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VIA EMAIL

Mr. Jeffrey Carucci
Statewide Coordinator for Electronic Filing
NYS Unified Court System
New York County Courthouse
60 Centre Street, Room 119M
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jcarucci@nycourts.gov

Dear Mr. Carucci:

The New York City Bar Association (the “City Bar”) is grateful for the opportunity to provide comments to the Supreme Court (Civil) Advisory Committee on Electronic Filing, in connection with that Committee’s report to the Chief Administrative Judge on the state’s experience with electronic filing for the commencement of actions and proceedings and the service and filing of papers. These comments reflect the input of the City Bar’s Council on Judicial Administration (the “CJA”) and its Committee on State Courts of Superior Jurisdiction (the “State Courts Committee”).¹

The use of electronic filing has been a tremendous boon to the court system, judges and attorneys in facilitating communication and the filing and service of papers. We applaud the personnel responsible for the system’s implementation and its oversight; as a result of their hard work, patience and dedication, the experience of the bench and bar has been largely positive.

¹ The State Courts Committee and the CJA include practitioners, academics and judges; the CJA also includes chairs of other court-related committees of the City Bar.

Unfortunately, however, there have been glitches along the way, particularly when electronic filing is first initiated in a new county or expanded into an area of law for which electronic filing was not previously available. Attorneys need to be trained in the use of the system. Some counties (notably Kings County Supreme Court) have deployed a dedicated clerk for electronic filing who is available, within the court system, to judges and other court personnel, as well as to attorneys and *pro se* litigants. We urge the creation of the position of E-Filing Clerk in every county in which e-filing is available, at least simultaneously with the implementation of e-filing, if not two to three months in advance, to assist judges, court staff and the public in learning how to use of the system.²

A second area related to electronic filing that we believe requires immediate attention is the creation of software capable of simultaneously inputting the county clerks' records, the court's records and other entries into the electronic filing system. The current procedures require duplication, often by hand, of the entries related to various filings, including motions and responses to motions and the calendaring of court appearances. As well, although the electronic filing system notifies parties of all filings, it does *not* notify them of court appearances – such notifications are given only through the separate “e-courts” system. All of this has resulted in delays and generated confusion among attorneys and court personnel, including judges, as to what has been timely filed, what papers are properly before the court and even what date the case is scheduled to be heard. The cost of the time expended by all parties and court staff in correcting misunderstandings and responding to inquiries from counsel is significant. We urge the immediate investment required to remedy this problem, which has been repeatedly raised and discussed in recent years.³

Although we realize that it is beyond the purview of this request for comments (which we understand is focused on the experience with existing procedures), we make one additional observation. While e-filing in most civil cases has been a positive innovation, the same cannot be said in criminal, matrimonial and family court cases, where issues of privacy may outweigh convenience. In these types of cases, highly sensitive personal information must be protected from the general public. Among other things, we are concerned that in the areas of matrimonial and family law, parties in the midst of personal family crises may try to use e-filing as a sword, threatening to embarrass the other side by e-filing private and personal information. Children's personal and private information may be made public as well. In criminal cases, where information about arrests and complaints is sealed when the cases end in dismissal or acquittal, damage from having such information made public pending resolution may be irreparable. If e-filing in criminal, family and matrimonial cases is contemplated, we urge the appointment of task forces of judges, criminal defense lawyers, family law practitioners and prosecutors to assess

² Anecdotally, we understand that there have been instances where lawyers attempted improperly to file legal papers by sending them directly to the assigned judge using the judge's email address.

³ The Chairs of the Advisory Council of the Commercial Division have been apprised of this issue and we understand that they may be undertaking to find or recommend a remedy, including private funding of the cost of hiring an outside vendor to assist in this regard.

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whether e-filing should be implemented in such cases and if so, to establish appropriate protocols to safeguard the information and/or other issues.

We hope our observations prove to be helpful. We stand ready to provide further comments upon request or to assist in any other way we can.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Adrienne B. Koch", with a long horizontal flourish extending to the right.

Adrienne B. Koch
Chair, Committee on State Courts
of Superior Jurisdiction