

**COMMENTS BY**  
**THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK**  
**ON THE REPORT AND RECOMMENDATIONS OF**  
**THE TASK FORCE ON ELECTRONIC FILING OF COURT DOCUMENTS**  
**OF THE NEW YORK STATE BAR ASSOCIATION**

Prepared by the Council on Judicial Administration

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## I. INTRODUCTION

The NYSBA Task Force (“Task Force”) was charged with the considerable challenge of “analyzing the current status of e-filing initiatives ... [,] gathering data from various constituencies within the bar and courts of New York State, and formulating recommendations as to whether and how e-filing should be implemented within the New York State Court System.” (TF Ltr at 1).<sup>1</sup> The NYSBA draft Report and Recommendation of Task Force on Electronic Filing of Court Documents, dated December 28, 2006 (the “Report”) is an extraordinary effort to reach that goal and to advance the creation of a statewide system for filing, storing and retrieving files by electronic means (“FBEM”).

We agree wholeheartedly with much of the Report and many of its recommendations.<sup>2</sup> For example, we agree that an electronic filing program must be mandatory with a suitable grace period. However, we believe that the Task Force did not sufficiently consider the scope and experience of the pilot FBEM program that is in all five counties of New York City and in Suffolk and Nassau Counties. Therefore, we propose that the Task Force conduct a further review of that program and thereafter revise its Report at which time the House should consider it.

In the alternative, we believe that, based upon the learning from that pilot program and other factors, it is clear that the following revisions should be made to the recommendations:

1. Implement FBEM county by county rather than wait for statewide installation.  
(IV).

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<sup>1</sup> Citations preceded by “TF Ltr” refer to the pages of the letter of transmittal of the Task Force Report, dated December 28, 2006. Citations preceded by “TFR” refer to the pages of the Task Force Report.

<sup>2</sup> These comments do not address each of the matters discussed in the Report or the appendices to the Report.

2. Install FBEM in all Supreme, County, and Surrogate courts within a county, rather than start only with Surrogate's courts, using the OCA FBEM Program as the model. (V).
3. Allow a 120-day grace period following county installation for each attorney to become FBEM certified, rather than 12-18 months. (VI).
4. Additional logistical changes should be made, such as:
  - a. Not installing e-filing facilities in each courthouse (VII.A).
  - b. Allow but not require that only excerpts of exhibits be filed (VII.B).
  - c. Provide for filing once in consolidated cases (VII.C).
  - d. Do not preclude pro-se litigants from e-filing (VII.D).

## **II. ADVANTAGES OF FBEM**

There are many advantages to be gained by use of the FBEM system, for County Clerk personnel as well as attorneys and judges. Some of the principal benefits of FBEM to attorneys are:

- **Costs to Client Are Reduced**

One of the principal benefits of FBEM is the ability to eliminate the cost to the client for the added time and disbursements for traveling to and from court to file papers. This benefit will have its greatest impact on sole practitioners who work a substantial distance from their County Clerk.

- **Counsel Has Seven Additional Hours to File Papers**

FBEM is available 24/7/365. Each attorney has approximately seven hours added time within which to file papers: between 5:00 P.M. when the clerk's office closes, and midnight. For the infrequent filer who may have made a mistake in the initial filing, the time/cost saving is

doubled if counsel uses FBEM to file corrected papers.

- **FBEM Is Luddite-Accessible**

The FBEM system requires no more knowledge of a computer than how to turn it on and no more computer familiarity than how to point and click with a mouse. The process of filing is intuitive, uses the same terminology for filed documents as is now used, permits the attorney to select a transaction from drop-down menus, such as filing an answer or a motion, permits counsel to type in other identifying or descriptive details, and assists the attorney from start to finish with pop-up instructions.<sup>3</sup>

Another advantage to the first-time or frequent FBEM user is the policy of OCA personnel to treat a mistake in filing, where the effort was made in a timely fashion, as correctible. Indeed, the system notifies users when a mistake has been made and permits a corrected filing to be made *nunc pro tunc*, all without the attorney ever traveling to court. This practice, followed in the federal system as well, removes the fear of using the new technology.

Attorney training in person is provided by OCA on computers installed for that purpose at the courthouse. In two hours, an attorney is trained and certified on the system and receives two CLE credits. Training may also be done at the attorney's desk, at home or the office, over the Internet. OCA has a web-based training program that prepares each attorney for certification.

Training is also simplified by other factors. When one attorney becomes familiar with and accomplished in FBEM, he or she will encourage others, whether or not filing is mandatory, and assist them to develop their competence in FBEM. Indeed, repeated use of FBEM simply increases one's proficiency.

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<sup>3</sup> The ability to type on the computer, at least by hunt and peck, the names of parties, documents, and exhibits is assumed. FBEM is not dependent on typing speed.

- **FBEM Is Uniform County to County**

Because the FBEM system will be uniform in each county, training in one county should also satisfy the training requirements in every other county.

- **FBEM Files Are Always Available**

Files delivered by hand to the County Clerk's office or to a Motion Part have to travel through several pairs of hands to reach the assigned judge. In the course of being processed, and married to opposing papers filed at a different time, there have been reports that, on rare occasions, papers were not all available when the matter was before the Court on a hearing.

FBEM makes all papers available to each party, the filer and counsel's adversary, as well as the judge and law clerk, immediately upon being filed. The files are always available for every possible need. And they remain available for the life of the case. This allows judges to work out of the courthouse without having to hire a van to carry the papers the Court may want to read in preparing a decision. And the same benefit is available to the practitioner who wants to prepare papers based on others filed earlier in the case. For the sole practitioner, the partner of a mega-firm, and the Court, the complete case files are available in a well-organized, easily referenced manner.

Finally, there is file portability. Everyone involved in the case can access the entire file on line, for example allowing them to answer emergency calls from the office while traveling on business or vacation or to work on the next brief in a quiet space such as the county law library.

Thus, we wholeheartedly support FBEM.

### **III. CONSIDER FURTHER THE PRESENT STATE OF EFFORTS TO INSTALL THE FBEM PROGRAM**

The Report transmittal letter mentioned that the Task Force "gave special attention to the experience ... with the Filing by Electronic Means ("FBEM") pilot project in New York State

Courts.” (TF Ltr at 1). We respectfully suggest, however, that greater consideration be given to that pilot FBEM project, and that the Report and its Recommendations be revised accordingly. At such time, the revised Report and Recommendation should come back to the House for consideration.

New York County and the New York County Supreme Court have installed and operated a successful voluntary program of Filing By Electronic Means (“NYC FBEM Program”). The program was authorized in 1999 and installed in 2000. Since its inception, the Office of Court Administration (“OCA”) has installed the program in each of the five counties of New York City, as well as in Nassau and Suffolk counties (collectively “OCA FBEM Program”). The OCA FBEM Program is now a time-saving, cost-saving, universally-praised service that is simple to learn and use.

With regard to the OCA FBEM Program, the Task Force’s Report concluded, “[f]rom the Task Force’s perspective, while the FBEM experience is instructive in terms of the technical aspects ... and some of the issues it may have faced during implementation, the fact that it has been limited to specific courts and counties and not been mandatory even there means that it is difficult to generalize to a statewide implementation.” (TFR at 53). However, the Report did not address why the voluntary and limited implementation of the OCA FBEM Program impairs the extension of that program for statewide implementation.

Though the Report addressed critical elements of the NYC FBEM Program (TFR at 31-33, section A), it did not detail the operation of the system. The Report focused only on the program’s purpose, scope, and voluntary nature, concluding with an excerpt from a report made by Judge Jonathan Lippman in June, 2005, in which he observed “[t]his is not where we hoped to be at this point in our experiment.” (TFR at 32).

The Report also described “How to File Under FBEM” (TFR at 33, section B) and concluded its discussion of FBEM by listing courts in 16 counties that it stated were “covered” by the FBEM system. (TFR at 35, section C).

We suggest greater study be given here and that the OCA FBEM Program be taken into greater account before the House votes on the Report and its Recommendations. As set out below, we believe that the program supports the following modifications of the recommendations.

#### **IV. LAUNCH FBEM ON A COUNTY-BY-COUNTY BASIS**

The Task Force indicated that FBEM should not be operational in New York until it can be installed statewide in a particular court system. However, expansion of the program need not await full statewide installation. Perhaps the more efficient approach would be to adopt expansion on a rolling basis. The City Bar therefore recommends that FBEM be installed on a county-by-county basis, making each county fully operational as soon as the Court equipment in that county is installed and Court personnel are trained.

As part of its justification for implementing FBEM program only once it is ready statewide, the Task Force, in its Report, relied on certain “overarching principles,” one of which was that “transition to e-filing must not begin until the courts are totally equipped to deal with it.” (TFR at 2). The Report further suggested that the FBEM system be installed in *Surrogate’s Court* “in each of the 62 counties” before training begins. (TFR at 3, top par.). With respect to other courts, the Report stressed that installation must be statewide before training commences, concluding “conversion to an e-filing system in *Supreme and County courts* [also] requires both funding and training for each of the 62 County Clerk’s offices. The Task Force recommended that any expansion of e-filing within Supreme and County Courts awaits such funding and



training.” (TFR at 3, middle par, emphasis added). Also, the Report stated that a 12-18 month period of transition (read as training) should follow the “full scale establishment of an e-filing system.” (TFR at 3, last par).

The Task Force’s Report itself does not highlight any particular reason to delay the immediate extension of the OCA FBEM Program county by county. The Task Force’s recommendation to delay implementation until FBEM can be installed statewide seemed to be based on the observation that the FBEM program has not been fully installed in counties outside New York County. (TFR at 47). However, the successful OCA FBEM program has successfully operated not just in New York County, but also in each of the other four counties of New York City, and in Nassau and Suffolk counties. Regardless, that does not appear to be a sufficient basis for not having county-by-county implementation. With this program acting as a model for expansion, the City Bar sees no reason why the necessary training cannot be implemented on a county-by-county basis, rather than wait for training to occur across the entire state.

#### **V. LAUNCH FBEM BEYOND JUST SURROGATE’S COURTS**

The City Bar further recommends that, rather than install the system at first only in Surrogate’s Court, FBEM should be installed concurrently in Supreme and County courts as well. As it currently stands, limiting the program to Surrogate’s Court alone would unnecessarily delay statewide implementation of FBEM within the New York State Court System as a whole. Further, because there is no court-wide e-filing structure for the court system, the City Bar recommends that the NYSBA simply extend the existing OCA FBEM program to additional counties on a rolling basis. Below, we address why we believe the reasons

given by the Task Force do not indicate initial implementation only in Surrogate's Court.<sup>4</sup>

**A. DOING SO AVOIDS UNNECESSARY DELAY**

For purposes of analyzing this proposal, we have assumed that the installation of FBEM in Surrogate's Court in each of New York's 62 counties could be completed in two years. Because the Task Force recommended that training occur for 12-18 months after the FBEM system is live before use of FBEM becomes mandatory (TFR at 53), this would mean that the program would not be mandatory for approximately 3.5 years from implementation.

Even after the system becomes mandatory, there would be further training not addressed by the Task Force before the program is fully implemented. The Report acknowledged that there would be limited participation by attorneys until the system was mandatory. (TFR at 52). The majority of attorneys, those who were not certified during the non-mandatory 18-month post-implementation period, would then have to be trained and certified *after* the program becomes mandatory. Assuming they could be trained in 1 year, the total time, from commencing the installation of an FBEM system through the date when it was mandatory and all users were certified, would be 4.5 years in each county.

Under the Task Force plan, installation of the FBEM program would not commence in the *Supreme Court* until after statewide installation of FBEM in *Surrogate's Court* is complete, a process that may take up to 4.5 years. If Supreme Court installation takes an additional 3.5 years beyond full installation in Surrogate's Court, we will not have partial functionality in New York until possibly 2015.<sup>5</sup> However, if the FBEM program were to be implemented in all court systems concurrently, this would decrease delay time considerably.

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<sup>4</sup> Although we do not address it in detail at this time, we support implementation of e-filing in the Appellate Divisions as well.

<sup>5</sup> In 2015, the computer hardware and software will be outdated if not obsolete. (Moore's law postulates that computer speed doubles every 2 years. In 8 years, computer systems should be 16 times (2 x 2 x 2 x 2) faster than those installed by contract signed in 2008.)

Extending the OCA FBEM Pilot Program already in place would also decrease delay. FBEM has been installed and used in New York, Bronx, Kings, Queens, and Richmond counties in New York City. The program has also become operational in Nassau and Suffolk counties. In the last two years, in addition to tax certiorari and commercial cases, hundreds of tort cases have been added to the FBEM system in such counties.<sup>6</sup> Further, many of the challenges and hurdles overcome during the pilot program's implementation would provide invaluable guidance as the statewide program is rolled out, perhaps reducing or eliminating some of the challenges that the Task Force perceived in expanding the program beyond Surrogate's Courts. Thus, it is possible that the scope of these challenges might have been overstated or relied on too heavily by the Task Force.

#### **B. COUNTY CLERKS AND OCA CAN CO-EXIST**

Much of the Task Force's discussion of the FBEM program in its Report focuses on the advantages of the Surrogate's Court. The Report concluded that the Surrogate's Court is the "best environment for e-filing" (TFR at 2), and "particularly well suited for e-filing" (TFR at 48, 58). It reached this conclusion in part, noting that:

OCA has exclusive jurisdiction over the filing process in Surrogate's Court (TF Ltr at 1; TFR at 48); "all filing in Surrogate's court is a function of the Unified Court System, only" (TFR at 2); and Surrogate's Court maintains its own records (TFR at 58).

The City Bar agrees that e-filing is appropriate in Surrogate's Court. However, the City Bar also believes that implementation of the FBEM program is equally suited at this time for the Supreme and County Court systems. We believe that the hurdles to implement FBEM in Surrogate's and County Courts are overstated. The Report itself did not focus in detail on the challenges of

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<sup>6</sup> The Task Force may not be aware of the exact scope of the OCA FBEM program, as the Task Force's Report observed that "there has been little or no participation in FBEM outside New York County commercial and tax certiorari cases." (TFR at 47).

commencing the FBEM statewide in Supreme and County Courts. The Task Force did state, though, that “e-filing in Supreme and County Courts presents difficulties based upon the dual jurisdictions in the filing process of both the court system [OCA] and the office of the County Clerk.” (TF Ltr at 2; TFR at 44). It continued, “[b]efore e-filing is expanded within Supreme and County Courts, ... the e-filing system must be adapted to acknowledge the role of the County Clerk. ... The Task Force strongly recommends that OCA attempt to make these changes before proceeding further in Supreme and County Court.” (TFR at 62).

The Task Force recognized that implementation of e-filing in the Supreme and County Courts requires the active and meaningful participation of the County Clerks’ offices. But, in its survey of the County Clerks, the Task Force found that there was friction between the County Clerks and OCA. (TFR at 6). The Task Force found that “quite a few County Clerks are very concerned” that the “current system of filing by electronic means does not maintain the separate role for the County Clerks.” (TFR at 61-62). But the New York County Clerk, the county where the OCA FBEM is operating successfully on the largest scale, has voiced no such concern.<sup>7</sup> Further, the OCA FBEM program has been operational since 2004 in the five counties of New York City, and since 2005 in Nassau and Suffolk Counties without any evidence of friction between the two departments.

As an additional reason to start statewide implementation of FBEM solely in Surrogate’s Court, the Report mentioned that OCA has exclusive jurisdiction over the fees paid in

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<sup>7</sup> The Report also stated that “[m]any [of the County Clerks who expressed such concern] have expressed resentment that their role as custodian of the records was not considered to their satisfaction when the FBEM pilot was established and when the pilot was enlarged to include their county.” (TFR at 62). On that basis, the Task Force had an excellent opportunity to address such concerns and educate the County Clerks who failed to understand this aspect of the FBEM system. The Report did not indicate that it attempted to do so. Instead, the Report recommended that FBEM be installed statewide first in Surrogate’s Court, where no County Clerk has any responsibility. Without resolving this concern, which, for the reasons described *infra* we find overstated, or deleting it as a basis for its recommendation, the Task Force Report is premature.

Surrogate's Court (TF Ltr at 1; TFR at 48). However, payments to the County Clerk and to the Supreme Court Clerk in New York County are now handled seamlessly, and such payments are easily implemented from the perspective not only of the filers but also from that of the clerks.

Further, any perceived problems with OCA and the County Clerk working together will have to be worked out before the FBEM system is implemented in the Supreme Courts. The proposal to limit the program only to Surrogate's Courts does not address the problem, but merely delays its resolution to another day. Moreover, any friction between OCA and the Clerks of the Supreme Court should not control the implementation of FBEM.<sup>8</sup> And the OCA FBEM Program need not be adapted to "acknowledge the role of the County Clerk." The roles of OCA and the County Clerk are well defined. Dual *jurisdiction* over filing court documents in Supreme Court does not exist. The responsibility of County Clerks to file documents for the court originates with the New York Constitution. (TFR at 43, 61). And it is clear that OCA has the role of filing, *for the County Clerk*, the documents filed under the FBEM program. (See TFR at 10, 31-35, 44). The Report disclosed no concrete basis on which any County Clerk suggested that OCA had done anything to usurp their constitutional responsibility.<sup>9</sup>

Another reason offered in the Report as a reason to begin statewide implementation solely in Surrogate's Court is that technological changes and training necessary to implement

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<sup>8</sup> There were no details in the Report from such survey. Nothing was presented as the cause of the friction. Not one County Clerk was identified as the source or object of any such friction. The Report did not indicate the percentage of the 62 counties, or the percentage of the counties with authorized but non-operating FBEM systems, where such friction was found. Also, the Task Force was apparently not aware that FBEM has been operational since 2004 in the five counties of New York City, and since 2005 also in Nassau and Suffolk counties, without suffering any meaningful tax, on either the FBEM system or the operations of the County Clerks, from the dreaded "friction" with OCA.

<sup>9</sup> Under the current UCS E-filing system, the County Clerks have complete control of what is accepted and rejected and they are the only ones who can approve/reject and take fees on all FEE related documents. The Supreme Court Clerk has control only on non-fee-related documents and that control is only to approve or return for correction. The file is "managed" much like a paper file is now managed, through a joint effort by both the County Clerk and Supreme Court Clerk to gather and maintain the most complete and accurate record of the case.

these changes may be planned and provided by OCA. (TF Ltr at 1; TFR at 48). However, such efforts by OCA can also be extended to the installation of FBEM in Supreme Court as well. After all, OCA has designed and implemented the FBEM system, as well as trained personnel and attorneys, in the five counties of New York City, and in Nassau and Suffolk Counties.

Finally, OCA and the County Clerks have operated the FBEM program in five New York City counties, and in Nassau and Suffolk Counties, without facing any of the challenges perceived by the Task Force. In fact, OCA and the County Clerks achieved a level of professional harmony and cost-saving efficiency in operating the OCA FBEM program.

**C. SURROGATE’S COURT NEW COMPUTER SYSTEM IS NOT A HINDRANCE**

One of the Task Force’s reasons for limiting the FBEM program to Surrogate’s Courts is the fact that these Courts are in the process of converting to a compatible Windows-based database system. (TFR at 2-3). Though this fact may make the Surrogate’s Court a favorable venue for implementing the FBEM program, it has no bearing on the feasibility of the program in other courts, too. The Report does not offer details as to the specifications of the new system, but it is possible that the system is under the control of OCA and compatible with its installations elsewhere, which means it would be compatible with the OCA FBEM Program design and software already developed.

**D. SURROGATE’S COURT IS NOT UNIQUELY APPROPRIATE FOR FBEM**

The Task Force also found that the following characteristics of the Surrogate’s Court supported its recommendation to first install the FBEM system in Surrogate’s Court:

- a) Surrogate’s Court is a court of limited jurisdiction (TFR at 58);
  - b) Surrogate’s Court handles a finite number of different proceedings (TFR at 58);
- and

- c) Most of the proceedings and files in Surrogate's Court are public records. (TFR at 58).

However, all of these characteristics can easily be applied with equal force to extending the FBEM program beyond the Surrogate's Court to also include the Supreme Court. Though each court has different jurisdictional limits, each handles a finite number of cases and provides public access to its records, two areas that impact FBEM.

## **VI. THE POST-IMPLEMENTATION GRACE PERIOD NEED ONLY BE 120 DAYS**

### **A. CERTIFICATION REQUIRES ONLY A TWO-HOUR TRAINING PROGRAM**

We wholeheartedly agree with the Task Force that FBEM should be made mandatory. However, we disagree that there should be a 12-18 month grace period after installation before it becomes mandatory. (TFR at 53). Mandatory use of FBEM should be implemented from the start and achieved over a grace period of, for example, no more than 120-days after FBEM is operational in a county, allowing every attorney ample time to become familiar with the system. During the grace period, attorneys can still file outside FBEM prior to their certification. In 2006, approximately 22,000 cases relied on the FBEM program, of which approximately 20,000 were tax certiorari, 670 commercial and 1,130 tort. In 2005, 172,000 new cases were filed in Supreme Courts statewide. (TFR at 44). Assuming the new cases filed in 2006 remained at the 2005 level, approximately 13% of cases filed in 2006 used the FBEM system, on a voluntary basis. Though 13% is an impressive percentage, only a mandatory implementation of FBEM will achieve the full potential of the program.

Part of the Report's rationale for limiting the FBEM program to Surrogate's Court and for providing a 12-18 month grace period is the "massive training" of court personnel and attorneys necessary to expand the program to the Supreme Court. (TFR at 2). However, an

examination of the training already conducted in New York County may show that the necessary training may not be as massive as the Report indicates. The FBEM training of any one attorney is a simple, two-hour process.<sup>10</sup> We assume the same may be said for training County Clerk personnel. And, if certification of certain attorneys requires them to take additional training, OCA personnel will provide that training before the attorney is certified.

**B. THE COSTS TO THE PRACTITIONER ARE MINIMAL**

The City Bar agrees with the Task Force that cost issues should not be a factor.

According to the Report, “cost issues would not preclude implementation [by practitioners] of a mandatory statewide e-filing system.” (TFR at 52). The Task Force Report correctly states that the necessary equipment is an affordable cost of doing business that serves purposes other than merely e-filing. (TFR at 52). However, the Report also recommended a 12-18 month grace period before FBEM became mandatory, in part to allow users to upgrade their computers and obtain the necessary equipment. (TFR at 53-54). We believe this factor does not support more than our proposed 120-day grace period. Most litigators will already have the Internet access, e-mail address, computer, and software needed to comply with FBEM, though some may need to add no more than an inexpensive scanner. Software and hardware can be purchased in every city or over the Internet, with delivery within a week. In the meantime, facilities are available commercially, such as in certain FedEx Kinkos stores.

Further, if a practitioner uses federal e-filing, all of the necessary equipment and software is already available, and the practitioner will incur no added cost.

For state-only practitioners who have never e-filed, but who have advanced beyond a

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<sup>10</sup> If certification of certain attorneys requires them to take additional training, we see no reason why OCA personnel cannot provide that training before the attorney is certified. Certification requires a minimum of two-hours, but we do not propose to place any limit on the training available to an attorney who requests more than two hours to feel comfortable and competent in the use of FBEM.



typewriter, their office should have most of the equipment needed for FBEM. They can obtain at minimal cost whatever they do not have:

a) Computer - use installed computer - no added cost

b) E-mail & Web Browser software:

Macintosh - included with operating system

Windows - included with operating system

c) Word processing software - use installed software - no added cost

d) Scanner - \$100 to \$500 MSRP for up to 15 ppm, 50-page feeder, multi-sided, color scanner.

e) Acrobat software - included with certain scanners - otherwise \$129-\$300 MSRP

f) Broadband internet access - no added cost if currently access internet - otherwise as little as \$30 per month (Verizon DSL).

g) E-Mail host: some providers will supply a domain for an individual's e-mail at no added cost, e.g. G-mail, Yahoo, AOL.

## **VII. OTHER COMMENTS**

### **A. COURTHOUSE INTERNET ACCESS IS UNNECESSARY**

The Report recommended that facilities for e-filing should be placed in every courthouse....” (TFR at 3, 55). However, the City Bar believes that the state should not install computer and scanning equipment at every courthouse, nor should it absorb the cost to maintain such equipment. Because the Task Force recommendation is not intended for the benefit of pro se litigants, the courthouse scanners would only be available for attorneys who presumably cannot afford scanners of their own. But these attorneys can still print their papers at their office,

photocopy any exhibits, and submit them through scanners available at third-party vendors such as FedEx-Kinkos, which provide all the necessary software and equipment at certain locations. This would eliminate any expense to New York State.

Further, if installed, it is unlikely that many practitioners would use the equipment at the courthouse. One of the principal cost savings of FBEM is the ability to eliminate the cost to the client for the added time and disbursements for traveling to court to file papers. Indeed, another principal FBEM benefit to the attorney is the added time within which to file his papers: between 5:30 p.m. when the clerk's office closes and the equipment becomes unavailable, and midnight.

**B. EXHIBITS SHOULD BE PERMITTED TO BE FILED IN FULL**

The Report recommended that exhibits filed by electronic means be filed in excerpted form. (TFR at 57-58 n.30, 63-64 excerpted). FBEM should allow but not require filing of excerpts of documentary exhibits.

Incomplete exhibits can invite a profusion of disputes that would not occur if the full document were filed. The cost of high capacity computer storage is *de minimus*, and requiring excerpted documents would not appreciably reduce the storage requirements per case. For instance, if each party chooses different portions of the same document to excerpt, then it is conceivable that the size of the separate excerpts, when added together, could outnumber the total pages of the document in its complete form. Further, the Court could be faced with the burden of examining different parts of the same document in two different sets of papers. Making the filing of excerpts to documentary exhibits permissive rather than mandatory might well reduce the occurrence of these problems.

Further, to reduce the burden on the court, each exhibit should be filed as a separate PDF named with the exhibit number or letter. A single PDF consisting of several exhibits increases

the time required by the adversary and the Court to locate each particular exhibit, whereas separately-labeled exhibits would help reduce this time.

**C. CONSOLIDATED CASES SHOULD PROVIDE FOR ONE-TIME FILING**

Where cases are consolidated for discovery purposes and pre-trial, and the same motions are made in each case by each party, one case should be designated as the central file, one set of documents should be filed, and the caption should clearly refer to the one or more cases in which the papers are filed. This topic is not covered in the Report.

For example, in a case involving eight separate but related cases, the central file should be alone in the top caption box, above a second caption box in which the cases are listed that are affected by the motion. This will reduce the administrative headache and cost to attorneys of opening and reviewing eight copies of the same set of papers filed by their adversaries. This will also reduce the clerk's workload, and digital document storage requirements, where the same action has to be repeated eight times. Finally, it will reduce the volume of papers that the Judge's chambers must review.

**D. CERTIFIED PRO-SE LITIGANTS SHOULD BE PERMITTED USE**

Though the Report recommended against permitting pro se litigants to e-file (TFR at 3, 55), the City Bar recommends that pro-se litigants other than attorneys, certified in the use of the system, should have the same access to FBEM as pro-se attorneys. We believe this is consistent with the fundamental constitutional principle that all citizens should have equal access to the courts.

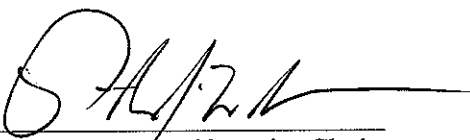
The use of FBEM will not be the source of any abuse by pro-se litigants. If pro-se litigants have a history of abusing the system, it is abuse founded in filing frivolous claims. Denying access to FBEM by such persons will not prevent them from filing frivolous claims the

old fashioned way.

Pro-se litigants should be encouraged to use FBEM so the papers in the case can be handled with all the efficiency that FBEM brings to the operations of the clerks and judges who handle such cases.

Respectfully submitted,

Association of the Bar of the City of New York  
through its Council on Judicial Administration

By   
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