

COURTHOUSE NEWS SERVICE

30 N. Raymond, Third Floor, Pasadena CA 91103, (626) 577-6700, home@courthousenews.com

January 22, 2018

RE: Public Comment on Rule 122 for Mandatory E-filing

To Whom It May Concern:

As the editor of Courthouse News Service, I am submitting this letter as a public comment on the proposed amendment to Rule 122, which would require attorneys to electronically file all documents in all case types.

Courthouse News Service (CNS) is a nationwide legal news service that reports on law and politics. Our public website receives hundreds of thousands of readers per month, while media entities and law firms subscribe to our publications focusing on civil litigation from the new complaint at the inception of litigation on through to the final ruling. That coverage includes reporting on opinions rendered by the appellate courts of Kansas, the federal appellate courts and the U.S. Supreme Court. CNS reporter Jon Parton currently covers hearings in the Kansas Legislature and covers Kansas state courts in Johnson and Wyandotte.

As Kansas contemplates mandatory e-filing and begins to implement its Odyssey statewide centralized case management system, now is the time to consider an electronic inbox that would provide the press with contemporaneous access to the court's public record, as filings are received and rulings are made.

The maker of Odyssey, Tyler Technologies, is highly competent and familiar with providing an electronic inbox for the press, having established such inboxes in a number of state courts. A decades-old tradition at courts all over the country ensures that the press has access to new paper filings as soon as they cross the clerk's counter. This access was generally provided through a physical inbox – or press box – where journalists reviewed the day's new filings.

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In these traditional inboxes, made of wood, metal or plastic, journalists could look over and report on the day's new civil complaints -- upon receipt and before docketing. As technology has advanced and e-filing has become common, the federal courts and many state courts have carried traditional press access forward into the digital age through the use of an electronic inbox. They have adapted the new technology to the longstanding tradition.

In contrast, a few state courts have used the e-filing transition as a means to push the press corps back behind the processing of new filings. While a growing number of federal decisions -- in Chicago, New York City, Houston and Los Angeles -- have found that such push-backs violate the First Amendment.

Federal judges in the Northern District of Illinois, Southern District of New York, Southern District of Texas and the Central District of California have found that a First Amendment right of access to new court filings attaches upon receipt and prior to processing.

We would urge the courts of Kansas to adopt a press access policy that follows those decisions, preserves traditional press access, and provides the press with contemporaneous access to new e-filings. Coupled with mandatory e-filing, the Kansas Judiciary's Odyssey statewide centralized case management system would allow for a statewide electronic inbox. Because Odyssey already includes an electronic inbox in many courts around the country, the establishment of a Kansas courts inbox would be neither time-consuming nor expensive.

While some courts provide their electronic inbox through the internet, that need not be a requirement. With a statewide case management system, each courthouse in the state could be set up with a computer terminal in the local clerk's office that allows inbox access throughout the state.

Such a system, whether online or at the courthouse, would put the Kansas courts on par with courts nationwide that recognize the traditional role of the media in putting a window on the courts and provide the press access required to achieve that purpose.

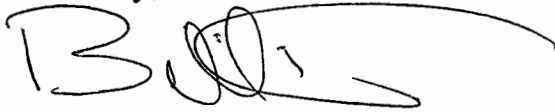
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The electronic inbox is a simple and elegant solution that requires no additional work from the staff and allows them to work at their appropriate pace. It would cost the courts nothing extra, it guarantees timely access, and it very much resembles the traditional physical press box where courts around the nation placed new paper filings as soon as they crossed the counter.

Therefore, as the state moves toward a fully electronic court system, I would respectfully request that the Kansas Judiciary engage in a dialogue with members of the press with the objective of assuring First Amendment access to the important work of the courts as they switch over to a new technology.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Girdner". The signature is stylized with a large "B" and a long horizontal stroke extending to the right.

Bill Girdner