

Order in the Courts!

RM Principles for the Judiciary

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The dramatic increase in electronic records is profoundly affecting records management practices in the courts. In response, a judiciary conference has published six recordkeeping principles that are intended to serve as a framework for assessing and implementing effective judicial records management practices. The six principles were influenced by ARMA International's Generally Accepted Recordkeeping Principles®.

In her May/June 2013 *Information Management* article on the application of the Generally Accepted Recordkeeping Principles® to Canadian Regional Government, Julie Gable points out the important distinctions between recordkeeping in the private sector and in government institutions.

While all organizations create and maintain records as part of their business function, Gable writes that the purposes and uses of records in a governmental organization are often directly related to maintaining the democratic process and preserving the rights and obligations of citizens and organizations. Nowhere is this more the case than in our courts.

Recordkeeping has always been a critical component of the judicial process. Since the early colonial times when judges “rode circuit” and local court clerks maintained files in county courthouses, the preservation of an accurate record of actions taken by the court and the parties in a case has been essential. An effective records management program in the judiciary supports these functions:

- Judicial decision-making
- Documentation of legal status and rights
- Public access to court proceedings and decisions
- Enforcement of court orders and judgments
- Preservation of records for appellate review
- Preservation of historical information

Judicial records management includes the creation, use, and preservation of records directly related to the adjudication of cases, as well as non-case-related records that support administrative activities. Court records have been defined in *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Court*, which was jointly developed by the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA):

Any document, information, or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding; any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding; and information maintained by the court or clerk of court pertaining to the administration of the court or clerk of court office and not associated with any particular case.

Court record systems must meet the diverse information needs of judges, court staff, litigants, and the public. The control, maintenance, and preservation of court records must be conducted in a way that ensures public trust and confidence in the judicial process. Despite the importance

of records management to the functioning of our judicial system, until now the development of a unifying set of principles has been lacking.

Principles for Judicial Records

Each year COSCA, which is a professional association of the administrators of state courts and the courts of the District of Columbia, Puerto Rico, and Guam, selects a topic of interest to address in an annual white paper. For 2013, COSCA and the National Center for State Courts (NCSC), which is an independent, nonprofit court improvement organization that serves as a clearinghouse for research information and comparative data to support state court judicial administration improvements, collaborated on the recently released white paper “To Protect and Preserve: Standards for Maintaining and Managing 21st Century Court Records.”

This paper sets forth six principles as a framework for assessing and implementing effective judicial records management practices, which were based on ARMA International’s Generally Accepted Recordkeeping Principles®. The paper identifies these judicial principles as central to judicial records management: compliance, access, integrity, preservation, disposition, and governance.

Compliance

The legal framework for judicial records includes not only laws and rules of procedure that apply to case-related records, but also local, state, and federal laws and regulations that govern records supporting administrative activities such as personnel management, accounting, and purchasing.

Compliance with the recordkeeping requirements of case records is particularly critical, as these records are the evidence of decisions and actions that create and enforce the rights of individuals and organizations. This includes adherence to statutes and rules in individual cases, as well as compliance with requirements for complete record series.

The shared responsibility for maintaining judicial records among various elected and appointed officials requires collaboration. The development of local policies, clear lines of responsibility, and regular reviews or audits is necessary to enforce continuing compliance with the statutory and regulatory frameworks that govern both case and non-case-related records.

Access

Access to court records is vital to the public’s perception of transparency and fairness in our judicial system. Records provide information that allows the public to follow the progress of individual cases, monitor judicial performance, and hold courts accountable for the timely and fair disposition of matters under their jurisdiction. Accessibility also applies to the ability of judges and court

staff to retrieve and accurately update records within the shortest time frame possible.

In the U.S. state courts, most case records are open to the public, except where specifically prohibited by statute or court rule. Restricted records include juvenile cases, adoption records, and information within court records that is considered private or confidential, such as psychiatric and medical evaluations.

The ways courts provide access to records are changing profoundly. Previously, when records were limited to bound docket books and paper files, public access was limited by the “practical obscurity” created by the inconvenience

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of going to the courthouse and waiting for staff to pull a file. The ready availability of court records via web interfaces, real-time feed of court proceedings, and other methods of electronic access has greatly increased the responsibility of court records managers to maintain the integrity of records and to have systems and procedures in place that ensure confidentiality.

Accessible public records have become an increasingly important part of our information economy, impacting consumer credit, housing and employment decisions, and individual rights. Part of this emerging trend has been the growing use of court records for commercial and research purposes. The availability of large amounts of court information in electronic form has made it feasible to access and distribute court-based information on an unprecedented scale. Courts must weigh the presumption of open access against the potential invasion of privacy that could occur by granting unrestricted access to records that contain personal information.

Integrity

Recently, the importance of the integrity of court records was dramatically highlighted when two Florida inmates serving life sentences for murder were able to gain their release using forged court orders bearing the signatures of the state attorney and a judge in the Ninth Judicial Circuit, as well as the seal of the Orange County Clerk of Court. Further investigation revealed at least seven cases in which inmates at the same Florida prison had attempted to forge court documents.

Maintaining the authenticity and accuracy of case records is a fundamental responsibility of courts. In the paper world, the familiar tools of embossed seals, certification stamps, and original signatures help ensure that

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Courts need to be sure the digital documents they receive or create are complete and unaltered, and that the signature on the document was actually made by the person it names. Technologies such as digital signatures, digital rights management, electronic “stamps,” metadata, and document audits are part of the new tool box for court records managers.

Preservation

Electronic case management systems have been in place in most jurisdictions for decades. More recently, electronic filing of court documents and the adoption of document management systems have moved many courts closer to “paper on demand” systems for managing case information.

For the foreseeable future, however, most courts will continue to operate in a hybrid records environment with responsibility for preserving both paper and electronic materials. Courts frequently maintain a legacy of microfilmed records and digital or audio recordings of court proceedings in addition to their electronic and paper collections. The variety of formats and approaches to medium and long-term retention further complicates the task of preservation.

The increasing reliance on electronic records has heightened the need for dialog about approaches to long-term preservation. The nature of some court proceedings requires preservation of these records for long periods (more than 10 years), if not permanently.

A review of current state retention schedules reveals a wide variation of policies and approaches to long-term preservation. Many states have developed guidelines and standards for long-term preservation, and efforts are currently under way in several states to update retention schedules. Part of this effort includes a re-assessment of the need for permanent retention of records that do not have long-term legal or historical value.

Disposition

Most state court systems and archives already have clear retention requirements for case files and related records. However, there are considerable differences between states concerning the appropriate retention periods for various types of case records. One state lists 143 record types for which permanent retention is required; others have fewer than a dozen permanently retained record series. While some records, such as adoption files and land rights documentation, are clearly candidates for long-term or permanent preservation, the appropriate life cycle for more routine civil and criminal matters is less clear.

Responses to a 2011 survey distributed on the COSCA listserv illustrate the variety of policies on approved media for long-term preservation of case records. Most respondents

Contractor, in accordance with the terms of this Agreement
of any termination rights under this Agreement

7.0 LIABILITY AND WARRANTY

7.1 Acceptance/Limit of Liability. Contractor shall be responsible for financial damages and loss of any materials deposited in bins or otherwise delivered to it for secure destruction due to accident, negligence or willful misconduct up to \$1,000,000. For purposes of this agreement, data breach notification expenses incurred by Customer due to Contractor's actions, including accident, negligence or willful misconduct, shall be considered recoverable damages.

7.2 Ownership Warranty. Customer provides Contractor hereunder to deliver for confidential de

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Did we
verify they
have the
proper
coverage?

legal custodian or otherwise has the right
Customer provides Contractor hereunder

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Some customers assume their service providers have the proper liability insurance to cover their mistakes.

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indicated their state had adopted standards for short-term retention of records in both paper and digital form, but only a few had adopted standards for long-term digital preservation. The respondents were about equally divided on the use of microfilm versus digitization for long-term records retention. Fortunately, the growing awareness of digital preservation issues has prompted the judiciary in several states to convene stakeholder groups to consider standards and guidelines in this area.

Governance

A unique challenge in managing judicial records is that the responsibility is often shared between elected and appointed people, as well as between departments or divisions

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that may not be part of the judicial organization hierarchy. For this reason, the principle of governance is of primary importance.

Clerks of court (or their equivalent) are typically the individuals with legal responsibility for the maintenance of case-related records. The selection or appointment of clerks, however, varies considerably across the country. In many states, clerks of court are independently elected executive branch officials. In some instances, elected county clerks have responsibility for court records in addition to other non-judicial functions such as recording property transactions, issuing passports, and maintaining marriage records. Other states provide for clerks to be appointed directly by the judiciary.

The responsibility for maintenance of supporting technology also varies. Larger courts may employ their own staff for information technology (IT) support and maintenance. Economies of scale in smaller courts often require these functions to be performed by IT staff and support services that reside in departments under control of the local executive branch.

Even when IT support staff are employed by the judicial branch, some functions, such as state-wide case management systems and networks, are managed by central administrative offices under the direction of state supreme courts.

Although individually elected and appointed officials such as judges and clerks are guided by statutes, rules, and administrative orders, they may retain considerable latitude in determining local policies and strategies for records under their direct control. In addition, the responsibility for software and infrastructure that support

electronic records is often viewed as a separate function, despite the increasingly critical role technology staff have in managing the life cycle of electronic records. The result is that records management policies and practices may be inconsistent or conflicting. The responsibility for court records clearly requires collaboration among elected and appointed officials, court support staff, and technology professionals.

Long-term preservation and archiving of judicial records is another area where responsibility is often shared. The roles of state archiving agencies in preserving state court records vary from complete responsibility for maintaining records over a certain age, preservation of historical records only, or no role at all. As state archival agencies continue to cope with budget limitations, it is even more critical that the judiciary coordinates its efforts with these partner institutions.

Promoting These Judicial Principles

The use of performance standards and measures to assess court performance is well established in the judicial community. Performance standards for judicial records were first addressed in the 1997 Bureau of Justice Assistance monograph *Trial Court Performance Standards*.

The NCSC has since expanded on the Standards with the development of *CourTools*, a set of 10 basic measures covering a variety of court performance areas. The tools include methods for measuring case file integrity, access, and consistency. Other methods have been developed by trial courts across the country to assess the effectiveness of their records management systems.

In conjunction with the release of COSCA's white paper, the NCSC has completed a draft version of a records management maturity model that provides courts with a self-assessment instrument to identify areas for improvement under each judicial principle. The maturity model has been released to the court community for comment. Events are being scheduled this year with state and national court management organizations to promote these principles and encourage courts to utilize the tool.

COSCA's endorsement of a unifying set of records management principles for the judiciary will be a catalyst for a broader discussion of issues associated with the increasing complexity of records management in the courts. Among the major tasks that lie ahead are addressing long-term digital retention needs and capability, promoting greater collaboration among judicial records stakeholders, encouraging more dialog between the courts and records management communities, and providing the tools to help court managers improve records management practices and performance. **END**

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