

Capabilities of Electronic Filing/Imaging System

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What Would Be a Filed Document?

A paper, pleading, order, form, etc. which is part of a court case file. In general, these are now only presented as hard copy on 8½" X 11" paper. In King County Superior Court, about 7 feet of paper is processed daily, ultimately sorted and placed into case file folders.

Under electronic filing/imaging, a filed "document" would be an electronic recording which is either (1) a document presented in electronic form only or (2) a picture of a hard copy document which is digitized and stored in electronic form only. Electronic documents and images could be retained in the same system, since all are electronic records. They only need to be displayed on-screen or print-outs in readable form. (Images require up to 40,000 bytes per page; electronic documents might require only 3,000 bytes for a page, a substantial savings in storage requirements.)

Advantages of Electronic Documents

Electronic documents can be text-searched for key words, strings, phrases. Readers can jump to a page instantly, without leafing through a stack of paper. With "hypertext," a legal reference in an electronic document could be used to link the reader to electronic law references to which the reader has on-line access. A judge could look up citations instantly and read further, for example. In preparing an answer to another party's pleading, a party can copy text from the pleading and save time and avoid errors in re-typing. In writing an order or decision, a judge can cut and paste text and citations from filed pleadings and file the completed document electronically.

Electronic records (whether images or files) can be routed anywhere by modems or across phone lines or Internet.

Electronic records can enjoy heightened security through encoding and password protection, eliminating the risk of exposing the hard copy to unauthorized viewing.

Document Authenticity

Hard copy documents are physically signed and, when scanned, a graphic image is made of the document including the signature(s). The "true original" is discarded, though parties should be encouraged (required?) to maintain duplicate copies in their own files until some period following "case completion" (as formally defined). The filed image is considered original and authentic because it is in the custody of the Clerk of the Court, an impartial officer with secure image custody, control, and access systems.

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Electronically-filed documents may never be printed on paper. Per Utah, however, they can be "signed" electronically by use of cryptographic techniques involving a "private key" and "public key" to authenticate a signature. Once accepted by the Clerk of the Court, a copy of the filed document is returned to the filer (and other parties). Per Utah, the signature encodes the document uniquely. On receiving an electronic document, the Clerk's computer checks for critical errors (e.g., no case number) and rejects documents with them, sending back an electronic report of the defect(s). If the document is accepted, the filing party receives an electronic message to that effect, along with a verification copy of the filed document (now including some encoding done by the Clerk's computer). The other party may also receive the document and this could count as formal "service."

"Certified" documents may still have to be print-outs of images or electronic filings. The certification involves a physical act of affixing the Seal and signature of a clerk. These could be ordered and paid for electronically and then mailed.

Docketing

Imaged documents would likely be docketed in much the same way as today, with a clerk reading information in the document and making data entries into SCOMIS. Some of these processes might be automated with use of bar codes, optical character recognition, and other techniques. Instead of clerks working with stacks of papers, they would have images appear on their screens, sent by a "workflow" program that routes documents through required workstations on the way to being "filed."

Electronically filed documents can largely be docketed by computer, with human intervention only for errors, omissions, or verification before final "filing" of the document. Per Utah, using Standard General Markup Language (SGML), a variation on word processing techniques, elements of a document are encoded so they can be machine read, verified, and entered into the mainframe database. For example, the case number, names/roles of persons, caption, document title, SCOMIS code, judge name, date/time for hearing, and other information can be encoded and machine read and processed accordingly.

Who Files Electronically?

Anyone who word-processes documents has the capability of filing electronically. Conversion software should be available for all major word-processing softwares to set up for SGML coding. (Word processing involves creating a presentation of a printed page, with margins, fonts, spacing, special effects, etc.; SGML may also mark text for special effects, but by identifying the elements within a document, it leaves the details of how to display the information to the

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receiving system.) Special training would be done with staff from law firms, so a substantial amount of their filings would be done electronically.

Electronic filing facilitates use of electronic forms, which can make this medium accessible to *pro se* litigants. A user can be prompted at a terminal to enter information required to complete a pattern form. Once the data has been entered, it can be placed by software into the appropriate points of the electronic document. Finally, the preparer can view and edit the document on-screen or in print-out form before "sending" it electronically to the Clerk for filing. Terminals where such documents are prepared could be located anywhere; users could even use home PCs or PCs in public libraries, malls, and elsewhere.

Record Retention

Superior Court case files must be retained "indefinitely." Only microfilm offers a medium that can provide a 100 year or longer record (only illumination and magnification are required to access microfilm, with no special computer languages, algorithms, or equipment involved). A system of electronic records would still need to be able to send a stream of images of the pages in a file to a computer-output-microfilm machine to create the film. Current film security and storage systems would continue to be used. It is possible that the records will remain electronically accessible for a long time. It is possible that in future times it will be determined that electronic storage can be re-recorded or converted to new media in a way that is reliable and not cost-prohibitive. In the meantime, microfilm images can be used. (Microfilm images can themselves be digitized and sent to terminals for on-screen viewing, eliminating the need for most users to access microfilm reels directly.)

Records Accessibility

Electronically filed documents/images can be accessed almost immediately by multiple users, even while the image is being processed, marked up, in a clerk's office (image on-screen or printed out can indicate "not yet filed").

Such documents can be accessed by multiple users simultaneously. One user does not need to wait for another to return the file to the Clerk's office.

Parties to a case could call in to the records system and view documents on their own screens on demand and print out copies of information locally. (Certifications would still be done in hard copy by the Clerk.) The public, press, title companies, etc., can also view documents electronically. It may even be possible to have utilities which search across all filings to locate documents containing only certain types of information (e.g., possibly affecting property), analogous to tools like "archie" and "veronica" which search out "hits" from within the vast information to be found through Internet.

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Access to documents electronically could eliminate delays and costs associated with formal service. So long as parties are accessible electronically, they may stipulate to service of whatever is accepted for filing in the court file because they can view all such filings at will.

Access to documents for the court would be quick and efficient. Electronic views of documents could be queued for court reference when appearing on certain calendars, pre-fetched by software. Electronic views of filed documents can be requested on demand and are delivered within seconds or a few minutes to terminals in the courtroom.

Individuals needing to research documents could do so without physically coming to the Courthouse. Certified documents could be ordered and paid for electronically and delivered by mail or messenger. Individuals needing only copies of documents could print them from the terminal they are using (e.g., at public library, home computer, kiosk, mall access sites).

Savings

Time savings would be substantial. No delays from lost, missing files or documents. Once filed, a document will remain in the clerk's system and copies are sent to any requester with appropriate access rights.

Bench research time and writing time would be saved or at least better used. Electronic manipulation of information in pleadings, legal research accessed electronically, and word processing would promote efficient bench writing.

Messenger, mail, and other costs of transporting documents for service, filing, and other delivery would be largely eliminated. Savings here include labor, congestion, traffic, and time.

Customer access to court documents could be achieved without trips to the Courthouse. Savings here would include time, staff required to retrieve records, customer travel/parking/daycare costs, and environmental stress avoided through eliminating some travel/road wear/pollution/congestion.

Court Filing Management Possibilities

To facilitate the best record system for the court, we might consider eliminating certain types of filings. Many filings are administrative in nature and the events noted by them might be recorded through a docket entry with no signed document produced. Some filings are not really relevant to the creation of a court file and might be eliminated if not within the definition of "pleadings, orders, judgments, etc." deemed appropriate to a court file (and so defined by rule or law). It could be that certain types of litigation would result in filing only of a limited number of

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expected document types or forms; other filings would not be acceptable except with explicit permission of the court. Such definitions and control might limit the number of filings in the court file and help reduce long-term access and retention costs associated with "indefinite" retention of court filings.

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