

Supreme Court of Vermont
Office of State Court Administrator

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To: Sen Dick Sears, Chair
Joint Justice Oversight Committee

Sen. Ann Cummings, Chair
Joint Fiscal Committee

FROM: Patricia Gabel, Esq., State Court Administrator

DATE: October 30, 2020

RE: State Court Administrator's Report pursuant to Sec. A.20 of Act 120

I. INTRODUCTION

Information technology systems installations rarely make the list of most enjoyable professional experiences, even when, like this one, they go relatively smoothly. The installation itself has been a great success. The Judiciary has more work to do to make the project a success for those who rely on the system to ensure our justice system is accessible for all.

When expectations are not met or surprises occur, the experience can be downright frustrating. Learning a new system, even when an organization has invested all the recommended time and energy on training and education, typically leads to slower processes and lost productivity, which can also be frustrating. The Judiciary recognizes these realities and has invested significant human and capital resources in efforts to mitigate the challenges that have been encountered. This report outlines additional specific efforts underway to increase training, education, and communications related to the project to enhance Judiciary staff skills and increase opportunities for users to enable a smoother transition.

The Judiciary is also prepared to explore an initiated case one-time e-filing use fee as an alternative to the current per envelope e-filing use fee, subject to successful negotiations with Tyler Technologies, which would be required to implement any change to the e-filing use fee structure prior to June of 2022.

The Vermont Judiciary engaged BerryDunn, a consulting firm, to conduct fact-finding activities and identify findings related to the usability and the service charge fee structure for the newly deployed Tyler File and Serve electronic filing (e-filing) system (the “BerryDunn report”). That report is attached to this Report as an exhibit.

BerryDunn reported one “general finding” on usability: As to the “desire for (the) e-filing system”:

Setting aside any technical issues or concerns related to fees, the overwhelming sentiment from participants is that e-filing is a valued and necessary tool. Participants who have used it often reported that OFS is relatively easy to use.

This finding is consistent with comments made at a recent meeting of the Windham County Bar Association. Windham County, as one of the pilot counties for the rollout of e-filing, was among the first to have to deal with the big changes and transition to the new electronic case management system and the new electronic filing model back in March and April of 2020. Now, approximately six months later, both judicial officers and attorneys who are actively using the system express an ease with, understanding of, and appreciation of the new electronic system. This observation is not to gloss over existing issues and challenges; but, rather, to demonstrate that the hard work that it takes to go through a dramatic transformation of this kind does yield real returns once individuals and their organizations invest in the learning required to be able to use the systems and have practical experience with them.

II. REQUEST FROM THE LEGISLATURE

Section A-20 of Act 120 passed by the Legislature in the spring of 2020 provides as follows:

- (a) The Judiciary shall meet with representatives of the Vermont Bar Association and other court users to listen to and respond to court users experience with the Odyssey File and Serve System and to examine alternatives to the current e-filing charges. The Judiciary shall report its efforts and recommendations for improving the rollout of the program and for improving court users’ experience with the system, including costs, to the Joint Fiscal Committee and Joint Legislative Justice Oversight Committee not later than October 30, 2020.

II. REPORT

The content of this Report is informed by feedback directly to the Judiciary from users of the Tyler File and Service e-filing service, review of data from other jurisdictions, Judiciary information and analysis, and the feedback collected by BerryDunn from stakeholder surveys and interviews, described as “findings” in the BerryDunn report.

The Vermont Judiciary’s Next-Generation Case Management System (NG-CMS) implementation is a multi-year effort that replaces an obsolete legacy system and enables the transformation of the Judiciary’s case management process from a paper-driven to an electronic-focused business model. With this change comes increased access to justice for Vermonters, strengthened inter-agency communication, and more efficient court operations through improved court case initiation, more accurate electronic case files, and improved document availability and accessibility.

When the Judiciary worked with the Legislature to obtain funding for this system, the funding committees sought assurances from the Judiciary before the funds were appropriated that the Judiciary would seek a vendor that would provide a “commercial off-the-shelf” (COTS) solution that was proven in other jurisdictions. In fact, the solution chosen, Tyler Technologies’ Odyssey system, which includes Case Manager, File and Serve and the public portal, is widely used across the country, including implementations in fourteen statewide court systems. It is not meant to be a custom-developed system specifically designed for Vermont, but a supportable and sustainable COTS solution that is configured for our needs.

Tyler Technologies hosts and supports the Odyssey File and Serve service (OFS) that provides electronic filing in Vermont. The costs of the services are paid by users through an e-filing user fee per envelope of documents filed by a user, as provided for in a contract between Tyler Technologies and the Vermont Judiciary. Due to the impact of the pandemic on access to justice, these fees are temporarily being covered by an access to justice grant from the Agency of Human Services to Vermont Legal Aid until December 30, 2020.

Tyler Technologies and the Judiciary’s extended project team, including judicial officers and court staff members in the Division of Trial Court Operations, supported by the NG-CMS project management office and the Division of Research and Information Services, have, since the first pilot rollout of the system in three counties in the Superior Court in March of 2020, continued to work together to refine the Judiciary’s internal processes and system configuration as both the Judiciary and

Tyler receive valuable feedback from people who are actually using the system. Odyssey Case Manager was implemented as a pilot phase in March in Windham, Orange, and Windsor counties (WOW), followed by the e-filing (OFS) pilot implementation in those same counties in April of 2020.

(The Supreme Court declared a Judicial Emergency due to the COVID-19 pandemic on March 16, 2020, initially limiting in-person activities in the Judicial Branch to emergency court proceedings. The pandemic has presented significant obstacles and required material changes to the plan for the training and the rollout, but the pandemic also made it more important than ever that both judges and employees in the Judiciary, as well as attorneys and other court users, be able to access case files electronically and remotely through the Odyssey suite of services in order for access to justice to continue.)

Odyssey Case Manager was implemented in September in Bennington, Rutland, Addison, and Chittenden counties and the Environmental Division (BRACE), followed by OFS implementation in those counties and that division on October 19.

The interaction between actual users of the system and the Judiciary team “on the ground” engages the trouble-shooting, problem-solving, and continuous improvement process. This collaboration was particularly integral to the pilot rollout, when many issues were identified as both the Judiciary and users had their first experience with the service; but collaboration is an ongoing process, as implementation of the system transitions into post-implementation operations. This interaction between users of the system and those working on rollout and troubleshooting is a familiar process for the implementation of complex technology transformations.

Overall, the NG-CMS implementation has been successful by any measure – development, training, testing and implementation all occurred with no major system flaws reported and thousands of successful e-filings completed. The Judiciary applied lessons learned in the WOW implementations of Odyssey Case Manager and OFS to the implementations in BRACE, resulting in a much improved and highly successful rollout. It is impossible to overstate how the impact of COVID-19-related changes to our everyday professional interactions has impacted this otherwise successful implementation. Disruptions in communications, training, and information-sharing, especially those we rely on in-person, have made it difficult, if not impossible, for many users to fully prioritize the work necessary to prepare for this type of systems transition. For the Judiciary’s part, more work is required to ensure users are adequately prepared and have the tools and resources needed to learn the new system in real-time.

In addition to listening to feedback from users of the system throughout the WOW and BRACE rollouts, and to fulfill the request made by the Legislature in Act 120 of 2020, the Judiciary engaged an external consultant, BerryDunn (also the external project manager for the NG-CMS project and a member of the project management office), to conduct fact-finding activities about the opinions of users and others related to the usability and service charge fee structure for the electronic filing (e-filing) system.

With the assistance of the Judiciary, BerryDunn identified stakeholders who might be willing and available to provide feedback on the system and charges due to (i) their experience e-filing in the three pilot counties or (ii) their experience participating in training in advance of the second e-filing go-live on October 19; or (iii) the opinions they had formed based on information they had received from other sources regarding e-filing.

One of the challenges to conducting this user review so early in the implementation was that most attorneys in the State did not yet have the experience of e-filing at the time the outreach was conducted because they did not practice in the pilot region of the Windham, Windsor, and Orange units. Although there had been some training completed for the second regional rollout during the latter part of this survey period, which helped provide feedback on the training from a broader group, the sample size available for feedback did not include users from the entire state because it was conducted before their county units had transitioned to Odyssey. We know that experiences can vary, and given the addition of COVID-19-related challenges, the Judiciary will continue to engage with stakeholders during the regional rollout of e-filing to other county units to continue to problem-solve issues with users of the system.

BerryDunn began its fact-finding process by issuing a web-based survey to stakeholders, then conducted interviews with select groups with the goal of exploring topics related to the legislative mandate.

III. ACTION PLAN

E-Filing Usability

The BerryDunn report identified three broad categories under which opportunities for improvement in usability could be categorized:

(a) Standardization

(b) Training

1. Training of parties external to the Judiciary
2. Training of people working in the Judiciary

(c) Communication

Based on an initial review of BerryDunn's findings, the Judiciary's own analysis of information developed through interaction with users, information from Tyler, and information from other state judiciaries who use the Tyler OFS e-filing service, the Judiciary, with respect to each of the three categories identified by BerryDunn:

- (i) has continued to make those improvements that can be made at this time, given the fact that the Judiciary is still in the middle of the implementation of the system and has finite resources;
- (ii) is in the process of planning additional changes in anticipation of a fully-rolled out system, at which time resources now devoted to implementation can be re-deployed to operations if Judiciary resources are adequate to permit such a redeployment;
- (iii) is exploring those areas where other changes could be made if resources were to be identified and/or appropriated to meet the new demands that would be placed on the Judiciary by some of the expectations described in the BerryDunn findings;
- (iv) is exploring those areas where Tyler Technologies, under its existing contract obligations, can and should respond to the Judiciary's identified needs and/or the BerryDunn findings, both on its own and in collaboration with the Judiciary; and
- (v) Is exploring those areas where the Judiciary and Tyler Technologies may jointly consider amending the contract in order to enable Tyler to respond to the Judiciary's identified needs and/or the BerryDunn findings.

Standardization

- (i) Judiciary has continued to make those improvements that can be made at this time, given the fact that the Judiciary is still in the middle of the implementation of the system and has finite resources;

The State Court Administrator and the Chief Superior Judge have established a Standardization Committee within the Judiciary composed of subject matter experts, both judicial officers and court management personnel, who are dedicated to the goal of standardizing business processes within the Judiciary by court division and case type. This Committee builds on a multi-year effort of the Division of Trial Court Operations and the NG-CMS Working Board, composed of judges and court staff, the Configuration Architecture Task Force, the project management office, and the dedicated project team to improve Judiciary operations through the development and communication of standard business practices across the State. The Standardization Committee will make recommendations for proposed changes of currently-established business standards to the State Court Administrator who, in consultation with the Chief Superior Judge and the Chief of Trial Court Operations, has decision-making authority regarding business processes that do not require policy decisions from the Supreme Court. This Committee will include in its deliberations input from Rules Committees, Oversight Committees, internal stakeholders, and external stakeholders.

- (ii) Judiciary is in the process of planning additional changes in anticipation of a fully-rolled out system, at which time resources now devoted to implementation can be re-deployed to operations if Judiciary resources are adequate to permit such a redeployment;

Once the NG-CMS is fully rolled out across the state, the Judiciary will establish a Judiciary Change Advisory Board that will identify recommended changes to existing business processes that may require technical system changes in order to be implemented. The Committee will make recommendations to the State Court Administrator covering feasibility, impact analysis, cost, implementation approach, and timeline. This Board will include in its deliberations input from Rules Committees, Oversight Committees, internal stakeholders, and external stakeholders.

- (iii) Judiciary is exploring those areas where other changes could be made if resources were to be identified and/or appropriated to meet the new demands that would be placed on the Judiciary by some of the expectations described in the BerryDunn findings;

In order to support technical changes and improvements to the NG-CMS suite, additional resources will need to be identified or appropriated to the Judiciary, either in the form of

new positions or additional operating funds or both, to meet the expectations of stakeholders that exceed requirements identified at the time the NG-CMS project was commenced several years ago.

- (iv) Judiciary is exploring those areas where Tyler Technologies, under its existing contract obligations, can and should respond to the Judiciary's identified needs and/or the BerryDunn findings, both on its own and in collaboration with the Judiciary; and

The Judiciary is currently in discussions with Tyler about how and when some promised system features and some system improvements responsive to stakeholder feedback may be implemented. The Interim CIO and external project manager will guide the creation of a comprehensive inventory of and proposed ways to address common usability issues (e.g., those identified by the BerryDunn report) with Tyler Technologies to distinguish between (i) those issues that are features of the OFS system that comply with Vermont statutes, the rules adopted by the Supreme Court, established standard business operations, and the contract requirements and (ii) those issues that can and should be rectified.

- (v) Judiciary is exploring those areas where the Judiciary and Tyler Technologies may consider amending the contract in order for Tyler to respond to the Judiciary's identified needs and/or the BerryDunn findings, both on its own and in collaboration with the Judiciary.

There has been insufficient time between the delivery of the BerryDunn report and the due date of this Report to identify potential contract changes regarding usability features or issues. If the Judiciary identifies such features or issues, this avenue may be pursued.

Training

Training of parties external to the Judiciary

- (i) Judiciary has continued to make those improvements that can be made at this time, given the fact that the Judiciary is still in the middle of the implementation of the system and has finite resources;

According to information from Tyler and other state judiciaries that use the Tyler OFS system, the standard practice is for Tyler to take the lead in training and support of users

of the e-filing system, as Tyler is the owner, direct host, and provider of the system and has successfully supported users of its system in hundreds of jurisdictions across the country, including thirteen statewide court systems before the Vermont implementation began. Tyler has its own systems for training and direct support of users of the system. The rollout of Vermont's NG-CMS project, including the budget and pricing, was designed with that understanding and expectation.

The initial training for electronic filing, based on recommendations from Tyler as used in other jurisdictions, included the following:

- **Schedule and conduct a series of live, 1-hour CLE credited basic e-filing webinar trainings**
 - Users are at liberty to attend as many of these sessions as desired to learn the system; some attorneys took advantage of this opportunity in WOW
- **Record a session of the 1-hour training and make it available to filers who did not/could not attend the scheduled webinars**
- **Call filers' attention to the various self-help resources that are available from Tyler**
 - **FAQ's (<https://tylertech.egain.cloud/kb/txh5/list/24240000009328>)**
 - **Tyler Support Chat**
(<http://fschat.tylertech.com/WebChat/Main.aspx?QueueName=FSCHAT>)
 - **How to File a Case video**
(<https://tylertech.egain.cloud/kb/txh5/list/242400000011494>)
 - **Various Tyler User Guides on filing and firm administration**
(<https://tylertech.egain.cloud/kb/txh5/list/242400000011514>)
- **For users who need particular attention, the Judiciary project team has routinely responded to assist those individuals (e.g., Vermont Legal Aid, Public Defenders, States Attorneys)**
- **Several various docket-specific user guides for practitioners (General policies & procedures, Civil, Criminal, Family, Probate, JB, Juvenile, Mental Health, how to create waiver accounts and how to perfect electronic service)**

- **User guide for how to use the Public Portal**
- **Video on how to use the Public Portal**

The answers to the survey questions distributed by BerryDunn regarding training issues indicate that prior to e-filing an envelope in the new system, 30% of Vermont users who replied did not read the docket-specific user guides available on the Judiciary website about how to use the system and over 20% did not participate in any training sessions that explained how to e-file an envelope.

According to the BerryDunn report, the common sentiment was that the training was too general and high level, and it did not meet the unique needs of the various stakeholder groups. On the other hand, users found the written training documentation too long and detailed to be useful to busy practitioners. The consensus was that smaller, case-type-specific training segments would have been more valuable.

The Judiciary responded to these comments by re-deploying Vermont Judiciary resources from the NG-CMS project and court operations to produce more Vermont-developed training between the pilot go-live in April and the second regional rollout in October. According to the BerryDunn report:

Users did indicate that the training for BRACE e-filers was a significant advancement over the training for the pilot WOW region, as it involved more videos and educational events (e.g., a continuing legal education (CLE) presentation by the Judiciary to the Chittenden County Bar Association), including answering questions and providing more specific demonstrations.

After the first pilot roll-out to WOW, the Judiciary increased the types of trainings available to stakeholders. The Judiciary provided training videos, FAQs, and user guides on the Judiciary website, all of which users found helpful.

Steps that were added to e-filing training subsequent to the WOW rollout:

- **49 Minute Introduction and Overview Video specifically designed for filers (<https://youtu.be/ke2ouMDK4VQ>)**
- **Updates to the Portal user guide**
- **Updates to the various docket-specific user guide**

- **To Be video specifically for criminal filing for the States Attorneys**
- **To Be Q&A sessions for criminal filing for the States Attorneys**
- **Creation of Office of Defender General role in the Portal (not directly tied to training, but is a noteworthy improvement)**
- **Creation of specific view for Arrest Warrants in the Portal (not directly tied to training, but is a noteworthy improvement)**

Noting these improvements, however, does not change the reality that for users to gain experience and confidence with a new system requires users to engage and train and practice. For users to gain competence in the use of the court e-filing system, they need to make understanding and mastering the system a priority, even when it is time-consuming and they have other demands on their resources.

- (ii) **Judiciary is in the process of planning additional changes in anticipation of a fully-rolled out system, at which time resources now devoted to implementation can be re-deployed to operations if Judiciary resources are adequate to permit such a redeployment;**

The Judiciary is currently working on training materials for pro se or self-represented litigants that will utilize a tool called Guide and File. Guide and File automates the process of providing forms and information to litigants who are not represented by lawyers. Tyler indicates that Guide and File will answer online questions to prepare the case filing in certain case types, create required documents related to that case, and enable the case to be filed online.

The Judiciary is instituting an “interim support model” for e-filing users. Currently, these users have described being “bounced around” between Tyler and the Judiciary before they receive an answer. The interim model involves only two levels (Tyler and one Judiciary employee) within which the e-filer questions will be answered without “bouncing around.”

Judicial officers have noted that a material portion of the difficulties lawyers describe regarding e-filing arises from their lack of familiarity with the Judiciary’s E-Filing Rules and Public Access to Court Records Rules and how those rules are interdependent and drive the standard processes regarding e-filing. The Judiciary is now planning a direct

continuing legal education presentation to lawyers and other users regarding the E-Filing and Public Access to Court Records Rules.

- (iii) Judiciary is exploring those areas where other changes could be made if resources were to be identified and/or appropriated to meet the new demands that would be placed on the Judiciary by some of the expectations described in the BerryDunn findings;

A permanent e-filing support model may involve Tyler and the Judiciary Access and Resource Center (ARC), which is being developed to provide direct services and support to users of the court system. It will require new dedicated positions to provide the support being requested by participants in the BerryDunn surveys and focus groups. In addition, once the implementation of the NG-CMS system has been completed with the rollout of the remaining geographic region and other units of the Judiciary, one or more members of the current project team may be available for redeployment to train IT and ARC employees so that they can provide user support and/or to be a direct resource to users

As an alternative to the contracted-for Tyler training methods and materials, respondents to the BerryDunn surveys and focus groups are asking for Judiciary-produced short, concise, and specific training materials considering uses of all stakeholders, including law enforcement and other non-attorney users of OFS. This would include one-page reference sheets for different practices and subjects (e.g., specific to certain user groups, and specific to certain tasks [e.g., filing confidential materials and using the portal search function]), and brief training tips communicated regularly with stakeholders. Communications related to trainings would need to provide enough detail so stakeholders can easily determine whether the training is relevant to them.

Historically, the Judiciary has not typically been a provider of education and training to individuals who do not work for the Judiciary. Judicial officers and employees of the Judiciary have historically been invited to sit on education panels and/or to prepare and deliver education presentations sponsored by other organizations, but the Judiciary as an organization has not previously taken on the responsibility as a provider of education products and services to external parties. The Judiciary is now reconsidering this historical expectation that third-party organizations will provide necessary education and training to lawyers and other court users regarding court procedures. If the

Judiciary is to take on this responsibility, additional resources will need to be identified or appropriated to the Judiciary in the form of new positions, operating expenses, or both.

- (iv) Judiciary is exploring those areas where Tyler Technologies, under its existing contract obligations, can and should respond to the Judiciary's identified needs and/or the BerryDunn findings, both on its own and in collaboration with the Judiciary; and

The Judiciary will be sharing the results of the BerryDunn report with Tyler Technologies in order to explore how Tyler can improve its performance under its contract with the Judiciary.

- (v) Judiciary is exploring those areas where the Judiciary and Tyler Technologies may consider amending the contract in order for Tyler to respond to the Judiciary's identified needs and/or the BerryDunn findings, both on its own and in collaboration with the Judiciary.

There has been insufficient time between the delivery of the BerryDunn report and the due date of this Report to identify potential contract changes regarding training. If the Judiciary identifies such changes, this avenue may be pursued.

Training of people working in the Judiciary

- (i) Judiciary has continued to make those improvements that can be made at this time, given the fact that the Judiciary is still in the middle of the implementation of the system and has finite resources;

The training offered by the Judiciary to judges and employees was severely impacted by the arrival of the pandemic coincident with the first pilot rollout of the NG-CMS system and the Supreme Court's declaration of a Judicial Emergency on March 16, 2020. The normal in-person support and hands-on training that characterizes Judiciary employee and judge education and training could no longer be held as planned. The project team and Judiciary managers pivoted and collaborated with Tyler members of the project team, who were now barred from travel, to provide training in a predominantly remote environment. The training was hampered by the fact that, especially during the first pilot rollout, many court staff members were not working in courthouses due to pandemic-related issues, and thus may not have had access to training. Another group of court staff

members experienced travel-related quarantine during the training, so they did not benefit from training offered.

Nonetheless, the project team was able to learn from the WOW pilot go-live experience to improve training for judges and court staff for the second roll-out

- (ii) Judiciary is in the process of planning additional changes in anticipation of a fully-rolled out system, at which time resources now devoted to implementation can be re-deployed to operations if Judiciary resources are adequate to permit such a redeployment;

The Judiciary is instituting an “interim support model” for support of internal Judiciary staff and their use of Odyssey. Currently (and temporarily), this involves the use of MS Teams, and the project team’s periodic review of the posts on Teams channels. Once the geographic and additional programs rollout of the Odyssey suite of products is complete, one or more members of the project team may be able to be re-deployed to train others in the Judiciary to provide internal support.

Judiciary staff training will require a close collaboration with the Standardization Committee to overcome the local tendencies to develop “local practices” that are inconsistent with standard procedures, confuse external users who practice or interact with more than one court, create errors in or the impossibility of collecting accurate data, and eliminate the efficiencies that are intended to be gained by adopting a statewide electronic case management system.

- (iii) Judiciary is exploring those areas where other changes could be made if resources were to be identified and/or appropriated to meet the new demands that would be placed on the Judiciary by some of the expectations described in the BerryDunn findings;

A more permanent support model for internal Judiciary staff will evolve to include one or more of the current project teams members as Tier 2 support (after training the IT helpdesk to be able to provide Tier 1 support for Odyssey.) Although the training of the IT helpdesk personnel may occur prior to the rollout to the northern counties, the formal support model is not expected to be completed until after the rollout to the northern counties and the rollout of other Judiciary programs due to the significant role the project team plays in the rollout.

The requirements of the clerk review and approval of filings function, resulting in acceptance or rejection of filings, the complexity of the application of the Public Access to Court Records Rules and E-Filing Rules in the determination of whether a filing should be accepted or rejected, and the need to have those standards and rules applied consistently across the state argue for specialized clerk reviewers of filings to reduce the number of people who need to be trained to perform this highly technical review. The Judiciary does not yet know if this will require additional resources or simply a re-deployment of existing resources.

- (iv) Judiciary is exploring those areas where Tyler Technologies, under its existing contract obligations, can and should respond to the Judiciary's identified needs and/or the BerryDunn findings, both on its own and in collaboration with the Judiciary; and

Not sure at this time

- (v) Judiciary is exploring those areas where the Judiciary and Tyler Technologies may consider amending the contract in order for Tyler to respond to the Judiciary's identified needs and/or the BerryDunn findings, both on its own and in collaboration with the Judiciary.

Not sure at this time.

Communication

- (i) Judiciary has continued to make those improvements that can be made at this time, given the fact that the Judiciary is still in the middle of the implementation of the system and has finite resources;

Components of the NG-CMS project plan over the past three years included both internal change management initiatives and regular communications with both internal and external stakeholders. In addition, external stakeholders were and are represented on Judiciary committees that deliberate on issues related to the new system, including the E-Filing Rules Committee and the Public Access to Court Records Rules Committee. There were also attempts to engage external stakeholders specifically with respect to data exchanges with the Judiciary with mixed receptivity from such stakeholders. Communication from e-filing users following the first pilot rollout and the feedback summarized in the BerryDunn report indicate that neither the Judiciary's reliance on

historic and evolving ways of interacting with external stakeholders nor the addition of targeted project communications and external stakeholder initiatives were considered to be adequate, on their own, to prepare e-filing users for the changes presented by the Tyler e-filing service.

- (ii) Judiciary is in the process of planning additional changes in anticipation of a fully-rolled out system, at which time resources now devoted to implementation can be re-deployed to operations if Judiciary resources are adequate to permit such a redeployment;

Under this category, re-deployment of existing resources are unlikely to meet the communications expectations expressed by users and reflected in the BerryDunn report because the Judiciary does not currently have dedicated communications resources that have the expertise/additional capacity to meet those expectations.

- (iii) Judiciary is exploring those areas where other changes could be made if resources were to be identified and/or appropriated to meet the new demands that would be placed on the Judiciary by some of the expectations described in the BerryDunn findings;

To improve communications, both in terms of outgoing communication, but also in terms of being able to act on incoming communications, the Judiciary will need to develop a next-stage communications plan for engagement with external stakeholders, including law enforcement and other non-attorney users of the e-filing system that is bidirectional in nature. The Judiciary will need to continue to gather feedback from external stakeholders, including law enforcement and other non-attorney users of the e-filing system about all aspects of e-filing. Any changes to e-filing, training tips and tricks, and other relevant information should be communicated out by the Judiciary to all stakeholders using the available methods in these unprecedented times. The communications plan should strive to communicate best practices to stakeholders.

As previously noted in the training section above, however, in order for users to develop competence with new court procedures, users are called on to make understanding and mastering the system a priority, even when it is time-consuming and they have other demands on their resources. In addition, communications will not be effective without direct interaction between the Judiciary and users of the system and interaction among users with each other as they learn from each other.

By continuing to implement the communications plan, the Judiciary might advance relationships between stakeholders and the Judiciary and help stakeholders best take advantage of the benefits of the e-filing service. Many findings related to usability appeared to be due to users' perception of lack of communication between the Judiciary and stakeholders, resulting in users' confusion about the Judiciary's expectations. It is possible that by improving communications and stakeholder engagement, a number of usability issues identified by stakeholders may be mitigated or resolved. To that end, stakeholders have had significant input related to their e-filing experience through the survey and interviews held by BerryDunn.

In order to meet these new expectations, additional resources will likely need to be identified or appropriated to the Judiciary in the form of new positions, operating expenses, or both.

- (iv) Judiciary is exploring those areas where Tyler Technologies, under its existing contract obligations, can and should respond to the Judiciary's identified needs and/or the BerryDunn findings, both on its own and in collaboration with the Judiciary; and

The Judiciary will explore with Tyler ways that Tyler could collaborate with the Judiciary to improve communications with users.

- (v) Judiciary is exploring those areas where the Judiciary and Tyler Technologies may consider amending the contract in order for Tyler to respond to the Judiciary's identified needs and/or the BerryDunn findings, both on its own and in collaboration with the Judiciary.

Not sure at this time.

Alternatives to the current e-filing "per envelope" use charge

Odyssey File and Serve is a hosted software-as-a-service model run, supported, and hosted by Tyler Technologies. As previously mentioned, it is used in court systems throughout the United States, including fourteen statewide judiciaries. For this service, Tyler charges either users or court systems amounts based on expected volume and adoption rates.

At the time the Judiciary contracted with Tyler for the current user per-envelope charge, the Judiciary had only initial estimates for rollout plans, including regions. Instead of agreeing to a fixed amount borne by the Judiciary, regardless of rollout or adoption rate, the Judiciary chose a smaller per-filing use fee supported by users of the system. This came with broad-based waivers to relieve from paying this use fee any filings exempted from paying court filing fees by the legislature, such as criminal filings, filings by government lawyers, filings on behalf of litigants who meet certain income guidelines, and the like. Self-represented litigants are not required to e-file. The fee negotiated with Tyler is also based on the Judiciary making e-filing mandatory for attorneys who are not otherwise exempt.

This approach enabled the Judiciary to ensure that the funding for the e-filing service being used by lawyers is supported by a financially sustainable funding model in accord with directions from the legislative committees that authorized funding for the project.

The e-filing contract term, which expires, subject to renewal option, in June of 2022, allows Vermont to gain experience with e-filing as Vermont proceeds through the implementation of the NG-CMS and adjust funding models as needed. The project will be fully rolled out in the Superior Court during the first half of 2021, after which data can be collected about the impact of the fee and its relation to the cost of e-filing services.

The BerryDunn findings with respect to the e-filing use fee stated that participants expressed a desire to base the e-filing use fee on actual filing data so that fees can be appropriately spread across all filers (see the BerryDunn report p. 12, F2, Basis of fees.)

As mentioned earlier in this Report, one of the challenges to conducting this user review so early in the implementation was that most attorneys in the State did not yet have the experience of e-filing at the time the outreach was conducted because they did not practice in the pilot region of the Windham, Windsor, and Orange units. E-Filing in the BRACE region began about two weeks ago. E-Filing in the remaining county units of the Superior Court will not begin until late in the first quarter of calendar year 2021.

This factor not only affects the ability to canvas user experience, but it also affects the development of data to learn how the e-filing use fee is impacting different categories of users from a financial point of view. It wouldn't be until later in 2021 that we would have data on all courts in the state, and it wouldn't be until April of 2022 that we would have at least one year's worth of data on all courts in

the state, which would be timely to inform our negotiation with Tyler regarding the renewal of the contract for File and Serve.

Question 11 in the BerryDunn survey (see p. 18 of the BerryDunn report) inquired as follows:

11. The benefits of the e-filing system and related support come with a cost. Acknowledging that e-filing service charges only apply to certain case types, in your opinion, how should those costs be borne?

The following list shows the choices offered by the survey and the percentage of respondents who checked each choice (guestimated based on the bar charts):

By the filer individually for each “packet of documents (envelope)” filed (i.e., each party to a civil matter pays their own fees each time that party files a packet):

20+%

By the case initiator on a per-case basis (i.e., in a civil matter the Plaintiff bears all costs of filing regardless of how many documents are filed in a case):

5+%

By the state’s general fund, supported largely by tax revenue:

33+%

Other, please explain:

35+%

The majority of responders (roughly 70%) preferred either the state’s general fund or “other” as a resource to cover the cost of Tyler’s File and Serve service.

A review of the BerryDunn findings regarding this question (pp. 11-13) indicates a diverse set of viewpoints about e-filing use fees, but those findings do not, with one exception, indicate alternative resources to cover the total cost of the Tyler File and Serve service that are not already contained in the specific answer choices offered, as described above. The one exception is the suggestion that the cost of e-filing in the Superior Court be funded by fees or surcharges on activity in another part of the Judiciary, such as on traffic tickets in the Judicial Bureau.

In general, the comments point out that some practice areas bear more of a cost for the e-filing service because they e-file more documents than do other practice areas; and some practice areas, such as criminal law practice, and some categories of litigants, based on income, bear no cost at all for e-filing because of statutory exemptions applied to legislatively-set court filing fees because the e-filing use fees have exemptions for those categories exempted by the legislature for court filing fees.

The comments also raise questions as to whether Certificates of Service and other documents currently required by rule should continue to be required by rule in an electronic world. This is less a comment on the structure of the e-filing user fee than on whether court rules could mitigate some of the complaints about e-filing user fees by eliminating filings that may be obsolete.

Given the historical resistance of the Executive and Legislative branches to increase the Judiciary's base budget to offset declining Tech Fund revenues, notwithstanding the role of the Tech Fund to support Judiciary technology costs, and given the increasing role of technology in Judiciary operations, the Judiciary's goal is to continue a sustainable funding model for Tyler's File and Serve service to users.

Any final decision as to the funding model should be based on data related to actual cost and impact and input from stakeholders. Any changes to the current model that is considered to take place prior to June of 2022 will need to be successfully negotiated between Tyler Technologies and the Judiciary.

Although only a little over 5% of the responders to the BerryDunn survey preferred a per-case e-filing use fee paid by the initiator of the case, BerryDunn also made a finding based on focus group discussion that the current per envelope model is not "tenable or equitable."

The Judiciary will review the BerryDunn findings to determine what steps can be taken to mitigate concerns both with respect to the structure of the e-filing use fee and also with respect to other steps unrelated to the structure of the fee, such as reviewing the necessity and impact of filings required by court rule. The Judiciary will also review the e-filing data between April 2020 and October 2020 to try to discern different kinds of impact on users under the current system and how that compares to estimated impacts if a per-initiated case e-filing use fee were to have been in place instead. Thereafter, if the analysis indicates that a better option is preferred, then the Judiciary will consult with Tyler regarding a possible renegotiation of the contract with Tyler regarding the File and Serve service.

cc. Rep Alice Emmons, Vice Chair
Sen. Philip Baruth
Sen. Ginny Lyons
Sen. James McNeill
Sen. Cheryl Hooker
Rep. Maxine Grad
Rep. Sandy Haas
Rep. Mary S. Hooper
Rep. Butch Shaw
Sen. Ann Cummings,
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Rep. Catherine Toll,
Rep. William J. Lippert Jr.
Steve Klein, Joint Fiscal Office
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Theresa Utton-Jerman, Staff Associate

**Vermont Judiciary
Office of the State Court Administrator**



**Act 120 Review Findings Report
Version 0.1**

Submitted by:

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Submitted on:

October 28, 2020

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Table i: Version History of the Findings Report

Version	Delivered Date	Version Notes
DED	10/9/2020	Initial delivery of the Deliverable Expectations Document (DED) to the Judiciary for review, feedback, and approval
V0.1	10/28/2020	Delivery of first draft to the Judiciary for review and feedback

1 Executive Summary

This section includes a summary of the Act 120 requirements, the approach that the Judiciary took to gather input, and a summary description of findings related to the two key topics defined in Act 120: e-filing usability, and e-filing service charge structure. Detailed findings can be found in Section 3 of this report.

Pursuant to Act 120 H. 961 § A.20(a), the Vermont Judiciary engaged BerryDunn to conduct fact-finding activities, and identify findings related to the usability and service charge fee structure for the newly deployed electronic filing (e-filing) system. With the assistance of the Judiciary, BerryDunn identified e-filing users and stakeholders who may provide feedback on the system and charges. BerryDunn issued a web-based survey to a broad set of these stakeholders, then conducted interviews with select groups with the goal of exploring the following topics:

The findings provided in this report are the culmination of feedback provided by a variety of e-filing stakeholders from across the State of Vermont.

- Timeliness and effectiveness of preliminary communications (prior to the implementation of e-filing in each region)
- Effectiveness and comprehensiveness of training provided by the Judiciary and Tyler Technologies prior to e-filing
- Effectiveness of support materials (e.g., training guides, quick reference cards, frequently asked questions (FAQs), video vignettes) and the overall support model (e.g., help desk)
- The user's experience and usability of the e-filing system
- Alternate e-filing service charge models

As a result of these fact-finding activities, BerryDunn has identified 51 findings. Findings details can be found in Section 3 of this report.

In general, stakeholder participants indicated that communications were sufficient prior to e-filing implementation. Specifically, there was clear improvement in communications for the Bennington, Rutland, Addison, Chittenden, and Environmental Court (BRACE) region over the Windham, Orange, and Windsor (WOW) (pilot region) implementation. The pilot presented lessons that were learned by the Judiciary project team; many of which were addressed for BRACE. Stakeholders reported, however, that they would have preferred if the Judiciary had engaged external stakeholders (attorneys and internal state agencies) more fully during the configuration of the e-filing system; taking into consideration the needs and business processes of specific dockets. For example, filing in a family matter is significantly different from a probate matter; civil matters are much different from criminal matters. Stakeholders felt that the

configuration of the system does not fully consider these nuances, which might have been addressed earlier in the process.

Stakeholders provided a significant amount of feedback regarding the training for the e-filing system as well as the public portal. The common sentiment was that the training was too general and high level, and it did not meet the unique needs of the various stakeholder groups. The consensus was that smaller, case-type-specific training segments would have been more valuable. Users did indicate that the training for BRACE e-filers was a significant advancement over the training for the pilot WOW region, as it involved more videos and educational events (e.g., a continuing legal education [CLE] meeting with Chittenden) to answer questions and provide more specific demonstrations. Even with these advancements, there seems to be confusion regarding how to file in certain circumstances. Additionally, court processes have not yet been standardized to the point where filers can follow a single process, regardless of which court they are filing in. Note that this issue is largely a process issue that is being addressed through continual process improvement, and less of a technical issue to be addressed through updates to system configuration. Though process standardization is a key focus of Trial Court Operations (TCO), there is still work to be done to increase the level of standardization to reduce inconsistencies and increase efficiencies.

Users reported confusion and inefficiencies related to the e-filing support model. Many were unaware that they were to engage Tyler Technologies as the first point of support, and were following past practices of calling their courts directly for e-filing support. Unfortunately, using this model results in inconsistencies because court staff have not been trained on e-filing from the filer's perspective; just from the filing reviewer's perspective. This has led to a "circular" support model where the user might have been passed around between the court, Research and Information Services Division (RIS), the Next Generation Case Management System (NG-CMS) project team, and Tyler.

Several usability issues were identified during fact-finding. Many of these are documented in correspondence between the Vermont Bar Association (VBA) and the Judiciary, while others have been provided to the Judiciary directly.

Finally, though not all stakeholders were assessed the e-filing service charges, interested stakeholders indicated that the originally designed fee-per-envelope model is untenable and unsustainable. Instead, many agreed that this service charge should be assessed on a "per case" basis; either as a separate charge, or as an increase to the existing filing fee.

Section 3 provides details regarding these findings.

2 Introduction

This section of the report summarizes the background of the project, the purpose and format of this report, and BerryDunn's approach to the development of this report.

2.1 Project Background

The Vermont Judiciary engaged BerryDunn as external project managers for the Judiciary's NG-CMS. The NG-CMS project included acquiring and implementing an e-filing system for use throughout Vermont. The Judiciary enacted a per-envelope e-filing service charge of \$5.25 in order to cover the cost of the Tyler Odyssey File and Serve (OFS) system.¹

The Vermont legislature enacted Act 120 H. 961 § A.20(a) (Act 120) related to the OFS system. Act 120 requires that the Judiciary meet with representatives of the VBA and other court users to listen to and respond to their experience with the e-filing system, and for the Judiciary to examine with those groups alternatives to the current e-filing charges. Additionally, Act 120 requires the Judiciary to provide a report to the legislature of its efforts to fulfill the requirements of Act 120.

The Judiciary retained BerryDunn to provide support and assistance in its conduct of an outreach process to inform the report requested by the Vermont legislature in Act 120.

Representatives from BerryDunn met with representatives of the VBA and other court users to gather input related to their experience with the OFS system and examined alternatives to the current e-filing service charges. The focus of this project is to develop a report, to be submitted to the legislature by October 30, 2020, outlining the Judiciary's efforts for improving program rollout and user experience with the system (including cost). Appendix C contains a list of interview participants.

BerryDunn reviewed documentation provided by the Judiciary, the VBA, and other court users for additional support in writing this report. Appendix D contains a list of the reviewed documents. BerryDunn issued web-based surveys to e-filing users to better understand the current environment and sentiment toward existing and potential e-filing service charges. Appendix A contains a summary of the survey results.

2.2 Report Purpose

The primary purpose of this report is to provide BerryDunn's findings related to opportunities to improve the usability of the e-filing system, and to analyze alternative e-filing service charge options. The findings reflect feedback gathered from a variety of current users of the e-filing

¹ Due to the COVID-19 pandemic, there is currently a moratorium on the collection of the e-filing service charge until the end of 2020.

system, as well as those that provided input to e-filing service charge structural options (as described in Section 2.4: Approach to Report Development).

The findings elucidated by BerryDunn within this report are intended to aid the Judiciary in addressing the requirements of Act 120. Moreover, this report sets the groundwork for improving user experiences with OFS, creating an e-filing service-charge model that meets the needs of the Judiciary and is acceptable to external stakeholders.

2.3 Report Format

This report is composed of an executive summary followed by two primary sections as described below:

Introduction. This section of the report summarizes the project background, report purpose, format of the report, work performed in the development of the report, and definitions of terms.

Assessment Findings. This section of the report describes the findings identified through the execution of this project.

2.4 Approach to Report Development (Work Performed)

This section describes the process used to gather input to inform the findings found within this report. A timeline graphic is included in this section.

Figure 2.4.1 provides an overview of information-gathering activities performed; Appendix C includes a list of participants in several of the activities.

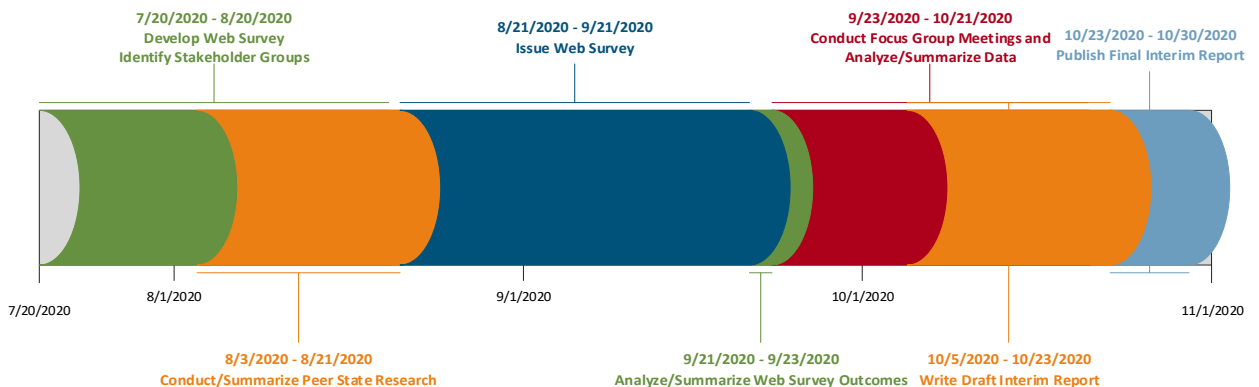
Figure 2.4.1: Act 120 Review Project Information-Gathering Activities



As a result of the information-gathering and analysis activities, BerryDunn identified a comprehensive set of findings. The findings are included in Section 3 of this report.

Figure 2.4.2 provides an approximate timeline of project planning, information-gathering activities, and report development.

Figure 2.4.2: Act 120 Review Project Timeline



2.5 Key Definitions

Appendix B includes a list of terms used frequently throughout the findings report and their definitions.

3 Assessment Findings

3.1 Overview

This section describes the process used to gather input to inform the findings found within this report.

After reviewing all survey results, including comments and narrative responses, and conducting multiple fact-finding sessions, BerryDunn identified 35 potential opportunities, or findings, to improve the usability of the e-filing system, and 16 findings related to e-filing service charges. A finding is described as a potential opportunity for improvement identified as a result of information gathered by BerryDunn during project activities, e.g., feedback shared by participant stakeholders, the web survey (including all comments and narrative responses), and review of documentation. It is also important to note that the assessment was performed over an approximate five-month period, between June 2020 and October 2020. Prior to—and during—the assessment, the Judiciary independently identified several of the opportunities for improvement and initiated activities to address them. However, the opportunities for improvement were still documented in the report as activities remain underway, and the opportunities are not yet fully addressed or resolved.

3.2 Specific Opportunities for Improvement

This section describes the findings or “opportunities for improvement” identified through the execution of this project. Findings were identified using survey results, including comments and narrative responses not included in Appendix A, documents provided by OFS users and the Judiciary, and fact-finding interviews.

Opportunities for improvement are assigned to one of the two topical areas: e-filing usability, and e-filing service charge structure. Section 3.2.1 provides a description of each e-filing usability finding. Section 3.2.2 provides a description of each e-filing service charge structure finding.

Several usability findings are rooted in a lack of communication between the Judiciary and stakeholders, a lack of training or failure to participate in training, and lack of standardization of processes and procedures. While there were many usability issues raised during BerryDunn’s fact-finding activities, the number of issues might be greatly reduced by addressing broader issues like communication, standardization, and training. Similarly, many findings related to e-filing services charges speak to a lack of open discussion between the Judiciary and stakeholders regarding the impact of various fee structure options. Another theme in the findings is a lack an understanding between the Judiciary and stakeholders. Participants often seemed unclear about how the Judiciary expected them to file certain documents or handle procedural matters. Similarly participants did not understand the processes that court staff undertake after documents are e-filed, and felt court staff did not understand the processes participants undertake on their end.

3.2.1 e-filing Usability Findings

This section provides a description of each e-filing usability finding

Table 3.2.1.1 provides a description of findings made by BerryDunn related to e-filing usability, and the impact of the opportunities for improvement identified related to e-filing usability. The findings were developed after a review of the survey results (including all comments and narrative responses) and interviews with participants in the e-filing user groups, and are not presented in any particular order.

Table 3.2.1.1: e-filing Usability Opportunities for Improvement

ID	Name	Description and Impact
General		
U1	Desire for e-filing system	Setting aside any technical issues or concerns related to fees, the overwhelming sentiment from participants is that e-filing is a valued and necessary tool. Participants who have used it often reported that OFS is relatively easy to use.
Training		
U2	Cross-training of court staff and external users	Participants expressed frustration that court staff did not understand the process involved in e-filing documents. Similarly, participants expressed a desire to better understand the processes that court staff goes through when accepting, rejecting and reviewing filings. There is generally agreement from participants that cross-training of court staff and external users would be helpful and appreciated.
U3	Initial training PDF	Participants described that they can generally find the training PDF through the Judiciary website. The initial training PDF was over 150 pages long and was too long to be useful to participants, given their time constraints. Those who were able to review the initial training PDF found it generally helpful.
U4	Judiciary training	Participants generally found training led by the Judiciary, including videos, to be helpful. Some found that more specific training geared toward different user groups (i.e., docket-specific) or case type would be helpful.
U5	Training generally	Participants believe more detailed and practice-specific trainings would be useful. Shorter, more concise training materials are preferred. Participants suggested that brief, bulleted weekly tips via email and saved to the Judiciary website would be useful. Considerations should be made for the amount of time users have to review and digest training materials. Participants also expressed a desire for something like one-page quick reference guides related to different aspects of the e-filing system. Some trainings were too far removed in time to be helpful. Some participants indicated that

ID	Name	Description and Impact
		follow-up training would be helpful; however, many participants who have used OFS regularly feel comfortable using OFS. Participants favored having training during normal work hours.
U6	Training videos	Participants found pre-recorded training videos provided by the Judiciary to be helpful. Some participants expressed that they preferred written materials to videos.
U7	Tyler-provided training	Participants found the trainings provided by Tyler Technologies were generally too broad, not tailored to participants' specific practices, unprofessional, and not particularly helpful.
U8	User guides	User guides were not initially made available to participants. Once available, those that read the user guides found them generally useful, although many found the user guides lacked detail. Some participants found the user guides were not narrowly tailored to their specific practices. A few participants did not have time to review the user guides.
Communications		
U9	Communications before roll-out	Participants received communications preparing them for the roll-out of OFS, and many reported that communications improved between the first and second roll-outs. A couple participants provided anecdotes that others did not receive notice or communication prior to roll-out; however, no direct evidence of this was uncovered in the survey or interviews. Participants expressed frustration that they were not involved in the process of acquiring and implementing OFS, or in end-user training.
U10	Communications going forward	Participants expressed a desire for short and concise communications related to OFS that are not time-consuming to review. Participants also expressed that they would like direction about who to communicate with to give system feedback.
U11	Communications related to training	Communications related to training were often vague. Communications should clearly describe the topics to be covered and how in-depth the training will be so participants can gauge whether they want to attend.
Support		
U12	Judiciary support	Some participants rely heavily on support within the Judiciary and have found them helpful and responsive. Others report that court staff does not understand OFS enough to answer their questions, or that it takes too long to resolve issues. Many participants reported they felt they were being bounced between Tyler support and the Judiciary, and both were reluctant to accept ownership of the support process.

ID	Name	Description and Impact
U13	Tyler support	Participants have had a varying degree of success with Tyler support. Some find it helpful, some have been unable to get ahold of a representative from Tyler (although that might be due to a security attack that Tyler experienced), and some felt they were being bounced between Tyler and the Judiciary.
Usability		
U14	Change in normal filing practices	In some cases, participants have had to change their normal filing practices as a result of OFS. For example, where filers previously combined motions to suppress and dismiss into one filing, they now have to file two separate documents.
U15	Confusion between e-filing and the portal	Participants reported some confusion between the OFS e-filing system and the public portal.
U16	Consistency and standardization	Many participants expressed that there appears to be no consistency between courts (and to some extent between court staff within each court) as to how documents are accepted, rejected, and reviewed. Additionally, there is a lack of consistency or uniformity related to what court staff requires from external users filing into OFS.
U17	Court forms	Some court forms made available on the Judiciary website need to be edited to reflect the OFS system.
U18	Document types/categories	Several participants reported that the document types or categories are not intuitive. Some have been leaving notes to the clerks when they are unsure of which category/type to choose but have not received responses from court staff.
U19	Elevated access	Some participants require elevated access to cases. The process for gaining elevated access is confusing.
U20	Emergency issues	Many participants expressed that there is no guidance as to how to deal with emergency issues (e.g., arraignments, relief from abuse cases) and filings that were previously paper intensive. Some participants expressed a desire for paper filings in emergency situations, or when e-filing is impractical (for example, when all parties are already in the court), but e-filing rules currently do not allow paper filing in those instances.
U21	Filers without internet or computer access	Participants expressed that many litigants do not have, or cannot afford, either a computer or internet. Requiring that those litigants use OFS presents additional access to justice issues, and allows a higher tier of access to justice to those who can afford computers and internet access.

ID	Name	Description and Impact
U22	Filing into multiple cases	Participants need to file the same documents into multiple cases at times. OFS requires the filer to file the document separately into each case, which requires extra work from the filer and results in multiple automatic emails from OFS. Participants would like the ability to file one document into multiple cases at the same time.
U23	Handling of exhibits	There is confusion amongst participants about how to file exhibits prior to hearings. There is no drop-down category for exhibits, which participants would find helpful. Additionally, participants feel there has been no guidance about how to file exhibits with confidential information.
U24	Handling of sensitive/confidential documents	Some participants handle confidential and sensitive documents on a regular basis. Not all participants were aware of how the court expects them to handle filings with confidential material.
U25	Inability to review certain information on summary screen	Some participants, especially state employees, said certain information is omitted from the summary screen, including criminal charge codes and financial information. Allowing a second review before filing might reduce the number of rejected filings and decrease time required by court staff to review defective filings.
U26	Inter-agency sharing of documents	Some state participants reported that they are currently unable to share documents with partner state agencies. Allowing them to share documents would increase efficiency.
U27	Pleading deadlines	Some participants seek guidance from the Judiciary related to when something is considered to have been filed. For example, some wondered whether it was considered “filed” when submitted, or when it is accepted by the court. This date impacts deadlines for responsive pleadings and, depending on the answer, might result in late filings.
U28	Portal search function	A few participants found the search function either too restrictive (producing few or no results, or requiring exact spelling), or too broad (wildcard function produced far too many results). Participants agreed that this might be, to some extent, due to a lack of training.
U29	Pro se litigants	Some participants expressed concern that OFS might be too confusing for pro se litigants and might negatively impact their access to justice. Additionally, inability to use OFS by pro se litigants might cause delays. There is a general lack of awareness that a guide and file support mechanism is being created for pro se litigants.
U30	Retention of low-bono and pro-bono attorneys	Some participants provided anecdotal evidence that some pro- or low-bono attorneys would prefer to retire rather than learning a new

ID	Name	Description and Impact
		filing system. Those attorneys are integral to some organizations who rely on them.
U31	Service contacts	There is significant confusion amongst participants related to public service contacts. Multiple participants reported that duplicate service contacts create confusion and might cause issues with service of documents
U32	Service of documents – service option	Many participants stated that filers should not be given the option to file without serving all parties.
U33	Service of documents – not receiving served documents or notices	Several participants reported not receiving documents filed by other parties and, in some cases, not receiving notices from the court. Some participants reported that, at times, the court was able to view e-filed documents while parties could not.
U34	Filing before a case has been docketed	Participants are unable to file any documents into OFS until the case has been docketed. As a result, filers are unable to use OFS in certain circumstances (e.g., motions for return of property, motions to modify bail conditions, expungements of arrest warrants where no charge was filed, and diversion acceptance) when they were previously able to file with paper filing.
U35	Billing issues	Some participants reported that when fees were still being collected, they were only able to enter one method of payment for their entire organization. This was described as being untenable for participants and caused confusion when billing clients. Some participants found it difficult to search for information related to what they had been previously charged.

3.2.2 e-filing Service Charge Structure Findings

This section provides a description of each e-filing service charge structure finding.

Table 3.2.2.1 provides a description of findings made by BerryDunn related to e-filing service charge, and the impact of the opportunities for improvement identified related to e-filing service charge structure. The findings were developed after a review of the survey results (including all comments and narrative responses) and interviews with participants in the e-filing user groups. Some participants are exempt from e-filing service charges and thus were not able to provide feedback about those e-filing service charges.

Table 3.2.2.1: e-filing Service Charge Structure Opportunities for Improvement

ID	Name	Description and Impact
F1	Access to justice	Participants expressed that any fee associated with OFS creates an access to justice issue. This is particularly true for low-income filers.

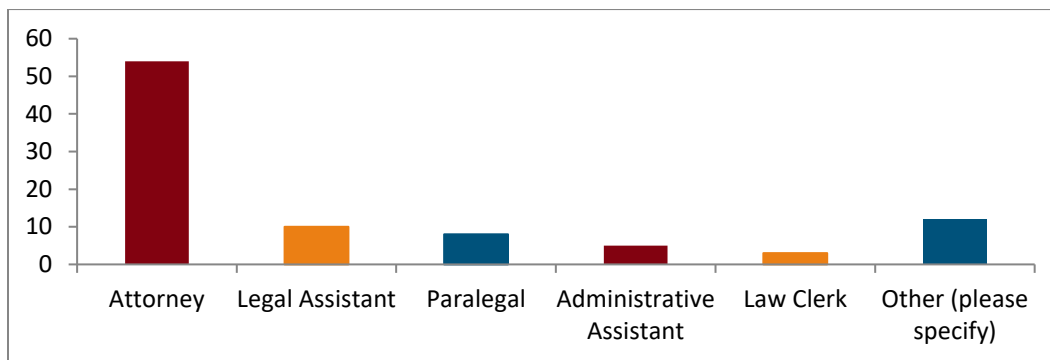
ID	Name	Description and Impact
F2	Basis of fees	Participants expressed a desire to base the filing fees on actual filing data so that the fees can be appropriately spread across all filers.
F3	Certificates of service	There is confusion amongst participants as to whether certificates of service are needed now that there is an electronic record of service. Participants do not believe a fee for certificates of service should be imposed.
F4	Disparity in costs amongst practice areas	Certain types of practices lend themselves to a higher number of filings, while many others generally have very few filings. The current e-filing service charge model (per envelope) creates a disparity in fees incurred across practice areas. Participants expressed that filing fees should be allocated in a way that does not penalize one practice area for the number of filings they might need to file.
F5	General fund	Participants questioned whether or not OFS costs should be funded through the general fund entirely or in part.
F6	Impact on filing practices	The per-envelope model might force some filers to avoid filing documents they would typically file in order to avoid fees. Conversely, some litigants might file multiple documents knowing that the other party is required to respond and will incur more fees in doing so. This was described as being especially concerning when there is a disparity in funds between parties, when a trust is funding e-filing service charges, or in cases of abuse.
F7	Increased case filing fees	E-filing service charges are separate and distinguishable from filing fees required at the initiation of some types of cases. Many participants expressed that they would prefer that the cost of e-filing service charge be incorporated in that initial case filing fee, even if it results in an increased initial filing fee. Alternatively, the e-filing service charge could be on a per-case basis as a separate charge from the initial filing fee.
F8	Notice	Some participants reported that they were surprised by the imposition of e-filing service charges. Other participants noted that they had been aware that e-filing service charges would be imposed and were not surprised.
F9	Per-envelope fee	Most participants agreed that the per-envelope model currently used by the Judiciary is not tenable or equitable. Some attorneys in private practice expressed indifference to the per-envelope model, as the fees generally are passed along to their clients.
F10	Predictability	Participants have expressed the need for fees that are predictable. The overall cost of e-filing service charges per case cannot easily

ID	Name	Description and Impact
		be predicted in the per-envelope model, which can be frustrating. Clients expect as much predictability as possible, especially when fees are being passed on from attorney to client.
F11	Required versus discretionary filings	There are several documents that must be filed either by statute, rule, or order of the court. Participants agreed that filers should not be charged for required filings. Additionally, the number of required filings in certain cases results in certain practices incurring significantly more e-filing service charges than other practice areas.
F12	Resolving matters without fees	There is currently no mechanism by which a party can file a complaint without paying e-filing service charges and case initiation fees. This does not allow parties to negotiate and resolve cases prior to paying fees and e-filing service charges, which was a practice for some participants prior to OFS. This finding is also related to finding U34, above.
F13	Supplementing cost from other sources	Participants raised the idea of increasing fees or costs in other areas (e.g., traffic tickets) in order to supplement the cost of OFS.
F14	Transparency and input	Participants expressed that they wanted to be involved in the decision to implement fees, and to have input as to how costs owed to Tyler would be paid.
F15	Victims	In some cases, parties become involved by no choice of their own, such victims of abuse. Participants expressed that those parties, to the extent they need to file, should not have to pay a fee.
F16	Waiver for pro-bono, low-bono, and court-appointed filers	Some participant organizations handle predominantly pro-bono and low-bono cases. Requesting an exemption from e-filing service charges for each case might significantly slow down their cases and require additional time. Participants wonder if there is a way to have certain organizations, cases, or filers have waived fees automatically.

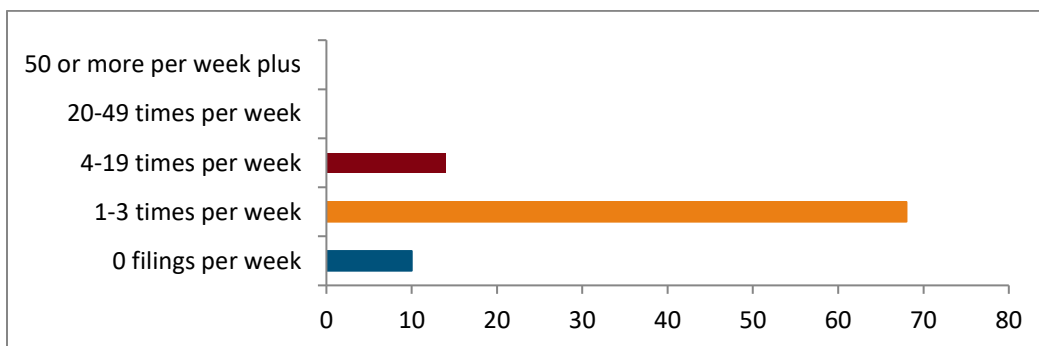
Appendix A: Survey Results Summary

This section includes a summary of the results of the web-based survey distributed as part of the fact-finding process to inform this report. Please note that this section does not include any comments that were provided by survey respondents, nor does this section include questions from the survey that required only a narrative response. Questions that appear below with an asterisk indicate that comments were given by some survey respondents in the actual survey. The comments and narrative responses to the survey were used in developing findings for this report.

1. Please indicate which of the following most accurately describes your role.*²



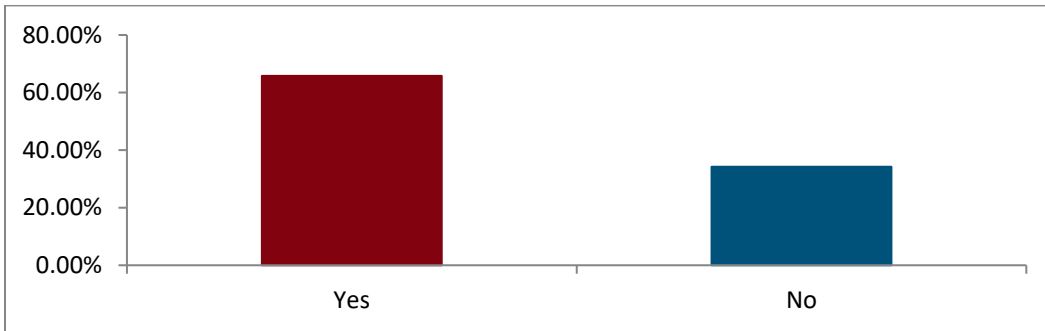
2. On average, how frequently do you file envelopes (packets of case documents) through the e-filing system?³



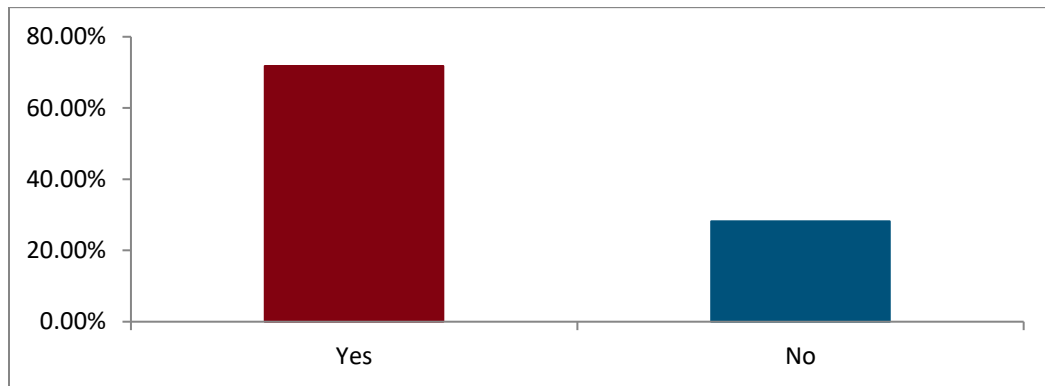
3. Prior to e-filing an envelope, did you read the docket-specific user guides available on the Judiciary website?

² This question was not posed in the initial version of the survey and so the number of responses are fewer than responses to other questions.

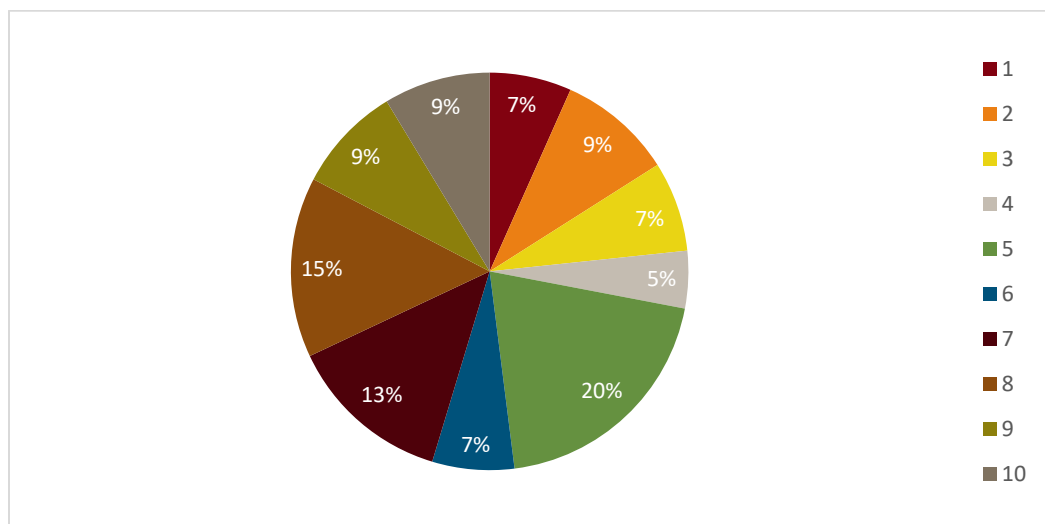
³ The response options to this question were amended in a later version. This response shows the response options that were provided to the majority of respondents.



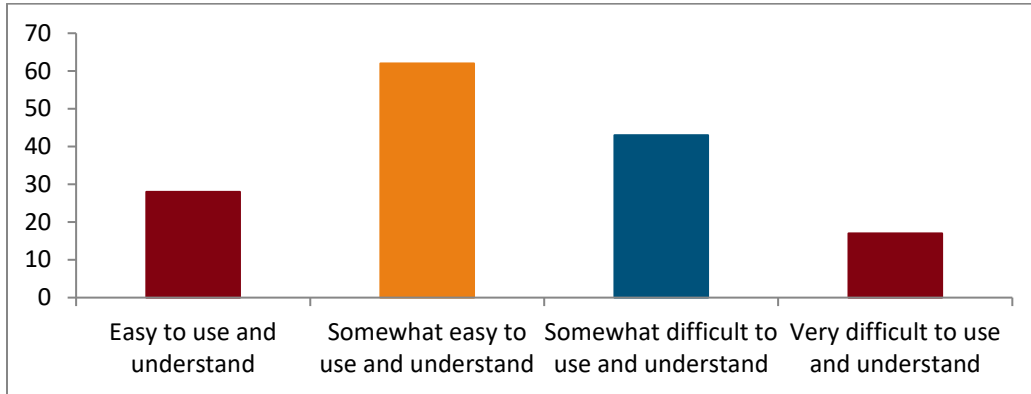
4. Prior to e-filing an envelope, did you participate in any training sessions that explained how to e-file an envelope?



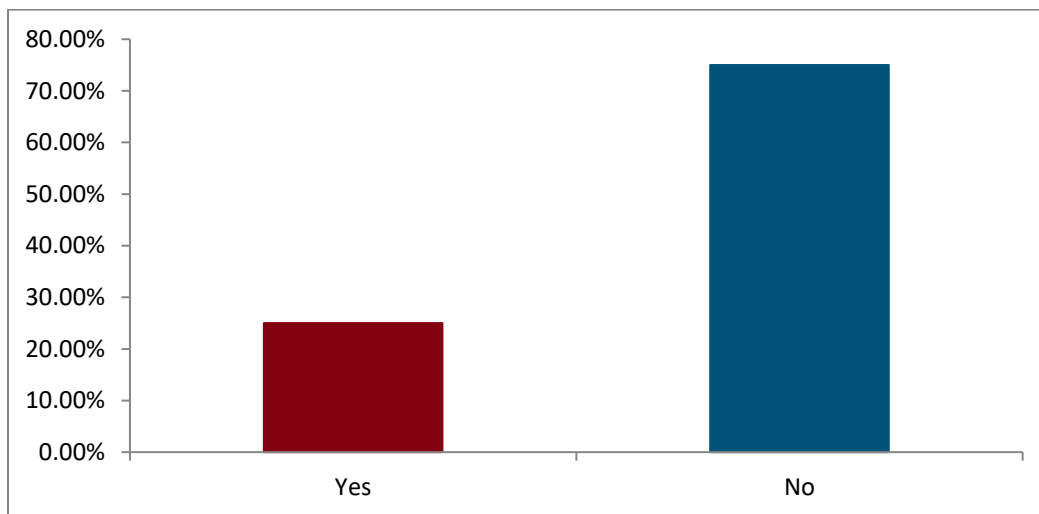
5. On a scale of 1 – 10, please rate how prepared you are to use the e-filing system based on the training provided, and your experience thus far, with 1 being not prepared at all and 10 being extremely prepared.



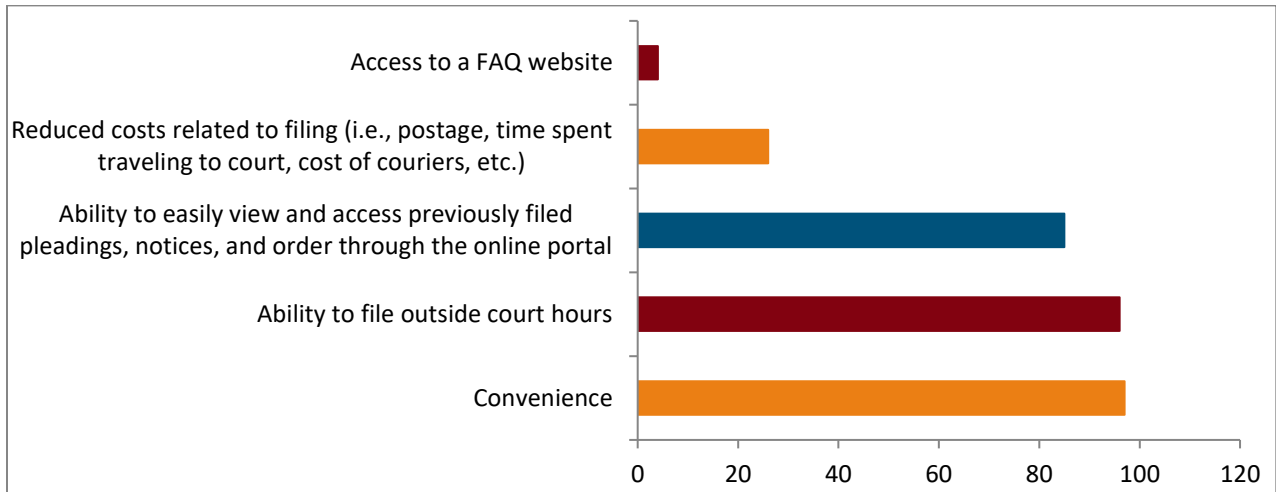
6. Describe your initial experience with the e-filing system once you received an explanation of how it worked:*



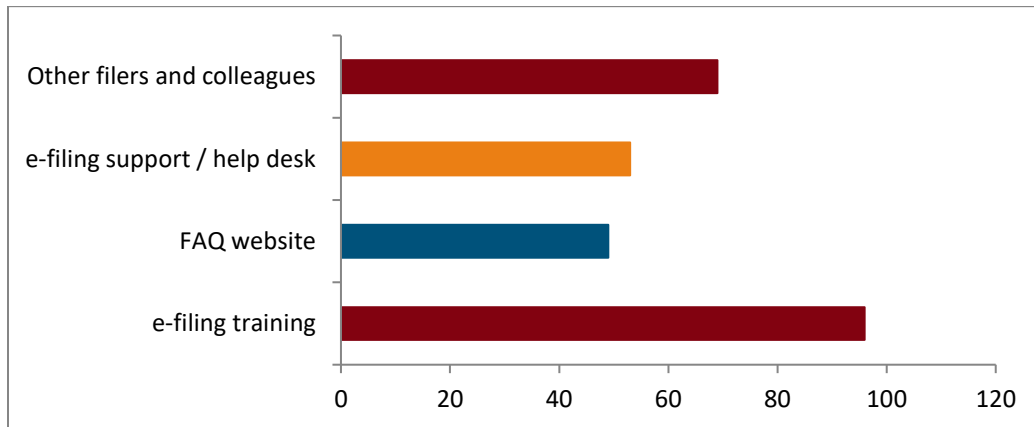
7. Would you like to revert to the traditional system of paper filing of documents?



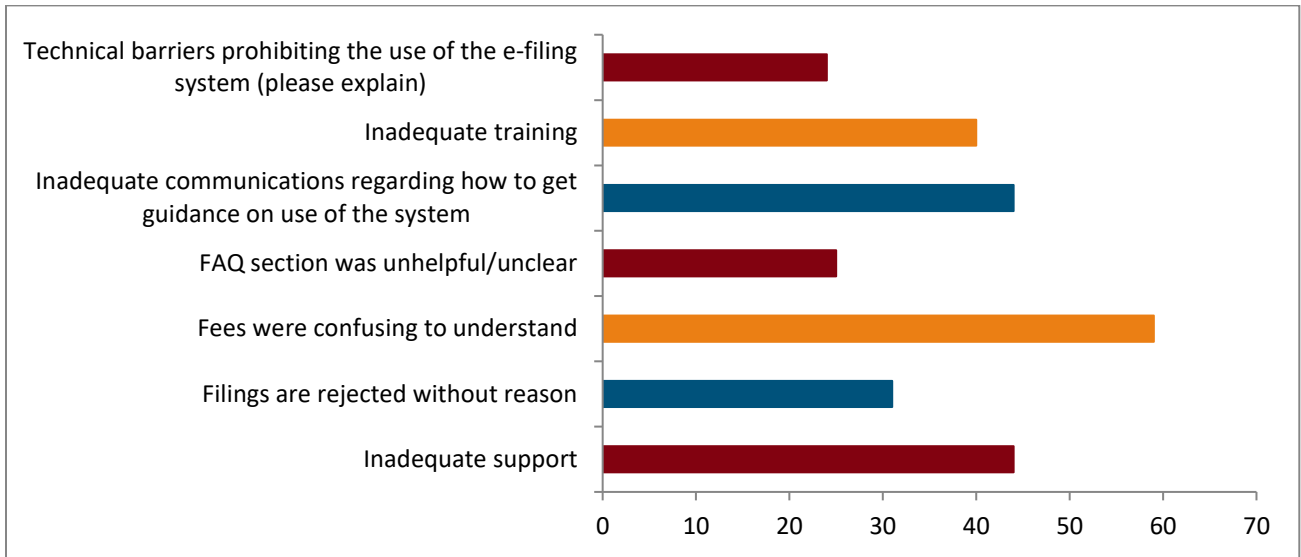
8. What benefits have you experienced from using the e-filing system as opposed to the traditional paper filing system? Please select all that apply.*



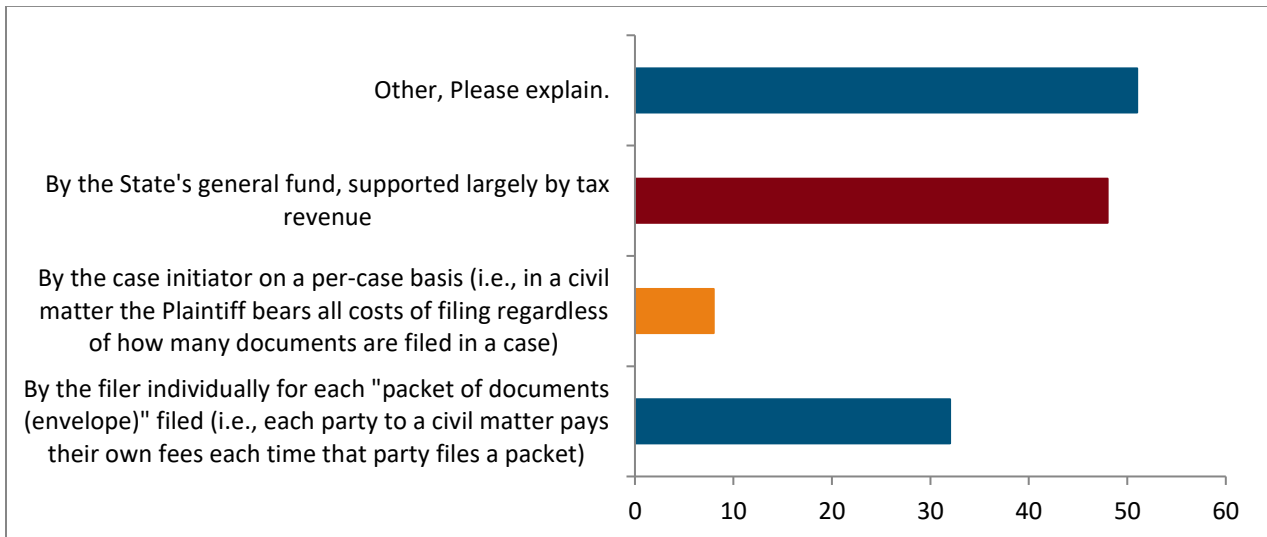
9. If you have used the e-filing system, what, if any, resources have you taken advantage of?*



10. What barriers have you experienced while using the e-filing system as opposed to the traditional paper filing system? Please select all that apply*.



11. The benefits of the e-filing system and related support come with a cost. Acknowledging that e-filing service charges only apply to certain case types, in your opinion, how should those costs be borne?*



Appendix B: Glossary of Acronyms

Table B1 includes a glossary of acronyms used in the report.

Table B.1: Glossary of Acronyms

Acronym	Definition
BerryDunn	Berry Dunn McNeil & Parker, LLC
BRACE	Bennington, Rutland, Addison, Chittenden, and Environmental Courts
DED	Deliverable Expectation Document
DOC	Department of Corrections
e-filing	Electronic filing
FAQ	Frequently asked questions
MS	Microsoft
NG-CMS	Next Generation Case Management System
OCS	Office of Child Support
OFS	Odyssey File and Serve
RIS	Research and Information Services
TCO	Trial Court Operations
VBA	Vermont Bar Association
VT	Vermont
WOW	Windsor, Orange, and Windham

Appendix C: Project Participants

The tables in this appendix include lists of participants involved in information-gathering activities between September and October 2020. BerryDunn invited various groups of people to participate in the information gathering sessions, and allowed each group to select which individuals they wanted to participate. In addition, 151 stakeholders responded to the web survey. Please see Appendix A for a summary of survey results.

Table C.1: VBA Alternate e-filing Service Charge Meeting September 23, 2020, 10 a.m. – noon

No.	Name
1	Mary Ashcroft, Esq.
2	Amber Barber, Esq.
3	Teri Corsones, Esq.
4	Steve Ellis, Esq.
5	Matthew Garcia, Esq.
6	Elizabeth Kruska, Esq.
7	Mark Langan, Esq.
8	Andrew Manitsky, Esq.
9	Jean Murray, Esq.
10	Beth Novotny, Esq.

Table C.2: VBA e-filing Use Meeting September 28, 2020, noon – 2 p.m.

No.	Name
1	Mary Ashcroft, Esq.
2	Penny Benelli, Esq.
3	Teri Corsones, Esq.
4	Amelia Darrow, Esq.
5	David Koeninger, Esq.
6	Elizabeth Kruska, Esq.
7	Jordana Levine, Esq.
8	Tracy Shriver, Esq.
9	Samantha Snow, Esq.
10	Cabot Teachout, Esq.

Table C.3: AG e-filing Service Charge and Use Meeting October 13, 2020, 9 a.m. – 11 a.m.

No.	Name
1	Andrew Watts
2	Jay Bailey
3	Holi Johnson
4	Bonnie Boyce

Table C.4: VT Legal Aid e-filing Service Charge and Use Meeting October 14, 2020, noon – 2 p.m.

No.	Name
1	Marilyn Mahusky
2	Leah Burdick
3	Rebecca Plummer
4	Laura Gans
5	Sara Kagle
6	Maguire Curran
7	David Koeninger

Table C.5: SAS e-filing Service Charge and Use Meeting October 14, 2020, 10 a.m. – noon

No.	Name
1	Jennifer Bouffard
2	Judy Durkee
3	Albert Coccagna
4	Ward Goodenough
5	Angela Sanborn
6	Tracy Shriver
7	Georgia Potter
8	Colleen Mills

Table C.6: VBA e-filing Service Charge Meeting October 15, 2020, 10 a.m. – noon

No.	Name
1	Mark Langan, Esq.
2	Andrew Manitsky, Esq.
3	Matthew Valerio, Esq.
4	Jean Murray, Esq.
5	Beth Novotny, Esq.
6	Elizabeth Kruska, Esq.
7	Mary Ashcroft, Esq.
8	Amber Barber, Esq.
9	Teri Corzones, Esq.
10	Steve Ellis, Esq.

Table C.7: Chittenden Bar Association e-filing Service Charge and Use Meeting October 19, 2020, noon – 1 p.m.

No.	Name
1	Rory Mandl-Abramson
2	Erin Miller-Heins
3	Krysten Perettine
4	Kevin Lumpkin
5	Jessica Brown
6	Sarah Reed

Table C.8: VBA e-filing Use Meeting October 19, 2020, 1 p.m. – 4 p.m.

No.	Name
1	Mary Ashcroft, Esq.
2	Penny Benelli, Esq.
3	Teri Corsones, Esq.
4	Amelia Darrow, Esq.
5	David Koeninger, Esq.
6	Elizabeth Kruska, Esq.

No.	Name
7	Jordana Levine, Esq.
8	Tracy Shriver, Esq.
9	Samantha Snow, Esq.
10	Cabot Teachout, Esq.

Table C.9: VT Association for Justice e-filing Service Charge and Use Meeting October 19, 2020, 4 p.m. – 5 p.m.

No.	Name
1	James Levin
2	Amy Caldwell
3	Michele Patton

Table C.10: OCS e-filing Service Charge Meeting October 20, 2020, 9 a.m. – 10 a.m.

No.	Name
1	Kyle Hatt
2	Sarah Haselton

Table C.11: DOC e-filing Service Charge and Use Meeting October 21, 2020, 9 a.m. – 10 a.m.

No.	Name
1	David Fitts

Appendix D: Provided Documentation

Table D1 includes a list of documents provided by various stakeholders during the execution of this project.

Table D-1: List of Provided Documentation

ID	Document	Date Provided to BerryDunn
1	6/2/2020 memorandum from Patricia Gabel to Senate Judiciary Committee titled "Update: File and Serve E-Filing Fee"	7/21/2020
2	Meeting minutes from the Special Advisory Committee on Rules of Electronic filing from 9/20/29, 5/17/19, 4/17/19, and 4/18/19	7/21/2020
3	MS Excel document titled "VTTransactions as of 05172020"	7/21/2020
4	Email with attachment titled "Notes from 10 8 18 Working board meeting"	7/21/2020
5	VBA's Executive Summary E-Filing Fees Study Committee Report and Recommendations	7/21/2020
6	4/28/2020 memorandum from Patricia Gabel to Senate Judiciary Committee titled "Vermont Judiciary E-Filing User Fee"	7/21/2020
7	State Court Administrator's update to the Senate Committee on Institutions dated 1/11/18	7/21/2020
8	State Court Administrator's update to the Senate Committee on Institutions dated 4/5/17	7/21/2020
9	4/25/2020 memorandum from Jeff Loewer to State Court Administrator titled "Next Generation Case Management System (NG-CMS) E-Filing Fee and Sustainability"	7/21/2020
10	4/26/2020 email from Jeff Loewer with attachment titled "efiling use fees"	4/26/2020
11	4/23/2020 email from Patricia Gabel with attachment titled "Efiling Questions"	4/23/2020
12	MS Word document titled "GENERAL Rules Committee Response for Pat – 08312020"	9/30/2020
13	MS Word document titled "Reply to Joint Judicial Rules"	9/30/2020
14	MS Excel document titled "efilingScenarios"	10/19/2020
15	MS Excel document titled "E-filing fees by State (v2)"	10/19/2020
16	MS Word document titled "Summary of Alternative E-Filing Fee Group-Berry Dunn Meeting 10-15-20"	10/19/2020

ID	Document	Date Provided to BerryDunn
17	MS Word document titled "Examination of Alternatives to the Per Envelope E-Filing Fee"	10/19/2020