

# E-Filing Automation Committee

Third meeting on October 16th, 2020, 11:00 AM – Held via Zoom

**Attendees:** Justice Jim Shea, Judge Shane Vannatta, Judge Jessica Fehr, Judge Audrey Barger, Peg Allison, Amy McGhee, Nick Aemisegger, Amy Tolzien, Craig McKillop, Karen Kane, P. Mars Scott, Beth McLaughlin, Lisa Mader, Ryan Davies, Lois Schlyer

**Not in attendance:** Shirley Faust, Phyllis Smith, Matt Jennings, Lee Bruner

[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

- Statute table update.
- E-Filing application switched from Oracle JAVA to Corretto JAVA (open source, no-cost) in preparation for Oracle JAVA being decommissioned 10/30/20.
- E-Filing and/or FCE upgrades provide:
  1. Quickest possible notice when Adlib is blocked.
  2. Daily notice to e-filing admin if there is something stuck in a status of “Submission Pending.”
- E-Filing database changes to reduce CPU usage on the database server and to provide speedier processing in the Judge Review Queue.

## Other Accomplishments:

- Provided the ability of a trial court judge to file on cases at the Montana Supreme Court.
- Provided an analysis and spreadsheet to e-filing Clerks of District Courts for e-filing of documents at their own courts.
- Created an extensive spreadsheet system to solve attorney bar number conflicts at all courts. This is one of the most time-consuming tasks we do.
- Went live with e-filing at:
  1. Havre City Court (v5, criminal only)
  2. Bighorn County District Court
  3. Fallon County District Court
  4. Asbestos Claims District Court
- Corrected the document name on the Certificate of Service for multiple documents served.
- Currently testing the ability to configure documents to not receive a COS, such as for a Proposed Order.

## Scheduled Activities are disrupted but moving forward:

- October 27, 2020: Hill County District Court will be upgraded to FCE integration (providing civil e-filing).
- November 17, 2020: Gallatin County Justice Court will be live with e-filing (FCE integration).
- January/February 2021: possible courts have not yet been contacted and so they are not listed here.

- February 2021 and beyond is unknown. We will continue to schedule e-filing start-ups at FCE courts as we are able.

Maps of FCE and of e-filing installations were presented showing statewide coverage of both programs.

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:**

- Judge Vannatta asked if we know why we have filings stuck in submission pending status or “stopped up” in Adlib or otherwise failing.
  - It is extremely difficult to pinpoint the reasons; we continually work on this.
  - Sometimes an e-filer submits a large document that takes so long to process that it triggers a timeout failure for subsequent documents. After the timeout the queue starts to clear but the original e-filer will resubmit the same large document which will create another stoppage. This sometimes happens three or four times in a row until we can discover the problem and ask the e-filer to stop submitting the problem document.
- Mars Scott asked if we were seeing an upward trend in the number of e-filers. He commented that perhaps good reports of the system would increase its usage and he wondered about the possibility of the Supreme Court making it mandatory.
  - In general, we see an uptick when a new court comes online or makes e-filing mandatory but other than that, we are not seeing a sharp upward trend, rather a steady but slow increase over time.
  - Lisa Mader commented that the survey results make it clear that the biggest desire of the survey responders is to expand e-filing throughout the state.
- Justice Shea asked if there were any inquiries from the Workers’ Comp Court for e-filing.
  - Lisa and Lois commented that they have not heard from the Unemployment Court; if they had a CMS, the possibility exists for e-filing.
  - Beth McLaughlin commented that there is so much work left to do with the trial courts, that even if the Workers’ Comp Court was contacting us, it would not be a priority until after getting the judicial branch completed.

Status of Open Items slide show presentation provided by Lois Schlyer.

**Open Items with the E-Filing Vendor** (numbers in parenthesis indicate the revision number of the delivery)

- Problem with opening documents from some eService notifications (vendor-proposed solution is unacceptable).
- Attorneys will have the ability to change their names after they register (7.2.0).
- Occasionally support staff suddenly becomes “detached” from the primary user (7.2.0).
- Adding notes in the Judge Review Queue without first creating a draft filing (7.2.0).
- Strip metadata from all documents (7.2.0).
- eService notification is missing information (7.2.0).

- Option for judge to select a specific page to sign (7.2.0).
- Skin/mask the role of “prosecutor” to “Govt Attorney” (7.2.0).
- Set a default court for those who want one (7.2.0).

**Open Items with the FC/FCE Vendor:** (note that 8.1 was delivered on 11/17 with 8.1 patch 1 due in December 2020. 8.1 patch 2 delivery is yet unknown)

- Judge Review occasionally displaying the wrong document or throwing an error – only three separate instances in thousands of filings (8.1 patch 2).
- Withdrawn prosecutors are showing up in the e-filing displays (8.1 patch 2).
- Modify the e-filing processing page to display the receipt number (8.1).
- Modify e-filing for active-only attorney search results in “Search by Name” (8.1).
- Add ability to sort the Clerk Review Queue by judge (8.1).
- Dismissed parties should not appear in e-filing displays.
- Information on the second page of clerk processing is lost if it is only partially complete.

#### **Internal Work:**

- Judy Tice resigned, and we are seeking a replacement. (Note: Maggi Everett was hired and started on November 4<sup>th</sup>, 2020.)
- New Identity Management software: Okta will replace ePass.
  - Lisa is leading the project, working with the E-Filing vendor and SITSD
- Instructional videos
  - We will take into consideration the Survey results.
  - We foresee a benefit to creating a Judge Review Queue video.
- Work with Peg and Shirley to perfect how Writs are to be e-filed.
- SL (statutory lien) cases need coordination to be enabled.
- “Clerk’s E-Filing Start-Up” booklet is underway for all future remote e-filing installations.
- Begin analysis of Water Court cases and workflows.

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

- Justice Shea asked if the issue with withdrawn prosecutors will have an effect on the E-Filing Rule that is to be implemented.
  - It is essential to have the fix from the vendor in place so that withdrawn attorneys and prosecutors will not be displayed in the e-filing portal. When an attorney is withdrawn and marked as withdrawn in the court CMS (FC/FCE), access to the case in e-filing will be rescinded for that attorney.
- Karen Kane asked that the discussion be expanded to include all withdrawn parties and attorneys on DN cases. In particular, she requested that withdrawn individuals not appear on the e-filing eService page. She does not like taking extra action to mark them “Not Served” for each e-filing submission on each case. She also questioned the duplication of a CASA individual with a CASA county office.
  - Any party dismissed and any attorney/prosecutor withdrawn from a case in the court’s CMS will not appear in the e-filing portal, once these two items are completed by the FCE vendor:
    - Withdrawn prosecutors should not appear in the e-filing displays (8.1 patch 2)

- Dismissed parties should not appear in e-filing displays
- The effect that Karen is looking for then becomes one of coordination with the Clerk of Court as to who they list as parties in the CMS, rather than being a technical e-filing issue.
- In response to Karen’s further questions about the variety of parties listed on a DN case, and if/when a GAL or a CASA should be a party on the case, a “DN Issues” subcommittee was formed. The subcommittee consists of
  - Karen Kane, Chair
  - Nick Aemisegger
  - Peg Allison
  - A CASA representative from the Flathead area
  - Amy Tolzien or her counterpart, Linnea Forseth
  - Lois Schlyer or Ryan Davies will be available as e-filing tech support for meetings, but neither will be permanently assigned as a subcommittee member.
- Karen also requested that the Comment box in the e-filing user interface have the “Comment” box at the end of the filing rather than the beginning. (Note that the breadcrumb trail takes an e-filer directly back to the “Filing Information” page on which the Comment box is located. This is available at any time during the filing.)

### Report from Subcommittees

- **Best Practices Subcommittee** composed of Lois Schlyer (Chair), Judge Vannatta, Craig McKillop, Mars Scott. Lois reported that the “Best Subcommittee” has put together a Best Practices guide which is now published on the courts.mt.gov website. It also includes the fee table as the third page. Lois suggested that this be reviewed once or twice a year.
- **Survey Subcommittee** composed of Lisa Mader (Chair), Judge Barger, Shirley Faust. Lisa presented a PowerPoint summary of the e-filing Survey results. Slideshow presentation by Lisa Mader.

### Survey Subcommittee Activities

- Subcommittee met on 8/11/2020 to formulate a survey plan
- Final agreement on survey content 8/17/2020
  - Distribution Group 3,925 email addresses
  - 476 Undeliverables/Suspected Spam/No Longer e-filing
  - Total Received Survey – 3,449
  - 9/16 Follow-Up Reminder
  - 9/30/2020 Closed Survey
  - 915 Total Responses Received
  - 27% Responses Received

**Survey Results** (condensed from slideshow; complete slideshow is available in meeting materials)

- What type of court e-filings do you submit (check all that apply) **907 responses**
  - Criminal Only 13.78%
  - Civil Filing Only 57.55%

- Criminal and Civil Filing 29.22%
- In what capacity do you work in the Court's E-Filing system? **914 responses**
  - Attorney and Authorized staff comprised 90.27% of respondents
- In what level of court do you commonly e-file? (check all that apply) **911 responses**
  - Supreme Court 43.14%
  - General Jurisdiction 86.94%
  - Limited Jurisdiction 29.64%
- Please rate our communication as it pertains to e-filing system maintenance and/or outages. **869 responses**
  - Very satisfied 42.46%
  - Satisfied 50.05%
  - Dissatisfied 5.64%
  - Very dissatisfied 1.84%
- List, in priority order, 3 things that you like *best* about the Courts E-Filing System (only the first of the three possible answers were tabulated) **833 responses**
  - Convenient/Efficient/Ease of Use 63%
  - Saves Paper/Time/Money 23%
  - 24 Hr filing/Available Anytime/Anywhere 14%
  - Miscellaneous 1%
- Lists, in priority order, 3 things that you *dislike* about the Courts E-Filing System (only the first of the three possible answers were tabulated) **518 responses**
  - Technical System Issues – Outages/Slowness 25%
  - System Difficult to Use 20%
  - Expansion to More Courts 17%
  - Filing Types Subtype Confusion 12%
  - Differing Court Rule Frustration 8%
  - Case Searches Difficult 7%
  - Miscellaneous Functionality Dislikes (unable to be categorized above) **233 responses**
    - Still uncategorized 36%
    - Email/Notification/Service dislikes 19%
    - Access dislikes 12%
    - Payment issues dislikes 11%
    - Approval slowness 8%
    - Multiple/batch document issues 6%
    - Paper required after e-filing 3%
    - Judge Queue & Queue routing issues 3%
    - Lack of personal contact 2%
- If you had one suggestion to improve the effectiveness/efficiency of the Courts E-Filing System, what would it be? **390 responses**
  - Expand to more courts 33%
  - Make more user-friendly/Remove redundancies 14%
  - Differing court rules/processes 10%
  - Open case searches beyond attorney-designated cases/More public access 9%

- Expand document descriptions/Filing type subtypes 8%
- Increase speed 7%
- More training – court staff, attorneys, attorney staff 6%
- Improve case search functionality 5%
- Add more case types 4%
- Faster/No approval of filings 3%
- Please provide ideas for short training videos that the OCA could develop and publish for user references. (Lisa mentioned that many respondents request short, concise videos.) Number of responses not captured.
  - Step-by-step/Basic how to use the system end-to-end
  - How to select accurate filing type/subtype
  - Correct document formatting
  - Understanding case searching
  - Uploading document – multiple/batch
  - How to file non-standard/complex cases
- Next Steps
  - How often to survey?
    - Every 2 years?
    - Every 1 year?
  - Continue E-Filing Implementations
  - Continue Technical Environment Improvements
  - Discussion

***Questions and discussion regarding the survey:***

Regarding survey interval:

- Mars suggested that a 1-year interval might provide more timely information about whatever the issues might be, while a 2-year interval may tend to drag things out; he also suggested that the tremendous amount of work that is required to compile the results might be automated.
- Judge Barger emphasized that in the future the survey can be crafted so that compiling the results will be much easier.
- Lois suggested that while a 1-year interval can be used to help direct priorities, with such a limited staff, it will take months to digest, respond to, and assimilate the suggestions.
- Beth suggests surveying every other year. By the time we can react to a survey and put in place a plan, it's time to resurvey and people haven't yet seen the positive affect of the change.
- Decision: survey every other year.

Other discussion regarding the survey:

- Craig McKillop commented that his number one dislike of the system was its slowness and asked if there is a way to distinguish between a user's connectivity and the system

itself being slow? Lisa responded that this is essentially not possible. This makes the situation difficult to resolve.

- Justice Shea asked about the issues of expansion to new courts and uniformity of e-filing practices. Regarding uniformity, is it just the court's local preferences or are there technical differences? Would there be technical reasons that would complicate making a mandatory rule? Justice Shea suggests we start working on these issues now as it will take time to put Rules in place. To be discussed further under "New Items" portion of the meeting.
- Peg commented that Flathead County District Court issued the first mandatory order for all licensed attorneys to e-file, and indicated there was no pushback from the bar, and overwhelmingly positive feedback.
- **Rules Subcommittee** composed of Karen Kane (chair), Phyllis Smith, Nick Aemisegger. Karen reported that they were asked to consider whether a Rule needed to be developed for an attorney to withdraw any support staff who previously worked for them. The subcommittee decided that all attorneys should be electronically prompted every 90 days or 6 months to change their password and confirm the authorized staff on their accounts.
  - Lois stated that there is no mechanism in place to electronically contact registered attorneys periodically or to force them to change their passwords.
  - Justice Shea suggested that there would be a Rule, putting the onus on the attorney to remove all staff who are no longer authorized by them.
  - Nick Aemisegger, Mars and Karen all suggested that we have both a Rule as well as an annual email reminder and Lisa agreed we could put out a reminder.
  - Lois asked about the proposal from last year, in which a Rule would require an attorney to withdraw themselves from a sealed case. Karen and Nick responded that the subcommittee did not pursue this action because of MCA 46.8.103 which defines duration of representation, obviating an attorney's withdrawal.
  - Judge Vannatta asked if a new e-filing profile would solve the problem, but the fact is that attorneys are tied to cases via their bar numbers, not other profile data.
  - Judge Barger suggested that the Terms and Conditions of use of the E-filing system might be used as a remedy.
  - Lisa and Beth reiterated that this situation is going to need to be solved by a Rule that affects the FullCourt record rather than by a technical mechanism within the e-filing system. How do we manage a human who changes jobs?
  - Karen and Nick stressed that attorneys are bound by their oath of professional conduct and that there may need to be a change to withdraw attorneys when cases are closed.
  - Justice Shea asked for the Rules Subcommittee to meet again with a district court judge and an IT support staff member. Judge Vannatta will ask Judge Fehr to take on this role or will do so himself, and the Court Administrator's staff will assign someone. The goal is to create a proposed e-filing Rule to remedy this situation, and to have the responsibility in the attorneys' hands.

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

Justice Shea asked to hear about committee members' boots-on-the-ground experiences over the past few months regarding technology, employees working remotely, what we've learned and how we're adapting.

- Justice Shea said that the Supreme Court has been conducting oral arguments with very little difficulty by having a maximum of four justices physically present in the court, the rest joining by Zoom, including attorneys.
- Mars said that in his office his staff is spread out and not wearing masks, but they ask clients to wear masks. He recounted the story of a Bozeman attorney who contracted COVID-19 from a client and has had serious medical issues as a result. For safety, he would like to have all his hearings and trials done via Zoom and is concerned that there may be a judge who may not agree that this is a best practice. He would welcome some training/knowledge of how to deal with things like introducing exhibits in trials.
- Judge Barger wanted the group to know how important e-filing is for their court, allowing the court to run from anywhere. The combination of e-filing, Zoom and FCE is what allows court business to continue, even in light of extremely high COVID-19 rates in Hill County. They cancelled trials for some time to comply with county health experts.
- Peg also expressed appreciation for e-filing. She stated that Judge Eddy has her courtroom closed but has held a bench trial and will hold a jury trial in November, doing so via Zoom so that there is public access. Peg is pulling an extra 20-30 jurors for the jury trial to accommodate those jurors who may not be able to connect via Zoom.
- Amy McGhee praised the technology and what it made available in the Missoula County Justice Court – bringing FCE live without any onsite visits – as well as safe operation of the Missoula County District Court, where she works now. Missoula County has made offsite locations available for jury selection.
- Judge Vannatta stated his view that the real challenge is holding jury trials. He is concerned about the backlog of criminal trials, which was significant prior to COVID-19 and is now much worse. E-filing enables him to work from home. He misses the personal interactions of what was the normal work environment.
- Justice Shea appreciates the work that everyone is doing to keep the courts operating and passed on the appreciation of Chief Justice McGrath. He foresees issues that may arise regarding witnesses testifying by video and a defendant's right to confrontation, as a current pre-pandemic case is now before the Supreme Court.

## New items from committee members and others

- Justice Shea asked for development of a Rule(s) regarding mandatory use and uniformity between courts within a new subcommittee. The subcommittee is to be comprised of Justice Shea, Judge Barger, Mars, Peg and either Lisa or Lois (Lisa and Lois to decide internally).
- Lois reported that Judge Hayworth (Judicial District 16, comprising seven district courts) has requested that judges have some type of notice when there are items in the judge review queue for each specific court.

- Judge Vannatta supports this request since he has run into the same situation in his Judicial District for which Mineral County is only about 4% of his workload and is often overlooked.
- Lisa said that she saw a survey answer that requested something similar for the clerk review queue.
- Lisa and Beth discussed the lack of funding for such a project; it is not something that can be added to the current budget request that has already been submitted.
- Lois will ask the e-filing vendor for a quote, so that we have that in hand.
- Lois also mentioned that she had a question from an attorney who is on a case with three opposing counsel, only one of which is an e-filer. It was suggested that moving towards mandatory and uniform e-filing rules would address this.
- Karen asked if there could be a central location in which courts' standing orders could be found. She finds it confusing that one court will require an electronic signature while a different court will refuse filings with an electronic signature, even when faced with the Supreme Court order allowing it.
  - Nick reiterated his plea for a statewide "minimum standard" concept for forms.
  - Lisa says that if the lists of standing orders for e-filing issues is compiled, we will find an appropriate place for them on our website.
  - Beth asks Peg if the Clerks' Association ever compiles this information.
  - Peg is willing to try to gather the standing orders from around the state. She asked for clarification that she would be looking solely for e-filing related orders; she received that confirmation. This Committee would not have any say nor would it be publishing the details of which courts allow/refuse emailed or faxed filings.
  - Mars said that his staff contacted every district court in the state and created a list of filing requirements for each of them. It is a bit outdated. He will share this with Peg and Karen as a starting point for compiling the list of standing orders.
  - Justice Shea said that the work on uniformity of filing may address some of these issues.

### To-do list

- Lois will contact the e-filing vendor to ask for a quote that would give the judges an indication that something is in their queue.
- Mars may need to share his court-by-court list of filing requirements with Peg and Karen.

**Next Meeting** – Lois asked committee members to set committee meetings twice per year rather than more often; this was accepted. Lois will survey for a meeting time in April/May 2021.

Meeting adjourned at 3:06 PM.