

ITAC E-Filing Workstream

Preview of Findings/Recommendations

January 26, 2022



JUDICIAL COUNCIL
OF CALIFORNIA

Workstream Charge

1. Explore the strengths and weaknesses of current e-filing programs and practices across the state.
2. Explore benefits of statewide EFM solutions inclusive of development opportunities and potential funding sources.
3. Evaluate standardizing e-filing transaction fees across the state.
4. Review e-filing rules and statutes to clarify language and improve consistency across the branch.

Appellate Court Findings and Recommendations

- **Findings:** Across all survey questions the Appellate Courts were neutral to satisfied across all assessed areas:
 - Number of EFSPs
 - Quality
 - Support responsiveness
 - Input into design
 - Current e-filing process from trial court
 - Overall satisfaction
 - Software updates
 - Enhancements
 - Timeliness of changes
- **Recommendation:** Explore addition of another EFSP for Appellate e-filing to be consistent with CRCs

1. Explore the strengths and weaknesses of current *trial court* e-filing programs and practices across the state.

PRELIMINARY FINDINGS AND RECOMMENDATIONS



JUDICIAL COUNCIL
OF CALIFORNIA

Findings: Current CA E-filing at a Glance

- Available in over half of trial courts
- Decisions are made and contracted locally
- 15 trial courts plan to introduce e-filing in next 2 years
- Majority (11) of *new* e-filing courts choose Journal
- Satisfaction varies by provider
- Concern over switching from current EFM provider
- Prior statewide EFM efforts produced benefits but had short-comings

Findings: The State of E-Filing in CA



- Currently in California:
 - 31 courts offer e-filing
 - 27 courts do not offer e-filing
- E-Filing Courts EFM's
 - **Tyler only** courts 19
 - **Journal only** courts 2
 - **Custom** courts 4
 - **Multi EFM Courts** 6
 - Alameda (**Tyler** + **Journal**)
 - Monterey (**Tyler** + **Custom**)
 - Los Angeles (**Tyler** + **Journal**)
 - Orange (**Tyler** + **Custom**)
 - San Diego (**Tyler** + **Custom**)
 - Santa Clara (**Tyler** + **Custom**)

Findings: Courts Without E-Filing

- 15 courts plan to implement e-filing in next two years
 - Journal - 11
 - TBD - 3
 - Tyler - 1
- 9 courts currently have no plans*
- 3 courts did not respond to survey – plans unknown

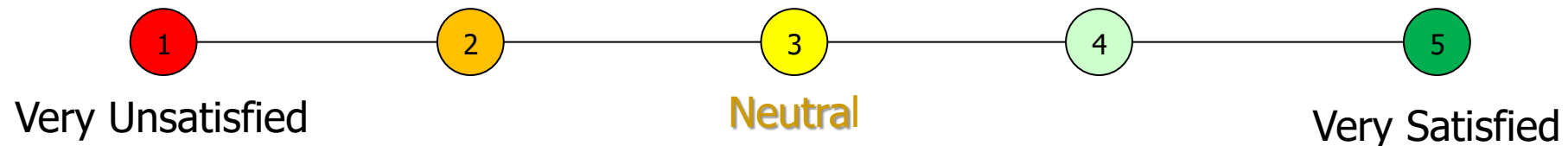
* As of survey August 2021

Findings: Satisfaction with E-Filing Solution

✓ Trial Court E-filing Survey – August 2021

Overall satisfaction with existing e-filing solution on a 5-point scale:

- Custom e-filing courts - 4.56 / 5.0 (8 courts)
- Journal e-filing courts - 4.50 (4 courts)
- Tyler e-filing courts - 3.15 (14 out of 19 respondents)



Findings: Satisfaction Detail

Overall satisfaction generally aligns with satisfaction in each assessed area.

Area Assessed	Custom	Journal	Tyler
Overall	4.56	4.50	3.15
Software quality	4.38	4.50	2.35
Software update process/timeliness	4.25	4.00	2.50
Responsiveness overall	4.25	4.25	2.70
Responsiveness to legislative changes	4.67	4.00	2.81
Timeliness of legislative changes	4.38	4.25	2.45
Enhancement prioritization	4.86	5.00	2.95
Receptive to design input	4.14	4.25	2.35

Findings: Concerns About Switching EFMs

All e-filing courts have concerns about changing EFMs

Custom EFM

- Disruption to efficient court operations
- Cost and time to make a shift
- Lack of customizability
- Catering to lowest common denominator
- Less flexibility and unresponsiveness to changes

Journal

- Disruption to efficient court operations
- Cost and time to make a shift

Tyler

- Disruption to efficient court operations
- Cost and time to make a shift
- Disruption to the public
- Potential reduction in CMS integration

2019 Statewide EFM Benefits / Concerns

Benefits

- Uniform EFM fees
- Free e-filing for government and indigent filers
- EFSP uniformity and consistency
- Compliance with national e-filing standards
- Competitive framework (3 EFM vendors selected)
- Journal committed to statewide goals
- A funding framework for JCIT e-filing unit

Concerns

- Tyler withdrew
- Imagesoft did not implement
- Only one trial court participated in statewide MSA
- Uncertain ongoing support for JCIT e-filing unit

Preliminary Recommendations

- JCIT or Tyler User Group (CA-TUG) should share results with Tyler in hopes of improved performance / increased satisfaction.
- Share findings with other Tyler jurisdictions to determine if satisfaction is similar and amplify need for change.
- Explore ways to work around vendor limitations (e.g., proposed orders)
- Explore targeted EFM solution for niche areas like DVRO and GVRO to test statewide potential
- Determine long-term operation and support model for JCIT e-filing unit

2. Explore benefits of statewide *trial court* EFM solutions inclusive of development opportunities and potential funding sources.

PRELIMINARY FINDINGS AND RECOMMENDATIONS



JUDICIAL COUNCIL
OF CALIFORNIA

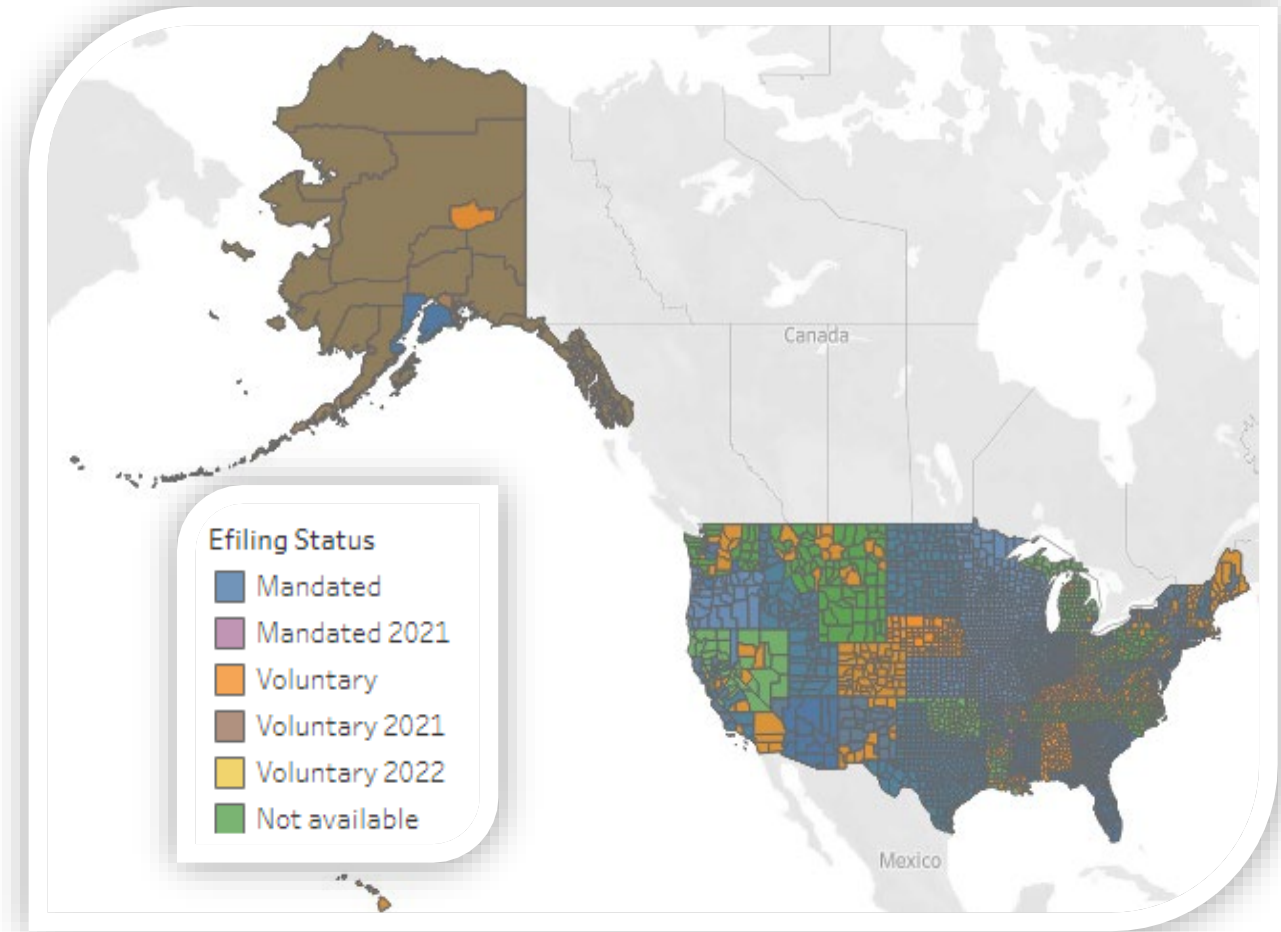
Findings: Statewide EFM at a Glance

- CA courts have a proven ability to build and operate an EFM
- The majority of states/jurisdictions offer e-filing, opting for vendor EFM solutions with 6 states having custom developed solutions.
- 9 states embrace the multiple EFSP model. All others bundle EFSP and EFM services together through a single vendor/solution. Only CA has embraced a multi-EFM model.
- 4 viable vendors offer EFM solutions in more than one jurisdiction of size (Tyler, Granicus, Tybera, Journal)
- E-filing programs cost money and multiple funding sources are in use across the country.

E-Filing in the USA

Mandatory e-filing is now the norm and not the exception

- Most jurisdictions now e-filing
- Most jurisdictions have moved to mandatory e-filing
- Most mandatory jurisdictions are centrally managed

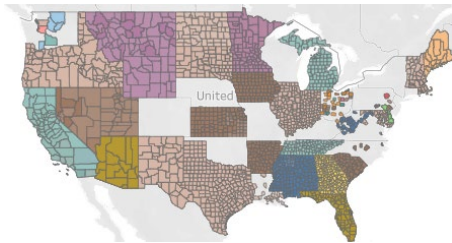


E-Filing Implementation Approach

Most jurisdictions have implemented vendor solutions.

Vendor-driven

- A number of vendors provide E-Filing Management (EFM) services. The larger providers include:
 - Tyler Technologies (IL, IN, MN, NH, TX, Misc CA...)
 - Tybera (AR, IA, KS, LS)
 - Granicus (AZ, FL)
 - Journal Technologies (Misc CA Counties, King County WA)



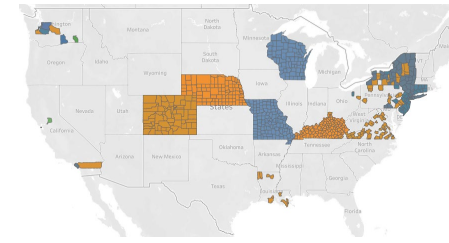
*CA is solid due to full adoption of Appellate Court.

Custom-developed

- A handful of jurisdictions opted to build and operate their own e-filing solution.
- Most notable:

- Colorado Missouri New York*
- Nebraska Wisconsin New Jersey

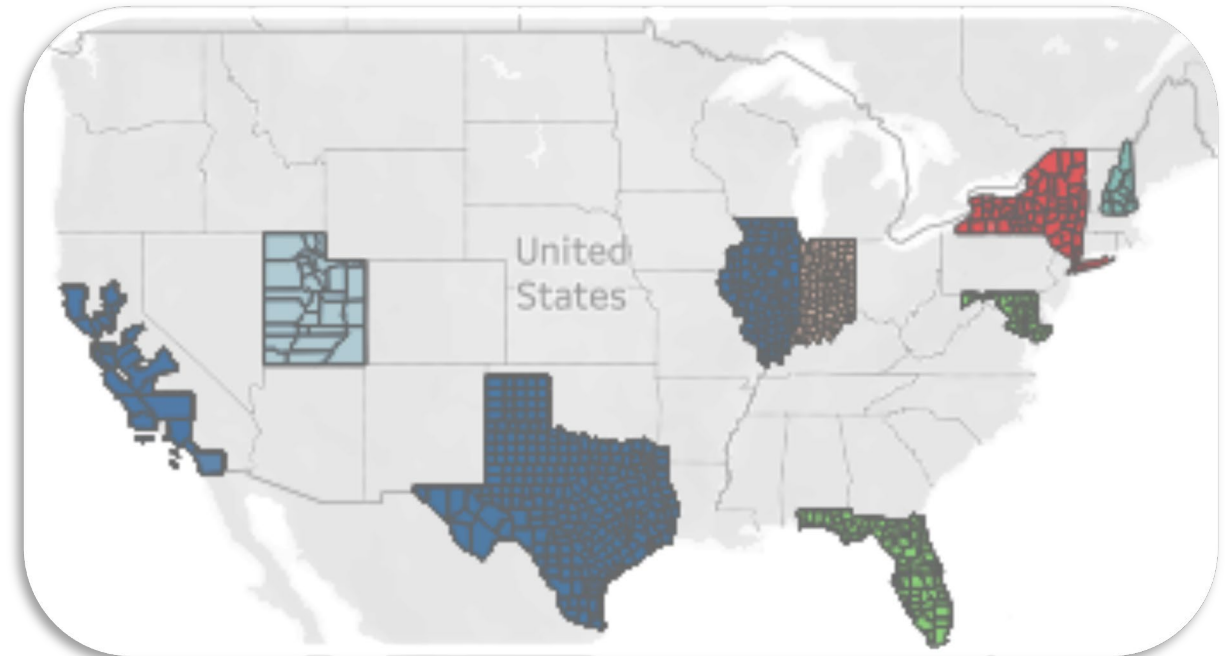
* Custom EFM, vendor EFSP.



E-Filing Services Providers (EFSP)

Five of the nation's six most populous states (CA, TX, FL, NY and IL) embrace the EFSP model.

- Only a handful of jurisdictions have adopted the EFSP model where there is an intermediary between the filer and the court/EFM.
- All but NY and NH offer more than one EFSP
- CA trial courts offering e-filing lead the way with 11 (OC-Civil) to 99 (Placer) EFSPs.
- Nationally, custom EFM jurisdictions do not offer multiple EFSPs



Potential Funding Sources for Statewide EFM

There are viable alternatives to the transactional model that has been historically used in CA.

General Fund

- Several centralized jurisdictions fund costs to build and operate e-filing through the court's operating budget.

Case Initiation

- Several centralized jurisdictions have opted to make the cost of e-filing a fee at case initiation (either a separate or a bundled fee).

Parties pay a single e-filing fee (\$25-100+) at case initiation that covers all e-filing costs (and in many jurisdictions costs of other statewide programs).

Transactional

- Jurisdictions that support multiple EFSPs all opt for a transactional model to pay EFSP fees.
- For these jurisdictions, the EFM portion of e-filing fees can be funded via general, case initiation or transactional methods.
- A small number of jurisdictions have implemented an annual subscription to cover costs.

Preliminary Recommendations

- Explore custom EFM solution for mandated* niche areas like DVRO and GVRO to:
 - Provide solution for courts not currently e-filing
 - Demonstrate full integration with legacy CMS systems (Tyler and Journal in particular) is possible
- Explore alternate funding approaches for e-filing

* From the proposed budget: Chapter 681, Statutes of 2021 (AB 887) – Domestic Violence Restraining Orders and Chapter 686, Statutes of 2021 (Senate Bill (SB) 538) – Gun Violence Restraining Orders: \$2.6 million in 2022–23 and \$1.7 million annually thereafter to implement and support electronic filing interfaces for domestic violence restraining orders, domestic temporary restraining orders, and gun violence restraining orders for all trial courts as required by AB 887 and SB 538.

3. Evaluate standardizing *trial court* e-filing transaction fees across the state.

FINDINGS AND RECOMMENDATIONS



JUDICIAL COUNCIL
OF CALIFORNIA

Findings: Fee Standardization at a Glance

- CCP 1010.6(b)(9) authorizes trial courts to *recover costs* associated with providing a service or product.
- Standard (identical) e-filing fees not practical
- The CA survey reflects that trial courts are generally in favor of fee standardization if possible
- An analysis of national e-filing practices reflects:
 - Fee uniformity is highest in centralized jurisdictions that fund the e-filing program centrally
 - There is great variability across the country in what parties pay to e-file
 - Jurisdictions that support multiple EFSP have the greatest variability in costs to e-file

Deconstructing E-Filing Fees

Illustrative Billing Statement

Line	Description	Cost	Realities
1	Motion	\$60.00	Standardized
2	EFM Fee	\$3.50	Court contracts range from \$2-\$5/transaction
3	EFSP Fee	\$1.00	The EFSP Fee which ranges from \$0-50.00 depending value added services provided
4	Payment Processing Fee	\$1.95	Approximately 3%. Minor variability based on EFM and payment method.
5	Local Court Cost Recovery Fee	\$2.00	Most courts charge \$0. Local cost recovery fees as high as \$2.50/transaction
6	Branch Cost Recovery Fee	\$0.50	Currently not implemented anywhere.
7	Total Cost	\$68.95	

Fees vary across counties because items 2-5 are dependent on local conditions.

State Survey Results

Fee Uniformity Importance	Very Important	Somewhat Important	Neutral	Not Important	Weighted Score
Overall (47)	18	16	11	2	4.06
EFM Fee	16	20	9	2	4.06
EFSP Fee	12	16	14	5	3.74
Court Cost Recovery Fee	12	12	15	5	3.70
Branch Recovery Fee	16	10	13	5	3.84

- While there is a consensus that fee uniformity is important, it is impractical:
 - EFM: Based on vendor and mandatory/voluntary
 - EFSP: Not achievable: These service providers differ on services and price.
 - Court Cost Recovery: Not achievable: Each court incurs costs differently to implement and operate e-filing
 - Branch Recovery: This (if applicable) is likely the easiest area to drive uniformity.

National Findings on Fee Uniformity

Fee uniformity correlates closely to funding model and EFSP strategy.

General Fund

- Courts that fund e-filing from the general fund tend to be:
 - Single EFM
 - Single EFSP
 - Mandatory e-filing
- **Fee uniformity is likely**

Case Initiation

- Courts that fund e-filing as part of the cost of case management (e.g., at initiation either as part of the court filing fee or a separate automation fee) tend to be:
 - Single EFM
 - Single EFSP
 - Mandatory e-filing
- **Fee uniformity is likely**

Transactional

- Courts that fund e-filing through transaction fees tend to be:
 - Single EFM / Single EFSP
 - Single EFM / Multiple EFSP
 - Multiple EFM / Multiple EFSP
- **Fee uniformity is unlikely** in the latter two use cases due to EFSP price variability.

Preliminary Fee Standardization Recommendations

- Overall: If fee uniformity is desired, explore alternate funding methods (non-transactional or hybrid).
- Uniformity in fee parts:
 - EFM fees: Determine if there is enough benefit to uniformity to trigger contract modifications amongst trial court providers.
 - EFSP fees: Unless abandoning the EFSP model, uniformity should not be pursued in this area as service providers charge based on services provided.
 - Local court cost recovery fees: Uniformity should not be pursued since allowed by government code.
 - Branch recovery fees: N/A but should be uniform if utilized.

4. Review e-filing rules and statutes to clarify language and improve consistency across the branch.

FINDINGS AND RECOMMENDATIONS



JUDICIAL COUNCIL
OF CALIFORNIA

Findings and Recommendations: E-filing Rules and Statutes

- **Survey asked courts whether statutes and rules about e-filing and e-service (1) are clear, and (2) should be changed.**
- **Findings:**
 - Most courts (both trial and appellate) found statutes and rules clear for both e-filing and e-service.
 - Requirements for express consent to e-service generated the most comments for change with six trial courts commenting.
- **Recommendations:**
 - Refer courts' comments for statute and rule changes to Rules and Policy Subcommittee.
 - Have JCIT explore alternatives and present to CEAC for non-e-filing courts to support mandatory DVRO/GVRO e-filing by January 2023