

Top 5 List of Goals and Aspirations
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As State Bar Representative

1. The Court's policy must result in assurances of **uniformity**
 - a. Right now, there are no Uniform Rules for filing, preferred methods of signature or authentication, issuance of passwords (eg., Division Two procedure is to call before issuance), service, rejection standards for pleadings, maintenance of original pleadings, documents and/or exhibits, certified copies, recordation requirements
 - i. Within the state and across courts
 - ii. Across state boundaries
 - iii. Federal vs. state (should we lead or follow?)
 - b. Supreme Court should mandate that all courts within the state use the same codes for pleadings and numbering for paragraphs, texts, embedded references policy, etc.
 - c. Treatment by attorneys of sensitive or protected data (ranging from Social Security number to)
 - i. The common law is 100 years old, federal and state laws conflict as to what constitutes data to be protected from ultimate disclosure
 - ii. **PROBLEM:** How to educate the various agencies and professionals about the extent to which information will flow across present-day "boundaries" (e.g, court filing contents to MVD or DPS)
 - iii. Awareness / discussion of where the burden for compliance, and accountability for noncompliance, will lie – not with Court personnel or judges but with attorneys (professional liability violations looming)
 1. **SUGGESTION:** That a representative of professional liability carriers should be included in the Subcommittee work
 - iv. Sensitive data sheet vs. XML
 1. How are we to deal with potential disclosure
 - d. The method for remote or public access in each level of the state courts, and in every court, must be the same (whether online or at kiosk)
 - i. Migration from kiosk to online should not occur "overnight"
 1. Eg., Florida courts directed full online implementation, followed by a necessary moratorium (there were 800-1000 exceptions to mandatory public disclosure of information)
2. Only the Court's *mandate* for compliance will result in appropriate self-education, training and management by legal professionals
 - a. Voluntary compliance will not occur because the vast majority of practicing attorneys (who are solos or in small firms) are not practicing good management, do not know about or have time to become familiar

with e-filing and other technology, are hesitant or suspicious to use it, feel that it is too complicated, and/or believe they can retire before it becomes mandatory

- i. ABA studies show a very small percentage of trial attorneys use trial technology, even though they may know it would be vastly more efficient and will eventually be required
 - ii. **PROBLEM:** Legal professionals cannot get ahead of the curve on technology (they do not have time and they do not know where it is going or what to anticipate)
 3. Further acceleration of law practice procedures, and spillover into private lives, will result from e-filing
 - a. Consider the diminishing return from a further reduction in the time for contemplation and disciplined thought
 - b. Attorneys are expected to return all calls the same day, respond to e-mails virtually upon receipt, file pleadings immediately
 - i. With e-filing, there will be an expectation of an “after hours” law practice and availability
 - ii. **SUGGESTION:** Individual with knowledge of practice impairment data be brought to the Subcommittee
 4. We must anticipate and articulate for legal professionals the practical impacts of e-filing upon the practice of law
 - a. Client engagement letters must address new rules about fees, cost allocation and savings, privacy and inadvertent disclosure due to future technology
 - b. Docket and calendaring procedures
 - c. Paper management skills must improve
 - i. Must become good at retaining “version history” and designating “finals” as such if there is no paper file
 - ii. Very few attorneys are good at managing e-mail now; e-filing will only add to the mountain of information not well maintained
 - iii. Metadata – when must it be removed before e-filing
 - d. Retraining staff as individuals and restructuring the various functions of staff
 - i. Having a nighttime or backup staff available
 - e. Timekeeping and billing questions
 - i. Should we return to job or project billing, rather than hourly
 - ii. How do we deal with the likelihood that clients will know that we can reach into a public filing, cut and paste it into our pleadings and then bill for it (no secrets anymore about form files)?
 - f. All offices must have a backup policy and system, kept offsite, if there is no paper file
 - g. Storage of records
 - i. how long must originals be retained, if at all
 - ii. what about third-party signature retention
 - h. There will be no secrets – clients will be able to easily view everything filed by their own attorney and by the opposition (possibly embarrassing)

5. We must emphasize the importance of maintenance and management of password and signature security
 - a. Currently, most professionals do not know how to maintain secure passwords and do not practice security with staff
 - i. Change passwords at regular intervals
 - ii. Revoke password and notify all courts upon employee termination
 - b. Court should adopt rules for preferred forms of authentication and signature in the future
 - i. Eg., Nevada statutory scheme authorizing electronic wills and trusts, authenticated by retinal scans, voice, fingerprint
 - c. Court should direct whether attorney must “read and sign” all pleadings – if not, staff will be signing for attorney and risk of error, theft of professional identity, fraud upon the court will be elevated
 - i. Extreme example = fraudulent filing of a will by an impostor attorney for probate, collection of the estate