

## Memo Re: Electronic Filing Fees

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**From:** Carlo Esqueda  
**To:** Shirley Abrahamson  
**Date:** 2/12/2016 3:49 PM  
**Subject:** Memo Re: Electronic Filing Fees  
**Attachments:** Memo Re Mandatory eFiling.docx

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Justice Abrahamson, I was able to pull together most, but not all of the data you requested. Still, the data you need is apparently on its way from the Office of Court Operations. Thank you!

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Date: February 12, 2016

To: Justice Shirley Abrahamson

From: Carlo Esqueda, Dane County Clerk of Circuit Court/Register in Probate

Re: Data Regarding Electronic Filing Fee Revenue

Justice Abrahamson, in our telephone conversation this week, you posed a number of questions about civil, small claims and family cases that would provide background to the issues posed by Supreme Court Rule Petition 14-03. I hope the following information is helpful to you.

1) You asked for a breakdown of the filing fees charged for each of the e-filed case types (family, civil, small claims). Where I note that the funds go to the state general fund, that means that is how we disburse the funds-- with a lump sum check to the Wisconsin Department of Administration. Whether the DOA then distributes the money to specific agencies, or keeps it in the general fund, I am not sure.

**The small claims filing fee** that parties pay is \$94.50. This fee breaks down as follows:

- CCAP Fee - \$11.80 – goes directly to CCAP
- Court Support Service Surcharge - \$51.00 – goes to state general fund
- Justice Information Surcharge - \$21.50 – \$6.00 to CCAP, the rest goes to the state
- Small Claims County Share - \$10.20 – retained by county

**The family action filing fee** that parties pay is either \$184.50 (for cases with no requests for child support or maintenance) or \$194.50 (with a request for child support or maintenance). These fees break down as follows:

- Circuit Court Fee Payable - \$60 - \$30 to state general fund; \$30 to county
- CCAP Fee - \$15 – goes directly to CCAP
- Court Support Surcharge - \$68 – goes to state general fund
- Justice Information Surcharge - \$21.50 – \$6.00 to CCAP, the rest goes to the state
- Family Counseling Service Fee - \$20 – retained by the county
- (for FA cases with a request for support/maintenance) Child Support Fee - \$10 – retained by the county

**The civil filing fee** that parties pay varies somewhat by the type of action it is. Most cases fall into one of these two categories: Money judgment (claim of \$10,000 or more), or non-money judgment (i.e. name changes, minor settlements).

- The **money judgment** filing fee that parties pay is \$265.50. This fee breaks down as follows:
  - Circuit Court Fee Payable - \$60 - \$30 to state general fund; \$30 to county
  - CCAP Fee - \$15 – goes directly to CCAP
  - Court Support Surcharge - \$169 – goes to state general fund
  - Justice Information Surcharge - \$21.50 – \$6.00 to CCAP, the rest goes to the state
  
- The **non-money judgment** filing fee that parties pay is \$164.50. This fee breaks down as follows:
  - Circuit Court Fee Payable - \$60 - \$30 to state general fund; \$30 to county
  - CCAP Fee - \$15 – goes directly to CCAP
  - Court Support Surcharge - \$68 – goes to state general fund
  - Justice Information Surcharge - \$21.50 – \$6.00 to CCAP, the rest goes to the state

Electronic filing is currently available for these three case types. Parties opt-in for an additional electronic filing fee each that is directed to CCAP (currently \$5, but proposed to increase to \$20). There are several important things to note about this fee:

- It is paid per litigant which opts into the e-filing system for a given case. So, if an attorney initiates a case via the e-filing system, that attorney pays the filing fee plus the additional e-filing fee. If the responding party wishes to also opt into the e-filing system, they would also pay the electronic filing fee. It is possible for civil cases to have several represented litigants. As a result, anywhere from one to perhaps a dozen electronic filing fee amounts could be collected on an individual case.
- On the other hand, non-represented defendants would not be required to use the e-filing system under 14-03 (although they certainly could voluntarily opt in by paying the electronic filing fee). So, in those cases where a represented plaintiff initiates a case against unrepresented defendant(s), there will be only one e-filing fee collected. It would be inaccurate to assume that that the expected number of e-filing fees collected per case is two.
- Currently, not all civil cases are open for e-filing. The exceptions are garnishments, temporary restraining orders, and injunctions. So, under the current software architecture, no e-filing fees would be collected for these kinds of cases.

2) You asked about child support agency e-filing and whether and to what extent would counties be on the hook for paying the e-filing fee. The amended petition notes on page 11, under (c), that “The electronic filing fee shall not be waived by the court except in accordance with policies set by the Director.” It is my understanding that the Director of State Courts intends to waive the electronic filing fee for governmental units, such as

District Attorneys, the public defender, child support agencies, the Department of Justice, and county and municipal attorneys, as noted on page 2 of Judge Wirtz' cover letter to the amended petition, as well as Judge Wirtz' letter to the Supreme Court dated February 10, 2016.

3) You asked about indigency fee waivers and the eligibility criteria for the waiving of filing fees. I have attached a copy of the indigency fee waiver petition, affidavit, and order (Form CV-410) for your reference. You will note that filing fees will automatically be waived if the petitioning party affirms that they receive some form of means-tested public assistance. If they do not, they are obliged to fill out the financial information in Section 2 of the form. According to Ch. 814.29(d)3. Wis. Stats, the court determines indigency based on a consideration of "the person's household size, income, expenses, assets and debts and the federal poverty guidelines under 42 USC 9902(2)."

Given that self-represented litigants will not be required to opt into the otherwise mandatory e-filing system contemplated by 14-03, I do not believe the electronic filing fee will create any additional hardship for these litigants.

4) You asked about the numbers of civil, family and small claims cases filed in Dane County, and their proportion to the entire caseload of the county. I'll use 2015 data for my answer.

Total new filings in Dane County in 2015 totaled 54,717. Of these, 2,285 were Civil (4%), 1,631 were Family (3%), and 7,737 were Small Claims (14%). While it may seem like these proportions are very small, it should be kept in mind that the vast majority of our new filings are traffic/forfeiture tickets (30,705, or 56%). These are matters that generally require very little in-court activity-- 53% of these tickets are actually disposed via a default judgment. **Note that the case count I used for Civil excludes the cases with class codes that are currently excluded from electronic filing.**

5) There has been a concern about funding for CCAP so that they may continue to support/maintain/enhance the electronic filing system. With the proposal to increase the electronic filing fee to \$20 per case for each electronic filing party on that case, it would be helpful to project the resultant revenue, both county-by-county and on a statewide basis.

As noted above, I do know the number of cases filed in Dane County for the three case types currently enabled for electronic filing. Unfortunately, I don't have the ability to query Dane County's CCAP database at the level of detail necessary to determine how many of these cases had parties who were represented by counsel. That is the key determinant to calculating what amount of electronic filing fee would be expected to result from this caseload

I contacted the Office of Court Operations to see if they could assist me with this analysis and I learned that they, in collaboration with CCAP, have been engaged in exactly this sort of analysis to inform the Court's consideration of Petition 14-03. My understanding is that this data will be made available to the Court very soon, if it hasn't been already.

Please feel free to contact me with any additional questions or concerns you may have. Thank you!