

# E-Filing Automation Committee

Second meeting on May 28<sup>th</sup>, 2020, 11:00 AM – Held via Zoom

**Attendees:** Justice Jim Shea, Lee Bruner, Judge Dan Wilson, Judge Shane Vannatta, Shirley Faust, Peg Allison, Phyllis Smith, Any McGhee, Nick Aemisegger, Matt Jennings, Amy Tolzien, Craig McKillop, Karen Kane, P. Mars Scott, Beth McLaughlin, Lisa Mader, Ryan Davies, Judy Tice, Lois Schlyer

**Not attending:** Judge Audrey Barger (family emergency prevented her attendance)

**Old Business:** Approval of Meeting Notes from the October 17, 2019 meeting. Approved unanimously.

**Overview of Current System and Schedules** – slide show presentation by Lois Schlyer, reporting on activities that have been completed since the previous meeting.

## Infrastructure and Systems

- Upgrade to a three-server cluster in both DEV and PROD, providing stability in program operation and load-balancing.
- Adlib upgrade from old version to newest version. Implemented an alert to E-Filing administration when a filing has failed due to exceeding a time threshold. Other proposed Adlib upgrades are in the preparation stages.
- E-Filing upgrade to enhance logging for better, more prompt issue resolution.
- FCE upgrades to enhance or resolve issues with the interface for clerk processing in FCE.

## Other Accomplishments:

- E-filing Guide published in 2020 Lawyer's Deskbook (pages 57-58).
- Judy Tice hired.
- Created a set of videos for clerk processing of civil e-filings. Looking at many more remote trainings, the videos are a great aid in cutting down training time as well as building confidence in the clerks.
- Went live with Choteau and Liberty County District Courts. (v5 courts)
- Went live with all the rest of the limited jurisdiction courts in the Flathead. (FCE)
  - Flathead County Justice Court
  - Kalispell Municipal Court
  - Whitefish Municipal Court
  - Columbia Falls City Court
- Brought Missoula County Justice Court live completely remotely. Two phases: Criminal first and then Civil. Amy McGhee provided the impetus to do the go-live remotely, providing the equipment and locations so that trainees could safely participate.

**Scheduled Activities** have largely been disrupted.

- June and July 2020. These months were previously booked, but we will regroup around one or more of the following activities:
  - Re-gearing our approach and materials toward doing remote-only implementations.

- Contacting courts who are extremely eager to have e-filing. One or more of these courts could possibly be implemented remotely or with minimal personal involvement:
    - Ravalli District; Havre City; Gallatin Justice; Asbestos Court
- August 2020: FCE conversion at Yellowstone County District Court will trigger work with e-filing. We plan to use the Missoula Justice Court model of implementing in two phases: 1) continue the existing case types (DC, DJ, DN, DI, DD) and then 2) go-live with Civil e-filing after a few weeks. The second phase of this project will take us into September.
- September and beyond is unknown. We will continue to schedule e-filing start-ups at FCE courts as we are able.

Statistics of the system were presented showing the number of active users as well as the filings that have been submitted at each of the installed courts since project inception. Numbers were shown from the time of the last meeting for comparison and determination of the volume of filings over time.

**Questions regarding the material presented above:**

- Matt Jennings asked why the statistics show the volume of filings at Missoula County District Court (MCDC) to be much higher than at the Yellowstone County District Court (YCDC).
  - The statistics are shown in the sequence in which the courts were first installed. MCDC was installed far earlier than YCDC. Also, civil and domestic relations cases are not yet enabled at YCDC.
- Justice Shea wants to access the civil filing videos that were prepared for the clerks' offices.
  - They will be available on a SharePoint collaborative site, keeping them off the public-facing site. Post-meeting Lois provided the video files to Justice Shea.
- Justice Shea asked about the logistics of creating the new Asbestos Court that was mentioned on one of the slides.
  - Lisa described that process of copying the Cascade District Court data into a new FCE database and removing all cases except asbestos cases. This will become live in June/July with Tina Henry as the clerk, and e-filing will then follow.
  - Beth indicated that Judge Eddy would be issuing an order as to how the seven judges would be assigned to the cases and that the first trial is in September 2020.

Status of Action Items from Previous Meeting – slide show presentation provided by Lois Schlyer.

**Accomplished (no vendor involvement required):**

- **E-Filing Bulletin Board** informing users of scheduled maintenance, unexpected outages and system upgrades.
- **Updated Terms of Use** so that users are added to the “E-Filing Alerts” mailing list.

**Partially Accomplished (no vendor involvement required):**

- **Best Practices Guide.** A “Guide to E-Filing” was published in the 2020 Lawyers Deskbook, which may provide the foundation for the official “E-Filing Best Practices Guide” that was discussed at the last meeting. Lois asked for the help of a subcommittee to vet, finalize and assist in publishing this document.

- **Trial Court Judge ability to e-file at the Supreme Court.** We have investigated and carried out some trials in our development system. We are trying to get the e-filing vendor to agree that our method is workable before putting it into production. We may go ahead and do so without the vendor's explicit consent.
- **Context Sensitive Help.** Our research shows that there are very few options for this to occur without the vendor's involvement. We have not done a system walk-through to determine what and where the help would be most beneficial. This is a task that is at the lower end of our priority list.
- **Addition of Multiple Attorneys at Case Initiation.** This feature needed to be implemented by the FCE vendor and has been provided to us in a release. That release has not yet been pushed out to production for various other reasons.

**Not Yet Accomplished (no vendor involvement required):**

- **Clerk's ability to e-file documents at their own court.** Post-meeting some progress has been made in exploring this functionality. We will be reaching out to the FCE e-filing clerks to assist in testing and designating the correct case types and filing types.
- **Survey Monkey** development and deployment. The e-filing team has not been able to put forth a draft survey. It may be much better served by having actual e-filers put the survey together using their "boots-on-the-ground" perspective. Lois requested a subcommittee to be formed to work on this task.
- **Draft of a new rule regarding cases from which an attorney must withdraw.** The rule would be considered for inclusion in the Temporary Electronic Filing Rules. Lois requested that a subcommittee be formed to draft the proposed rule.

**Nick Aemisegger presentation regarding standardized documents.** This time was given to Nick to talk about his work with automatic document generation for the 175 OPD attorneys throughout the state who often have problems with documents being rejected depending on the specific court. As OPD offices are attempting to go paperless, it creates additional challenges for IT staff, and it makes sense from a cost perspective to have standard formats. As they approach a new vendor, they would like to generate a set of "minimally qualified" documents that would be accepted throughout the state and the e-filing system may be a platform for getting that established. The simple rule that Nick suggests would perhaps be that if electronic documents meet these four conditions, they would not be rejected:

- 12-point minimum font
- Double spaced
- Unnumbered lines
- Judge name not included in the court name
- Karen Kane mentioned the huge amount of work she has done over the past many years to have a standard set of Abuse and Neglect (DN) forms accepted. She indicated that contract OPD workers would continue to be a problem no matter the documents generated from the OPD case management system. She also touted the use of Word documents which the judges can then manipulate as they desire, such as changing font size on proposed orders.

- Judge Vannatta encouraged Nick in his efforts and indicated that to Judge Vannatta’s knowledge, documents were not being rejected by the clerks in the Fourth Judicial District due to formatting. He mentioned the impressive system used by the US Patent and Trademark office in which one fills out an online form which is then automatically rendered into a correct format for a judge, and suggested that this committee should look into something similar once FCE and E-Filing is implemented throughout the state. He suggested that perhaps the Uniform District Court Rules Commission would be a more appropriate group for Nick to pursue document standardization.
- Phyllis Smith indicated that Rule 5 of Civil Procedures may be important to be brought to the attention of the Clerks of District Court. (MCA 25.20.11 Rule 5 (d)(4) “Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.”)
- Beth McLaughlin agreed that the proper format for Nick to pursue this project would be the Uniform District Court Rules Commission, approaching Judge Eddy to make her aware of the issue. Beth indicated that when we are ready to move forward with e-filing for self-represented litigants that she envisions having online fillable forms that would then create a court-ready document.
- Shirley Faust clarified that the Fourth Judicial District does not reject documents due to their format. She stated that it would be extremely beneficial for clerks if the documents could have standardized titles.
- Amy Tolzien expressed her enthusiasm for having a standard “minimum requirement” in place and believes it would be very helpful.

#### Items Approved for Funding for vendor work:

- Display of Multiple Documents per ROA at FCE courts. This is a feature that we have assumed would be available to us from both the e-filing and the FCE vendor. We recently learned that the e-filing vendor will charge to make this functionality available. We have contracted with the e-filing vendor to have this accomplished.
- Adding notes in the judge review queue without first creating a draft filing.
- Skin/mask the display of the role “Prosecutor” to display “Govt Attorney.”
- Have Adlib (or similar program) strip metadata from all documents.
- Option for Judge to select a specific page to sign.
- Set a default court for e-filers who want one.
- Display clerk’s comments to the judge in judge review queue.
- eService notification is missing information.
- In FCE clerk interface (post-meeting: all confirmed as funded)
  - Omit Dismissed Parties.
  - “Search by Name” in e-filing should only return results for active attorneys.
  - Add Case Judge filter in Pending Electronic Filings queue.
  - Modify e-filing processing page to display receipt number at top of page.

### Items Not Approved for Funding for vendor work:

- In Judge Review Queue, provide for ability to change a document without having the extra step to “replace.”

This would require a Word plug-in on all end-user machines and change the document processing beyond what can be accomplished in the core product. Estimate to investigate-only is 40 hours. Total effort estimated to be around 1000 hours, but unknown until investigation.

- eService available to Trial Court Clerks.

This would be a completely new utility and the vendor is not prepared to proceed with the full discovery process. The high-level estimate is assumed to be in the thousands of hours.

- Omitted from last meeting’s notes: Ability of a judge to designate a filing as “emergency” and to include a note to the clerk.

The cost estimate of 154 hours (\$18,480) was deemed prohibitive and without a funding source.

Lisa Mader reiterated that this quote is now stale and if we were to pursue it, the quote would likely be calculated with current rates, which could bring the total close to \$32,000.

### **Questions regarding the material presented above:**

Amy Tolzien asked for clarification about the items that were listed as funded and was reassured that except for a small possibility that the four items “on review” were not going to be approved, that all the rest were approved for funding. The timeline for delivery of these items is estimated to be about twelve to eighteen months.

### Creation of Subcommittees

- Rules – Subcommittee composed of Karen Kane (chair), Judge Dan Wilson, Phyllis Smith, Nick Aemisegger. The most immediate need is to aid in drafting a rule to address an attorney’s mandatory withdrawal from cases, but other topics may be addressed in the future.
  - Karen Kane suggested that it will be impossible to mandate an attorney withdrawal on Abuse and Neglect cases that involve a guardianship, since that would allow further petitions to be filed which would require those to be served on the previous counsel.
  - Phyllis Smith stated that Rule 41 creates a lot of problems for clerks when guardianship is involved in Abuse and Neglect cases.
- Best Practices Subcommittee composed of Lois Schlyer (chair), Judge Vannatta, Craig McKillop, Mars Scott.
- Survey Subcommittee composed of Lisa Mader (chair), Judge Barger, Shirley Faust.

### COVID-19 Lessons Learned – Justice Shea/Staff/Committee Discussion

Justice Shea asked to hear about committee members’ experiences over the past few months regarding technology, their use of it and their ideas about its continued use.

- Mars Scott observed that while technology may have been available in the past, they are now being forced to use it and he believes it is going to change how law is practiced. He mentioned the cost savings and efficiency of not having a subpoenaed witness required to be physically in a specific courthouse. He admits that there are differences between seeing someone on a screen versus in person but has had two contested hearings via Zoom and was preparing for a Zoom-based deposition and find it workable.
- Judge Wilson stated that he is adjusting to video hearings although he finds it unwieldy to manage multiple participants, where some are on video and some are connected by phone, so that everyone can understand exactly what is happening. It requires him to keep a careful record of who is speaking, or blurting out, which is a function that would normally be handled by the court reporter. He believes that people are adapting, and that witnesses will expect to be able to appear via video in the future. His main concern is certainty that the documents that are presented in court are identical for all attorneys as well as the court. He suggested that Dropbox or other technology may be used to try to solve this issue.
- Judge Vannatta stated that he has held two or three contested hearings via Zoom. He had all documents pre-marked and sent directly to judicial chambers and opposing counsel. His main concern so far is that it appeared in one of the hearings that a witness had someone else in the room who was “coaching” or at least reminding the witness of dates while the witness was giving testimony. He is looking for a set of procedures to address this, perhaps in the form of an agreement for those who are testifying. He is organizing a CLE addressing effective use of Zoom for contested hearings. He expressed his gratitude of having the advantage of both FCE and e-filing in the Fourth Judicial District.

#### New items from committee members and others

- Lois Schlyer announced that there was a recently discovered problem with some large filings not being delivered to the trial courts as well as not having any type of failure message. E-Filing staff is currently working with both the FCE and the e-filing vendor to make sure that this is resolved.
- Amy Tolzien stated the Montana County Attorney’s Association has a committee that is trying to find a replacement for the soon-to-be-defunct Justware case management software (CMS). They are considering one vendor who is interested in creating an API to pull information from the CMS to submit directly to e-filing. Since the e-filing vendor’s quote to accept the API is exorbitant, Amy’s question was if the state would be able to develop and provide that API connection, or if there is no way around working with the e-filing vendor.
  - Lisa Mader indicated that the work plan for the judicial IT department is developed through the judicial Commission on Technology. Her work plan currently is almost solely directed to implementation of e-filing, of new e-filing case types and of FCE. As this topic has not been discussed as part of the strategic initiatives, it is not something she can step into.
  - Beth McLaughlin indicated that one of the problems in providing software interfaces for county agencies is the barrage of 56 counties asking for 56 different things. But if there is a single vendor for all county attorney offices, this changes the landscape very favorably. She can imagine going to the Legislature to ask for funding as a joint venture between the branch and the Association of Counties.

- Nick Aemisegger indicated that the public defender is also looking for a new vendor and Amy Tolzien shared with us that one of the vendors (who has also recently contacted Lisa Mader) is 'Prosecutor' created and vended by Karpel, who also offers a 'Defender' CMS.
- Judge Allison, from Flathead County District Court, questioned one of the drop-down menu options that he sees when he is working in the judge review queue regarding Abuse and Neglect cases, and further that it might be beneficial to do away with quite a few of the drop-down options for judges.
  - Karen Kane commented that she feels the option may need to stay, but it may be helpful to have the documents renamed in such a way as to remind everyone that TIA cannot be extended beyond 90 days.
  - Judge Wilson's opinion is that the drop-down menu options are not a place to alert judges to legal obligations.
  - Lois Schlyer suggested that if there would need to be a change in the drop-down menu options that those might be better handled in the FCE Automation Committees, one for the district court and the other for the limited jurisdiction courts.
- Lois Schlyer says that she gathers suggestions from those who are working in e-filing and she compiled the following list. She does not know what to do with the suggestions but does not want to discard them. After discussion by Lisa Mader and Justice Shea, the decision is that Lois is to get back to those making the suggestions to say that we will keep them on the list but there is no source of funding available.
  - Bethany Bender wants to see attorney listed on the Filing Information page.
  - Bethany Bender wants the Certified Date of Service field to default to "today."
  - Joanna Mong wants to be able to submit filings from the draft queue.
  - Joanna Mong wants errored/rejected filing to be automatically deleted upon resubmission.
- Additional items from Committee Members
  - Nick Aemisegger would like to be able to submit documents with embedded photographs and embedded video. Justice Shea concurred. This will be carried forward on our 'Wish List.'
  - Beth McLaughlin gave an update on schedules that have been disrupted. Yellowstone County District Court was put on hold to protect the IT staff; she does not know when it will be safe to put staff on the road again. We are trying to figure out what we can do remotely. The next 12 – 18 months are going to be challenging as we are working in an abnormal environment. She appreciates everyone's patience as we go forward.
  - Shirley Faust reported she has received requests that when an e-filed document is rejected, all the eService recipients on the original filing would be notified of the rejection. Lois is placing this request on the 'Wish List.'

[Next Meeting](#) - Justice Shea and Karen Kane suggested that we could schedule two meetings out in the future. We will survey for the end of September and again for January 2021.

Meeting adjourned at 2:25 PM.