

Report of the subcommittee on Criminal E-Filing 4/14/2014

The attached document is the subcommittee's first attempt to craft a criminal rule to address criminal e-filing. It is borrowed from C.R.C.P. 121, Section 1-26 thus the edits appear in track changes mode. The proposed rule is being submitted for discussion, not a vote, at the April 18th criminal rules committee meeting.

There are a number of yellow highlighted sections in the proposal. These indicate numbering that exists in the civil rule that will need to be changed when a criminal rule is adopted.

Explanation of suggestions:

Paragraph 7. It is suggested that paragraph 7 be deleted as the subcommittee did not feel it necessary for the Supreme Court to dictate by rule, how long parties should keep a copy of an original, particularly since there does not appear to be a situation in the context of criminal cases where an original signature is required to be maintained. In addition, with post-conviction motions in criminal cases, it would be difficult to determine a time period for keeping records. Any documents filed with the court will be maintained by the court and will be the official record.

Paragraph 8. C.R.C.P. 11(a) provides that if a pleading is signed in violation of the rule, attorney's fees incurred because of the filing of the pleading may be awarded to the opposing party. This provision has no application in the criminal context.

Paragraph 9. There are a variety of occasions where a party may, or is required to file a document under seal. In the criminal e-filing context the clerk must have an Order from the court allowing for filing documents under seal. This can be carried out by the e-filing clerk holding the documents that are sought to be sealed, in clerk review until the judge approves the motion. Sealed documents will thereafter only be viewable by the judge.

Paragraph 15. There are certain elements of documents that are not public pursuant to CJD 05-01. This proposal was modeled after the federal e-filing rule.

Paragraph 16. Identifying information of victims of sexual assault cases is not to be released to the public. Rather than have the onus be on the filing party to redact identifying information, they will instead be required to file any document containing victim identifying information, under a suppressed security status. There will be a drop down menu in the e-filing system to allow the filing party to select "Suppressed" for that document. Not all documents filed under a sex offense case will be suppressed instead, just those that contain victim identifying information. Suppressed documents will only be available to the parties of the case. If a public access request is made upon the courts, the clerk's office will be responsible for redacting the victim identifying information from suppressed documents before they are provided to non-parties to the case.

Paragraph 17. Other documents to be filed Suppressed are listed in paragraph 17. This is to comply with CJD 05-01 as it lists documents that are not available to the public.

Paragraph 18. This is another borrowed paragraph from the federal rules.

Respectfully submitted,

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Staff to the subcommittee