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The Road to a Paperless Court

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In several previous *Bar News* articles, including Robert S. Appgood's explanation of Extensible Markup Language (XML) (October 1999), you have read about recent progress toward a paperless court. Even a couple of years ago, this idea seemed interesting, perhaps hopeful, but definitely distant. Yet throughout the state, primarily driven by members of the Washington State Association of County Clerks, concrete steps are being taken toward paperless courts. One by one, clerk's offices are beginning to implement and phase in electronic records. Their efforts are rapidly changing the way their offices conduct business, and will also soon change the way members of the Washington State Bar Association conduct the business of lawyering.

Background

The management of paper is costly. In King County, for example, the clerk's office receives over 7,000 documents daily, the equivalent of a stack of papers 10 feet high. Moving this volume of papers through the necessary steps of filing, docketing, judgment recording and file creating takes tracking mechanisms and time. It is subject to error, including lost, misplaced or misfiled documents. The eventual need to store these files (King County has over two million case files) creates storage costs, retrieval costs and maintenance costs.

Paper records are limiting. How often have you gone to your clerk's office to view a file, only to be told that the record has been delivered to the court or is currently being reviewed by someone else, and thus is not accessible? In those courts with a significant volume of papers, the file may be in a remote storage warehouse — accessible, but perhaps not today. For many clerk's offices, microfilming offered an interim solution. Yet many of the same limitations which exist for paper records apply to microfilming. There are similar costs for maintenance and storage, and only one person is able to view the microfilm at any given time.

Solutions

To begin addressing these issues, several clerk's offices throughout the state have undertaken projects to move legal documents into electronic form. A growing majority of county clerk's offices have begun scanning paper documents, creating digitized images of legal documents for access on an electronic screen. In some counties, this effort is starting with cases at the end of their case life (archived files). In other counties, the effort involves scanning new documents on new cases as they are filed with the clerk's office. Numerous vendors are now available to assist in this transition. This first phase of electronic records allows more immediate access to the record. Even if counties choose to go no further with electronic records, remote access from law firms to the digitized image can eventually occur. Progress on this scanning phase is rapid statewide.

The experience in King County of developing this initial step reflects the learning of many clerk's offices throughout the state. Before automating the process, workflow is re-engineered to best capture efficiencies and benefits of a future electronic records scanning system. Selection of a vendor to assist in the design and implementation of the system allowed for testing. The King County Department of

Judicial Administration staff now work with the electronic image, rather than hard copy, for all new cases filed January 3, 2000 or after. In practical terms, this means that for new cases, the paper is scanned on day one, and on day two the hard copy is in the case file. Staff then work with the electronic image for establishing judgments, docketing, calendaring and funds-receipting tasks. This reduces the possibility of lost or misplaced documents and assures that each necessary step is completed before the electronic image of the document moves to the next required work station.

However, the greatest challenge — and the greatest gain — is in the next phase: electronic filing. Electronic filing will allow for creation of documents, using standard word-processing equipment, prepared in a form which allows for encoding the included data to enable "take offs" from that data (i.e., eliminating keystrokes by clerk's office data entry staff), which can be transmitted directly from law offices and public legal service agencies to the court.

The digital records significantly improve upon the digitized or scanned hard copy, in that digital records allow for a significant shift in the operational components of the practice of law. Digital records allow lawyers to prepare a filing on his or her PC, using the transparent XML markup language. This digital document is then transmitted electronically to the clerk's office and is simultaneously transmitted to any central record-keeping unit within the law office. Once received by the clerk's office, the key data is "lifted" automatically into the state's data repository (SCOMIS), because of the XML language's ability to segregate specific data elements, thereby eliminating data entry by the clerk's office. The bench and public then subsequently view the documents at PCs connected to the Internet.

In addition to allowing clerk's office staff to work more effectively with images rather than hard-copy documents, a significant eventual benefit is that access to the legal record can occur via PC terminal. Initially, this means access limited to public terminals in a clerk's office. Eventually, however, the records will be accessible via a PC on the attorney's desk. Electronic access also means simultaneous access. The parties, judge, court staff and public will all be able to view the same document at the same time. In King County, our goal is to achieve this by early 2002.

Benefits to the Bar

This final "e-filing" phase of the program in King County offers numerous benefits for members of the Bar Association, including:

- Reducing storage requirements within law firms. Documents may be held electronically both at the law office and at the clerk's office, eliminating the need for paper records and paper storage, both costly elements of law office administration. This also assures that the records of the law firm and those of the clerk's office are consistent.
- Reducing the need for legal document delivery between the law firm and the clerk's office. Again, this is currently a cost to firms and litigants.
- Allowing for immediate access to all filings. This provides the opportunity for all counsel to be fully aware of all documents which have been filed with the county clerk.
- Allowing parties to pay filing fees using credit cards simultaneous with the filing of the initiating document. This reduces the need to prepare checks and the corresponding tasks of administering such accounts.
- Avoiding costly trips to the courthouse to access the legal case file. The ability to access the legal file directly from the law office allows the attorney and client immediate access in a private, comfortable setting.
- Eliminating the possibility of "lost" papers and files, whether in the law firm or at the clerk's office.

- Improving confidential record security. Confidential records in electronic form can have numerous technology "walls" built around them, which confidential records in hard copy form generally cannot.
- Simplifying appeals process/designations. Attorneys will be able to designate specific documents as part of an appeal and electronically transmit those documents to the appellate court.
- Speeding the process. As a result of the XML markup language capabilities, case data needed by the law firm or the court can be "lifted" from the electronic document and used to "populate" the database. Additionally, internal steps within the law firm pertaining to paper documents will be significantly reduced.
- Eliminating the wait to use the court files. Both digitized and digital documents allow for immediate and simultaneous access to the court file, either from a public terminal in the clerk's office or from an Internet-connected PC in a law office.

This is not to say that the transition process is easy. Numerous challenges exist to implement e-filing, including assuring that the XML markup language is useable by law offices, that issues of access are fully understood and debated, and that members of the Bar come to understand and embrace its advantages. Yet given the benefits of e-filing and working with electronic documents, we are well positioned to address the challenges and begin the dialogue.

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<http://www.wsba.org/media/publications/barnews/archives/2000/may-00-road.htm>