

Electronic Filing and Self-Represented Litigants: Concept Paper

The King County Superior Court and Department of Judicial Administration (DJA) propose to demonstrate how, by providing standard forms and effective training at locations in the community where there is publicly available computer equipment, self-represented litigants (*pro se*'s) will be able to file documents in their cases electronically. Courts of all jurisdiction levels throughout the nation are using new technology to speed the flow of information and expand access to the Court. All wonder how to make the benefits of new technology available to those who, for lack of computer skills or access, are on the down side of "The Digital Divide." Training curricula and materials developed in our proposed project will help courts anywhere to share the benefits of new technology with *pro se* litigants at sites within their own communities.

I. PROJECT OVERVIEW

DJA, the Superior Court Clerk, has built an electronic court records (Core ECR) system that maintains electronic images of the documents that make up the files of all Superior Court cases opened since January 3, 2000. We will soon add electronic filing, so digital documents can be filed with the Court via the Internet in electronic format. Court filings will not have to be in paper form. Phased implementation of electronic filing gets under way in 2001 and the project is expected to span at least two years. Objectives are twofold: 1) to enhance access to the Court by allowing the filing of documents without physical delivery to the courthouse, and 2) to reduce manual handling of paper and repetitious data entry by staff. Those who would file digitally will have to have an Internet-ready PC and training on how to obtain, complete, and submit electronic documents. Electronic commerce will allow on-line payment of filing fees and other monetary transactions. King County will base digital document filing on eXtensible Mark-up Language (XML) standards now

being developed by the Legal XML Work Group.¹ Litigants will employ digital signatures to validate their filings and ensure against changes in them.

II. GRANT REQUEST SUMMARY

To ensure that *pro se* litigants are not excluded from electronic filing, DJA will use grant funds to develop and test a model for community-based, Internet-ready public PC access for them to use. We will survey community resources and identify one to three sites deemed most amenable to serving as model, publicly accessible electronic court filing centers. Likely sites will be local, multi-purpose facilities like libraries, schools, or community centers.

Using knowledge we have about the types of documents most used by *pro se* litigants, DJA will provide XML-encoded form sets for their use. DJA will engage and work with experts in adult education to develop and evaluate curricula and teaching materials that help *pro se*'s to create and submit electronic documents successfully.

III. ELECTRONIC FILING FOR PRO SE LITIGANTS: PROJECT DETAIL

DJA's plan for electronic filing is to automate all parts of the existing paper handling process. Documents received via the Web will pass security checks and, if found to be safe and virus-free, will have filing or other fee payments processed electronically. Electronic commerce tools will perform monetary actions and support financial responsibilities of the Court and Clerk.

XML Documents and Automated Data Processing

When received, each filing is analyzed for completeness and correctness by an XML "parser" software component. Data elements and values, identified in documents by XML standard codes (data mark-up, or tags), are processed based on rules programmed in the DJA document system and the State case management system. Standardized XML supports automated interfaces

¹ See <http://www.LegalXML.org>.

that facilitate electronic data flow among computer systems, avoiding manual re-keying of data already entered once. Other systems can be included, thanks to the extensibility of XML.

Other data elements direct documents that need human review into Core ECR workflow queues. Electronic storage of documents in the Core ECR system allows imaged and digital documents to be stored “side by side” in electronic case files. Retrieving documents for use by the Court, staff, or public uses software designed to display electronic documents in familiar, human-readable formats.

Authoring XML Electronic Documents

King County will adopt formal requirements and standards for XML filings, following national standards that will be set by Legal XML. Standards will be developed with the Office of the Administrator for the Courts (OAC) and other Washington courts. Since XML authoring tools are already available commercially, DJA expects that some filers will want to build their own XML documents and file them. The technology and infrastructure for XML document creation will continue to grow and mature. Staff in many law firms, solo practitioners, and legal vendors will be able to construct XML compliant authoring tools, templates, and filings.² DJA expects steady progress in attorney adoption of digital documents and electronic court filing.

DJA by itself will build many XML document templates and forms for electronic filers to use. DJA will help OAC with its ongoing work to prepare XML versions of State mandatory pattern forms in domestic relations and recommended pattern forms in other areas.

Digital Signatures

To satisfy signature requirements prescribed for court filings by statutes, court rules, and legal practice, digital documents need to be digitally signed. King County expects to use Public Key

Infrastructure based digital signatures as specified in the State's Electronic Authentication Act of 1996 (amended). Washington's digital signature law is among the world's most stringent for validating and securing electronic documents.

IV. EQUAL ACCESS TO JUSTICE: INCLUDING *PRO SE* LITIGANTS

King County's intent to build its own electronic filing system, integrating its electronic document management system with XML standards for electronic documents, should serve the Court and *all* litigants well. The impetus for these developments comes from the necessity to manage huge quantities of information in the judicial process. Incentives will grow for the Court, the Clerk, law firms, other government agencies, and solo attorneys to use this technology. Digital documents have versatility and many benefits; *e.g.*, they are text-searchable and easy to send, encrypt, sort, and store, saving something in everyone's business processes and costs.

Incentives and technology for self-represented litigants to use digital court filings are harder to find. People whose involvement with courts is occasional, in probate, family law, domestic violence, or civil cases, will not be encouraged by colleagues, professional publications, or others to learn about and adopt new legal tools and technology. King County's Court nevertheless intends that *pro se* litigants be able to benefit from these advances. We place a high value on considerations of equal access to justice and fairness for all parties in litigation. Studies show that over 70% of domestic relations cases involve one or both parties as unrepresented litigants. The large and growing demand for "do-it-yourself" legal forms in many areas of litigation, particularly domestic relations, shows that self-representation is increasing. Litigants who can prepare the correct forms properly for the matter at hand are of great practical value for a court overwhelmed by sheer

² ; XML will have many uses for attorneys and firms beyond court filings. Standards are also being developed for contracts, transcripts, and other uses.

numbers of documents and cases to be handled within prescribed timeframes by an over-burdened judiciary.

Pro se litigants must learn how to find the forms and authoring tools they will need to take them through the step-by-step process to file with the Court while avoiding time-wasting errors, omissions, and delays. They need to file digitally, access records readily, and enjoy these benefits without the burdens of losing time from work, arranging for day- or elder-care, traveling on over-crowded roadways, paying high parking fees, wandering in unfamiliar buildings, hunting for information and forms, locating a place to work on them, and getting the documents filed. Currently, successfully getting through the process often means returning several times due to errors, missing information, or misfiled documents. A remedy is to find resources in the communities so *pro se* litigants can find and use what they need to participate in electronic filing.

V. Researching Community Resources

King County will implement community-based electronic filing centers in one to three locations, to be identified from among the many communities that exist within the County. Working in conjunction with University of Washington programs in public services and information technology, King County will identify qualified graduate students to survey community-based agencies that might be sites for early implementation of *pro se* litigant resource centers. These students will investigate local libraries, public schools, colleges, universities, law schools, local government offices, and senior and community centers to find out which are presently well organized such a purpose.

Indicators of suitability will include factors like 1) having PCs accessible for the public, 2) being able to support (with phone lines, DSL, etc.) the deployment of PCs for Internet access to the Court's digital document creation and filing systems, 3) having administrators and staff who support community access to varieties of services, 4) being able to provide PC and Internet access instruc-

tion, 5) having space to accommodate public interest seminars on how to access and complete legal XML forms on the Web, 6) being able to provide volunteer or paid staff to help teach and assist persons using electronic filing facilities, and 7) serving geographic locations that help demonstrate the feasibility and extensibility of the training and service models involved. Part of the assessment of sites will evaluate technology in place, to ensure it will be suitable for linking with King County systems over the Internet. Selection of sites will also be based on feasibility and the likelihood of producing replicable results, to reach population groups and geographic areas most in need of such services. These implementations will generate information and experience on which later implementations can be built, as the program expands into other geographic areas after completion of this SJI supported project.

For its part, King County will create web sites anyone can use for accessing pattern forms for digital document authoring and electronic filing. The County will provide training materials and curricula for community groups and self-teaching individuals. DJA will help agencies to train trainers and will provide some of the initial community training. DJA will provide in-the-Courthouse access to electronic filing authoring tools for litigants who, having come to the Courthouse, choose to file digital documents in their cases.

Lack of responsive, contemporary equipment and software is likely to discourage people from using new filing methods; such problems must be addressed to make success a reality. Part of the budget will buy technology for participating agencies where necessary to bring the infrastructure to an appropriate level to support electronic filing. Equipment and/or software, if obtained through the grant, will be limited to items an agency must have to ensure that the electronic document creators and filers will enjoy responsive processing, bandwidth, and speed.

It is possible, but neither necessary nor planned, that King County will be allowing pro se litigants to do electronic filing from home or office computers before this project is complete. So long as security and other important issues are unresolved relative to general access to the Court's electronic files, this project may proceed as a standalone demonstration with special, secure user access procedures.

VI. Legal Forms Development for Pro Se Electronic Filings

King County will work with OAC to develop statewide user-friendly fill-in-the-blanks type electronic documents for mandatory pattern forms for domestic relations. DJA may add functionality to the OAC forms to make them fully useful in the County's own filing and access systems. Leaders at OAC have indicated that there will be full cooperation between their staff efforts and those of DJA. DJA will make sure forms are compliant with Legal XML standards. This work will be a joint effort by DJA business and technical staff (part of the required grant match) and XML technical consultants or term-limited staff involved in the DJA implementation. Such expertise will ensure the documents and data transfers will operate as planned.

It will be King County Superior Court's decision to determine the digital signature requirements that apply to digital filings. It will be DJA's job to make digital signature services reasonably available for the *pro se* litigants involved in these early implementations. Instructions and options for obtaining digital signatures, where required, will be included in the training curriculum and training sessions provided.

VII. Deliverables to Continue and Expand Pro Se Digital Filings in the Community

King County will engage qualified expert consultants and Court staff to develop effective curricula and teaching materials for *pro se* electronic filer litigants who use the community agencies. The instructional materials will be usable by staff and volunteers at other community-based agencies

for instructing adults with varying levels of computer experience in the basic steps for accomplishing this work successfully. Curricula will address how to use computers of various types (*i.e.*, Mac as well as IBM), how to contact the Court via the Internet, how to execute log-ons or needed downloads, how to use on-line Help, and how to author digital documents and submit them electronically for filing. Instructional materials will cover how to access, obtain, and execute a digital signature and how to pay for fees associated with filings.

DJA staff will provide extensive collaboration and support for the development of curricula and training materials, but experts in adult education and training will develop the actual training tools. If feasible, training materials will be provided in at least one language other than English.

VIII. Evaluation and Review

King County will conduct a careful evaluation and review of all components of the community-based *pro se* electronic filing implementation. DJA will engage professional support to build evaluation tools and conduct a thorough evaluation of the program. DJA will ensure the project is fully documented, evaluated, and reviewed, covering all components of the project. A complete report of the project will be 1) submitted to the State Justice Institute and all its designated libraries, 2) posted in several formats on the Internet, and 3) circulated to representatives from all the courts participating in the Legal XML work on court filing standards.