



September 29, 2020

Clerk of the Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

Re: Proposed Rule Change to GR 30—Electronic Filing & Service

Dear Clerk:

I write on behalf of the King County Bar Association and its Judiciary & Litigation Committee regarding the proposed change to GR 30. We agree with the amendment's proponents that outdated references to repealed statutes should be removed from the rule, and that GR 30's definition of "digital signature" should be stated within the rule itself.

We suggest going a step further than the proposed amendment. Rather than carry forward the definition of digital signature from the now-defunct RCW 19.34.020, we propose using the definition for "electronic signature" found in Washington's recently-enacted Uniform Electronics Transaction Act (UETA), Chapter 1.80 RCW, or in the Supreme Court's May 29, 2020, general order addressing court operations during the COVID-19 pandemic. In the context of GR 30, we believe this definition of an electronic signature better serves the interests of ensuring access to justice than the proposal as drafted, while adequately addresses the interests of maintaining the integrity of the court process.

Under UETA, and electronic signature is defined as

an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

RCW 1.80.010(10). This language was echoed in the Supreme Court's General Order No. 25700-B-626, issued May 29, 2020 (with language consistent with UETA emphasized):

Notwithstanding any provision of GR 30 to the contrary, an electronic signature shall be deemed a reliable means for authentication of documents and shall have the same force and effect as an original signature to a paper copy of the document so signed. For purposes of this Order, "electronic signature" means a digital signature as described in Supreme Court Order No. 25700-B-596 (July 16, 2019) and RCW 9A.72.085(5) (repealed); *an electronic image of the handwritten signature of an individual; or other electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record, including but not limited to "/s/ [name of signatory]"*.

In contrast, the definition from the repealed RCW 19.34.020 and the current proposed amendment give “digital signature” is a narrow technical meaning, encompassing only certain cryptographically secured techniques. The definition of “electronic signature” offered in the UETA and General Order 25700-B-626—“an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record”—with the specific example of “an electronic image of the handwritten signature of an individual”—is a more modern and flexible definition. We believe this definition of an electronic signature is appropriate for the purposes of GR 30.

Under the current GR 30, a digital signature is permitted as an alternative to a typographic signature (such as, “s/ [name of signatory]”) on electronic documents requiring an attorney’s signature, or requiring a non-attorney’s signature not signed under oath. A non-attorney signing an electronic document under oath must either use a digital signature; or else sign a physical copy of the document which must then be scanned, filed, and maintained in physical form by the filer until sixty days after the life of the case. Therefore, a digital signature is only required over a typographical signature in cases of a filing signed under oath by a non-attorney.

Requiring non-attorneys to have access to a cryptographically secure process as the only alternative to a scanned physical signature presents an access to justice issue. Many individuals will not have easy access to the software required for a digital signature, or to the printing and scanning equipment necessary to produce and digitize a signed copy of an entire sworn document. In contrast, access to a cellphone with a camera is widespread—which is what would be needed to create an image of the signatory’s handwritten signature. We believe the Supreme Court recognized this in issuing its General Order, which noted the need to allow “courts to operate effectively and maintain effective and equitable access to justice.”

The KCBA is cognizant of the need to ensure the authenticity of signatures, especially on documents signed under oath in the context of litigation. The statutory language of the UETA contemplates electronic signatures would be appropriate for sworn statements. See RCW 1.80.100. Further, we feel the requirement that an electronic signature be affirmatively executed or adopted, combined with the checks provided in an adversarial process, are sufficient safeguards of a signature’s authenticity.

Thank you for your consideration of the suggestion in this comment. Please feel free to contact me if you have any questions about this letter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Isham Reavis', with a long horizontal line extending to the right.

Isham Reavis

Co-chair, KCBA Judiciary & Litigation Committee

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Linford, Tera](#)
Cc: [Tracy, Mary](#)
Subject: FW: GR 30
Date: Wednesday, September 30, 2020 2:57:17 PM
Attachments: [2020-09-29 KCBA letter re GR 30.docx](#)
[ATT00001.txt](#)

-----Original Message-----

From: Anne Daly [<mailto:dalydowd@msn.com>]
Sent: Wednesday, September 30, 2020 2:53 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: isham@aokilaw.com; katie@levy-law.com
Subject: GR 30

Good afternoon,

Please find a comment from the Judiciary and Litigation Committee of the King County Bar Association, regarding proposed changes to GR 30. Should you have any question, please feel free to contact committee co-chairs, Isham Reavis or Katie Comstock, or myself. Thank you for your consideration of our feedback.

Anne Daly
Interim Executive Director
King County Bar Association