

**ANNUAL REPORT
OF THE
AUTOMATION AND TECHNOLOGY COMMITTEE
TO THE ILLINOIS JUDICIAL CONFERENCE**

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I. STATEMENT ON COMMITTEE CONTINUATION

On June 8, 2011, the Illinois Supreme Court issued an order (M.R. 24671) charging the Illinois Judicial Conference Automation and Technology Committee (Committee) to serve as representatives from the users' standpoint for the development and implementation of e-Business applications in the Illinois court system, including but not limited to e-Filing. The Committee is to develop general guidelines on the use of e-Business in the trial courts, the Appellate Court, and before the Supreme Court of Illinois, including statewide standards, protocols, or procedures; analyze applicable rules and statutes and develop recommendations for any changes necessary for the use of e-Business within the courts; and review and evaluate e-Business applications and their impact on the operation and workflow of the courts. The Committee may also research and recommend response protocols to resolve security issues affecting e-Business. The Automation and Technology Committee requests that it be continued in the 2012 Conference Year to complete this work.

II. SUMMARY OF COMMITTEE ACTIVITIES

The Committee on Automation and Technology was newly constituted this year. It received its instructions from the Supreme Court on June 8, 2011, to work with the Special Supreme Court Committee on E-Business, comprised of attorneys and chaired by Bruce Pfaff and a similar committee from the Clerks of Court Committee. Supreme Court Chief Justice Thomas L. Kilbride emphasized that a centralized system for e-Filing is not feasible at the present time in Illinois, and that the committees should focus on evaluating the current e-Business pilots with an eye toward making those projects permanent. The result should be suggested minimum guidelines for e-Business in the Illinois Courts and requisite changes needed in court rules and policies to accommodate e-Business initiatives.

The Automation and Technology Committee has begun along that path. Along the way, it plans to consider experience from other jurisdictions, recommendations and guidelines from organizations, such as the National Center for State Courts and the National Council for Juvenile and Family Court Judges, and input from judges, lawyers, clerks, and others across the state. In addition, the Committee plans to inquire into compliance with relevant statutes, such as the Privacy Protection Act in Illinois, the Americans with Disabilities Act and the Technology Accessibility Act. Fortunately, the National Center for State Courts and the National

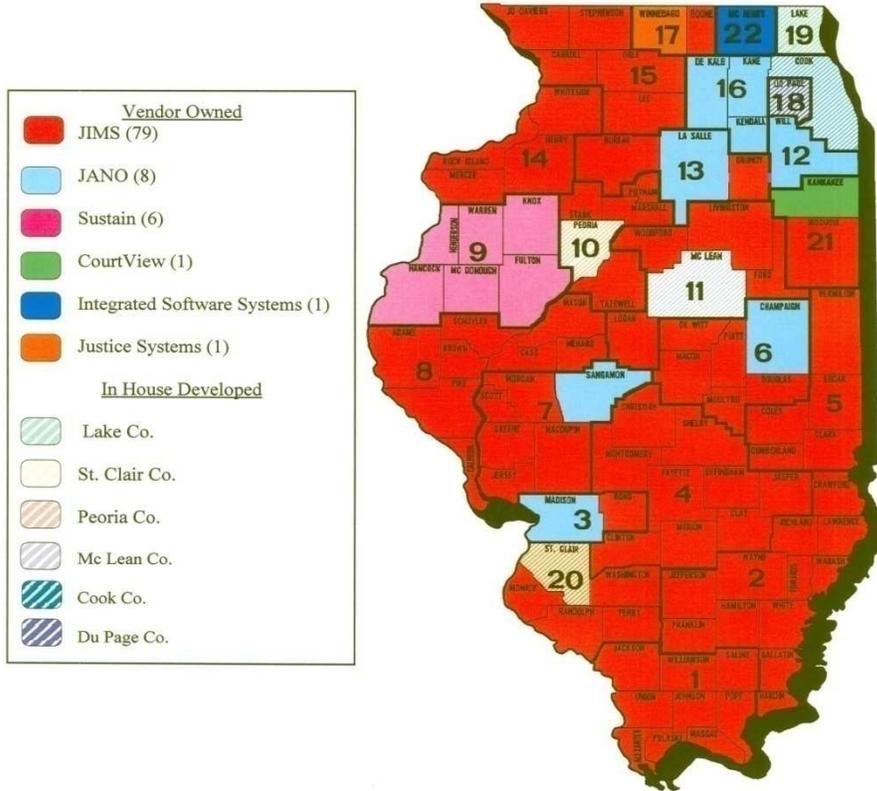
Conference of Appellate Court Clerks have endorsed e-Business initiatives as a means to add convenience, save cost, and increase efficiency. They have also compiled information, reviewed experiences of other court systems, and formulated guidelines to assist state courts with implementation. Other large jurisdictions, such as California and New York, have also reported on their experiences. In addition, there are several pilot projects in various stages of progress throughout Illinois with procedures and experiences from which to draw.

A. Description of Existing Case Management Systems in Illinois

Any successful e-Filing system must smoothly integrate with the case management system at the circuit courts. Originally, the Supreme Court envisioned a “portal system” whereby it would maintain a central site for electronic filing of court documents and transmit them to the local courts. Unfortunately the lack of funding and other logistical impediments prevented that concept from successful implementation. Among the complicating factors are the myriad different case management systems in use in Illinois. Of these, six are unique systems developed in house in the county. There are also a variety of systems in use in Illinois by probation departments. This variety presents significant challenges for any successful e-Business initiative; and demonstrates the need for guidelines. Below is a map of the case management systems as of 2010.

The reason that the variety of case management systems matters is that attorneys and Appellate Courts need to be able to prepare and receive documents with one standard throughout the state. Because there are different vendors engaged in pilot e-Filing projects in the state, it is essential that any successful system be able to interface seamlessly with all of the other case management systems. If electronic files become the official court record in a jurisdiction, as the National Center for State Courts Guidelines recommends, then the electronic file will be transmitted to other counties, as files are transferred, and to the reviewing courts as cases are appealed. Fortunately, as the authors of the report to the National Conference of Appellate Court Clerks in *E-Filing in State Appellate Courts, An Appraisal*, Schanker, et. al. February 10, 2010, concluded, the task is not as daunting as it initially seems. That is because almost all of the vendors have patterned their system on that which is employed by the United States Courts.

4.3 Trial Court Case Management Systems
as of September 2010



B. Description of E-business Initiatives

According to the Illinois Supreme Court website, e-Business is defined as, "The process of conducting court business thru electronic means." Illinois has a variety of e-Business initiatives in place in its court system in various trial and reviewing courts affecting both civil and criminal matters all over the state. A map of e-Business projects is available at the Illinois Supreme Court website at http://www.state.il.us/court/EBusiness/EBus_Map/EBusMap.asp. These projects include e-Filing, e-Tickets, e-Warrants, and electronic pleas of guilty.

E-Filing: Electronic filing enables the filing of documents electronically over the internet, with filing fees also paid electronically. The filer receives notification that the documents have been received and accepted or rejected within a specified period of time. The filers can also notify other parties, receive court notifications and review documents electronically. The documents can then be incorporated into the court's case management system and transmitted or accessed by court personnel electronically, rather than being physically transported in the form of paper files. There are authorized e-Filing projects in DuPage, Cook, Will, Madison, and St. Clair Counties. The vendors involved with those projects include i2file, LexisNexis, USCourts, and Wiznet. Two different models are in use in these court systems. i2File obtains its funding from the Circuit Court Clerk and does not charge the user for its service. LexisNexis, USCourts, and Wiznet, finance their service by charging the filer for each document filed. The distinction is significant because it represents two contrasting business plans for implementing e-Filing.

E-Ticket: E-Ticket is a system whereby the officer in a police car, using either a handheld device, or a mobile computer, can generate a citation by populating the required fields with information that he or she retrieves from law enforcement databases, after typing information from the driver's license of the motorist. One of the most significant benefits of this system is the avoidance of the need for deciphering of the police officer's handwriting. The citation is then transmitted electronically to the Circuit Clerk's office. The court system can regulate the return dates on the ticket so that the court calls are balanced, and dates when no traffic judge will be available are avoided. Currently, Applied Public Safety provides all of the e-Ticket software utilized in Illinois with DuPage County serving as the data center. The officers print out two copies of the citation at the present time. One is given to the motorist; and the other filed with the clerk. However, the potential exists to eliminate the paper copy filed with the clerk. Of particular significance is the federal funding that many law enforcement agencies throughout the State were able to obtain in order to procure the requisite equipment.

E-Orders and Warrants: The Supreme Court also is exploring the potential of allowing paper warrants to be replaced by electronically issued warrants. This has the potential of avoiding the delay, confusion, and transportation issues associated with the current system of paper warrants. Both Cook County and DuPage County have pilot programs whereby the original document is created in html. The judge then adds a digital signature, and the order is converted into a tamper proof PDF document, which is forwarded, over the Internet, to law enforcement agencies. Prospects for direct entry of the digital warrant into the State's LEADS system are also being explored.

The use of digitally signed orders has potential utility for other applications in addition to warrants. For example, there is currently great confusion and delay associated with orders directing enforcement by law enforcement personnel, such as orders of protection and no contact orders. These orders all require entry into centralized data bases to which the entire law enforcement community has access. In addition to the time delay associated with original entry, there is currently a potentially prejudicial impact associated with the current delay communicating the modification or vacating of those orders.

Appeals: The Second District Appellate Court, in cooperation with the DuPage County Clerk and the Ogle County Clerk is in the process of implementing a pilot project to allow the electronic transmission of records on appeal between the circuit courts and the appellate courts. At the present time, a hard copy original common law record and report of proceeding is filed in addition to the electronic version. Because of this, the pilot process does not require any changes to rules; but does afford electronic access to the appellate court justices, clerks, personnel, appellants and appellees. The pilot utilizes the services of i2file, with whom the circuit courts currently contract for services at no cost to the Appellate Court.

Of special interest in the Second District Appellate Court project is the variance in the case management systems used in DuPage and Ogle Counties. DuPage County has a custom case management system that it designed in house, while Ogle County uses JIMS, a case management system in use in most of the smaller counties in Illinois. Should the project be expanded to include other counties in the Second District, it would provide a beneficial test of the ability to interface between courts without regard to case management systems.

C. Prospective Benefits of Electronic Systems

At the present time, litigants prepare the vast majority of court documents for filing on their computer using standard software, thereby creating an electronic file. That electronic file can be searched, highlighted, indexed, and otherwise manipulated. They then print those

documents out, and mail or walk them to the clerk's office with payment. In many courthouses, the clerks take those paper documents and scan them, creating another electronic file. The scanned document is basically a photo of the printed document. It requires additional software and manipulation in order to enable judges and other courthouse personnel to search or otherwise take advantage of its digital characteristics. Enabling electronic filing of the original documents avoids the duplication and extra steps of printing, transporting, scanning, and digitizing the scanned pleadings. This means savings of time, cost and effort on the part of both the litigants and the courts.

The paper files have also become a serious logistical burden on the court system. Many counties have courts in multiple locations separated by wide distances. Transporting files among those different locations costs the court system time, confusion and money. In many cases, this has been at the expense of timely and efficient administration of justice. For example, among the most time sensitive matters handled by the courts are those involving the care and custody of children. Toward that end, the Supreme Court has enacted the 900 Series Rules and Rules for expedited handling of appeals. One of the most significant recent changes aimed at accomplishing the timely resolution of matters affecting children, while meeting the demands of federal legislation is Supreme Court Rule 302. It strongly encourages that, to the extent possible, all matters affecting a family be tried before the same judge. However, at the recent Conference on Abuse and Neglect Issues held at the Judicial College in Reno, many Illinois judges from large counties acknowledged that the physical restraints of the multiple locations of specialized courts have impeded the effective and efficient application of this Rule.

For example, Will County is fortunate to have a juvenile detention facility and court administration complex located near Interstate 80. At the complex, two judges hear abuse and neglect, delinquency, probate and guardianship cases. Dissolution of marriage and parentage cases, however, are heard at the main courthouse building in downtown Joliet. Petitions seeking a finding of indigence are filed and decided at the downtown courthouse. Therefore, if someone files a guardianship petition involving children that are the subject of a dissolution of marriage petition, in order to fulfill the requirements of Rule 302, the guardianship judge, sitting at River Valley must first learn of the other case, and then order it transferred to the downtown courthouse for consideration by the judge presiding over the dissolution of marriage proceeding. Furthermore, the paper file must be physically transported to the downtown courthouse before any proceedings can be conducted. Similarly, a dissolution of marriage case involving children who are the subject of an abuse and neglect petition presents even more complications. The distance itself, and need to physically transport case files between the two buildings results in delays in matters that are not only critical to families and developing children, but have a direct bearing on eligibility for federal reimbursement.

In addition, many courthouses are stuffed to the brim with official records. Every square inch required for record storage reduces the available space for conducting the court's business. With the fiscal restraints faced by all levels of government, there is no budget for additional space. Enabling the filing and maintenance of files in electronic form can relieve much of the space demand. In complex civil and criminal litigation, the filings in paper form in just one file can become physically difficult to handle and transport. It has been reported that making sure the correct pleadings are before the judge when he or she needs it can be daunting. See *Patchwork E-Filing Frustrates Lawyers*, Lynne Marek, National Law Journal, February 26, 2008.

These problems can all be eliminated by a well designed system for filing, storage and accessing electronic documents.

D. Requirements from Judges' Perspective

One issue that has been largely overlooked in the design, implementation and review of e-Filing and case management systems is the need for judges to successfully navigate and use electronic files and systems. After all, judges are the ultimate consumers of the electronic product of the court system. In order for any e-Business initiative to be successful, it must have the same functionality and ease of use of a paper file for the judge. In order for that to happen, both the software and hardware must meet minimum requirements for readability, ease of navigation, and use. At the same time, it can't interfere with the physical operation of the courtroom.

In Wisconsin, for example, a panel of judges is working with a vendor to design the interface, or computer screen, that the judge uses to access the contents of a file. Proposed drafts are circulated among the judiciary for comment. One judge from Washington State, who uses a completely electronic file, complained about the awkwardness and difficulty of navigating the documents within a complex file. She then pointed to her iPad and commented that she'd like her court system to be as easy to navigate within documents as it is.

In addition, electronic files will require that judges maintain requisite control over input of findings and orders. Any plan for automation of court files should take these needs into consideration.

E. Issues that Need to Be Resolved

Among the issues that need to be resolved on a statewide basis before permanent implementation of the e-Business initiatives in Illinois courts are control, privacy, cost, format, and *pro se*, disabled, and indigent litigants. Currently, the Electronic Access Policy for Circuit Court Records of the Illinois Courts Section 4.30 prohibits any document that is filed or imaged from being accessed in electronic form unless such access is provided through the use of a computer terminal in the clerk's office, which does not allow information to be downloaded or exported. However, as courts transition to electronic files, limiting access to terminals inside the clerk's office may become unwieldy. If the Court should ease the rules for electronic access to pleadings, then privacy issues must be addressed. Courts around the country have adopted a wide range of intermediate solutions to this problem such as only giving the litigants internet access to the files in which they are, or represent, a party, *NCSC 2009 E-Filing Survey*, posted at www.ncsc.org/services-and-experts/areas-of-expertise/technology/2009-e-filing-survey.aspx. In the federal system, for example, lawyers and litigants must submit an affidavit with pleadings that they have reviewed and redacted all private information.

There are similar issues with regard to control. Under the current policies, judges and clerks have dual responsibility for the record of proceedings. Judges control the dissemination of orders by their signature. With electronic signatures, or even use of scanned handwritten signatures, protocols will need to be established to prevent misuse and forgery. What judges and clerks are respectively allowed to input into the court management system, and how they correct errors, should be clearly defined, especially in light of the criminal sanctions associated with unauthorized alteration of public records, 720 ILCS 5/32-8 (2010 as amended by P.A. 96-1217, eff. 1-1-11; and 96-1508, eff. 6-1-11).

The issue of cost must also be considered. Already, in the various pilots in existence in Illinois are conflicting models for financing e-Filing. In addition, there is reason to explore the potential of funding from cost savings associated with increased efficiencies, which a well-designed system can introduce. Working in collaboration with the Clerks of Court Committee could produce some concrete and innovative suggestions. Tied in with cost is the issue of access. Many systems, including the federal courts, finance their system in part from charging for access to documents.

Another paramount consideration is meeting the needs of unrepresented, disabled, and indigent litigants who lack access to and familiarity with the electronic tools with which our society has become so familiar. This Committee plans to explore the various ways that the pilot projects have attempted to meet those needs and make observations and suggestions.

The format most commonly used for electronic filing today is PDF. That is the format employed by the federal court system when it initiated its PACER system. However, the federal system is currently transitioning to a new format, called PDF/A, www.pacer.gov/announcements/general/pdfa.html. Because of the need for easy transmission of files between counties and trial and reviewing courts, the selection of a standard format for documents may be important. It is the hope of the Automation and Technology Committee that this issue be explored to recommend whether a standardized format is needed; and, if so, what it should be.

Resources

- 1) Report from New York
- 2) Guidelines from National Center for State Courts
- 3) Electronic Access Policy for Circuit Court Records of the Illinois Courts
- 4) National Conference of Appellate Court Clerks, *E-Filing in State Appellate Courts, An Appraisal*, Schanker, et. al. February 10, 2010
- 5) Local Rules authorizing E-Filing

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

The Committee respectfully requests permission to continue to work with the Special Supreme Court Committee on E-Business and Clerks of Court's Committee to survey the needs of the various constituent groups, particularly judges, evaluate pilot projects already in existence in Illinois implementing e-Business initiatives, and suggest guidelines, rules, and procedures for permanent implementation of projects and mechanisms funding these projects. We further plan to develop a timeline for implementation.

In addition, the Committee suggests that the incompatibility of probation systems with case management programs is a matter that deserves review in coordination with the other committees of the Judicial Conference, understanding, however, that individual counties are responsible for selecting and funding those case management systems.

IV. RECOMMENDATIONS

The Committee is making no recommendations to the Conference at this time.