

DAILY REPORT

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Fulton e-filing fees draw a challenge

PLAINTIFFS' LAWYER claims Fulton State and Superior Court systems are illegal

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PLAINTIFFS' ATTORNEY Steven J. Newton is no stranger to the Fulton County courts; a quick search of court records reveals nearly two dozen cases in state and superior Court in which the Atlanta sole practitioner has assumed a role.

But it was not until last summer that he first used the computerized filing system required in many Fulton state Court and some Fulton County superior Court cases.

Newton was helping a friend, norcross attorney w. Phillip McCurdy III, file an emergency motion in a personal injury case in Fulton state Court.

"I had sent a courier down with the motion, and he came back and said all these had to be e-filed," recalled Newton, who fired up his computer and went online.

He said he found the LexisNexis File & Serve Web site relatively user-friendly and didn't have any trouble creating an account and filing his documents.

"I thought it was wonderful," said Newton, "until I got the invoice. I had three \$7 charges, and I didn't know what they were for."

A call to LexisNexis told him that he was being charged \$7 for each document



COURTESY OF STEVEN NEWTON

Lawyer Steven Newton says Fulton State and Superior Court's mandatory e-filing is costly and unconstitutional.

he had filed—and that in some cases, per-document fees could run even higher.

"I thought, 'Do I have to pay \$7 for every one-page certificate of service I file?' It's not unusual to file 20 or 30 documents per case, even in minor cases," said Newton. "And they were charging the same rate, whether it's one page or 100."

Next, Newton called the Clerk of the State Court's office.

"I asked them how they could charge these fees, and they said 'LexisNexis sets the price.' I said, 'I don't think that's constitutional.'"

"There was kind of a stunned silence," said Newton, and he was finally told that the court had approved of the arrangement.

Newton, on Dec. 13, went to federal court to file a potential class action alleging that the program is illegal. He named as lead plaintiffs McCurdy, McCurdy's client Michael Shane Cawthon and Nelson W. Picklesimer, whose asbestos litigation Newton handled in Fulton County Superior Court.

The defendants are LexisNexis Courtlink Inc., Fulton County State Court Chief

Clerk Mark N. Harper, State Court Chief Administrator Stephani R. Searcy, Fulton County Superior Court Clerk Cathelene "Tina" Robinson, the Fulton County Board of Commissioners and the State of Georgia.

In addition to class certification, the suit also requests an injunction barring further collection of the File & Serve fees.

According to Newton's complaint, filing fees and costs for civil actions are set by statute, and—unless specifically authorized—no other "fees, assessments or other charges may be assessed or collected."

The File & Serve fees, he argues, amount to a "litigation toll booth" that imposes unauthorized fees. The filing rules also violate state and federal constitutional guarantees of due-process and equal protection, since some legal documents cost more to file in Fulton courts than in other jurisdictions.

Newton adds that the original order establishing the program in Fulton State Court, issued by the clerk of the Supreme

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Court, does not bear the signature of any high court justice, and there is no indication that it has been approved by a majority of the court.

But his biggest gun, he said in an interview, may be a Georgia statute stating that “[a]ny pleading or other document filed in any court of record may be prepared on letter-sized paper; and no clerk of any court of record shall refuse to accept for filing any pleading or other document for the reason that it is on letter-sized paper.”

“They’ve illegally taken away the ability to mail in pleadings in Fulton County,” he said.

Newton also notes that attorneys must subscribe to the online system for access, and he is not mollified by the public access terminals in the clerks’ offices, he said.

“I’ve either got to send a courier or another lawyer down to file, pay for parking ... it’s even more expensive than the File & Serve fees,” he said.

Efforts to reach the defendants or their attorneys were unsuccessful.

Because LexisNexis Courtlink, a division of global publishing giant Reed Elsevier, is a private contractor, it is not shielded by any government immunity, noted Newton. According to its Web site, File & Serve is in use, to some extent, in courts in 16 states, and handles more than 70 million online filings annually.

Newton said he has not been able to find any previous challenges to court-ordered e-filing naming the company.

Efforts to reach LexisNexis’ corporate communications office and separate media department, via telephone and e-mail, were unsuccessful. But according to the Fulton County rate sheet attached to Newton’s complaint, per-filing costs are \$7 per transaction for general civil filings, \$9 for mass torts and \$11 for complex litigation. For multiple-case filings, \$2 per filing is added to those rates.

In a series of orders beginning in 1999, approved by the Fulton County Board of Commissioners and signed by State



ZACHARY D. PORTER/DAILY REPORT

Judge Henry Newkirk says the e-filing program saves the court money and saves lawyers time.

Court Chief Judge Albert L. Thompson, cases requiring e-filing involve asbestos, Fen-Phen, mercury or lead, silicosis, weldingrods, medical or legal malpractice, personal injury, cases with four or more plaintiffs or defendants, cases in which more than \$50,000 in damages is being sought, torts cases and those in which no specific dollar figure is demanded.

In Superior Court, certain asbestos and silicosis cases must e-file, and all filings in the criminal case against accused Fulton County Courthouse shooter Brian Nichols are also required to be e-filed.

Thompson was unavailable for comment. But Fulton State Court Judge Henry M. Newkirk IV, who helped launch the original File & Serve pilot program in 1999, pronounced himself a big fan of the system—“the first e-file program east of the Mississippi,” he said proudly, even as he acknowledged the extra costs.

“There are certainly some expenses associated with it,” said Newkirk, “but it’s also saving the county a lot of money in time and the space downstairs to hold all those documents.”

And attorneys, said Newkirk, also save in terms of convenience and time.

“It’s very convenient for lawyers, who can file from their laptops in Atlanta or London or anywhere, anytime,” he said.

In conversation with lawyers, said

Newkirk, “I’d say about 97 or 98 percent have been favorably inclined. And I’ve asked a lot of lawyers about it.”

As e-filing spreads to other jurisdictions and other courts, he said, the state may well adopt a less costly system, such as that used by the federal courts.

“But I see it being contracted out to a third-party for the foreseeable future.”

Newkirk said he was unaware of any previous legal challenges to the system.

Fulton Superior Court Chief Judge Doris L. Downs said she’s heard “a lot of complaints” about the fees and doesn’t understand why they’re so high.

“You can run up a lot of money,” she said, noting that some attorneys have said they brought smaller cases to the Superior Court in part because of the fees.

“I think it’s something we really should look at,” she said.

For his part, Newton also thinks e-filing is a beneficial option; he just doesn’t like the hefty fees and lack of state oversight that goes into their promulgation.

“I can’t believe the [Georgia] Supreme Court would say, ‘We need greater access to the courts,’ then double or triple the filing costs,” he said.

The case, in the Northern District of Georgia, is *W. Phillip McCurdy, et al v. the State of Georgia, et al*, No. 1:07-CV-3098. ☞