This article is reproduced with the permission of the Maryland Bar Journal, published by the Maryland State Bar Association.

The Honorable Ben C. Clyburn

E-Filing on Horizon for Maryland Lawyers

By Janet Stidman Eveleth

E-filing is on the horizon for Maryland courts and Maryland lawyers. The new judicial electronic case management system, once implemented, will give attorneys the opportunity to file and access their court documents electronically, making life much easier for most practitioners in the state. By 2015, Maryland's entire court management system could "go green," becoming a paperless operation.

Maryland attorneys, as well as the state's Judiciary, are expected to reap the benefits of the new Maryland Electronic Courts (MEC) system. One of the biggest advantages for the Bar will be electronic filing. When e-filing is instituted, lawyers will be able to electronically file their documents with the court remotely, 24/7 and will no longer need to go to the courthouse to meet a court deadline. They will also be able to view full case information electronically.

This unified electronic case management system will prove advantageous to Maryland's court too, saving time and money. The expense saved from the elimination of paper alone will be staggering. Court processes will be streamlined, expediting the 2+ million cases filed with the state's judiciary annually. MEC will also speed up the delivery of court notices, orders and other documents and eliminate handling and mailing costs for both the court and attorneys.

Attorneys will need to affiliate with an e-filing support service to initiate electronic access with the court. They will have the choice of hooking up with the Court's basic service, deemed sufficient for most solo and small firm practitioners, or with private vendors offering more advanced services, more conducive to larger law firms. Costs should range from $5 per filing for the more basic service to roughly $8 to $9 per filing for the more sophisticated ones.

E-filing will be voluntary for Maryland lawyers, although it is "highly recommended" by the Court. Maryland's Judiciary plans to unveil its first MEC pilot project, encompassing e-filing, in 2012 in Anne Arundel County. Based on its success, the Court will begin rolling out MEC on a county-by-county basis until it is available in all 23 counties and Baltimore City by 2015.

Why an Electronic Case Management System?

The court system is now in the midst of a technological revolution which will culminate with MEC, an electronic court case management system. The overall goal of this $50+ million venture, slated for all four levels of the Judiciary, is to increase access to justice and public safety. The court is introducing MEC to enhance its efficiency, speed up it processes and advance its overall operation.

Although this major project appears to be in an infancy stage, the Judiciary has already invested $12 million in the electronic conversion initiated in 2003. When the Honorable Ben C. Clyburn was appointed Chief Judge of the Court of Appeals of Maryland in December 2004, he assumed the lead role in overseeing this massive undertaking. Clyburn has mobilized the Judiciary, its justice partners and Maryland's legal community in the pursuit of this efficient and effective electronic court system which will benefit the court, the Bar and the public.

In a recent interview with the *Maryland Bar Journal*, Judge Ben C. Clyburn shared his vision of the paperless Maryland court system of the future. In addition to all of his work as the Chief Judge of the District Court of Maryland, Clyburn chairs the Access to Justice Commission and the Maryland Judiciary Advisory Committee and devotes countless hours to overseeing the court's future e-case management system.

In my November/December 2005 vol. XXXVIII no. 6 *Maryland Bar Journal* article, "New Chief Judge Promotes Positive Face," Maryland District Court's Chief Judge Clyburn characterized his future vision of Maryland's Judiciary as "technologically advanced, innovative, customer service oriented and adaptable to the ever-changing needs of society." Five years later, he is well on his way to achieving this goal with MEC. Clyburn believes the timing is right to begin implementation in Maryland.

"If you look out there at what is happening in society today, you see people paying their bills online, dating online, shopping online; they are doing everything online except for matters relating to the court, because we are slightly behind. The public is now accustomed to online services," he emphasizes, "and is even demanding them, especially the younger generations." So, the Judge feels it is time to add electronic court services to the long list of online options available to the public.

MEC

MEC was conceived in 2003, when the Judicial Information System (JIS) started laying the groundwork for a new infrastructure with the support of the Maryland Legislature. "The initial $12 million investment established an oracle database that is already realizing returns," Clyburn reports, citing domestic violence orders as one example. "We can now transfer domestic violence orders electronically." Another example is the e-citation program where state troopers issue citations electronically, expediting the court's traffic caseload.

Clyburn assumed oversight of MEC in early 2005 and, working with JIS and his oversight group, the Maryland Integrated Case Management System Advisory Committee, has helped facilitate the construction of MEC's infrastructure, the system's foundation to accommodate the flow of electronic information. This project involved a thorough internal diagnosis of the court's database and an evaluation of the flow of cases and business processes of all judicial operations. It proved especially challenging in the state's circuit courts where, Clyburn points out, "one process is done 24 different ways."

"We have studied the work flow in different locales throughout the state and discovered we need a system to accommodate 65 processes in Maryland's differentiated case management systems." So the oversight group examined other state systems to determine "what works and what does not work, and Minnesota's stood out as the best and most adaptable fit," Clyburn reports. "We also looked at the federal government's PACER system; e-filing is mandatory in federal court."

Essentially, MEC will consist of four primary elements:

- e-filing;
- the integrated statewide case management system;
- the electronic storage of all case content –documents, images, audio, video;
- and the integrated justice exchange of data with justice partners.

"The Judiciary is the source of the data exchange," explains Clyburn, "because our disposition drives law enforcement, parole, public safety, community service, corrections, human resources health and mental hygiene and juvenile services." Ultimately, the court seeks a "reciprocal transfer of e-data or inter-operability."

To illustrate this concept, Clyburn cites the following example. Right now, "when a judge issues a temporary protective order in a domestic violence case, it cannot go into a second stage – a final order - until that initial order has been served on the respondent. This means that many times, a victim of domestic violence has to come back to court several times because there is no proof of service."

However, "with e-transfer, that initial order is transferred directly to the police who can take action immediately. Eventually the police will even be able to e-transfer proof that the order has been

served back to the judge (clerk's office). So it will move quickly instead of waiting on a piece of paper to be put into the system."

Benefits to Court

"Our primary benefit will be time; the court will save a tremendous amount of time," exclaims the Chief Judge. "It will also eliminate paper as well as the costs and time associated with the use of paper and the potential destruction of that paper. "Right now, the District Court has about 24,000 different notices," he adds, "and we are the largest user of the U.S. postal service in Maryland, in terms of the amount of paper we send out on a daily basis." So these court costs will definitely be trimmed.

With electronic access, "court decisions will be made more quickly and on better information." MEC will allow attorneys, litigants and members of the public to have access to case information on a real-time basis. "When you have information on a near real-time basis, it enables you to electronically transfer it," Clyburn explains. "This puts our justice partners in a better position to do their jobs," which in turn increases public safety.

As an example, Clyburn cites a situation where a judge issues a bench warrant calling for an immediate arrest. "We have had incidences where the warrant then goes into the system and actually sits on someone's desk and does not get to the sheriff in time," laments Clyburn. "We have had cases where someone was actually killed because of this."

Clyburn envisions quite a different scenario with the electronic system. "When that judge e-signs that warrant and pushes the button, that warrant will go directly to that police officer. This means the officer can react a lot faster; this is going to save some lives."

In addition to public safety and access to justice, internal and external judicial communication is expected to advance this uniform electronic system. Internal communication within the Judiciary should be enhanced because the four levels of the court will be interfaced electronically enabling them to communicate with each other more quickly, moving information more efficiently. Once electronically integrated, the court will reap the same communication benefits with its external agencies and Maryland's Bar.

Finally, delays in the court's internal and external processing should be eliminated, as well as the redundant entry of data. "This presents the opportunity to re-train and re-deploy our staff," he continues. Ultimately, Clyburn expects it to result in a "staffing efficiency. We need to implement MEC and keep it going but eventually, once it is up and running, we may not have as many needs in terms of requesting staffing positions. We have already seen this in traffic court with the initiation of e-citations."

E-filing Benefits for Lawyers

A uniform electronic court e-case management system will deliver efficiency and consistency to Maryland lawyers with the activation of e-filing at all four levels of the judiciary. Lawyers across the state will no longer have to go to the courthouse to physically file papers to meet a court deadline because they will be able to electronically file the documents with the court remotely, 24 hours a day, 7 days a week. In addition to the convenience, electronic filing will significantly reduce attorneys' paper, copying, courier and postage costs.

E-filing will be voluntary and available to all attorneys who have a computer and a scanner. Attorneys will be able to electronically access and view all documents in their cases immediately, 24/7. They will have the ability to see the full text of the documents included in any file at any level of the court simultaneously. Full case information will be electronically available to attorneys, parties of cases and the general public via case search.

Eventually, attorneys will be able to receive e-notices when motions are filed and e-notice updates of a case's status. Future possibilities include the e-integration of an attorney's computer system with the court's case management system, paving the way for e-paging, e-notification and even a tickler system to remind attorneys when a response to a motion must to be made. Down the road, law firms should be able to track billing for individual cases.

E-Filing Support Services

Attorneys will need to hook-up with an e-filing support service to utilize the court's electronic case management system. They will have two options: (1) attorneys may opt for the court's basic e-filing service through the Administrative Office of the Courts (AOC), or (2) attorneys may select one of an anticipated multitude of e-filing service providers and, after certification with the court, take advantage of these more sophisticated e-service packages. Costs will vary according to which option an attorney chooses.

The AOC will provide basic e-filing capabilities that are inexpensive and web-browser accessible, with limited features and support resources. The features include filing, service of pleadings and papers (other than original pleadings), document access and credit card payment. Customer support will be provided online or by phone but hours will be limited. However, the court's version should accommodate the needs of most lawyers in the state, especially solos and small law firm practitioners.

An array of independent email e-filing service providers will likely be available in the private sector and these

vendors will offer a variety of "bells and whistles" or enhanced e-filing services. These are likely to include filing, service of pleadings and papers (other than original pleadings), document access, payment by credit card or at the end of the month on account, extended hours of phone support, notification of scheduled events and deadlines, automated client and case accounting and billing and integration with the law office's case management accounting system.

Attorneys in larger firms may find this option more advantageous, although any attorney or law firm affiliating with a private vendor must be certified by JIS to ensure they have the necessary technology and capability for e-filing. "Private vendors may provide more functionality and bells and whistles such as paging, notification and integration with the law firm's systems," states Clyburn, "but national standards must be met to interface with the court system."

If attorneys opt for the AOC service, all they need is a computer and a scanner. The initial software and out-of-pocket costs are expected to be low. "The court service should be sufficient for most solo and small firm practitioners; we put the fee schedule together on the lower end to accommodate them," reports Clyburn. "The average per fee charge in other states is $8.50 per filing but we set our charge at $5 per filing with smaller practitioners in mind." Attorneys using independent vendors are likely to pay closer to $8.50/$9 per filing.

"Larger law firms with internal case management systems may want to take full advantage of the plethora of options available through private vendors," Clyburn adds. "These can even help them with billings, paging and other court notifications." Eventually, AOC will provide these services, too.

The court plans to conduct extensive training programs for lawyers with respect to the new electronic system and hopes to work in conjunction with MSBA and local bar associations to facilitate these education and training sessions. These sessions will be presented at the local level as the pilot programs are launched.

Paper Still an Option – But Discouraged

E-filing is voluntary for lawyers. Paper will still be an option for attorneys unwilling to make the electronic leap, but it will be discouraged by the Court. "Lawyers opting to keep using paper must get in their cars and go to court during court hours to file their papers," warns Clyburn, "wasting a lot of time. The clerk will scan the paper into the system and, for the life of that case, it will be electronic. If the attorney does not have the capability to receive e-transfers, there will be paper on demand."

But the Court is strongly encouraging all attorneys to participate in MEC. "We are very cognizant of the needs of small practitioners and small firms and have structured MEC to not adversely affect them. They probably spend that much now on courier services and lost time – especially those in rural areas with long drives."

Paper will still be needed in the court, too. "There will be situations like protective orders where the litigant needs an actual piece of paper to keep on his or her person in case the respondent comes near them," Clyburn offers, "so there will always be paper."

For now, MEC is a "work in progress." There are still questions to be answered and "bugs" to be worked out, including technical aspects, standards and definitions, which may lead to changes in the Rules. For example, what happens when with the attorney's computer system or MEC malfunctions or is down?

In many instances, the Court is actively seeking input from MSBA on potential problems and is working with the Association's Special Committee on E-filing for feedback. "Once we figure out how the system will work, we will re-visit such issues as e-signature, e-record, e-order, e-transfer of exhibits and e-deadlines," he states. "We hope to come up with draft rules and send them over for review by the Rules Committee and MSBA."

Message to MD Lawyers

Electronic communication is the wave of the future. Online service is the direction in which society, and the entire legal profession, is already headed. "The more technology you see," Clyburn continues, "the more we are moving away from our current way of doing business."

Judge Clyburn's message to Maryland lawyers – "The Court needs you to be part of this. We need input from lawyers and bar associations in order to move forward with a vision of how MEC will benefit the practice of law. Lawyers should realize this new system is going to be a change; it is going to be a change for the court too. It will require an adjustment on both sides. But MEC is designed to work for lawyers, because if it does not work for lawyers, then it will not work at all."

But this change is going to make a difference in citizens' lives. "I think the reason we are here practicing law is to serve the citizens of Maryland," Clyburn concludes, "and it has been proven, at the federal and state levels, that an electronic judicial system improves the delivery of legal services and the fair administration of justice. This is our ultimate goal. In the end, everyone benefits."

Janet Stidman Eveleth is the Director of Communications for the Maryland State Bar Association and the Editor of the Maryland Bar Journal.

*NOTE: On page 2, the article incorrectly refers to Chief Judge Clyburn as the C**hief Judge of the** Court of Appeals. Judge Clyburn is the Chief Judge of the District Court of Maryland.*