

## LABI JUDICIAL MODERNIZATION PROJECT

### *Accessibility Through Technology*

LABI presents the first installment in its four-part Judicial System Modernization Series, for more information or to view other series installments visit [www.LouisianaJudiciary.com](http://www.LouisianaJudiciary.com).

#### INTRODUCTION

Over the past year and a half, the COVID-19 pandemic and subsequent public health mitigation efforts have upended the logistical functions of nearly all aspects of American governance, including our court systems. It sounds obvious, but so much of the courts' functionality is conducted through in-person interactions, be it outward-facing functions like arraignments and hearings, or behind-the-scenes work such as meetings between judges and attorneys. While some Louisiana courts were already set up to conduct functions remotely on occasion, the utilization of technology has been sporadic. In other words, when the impact of COVID-19 grounded life to a halt last year, most American courts, and certainly those in Louisiana, did not have practices or the technology to operate remotely. Thankfully, in allocating relief dollars to governmental bodies such as courts, Congress provided flexibility to use the funding on things such as new technology to ensure the public could continue to access the courts during the public health emergency.

To their credit, Louisiana courts and clerks of court seem to have maximized and leveraged those dollars not only to invest in infrastructure to improve access, but also as the impetus to begin identifying ways to innovate and improve their technology to better serve Louisiana citizens. We commend that work and encourage the judiciary to continue it, but we also believe more significant modernizations are needed to bring Louisiana courts in line with those of other states, ensure our courts and their documents are readily accessible to the public, and protect the fiscal sustainability of our judiciary. There is a pressing need for greater transparency in the judiciary, applying to both the fiscal operation and administration of our courts and to the conduct of our judges. Any efforts to achieve greater transparency must necessarily include consideration of how the information will be made available and accessible. Better technology, therefore, must be part of the conversation.

#### THE STATUS QUO

Unlike many states, **Louisiana does not have a “unified” judiciary, either financially or administratively.** Each level of our judiciary (supreme court, courts of appeal, district courts), and even many courts within the same level, has its own unique mix of funding sources (state general funds, local tax dollars, fines/fees, grants, etc.), and each court, **including all 42 judicial districts, has its own way of conducting business and interfacing with litigants and the general public.** Another unique aspect of the Louisiana judiciary is that the Louisiana Constitution grants each parish authority to elect its own local clerk of court to manage filing, recordation and access to public documents, including those of local district courts. While many Louisiana judicial districts span across multiple parishes, the operations and procedures of our clerks of court differ along parish lines.

At a basic level, no two state court websites in Louisiana look the same, nor are any two similar in terms of navigation. **Twenty-seven of our 42 district courts have no website at all!**<sup>1</sup> Others may have a website, but it does not contain much more information than the location and phone number for the courthouse, let alone information about how to file and access documents or the amount of filing fees. In some districts, the clerks of courts have websites which are different from the “judicial website.”

*There is no centralized system used by our courts or clerks of court to submit filings, access documents, or pay fines or fees.*

<sup>1</sup>District courts with no website include the 1st JDC (Caddo), 3rd JDC (Union, Lincoln), 6th JDC (East Carroll, Madison, Tensas), 7th JDC (Catahoula, Concordia), 8th JDC (Winn), 11th JDC (Sabine), 12th JDC (Avoyelles), 13th JDC (Evangeline), 20th JDC (East Feliciana, West Feliciana), 27th JDC (St. Landry), 32nd JDC (Terrebonne), 34th JDC (St. Bernard), 37th JDC (Caldwell), 39th JDC (Red River), and 42nd JDC (DeSoto).

Over the past several years, some courts and clerks of court have made great strides in launching new technology to improve access for citizens and the efficiency of the court, but others have not, either because of funding, a lack of expertise, or a hesitation to embrace change. And even where there has been innovation and progress by particular courts or clerks of court, there is still a lack of consistency among the technology they use. As a result, our current system is a hodgepodge of different technologies and varying levels of access depending on which court or records one is seeking to access, which is inefficient and expensive for litigants to navigate our courts—especially for lawyers whose practices almost always cross parish and district lines.

Most courts in Louisiana still require documents to be filed in-person or via fax. Some allow electronic filing (“eFiling”), but even among those courts, there is not one common or uniform system in place. Jefferson Parish Clerk of Court, for example, developed and launched JeffNet (<https://www.jpclerkofcourt.us/jeffnet-login/>) in 2004, allowing eFiling and online access to civil and criminal filings and other public records maintained by the clerk of court’s office. That system, although useful to litigants in the 24th JDC, is not compatible with any other district court’s eFiling system. Next door, the Orleans Parish Civil District Court uses its own system, called Remote Access, <https://remoteaccess.orelanscivilclerk.com>. Yet another dozen or so courts, including the St. Tammany Clerk of Court, which serves the 22nd JDC, use a system called Odyssey eFileLA ([www.eFile-LA.com](http://www.eFile-LA.com)). The Odyssey system has the capability to provide both eFiling and online access to filings and other public records maintained by clerks—a function often referred to as “electronic case management.” As of today, none of the clerks using Odyssey have launched the system’s case management functions. Yet another dozen or so clerks of court use a different system called Clerk Connect (<https://www.clerkconnect.com/login>) to provide electronic access to civil and criminal records, and in some cases the ability to eFile civil documents. Some clerks also use Clerk Connect for electronic case management.

Each of the systems described above looks different, has different capabilities and requires its own subscription and fees, which can quickly add up.<sup>2</sup> Moreover, because adoption of a particular technology system is at the discretion of each parish clerk of court, some multi-parish judicial districts utilize multiple technologies. In the 15th JDC, for example, which includes Lafayette, Acadia, and Vermillion Parishes, Lafayette Parish and Vermillion Parish utilize ClerkConnect for civil eFiling, while Acadia Parish does not allow eFiling but offers a subscription to DocuNet to access conveyance and mortgage documents.

Our courts of appeal are similarly disjointed when it comes to technology. Three of the five circuit courts (1st, 4th and 5th) allow eFiling, yet they do not all use the same system, and the systems are not compatible with one another.<sup>3</sup> The other two courts (2nd and 3rd circuits) allow electronic submission of filings via e-mail, but only during times of a declared emergency like a hurricane or a public health emergency such as COVID-19.

In 2014, at the request of the Louisiana Clerks of Court Association, the Legislature created the Louisiana Clerks Remote Access Authority (LCRAA), a state entity authorized to design, construct, administer and maintain a statewide portal of records maintained by parish clerks of court.<sup>4</sup> LCRAA is governed by a Board of Commissioners composed primarily of clerks of court, and as we describe in more detail below, the entity has expanded its scope of work considerably over the past several years, moving away from only addressing electronic access and e-recording to helping clerks access eFile and electronic case management technology.

Since its inception in 2014, LCRAA has made considerable progress in helping clerks move historical and new civil documents online. There is now a single portal that contains indexed land, marriage and other civil records for every parish except Orleans. The portal allows users to electronically access over 40 million land records, 2.2 million marriage records and 4 million other civil records. Over the years, LCRAA has provided monetary grants to clerks who needed help paying for computers, software or other equipment to convert documents from paper to electronic records.

Still, however, there is more work to be done to create a more streamlined and affordable process for accessing records. Although every parish, except Orleans, participates in LCRAA in some way, some parishes only use it as a means for accessing conveyances, mortgages and marriage licenses, not civil filings.<sup>5</sup> In St. Landry Parish, for example, you can access conveyances and mortgages through LCRAA but must use a local system called DocuNet to access any other documents (<https://stlandry.org/docunet-service/docunet-registration>). The system requires installing a special app on your computer, at a cost of \$125 per computer, plus a monthly fee, which varies depending on where in the state you reside in relation to Opelousas, the parish seat (0-20-mile radius = \$50/month, 20-50-mile radius = \$100/month, 50+ mile radius = \$300/month).

<sup>2</sup> A JeffNet subscription includes a one-time \$100 fee plus a monthly fee of \$50/month per user. This fee is in addition to fees imposed on filings or document access. The Orleans Civil District system costs \$100/month. Pricing for Odyssey eFileLA could not be found online.

<sup>3</sup> The First Circuit uses eClerk’s Counter (<https://eclerk2.la-fcca.org/>); Fourth Circuit uses eCourt ([www.ecourt.la4th.org](http://www.ecourt.la4th.org)); Fifth Circuit also uses eCourt (<https://ecourt.fifthcircuit.org/>), but with a different user interface.

<sup>4</sup> See La R.S. § 13:754.

<sup>5</sup> See <https://www.laclerksportal.org/>.

Apart from the practical barriers to access such a system creates, it also raises constitutional concerns as there does not appear to be any rational basis for charging some individuals more than others for a basic technology service depending on how closely they live to the courthouse.

## BEST PRACTICES

Electronic filing saves time and reduces costs for the courts, which ultimately benefits the taxpayers who financially support the courts. Electronic documents are easier for the general public, attorneys and judges to access compared with paper documents, and storing documents in an electronic format saves physical space compared to storing paper files, which is a major concern for almost every court in every state. Maintaining court records on an electronic database also allows court staff and judges better access to case documents.

Given the incredible technological advances made in this country over the past decade, there is no reason litigants in Louisiana should have to travel, in person, to a courthouse to file or gain access to any documents—or pay an attorney to do so. Such a system is inefficient, expensive, and may present a barrier to access for those who lack reliable transportation. Additionally, in a world where local attorneys who only practice in their hometown rarely exist anymore, a system requiring attorneys to navigate (and pay for) a host of different technologies and databases to access courts across the state does not make sense, practically or financially.

Prior to COVID-19, many states around the country had already mandated eFiling and implemented sophisticated software tools to ensure standardized filing processes and allow for online access to civil and criminal filings. Georgia, for example, stands out as a leader in this regard. In May 2018, Georgia’s governor signed legislation that set a deadline for Georgia’s 159 superior courts and 70 state courts to transition to mandatory electronic filing for all documents and records no later than January 1, 2019.<sup>6</sup> Some Georgia courts were already allowing litigants to file electronically, but the 2018 legislation made it mandatory. Today, almost every court across Georgia uses a uniform document access and eFiling system, called PeachCourt,<sup>7</sup> which is available 24 hours a day, seven days a week. Both attorneys and non-attorneys may register for a PeachCourt account at no cost, and any PeachCourt user can search for and view civil case dockets at no cost. Attorneys of record can use PeachCourt to view and download every eFiled pleading at no cost. Every clerk of court’s office in Georgia provides a computer for litigants to e-File documents into that court. The PeachCourt system is entirely funded by transactional filing fees (a flat fee of up to \$30 per party, per case). No state funds are used to operate the system.

Similarly, in 2012, the Texas Supreme Court adopted an order making e-Filing mandatory for all attorneys filing civil, family, probate or criminal cases in the supreme court, court of criminal appeals, courts of appeal and all district and county courts.<sup>8</sup> Texas achieved full implementation in 2020. The official e-Filing system for Texas courts, eFileTexas, has more than 335,000 registered users and has eliminated 316 million pages of paper since it was implemented in 2015.<sup>9</sup>

Beginning in 2005, the Mississippi Supreme Court began a comprehensive move to evaluate, test and implement electronic filing and case management in all Mississippi courts. The Court settled on a system called Mississippi Electronic Courts (MEC), which is modeled after the Case Management/Electronic Case Filing, or “CM/ECF” system, used by federal courts throughout the country. Using MEC, Mississippi courts can make all case information immediately available electronically and can accept document filings in real-time, 24/7. Almost all courts in Mississippi now use the MEC system, and all documents submitted for filing in civil and criminal cases in courts which have implemented MEC, no matter when a case was originally filed, must be filed electronically.

Wisconsin circuit courts have had voluntary eFiling since 2008 for civil, family and small claims cases. But after years of low volume, a subcommittee was formed to consider how the use of eFiling might be increased. The committee concluded that to fully realize the benefits of an eFiling system, all court files needed to be electronic, and most litigants would need to be required to file electronically. In 2016, the Wisconsin Supreme Court unanimously approved a rule to gradually transition to mandatory eFiling in circuit courts.<sup>10</sup> The gradual implementation schedule adopted in the Wisconsin mandate was modeled on successful mandatory eFiling initiatives in Iowa<sup>11</sup> and Minnesota.<sup>12</sup>

<sup>6</sup> Georgia General Assembly, SB 407 (2018 Regular Session), available at <http://www.legis.ga.gov/legislation/en-US/Display/20172018/SB/407>; see also <http://awesome.peachcourt.com/mandatory>.

<sup>7</sup> <https://peachcourt.com/>; see also <http://awesome.peachcourt.com/> for detailed information about filing guidelines and using PeachCourt.

<sup>8</sup> While not required, non-attorney filers are encouraged to file as well.

<sup>9</sup> See <https://www.efiletexas.gov/#:~:text=e%2DFiling%20is%20now%20mandatory,encouraged%20to%20file%20as%20well>.

<sup>10</sup> <https://docs.legis.wisconsin.gov/statutes/statutes/801/18>; <https://www.wicourts.gov/ecourts/efilecircuit/index.jsp>.

<sup>11</sup> <https://www.iowacourts.gov/efile>

<sup>12</sup> [https://www.mncourts.gov/mncourtsgov/media/scao\\_library/documents/eFile%20Support/Overview-Mandatory-Electronic-Filing-and-Service.pdf](https://www.mncourts.gov/mncourtsgov/media/scao_library/documents/eFile%20Support/Overview-Mandatory-Electronic-Filing-and-Service.pdf) (requiring mandatory e-Filing and e-Service).

Today, 38 states mandate eFiling for at least some level of their judiciary. Close to 20 states mandate eFiling for all state courts.<sup>13</sup>

## MOMENTUM FOR CHANGE

In Louisiana, the push for more efficient access to our courts through improved technology is not new. For years, lawmakers have offered bills to encourage—and in some cases mandate—better technology in our judicial system. Unfortunately, political forces, lack of collaboration and concerns over funding have impeded major progress.

In 2014, the Legislature passed Act 606, which authorized judges to sign court documents and orders electronically, provided that each local court adopted its own rule for what method of e-signature would be used.<sup>14</sup> Today, some courts have done so, but many others have not.<sup>15</sup>

In 2016, Rep. Tanner Magee (R-Houma) authored a resolution (HR 191) to create the Clerk of Court Statewide Filing System Task Force. The task force, which included clerks of court from around the state, as well as attorneys, was tasked with developing a model for a statewide electronic filing system for civil pleadings and was required to submit a written report to the Legislature prior to the 2017 Session. In its final report, the task force concluded that eFiling is becoming standard practice and that “a single statewide universal electronic filing system would be ideal.”<sup>16</sup> However, the group noted certain state laws would need to be amended to accommodate universal electronic filing and that funding to implement such a system might also be a concern. The group recommended additional research to determine the cost of a proposed system and what funding sources could be utilized and thus recommended the task force continue its work. Three years later, while the number of districts that allow e-Filing in civil cases has increased, there still has not been widespread adoption of any centralized case management or eFiling system. The good news, however, is both clerks and judges have recently taken steps which suggest improving and streamlining judicial technology is a significant priority.

Following the 2017 task force report, the Louisiana Clerks Remote Access Authority issued a Request for Proposals (RFP) for a vendor to develop and implement a statewide eFiling system for civil matters. Tyler Technologies, a Texas-based technology solutions company that has worked with court systems in several other states, was selected. A partnership was established, and clerks of court throughout the state were given the option of signing onto the system, Odyssey eFile (see above). Unfortunately, despite fairly widespread consensus that moving to electronic filing should be a priority, only about two dozen clerks are using the technology. One factor that has impeded quicker and more enthusiastic consolidation around the Tyler system has been challenges integrating the technology into clerks’ existing technology. Another dozen or so clerks use a different technology called Clerk Connect for e-Filing, which is offered by a Louisiana-based company called Software & Services.

More recently, in February 2021, LCRAA issued a new RFP to select a statewide vendor for electronic case management services. Once again, while some clerks around the state already have electronic case management capabilities, there are multiple vendors and multiple technologies being used. As suggested above, it is critical that e-Filing technology be able to integrate with a clerk’s existing case management technology. Given that the new preferred case management vendor has not yet been announced, it is too early to tell how many clerks will elect to use the new technology and how existing or new e-File technology will integrate with the system.

Judges have also shown a willingness to assist in efforts to modernize our judicial technology. In September 2020, the Supreme Court announced creation of the Louisiana Supreme Court Technology Commission. The 15-member Commission, composed of representatives from all levels of the judiciary, is charged with “identifying technology needs, establishing goals for implementation, devising best practices, and suggesting necessary rule changes and steps towards implementation of articulated technology goals for the judiciary.”<sup>17</sup> Among other things, the Commission has worked to ensure that CARES Act funding made available to the judiciary can be used to provide a computer to any district or appellate court, including their clerks of court, in need of one. The Commission developed several recommendations to improve access and efficiency in our courts, including ensuring all courts share a similar interface on the internet and launching an Online Dispute Resolution (ODR) pilot program to help parties in certain civil cases resolve their disputes in a simple, fast and low-cost way. At least one of the Commission’s recommendations is on track for implementation.

<sup>13</sup> These states include Georgia, Idaho, Illinois, Indiana, Iowa, Kansas.

<sup>14</sup> <https://legis.la.gov/legis/ViewDocument.aspx?d=914171>.

<sup>15</sup> See LASC Court Rules, Appendix 3.4 (listing court-specific rules concerning judges’ use of electronic signatures), available at <https://www.lasc.org/rules/dist.ct/COURTRULESAPPENDIX3.4.pdf>.

<sup>16</sup> Report to the Legislature in Response to House Resolution 191 of the 2016 Regular Session (Clerk of Court Statewide Filing System Task Force)

<sup>17</sup> See [https://www.lasc.org/Press\\_Release?p=2020-31](https://www.lasc.org/Press_Release?p=2020-31).

During the 2021 Regular Session, Act 409, authored by Rep. Rick Edmonds (R-Baton Rouge), established an ODR Pilot Program in the 24th JDC (Jefferson Parish) that allows the court to handle all preliminary civil matters on an online platform rather than in-person, where appropriate. This would include things like simple motions and exceptions that do not require witness testimony. As part of the program, oral arguments may be waived and instead, written arguments may take place in an asynchronous manner within a time frame specified by the court.

During the 2021 Session, the Legislature also modernized the Code of Civil Procedure to allow for more remote court activity. Act 68 by Rep. Nick Muscarello (R-Hammond) eliminates the requirement that a district judge be “in chambers” to sign orders and judgments, instead allowing a judge to sign any place where the judge is physically located. The bill also established certain judicial proceedings that can be conducted by auto-visual means, added the requirement of an email address on a pleading along with a physical address, and allowed service of a pleading or order setting a court date to be served by emailing the document to the designated email address.

## HOW WE CAN IMPROVE

We believe investment in uniform technology to improve access to the courts and efficiency of our judicial system should be the shared responsibility of both judges and clerks of court. They are, after all, both part of *the judiciary*. Historically, there has been very little coordination among the groups. However, during the 2021 Regular Session, Sen. Jay Morris (R-Monroe) passed a senate resolution establishing the Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention.<sup>18</sup> Membership on the task force includes judges, clerks, attorneys, and legislators, and the resolution requires the group to solicit input from a wide array of stakeholders, including LCRAA, the Supreme Court Technology Commission, the Law Institute, individual clerks of court, and several others. The task force is charged with studying the feasibility of e-Filing and electronic recordation of documents, examining what systems clerks currently use for these functions, and potentially developing a set of statewide standards to presented to the Legislature prior to the 2022 Regular Session. The task force work will start this fall and we are hopeful the task force will provide a forum for collaboration.

Not surprisingly, how to fund new technology has been raised as a concern preventing widespread implementation. There may be existing avenues to secure the necessary funding, but again, more cooperation and transparency is needed.

The only readily available information when it comes to how our courts are funded is generally how much money they get from the state each year through the legislative appropriations process. But our courts also receive funding from other sources, including local city-parish governments, fines and fees, and other governmental entities. As we will discuss more in a future installment of this series, bringing transparency to judicial financing is crucial. We believe greater transparency and other recommended modernizations may bring efficiencies to the court that could alone be able to fund the technological advancements proposed below. Today, however, there simply is not enough information about the judiciary’s financial status to make such a determination.

Unlike other states, elected clerks of court offices do not receive any state funding. They are funded solely by fees charged for the services they provide—but must seek legislative approval of any new proposed fees, and in fact, at least some of the fees clerks are required to charge are passed onto judges and other elected officials. Several states that have implemented mandatory eFiling systems have used user fees to fund implementation, and that funding could be part of the equation here in Louisiana as well. In fact, LCRAA, which was established specifically to provide technology and support a statewide portal for remote access, already has authority to and does collect a user fee that paid for and supports the Odyssey eFile technology. We urge both judges and clerks to proactively begin working together, including on funding strategies, and to think big, as bold steps are needed to bring the technology of Louisiana’s judiciary into the 21st century. We cannot continue to have every parish in Louisiana implement its own, unique systems and technology.

<sup>18</sup> Senate Resolution No. 202 (2021 Regular Session), available at <https://legis.la.gov/legis/BillInfo.aspx?i=241348>.

## LABI RECOMMENDATIONS

- The Louisiana Supreme Court, and all Louisiana courts and clerks of court should continue to support the work of the Supreme Court Technology Commission and the Louisiana Clerks Remote Access Authority as forums for developing and promoting uniform technology standards and innovations for our courts and clerks of court.
- The Legislature should adopt legislation requiring all Louisiana courts, in the short-term, to develop standardized websites, each with a mandatory common interface and certain mandatory common functions and electronically accessible forms.
- The Legislature should set a deadline of no later than 2024 for judges and the clerks of court to transition to mandatory eFiling and online access to civil and criminal filings and other public records maintained by the clerk of court's office. Every effort should be made to ensure all Louisiana courts use the same document access and electronic filing portal, using existing technology such as Georgia's PeachCourt as a model. Courts that already have document access, case management and electronic filing systems in place should be required to ensure that their existing technology is compatible with any new statewide system is adopted.
- The Legislature should establish a Task Force to develop plans for the transition and oversee implementation. While the 2016 Clerk of Court Statewide Filing System Task Force or the 2021 Task Force on Statewide Standards for Clerks of Court Electronic Filing and Records Retention may serve as a good starting point for the proposed task force, the group must also include members of the judiciary as well as individuals with expertise in technology and IT infrastructure.
- Once a uniform judicial funding system is in place that allows for real-time tracking of dollars in and out of each courthouse, and this information is made available through each court's website (to be discussed in later installments of this series) the state should consider allocating state general funds to aid in these technological advances.