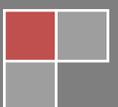


2014

# Montana Courts

## Electronic Filing Initiative

Combined Major Case Review of  
Criminal, Abuse and Neglect, Involuntary  
Commitment and Youth Court Cases



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**Introduction**

The major case review is an integral step in the design and development of a statewide electronic filing system for Montana Courts (E-Filing). The purpose of the major case review session is to review core system functionality and gather electronic filing requirements that may be unique to specific types of cases, ensuring unique requirements are addressed in the overall system design and proposed temporary E-Filing rules.

This combined report of the Major Case Review sessions (excluding the Appellate Case Review) is presented to enable major case session participants to review commentary from all major case sessions. Many of the participants could have been included in any or all sessions besides the one to which they were invited. There are patterns of discussions which emerged over the entirety of the meetings that become apparent in a combined report. The combined format is also able to best consolidate the discussion and change requests related to the proposed temporary electronic filing rules (Rules). The Rules, with an explanation of their evolution and details of requested changes from all groups, are presented in the final chapter.

**Major Case Review Sessions, Phase 1 Pilot**

Phase 1 of the E-Filing pilot is defined as “prosecutor-initiated” cases, to include criminal, abuse and neglect, juvenile and civil commitment cases. These cases provide the opportunity to work with all levels of courts (in criminal cases), to work generally with government-to-government filers and to postpone the introduction of filing fees until pilot Phase 2.

An advisory group of court personnel, county attorneys, defense attorneys and other subject matter experts from around the state were invited to Helena to participate in the major case review sessions for those case types involved in Phase 1 of the electronic filing pilot. These sessions were held during the last months of 2013 and the first months of 2014:

Appellate Case Review <sup>1</sup> Report available separately	October 24, 2013
Criminal Case	November 15, 2013
Juvenile Case	January 3, 2014
Abuse and Neglect	January 30, 2014
Civil Commitments: Involuntary Commitment and Developmental Disability	February 20, 2014

<sup>1</sup>The Appellate Case Review is available as a separate document. The appellate major case committee focused on electronic filing system components related to direct appeals filed in the Montana Supreme Court with an emphasis on appeals arising from criminal, abuse & neglect, civil commitment and Youth Court cases. <http://courts.mt.gov/content/efile/docs/efi.pdf>

The agenda for each of the major case review sessions was the same:

- An overview of core e-filing functionality by court staff, including high-level e-filing workflows (registration, initiating a new case, filing on an existing case, and electronic service).
- Discussion of the unique work flow pertaining to the major case category.
- Discussion of documents that should not be electronically filed.
- Discussion of documents that are not to be viewed by other parties on a case.
- Discussion of the proposed temporary e-filing rules.

All of the sessions were recorded and the recordings are available upon request.

**Case Participants and Statistics of the Individual Major Case Review Sessions**

**Criminal**

The category of criminal cases in this context does not include traffic<sup>2</sup>, local ordinance, search warrant, investigative subpoena, coroner’s inquest or indictment cases. It includes criminal-DC cases filed in the district courts and those cases that are appealed to the Supreme Court, and may include criminal-CR cases filed in the courts of limited jurisdiction.

<b>Criminal Cases Filed by Court Level</b>	<b>2013 Filings</b>
Supreme Court Direct Appeals of Criminal Cases	257
District Court	9147
Limited Jurisdiction	49,864
Total Cases	59,268

**Participants**

- Judge Audrey Barger, Justice of the Peace, Hill County
- Bill Hooks, Chief Public Defender, Office of the State Public Defender
- Judge Mike Menahan, District Court Judge, Lewis and Clark County
- Justice Jim Rice, Justice, Montana Supreme Court
- Jackie Schara, Clerk of Carbon County Justice Court
- Kent Sipe, Musselshell County Attorney
- Paige Trautwein, District Clerk of Court, Ravalli County
- Fred Van Valkenburg, Missoula County Attorney
- Claudia Anderson, Project Manager, Office of the Court Administrator
- Lisa Mader, Director of Technology, Office of the Court Administrator
- Karen Nelson, Office of the Court Administrator
- Lois Schlyer, Electronic Filing Program Manager, Office of the Court Administrator

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<sup>2</sup> Since 2010, electronic filing of Montana Highway Patrol (MHP) tickets has been accomplished in justice courts throughout the state in conjunction with MHP SmartCop E-Citations. This automation successfully processes on average 210 MHP E-Citation filings per day with a minimum delivery time improvement of 50% over baseline measures (2013 statistics). Some municipal, city and justice courts also import citations from the local sheriff or city police departments.

**Juvenile**

Juvenile cases in this context include formal youth cases (DJ cases) that are filed in District Courts and those cases that are appealed to the Supreme Court, and exclude informal cases that are entirely within the purview of the Juvenile Probation Office.

Juvenile Cases Filed by Court Level	2013 Filings
Supreme Court Direct Appeals of Juvenile Cases	8
District Court	1565
Total Cases	1573

**Participants**

- Peg Allison, District Clerk of Court, Flathead County
- Gracie Beto, Administrative Assistant, Juvenile Probation Office, Lewis and Clark County
- Judge Dan Boucher, District Court Judge, 12<sup>th</sup> Judicial District
- Betty Carlson, Public Defender, Cascade County
- Jeremy Gersovitz, Deputy County Attorney, Lewis and Clark County
- Justice Laurie McKinnon, Justice, Montana Supreme Court
- Bob Peake, Director, Youth Court Services
- Lisa Mader, Director of Technology, Office of the Court Administrator
- Karen Nelson, Office of the Court Administrator
- Lois Schlyer, Electronic Filing Program Manager, Office of the Court Administrator

**Abuse and Neglect**

Dependent Abuse and Neglect (DN) cases are those filed in the District Courts and those cases that are appealed to the Supreme Court.

Abuse and Neglect (DN) Cases Filed by Court Level	2013 Filings
Supreme Court Direct Appeals of Abuse and Neglect Cases	61
District Court	1527
Total Cases	1588

**Participants**

- Jennifer Brandon, District Clerk of Court, Gallatin County
- Angela Campbell, Executive Director, Yellowstone CASA
- Susanne Clague, Attorney, frequent Guardian ad litem, Butte
- Justice Pat Cotter, Justice, Montana Supreme Court
- Judge Blair Jones, District Court Judge, 22<sup>nd</sup> Judicial District
- Anne Lawrence, Deputy County Attorney, Flathead County
- Barbara Maddren-Broughton, Child Protection Specialist, DPHHS, Livingston
- Faye McWilliams, District Clerk of Court, Cascade County

Fred Snodgrass, Attorney, frequent counsel for parents, Billings  
 Claudia Anderson, Project Manager, Office of the Court Administrator  
 Lois Menzies, Office of the Court Administrator  
 Lisa Mader, Director of Technology, Office of the Court Administrator  
 Karen Nelson, Office of the Court Administrator  
 Lois Schlyer, Electronic Filing Program Manager, Office of the Court Administrator

## Civil Commitments: Involuntary Commitment and Developmental Disability

Civil Commitment cases include both Involuntary Commitment (DI) cases and Developmental Disability (DD) cases filed in District Courts and those cases that are appealed to the Supreme Court.

Civil Commitment Cases Filed by Type and Court Level	2013 Filings
<b>Involuntary Commitment</b>	
Supreme Court	9
District Court	1240
<b>Developmental Disability</b>	
Supreme Court	0
District Court	50
Total Cases	1299

## Participants

Marilyn Craft, District Clerk of Court, Jefferson County  
 Douglas Day, Regional Deputy Public Defender, Lewistown  
 Erica Grinde, Deputy Missoula County Attorney  
 Lori Maloney, District Clerk of Court, Butte-Silverbow County, in absentia  
 Judge Jon Oldenburg, District Court Judge, 10<sup>th</sup> Judicial District  
 Lisa Mader, Director of Technology, Office of the Court Administrator  
 Karen Nelson, Office of the Court Administrator  
 Lois Schlyer, Electronic Filing Program Manager, Office of the Court Administrator

## Glossary of Acronyms

CMS – Case Management System

- FullCourt is the CMS in use at city, municipal, justice and district courts
- C-Track is the CMS in use at the Supreme Court

JPO – Juvenile Probation Office or Officer

MCA – Montana Code Annotated

OCA – Office of the Court Administrator

OPD – Office of the Public Defender

SITSD – State Information Technology Services Division

## Major Topics

Major topics include those that were discussed during one or more of the major case review sessions, with several topics having been considered at every review session. Topics which are common to more than one of the major case types are listed below under “Common Topics” while those that are specific to only one case type are listed in the “Case Type Specific” section.

## Common Topics

### Aliases

Often the criminal Complaint/Information lists aliases for the defendant. There should be a way to capture these in the E-Filing system and have them carried over to the alias records in FullCourt.

**Discussion/Action:** Note that aliases will also be relevant for other case types filed in general and limited jurisdiction courts, especially civil cases. As requested by the group, the E-Filing system will be enhanced to provide fields for entry of aliases which will then be integrated into the FullCourt CMS during clerk review.

The Supreme Court CMS does not have a special field for aliases and, if necessary, they are stored in a comment field or contained in the case title. No further action regarding the records of this court is required.

### Audio Transcripts

In appeal cases filed in District Court, a DVD is often provided, containing the proceedings in the court from which the case is being appealed. Once the case is decided in District Court, the DVD is returned to the lower court and is no longer available as part of the District Court record. This creates an issue if the case is then appealed to the Supreme Court. A District Court judge will not typically order the litigant to have a written transcript prepared because of the expense.

**Discussion/Action:** The E-Filing System does not support audio filings at this time. Non-transcribed official recordings filed on appeal will need to be filed by traditional methods (reference Rule (12)(b)1).

OCA staff will continue to monitor options that may become feasible with technology advances, and to consider adding functionality to support audio filings within the E-Filing system.

### Automatic Notification to Office of the Public Defender (OPD)

During case initiation of criminal and juvenile cases, the e-filer (i.e., the County Attorney) has the option of indicating if the defendant or youth is represented by an attorney and if so, the

filer must then specify the attorney. The juvenile case group proposed that a better option might be to allow the filer to select OPD as representation for the youth when it is known that an OPD attorney will be representing the youth but it is not yet known precisely which attorney in the OPD office will be assigned the case.

**Discussion/Action:** The roll of attorneys used in the E-Filing system comes from the Montana State Bar. It lists individual attorneys and does not include law offices or state agencies. Therefore, there is no direct way of providing the requested functionality. The e-filer will have the option of selecting the Regional Deputy Public Defender from the list of attorneys. The record can later be amended with the name of the specific OPD attorney representing the youth or defendant.

OCA staff will continue to monitor the needs of e-filers and courts throughout the course of the pilot project to see if there may be some customized option that the vendor could provide if the need is prevalent.

## Case Initiation

Pilot Phase 1 cases in a limited or general jurisdiction court may be initiated only by a city or county prosecutor, acting on behalf of the State of Montana.

**Discussion/Action:** City, county and state prosecuting attorneys will register with the E-Filing system in the role of “prosecutor” which allows case initiation with the filing of a specific document; for example, a Complaint or Information in criminal cases. Law enforcement officers who are not prosecutors will not be able to file initiating case documents.

## Commitment, Detention and Release Orders Related to Juvenile and Civil Commitment Cases (Montana State Hospital, Riverside, Pine Hills, Warm Springs, and Juvenile Detention Centers)

Participants in the juvenile group described the current workflow as involving paper copies of detention and release orders “in the hands” of a transport officer waiting with the youth, so there is no question of the court order to transport, and so there will be no question of the youth’s acceptance at the destination facility. In some circumstances, the order has not yet been signed by the judge, and the transport officer would like to get on the road. Civil commitment cases have a parallel situation in that Warm Springs will not accept a patient without a detention order.

At least one participant pointed out that best practices require every detention or commitment order to be immediately scanned and emailed to the facility, while other participants indicated there are many instances in which this is not accomplished.

**Discussion/Action:** There may be situations in various courts in which it will be appropriate for a judge to fill out by hand and sign a paper Order so that a transport officer can begin the necessary journey. Whether or not that Order is immediately electronically or otherwise filed is determined by the individuals involved and the prevailing circumstances.

OCA staff will research possible E-Filing system enhancements that may lead to automatic notification of a receiving facility. If it is determined that the system could not perform that functionality, OCA staff may be able to develop instructional materials to emphasize the desired practice.

## **Documents That Should Not Be Electronically Filed or Documents That Are Not to Be Viewed by the Opposing Party's Legal Representative**

A full discussion on this topic appears in the Summary of Major Case Elements, page 23.

## **Fee Waivers**

The focus of Phase 1 of the Montana statewide electronic filing pilot is prosecutor-initiated cases and appeals that do not have filing fees associated with the cases. However, a number of the prosecutor-initiated major case participants were interested in how the electronic filing system will support fee waivers in the future.

It is important to note that the concepts described in the following discussion are preliminary and will be vetted by the Phase 2 major case groups where filing fees are required.

**Discussion/Action:** All courts in Montana provide rules for initiating a case without the payment of fees upon a determination by the court that the filing party is indigent and unable to pay the filing fees. These rules generally require a motion, affidavit and financial statement be filed with the court prior to case initiation. If the court grants the motion, the party may file the case without the requirement to pay fees. If the court denies the motion, the party must pay the filing fees when the case is initiated. Some courts may also grant partial fee waivers, in which cases the party must pay the specified partial fee when the case is initiated.

Proposed temporary electronic filing Rule 7 (b) reads "Users may submit a request for waiver of fees, using a form provided by the electronic filing system for that purpose."

### **Fee Waiver Concept 1**

The user files the inability to pay motion, affidavit and financial statement as scanned documents for the court's review. The system will be configured so that these types of motions are not associated with a fee. If the court approves the motion, the filer then files

the initiating document in the case. When the system calculates the fees it will also provide an option to note the court has waived the fees based on the filer's inability to pay. It will be the responsibility of the reviewing clerk to determine whether the court has granted the motion.

This concept is fairly straight forward and allows the filer to file motions, affidavits and financial statements on the forms published by the court for that purpose.

## Fee Waiver Concept 2

The electronic filing system would provide a template for the motion and financial statement and an unsworn written declaration as allowed under 1-6-105, MCA. The financial statement would be a fillable form with required fields. Having required-to-be-filled fields is a request made by at least one district court judge. The documents generated from the electronic filing system would flow as in Fee Waiver Concept 1.

This concept creates a standard set of forms and process for requesting a fee waiver in all Montana courts in the electronic filing system.

## **Filings Made By Those Who Are Not Parties**

Many cases have documents submitted by those who are not direct parties on a case. For example, Petitions for Support may be filed in a juvenile case and could come from Child Support Enforcement Division or the Department of Corrections. A Pre-Sentence Investigation is often filed by a probation officer in criminal cases. These agencies or individuals are not direct parties on the case. Will they be able to electronically file their documents?

**Discussion/Action:** The E-Filing system provides a means for "case participants" to register and file documents on a case. Since there is no public access to the cases, these individuals will not have full access to the case, but will be able to identify the case by cause number and title, and file the documents electronically.

## **Mandatory Address Fields for "Other Recipients" In the Service Screen**

During demonstration of the E-Filing system functions, meeting participants observed that the system was requiring a physical address to be provided for all service recipients. They noted that a victim is commonly served with notice of case filings, and the victim's address cannot be required to be listed.

**Discussion/Action:** Because of the group's observation, OCA staff has removed the requirement that physical address fields be filled. This allows victims to be listed on the Certificate of Service by name and by service type only. The service type indicates if they are

being served as a registered e-filer, by email or by some other method. No address is required. This applies to all levels of courts.

## **Notice: Ability for an Entity or Organization to Register For Notice Purposes Only**

Several of the major case review groups observed that there may be an advantage to allowing certain individuals and/or agencies to be able to register with the E-Filing system for the sole purpose of being able to receive notification of service. This may benefit e-filers because they would be able to send notice of service through the E-Filing system instead of having to send notice in a separate action outside the E-Filing system.

*Discussion/Action:* OCA staff agrees that this would provide a benefit, and will analyze the feasibility of adding this functionality in the future.

## **Public Access Workstations**

If there are no longer paper documents, how will the public and the press access those records?

*Action/Discussion:* Public access will remain exactly the same as it is today, with access through the clerk's office. Many of the larger district courts already have public access workstations while many of the small ones do not. Funding for additional workstations is being addressed in OCA's technology proposal to the next Legislature. The intention is to provide equipment and network services to every district court to support hard-wired public access terminals and to provide access to limited jurisdiction court records on those same terminals where network capability allows.

## **Rejection of Electronic Filings**

- 1) Filers want to be confident that filings will not be rejected. In what circumstances will clerks reject electronic filings?

*Discussion/Action:* As the major case groups met, this topic was commonly touched on. Many district court clerks indicate that they reject nothing, even in those instances where a totally unrelated document is presented for filing. The decision to reject nothing is made so that the responsibility remains with the filer rather than being subsumed by the clerk; in these instances the Court can issue an order regarding the inappropriate document. Consensus among the major case groups is that it is not deemed necessary to establish electronic filing rules indicating that all filings would be required to be accepted by the clerk (as is done in the Federal 9<sup>th</sup> Circuit Court of Appeal).

In general, and to the extent possible, the intent is that electronic filing will not change existing local rules and practices. In reality, the change from paper to electronic filing will engender some changes. An example of this was indicated by a Clerk of District Court who

said that a common error filers make is to present a document with the wrong cause number and, in the realm of paper filing, she might simply correct the mistake. This action will not be available with electronic filing, so her existing practice will necessarily change.

- 2) The question arose concerning automatic noticing of a rejected filing from the electronic filing system. Will rejection notices go out to all e-filers who were served notice through the E-Filing system, or only to the e-filer? This question arises because of the timing of notification. One of the steps the e-filer takes is to indicate to whom a notice of filing is to be served. (The E-Filing system presents the user a distribution list to assist in this step.) The E-Filing system then sends eService notice (via email) to those recipients who are registered users of the system, and it does so at the time the e-filer submits the filing and prior to the clerk review of the filing. The filing may potentially be rejected by the clerk.

**Discussion/Action:** If the clerk rejects an electronically submitted filing, notification will be sent only to the e-filer. It will not automatically be sent to others who were notified of service via the E-Filing system. The reasons for this may be summarized as follows:

- a. There currently exists no law in the realm of paper filing which compels an attorney or other filer to notify a service recipient if a filing has been rejected. If an attorney is obliged by ethical concerns to do so, such practices can continue into the realm of electronic filing, and will be up to the attorney to carry out.
- b. There may be a fairly inconsequential reason that the filing is being rejected, for instance because the cause number is incorrect or a document is not signed. It is likely that the filer, once notified, will quickly rectify the mistake and re-file the document without changing the substance of the filing. Those service recipients who are registered users of the E-Filing system will receive notice when the filing is resubmitted.
- c. The service distribution list and additional service recipients may be a mix of those who are registered with the E-Filing system and those who are not. If the system were to automatically send eService notices to those who are registered users of the E-Filing system, it would not simultaneously send paper mail or email to those recipients who are not registered users. This inconsistency in notice is undesired.

## Security

1. What is the security of the electronic filing system? OCA staff states that electronic records in the Montana Courts Statewide E-Filing system will be more secure than those stored in paper records in existing files. Participants wanted to know more about storage of documents and security of the whole system in light of that statement.

**Discussion/Action:** The E-Filing system is a “portal” that calls for and presents information from the individual court case management systems (CMS) and sends information back to the CMS for clerk review. The information being transmitted is encrypted as it goes through the data stream, which is further protected by a secure socket layer (SSL).

The E-Filing system does not change current storage of documents in the CMS systems: documents are stored on servers provided by the OCA; these systems are backed up locally as well as centrally, giving several layers of database backups. The E-Filing system itself is not a document storage and/or document management system.

The E-Filing system is housed on state servers (SITSD) which will also be backed up according to current IT standards. The servers will be automatically subjected to penetration and vulnerability testing by SITSD, to confirm that security levels satisfactorily protect the system and data from disastrous compromises.

2. Wireless access is not available in every courthouse, and when it is not available, “remote access” to electronic court records is essentially unavailable to those working in the building.

**Discussion/Action:** The OCA sees this as a county infrastructure issue outside the purview of E-Filing. This is an area that may need to be addressed with county individuals (e.g., commissioners) responsible for county infrastructure.

3. How are electronic records protected from public access? Can the electronic filing portal be “spoofed?”

**Discussion/Action:** First, the electronic filing portal requires a user to register with the system. Registration and login validation are accomplished through identity management provided by one of two systems. Those who are part of state government will be authenticated using Active Directory credentials. ePass Montana provides authentication for those without state government credentials. Next, attorney registration will be verified by matching to the State Bar ID number. Between the records of the case management system and the E-Filing system, there is a “hook” that indicates whether or not the e-filer is a party, attorney or judge on the case. Further, audit trails throughout the E-Filing system are present to detect any spoofing attempt. For example, someone may register for the system, but there will not be access to any records unless the individual is officially attached to those cases. Finally, there is much less of a chance of exposure through the E-Filing system than with paper filing: a document will not be lost, and there is an audit trail that provides specific tracking of all transactions.

## Self-represented Litigants

Pro Se participation was a topic of discussion in each of our major case review meetings.

**Discussion/Action:** The concept for statewide Montana electronic filing fully encompasses the eventual participation of self-represented litigants. Pilot Phases 1 and 2 are developed to first support those cases in which parties have attorney representation, so that system functionality can be developed and added incrementally. There are technical reasons making direct participation of self-represented litigants more difficult to accomplish, and there are operational reasons making it desirable to have a simplified E-Filing process for the non-attorney population.

It is anticipated that there will be a group representing self-represented litigants which would be motivated to propose an enhanced front end (user-interface) that would walk the pro se user through each entry, prompting the user to enter the appropriate information and assisting the user in filing.

Throughout the pilot projects, self-represented litigants may file paper with the court, and the court will assist the filer by scanning documents as necessary. Public access terminals will be available in court clerk offices to view electronically filed cases and obtain printed copies (printing costs will continue to be assessed as set forth in statute).

## Time/Benefits Analysis

During the major case sessions OCA staff provided an overview of the E-Filing system, listing some of the benefits that are expected. Participants asserted that it is necessary to perform a detailed and thorough assessment of costs weighed against benefits and that “costs” should not be limited to monetary amounts.

**Discussion/Action:** The OCA, in conjunction with pilot site participants, will need to quantify the benefits that are expected when the E-Filing system comes online. Workflow changes will likely lead to trade-offs in time savings from one office to the next. For instance, the prosecuting attorney’s office will be doing more data input, which will free the clerk’s office from doing so. OCA will compile statistics and will benchmark certain workflows to compare before and after statistics related to each of the offices involved in E-Filing, and will include judges/justices, clerks, county attorney, public defender, juvenile probation and offices of other case-related entities.

Expected benefits of Montana Courts E-Filing that were listed during the presentation:

- Provide a method of secure 24/7 filing from any location.
- Provide efficient access to the court record.
- Reduce paper and ink, trips to the courthouse and storage requirements.

- Improve record quality.
- Protect court records from catastrophic events.
- Provide standard features for all courts, cases types and filers.

## Time and Effect of Filing

Filing “at the last minute” may be a strategy that is used by filers in certain circumstances. The statewide electronic filing system expands the hours of filing beyond the business hours of the clerk’s office. When the clerk reviews and accepts the filing, it will be accepted as of the date the filing was submitted through the system (except weekends and holidays). How is a filer to be assured that a filing will be accepted at the date and time the filing is submitted, when the clerk may review and accept/reject the filing on the next court business day?

**Discussion/Action:** It is the duty of the filer to be certain that filings are accurate and timely. As stated in the Draft Temporary E-Filing Rules (13)(a)2: “Parties are responsible for timely filing of electronic documents to the same extent as with the filing of paper documents, with the same consequences for missed deadlines.” A filer who uses a strategy of filing “at the last minute” when filing paper documents must arrive at the clerk’s office well before the end of the business day to assure that the filing will be accepted and file-stamped with that day’s date. An electronic filer may wish to do the same to be certain that the filing will not be rejected.

## Training for E-Filing Users

Participants in the major case review sessions were curious as to the advance training planned to be undertaken prior to statewide electronic filing coming online.

**Discussion/Action:** Throughout Pilot Project Phases 1 and 2, OCA staff will be refining training and instructional materials to introduce and support those who desire to register with and use the E-Filing system. Manuals, videos and in-person presentations are envisioned. Business analysts/trainers of the OCA will be available to train staff and provide on-site assistance in clerk offices as a court goes live with E-Filing. The court clerk’s office will provide training and on-going, first-line user support to filers in the E-Filing environment, with the OCA supporting the clerk’s office.

## Case Specific Topics - Criminal

### Alternative Charges

Often when charges are filed in limited and general jurisdiction courts, the charging document will list a charge along with an alternative charge stated as, “or in the alternative....” (Example: Deliberate Homicide or in the alternative, Mitigated Deliberate Homicide.) The FullCourt CMS used in these courts does not have a provision to store alternative charges, so they have not been captured in the CMS in the past.

**Discussion/Action:** As a result of the request from this group, the E-Filing system will be designed to capture an alternative charge. During the clerk review processing in FullCourt, the alternative charge will be stored in the comment field for that charge. If the defendant is found guilty of an alternative charge, it will be up to the clerk to change the charge record accordingly.

The Supreme Court CMS does not contain fields for charge information, so no further action regarding the records of this court is required.

### Filing of Motion for Leave to File Information and Affidavit of Probable Cause (District Courts)

There are a variety of practices across the state, even among district courts within the same judicial district, regarding the filing of a Motion for Leave to File Information and the clerk’s subsequent procedures as they manage the court records in their CMS databases.

An Information in District Court cannot be filed until a judge has granted leave to file. A common practice is for the clerk to file the Motion for Leave to File Information, which opens the case, establishes a cause number and assigns a judge. In these situations, if the judge does not grant leave to file, the case is closed. If leave to file is granted, the case moves forward with the Information being filed.

**Discussion/Action:** A prosecutor may present a Motion for Leave to File directly to the judge or file it with the clerk of court (who will route it to a judge) in order to obtain leave. Following are two examples of how this might be accomplished within the electronic filing system.

Example 1: A county attorney e-files a Motion for Leave to File Information and Affidavit in Support (and depending on local rules, may also file a proposed order). The E-Filing system automatically routes the filing to the Clerk of Court who reviews and accepts the filing, which opens a case, giving it a cause number and assigning a judge. The motion, and proposed order, if any, is then electronically routed to the appropriate judge. (The judge’s administrative assistant will be required to route the motion to an available judge if the

assigned judge is unavailable.) While the motion is with the judge, within the E-Filing system, there is no access to the case or to the filings except by the prosecutor and the judge.

Example 2: A County Attorney seeks to have an Order for Leave to File signed and, with all necessary paper in hand, approaches the judge (any available judge in a multiple-judge court) to obtain a signature on an Order for Leave to File. Once the signature is obtained, the prosecutor may scan the documents and file the Information and all the preceding paperwork electronically. The clerk will review and accept the filings and open the case, with the CMS providing a cause number and assigning a judge.

A major goal of Phase 1 of the E-Filing pilot is to determine if there are any gaps in workflows or processing that would adversely affect any aspect of electronically initiating criminal cases. These practices will be closely monitored throughout the course of the pilot project.

## Search Warrants, Investigative Subpoenas and Inquests

The ability to electronically file search warrants, investigative subpoenas and inquests was requested to be included in Phase 1 by all participants.

*Discussion/Action:* In response to this request, OCA staff indicated that it would be included in the Phase 1 pilot. In researching the issue, it was found that these types of cases have different functional requirements on the system and database level and include unique workflows that have not been built into the expected timelines of the Phase 1 pilot. OCA will convene IS (investigative subpoena) and SW (search warrant) major case category teams at a later date to incorporate these case types into the electronic filing system as soon as is practicable.

## Substitution Fees

In February 2014 the Montana Judges Association filed a petition with the Supreme Court requesting revision of judge substitution rules (AF 09-0289). At present, there are no fees for substitution of district court judges in criminal cases. If the proposed changes were to be accepted, judge substitution fees would be required in criminal cases.

*Discussion/Action:* When Phase 1 of the statewide courts electronic filing system was envisioned, this proposed revision of rules on substitution of district court judges did not exist. Phase 1 of the E-Filing pilot makes no provision for the collection of statutory filing fees; instead fee collection is planned for Phase 2. If Montana Code Annotated were to be revised according to the petition's request, any such fee would need to be paid outside of the E-Filing system until Phase 2, at which time a secure online payment processing function will be incorporated into the E-Filing system.

Update as of July 10, 2014: an Order of Postponement Pending Mediation was issued in the case, anticipating a proposal resolving some or all of the issues and setting a November 2014 public meeting if no resolution is forthcoming.

## Case Specific Topics - Juvenile

### Filing Types and Subtypes for Petitions Filed to Initiate a Juvenile Case

Courts throughout the state have various customs in relation to filing and may name their documents differently.

**Discussion/Action:** Petitions filed to initiate juvenile cases may be labeled:

- Petition
- Youth Court Petition
- Petition for Youth Hearing and for Appointment of an Attorney
- Possible others, to be determined in consultation with the Clerk of District Court Automation Committee

### Role of Juvenile Probation Officer - Court Record Access Requirements

Youth Court judges/Juvenile Probation Officers are officers of the court and should have access to Juvenile case files within the JPO's district. They do not necessarily need to file on a case, but they do need to have access to the district court record.

**Discussion/Action:** The E-Filing vendor will be asked to create a specific role for Juvenile Probation Officers so that they will be able to have access to view those cases within their JPO district. Note that this new E-Filing "role" may not be present during Phase 1 of the E-Filing Pilot, but will be introduced as soon as possible.

### Update FullCourt Statute Table to Include Delinquent Youth and Youth in Need of Intervention

Participants expressed concern about the ability of the E-Filing system and of the current FullCourt CMS statute table and filing options to support the full realm of filings that may be made in Youth/District Courts. A specific request is to have the ability to file a case with the offense alleged as Delinquent Youth or Youth in Need of Intervention, MCA 41-5-1401.

**Discussion/Action:** Not all technical details and current system settings were readily available during the work session. Subsequent research shows that the two requested statutes are and have been available for use in FullCourt starting with the April 2010 (201004) statute revision:

- 41-5-1401[1] Delinquent Youth
- 41-5-1401[2] Youth In Need Of Intervention

However, OCA best practice guidelines will continue to be that the Juvenile case subtype be set to either Delinquent Youth or Youth in Need of Intervention and that the underlying offenses be captured in FullCourt.

For example, the county attorney may file a Motion For Leave to File Petition And to Appoint Attorney, in which it is stated, "Pursuant to Section 41-5-1401 MCA..." and which also lists offenses as Count I: Assault (Misdemeanor); Count II: Disorderly Conduct (Misdemeanor), and so forth. It is recommended that the case would be filed as Juvenile, subtype Delinquent Youth, and each of the charges, Count I, Count II and so on, would be listed as offenses.

OCA will be providing instructional materials to E-Filers so that these best practices can be continued as the county attorney's office will be performing the initial case data entry for Juvenile cases when using the E-Filing system.

### User Interface Wording Changes

During presentation of the screen prototypes designed by OCA staff in conjunction with the software vendor, two specific changes in the screen layout were requested:

- Change the word "respondent" to "youth"
- Change the word "charge" to "allegation" or "offense"

**Discussion/Action:** The E-Filing vendor will make the requested changes so that the E-Filing screens reflect the accurate wording.

### Youth Court as Distinct from District Court in the E-Filing System

Participants proposed that Youth Court should be distinguished from District Court in the E-Filing system so that a filer would have the option of selecting a specific "Youth Court."

**Discussion/Action:** A registered user of the E-Filing system is prompted to fill in information about a filing, including the selection of a specific court in which to file. This is a two-step process in which the court level is selected, followed by selection of the specific county. The court level is appropriately selected as the district court level since Youth Court cases are filed in district courts as juvenile (DJ) cases and stored in the district courts' databases. The next drop-down selection, listing the specific county in which to file, could potentially have each county listed twice. For example, the list might read similar to this:

- Daniels County District Court
- Daniels County Youth Court
- Dawson County District Court
- Dawson County Youth Court

From a user interface standpoint, this introduces a level of awkwardness that does not seem warranted given that it adds no tangible benefit to the filer or court personnel. We note that filers are experienced in filing juvenile case documents in district courts in the paper world and therefore the lack of a specific Youth Court option on the selection menu will not introduce a hindrance to the e-filer.

## Case Specific Topics – Abuse and Neglect

### Define the Role/Access Requirements for CASA

Court-Appointed Special Advocates (CASA volunteers) are ordered to be assigned to abuse and neglect (DN) cases throughout the state. Participants of the major case review recommended that CASA have access to DN cases through the E-Filing system.

**Discussion/Action:** As a result of the guidance of this group, OCA has undertaken steps to establish a specific “role” for CASA and other individuals who are court-appointed (such as Respondent’s Friend). The role will allow full access to the case to which the individual is appointed. A Notice of Participation may be required to be filed to establish the individual as an authorized person on the case. The Clerk of Court will need to attach the E-Filing filer ID to the party in the FullCourt CMS so that authentication can occur.

Note that because the original design of the system only allowed for filing of reports by court-appointed individuals, rather than full access to cases, this new E-Filing role may not be present during Phase 1 of the E-Filing pilot, but will be introduced as soon as possible.

### Support of Identical Filings in Companion Cases

A separate abuse and neglect case is opened for each child. In situations where the same filing applies to several children in the same family unit, it can be convenient for the filing to list the several children and cause numbers on the same document. Will the E-Filing system support the copying of such documents to each separate case that applies?

**Action/Discussion:** Where local rule or custom allows filing of a single document to more than one case, without the changing of document title and cause number, the electronic filing system will make the task easier by allowing the single document to be directly filed to the sibling cases.

OCA staff will continue to monitor the needs of e-filers and courts throughout the course of the pilot project to see if there may be an option that could provide more efficient filing in sibling cases if the need is prevalent.

## Case Specific Topics – Civil Commitments

### Emergency Detention

Group participants described the process of obtaining emergency detention orders which require a judge's signature and often need to be obtained during non-working hours. They asked if the electronic filing system would assist in the necessary communications between the county attorney and the judge.

*Action/Discussion:* The current communication methods are not necessarily enhanced by the electronic filing system, as that is not the goal of E-Filing. Emergency situations will need to continue to be dealt with in the manner deemed most effective by the individuals involved in the given circumstances.

During the course of the pilot, OCA staff will research possible E-Filing system enhancements that may lead to serving a judge directly with the necessary documents.

### Montana Mental Health Nursing Care Center

Petitions for Extending Commitment and Petitions for Recommitment are filed by a Special Deputy County Attorney in Fergus or Deer Lodge County rather than in the originating county.

*Action/Discussion:* The practices currently in place in the two counties with mental health facilities seem to be fully supported by the electronic filing system without customization of any kind. OCA staff will seek additional input from the Special Deputy County Attorney in Fergus County and the Special Assistant Attorney General regarding Involuntary Commitment (DI) cases as documents are filed through the E-Filing system.

### Petitions for Involuntary Commitment (DI) May Include Protected Health Care Information

In most cases, initiating petitions for Involuntary Commitment cases include protected health care information, but they are not automatically sealed by the District Court case management system. (By contrast, case-initiating Developmental Disability petitions are automatically sealed.)

*Action/Discussion:* The E-Filing vendor will make the requested change so that by default, initiating DI case petitions will be checked with a "Request Confidential" indicator. When the filing is submitted, the indicator will be viewed by the clerk who will then set the security of the filing/case appropriately.

## Summary of Major Case Elements

Each of the major case groups was asked to identify specific case filing details related to the case type in relation to initiating documents, statutory filing fees, service requirements and those documents that might be filed but that should not be viewed by all parties on a case. In each of the major case review sessions, this last topic expanded to cover broader aspects that may be encountered in courts electronic filing. In this section, the broader topic is presented separately, followed by the other individual elements related to each major case group.

## Documents That Should Not Be Electronically Filed or Documents That Are Not to Be Viewed by the Opposing Party's Legal Representative

Each major case group was asked to identify documents and items typically filed in the case type under review that should not be electronically filed and to identify any documents that should not be accessible to the opposing counsel or a self-represented litigant on the case.

Possible reasons cited for why a document should not be filed through the portal include:

- Items with technical limitations relating to the electronic transmission, storage or viewing of the item, e.g., oversized documents, maps, and audio files.
- Documents requiring an original signature.
- Lodged documents that are placed in a court file but not officially filed.
- Documents that have been sealed or for which a motion to seal is pending before the court.
- Ex parte motions.
- Documents that have a unique workflow in the court system, e.g., applications for a search warrant.
- Documents required to be retained by the clerk in an original form, e.g., a will, trust monies, stock certificates, etc.
- Discovery material and exhibits.

**Discussion/Action:** The Montana Courts Electronic Filing Portal facilitates the electronic filing, notice and real time access to court records for persons representing a party on a case and court staff assigned to the case. The portal provides a limited filing capability to other case participants, e.g. probation officers, social workers and amicus curiae.

In order to achieve maximum efficiencies the portal must, to the extent practical, accommodate all types of filings, provide a complete record of clerk-approved filings from the court case management system and systemically restrict access as appropriate. In those instances where the document or item cannot be filed, it is vital that the register of action on the case duly note the existence of any item not electronically accessible.

It is envisioned that further deliberations on the temporary proposed rules, lessons learned during the E-Filing pilots, and the evolution of the underlying technologies used in electronic filing will help refine and define limitations on the electronic filing of certain documents. The following paragraphs provide instruction for initially handling these types of documents in the pilot phases.

Note that where the discussion makes reference to a rule, it is likely that the information and suggestions obtained by the major case review sessions prompted the addition of a rule or amendment of an existing rule. In this way the Draft Temporary Electronic Filing Rules evolved according to the combined input of all the subject matter experts who participated.

- Items with technical limitations relating to the electronic transmission, storage or viewing of the item, e.g., oversized documents, maps, and audio files.

The Electronic Filing Technical Operations Guide will provide the specific technical requirements for documents electronically filed (Draft Temporary Electronic Filing Rule 8 (c)). If possible, items that cannot be electronically filed should be offered into evidence at an evidentiary hearing or trial.

- Documents requiring an original signature.

Draft Temporary Electronic Filing Rule 10 provides procedures for signatures on documents filed electronically. If electronically filing a document with written signature(s), the document must be scanned and the original retained as required in Draft Temporary Electronic Filing Rule 9(g) which requires the submitting party to produce the paper document if validity of the signature or document is challenged.

Documents generated in a court during a scheduled courtroom proceeding may be signed and filed on paper during the hearing. This includes affidavits of indigency, statements of defendants and plea agreements, with the premise being that documents signed in open court and properly referenced in minute entries and the official court transcript are valid on their face and can be scanned and electronically filed by the Clerk of Court and the paper destroyed.

- Lodged documents that are placed in a court file but not officially filed.

It was noted that occasionally documents are placed in the court file but not officially filed, e.g., letters to the court in commitment cases. Since these documents are not officially filed they should not be electronically filed (Draft Temporary Electronic Filing Rule 6 (a) (8)).

- Documents that have been sealed or for which a motion to seal is pending before the court.

In the context of electronic filing a sealed document is a document sealed through an order of the court and, therefore, may only be opened by court order. These types of documents should not be electronically filed. However, the motion to seal may be filed pending the judicial proceeding that acts upon the motion. The document that is requested to be sealed should be hand delivered to the court clerk in a sealed envelope. The motion should be properly noticed and, upon acceptance by the clerk, docketed in the case management system.

Further discussions are needed on electronic filing procedures for cases that are statutorily sealed.

- Ex parte motions.

Ex parte motions may or may not be electronically filed. If the ex parte motion is electronically filed, the motion is viewable by all parties on the case, once accepted by the court clerk. See Draft Temporary Electronic Filing Rule 6 (a) (6) (c).

- Documents that have a unique workflow in the court system, e.g., search warrants.

A number of unique workflows were noted by the major case participants. Search warrants and petitions for emergency commitments that occur after hours are two such unique workflows. Each of these scenarios would require a direct routing of the petition to the judge. It is envisioned that the specifications for electronic filing of these documents by prosecutors will be developed during the Phase 1 pilot. Local rules may be necessary to accommodate multi-county and multi-judge districts.

- Documents required to be retained by the clerk in an original form, e.g., a will, ballot, trust monies, stock certificates, etc.

There are certain types of documents that are required to be retained by the Clerk of Court by statute, court order, or court rule. These documents may be electronically filed provided that the original document is filed with the court within 10 calendar days. See Draft Temporary Electronic Filing Rule 6 (a) (2). Documents that are filed under this rule that are confidential documents should be marked as such.

- Discovery material and exhibits.

Communication between parties that is not intended to be filed with the court should not be electronically filed, e.g., discovery materials. See Draft Temporary Electronic Filing Rule 8 (a) (7).

Evidentiary materials should not be electronically filed, but rather submitted as exhibits. This is particularly important for original documents that are not suitable for electronic filing.

**Case Elements by Case Type**

The following tables describe the unique characteristics of each of the Pilot Phase 1 cases.

*Criminal*

Major Case Element	Design Consideration
<b>Initiating Document</b>	<ul style="list-style-type: none"> <li>Complaint (limited jurisdiction courts)</li> <li>Citation/Notice to Appear (limited jurisdiction courts)</li> <li>Motion for Leave to File Information or Information (general jurisdiction courts)</li> </ul>
<b>Statutory Filing Fees</b>	None
<b>Service Requirements</b>	<ul style="list-style-type: none"> <li>Initiating documents: Personal service (outside of E-Filing system)</li> <li>Subsequent documents: Certificate of Service</li> </ul>

*Juvenile*

Major Case Element	Design Consideration
<b>Initiating Document</b>	<ul style="list-style-type: none"> <li>Petition alleging Delinquent Youth or Youth in Need of Intervention</li> <li>Transfer order from a court of limited jurisdiction</li> <li>Detention Order Hearing (in many instances, the Minute Entry from the hearing is the initial document filed – by the clerk – on the case)</li> <li>Affidavit of Probable Cause</li> </ul> <p>For clarification purposes only, note:</p> <ul style="list-style-type: none"> <li>A consent adjustment does not open a case in Youth Court.</li> <li>Pickup and Hold Orders arise only on existing cases</li> </ul>
<b>Statutory Filing Fees</b>	None For clarification purposes only, note that there are no substitution of judge fees in juvenile cases.
<b>Service Requirements</b>	<ul style="list-style-type: none"> <li>Initiating documents: Service of Summons must be served on youth personally (outside</li> </ul>

	<p>of E-Filing system).</p> <ul style="list-style-type: none"> <li>• Subsequent documents: Certificate of Service</li> </ul>
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*Abuse and Neglect*

Major Case Element	Design Consideration
Initiating Document	Motion or Petition
Statutory Filing Fees	None
Service Requirements	<ul style="list-style-type: none"> <li>• Initiating documents: Personal service or publication (outside of E-Filing system)</li> <li>• Subsequent documents: Certificate of Service</li> </ul>

*Civil Commitments*

Major Case Element – Involuntary Commitment	Design Consideration
Initiating Document	Petition
Statutory Filing Fees	None
Service Requirements	<ul style="list-style-type: none"> <li>• Initiating documents: Personal service (outside of E-Filing system)</li> <li>• Subsequent documents: Certificate of Service</li> </ul>

Major Case Element – Developmental Disability	Design Consideration
Initiating Document	Petition
Statutory Filing Fees	None
Service Requirements	<ul style="list-style-type: none"> <li>• Initiating documents: Personal service (outside of E-Filing system)</li> <li>• Subsequent documents: Certificate of Service</li> </ul>

## Proposed Electronic Filing Temporary Rules

The following proposed rules for the Montana Courts Statewide Electronic Filing Pilot were submitted to the Supreme Court Commission on Technology on July 31, 2014.

### Draft Temporary Electronic Filing Rules (7.8.2014)

#### Electronic Filing

##### (1) DEFINITIONS:

- (a) "Clerk of court" means the official custodian of the court record for the case in question, which may be the clerk of the Supreme Court, clerk of district court, or the appointed clerk in a justice court, municipal court, city court, water court, or workers compensation court.
- (b) "Document" means a pleading, form, notice, motion, order, affidavit, paper exhibit, brief, judgment, writ of execution, or other filing. For purposes of this rule, a document includes the transmittal information submitted with the filing.
- (c) "Electronic filing system" means a web-based system established by the Office of the Court Administrator for the purpose of filing documents with or by a court, integrating them into the court's case management system, and electronically serving notice to the parties who have registered with the electronic filing system. "Electronic filing" does not include alternative methods of filing, such as electronic mail, facsimile, floppy disks, or other electronic methods.
- (d) "Electronic filing system administrator" means an individual appointed by the Supreme Court Administrator to receive information and take action as necessary to administer the electronic filing system.
- (e) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document, that can be executed or adopted by the user with the intent to sign the document.
- (f) "Initiating document" means a summons and complaint, information, petition, notice of appeal, application, citation, criminal complaint, or any other document filed to commence a court case.
- (g) "Lodged" means placing a document in a court file without officially filing it.
- (h) "Traditional methods" means those methods of filing and serving documents, other than electronic filing, provided under statutes and local rules.

- (i) "Transmittal page" means a document generated by the electronic filing system containing the case management information necessary to transmit and file a document.
- (j) "User" means an individual who has registered to use the electronic filing system under section 3.

**(2) SCOPE:**

- (a) The Supreme Court Administrator shall implement an electronic filing system for Montana courts.
- (b) Use of the electronic filing system is voluntary. Courts choosing to participate in the electronic filing system shall make formal application to the Office of the Court Administrator. The application shall be made in writing by the Chief Judge and, if applicable, the elected clerk of court. Parties or their attorneys may choose to participate in the electronic filing system unless the court has designated a certain case type for mandatory electronic filing. Parties or attorneys who choose not to participate shall file, serve, and receive documents by traditional methods.
- (c) Any action that may be brought in court may be brought using electronic filing, subject to the ability of the electronic filing system to accept the documents. This section does not guarantee anyone the right to file electronically.
- (d) The procedures in these rules shall be interpreted in a manner consistent with existing court rules.
- (e) An exception will be permitted for certain governmental agencies to file documents and transfer data by a Supreme Court-approved alternative method of transferring the document or data from the agency's electronic system to the court's electronic case management system. For example, interfaces have been created to allow electronic filing of Montana Highway Patrol citations.

**(3) REGISTRATION REQUIREMENTS:**

- (a) The following individuals may register to use the electronic filing system:
  - 1. Licensed Montana attorneys and designated staff.
  - 2. Attorneys appearing pro hac vice.
  - 3. Self-represented parties to an action.
  - 4. Court employees.
  - 5. Other individuals as appointed or ordered by the court.
- (b) Users of the electronic filing system shall be individuals. However, the electronic filing system may provide a method for law firms, organizations, corporations, agencies or

other groups to register with the system for the sole purpose of receiving electronic service notification.

- (c) Users shall register through the electronic filing system website by executing a user agreement governing the terms of use of the electronic filing system. To register, users shall have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system. By registering, users agree to electronically file all documents in a case to the extent the electronic filing system can accept them and agree to electronic notification on any case electronically filed.
- (d) Users will access the electronic filing system using a confidential, secure identifier. The secure identifier shall be used only by the user to whom it is assigned. This user may authorize agents or employees to use the electronic filing system on the user's behalf. Each such authorized user shall use a unique, secure identifier. Upon learning that the confidentiality of the secure identifier has been inadvertently or improperly disclosed, the user shall immediately notify the electronic filing system administrator.
- (e) Users are responsible for keeping the registration information profile current, accurate and complete in the electronic filing system.
- (f) The same secure identifier shall be used for all cases on which the user is an attorney or a party. The electronic filing system administrator may reset secure identifiers as needed for administrative and security purposes.
- (g) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case, such as witnesses seeking protective orders, intervenors, and amicus curiae. It may also provide a method for submitting reports by individuals who are not parties to the case, such as presentence investigators and social workers.

**(4) TIME AND EFFECT OF ELECTRONIC FILING:**

- (a) The electronic filing system is an agent of the court for purposes of electronic filing, receipt, notification of filings and retrieval of electronic documents.
- (b) When a document is submitted by a user to the electronic filing system, the electronic filing system shall transmit it to the appropriate court where the case is filed. The electronic filing system shall issue a confirmation that submission to the electronic filing system is complete.
- (c) Filing of documents with the electronic filing system shall be accepted on a 24 hour basis, from 12:00 a.m. to 11:59 p.m. Mountain Time. Documents electronically

submitted and approved by the clerk shall receive the filing date the document was initially submitted if the filing date is a business day for the court. If the filing occurs on a weekend or holiday the next court business day will be the filing date. The electronic filing system shall note the date and time the document is submitted. The calculation of time under other statutes and rules is neither expanded nor contracted by this section.

(d) The clerk of court shall review the document to determine if the document should be accepted for filing. If the clerk accepts the document, the document shall be considered filed with the court on the date the original submission to the electronic filing system was complete, as specified in section (4)(c) above. Upon acceptance, the electronic filing system shall issue a confirmation with the file-stamped date. If the clerk rejects the document, the document shall not become part of the court record and the filer shall receive notification of the rejection.

(e) The electronic filing system shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.

**(5) COMMENCEMENT OF ACTION:**

(a) If the clerk of court accepts an initiating document for filing, the clerk of court shall assign a case number and electronically place the clerk's filing stamp and case number on each document. The electronic filing system shall send a notice to the filer that the filing has been accepted and is available through the electronic filing system website.

(b) Initiating documents shall be served by traditional methods unless the responding party has consented to accept electronic notice or service by some other method as allowed by statute or court rule.

**(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS:**

**(a) DOCUMENTS THAT MAY BE FILED ELECTRONICALLY:**

1. A court may permit electronic filing of a document in any action or proceeding unless court rules or other legal authority expressly prohibit electronic filing.
2. In a proceeding that by statute, court order or court rule requires the filing of an original document, e.g., a ballot or will that was created in a paper form, an electronic filer may file an electronic copy of a document provided that the original document is then filed with the court within 10 calendar days. The original document shall be maintained in its original format by the clerk of court.
3. The court may permit electronic filing of an application for waiver or partial waiver of court fees and costs in any proceeding in which the court accepts electronic filings.

4. The court may electronically file any notice, order, minute entry, judgment, or other document prepared by the court.
5. Proposed orders may be filed and submitted electronically through the electronic filing system.
6. Effect of document filed electronically:
  - (a) A document that the court or a party files electronically under these rules has the same legal effect as a document in paper form.
  - (b) The calculation of time under other statutes and rules is neither expanded nor contracted by this section.
  - (c) Once accepted by the clerk, electronically filed documents are immediately viewable by all parties on the case. If a user intends to file ex parte matters, consideration should be given to submitting the documents outside the electronic filing system.
7. The electronic filing system shall not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court.
8. If a document is intended or ordered to be lodged in a case, it shall be traditionally submitted to the clerk of court, since electronic filing is limited to those documents which are officially filed with the case.

**(b) ELECTRONIC NOTICE OF SERVICE:**

1. When a document may be served by mail, express mail, overnight delivery, or fax transmission, electronic notification of service of the document is permitted when authorized by these rules.
2. A party agrees to accept electronic notification of service by:
  - a. Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice shall include the electronic service address at which the party agrees to accept service; or
  - b. Electronically filing any document with the court using the electronic filing system. The act of electronic filing is evidence that the party agrees to accept notification of service at the electronic service address the party specified when registering as a user of the electronic filing system.
3. A court that permits electronic filing in a case shall maintain and make available electronically to the parties an electronic service list that contains the parties'

current electronic service addresses, as provided by the parties that have filed electronically in the case.

4. Parties are responsible for service on all other parties in the case. A party may serve documents electronically by electronic mail, by an agent, or through the electronic filing system.
5. A registered user whose electronic service address changes while the action or proceeding is pending shall update his/her electronic service address in the electronic filing system.
6. An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed notice that the address is no longer valid.
7. Electronic service of a document is complete at the time the electronic notification of the filing of the document is sent, together with a hyperlink to the submitted document.

**(c) PROOF OF SERVICE:**

1. The Certificate of electronic service shall state:
  - (a) The electronic signature of the person making service, including a filed-on-behalf-of statement if the person making the service is filing on behalf of the attorney of record;
  - (b) The date of service;
  - (c) The name and address of the person served unless the address is legally protected; and
  - (d) The manner by which the document was served.
2. Proof of electronic service may be in electronic form and may be filed electronically with the court.
3. The court may electronically serve any notice, order, judgment, or other document issued by the court in the same manner that parties may serve documents by electronic service.

**(7) PAYMENT OF FEES:**

- (a) Users shall make payment of filing fees due to the clerk of court through the electronic filing system unless otherwise ordered by the court or other arrangements are made

with the clerk of court. The electronic filing system shall establish one or more methods for electronic payment.

- (b) Users may submit a request for waiver of fees, using a form provided by the electronic filing system for that purpose.

**(8) FORMAT AND CONTENT OF DOCUMENTS:**

- (a) To the extent practicable, the user shall format all electronically filed documents in accordance with statutes and local rules governing formatting of paper documents, including type size, word and page limits.
- (b) Users shall provide information required to file the document in the court case management system.
- (c) The electronic filing system administrator shall publish a Technical Operations Guide describing the specific technical requirements regarding the format and content of documents filed in the electronic filing system.

**(9) OFFICIAL RECORD:**

- (a) Electronically filed documents have the same force and effect as documents filed by traditional methods.
- (b) For documents that have been electronically filed, the electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court, except as provided in (12) below or unless the court specifically requires a copy through court policy.
- (c) The clerk of court may maintain the official court record in electronic format or in a combination of electronic and non-electronic formats. Documents filed by traditional methods in an electronic case file shall be electronically scanned and made part of the official record. The clerk of court may discard the paper copy immediately, unless statutorily required to maintain the paper copy. If a document submitted by traditional methods is not of sufficient quality to be legible when electronically scanned into the electronic document management system, the clerk shall maintain the document in paper format.
- (d) Any official court record containing electronically filed documents shall meet the operational standards for electronic records.

- (e) The clerk of court shall make the public portions of the electronic record available through the clerk's office.
- (f) Certified or conformed copies of an electronic record shall be obtainable from the clerk of court's office by traditional methods.
- (g) In an electronic case file, the court may require the submitting party to produce the original paper document if validity of the signature or document is challenged.
- (h) Electronic placement of the clerk's filing stamp and case number constitutes the official court record. A conformed copy may be printed from the court case management system by the clerk of court or from the electronic filing system by a user who is authorized to access the case.

**(10) SIGNING PLEADINGS, MOTIONS AND OTHER PAPERS:**

**(a) SIGNATURES ON ELECTRONIC FILINGS:**

- 1) A registered user's log-in and password serve as the user's signature on all documents electronically filed with the Court.
- 2) Except as provided by (10) (b), where a hand signature would otherwise appear, each document filed electronically by a registered user may be signed in the format "/s/ Chris E. Attorney."
- 3) A registered user shall not knowingly permit or cause the user's password to be used by anyone else. If a registered user has reason to suspect that the security of the user's log-in and password has been compromised, the E-Filing System Administrator must be contacted immediately.
- 4) Only a judge, registered user, clerk of court, court reporter, or deputy clerk of court may use the "/s/" signature form, and, except as provided by (10) (b) (1) (a) only when signing the document as the filer.

**(b) JOINTLY FILED DOCUMENTS; MULTIPLE SIGNATURES:**

- 1. Documents requiring signatures of more than one party may be filed in one of the following ways:
  - (a) Where all signers are registered users and where all consent to the filing, by using the "/s/" electronic signature as to all parties;
  - (b) Where all signers use hand signatures, by scanning the document and filing it electronically without the "/s/" signature by any party;

- (c) By scanning one or more identical documents with hand signatures and attaching each document as an exhibit to a document bearing the registered user's "/s/" electronic signature; or
  - (d) By using any other method prescribed by the Court.
2. In no event may one signature page be signed in the "/s/" electronic form by one party and by hand signature by another party.

**(11) CONFIDENTIAL INFORMATION:**

- (a) The confidentiality of an electronic record, or an electronic or paper copy thereof, is the same as for the equivalent paper record. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record, or an electronic or paper copy thereof, may release the information to any other person except as provided by law.
- (b) If a document is deemed confidential by statute, local rules or court order, it shall be identified as confidential by the submitting party when it is filed. The electronic filing system may require users to enter certain information, such as social security numbers, in confidential fields. The clerk of court is not required to review documents to determine if confidential information is contained within them.

**(12) ELECTRONICALLY FILING DOCUMENTS IN A CASE ON APPEAL:**

- (a) **IN THE SUPREME COURT, INCLUDING EXTRAORDINARY WRITS, SUPERVISORY CONTROL AND ORIGINAL PROCEEDINGS:**
  - 1. The clerk of the originating court may electronically file the originating court record or provide a hyperlink to the court record with a certification that the electronic court record is accurate and complete.
  - 2. Court reporters may electronically file transcripts.
  - 3. When filing Motions, Petitions for Original Proceedings, and Petitions for Extraordinary Writs, electronically file the original only. The Clerk of the Supreme Court may direct a party to submit additional paper copies of the motion, petition, response, or any appendices or exhibits, when paper copies would aid the Court's review of the matter.

4. When filing briefs, electronically file the original. For the electronically filed brief, the color requirements for the cover under Rule 11(6)(a) M.R.App.P. shall not apply. Once the electronically filed brief is checked for deficiencies and approved, the clerk will notify the e-filer to submit seven paper copies of the electronically filed brief, including copies of the orders and judgments from which the appeal is taken. Upon notification, paper copies must be submitted promptly or within such specific time as directed by the Court. For the paper copies, the color requirements for the cover under Rule 11(6)(a) M.R.App.P. shall apply.
5. When filing an Appendix, electronically file the original. Submit one paper copy when the brief is approved.

**(b) IN A DISTRICT COURT:**

1. Except for electronic recordings, the record on appeal may be filed electronically and may be filed by providing a hyperlink to the court record with a certification that the electronic court record is accurate and complete. If no written transcript exists for the court's proceedings that have been recorded electronically, the electronic recording shall be filed by traditional methods. Any bonds, undertakings on appeal and statutory filing fees to be transferred shall be done by traditional methods.
2. After the case is transferred all further filings shall be filed into the record on appeal in the District Court and may be electronically filed unless otherwise directed by local rule.

**(13) ELECTRONIC FILING SYSTEM TECHNICAL FAILURES:**

- (a) A user whose filing is made untimely as a result of a technical failure may seek appropriate relief from the court as follows:
  1. If the failure was caused by the court's electronic filing system, the court shall grant appropriate relief upon satisfactory proof of the cause.
  2. If the failure was not caused by the court's electronic filing system, the court may grant appropriate relief upon satisfactory proof of the cause. Parties are responsible for timely filing of electronic documents to the same extent as with the filing of paper documents, with the same consequences for missed deadlines. The calculation of time under other statutes and rules is neither expanded nor contracted by this section.
- (b) This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.

## History and Evolution of Electronic Filing Temporary Rules

The draft rules as submitted to the Supreme Court Commission on Technology represent many hours of consideration, discussion, recommendations and revisions made by individuals of diverse perspectives who work in our state courts.

The rules were originally drafted by former judicial branch IT Director Karen Nelson, based on existing e-filing rules adopted by courts around the country and then tailored to Montana's statewide e-filing initiative. The rules went through the first important revision as a result of the major case meeting related to Appellate cases. Of significance was the adoption of the Federal Ninth Circuit Court of Appeals rules related to signatures on electronically filed documents and the addition of rules related to electronic filing of cases on appeal. The resulting version of rules was presented to each of the other major case groups for their examination and review. Finally, all of the recommendations were vetted by the E-Filing Pilot Committee whose members approved the rules as listed above (7.8.2014 version).

The E-Filing Pilot Committee was appointed by Ed Smith, Clerk of the Supreme Court, in his capacity as chair of the E-Filing and Remote Access Task Force. The sub-committee was originally assembled in 2012 to assist in selecting an e-filing vendor and now operates in an advisory capacity to the OCA as the design and implementation of Montana's statewide e-filing initiative advances.

The E-Filing Pilot Committee members are:

- Lisa Mader, Co-Chair, IT Director, OCA
- Rex Renk, Co-Chair, Deputy Clerk, Montana Supreme Court
- Hon. Larry Carver, Justice of the Peace, Judith Basin County
- Shirley Faust, Clerk of District Court, Missoula County
- Kay Johnson, Clerk of District Court, Blaine County
- Sharon Skaggs, Supervisor, Yellowstone County Justice Court of Record
- P. Mars Scott, Scott Law Offices, Missoula

The following table summarizes the recommendations and discussions surrounding specific rules as well as language changes that were undertaken by OCA staff. Abbreviations used in the table are:

- DJ – Juvenile
- DN – Abuse and Neglect
- DI/DD – Involuntary Commitment and Developmental Disability
- OCA – Office of the Court Administrator
- Advisory Committee – E-Filing Pilot Committee

Rule	Title/Section/Topic	Group Requesting	Description of Change
1(c)	Definition: Electronic Filing System – related to service	DN, others	...for the purpose of filing documents with or by a court, integrating them into the court’s case management system, and electronically serving <u>notice to them</u> <del>on</del> the parties who have registered with the electronic filing system.
Discussion: We are not serving the document directly by sending it attached to an email, but instead sending an email that provides notification that a document has been filed and including in the email a hyperlink to the document in the E-Filing system. See also 6(b) sections.			
1(d)	Definition: electronic filing system admin	Advisory Committee	necessary to <del>run</del> <u>administer</u> the electronic filing system
1(f)	Definition: electronic digital signature	Appellate	<i>The term “digital signature” is no longer used and this definition is addressed in new Rule 11 (may become Rule 10) regarding signatures.</i>
1(g)→1(f)	Definition: initiating document	OCA	"Initiating document" means a summons and complaint, <u>information</u> , petition...
1(k)→1(j)	Definition added: lodged	DJ	<u>“Lodged” means adding a document to a court file without officially filing it.</u>
Discussion: examples of “lodged” documents provided by Peg Allison (DJ group): 1) documents submitted for filing that require payment of a fee for which no fee was submitted, but a ruling is pending on a request for waiver of a fee; 2) documents submitted that cannot yet be filed due to a pending motion for leave to file such as for amended complaints or petitions to intervene; 3) correspondence or documentation submitted by non-parties in a case for which the court has directed the clerk to ‘lay’ in the file; and 4) returned undeliverable mail.			
2(b)	Scope	Appellate  Advisory Committee - also see note at 9(C)	Parties or their attorneys may choose to participate in the electronic filing system unless the court has designated a certain case type for mandatory <u>electronic</u> filing.  ...system <u>shall</u> <del>must</del> make... ...application <u>shall</u> <del>must</del> be...
2(d)	Scope	OCA	The procedures in <u>these rules</u> <del>this section</del> shall be interpreted in a manner consistent with existing court rules.

Rule	Title/Section/Topic	Group Requesting	Description of Change
2(e)	Scope exception	Advisory Committee	<del>Exceptions for authorized governmental agencies.</del> An exception will be permitted for <del>certain</del> governmental agencies <del>will be allowed</del> to file documents...
3(a)3	Who may register	DN	<u>Self-represented</u> parties to an action.
3(a)5	Who may register: addition	DN	<u>Other individuals as appointed or ordered by the court.</u>
Discussion: court-appointed individuals such as friends or CASA volunteers may register with the system in order to access, file and be served with documents in cases to which they have been appointed or ordered.			
3 (b)	Registration of individuals solely for the purpose of electronic notification	Appellate, Criminal, DN, DJ, DI/DD Advisory Committee	<u>However, the electronic filing system may provide a method for law firms, organizations, corporations, agencies or other groups to register with the system for the sole purpose of receiving electronic service notification.</u>
Discussion: A common theme during the Major Case Group meetings was the desire for various organizations to be able to access the E-Filing system to read case files and to be notified when documents are filed by others. In order to keep confidential documents secure within the E-Filing system, a basic premise is that case documents are accessed through the E-Filing system only by those who are legitimate parties on the case. An organization may be represented by an attorney or other individual, but it is an individual who files. Therefore, access to case files is restricted to the individual who is a legitimate party on the case. However, in order to keep certain organizations notified, the possibility of registering an organization for the sole purpose of receiving notification is envisioned. An example is a CASA program that would receive notice on all cases in which CASA volunteers have been appointed. Details of this have not been worked out and will not be put in place during Phase 1 of the pilot, but establishing the Rule allows us to explore these options in the future.			
3(c)	Agreement to electronic notice	DJ, DN, OCA, Advisory Committee  Advisory Committee - also see note at 9(C)	By registering, users agree to electronically file all documents in <del>a the</del> case to the extent the electronic filing system can accept them and agree to <u>electronic notification of the filing of a document</u> service on any case electronically filed <u>via the electronic filing system of which the user he or she is a party counsel of record or a party not represented by counsel.</u>  ...users <del>shall</del> <u>must</u> have...
Discussion: The wording "counsel of record" was suggested to be used in place of "party" to be inclusive of all those who have the right to file on a case. Pro se litigants are the counsel of record in their cases.			

Subsequent suggestions of rewording for clarity were made by the Advisory Committee.

*Also note for future: Rules of Civil Procedure may need to be changed if these Temporary Rules are to become permanent.*

Rule	Title/Section/Topic	Group Requesting	Description of Change
3(d)	Use of Secure Identifier	OCA language cleanup	...access the electronic filing system <u>using</u> <del>be provided with</del> a confidential...  ...on the <u>user's</u> <del>his or her</del> behalf.  ...the user shall immediately <del>report that fact through</del> <u>notify</u> the electronic filing system <u>administrator</u> .
3(e)	Registration Information	Advisory Committee language cleanup	Users <u>are responsible for keeping the</u> <del>shall immediately update</del> registration information <u>profile current, accurate and complete</u> in the electronic filing system. <del>of any changes in the information provided during initial registration.</del>
3(f)	Use of Secure Identifier	OCA language cleanup	The electronic filing system <u>administrator</u> may reset secure identifiers <del>and electronic signatures</del> as needed for administrative and security purposes.
4(a)	Time and Effect of Electronic Filing	DN see discussion at 1(c)	...purposes of electronic filing, receipt, <u>notification of filings</u> <del>service</del> , and retrieval of electronic documents.
4(c)	Time and Effect of Electronic Filing	DN  Advisory Committee (combined with former rule 4(e))	<i>Specification of "Mountain Time:"</i> ...shall be accepted on a 24 hour basis, from 12:00 a.m. to 11:59 p.m. <u>Mountain Time</u> .  <u>The calculation of time for to respond</u> <del>reply</del> <u>response</u> under other statutes and rules is neither expanded nor contracted by this section.
4(d)	Time and Effect of Electronic Filing	OCA  OCA	...on the date the original submission to the electronic filing system was complete, <u>as specified in section 4(c) above</u> .  ... Upon acceptance, the electronic filing system shall issue a confirmation with the <u>file-stamped</u> date. <del>and time of the original submission to serve</del>

		DN	<p><del>as proof of filing.</del></p> <p><u>The filer may be required to notify service and notice recipients of any potential impact to response deadlines due to the rejected filing.</u></p>
		Advisory Committee	<p><del>The filer may be required to refile the document.</del></p> <p><u>The filer may be required to notify service and notice recipients of any potential impact to response deadlines due to the rejected filing.</u></p>

Discussion: The EFS will return the time and date of the original submission to serve as proof of filing at the time of submission as stated in Rule 4(b). When the filing is accepted, it will return the file-stamped date of acceptance as part of the email notice of acceptance.

Discussion of filer requirements to notify: Electronic notification of service is made at the time the filing is originally submitted. If the filing is subsequently rejected, originally calculated time constraints may change and the point was made that it is at least a professional courtesy to notify those who were served that the filing has been rejected. A counter point was offered indicating that the reason for rejection may have been something that would be immediately fixed and therefore not have any effect on subsequent deadlines. Even though there is the potential that e-notified recipients could be notified of the rejection through the EFS, there may be service recipients who are not registered e-filers and such a rule would require the E-Filer to notify those individuals as well. There is currently no rule requiring an attorney to notify service recipients of changes to an original, rejected filing in the paper world. The sentence was added as a placeholder for further possible action, and subsequently rejected by the Advisory Committee.

Rule	Title/Section/Topic	Group Requesting	Description of Change
4(e)	Calculation of time for response	DN	<p>The calculation of time for <u>response</u> <del>reply</del> under other statutes...</p> <p><i>Note that this previous rule was reworded and incorporated into rule 4(c).</i></p>
5(a)	Commencement of Action	Criminal	<p>...the clerk of court shall assign a case number and <u>electronically place the clerk's filing stamp and case number on each document.</u></p> <p><del>authenticate the document as provided in section (10).</del></p>
5(b)	Initiating documents	DN, Criminal  Appellate, DJ	<p>...consented to accept electronic <u>notice service</u> or service by some other method <u>as allowed by statute or court rule.</u></p> <p><del>Initiating documents shall be served together with a notice to the responding party stating that the case has been electronically filed and giving instructions for how to use the electronic filing</del></p>

			system if the responding party chooses to do so.
<p>Discussion: The Appellate group proposed to strike the last sentence of this rule as being too burdensome for electronic filers, while the DJ group found value in having this information as part of the summons or part of individual court policy. The suggestion is that by local rule a summons could contain wording indicating that the case has been electronically filed and is available through the electronic filing system.</p>			
Rule	Title/Section/Topic	Group Requesting	Description of Change
6(a)2	Documents that may be filed electronically	Appellate  DN  DJ	...document, <u>e.g., a ballot or will that was created in a paper form,</u> ...  ...document <u>provided that</u> #..  <u>The original document must be maintained in its original format by the clerk of court.</u>
6(a)3	Electronic filing of fee waivers	DN	<i>Addition of partial fee waivers:</i> ...for <u>wavier or partial wavier</u> of court fees...
6(a)6(b)	Effect of electronically filed document	Appellate	<del>Filing a document electronically does not alter any filing or service deadline.</del> <u>The calculation of time under other statutes and rules is neither expanded nor contracted by this section.</u>
6(a)6(c)	Effect of electronically filed document	Advisory Committee, as further clarification to (new) section 11 re Confidential Information	<u>Once accepted by the clerk, electronically filed documents are immediately viewable by all parties on the case. If a user intends to file ex parte matters, consideration should be given to submitting the documents outside the electronic filing system.</u>
6(a)8	Lodged document	DI/DD, Appellate	If a document is <del>intended</del> <u>desired</u> or ordered to be <u>lodged</u> " <del>lodged</del> " in a case, it <del>must</del> <u>shall</u> be <del>manually</del> <u>traditionally</u> submitted...
6(b)	Section Title	OCA	<b>ELECTRONIC NOTICE OF SERVICE:</b>
6(b)1	Electronic notice	OCA	...electronic <u>notification of service</u> ...
6(b)2	Electronic notice	OCA	...accept electronic <u>notification of service</u> by...
6(b)2(b)	Electronic notice	OCA	...party agrees to accept <u>notification of service</u> ...
6(b)4(a)	Service by the parties	OCA	<del>Notwithstanding (3),</del> <u>Parties are responsible for electronic service on all other parties in the case.</u>

Rule	Title/Section/Topic	Group Requesting	Description of Change
			A party may serve documents electronically <u>by electronic mail directly</u> , by an agent, or <u>by notice</u> through the electronic filing system.
6(b)4(b)	Service by the parties	DJ, OCA, Advisory Committee	<del>A document may not be electronically served on a nonparty unless the non party consents to electronic service or electronic service is otherwise provided for by law or by court order.</del>
6(b)5(a)	Change of electronic service address	Appellate, DJ, OCA, Advisory Committee	<del>Change of electronic service address: A party registered user whose electronic service address changes while the action or proceeding is pending must promptly shall update his/her electronic service address in the electronic filing system. , or if not registered in the electronic filing system, promptly file a notice of change of electronic address electronically with the court.</del> (b) A party's election to use the electronic filing system to electronically file and serve documents or to receive electronic service of documents on the party's behalf does not relieve the party of its duties under (a)
6(b)7	Time of electronic service	DN, Appellate	Electronic service of a document is complete at the time of the <del>electronic transmission of the document, or at the time the electronic notification of the filing service</del> of the document is sent, <u>together with a hyperlink to the filed submitted document.</u> , <del>however, service that occurs after the close of business is deemed to have occurred on the next business day.</del>
6(c)1(a)	Proof of service	OCA  Appellate  DJ  Appellate	<del>The Certificate Proof</del> of electronic service shall <del>must</del> state...  The electronic <del>service address</del> <u>signature...</u>  ...person making <del>the</del> service,  ... <del>in addition to that person's residence or business address; including a filed-on-behalf-of statement, if the person making the service is filing on behalf of the attorney of record;</del>

Rule	Title/Section/Topic	Group Requesting	Description of Change
6(c)1(b)	Proof of service	Appellate	The date <del>and time of the</del> electronic service;
6(c)1(c)	Proof of service	Appellate Criminal, DI/DD	The name and <del>electronic service</del> address of the person served <u>unless the address is protected</u> ;
6(c)1(d)	Proof of service	DJ Appellate	<del>That</del> <del>the</del> <u>manner by which the</u> document was served. <del>electronically.</del>
6(c)3	Proof of service	Appellate	<i>This rule is stricken; EFS generates a certificate of service.</i>
7(a)	Payment of fees	Appellate, DJ – see discussion	Users shall make <del>any</del> payment of <u>filing fees</u> ...  ...ordered by the court or <del>unless</del> other <u>special</u> arrangements...  <del>Documents that require payment of a fee are not considered filed until the fee is paid or a waiver of the fee is granted.</del>
<p>Discussion: The Appellate group proposes to strike this sentence; current rules allow filings with subsequent payment. The DJ group believes it is appropriate to district courts in that lack of payment may be a reason for rejection of the filing.</p> <p><i>There were comments from various groups about providing other methods of payment besides paying by card online. In part, the rule states: The electronic filing system shall establish one or more methods for electronic payment.</i></p>			
7(c)	Payment of fees	Advisory Committee	<del>The electronic filing system shall deposit the fees due to the clerk of court in the clerk's account.</del>
8(a)	Format and content of documents	DN, Appellate	...paper documents, including <u>type size, word and page</u> limits.
8(b)	Format and content of documents	DN	Users shall provide <u>the information needed to file the document in the any court</u> case management system. <del>information needed to transmit and file the document. The electronic filing system shall reject the document for failure to include information in any one of the mandatory fields identified by the system.</del>
8(d)	Original document	Appellate, DN	Users shall maintain <del>the</del> in its original <u>document</u> <del>in its native format</del> of each electronically filed document <del>in electronic form</del> until final disposition of the case and expiration of all time for appeal.

		Advisory Committee	<del>Users shall maintain its original format each electronically filed document until final disposition of the case and expiration of all time for appeal.</del>
Discussion: The Appellate group proposed the word “native,” which was objected to in the DN group session. The rewording reflects changes that were proposed by both groups. Subsequent review by the Advisory Committee resulted in striking of the rule, as over-broad.			
Rule	Title/Section/Topic	Group Requesting	Description of Change
9(b)	Official record	Appellate	No paper copy of an electronically filed document shall be sent to the court, <u>except as provided in (12) (13) below</u> or unless the court specifically requires a <del>courtesy</del> copy through court policy.
9(c)	Official record: shall vs. must	Appellate, DN	...in an electronic case file <del>may</del> <u>must shall</u> be electronically scanned...
Discussion: Replacing “may” with “must” or “shall” requires the clerk of court to convert any traditional filings to electronic form in a case where at least one party is electronic filing.			
<i>Note: As requested during the DN group meeting, for the sake of consistency, “must” was changed to “shall” throughout the document, after asking the E-Filing Advisory Committee about which word is preferred.</i>			
9(c)		DJ	...is not of sufficient <del>graphical</del> quality to be legible...
9(c)	Clerk’s responsibility regarding original document after scanning	Criminal, DJ, others	<i>This was discussed at length. Instead of the clerk destroying the original, a suggestion is that the clerk should hand the document back to the filer. This would also conform with rule 9(g).</i>
9(d)	Official record: shall vs. must	DN	...documents <u>shall</u> <del>must</del> meet...
9(f)	Copies of electronic record	Criminal	Certified <u>or conformed</u> copies...
9(g)	Official Record	Advisory Committee	<del>If a document is filed by traditional methods</del> In an electronic case file...
9(h)	Replaces previous Rule 10 regarding Authentication	Criminal	<i>Added as part of Rule 9, with improved language: <u>Electronic placement of the clerk’s filing stamp and case number constitutes the official court record. A conformed copy may be printed from the court case management system by the clerk</u></i>

			<u>of court or from the electronic filing system by a user who is authorized to access the case.</u>
Rule	Title/Section/Topic	Group Requesting	Description of Change
<del>10</del> (old section 10)	Authentication	Criminal	<i>Stricken in its entirety. Replaced with 9(h)</i>
<del>11</del> (old section 11)	Signatures on E-Filed Documents	Appellate	<i>Stricken in its entirety. Replaced with new section 10: Signing Pleadings, Motions and Other Papers.</i>
<del>(11)</del> 10 (new section 10)	Signing Pleadings, Motions and other Papers	Appellate	Entire section added, taken from Ninth Circuit Court of Appeals.
<del>(11)</del> 10(a)(4)	Use of “/s/” signature form	OCA	<del>All other signatures, including those on any affidavit, must be hand signatures.</del>
Discussion: OCA sees this sentence as problematic for statewide Montana e-filing, e.g., when filing Motion for Leave to File Information with supporting Affidavit. The desire is to keep the entire process electronic, and this sentence would preclude that.			
<del>(12)</del> 11(b) – new section 11	Confidential Information	DJ, others	If a document is <u>deemed confidential by statute, local rules or court order...</u>
Discussion: Language was added in Rule 6(a)6(c) to alert the filer that once accepted by the clerk, electronically filed documents are immediately viewable by all parties on the case. Also see the Summary of Major Case Elements in the Combined Major Case Review for further discussion of confidential information.			
<del>(12)</del> 11(c) – new section 11	Temporary seal	OCA, Advisory Committee	<del>If a user seeks court approval to make a document confidential, the user may electronically file the document under temporary seal pending court approval of the user’s motion to seal.</del>
Discussion: This rule was stricken in its entirety, since the electronic filing system cannot be used to lodge a document. Reference Rules 1(g) and 6(a)(8).			
<del>(12)</del> 11(d)	Confidential Information	OCA, Advisory Committee	<del>The <u>case management electronic filing system</u> shall place a visible mark on documents identified as confidential.</del>
Discussion: This rule was stricken in its entirety. The currently designed electronic filing system will identify confidential documents when displaying case information to a logged in user. Placing a mark on the official documents is beyond the scope of the electronic filing system.			
<del>(13)</del> 12 (new)	Electronically filing documents in a case	Appellate, Advisory	<i>New rule added to address judicial access to electronic court records on appeal in both the</i>

section 12)	on appeal	Committee	<i>Supreme Court and district courts.</i>
<b>Rule</b>	<b>Title/Section/Topic</b>	<b>Group Requesting</b>	<b>Description of Change</b>
13(a)1	Technical Failure	DI/DD	<i>Suggestion to change “shall” to “may”</i>
<p>Discussion: The DI/DD group recommended that the phrase in section 1 be changed as follows: “...the court <del>may</del> <u>shall</u> grant appropriate relief...” After reflection the OCA recommends not changing this rule. 13(a)1 addresses a situation in which the technical failure was caused by the electronic filing system itself, and therefore the court is being compelled to provide relief since there is no fault attributed to the filer. 13(a)2 then addresses the situation in which the technical failure was not caused by the electronic filing system and in which the court has discretion to provide relief or not.</p>			
13(a)2	Technical Failure	DJ Appellate	...to the same extent as <u>with the</u> filing... ...with <del>similar</del> <u>the same</u> consequences

## Appendix

### Montana Judicial Branch District Court Uniform Caseload Filing Standards Effective November 1, 2011

#### I - CRIMINAL (DC)

A criminal case file shall be OPENED upon the filing of an initial criminal pleading. A separate case file shall be OPENED and case number assigned for each named defendant, inclusive of all criminal charges relating to the same event or events. Multiple charges involving the same criminal defendant and relating to the same incident or event shall be filed as separate counts under the same case number. If a summons or arrest warrant is issued in the case or a petition to revoke is filed, the cases shall be OPENED but placed in a PENDING status until arraignment or appearance of the defendant. The case shall be set to ACTIVE upon the arraignment or appearance of the defendant.

A case is SUSPENDED:

- Upon issuance of an arrest or bench warrant if the defendant has been arraigned previously on the charges.
- Upon issuance of a writ staying the proceedings.
- Upon temporary transfer of the case to another court of jurisdiction.

A case is REOPENED:

- Upon the appearance of the defendant in court following the service of an arrest, bench warrant or summons in the instant matter if previously arraigned on the charges.<sup>3</sup>
- If following an agreement for deferred prosecution and prior to the issuance of final judgment in a case, a motion filed by any party or the arrest of the defendant in the instant matter.
- Upon the appearance of the defendant in the court following the filing of a petition to revoke and/or any post-judgment pleading.<sup>4</sup>
- Upon remand to the District Court.

A case is CLOSED or RECLOSED:

- Upon judgment or order of dismissal or denial of original criminal pleadings.
- Upon sentencing, judgment or order.
- Upon the filing of a court-approved agreement to defer prosecution of all charges.
- Upon post-judgment and sentencing court order.

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<sup>3</sup> If the defendant has not been arraigned the case should be set to an ACTIVE status rather than REOPENED.

<sup>4</sup> If the defendant has not appeared on the revocation, the case should be REOPENED and set to PENDING.

- Upon the date a case is permanently moved to another court of jurisdiction.

INACTIVE: If no action has been taken on a case for a period of 2 or more years the case will be presented to the Judge for a determination of case status. The case may be placed in an INACTIVE status if no other action is deemed appropriate by the Judge.

Effect of NOTICE OF APPEAL:

Upon the transmission by the Clerk of Court of the record for appeal, the case file shall be CLOSED (if not already CLOSED) and placed in an ON APPEAL status. Receipt of the Supreme Court Remittitur or Order shall REOPEN the case and closure shall be determined by entry of a subsequent final order.

### **V- JUVENILE (DJ)**

A case is OPENED upon the filing of an initiating document, a detention hearing order or upon the receipt of a transfer order from a court of limited jurisdiction. A separate case file shall be established and a case number assigned to the youth. The case shall be set to ACTIVE when the juvenile or juvenile's counsel appear in Youth Court. A consent adjustment pursuant to 41-5-1302, MCA is an informal proceeding and does not open a case in Youth Court. A revocation of probation shall REOPEN the same file number.

A case is SUSPENDED:

- Upon the issuance of a writ of supervisory control or some other action occurs that temporarily moves the case to another court of jurisdiction.

A case is REOPENED:

- Upon the filing of a petition for revocation or a post-judgment pleading relating to the same matter.
- Upon remand to the District Court.

A case is CLOSED OR RECLOSED:

- Upon the filing of a consent decree.
- Upon a final order.
- Upon a period of inactivity of 30 days following a detention order/hearing.

Detention Hearings that do not result in a petition for a Delinquent Youth or Youth in Need of Intervention are Informal Youth Court records and are to be closed and sealed upon a period of inactivity of 30 days following the detention order/hearing.

Adjudications as a Delinquent Youth and Youth in Need of Intervention are formal Youth Court records and the case file will be sealed on the youth's 18th birthday. In those cases when jurisdiction of the court is extended beyond the youth's 18th birthday or the youth did not fulfill all requirements of the court's judgment or disposition, the records must be sealed upon termination of the extended jurisdiction or compliance with the court order.

INACTIVE: If no action has been taken on a case for a period of 3 or more years the case will be presented to the Judge for a determination of case status. The case may be placed in an INACTIVE status if no other action is deemed appropriate by the Judge.

Effect of NOTICE OF APPEAL:

Upon the transmission by the Clerk of Court of the record for appeal, the case file shall be CLOSED (if not already CLOSED) and placed in an ON APPEAL status. Receipt of the Supreme Court Remittitur or Order shall REOPEN the case and closure shall be determined by entry of a subsequent final order.

### **VI – Child Abuse and Neglect (DN)**

A case is OPENED upon the filing of a petition or complaint. A separate case file shall be OPENED and case number assigned for each child.<sup>5</sup> The case files for each child, if filed simultaneously, shall be presided over before the same District Court judge but shall not be consolidated under the same case number.

A case is SUSPENDED:

- Upon issuance of a writ of supervisory control or when the case is temporarily moved to another court of jurisdiction.

A case is REOPENED:

- Upon the filing of a new petition.
- Upon the filing of a petition for review of permanency plan.
- Upon remand to the District Court.

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<sup>5</sup> Many children have different putative fathers and the information included in the same files is protected from dissemination to some of the parties in the same case. The purpose behind this rule is to protect the confidential information related to one child from an individual who may be related to a stepbrother or a stepsister, but not related to the child in question.

A case is CLOSED or RECLOSED:

- Upon dismissal of the petition.
- Upon entry of an adoption decree or court order appointing a surrogate parent.
- Upon a court order following a permanency hearing. If further reports to the court are required the case shall be closed and placed in a SET FOR REVIEW status.
- Upon permanent removal of the case to another jurisdiction.

A case is SET FOR REVIEW:

- Upon a court order following a permanency hearing when further reports to the court are required.

INACTIVE: If no action has been taken on a case for a period of 3 or more years the case will be presented to the Judge for a determination of case status. The case may be placed in an INACTIVE status if no other action is deemed appropriate by the Judge.

Effect of NOTICE OF APPEAL:

Upon the transmission by the Clerk of Court of the record for appeal, the case file shall be CLOSED (if not already CLOSED) and placed in an ON APPEAL status. Receipt of the Supreme Court Remittitur or Order shall REOPEN the case and closure shall be determined by entry of a subsequent final order.

**X - COMMITMENT OF A PERSON WITH  
DEVELOPMENTAL DISABILITY (DD)**

There will be one filing for each protected person with a case file OPENED and case number assigned upon the filing of a petition for commitment. On the issuance of an order of commitment, the case shall be CLOSED. A new filing shall REOPEN the same file number. This file number shall stay with the protected person. It is necessary that the judge be familiar with the history of the person. Any new petitions shall be filed as a consecutively numbered petition within the original case file and case number. Each new petition shall be considered as a new filing for reporting purposes. If a petition for recommitment is filed in a different county than the original petition for commitment, a case file shall be OPENED and a new case number assigned in the county of the recommitment.

A case is SUSPENDED:

- Upon issuance of a writ staying the proceedings or temporary removal of the case to another court or jurisdiction.

A case is REOPENED:

- Upon the filing of a petition for recommitment.
- Upon the filing of a new petition for commitment.
- Upon court review or petition for further order of the court.
- Upon remand to the District Court.

A case is CLOSED or RECLOSED:

- Upon issuance of an order of commitment or recommitment.
- Upon an order of dismissal.
- Upon permanent removal to another jurisdiction.

INACTIVE: If no action has been taken on a case for a period of 3 or more years the case will be presented to the Judge for a determination of case status. The case may be placed in an INACTIVE status if no other action is deemed appropriate by the Judge.

Effect of NOTICE OF APPEAL:

Upon the transmission by the Clerk of Court of the record for appeal, the case file shall be CLOSED (if not already CLOSED) and placed in an ON APPEAL status. Receipt of the Supreme Court Remittitur or Order shall REOPEN the case and closure shall be determined by entry of a subsequent final order.

#### **XI - COMMITMENT OF A PERSON WITH MENTAL ILLNESS (DI)**

There will be one filing for each protected person with a case file OPENED and case number assigned upon the filing of a petition for commitment. On the issuance of an order of commitment, the case shall be CLOSED. A new filing shall REOPEN the same file number. This file number shall stay with the protected person. It is necessary for the presiding judge to be familiar with the history of the person. Any new petitions shall be filed as a consecutively numbered petition within the original case file and case number. Each new petition shall be considered a new filing for reporting purposes. If a petition for recommitment is filed in a different county than the original petition for commitment, a case file shall be OPENED and a new case number assigned in the county of the recommitment.

A case is SUSPENDED:

- Upon issuance of a writ staying the proceedings or temporary removal of the case to another court or jurisdiction.

A case is REOPENED:

- Upon the filing of a petition for recommitment.
- Upon the filing of a new petition for commitment.
- Upon a petition for revocation of conditional release.
- Upon court review or petition for further order of the court.
- Upon remand to the District Court.

A case is CLOSED or RECLOSED:

- Upon the entry of judgment.
- Upon an order of commitment or recommitment.
- Upon an order of dismissal.
- Upon permanent removal of the case to another jurisdiction.

**INACTIVE:** If no action has been taken on a case for a period of 3 or more years the case will be presented to the Judge for a determination of case status. The case may be placed in an INACTIVE status if no other action is deemed appropriate by the Judge.

Effect of NOTICE OF APPEAL:

Upon the transmission by the Clerk of Court of the record for appeal, the case file shall be CLOSED (if not already CLOSED) and placed in an ON APPEAL status. Receipt of the Supreme Court Remittitur or Order shall REOPEN the case and closure shall be determined by entry of a subsequent final order.

*Please note that terms such as “order,” “judgment,” “petition,” et al are used generically in many places throughout the document.*