

-Filing Report

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contents

1 **Commentary on the Electronic Court Filing Functional and Process Standards**

By Roger Winters

The author reviews and analyzes the national functional and process standards for electronic filing systems in the courts. These standards are now making their way through an approval process that will declare the standards they describe appropriate for courts in all of the states.

2 **From the Editor**

9 **E-Filing in England and Wales: A Beginning**

By Lord Justice Brooke

The Court Service Agency for England and Wales has implemented a web-based service called Money Claim Online, which allows any creditor to issue money claims up to £100,000 against defendant debtors. Claimants may request issue of their claim, request judgment by default, and apply for a warrant of execution, all via the Internet.

11 **The National Consumer Law Center's Comments on the Court Documents Exception to the ESIGN Act**

The National Consumer Law Center and other consumer advocates, on behalf of low income litigants, urge the National Telecommunications and Information Administration to "avoid endorsing any requirement that access to courts be limited to those who can use and access electronic records."

13 **E-File Income Tax for Free!**

This tax season, eligible taxpayers—over 78 million—will be allowed to file their tax returns online for free.

14 **Upcoming e-Filing Events and Conferences**

Commentary on the Electronic Court Filing Functional and Process Standards

by Roger Winters

Roger Winters is the Electronic Court Records Manager for the King County Department of Judicial Administration (the Superior Court Clerk) in Seattle. Mr. Winters was involved early with, and has been a key contributor in developing, electronic court filing technical and process standards for legal documents. He is Editor for several technical committees in Legal XML, a member section of OASIS (Organization for the Advancement of Structured Information Standards), including Court Filing, Transcripts, and Integrated Justice. He has worked extensively with the groups that have built functional standards for electronic filing at state and national levels.

[Editor's Note: The following is excerpted from a paper prepared for the "E-Court 2002" Conference in Las Vegas, Nevada, December 9, 2002. That paper's purpose was to help a broadly representative group of court officials and staff understand the scope and significance of both technical and process standards being developed for electronic filing in the courts. Without national standards, each court would develop its own e-filing technology and litigants would have to learn and master software, procedures, and formats for each court. The benefits of electronic court records—improving processes and information in the courts—would be unrealized. A previous excerpt, published in the February issue of the e-Filing Report, addressed technical standards. This piece reviews the functional and process standards for electronic filing systems in the courts.]

(continued on page 3)

The document titled *Standards for Electronic Filing Processes (Technical and Business Approaches)* ("Standards document"), dated November 27, 2002, contains the standards addressed in this article. A copy is available on the National Center for State Courts' technology standards Web site at www.ncsconline.org/D_Tech/Standards/Standards.htm.

The Standards have been widely reviewed and have been the subject of at least two rounds of public comment. They are, at this writing, making their way through an approval process that will declare the business and technical standards they describe appropriate for courts in all states. It is not a dry document; it is well written and is a good education resource for those seeking to learn about electronic filing in the courts.

The Standards document has three main sections: *Policy Standards*, a *Conceptual Model*, and *Functional Standards*:

- A set of *Policy Standards* that include suggested rules and policies for courts to adopt in order to best achieve the goals of electronic filing processes.
- A general *Conceptual Model* of the electronic filing process to better explain the interrelationship of various entities and systems for successful operation.
- *Functional Standards* that set forth the requirements for automated applications to achieve nationally interoperable electronic filing systems in courts.

The items extracted from the Standards and discussed below are **policy** and **functional** standards that I believe particularly worthy of attention. When implementing an electronic filing system, it is necessary that a court should review every standard in detail, not just those addressed here.

The comments on the key **Policy Standards** which follow are my own. The explanations and discussions included in the Standards document itself are well worth reading—I recommend them enthusiastically:

The Policy Standards

1.1A Official Court Record—The electronic document will be the official court record. Paper records, if maintained, will be considered a copy of the official court record.

Commentary: In King County, we maintained paper and electronic versions of the case files for about a year and a half following implementation of the Electronic Court Records (ECR) imaging and electronic document management system. From the beginning, we made it clear that the images would be considered by the Clerk's Office to be the official "original" documents. Even if both a paper and an imaged version of a document were available, clerks were instructed to only make certified copies from a printout from the images in ECR. After experience showed a 74% reduction in use of hard copy files in the first year, and once we had reached agreement with our judges on practices we would follow to preserve certain types of documents in hard copy as well as images, we were able to change our practices and eliminate retention of hard copy for most documents. With important exceptions that have been carefully defined (e.g., original wills, very large documents, certain specific case types), we retain hard copy for 30 days following imaging, quality checking, and indexing into the ECR system. After that time the hard copy is ready for destruction, with the images from every document retained and made readily accessible through ECR.

Maintaining dual systems was very, very difficult. Extensive overtime meant high stress for staff. The time and savings to be gained by using imaging were not forthcoming until paper retention ended. The most important thing we did, in my opinion, was to make it clear from the beginning that the images in the clerk's electronic document management system were the official record.

1.1C Technical Requirements—Courts will use Internet browser, XML, web services, and World Wide Web Consortium recommended standards for electronic filing processes.

Commentary: These are the most important fundamental technical requirements. Using browser-based systems avoids or minimizes the need to install special software on user computers, avoiding a major expense and disincentive to use electronic filing. The World Wide Web Consortium (W3C)

has become well established as the premiere world entity for articulating standards for Web technology. Adopting something proprietary that does not follow this policy would make your system "an island of technology."

1.1G Identity of the Sender—Courts will authenticate the identity of persons interacting with its electronic filing system.

Commentary: This policy is well founded in that it seeks to ensure that authorized, legitimate persons use electronic filing systems to do what they are intended for. Some have questioned how authentication of identity would work. These Standards do not answer questions of "how." Exposure to the outside world by opening the door to electronic filing and other interactions can be a dangerous undertaking. Many security issues must be addressed and security will remain an ongoing issue. Courts may question what "authentication" means, noting they do not check ID when filers present hard copy documents.

There is a general principle that new technology should not be subject to higher standards than traditional technology. This leads to some resistance to ideas that might give a court or clerk new duties just because document filing becomes electronic. These are serious questions. They should, I believe, be answered in terms of practical necessities. They should not be answered based on fears or uncertainties some may have in confronting new technology. It remains to be seen what the practical answers on authentication of persons will be.

1.1H "Integrity of Transmitted and Filed Documents and Data"—Courts will maintain the integrity of transmitted documents and data, and documents and data contained in official court files, by complying with current Federal Information Processing Standard 180.1 or its successor.

Commentary: Comments on this policy raised concern over the seeming requirement to verify every incoming filing to prove that it arrived at the court's system without any changes having been made since leaving the author's hands. The federal standard would require that a software process be run on each document to show no electronic differences between what was sent and what was received. Is this an instance of a new duty, since clerks don't now review incoming filings against what left the law firm's office? Is it a higher standard based on distrust of electronic messaging tech-

nology? Is this a reasonable, simple, and prudent step? The committee response was that this is a readily accessible, inexpensive component that electronic filing systems should include. These questions will be addressed by each court when implementing this policy standard.

1.1K Court Control over Court Documents—Whenever a court's electronic documents reside on hardware owned or operated by an entity other than the court, the court will ensure by contract or other agreement that ownership of the documents remains with the court or clerk of court. All inquiries for court documents and information will be made against the current, complete, accurate court record.

Commentary: There is a risk that some courts will fail to take proper care to maintain the control called for here. Some vendors provide very low-cost (to the court) systems for electronic document storage and retrieval, retain the documents on their own servers, and maintain control over access to them. While the court might pay little for such a system and might be given relatively unfettered access to the records, the vendor may collect fees for allowing access to records from lawyers and the public. Our belief in the importance of this principle led King County to develop ECR with in-house retention of the images on disks in systems owned and operated by the Clerk. The issues of fees are reviewed in other standards. The question of control over records is a fundamental one that must, I believe, be resolved in accordance with this policy standard.

1.2A Service of Filings on Opposing Parties (Text omitted).

Commentary: It is very important to have strong incentives for lawyers, law firms, and other litigants to use electronic filing systems and services. This recommended rule urges courts to allow litigants to serve opposing parties or counsel electronically. The way in which this rule recommendation was drafted, assigning the court a role in the service process, raised issues with our court. It is important that issues like this not get in the way of the fundamentally important principle that litigants, too, deserve to benefit from the electronic processes the courts create. If not supporting electronic service, courts will reduce the incentive for most litigants to participate.

**1.2C When document is considered filed,
1.2D Available hours for filing electronically, and
1.2E Remedies when electronic filing fails.**

Commentary: These court rule related issues are often raised by people on first hearing about electronic filing. There seem to be two schools of thought over the availability and assignment of the time of an official filing: One holds that current rules should apply to electronic filing in the interest of fairness to those without the technology to do it. They would keep current deadlines, so an after-hours filing would be counted as filed the next court day. The other holds that a major incentive for adopting electronic filing is the ability to file whenever ready to do so, even in the middle of the night. These issues will be debated and resolved in each court—I predict—with a variety of results. The issue of what the remedies will be when electronic filing fails is an important one, for people are understandably nervous about the prospect of missing an important deadline because of a power outage or system failure. Together, these issues indicate there will be an adjustment period as people become used to filing electronically and learn the lessons and problems from practical experience. While it may be that general comfort will develop, just as it has with ATMs and cell phones, it is important to remain sensitive to the people who voice these concerns (and those who see new possibilities) as court rules and practices are determined.

1.3D Maintaining Supplementary Scanning Capability—Courts will ensure that all documents in electronic cases are maintained in electronic form. Consequently, in voluntary electronic filing processes, courts will scan paper documents and then file them electronically.

Commentary: Most courts will likely see papers filed from time to time indefinitely. Some people do not have the technology or the ability to use it to create word-processed documents or to file electronically. Even when courts provide kiosks and other services for them to use, people may not be able to do so for a variety of reasons. Litigants may send paper filings by mail, from overseas, from within prisons, or otherwise, simply because they cannot do otherwise. It is important to balance the eagerness with which we want to move everyone forward into the fully-electronic court record and document environment against our willingness to accommodate everyone. There is no shame in not

being an adopter of new technology, no special nobility in using it. There are some document types that courts need to consider carefully regarding the appropriateness of maintaining them as paper. What do we do with original wills signed in traditional ways? What about bonds and other negotiable instruments? What about documents with historical value? Important records management and preservation issues remain, though electronic document technology marches on.

1.3F Eliminating Unnecessary Paper Processes—Courts will eliminate paper processes that are obsolete or redundant in an electronic environment.

Commentary: This is a principle in which it should be hard to find room to object. However, there may be processes that some see as unnecessarily paper-based but others do not. It is important, when applying a principle like this, to recognize the value-laden words like “unnecessary,” “obsolete,” or “redundant,” and to seek concrete reasons and criteria for maintaining or eliminating a practice on which strong differences of opinion may exist.

1.3H Archiving Electronic Documents—Courts will maintain forward migration processes to guarantee future access to electronic court documents.

Commentary: Strategies for long-term preservation of electronic records, stability and reliability of electronic storage media and systems, and policies on “migration” are hot topics among records managers and technologists dealing with electronic document and information systems. The stakes are very high when records must be retained long-term or even permanently. Professionals in the records management and archives fields are ready to work out solutions, where they initially took positions warning against using electronic systems for records. The issues they raise are serious and the solutions can be expensive. Sometimes a recommendation like building a “hot-swappable completely operational mirror of your system that is in another city that you can switch to on a moment’s notice” or “maintain paper records along with the electronic version” are simply too expensive to consider. The challenge, however, must be faced, to maintain electronic court records so they will be continuously accessible using contemporary, supported computer technology. If one can’t do that, the records will be, in effect, lost.

3.1 General Court Standards

Commentary: These mandatory standards are to make sure everyone supports not just XML based standards, but those approved through the Conference of State Court Administrators/National Association for Court Management (COSCA/NACM) approval process (described in the Standards document). It is worth noting that it is expected that part of the outcome of this process will be a free-of-charge method for a would-be filer to discover a court's policies and practices relative to electronic filing.

3.2 System Architecture

Commentary: While these mandatory standards also call for compliance with the adopted COSCA/NACM standards, they also call for support of mass filing capability and disaster recovery and rollback functionality. Without mass filing capability, Electronic Filing Service Providers (EFSPs) would not be able to participate in a court's electronic filing program and their customers would be forced to continue to file traditional paper documents.

3.3 Electronic Documents

Commentary: Every court will have to specify how it handles dates and times for filings, the types of electronic documents it accepts for filing, and a way to accommodate non-electronic documents. The optional function of including such things as transcripts, exhibits, and multimedia presentations may cause some concern among those who believe the case file should not be mixed with such objects; on the other hand, it may help to inspire some to try to design their electronic systems to accommodate all of the kinds of documents and other sources of information that relate to the court's business.

3.4 Document Integrity

Commentary: It is clear that worries about the integrity of electronic documents are widespread at this point in the evolution of information technology. Requiring the verification methods specified here may strike some as excessive, driven by anxiety more than by necessity. Others feel that such checks against the failures of technology and the unknowns of people's capability to do mischief with electronic records are essential, certainly at the beginning and perhaps always.

3.5 System Security

Commentary: Some who specialize in network and system security say that data is always at risk due to the weaknesses inherent in Internet technology and the ingenuity of those who want to invade and undermine systems. In the court environment, there is concern over the potential power new technology might provide for some who might choose to exploit it to change records, halt proceedings, or otherwise subvert the justice process. No court can take security issues lightly. Funding for security procedures and practices may be a major ongoing part of system expenses. Validation of identity and control over access privileges for users of electronic records are substantial challenges that must be met due to the extent of confidential, sealed, and secret information handled in our courts.

3.6 Signatures and Authentication

Commentary: The functional standards here require that the court have rules and practices that define how authentication of users and signatures are to be handled. It does not prescribe a particular method or practice for signing digitally. Some courts are implementing expensive digital signature systems, others require users to register before using their systems, and others allow a person's user ID and password to count for the signature. A frequent question for those new to the subject of electronic filing, how signatures are to be handled will continue to be a hot button question for many people. Courts are well advised to weigh carefully the advantages of complex digital signature methods against their costs and the convenience of minimal signature verification against the problems and fears people have about them.

3.7 Case and Document Confidentiality

Commentary: In paper systems, courts rely on practices and procedures they believe to protect the confidentiality of information in records (e.g., sealing documents into envelopes, locking them in vaults, requiring picture ID before granting access). The alternatives for electronic filing and document systems have to be discovered, implemented, and they must succeed. Otherwise, it will be hard for the court or litigants to trust new technology with this important function. Nevertheless, electronic document technology brings the court powers it has never had to exercise control over access to such records and even to enhance it. For example, a person's privilege to view sealed records can be

controlled at a higher degree of granularity in electronic systems, where very specific access rights can be defined; compare this with paper systems where one either is allowed in the sealed file area or one is not.

3.8 Acceptance and Rejection of Filings

Commentary: Another frequent source of questions about electronic filing is concern over the conditions affecting a filing's being accepted or rejected by the filing system. The functional standards call for systems to present information in a receipt of acknowledgement when a filing has been accepted. The rules and procedures for rejection need to be well explained to reassure new filers that their risks due to the technology are not much different than they are with paper.

3.9 User and Service Registration

Commentary: This standard calls for methods to register and authorize users in the court's system. Some courts have extensive registration requirements and procedures as part of their systems. Others have a more open policy, allowing for self-registration without having to be reviewed by the court before doing e-filings. Experience is likely to reveal what practices are too loose, putting the court system or records at risk. Experience may not tell much about what practices constitute overkill, except to indicate which are costly enough to warrant a second look.

3.10 Court Payments

Commentary: It is certainly intended that all aspects of filing court documents should be supported in electronic filing systems, including accepting payments. Sometimes the ability to do this is constrained by factors not in the court's control, such as its ability to access credit card services or other ways of managing payments. Courts should continue to work on this issue until they have found the way to provide a full-service electronic filing program.

3.11 Submission of All Filings

Commentary: These provisions are to ensure that filing processes work as smoothly as possible by providing ways to check filings for completeness and correctness as they are submitted. Filing systems should not be passive "in-boxes" into which any electronic documents can be dropped. Incoming filings should be checked electronically to

ensure they meet basic requirements, such as correct case and number, format, and otherwise. This will minimize later rejections due to factors that could easily be verified by automatic processes.

3.12 Case Opening Filings

Commentary: Many courts find it hard to support electronic filings that initiate cases because of the special complexities involved: no case number is yet assigned, extensive data to set up the case in the court's case management system has to be located in the document, and other important procedures may occur at this point (e.g., issuing a case schedule or instructions about service or other court rules). Solving those problems will be important to the ongoing success of the system.

3.13 Subsequent Case Filings

Commentary: These standards are optional because the technology is not mature enough to expect every court to be able to support automated docketing and other review of filings in existing cases without human intervention. When it is possible to process routine filings with automation, however, courts will realize substantial savings from eliminating unnecessary labor now used to key in information that already has been typed into the documents and from correcting mistakes due to human error in such data entry work.

3.14 Service and Notice

Commentary: While it is clear that electronic service and issuance of notices from the court and clerk will constitute substantial time—and money—saving steps for litigants and for the courts, it is not clear how this will best be organized. The functional standards as drafted call on the court to provide records about service requirements and to generate service proof that courts may not provide now. Nevertheless, each court needs to do all that it can to ensure that service and notice can be achieved electronically or face the prospect of having only limited use of its electronic filing services.

3.15 Judicial Consideration of Drafts

Commentary: These optional standards relate to incorporating functions into an electronic filing system that allow judicial officers to receive and process draft documents submitted electronically for their use. While the idea of integrating such functions with the clerk's systems for maintaining custody of the record may lead to some opposition,

the desirability of providing for all document related services within a court in an integrated application is clear. These standards are optional because there is no clear path toward providing these very desirable services that will have high appeal for our litigants and our judges.

3.16 Clerk Review

Commentary: These mandatory standards make what might seem an obvious point, that it must be possible for clerks, human beings, to review electronically filed documents before they are made part of the case record. While the majority of documents may need no action beyond basic docketing and indexing in the case file, the rest require some process by a clerk or other person before the document is filed away. Systems cannot ignore the necessity of human review of electronic records as needed.

3.17 Court Initiated Filings

Commentary: Sometimes we forget that electronic filing is not going to happen in one direction only, from outside filer to the court. The court itself is a filer of documents, as when notices are issued by the clerk or orders by the judge. Electronic filing services must be available to the court and clerk, for they too are filers. Court initiated filings are likely to be a special case. If they exist only in electronic form, they may require signing with digital signature software or other tools if the orders are to be acknowledged and obeyed out in the world, on the street. The equivalent to certified copies of orders and other court case documents has not been invented yet.

3.18 Requests for and Responses to Requests for Case Information

Commentary: Systems must be able to respond to inquiries, from potential filers and the service providers they use, to find out what they must know in order to file. While a system might not be able to deliver responses to every possible type of request by automation, it needs to be able to respond with information for the most basic queries. Such queries are identified in these standards and in the Query and Response specification, also published by the Legal XML Electronic Court Filing Technical Committee.

3.19 Integration with Document Management Systems

Commentary: Perhaps this point might have gone without saying, but it is a fundamental principle that electronic filings need to be included in the files, and this means they need to become part of the electronic document management system that is used for court files. Systems must be properly designed to ensure that documents enter the document management system appropriately and that they are properly integrated with the filing and retrieval system used there.

3.20 Integration with Case Management System

Commentary: Just as filings must be linked with document management systems, they must be related to the court's case management system. Documents are, in a sense, containers of data that case management systems will need to extract (by human data entry or by XML automation) for many purposes. This standard makes that point explicit.

3.21 Judicial Information Sharing Among Courts, Including Appellate Courts

Commentary: Often the method of sharing records with other courts is cumbersome and paper-intensive, requiring complicated certifications and other practices. With electronic records, the opportunity exists to smooth the way to share records electronically. These optional standards are challenges to courts to take advantage of their electronic records technology to build bridges for routinely sharing access to support all judicial processes.

3.22 Document Retention and Archiving

Commentary: These mandatory standards should remind courts and clerks that they have always had responsibility for observing specified retention requirements and for archiving their records properly. Electronic systems and media bring new challenges and new capabilities to help courts and clerks perform these duties. The heightened attention given to retention and archiving issues due to the introduction of electronic systems is a healthy reminder of an often-neglected area of our business.

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Commentary on the E-Filing Standards. . .

(continued from page 8)

3.23 Related Technical Considerations

Commentary: These standards direct courts to use browser and Internet technology and comply with **World Wide Web Consortium (W3C)** standards, and otherwise to stay in step with contemporary technological services and principles. This is

important advice. No system will be “final,” for all will require continuous upgrades and changes as our technology changes. This has been our experience since we sat down at our first PCs; there is no reason to expect the future to give us changes that are any less substantial or fast-moving. ●

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150 Clove Road
Little Falls, NJ 07424

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