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**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 A*

*402 West Washington Street*

*Indianapolis, IN*

*April 8, 2016*

*12:00 – 2:00 PM*

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**MINUTES**

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

**I. Welcome and Approval of February 26 minutes.**

The meeting began at 12:01 p.m. Approval of the February 26 minutes was moved, seconded, and approved by consent. The Chief Justice gave brief opening remarks.

**II. Implementation Report re: Posting of Briefs**

Bob Rath reported that the first appellate briefs went online on April 1, with over 80 posted in the first week. CCS entries in “Appellate Case Search” at <http://www.in.gov/judiciary> have clickable brief icons (and, in Odyssey counties, links to related trial and appellate matters).

**III. Comparing Remote Access Systems**

*A. National Overview*

Jeff Wiese surveyed public remote-access systems in a sampling of other states and the federal PACER system. Approaches vary widely – some requiring registration or subscription to control levels of access, others charging fees, either for subscription or based on usage. Of the surveyed states, court documents are available in 12; pleadings in 10; orders/judgments in 11; appeals briefs in 5; other documents in 8. All 12 online states offer documents to attorneys, but only about half to parties or the public. Iowa replicates “practical obscurity” by offering electronic documents only at kiosks in each courthouse lobby. And Florida (which classifies more documents confidential and has a public-access constitutional amendment) requires a Clerk’s Office employee to screen all requests.

*B. System Demonstrations*

*1. PACER (federal)*

Bob Rath demonstrated the federal PACER *viewing* system (separate from the CM/ECF *filing* system). A free account is required, but access fees apply (generally \$0.10 per page,

though fees under \$15 per quarter are waived). Every document is online unless specifically marked confidential, and related cases are hyperlinked to each other, akin to MyCase functionality in Odyssey counties. Federal briefs use PACER hyperlinks, so judges read briefs on one screen and hyperlinked documents on the other. (Chief Justice Rush observed that Indiana aims to eventually do likewise.) Judge Mathias noted that PACER is well-integrated but arguably outdated; and that Indiana's annual case-filing volume is several times higher than the federal system. Still, the General Assembly's support for a unified statewide system should eventually makes similar integration available in Indiana.

## 2. *Indiana E-File*

Donna Edgar demonstrated the e-filing information page at <http://www.in.gov/judiciary/4267.htm>. The page links to several supported e-filing systems (DoxPop, GreenFiling, and State-operated [efile.INCourts.gov](http://efile.INCourts.gov)), and the Indiana Prosecuting Attorneys Council's system is also certified but not linked. The INCourts system is free (except initial filings) and is seeing increasing use, including the Marion County Public Defender and some probation departments. In Hamilton County, e-filing has been available for a year, and both attorneys and pro-se litigants use the system.

INCourts users must register for an account, to authenticate their filings and track usage. The system reads Odyssey CMS data, and will read CSI and Quest data when those systems are certified for e-filing in April or May. The system also prompts users for the correct confidentiality code and to file Notice of Exclusion. It provides e-mail proof of filing and of acceptance by the Clerk. Appellate briefs become available online when "accepted."

## IV. Legal Considerations

Chief Justice Rush noted the significance of Indiana Administrative Rule 9 confidentiality considerations as the Task Force considers wider remote accessibility of court documents.

### A. *Administrative Rule 9 – Lilia Judson*

Lilia Judson provided a high-level, non-legalistic overview of Rule 9. E-filing reflects the same concepts as the Rule's "green sheet" provisions, but uses document headers to let Clerks see easily what is excluded from public access. Inadvertent failure to mark information as confidential is not a waiver, but courts cannot control what happens before the correction is made; and the Rule has procedures to make information public that was improperly filed as confidential. Bulk and compiled records have commercial value, and courts have discretion to release (and charge for) data if a request serves the public interest.

### B. *Impact of New Legislation – Mary DePrez*

Mary DePrez discussed SEA 357, implementing a registry of convicted child abusers with minimal fiscal impact because trial courts now use electronic Abstracts of Judgment in all felony cases. A public portal to Abstracts of Judgment could be implemented readily. (A hand-out also addressed HEA 1157 and SEA 216.)

## V. Discussion

### A. *Posting appellate motions and other pleadings*

The Chief Justice opened with discussion about posting *all* appellate motions. The Task Force noted the volume of such motions far exceeds the volume of briefs now posted; they are rarely filed on green paper but some include confidential information; and many are of limited interest. Professor Schumm suggested that Notices of Additional Authority, Stays Pending Appeal, and Motions for Remand are often noteworthy and rarely include confidential information.

The Chief Justice moved to post motions under the same restrictions as briefs. The motion was seconded. Extensive discussion focused mainly on (1) the extent to which confidential (or otherwise sensitive) material was likely to appear in such motions and (2) the extent to which the e-filing system should prompt the filer to acknowledge that the filing would be publicly available. The Task Force reached consensus that appellate motions should be posted under the same criteria as briefs within 60 days; and that the e-filing system should notify all appellate filers that the document will be available publicly.

The Chief Justice called the question of whether to move forward with posting motions under the above terms; and the motion carried by unanimous voice vote.

### B. *Posting trial court orders and judgments*

With insufficient time to consider posting trial-level motions and judgments, the Chief Justice tabled the question for the May 6 meeting. But the Task Force preliminarily discussed that (1) trial-court records pose the additional challenge that counties are not yet on a unified system, (2) trial pleadings more often include information that should be confidential, and (3) public availability of pre-trial investigatory subpoenas and warrants may be detrimental to both an accused's privacy and officer safety. The Chief Justice observed that requiring user-account registration would provide some security by keeping a record of who is viewing the records—but that the Task Force's discussion should start from a presumption of public accessibility.

Finally, Judge Willis noted that the requiring duplicate paper copies of trial-court RJOs is anachronistic in the age of electronic records and may warrant Task Force consideration.

**VI. Next Meeting Dates:** The remaining Task Force meetings will be May 6, June 3, July 29, and potentially September 2, all from 12:00 to 2:00.

**VII. Adjournment.** The Task Force adjourned at 1:55 p.m.

Respectfully submitted,

Jason Bennett  
Supervisor of Supreme Court Services