

**Electronic Filing Committee  
Policy and Procedure Subcommittee  
Meeting Minutes  
November 20, 2009**

Members Present:

Hon. Dan Biles, Subcommittee Chair	Debi Schrock
Hon. Marla Luckert	Steve Berndsen
Hon. Edward Bouker	John Steelman
Kathleen Collins	Lisa Wilson
Alice Adams	M.J. Willoughby
Tim O'Brien	Debi Schrock
Ron Keefover	Steve Grieb

Agenda Items:

- I. Review of Electronic Filing Committee Activities
  - a. Finance Subcommittee
  - b. Technology Subcommittee
  - c. National Center for State Court's (NCSC) Court Technology Conference
  - d. Review of Draft Request for Information (RFI)
- II. Review and Discuss NCSC's *Standards for Electronic Filing Process*
- III. Statewide Electronic Filing Portal
- IV. Legislative Changes for Electronic Filing
- V. Determine next meeting date, time, and location.

Justice Biles opened the meeting by requesting Tim O'Brien relate to the committee details about a conversation he had with Legislative Post Audit about e-filing. Tim reported that Joe Lawhon with Legislative Post Audit contacted him to discuss the CM/ECF or e-filing system being used in the federal courts. They discussed the efficiencies of the system. Mr. Lawhon did request a quantification of the economic impact the system has had on the federal courts; however, Tim related that there wasn't a report on that issue available.

I. Review of Electronic Filing Committee Activities.

Steve Berndsen reminded members that e-filing committee information is posted at the [kscourts.org](http://kscourts.org) website.

a. Finance Subcommittee

Steve Grieb, subcommittee co-chair, reported on the activities of the Finance Subcommittee. Recommendations will revolve around the advice of "do nothing to discourage e-filing." At this point they are working on a recommendation for a "go forward" charging structure that will not discourage e-filing.

b. Technology Subcommittee

Steve Berndsen reported on the activities of the Technology Subcommittee. It is recommended that an existing system be sought as opposed to developing an in-house system. An RFI (Request for Information) is being drafted to send to the Division of Purchases for release. Any electronic filing system will need to integrate with existing case and document managing systems. E-signatures, signature verification and user authentication are also being reviewed.

c. National Center for State Court's (NCSC) Court Technology Conference

A group of committee members were able to attend the NCSC's Court Technology Conference in Denver in September. Members were able to gain information about various e-filing systems. A meeting was held with Justice Systems, Inc., the FullCourt Case Management System vendor, about the integration of an e-filing system with the existing FullCourt case management and document management systems.

Steve Berndsen went through a diagram of how an e-filing system would work. He explained that the user would be sending documents to a filer interface. That information links into what's called a clerk's review interface, which is where the court would review the information and send it into their case management and document management systems. Systems already in place in Kansas courts include the fee payment system, the document management system, and the case management system. In order to provide e-filing in Kansas, an EFSP (E-Filing System Provider) and the clerk interface are needed.

Differences between the current FullCourt case management system and FullCourt Enterprise were discussed. FullCourt Enterprise allows for fewer data servers to be required around the state. Courts would be able to access information independently without having to maintain servers or have redundant processes. The committee recommended an enterprise based case management system be pursued in conjunction with electronic filing.

The committee discussed public access to documents. Tim O'Brien stated that the federal courts use the PACER (Public Access to Court Electronic Records) system which allows people to go online and register for access to any case that's been filed in a specific jurisdiction for a minimal cost. The CM/ECF system is for users to look at their case documents. Users initially get one opportunity to look at their documents for free, and then they have to pay for any other views of that specific document. The media uses PACER. PACER funds go to the court's administrative office and are used for IT upgrades and projects.

d. Review of Draft Request for Information (RFI)

The Technology Subcommittee has been preparing and reviewing the RFI. It will be reviewed by the Finance Subcommittee and one final review by the Technology Subcommittee and then sent to the Division of Purchases for release. Committee members were asked to e-mail any questions or comments about the RFI to Steve Berndsen in the next few days.

II. Review and Discuss NCSC's *Standards for Electronic Filing Process*

The committee reviewed a handout of an outline of the NCSC's *Standards for Electronic Filing Processes*.

*Policy Standards:*

- Policy for Official Court Records

The NCSC recommends that electronic documents stored in the court's document management system be the official record. In this environment it is recommended that the paper copy eventually be eliminated. The committee agreed that if both an electronic and a paper copy of a document exist, that the electronic copy would be the official court record. The issue of technical requirements was referred to the Technology Subcommittee.

- Document Formats

The committee agreed to refer the technical aspects of standardized documents to the Technology Subcommittee.

- Self-contained Documents

These are documents that involve hyperlinks. The National Center's recommendation is to not allow these types of documents or to only allow them on a very limited basis. The practice of using hyperlinks to law citation cites, i.e. Westlaw or Lexis Nexis, along with attorneys linking to items within the record was discussed. The committee agreed to a policy statement that says hyperlinks will be allowed to items within the record, legal citations, and outside records included as attachments.

- Data Accompanying Documents

This is data required for case management and document management systems. The committee agreed to refer issues with data format and data standards for this policy to the Technology Subcommittee.

- Identity of Sender Issues

Some methods discussed included the ID/Password, the PKI (Public/Private Key Infrastructure), signatures, and how you authenticate documents or signatures. The subject of signatures for attorneys, clerks, and judges was discussed. The committee decided to hold a joint meeting with the Technology Subcommittee after that subcommittee had developed a recommendation on this subject.

- Integrity of Transmitted Data

It was agreed that this is a technology issue and should be referred to that subcommittee.

- Electronic Acceptance of Payments

There was agreement that if electronic filing is being offered, that electronic methods of payments should be in place.

- Court Control of Court Documents

It was stated that in the Request for Proposal (RFP) for vendors, a statement should be included that states that the court retain control of all documents.

*Court Rules:*

- Service of Filings on Opposing Parties

The National Center's recommendation is that if you are a registered user of the e-filing system that you're consenting to electronic service through the system. A complication for this would be discovery. It was decided that this should be addressed either in the RFP for a vendor, or through Supreme Court Rule.

- Use of a Unique Identifier

This stipulates that when a user logs in with a user ID, that the user is responsible for all filings submitted under that ID. The committee agreed with that stipulation.

- Determining When a Document is Filed

Definitions of when a file is received, filed, served, and docket entry created along with rejection and resubmission procedures when the system is down need to be determined. It was decided that when Rule language is created that these issues should be addressed at that time.

- Availability of the E-filing Process

This item was referred to the Technology Subcommittee because it involves staffing levels and support.

- Remedy for Failure of Electronic Processes

This also is a Rule that needs to be developed as we start looking at vendor selection.

*Implementation:*

- Universal Electronic Filing Processes

The National Center encourages the goal of all documents and all case types being electronic. The committee has already agreed to incremental implementation by phasing in different case types.

- Mandatory Electronic Filing Processes

Again, the committee had already agreed to a phased in approach by starting on a voluntary basis and eventually making it mandatory.

- Maintaining Supplementary Scanning Capability

The National Center recommends that you maintain your scanning ability which Kansas already has in place with our document management and case management systems. Any paper that may be filed would be scanned; therefore, making the electronic file the official case file.

- Quality Control Procedures, Eliminating Unnecessary Paper Processes, Integration with Case Management and Document Management Systems, and Archiving Electronic Documents

The Technology Subcommittee is looking at these items.

The committee felt that Kansas should stay as close as possible to the national standards because that would make us more compatible nationwide. Another related subject mentioned was how will appeals from other groups, i.e. municipal courts, and other agencies, be handled. Are we going to have an exception to electronic records for administrative appeals? These questions will be addressed as the project develops.

### III. Statewide Electronic Filing Portal

A single portal for electronic filing would allow attorneys access to electronic filing for any court in Kansas. One issue discussed was that Johnson and Shawnee Counties

currently have, or soon will have, e-filing systems in place. Attorneys would be redirected by the single portal to those systems.

#### IV. Legislative Changes for Electronic Filing

Justice Luckert handed out a draft of amendments being considered by the Judicial Council Civil Code Advisory Committee as part of a large package of amendments to the Code of Civil Procedure. In reviewing the code, the Advisory Committee considered the implications of electronic filing. There is only a week in which any changes can be made to these recommendations and she also mentioned that members should be thinking about all codes needing amendments, not just Chapter 60 which was what the draft covered. Justice Luckert brought to the committee's attention some of the recommendations to include electronic filing and associated changes.

- 60-206 (a)(4) "Last Day" Defined. This addition would put us into a 24/7 electronic world because it shows filing by midnight in the court's time zone. This is an issue that the Justice would like feedback on within the next week.
- Changing affidavit to affidavit or declaration. The reason for this change was to get away from notarized documents.
- Change language that requires clerks to mail to read instead to service, deliver, or transmit to make it clear it doesn't have to be by U.S. Postal Service.
- 60-271 was originated to allow courts to accept fax filings and now it's being broadened to accept electronic means. Justice Luckert felt this was a key statute to this whole process.
- Add the allowance of electronic e-mail of garnishments.

Justice Luckert asked committee members to e-mail either M.J. Willoughby or her with any changes or recommendations within the next couple of weeks.

The issue of file stamping was raised. At least one statute requires the clerk to initial the file stamp. Items for review include any language that requires a clerk to mail or initial documents. Another issue discussed was how to deal with summons and subpoenas on case initiation and transfer to sheriff's offices.

Where should the burden lie with the number of copies that have to be served? It was felt that this should remain the clerks' responsibility but the cost should be charged to the parties as part of the cost of the case.

The committee agreed to work on drafts of the legislative package by e-mail since there is a short timeframe before the Legislative session starts.

#### V. Next meeting date, time and location.

The next meeting will be scheduled after responses to the RFI are received.