



NEW TECHNOLOGY REQUIREMENTS FOR INDIANA PROSECUTORS: ELECTRONIC FILING AND FORFEITURE REPORTING

July 22, 2015

Introduction. This information paper discusses two new requirements: electronic filing (e-filing) and forfeiture reporting. These new requirements affect how the Indiana Prosecuting Attorneys Case Management System (INPCMS) will be used. Although the two requirements might seem unrelated, the IPAC Board and its Technology Committee recognized that the timing for the implementation of these requirements could not have been better. The two requirements can work synergistically and allow prosecutors to more efficiently manage their caseloads.

Background. The INPCMS was first fielded approximately 30 years ago. The fifth version of the software is the version currently in operation. It is currently in use in 88 of Indiana's 91 prosecutors' offices. The system has many features to include the capability to electronically file a case with either the Odyssey Case Management System or the Judicial Tracking System (JTS), the two primary court case management systems in use in Indiana. The INPCMS cannot electronically file data with CourtView, the third system in use.¹

On May 21, 2014, the Indiana Supreme Court committed the state to a course of action that will establish e-filing as a standard litigation process. On September 2, 2014, the court promulgated a new trial rule, Trial Rule 86. In its order, the court "[found] that the Division of State Court Administration should be directed to facilitate the expansion of electronic filing to all courts in this state." Trial Rule 86 implements that vision.

During the Indiana General Assembly's last session, Senator Brandt Hershman² authored a bill that required monthly reports from all prosecutors concerning forfeiture collections. The IPAC staff worked closely with Senator Hershman who ultimately decided that an annual requirement would be preferable. Although his bill did not pass, its key language was incorporated in another bill and is now codified at Ind. Code § 34-24-1-4.5.

Trial Rule 86 Implementation and Basic Requirements

E-filing Implementation. State Court Administration (STAD) has contracted with Tyler Technologies (Tyler) to develop what is known as an e-filing manager (EFM). An EFM acts as a go-between, between electronic filing service providers (EFSPs) and whatever case management system a given court uses. The INPCMS is designed to work as an EFSP. In order to fully qualify as

¹ CourtView is a vendor operating its system in Boone, Lake, and Tippecanoe Counties. It is understood that CourtView has been included in State Court Administration's plans for e-filing, but that Odyssey will replace CourtView in Tippecanoe County in 2016.

² Senator Hershman serves as the Majority Floor Leader and represents District 7.

an EFSP, the INPCMS will have to go through a certification process. Both STAD and Tyler are confident that the INPCMS will meet the certification criteria.

Although there is essentially only one criminal EFSP and only two primary court systems, civil practitioners have several providers to choose from when selecting an EFSP. STAD is also developing one for public use. The EFM will allow the disparate EFSPs to “talk” with the courts’ case management systems (CMS) in use. Figure 1³ is a generic representation of the relationship between EFSPs, the EFM, and the case management systems.

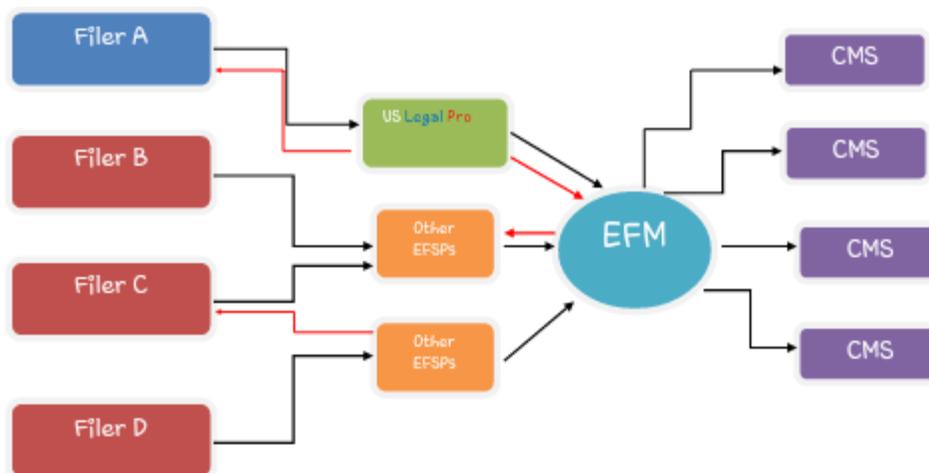


Figure 1. The EFSP-EFM-CMS Relationship

The timeline for fielding and full state-wide implementation calls for the Hamilton Superior Court, court that uses Odyssey, to begin a civil pilot in August 2015. Courts supported by the CourtView system will begin a civil pilot in January 2016 and courts using JTS will begin a pilot in March 2016. The first criminal filing pilot should take place in Hamilton Superior Court in November 2015. The projected timeline calls for all Odyssey courts to be fully running by December 2016 and for all other courts to be running by February 2017. The courts to be used for additional pilots or initial implementation have not been chosen, but the matter is currently being discussed.

Trial Rule 86 Basic Requirements. As one might expect from the description of the EFSP-EFM-CSM relationship, the “Indiana E-Filing System [(IEFS)] is the system of networked hardware, software, and service providers approved by the Supreme Court for the filing and service of documents via the Internet into the Case Management System(s) used by Indiana courts.”⁴ As

³ Figure 1 was obtained from U.S. Legal Pro. The diagram and further discussion are available at <http://uslegalpro.com/blogs/judicial-system-in-texas-a-glimpse-inside-e-filing-process>. U.S. Legal Pro is an EFSP providing a free filing service in Texas for attorneys and members of the public.

⁴ Ind. Trial Rule 86(A)(7).

one would also expect, “[u]nless otherwise permitted by these rules, all documents submitted for filing must be filed electronically with the clerk using the Indiana E-Filing System.”⁵

Trial Rule 86⁶ should be closely examined, but a few essential provisions are worth highlighting here. First, in order to use the IEFS, individuals “must execute a User Agreement with one or more Electronic Filing Service Provider(s) before that User may utilize the Indiana E-Filing System.”⁷ Next, “[a]n action must be commenced: (1) electronically, using the Indiana E-Filing System unless exempted by these rules; and (2) by filing a paper complaint and furnishing to the clerk the requisite number of copies of all documents in accordance with Trial Rule 3 within three (3) business days of initiating the case electronically.”⁸ Electronic service of process “has the same legal effect as service of an original paper document.”⁹ As far as signatures go, “[a]ll documents electronically filed that require a signature must include a person’s signature using one of the following methods: (a) a graphic image of a handwritten signature, including an actual signature on a scanned document; or (b) the indicator ‘/s/’ followed by the person’s name.”¹⁰

The IPAC Response. The Supreme Court’s effort to bring e-filing to Indiana is being led by Indiana Supreme Court Justice Steven David and Judge Paul Mathias of the Court of Appeals. Two committees have been formed. Dan Murrie, the Daviess County Prosecutor and Technology Committee Chair, was appointed to the Court’s Business Committee and Ryan Cage, of *BCforward*, was appointed to the Technology Committee.¹¹

Mr. Murrie has brought several issues to the attention of the Business Committee. One issue he has raised concerns requirement to file a case electronically and to additionally submit a paper copy of the initial filings.¹² Related to this are the statutory requirements that the prosecutor sign an information¹³ and that someone else¹⁴, or possibly the prosecutor,¹⁵ swear to the charges.¹⁶ Overall, even though an oath has been a requirement in civil and criminal proceedings since at least the time of the *Magna Carta*,¹⁷ it may be time to consider simplifying some of the associated formalities in light of electronic signature technologies and the like.

⁵ T.R. 86(D)(1).

⁶ Trial Rule 86 and its implementing order are available at <http://www.in.gov/judiciary/files/order-rules-2014-0902-trial-e-filing.pdf>.

⁷ T.R. 86(B).

⁸ T.R. 86(C).

⁹ T.R. 86(G)(1).

¹⁰ T.R. 86(I)(1).

¹¹ *BCforward* was selected in 2013 as the technology consulting firm to maintain and develop the INPCMS.

¹² See T.R. 86(C).

¹³ See I.C. § 35-34-1-2(b).

¹⁴ See I.C. § 35-34-1-2-4(a).

¹⁵ See I.C. § 35-34-1-2(b) (“An information shall be signed by the prosecuting attorney or his deputy and *sworn to or affirmed by him or any other person.*”). See also *State v. Riley*, 980 N.E.2d 920, 923 (Ind. Ct. App. 2013 (“common to have a law enforcement officer or prosecutor affirm the information”).

¹⁶ See I.C. § 35-34-1-2(e) and (f).

¹⁷ “A freeman is not to be [fined or penalized] . . . save by the oath of honest and law-worthy men of the neighbourhood.” *Magna Carta*, art. 14 (1215) available at http://www.archives.gov/exhibits/featured_documents/magna_carta/translation.html.

Mr. Cage is working to ascertain the requirements that will be needed to map the INPCMS to the EFM. A significant issue concerns whether the INPCMS should send and receive data through the EFM given that there are already more direct links to Odyssey and JTS. Additional information can be obtained from STAD at <http://in.gov/judiciary/4267.htm>.

Forfeiture Reporting

Basic Requirements. The new forfeiture reporting requirement asks that each of Indiana's 91 Prosecuting Attorneys make an annual report to the IPAC concerning the amount of money or property declared forfeit in either state or federal proceedings to include federal proceedings where federal agents seize and control the property in question and those federal proceedings where the federal representatives have agreed to adopt the forfeiture.¹⁸ The reporting requirement is applicable even if a prosecutor has elected to contract with an attorney or law firm to pursue asset forfeiture proceedings. The new statute, found at I.C. § 34-24-1-4.5 is as follows:

(a) After a court enters a judgment in favor of the state or a unit under section 4 of this chapter ([I.C. § 34-24-1-4]), the prosecuting attorney shall report the:

- (1) amount of money or property that is the subject of the judgment; and
- (2) law enforcement agency to which the money or property is ordered to be transferred;

to the Indiana prosecuting attorneys council. This subsection applies even if the prosecuting attorney has retained an attorney to bring an action under this chapter.

(b) After a court, upon motion of the prosecuting attorney under IC 35-33-5-5(j), orders property transferred to a federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e), and any related regulations adopted by the United States Department of Justice, the prosecuting attorney shall report to the Indiana prosecuting attorneys council the amount of money or property transferred. This subsection applies even if the prosecuting attorney has retained an attorney to bring an action under this chapter.

(c) A report made to the Indiana prosecuting attorneys council under this section must be in a format approved by the prosecuting attorneys council.

The corresponding directive to the IPAC is found in I.C. § 33-39-8-5(7):

The council shall:

- (A) compile forfeiture data received under IC 34-24-1-4.5; and

¹⁸ As most prosecutors are undoubtedly aware, the former United States Attorney General elected to forgo federal involvement in adoptive forfeitures under most circumstances. The AG's order is available at http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/01/16/attorney_general_order_prohibiting_adoptions.pdf. Given that some adoptive forfeitures are still authorized or that the policy may change in the future, the Indiana law includes it as a category.

(B) annually submit a report to the legislative council containing the compiled data.

The council shall submit the report to the legislative council before July 15 of every year. The report must be in an electronic format under IC 5-14-6. The council may adopt rules under IC 4-22-2¹⁹ to implement this subdivision.

The IPAC Response. In light of e-filing, the IPAC Board concluded that prosecutors would prefer to have their own system and one with a familiar look and feel. Thus, the board approved that *BCforward* should go forward to develop this capability as a feature of the INPCMS.

The project has been set up to be completed with three benchmarks in mind. First, a basic data entry system will be created. The IPAC staff, the Marion County Prosecuting Attorney's Office, and *BCforward* have been working on identifying the requirements that will appear to the attorney or staff who input data. The second benchmark will be reached when the system has the capability to utilize the data for document production. It has been noted that the drafting of a complaint can sometimes be more complicated than drafting an information. It can involve more art and less rote precision. Regardless, the goal is to keep free-form data entry to a minimum and identify as many opportunities as possible to easily select and utilize responsive document language. Although INPCMS forfeiture capabilities and ease of operation will improve, it will be essentially functional at the completion of this second phase. Finally, the system will be fully capable of acting as an EFSP and compliant with Trial Rule 86.

At the end of the day, prosecutors will have a fully functional EFSP for forfeiture proceedings. What is more, prosecutors will have no need to individually track their forfeiture proceedings in a separate system for the purpose of providing the General Assembly with the requisite statistics. The data entry, necessary as a case is developed, will serve to populate any requisite statistical report.

Conclusion. More information will be distributed as it becomes available. Questions from prosecutors' offices are quite helpful and impact programming and the development of the INPCMS to accommodate e-filing and to meet the forfeiture reporting requirements. The IPAC staff point of contact is J T. Parker (jtparker@ipac.in.gov).

¹⁹ Adoption of rules pursuant to I.C. ch.. 4-22-2 is, when authorized, an executive branch agency function. The IPAC is, a judicial branch agency. As discussed in the next section, the IPAC will have no reason to adopt rules. This language was inadvertently inserted into the legislation very late in the last legislative session.