

A Brave New World: eFiling in Oregon State Courts

Willamette Valley Inns of Court

Team 3

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Explanation of the Proposed Rules for eFiling

CHAPTER 21 – Filing and Service by Electronic Means

21.010 DEFINITIONS

The following definitions apply to this chapter:

- (1) A “conventional filing” means a process where a filer files a paper document with the court.
- (2) A “document” means a pleading, a paper, a motion, a declaration, an application, a request, a brief, a memorandum of law, an exhibit, or other instrument submitted by a filer, including any exhibit or attachment referenced in the instrument. Depending on the context, as used in this chapter, “document” may refer to a document either in paper or electronic form.
- (3) “Electronic filing” means the process where a filer registered with the electronic filing system electronically transmits to a court a document in an electronic form to commence an action or to be included in the files of the court for an action.
- (4) “Electronic filing system” means the system provided by the Oregon Judicial Department for the electronic filing and the electronic service of a document via the Internet. The system may be accessed through the Oregon Judicial Department’s website (<http://www.ojd.state.or.us>).
- (5) “Electronic service” means the electronic transmission of a notice of filing, which contains a hyperlink to access a document that is filed electronically, by the electronic filing system to the electronic mail (e-mail) address of a party registered as a filer with the electronic filing system for the purpose of effecting service.
- (6) A “filer” means a person registered with the electronic filing system who submits a document for filing with the court.
- (7) A “pro se litigant” means a person representing him or herself and not represented by an attorney.

Explanation: Section 21.010 provides a set of definitions for terms and key processes used throughout the chapter. In order to avoid confusion, the chapter uses the term “electronic” in some form 16 times and six times in the definition of “electronic service.” One of the aims of this chapter is to establish an EFS that is similar to the Public Access to Court Electronic Records (PACER) System, which is used in the Federal Bankruptcy Courts and the United States District Courts.

21.020 APPLICABILITY

This chapter, as authorized by ORS 1.002, applies to those circuit courts that have obtained written approval from the State Court Administrator to accept filings electronically for designated case types and filers. Information on the circuit courts that have received approval can be accessed through the Oregon Judicial Department’s website (<http://www.ojd.state.or.us>).

Explanation: There are two key elements reflected in this chapter. The first is Oregon Laws 2007, chapter 129, which provides the authority for the creation of these rules. This Act permits the Chief

Justice to establish rules for electronic filing, electronic service, and electronic documents that must be consistent with, but need not follow, the law which applies to the filing of paper documents. The second element is the progress being made with the Chief Justice's eCourt Initiative to have electronic documents replace paper documents in the circuit and the appellate courts. Under the Chief Justice's plan, circuit courts will begin the change over to electronic documents and electronic filing in series, four at a time, until all 36 circuit courts are using the new technology. When a court is ready to begin accepting document filing electronically, the State Court Administrator will designate the court to be subject to UTCR Chapter 21. These designations will be posted on the OJD web site, and electronic filers may track the availability of the services as successive sets of circuit courts are authorized.

21.030 FILERS

(1) Authorized Filers

- (a) The following are authorized to register as filers in the electronic filing system:
 - (i) Any member of the Oregon State Bar that is authorized to practice law;
 - (ii) Any attorney admitted to the practice of law *pro hac vice* during the period of the attorney's temporary admission;
 - (iii) A pro se litigant in an action in which the person is a party; and
 - (iv) Any other person as approved by the State Court Administrator.
- (b) A filer must complete a registration form to request a login for access to the electronic filing system and sign a user agreement. The filer must provide information sufficient to establish his or her technical capacity to send and receive electronic filings and court notices. Upon receipt of the required information, notice will be sent to the filer of his or her registration status. If the filer is approved to access the electronic filing system, a filer shall be assigned a login.

(2) Conditions of Electronic Filing

In order to access the electronic filing system, each filer agrees to, and shall:

- (1) Register for access to the electronic filing system;
- (2) Comply with the registration conditions when using the electronic filing system; and
- (3) Furnish required information for case processing.

Explanation: Similar to the federal system, the EFS and this chapter presume a statewide, central registration authority for anyone seeking to file a document electronically. A person must register and fully comply with the registration process to be issued an EFS login. As in PACER system, the EFS password becomes the signature for the filer. Every filed document will have a submittal screen that will require the filer to provide information about the document being filed.

21.040 FORMAT OF DOCUMENTS TO BE FILED ELECTRONICALLY

- (1) All documents submitted to the court must be in a Portable Document Format (PDF).
- (2) Submitted documents must, when viewed in an electronic format and when printed, comply with the requirements of ORCP 9E and UTCR 2.010 except as to any requirement that a document bear a physical signature when filed.
- (3) Submitted documents which do not comply with these provisions may be rejected as provided in this chapter.

Explanation: The EFS will have a PDF standard for electronic documents. Documents filed electronically must meet the document standards set forth in ORCP 9E and comply with the requirements of UTCR 2.010. Documents that fail to comply may be returned to the electronic filer without being accepted by the court. Submitted documents will be filed as of the date and time of submission, but filings must clear an initial inspection to achieve that filing date and time.

21.050 PAYMENT OF FEES

(1) Payment Due Upon Filing

A filer shall pay the filing fees for filing a document electronically with the court by using the electronic filing system.

(2) Fee Waivers and Deferrals

A filer may apply for a waiver or deferral of court fees and costs at the time of filing a document electronically, as provided in Or. Laws 2007, ch. 493, §§ 2, 3 (effective on Jan. 1, 2008). A document, which constitutes an appearance or pleading for which a fee is required, may be submitted for filing with an accompanying application for a waiver or deferral of a required fee. The document will not be accepted for filing unless the fee waiver or deferral is granted.

Explanation: While Oregon Laws 2007, chapter 129 provides that service of summons or other documentation which begins an action must be accomplished as for paper documents, the actual filing of a complaint or petition, including the satisfaction of the required filing fee, may be accomplished electronically.

21.060 FILES OF THE COURT

(1) Electronic Filing

- (a) The submission of a document electronically, with the electronic filing system’s confirmation receipt confirming that the electronic filing system received the document, and acceptance of the document by the court, accomplishes the electronic filing.
- (b) The electronic document, when accepted for filing, constitutes the court’s record of the document.

Explanation: This rule sets out the process for filing electronically. The filer submits the document electronically and receives an e-mail receipt confirming that the document was received by the court and setting out the date and time of the submission of the document. When the submitted document is reviewed, and accepted for filing, the circuit court's electronic content management system (ECM) will accept the submission date and time as the date and time of the filing of the document.

(2) Converting a Conventional Filing into an Electronic Format

The court may digitize, microfilm, record, scan, or otherwise reproduce a document that is filed conventionally into an electronic record, document, or image. The court subsequently may destroy a document that is filed conventionally in accordance with the protocols established by the State Court Administrator under ORS 8.125(11) and Or. Laws 2007, ch. 129, § 2.

Explanation: This rule reflects the authority granted by the Legislative Assembly for both the Chief Justice and the State Court Administrator to define rules regarding the conversion of paper documents to an electronic format. This rule establishes the Chief Justice's grant to the courts through the State Court Administrator's standards for the conversion and retention of electronic documents and the destruction of paper documents.

21.070 SPECIAL FILING REQUIREMENTS

(1) Courtesy Copies

The court may request that a filer submit, in the manner and time specified by the court, a copy of the document that was filed electronically and a copy of the confirmation receipt from the electronic filing system in one of the following formats:

- (a) Paper;
- (b) PDF; or
- (c) The file format in which the document was created.

Explanation: Judges vary widely in the acceptance and use of electronic documents. This rule allows a judge to request a document copy be provided to the judge for the judge's own use in a format determined by the judge. The EFS would not be used for the delivery of a copy of an electronically filed document, but e-mail, fax, or messenger as the situation required would be sufficient.

(2) Court Order Requiring Electronic Filing and Electronic Service

Except for service of summons or service of complaint or petition, the court may, on the motion of any party or on its own motion, order all parties to file and serve all documents electronically, after finding that such an order would not cause undue hardship or significant prejudice to any party.

Explanation: This rule permits the court to direct that all parties in an action begin using the EFS system for purposes of a particular action. It is assumed that registered parties in such an action would be using

EFS. The effect of a court's order under this section would be to require some parties to register and use the system.

(3) Attachments and Exhibits

- (a) A filer may submit as an exhibit or attachment only the excerpt of the referenced material that is directly germane to the matter under consideration by the court. A responding party may timely file an additional excerpt or the complete document that the party believes is directly germane. The court may require a party to file an additional excerpt or the complete document.
- (b) A demonstrative or oversized exhibit must be filed conventionally.
- (c) Trial exhibits may not be filed electronically or conventionally with the court, and must be delivered or submitted as ordered by the assigned judge.

Explanation: This rule adopts the federal court "excerpt of document exhibit" standard for exhibits to be submitted to the court. While there may be times when the complete document is required or needed, this rule provides the parties with discretion to make that determination. "Oversized exhibits" means any document over 8.5" x 11," which cannot functionally be reduced to that size, or any non-documentary exhibit.

21.080 ELECTRONIC FILING DEADLINES

- (1) Electronic filing is permitted at all times, except when the electronic filing system is temporarily unavailable.
- (2) The filing deadline for any document filed electronically is 11:59 p.m. in the time zone in which the court is located on the day the document is required to be filed.
- (3) A document will be considered submitted for filing when the document is received by the electronic filing system. The electronic filing system will affix to each document the time of day, the day of the month, month, and year that the document is received and will issue a confirmation receipt to the filer that includes the date and time of receipt.
- (4) If the document is accepted for filing, the date and time of filing entered in the register will relate back to the date and time the document is received by the electronic filing system and the electronic filing system will affix the date and time of acceptance on the document.
- (5) In the event the court rejects a document submitted electronically for filing, the court will affix the date and time of rejection on the document and send notice of the basis for the rejection, with the document, to the filer and the document shall not become part of the court's file in the action. The court may require a filer to resubmit the document to meet the filing requirements. Unless otherwise ordered by the court, a resubmitted document will be considered for filing when the document is received by the electronic filing system. The date and time of filing of the resubmitted document does not relate back to the date and time of the filing of the original document.

Explanation: This rule sets out the document filing process for the EFS and what happens to a rejected document. The goal is to provide to the filer and the court a clear set of documented steps through which each document is processed. The court may order that a rejected document, which is later resubmitted, have a filing date and time that relates back to the original submission of the document for filing. It is intended that this relief be used only in cases where manifest injustice would result if the filing of the document did not relate back to the date and time of the original submission.

21.090 ELECTRONIC SIGNATURES

- (1) The use of a filer's login constitutes the signature of the filer for purposes of these rules and for any other purpose for which a signature is required.
- (2) In addition to information required by law or rule to be in the document, a document that is filed electronically must include a signature block that includes the typed name of the filer preceded by an "s/" in the space where the signature would otherwise appear.

Example:

s/ John Q. Attorney
JOHN Q. ATTORNEY
OSB #
Attorney for Plaintiff Smith Corporation, Inc.

- (3) When a document is filed electronically in which more than one party joins, that all such parties join in the document must be shown either by:
 - (a) Submitting a scanned document containing the signatures of all parties joining in the document;
 - (b) A recitation in the document that all such parties consent or stipulate to the document; or
 - (c) Identifying on the document the signatures that are required and submitting each such party's written confirmation no later than three (3) days after the filing.

Explanation: A filer who logs in to the EFS and submits a document is deemed to have signed it. This approach seems to work very well in the federal court system.

21.100 ELECTRONIC SERVICE

- (1) Filers that are registered with the electronic filing system are deemed to consent to electronic service of all documents filed by other registered filers in an action, except for service of summons or service of complaint or petition.
- (2) Upon the filing of a document submitted through the electronic filing system, a notice of filing, which contains a hyperlink to access a document that is filed electronically, is transmitted by the electronic filing system to the e-mail address of each party to be served for the purpose of effecting service.
- (3) Completion and Time of Electronic Service

- (a) Except as provided in (b), electronic service is complete at the time the document submitted for filing electronically is accepted by the court.
- (b) Electronic service is not effective if the serving party has knowledge that the document was not sent to or received by the party to be served.

Explanation: The ECM system will transmit “service” when a document is accepted for filing. The service will be the e-mail notice of the document being filed in the action. The served party will click on the hyperlink in the e-mail notice to obtain the served document. The document may be printed and saved locally.

(4) Proof of Electronic Service

A filer who serves a document electronically upon another party, as provided in this chapter, shall make a proof of service that shall accompany the document when it is submitted for filing.

Explanation: When filing electronically, the filer may assume that the document, if filed, will be served and may state in the proof of service that “the document will be served by the electronic filing system upon filing of the document.” While this may seem backwards from the service of paper documents, the automated nature and certainty of electronic delivery of the “service” notice make it both practical and efficient.

(5) Conventional Service

The filing party is responsible for perfecting service conventionally in any manner permitted by the Oregon Rules of Civil Procedure and for filing a proof of service with the court for every:

- (a) Document required to be filed conventionally under this chapter; and
- (b) Document that could not be served electronically upon a party who appeared in the action.

Explanation: Oregon Laws 2007, chapter 129 specifically requires conventional service on any opening document that brings a party within the jurisdiction of the court and compels an appearance or some other appropriate response. Service in these instances must comply with the Oregon Rules of Civil Procedure.

21.110 HYPERLINKS

- (1) A document that is filed electronically may contain hyperlinks to other portions of the same document, and/or hyperlinks to a location on the Internet that contains a source document for a citation.
- (2) A hyperlink to cited authority does not replace standard citation format. The complete citation must be included within the text of the document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. A hyperlink is simply a convenient mechanism for accessing material cited in a document filed electronically.

- (3) The Oregon Judicial Department neither endorses nor accepts responsibility for any product, organization, or content at any hyperlinked site, or to any site to which that site may be linked.

Explanation: This rule, a direct lift from the rules governing electronic filing in United States District Court, allows parties filing electronically to take advantage of that medium by using hyperlinks within a document.

21.120 RETENTION OF DOCUMENTS BY FILERS

- (1) Unless otherwise ordered by the court, a filer, who files electronically a document that contains the original signature of person other than the filer, shall retain the document in its original paper form for ten (10) years.
- (2) Upon reasonable notice, the filer must provide a printed copy for inspection by another party, the clerk, or the court.

Explanation: For any document filed electronically, which requires signatures other than that of the electronic filer (who will have signed via use of the registered login), the filing party must retain the fully signed document for 10 years and make it available when requested.

21.130 PROTECTED INFORMATION

The use of information contained in a document filed electronically or information accessed through the electronic filing system shall be consistent with state and federal law.

Explanation: This rule is directed at enforcement of the integrity of the EFS and the security of its registered users and the parties they may represent. In addition to any other legal sanctions, violators of this chapter face denial of access to the system for all purposes.

BUSINESS IMPACT OF E-FILING

Currently, there are many ways in which a business can protect its trade secret¹ or confidential information from being disclosed to the general public. In the context of litigation, ORCP 36C provides in relevant part that “[u]pon a motion by a party or by the person for whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following: (7) that a trade secret or other confidential research, development or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court...”

NEGOTIATE PROTECTIVE ORDERS EARLY

With the advent of e-filing, the importance of having a solid protective order in place prior to the disclosure of any confidential or trademark information is imperative as unlike paper filing, access to such information is immediate and widespread. With regard to trademark information ORS 646.469 provides that in any action brought under the Oregon Trade Secrets Act “the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action or ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.” ORS 646.469.² In negotiating a protective order prior to releasing documents subject to a valid discovery request, you should include a provision wherein no document subject to the protective order will be filed or that the introduction of such document into evidence in open court not constitute a waiver of the protective order.

STANDARD FOR FILING SEALED DOCUMENTS

Should the adverse party file a document that is subject to protective order or otherwise have access to such information outside the confines of formal discovery (i.e. an employee), then a Motion to Seal the Record should be immediately filed. The Ninth Circuit Court of Appeals applies two different standards for motions to seal documents, a “compelling reasons” standard and “good cause” standard. The first, a “compelling reasons” standard applies to most judicial records. *Pintos v. Pacific Creditors Ass’n*, 04-17485 (9th Cir. 9-21-2007) (Internal citations omitted). The standard

¹ “Courts traditionally examine six factors in determining whether information constitutes a trade secret: (1) to the extent to which the information is no one outside the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to safeguard the secrecy of the information; (4) the value of the information to the business or as competitors; (5) the amount of effort or money expended by the business in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” *Citizens’ Utility Board of Oregon v. Oregon Public Utility Commission*, 128 Or App 650, 658-659, 877 P.2d 116 (1994) (internal citation omitted).

² “Portion of statute allowing person involved in litigation from disclosing trade secrets without permission was unconstitutional content-based restraint on free speech.” *State ex rel Sports Management News v. Nachtigal*, 324 Or 80, 921 P.2d 1304 (1996).

derives from the common law right to inspect and copy public records and documents, including judicial records and documents. *Id* (internal citation omitted). To limit this common law right of access, parties seeking to seal judicial records must show that “compelling reasons supported by specific factual findings...outweigh the general history of access and the public policies favoring disclosure.” *Id* (internal citation omitted). This is a higher standard from private materials unearthed during discovery. FRCP 26(c) provides that a trial court may grant a protective order which justice requires “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense” similar to ORCP 36C. The “good cause” standard is not limited to discovery, as it has also been applied by the Ninth Circuit when a party seeks access to previously sealed documents attached to a non-dispositive motion. *Id.*³

Therefore, parties must file a Motion for Leave to File Under Seal and obtain leave of court to file a sealed document or a sealed motion, unless the sealed document is a responsive filing to a motion or document already filed under seal. The motion should be filed accompanied by a memorandum in support setting forth the legal basis for sealing the proposed document or motion. The proposed sealed document(s) or sealed motion must be attached to the motion for leave to under seal. Should the court grant the party leave to file a motion or document under seal then any business confidential or trademark information would remain as such pending the court’s decision. In some jurisdictions, sealed cases and sealed documents may not be filed electronically. They must be filed in paper form.⁴ The party may electronically file a motion to file the document under seal and if granted, the assigned judge will electronically file an order authorizing the filing of the document under seal. Other jurisdictions allow for the filing of sealed documents electronically if the court allows a party leave to file the motion or document under seal.⁵ In the U.S. District Court District of Oregon, Local Rule 3.8-3.11, 26.6⁶, governs the filing of sealed documents.

CONCLUSION

While the concept of public access to court documents remains the same, the effect of e-filing of confidential, proprietary or trademark information is immediate and widespread. Careful consideration to drafting protective orders, in the context of discovery, or a motion to seal a previously filed document is critical to maintain business propriety, confidential and trademark documents.

³ “[W]hen a party attaches a sealed discovery document to a non-dispositive motion, the usual presumption of the public’s right of access is rebutted.” Non-dispositive motions ‘are often unrelated, or only tangentially related, to the underlying cause of action,’ and, as a result, the public’s interest in accessing dispositive materials ‘do[es] not apply with equal force’ to non-dispositive materials.” *Id* (internal citation omitted).

⁴ Northern District of Illinois.

⁵ S. Dakota (for example directions for filing sealed documents, see attached).

⁶ For further guidance in Oregon “[p]arties or persons applying for protective orders or orders authorizing the party or person to file materials under seal should review *Foltz v State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003); *Phillips v. General Motors Corp.*, 307 F.3d 1206 (9th Cir. 2002); *Beckman Industries, Inc. v International Ins. Co.*, 966 F.2d 470 (9th Cir. 1992); *Gisby v Les Schwab Tire Center of Oregon, Inc.*, 2004 WL 848191 (D. Or. 2004); and *Fischer v City of Portland*, 2003 WL 23537981 (D. Or. 2003).” LR 26.6.

OVERVIEW OF PRIVACY LAWS IN DOMESTIC RELATIONS CASES AND POTENTIAL PROBLEMS WITH E-FILING

Although ORCP 36C does provide some framework for protecting privacy in ordinary civil cases, whether for e-filing or otherwise, Oregon law is a bit further advanced with regard to protection of certain privacy interests under certain contexts in family law.

ORS 107.840 authorizes the State Court Administrator to establish a procedure applicable to every court in the state to ensure to protection of Social Security Numbers of parties for filings under ORS 107.085, the statute authorizing dissolution or annulment of marriage proceedings, or 107.485, the summary dissolution procedure typically used by *pro se* litigants.

Briefly, ORS 107.840 requires:

- That Social Security Numbers be listed on a separate paper attached to an affidavit of the Social Security Number holder providing that the Social Security Number is correct,
- That the Social Security Numbers of obligors have been provided or will be made accessible to entities responsible for providing support enforcement services under ORS 25.080 (typically, the district attorney's office as in the case of Marion County or the Department of Justice, Division of Child Support), and
- That any privacy statutes comply with the requirements of 42 U.S.C. 666 relating to the provisions of Social Security Numbers.

"PROTECTED PERSONAL INFORMATION" under UTCR 2.100

Uniform Trial Court Rule 2.100, which is statutorily authorized by ORS 107.840, creates two categories of protected information which may be affirmed by affidavit and protected from view by

anyone other than the court or appropriate child support enforcement agencies. It defines “protected personal information” as:

specific and individual facts that, unless segregated, would otherwise be in a submitted document to identify a person submitting the document or another person beyond that person’s name or to identify the financial activities of either and which the court is allowed or required by law to keep confidential. UTCR 2.100 (2)(a)

The rule specifically identifies the following types of information as “protected personal information”:

- Social security numbers, credit card numbers, bank or other financial account numbers, bank or other financial account locations, driver’s license numbers, financial account access numbers, or similar information that is used for financial transactions.
- Maiden names, birth dates, and places of birth,
- Facts about a person’s identity, the identity of the person’s financial activities that is other than contact information that can be kept exempt from public inspection under the Oregon Public Records Law (ORS 192.410 TO 192.505).
- Facts other than contact information that can otherwise be protected under specific law, including, but not limited to, information protected by existing court order (such as an order issued pursuant to ORCP 36C).

“CONTACT INFORMATION” under UTCR 2.100

In addition to “protected personal information”, UTCR 2.100 also creates a category called “contact information” which may also be protected. “Contact information” is defined as “the name of a person submitting a document or of a person on whose behalf a document is being submitted; telephone number; personal or business address; e-mail addresses; employer identification and address; or similar facts that make it possible for another to contact a person who is named in a document.”

PROTECTION OF PREVIOUSLY-DISCLOSED PROTECTED INFORMATION under UTCR 2.110

IN addition to the protections afforded under UTCR 2.100, UTCR 2.110 provides a procedure to protect personal information and no contact information which has already been included in a file or in a court filing. Just as UTCR 2.100 requires an affidavit and segregated information sheet to be filed separately from the petition for dissolution, and requires the petition for dissolution itself to note that the information was disclosed or not disclosed pursuant to UTCR 2.100 and any other applicable statutes, so does UTCR 2.110 allow a party to, post-filing, move that the court segregate any information deemed protected under UTCR 2.100.

UNIFORM CHILD CUSTODY JURISDICTION ENFORCEMENT ACT (ORS Chapter 109.701 to 109.990.)

The Uniform Child Custody Jurisdiction and Enforcement Act was created to prevent forum-shopping in custody disputes between divorcing parties. The rule essentially provides that the party filing a dissolution, paternity, annulment, or separation proceeding must litigate the issues of custody and parenting time in a child’s “home state,” which is defined as the state where the child has resided for the last six months (absent a number of other tests that may apply). Because the U.C.C.J.E.A. encourages the parties to be forthcoming about the residence locations of the children, ORS 109.767 requires, among other things, a declaration that no other proceeding addressing custody or on file in any other state, and a list of the names, dates of birth, and addresses of the

children for the previous five year period. This information would be protected under UTCR 2.100, as well. UTCR 2.100(3)(c)(ii).

FAMILY ABUSE PREVENTION ACT (ORS Chapter 107.700 to 107.735)

The Family Abuse Prevention Act, ORS 107.700 to 107.735, provides for the issuance of a restraining order when a “family or household member” has been a victim of “abuse, within the last 180 days.” At ORS 107.718, the Family Abuse Prevention Act Restraining Order Application form has been set forth within the body of the statute. That form does not specifically provide that the petitioner’s telephone number, residence address, age, and birth date may not be disclosed to the respondent against whom the petitioner seeks an order. It does, however, contain a paragraph stating:

If you wish to have your residential address or telephone number withheld from respondent, use a contact address and telephone number so that the Court and the Sheriff can reach you if necessary.
ORS 107.718.

PRIVACY PROBLEMS ARISING FROM E-FILING

As in other practice areas, the existence or non-existence of e-filing does not necessarily create new privacy concerns. Rather, e-filing tends to increase the importance of excluding all “protected personal information” and “contact information” under UTCR 2.100 to the fullest extent of the rule possible when filing initial dissolution, separation, and annulment proceedings. Further, there is a heightened need to review incoming and outgoing discovery to identify potential protected or contact information which may need to be provided as attachments to affidavits (as in the case of the Uniform Support Affidavit required to be filed by UTCR 8.010), in support of motions to compel production under ORCP 46, and as trial and hearing exhibits. The careful practitioner will be vigilant about whether the protections afforded to litigants under ORCP 36C could provide additional security to clients and opposing parties.

In addition to practitioner-based concerns, UTCR 2.100 does not on its face include applicability to paternity proceedings under ORS chapter 109 at the filing stage, notwithstanding the fact that those proceedings would likely require a child support order to be entered pursuant to ORS 25.020(8)(d).

ORS 25.020(8)(d), which requires parties in any child support order including paternity order resulting from a paternity proceeding under ORS chapter 109 to include residence, mailing or contact or address, Social Security Number, telephone number, and driver's license of each party, has its own confidentiality rule based upon a finding that "the health, safety or liberty of a party or child would unreasonably be put at risk by the disclosure of information," but the rule does not apply at the filing stage as clearly as does UTCR 2.100. It also requires a court order. One potential approach to this problem would be to complete a UTCR 2.100 segregated information sheet and affidavit to be filed along with the petition for paternity, which, despite the rule's failure to include paternity proceedings, is not likely to be rejected by the courts.

Similarly, UTCR 2.100(3)(a) **requires** parties under dissolution proceedings to segregate Social Security Numbers from all documents they submit, but no such requirement exists for paternity proceedings filed under ORS Chapter 109.

The domestic relations statutes in Oregon have done a fairly effective job of preventing the disclosure of inappropriate information to, for example, unrelated third parties who seek it for purposes of identity theft or other nefarious purposes. However, the close nature of family relationships combined with Oregon's policy of assuring minor children of frequent and continuing contact with parents who have shown the ability to act in the best interests of the child (ORS 107.101), creates situations in which the privacy of a petitioner seeking, for example, a restraining order, can sharply conflict with the interests of a respondent seeking parenting time with a child. In those instances, counsel must be particularly vigilant to avoid disclosure of potentially protected information, either in initial filings such as petitions for dissolution or motions for modification of custody, parenting time, or child support, and also in submitting exhibits to the court which may contain protected information, such as the family abuse prevention act restraining order application form mandated by ORS 107.718.

APPENDIX 2

By this affidavit under UTCR 2.100, I request that the protected personal information on the form attached to this affidavit be segregated from information that the general public can see in the case noted above.

The protected personal information I request to be segregated is as follows:

A. The following is a general description of the protected personal information (example description "my social security number" or "parent's bank account number"). Do not include specific protected personal information here.	B. The following is the legal authority by which I believe this information may be exempt from public inspection (<i>cite to statute, rule, case, etc.</i>). Row numbers correspond to those in Column A. Add rows in both columns as necessary.
1. Wife's Birthdate	UTCR 2.100; ORS 192.410-192.505
2. Wife's Social Security Number	UTCR 2.100; ORS 192.410-192.505; ORS 107.840
3. Wife's Maiden or Prior Name(s)	UTCR 2.100; ORS 192.410-192.505
4. Wife's Place of Birth	UTCR 2.100; ORS 192.410-192.505
5. Wife's Credit Card Number(s)	UTCR 2.100; ORS 192.410-192.505
6. Wife's Bank or other financial account number(s) and location(s)	UTCR 2.100; ORS 192.410-192.505
7. Wife's Driver's License Number	UTCR 2.100; ORS 192.410-192.505
8. Husband's Birthdate	UTCR 2.100; ORS 192.410-192.505
9. Husband's Social Security Number	UTCR 2.100; ORS 192.410-192.505; ORS 107.840
10. Husband's Place of Birth	UTCR 2.100; ORS 192.410-192.505
11. Husband's Credit Card Number(s)	UTCR 2.100; ORS 192.410-192.505
12. Husband's Bank or other financial account number(s) or location(s)	UTCR 2.100; ORS 192.410-192.505
13. Husband's Driver's License Number	UTCR 2.100; ORS 192.410-192.505
14. Child(ren)'s Birthdate(s) and Social Security Number(s)	UTCR 2.100; ORS 192.410-192.505; ORS 107.840
15. Tax Returns and/or pay stubs for Uniform Support Affidavit(s)	UTCR 2.100; ORS 192.410-192.505; ORS 107.840

1. The specific protected personal information described above is provided on the attached UTCR 2.100 segregated information sheet.

2. I have segregated the information described above from another document or form that I am submitting at the same time (petition for dissolution of marriage, motion to appear and show cause, and uniform support affidavit), to keep the protected information from being available to the general public. I appropriately noted in the other documents the places where information has been provided in the attached information sheet rather than in that document. *(No fee is charged when information is segregated at time of submission.)*

APPENDIX 2

3. I have attached a self-addressed, stamped postcard with language required by UTCR 2.100 so that the court can inform me of its response to this request.

4. I understand that while the protected personal information may be withheld from the general public, if this request is granted, it may still be available to some persons and government agencies as described in UTCR 2.100.

5. I have mailed or delivered copies of this request (*not including the attached UTCR Form 2.100.4b and its attachments*) to people required by UTCR 2.080.

I knowingly give the information in this affidavit, the attached information sheet and any attachments to the information sheet under an oath or affirmation attesting to the truth of what is stated and subject to sanction by law if I knowingly provide false information to the court.

DATED this _____ day of March, 2008.

For Office Use:

Request granted OR denied (state reason) _____

Date: _____ TRIAL COURT ADMINISTRATOR

By: _____

APPENDIX 3

ATTENTION COURT STAFF: Except as your trial court administrator tells you otherwise, this sheet and its attachments are:

- to be separated from the attached affidavit, and
- NOT to be placed in any court file where they can be seen by the public, and
- NOT to be provided to any member of the public to see or copy.

PLEASE follow UTCR and Judicial Department instructions for protecting information on this form. Ask your trial court administrator if you have questions.

1. The requestor **MUST** complete all of the following information:

Requestor Information:

Name: A Name
 Address: 1011 Commercial Street N.E. #210
 P.O. Box 749
 Salem OR 97308-0749
 Telephone Number: 503-581-1501
 Other Contact Info: 503-581-5891 (fax)
 ATTY E-MAIL (E-mail)
 Relationship to Case: Attorney for P/R

2. Protected Personal Information that is segregated:

Row number used to identify on affidavit	General Description of the protected personal information (<i>same as on affidavit</i>)	Relates to (<i>Person's name</i>)	The following is the specific Protected Personal Information to be segregated (<i>give the specific fact, i.e. social security number etc. that is being protected</i>). This can be a reference to an attachment. Do not use for contact information (addresses, telephone numbers, employer identification, and similar information that can be used to contact someone) unless specifically ordered by a court. The type of information that can be protected by this form is limited to what is listed in UTCR 2.100. Add rows as necessary.
1.	Wife's Birthdate	Wife	W DOB
2.	Wife's Social Security Number	Wife	W SSN
3.	Wife's Maiden and/or Prior Name(s)	Wife	W Mdn/Prior
4.	Wife's Place of Birth	Wife	State or Country
5.	Wife's Credit Card Numbers	Wife	List
6.	Wife's Bank or other financial account numbers	Wife	List

APPENDIX 3

Row number used to identify on affidavit	General Description of the protected personal information (same as on affidavit)	Relates to (Person's name)	The following is the specific Protected Personal Information to be segregated (give the specific fact, i.e. social security number etc. that is being protected). This can be a reference to an attachment. Do not use for contact information (addresses, telephone numbers, employer identification, and similar information that can be used to contact someone) unless specifically ordered by a court. The type of information that can be protected by this form is limited to what is listed in UTCR 2.100. Add rows as necessary.
	and locations		
7.	Wife's Driver's License Number	Wife	W ODL
8.	Husband's Birthdate	Husband	H DOB
9.	Husband's Social Security Number	Husband	H SSN
10.	Husband's Place of Birth	Husband	State or Country
11.	Husband's Credit Card Numbers	Husband	List
12.	Husband's Bank or other financial account numbers and locations	Husband	List
13.	Husband's Driver's License Number	Husband	H ODL
14.	Children's Birth date(s) and Social Security Number(s)	Child #1 Name Child #2 Name	C1 DOB C2 DOB
15.	Tax Returns and Pay stubs	Husband Wife	Attachments

There are attachments to this information sheet: Yes No.

If so, how many pages? # of pages.

E-filing and Government Efficiencies

The Oregon State Bar E-Filing in State Courts Task Force Report¹ sets forth a basic example of the current process involved in filing a civil case in Oregon's circuit courts. A practitioner: prints a physical document at the office; signs the document; and delivers a physical document to the court. The court in turn date stamps the document; manually enters the data in a case management and docket system; places the document into a hard file; physically routes the file to the appropriate person who must act on the document; where it is filed in a large records storage facility; to be physically retrieved and re-filed multiple times.²

This can be a highly inefficient and costly process, and for the courts most of these costs are consolidated with tax payers. This inefficient and costly process is compounded for tax payers when the practitioner involved is the State of Oregon or other governmental entity. Therefore, in situations where government is the practitioner in circuit court, the benefits of an efficient e-filing system, including reduction in overall costs, are likewise increased for tax payers.

Even in the event of litigation where the defendant makes no appearance and default is sought, resources are expended in the completion, execution, and delivery of the appropriate complaint, motion for judgment on default and proposed judgment. A practitioner and her or his staff must print the physical complaint, sign the complaint, and either hand deliver or mail the physical complaint to the appropriate circuit court. They must do the same with necessary proof of service and summons, and with the motion for judgment on default and proposed judgment. Particularly where the practitioner is the government, some deliveries of these physical documents periodically happen in-person, due in part to coordination with other governmental entities. However, regardless of form of delivery, the circuit court must physically route and attend to these various documents. And, in the case of many civil actions by the State of Oregon, the circuit courts then create and cause to be returned to the State of Oregon physical conformed or certified copies of the judgments — this without the benefit of recouping fees as with private litigants.

Therefore, where government is the practitioner utilizing the services of the circuit courts — in reducing the use of physical paper, and in reducing the necessary labor related to the creating, routing, delivery and receipt of physical paper at both ends — an adequately engineered e-filing system will reduce costs for government on both sides of the coin in the long run. Further, the ability to file, receive, route, and store documents in a digital manner will not only reduce costs and inefficiencies, but will also provide practitioners and circuit courts the opportunity to reallocate and better use allotted time. Not to mention the reduced use of physical space for storage of documents. Benefits such as this, no matter how small, are often exponential over time and will help to ease the burdens placed upon tax payers and civil servants in paying for and performing certain government services — in addition to the overall benefits to all who use the courts.

If a court adopts full electronic filing, in lieu of paper..., then the costs in time and money to handle, store, catalog and retrieve paper... are significantly reduced. Ultimately, the costs of archiving and storing paper... will disappear in some courts, since they will be replaced entirely by electronic files.³

Experience regarding the shift to general electronic filing systems in the private sector lends positive data to support the justification for the initial costs of implementing such a system.

During 1994 and 1995, Bell South Telecommunications conserved 16 million sheets of printout paper and saved \$3.5 million by implementing an electronic filing system. The company's system of storing reports electronically enables employees to view, download, or print reports archived in

¹ E-Filing in State Courts / Task Force Report November 2006.

² *Id.*, at 4.

³ <http://www.llrx.com/extras/filing.htm>.

the company's data centers from their own workstations. Implementing this system has helped the company conserve paper, improve efficiency, and reduce the need for paper storage.⁴

Similar savings have also been experienced in non-judicial sectors of government.

The Expanding Electronic Tax Products for Businesses (EETPB) reduces the tax-reporting burden on businesses while improving the efficiency and effectiveness of government operations, provides for timely and accurate tax information from businesses, and simplifies the Federal and state reporting process. . . . [Electronic] Forms 1120/1120S have generated a cost savings of \$2,082,000 for 2007 as of September 2007. Cost saving for processing Forms 1120/1120S electronically versus on paper is \$2.39 per return.⁵

E-filing will not occur without its challenges. Some of these challenges will of course be universal for all or most practitioners and for the circuit courts. However, just as many issues will be unique for private practitioners, or unique for the circuit courts, some issues created by e-filing will likewise be unique for government practitioners. Regardless, each challenge creates the potential for further improved efficiencies.

For example, while all practitioners utilize *ex parte* procedures for various orders and other matters, there exists a unique statutory court approval requirement for certain non-litigated settlements involving the State of Oregon. These settlements constitute a large portion of certain government work. Although not termed nor captioned as such, these court approvals don't require an appearance by opposing counsel or the respondent, so they have always been treated as *ex parte*. These Assurances of Voluntary Compliance,⁶ which become court orders upon approval by the appropriate judge, are complete documentary matters in and of themselves. There is no complaint or judgment filed in the matters, and the court proceedings are opened and closed immediately upon creation of the physical files housing the original settlements. Like other *ex parte* matters, Assurances of Voluntary Compliance receive court approval prior to filing. The document is provided to the *ex parte* judge before any underlying case number is assigned to the matter, and before any file is opened by the court. Where coordination isn't an issue, Assurances of Voluntary Compliance are often mailed to the appropriate circuit court, which routes the document internally for approval and filing as necessary. Just as with certain judgments, courts then create and cause to be returned to the State of Oregon physical certified or conformed copies of the Assurances of Voluntary Compliance.

Presuming these settlements will be documents that can be e-filed and approved electronically, what process will be set in place to allow for timely approval by the appropriate judge? Under the current bankruptcy system, federal judges can place electronic signatures directly upon electronically submitted orders (pursuant to appropriate time periods, etc. . . .). E-filed *ex parte* submissions, where judges could review matters on their schedules and merely attach digital signatures (as opposed to a judge's staff dealing with a room full of *ex parte* matters at 8:30 in the morning) would no doubt be preferred by all in most circumstances. But still, when time is of the essence (as is often the case in *ex parte* matters) will there be direct electronic contact with a given *ex parte* judge at a designated time? Or, will "rush" *ex parte* matters — or certain matters akin to such — simply need to be pursued in a more traditional manner? For most if not all practitioners there will of course likely be occasions where *ex parte* face-time between attorneys and judges is necessary anyway, but the limiting of these occasions through the broad use of electronic procedures and communications will best serve all, and will best aid in the reduction of current costs and inefficiencies in the long run.

⁴ <http://epa.gov/wastewise/wrr/cost.htm>.

⁵ Targets are based on IRS filing projections. <http://www.whitehouse.gov/omb/egov/c-7-6-cetpb.html>

⁶ ORS 646.632(2).

As anticipated by the proposed rules for e-filing in Oregon,⁷ the electronic service capability of an e-filing system will no doubt be equally preferred by all in most circumstances, and will also reduce costs and inefficiencies. Further, just the ability to review documents immediately after filing will greatly enhance convenience.

An e-filing system which is properly designed to provide online access to files will permit attorneys representing parties to have immediate access to the filings as soon as they are up on the site. No more waiting for two or three days for a copy of the brief [or other pleading] to come in the mail.⁸

However, just as with the need for face-time with judges, there will similarly be instances where the use of electronic service is not appropriate. The proposed rules recognize this and mandate “conventional service” in certain circumstances.⁹ A good example is provisional process. Such actions do not necessarily lend themselves to electronic service. Similarly, service of summons or complaints will generally need to occur in conventional manners. But these are exceptions. Any e-filing system set in place operating in a fashion that insures minimal creation of physical documents and minimal handling of those physical documents will encourage reduction of current costs and inefficiencies in the long run.

There will understandably be many questions and issues with such a technological shift in how day-to-day business is conducted with the courts. The answers to these questions and solutions to these issues will no doubt ultimately be addressed by any e-filing system set in place, and the end result will remain the same; that is, the capabilities and efficiencies offered by an adequately engineered e-filing system will likely create an increased net benefit for government in the long run — in addition to the overall benefits to all who use the courts.

⁷ Selected Sections Applicable to the Proposed Rules for e-filing: Oregon Laws 2007 chapter 129, sections 1 to 2 (effective Jan. 1, 2008).

⁸ <http://www.llrx.com/extras/filing.htm>.

⁹ Selected Sections Applicable to the Proposed Rules for e-filing: Oregon Laws 2007 chapter 129, sections 1 to 2 (effective Jan. 1, 2008).

E-Filing Structures Adopted By Administrative Agencies

At the state and federal levels, e-government legislation has been promoted as a means of reducing costs, improving efficiencies, and providing enhanced access to government entities and services. Federal, rather than state, agencies have been early adopters of conducting their duties through electronic means, in no small part because of the significant costs involved in implementing effective e-government systems.

In response to legislation that mandated reductions in paper work and the adoption of electronic services,¹ federal agencies are now conducting more of their duties over the Internet. For example, an individual can submit his or her application for a trademark, patent, or NOAA fisheries permit through the U.S. Department of Commerce's website. But an agency's electronic offerings can vary from the comparatively simple, such as publishing documents online in PDF format, to the complex, which includes e-filing.

William Fenwick and Robert Brownstone have recognized 3 phases or types of e-government offerings provided by federal and state agencies:

- Phase I entails creating web pages to disseminate information about the agency and its activities with no interactive capability, in other words using the Internet as a publisher only.

Example: Oregon Department of Environmental Quality, which makes forms such as the 'Wood Chipper Pollution Control Facility Tax Credit Application' available for download only on the DEQ website.

- Phase II entails not only using the Internet to publish, but also creating the ability of the citizen to submit transactions to the agency. Submitted information is processed and responded to more or less off-line using traditional means of the telephone or mail.

Example: Oregon DMV offers online vehicle registration renewal that is received online, processed, and then delivered by mail.

- Phase III is creating an interactive web site that publishes, receives transactions, processes transactions and responds on-line in real time.²

Example: Certain electronic filing options offered by the Internal Revenue Service.

Phase II and III offerings, which include electronic docketing and filing systems, contain the greatest opportunity for savings for both users and government agencies, as well as increasing public access to agency offerings. Simply making a Phase II or III system available will not result in anticipated benefits if the system's underlying structure is flawed.

¹ The E-Government Act of 2002, Pub.L. 107-347, 116 Stat. 2899, 44 U.S.C. sec. 101.

² William Fenwick and Robert Brownstone, *Electronic Filing: What is it? What are its Implications?*, 19 Santa Clara Computer & High Tech. L.J. 181 (Dec. 2002) (as revised 26 November 2003)

The National Archives and Records Administration's Office of the Federal Register and the Government Printing Office in partnership attempted an ambitious electronic offering of the complex variety in 2003 with the launch of *Regulations.gov*. The website's purpose was the consolidation of 200 major federal regulatory dockets into a single Internet portal available for public access. Beginning in the fall of 2005, the Federal Docket Management System, developed in part by Lockheed Martin under a contract worth \$98 million over a 5 year period,³ debuted as the next generation of *Regulations.gov*. This new docket management system "allows citizens to view the entire rulemaking docket for a regulatory proceeding, including background materials and prior versions of the rule, as well as to view and post comments."⁴

User descriptions of the website have been relatively consistent and can be summed up in the words of Cornell students studying human-computer interaction: "absolutely horrific."⁵ The *E-Gov Performance Index* compiled by the White House's Office of Management and the Budget revealed that in FY2007 only 42% of consumers were satisfied with this electronic docket system. Their target for FY2008 is 52%.⁶ Common complaints involve the docket system's poor search capabilities and a lack of uniformity in how agencies label and process the information submitted to the electronic docket. "The FDMS is turning out to be pretty lousy—it's 'cutting edge' if we wind back the clock to ten years ago, but not up to snuff by today's standards."⁷

More successful and cost-effective implementations of electronic docket systems by administrative agencies are found at the state level. In West Virginia, the state's Supreme Court partnered with the Workers' Compensation Division so that the court could utilize the agency's Electronic Document Management System. As part of the system, all claims for workers' compensation are scanned and indexed. Staff attorneys with the court can access the administrative record through a secured web-based interface. The partnership has reduced time

³ Gail Repsher Emery, *Government defends e-rulemaking*, Washington Technology, Vol. 18, No. 24 (22 March 2004)
<http://www.washingtontechnology.com/print/18_24/23061-1.html>

⁴ Ralph Lindeman, *Government Operations: OMB Struggles to Deal With Objections On Capitol Hill to E-Regulation Project*, Regulation & Law (9 January 2006). From ABA Section of Administrative Law and Regulatory Practice, 2006 Midyear Meeting of 11 February 2006.
<<http://www.abanet.org/adminlaw/midyear/2006/Tab6.pdf>>

⁵ Ralph Lindeman, *Government Operations: Structural, Other Flaws Said to Impede Effectiveness of E-Rulemaking Web Site*, BNA, Inc. Daily Report for Executives (30 March 2007). <<http://ceri.law.cornell.edu/documents/bna-mar-report.pdf>>

⁶ OMB, *E-Gov Initiatives Performance Index*. (Last accessed on 12 March 2008).
<<http://www.whitehouse.gov/omb/egov/c-7-22-b-erule.html>>

⁷ Ibid.

spent handling paper and requests while improving the court's review process.⁸

The California Public Utilities Commission deployed an electronic filing system on 29 August 2006 at a cost of \$400,000. As of July 2007, 83% of all documents filed with the commission were filed electronically. "Each year the [commission] processes approximately 7,500 filings submitted by regulated utilities and other participants in formal CPUC proceedings."⁹ With a reduction in paper filings, the commission transferred a filing clerk to more important work. As expected, the commission found that e-filing decreased the amount of paper received, reduced storage costs, and improved public participation in administrative hearings. Unexpectedly, the quality of filings has improved. "The time and effort required to correct, resubmit, and process an acceptable e-Filing is greatly accelerated because rejections, corrections, and resubmissions happen right away."¹⁰

The Nebraska state Department of Revenue wants the gold medal in the e-filing competition among state tax agencies. In 2007, 62% of the state's tax returns were filed electronically.¹¹ Dave Heineman, Governor of Nebraska, is actively encouraging Nebraskans to take advantage of e-filing. Nebraska's Tax Commissioner, Doug Ewald, has estimated that his department will hire 60 seasonal workers this year to process filed returns, a reduction of more than half from a decade ago.¹² Processing tax returns electronically has resulted in reduced costs, improved response times, and more accurate filings. These benefits mirror those found by the IRS.

The information collected by federal and state administrative agencies involves varying levels or categories of personal information. Of the information collected, which categories are properly labeled as private? Which categories are entitled to some degree of protection? What actions should agencies take to protect private information?

In September of 2006, the Director of the California Department of Finance released a

⁸ Rory Perry, *Inter-Agency Electronic Document Exchange: Strategies for Building an Electronic Filing Infrastructure*, Seventh National Court Technology Conference, 2001.
<http://www.ncsconline.org/D_Tech/ctc/showarticle.asp?id=11>

⁹ California Public Utilities Commission, *CPUC Deploys E-Filing on Public Web Site*, Government Technology's Public CIO (21 September 2007)
<http://www.govtech.com/pcio/articles/147758?id=&story_pg=1>

¹⁰ Ibid.

¹¹ Nancy Hicks, *Governor promotes e-filing tax returns*, Lincoln Journal Star, 13 Feb. 2008. (Last accessed: 12 March 2008)
<<http://www.journalstar.com/articles/2008/02/14/news/nebraska/doc47b347f186824047732153.txt>>

¹² Ibid. (*See also*, 13 Feb. press release from Governor Heineman's office).

memo detailing procedures for protecting information received by state agencies. California separates the information contained in agency filings into 4 categories: 1) Confidential information, which is exempt from disclosure under state and federal law; 2) Sensitive information, which requires special precautions to protect it from modification or deletion; 3) Personal information, which identifies or describes an individual; and 4) Public information, which is not exempt from disclosure under federal or state law. Information that is confidential, sensitive, or personal is protected. Agencies are directed to adopt procedures for protecting that information, and are advised by the Office of Privacy Protection and the State Information Security Office.¹³

Not too long ago, private information of all categories was protected by distributing information among various physical locations. If you didn't visit the county courthouse or the agency's main office, you couldn't access the information. This is the concept of 'practical obscurity' presented by the U.S. Supreme Court in U.S. Department of Justice v. Reporters Commn. for Freedom of Press, 489 U.S. 749 (1989). The time, money, and effort required to obtain information from the various record holders acted as a protective veil. But with the development of e-filing, that veil is being taken down by Google. Furthermore, where 'practical obscurity' was a passive way of protecting information, electronic docket systems require more active measures.

These more active measures involve a combination of low- and high-tech responses.¹⁴ First, attorneys and *pro se* individuals must be more aware of the private information contained in their agency filings and take steps to guard that information whenever possible. Second, agencies are developing rules and policies for protecting and publishing the information contained in the filings they receive. Third, agencies are deploying firewalls, encrypting filings, requiring registration and password prior to log-in, and may employ automatic redaction.

¹³ Michael C. Genest, Protection of Information Assets, State Administrative Manual Management Memo (MM 06-12). 1 September 2006. (Last accessed on 12 March 2008) <http://www.documents.dgs.ca.gov/osp/sam/mmemos/MM06_12.pdf>

¹⁴ E.g., Act on the Protection of Personal Information, Law no. 57, 2003. Cabinet Office, Japan.

Contacting the Court by e-mail--What are the rules?

Rule No 1: The rules are whatever the Judge you are contacting says are the rules.

Rule No 2: Always ask the Judge what is covered by rule No. 1.

Contacting the court at this time by e-mail is not uniformly regulated in many counties. Individual Judges have their preferences, and only a few Judges have reduced those to written guidelines. Check the Supplemental Local Rules of the County, but go beyond that and inquire of the local Judge handling your case.

Below are some paraphrased comments from Judges in three Willamette Valley Counties on the topic.

"Lawyers need to realize that sending something to the Judge by e-mail does not substitute for filing documents with the clerk's office."

"If you e-mail the court, you must copy all other counsel, but you should not copy your client on the e-mail. If you do, the court can't "reply all." The court does not want to have clients e-mailing the court or copying the court on client-attorney e-mails."

"I don't want e-mails from pro se litigants. They don't know the rules. I don't want them sharing the court's e-mail address with their friends and family."

"I had two lawyers in a case e-mail their trial briefs to me a day before trial. The State Court Systems spam filter sent them to the spam file."

"I don't mind short messages regarding scheduling, but I have a hard time reading long documents on a vertical screen. I have to print long documents and read them on a flat desk. I'd prefer just to get paper in the first place."

"I don't trust the security of e-mail for confidential or sensitive information. Lawyers should not assume e-mails are as secure as letters or phone calls."

"For criminal cases I have an informal system for postponing pretrial conferences. If one of the attorneys sends an e-mail and represent that all attorneys agree, I'll postpone in most cases without more."

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"I don't make decisions or rulings on e-mails. I set issues for hearings. I do issue opinions by e-mail."

"One problem with e-mail is the lack of a fixed time for the other side to respond if an issue is raised that invites a response."

"I read my e-mail everyday, except for the days I don't. I average four out of five days most weeks."

"I don't want e-mails asking me to rule on deposition issues--lawyers should call on the phone."

"I won't grant a continuance on an e-mail. I want a motion filed in proper form"

"I don't like to receive formal documents by e-mail. Not even copies of documents filed."

"We do juvenile cases and we don't have a set policy on e-mails, but generally attorneys do not e-mail the court because of the sensitive nature of the issues and the number of persons that have to be copied in the system."

"We do use e-mails with Drug Court teams, but we only use first names to protect identity."

Judge Murphy and Judge Bispham in Linn County established written procedures for e-mail in domestic cases as follows:

LINN COUNTY E-MAIL LOCAL RULES

3. CONTINUANCES FOR FAMILY LAW CASES ONLY JUDGE BISPHAM AND JUDGE MURPHY

1. Only a Judge may authorize a continuance in a case or the removal of a case from the docket. The Judge will not authorize a continuance in a case of the removal of a case from the docket based upon a telephone call or message.

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2. Please remember that your appearance is required unless the Judge has authorized a continuance or the Judge has allowed you to appear by telephone.
3. Good cause is always required before the Court will grant a continuance. Only two continuances for a single court event are allowed, absent a compelling cause. Scheduling conflicts will not constitute a compelling cause. Counsel may help avoid scheduling conflicts by always bringing their calendar to court and by submitting a list of their available Thursday mornings with their request for a first or second continuance.
4. A request for a continuance by fax or letter or e-mail must be received no later than 11:00 a.m. the day prior to the scheduled appearance and must include the following information:
 - (A) The petition number and case name shall be listed;
 - (B) A statement that each attorney and pro se party has been contacted and agrees to the continuance, listed by the name of the attorney or party; and
 - (C) A list of the Thursday mornings when the attorney will be available for the eight weeks following the date of the continuance must be included.
5. A request for a continuance by e-mail must also include the e-mail address of all attorneys and pro se parties listed in the header of the e-mail request so the Court knows the request was sent to them and so the response will, likewise, be sent to them by a "reply to all with history" e-mail response. If you do not receive a response to an e-mail request, you may assume the e-mail request was not received or seen by court staff or the Judge, and you should contact the Court in another manner. Remember, the Judge or the Judicial Assistant may be unavailable to reply to your e-mail request. Do not "cc" or "bc" clients when sending e-mail to the Court, because the Court cannot then use the "reply to all" button without directly communicating with a represented client.
6. If any party or attorney does not have e-mail, the continuance may not be requested by e-mail.

7. An e-mail request for a continuance will not be granted unless all parties are notified and agree to the requested continuance.

4. OUR E-MAIL ADDRESSES

The E-mail address of Judge Bispham & her Judicial Assistant, Sharon is:
Linn.Family.Law.Judge.Bispham@ojd.state.or.us

The E-mail address for Judge Murphy & his Judicial Assistant, Merla is:
Linn.Family.Law.Judge.Murphy@ojd.state.or.us

One more comment by a Judge on the topic of e-mail:

"The day the court system goes paperless will be the day I retire."