
Advisory Task Force on Remote Access to and Privacy of Electronic Court Records

<http://www.in.gov/judiciary/admin/3389.htm>

Indiana Government Center South, Conference Room C

402 West Washington Street

Indianapolis, IN

May 6, 2016

12:00 – 2:00 PM

AGENDA

Attendance: *Chair:* Hon. Loretta H. Rush. *Members:* Melissa Avery, Christa Coffey, Kenneth J. Falk, Christine Hayes Hickey, Lilia G. Judson, Jon Laramore, David N. Powell, Prof. Joel Schumm, Gary D. Secrest, Debra Walker, Hon. Mary G. Willis. *Designee:* Ann Sutton (for Larry Landis). *Ex Officio:* Hon. Steven H. David, Hon. Paul D. Mathias. *Staff:* Jason W. Bennett, Justin P. Forkner. *Absent:* Prof. Fred H. Cate, Stephen Key, Larry A. Landis, Hon. Peggy Lohorn, Kelly McBride, Rep. Sharon Negele, Rep. David Ober.

I. Welcome

The meeting began at 12:11 p.m. The Chief Justice gave brief opening remarks concerning Hamilton County's upcoming transition to e-filing and the Indiana Supreme Court's first paperless conference. Justin Forkner gave a brief introduction as the new staff support for the Task Force. Approval of the April 8 minutes was later moved, seconded, and approved by consent.

II. Progress Reports and Demonstrations

A. Posting of Appellate Motions

Greg Pachmayr provided an update. Appellate motions – when filed by an attorney and in a non-confidential matter – are ready for online posting pending approval by the Task Force.

B. Search Function by Event Type

Greg Pachmayr presented a handout displaying the search function for appellate cases and the ability to conduct advanced searches on specific courts, case types, parties, attorneys, date ranges, and events. The feature is live, but the ability for a user to open a posted motion is not live at this time.

The Chief Justice asked about the need for the system to display a notice, alerting filers that the motion to be filed would be accessible to the public. The Task Force discussed where the notice should appear and the language used in the notice; the members agreed that the notice should be a statement and not require an affirmative 'click' from the filer to acknowledge it. The Chief Justice asked Mary DePrez and

Greg Pachmayr to present an example of that procedure at the June 3 meeting, and an MOU or letter to the e-filing provider requesting the change.

The Task Force also discussed whether a filer who selected a filing as confidential and later realized it was not could go into the system and change the designation. The system does not have that capacity. The Task Force also discussed the potential for attorneys to collude and agree to designate matters as confidential in order to keep the public from viewing the filings. Judge Mathias said this was already a concern with paper filings, and was an ethical issue for the attorneys.

III. Issues for Discussion and Recommendation

A. Posting trial court orders and judgments from Odyssey trial courts

- 1. Should all non-confidential case types be included, with the exception of protection order cases – Divorce (DR); Reciprocal Support (RS); Juvenile Paternity (JP)?*

The Task Force discussed whether judgments should be treated separately from other orders or findings, because of the personal nature of the findings and conclusions that might be in those documents – especially in domestic and family law matters. The Task Force also discussed similar concerns with respect to certain criminal pre-charge and pre-conviction orders regarding suspects, victims, and investigations, including motions to suppress.

Jeff Wiese stated that some states do not provide any public access at all until a criminal case reaches the conviction stage. The Chief Justice asked for research on state practices on this matter, and for recommended best practices for the June 3 meeting. Judge Mathias suggested the Task Force members reach out to their peers on categories of particular filing types to discuss as a group.

- 2. What do judges need to know/do differently?*

Judge Willis discussed her view on how to analyze whether matters should be posted online or not, and she distinguished between people who would be willing to be seen searching in person and those who would not; i.e., those who would have a legitimate business purpose in reviewing filings versus those who are simply being nosy and can now do so anonymously online. She suggested that judges may need to consider posting separate orders for public access, whereas more delicate findings and conclusions might be in an order that is publicly available at the courthouse but not online.

- 3. What do practitioners need to know/do differently?*

Christine Hickey noted that many of Judge Willis's concerns parallel practitioner concerns, and highlighted the need to educate members of the Bar. The Chief Justice asked the best way to do so, and the Task Force discussed utilizing the State and local Bar associations as the primary access point. Judge

Mathias asked if the Supreme Court should provide an email to every attorney about online access and practices. The Chief Justice said that the Supreme Court had the capability to do so, but tried not to do so frequently – Kathryn Dolan said that the open rate on such emails was roughly forty percent in the first twenty-four hours.

Melissa Avery expressed concern about limiting online access to case files as an access to justice issue because online access allows parties to pull materials from the internet as opposed to taking time off work to travel to the courthouse. Chief Justice Rush said that a party (or attorney of record) should always be able to access their cases. Judge Mathias noted that this was a topic of discussion for the June 3 meeting.

The Task Force continued its discussion on particular case types that should or should not be posted online, or posted online only in a limited fashion. Justice David suggested that State Court Administration create a matrix of case types, including specific filings in particular case types identified by the Task Force, and provide that matrix to the Task Force members to review so it could approach them sequentially. The Chief Justice asked for that matrix to be provided to the Task Force members electronically before the June 3 meeting. Ruth Reichard agreed to put the matrix together.

Lilia Judson asked if there was a way to electronically screen filings for accuracy as to whether they are confidential or not. Judge Mathias said there was not; the system relies on users to properly identify the type of filing. The Task Force discussed the potential error rate in this process, given the multitude of filing type options available in the system.

Mary DePrez noted that by statute, warrants are public unless a prosecutor files a motion to make it confidential and a hearing is held. Justice David said that not posting them online does not mean they are not “public.” Dave Powell stated that there is confusion amongst the prosecutors on this process, but the onus is definitely on them to file the motion for confidentiality.

B. Protective Order Cases – Federal Law and Protective Order Registry

Ruth Reichard presented a report and presentation on protective order requirements under Federal and State law, and what is permitted or required to be online on the Protective Order Registry and what may not be posted. She noted that the Registry is uniform across counties because it is a state-wide program, but that county policies on accessibility might vary in gray areas. Judge Willis said those gray areas concern judges with respect to the scope and availability of information.

C. *Appellate Motions Revisited*

Professor Schumm listed examples of personal matters in appellate motions, specifically in motions to continue, that attorneys might not want posted online: use of home addresses combined with stating that the attorney would be on vacation, and private details on medical issues. He said that lawyers include that level of detail because it is expected by the courts. The Chief Justice emphasized the need to train judges and lawyers on the changing nature of public information, and the need to trust each other without requiring excessive personal detail in writing. Professor Schumm noted that the Supreme Court does not permit these types of filings anyway.

IV. Issues for Discussion and Recommendation at June 3, 2016 Meeting

The Chief Justice noted the matters listed below would be discussed at the June 3 meeting and reiterated the request that Task Force members consider each case type its particular functions, and whether those case types and functions should be available online to the public, not online at all, or online in a limited fashion.

- A. *Case financial records information*
- B. *What case financial information is available in Odyssey courts – Report by Clerk Debbie Walker*
- C. *Making case file documents available to e-filing parties and lawyers*

V. Next Meeting Dates: *June 3, July 29, September 2*

VI. Adjournment: The meeting adjourned at 1:57 p.m.

Respectfully Submitted,

Justin P. Forkner
Deputy Director
Indiana Judicial Center / State Court Administration