews and automated forms integrated so that they feed the finished digital filing directly into the court’s e-filing and case management systems.

The first two of these are relatively straightforward and our recommendations for adding this capability to the Trial Court’s web site are set forth immediately above. The following section focuses on the more complex, but also far more useful for many self-represented parties, guided interview and form creation programs.

## Guided Interviews and Automated Form Creation

### 1. Overview of the Technology

An automated guided interview is an electronic interview, hosted on a website or computer terminal, which prompts users through a step-by-step process to enter information. The information is mapped onto designated fields of an existing form. Additional software then assembles (“merges”) the relevant data with the digital version of the form to create a completed form that can be printed out and filed with the court or, where such systems exist, e-filed electronically.

Automated interviews can assist self-represented litigants in accomplishing a number of complicated tasks, such as answering legal questions (e.g., which court has jurisdiction in a child custody dispute), preparing for a hearing (e.g., what kinds of evidence will be useful in a landlord-tenant dispute), and preparing complex court forms or pre-litigation documents that may reduce the need for litigation. The software can even conduct interviews and gather information in a language other than English and then generate the completed form in English.

The automated interview begins with the broadest possible questions, and depending on how the user answers those questions, it directs him to only those questions relevant to his particular situation. Typically, questions are designed to be simple, often times focusing on a series of “yes”/“no” questions and limiting other input to basic information such as names, dates, and contact information. Thus, the guided interview process simplifies the task of completing complex legal forms by presenting questions in small, easy-to-understand portions and ignoring components that do not apply to the user’s particular situation. Further, by asking background questions, providing supplemental information, and linking to external resources—features which are not typically available with a paper form—automated interviews can be useful for ensuring that a self-represented litigant is filling out the right form and that he understands the legal issues confronting him. This, in effect, facilitates comprehension by self-represented litigants, reduces the difficulties in completing complex form, reduces the occurrence of errors, and minimizes the burden on courts to decipher incorrectly filled forms.

### 2. Front-End Software: Automated Guided Interviews

The two software programs that are most frequently used by courts to implement guided interviews are A2J Author and I-CAN! Legal. Of the two, A2J Author seems to have experienced more widespread adoption among court systems and legal aid organizations.

A2J Author<sup>64</sup> is a software tool developed by the Center for Access to Justice and Technology (“CAJT”) at Chicago-Kent College of Law and the Center for Computer-Assisted Legal Instruction (“CALI”). The tool enables courts and legal services providers to build and implement a user-friendly, web-based interface for assisting litigants to navigate complex legal forms. A2J Author can be downloaded at no cost to anyone using it for non-commercial purposes. Currently, A2J Author is used by courts and legal services organizations in 36 states, and more than 1,200 A2J Guided interviews are posted on the national server operated by Law Help interactive.<sup>65</sup>

A2J Author includes a graphical flowchart map that displays the entire dialog for the interview to the author to facilitate complex branching. Other components of the software stack include A2J Viewer, which is a program in Adobe’s flash language, which is downloaded to the user’s browser in conjunction with the interview in order to play the interview. Substantial work has been done to make A2J Author interviews user-friendly, even for those who are not tech-savvy. For example, the interviews feature a graphical representation of an interviewer asking questions and guiding the user towards a courthouse, the path to which has signposts indicating the major categories of questions left to answer. The most recent version, A2J Author 3.0, includes a number of improvements intended to increase both end-user experience and the A2J Authoring process, including the ability to:

- add graphics and videos to questions;
- customize how users exit an interview and let them leave before an interview is completed;
- create new interviews by "cutting and pasting" existing questions or question sets; and
- add a logo to the interview.

Much of the success of A2J Author stems from its compatibility with the National Public Automated Documents Online (“NPADO”) Server for Nonprofit Legal Services. A2J Author is usually associated with a software stack that includes a program called HotDocs to generate completed forms from the data entered by users during an interview. The interviews are hosted on the NPADO server but linked to the creating court’s or legal aid group’s website. When the user completes an interview through his web browser, the data is sent to the HotDocs server to produce the final document.

The alternative to A2J Author, I-CAN! Legal<sup>66</sup> is a free online application developed by the Legal Aid Society of Orange County (“LASOC”). This application allows self-represented litigants to prepare court forms for divorce, guardianship, civil harassment, child support, wage and earnings, paternity petition, name change, small claims, eviction, notice of motion, order to

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<sup>64</sup> A2J Author, <http://www.a2jauthor.org/>.

<sup>65</sup> Numerous guides and other resources for efficiently implementing A2J modules is available online from the LSC National Technology Assistance Project (“NTAP”). See, e.g., [http://lsntap.org/training\\_bp\\_online\\_doc\\_assembly](http://lsntap.org/training_bp_online_doc_assembly).

<sup>66</sup> I-CAN! Legal, <http://www.icandocs.org/>.

show cause, domestic violence, fee waiver, child custody, and income and expense. The website provides litigants with modules for filling out certain court forms, as well as step-by-step instructions for filing the forms, serving the forms, and preparing for court hearings. The modules currently available for Massachusetts include court forms for guardianship, fee waiver, and eviction defense.

While I-CAN! Legal has similar capabilities to A2J Author, there are a number of important differences which may make it less ideal for widespread adoption by the Trial Court: (1) it does not seem to have an authoring tool, and instead interviews are developed in close cooperation with LASOC; (2) it has much more limited adoption; (3) it depends on a different stack of software technologies; and (4) the user interface of interviews generated with I-CAN! does not have computer graphics.

In addition, there are a variety of commercial options, such as TurboCourt, EZLegalFile, Smart Legal Forms, and WordMill, that can be used for creating automated interviews. These options, however, seem to be less widely implemented and may be less practical for automated document assembly once integration with the Trial Court's case management and e-filing system and the automated interviews becomes essential.

### 3. Back-End Software: Document Assembly

A2J Author must be used in conjunction with either HotDocs or another document assembly program that can translate the answer file generated by A2J Guided Interviews. NPADO is a document assembly project that hosts interactive online forms for nonprofit legal aid and access to justice organizations. The NPADO system was created by ProBonoNet, in collaboration with Ohio State Legal Services Association, with funding from the Legal Services Corporation ("LSC") and HotDocs software donated by its then owner, LexisNexis (the software has recently been acquired by another company). Through this system, organizations must first upload the appropriate HotDocs template to the NPADO server and next upload their A2J Guided interviews to the server. Templates that are uploaded to the NPADO server can then be linked to websites, where they are available to for self-represented litigants. The system then helps organizations create document assembly content based on existing A2J forms and documents. As of December 2007, sixteen states (including California, Idaho, Kentucky, and New York) were using NPADO to deliver legal forms online so.

A2J Author allows courts and legal services to upload and host A2J Guided Interviews on the NPADO server. Further, ProBonoNet provides participants with developer resources and technical support, including assistance with collaboration building, content development, outreach, and evaluation. An important consideration, however, is that the NPADO servers do not provide free hosting of A2J Author interviews for courts (though they do provide free hosting for legal aid organizations). In order to use these servers, courts must negotiate contracts and fees. As a result, some courts have set up their own servers rather than negotiating to use the NPADO servers. To the extent that courts wish to bypass NPADO as a long-term goal, it may be fruitful to explore developing a parallel national server.

The NPADO server not only hosts the guided interviews, it also provides internet-based document assembly services via HotDocs software by LexisNexis. With this software stack, A2J Guided Interviews that are made available through court and statewide websites can be uploaded to the NPADO server and combined with corresponding HotDocs form templates—digital representations of blank court forms—so that information collected from the guided interview can be manipulated and inserted into the correct position on the corresponding court forms. Specifically, HotDocs allows developers to embed variables and simple scripting instructions into documents to create a template and a matched HotDocs component file. As users input information into required fields, a customized document is produced.

Rather than using HotDocs, however, it is also possible to develop XSL transforms that will translate the data exported in A2J Guided Interviews answer file (.anx) into an alternative XML format. At least one such XSLT has been written thus far for LSXML, which is used by Pika case management systems. Implementing this back-end software as part of the A2J software bundle would allow the court to seamlessly utilize automated interviews within a larger document assembly system. The software may also facilitate the merger of this information for case management, data collection, or e-filing purposes. (See the Section on Case Management and E-Filing Systems, *infra*). HotDocs has the largest market presence and offers the most developed system a full-featured web implementation, a tool for automating graphical forms, and a reputable online knowledgebase. The downside to utilizing HotDocs is that it is a proprietary program owned by a private company and, at the moment, requires licensing fees for use by courts and other non legal aid organizations.

#### 4. Main Steps for Development

Developing a strategy for automating court forms and creating guided interviews will involve both a careful assessment of the court’s needs and the current gaps in meeting those needs, as well as close consultation with key stakeholders. The primary considerations for the court to address during the development stage include:

- Identify and prioritize specific forms or processes the court should automate.
- Consult with stakeholders (e.g., clerks, judges, legal services groups) before drafting.
- Agree on standardized court forms that judges in all relevant jurisdictions will accept.
- Consider who is in the best position to develop and host the forms.
- Develop the structure and substance of the legal decision tree that will underlie each automated interview. (This will require mapping individual questions against legal research on the particular issue and familiarity with court filing requirements.)
- Identify potential roles for law students, legal aid organizations, pro bono attorneys to create and review interviews, conduct legal research, or draft underlying decision trees.



- Perform plain language review of automated interviews, and provide materials to accommodate low literacy or disabled litigants.
- Consider the need for multilingual interview processes and materials.
- Consider the extent to which materials should be enhanced by audio or video features.
- Perform beta testing and host focus groups to identify problems before deployment

*Identify specific forms:* The first step in developing automated interviews is to identify forms that can usefully be automated. Forms that typically are good candidates for automation are those that involve simple court procedures for which legal representation is rarely sought (e.g., name change, fee waiver), or complex high-need, high-volume procedural forms. Other forms that may be useful for self-represented litigants include statutory forms (e.g., for estates or guardianship), and non-judicial legal issues (e.g., letters to creditors or credit agencies, requests for crisis assistance, request for grievance hearing with housing authority). Subject matters for which the court may want to provide automated forms can range from family law, divorce and domestic violence to landlord-tenant disputes, probate and small claims.<sup>67</sup> As the Massachusetts Access to Justice Initiative Task Force on Forms continues its work, these would be valuable areas for it to address.

*Consult with stakeholders:* To identify and prioritize forms that should be automated, it will be useful to (i) survey judges, court personnel and legal aid organizations; and (ii) look at statewide website search statistics. Court clerks are often good resources for identifying areas where litigants have trouble understanding forms, common mistakes in filling out forms, and forms that are frequently bounced. As a related matter, the court will want to consider which forms, guidelines, and resources are best developed by the court versus those which are better left to legal aid organizations who can assist litigants by providing legal advice and unbundled legal services.

*Agree on standardized forms:* Before automating a particular form, it will also be important to determine if multiple versions of the same form exist for different jurisdictions. To make the most of the automation process and avoid expensive revisions when forms change, the Trial Court's ongoing effort through the Task Force on Forms to update and standardize forms so judges across various Trial Court Departments and locations will accept them are critical before development of automated forms begin.

*Decide who creates the interviews and automated forms:* The Trial Court will also need to decide whether it wishes to invest the resources to develop its own versions of guided interviews and automated forms, leave such development to others such as legal services organizations, or some combination. As you know, the recent TIG funding application by the

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<sup>67</sup> For examples of forms that have been automated by various courts and legal aid organizations, see SelfHelpSupport.org ([http://www.selfhelpsupport.org/library/folder.126853-Drafting\\_Forms](http://www.selfhelpsupport.org/library/folder.126853-Drafting_Forms)) and NCSC (<http://www.ncsonline.org/WC/CourTopics/statelinks.asp?id=64&topic=ProSe>).

LSC-funded legal aid organizations, partnering with the Courts, is primarily aimed at enabling those entities to create automated document assembly modules for a variety of common forms. The Court may not wish to duplicate much or any of this effort.

In some states, guided interviews are developed by the state courts and offered through the courts' websites; in other states, the majority of interviews are offered by legal aid organizations. In addition to resources, a number of factors should be considered in determining if and when the Court is in the best position to offer these services. For example, a lawyer implementing A2J interviews for NY courts reported, that in addition to automated interviews oriented towards assisting tenants faced with eviction, the court also wanted to provide interviews to assist small land owners seeking evictions pro se. These are not the traditional clients accepted by legal aid organizations, and courts may wish to retain the ability to develop and host a range of automated interviews that might not otherwise be made available.

Further, the Court may in some cases prefer to control the tone and neutrality of certain interviews. It also may be in a better position to evaluate interview effectiveness by collecting usage information from court case management systems, and to better integrate the output of automated interviews directly into the Court's upcoming e-filing system (see detailed discussion in the Case Management and E-Filing Systems section, *infra*).

*Develop the legal decision tree:* After a form has been selected for automation, interview designers must be sure that they are familiar with the law, which will often entail legal research regarding the various considerations that a lawyer in the particular area of law (e.g., divorce, landlord-tenant, probate) would identify for his client. The Court will need to consider how the information is vetted, who is responsible for each component, and how it can factor in all legal knowledge. Interview designers can begin writing the interviews by mapping the branches of the legal decision tree and posing questions as if they were interviewing a client in person. If the interview is intended to produce a court form rather than answer a legal question, the designer will need to write the logic necessary to map the interview questions against the desired form.

This process, which requires a degree of legal research and analysis, may be an opportune point to take advantage of outside resources including law students from a program organized through a local university. For example, the head of Chicago-Kent's A2J program has suggested projects for enlisting students to draft web content, document assembly templates, or guided interviews.<sup>68</sup> Such a project would engage law students in efforts to improve access to justice while allowing the court to tap into a valuable resource.

One advantage of A2J Author software is that there is now a large community of legal aid organizations and courts actively using the software and developing expertise in creating interviews and automating forms. The MA Trial Court can leverage much of that expertise through an active discussion list, regular web-based training and a growing library of resources

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<sup>68</sup> See Ronald W. Staudt, *White Paper: Leveraging Law Students and Technology to Meet the Legal Needs of Low-Income People* 3 (2007).

and materials available at the A2J Author website.<sup>69</sup> The site's large collection of existing interviews for a wide variety of forms from other states will allow court or legal aid staff in Massachusetts to start from a comparable existing form and adapt it for the specifics of MA forms or usage, substantially reducing the time and effort needed to begin developing MA-specific interviews.<sup>70</sup>

*Plain language review, multilingual materials, and audio/video features:* An effective guided interview must be comprehensive and thorough but also simple to navigate. Because the majority of self-represented litigants will not have the chance to consult with an attorney about their case, court forms and instructional materials must be written in a way that is easy to follow. One important method for making forms more accessible to the general public will be to conduct a plain language review to ensure that complex legal questions are posed in clear and simple language. Secondly, there is considerable need for common court forms to be translated into other languages to facilitate access by litigants whose primary language is not English. Finally, the Court may decide to add audio or video features in order to improve the overall experience of the guided interview process. Such features will improve access to justice by ensuring that basic materials are easy to understand and user-friendly.

*Beta testing and focus groups:* Once a final draft interview is created, it should be distributed to various stakeholders, including court clerks, attorneys, legal service organizations, and judges who can flag problems or inadequacies in the questions or the resulting form. Once an interview has been reviewed by all relevant stakeholders, it is important to perform a plain language review to make sure that the interview is comprehensible to a broad audience with no legal training and of varying educational backgrounds. If the court decides to make the interview available to an even wider audience, it may consider providing multi-language forms or adding audio features to facilitate access by those who have difficulty reading. Before a deploying a final version of the forms, it may also be useful to put them through beta testing or a focus group.

## 5. Careful Deployment Is Critical

One of the strongest messages we heard in our interviews with those who have been involved in previous automated guided interview efforts was the critical need for strategies and protocols to ensure that, once the work of developing guided interviews has been done, they are effectively utilized by litigants. In fact, Rochelle Klempner, who helped lead New York's successful adoption of A2J interviews and forms, stressed that the success of a guided interview project depended *more* on thoughtful and effective implementation than on initial development.

Based on our preliminary investigations to date, the primary considerations for the court to address during the deployment stage include:

- Identify location for court to host automated forms and materials on website.

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<sup>69</sup> <http://www.a2jauthor.org>

<sup>70</sup> John Mayer, Access to Justice – Scaling Up For The Public: Law Via The Internet (November 27, 2009), available at <http://www.lawviateinternet.org/Presentations/JohnMayer.pdf>

- Place terminals to facilitate ease of access to automated forms and in-person assistance.
- Publicize and highlight A2J capability on court websites. Inform litigants about the availability of automated forms. (Ensure that court web content is up-to-date.)
- Ensure capability to easily create and publish online form from terminals at the courthouse and law libraries (or perhaps even public libraries).
- Train court personnel regarding how the system works and how to answer questions about it (with an emphasis on directing self-represented litigants to the terminals).
- Develop self-help guides and supplemental materials to provide additional resources.
- Consider requirements for long-term integration with case management and e-filing systems

*Location, location, location:* The first, though certainly not only step, in deploying this technology requires publishing the automated interviews via the court’s website and/or terminals located at the courthouse. Creating and publishing a form is only part of the challenge of increasing access to that form and to the courts. Indeed, the A2J website suggests that authors should anticipate spending twice as much time collecting feedback/comments, testing, and making revisions as developing the interview. Proper deployment of the technology is a critical step to increasing access to justice. After all, if litigants are unaware of the availability of automated interviews and are not instructed regarding how to use them, the automation process is of little value. Court systems that have developed automated interviews must ensure that the forms are accessible to those who need them.

*Publicize A2J capabilities:* When the automated interviews are published on the court’s website, they should be displayed prominently alongside instructions guiding litigants to the appropriate forms. This step of the implementation process may also relate to a more general need to update the court’s website and to ensure that all information is current, easy to understand, and accessible to self-represented litigants.

If the court also decides to make forms available through court terminals (rather than simply hosting forms on the court website), there are related challenges to ensuring that these computers are used. Often, self-represented litigants are unaware of computer terminals within the courthouse. To improve access to these technologies, clearly labeled signs and strategic placement of information desks will be important in directing litigants to these resources. Strategic location of computer terminals (e.g., next to clerks’ offices rather than down the hall or on a different floor) can drastically increase traffic to important materials such as automated forms, procedural information, and self-help guidelines.

*Train court personnel and develop additional resources:* Further, to effectively implement a system of automated guided interviews, court staff must be trained to complete

the interviews and to assist users in navigating the system. In New York, for example, the court found that training high level clerks and telling them to train their staff was not sufficient to encourage personnel to promote use of the systems. However, if each staff member individually completed an automated interview and printed the accompanying form, they had a better understanding of the system and were able to help people using it.

Finally, self-help guides and supplemental materials should be developed to provide litigants with additional resources regarding both follow-up procedural requirements and background legal information for their particular legal issue. Depending on the complexity of a particular issue, the court may even consider providing links to external resources such as legal aid organizations that can provide unbundled legal services or legal advice not available through the court itself.

*Mechanisms to monitor use, savings, shortcomings, etc.:* Usage statistics can be collected from a number of different sources:

- Identify data that is generated through the servers that host the interviews. Identify processes that can be used to capture the data. (This will depend on the particular software the court chooses to use.)
- Capture information through case management systems.
- Create feedback loops or mechanisms, surveys, etc.

First, the servers (e.g., NPADO) that host the interviews can provide information about how many interviews are started and completed. However, this information is limited in a number of ways. Generally, the servers do not have information about the county in which a user is located, the court in which they will file, or even whether they ultimately file. (Of course, if interviews are integrated into case management and e-filing systems, collecting this data may be simpler.)

The second major source of statistics is from computerized court case management systems. Theoretically, these systems should be able to provide information on every automated form filed with the court. In practice, however, these statistics are also problematic because they depend on clerks reliably flagging forms that are generated by automated interviews, which may require additional training and, at least initially, cause some confusion. Further, some court systems have not yet implemented computerized case management systems. In order to evaluate usage statistics for the final automated forms, the New York courts decided to distinguish between traffic coming from within the court and outside the court by publishing two versions of each form at different URLs, one version for use inside the court and one for use outside. This provided crucial information in the initial stages of assessing implementation because the courts soon learned that almost no traffic was coming from court kiosks. As a result, they promptly made changes to improve access to computers within the courts.

Finally, user feedback surveys can be appended to the end of an automated interview or printed out with the generated court form. Feedback surveys at the end of automated

interviews may be useful because data that is entered electronically can be compiled quickly and analyzed efficiently. However, such surveys are frequently ignored by users who immediately look to print and retrieve their automated forms. As an alternative, surveys can perhaps be printed with the forms themselves. Many people do fill out these surveys, which can provide important information regarding how users learned about a program or where they used the program. These forms, however, must be collected by the court clerks and sent to whoever is coordinating the design of the interviews.

#### 6. Next Steps for a Detailed, Step-by-Step Plan to Develop A2J Interviews

The Cyberlaw Clinic's work thus far has allowed us to create this structural outline of issues and challenges in developing and deploying a system of guided interviews and automated forms for common self-represented legal filings. One of the primary ways in which we can help in the next phase of this project would be to develop a detailed guide that the Trial Courts could use as it begins to develop and deploy A2J interview/form programs. The guide would mix a high level overview of issues about which the court should be aware as it implements the program, with specific, step-by-step recommendations on key decisions and protocols that must be addressed along the way. It also would evaluate the possible role that law schools, legal clinics and law students could play in assisting the Trial Court's efforts, and would examine the best practices for collaborations among the Trial Court and various Massachusetts legal services organizations for the development of guided interview/form modules and integration of those modules with the Trial Court's case management and, eventually, e-filing systems. A more detailed description of the approach of this project is set forth in Appendix C.

### C. Case Management and E-Filing Systems

We understand that the ongoing MassCourts case management system ("CMS") project is now up and running in all or parts of five of the Trial Court's seven departments, and that complete rollout is anticipated sometime in the next year or so. We also understand that planning is underway, and several pilot projects are upcoming, to include e-filing capability in the MassCourts system. MassCourts is intended to bring major improvements in efficiency to the courts' overall management of all of its cases. We have focused our research on a much smaller, but still highly important, aspect of MassCourts: ways in which MassCourts and future e-filing capacity can increase the efficiency and lower the cost of the Trial Court's interactions with unrepresented parties and simultaneously facilitate such parties' access to the court system.

Online guided interviews and automated form creation systems like A2J Author/Hot Docs, discussed above, produce digital versions of the court forms they create. Ironically, in almost all cases where automated interviews have been developed by courts or legal aid groups, users enter information digitally into computers and create a digital form, only to then turn that information back into a static, analog form by printing it before taking it to a court clerk to file. The clerk then retypes the data from the form into the CMS, a costly and wasteful

duplication of work that has already been done. Retyping also introduces the possibility of clerical errors.

Much of this waste, unnecessary cost and error risk could be avoided by integration of online document creation systems and the MassCourts electronic case management system to automate entry of data into court records. Further integration of A2J-type output with the coming e-filing system will yield even greater cost savings and gains in accuracy and efficiency. Both types of integration also would provide the ability to easily collect statistics regarding the use and effectiveness of automated interviews. This information will be of great value for improving the interview/form creation and evaluating its success and cost-effectiveness.

We discuss these two types of integration and their benefits separately below.

### 1. Case Management System Integration

Without e-filing, even advanced CMS's like MassCourts will still require manual filing of paper copies of forms and pleadings. Where those forms and pleadings are created using an online guided interview and form creation system, however, considerable court-staff time could be saved, and accuracy improved, if key portions of forms created through systems such as A2J Author could be electronically imported into MassCourts rather than having to be manually re-entered by court clerks. This capability is one of the recommendations made by the Self-Representation Litigation Network ("SRLN"),<sup>71</sup> a group of experts and organizations dedicated to making the justice system accessible to self-represented litigants, in a 2008 best practices document.<sup>72</sup>

One option we are exploring to achieve such efficiencies involves enhancing the online form creation system so that it prints the key portions of court forms onto those forms as bar codes in addition to printing the standard form. Those bar codes can then be optically scanned by the court clerk when the form is filed, and the information automatically imported into MassCourts, perhaps followed by a quick quality control check by the clerk. This process would be much faster and more accurate than retyping the information. So called "2-D Barcode" forms such as these are already in widespread use by state tax authorities in Massachusetts and elsewhere,<sup>73</sup> and we are researching the degree to which they may currently be in use by A2J Author software.

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<sup>71</sup> SRLN, <http://www.srln.org/>

<sup>72</sup> SRLN, Best Practices in Court-Based Programs for the Self-Represented- Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources (2008) at 50, *available at* [http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best\\_practices\\_7-08.pdf](http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best_practices_7-08.pdf).

<sup>73</sup> See, e.g., Mass. Dep't of Revenue, Filing Options ("The barcodes on these paper returns capture all the information the taxpayer enters, which results in faster, more accurate processing and significantly reduces refund turnaround time."), *available at* <http://www.mass.gov/?pageID=dorsubtopic&L=4&L0=Home&L1=Individuals+and+Families&L2=Personal+Income+Tax&L3=Filing+Options&sid=Ador>; Virginia Dep't of Taxation E-filing FAQ ("This 2D Bar Code includes the tax information needed to process your return . . . in a format that allows the return information to be entered quickly in our processing system with a very high accuracy rate."), *available at* <http://www.tax.virginia.gov/site.cfm?alias=ElectronicFiling>.

Ensuring that guided interviews and online form creation software can produce an output that, through printed bar codes or otherwise, can be directly imported into MassCourts requires proper advance planning. As the MA legal services providers and the Trial Court begin to move forward to create automated forms, having integration with the MassCourts CMS (and, as described below, with later e-filing capability) as a project goal from the beginning will achieve integration while avoiding the need for costly rewriting and restructuring of the software systems on either side. Now is the time to anticipate and ensure critical integration.

One example of this kind of forward planning would be matching the variable names from the automated interviews with the case management system. If different variable names are used, then when it comes time to integrate the systems not only is there an extra task of correctly mapping variable names from one to the other, but for some variables there may be no exact mapping, again introducing the possibility for inaccuracies in records or the need for costly rewriting of software. Planning ahead can avoid these types of problems, and substantially reduce the costs of integration.

## 2. Electronic Filing

E-filing refers generally to the electronic transmission of legal documents from litigants or their lawyers to a court and the automated filing of those documents with the court. Typically, this means that a litigant can file documents with the court and serve other parties over the internet. E-filing is now standard in all federal district courts through the CM/ECF system and is used in an increasing number of states including Arizona, California, Colorado, Connecticut, New Jersey, New York, Ohio, and Texas.<sup>74</sup>

From the standpoint of access to justice, e-filing creates the potential for dramatic benefits for courts and litigants but it also presents major challenges.

**Benefits:** The benefits include a large decrease in the inefficiency of transmitting, accepting, scanning and filing paper copies and in the redundancy and error risks of retyping filing information into CMS's described above. E-filing allows a user to electronically file a document with the court, have the document entered into the CMS without any intermediate paper step, and obtain and review that document or any other in the case over the internet.<sup>75</sup> The ability to access and file documents over the Internet, at any time of day, is very beneficial to those who may be unable to use printers or mail services. E-filing also makes provision of just-in-time legal information possible, allowing self-represented litigants to get the information that they need without overwhelming them. E-filing ultimately will lead to operational efficiencies including reduced paper files, mailing costs and staffing costs for courts

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<sup>74</sup> <http://www.abanet.org/tech/ltrc/research/efiling/>

<sup>75</sup> See COSCA, Position Paper on The Emergence of E-Everything. Conference of State Court Administrators (December 2005) at 13-14 (e-filing “reduces paper usage and storage, reduces trips to the courthouse for litigants and attorneys, enables them to file, access and review court papers on a 24- hour/seven day a week basis, provides flexible options for payment of filing fees, reduces the courts’ data entry effort, cuts down on the flow of paper and provides web-based access to court documents for judges, court staff, attorneys and litigants.”), available at <http://cosca.ncsc.dni.us/WhitePapers/E-EverythingPositionPaperApprovedDec05.pdf>.



accompanied by increased control over filings, faster processing times, and greater security.<sup>76</sup>

Beyond the basic implementation of e-filing systems, integration of automated interview and form-creation programs with such systems would provide particular benefits for courts and self-represented parties. Integration would avoid the inefficiencies described above by allowing a user to electronically file the output of an automated interview, delivering the data produced by the interview software directly into a CMS and achieving the court filing without any intermediate paper step and with a greatly reduced amount of court staff time and involvement. Indigent parties would avoid the cost and difficulty of printing their forms, traveling to a courthouse to file them and then manually serving them.

Because of these potential benefits, the Trial Court, as a prerequisite for its participation in the LSC TIG proposal, included the development of standards for integrating the anticipated online automated forms with the Court's coming e-filing system. This integration would provide a complete, end-to-end, electronic solution, allowing self-represented litigants to create and file forms using just an Internet browser.

*Challenges:* Our research so far has revealed that, while numerous courts around the country have implemented e-filing systems of one kind or another, virtually none of those systems are adequately accessible and useful to self-represented litigants.<sup>77</sup> This is a huge failing; in many cases technology that should facilitate self-represented parties' access to the courts is in fact inhibiting it or, at best, doing nothing to improve it. Numerous challenges help account for this failing; they are described in more detail below, but include e-filing systems that are limited to attorneys or that require complex registration information, overly complex user interfaces and processes, lack of support for foreign language speakers or disabled users, and difficulties around statutory and user fees and absent or complex waiver mechanisms.

Moreover, in order to capitalize on the complete, end-to-end efficiencies described above, automated form creation systems must be capable of outputting documents and information in a format that can be directly imported into the Trial Court's e-filing system. Our research suggests that, while efforts are ongoing, few if any existing A2J Author and e-filing systems are capable of this integration.

Thus, from the standpoint of access to justice, successful implementation of e-filing by the Trial Court will require *both* careful design of the e-filing system to accommodate the special needs of all self-represented filers, whether or not they use A2J-type software to prepare their filings, *and* effective integration with online form creation programs used by self-represented litigants and Massachusetts legal service organizations. We address each of these sets of challenges below following a brief overview of e-filing technologies.

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<sup>76</sup> John T. Matthias. E-Filing Expansion in State, Local, and Federal Courts (2007) at 3.

<sup>77</sup> In fact, most e-filing systems are designed by and for use by lawyers, not laypersons. Ronald W. Staudt. All the Wild Possibilities- Technology that Attacks Barriers to Access to Justice (2009) at 1138.

### 3. Brief Overview of E-filing

There are numerous approaches to and implementations of e-filing systems, some developed by courts in-house and some provided by a variety of vendors. We provide a thumbnail sketch below and a more detailed explanation in Appendix C.

*What is filed?* One important threshold question is what information is actually filed through an e-filing system and in what form. The almost universal answer today, with the federal CM/ECF system being a primary example, is that a filing consists of a pdf or similar file containing the filed document (form, brief, etc.) “wrapped” in a small amount of metadata, such as the case name, number, parties, date and time of filing, title or document type of the filing, name and identifying information of the filer, etc. The metadata is imported directly into the corresponding case management system and provides the information for an automated entry on the case docket. But the pdf file of the form or document remains a separate attachment that can be downloaded from the system but that does not itself enter the CMS electronically. The pdf itself may be either a digital version, which is searchable, or simply a static image scan of the document, which can only be viewed, downloaded or printed.

Obviously, the more information from the filing itself that can be imported into the CMS through an e-filing system, the more rich and useful the information in the CMS will be and the more the court will be moving toward a truly paperless filing and document retention system. Automated form creation software presents the potential for much or all of the contents of a form, which all exist in digital form in the software, to be filed directly into the CMS. But such “rich” filing appears to remain the elusive “holy grail” of court automation. Importing the entirety of a digital filing poses substantially more complex technical challenges, including the need to ensure consistent standards and specifications of many fields and formats. We have yet to find a successful implementation and e-filing experts predict that full paperless filing is still two or more years away.

*Typical components:* An e-filing system typically involves several subsystems: one or more Electronic Filing Service Provider(s) (EFSP), an Electronic Filing Manager (EFM), and a Case Management System (CMS). The EFSP is the component that receives e-filing requests from parties and passes it on to the EFM. The EFM component receives the requests from the EFSP(s), passes the e-filing request through the review process, and eventually passes the request on to the CMS while communicating its status.<sup>78</sup> The CMS handles the actual docketing of the filing, fulfilling the e-filing request.

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<sup>78</sup> OASIS LegalXML Court Filing Technical Committee. ECF LegalXML Quickstart at 3.

See **Figure 4 - Components of an e-filing system** for a visualization of how basic components of an e-filing system relate to one another.

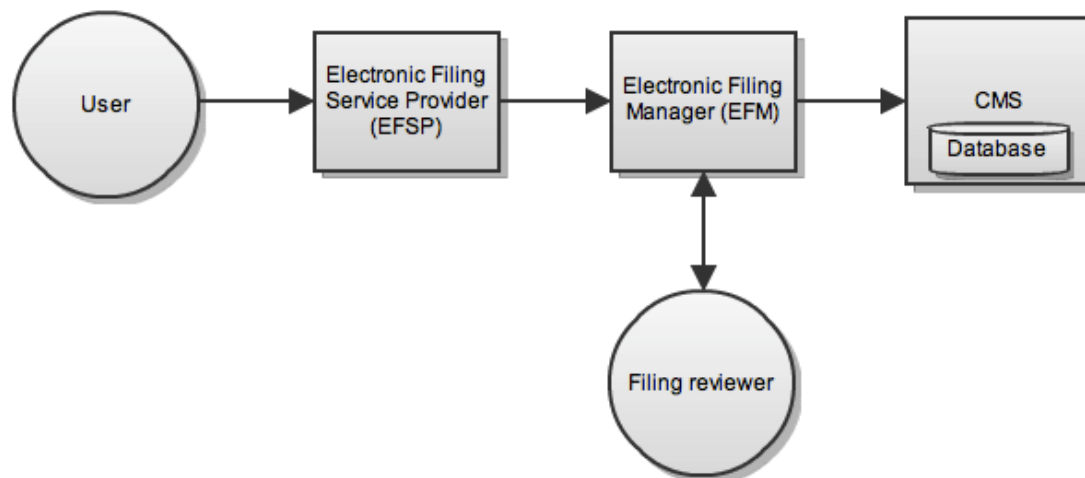


Figure 4 - Components of an e-filing system

Once a CMS is in place, there are various possibilities for where the EFSP and EFM will reside and how they will be procured. Although these EFSP and EFM decisions can be nuanced, they can be categorized into three basic models: the “no fee no vendor” model, the “vendor” model, and the “vendor-hosted” model.<sup>79</sup>

In the “no fee no vendor” model, the court does not use a vendor and implements the entire e-filing system itself, funding the design, procurement and operation of the system from the court’s operating budget, typically without charging user fees.<sup>80</sup> In the “vendor” model, the court works with one or more third-party vendors to provide a front-end for e-filers -- the Electronic Filing Service Provider (EFSP) system that prepares and submits court documents for e-filing<sup>81</sup> -- while maintaining the backend system that handles the actual case processing and filing.<sup>82</sup> A court could choose to use an EFSP from a third-party vendor; such vendors typically charge per-transaction fees to the user of the e-filing system.<sup>83</sup> Experts often recommend that a court utilize several vendors for the EFSP to ensure some competition and flexibility in the access that is presented to users. Alternatively, a court might create the EFSP in-house,

<sup>79</sup> COSCA, Position Paper on The Emergence of E-Everything. Conference of State Court Administrators (December 2005) at 13-14. These divisions are somewhat arbitrary because there are many very different ways to implement an e-filing system.

<sup>80</sup> Id. at 13 (“Some courts have found that they derive internal efficiencies from e-filing and thus do not charge fees. Under this “no fee no vendor” model, the court provides funding from its budget.”).

<sup>81</sup> OASIS LegalXML Court Filing Technical Committee, ECF LegalXML Quickstart at 2.

<sup>82</sup> Id. at 14.

<sup>83</sup> John T. Matthias. E-Filing Expansion in State, Local, and Federal Courts (2007) at 35.

allowing the court to maintain control over the filing mechanism and offer e-filing service to some or all users for free, with the costs recovered through savings from operational efficiencies. Finally, in the “vendor-hosted” model the court contracts out both the front end and the back end to a third-party vendor. Under this model, the third party controls the entire e-filing system and typically charges user fees for the service.

Because e-filing requires many different systems to communicate with one another, interoperability standards can help simplify the situation. Complex systems where multiple agencies and EFSP’s are able to e-file and retrieve records from the court can be made possible through the use of interoperability standards, more and more of which rely on open standards.<sup>84</sup> XML (eXtensible Markup Language) is a textual format for documents that can be read by computers and typically is made up of a hierarchy of individual elements, each made up of tags, elements, and content. XML has been endorsed as the basis for a common communications standard in justice by multiple organizations.

The OASIS Legal XML Electronic Court Filing Technical Committee has been one of the organizations dedicated to creating XML based standards for the transmission of legal documents.<sup>85</sup> They are responsible for a series of Electronic Court Filing (ECF) standards: from ECF 1.0 in 2000 to ECF 4.0 in 2008.<sup>86</sup> ECF 3.0 marked a change to using more a more expressive XML schema language than the earlier DTD and used GJXDM.<sup>87</sup> ECF 4.0 moved on from GJXDM to the more flexible National Information Exchange Model (“NIEM”).<sup>88</sup> NIEM was created in 2005 to allow for information exchange between a wider variety of domains;<sup>89</sup> it is designed to improve information sharing between organizations involved in justice, security, emergency, and intelligence<sup>90</sup> and is the model is used in ECF 4.0.

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<sup>84</sup> Position Paper on The Emergence of E-Everything. Conference of State Court Administrators. December 2005. Page 14.

<sup>85</sup> <http://www.oasis-open.org/committees/legalxml-courtfilling/charter.php>.

<sup>86</sup> James E. Cabral Jr. Lessons Learned From the Development and Implementation of the OASIS LegalXML Electronic Court Filing 4.0 Specification. October 1, 2009. Slide 6.

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> Introduction to the National Information Exchange Model (NIEM). February 12, 2007 v0.3 at 1.

See Figure 5 – Staudt’s e-filing model, for a visualization of a comprehensive model for e-filing by self-represented parties presented by Staudt.

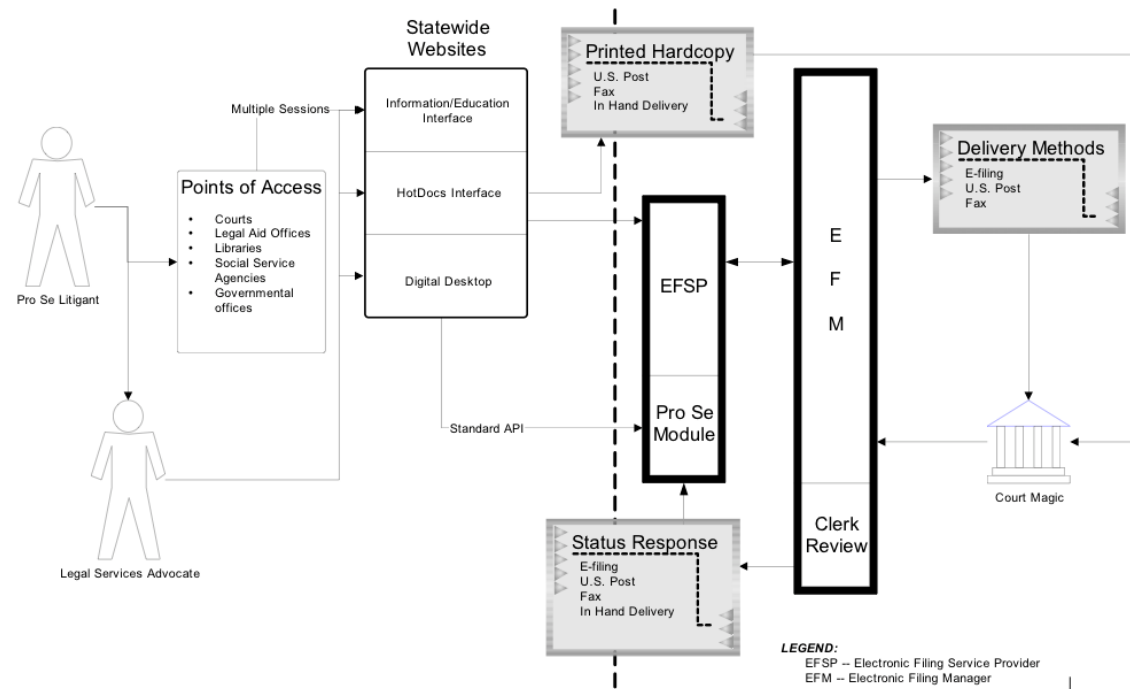


Figure 5 – Staudt’s e-filing model<sup>91</sup>

#### 4. Making E-Filing Fully Accessible to Self-Represented Litigants

In order to ensure that e-filing facilitates access to justice instead of complicating it, and that it achieves the desired cost savings and efficiencies for courts, e-filing must be conceptualized and implemented carefully and with specific consideration of indigent and other self-represented litigants. First, a number of complex and difficult process, procedural and technical issues must be resolved in order to implement e-filing for any litigants or attorneys. Second, even more difficult challenges must be addressed in order for e-filing to adequately serve self-represented litigants.

We are working now on detailed interviews of experts and court staff in states with the best e-filing systems to develop best practices and a strategic model for overcoming these challenges. As noted earlier, this is one area in particular where the MA Trial Court’s careful leadership can serve as an important national model.

<sup>91</sup> Id. at 8.

While our work is ongoing, we have developed the following basic framework to inform our analysis of key challenges and solutions for e-filing implementation. In addition to conducting new interviews, we have reviewed previous research, including a 2003 approved set of Standards for Electronic Filing Processes approved by the Conference of State Court Administrators (“COSCA”) and NACM,<sup>92</sup> Chicago-Kent professor and A2J Author expert Ron Staudt’s White Paper on Self-Represented Litigants and Electronic Filing,<sup>93</sup> and SRLN’s 2008 best practices document.<sup>94</sup>

**Statutory or Rule Restrictions:** Some states have found their e-filing implementation efforts complicated by statutes or court rules that require particular types of signatures, verifications or notarization on certain filings. We have not attempted to catalog which, if any, Trial Court filings may be subject to these sorts of complications. If there are any, the solution may sometimes require changes to the law or rule or may be solved in other ways in some cases. We discuss signatures and notarization requirements in turn below.

**Signatures:** In a paper-filing world, many documents need to be signed by either the litigant or their attorney before they can be filed with the court. Court clerks check documents for necessary signatures but ordinarily do not attempt to authenticate them, leaving it up to the parties to challenge the authenticity of a signature.<sup>95</sup> Electronically filed documents, particularly those created electronically through a system like A2J Author, may not include signed pieces of paper. There are, however, several alternatives that may be used to satisfy a signature requirement.

In order of increasing security, an e-filing system could: use a digital image of a signature, depend on the account access protections of the e-filing system itself, or require a digital signature authenticated by a commercial service.<sup>96</sup> A digital image of a signature placed onto a digital form seems most analogous to a paper signature, but is actually much less secure because of the ease of duplicating a digital signature image. Substituting the access and authentication protections of the e-filing system, on the other hand, is a much safer option. It can be even more secure than a traditional paper signature because it is usually more difficult to obtain someone’s password than it is to forge a signature.<sup>97</sup> Commercially authenticated digital signatures are the most secure method, but they are also more complicated, conflict more with routine law office procedures, and are less inaccessible to self-represented filers.<sup>98</sup>

If the authentication protections of the e-filing system are used to constitute the electronic signature, consideration must be paid to the details of the e-filing system to ensure that the signature is valid. The four common elements of a valid electronic signature are

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<sup>92</sup> See Ronald W. Staudt. White Paper Self-Represented Litigants and Electronic Filing (2003) at 4-5.

<sup>93</sup> Id.

<sup>94</sup> SRLN, Best Practices in Court-Based Programs for the Self-Represented- Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources (2008), available at [http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best\\_practices\\_7-08.pdf](http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best_practices_7-08.pdf).

<sup>95</sup> Alan Carlson. JMI Electronic Filing and Service- An Evolution of Practice. 2004 at 31.

<sup>96</sup> Id. at 31-32.

<sup>97</sup> Id. at 32.

<sup>98</sup> Id.

authentication, capture of intent, binding of the signature to the document, and integrity of the document.<sup>99</sup> E-filing systems that rely on electronic signatures should be designed and constructed with these elements in mind.

Typically, an e-filing system ensures authentication by using a secure identification process during user registration. Properly capturing user intent to sign requires that an e-filing system make clear to the user that he or she is, in fact, formally signing the document through the digital means provided. To meet the binding requirement, an e-filing system must electronically associate or incorporate the signature to or in the filing in a durable way. Finally, ensuring integrity requires that the e-filing system retain the records of the filing, a routine element of any e-filing system. A much more detailed discussion of legal requirements for digital signatures can be found on the mass.gov website.<sup>100</sup>

Even with a well-thought-out electronic signing system, there remains the question of whether or not electronic signatures would be valid for court filings in Massachusetts. The Uniform Electronic Transactions Act (UETA), which Massachusetts has adopted as the MUETA, is a key piece of legislation for electronic signatures in most domains. The Act put electronic signatures on par with their paper equivalents.<sup>101</sup> However, the UETA mainly covers commercial transactions and certain domains are exempted, including court documents. Electronic signatures that would be produced in an e-filing system would not be covered under the UETA (nor, consequently, the MUETA) because § 3(a)-(b) declares that it “shall not apply to a contract or other record to the extent it is governed by ... rule of law governing ... wills, codicils, or testamentary trusts; ... adoption, divorce, or other matters of family law; [or] ... court orders or notices, or official court documents”<sup>102</sup>

Fortunately, although MUETA does not apply to court e-filing, e-signatures still may not present a significant obstacle to e-filing in Massachusetts. E-signature regulations already in

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<sup>99</sup> See Hamel, *The Massachusetts Uniform Electronic Transactions Act: Continuity and Change*, 2004 MASS. L. REV. 41 (Summer, 2004). <http://www.massbar.org/for-attorneys/publications/massachusetts-law-review/2004/v89-n1/case--statute-comments-the-massachusetts>

<sup>100</sup> MASSACHUSETTS EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE, *The Law Pertaining to the Use of Electronic Signatures and Records by Massachusetts State Agencies*, available at [http://www.mass.gov/?pageID=afterterminal&L=5&L0=Home&L1=Research+%26+Technology&L2=IT+Policies,+Standards+%26+Guidance&L3=Legal+Guidance&L4=Electronic+Signatures,+Contracts+%26+Records&sid=EOAF&b=terminalcontent&f=itd\\_guidance\\_legal\\_esignatures\\_records\\_law&csid=EOAF#5](http://www.mass.gov/?pageID=afterterminal&L=5&L0=Home&L1=Research+%26+Technology&L2=IT+Policies,+Standards+%26+Guidance&L3=Legal+Guidance&L4=Electronic+Signatures,+Contracts+%26+Records&sid=EOAF&b=terminalcontent&f=itd_guidance_legal_esignatures_records_law&csid=EOAF#5) (including the need to ensure compliance with laws regarding privacy, confidentiality, accessibility, records conservation, preservation of publications, and public records; and recommendations that an electronic system be accurate, secure, auditable, information-complete, capable of demonstrating intent, and exhibit a contextually reasonable level of care).

<sup>101</sup> Uniform Electronic Transmission Act, 15 U.S.C. § 7001(a) (2010), available at [http://www.law.cornell.edu/uscode/html/uscode15/usc\\_sec\\_15\\_00007001----000-.html](http://www.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00007001----000-.html) (providing that “Notwithstanding any ... rule of law ... with respect to any transaction in or affecting interstate or foreign commerce— (1) a signature ... relating to such transaction may not be denied legal effect ... solely because it is in electronic form.”).

<sup>102</sup> Uniform Electronic Transmission Act, 15 U.S.C. § 7003(a)-(b) (2010), available at [http://www.law.cornell.edu/uscode/html/uscode15/usc\\_sec\\_15\\_00007003----000-.html](http://www.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00007003----000-.html); Massachusetts Uniform Electronic Transmission Act, Mass. Gen. Laws, ch. 110G, § 3(b), available at <http://www.mass.gov/legis/laws/mgl/110g-3.htm> .

use in commerce may be sufficient to provide an adequate legal basis for e-signing e-filed court documents.<sup>103</sup> For example, the federal e-filing system has found it sufficient to require that users sign an agreement stating that pleadings they e-file are equivalent to the signed documents required by FRCP 11(a).<sup>104</sup> The Massachusetts version of FRCP 11(a), contains a similar requirement that a party (or their attorney) “shall sign his pleadings and state his address, telephone number, and e-mail address if any ... [and] need not be verified or accompanied by affidavit.”<sup>105</sup> Thus, it may be sufficient for Massachusetts to follow a similar strategy. There is some support from courts in Massachusetts for accepting signatures in forms other than traditional pen and paper.<sup>106</sup> In the absence of a specific statute or regulation stating otherwise, there are strong arguments that electronic signatures are valid.<sup>107</sup> However, we are continuing our research in this area to explore both the possibility of specific legal obstacles in Massachusetts and effective strategies for addressing the issue in other states that have adopted e-filing.

**Notarization:** It is unclear at this stage of our research what actually constitutes a valid e-notarization, and more research needs to be done, especially concerning issues such as public/private keys, checksums, and encryption; the Model Notary Act of 2002 and the Uniform Real Property Electronic Recording Act (URPERA). Even in the area of commerce, over which the UETA presides, the status of electronic notarization is unclear. Although the UETA recognizes electronic notarization as valid, it fails to define electronic notarization.<sup>108</sup> In one case, the Massachusetts Appeals Court held that a stamped facsimile of a notary’s signature was sufficient and a handwritten signature is not inherently more reliable.<sup>109</sup>

## 5. Specific Barriers to Self-Represented Parties’ Use of E-Filing

Self-represented parties face a number of unique challenges to using e-filing systems. These often include, among others:

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<sup>103</sup> Bradley J. Hillis, *The Digital Record: A Review of Electronic Court Filing in the United States*, 2 J. APP. PRAC. & PROCESS 319, 325 (“court e-filing, do[es] not need any new laws to succeed; contract rules developed for trading partners and electronic data interchange provide sufficient legal support for e-filing with electronic signatures”).

<sup>104</sup> *See id.* (“Prior to e-filing, attorneys sign an agreement that e-filed documents are the equivalent to documents personally signed as required by rule 11 of the Rules of Civil Procedure.”).

<sup>105</sup> Mass. Civ. P. R. 11(a), available at <http://www.lawlib.state.ma.us/source/mass/rules/civil/mrcp11.html>.

<sup>106</sup> *See e.g.* *Providence Granite Co., Inc. v. Joseph Rugo, Inc.*, 362 Mass. 888 (Mass. 1972) (holding that a telegram was sufficient to show a signed contract under the statute of frauds); *Com. v. Johnson*, 32 Mass.App.Ct. 355 (Mass.App.Ct.,1992) (holding that a stamped facsimile of a notary signature is not inherently less reliable than a handwritten signature); *i.Lan Systems, Inc. v. Netscout Service Level Corp.*, 183 F.Supp.2d 328 (D.Mass., 2002) (holding a click-wrap agreement for a software license to be valid in Massachusetts law).

<sup>107</sup> *See supra* note 100 (stating that “In summary, absent some specific statutory or regulatory language to the contrary, electronic signatures and records used by state agencies and showing the signer’s identity and intent to sign are probably valid”).

<sup>108</sup> Daniel J. Greenwood, *Electronic Notarization: Why It’s Needed, How it Works, and How It Can Be Implemented to Enable Greater Transactional Security*, Massachusetts Institute of Technology (2006).

<sup>109</sup> *See Johnson*, 32 Mass.App.Ct. at 356-57 (finding that “the potential for falsification of the oath in either case is the same. ... Second, ... the Legislature’s failure to specify that a personal signature was not required, as stated specifically in other statutes, [is] not a reason for concluding that a handwritten signature [is] required”).



- Only attorneys are eligible to sign up and use the system
- Systems require credit cards, bar numbers, etc., to register for use
- Systems are complex and difficult for laypersons to use
- Support may be lacking for non-English speakers or those with disabilities
- Self-represented litigants lack the necessary equipment, such as scanners or pdf-creation software (or even access to computers), to use the system
- Indigent parties cannot afford the user fees
- Waivers of user and statutory filing fees, if allowed, cannot be processed and resolved through the e-filing system
- Mandatory e-filing systems do not have a manual filing option for indigent users

Failure to address these challenges when designing and building an e-filing system is likely to make the system worthless to most or all self-represented filers and to lose the efficiency benefits the system is capable of achieving -- particularly the reduced staff time to deal with self-represented litigants. Adequate solutions are possible for most of these difficulties, though the experience of courts to date suggests these challenges are serious and daunting. As Ron Staudt urges in his *Self-Represented Litigants and Electronic Filing White Paper*, courts should be mindful of self-represented litigants and even involve them in the process of developing e-filing systems to reduce the risk of creating new barriers to access the justice system.<sup>110</sup> From a cost-benefit standpoint, overcoming these challenges need not create significant additional costs above the already ongoing development of the e-filing system, particularly if the solutions are thought through and developed early on as the system is being designed and built.

*Eligibility, Registrations and Accounts:* Obviously, e-filing must be available to self-represented parties as well as attorneys. Registration should be simple and should not require, or should have an exception to any requirement for, credit card numbers, attorney bar numbers, etc. Users should be able to create a secure, personal account in a straightforward, simple manner. Staudt recommends that systems allow users to have a persistent personal case account for all their court interactions.<sup>111</sup> In his view, indigent self-represented litigants may often be “repeat players” who may be involved with the court regarding several issues over an extended period of time.<sup>112</sup> Thus systems should permit users to have an identifiable, durable account on the court’s Internet presence that maintains records of prior filings and documents, and provides information on the status of the user’s court interactions and actions.<sup>113</sup> Secure access and authentication requirements for accounts also will help ensure that an e-filing system meets the requirements for electronic signatures.

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<sup>110</sup> Ronald W. Staudt. *White Paper Self-Represented Litigants and Electronic Filing*. 2003. Page 13.

<sup>111</sup> *Id.* at 12.

<sup>112</sup> *Id.* at 9.

<sup>113</sup> *Id.* at 12.

*Simple, Clear Interfaces and Operation:* To be accessible to all users, e-filing systems must be simple, clear and easy to use, even for the most technically and legally unsophisticated litigants. Unlike lawyers and law firms, self-represented users will not have the benefits of training in how to use the e-filing system or frequent experience with it. The system must be web-based and accessible through common web browsers.<sup>114</sup>

E-filing systems can have either a single, simple interface and function for all users, or one interface and process for attorneys and a separate, simpler version for self-represented filers. Staudt advocates a specialized self-represented interface for the e-filing system,<sup>115</sup> one that is simple and straightforward, exhibiting “ATM-like simplicity with one task at a time displayed in simple screens with clear and few options.”<sup>116</sup> Another way to ensure that the e-filing interface and system are simple and straightforward enough for all members of the public, including self-represented litigants, is to include plain language review and user testing and feedback throughout the design process.<sup>117</sup> Ease of use for self-represented filers is critical to minimize support costs – clerks answering questions, dealing with bungled filing attempts, etc. – that could otherwise erode the substantial efficiencies and cost-savings that e-filing can bring.

Even with clear and simple interfaces, some self-represented users may be unable to use e-filing systems because of limited abilities to read and write, because they do not speak English or because they have vision disabilities.<sup>118</sup> Fully accessible e-filing systems will provide basic user instructions and filings screens in multiple languages and, in the best case, through audio and/or video means as well as text. A related means of achieving a simpler and more accessible user experience for e-filing systems would be for them to utilize so-called “soft” interfaces such as A2J Author-created interviews to help guide self-represented users through the steps of e-filing.<sup>119</sup> The automated interview approach to a self-represented interface can help overcome complexity and ease of use issues as well as limited literacy.<sup>120</sup>

*Guided Interview/Automated Forms and E-Filing Integration:* An especially important mechanism for facilitating e-filing by self-represented parties, and a key component of a comprehensive court approach to using technology to improve access to justice, is to integrate the Trial Court’s upcoming e-filing system with the output of any A2J Author-type interview and form creation programs provided by the Trial Court or by Massachusetts legal aid organizations.

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<sup>114</sup> SRLN, Best Practices in Court-Based Programs for the Self-Represented- Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources (2008) at 50, available at [http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best\\_practices\\_7-08.pdf](http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best_practices_7-08.pdf).

<sup>115</sup> Id. at 12.

<sup>116</sup> Id. at 11.

<sup>117</sup> Electronic Filing Processes (Technical and Business Approaches), available at the National Center for State Courts web site at [http://www.ncsconline.org/d\\_tech/standards/Documents/pdfdocs/Recommended\\_Process\\_standards\\_02\\_26\\_03.pdf](http://www.ncsconline.org/d_tech/standards/Documents/pdfdocs/Recommended_Process_standards_02_26_03.pdf).

<sup>118</sup> Id.

<sup>119</sup> Id. at 13.

<sup>120</sup> Ronald W. Staudt. All the Wild Possibilities- Technology that Attacks Barriers to Access to Justice (2009) at 1142.

Staudt, SRLN and others have endorsed the need to integrate such systems.<sup>121</sup> The Trial Court itself has already focused on the important benefits this integration can achieve and made it a key component of the Court's collaboration with the MA LSC-funded legal groups in the recent TIG application, which notes the importance of solutions to "the complexities involved in making e-filing an accessible component of a document assembly module for self-represented litigants."<sup>122</sup>

The details behind linking A2J Author interview results directly to e-filing systems is an area that requires considerable further research and that is one express focus of the recently submitted LSC TIG proposal. Based on our preliminary research, it appears that there are two main routes to e-filing A2J Author interview results. The first, and most obvious, would be to e-file the document assembled by the HotDocs document assembly system. Some of the disadvantages of this approach include the costs of HotDocs licensing fees, and the need to develop HotDocs templates to direct the assembly process. The other method is to transform the results (an xml, .anx file), with an extensible stylesheet language transformation (a .xsl file), to produce an xml file that is readable by the court's e-filing system.<sup>123</sup> E-filing initiatives that seek to incorporate A2J Guided Interviews, such as the one in Vermont, may be good sources for further insight into this area.<sup>124</sup> One of our areas for additional research is to examine various existing court and vendor CMS's to gain a better understanding of what features are best to have in case management systems to ensure easy integration for e-filing.

*Access to Computers and Other Equipment:* Even with the simplest of interfaces and easy to use filing procedures, some significant number of self-represented litigants are likely to be unable to engage in e-filing because they do not have access to a computer. Others who do have computer access at home or in a public place like a library may still lack access to equipment, like a scanner and pdf-creation software, needed to digitize their document for e-filing (assuming no integrated system for A2J Author digital output to feed directly into the e-filing system). Courts that want to ensure the maximum use of e-filing by self represented parties need to ensure that there are e-filing computers, or even self-help kiosks, in courthouses and clerk's offices.<sup>125</sup> Clerk's offices also may need to be equipped with scanners to scan paper documents into the e-filing system, or court staff available to scan and file such documents for those who are unable to do so for themselves.<sup>126</sup>

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<sup>121</sup> See SRLN, Best Practices in Court-Based Programs for the Self-Represented- Concepts, Attributes, Issues for Exploration, Examples, Contacts, and Resources (2008) at 50, available at [http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best\\_practices\\_7-08.pdf](http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/best_practices_7-08.pdf).

<sup>122</sup> Massachusetts Justice Institute, Inc, LSC TIG proposal, submitted May 2010 at 3.

<sup>123</sup> How to setup A2J Author® on your own server and How to process the answer file received from A2J Author® using PHP5/SimpleXML and XSL. Available at <http://www.a2jauthor.org/drupal/?q=node/157>.

<sup>124</sup> Ronald W. Staudt. All the Wild Possibilities- Technology that Attacks Barriers to Access to Justice (2009) at 1139.

<sup>125</sup> Once the Trial Court enhances the accessibility and navigability of its web site, simple and prominent links to the e-filing system can allow self-represented filers to reach and use the e-filing system from any other location where computers are available, such as homes, libraries and shelters.

<sup>126</sup> Electronic Filing Processes (Technical and Business Approaches), available at the National Center for State Courts web site at [http://www.ncsconline.org/d\\_tech/standards/Documents/pdfdocs/Recommended\\_Process\\_standards\\_02\\_26\\_03.pdf](http://www.ncsconline.org/d_tech/standards/Documents/pdfdocs/Recommended_Process_standards_02_26_03.pdf).

*User or Convenience Fees, Statutory Fees and Waivers:* In its 2005 Report, the Conference of State Court Administrators recognized that “court administrators must also ensure that waiver provisions exist for the indigent so that the virtual courthouse is equally accessible to all users.”<sup>127</sup> SRLN’s recommendations for e-filing systems also endorse the need to ensure no fees or integrated fee waivers for self-represented filers and to maintain a penalty-free manual filing option.<sup>128</sup> For example, in 2008 Colorado expanded its developing e-filing system to include self-represented parties and provided e-filing and e-serving services free of charge to litigants deemed to be indigent under Colorado court rules.<sup>129</sup>

One threshold issue is that e-filing systems must be designed and built in anticipation of waivers. In vendor-operated systems where the vendor’s compensation is structured around user or convenience fees, the contract between the court and the vendor must be clear and specific up front as to what waivers will be allowed and how they will be processed. Another challenge is that self-represented litigants who would have been required to pay the statutory filing fee if they filed manually in a courthouse may not have a credit card, PayPal account or similar means to pay that fee as part of an online process.<sup>130</sup> Either the litigant will be unable to use the e-filing system or, if waivers are granted that would not have occurred in the pre e-filing world, the Court will lose filing revenue.<sup>131</sup>

Our initial information suggests that implementing this waiver has been complicated and less than fully successful and we are gathering more details. Prior court experience with e-filing systems suggests that architecting and managing the processes and work flow around fee waivers and alternative payment systems can be daunting, and likely has led many of those systems to fail to serve the needs of low income or indigent filers. Claudia Johnson, the e-filing expert at probono.net, reports that one of the major difficulties that has thwarted effective implementation of e-filing for indigent self-represented parties in several states thus far has been this difficulty in building into the e-filing system mechanisms for indigent users to document their financial status and request fee waivers (e.g., the MA Affidavit of Indigency), processes to review and approve those requests if necessary and mechanisms to then allow e-filing without any payment.

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<sup>127</sup> Conference of State Court Administrators, Position Paper on The Emergence of E-Everything (December 2005) at 5-6, available at <http://cosca.ncsc.dni.us/WhitePapers/E-EverythingPositionPaperApprovedDec05.pdf>.

<sup>128</sup> Id. at 50.

<sup>129</sup> Colorado Judicial Branch, Colorado District Court e-file and serve transaction fees increase; Colorado Legal Services and indigent litigants to receive services at no charge, August 15, 2008, available at [http://www.courts.state.co.us/Media/Press\\_Docs/LNFS\\_Fees\\_PR\\_FINAL.pdf](http://www.courts.state.co.us/Media/Press_Docs/LNFS_Fees_PR_FINAL.pdf).

<sup>130</sup> See Alan Carlson, JMI Electronic Filing and Service- An Evolution of Practice (2004) at 32.

<sup>131</sup> Position Paper on The Emergence of E-Everything. Conference of State Court Administrators (December 2005) at 15. In addition, online credit card payments at the time of the e-filing for any parties may conflict with local or state laws in some states that prohibit courts from charging litigants credit card processing fees. Id. In jurisdictions where this is the case, courts sometimes contract with a third party vendor that processes the credit card payment, charges the user a sufficiently large surcharge and passes on the original base fee to the court. Alternatively, courts may process the transaction themselves or through a government portal and absorb the credit card fees on the theory that the increased convenience will increase payment rates. Id.

These workflows can become complicated. If the acceptance of a document depends on payment of the fee in advance, and waivers either require advance approval or, where automatic, are sometimes subsequently reversed, the e-filing system will need to accommodate these decisions and change the filing status of the accompanying document accordingly. If the official filing date depends on payment of a fee or approval of a waiver, complications in either can end up affecting the filing date.<sup>132</sup> In addition, if court practice is that an accepted indigency determination/fee waiver for one filing applies to subsequent filings, the e-filing system must be able to recognize and apply the recurring waivers.<sup>133</sup> Staudt's account system recommendation seems particularly apt to handle this situation.<sup>134</sup> Whatever the specifics, it is clear that all possible options, court processes and workflows must be sorted out in advance and fully mapped to features of the e-filing system.

As we advised you in our letter in support of the Massachusetts LSC groups and Trial Court's partnership proposal for an LSC TIG grant, the Cyberlaw Clinic is committed to continuing to assist the Trial Court in addressing these difficult e-filing issues and, in particular, to helping develop sound policies, processes and procedures for ensuring that self-represented litigants have full access to and ability to use the Court's eventual e-filing system. This strategic planning assistance will include, among the other issues identified above, developing proposed procedures for fee waivers and approvals for appropriate indigent litigants, simple and accessible interfaces and functions for the Trial Court's e-filing system, and integration of Court or legal aid group guided interview/automated form systems into the Court's CMS and e-filing systems.

## D. Individualized Human Assistance

### 1. Overview

Individualized human assistance refers simply to providing direct, person-to-person assistance to court users through a variety of different communication media, typically email or live web chats, but conceivably also including VOIP or even video chat. While automated interviews and web materials seek to leverage technology by creating reusable resources that can be accessed thousands of times without additional human labor, individualized human assistance technologies seek instead to leverage technology to efficiently direct human labor where it is needed, and to create new forms of direct assistance deliverable by a broader spectrum of service providers. Email and live web chats can open up direct assistance to more

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<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Ronald W. Staudt. White Paper on Self-Represented Litigants and Electronic Filing (2003) at 9.

service providers because they do not require physical presence, and because they are to some degree asynchronous—allowing providers time for research, and permitting them to help in small pieces when they are available. Technologies facilitating individualized human assistance can best be used as complements and support to other technologies such as automated interviews and web materials because they can help people surpass roadblocks while using those technologies to help themselves.

Most Internet users will already be familiar with the kinds of technologies that can assist individualized human assistance. For example, the simplest method is to provide an email address to which people can send questions. That inbox associated with that email address can be monitored by an individual responsible for forwarding requests to volunteer or paid specialists, who respond to the email and continue working with the client. Alternatively, automated systems can be used to forward requests to specialists based on their availability, eliminating the need for a human being to triage income requests.

Systems to provide immediate help via live web chats that are embedded in a web page, while somewhat more complex, will still be familiar to most Internet users. In this kind of system, the organization's web page typically has a button labeled something like “live help”. When a user presses that button a window will pop up, where they can type questions and get responses from a specialist. The specialists providing answers must log into the system ahead of time to indicate their availability. As requests from users come into the system they are automatically assigned to a specialist who can immediately start communicating with the user via typed messages.

For the most part, access-to-justice initiatives have limited themselves to systems such as the two just described. It is also worth noting that technology already exists to provide voice and video chats over the Internet, and as those technologies become more standardized, easier to use, and more universally available on client's computers, individualized human assistance could be provided through those channels as well

## 2. Main Steps for Development

Before developing a system for individualized human assistance, an organization must answer a number of preliminary questions about the kind of system it wishes to set up. The threshold questions that must be answered relate to the system of delivery, the delegation of responsibility among different individuals, and the scope of the information to be provided:

- Determine the means of communication through which assistance be delivered:
  - Web chat
  - E-mail
  - Telephone
  - VOIP
  - Online forum

- Identify volunteers and/or paid personnel who will be responsible for staffing the service:
  - Staff attorneys, Americorps attorneys, paralegals
  - Americorps VISTA volunteers
  - Local law librarians
  - Law school students
  - Information management students
  - State bar (some attorneys that can't engage in full pro bono representation might be willing to staff LiveHelp from their desk)
- Determine the size of the initial specialist pool (large or small). Determine whether specialists will have fixed schedules. Determine whether they will be paid or volunteer.
- Identify the scope of information that specialists will provide (legal information versus legal advice). Differentiate areas in which the court (rather than legal aid organizations) is in the best position to provide certain types of information.

*The means of communication:* Assistance can be delivered through (a) web chat, (b) email, (c) telephone, (d) VOIP, or (e) online forum. As an initial step, the court will need to identify the means through which communication will be delivered. This will typically be a choice between email or live web chat. Synchronous modes of communication such as live web chats (as well as VOIP and video chats) have important benefits in that they can help users make progress immediately, and reduce the chances that they get frustrated and give up with a feeling that they just do not have the capacity to navigate the justice system. Asynchronous modes, on the other hand, may reduce costs to the extent that they smooth spikes in demand, and make staffing needs more predictable.

Regardless of how the court ultimately answers this question, it should emphasize to litigants that the information provided is not intended to take the place of consulting an attorney. As with all technology aided assistance, this is an important disclaimer to avoid leading litigants into a false sense of confidence about the scope of information they are receiving.

*The scope of information:* Individualized human assistance can focus on (i) assistance navigating the Trial Court's web sites or using any of the resources there, such as finding information on particular courts or completing a guided interview and automated form program; finding legal resources and conducting research, (ii) general legal information, (iii) unbundled legal advice, (iv) assistance assessing options, or (v) translation services. Because the court must remain neutral within the judicial process, it will likely focus on providing general legal information and assistance navigating court resources.

The way in which the court defines the scope of information it wishes to provide will have important implications for the means of communication chosen. For example,

synchronous modes may be the most effective and efficient choice for basic procedural or technical issues, while asynchronous modes may be more appropriate for issues that require thorough research. This choice also affects the types of specialists who are recruited to staff the service (i.e., does the person have to be a practicing lawyer to answer the question, what type of legal knowledge is necessary, etc.).

*Staffing the service:* Staffing questions will include asking (i) who is qualified to provide the information needed, and (ii) should these positions be paid or voluntary. While law school students or paralegals may be utilized to answer basic questions, it will be important to have qualified attorneys on staff to supervise them and address more complex legal questions. The court could also conceivably enlarge the pool of those interested in contributing their time and knowledge by offering a degree of flexibility in their schedules or giving them more time to research questions. This effect could reduce costs and increase the volume and scope of services provided. A typical approach to this problem is to provide live help during certain hours, and to automatically switch to email help when live help is not available.

### 3. Useful Examples

The highest-profile work being done in this area is ProBonoNet's LiveHelp project, which uses the LivePerson commercial software package to deliver the service. LivePerson requires a monthly per-seat licensing fee of \$150, and the typical program starts with one or two seats. Pro Bono Net offers trainings on best practices for setting up and running a system.

In Massachusetts, the Trial Court Law Libraries run an Ask a Law Librarian program, which allows website visitors to submit questions via web chat, email, AIM, Google Talk, MSN Messenger, or Yahoo Messenger. In addition, LiveJustice (a project of the Legal Assistance Corporation of Central Massachusetts), provides elderly and low income people with online email exchanges with lawyers or paralegals who can give advice (only attorneys can give legal advice), explain the steps needed to solve a legal problem, or help find additional legal representation. When the Trial Court moves to expand the assistance available through these kinds of technologies, it likely will make sense to coordinate with these already existing efforts.

A final evaluation of the LiveHelp pilot projects researched and written by Richard Zorza, which included online surveys of both LiveHelp chat users and regular website users, observation of test LiveHelp users, phone interviews with LiveHelp users, review of chat texts, surveys of operator-specialists, and interviews with program managers, concluded that LiveHelp was “a highly valuable addition to the access to justice delivery system”:

The evaluation found that the new service is growing rapidly, has high satisfaction levels, seems to more effectively provide useful information about the law and legal rights to users, and reaches effectively into the legal aid target community.

It is particularly significant that, compared to users who use just the website, LiveHelp users have very significantly higher satisfaction levels. They understand and accept the limitations upon the assistance that can be given.



It is also significant that website users and LiveHelp users have approximately the same user demographics – in other words the service is reaching the people that need to be reached.

## Appendix A

### Critical A2J Needs That Can be Addressed through New Technologies

We examined a number of substantive and procedural areas in which self-represented litigants appear to struggle the most and ways in which the court can most effectively respond to these critical needs. We have divided these concerns into three broad categories: informing litigants, assessing legal options, and pursuing the case. We also identify generally various actions that courts can take in each of these areas in order to facilitate access to justice by self-represented litigants.

#### Informing Litigants

As an initial step for increasing access to justice, courts can ensure that litigants are provided with readily accessible, up-to-date information and human assistance to ensure that they are adequately informed of court requirements, procedures, and logistical considerations. These resources can take many forms, but typically include some or all of the following elements:

##### *Orientation and General Background Information About the Courts*

- Inform and educate individuals, including self-represented parties, about the court system.
- Inform individuals about the various courts, divisions, and types of cases or disputes.
- Direct individuals to the places on the courts' websites and elsewhere that can help.
- Provide information regarding types of information and resources available for a particular legal problem.
- Provide materials setting forth and answering "frequently asked questions" about logistical and procedural (but not substantive legal) matters.

##### *General Guidance in Navigating the Court Process*

- Provide one-on-one at courthouse or law library (e.g., opportunity to consult with court clerk, volunteer lawyer, law student, et al.) to understand the court process or procedures or how to use the various online technology resources.
- Create a system for online assistance (e.g., LiveHelp) for accessing information, completing forms, using e-filing systems, etc.
- Provide responses to procedural and logistical questions on a website, via email, or by telephone.

## 1. Assessing Legal Options

Before litigants can proceed in pursuing or defending their particular case, they must understand the legal background and import of their particular situation and the alternatives that they can consider.

### *Help Self Litigants Understand Their Specific Situation*

- Provide information for understanding the background of their situation (e.g., what is an eviction proceeding? what happens in a spousal support enforcement proceeding?)
- Help litigants understand what is happening to them and what the steps in the process are.
- Help litigants understand what needs to be done, and what their procedural and court options are

### *Inform Individuals About Alternatives to Litigation*

- Inform individuals about negotiation, court-connected mediation, and settlement options.
- Provide information and resources for exploring those alternatives (e.g., social service agencies, referrals to legal aid organizations, etc.).

### *Inform Individuals About the Decision to Proceed Pro Se*

- Provide information regarding the decision to proceed pro se versus hiring an attorney.
- Help litigants assess their needs, guide them to possible referrals, etc.
- Provide information regarding unbundled legal services (i.e., limited assistance representation where an attorney assists with discreet issues of a legal matter).

## 2. Pursuing The Case

Once litigants decide to proceed without an attorney, the court can assist individuals with basic information regarding the process of pursuing or defending their case. These resources and materials can include:

### *Assist Individuals with the Process of Filing Court Document*

- Assist litigants in understanding which forms are necessary for pursuing their case and how to develop the information required by various common forms and other documents.
- Prepare these forms, documents or other filings/materials in a simple, accessible way.
- Produce these forms in a printed format that will be accepted for filing by the relevant court and clerk. (Include instructions for next steps.)

- Ideally, provide a way to serve opposing counsel electronically from the same system that creates the documents, or a closely connected system, once pleadings are filed
- Ideally, provide a way to e-file any created forms or documents from the same system that creates the documents, or a closely connected system, or at least to output those forms in a format that could feed directly into a court CMS to avoid the cost and inefficiency of clerks manually re-entering the information

#### *Provide Information on Follow-up Events*

- Provide general information and guidance regarding how to deal with follow-up events like conferences, hearings, etc. (e.g., what happen when, how they will be notified, what will happen in the hearing).
- Allow the court to automatically schedule follow-up events in court calendar.
- Provide an opportunity to consult with court clerk, volunteer lawyer, law student, *et al.*, for follow-up questions regarding forms, developments, next steps, etc.

#### *Assist Litigants with Resolution and Enforcement*

- Automatically produce a written judgment (using standardized or automated forms) at the end of hearing and inform parties of next steps regarding enforcement and appeal.

## Appendix B

### Next Steps for a Detailed, Step-by-Step Plan to Develop A2J Interviews

Going forward, the Cyberlaw Clinic could assist the Trial Court in developing a detailed guide that court staff and others could use to begin developing and deploying an A2J interview/form program. The guide would mix a high level overview of issues about which the court should be aware as it implements the program, with specific, step-by-step recommendations on key decisions and protocols that must be addressed along the way. A general outline would include:

*Methodology:* In formulating those recommendations we would draw on four sources:

- A further literature review of the limited pool of written best practices, case studies and so forth;
- In-depth interviews with multiple people in each of 3-5 other state court systems with the most advanced and successful programs;
- In-depth interviews with representatives of legal aid organizations that have been particularly active in developing and using guided interviews and automated forms; and
- Independent compilation of data from probono.net's NPADO servers and other sources to help develop discrete implementation guidance. For example, we can review all of the 1200+ court forms that currently have been developed with guided interviews and are hosted on NPADO servers to help identify the most frequently automated types of forms and legal issues

*Contents:* The overview and recommendations we would develop would include:

- Turnkey guide to developing a court program for guided interviews, with sequential checklist of actions to be taken at each stage (examples of granularity would be: "hire interview developer"; "download A2J software and train developer"; "contact NPADO.org to negotiate hosting terms and contract"; etc.)
- Step-by-step instructions for guided interview developers with descriptions of the most effective practices that developers in each court system have found most useful while developing interviews. This would include detailed guidance on how to develop flow charts of interviews, best practices for phrasing of interview questions, most effective coding techniques, and so forth.
- Prioritized list of court forms and procedures to be automated, based on analysis of the database of thousands of forms hosted by NPADO to determine which court forms are most commonly and usefully automated, and based on discussions with Massachusetts courts about their particular needs.
- Estimates of costs including total program cost and costs broken down by program elements: design of interviews and forms, plain language reviews,

training of court personnel, hosting of interviews on NPADO servers etc. Also included here would be a information about how NPADO server costs are typically calculated—i.e. upon number of forms, storage space, bandwidth, or some other metric.

- Estimates of savings based on clerk time saved, improved efficiency through better court preparation, etc.
- Projected development times, including how long it will take to get forms developed and hosted and available to the public, how long training court personnel should be expected to take, how long it will take for substantial usage uptake to occur etc.
- Overall, presentation of the experiences of courts developing and rolling out systems: what they tried, what worked, and what did not.

*Partnerships with law schools, legal clinics and law students:* One of the most important and cost-effective approaches of any guided interview/automated form undertaking could be to engage in partnerships with law schools and clinics to get law students involved on a pro bono basis. Students and clinics could, among other things, help to prepare the decision trees for the judgments that get coded into the guided interviews, help to prepare and test the actual interviews, quality check the resulting forms, etc.

Considerable good work has already been done in this area, such as the Leveraging Law Students and Technology to Meet the Legal Needs of Low-Income People whitepaper that reported on a workshop of experts in the field convened at Chicago-Kent College of Law in 2006. The experts who participated in that workshop shared their experiences pioneering a number of different approaches to involving students with courts and legal aid organizations to develop materials related to access to justice technologies, and to provide services directly to clients through new technological channels. We would build on and expand that work and tailor it to the needs of the Massachusetts A2J project and the capabilities of Massachusetts schools, clinics and students. In addition, we propose to work closely with the Columbia and New York Law School faculty who were involved in the collaboration with the New York courts to determine what worked, what didn't work, how the process could be improved, etc.

In each case we would seek to understand the nature of the program, how it evolved, what kinds of approaches were tried, and lessons learned about what worked and what does not work. With this information we would develop step-by-step recommendations for Massachusetts given its specific needs and work closely to help recruit law school partners and to implement those recommends.

*Collaboration with Legal Services Providers:* As noted elsewhere in this Report, the Trial Court is already partnering with the LSC-funded legal services organizations in Massachusetts in an LSC TIG grant application that would provide funding for, in part, the development of guided interviews and automated forms for a number of forms those organizations commonly use.

Collaboration among the Court and legal aid groups has the potential to be highly beneficial to the Court's access to justice initiative and to allow it to magnify its own efforts. At the same time, collaborations such as these present a variety of challenges that have to be anticipated and carefully managed. Our ongoing work will assess how best to maximize the value of collaborations while minimizing the problems. We will base that evaluation in part on similar collaborations in other states.

## Appendix C

### More Detailed Overview of E-filing

There are numerous approaches to and implementations of e-filing systems, some developed by courts in-house and some provided by a variety of vendors.

An e-filing solution typically involves several subsystems: one or more Electronic Filing Service Provider(s) (EFSP), an Electronic Filing Manager (EFM), and a Case Management System (CMS). EFSP is the component that receives e-filing requests from parties, and passes it on to the EFM. The EFM component receives the requests from the EFSP(s), passes the e-filing request through the review process, and eventually passes the request on to the CMS. The CMS handles the actual docketing of the filing, fulfilling the e-filing request.



See **Figure 4 - Components of an e-filing system** for a visualization of how basic components of an e-filing system relate to one another.

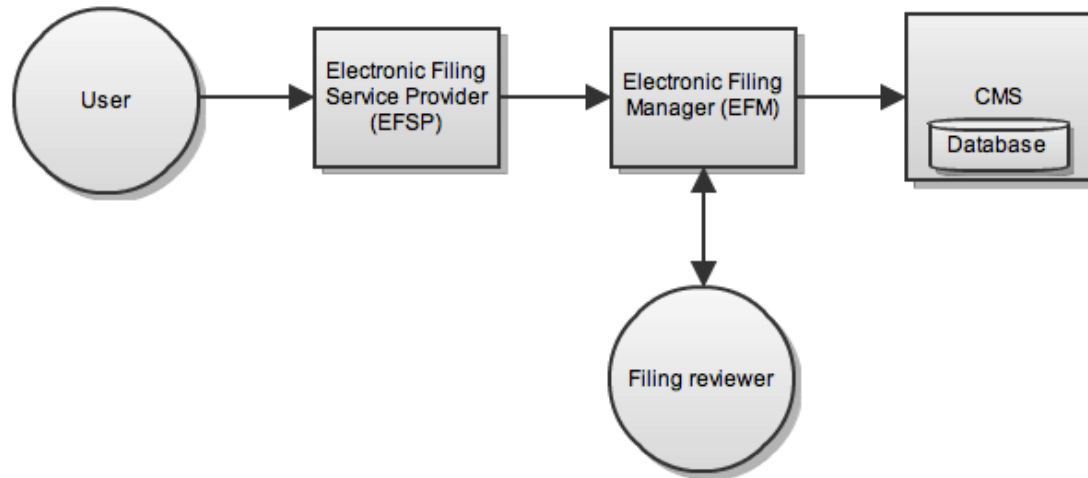


Figure 1 - Components of an e-filing system

### Choices in Implementation

While we recognize that the Trial Court’s e-filing planning is already well underway, we offer as background the following general description of the ways in which a typical implementation of the e-filing components can differ. Once a CMS is in place, there are choices about where the EFSP and EFM will reside and how they will be procured. Although these EFSP and EFM decisions can be nuanced, they largely can be categorized in three models: the “no fee no vendor” model, the “vendor” model, and the “vendor-hosted” model.<sup>135</sup> These divisions are somewhat arbitrary because there are many very different ways to implement an e-filing system. However, we will describe these three models generally in order to establish a big-picture view before examining the more detailed decisions and considerations.

In the “no fee no vendor” model, the court does not use a vendor and implements the entire e-filing system itself, funding the design, procurement and operation of the system from the court’s operating budget.<sup>136</sup> Under this model, the court maintains control over its e-filing system and does not charge user fees. Instead, it can recoup the costs of implementation and operation through savings and efficiencies gained from e-filing or from dedicated items in its

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<sup>135</sup> COSCA, Position Paper on The Emergence of E-Everything. Conference of State Court Administrators. December 2005. Pages 13-14.

<sup>136</sup> Id. at 13.

budget. Courts also could provide a system themselves and implement a usage fee system similar to what is typically used in the vendor models described below.

The “vendor” model involves working with a third-party vendor to provide a front-end for e-filers.<sup>137</sup> The court maintains the backend system that handles the actual case processing and filing. Courts can negotiate with the vendor to establish the details of the fee structure, but it typically involves per transaction fees for e-filers.

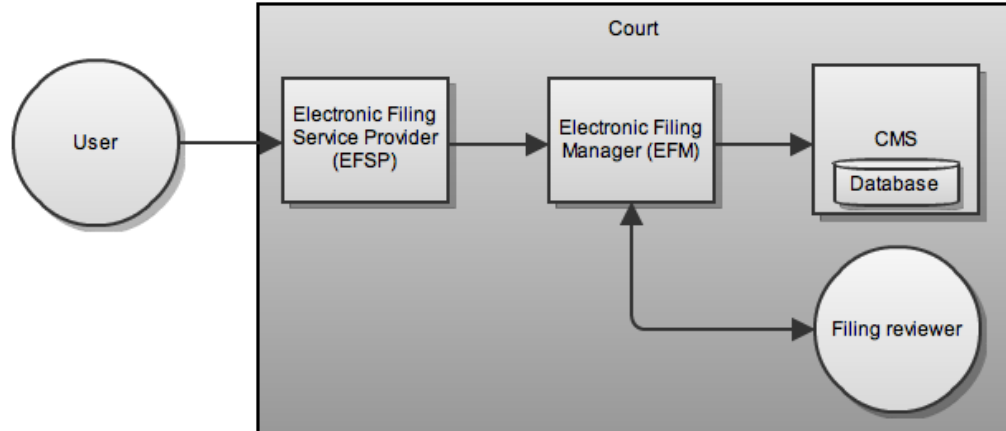
The “vendor-hosted” model takes the “vendor” model even further, contracting out both the front end and the back end to a third-party vendor. Under this model, the third party controls the entire e-filing system. This means that a court must maintain its own backend and synchronize it with the third-party host, or negotiate some way for those without access to the vendor front-end to access filed documents.

See Figure 2 for a diagram of what the three models may look like with respect to the e-filing components discussed above.

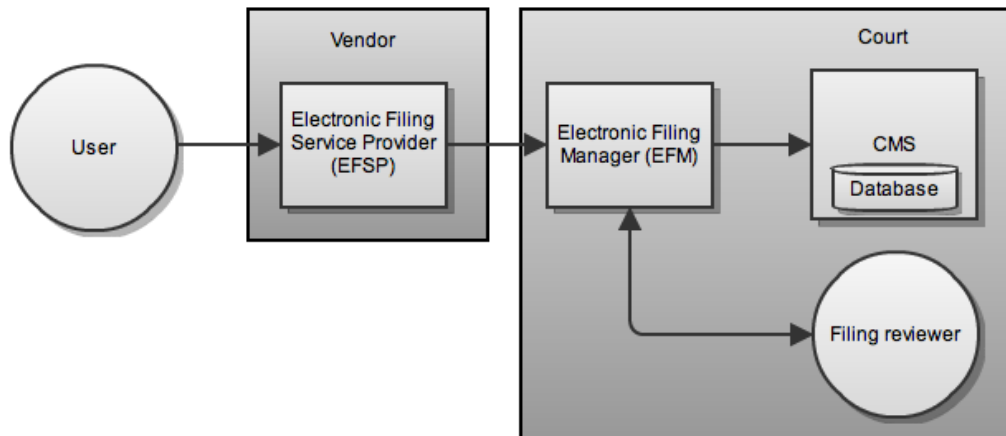
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<sup>137</sup> Id. at 14.

**No Vendor No Fee Model**



**Vendor Model**



**Vendor Hosted Model**

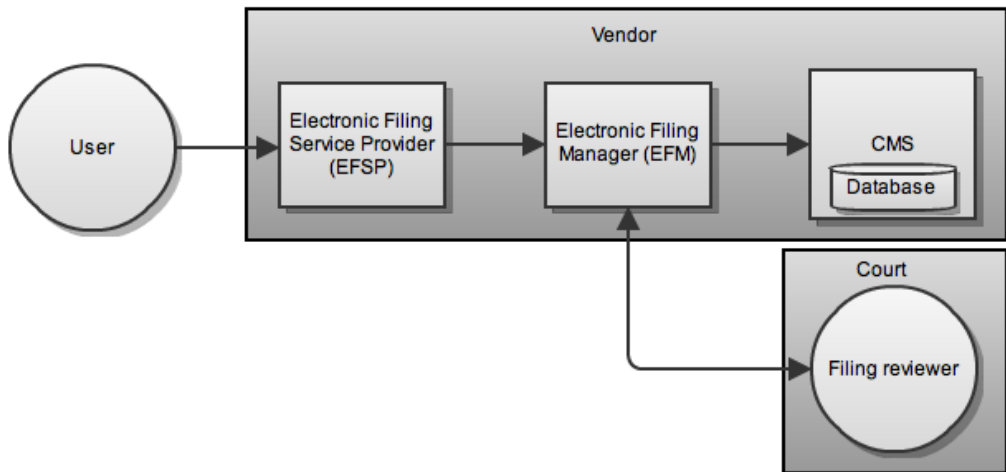


Figure 2 – Three basic e-filing models

## EFSP

An Electronic Filing Service Provider (EFSP) is the main system that prepares and submits court documents for e-filing.<sup>138</sup> This is the portion of the e-filing system with which someone who is e-filing documents would interact. A court could choose to use an EFSP from a third-party vendor such as LexisNexis' File & Serve service.<sup>139</sup> However, third-party vendors typically charge per-transaction fees to the user of the e-filing system.<sup>140</sup> If there are not mechanisms in place to allow filing without fees by self-represented litigants, these charges can reduce the adoption and use of the e-filing system,<sup>141</sup> and limit its use by indigent self-represented litigants. Depending on the system, vendors may maintain their own CMS, which the court will need to sync with in order to keep their own systems up-to-date. A court may also choose to use several EFSP's from various third-party vendors. The competition among vendors will spur them to improve their service and prices, however this advantage is counterweighed by the costs of integrating with multiple vendors.<sup>142</sup>

Alternatively, a court may choose to create the EFSP in-house. This requires a resource commitment to build and maintain such a system. This commitment should not be taken on lightly, because it essentially requires the court to act as a software developer of an EFSP.<sup>143</sup> This approach does, however, carry several advantages. For one, the court maintains control over the filing mechanism and fees charged to users. Creating the EFSP in-house allows a court offer e-filing service for free, with the costs recovered through savings from operational efficiencies.

There is a third option that is a blend of the in-house and third-party strategies. The court can license an EFSP from a third-party vendor and host it in-house.<sup>144</sup> This allows a court to avoid both the hefty implementation and maintenance costs associated with in-house implementations, and the user fees and lack of file control associated with third-party implementations. This approach does have its own disadvantages. The court must integrate the licensed technology with its CMS, and is reliant on the vendor to maintain, update and provide technical support for the EFSP.

## EFM

An electronic filing manager (EFM) manages the filings submitted by the EFSP(s) by accepting new filings, passing them through the review process, and communicating their

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<sup>138</sup> OASIS LegalXML Court Filing Technical Committee. ECF LegalXML Quickstart at 2.

<sup>139</sup> There are numerous third-party vendors for e-filing technology today from which the courts can choose, with LexisNexis' service being one of the better known. See [http://www.ncsconline.org/d\\_tech/vendorlist/vendbyproduct.asp?id=18](http://www.ncsconline.org/d_tech/vendorlist/vendbyproduct.asp?id=18)

<sup>140</sup> John T. Matthias. E-Filing Expansion in State, Local, and Federal Courts (2007) at 35.

<sup>141</sup> Id.

<sup>142</sup> Id.

<sup>143</sup> LexisNexis. E-filing in a multi-vendor environment at 4.

<sup>144</sup> John T. Matthias. E-Filing Expansion in State, Local, and Federal Courts (2007) at 36.

status.<sup>145</sup> While there are many different strategies a court can take with regard to the EFM, choices in CMS and EFSP(s) may limit options in this area. Firstly, the EFM may already be built into the CMS.<sup>146</sup> If this is the case, then in the interest of simplicity, the built-in EFM should probably be used. This may, however, cause difficulties with implementing a full e-filing solution. This is because the EFM needs to interface with the EFSP(s). If the built-in EFM uses a non-standard interface, integration may be expensive or even impossible.

Secondly, depending on the EFSP(s) that are chosen, there may already be a built-in EFM, or a requirement to use a particular third-party's EFM.<sup>147</sup> While this ensures that integration between the EFSP and the EFM will go smoothly, there may be difficulties in integrating the EFM with the CMS. Additionally, this can cause issues with integration in a multiple EFSP solution, because such a solution typically requires a single EFM that can communicate with all the EFSP's.

### Interoperability Standards

Because e-filing requires many different systems to communicate with one another, interoperability standards can help simplify the situation. Complex systems where multiple agencies and EFSP's are able to e-file and retrieve records from the court can be made possible through the use of interoperability standards. If each system is able to communicate in the chosen standard, information can pass easily between the systems. Courts that are building e-filing systems in-house are basing the interfaces more and more on open standards.<sup>148</sup>

XML (eXtensible Markup Language) is a textual format for documents that can be read by computers. Because it is a text based format, it is also human readable. An XML document is normally made up of a hierarchy of individual elements, each made up of tags, elements, and content. A standardized XML format (such as XHTML for the web, and OpenDocument for OpenOffice) can be encoded and decoded by different software systems. This format has been endorsed as the basis for a common communications standard in justice by multiple organizations.

The OASIS Legal XML Electronic Court Filing Technical Committee has been one of the organizations dedicated to creating XML based standards for the transmission of legal documents.<sup>149</sup> They are responsible for a series of Electronic Court Filing (ECF) standards: from ECF 1.0 in 2000 to ECF 4.0 in 2008.<sup>150</sup> ECF 3.0 marked a change to using more a more

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<sup>145</sup> OASIS LegalXML Court Filing Technical Committee. ECF LegalXML Quickstart at 3

<sup>146</sup> Id.

<sup>147</sup> Id.

<sup>148</sup> Position Paper on The Emergence of E-Everything. Conference of State Court Administrators. December 2005. Page 14.

<sup>149</sup> <http://www.oasis-open.org/committees/legalxml-courtfilling/charter.php>

<sup>150</sup> James E. Cabral Jr. Lessons Learned From the Development and Implementation of the OASIS LegalXML Electronic Court Filing 4.0 Specification. October 1, 2009. Slide 6; [http://en.wikipedia.org/wiki/Electronic\\_court\\_filing#LegalXML](http://en.wikipedia.org/wiki/Electronic_court_filing#LegalXML)

expressive XML schema language than the earlier DTD and used GJXDM.<sup>151</sup> ECF 4.0 moved on from GJXDM to the more flexible NIEM.<sup>152</sup>

The Global Justice Xml Data Model (GJXDM) is a model for data exchange between justice organizations.<sup>153</sup> It is comprised of three parts: a data dictionary that defines a common vocabulary for data exchanges; a data model that defines the relationships between different entities in the data; and a reuse repository that allows different organizations to reuse the same vocabulary and relationships.<sup>154</sup> GJXDM was prereleased in 2003, and became a vital technology for the seamless communication of data between justice agencies.<sup>155</sup> Unfortunately, because it was designed to work within the domain of justice and law enforcement, it does not facilitate data exchange with other domains.

The National Information Exchange Model (NIEM) was created in 2005 to solve this problem.<sup>156</sup> It is based on GJDM and is largely similar, but allows for information exchange between a wider variety of domains.<sup>157</sup> The model is designed to improve information sharing between organizations involved in justice, security, emergency, and intelligence.<sup>158</sup> This more flexible model is used in ECF 4.0.

See Figure 3 for a visualization of this evolution of the EFC standard.

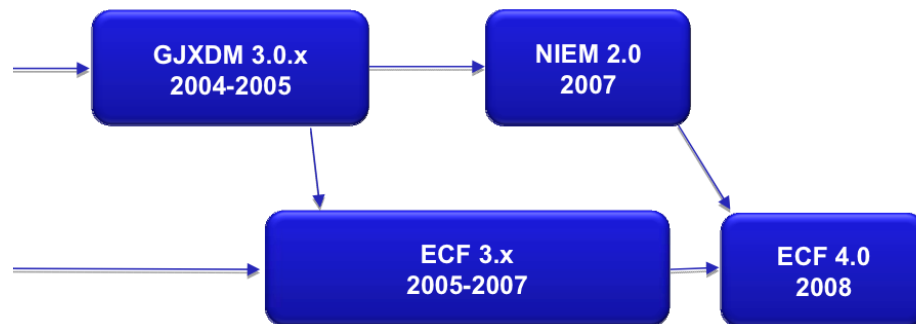


Figure 3 – Evolution of ECF<sup>159</sup>

<sup>151</sup> [http://en.wikipedia.org/wiki/Electronic\\_court\\_filing#LegalXML](http://en.wikipedia.org/wiki/Electronic_court_filing#LegalXML)

<sup>152</sup> Id.

<sup>153</sup> <http://www.newdawn.tech.com/gjxdm2.html>

<sup>154</sup> Id.

<sup>155</sup> <http://www.newdawn.tech.com/gjxdm3.html>

<sup>156</sup> Id.

<sup>157</sup> Id.

<sup>158</sup> Introduction to the National Information Exchange Model (NIEM). February 12, 2007 v0.3. Page 1.

<sup>159</sup> James E. Cabral Jr. Lessons Learned From the Development and Implementation of the OASIS LegalXML Electronic Court Filing 4.0 Specification. October 1, 2009. Slide 6

Interoperability standards are a topic for further investigation. Preliminary research suggests that the ECF 4.0 standard is the most broadly recognized and flexible standard for electronic court filing.