

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR BENTON AND FRANKLIN COUNTIES**

7122 W. Okanogan Place, Building A, Kennewick, WA 99336

ADMINISTRATIVE PRESIDING JUDGE
BRUCE A. SPANNER

BENTON COUNTY JUSTICE CENTER
FRANKLIN COUNTY COURTHOUSE
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February 24, 2014

Mr. Ronald R. Carpenter
Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

**Re: Proposed Rule Change Comments
CR 5(b)(7) – Service and Filing of Pleadings
GR 30(b)(5) – Electronic Filing**

Dear Mr. Carpenter:

This letter is submitted on behalf of the entire bench of the Benton Franklin Counties Superior Court. We understand that the purpose of the proposed rule is to allow judicial district to mandate electronic service of court documents by litigants. We fully support that purpose, as we strongly believe that electronic service by litigants and the courts should be the norm.

Judge Spanner and Court Administrator Pat Austin are actively working on the Superior Court Case Management Project. Through their involvement on the Court User Work Group, it has become apparent that our courts will not be able to take advantage of substantial functionality of the case management software unless the courts have the authority to electronically serve notices, orders, or other documents.

Indeed, Benton Franklin Superior Court has locally-developed case management software that can electronically deliver notices, orders, or other documents to attorneys and litigants. Under GR 30(b)(3), we must secure the consent of the attorneys and litigants. We can see that courts will be paperless in the coming years. Electronic service of documents is a logical and necessary step in that direction.

We certainly support the stated goal of mandated electronic service by litigants. However, we would like to see the scope increased to include mandated electronic service by the court. Each point will be considered in turn.

Electronic Service by Litigants. Section 7 of CR 5, with the proposed change, is quoted in its entirety:

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(7) *Service by Other Means.* Service under this rule may be made by delivering a copy by any other means, including facsimile or electronic means, consented to in writing by the person served or as authorized under local court rule pursuant to GR 30(b)(4). Service by facsimile or electronic means is complete on transmission when made prior to 5:00 p.m. on a judicial day. Service made on a Saturday, Sunday, holiday or after 5:00 p.m. on any other day shall be deemed complete at 9:00 a.m. on the first judicial day thereafter; Service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service under this subsection is not effective if the party making service learns that the attempted service did not reach the person to be served.

Upon first blush, it would appear that electronic service among litigants is authorized in two ways: Either the parties consent to it or the courts mandate it by local rule. The problem is the reference to GR 30(b)(4). We recognize that the proponents of the amendments propose to eliminate the current GR 30(b)(4), and renumber GR 30(b)(5) to GR 30(b)(4). The renumbered GR 30(b)(4) has as its primary subject the electronic filing of documents.

We would prefer that the topics of electronic service and electronic filing be addressed separately in the rules. We do not want to tie electronic service of court documents to electronic filing. Only a few courts now have electronic filing. The vast majority are years away from electronic filing. Courts should be able to mandate electronic service before they mandate electronic filing.

We offer two suggestions: First we would suggest that the reference to GR (30)(b)(4) be eliminated from the proposed rule. Specifically, we would suggest that the phrase "pursuant to GR 30(b)(4)" be eliminated from the proposed amendment to CR 5(b)(7). Second, we suggest that GR 30(b)(4) be amended to allow courts to mandate electronic service by local rule independent of the decision to adopt electronic filing. We suggest that GR 30(b)(4) be amended to read as follows:

(4) **Electronic Service by Parties.** Parties may electronically serve documents on other parties of record ~~only~~ by agreement or as authorized under local court rule.

Electronic Service by Courts. As indicated above, the proposed rule does not address electronic service of notices, orders, or other documents by courts. It does not allow courts to mandate electronic service of documents. The subject of electronic transmission of documents by courts is addressed in GR 30(b)(3). It reads as follows:

(3) **Electronic Transmission from the Court.** The clerk may electronically transmit notices, orders, or other documents to a party who has filed

electronically, or has agreed to accept electronic documents from the court, and has provided the clerk the address of the party's electronic mailbox. It is the responsibility of the filing or agreeing party to maintain an electronic mailbox sufficient to receive electronic transmissions of notices, orders, and other documents.

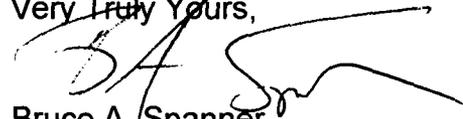
Under that rule, the clerk may send documents only if a party has filed electronically or has consented to electronic service. The rule does not address transmission of documents by the court itself. We would suggest that an amendment to GR 30(b)(3) would be appropriate at this time. Additionally, it does not provide a mechanism by which the court can mandate electronic service by the court. We propose the following:

(3) Electronic Transmission from the Court. The court or clerk may electronically transmit notices, orders, or other documents to all attorneys as authorized under local court rule, a party who has filed electronically, or has agreed to accept electronic documents from the court, and has provided the clerk the address of the party's electronic mailbox. It is the responsibility of all attorneys and the filing or agreeing party to maintain an electronic mailbox sufficient to receive electronic transmissions of notices, orders, and other documents.

Please note that under our proposal, all attorneys must accept electronic transmissions of notices, orders, and other documents, and must maintain an email address. (We are told that the Washington State Bar Association now requires all attorneys to provide it with an email address.) Unrepresented litigants will not be required to accept electronic transmissions of notices, orders, and other documents unless they consent or electronically file documents with the court.

Thank you for your consideration of our comments. If you have any questions, please let us know.

Very Truly Yours,



Bruce A. Spanner
Superior Court Judge
Benton and Franklin Counties

Cc: Washington State Bar Association
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