

E-Filing in State Courts

Task Force Report

November 2006



INTRODUCTION

History Behind Formation of the Task Force

At the Oregon State Bar House of Delegates meeting in October 2002, delegate Kenji Sugahara proposed a resolution to urge the Oregon Supreme Court to allow electronic filing projects. The resolution stated:

WHEREAS, the House of Delegates of the Oregon State Bar has the duty in annual session to debate matters of concern to the membership of the Oregon State Bar and to provide learned advice and direction on matters concerning the practice of law in the state of Oregon;

WHEREAS, the House of Delegates of the Oregon State Bar believes that electronic filing of court documents will improve the practice of law;

WHEREAS, the federal court for the District of Oregon is running an electronic filing pilot project, but there is no counter-part in the state courts of Oregon;

WHEREAS, the Information Technology Department of the Oregon Judicial Department does not have the resources to implement electronic filing projects; now, therefore, be it

RESOLVED, that the House of Delegates requests and instructs the Board of Governors of the Oregon State Bar to urge the Supreme Court of Oregon:

1. To allow private vendors to engage in electronic filing pilot projects in the state of Oregon;
2. To allow only those vendors who subscribe to the legal XML standard or substantially similar standard to participate in pilot projects;
3. To allow individual courts to choose their vendors with minimal oversight from the Information Technology Department of the Oregon Judicial Department;
4. To allow individual courts to allocate resources to these pilot projects as they see fit; and
5. To adopt rules of procedure to enable electronic filing.

The House of Delegates overwhelmingly passed the Resolution.

Since the adoption of the Resolution by the House of Delegates in 2002, the pilot projects in the federal district court for the District of Oregon have come to fruition as a full-fledged case management electronic case filing process, based upon optional participation. Approximately 30 percent of the documents filed in the federal district court are filed by electronic methods. The federal district court adopted rules to make electronic case filing mandatory effective September 1, 2006. In addition,

the United States Bankruptcy Court for the District of Oregon has become a full electronic filing court from the initiation of cases throughout the life of the cases, using an electronic case management system. This system has completely done away with the maintenance of paper files. Filing is mandatory by electronic means for most participants, with the exception of *pro se* litigants.

In February 2004, former Chief Justice Wallace P. Carson, Jr. appointed a special task force on future technology in the Oregon courts to provide the Chief Justice and state court administrators with updated, strategic planning and recommendations for the future direction of the Oregon Judicial Department's technology systems and strategies. The task force contracted with MTG Management Consultants, LLC, of Seattle, Washington, to provide consulting services to assist with justice system technology planning.

With this backdrop, in late 2004, then Oregon State Bar President William Carter conceived of the formation of an electronic filing task force to explore the feasibility of electronic filing in the state courts of Oregon.

In February 2005, the Oregon State Bar Board of Governors formed the state e-filing task force to be chaired by Mark B. Comstock, a Board of Governors member. The Board named the following members to the task force: Jim Adams, Jackson County Circuit Court Trial Court Administrator; Doug Bray, Multnomah County Circuit Court Trial Court Administrator; Bruce Hamlin, practitioner, Portland; the Honorable Paul Lipscomb, Circuit Judge, Marion County; Debra Velure, practitioner, Portland; Carl Ward, Chief Information Officer, Oregon Judicial Department; Jeff Barlow, Oregon Judicial Department Information Technology Division E-filing Manager; Andy de Gues, Oregon Judicial Department Information Technology Division, Senior Project Manager; Val Paulson, Klamath County Trial Court Administrator; R. David Butler III, practitioner, Vale, Oregon; Tamara MacLeod, practitioner, Bend, Oregon; and the Honorable Lauren Holland, Circuit Judge, Lane County.

Judge Lipscomb actively participated in the e-filing task force, although his attentions were diverted when the Marion County Courthouse suffered a catastrophic event, which caused the relocation of all court facilities to other locations in Marion County. Judge Lauren Holland was named to the task force in May 2006 to assist the task force in coordinating proposed legislation with the Council on Court Procedures, of which Judge Holland is a member. Richard Vandiver, a retired former staffer for the Oregon Judicial Department Court Research and Services Division, served as staff to the task force.

Task Force members Carl Ward and Jeff Barlow actively participated until Spring 2006, when each was lured by other employment offers to leave the Oregon Judicial Department (OJD). R. David Butler III, although named to the Task Force, did not participate. Member Tamara MacLeod participated until fall 2005 when the pressures of a busy practice required her attentions elsewhere.

SCOPE OF STUDY

Scope of Task Force Study

At its first meeting in February 2005, the task force discussed the scope of its work. At the first meeting, it became clear to the task force that there was a need to address the interaction between the Oregon Judicial Department (OJD), which has the statutory obligations to manage the state court system, and practitioners of the Oregon State Bar.

The task force charge was to investigate the feasibility of recommending an electronic filing system in the state courts of Oregon. This scope was limited to eight areas.

1. A review of the Oregon state courts in relation to their technology and the feasibility of an electronic filing environment;
2. A review of the federal court electronic filing and case management system and its use in the District of Oregon;
3. A review of electronic filing and electronic case management systems available in the market;
4. A review of what other states and courts have initiated in the area of electronic filing and electronic case management systems;
5. A survey of Bar members to determine interest in an electronic filing system;
6. A survey and possible preparation of electronic filing system rules for practice;
7. A review of necessary legislative changes and civil practice rule changes to initiate a move towards an electronic filing system and electronic case management system; and,
8. Recommendations for funding the creation of an electronic filing system, if it was determined to be feasible for Oregon state courts.

Methodology

The methodology used by the task force was three-fold. First, the task force considered the state court perspective. The task force included members involved in all facets of the operation of the OJD, including circuit judges, trial court administrators, Information Technology Division personnel, and practitioners. This enabled the e-filing task force to have a detailed view of the operation of the state courts and what is essential for their operation.

Second, the task force considered the federal court perspective. The task force had experienced practitioners in the Oregon federal court systems, both United States District Court and the United States Bankruptcy Court, as members, and had other practitioners available for assistance. The task force also invited and received pre-

sentations from the federal district court clerk's office and from judicial officers of the federal district court and United States Bankruptcy Court.

Third, the task force considered other sources of information. The task force invited and received presentations from four different media vendors with four different types of electronic filing and electronic content management solutions available to courts. In addition, the task force invited and received presentations from personnel from other state trial courts that have recently initiated electronic filing and electronic content management systems. Members of the task force also reviewed national initiatives and publications from national sources.

The work group met 12 times in various areas of the state. The task force worked mostly as a committee of the whole, although rules and legislation were each drafted by different subcommittees for consideration by the task force.

The task force also utilized the services of the Oregon State Bar in surveying members of the Bar to determine their interest in the pursuit of an electronic filing case management system and how it would have an impact on the various types of users. At the request of the task force, staff of the Oregon State Bar sent a survey to 540 active members of the Bar. Those surveyed were diverse in geography of residence, age, and practice-type, and comprised a statistically significant sample of the active Bar. The survey sought input specific to the charge of the task force to help the task force design a recommendation to the Board of Bar Governors.

WHAT IS ELECTRONIC FILING

As used in this report and by the task force, electronic filing is defined as the initiation of the filing of pleadings in the court over the Internet. It is not transmitting by fax or delivering paper documents to the clerk's office for scanning and creation of an electronic image.

Currently, the filing of a case or pleading involves the following steps: a practitioner (1) prints a physical document in the office, (2) signs the document, and (3) delivers a physical document to the clerk's office with payment of the filing fee.

The court then (1) date stamps the document, (2) issues a receipt for the filing fee payment, (3) manually enters the data in a case management and docket system describing the document, (4) places the document in a hard paper file, (5) physically routes the file to the person who must act on the document, (6) files the file in a large records storage facility, (7) physically retrieves, accesses, and re-files the file multiple times, and (8) removes and archives the file when the case is completed.

Access to a document is accomplished by physical inspection of the file by either court personnel or a party requesting access at the courthouse during normal business hours. Court personnel or a party may obtain copies by court personnel removing the requested document from the file folder and physically copying it. If the requestor is not court personnel, a 25 cent per page fee is paid.

By contrast, electronic filing and content management systems involve the following steps: The practitioner (1) creates a document or pleading at the office or other location, (2) transmits an unalterable image of the document to the court without leaving the office or location, (3) arranges for payment of filing fees by credit or debit transaction, and (4) receives an acknowledgement of receipt by the court almost immediately.

The court (1) receives the electronic image of the document, (2) reviews it for compliance with filing and payment requirements, (3) creates the electronic file, (4) electronically extracts data to create case management information derived from and associated with the document in the official record, (5) simultaneously transmits a confirmation of filing, (6) automatically routes the electronic document for further court action, (7) may notify other parties associated with the case of its filing, and (8) posts and unalterable electronic image of the file to a secure Internet location.

Electronic documents are available for viewing and downloading at any time through the Internet site. Access to documents can be carefully controlled to protect confidential and restricted information. A users' access to view and download images may be subject to payment of a fee.

ANALYSIS OF TASK FORCE AREAS OF STUDY

Review of the Administrative Structure of the Oregon Judicial Department

The OJD consists of trial courts of general jurisdiction (circuit courts) in each of Oregon's 36 counties, as well as a Tax Court, a 10-judge court of appeals, a 7-justice supreme court, and the State Court Administrator's Office. The circuit courts handle all case classes and types, including, but not limited to, civil, small claims, probate, mental health, juvenile, criminal offenses (felony, misdemeanor, and violation, including traffic), and all family law.

Circuit court judges are locally elected in non-partisan elections. Appellate judges and supreme court justices are each elected on a statewide basis. The seven supreme court justices select from their members a Chief Justice. The Chief Justice hires the State Court Administrator.

For each circuit court, the Chief Justice appoints (with input from the local judges) one of the sitting circuit judges to be that circuit court's presiding judge. The circuit court presiding judge, in turn, hires a trial court administrator. Trial court administrators report to their respective presiding judges and manage all aspects of the court, including filings and court operations. Unlike some other states, there is no involvement by locally elected clerks in the operation of the courts.

All Oregon circuit courts, the tax court, the court of appeals, and supreme court, are funded by the legislative assembly through an appropriation of funds to the Chief Justice through the State Court Administrator. The State Court Administrator allocates the funds as provided by the appropriation law. For the circuit courts, the

appropriation provides for one lump sum allocation for all, rather than individual allocations to each judicial district. The Legislative Assembly leaves to the State Court Administrator the determination of the amount and timing of distribution of funds to individual judicial districts. The State Court Administrator distributes funds for staff, services, and supplies for the biennium to the circuit courts. The circuit court budgets do not include a line item for information systems or technology. Rather, technology initiatives are part of the OJD's budget administered by the State Court Administrator. Under this financial structure, it is beyond the reach of most individual courts to implement technology initiatives. Launching an e-filing program must be done by working through the Office of the State Court Administrator as a statewide program.

Existing Case Management System and Financial Management System

The case management and integrated financial management systems for trial courts are the Oregon Judicial Information Network (OJIN) and the Financial Information Accounting System (FIAS), which were developed in-house by the OJD during the early 1980s. OJIN/FIAS is an integrated set of applications running on a distributed network of 20 AS/400 mainframe computers serving every circuit court in the state and used for every case class and type. While each court maintains its own data, users have view access (depending on security authorization) to case information statewide, but not images of the documents filed in the record.

In addition to the OJD staff and judges, hundreds of public agencies and thousands of private entities maintain accounts whereby they have access to OJIN/FIAS information. Private entities pay for their access.

History of the Oregon Judicial Department Technology Initiatives

The OJD was a leader in the national justice community in the provision of technology-based justice systems for many years. During this time, the OJD's ability to maintain its leadership position eroded due to rapidly changing business needs, severe financial constraints, and technology capability demands from litigants and justice-partner agencies that outpaced the OJD's business and technology capabilities.

In February 2004, former Chief Justice Wallace P. Carson, Jr. appointed a special task force on future technology (the OJD Task Force) in the Oregon courts to provide the Chief Justice and the State Court Administrator with an updated strategic plan and recommendations for the future direction of OJD's technology systems and strategies.

The OJD task force contracted with MTG Management Consultants LLC of Seattle, Washington to provide consulting services to assist the justice system technology planning. The task force, in collaboration with more than 300 justice-partner agencies and stakeholders, identified deficiencies in the OJD's current technology environment, defined unmet internal and external business needs, and created strategies to leverage existing and future technology investments.

The OJD task force identified three over-arching strategies and created a detailed strategic plan. Fundamental to the OJD's technology environment are the need for standardization of certain processes and technological consistency. The three strategies are summarized as follows:

- **Business Model:** The OJD's business model will shift toward an electronic as opposed to a paper environment. The new model will leverage technology to enable electronic filing of documents, payments and case management.
- **Business Systems Delivery Model:** The OJD's business model will move away from its current case and financial management systems to a flexible, standards-based and component-based environment.
- **Technology Governance:** The OJD will implement a portfolio-based decision making process, which takes into account relationships among technology related initiatives within the department for more informed decision making processes and increased stakeholder communications.

The comprehensive technology strategic plan included multiple discrete projects that were positioned to take advantage of funding opportunities to offset costs among justice partners and the vendor community, when appropriate.

The OJD task force dissolved in mid-2005. Upon the dissolution of the task force, former Chief Justice Carson created the OJD Technology Committee, which first met in April 2005. The committee serves as a governance body of the OJD's technology investments and strategies. During the June 2006 meeting of the Technology Committee, Chief Justice Paul DeMuniz challenged the Technology Committee to accomplish three major goals within a three to five year period, summarized as follows:

- **Business Model:** Implement an electronic business environment, including electronic filing, payments and electronic content management, sometimes referred to as electronic document management.
- **Consistent Business Practices:** Facilitate the creation of uniform court and business standards and practices, necessary to align court processes with technologies.
- **Replace the Current Case Management System and Financial Management System:** Replace the OJIN case management and the FIAS financial management software with new electronic systems that are dynamic, built to open standards and capable of rapid modular development and deployment to keep pace with a rapidly changing justice environment.

Review of the Federal Court System

The e-filing task force reviewed the operation of the federal district court electronic filing and case management system and the United States Bankruptcy Court case management and electronic filing system from the standpoint of attorney users. A significant number of Oregon practitioners practice in the federal district and bankruptcy courts and would be natural users of an electronic filing and case

management system in the state courts, if it was not too dissimilar to the user's experience with the federal system.

The task force also reviewed the operation of the federal district court and United States Bankruptcy Court electronic filing and case management system from the standpoint of the inside operations and considered the pitfalls experienced in the implementation and operation by court personnel and judicial officers.

The Federal System

Oregon federal district and bankruptcy courts have adopted and are using a mature electronic case filing system identified as Case Management/Electronic Case Filing system (CM/ECF). The system was developed nationally over the last 10 years and has been in the process of implementation, in one version or another, since 2001.

The basis of the CM/ECF system is that an image of a document is filed by an attorney as a Portable Document Format (PDF) document. Court personnel either scan documents or otherwise generate PDF documents for filing in the filing system. Integral to the federal filing system is an electronic docket, which allows viewing of the docket and, additionally, allows a user with a PACER (public access court electronic record) account to access the PDF documents, provided the requested document is not a sealed document. The federal system allows downloading of individual PDF documents by authorized users for an eight cent per page fee.

CM/ECF systems are now in use in 93% of the federal courts: 90 district courts, 93 bankruptcy courts, the Court of International Trade, and the Court of Federal Claims. Most of these courts are accepting electronic filings. More than 27 million cases are on CM/ECF systems, and more than 250,000 attorneys and others have filed documents over the Internet. Under current plans, most of the courts that are not yet using CM/ECF will begin usage by the end of 2006. Each court goes through an implementation process that takes about 10 months.

Attorneys practicing in Oregon federal district and U.S. Bankruptcy courts are able to file documents directly with the court over the Internet. The CM/ECF system uses standard computer hardware, an Internet connection and a browser, and accepts PDF documents. The system is easy to use - filers prepare a document using conventional word processing software, then save it as a PDF file. After logging onto the court's Website with a court-issued password, the filer enters basic information relating to the case and document being filed, attaches the document, and submits it to the court. A notice verifying court receipt of the filing is generated automatically. Other parties in the case then automatically receive nearly immediate e-mail notification of the filing and all litigants are able to download one free copy of any document filed in their case.

In its first meeting in Salem in February 2005, the task force received a demonstration, from the attorney user point of view, of the CM/ECF system in both the federal district court and the United States Bankruptcy Court in Oregon. In its May 2005 meeting, the task force viewed the federal CM/ECF system from the inside, with presentations from Camille Hickman, U.S. District Court Clerk's Office, and the Honorable Frank R. Alley, III, United States Bankruptcy Court Judge.

Ms. Hickman indicated that the federal courts have invested substantial time and funds in the development of the CM/ECF system and will likely stay with the PDF document format for the long term. At the outset, the CM/ECF system in the federal courts was voluntary, with e-filing in about 25% to 30% of cases.

The Oregon Federal Court Local Rules Committee recommended and the federal district court adopted local rules in August 2006 which made e-filing mandatory in federal cases. Once a litigant commences e-filing in a case, all subsequent documents must be filed electronically, unless under seal.

In the clerk's office and the courtroom, the workflow changes that resulted from the use of the CM/ECF system in federal district court yielded better courtroom access to the docket information and electronic images than prior to the implementation of the electronic system. Both internal and external users create docket entries and use the calendar and dockets extensively. Judges may still require some work on paper, but most files are maintained electronically.

Bankruptcy Judge Alley demonstrated his remote access to the court from a standard Internet connection, and completed his routine consideration and signing of orders electronically using his laptop computer. Judge Alley indicated that for all but pro se users electronic filing is mandatory in Oregon Bankruptcy Court. Judge Alley also indicated that for a period of six months, the court maintained paper files after scanning hardcopy into electronic format. With the advent of electronic filing, the electronic record is now the official record of the court. The bankruptcy court used a phase-in program where electronic processing began approximately 18 months before the advent of electronic filing, and the processing of orders commenced in April 2005.

The bankruptcy court uses initiation documents and collects fees for the initiation of cases using a credit card processing format. If a credit card is dishonored, the user is locked out of the system until the resolution of the card issue has been completed.

Both Judge Alley and Ms. Hickman indicated that incrementally commencing the use of the system is vital to overcoming resistance, and the court also needs to be firm that e-filing is mandatory in order to get the most use of it. From experience, both the bankruptcy court and the federal courts indicate that attorneys, once familiar, are strong advocates of the system.

From a security perspective there have been no reported incidents of hacking into the system that has caused any compromise or delay of the system.

Commercially Marketed Systems

The task force made inquiry to determine the market and the types of systems available in the market. In a joint meeting with the OJD Technology Committee, the task force received presentations by four representative vendors, each of which market a different approach to e-filing.

Bearing Point Systems. Bearing Point Systems presented an open business model where attorneys interface with an electronic filing service provider. The electronic fil-

ing service provider then interfaces with an electronic file manager, which sends the filings on to the court clerk. Bearing Point Systems has 16 counties in Texas completed and an additional 11 counties adopting rules for filing, as well as the District of Columbia Superior Courts and a project in Cook County, Illinois.

The systems maintained by Bearing Point Systems are all civil filing systems and are available 24 hours a day, 7 days a week. The use of multiple electronic service providers allows attorneys to contract with their choice, based on either economic or service factors. However, there is a single electronic file manager that interfaces with the court clerk, which allows standardization at the electronic file manager level and consistent results in the court clerk's office. Additionally, all official records are held by the court clerk. The Bearing Point System uses PDF as their file storage format, but is able to convert XML and JPG files to PDF documents.

LexisNexis Court Link. LexisNexis maintains a proprietary system that is active in 22 different states, and involves the implementation, support and training for the systems. Colorado and Delaware are statewide projects. LexisNexis estimates an 80% adoption rate in a permissive environment, with only complex litigation mandatory. Case types are usually civil, domestic relations, water rights, probate and foreclosure, with appellate and supreme court implementations. In the LexisNexis model, LexisNexis is the only electronic filing system provider. The clients pay for the service, and there is a strong identity in the legal community. Under this system, a single electronic filing system provider interfaces with the court. The official records are the images that are records maintained and owned by the court, but the LexisNexis filing system maintains a copy of the documents for commercial purposes. The court is able to download copies of the documents into their servers if they desire, at no cost to the court involved, so long as LexisNexis has a copy and is allowed to maintain a copy for commercial purposes. The electronic filing system integrates with a case management system that is proprietary to LexisNexis. The LexisNexis single provider system limits the availability of service to *pro se* filers.

Wiznet. Wiznet is developed proprietary software that is implemented in Clark County, Nevada and is designed according to the specifications of the court. Wiznet charges a fee to users which it has shared with the court. Viewing access is available by subscription to the Wiznet system.

Counterclaim, Inc. Counterclaim, Inc. is a software provider based in Eugene, Oregon, that creates case management for courts with a strong commitment to electronic filing and utilizing open source middleware available at no cost to the court. The Counterclaim system is an electronic filing manager, which uses a surcharge as a revenue stream to generate the funds to pay the cost of creating and running the system. Counterclaim has developed and made available the open electronic filing manager to the court community using a standards-based system. Under the Counterclaim model, the system allows multiple vendors as the electronic filing service provider that interfaces with the electronic filing manager, which converts the documents into a format for use by the case management system. The court owns the system and can have Counterclaim develop the case management system.

Other State Courts

The task force agreed to look to other states and court systems to determine how similar initiatives for electronic filing and electronic case management had been initiated in other courts and systems, for the purpose of identifying lessons to be learned.

The task force viewed several other systems and extensively reviewed the electronic docketing and electronic filing system developed in King County Superior Court in Washington.

The Washington court sought legislation to allow the electronic court record to be the official record, and ultimately has done away with paper case files. In King County, the court scanned old case files and created the core electronic record that allowed cases to be worked through computer rather than on paper. The system in King County is one in which documents are scanned by court personnel, and then entered into the system and utilized in the operation of the court. Coming up with an indexing system was the most challenging issue in the adoption of the electronic case record system in King County.

In developing an electronic document management system, King County found that it is important that all aspects of the system be integrated so that it is possible to easily identify what the official record is. The electronic filing system is a delivery mechanism. Filing of a document can be accomplished either by the court through scanning or by initial electronic filings by users over the Internet. King County uses PDF as its document format, which is easily accessible and is the *de facto* standard. Use of XML (extensible markup language) or legal XML may be sufficiently developed in the future, but has yet to mature enough for purposes of court filings.

King County found that there was no net loss of personnel necessary for the revision and completion of workflow in the system, but that the personnel in the clerk's office were reassigned to usually higher-level job duties when the integrated electronic case files were used.

Attached as Appendix A-1 are charts identifying the flow of documents in the King County Superior Court. Attached as Appendix A-2 is a copy of the King County, Washington, Department of Judicial Administration, Electronic Court Records Master Plan dated April 1998.

Possible Funding Models

The "Per Page Use Fee" Federal Model: The funding model for the implemented federal CM/ECF system uses a charge for accessing documents available via the Internet on a per page basis. Users must have a PACER account which allows billing on a per page payment. Users are billed periodically and may use the same PACER account for access to multiple courts. The PACER charge is currently a modest 8 cents per page for viewing, downloading, or printing electronic documents contained in this system. Key features of this system are 24 hour, 7 day per week availability over the Internet, ability for frequent users to establish billing accounts, and one free download of each document for parties to pending cases.

The federal Electronic Public Access System, of which PACER is a part, generated more than \$45 million nationally in the last Annual Report of the federal administrative office of the United States court system from among other things users' fees to access electronic documents. There is no surcharge or differential charge for electronic filing in the federal system.

If this model was used in Oregon courts, there potentially could be a revenue stream generated to support the development and implementation of an electronic filing and content management system. Using the per page access model at the rate of 8 cents per page for access to a portion of the 50 million pages filed annually in the Oregon courts may yield a revenue stream nearing \$6.5 million annually.

The Surcharge Model: Under a surcharge model, which is what most of the commercial providers use, there are no costs to the courts. There are transaction fees for filers collected by the electronic filing service provider and/or electronic filing manager for access to the electronic system. There can be both e-filings and standard paper filings, with an increased fee charged for scanning the paper filings into the system. The revenue stream can be generated by a surcharge on electronic filing, paper filing, or some combination. Depending on vendor contract, revenue either goes to the vendor or may be shared with the court to support development or maintenance of the system.

Survey of Bar Practitioners and Users

The task force agreed to initiate a survey of Bar members to determine the interest of attorneys in the adoption of an electronic filing and electronic case management system in the state courts.

The task force commissioned the communications department of the Bar to assist it in surveying Oregon practitioners on issues related to electronic filing, such as general interest, usefulness of various services, funding, and concerns. Surveys were delivered by both email and hard copy to members of the Oregon State Bar who were randomly selected to match the overall demographics of Bar membership. The survey garnered 216 responses from 540 surveys distributed, for an impressive 40 percent response rate.

The attorneys who responded overwhelmingly favored the development and adoption of an electronic case filing and docket system as the primary method of filing actions in state court.

More than two-thirds (67.4 percent) of respondents had not filed electronically in any federal or state court. However, 74 percent of respondents indicated they would use electronic filing if they had the option to file state court documents electronically. Further, between 78 percent and 83 percent of respondents said that electronic access to state circuit court information in varying forms would be very useful. While 65 percent of the responses were from private practitioners, the rest were also wholeheartedly in favor of the adoption of an electronic filing system in Oregon state courts.

Respondents who said they either would not file electronically or were unsure about electronic filing were asked what would make them comfortable with filing electronically. Their answers centered on concerns about security, funding, training and support, and the ability to confirm that documents have been received and filed.

In summary, the survey showed that Oregon attorneys are ready to embrace an increase in electronic services in state courts. In the words of one respondent: "All I can say is it is about time for electronic filing."

Attached as Appendix B is a summary report of the Bar survey.

Rules of Practice

The task force determined that an important aspect of any electronic filing system was the practice rules under which the attorneys operate. The task force agreed to review various models of practice rules for electronic case systems with an eye toward developing draft rules. The goal of the draft rules was to ease the transition to an electronic filing environment in Oregon state courts.

A subcommittee of the task force, comprised of members Debra Velure, Doug Bray, and Bruce Hamlin, met and developed draft model rules of practice for an electronic filing system in Oregon courts. The subcommittee drafted with an eye toward the ease of practice for the Oregon practitioner and minimal confusion for staff and attorneys who practice in both the state courts and federal courts in Oregon.

Attached as Appendix C are the model rules of practice adopted by the task force for recommendation.

Legislation

The task force agreed to review the need for legislative amendments to allow the state courts, or the Chief Justice, to address the legislation needed for moving from a paper environment to an electronic environment, noting that the transition and the management of change is a task that is fraught with danger in any process.

One area where the electronic filing task force found a significant issue was regarding legislation that enables the trial court clerks and state court administrator to develop an electronic filing and electronic docket system. The existing statutes are limited in their applicability to an electronic document system because much of the statutory language is focused on physical or paper filing instead of document image and electronic filing. The e-filing task force, in conjunction with the OJD, drafted legislation to broaden the authority of the Chief Justice, and to clarify the ability of the Office of the State Court Administrator, to adopt an electronic record, and to clarify that the system is a unified, centralized state filing system. This draft legislation, which broadens the enabling statutes for the trial court clerks and the State Court Administrator, was submitted to legislative counsel for consideration in the 2007 legislative session.

The task force also reviewed the Oregon Rules of Civil Procedure to identify rules that were inconsistent with the adoption of an electronic record. The e-filing task

force submitted placeholder legislation to identify areas needing change. The e-filing task force committed to collaborate and coordinate with the Council on Court Procedures to enable amendments to the Oregon Rules of Civil Procedure to be adopted in a timely fashion to allow development of an electronic case management system and electronic filing on a timetable acceptable to the Chief Justice and the Office of State Court Administrator.

A subcommittee of the task force, comprised of members Mark Comstock and Doug Bray, reviewed the existing statutory basis for the operation of the Oregon courts, and sought to draw on the lessons learned in King County, Washington in its transition from a paper filing system to an electronic filing system for the Oregon courts. The subcommittee was also mindful of the time frames that the Chief Justice has announced for transition to an electronic system. The OJD Office of the State Court Administrator agreed to co-sponsor legislative action in conjunction with the Oregon State Bar public affairs department to address necessary legislation in the 2007 session.

The draft legislative concepts discussed sought to address the statutory enactments that are tied to "paper" and the concept of the "filing of a physical object" as the actions undertaken in the court system and various trial court clerks' offices. This analysis caused the committee to look at the Oregon Rules of Civil Procedure, a domain of the Council on Court Procedures. The task force adopted a draft placeholder legislative concept for submission as part of the Bar's public affairs legislation package for the 2007 legislative session. The OSB Public Affairs Committee and Board of Governors approved the submission of the draft legislative concept to Legislative Counsel for formal drafting, with the acknowledgment that the placeholder was subject to discussion and negotiation with the Council on Court Procedures, Office of the State Court Administrator, and the Chief Justice.

Attached as Exhibits D-1 and D-2 are copies of the draft placeholder legislation submitted by the task force.

SIGNIFICANT OJD INITIATIVES

Future Plans of the Oregon Court System

"Paperless Court" Overview and Background

The Information Technology Committee (ITC) of the Judicial Department has recommended a move forward with implementation of a "Paperless Court" sometimes referred to as an "E-Court." The goal is to eliminate or significantly reduce the amount of physical paper the OJD handles as part of its adjudication process.

The OJD handled over 50,000,000 pieces of paper last year. All of this paper totaled about 10,000 boxes and weighed in at about 500,000 lbs or about 250 tons. Over a ten year period the OJD handles and moves about half a **billion** pieces of paper.

The "Paperless Court" initiative is divided into three projects that include:

1. *Web Portal* - Development of new and easy to use Web pages for the OJD while updating its Internet "look & feel." Building the Web portal is the first step toward establishing the electronic filing system. It is the universal doorway to any circuit court for electronically filed documents.
2. *Electronic Content Management System (ECMS)* - This system will replace both the case file and the records room for electronically filed documents and for digital images of scanned paper documents filed in actions. (See below for detailed discussion of ECMS.)
3. *E-Filing* - This is the goal: an electronic messenger that picks up the practitioner's document (and filing fee) at their PC, delivers it to ECMS, insures the document is filed, and sends the practitioner a confirmation of that filing, and, if appropriate under the rules, service.

ECMS Description

An ECMS is generally composed of three elements:

1. *Imaging, storing and Optical Character Recognition (OCR) /Intelligent Character Recognition (ICR)* - Imaging and OCR/ICR are the technical processes of converting "human readable" documents into "computer readable" formats through the use of scanning devices. Imaging provides an organization with the ability to capture, store, and retrieve document images from paper files. OCR/ICR also uses scanning to reduce paper documents to text, rather than images, by "recognizing" the characters and converting them to text.
2. *Workflow* - This software enables organizations to define routing and processing schemes to automate the major document-based business processes of the organization. Workflow may be structured (predefined) or ad hoc (created at the moment). On the simple end are applications that route documents for approval. More complex workflow includes task assembly, task assignment, tracking tasks to completion, and statistics.
3. *Electronic Content Management* - This software provides a means of organizing and controlling the creation, management and retrieval of documents through their life cycle. Library services comprise the core set of document management functionality, including saving, profiling/cataloging, and retrieving files (check-in and check-out).

When implemented by the OJD in the circuit courts, this system would give the court and its authorized customers the ability to access documents filed with the court by use of a computer. These documents would be accessible from any computer on the OJD network or the Internet given proper authorization. Hard copies of the document can be made by printing the document displayed on the computer. No additional work is required.

ECMS Revenue Stream - Paid Public Access (PPA)

The ECMS may be a significant source of revenue for the OJD. The process of scanning documents to create images converts the information contained in those documents into a vehicle that can be accessed on the Internet. Access to these documents may provide an opportunity to generate revenue to help pay for the implementation and maintenance of the ECMS, the Web portal, and the modernized case management system.

The amount of revenue that may be generated from paid public access (PPA) to documents that have been scanned or e-filed is estimated at \$6,631,790 annually. This amount is based on a model in which users pay 8 cents per page to view some of the 50 million pages filed annually with the OJD. The revenue estimate is based on OJIN state wide statistics for the previous ten years.

ECMS Implementation Time Estimate

Implementation of ECMS for the Judicial Department may take from three to six years. The specific amount of time required will depend on the availability of funding for the project. If funding to pay for the entire project is not available, the OJD can proceed with implementation using a pay as you go plan. This plan would use revenue generated by the PPA system to pay for implementation of the ECMS. Implementation of the ECMS would then be dependant on the revenue stream generated by PPA.

RECOMMENDATIONS AND CONCLUSIONS OF FEASIBILITY

Feasibility

By consensus, the e-filing task force finds that the creation and implementation of electronic filing and electronic document management systems is feasible in Oregon state courts, given sufficient "seed money" to initiate key aspects of such a system. This system could eventually become at least partially self funding.

The task force has determined that both the hardware and reliable software is in existence in the commercial market to adopt a reliable accessible electronic environment that would improve public as well as court and user access and provide at least a potential hint of faster easier availability of court public records. Various providers have developed viable stable electronic filing and document management systems in similar sized court systems to be able to address the needs of a statewide Oregon state court electronic filing and document management system.

The task force determined that the PDF document format is sufficiently stable, reliable, and available for use in maintaining and implementing a stable electronic record of the documents presented to the court in association with the court systems. While the initial HOD resolution addressed the "legal XML" format, the task force finds that there has been insufficient market penetration by XML in the legal community to support a change from the standard PDF format utilized in both Oregon Federal District Court and Bankruptcy Court. However, the future development of the XML format or other formats may supplant the PDF format familiar today. Accordingly, any system should be sufficiently flexible to accommodate technological advances.

The task force determined that the practicing bar has an overwhelming interest in utilizing an electronic document and electronic filing system for access to Oregon courts, to such an extent that a majority is willing to assist in the payment of the development and maintenance of the system at least on a per page viewed methodology.

Recommendations

The recommendations of the e-filing task force are as follows:

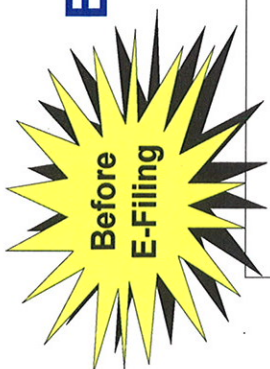
1. The Oregon Judicial Department should develop for the circuit courts a unitary, centralized, Internet-based system for the filing of court documents, payment of court fees, and the storage and retrieval of case information and documents.
2. The system should be standards-based, and not tied to any particular document format, or software or application system, although the PDF document format has significant advantages in its required usage in the Oregon federal court electronic filing and document systems.
3. The state court system should be similar in look, operation, and applicable rules to the federal court system utilized in the State of Oregon to minimize the numbers of inconsistent rules and applications for practitioners.
4. The electronic filing system should be developed in a way to allow initiation of actions and payment of any required fees, as well as all subsequent submissions, by electronic methods.
5. The court should adopt rules consistent with the model rules developed by the task force to allow original filing, filing of all subsequent documents, and electronic service on parties after the initiation of the litigation.
6. The case management system and electronic filing system should be incrementally introduced, starting with civil filings and expanding to all filing types, consistent with the need for preservation and protection of privacy, and the efficient and effective operation of the court system.
7. The system, to the greatest extent possible, should be economically self-sustaining by use of a per-page fee and subscription or other fees as are necessary to maintain it.

Conclusion

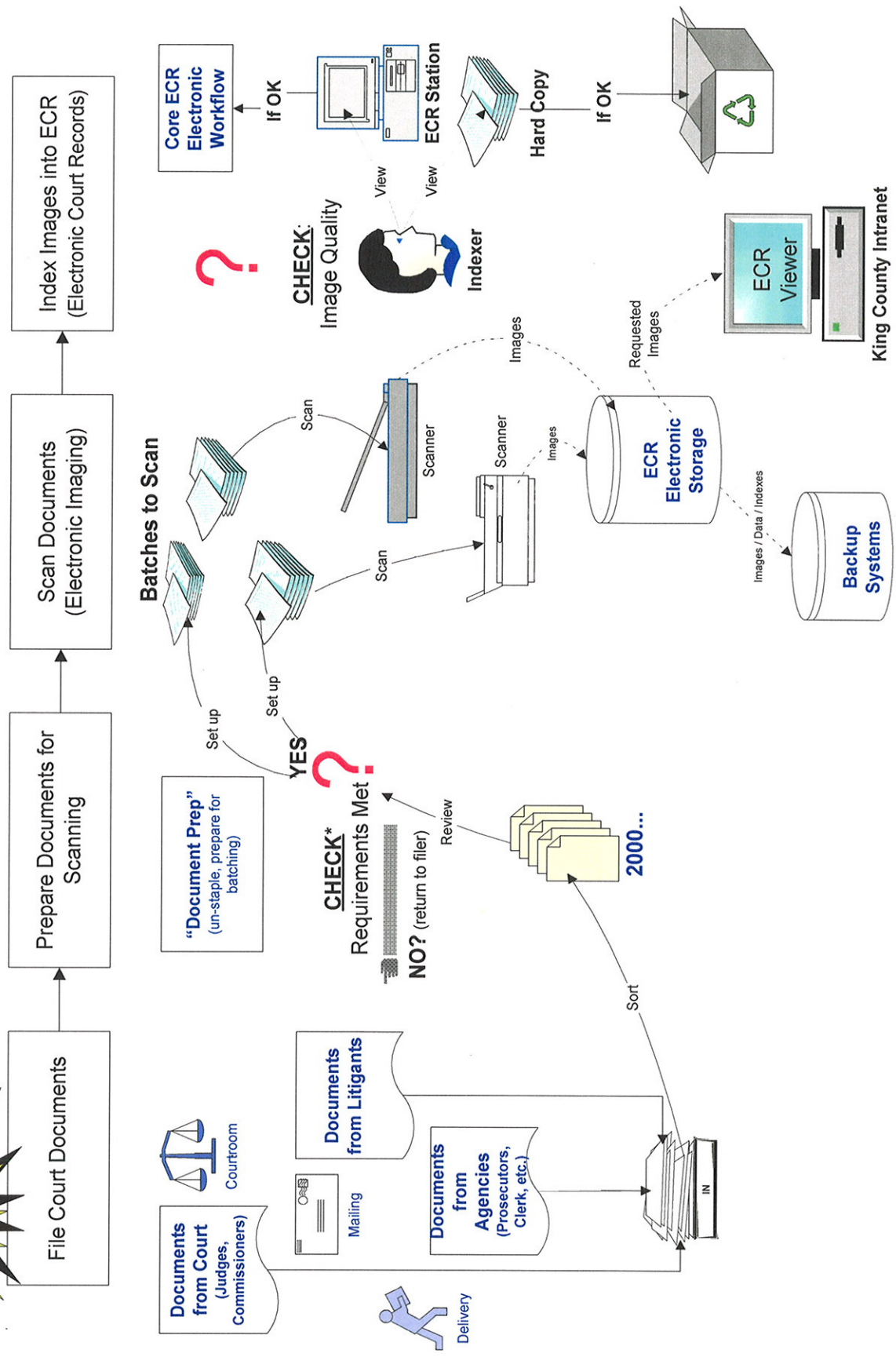
The task force enthusiastically recommends that the Oregon State Bar encourage the Oregon Judicial Department to move ahead with all deliberate speed toward the development of a court system that recognizes and utilizes electronic filing and electronic content management systems.

The task force acknowledges that there are many issues, questions and approaches that are not answered or addressed in this report, including *pro se* access, public access, the accomplishment of service of process by electronic means, managing the transition to electronic media, funding, and others. However, the task force is confident that the electronic environment for the state court system is feasible for future operations.

Appendices

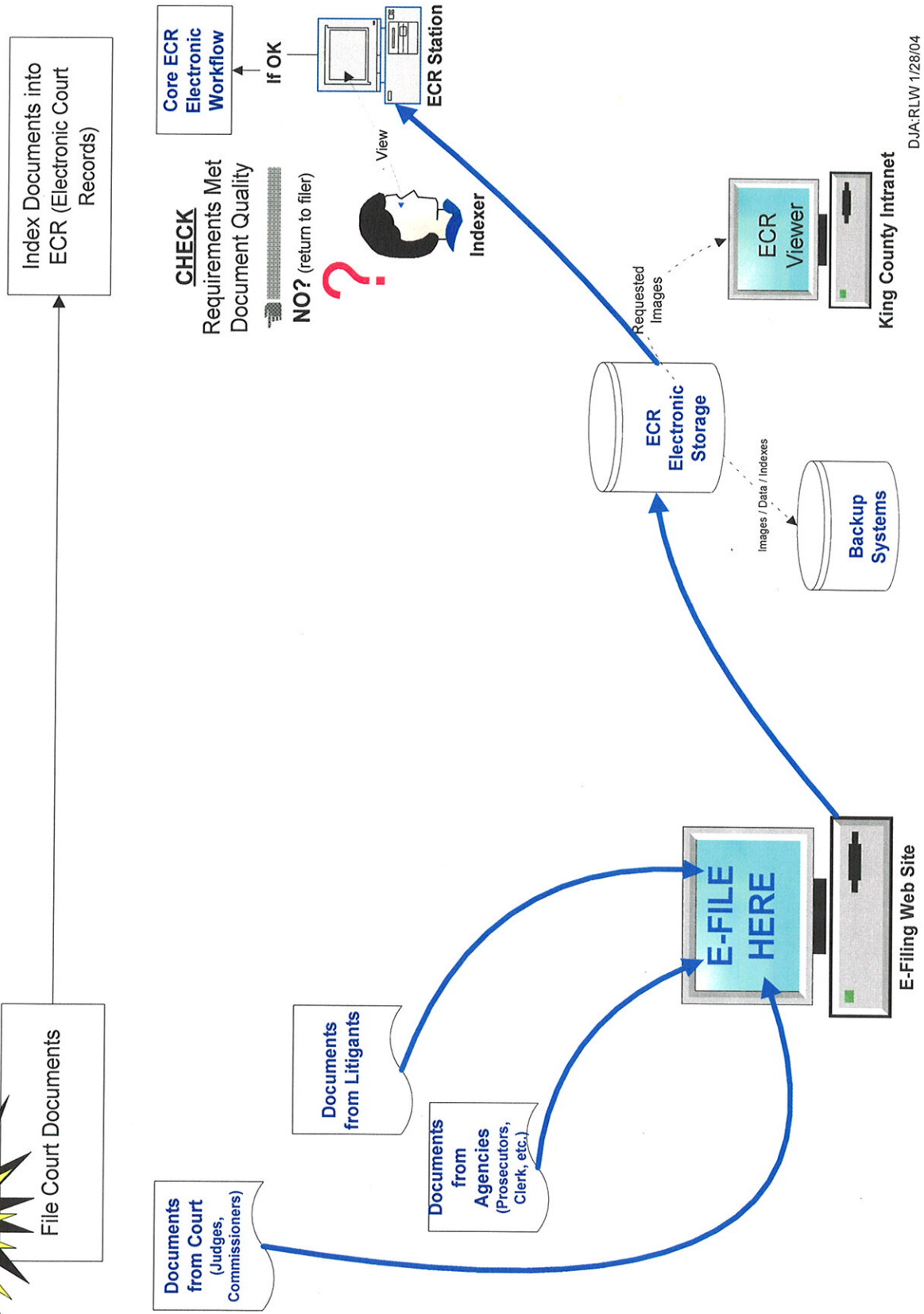


Electronic Document Processing (EDP) From Paper Filings to Electronic Images



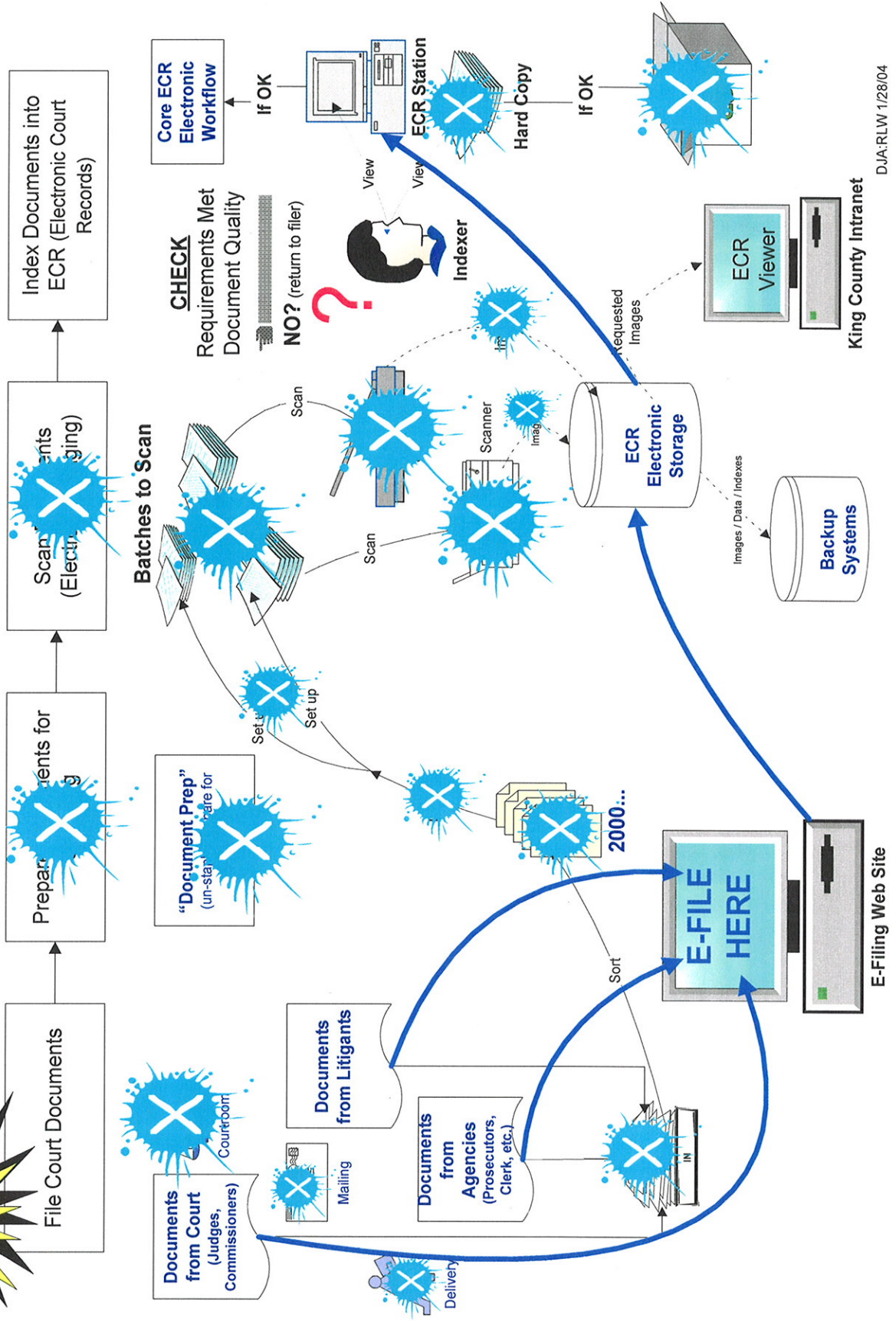


Electronic Document Processing (EDP) The ELECTRONIC Filing Process





Electronic Document Processing (EDP) What Steps Are Eliminated with ELECTRONIC Filing?





King County

Department of Judicial Administration

**Electronic Court Records
(ECR)**

Master Plan

April 1998

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Acting Director and Superior Court Clerk

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Electronic Court Records Manager

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INTRODUCTION

The evidence is overwhelming: the King County Department of Judicial Administration (DJA, the Superior Court Clerk's Office) must change its records systems to meet the need for timely, available Superior Court case records. DJA, after carefully evaluating alternatives, has concluded that migration to on-line, electronic court records is the most reasonable solution. This massive change is not about technology, but about legal culture change. This Master Plan lays out essential steps, timing, costs, issues, risks, and a plan for a 5-year Electronic Court Records (ECR) program and component projects.

STATEMENT OF NEED

DJA is relied on by the public and courts for its record keeping. Maintaining timely, accurate, and complete case records are part of the Mission of DJA. DJA does not merely file documents. Clerks index each document into the case "docket" and transfer information to enter into SCOMIS (Superior Court Online Management Information System). Documents are reviewed for required Clerk's actions. After processing, papers are fine-sorted and placed in folders in the Clerk's shelving system.

DJA's goal to provide the record in time is not today satisfying DJA's customers. The sheer number of daily filings — the equivalent to a stack of papers over 8½ feet high — is daunting. The expectations of information age people lead the Court and public to want to see documents right after they are filed. The present standard in court rules (allowing 5 days for the routine flow of papers from filing to when available in the file for check-out) is not acceptable for documents like warrants, temporary restraining orders, judgments, or papers in high-profile matters.

In recent focus groups, hard copy file availability and finding papers in process were named the most frustrating problems for DJA staff and customers. The biggest complaint from our Court is that files, on arriving in the courtroom, do not contain all the current filed material. Further, hard copy management is hugely expensive. It produces only one file per case, accessible to but one user at a time.

ALTERNATIVES ANALYZED

DJA management considered how to speed the flow of papers while continuing to get information needed to maintain indexes and required records. Their goal was to be sure the file used by the Court, staff, or public will be complete, including all recently-filed papers. The following alternatives were evaluated:

1. Increase staffing by 10+ FTE and begin 24-hour operations 6 or 7 days a week.
2. Define the DJA-retained record as only for history. Develop alternatives for day-to-day access and review. For example, litigants might be required to provide "working papers" for all court appearances.
3. Reduce DJA operations to minimum "core" functions. DJA would eliminate support for special programs, stop participating in state-wide developments, reduce or eliminate statistics, and curtail outreach, pilot projects, and the like.

4. Take absolute control over what is allowed to be filed. With enhanced authority, DJA could keep what can be filed to a minimum and require process-supportive features such as bar coding on all documents.
5. Implement Electronic Court Records (ECR) so papers are scanned at filing, being quickly available at multiple concurrent access points. Scanned files would be supplanted in the future with digital (i.e., word-processed or ASCII) documents where possible, enabling increased automation of data capture and information processing.

RECOMMENDATION: Implement Electronic Court Records (ECR)

1. Working "harder, faster and longer" (Alternative #1) will cost the same over a 5-year time frame. It does nothing to accommodate growth. No matter what, papers could never be available in less than the 2+ days required for such a large sorting/filing process. Files would still be available to only one person at a time.
2. Redefining the Clerk's record as historic only (Alternative #2) would simply shift the costs of paper processing elsewhere and serve the Court less well.
3. Eliminating some functions (Alternative #3) may help, but at the expense of other important priorities. Such savings would not result in better file availability and the one-user-at-a-time problem remains unresolved.
4. Efforts to define and control filings (Alternative #4), a good idea worth doing, will likely meet with significant resistance and will not achieve results for years.
5. ECR is the most cost effective option, most likely to meet the goal of complete and available files, quickly accessible. Implementing ECR satisfies the need for file completeness and availability. It also enables improvements like workstation or remote access, multiple simultaneous file use, better file navigation, task automation, and portability.

VISION STATEMENT

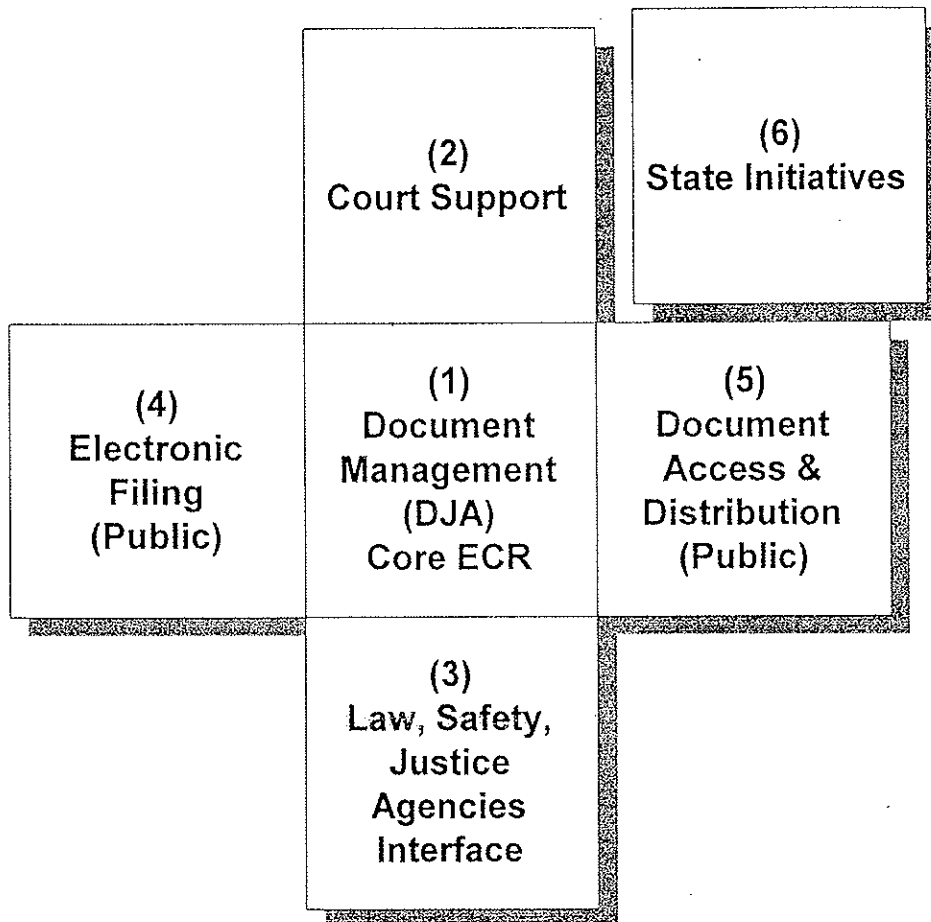
Replace hard copy case files with electronic records. The official court record will be maintained in electronic form and can be accessed by file users in several ways. This allows automated data capture from digital documents, remote filing and access, and multiple simultaneous use of the case file.

ECR PROGRAM PLAN

DJA is undertaking a 5-year program (1997 - 2002) to implement ECR. ECR will be undertaken in phases, with stakeholders involved in all the component projects. Each advance in ECR features will be tested in "proof of concept" pilot or demonstration project prior to being adopted into the overall program. "Pause points" for systematic review and program adjustment are key milestones in the program plan. The ECR communications program is designed to be sure that all stakeholders are heard and that all issues are resolved. There is dedicated ECR program management and technical staff.

ECR PROGRAM TIME LINES & ISSUES

DJA sees ECR as a multi-faceted program which will unfold through phased implementation in several major projects. Many issues are associated with the implementation of ECR. Each issue will be defined, discussed, and documented in an issue paper where potential solutions are explored. Issues are identified with the component projects; their resolution as part of those projects is part of the critical path.



(1) CORE ECR: In 1998, this establishes the basic infrastructure of ECR.	
<p>ACTIONS</p> <ul style="list-style-type: none"> ✓ Vendor(s) build and install Core ECR. ✓ Archival scanning with 1997 platform continues, converting to equipment, software, and systems of the selected vendor. ✓ Limited public viewing of scanned images is available in the Clerk's Office. ✓ Demonstrations using selected cases illustrate ECR features and help clarify requirements. ✓ DJA staff learn to process documents as images routed through the workflow system. ✓ DJA maintains hard copy case folders for public and court access (electronic access comes later). 	<p>ASSOCIATED ISSUES</p> <ul style="list-style-type: none"> ◆ Hard copy management. ◆ Document scanning & quality control. ◆ Special case documents: original wills, fingerprints, promissory notes. ◆ Operating dual systems. ◆ Security (technological & sealed records) ◆ Judicial Information Systems (JIS) interface. ◆ Sub-numbering documents. ◆ Indexing techniques, structure, & categories. ◆ Status of Clerk's marks on document images. ◆ Long-term storage strategy (Computer Output to Microfilm, COM). ◆ Reallocation of staff. ◆ Training and support.

(2) COURT SUPPORT: This follows Core ECR as an expansion expected in 1999.	
<p>ACTIONS</p> <ul style="list-style-type: none"> ✓ ECR is linked with courtroom operations to support business processes beyond access to electronic file folders. ✓ Electronic filing and access is enabled for the Court and Court staff. ✓ Some files-on-line with some pre-fetch service, a supportive index, & some hyperlinks. ✓ Case files are organized into categories facilitating retrieval by judges, staff, and file users. ✓ Software to produce, receive, index, queue, and pre-fetch images is installed. ✓ DJA, the Court, and Superior Court Administration begin to integrate functions and services of ECR, CMIS (Court Management Information System), and other systems. 	<p>ASSOCIATED ISSUES</p> <ul style="list-style-type: none"> ◆ Navigation within the electronic court file folder. ◆ Courtroom initiation of forms and data for filing with the Clerk into the electronic record. ◆ Interface with CMIS for support of real-time information processing. ◆ Adequacy of technology in the courtroom. ◆ Technology hardware management in the courtroom. ◆ Extended training and support.

(3) LAW, SAFETY, & JUSTICE CONNECTIVITY: This is a 1999 expansion built from Core ECR.	
<p>ACTIONS</p> <ul style="list-style-type: none"> ✓ The County law, safety, and justice (LS&J) agencies that are already linked through the King County Wide Area Network (WAN) gain access to electronic case files. ✓ Connectivity grows on the foundation laid by the 1998 case demonstrations. ✓ Electronic transmission of certain documents. 	<p>ASSOCIATED ISSUES</p> <ul style="list-style-type: none"> ◆ County agency access. ◆ Law, safety, & justice connectivity. ◆ Certification of electronic records. ◆ Funding law, safety, & justice technology.

(4) ELECTRONIC FILING: This will be developed for the public and attorneys in 2000, following integration of LS&J agencies.	
<p>ACTIONS</p> <ul style="list-style-type: none"> ✓ Programs and procedures for filing digital (word-processed & ASCII) documents (beyond images) are developed. ✓ Limited public access to electronic records is provided to meet business needs. ✓ Fee collection and other basic transactions are enabled for ECR. ✓ Methods for identifying filers and systems for electronic signatures are adopted. ✓ Automatic capture of data from electronic documents saves data entry labor. ✓ Pattern forms, templates, and "smart forms" (with artificial intelligence) grow in use. 	<p>ASSOCIATED ISSUES</p> <ul style="list-style-type: none"> ◆ Court rules. ◆ Costs and assessing fees for services. ◆ Digital signatures (or alternatives). ◆ Document standards, e.g., should content be preserved alone, or content with format? ◆ Citing to the electronic record. ◆ Using hypertext links in citations of other documents. ◆ Developing a "filing message" to help filers categorize and name their documents for better processing and retrieval. ◆ Acknowledging receipt of filings. ◆ Appellate processes. ◆ Incentives for electronic filing.

(5) DOCUMENT ACCESS & DISTRIBUTION: This will make filings accessible electronically for the public and attorneys in 2000, following LS&J integration.	
ACTIONS	ASSOCIATED ISSUES
<ul style="list-style-type: none"> ✓ Multiple access options are developed, e.g., at courthouses, law libraries, government offices, and public kiosks. ✓ Internet, dial-up, and other access systems are explored. ✓ "Universal browsers" and similar electronic access tools are tested and evaluated. ✓ Security of ECR systems against invasion or disaster is fully developed before going public. 	<ul style="list-style-type: none"> ◆ External access to court records (techniques). ◆ Electronic document remote access dissemination policy. ◆ Remote access to court records (privacy issues). ◆ Security for sealed materials. ◆ Methods & timing for "cut-over" to new systems. ◆ When is the electronic the official record? ◆ Staff re-distribution. ◆ When to stop providing hard copy for access.

(6) STATE INITIATIVES: Simultaneous with all projects, DJA ensures ongoing ECR coordination with related efforts at the state level and elsewhere.	
ACTIONS	ASSOCIATED ISSUES
<ul style="list-style-type: none"> ✓ Ongoing communication is maintained with other agencies or projects related to electronic records and files. ✓ Electronic records for appeals. ✓ Electronically available "Judgment & Sentence," protection orders, etc. 	<ul style="list-style-type: none"> ◆ Governance. ◆ Electronic records standards. ◆ Legislative authority.

ECR STAKEHOLDERS

Support from those significantly affected by ECR is vital to success. DJA must hear and understand their voices, cultivate their input, and benefit from their criticism and advice.

Stakeholders	ECR Interests & Concerns
The Public	Taxpayers pay for new systems. <i>Pro se</i> litigants. Case file users. Cases are open public records unless sealed.
Elected officials & Information Resource Council (IRC)	Provide funding & oversight for King County technology projects.
Superior Court & staff	Need systems to support judicial decision-making, system coordination (e.g., CMIS). Use case file records. Create & file documents.
DJA staff	Design, build, & implement ECR. Work processes will change. Career change & opportunities to come.
LS&J agencies (Prosecuting Attorney, Defenders, Jail, etc.)	Use case file records regularly. Create & file documents. Authenticity, security, reliability of documents.
Other courts, counties	Records for appellate review. Need ECR elsewhere. Shared concerns about resources, standards, and uniform practices.
Attorneys & support staff	Litigants, legal practitioners, who use files regularly. Create & file documents. Work requirements will change. Potential costs/savings.
Office of the Administrator for the Courts (OAC)	Interface with existing data systems (JIS, SCOMIS, etc.). Coordination of statewide systems, policies, & practices.
Law Library & Litigant Support Agencies	Provide court user support. Access to information for litigants.
Title Companies, Messengers, Researchers, Vendors	Business opportunities. Commercial interests in case information, filer services, information re-sale, etc. Regular case file users.
State of Washington	Standards for archival & electronic records. Archivist policies. Digital signatures.

COSTS & BENEFITS

Costs incurred for important new technology like ECR are justified by the benefits and savings they enable. Many of ECR's concrete benefits to the Court and litigants are difficult to quantify. The return on investment for ECR will be realized in increased efficiency, new productivity, and eliminating tasks required for hard copy handling. The ECR project has attracted County, federal, and grant based support. As the project unfolds, its costs, funding, benefits, and savings will become clearer.

Expected Costs	Benefits & Potential Savings
<p>1997</p> <ul style="list-style-type: none"> • Grant from County Information Resource Council (IRC) for technology consultant • Scanning project (infrastructure funds from County IRC technology resources) • Scanning project labor from Current Expense • Grant from State Justice Institute (SJI) for process consultants • Federal grants for demonstrations 	<p>1997</p> <ul style="list-style-type: none"> • Substantially develop infrastructure for document image processing • Build knowledge of scanning, imaging • Proof of concept tests help to define image resolution & readability standards, Wide Area Network capacity, electronic document security, image viewing requirements, and the value of centralized County technology resources
<p>1998</p> <ul style="list-style-type: none"> • About \$1 million to establish "Core ECR" (DJA imaging & electronic workflow capability) • Scanning project labor from Current Expense continued • Grants & potential SJI continuation grant 	<p>1998</p> <ul style="list-style-type: none"> • Determine ability of vendors to meet DJA requirements within available resources • Develop, test, computer output to microfilm • Criminal case demonstration project: proofs of concept (accessing active case records electronically)
<p>1999</p> <ul style="list-style-type: none"> • Scanning project labor from Current Expense continued • Federal grants & possible SJI support • Planned funding for "Court Support" and "LS&J Connectivity" of \$800,000 (approx.) 	<p>1999</p> <ul style="list-style-type: none"> • Develop connectivity with Court & LS&J systems, agencies • Initiate workflow processing of documents within DJA (paper maintained for access only)
<p>2000</p> <ul style="list-style-type: none"> • Scanning project labor from Current Expense continued • Costs of infrastructure enhancements for "Electronic Filing" and "Document Access & Distribution" to be determined 	<p>2000</p> <ul style="list-style-type: none"> • Internal processing savings initiated through workflow, intelligent automated data extraction, "smart forms," etc. (ultimately reduces by up to 8 FTE) • As agency self-service electronic access grows, reduce staff providing files (up to 3 FTE) • Investigation of new fees (e.g., premium court file data access services) & user incentives
<p>2001</p> <ul style="list-style-type: none"> • Scanning project begins to produce noticeable hard copy backfile reductions 	<p>2001</p> <ul style="list-style-type: none"> • Initiation of remote access & elimination of substantial access to paper files reduces staff required (up to 11 FTE through attrition as paper file service needs shrink)
<p>2002</p> <ul style="list-style-type: none"> • Scanning project concludes as it produces substantial hard copy backfile reductions 	<p>2002</p> <p>Remaining staff efforts shift away from physical file support & manipulation to knowledge-worker services for Court & litigants</p>

RISKS & CONTINGENCIES

All projects of substantial size and scope involve taking risks and require contingency planning. DJA has sought out consultants and experts for advice on how to identify, manage, and respond to potential risks and problems along the way.

- 1. Resource problems:** There is always a risk that a project's costs will be more than projected or that benefits will not be as much as is expected. There is a nominal risk that necessary resources to continue the project might not be available.

These risks are mitigated by dividing ECR into manageable projects, each of which can stand on its own. For example, Core ECR will be valuable even if Extended ECR is postponed.
- 2. Support endorsement problems:** Any big project is under risk that its advocates will lose interest or that the support of key stakeholders will wane.

This risk is mitigated with DJA's aggressive communications project and focus group approach. The program will continue to keep in close touch with all stakeholders, to get their input and keep support levels high.
- 3. Product does not meet expectations:** Some may worry that the final product (an accessible electronic court record) will not meet stakeholders' expectations. What if it is not user-friendly enough? What if it lacks desired special features? Might it be of low quality due to budget constraints?

Expectation management is a central focus for this project. The features promised for each phase or project will be clearly defined, built with user input, and tested for usability. Budgets may constrain the timeline but not quality.
- 4. Project management problems:** Major technology project implementations risk timeline slippage, scope creep, staff turnover, poor quality control, unresolved problems, never-ending enhancement demands, or unmanaged change.

The project management team is continually being trained in project management, aided with the latest project tracking tools. The team will benefit from various County and outside technology user groups and periodic re-evaluations of program progress.
- 5. Technology problems:** The technology for ECR is neither too new, unproved, nor overly complex. There are nevertheless some technology risks: What if King County's Information and Telecommunications Services Division (ITS, the ECR server manager) isn't able to meet security or availability needs? What if it proves hard to attract and keep high quality technology staff? Suppose the integrating technology doesn't work as planned. Every project dreads system failures or disasters, and hopes the problems with vendors or products will be easily resolved.

The "proof of concept" approach will mitigate these concerns, moving the project forward only after careful testing and experience.
- 6. External factors:** The ECR program depends on other organizations to accept changes and revise procedures, the Revised Code of Washington (RCW), the Washington Administrative Code (WAC), and court or agency rules. Failure or refusal to accommodate ECR could prove problematic. The federal government or Washington State agencies could choose to impose proprietary standards not compatible with the

ECR direction. The State Archivist could overly constrain the acceptability of electronic records. The Supreme Court or State Bar Association could resist enabling orders or rules. Digital signature implementation could falter and alternatives could be too weak. Any seemingly small problems could become threshold.

The inclusive ECR project structure and its broad public relations program should surface issues in time to resolve them before they become serious. The State Supreme Court, State Archivist, State Bar Association, the National Center for State Courts, and the State Justice Institute (SJI) are supportive of ECR's goals and are knowledgeable about and involved in the program.

MANAGEMENT

Internal Project Management: The Core ECR Team will include a DJA business process expert, a technology specialist, and a program director. Internal support to the Core Team comes from the Communications Group, DJA's ECR Operations Committee, and the EDM Workflow Team. External support is expected from the Court Technology Steering Committee which oversees Superior Court and DJA technology initiatives. ECR's Team includes important skills in technical support, public relations, project tracking to keep us on schedule, and business processes analysis. Resources are managed through DJA's budgets, grant writing, grant management, and expenditure tracking. The Core Team draws on technical expertise to monitor, coordinate, and oversee hardware and software installation. The program director is responsible for project communication, meeting coordination, procurement, and consultants.

External Project Management: A County-wide Steering Committee formed in 1995 is the primary tool for decision making. For state-level coordination, a state Advisory Committee meets quarterly to review decisions, receive reports, and discuss state-wide implications of programs goals. Special working groups are formed for "proof-of-concept" demonstration projects.

PROOF-OF-CONCEPT PROJECTS AND COMMITTEES

DJA minimizes potential waste and risk by engaging in collaborations, "proof-of-concept" demonstrations, and "safe mode" (not risking disruption of real-time court operations) experiments. This approach is cautious and conservative. When a demonstration project proves a method or approach, DJA builds on it directly.

King County's Electronic Document Advisory Committee (EDMAC) was formed by several County agencies working toward electronic records, to explore how to share County resources, including technology infrastructure. A grant from the Information Resource Council (IRC) engaged a consultant to advise on standards and "best practices" in electronic document management systems. EDMAC was precursor to the Electronic Records Advisory Council (ERAC), which today explores issues and economics associated with County electronic information resources.

DJA's Electronic Document Management (EDM) Workflow Team is a Total Quality Management (TQM) team of DJA staff, formed in 1996. Its mission is to study and chart the flow of documents and work within DJA. This work prepares us to design workflow software for Core ECR. The inter-divisional Team has developed text and computer-

aided flow charts of the work steps for criminal case documents. A few obsolete or repetitive work processes surfaced and have been eliminated. The Workflow Team's knowledge, skills, and techniques will benefit DJA as workflow applications are designed.

DJA's Scanning Project began in 1997 to take the place of microfilming inactive case records. (DJA by law preserves case records "indefinitely.") A temporary, rental-based imaging program was procured, along with scanners, servers, and other equipment. The project was assigned to the Regional Justice Center (RJC) in Kent. Court case records archived from SCOMIS were taken from shelves and prepared for scanning. DJA selected the powerful IBM RS-6000 owned by ITS as the server for document images. DJA chose magnetic disks over optical media for image storage.

The Scanning Project has demonstrated much:

- Documents scanned in Kent can be transmitted to Seattle for storage and retrieval.
- Storage and retrieval can be done with excellent access times using magnetic media.
- Access can be from anywhere on the County WAN.
- Images scanned at 200 dots per inch maintain readability even when converted to microfilm and printed.
- Numerous paper jams can plague "high speed" scanners because older papers are hole-punched, stapled, and worn.
- Time consuming document preparation and careful daily machine maintenance are essential to keep daily volume high.
- Implementing software programs with a vendor located in another state is quite challenging.

The Criminal Case Demonstrations Project is a collaboration of Law, Safety, and Justice system agencies to test how ECR helps them process criminal cases. Participants include DJA courtroom and criminal judgments staff, representatives from the King County Prosecuting Attorney, public defender agencies, the King County Jail, and the Court of Appeals. With grant support, this demonstration is to show how an electronic file folder for active criminal cases can be advantageous for those involved. Fraud and drug cases will be selected for the project. DJA will scan documents as they enter the system and again before they are put in the file. Those working with the files can read them from computers without having to have the paper file in hand.

"What's the Record?" is a subgroup of the ECR Steering Committee concerned about navigating in the electronic file folder. The group did a detailed analysis of case file contents from a courtroom perspective. They are building a "filing message" toolkit to help litigants name documents clearly. They are defining document categories to support user searching and may try to identify which documents need not be retained in the permanent case file.

DJA's ECR Communications Team maintains good stakeholder relations. This group of DJA staff helps make sure their colleagues and outside groups are well informed about ECR. The Team is conducting **Focus Groups** within DJA, for Superior Court staff, and for legal staff, attorneys, and others. Focus groups educate participants about ECR, solicit their concerns, and provide defined ways for them to stay informed. Other educational programs include **ECR Web Pages**, **educational presentations**, and speaking at **attorney continuing legal education (CLE) classes**.

The Court Rules & Legal Change Committee of the ECR Steering Committee includes a judge and several attorneys. They have identified where in Washington law, court rules, and County procedures changes may be needed to enable ECR. They will draft a general order to authorize ECR to proceed in King County. Proposed rule changes will be circulated for comment. Formal rule changes will be introduced through regular processes.

The **DJA Hard Copy Management Group** are DJA managers and supervisors making sure that existing hard copy records are supported during ongoing ECR planning and a Courthouse office remodel. The group works on file overcrowding, offsite storage options, and other aspects of hard copy management.

DJA's ECR Operations Committee are DJA managers and supervisors serving as an internal advisory body on ECR. This group reviews and makes recommendations on any aspect of the ECR Program and related projects that impact the operations and responsibilities of DJA.

ECR PROGRESS MONITORING & EVALUATION

DJA Management will pause at logical points in the ECR Program's life cycle to measure strategic and tactical progress, consider new realities, and determine how best to proceed. DJA will engage a Quality Assurance Reviewer who will present findings and recommendations upon completing a formal review. The "Pause Points" will occur before each significant milestone. For the "Core ECR" project, formal reviews are planned before a vendor contract is signed, prior to product installation, and before final acceptance of installed systems.

Results Summary



Filter Results

To analyze a subset of your data, you can create one or more filters.

Add Filter **Total:** 216
Visible: 216

1. OSB Member Survey

1. Have you filed court documents electronically, e.g., in federal court or another state court?

	Response Percent	Response Total
Yes	32.6%	70
No	67.4%	145
Total Respondents		215
(skipped this question)		1

2. If you had the option to file state court documents electronically would you use it?

	Response Percent	Response Total
Yes	74%	159
No	7.4%	16
Not sure	18.6%	40
Total Respondents		215
(skipped this question)		1

3. If you did not answer "yes" to question 2, what would need to happen to make you comfortable with electronic filing?

View **Total Respondents** **58**
(skipped this question) 158

4. How useful would electronic access to the following state circuit court information be to you?

	Not useful	Somewhat useful	Very useful	N/A	Response Average
Basic case information, e.g., case status, parties	3% (6)	10% (21)	82% (177)	5% (11)	2.84
Court docket/Case register	3% (6)	13% (28)	79% (168)	5% (11)	2.80
Scheduled hearing dates	4% (8)	13% (27)	79% (168)	5% (11)	2.79
Ability to view case file documents	2% (5)	11% (23)	83% (179)	4% (8)	2.84
Ability to print/download case file					







APPENDIX B

documents	3% (7)	11% (24)	82% (176)	3% (7)	2.82
Total Respondents					216
(skipped this question)					0

5. How useful would the following electronic services be to you?







	Not useful	Somewhat useful	Very useful	N/A	Response Average
Scheduling court appearances	7% (16)	22% (47)	62% (133)	8% (18)	2.60
File pleading documents with the court	8% (18)	16% (35)	67% (143)	8% (17)	2.64
Automatic distribution of filings to opposing counsel	8% (17)	19% (40)	65% (139)	8% (17)	2.62
Receive electronic notices from the court	9% (19)	17% (37)	67% (143)	7% (15)	2.62
Ability to pay fees electronically	16% (35)	21% (45)	47% (101)	15% (32)	2.36
Total Respondents					215
(skipped this question)					1


6. What do you think would be the best way to fund electronic court services?

	Response Percent	Response Total
Fee to view/print a document (e.g., PACER charge) 	27.8%	59
Surcharge on electronic filings 	9.9%	21
Subscription service 	23.6%	50
State general fund/taxpayer funds 	33.5%	71
Combination of the above 	36.3%	77
<input type="button" value="View"/> Other (please specify) 	10.8%	23
Total Respondents		212
(skipped this question)		4













2. Demographics

7. Which category best describes your practice or type of employment?

	Response Percent	Response Total
private practice 	64.8%	138
government -- prosecutor 	6.6%	14
government -- non-prosecutor 	10.8%	23
courts 	1.9%	4
corporate or in-house counsel 	3.8%	8
public interest law 	2.8%	6

	not employed as a lawyer 	2.3%	5
View	Other (please specify) 	7%	15
		Total Respondents	213
		(skipped this question)	3


8. What is your primary area of practice?

		Response Percent	Response Total
	Bankruptcy 	2.8%	6
	Business & Corporate - Litigation 	3.8%	8
	Business & Corporate - Transactional 	4.7%	10
	Tax/Estate Planning 	5.6%	12
	Workers Comp 	1.9%	4
	Civil Litigation - Defense 	12.7%	27
	Civil Litigation - Plaintiff 	8.9%	19
	Criminal - Defense 	7%	15
	Criminal - Prosecution 	6.6%	14
	Domestic Relations 	9.4%	20
	General (no area greater than 50%) 	15%	32
View	Other (please specify) 	21.6%	46
		Total Respondents	213
		(skipped this question)	3

9. How many pleadings/documents do you typically file per week?

		Response Percent	Response Total
	0-5 	70.7%	147
	6-10 	19.2%	40
	11-50 	9.1%	19
	more than 50 	1%	2
		Total Respondents	208
		(skipped this question)	8

10. How long have you been a lawyer?

		Response Percent	Response Total
	0-5 years 	16.6%	35
	6-10 years 	11.4%	24

11-20 years		24.6%	52
21-30 years		27.5%	58
more than 30 years		19.9%	42
Total Respondents			211
(skipped this question)			5

11. How many lawyers work in your firm/organization?

		Response Percent	Response Total
1		21.1%	45
2-5		26.8%	57
6-10		11.3%	24
11-25		15.5%	33
26 or more		20.7%	44
<input type="button" value="View"/> Other (please specify)		4.7%	10
Total Respondents			213
(skipped this question)			3

12. In what geographic area do you most often practice?

		Response Percent	Response Total
Baker/Grant/Harney/Lake/Malheur/Union/Wallowa/Wheeler counties		1.9%	4
Clackamas County		7.1%	15
Clatsop/Columbia/Coos/Curry/Lincoln/Polk/Tillamook/Yamhill counties		4.3%	9
Deschutes/Crook/Jefferson counties		3.3%	7
Douglas/Jackson/Josephine/Klamath counties		5.7%	12
Hood/Sherman/Wasco/Gilliam counties		1%	2
Lane/Linn/Benton counties		9%	19
Marion County		12.4%	26
Multnomah County		44.3%	93
Umatilla/Morrow counties		0.5%	1
Washington County		9%	19
Out-of-State		1.4%	3
Total Respondents			210
(skipped this question)			6

UTCR 21 RULE GOVERNING CASE MANAGEMENT AND ELECTRONIC CASE FILING IN CIVIL CASES

UTCR 21.010 Case Management and Electronic Case File System

- (1) **General:** The Circuit Court for the State of Oregon uses the ___ system and the Internet to support electronic filing and service in civil cases, and electronic access to public civil court records.
- (2) **Electronic Filing in Civil Cases:** Unless otherwise limited by these rules or other applicable law, the Court and Registered Users may electronically file pleadings, documents, and other papers in all pending civil cases.

[The committee has discussed whether and/or when electronic filing and registration will be mandatory and determined, most likely, with the first set of rules, it will be optional. Also, the initial application for electronic filing is limited to civil matters.]

- (3) **User's Manual:** Electronic filing requirements are described in detail in the *User's Manual* on the Oregon Judicial Department's website at www.ojd.state.or.us. From time to time this manual may be updated to conform to the evolving ___ system. Notice of any updates will be posted on the Oregon Judicial Department's website.

UTCR 21.020 Registered Users

- (1) **Registration Requirements:** Lawyers admitted to the Oregon State Bar that currently practice in the Circuit Court for the State of Oregon on civil matters may [or must] register with the system and maintain a current e-mail account sufficient to receive service of electronic filings and court notices. Upon registration, lawyers are deemed to be Registered Users for purposes of these local rules.
- (2) **Login and Password Security:** No person may knowingly permit or cause to permit a password to be used by anyone other than a Registered User or an authorized agent of the Registered User. Registered Users agree to protect the security of their password and notify the Clerk's Office immediately if they learn that their password has been compromised.
- (3) **Consent to Service:** In accordance with ORCP 9B, when filing a document according to these rules, Registered Users who have appeared in the action are deemed to consent to electronic service of all electronically filed documents by the Court or other Registered Users who have appeared in the action. Such consent does not apply to service made pursuant to ORCP 7, 37, 55, and 79-85; ORS 33.015 to 33.155, 416.400 to 416.470, 419B.400 or 419C.590; and ORS Chapter 108, 109 or 110.

- (4) **Non-Registered User Attorneys:**
- (a) **Exemption from Requirements:** For good cause shown in a specific case, attorneys without access to automation and the Internet may apply to the assigned judge for an exemption from the _____ electronic filing requirements.
 - (b) **PDF Filing Requirements:** Attorneys exempted pursuant to this rule must include with every conventional filing a 3.5" diskette or CD-ROM containing a text searchable PDF version of all papers filed with the court.
- (5) **Pro Se Party Litigants:** On a case-by-case basis, a *pro se* party may apply to the presiding judge of the circuit court in which the case is filed for permission to become a Registered User. Every such application must demonstrate the *pro se* party's automation, word processing, and Internet access capabilities, and must include an agreement to abide by the requirements of these local rules and the *User's Manual*. If approved, the clerk will assign the *pro se* party a _____ login and password, and that individual will become a Registered User in the specific case.

[By this first rules draft, it is anticipated that Small Claims/Landlord-Tenant/Probate proceedings would not have the electronic filing option.]

UTCR 21.030 Official Record

- (1) **Electronic Filing:** In accordance with ORCP 9E, the electronic filing of a document (together with the _____ system's transmission of the *Notice of Electronic Filing*) constitutes filing of that document, the official record for all purposes of the ORCP, UTCR and Supplementary Local Rules of any Circuit Court, and entry of the document on the docket kept by the Clerk.
- (2) **Conventional Filings:**
- (a) **Filed Before _____:** Unless otherwise directed by the Court, documents filed conventionally before _____ constitute the official record and parties are not required to submit an electronic version of those conventional filings.
 - (b) **Filed After _____:** Documents authorized to be filed conventionally on or after _____, will be filed and docketed by the Clerk and will constitute the official record until the Clerk elects to scan and upload an electronic version of the conventional filing pursuant to UTCR 5.530(1)(c).
 - (c) **Converting a Conventional Filing into an Electronic Replacement:** The Clerk may scan and convert a conventional filing in its entirety to an electronic replacement for posting to the _____ system. Should the Clerk do so, the conventional filing may be discarded and not returned to

the filing party after providing reasonable notice to all parties.

UTCRC 21.040 Special Filing Requirements

- (1) **Initial Case Papers:** Initial case papers and any papers which add additional parties to the action may be electronically filed with the Clerk's Office..

[Note: this is what is desired by the drafting committee, but requires technology to support it].

- (2) **Judge's Paper Copy Requirements:** . A paper copy of all electronically filed motions, responses, and replies (including associated legal memoranda, attachments, exhibits, affidavits or declarations), and the Notice of Electronic Filing, shall be marked as a "JUDGE'S COPY" and delivered to the Judge's Office within within the time provided by Supplementary Local Rule (SLR) or, if no SLR provides a time for delivery, three (3) days after the electronic filing.

- (3) **Attachments and Exhibits:**

(a) Registered Users must submit in electronic form all documents referenced as exhibits or attachments, unless the Court permits the document to be conventionally filed.

(b) A Registered User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such. Registered Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The Court may require parties to file additional excerpts or the complete document.

(c) Demonstrative or oversized exhibits may be filed conventionally.

(d) Trial exhibits are not filed either electronically or conventionally with the Court, and must be delivered or submitted as ordered by the assigned judge.

- (4) **Documents That Must Be Filed Conventionally:** The following documents must be conventionally filed and served and may not be electronically filed:

(a) Sealed and *in-camera* documents

(b) DMV or other agency administrative record.

- (c) Individually identifiable health information protected under HIPAA . (See also 45 CFR 160.103).
- (d) Notices of Appeal of municipal or justice court violations or of administrative agency decisions may not be electronically filed.

UTCR 21.050 Electronic Filing Deadlines

- (1) Electronic filing is permitted at all times, except when the system is temporarily unavailable due to routine or emergency maintenance.
- (2) The filing deadline for any document is 11:59 pm (Pacific Time) on the day the document is required to be filed.
- (3) If an electronic filing relates to a scheduled court proceeding that is to be held within three (3) days of the filing date, the filing party must deliver a paper copy of the document and of the notice of e-filing to the assigned judge's office.
- (4) A document will be considered filed when all components of the document reside in the official court electronic document database maintained by the Oregon Judicial Department. The _____ system will affix to each document component the time of day, the day of the month, month and year of the entry of each into the document database.

UTCR 21.060 Electronic Signatures

- (1) A Registered User's login and password required to file documents via the _____ system constitute the Registered User's signature for purposes of the Oregon Rules of Civil Procedure (including ORCP 17), the Supplementary Local Rules of this Court, and for any other purpose for which a signature is required in connection with proceedings before the Court.
- (2) In addition to other information required to be on documents by UTCR 2.010, electronically filed documents must include a signature block including the typed name of the Registered User who filed the document preceded by an "s/" (followed by the typed name) in the space where the signature would otherwise appear.

s/ John Q. Attorney
JOHN Q. ATTORNEY
OSB #

Attorney for Plaintiff Smith Corporation, Inc.

- (3) Documents containing the signature of a person other than a Registered User are to be filed electronically with the signature represented by an "s/" and the name typed in the space where a signature would otherwise appear, or as a scanned image.

- (4) Documents requiring the signatures of more than one party must be electronically filed either by:
 - (a) Submitting a scanned document containing all necessary signatures.
 - (b) Representing the consent or stipulation of the other parties on the document.
 - (c) Identifying on the document the signatures which are required and submitting written confirmation by the parties no later than three (3) days after the filing, or
 - (d) In any other manner approved by the Court.

UTCR 21.070 Service (See also UTCR 21.020(2))

- (1) **CM/ECF Electronic Service:**
 - (a) **Completion of Service:** Electronic service is complete upon transmission of the *Notice of Electronic Filing*, but is not effective if the serving party learns that it did not reach the person to be served.
 - (b) **Notice of Electronic Service:** The *Notice of Electronic Filing* will be transmitted to all Registered Users who have appeared in the case, and confirmation of receipt of the *Notice of Electronic Filing* fulfills the notice requirements of Oregon Rules of Civil Procedure 9B.
- (2) **Conventional Service:** The filing party is responsible for perfecting conventional service in any manner permitted by the Oregon Rules of Civil Procedure (and for filing a Certificate of Service with the court) for every:
 - (a) Conventionally filed document permitted by these rules;
 - (b) Electronic filing that could not be electronically served upon a party or Registered User who appeared in the action; and
 - (3) Document filed under seal.

UTCR 21.080 Hyperlinks

- (1) Electronically filed documents may contain hyperlinks to other portions of the same document, and/or hyperlinks to a location on the Internet that contains a source document for a citation.
- (2) Hyperlinks to cited authority do not replace standard citation format. Complete citations must be included within the text of the document. Neither a hyperlink,

nor any site to which it refers, shall be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in an electronically filed document.

- (3) The Court neither endorses, nor accepts responsibility for any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked.

UTCRC 21.090 Court Orders and Judgments

Every order or other court-issued document filed electronically without the original signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the order and it had been entered on the docket in a conventional manner. Orders may also be issued as "text only" entries on the docket, without an attached document may be linked.

UTCRC 21.100 Retention Requirements

- (1) Electronically filed documents such as affidavits or declarations under penalty of perjury which contain original signatures of persons who are not Registered Users must be maintained in their original paper form by the Registered User until the later of:
 - (a) The final disposition of the case, including appeal or expiration of the time for appeal; or,
 - (b) The expiration of any relevant statute of limitations.
- (2) On request of the Court or a party, the Registered User must provide the original document for review.

UTCRC 21.110 Personal Privacy Issues (See also UTCRC 2.100)

Information posted on the [insert name of Oregon system] system shall not be downloaded for uses inconsistent with the privacy concerns of any person.

OREGON STATE BAR
Legislative Proposal
Part I – Legislative Summary

RE: **Electronic Filing in Oregon state courts**

Submitted by: **Mark Comstock, Chair, OSB E Filing Task Force**

Legislative Contact(s):
Phone 503.581.1501
E-mail: mcomstock@garrettlaw.com

This bill would amend ORS Statute(s):

ORS 1.002 (2) (b) and (d); ORS 7.010, 7.020, 7.090, 7.110, delete 7.250, 8.120, 8.225, ORCP 1E, ORCP 3, ORCP 7A, ORCP 7B, ORCP 7D(6)(a), new ORCP 7D(6)(h), ORCP 8D, new ORCP 8D(1), ORCP 9B, ORCP 9E, and ORCP 9F

1. PROBLEM PRESENTED (including level of severity):

The potential of electronic filing and electronic storage of documents or images of documents is hampered by the breadth of the statutory grant of authority or limitations in ORS Ch. 1, 7, 8 and ORCP.

ORS 1.002 provides currently for the Chief Justice to have the authority, subject to all other laws, to make rules for electronic filing of documents (1.002 (2) (b)) and for the electronic storage of documents (1.002 (2) (d)). The true scope of the rules necessary for an e-filing system involve requires a broader statement.

2. SOLUTION:

Amend ORS 1.002 to provide that, subject to all other laws, the Chief Justice may make rules relating to the substitution of electronic documents or scanned images of paper documents for any document required to be served, received, filed, entered or retained by circuit court, by the tax court, court of appeals or supreme court.

3. PUBLIC POLICY IMPLICATION of this proposed legislative change:

This change aligns the state courts to move, under rules, to electronic document management systems and e-filing.

4. Could the problem be addressed through a NON-LEGISLATIVE SOLUTION, such as administrative rule or education?

Existing authority in ORS 1.002 (2) (b) and (d) are not this clear a statement and could result in delay because there is uncertainty about the scope of the Chief Justice's authority.

5. COULD ANOTHER SECTION OR GROUP MORE APPROPRIATELY INTRODUCE THE BILL? If so, have you suggested it to the section or group?

This falls within the E-Filing Task Force and the Office of the State Court Administrator is represented on the Task Force and is aware the Task Force will be seeking legislation.

6. IDENTIFY THE GROUP OR CONSTITUENCIES THAT WOULD BE MOST IMPACTED or interested in this change. Who would support it and who would oppose it?

There is no known opposition to e-filing, but there may be parties that want to modify the language or oppose modifying the current language. The suggested amendment broadens the statement of scope of the authority granted to the Chief Justice and makes explicit that which needed to be implied in the current wording of ORS 2.001 (2).

**OREGON STATE BAR
Legislative Proposal
Part II – Legislative Language**

Amend ORS 1.002 (2) as follows:

(2) Subject to all other laws governing courts and court procedures, the Chief Justice may make rules for the use of electronic applications in the courts, including but not limited to rules relating to:

- (a) Applications based on the use of the Internet and other similar technologies;
- (b) Filing of electronic documents and the substitution of electronic documents or electronic images of paper documents for any document, process or paper required under law to be served, delivered, received, filed, entered or retained as documents, papers or process in any action or proceeding, or as records in court proceedings, in lieu of hard copies of those documents;
- (c) Payment of statutory or court-ordered monetary obligations through electronic media;
- (d) Electronic storage of court documents;
- (e) Use of electronic citations in lieu of the paper citation forms as allowed under ORS 153.770, including use of electronic citations for parking ordinance violations that are subject to ORS 221.333 or 810.425;
- (f) Public access through electronic means to court documents that are required or authorized to be made available to the public by law; and
- (g) Transmission of open court proceedings through electronic media.

Amend ORS 7.010 to read:

7.010 Records of court; minimum record retention schedules. (1) The records of the circuit courts include a register and jury register.

(2) The record of the Supreme Court and the Court of Appeals is a register.

(3) All references in this chapter to the clerk or court administrator relate to the office of the clerk or court administrator of the appropriate trial or appellate court as designated by rule or order of the Chief Justice.

(4) Minimum record retention schedules and standards for all records of the state courts and the administrative offices of the state courts may be prescribed by the State Court Administrator pursuant to ORS 8.125. The State Court Administrator shall ensure that the minimum record retention schedules and standards prescribed under ORS 8.125 conform with policies and standards established by the State Archivist under ORS 192.105, 357.825 and 357.835 (1) for public records valued for legal, administrative or research purposes. [Amended by 1969 c.198 §34; 1975 c.588 §3; 1985 c.540 §1; 1989 c.768 §2; 1995 c.244 §9; 2003 c.576 §174]

Amend ORS 7.020 to read:

7.020 Register. The register is a record wherein the clerk or court administrator shall enter, by its title, every action, suit or proceeding commenced in, or transferred or appealed to, the court, according to the date of its commencement, transfer or appeal. Thereafter, the clerk or court administrator shall note therein all the following:

(1) The date of any filing or entry of any paper ~~or a~~ process, record, electronic image or document.

(2) The date of making, filing and entry of any order, judgment, ruling or other direction of the court in or concerning such action, suit or proceeding.

(3) Any other information required by statute, court order or rule. [Amended by 1971 c.193 §12; 1975 c.588 §4; 1985 c.540 §2; 1989 c.768 §3]

Amend ORS 7.090 to read:

7.090 Files of court. The files of the court are all papers, documents, electronic images, records, or process filed with or entered in any electronic database designated by rule or order of the Chief Justice by the clerk of the court or court administrator, in any action, suit or proceeding therein, or before the judge. [Amended by 1975 c.588 §11]

Amend ORS 7.110 to read:

7.110 Custody of records and files. (1) The records and files of the court shall be ~~kept in the office of~~ maintained by the clerk or court administrator of the respective trial or appellate court, and the clerk or court administrator is the custodian of and responsible for those records and files. The records and files shall not be ~~taken out of the office~~ removed or deleted from any file, electronic database by any person except, when allowed by special order of the court or a judge thereof or general rule made by the court, by a judge of the court. ~~or an attorney.~~

(2) Custody of and responsibility for records and files of the court relating to an action, suit or proceeding may be transferred to the clerk or court administrator of another court, for the purposes of storage and servicing, after the expiration of 25 years after the entry of final judgment in the action, suit or proceeding. [Amended by 1971 c.193 §15; 1975 c.588 §12; 1985 c.540 §5]

Delete ORS 7.250

~~USE OF RECYCLED PAPER AND PAPER PRINTED ON BOTH SIDES~~

~~— 7.250 Use of paper printed on both sides; use of recycled paper. (1) The State Court Administrator and the courts of this state shall encourage persons who make filings in the courts, including all pleadings, motions, copies and other documents, to use paper that has been printed on both sides of each sheet. The courts of this state may not decline to accept any filing because the~~

filing is printed on both sides of each sheet of paper.

~~—(2) All filings in the courts of this state, including all pleadings, motions, copies and other documents, shall be printed on recycled paper if recycled paper is readily available at a reasonable price. The State Court Administrator and the courts of this state shall encourage persons who make filings in the courts to use recycled paper that has the highest available content of post-consumer waste, as defined in ORS 279A.010, and that is recyclable in office paper recycling programs in the community in which the filing is made. A court of this state may not decline to accept any filing because the paper does not comply with the requirements of this subsection. [1997 c.762 §2; 2003 c.794 §193]~~

Amend ORS 8.120 to read:

8.120 Duties as court administrator for Supreme Court and Court of Appeals; delegation. (1)

The State Court Administrator shall, for the Supreme Court and Court of Appeals:

- (a) Act as court administrator for the court.
 - (b) Keep the seal of the court, and affix it in all cases required by law.
 - (c) Record the proceedings of the court.
 - (d) Keep the records, files, books and papers pertaining to the court.
 - (e) File or cause to be entered all papers, documents, or electronic images delivered to or transmitted to the administrator for that purpose in any action or proceeding in the court.
 - (f) Attend the terms of the court, unless excused by the court, and administer oaths.
 - (g) Under the direction of the court enter its orders and judgments.
 - (h) Authenticate, by certificate or transcript, as may be required, the records, files or proceedings of the court, or any paper or record pertaining thereto, and filed or entered with the administrator.
 - (i) In the performance of duties pertaining to the court, conform to the direction of the court.
- (2) The State Court Administrator may delegate powers of the office of State Court Administrator to officers and employees of the Judicial Department designated by the State Court Administrator in writing. [Amended by 1971 c.193 §2; 1981 s.s. c.1 §13; 1985 c.540 §21; 1995 c.273 §3; 2003 c.518 §4]

Amend ORS 8.225 to read:

8.225 Duties of trial court administrator; delegation; transcript coordinator. (1) The trial court administrator for a judicial district has the duties, powers and functions prescribed by law or by rules of the circuit courts in the district.

- (2) A trial court administrator shall, for each court served by the officer:
- (a) Keep the seal of the court, and affix it in all cases required by law.
 - (b) Record the proceedings of the court.
 - (c) ~~Keep~~ Assist the Office of the State Court Administrator to maintain access to the records, files, books and papers pertaining to the court.
 - (d) File all papers, and enter all documents or records transmitted to or delivered to the officer for that purpose in any action or proceeding in the court.
 - (e) Attend the terms of the court, administer oaths and receive the verdict of a jury in any action or proceeding therein, in the presence and under the direction of the court.
 - (f) Under the direction of the court enter its orders and judgments.
 - (g) Authenticate, by certificate or transcript, as may be required, the records, files or proceedings of the court, or any ~~paper~~ record pertaining thereto, and filed with the officer or entered in the records of the court.

(h) In the performance of duties pertaining to the court, conform to the direction of the court.

(3) A trial court administrator may take and certify the proof and acknowledgment of a conveyance of real property or any other written instrument authorized or required to be proved or acknowledged.

(4) A trial court administrator may delegate powers of the office of trial court administrator to employees of the trial court administrator.

(5) A trial court administrator shall designate a person to act as transcript coordinator for the court. [1981 s.s. c.3 §12; 1985 c.540 §22; 1993 c.223 §1; 1995 c.273 §4; 1997 c.801 §§117,117a]

Amend ORCP 1E to read:

E Use of declaration under penalty of perjury in lieu of affidavit; “declaration” defined. A declaration under penalty of perjury may be used in lieu of any affidavit required or allowed by these rules. A declaration under penalty of perjury may be made without notice to adverse parties, must be signed by the declarant or bear evidence of the adoption of declaration by the declarant and must include the following sentence in prominent letters immediately above the signature of the declarant: “I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.” As used in these rules, “declaration” means a declaration under penalty of perjury.

Amend ORCP 3 to read:

Commencement of action. Other than for purposes of statutes of limitations, an action shall be commenced by filing or entry of an electronic document in an electronic database pursuant to a rule or order of the Chief Justice of a complaint with the clerk of the court. [CCP 12/2/78]

Amend ORCP 7 to read:

A Definitions. For purposes of this rule, “plaintiff” shall include any party issuing summons and “defendant” shall include any party upon whom service of summons is sought. For purposes of this rule, a “true copy” of a summons and complaint means an exact and complete copy of the original summons and complaint with a certificate upon the copy ~~signed by an attorney of record, or if there is no attorney, by a party,~~ which indicates that the copy is exact and complete.

B Issuance. Any time after the action is commenced, plaintiff or plaintiff’s attorney may issue as many original summonses as either may elect and deliver such summonses to a person authorized to serve summons under section E of this rule. A summons is issued when ~~subscribed~~ transmitted pursuant to rule or order of the Chief Justice by plaintiff or an active member of the Oregon State Bar.

D(6)(a) Court order for service by other method. On motion upon a showing by affidavit or declaration that service cannot be made by any method otherwise specified in these rules or other rule or statute, the court, at its discretion, may order service by any method or combination of methods which under the circumstances is most reasonably calculated to apprise the defendant of the existence and pendency of the action, including but not limited to: publication of summons; mailing without publication to a specified post office address of the defendant by first class mail and by any of the following: certified or registered mail, return receipt requested, or express mail; or posting at specified locations, or by electronically mailing the document to the party's attorney pursuant to rule or order of the Chief Justice. If service is ordered by any manner other than

publication, the court may order a time for response.

D(6)(h). Summons may be served by compliance with a rule or order of the Chief Justice providing for service by electronic transmission.

Amend ORCP 8 D to read:

D Telegraphic transmission of writ, order, or paper, for service; procedure. Any writ or order in any civil action, and all other ~~papers~~ documents or records requiring service, may be transmitted by telegraph for service in any place, and the telegraphic copy as defined in ORS 165.840, of such writ, order, or paper so transmitted may be served or executed by the officer or person to whom it is sent for that purpose, and returned by such officer or person if any return be requisite, in the same manner and with the same force and effect in all respects as the original might be if delivered to such officer or person. The officer or person serving or executing the same shall have the same authority and be subject to the same liabilities as if the copy were the original. The original, if a writ or order, shall also be filed in the court from which it was issued, and a certified copy thereof shall be preserved in the telegraph office from which it was sent. In sending it, either the original or a certified copy may be used by the operator for that purpose.

D(1) Any writ or order in any civil action, and all pleadings, documents or records requiring service, may be transmitted by electronic transmission pursuant to rule or order of the Chief Justice providing for service by electronic transmission.

Amend ORCP 9 B to read:

B Service; how made. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service shall be made upon the attorney unless otherwise ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party, by mailing it to such attorney's or party's last known address or, if the party is represented by an attorney, by telephonic facsimile communication device, or by electronic transmission pursuant to rule or order of the Chief Justice providing for service by electronic transmission, as provided in section F of this rule. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age then residing therein. A party who has appeared without providing an appropriate address for service may be served by placing a copy of the pleading or other papers in the court file. Service by mail is complete upon mailing. Service of any notice or other paper to bring a party into contempt may only be upon such party personally.

Amend ORCP 9 E to read:

E Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing or transmitting pursuant to rule or order of the Chief Justice ~~them with~~ to the clerk of the court or the person exercising the duties of that office. The clerk or the person exercising the duties of that office shall endorse upon such ~~pleading or paper document or record~~ the time of day, the day of the month, month, and the year. The clerk or person exercising

the duties of that office is not required to receive for filing any paper record or document unless the name of the court, the title of the cause and the paper document, and the names of the parties, and the attorney for the party requesting filing, if there be one, are legibly endorsed on the front of the document, nor unless the contents thereof are legible.

Amend ORCP 9 F to read:

F Service by ~~telephonic facsimile communication~~ electronic device. Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service may be made upon the attorney by means of electronic transmission pursuant to rule or order of the Chief Justice, or a telephonic facsimile communication device if the attorney maintains such a device at the attorney's office and the device is operating at the time service is made. Service in this manner shall be equivalent to service by mail for purposes of Rule 10 C. [CCP 12/2/78; amended by 1979 c.284 §10; §B amended by CCP 12/13/80; §B amended by CCP 12/4/82; §§C,D,E amended by CCP 12/13/86; amended by 1989 c.295 §1; §C amended by 2003 c.194 §6; §F amended by CCP 12/11/04]

E-mail Return by April 14, 2006,
to:
Sandy Hilfiker (OSCA)
Sandy.L.Hilfiker@ojd.state.or.us

Attachments being faxed or mailed
separately? Yes No

ATTACHMENT 2

2007 Legislative Session
Oregon Judicial Department (OJD)
Bill Suggestion Form
(submit additional sheets as necessary)

SCA Office Use Only

LS # _____
Date Received _____
Subject Code _____
Reviewers _____

Name: Douglas M. Bray

Telephone: 503.988.5106

Court/Location: Fourth Judicial District

E-Mail Address: doug.bray@state.or.us

A. Concept Subject: Moving paper records to document images

B. Legislative Proposal:

1. Statement of Current Problem and Effect: (If due to legal decision/law change, cite the case(s) or law(s))

Currently there are no express statutory standards which permit the destruction of paper court records once those records are recorded as document images and the SCA has not adopted rules expressly directed to this subject.

2. Suggested Solution and Legislative Changes Needed: (explain below)

Add to ORS 8.125 new subsection (12):

(12) Notwithstanding any other law relating to the destruction of court records, the State Court Administrator may establish by rule procedures to cause to be destroyed all documents, records, instruments, books, papers, and transcripts, in any action or proceeding in the circuit court, or otherwise filed in a circuit court pursuant to law, if all of the following conditions exist:

(a) The trial court administrator for the circuit court maintains for the use of the public a photographic film, microphotographic, photostatic, electronic, or similar reproduction of each document, record, instrument, book, paper, deposition, or transcript so destroyed.

(b) At the time of the taking of the photographic film, microphotographic, photostatic, electronic, or similar reproduction, the trial court administrator or other person under whose direction and control the same was taken, attached thereto, or to the sealed container in which the same was placed and has been kept, or incorporated in the photographic film, microphotographic, photostatic, electronic, or similar reproduction, a certification that the copy is a correct copy of the original, or of a specified part thereof, as the case may be, the date on which taken, and the fact it was taken under the trial court administrators direction and control. The certificate must be under the seal of the court.

(c) The trial court administrator promptly seals and stores at least one original or negative image of each such photographic film, microphotographic, photostatic, electronic, or similar reproduction in such manner and place as reasonably to assure its preservation indefinitely against loss, theft, defacement, or destruction. Electronic reproductions are acceptable media for this purpose if one of the following conditions exists:

(A) The electronic reproductions are continuously updated and, if necessary, transferred to another medium to ensure that they are accessible through contemporary and supported electronic or computerized systems; or

(B) The electronic reproductions are reproduced on photographic film, microphotographic, photostatic, or similar media for indefinite preservation.

(d) The photographic film, microphotographic, photostatic, electronic, or similar reproduction of each document, record, instrument, book, paper, deposition, or transcript maintained under this section are retained under the schedule prescribed in ORS 8.125 (11) for records of the state courts.

[the text is a Washington statute, not original, but it does what we need]

3. Policy Implications: (Effect of solution; substantive or "housekeeping" issue; known/likely support or opposition)

Allows the state courts to move into true electronic document management systems and, at some point, to stop maintaining two parallel systems of document files - the imaged documents and the original paper documents.

4. Has this legislation been submitted before? No Yes

If yes, Year: _____ Bill #: _____ Why proposing again (what changed?):

5. OJD Fiscal/Operational Impact of Legislative Proposal (FIS to be included in budget.)

Please indicate how the legislative proposal will affect OJD fiscal and personnel resources:

- a. Workload impact: **Staff:** increase decrease n/a **Judges:** increase decrease n/a
- b. Fiscal impact to:
- | | | | |
|------------------------------------|-----------------------------------|-----------------------------------|---|
| - court operations: | <input type="checkbox"/> increase | <input type="checkbox"/> decrease | <input checked="" type="checkbox"/> n/a |
| - mandated (jury/interpreter/ADR): | <input type="checkbox"/> increase | <input type="checkbox"/> decrease | <input checked="" type="checkbox"/> n/a |
| - state revenues: | <input type="checkbox"/> increase | <input type="checkbox"/> decrease | <input checked="" type="checkbox"/> n/a |
- c. Does this proposal impose or add to unfunded mandates on local governments (see Attachment 3)? No Yes (if yes, explain)

SCA Action:

