

Mandatory E-Filing 2009 Implementation Plan

Due to budget reductions for FY 2009 and beyond, the Department of Judicial Administration (“DJA” or “Clerk”) proposed implementing mandatory electronic filing (“e-filing”) to reduce staff by three positions. The Superior Court judges requested that DJA provide its plan for implementation of mandatory e-filing and its plan to address the delivery of working papers associated with e-filed documents. This document outlines the plan for mandatory e-filing in 2009 and the associated plan for working papers.

Introduction

The official record of King County Superior Court (“Court”) is maintained by the Clerk. The official record is the electronic file maintained on the Clerk’s computer servers. The official record includes information transmitted to the Clerk in electronic format, as well as in paper form.

Since January 1, 2000, and pursuant to RCW 36.23.065, the Clerk does not maintain a paper court file in any new case, with some exceptions.

Beginning in 2004, the Clerk implemented voluntary e-filing and began receiving documents electronically, including some court orders. GR 30, which governs electronic filing in Washington courts, allows local courts to mandate electronic filing as long as courts refrain from requiring counsel to provide duplicate paper pleadings as “working papers” for judicial officers.

From April to July 2008, the Court and Clerk conducted a pilot project that explored the viability of allowing parties to submit their working papers electronically. During the pilot project, users who e-filed documents could choose to submit working papers via e-mail. (Parties who preferred to provide paper copies of their working papers could submit an opt-out form from the pilot project.) Each participating department asked the Clerk to either print paper copies of the working papers or to place the electronic working papers in specific network folders for their retrieval.

The Clerk recently conducted a thorough review of the pilot and solicited the feedback of all departments involved in the pilot program. The Clerk distilled the feedback into a table of issues and corresponding plans for addressing each issue. (See Attachment #1) The Clerk also conducted an electronic survey of attorneys and filing parties who participated in the pilot project. (See Attachment #2)

The following is an overview of the first phase in a multi-year phased approach to mandating e-filing in King County Superior Court. This plan is based on the experience gained from phasing in ECR viewing, the success of mandatory e-filing in federal court, the results of the pilot project, the need to meet budget constraints over a multi-year period, and the time necessary to work with many constituents on a large scale to change the way we have been doing business.

PROPOSAL

I. Mandatory E-Filing for 2009

Effective June 1, 2009, the Clerk will require all counsel to electronically file ("e-file") documents under 100 pages in length through the Clerk's Electronic Filing System (EFS). Exceptions to mandatory e-filing are described below.

A. Pro se parties may, but are not required to, electronically file documents.

B. Documents exempted by Local Rule

1. Voluminous documents may be electronically filed, but e-filing is not mandatory. When a user e-files a document that exceeds 99 pages in length and it is a document requiring judge's working papers, the user shall deliver a paper copy of the document to the judges' mailroom pursuant to the local rules.
2. Summary judgment motions and supporting documents may be electronically filed, but e-filing is not mandatory. When summary judgment motions and supporting documents are e-filed, the user shall deliver a paper copy of the working papers to the judges' mailroom pursuant to the local rules.
3. Trial exhibits shall not be filed electronically or otherwise.
4. Documents presented for filing during a court proceeding need not be electronically filed.
5. Documents for filing in an aggravated murder case shall not be electronically filed.
6. Foreign adoption documents shall not be electronically filed. The Clerk maintains paper originals.
7. Documents for cases filed prior to January 1, 2000, shall not be electronically filed. The Clerk began retaining electronic documents in cases commenced after January 1, 2000. The Clerk may retain paper files in cases commenced prior to January 1, 2000.

C. Documents exempted by General Rule 30

1. Original wills and codicils shall not be electronically filed. The Clerk maintains paper originals.

2. Certified records of proceedings for purposes of appeal shall not be electronically filed. The Clerk maintains paper originals.
3. Negotiable instruments shall not be electronically filed.
4. Documents of foreign governments under official seal shall not be electronically filed. The Clerk maintains paper originals.

D. Permission to file paper rather than electronic documents

Under GR 30, if an attorney is unable to electronically file for whatever reason, counsel must apply to the Clerk for a waiver to file papers. The Clerk will make forms available for users to apply for a waiver. The Clerk will consider each application and provide a written approval or denial to the user.

II. Working Papers for 2009

A. General Rules

1. When a user electronically files a document, the Clerk will allow the user to designate the documents that need to be delivered to the judge or commissioner as working papers. Users will also be allowed to electronically submit documents, such as out of state cases or other cited authorities, that should be included as working papers, but are not included as part of the court file.
2. The Clerk will not accept electronic working papers in support of a summary judgment motion.
3. Users will submit proposed orders in Word or Word Perfect format.
4. The Clerk will charge users a fee for submitting working papers electronically; the fee will not exceed \$20 per submission.
5. The Clerk will accept electronic working papers in *.pdf and *.tiff file formats (except proposed orders—as previously noted, they are to be submitted in Word or Word Perfect format). These are the same file formats accepted by the e-filing system.
6. The Clerk will continue to offer training, written instructions, and help desk services to assist users with submitting working papers electronically.

B. Highlighting

Users may submit highlighted working papers electronically. The Clerk will print all working papers on a color-detect copier that will print all colors, including highlighted portions. The Clerk will provide users with direction about complying with Local Rules related to highlighting. The Clerk will offer training, written instructions, and help desk services to assist users with highlighting text when preparing *.pdf or *.tiff documents.

C. Tabbing

Users may submit tabbed working papers electronically. The Clerk will provide users with instructions on how to properly designate where tabs should be placed and how they should be labeled. The Clerk will allow users to designate tab naming with numbers, letters, or titles. The Clerk will offer training, written instructions, and help desk services to assist customers with the tabbing feature. The Clerk will prepare working papers sets with tabs, as designated by the user.

D. Printing

The Clerk will print for the judge all working papers received electronically—the judge will not directly receive any electronic working papers. The Clerk will create working papers that mimic how paper copies of working papers are currently received and will deliver them twice daily to the judges' mailroom.

The Clerk will print for commissioners all working papers received electronically. The Clerk will create working papers that mimic how paper copies of working papers are currently received and will deliver them to specified locations to be designated.

III. Electronic Working Papers Systems Development

The Clerk will not require electronic viewing of working papers by any judicial officer. However, the Clerk will work with judges and bailiffs interested in managing working papers electronically to identify a workable electronic approach. The Clerk will begin a discovery phase in the fourth quarter of 2008 and will develop workflow diagrams to capture how working papers are currently managed in paper form. The Clerk will use the workflow diagrams to determine the requirements for an electronic document management system.

During the first quarter of 2009, the Clerk will meet again with judges and bailiffs to *i)* validate the concepts and *ii)* present visual prototypes and/or workflow diagrams of potential features to support the management of electronic working papers.

The Clerk will work with a vendor during the second quarter of 2009 to design and develop an electronic working papers management system. The Clerk and designated Court departments will test the system. If the system meets expectations, the Clerk will

begin deployment concurrently with training for any courtroom team interested in working with electronic working papers.

IV. Summary

The Clerk seeks approval of the 2009 mandatory e-filing plan, which is being proposed in order to meet a severe 2009 budget reduction. The Clerk recognizes that this is the first phase of what likely will be additional phases of mandatory e-filing. The Clerk intends to ensure that mandatory e-filing is successful by breaking it into phases, developing skill and expertise in managing working papers for judges, providing training and education to the bench and bar throughout 2009, and working with the e-filing vendor on e-filing and e-working papers solutions that are acceptable to the Court.

The Clerk, with guidance from and in cooperation with the Court, will conduct a review of the implementation of the Mandatory E-Filing Plan no later than April, 2010. The Clerk will prepare and present the Court with a report that describes the results of the review, including any recommended additions or deletions to the list of documents excluded from mandatory e-filing and any fee changes.