

Terms of Use

Please read the following carefully. By using or accessing E-Motion™ software “Software”, the user confirms that he/she agrees to these terms.

1. Intended Use

The only intended and authorized use of Software is the submission of bench copies of motions, supporting documents and other pleadings, and the review thereof by the judicial officers of the Benton and Franklin Counties Superior Court (“the Court”).

IMPORTANT NOTICE: The submission of documents through E-Motion™ is NOT a substitute for filing documents with the Court Clerk. The ORIGINAL of every document submitted through E-Motion™ Software MUST be filed with the Clerk of the appropriate court.

Any other use is not authorized and will subject the user to civil and criminal liability.

Users must not use the Software to harm Benton or Franklin Counties, the Court, the Software or others. Users must not: damage, disable, overburden, or impair the Software (or any network connected to the Software); resell or redistribute the Software or any part of it; use any unauthorized means to modify, reroute, or gain access to the Software or attempt to carry out these activities; or use any automated process or Software (such as a bot, a spider, periodic caching of information, or metasearching) to access or use Software. Users may be able to access third-party websites or services via the Software, and acknowledge that the Court and Benton and Franklin Counties are not responsible for such websites or services or content that may be available there.

2. Acceptable Document Formats

Documents only in the Portable Document Format (.pdf) may be submitted. Software will not accept documents exceeding 25 megabytes. Users are encouraged to consolidate all documents submitted with respect to a particular motion or hearing into one Portable Document Format (.pdf) file. However, if a document is greater in size, separate it into multiple parts and submit each part separately.

3. Applicable Court Rules

All documents submitted shall be in compliance with all applicable Washington State Court Rules and applicable local rules. Two important Washington State Court Rules are quoted below.

**RULE CR 5
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**

(a) Service--When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in rule 4.

**RULE CR 11
SIGNING OF PLEADINGS, MOTIONS, AND LEGAL
MEMORANDA: SANCTIONS**

(a) Every pleading, motion, and legal memorandum of a party represented by an attorney shall be dated and signed by at least one attorney of record in the attorney's individual name, whose address and Washington State Bar Association membership number shall be stated. A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address. Petitions for dissolution of marriage, separation, declarations concerning the validity of a marriage, custody, and modification of decrees issued as a result of any of the foregoing petitions shall be verified. Other pleadings need

not, but may be, verified or accompanied by affidavit. The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

(b) In helping to draft a pleading, motion or document filed by the otherwise self-represented person, the attorney certifies that the attorney has read the pleading, motion, or legal memorandum, and that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact, (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law, (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. The attorney in providing such drafting assistance may rely on the otherwise self-represented person's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts.

The applicable Benton and Franklin Counties Superior Court Local Rules are quoted below:

**Local Civil Rule 5
Briefs**

All briefs, declarations, affidavits, and other supporting written documentation pertaining to trials, summary judgments motions and any other motions, and other

documents, pre-trial position statements in domestic cases, trial management reports, proposed findings of fact and conclusions of law and judgments, motions and sentencing position statements in criminal matters, and guardian ad litem reports (including criminal and domestic relations), shall be served and filed in the cause. Unless a party does not have access to a computer or the internet, bench copies of all such documents, as well as settlement position statements in civil and domestic cases, shall be submitted electronically via the internet at <http://motion.co.franklin.wa.us/>. Parties without access to a computer and the internet shall deliver bench copies to the Court Administrator. All bench copies must be submitted not later than nine (9:00) o'clock a.m. one court day prior to the scheduled hearing, proceeding or trial. No bench copies, except settlement position statements, shall be submitted to the Court unless prior thereto or simultaneously therewith a copy thereof has been served upon or mailed to opposing counsel. All paper bench copies will be destroyed one (1) week after the original date noted for hearing unless counsel requests copies be returned, with return postage arranged, or unless Court Administration is advised of the new hearing date. When hearings are continued, the parties shall amend the hearing date associated with all bench copies submitted electronically.

[Adopted effective April 1, 1986; Amended effective September 1, 2000; September 1, 2001; September 1, 2002; September 1, 2003; September 1, 2005, September 1, 2007, September 1, 2009, September 1, 2011]

Local Criminal Rule 4.5

OMNIBUS HEARINGS

In every criminal case (except appeals) an omnibus hearing date will be set at the time of arraignment. Normally, it will be set for four (4) weeks from the date of arraignment. At the time of the hearing, it will be expected that defense counsel and Prosecuting Attorney will have already met and disposed of all matters on the omnibus application that can be disposed of and that plea bargaining will have been considered.

If there are any unresolved matters, they will be determined by the Court at the hearing. If it is necessary to hold a suppression hearing, a date certain will be set for such hearing at the time of the omnibus hearing. The defendant shall be present at the omnibus hearing.

If there will be no pre-trial motions or hearings in a case, and all parties agree that an omnibus hearing would not be beneficial, waiver of the hearing may be requested by written stipulation which shall be signed by counsel and defendant. Such a request constitutes an assurance that the case is ready for trial on the date set and that all pre-trial matters have been disposed of.

All rulings of the Court at omnibus hearings or otherwise made in the Criminal Motion Department shall be binding on the parties and shall not be re-litigated at trial.

All briefs, declarations, affidavits, trial briefs, proposed jury instructions, motions, proposed findings of fact and conclusions of law, sentencing position statements, and pre-sentence investigation reports shall be served and filed in the

cause. Unless a party does not have access to a computer or the internet, bench copies of all such documents shall be submitted electronically via the internet at <http://motion.co.franklin.wa.us/>. Parties without access to a computer and the internet shall deliver bench copies to the Court administrator. All bench copies must be submitted not later than nine (9:00) o'clock a.m., one (1) court day prior to the scheduled hearing, proceeding or trial. No bench copies shall be submitted to the Court unless prior thereto or simultaneously therewith a copy thereof has been served upon or mailed to opposing counsel. All paper bench copies will be destroyed one (1) week after the original date noted for hearing unless counsel requests copies be returned with return postage arranged, or unless Court Administration is advised of the new hearing date. When hearings are continued, the parties shall amend the hearing date associated with all bench copies submitted electronically.

[Adopted Effective April 1, 1986, Amended September 1, 2011]

4. User Accounts

Documents may be submitted only by persons that have established a User Account. All User Accounts require approval of Court Administration of Benton and Franklin Counties ("Court Administration"). Users may call 509-736-3071, Ext 3184 to request expedited approval. **Information provided to register a User Account will not be made available to the public, except by Court Order.**

Users must keep User Accounts and passwords confidential and not authorize any third party (except staff) to access or use the Software on your behalf. Users must contact Court Administration immediately if users suspect misuse of User Accounts or any security breach in the Software. Individual users are responsible for all uses made of the Software using the users' User Account.

Users are encouraged to change their passwords in the event of staff changes.

5. Termination and Cancellation of User Accounts

The Court reserves the right to suspend, cancel or terminate the User Account of any user who violates any provision of these Terms of Use or any local rule applicable to the submission of electronic bench copies.

The Court reserves the right, at its sole discretion, and without any obligation to do so, to review and remove user-submitted documents and content at will and without notice.

6. Content

The Court does not claim ownership of the documents or content users provide using the Software. Your content remains the content of the user. The Court does not verify, or endorse the content that users upload with the Software.

Users hereby grant the public, the Court, its judges and Court Administration the right, to use, modify, adapt, reproduce, distribute, and display any documents submitted using the Software, except those filed with the Court Clerk **under seal and for which user has identified the document as being filed under seal.**

7. Attestation of Compliance with Applicable Rules and Terms of Use

By submitting a document, the User thereby attests under penalty of perjury under the Laws of the State of Washington that the document submitted is in compliance with these TERMS OF USE, is in compliance with all applicable Court Rules, that the original of the submitted document has been signed and filed with the Clerk of the applicable Court and that a copy has been served upon all parties or their attorneys of record.

8. Change of Hearing Dates and Continuances.

It is the responsibility of the user submitting a document to change the Hearing Date whenever a hearing is continued or rescheduled for any reason. From the list of active documents submitted by the user, click EDIT to access the properties associated with your document to change the Hearing Date.

9. Expiration and Deletion of Documents

All documents expire and will be deleted from E-Motion™ 45 days after the Hearing Date. All active documents for each user are listed below the document submission form. If a document is not in this list, the user must re-submit it.

Users are responsible for backing up the documents that are submitted using the Software. If a User Account is suspended or canceled, all documents submitted by that user may be deleted. The Court has no obligation to return documents after a User Account is suspended or canceled.

10. Privacy

In order to operate and provide the Software, the Court will collect certain information about the users, and may also automatically upload information about user computers, user use of the Software, and Software performance. The Court may access or disclose information about users, including the content of user documents, in order to: (a) comply with the law or respond to lawful requests or legal process; (b) protect the rights or property of the Court, including the enforcement of our these Terms of Use or rules and policies governing your use of the Software; or (c) act on a good faith belief that such access or disclosure is necessary to protect the personal safety of Court employees, customers, or the public.

However, information provided to register a User Account will not be made available to the public, except by Court Order.

By submitting documents, and except as stated below, you grant to the public, Court, the judges of the Court, Court Administration the parties to the subject litigation and the public free, nonexclusive permission to review, use, reproduce, distribute, display, transmit, and communicate to the public the documents. The only exceptions to the above are documents that have been **filed** with the Court Clerk **under seal and for which you have identified the document as being filed under seal**. Only judges of the Court will have access to such documents.

11. Prohibited Uses

Unless specifically authorized by order of the Court, users shall not upload, post, transmit, transfer, distribute or facilitate distribution of any content (including text, images, sound, video, data, information or software) or otherwise use the service in a way that:

- depicts nudity of any sort including full or partial human nudity or nudity in non-human forms such as cartoons, fantasy art or manga.
- incites, advocates, or expresses pornography, obscenity, vulgarity, profanity, hatred, bigotry, racism, or gratuitous violence.
- misrepresents the source of anything uploaded, including impersonation of another individual or entity.
- provides or creates links to external sites.
- includes content that is protected by intellectual property laws, rights of privacy or publicity, or any other applicable law unless the user owns or controls the rights thereto or has received all necessary consents.
- is intended to harm or exploit minors in any way.
- is designed to solicit, or collect personally identifiable information of any minor (anyone under 18 years old), including, but not limited to: name, email address, home address, phone number, or the name of their school.
- invades anyone's privacy by attempting to harvest, collect, store, or publish private or personally identifiable information, such as passwords, account information, credit card numbers, addresses, or other contact information without their knowledge and willing consent.
- is illegal or violates any applicable local and national laws; including but not limited to child pornography, bestiality, incest, illegal drugs, software piracy, and harassment.
- threatens, stalks, defames, defrauds, degrades, victimizes or intimidates an individual or group of individuals for any reason; including on the basis of age, gender, disability, ethnicity, sexual

orientation, race or religion; or incites or encourages anyone else to do so.

- harms or disrupts, or intends to harm or disrupt, a Court or Court Administration computer, another user's computer or would allow you or others to illegally access software or bypass Software security, or servers, including but not limited to spamming.
- attempts to impersonate a judge, court employee, agent, manager, administrator, another user or any other person through any means.
- promotes or otherwise facilitates the purchase and sale of ammunition or firearms.
- contains or could be considered 'junk mail', 'spam', 'chain letters', 'pyramid schemes', 'affiliate marketing' or unsolicited commercial advertisement.
- mischaracterizes content uploaded .
- attempts to manipulate the Software, by violating any of the provisions of these Terms of Use, colluding with others or using multiple profiles.
- contains advertising for money making schemes, discount cards, credit counseling, online surveys or online contests.
- is not consistent with applicable court rules, the eMotion User's Manual and these Terms of Use.

Users shall not use any form of automated device or computer program that enables the submission of documents.

12. Contact Court Administration

If you need further information regarding Software, or its use, you may contact Court Administration as follows:

Court Administration
Benton and Franklin Counties Superior Court
7122 W. Okanogan Place
Building A

Kennewick, WA 99336
509-736-3071, Ext 3184

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