

Administrative Office of the Courts

Supreme Court of New Mexico

Arthur W. Pepin, Director



237 Don Gaspar, Room 25
Santa Fe, NM 87501
(505) 827-4802
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MEMORANDUM

TO: Chief Justice Judith Nakamura, Justice Petra Jimenez Maes, Justice Barbara Vigil, Justice Charles Daniels, and Justice Gary L. Clingman
FROM: Artie Pepin
DATE: November 30, 2018
RE: COURTHOUSE NEWS SERVICE REQUEST FOR ACCESS TO COURT FILINGS

On Wednesday, November 26, 2018, Chief Justice Nakamura received a letter from Bill Girdner, Editor for Courthouse News Service (CNS) requesting that New Mexico courts establish a “press queue” to provide immediate access “to newly efiled complaints and subsequent filings upon receipt, at the same time as the filing.” A copy of the letter is attached as **A**. CNS wants to get copied on everything submitted for efilings before it is entered in a court queue and reviewed by the court to be accepted or rejected. Among possible responses to the letter are (1) the requested access will be granted as soon as we can arrange for Tyler to install the press queue, or (2) no. If the latter it seems very likely CNS will soon litigate the matter in federal court.

Litigation Addressing the CNS Claim to a Constitutional Right to Immediate Access to Documents Sent to a Court for Electronic Filing

Litigation in California and Illinois makes it clear that CNS places a high monetary value on immediate access to pleadings even before they are accepted by a court and without waiting until the court accepts the filing. I did not research the issue fully and there may be other cases. In a California case that has gone to the Ninth

Circuit and back to district court at least twice, *CNS v. Planet*, CV-08083 SJO (2016 WL 4157354), and recently in the Northern District of Illinois, *CNS v. Brown*, 17C 7933 (2018 WL 318485), CNS argued it has a constitutional right to access when a document is presented to the court electronically to be filed.

The Conference of Chief Justices filed an amicus curiae brief in *CNS v. Planet*, Nos. 16-55977 and 16-56714 (9th Cir., May 1, 2017). The Table of Contents states the arguments are “I. Access to Pre-Judgment Court Records in Civil Cases Is Not Compelled by the First Amendment” and “II. Creating a *Constitutional* Right to Immediate Or Even Same-Day Access to Pre-Judgment Court Records Would Trammel Existing, Well-Recognized Rights of Litigants and Unduly Burden the State Courts in the Performance of Their Duties.”¹ I did not track down the ultimate outcome of *Planet* but I did confirm that California courts that use Odyssey had Tyler install a press queue for CNS so the matter may have been settled. Attached at **B** is a string of email responses (some of which linked to more detailed replies) from states in response to a series of questions I sent as COSCA President to State court Administrators in October 2016 to provide court data in support of the CCJ amicus brief. They detail how these states provided media access to filings two years ago and what issues or challenges it would pose if their courts had to provide immediate, same-day access to the press.

A recent opinion in *CNS v. Brown*, No. 18-1230 (7th Cir., November 13, 2018) reversed the district court’s grant of an injunction and dismissed the case under the abstention doctrine articulated in *Younger v. Harris*, 401 U.S.37 (1971). The Seventh Circuit held that the CNS claims had to be litigated in state court first although the court recognized that this created a conflict with the Ninth circuit’s ruling in *Planet* which rejected abstention and remanded for additional litigation on the merits. *Brown* at page 26, note 6.² Although the court did not reach the merits of the CNS claims, the opinion discusses reasons why the type of immediate access requested by CNS might not be constitutionally required.

¹ Without agreeing to a paid, private subscription I am unable to download or print the brief due to limitations in our Westlaw account. I can get the brief from its author but have not done so. A link to the brief that allows it to be read online is at:
<https://www.scribd.com/document/348182457/CNS-v-Planet-Chief-Justices-Conference-Amicus-Brief>

² I am also unable to obtain this opinion through Westlaw although I have a printed copy that can be provided to the Court in print or electronically.

CNS Actions before the Odyssey Access Subcommittee

Mr. Girdner from CNS sent a letter dated July 26, 2016, to the Odyssey Access Subcommittee (OAS) of JIFFY making a request similar to the one in his recent letter to Chief Justice Nakamura. It is attached as **C**. Attorney Pat Rogers appeared before OAS at its September 15, 2016 meeting resulting in an invitation to return for the meeting on October 19, 2016, as stated in the email attached as **D**. Minutes from the October meeting, attached as **E**, reflect a discussion of the CNS request with Mr. Rogers. Also attached as **F** is an email marked "confidential" dated October 26, 2016, stating CEO Jim Noel's opposition to a CNS request for immediate electronic access at the Second Judicial District Court and from Colleen Reilly at Tyler confirming they did build an access portal for CNS in Clark County, Nevada and in Georgia at no cost to the courts.

I am searching for any additional correspondence between OAS and CNS or relevant OAS minutes. I will provide them as soon as I have any such documents. I attended some but not all of the OAS meetings that included CNS. I believe OAS eventually denied the CNS request. Senior Justice Maes attend the OAS meetings more regularly than I and may have been present for additional discussions of the CNS request. She may recall other OAS discussions or actions in this matter.

Response to CNS Letter

The email from Mr. Noel (attachment **F**) reports a CNS threat to litigate its right of access in federal court. CNS has done so in California and Illinois and perhaps in other cases. I confirmed that Nevada, Georgia, and California have had Tyler install at no cost to the courts a press queue as Mr. Girdner requests of New Mexico. Two options for responding to the CNS letter are to have Tyler install the press queue or deny the request and await litigation in federal court.

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COURTHOUSE NEWS SERVICE

50 N. Raymond, Third Floor, Pasadena CA 91101 Phone 826 577 5700

November 26, 2018

Judith Nakamura
Chief Justice
New Mexico Supreme Court
237 Don Gaspar Ave.
Santa Fe, NM 87501

Honorable Chief Justice Nakamura,

I am writing to respectfully ask that the courts of New Mexico return the traditional access to newly filed civil actions that was once used by journalists to cover the state's biggest trial court.

The advent of a new technology for filing court documents has worked at times in a way that retains and even improves on traditional press access to paper filings – and at times worked to slow down and undercut press access.

In the 2d Judicial District journalists formerly had access to the stack of new civil complaints on the day they were filed, in time to report on them in the same news cycle as the filing itself. The access came just after the new actions crossed the counter, before docketing.

That speed of access – sufficient to allow reporting for next morning's newspaper – has been carried forward in the efile era by the federal district courts, including the U.S. District of New Mexico. They provide access to newly efiled complaints and subsequent filings upon receipt, at the same time as the filing.

In a similar manner, an increasing number of state courts have set up a press queue that provides the same speed of access, as soon as the document clears the automated efile manager. Using Odyssey software by Tyler Technologies, courts in Nevada, California and Georgia provide journalists with a "press review queue," with access granted through a user name and password.

Outside of the Odyssey courts, Los Angeles Superior with the highest volume of civil filings in the nation is set to launch mandatory efile for complex cases in one week. With that launch, the court is providing a "media access portal" that works just like the Tyler press review queue.

Mandatory efile of general civil cases in that behemoth of a court will follow on the first

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court day of the New Year. And those filings will also flow immediately upon receipt into the media access portal.

In addition, Alabama, Connecticut, Utah and all the efilings courts in New York provide access upon receipt, in keeping with the federal model.

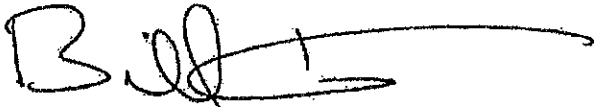
In contrast to that trend, and very much in contrast to their excellent tradition on press access, the state courts of New Mexico are currently holding back new efilings until they are processed. Processing requires a series of administrative steps by a clerk and is analogous to docketing for paper filings. It inherently takes time.

By putting the work of court clerks ahead of press access, that court policy in New Mexico delays the news contained in the new filings well past the current news cycle and ultimately washes all the news value out of them.

In the 2d Judicial District, for example, less than one out of three new civil actions can be reviewed by the press on the same days as the filing. Our tracking shows that only 28% of the new civil complaints can be reviewed on the day of filing, while 51% are withheld for one day and 21% are withheld for two or more days -- by which time the news is stale indeed.

Because the New Mexico state courts employ Tyler's Odyssey efilings system, I would very respectfully ask that the Chief Justice request that Tyler provide a press review queue for new civil complaints and subsequent filings. Such a press queue would greatly support the ability of the New Mexico press corps to report on new matters flowing into the courts of New Mexico.

Thank you very much any consideration Your Honor can give to this important matter of press access to court proceedings.



Bill Girdner
Editor
Courthouse News Service
bgirdner@courthousenews.com
626 577 3870 (direct)
626 577 6700 (main line)

A

New Mexico
Courts

B

Artie Pepin <aocawp@nmcourts.gov>

CNS v. Planet Questions

2 messages

Artie Pepin <aocawp@nmcourts.gov>
To: "Rockwell, Shelley" <srockwell@ncsc.org>
Cc: Jonni Pool <aocjlp@nmcourts.gov>

Mon, Oct 31, 2016 at 12:08 PM

Shelley - Attached is a document that includes several questions I would like to send out on the COSCA list. Please let me know if I need to do anything to follow up on this request in order for that to happen. The text of the document can be formatted in whatever way is usual or easiest to insert it into the email sent to COSCA members. I do not intend for it to be a separate attached document unless that is easier than just putting the questions into the email. Let me know if you have any questions. Thank you! - Artie

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CNS v. Planet Questions.docx
17K

Rockwell, Shelley <srockwell@ncsc.org>
To: Artie Pepin <aocawp@nmcourts.gov>
Cc: Jonni Pool <aocjlp@nmcourts.gov>

Mon, Oct 31, 2016 at 12:40 PM

Thanks Artie. I'll send this to KIS so they can get it posted. I think that just copying the language from the attachment into the email is the best way to go. Somebody from KIS may contact you to see if there is a deadline by which you need to receive the responses. Shelley

From: Artie Pepin [mailto:aocawp@nmcourts.gov]
Sent: Monday, October 31, 2016 2:09 PM
To: Rockwell, Shelley <srockwell@ncsc.org>
Cc: Jonni Pool <aocjlp@nmcourts.gov>
Subject: CNS v. Planet Questions

[Quoted text hidden]

B



Inquiry on CNS v. Planet

2 messages

Michael Henderson <mhenderson@idcourts.net>

Thu, Nov 10, 2016 at 11:27 AM

To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

Sara Thomas, our Administrative Director of the Courts, has asked me to respond to your inquiry. First, by way of general explanation, we are not aware of any special access that has been given to the media in any of our 44 counties, except for Ada County, which is by far the most populous county in Idaho. For some time, it has been the practice to make civil filings available on the day they are filed. CNS in particular has checked these filings on a daily basis. (Some lawyers have also been looking at these new filings at the courthouse.) However, we are in the process of transitioning to a new court management system, Odyssey, through our contract with Tyler Technologies. So far the Odyssey system has been implemented in two counties, Twin Falls and Ada. Mandatory e-filing has also been instituted in these counties. At this point we some lag time between the filing of complaints and the time when we can make them available, amounting to no more than a few days. We are working toward reducing that lag time, but it is our intent to allow for review of the complaints by the clerks before the files become available to the public, including the media. We anticipate that at some time in the near future we will be able to provide same-day access. So, with that, the answers to your questions:

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing?

With few exceptions for certain types of cases, access is provided upon request under Rule 32 of the Idaho Court Administrative Rules. <http://www.isc.idaho.gov/icar32> In the two counties where we have e-filing, we do not yet have online access to documents.

a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame?

Documents are generally provided after they have been viewed and file stamped by the clerk. Rule 32 provides that requests for records must be responded to within three working days. It also states, "Efforts should be made to respond promptly to requests for records." ICAR 32 (j)(4). In most instances documents are provided at the clerk's office immediately upon request.

b. Is there a charge to the media for access and if so, how much and how is it assessed? There are no charges for access. When online access becomes available we may institute a charge for such access. There are costs for copying if a large amount of documents are involved.

2. How, if at all, does the access provided to the media differ from access by the general public? There is no difference.

a. If media access differs from general public access, what criteria are used to define "media" entitled to media access? N/A

b. Is there a charge to the public for access to documents? Same as the answer for media given above.

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so? Where we are dealing with electronic documents, we are not able to always provide same day access at this time.

a. What challenges would this pose? We simply need more time to adapt to the technological challenges. In addition, certain types of complaints might require review by a the clerk or by a judge before deciding whether we could provide access, or whether the complaint falls into one of the categories of records that are exempt from disclosure under ICAR 32(g). In such cases, the delay to make such a determination would not be long, but it might prevent same day access.

b. What would be required to meet these challenges? As indicated above, we could in time provide same-day access in most cases, but in others we would need more time before deciding whether we could provide the record.

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing? Under Rule 2.6 of the Idaho Rules of Civil Procedure, persons filing documents in civil cases are required to redact all but the last three numbers of SSNs, the names of minor children, dates of birth other than the year of birth, and financial account numbers. <http://www.isc.idaho.gov/ircp2.6-new> The clerks have no obligation to review documents for compliance with this rule. Failure to comply with the rule is grounds for contempt. In addition, the court may redact identifying information from documents that have been requested if it becomes aware that such information has been improperly included in the document.

Michael Henderson

Legal Counsel

Idaho Supreme Court/ Administrative Office of the Courts P.O. Box 83720 Boise, Idaho 83720-0101

Phone: 208-947-7404

Artie Pepin <aocawp@nmcourts.gov>
To: Jonni Pool <aocjlp@nmcourts.gov>

Tue, Nov 22, 2016 at 2:37 PM

[Quoted text hidden]

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New Mexico
Courts

Artie Pepin <aocawp@nmcourts.gov>

Montana response amicus

2 messages

McLaughlin, Beth <bmclaughlin@mt.gov>

Mon, Nov 7, 2016 at 11:52 AM

To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

As this decision potentially could have an impact on state courts all over the country, the Conference of Chief Justices is filing a brief *amicus curiae* in the Ninth Circuit and needs factual information from us. Please answer the following questions as promptly and completely as possible as this information is needed for preparation of the CCJ brief. We will also discuss these issues at our December meeting. Please email your response to aocawp@nmcourts.gov Thank you - Artie

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing? Supreme Court – everything available electronically real time; trial courts are still on paper filing – anyone can request the information; some larger clerks's office have a the court case management system on a public computer, which is searchable in the office by anyone. The current case management system in deployed on a separate servers and is not searchable in a web version.
2.
 - a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame? Supreme Court – available generally real time; trial courts – public can request to look at the paper file at any time; clerks also – as time permits – scan documents, which can be e-mailed but it's a hand process – in some busy courts it could be a week before a document scanned; the paper file would be available.
 - b. Is there a charge to the media for access and if so, how much and how is it assessed? Supreme Court – electronic copies are download for free; trial courts – statute governing costs is below.
2. How, if at all, does the access provided to the media differ from access by the general public?
 - a. If media access differs from general public access, what criteria are used to define "media" entitled to media access? No difference – public information is public information.
 - b. Is there a charge to the public for access to documents? Supreme Court no; trial court – generally no as well to pull a file and review; costs do exists for name searches and copies.
3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so? At the trial court level, Montana could likely comply with paper access in each of the 200 courts but not with electronic access. However, that means media would be in the clerk's office requesting the paper. Any person can request files at a clerk's office and receive the paper file for review. Electronic access on a statewide basis not possible with the current case filing system used in all Montana trial courts.

a. What challenges would this pose? Montana is at the start of two large IT projects – an upgrade to a web-case management system and electronic filing in all courts. Montana can likely comply with same day access within the next three-five years (with most case types) assuming the technology projects are not delayed and assuming the Branch is able to deploy a public facing website with the existing budget. The deployment of e-filing for self-represented litigants is much more complicated and it is unlikely to be in place in five years.

b. What would be required to meet these challenges? Montana will need to deliver the two large projects within budget, which is a significant challenges. If the projects need additional funding to be fully operational the Branch is dependent on receiving that funding from the Legislature, which meets every other year in Montana. Schedule creep is a very real issue with large IT projects so delay is possible.

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing? Parties are required to file private information requests to secure private information. Beyond the sealed case types (child abuse, commitment, adoption) parties are responsible for protecting their information. This will likely change when Montana deploys a public facing data – we have not addressed this yet but assume it will involve reduction software of some type.

Beth McLaughlin

Supreme Court Administrator

406-841-2966

25-1-201. Fees of clerk of district court. (1) The clerk of district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the Intervenor, \$80; for filing a petition for dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition for a contested amendment of a final parenting plan, \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's office in all criminal and civil proceedings, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

(ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

(iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic means in all criminal and civil proceedings, 25 cents per page;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years, and an additional \$1 for each name for any additional year searched;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, \$53;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filling a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, \$53;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75;

(r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.

(2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court must be deposited in the state general fund as specified by the supreme court administrator.

(3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110.

(4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.

(6) The fees collected under subsections (1)(d), (1)(g), (1)(j), and (1)(r) must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without solemnization, \$13 must be deposited in the domestic violence intervention account established by 44-4-310 and \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used for district court operations.

(8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not otherwise specifically allocated must be deposited in the state general fund.

Artie Pepin <aocawp@nmcourts.gov>
To: Jonni Pool <aocjlp@nmcourts.gov>

Mon, Nov 7, 2016 at 12:00 PM

[Quoted text hidden]

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New Mexico
Courts

Artie Pepin <aocawp@nmcourts.gov>

[COSCA] Survey for Amicus Brief

19 messages

Kavanagh, Blake <bkavanagh@ncsc.org>
 Reply-To: "Kavanagh, Blake" <bkavanagh@ncsc.org>
 To: COSCA@listserv.ncsconline.org

Mon, Oct 31, 2016 at 1:58 PM

Sent on behalf of Artie Pepin.

Litigation that is now before the Ninth Circuit may have an impact on how states provide public access to documents and specifically how access is provided to "news" organizations. In *Courthouse News Service v. Planet*, a federal district court ordered a state court to provide a news organization with "immediate" (i.e., same day) access to civil complaints filed. CNS argues it is entitled to be provided with civil complaints (including all exhibits and other attachments) as the same day it arrives at the court on paper or electronically.

As this decision potentially could have an impact on state courts all over the country, the Conference of Chief Justices is filing a brief *amicus curiae* in the Ninth Circuit and needs factual information from us. Please answer the following questions as promptly and completely as possible as this information is needed for preparation of the CCJ brief. We will also discuss these issues at our December meeting. Please email your response to aocawp@nmcourts.gov Thank you - Artie

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing?

- a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame?
- b. Is there a charge to the media for access and if so, how much and how is it assessed?

2. How, if at all, does the access provided to the media differ from access by the general public?

a. If media access differs from general public access, what criteria are used to define "media" entitled to media access?

b. Is there a charge to the public for access to documents?

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so?

- a. What challenges would this pose?
- b. What would be required to meet these challenges?

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing?

Sattizahn, Greg <Greg.Sattizahn@ujs.state.sd.us>

Mon, Oct 31, 2016 at 3:29 PM

To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

The answers below are for South Dakota.

Greg

From: COSCA List [mailto:COSCA@LISTSERV.NCSCONLINE.ORG] **On Behalf Of** Kavanagh, Blake
Sent: Monday, October 31, 2016 2:59 PM
To: COSCA@LISTSERV.NCSCONLINE.ORG
Subject: [COSCA] Survey for Amicus Brief

Sent on behalf of Artie Pepin.

Litigation that is now before the Ninth Circuit may have an impact on how states provide public access to documents and specifically how access is provided to "news" organizations. In *Courthouse News Service v. Planet*, a federal district court ordered a state court to provide a news organization with "immediate" (i.e., same day) access to civil complaints filed. CNS argues it is entitled to be provided with civil complaints (including all exhibits and other attachments) as the same day it arrives at the court on paper or electronically.

As this decision potentially could have an impact on state courts all over the country, the Conference of Chief Justices is filing a brief *amicus curiae* in the Ninth Circuit and needs factual information from us. Please answer the following questions as promptly and completely as possible as this information is needed for preparation of the CCJ brief. We will also discuss these issues at our December meeting. Please email your response to aocawp@nmcourts.gov Thank you - Artie

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing? Both, electronically they are only available at terminals at the courthouse right now and can also be requested in paper format. We charge .20 per page for printing.

a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame? Documents are available after accepted into the court file. So they have to be reviewed by the clerk and accepted into the case.

b. Is there a charge to the media for access and if so, how much and how is it assessed? .20 per page for copies.

2. How, if at all, does the access provided to the media differ from access by the general public?

a. If media access differs from general public access, what criteria are used to define "media" entitled to media access? There is no distinction.

b. Is there a charge to the public for access to documents? Same as the media, and the only charge is to have copies- not to view the documents.

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so? There would be no way to ensure those documents are complete or associated with the correct case. Documents can be rejected for a number of reasons and to make documents available that ultimately do not end up in the court file would be confusing at worst and misleading to anyone viewing case information.

a. What challenges would this pose? It would create a break in the process and would probably lead to more delay and inaccurate information being represented as being in the court file that could ultimately be rejected and never considered by the court.

b. What would be required to meet these challenges? We would have to reconfigure our case filing process and perhaps add more staff to meet this time requirement.

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing? The burden is on the filing party to redact any sensitive or protected information. With that said though the Clerks of Court try to catch any obvious items that should have been redacted. We are also exploring redaction software to catch these items, but that is estimated at a 1million dollar cost. The existence of unredacted personal identifiers in court filings is one of the largest limitations we have on the ability to offer web based public access.

Kim Allard <kima@utcourts.gov>
To: aocawp@nmcourts.gov
Cc: Dan Becker <danb@utcourts.gov>

Mon, Oct 31, 2016 at 4:20 PM

Utah Responses in Red

----- Forwarded message -----

From: **Kavanagh, Blake** <bkavanagh@ncsc.org>
Date: Mon, Oct 31, 2016 at 1:58 PM
Subject: [COSCA] Survey for Amicus Brief
To: COSCA@listserv.ncsconline.org

Sent on behalf of Artie Pepin.

Litigation that is now before the Ninth Circuit may have an impact on how states provide public access to documents and specifically how access is provided to "news" organizations. In *Courthouse News Service v. Planet*, a federal district court ordered a state court to provide a news organization with "immediate" (i.e., same day) access to civil complaints filed. CNS argues it is entitled to be provided with civil complaints (including all exhibits and other attachments) as the same day it arrives at the court on paper or electronically.

As this decision potentially could have an impact on state courts all over the country, the Conference of Chief Justices is filing a brief *amicus curiae* in the Ninth Circuit and needs factual information from us. Please answer the following questions as promptly and completely as possible as this information is needed for preparation of the CCJ brief. We will also discuss these issues at our December meeting. Please email your response to aocawp@nmcourts.gov
Thank you - Artie

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing?

Electronically primarily.

a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame?

Public documents are available upon filing.

b. Is there a charge to the media for access and if so, how much and how is it assessed?

Online access to public case information and documents is available to media (and the public) through a subscription service. The base fee is \$30.00 per month for any portion of a calendar

month; and \$.10 for each search over 200 during a billing cycle fee.

2. How, if at all, does the access provided to the media differ from access by the general public?

The \$.10/search for each search over 200 is waived for media accounts. The document fee of \$.50/document is the same for the media and the public.

a. If media access differs from general public access, what criteria are used to define "media" entitled to media access?

Media is defined in the Code of Judicial Administration 4-101(1)(D) ... a publisher, editor, reporter or other similar person who gathers, records, photographs, reports, or publishes information for the primary purpose of disseminating news to the public, and any newspaper, magazine, or other periodical publication, press association or wire service, radio station, television station, satellite broadcast, cable system or other organization with whom that person is connected.

b. Is there a charge to the public for access to documents?

The charge for documents is the same for the public as for the media. Public documents are available online for \$.50/document. Copies of documents may also be accessed at the court for \$.25/page if the time required to retrieve the documents is less than 15 minutes.

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so?

Yes

a. What challenges would this pose?

None

b. What would be required to meet these challenges?

NA

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing?

Redaction of non-public information in public documents is the responsibility of the filer. Documents that require non-public information, such as SSNs, are filed as document type classified as private. Documents classified as private are not made available to media or the public.

A filer may request the court classify a specific document as private. That request along with the document in question is electronically filed as private and changed to public only if the judge denies the motion to classify as private.

--
Dan Becker
State Court Administrator
450 S State
PO Box 140241
Salt Lake City, UT 84114
(801) 578-3806 Phone
(801) 578-3843 Fax

danb@utcourts.gov
www.utcourts.gov

--

Kim Allard
Court Services Director
Administrative Office of the Courts
450 State St
Salt Lake City, Utah 84114
kima@utcourts.gov

Artie Pepin <aocawp@nmcourts.gov>
To: Jonni Pool <aocjlp@nmcourts.gov>

Mon, Oct 31, 2016 at 4:22 PM

FYI

[Quoted text hidden]

--

Arthur W. Pepin
Director, NM Administrative Office of the Courts
237 Don Gaspar, Room 25
Santa Fe, NM 87501
505-827-4802 (desk)
505-470-3183 (cell)

Milt Mack <MackM@courts.mi.gov>
To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

Tue, Nov 1, 2016 at 12:37 PM

Artie,

Here are the answers from Michigan.

Milt

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing?
 - a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame?
 - b. Is there a charge to the media for access and if so, how much and how is it assessed?

Access to public court case records is provided to the media and the public immediately upon filing with the court. Courts may charge for copies of documents in case files up to a maximum of \$2.00 per page. There is no charge for access to public court case records.

2. How, if at all, does the access provided to the media differ from access by the general public?
 - a. If media access differs from general public access, what criteria are used to define "media" entitled to media access?
 - b. Is there a charge to the public for access to documents?

The access provided to the media is no different than the access provided to the general public.

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so?
- What challenges would this pose?
 - What would be required to meet these challenges?

Many courts could provide same-day access as long as the documents have been properly filed, time stamped, and placed in a file jacket. In larger jurisdictions, this could pose a problem because of the volume of pleadings and the inability of clerks to create file jackets the day of filing. Additional staff would be required to assure that all courts could meet that same-day standard.

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing?

Michigan courts are not permitted by Michigan Supreme Court Order 2006-2 to maintain social security numbers in their entirety on documents filed with the court. They are limited to the last four digits. If a document is filed with a social security number after March 1, 2006, the person whose social security number is contained in the document may file a motion asking the court to direct the clerk to:

- redact the number on any document that does not require or allow a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification; or***
- file a document that requires or allows a social security number pursuant to statute, court rule, court order, or for purposes of collection activity when it is required for identification, in a separate nonpublic file.***

Dissemination is restricted to the purposes for which they were intended.

From: COSCA List [mailto:COSCA@LISTSERV.NCSCONLINE.ORG] **On Behalf Of** Kavanagh, Blake
Sent: Monday, October 31, 2016 3:59 PM
To: COSCA@LISTSERV.NCSCONLINE.ORG
Subject: [COSCA] Survey for Amicus Brief

Sent on behalf of Artie Pepin.

[Quoted text hidden]

Artie Pepin <aocawp@nmcourts.gov>
To: Jonni Pool <aocjlp@nmcourts.gov>

Tue, Nov 1, 2016 at 4:58 PM

[Quoted text hidden]

--
Arthur W. Pepin
Director, NM Administrative Office of the Courts
237 Don Gaspar, Room 25
Santa Fe, NM 87501
505-827-4802 (desk)
505-470-3183 (cell)

Wed, Nov 2, 2016 at 9:31 AM

Farley, Melissa <Melissa.Farley@jud.ct.gov>
To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>
Cc: "Carroll, Patrick" <Patrick.Carroll@jud.ct.gov>

Good morning,

As per your request, here are the answers to the questions you posed that are being submitted on behalf of the CT Judicial Branch.

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing? **The Connecticut Judicial Branch provides media access to documents on paper and electronically.**
 - a. What is the timing? Are documents provided upon submission or after acceptance or in some other time frame? **Documents are provided to the media as soon as they are publicly disclosable and available.**
 - b. Is there a charge to the media for access and if so, how much and how is it assessed?
There is a statutory \$1 per page charge for paper copies.

2. How, if at all, does the access provided to the media differ from access by the general public? **There is no difference between the access that the media and the general public receives.**
 - a. If media access differs from general public access, what criteria are used to define "media" entitled to media access?
 - b. Is there a charge to the public for access to documents?

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so?
 - a. What challenges would this pose?
 - b. What would be required to meet these challenges?

When civil documents are e-filed, there is no acceptance process. They are immediately part of the record. In other states, when a document is e-filed, the court has to first approve it, but that is not the situation with the Connecticut Judicial Branch. The Connecticut Judicial Branch already provides same day access for most civil cases. The public can view them immediately.

These are the exceptions:

- a. **Asset forfeitures;**

- b. Firearm Safety Hearings (C.G.S. §29-38c)
- c. Foreign civil judgments (C.G.S. §§ 52-604, 52-605);
- d. Foreign protective orders;
- e. Habeas cases;
- f. Lottery Assignment cases;
- g. Summary Process and housing civil matters in the Bantam, Danielson, Derby and New London geographical areas.
- h. Vehicle forfeitures (pursuant to C.G.S. 22a-250 and 250a).

The Summary Process and Housing Civil matters are scheduled to become electronic over the next few months.

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing?

Pursuant to Section 4-7 of the Connecticut Practice Book, "The responsibility for omitting or redacting personal identifying information rests solely with the person filing the document. The clerk of the court need not review any filed document for compliance with this rule."

Regards,

Melissa

Melissa A. Farley, Esq.

Executive Director

External Affairs Division

State of Connecticut Judicial Branch

231 Capitol Avenue

Hartford, CT 06105

Phone: (860) 757-2270

From: COSCA List [mailto:COSCA@LISTSERV.NCSCONLINE.ORG] **On Behalf Of** Kavanagh, Blake
Sent: Monday, October 31, 2016 3:59 PM
To: COSCA@LISTSERV.NCSCONLINE.ORG
Subject: [COSCA] Survey for Amicus Brief

Sent on behalf of Artie Pepin.

[Quoted text hidden]

Titchener, Roberta H. <Roberta.H.Titchener@nccourts.org>
To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

Wed, Nov 2, 2016 at 2:09 PM

Artie,

Please see the answers below in BOLD CAPS from our communications division for the NC AOC.

Best Regards,

Roberta Titchener

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing? **WHEN POSSIBLE, DOCUMENTS ARE PROVIDED ELECTRONICALLY VIA EMAIL OR COMPACT DISC. OTHERWISE, HARD COPIES ARE PROVIDED BY THE CUSTODIAN OF THE DOCUMENTS OR THE CUSTODIAN'S DESIGNEE.**

a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame? **DOCUMENTS ARE PROVIDED IN AS TIMELY A FASHION AS POSSIBLE. IF DOCUMENTS ARE ON FILE WITH THE CLERK OF SUPERIOR COURT, THEN THEY MAY BE OBTAINED THROUGH THAT OFFICE. DOCUMENTS USED AS EVIDENCE IN COURT MAY NOT BE IMMEDIATELY AVAILABLE, BUT WOULD BE MADE AVAILABLE AS SOON AS POSSIBLE.**

b. Is there a charge to the media for access and if so, how much and how is it assessed? **THERE IS GENERALLY NO COST ASSOCIATED WHEN DOCUMENTS ARE SUBMITTED VIA EMAIL. THE COST TO MAKE COPIES OF DOCUMENTS MADE AVAILABLE TO THE MEDIA VIA THE CLERK OF SUPERIOR COURT IS \$.25 PER PAGE. HOWEVER, BY STATUTE, WE CAN ASSESS FEES FOR IT PROGRAMMING THAT MAY BE NEEDED TO PRODUCE THE REQUESTED MATERIAL.**

2. How, if at all, does the access provided to the media differ from access by the general public? **GENERALLY SPEAKING, THE PROCESS IS THE SAME UNLESS DOCUMENTS ARE READILY AVAILABLE ELECTRONICALLY AND CAN BE EMAILED. ONE DISTINCTION IS THAT MEDIA INQUIRIES ARE MANAGED BY THE COMMUNICATIONS OFFICE FOR MEDIA RELATIONS PURPOSES. RECORD REQUESTS FROM THE PUBLIC ARE SUBMITTED ONLINE AT <http://nccourts.org/Citizens/JData/NewPRR/PubRequest.asp>; THESE REQUESTED ARE MANAGED BY OUR OFFICE OF GENERAL SERVICES.**

a. If media access differs from general public access, what criteria are used to define "media" entitled to media access? **"MEDIA" IS CONSIDERED TO BE THE TRADE OR MAINSTREAM MEDIA OR ANYONE WITH MEDIA CREDENTIALS; BLOGGERS ARE ALSO CONSIDERED TO BE MEDIA.**

b. Is there a charge to the public for access to documents? **THERE IS NO CHARGE TO VIEW DOCUMENTS. THERE ARE CHARGES ASSOCIATED WITH MAKING COPIES OF DOCUMENTS.**

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so?

DOCUMENTS ON FILE WITH THE CLERK OF SUPERIOR COURT ARE AVAILABLE FOR SAME-DAY ACCESS. EXHIBITS AND/OR EVIDENCE CONSIDERED TO BE TRIAL PREPARATION MATERIALS AND/OR THOSE EXHIBITS SUBMITTED DURING TRIAL MAY NOT BE IMMEDIATELY AVAILABLE FOR PUBLIC CONSUMPTION, BUT WOULD BE MADE SO AS SOON AS POSSIBLE.(SEE NCGS § 132-1.9. TRIAL PREPARATION MATERIALS.)

a. What challenges would this pose? **ASSUMING THE REQUESTED INFORMATION IS CONSIDERED PUBLIC RECORD AND NOT TRIAL PREPARATION MATERIAL, REQUEST FOR EXHIBITS AND EVIDENCE SUBMITTED DURING TRIAL REQUIRE THE COURTROOM CLERK TO MAKE COPIES AVAILABLE. THERE IS OFTEN NOT ENOUGH TIME TO DO THIS WITHOUT DISRUPTION OR DELAY TO THE TRIAL.**

b. What would be required to meet these challenges? **A RECESS OR ALOTTED TIME WOULD HAVE TO BE PREARRANGED TO ALLOW TIME FOR THE COURTROOM CLERK TO MAKE AND DISTRIBUTE COPIES.**

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing? **SEE NCGS § 132-1.10. SOCIAL SECURITY NUMBERS AND OTHER PERSONAL IDENTIFYING INFORMATION.**

E-mail correspondence to and from this address may be subject to the North Carolina public records laws and if so, may be disclosed.

David Slayton <David.Slayton@txcourts.gov>

Fri, Nov 4, 2016 at 8:20 AM

To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

Cc: Casey Kennedy <Casey.Kennedy@txcourts.gov>, Nathan Hecht <Nathan.Hecht@txcourts.gov>

Artie,

See responses inline below.

David Slayton

Administrative Director – Office of Court Administration

Executive Director – Texas Judicial Council

www.txcourts.gov

205 W. 14th Street, Suite 600

P.O. Box 12066

Austin, Texas 78711-2066

512-463-1626 (o)

512-463-1648 (f)

From: COSCA List [<mailto:COSCA@LISTSERV.NCSCONLINE.ORG>] **On Behalf Of** Kavanagh, Blake
Sent: Monday, October 31, 2016 2:59 PM
To: COSCA@LISTSERV.NCSCONLINE.ORG
Subject: [COSCA] Survey for Amicus Brief

Sent on behalf of Artie Pepin.

Litigation that is now before the Ninth Circuit may have an impact on how states provide public access to documents and specifically how access is provided to "news" organizations. In *Courthouse News Service v. Planet*, a federal district court ordered a state court to provide a news organization with "immediate" (i.e., same day) access to civil complaints filed. CNS argues it is entitled to be provided with civil complaints (including all exhibits and other attachments) as the same day it arrives at the court on paper or electronically.

As this decision potentially could have an impact on state courts all over the country, the Conference of Chief Justices is filing a brief *amicus curiae* in the Ninth Circuit and needs factual information from us. Please answer the following questions as promptly and completely as possible as this information is needed for preparation of the CCJ brief. We will also discuss these issues at our December meeting. Please email your response to aocawp@nmcourts.gov Thank you - Artie

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing?

For trial courts – this is handled at the local court level. Some provide access via automated program interfaces (APIs) and others provide no electronic access. For those without electronic access, most trial courts provide access to paper copies of documents in clerks' offices.

For the intermediate appellate and high courts – documents filed in paper are scanned, then both paper and electronic documents get posted to the courts' website.

a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame?

For the trial courts – this is a local preference on timing, but no electronic documents are provided prior to acceptance. Access to the documents after acceptance may be electronic (uploaded to public access site at the local court preference or in paper files).

For the intermediate appellate and high courts – documents and docket entries are posted between 6pm and midnight (specific time chosen by

the court) after the documents have been accepted by the clerk. The reasoning is that during business hours, this allows the clerk staff to correct mistakes made when determining if a document is eligible to post to the website.

b. Is there a charge to the media for access and if so, how much and how is it assessed?

For trial courts – courts are authorized to charge for electronic access systems and this varies by local court; no charges are allowed to view paper or electronic documents in the courthouse.

For the intermediate appellate and high courts – no charge for anyone to use the website to look at docket entries and documents. Access is direct from the web.

2. How, if at all, does the access provided to the media differ from access by the general public?

Access is the same for public as it is media.

a. If media access differs from general public access, what criteria are used to define "media" entitled to media access?

b. Is there a charge to the public for access to documents? For the trial courts – there may be fees for electronic access. For the intermediate appellate and high courts – No, it's free for all.

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so? For all courts – electronically filed documents could be posted before any review. It should be noted that in our mandatory eFiling environment, 60% of filed documents are reviewed by the clerk and accepted within 4 hours, 91.2% within 24 hours.

a. What challenges would this pose? Posting of confidential/sensitive information – for example, in certain cases, unfounded allegations can be made, attorneys may mistakenly include names, social security numbers, DOBs, account numbers, etc. Documents that are improperly filed would be made public prior to proper review.

b. What would be required to meet these challenges? Redaction software (expensive) and staff to review every document (also expensive if it needs to be same day)

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing? By court rule, filers are tasked with redacting sensitive information from documents filed with the court. If the information is required to be there by statute, the filer must label the document as containing sensitive data. The document then cannot be posted on a website. If the clerk's staff notices unmarked sensitive data, they're required to take it down from the website. Clerks may also return documents for correction when sensitive data is included in documents erroneously.

Kavanagh, Blake <bkavanagh@ncsc.org>
To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

Fri, Nov 4, 2016 at 1:36 PM

Artie,

Here is Missouri's response!

Blake Points Kavanagh, JD| KIS Analyst
National Center for State Courts | 300 Newport Avenue | Williamsburg, VA 23185
t 757.259.1826 | f 757.564-2046 | bkavanagh@ncsc.org | www.ncsc.org

-----Original Message-----


From: Kathy.Lloyd@courts.mo.gov [mailto:Kathy.Lloyd@courts.mo.gov]
Sent: Friday, November 4, 2016 3:34 PM
To: Kavanagh, Blake <bkavanagh@ncsc.org>
Subject: Re: [COSCA] Survey for Amicus Brief

Attached is Missouri's response to your questions re: Amicus Brief.

(See attached file: COSCA Survey for Amicus Brief.docx)

Kathy S. Lloyd
State Courts Administrator
PO Box 104480
Jefferson City, MO 65110
(573)526-8803
kathy.lloyd@courts.mo.gov

From: "Kavanagh, Blake" <bkavanagh@NCSC.ORG>
To: COSCA@LISTSERV.NCSCONLINE.ORG
Date: 10/31/2016 03:03 PM
Subject: [COSCA] Survey for Amicus Brief
Sent by: COSCA List <COSCA@LISTSERV.NCSCONLINE.ORG>
[Quoted text hidden]

 **COSCA Survey for Amicus Brief.docx**
470K

Artie Pepin <aocawp@nmcourts.gov>
To: Jonni Pool <aocjlp@nmcourts.gov>

Mon, Nov 7, 2016 at 9:21 AM

[Quoted text hidden]

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Arthur W. Pepin
Director, NM Administrative Office of the Courts
237 Don Gaspar, Room 25
Santa Fe, NM 87501
505-827-4802 (desk)
505-470-3183 (cell)

 **COSCA Survey for Amicus Brief.docx**
470K

osca <osca@flicourts.org>
To: "Arthur W. Pepin (aocawp@nmcourts.gov)" <aocawp@nmcourts.gov>
Cc: Tad David <davidt@flicourts.org>, Craig Waters <watersc@flicourts.org>, Alan Neubauer <neubauer@flicourts.org>

Wed, Nov 9, 2016 at 9:10 AM

Hi Artie,

Please see the responses in blue, below, from the Office of the State Courts Administrator. Have a great day.

Karrie Larson, CP, FRP

Certified Paralegal

Office of the State Courts Administrator

500 S. Duval Street

Tallahassee, FL 32399-1900

Phone 850-922-5693

Email LarsonK@flicourts.org

From: COSCA List [<mailto:COSCA@LISTSERV.NCSCONLINE.ORG>] **On Behalf Of** Kavanagh, Blake
Sent: Monday, October 31, 2016 3:59 PM

To: COSCA@LISTSERV.NCSCONLINE.ORG

Subject: [COSCA] Survey for Amicus Brief

Sent on behalf of Artie Pepin.

Litigation that is now before the Ninth Circuit may have an impact on how states provide public access to documents and specifically how access is provided to "news" organizations. In *Courthouse News Service v. Planet*, a federal district court ordered a state court to provide a news organization with "immediate" (i.e., same day) access to civil complaints filed. CNS argues it is entitled to be provided with civil complaints (including all exhibits and other attachments) as the same day it arrives at the court on paper or electronically.

As this decision potentially could have an impact on state courts all over the country, the Conference of Chief Justices is filing a brief *amicus curiae* in the Ninth Circuit and needs factual information from us. Please answer the following questions as promptly and completely as possible as this information is needed for preparation of the CCJ brief. We will also discuss these issues at our December meeting. Please email your response to aocawp@nmcourts.gov Thank you - Artie

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing?

a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame?

The clerks make electronic documents available, after they have been docketed, in accordance with AOSC16-14 and the Access Security Matrix incorporated therein. Availability of court records online is established pursuant to the role of the requester wishing to accessing the record. With regard to records designated as View on Request (VOR), additional time may be associated with reviewing the document for personal or confidential information that must be redacted before being disclosed. If paper copies are requested, further additional time may be required to produce such records, but there is no specific delay simply because of the format requested.

b. Is there a charge to the media for access and if so, how much and how is it assessed?

There is no charge for public access to non-bulk electronic document requests unless the records are designated VOR and must be reviewed and redacted before disclosure. If paper copies are requested, requisite fees provided by statute may be charged.

2. How, if at all, does the access provided to the media differ from access by the general public?

NONE

a. If media access differs from general public access, what criteria are used to define "media" entitled to media access?

N/A

b. Is there a charge to the public for access to documents?

There is no charge for electronic access to non-VOR records for the general public or the media. If paper copies are requested, requisite fees provided by statute may be charged. These fees would be the same for the media as for the general public. According to the time and resources necessary, there may be a charge for the review and redaction process for VOR records. These fees would be the same for the media as for the general public.

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so?

This question would need to be answered by the individual clerks' offices since their individual abilities to meet this hypothetical requirement would be based on each clerk's current resources and business practices.

a. What challenges would this pose?

This is a workload, resource availability and business process issue for the individual clerks' offices.

b. What would be required to meet these challenges?

This question would need to be answered by the individual clerks' offices since their individual abilities to meet this hypothetical requirement would be based on each clerk's current resources and business practices.

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing?

To limit sensitive information in court documents, pursuant to Florida Rule of Administrative Procedures 2.425, designated sensitive information filed with a state court in Florida is limited to the specific formats outlined in the rule. The Access Security Matrix, incorporated in AOSC16-14, was developed to protect sensitive personal information and incorporates the items identified by law as sensitive or confidential. This matrix is reviewed as necessary to maintain compliance with any changes made to the governing law.

Artie Pepin <aocawp@nmcourts.gov>
To: Jonni Pool <aocjlp@nmcourts.gov>

Mon, Nov 14, 2016 at 2:39 PM

[Quoted text hidden]

--

Arthur W. Pepin
Director, NM Administrative Office of the Courts
237 Don Gaspar, Room 25
Santa Fe, NM 87501
505-827-4802 (desk)
505-470-3183 (cell)

Tuominen, Andrea <Andrea.Tuominen@pacourts.us>
To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>
Cc: "Darr, Tom" <Tom.Darr@pacourts.us>

Tue, Nov 15, 2016 at 3:01 PM

On behalf of the Court Administrator, I have attached Pennsylvania's response. Please feel free to contact me if additional information is needed.


Andrea B. Tuominen, Esq.
Assistant Court Administrator
Administrative Office of Pennsylvania Courts

717-231-3289

Begin forwarded message:

From: "Kavanagh, Blake" <bkavanagh@NCSC.ORG>
Date: October 31, 2016 at 3:58:38 PM EDT
To: <COSCA@LISTSERV.NCSCONLINE.ORG>
Subject: [COSCA] Survey for Amicus Brief
Reply-To: "Kavanagh, Blake" <bkavanagh@NCSC.ORG>

[Quoted text hidden]

 **CCJ Courthouse News amicus brief response.docx**
28K

Artie Pepin <aocawp@nmcourts.gov>
To: Jonni Pool <aocjlp@nmcourts.gov>

Tue, Nov 15, 2016 at 3:29 PM


Jonni - I am delayed and now flying through Houston arriving at 11:30. Travel fun! On these responses for the amicus brief, can you chart them and send the conglomeration to me tomorrow or Thursday? I will be seeing Kieth and would like to give him an update. Many thanks.

----- Forwarded message -----

From: Tuominen, Andrea <Andrea.Tuominen@pacourts.us>
Date: Tuesday, November 15, 2016
Subject: [COSCA] Survey for Amicus Brief

[Quoted text hidden]

[Quoted text hidden]

 **CCJ Courthouse News amicus brief response.docx**
28K

Kavanagh, Blake <bkavanagh@ncsc.org>
To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

Wed, Nov 16, 2016 at 8:05 AM

Blake Points Kavanagh, JD | KIS Analyst

National Center for State Courts | 300 Newport Avenue | Williamsburg, VA 23185
t 757.259.1826 | f 757.564-2046 | bkavanagh@ncsc.org | www.ncsc.org

From: Glenn Grant [mailto:Glenn.Grant@njcourts.gov]
Sent: Wednesday, November 16, 2016 10:04 AM
To: Kavanagh, Blake <bkavanagh@ncsc.org>
Subject: : Fwd: [COSCA] Survey for Amicus Brief

Mr. Kavangh:

Pursuant to your quest please find responses from the New Jersey Judiciary to the questions posed in your email. I hope you find the information helpful.

Best of luck,

Judge Glenn Grant

Administrative Director of

the New Jersey Courts

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing?

On paper or by email. Email is only available for smaller requests.

a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame? Timing varies, depending on the requested documents. Before any files are produced, they must be reviewed to ensure that any information needed to be redacted was redacted. In the vicinages, requests for files that have been archived (and as such, are usually stored in a different location) take at least a few days to retrieve and then go through the review/redact process. However, generally, the documents are provided as soon as possible, regardless of the requestor. High profile cases are centralized at the Administrative Office of the Courts for a response by the Office of Communications or the Office of the Superior Court Clerk.

b. Is there a charge to the media for access and if so, how much and how is it assessed?

There is no charge for "access" but there is a charge if copies of documents are requested - \$.05 per page for paper; no charge if by email. Again, the charge is assessed the same whether the requestor is a member of the media or not. Payment may be made by check, money order or collateral account. All fees must be paid in advance of the release of the records.

1. How, if at all, does the access provided to the media differ from access by the general public?

These requests are handled in the same manner as all other requests. High profile cases are centralized with the Office of Communications or Office of the Superior Court Clerk.

a. If media access differs from general public access, what criteria are used to define "media" entitled to media access?

N/A

b. Is there a charge to the public for access to documents?

As indicated above, there is no charge for “access” but there is a charge if copies of documents are requested - \$.05 per page for paper; no charge if by email. Again, the charge is assessed the same whether the requestor is a member of the media or not. Payment may be made by check, money order or collateral account. All fees must be paid in advance of the release of the records.

2. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so?

No.

- a. What challenges would this pose?

Based on the sheer volume of civil records from 21 counties, the NJ Judiciary lacks the resources to provide copies of the images on a daily basis. We lack the staff resources required to review and redact the necessary documents prior to releasing them to the public.

- b. What would be required to meet these challenges?

We would need additional technological resources and staff. To meet these requirements, we would need to automate some of our current practices which requires revenue and technical staff.

3. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing?

New Jersey Court Rule 1:38 addresses public access to court records and administrative records, and details many of the steps that the Judiciary is taking in an effort to protect personal identifying information. For example, in 2009, the Court Rule was amended to include 1:38-7 which sets forth the “Prohibition on Submission of Confidential Personal Identifiers to the Court . . . unless otherwise required by statute, rule, administrative directive, or court order; provided, however, that an active financial account number may be identified by the last four digits when the financial account is the subject of the litigation and cannot otherwise be identified.” (R.1:38-7(b)). As to Social Security numbers, where requested, only the last four digits are stored. While the court rule amendment requiring redaction by the parties covers all filings subsequent to the effective date of the amendment, the decades of records filed prior to that date would still include all personal identifiers, requiring redaction before access. Nevertheless, all records (regardless of filing date) are manually reviewed by staff for the existence and redaction of confidential personal identifiers, prior to releasing them pursuant to any records request.

The challenge facing the modern Judiciary regarding the dissemination of information to the media and public is how to handle and balance the demand for ease of access while protecting the personal and confidential information in the digital age.

From: Glenn Grant
Sent: Monday, October 31, 2016 4:07 PM
To: Winnie Comfort <Winnie.Comfort@njcourts.gov>; Jennifer Perez <Jennifer.Perez@njcourts.gov>; Steven Bonville <Steven.Bonville@njcourts.gov>
Cc: Ann Marie Fleury (Ann Marie) <Annmarie.Fleury@njcourts.gov>; Kevin Wolfe <Kevin.Wolfe@njcourts.gov>; Michelle Smith <Michelle.Smith@njcourts.gov>
Subject: Fwd: [COSCA] Survey for Amicus Brief

FYI.

Sent from my iPad

Begin forwarded message:

From: "Kavanagh, Blake" <bkavanagh@NCSC.ORG>
Date: October 31, 2016 at 3:58:38 PM EDT
To: <COSCA@LISTSERV.NCSCONLINE.ORG>
Subject: [COSCA] Survey for Amicus Brief
Reply-To: "Kavanagh, Blake" <bkavanagh@NCSC.ORG>

Sent on behalf of Artie Pepin.

Litigation that is now before the Ninth Circuit may have an impact on how states provide public access to documents and specifically how access is provided to "news" organizations. In *Courthouse News Service v. Planet*, a federal district court ordered a state court to provide a news organization with "immediate" (*i.e.*, same day) access to civil complaints filed. CNS argues it is entitled to be provided with civil complaints (including all exhibits and other attachments) as the same day it arrives at the court on paper or electronically.

As this decision potentially could have an impact on state courts all over the country, the Conference of Chief Justices is filing a brief *amicus curiae* in the Ninth Circuit and needs factual information from us. Please answer the following questions as promptly and completely as possible as this information is needed for preparation of the CCJ brief. We will also discuss these issues at our December meeting. Please email your response to aocawp@nmcourts.gov Thank you - Artie

1. How do your courts provide media access to documents provided to the court (on paper and/or electronically) for filing?
 - a. What is the timing; are documents provided upon submission or after acceptance or in some other time frame?
 - b. Is there a charge to the media for access and if so, how much and how is it assessed?

2. How, if at all, does the access provided to the media differ from access by the general public?
 - a. If media access differs from general public access, what criteria are used to define "media" entitled to media access?
 - b. Is there a charge to the public for access to documents?

3. If your courts were required to provide same-day access to civil complaints and all exhibits and other attachments when filed (before any review or acceptance process by the court) on paper or electronically, could your courts do so?
 - a. What challenges would this pose?
 - b. What would be required to meet these challenges?

4. What measures are used by your courts to protect personal identifying information (home addresses, social security numbers, birthdays) from access by the media or public when there is a request for documents submitted to the court for filing?

Artie Pepin <aocawp@nmcourts.gov>
To: Jonni Pool <aocjlp@nmcourts.gov>

Sun, Nov 27, 2016 at 2:03 PM

[Quoted text hidden]

--

Arthur W. Pepin
Director, NM Administrative Office of the Courts
237 Don Gaspar, Room 25
Santa Fe, NM 87501
505-827-4802 (desk)
505-470-3183 (cell)

Johnson, Michael <Michael.Johnson@courts.state.mn.us>

Fri, Dec 2, 2016 at 3:37 PM

To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

Cc: "Heyl, Carla" <Carla.Heyl@courts.state.mn.us>, "Shorba, Jeff" <Jeff.Shorba@courts.state.mn.us>

Attached please find Minnesota's responses to the survey questions.

Regards,

Mike

Michael B. Johnson

Senior Legal Counsel

Legal Counsel Division, State Court Administration

Minnesota Judicial Branch

125-H Minnesota Judicial Center

25 Rev. Dr. Martin Luther King, Jr. Blvd.

St. Paul, MN 55155

direct dial 651.297.7584

facsimile 651.297.5636

e-mail michael.johnson@courts.state.mn.us

From: COSCA List [<mailto:COSCA@LISTSERV.NCSCONLINE.ORG>] **On Behalf Of** Kavanagh, Blake
Sent: Monday, October 31, 2016 2:59 PM
To: COSCA@LISTSERV.NCSCONLINE.ORG
Subject: [COSCA] Survey for Amicus Brief

Sent on behalf of Artie Pepin.

[Quoted text hidden]

 **MN Responses to Amicus Survey Questions 161202.docx**
35K

Artie Pepin <aocawp@nmcourts.gov>
To: "Fisher, Keith" <kfisher@ncsc.org>
Cc: Jonni Pool <aocjlp@nmcourts.gov>

Mon, Dec 5, 2016 at 10:32 AM

A response received Friday from Minnesota. - Artie

----- Forwarded message -----

From: **Johnson, Michael** <Michael.Johnson@courts.state.mn.us>
Date: Fri, Dec 2, 2016 at 3:37 PM
Subject: Survey for Amicus Brief
To: "aocawp@nmcourts.gov" <aocawp@nmcourts.gov>

[Quoted text hidden]

--

Arthur W. Pepin
Director, NM Administrative Office of the Courts
237 Don Gaspar, Room 25
Santa Fe, NM 87501
505-827-4802 (desk)
505-470-3183 (cell)

 **MN Responses to Amicus Survey Questions 161202.docx**
35K

COURTHOUSE NEWS SERVICE

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

July 27, 2016

James A. Noel
Court Executive Officer
Second Judicial District Court
Bernalillo County Courthouse
400 Lomas Blvd., NW
Albuquerque, NM 87102

Hello Mr. Noel,

It has been some time since we talked about press access in your court. Press access has unfortunately not improved since then. I would like to renew our request for an in-box -- access upon receipt -- as journalists currently have in federal courts and in a number of state courts with Odyssey case management systems.

I have attached our tracking sheets from the last two full weeks in July showing a same-day access rate of 39% and 37%, which are typical rates in Bernalillo County in recent months. That means that on the day of receipt, access is being withheld for a majority of the new, general-jurisdiction complaints filed in Bernalillo County Second Judicial District Court.

I have also attached a judgment and order from U.S. District Court in the Central District of California, ruling that under the First Amendment press access attaches upon receipt. In the judgment and order, Judge James Otero also finds that the press has a First Amendment right to access *before processing*.

In addition, while I realize your court is in the Tenth Circuit, I have attached a Ninth Circuit opinion which confirms that the access I am requesting falls squarely under the First Amendment.

While your office had in the past provided access to paper-filed complaints upon receipt, it is now withholding access to e-filed complaints until after processing, in violation, I would respectfully argue, of the First Amendment.

More than a year ago, I wrote a letter on this issue to the Honorable Chief Judge Nan Nash, which I have also attached for convenience. In your follow-up phone call, which was indeed cordial and helpful, you said the matter was not in your control. Through an exchange of emails, I argued that the matter is indeed within the Court's control. And I am renewing that argument here. In order to process a new complaint, processing clerks in Bernalillo County are per force reviewing the newly filed civil complaints in an intake queue as they come in -- otherwise the clerks could not process the new complaints. We are asking for that same view.

There are now a number of Odyssey courts where the press has access upon receipt, on a court-by-court basis. We have found that the Tyler Technology employees are quite amenable to requests from individual clerks to provide a press-box or in-box, as it is variously called.

In Georgia, for example, a number of individual courts employ the Odyssey e-filing and case management systems. The vendor has responded to individual requests from individual clerks to provide access upon receipt for the public and press. In response to a request from the clerk in DeKalb County, for example, we obtained access to that county's new filings as they came in. In other words, the access is not system-wide, for all Odyssey courts in Georgia. Rather, it is granted court by court. We are making such a court-specific request here.

So I would respectfully urge your office to ask your vendor to provide the press with access to an in-box, the same type of view that your office's docketing clerks currently have in order to begin processing the newly filed actions. Through an in-box for the press, we can review the new actions as they come in, rather than seeing access withheld while the court's processing clerks go about their tasks, or not, when they are absent. Screen shots of what this looks like in practice, using the Odyssey system, are included in the attached "tour" of the in box in the State Court of Fulton County, Georgia.

There is a greater point that I wanted to move to, and that is the tradition of press access in your office.

As you graciously conceded in our talk, the press's past access in Bernalillo Superior was just about perfect. We saw cases in a press bin as they crossed the counter - in other words, upon receipt. It is not right that because the Court moves to what is considered a more advanced system of filing, then press access goes backwards and access upon receipt is now denied.

That is not the promise of progress in technology, that the public business of the Court should become less transparent, that the Court should become more difficult to report on, that the Court's matters should become more shrouded.

Nor need it be. There is perfectly feasible technical solution to the access issue, and I respectfully urge the Court to employ it.

Thank you for your time and consideration,



Bill Girdner
Editor
Courthouse News Service
bgirdner@courthousenews.com
626 577 3870

Cc Hon. Nan Nash, Chief Judge, Second Judicial District Court

Enclosures

D

New Mexico
Courts

Artie Pepin <aocawp@nmcourts.gov>

OAS 10-19-16 Meeting: Courthouse News

1 message

Brenda Castello <Brenda.Castello@nmcompcomm.us>

Mon, Sep 19, 2016 at 1:39 PM

To: Barry Massey <bmassey@nmcourts.gov>, "Chief Judge Henry A. Alaniz" <halaniz@metrocourt.state.nm.us>, Ian Bezpalko <ian@bezpalkolawfirm.com>, James A Noel <albdjan@nmcourts.gov>, "Gregory J. Saunders" <gsaunders@nmcourts.gov>, Judge Mark Sánchez <lovdmts@nmcourts.gov>, Weldon Neff <aztdwjn@nmcourts.gov>, Artie Pepin <aocawp@nmcourts.gov>, Terri Saxon <suptls@nmcourts.gov>
Cc: Senior Justice Maes <suppjm@nmcourts.gov>, "Judge Karen P. Mitchell" <roymkpm@nmcourts.gov>, Joey Moya <supjdm@nmcourts.gov>

Good afternoon OAS members.

Pat Rogers, counsel for Courthouse News Service ("CNS"), attended the Sept. 15 JIFFY meeting, requesting time to speak regarding the online case access proposal and impending Supreme Court order and distributing the attached material. After his brief position statement and exchange with JIFFY members, I invited Mr. Rogers to present to OAS on Oct. 19th to further clarify his client's position.

In addition, please look for a poll from Annie to secure an earlier date than Nov. 18 for our November meeting where we will be requesting more public comment from the news media. We are targeting Nov. 1, 2, 3, and 7 in order to compile information prior to the Nov. 9 Supreme Court conference. Please do not remove the Nov. 18 OAS meeting from your calendars just yet. We may need it.

A draft meeting agenda is forthcoming wherein you will see discussion of recent developments since JIFFY.

Thank you.

Brenda Castello

Brenda Castello

Executive Director and Chief Financial Officer

New Mexico Compilation Commission

P. O. Box 15549

Santa Fe, NM 87507

(505) 827-4821

www.nmcompcomm.us

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D


11/29/2018

New Mexico State Judiciary Mail - OAS 10-19-16 Meeting: Courthouse News

Confidentiality Notice: This email, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited unless specifically provided under the New Mexico Inspection of Public Records Act. If you are not the intended recipient, please contact the sender and destroy all copies of this message.

2 attachments

 **CNS v Planet_ Ninth Cir Ct Opinion 04-07-14.pdf**
651K

 **CNS_07-27-16 Ltr 2nd DCT.pdf**
89K

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JIFFY Online Access Subcommittee
Meeting Minutes
Wednesday, November 2, 2016

Subcommittee Members:

Brenda Castello, Chair
Senior Justice Petra Jimenez Maes
Ian Bezpalko
James Noel
Judge Henry Alaniz
Artie Pepin
Barry Massey
Joey D. Moya
Judge Karen Mitchell
Gregory J. Saunders
Weldon Neff (video)

OAS Staff:

Terri L. Saxon

JID Staff:

Tim Elsbrock
Genevieve Grant
Laura Orchard
Wesley Reynolds

Guests:

Patrick Rogers, counsel for
CNS
Elizabeth Garcia, general
Counsel for the Second
District Court

Call to order; agenda. Brenda Castello called the meeting to order at 1:40 p.m. The subcommittee approved the agenda and agreed to begin the meeting with a discussion of agenda item 3.

Agenda Item #3. Court kiosks update. (Magistrate court kiosks and district court kiosks)

Agenda Item #3(a). Magistrate court kiosks: PCI-DSS compliance.

Tim Elsbrock presented a preliminary analysis of how many times the magistrate court kiosks were used for payment. The results show that over a period of ten days, people used the e-pay function of the kiosks a total of 151 times, which is less than 1% of the payments received by the magistrate courts during the ten-day period. 13 of the magistrate courts did not use the kiosks at all for e-pay. Given these results and the PCI non-compliance fines that will be assessed for use of e-pay, JID would like to recommend disabling the e-pay function from the magistrate court kiosks. Disabling the e-pay function will considerably reduce the scope of violations found in the PCI audit and allow JID to focus on the remaining

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issues. The subcommittee agrees that the magistrate courts should be notified of the results of the analysis and of JID's intention to disable this function.

Artie Pepin moved that the subcommittee recommend to JIFFY that the e-pay function be disabled from the magistrate court kiosks; and that magistrate courts be notified of the subcommittee's recommendation. Judge Alaniz seconded the motion, and it passed on a unanimous vote.

Following the vote, the subcommittee discussed the logistics and timing of notification to the magistrate courts, including that the notification will provide the reasoning behind the decision and the statistics regarding use of the kiosks for e-pay, and signage for courts to notify the public that payments still can be made electronically through computers that do not belong to the courts.

Agenda Item #3(b). District court kiosks: JIFFY update.

Brenda advised the subcommittee that the CEOC recommendation regarding file access and redaction, which the subcommittee adopted, was adopted by JIFFY with the exception of the third component regarding removal of PPIs. That component was tabled.

Agenda Item #1. Finalize online case access policy to prepare for public comment forum.

1(b). News media definition and access consideration.

The subcommittee turned its attention to defining "news media," and whether it wanted to create that definition at this time. After initial discussion, the subcommittee determined that it was important to define "news media" before the public comment forum and undertook to do so. Important considerations were the competing factors of the right of the public, including the media, to access to public information, and the statutory requirement that the judiciary protect protected personal identifiers ("PPIs"). The judiciary's lack of resources to redact PPIs creates a tension between the news media's First Amendment right to public information and the judiciary's obligation to protect PPIs. The subcommittee's current draft Online Case Access Policy gives the public, which includes news media, view and print access to "redacted public records," with the caveat that redaction technology is not currently available. The news media is seeking broader and more immediate access to court records. The subcommittee focused its discussion on how to balance the competing needs by creating a clear definition of "news media," separate from the "public," and then creating an application that will subject members of the news media who disclose any PPIs to sanctions,

including withdrawing their access. Joey suggested that the subcommittee consider Iowa's definition, which is:

“News media” includes any person who regularly gathers, prepares, photographs, records, writes, edits, reports, or publishes news or information about matters of public interest in any medium and who successfully applies to participate in expanded news media coverage and agrees to comply with all court rules.

If we have this definition of “news media” in our Online Case Access Policy, we can then create an application that limits media's access to SSOPA to people who fall within the definition, and bind those applicants to the same obligation to protect PPIs that attorneys and their staff are bound by. Oregon's application was suggested as an example. Enforcement of any violation could be addressed through a rule amendment. Enforcement would be handled by JID. Artie suggested that enforcement will increase the burden on an already over-taxed JID, but Greg said that he and his staff have looked at this possibility and they do not believe it will be a problem.

Sr. Justice Maes expressed her ongoing concern that disclosure of PPIs may subject the judiciary to liability. The advanced technology has created a demand for instant access to public records, but we also know that PPIs are increasingly used for improper, illegal purposes. Artie and Barry voiced their concern that limiting access will subject the judiciary to claims of violations of the First Amendment. The subcommittee continued its discussion about how to adequately address these competing concerns through the application. Jim Noel suggested that creating a distinction between the press and the public will create problems, because at some point the public will want the same access that the press has. Jim is concerned that we are looking at other states, such as Iowa and Oregon, that already have redaction technology, so those states are not in a comparable position with New Mexico.

Jim moved to adopt a recommendation that the press and the public have the same access, and that both must come to courthouses to obtain access; further, the recommendation will be not to define “news media” or provide differential access to the press and the public. Ian seconded the motion. After discussion by the subcommittee, the motion failed on a vote of five opposed, being Greg, Judge Mitchell, Barry, Joey, and Weldon, to three in favor, being Jim, Ian, and Judge Alaniz.

Joey moved to create a definition for “news media” based on Iowa’s definition, with one change. The recommended definition is: “ ‘News media’ includes any person who regularly gathers, prepares, photographs, records, writes, edits, reports, or publishes news or information about matters of public interest in any medium and who successfully applies to participate in online access and agrees to comply with all court rules.” Barry seconded the motion. After Judge Mitchell clarified that the definition was just for the Online Case Access Policy, the motion passed on a voice vote with Jim Noel abstaining.

Having approved a definition of “news media” that includes a requirement that the news media agent successfully applies to participate in online access and agrees to comply with all court rules, the subcommittee agreed that the requirements included in Oregon’s Request for Document Access provide an appropriately narrow scope for who would be given news media access. Oregon requires applicants seeking news media access to provide documentation to support their application, as follows:

News Media – Submit one of the following: (1) A letter from the news media organization you represent confirming your representation of the organization; (2) a copy of your contract with a news media organization; or (3) for radio or television organizations, a copy of the valid FCC license for the organization you represent.

Barry moved that we create a separate line on the Online Case Access Policy for the news media, using the approved definition and granting the same access to the news media that is given to attorneys. Joey seconded the motion. The motion passed on a voice vote with Jim Noel abstaining.

Artie suggested that we use the term “press” instead of “news media” or “media” to be consistent with that term as used in the United States and New Mexico Constitutions.

Greg moved to change “news media” or “media” to “press” throughout the Online Case Access Policy and all related applications and documents. Joey seconded the motion, and the motion passed on a voice vote with Jim Noel abstaining.

Brenda reviewed the changes the subcommittee agreed to make to the draft Online Case Access Policy, as follows: Delete the column for "Filing Access"; add this new sentence in the "***" footnote: "Appellate court cases are unavailable under current technology and funding"; insert "Press" between "Justice Partners" and "Self-Represented Litigants"; change "View Access" in the heading to "View/Print Access"; and delete "including public media" from the definition of "Public."

Agenda Item #1(c)-(e). Other access groups, access policies and applications, and additional applications.

The subcommittee next discussed the criteria that justice partners must meet to be granted access, and whether new employees for justice partners have access now or need to submit new applications. New employees have access based on their justice partner employer's access. Generally, justice partners need access to criminal case information, but sometimes will also need access to SOPA. The subcommittee agreed, however, that the current view access given to justice partners is sufficient. Given the subcommittee's decision to provide individual access codes rather than have codes shared among agency employees, the subcommittee agreed that in addition to the changes to the Online Case Access Policy discussed earlier, the last parenthetical sentence in the definition of "Justice Partners" should be deleted. With that change and the other agreed-upon changes, the subcommittee agreed that the draft Online Case Access Policy is in final form to be presented to JIFFY. Regarding the applications, Greg advised that JID currently has applications for attorneys, justice partners, and pro hac vice attorneys, and will prepare an application for the press based on the approved motions defining press and press access and the subcommittee's agreement regarding the language for the application. Additionally, JID will create new applications for attorney staff and self-represented litigants. The subcommittee did not identify any other access groups at this time, and continues to agree that no bulk access is to be provided.

Next, the subcommittee discussed the issue of attorney access to juvenile cases. Some attorneys, such as certain attorneys working for CYFD, public defenders, and district attorneys working on juvenile cases, need that access, while others in those agencies do not. JID needs the subcommittee to define the criteria so that it can be consistent in granting or denying access to juvenile cases. After discussion, Greg suggested that the initial approach would be for JID to narrowly grant access to juvenile cases based on very specific criteria. Any applications for this access that are denied could be appealed to JIFFY, and where appropriate the criteria for granting this type of access to attorneys might be

broadened. The subcommittee discussed adding a box for access to juvenile cases to the attorney application, and the concern that doing so may lead to blanket requests for access to all records identified on the application. An alternative that may reduce this tendency is to have a separate addendum or separate application specifically for attorneys seeking access to juvenile cases.

JID will internally determine the best mechanism to allow attorneys to apply for access to juvenile cases.

Because of time constraints of some subcommittee members, the subcommittee moved ahead to agenda item 2, as discussed next.

Agenda Item #2. Tyler "Press Review Site" and CNS request.

This portion of the meeting began with an update from JID regarding the press review site that Tyler created for the Georgia courts. That site allows authorized members of the press to view entries showing new, opening petitions that have been submitted but not yet accepted for filing. The viewer can only see the entry; the document itself is not available for viewing. Once a petition is accepted, the entry is dropped from the queue. Pleadings submitted in existing cases do not appear on this site pending acceptance or rejection for filing. Tyler informed JID staff that this site is available in Georgia and Florida; Tyler does not intend to roll this out elsewhere.

It appeared to the subcommittee that the information available on Georgia's press review site was different from what Patrick Rogers, attorney for CNS, had indicated his client was seeking. When asked to clarify, Mr. Rogers said he did not previously have these details about the Georgia site, but that he believed his client would be satisfied with that access on an interim basis. Mr. Rogers also stated his understanding that states can require Tyler to provide a press review site. Sr. Justice Maes suggested that Mr. Rogers get better direction and clarification from his client before he next addresses the subcommittee.

Once JIFFY has approved the definition of "press" and the view/print access, we can offer more expanded access to documents that have been filed, but not to documents submitted but not filed. Judge Mitchell pointed out that Tyler, not the individual courts, maintain Tyler's documents so we do not have the capability to provide access to pre-filed documents that CNS is seeking. Jim Noel discussed the lag time between submission and acceptance or rejection of a pleading, which is generally 48 hours. Sr. Justice Maes reiterated that at this point, the

subcommittee does not have all the information it needs from Mr. Rogers to consider his client's request, and suggested that the subcommittee table this issue pending receipt of the additional information needed. This agenda item was then tabled by the subcommittee.

After this agenda item was tabled, the subcommittee returned to the remaining items within agenda item 1, **Finalize online case access policy to prepare for public comment forum.**

Agenda Item #1(f). Public comment forum invitation, remote A/V locations, etc.

Brenda asked the subcommittee to think about the logistics and staging for the public comment forum. The in-person meeting will be at JID, with remote audio and video access available at Metro Court and the First, Third, Fifth, Eighth, and Eleventh District Courts. The draft schedule allows public comment from 10:00 a.m. until 12:00 noon, then has the subcommittee adjourning until 1:30 p.m., at which time it will reconvene to consider the comments and make a recommendation to JIFFY regarding the Online Case Access Policy. Barry offered the subcommittee a detailed explanation of how the public forum would be advertised. After JIFFY has approved the draft Online Case Access Policy adopted earlier in the meeting, Barry will prepare a press release that explains the policy and provides a roadmap for presenting comments at the meeting. In addition, Joey will send an email "blast" to members of the Bench and Bar. The Supreme Court and the individual district courts also can put notices of the forum on their respective websites, and the subcommittee can send e-newsletters and also place a notice in the *Bar Bulletin*.

The subcommittee discussed the mechanics of receiving input from the six remote locations and those appearing at JID, and how to balance the time constraints with the desire to hear from the public. Sr. Justice Maes suggested that requiring written comments in advance would facilitate an efficient flow of the comment period, and that the subcommittee could require people to register and deliver their comments by 9:45. The concern with this, however, is that some people may not be able to be at their respective locations by that time because of work or other constraints, and this may prevent them from providing their input. The subcommittee will encourage people to sign in early, but will take comments for the duration of the comment time period. The subcommittee agrees that this forum will not be for dialog between the subcommittee and the public, but rather for the subcommittee to hear the public's comments and concerns. The

subcommittee will be able to ask questions. Comments should be limited to two minutes each.

The meeting room at JID will be configured so that the subcommittee members are at the head table, or seated as close to it as possible, the remaining side and back tables will be removed, and the podium will be facing the head table.

Given the possibility of numerous commenters and the availability of audio and video participation from other locations around the State, thus alleviating the concern about people having to travel long distances to Santa Fe, the subcommittee agreed to convene the meeting at 9:00 a.m. and to take comments until 12:30 p.m. The subcommittee agreed that it is necessary to record the comments, and that an actual transcript of the meeting, rather than minutes, will be useful. Sr. Justice Maes said that she will ask her paralegal Margie Lueras, who has an extensive background in court reporting, to be available for this purpose.

Brenda and Barry will work together to determine the final logistics for the public forum and will advise the subcommittee in advance of those logistics.

Agenda Item #4. Determine if November 18, 2016 OAS meeting needed prior to public forum. The subcommittee agreed to reserve November 18 for its next meeting, if necessary.

There being no further business, Brenda adjourned the meeting at 4:45 p.m.

F

New Mexico
Courts

Artie Pepin <aocawp@nmcourts.gov>

CONFIDENTIAL COMMUNICAITON: Attorney-Client Privileged- Fwd: Access to E Filing Queues

1 message

James Noel <albdjan@nmcourts.gov>

Wed, Oct 26, 2016 at 11:37 AM

To: "Elizabeth A. Garcia" <albdeag@nmcourts.gov>, Celina Jones <aoccaj@nmcourts.gov>, "Bierhoff, Ari" <abierhoff@nmag.gov>

Cc: "Pepin, Arthur" <aocawp@nmcourts.gov>, Gregory Saunders <gsaunders@nmcourts.gov>

Good morning Liz, Ari and Celina:

As you may know, Courthouse News Service (CNS) hired a local attorney, Pat Rogers, to handle its request to the SJDC to have access to SJDC/statewide attorney civil filings as they sit in the E-file and Serve queue, prior to actually being filed by the court. CNS hired Mr. Rogers after I indicated to CNS that they would have to take such a request to JIFFY. I had a lengthy conversation with Mr. Rogers about this, and then subsequently he scheduled a meeting with me and Greg Saunders (a meeting I was unfortunately unable to attend), after which Mr. Rogers made a presentation to a subcommittee of Jiffy last week, the Online Access Subcommittee (OAS), during which he suggested that once an attorney submitted a document to E-file and Serve, it became a public record subject to inspection. At that time, it was not clear to OAS whether it was even possible to allow "view-only access" to documents sitting in the queue in E-file and Serve, but as you can see by the email below from Colleen, our Tyler Rep, Tyler has provided such access in at least two other states.

I disagree with Mr. Rogers' conclusion that such documents are subject to inspection. I also am concerned that CNS will have access to documents that may never actually be filed with the court, but that they may represent to their subscribers that such documents are filed with the court.

I also think it is important to know in this context that CNS made direct representations to me (prior to hiring Mr. Rogers), and in fact sent me what they considered to be successful first amendment claims they had against California district courts in the 9th Circuit, that they have no problem taking the SJDC to federal court claiming we are infringing on their first amendment right to access to court records by not providing them "immediate" (his word not mine) access to attorney filings sitting in the E-file and Serve queue.

I am reluctant (if not adamantly opposed) to such access by CNS. I think this should be discussed further before the matter appears again before OAS, or appears before Jiffy.

Do any one of the three of you have any suggestions?

Thanks very much.

Regards,

Jim



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----- Forwarded message -----

From: **James Noel** <albdjan@nmcourts.gov>
Date: Wed, Oct 26, 2016 at 11:10 AM
Subject: Re: Access to E Filing Queues
To: "Reilly, Colleen" <Colleen.Reilly@tylertech.com>
Cc: Gregory Saunders <gsaunders@nmcourts.gov>

Good morning Colleen - Thank you very much for the follow-up, and I appreciate the fact that it does not appear Greg's team would have any additional work to do in order to support such access. I assume there is no great security risk by allowing Kiosk access to E-file and Serve than we already have with allowing Kiosk access to Odyssey. Please confirm or indicate otherwise. Thanks again.

Jim



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On Wed, Oct 26, 2016 at 10:54 AM, Reilly, Colleen <Colleen.Reilly@tylertech.com> wrote:

Jim,

We did build a configuration for Clark County, Nevada to see filings before they are accepted by the court. Since that time, there are a few counties in Georgia who

are using the same approach. The configuration is in our database, so it is something Tyler would need to do. There is no cost associated with this work.

The Court would tell us the location and case types that would be made accessible, and we do the configuration. We do recommend that this access be available only through a courthouse kiosk or computer. They would have to come to the courthouse to get access to the kiosk to look at the documents. That way you can maintain control over who is looking and when. If you give out a user name and password, there is no way to guarantee that the user name and password are not shared.

I hope that helps. Please let me know if you have any questions.

Colleen

Colleen Reilly
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