

GovNews Blog

4 Pillars of Court Records Management# 4: People, Politics, Governance

Posted by [Jeff Barlow](#) on Nov 24, 2015 2:32:00 PM

In my first post in this series, I made the case for ECM. A successful court Electronic Content Management System (ECMS) includes lots more than its hardware, software ([read more in the blog post in this series dedicated to technology](#)), and network components. From the first serious consideration of implementing ECM, through planning and implementation itself, and continuing after the system becomes established, the court must devote substantial care, consideration, and effort to management of the People, the Politics, and the Governance of ECM.



People

While everyone understands the importance of training to the success of ECM, a couple points bear further comment. First, training for judges must be specifically tailored to judges. One judge at a conference candidly observed, "Let's face it: we're judges because we couldn't do math and can't

sell anything." His point was that judges think, problem-solve, and learn in ways that differ fundamentally from most other people. The very characteristics that make them good judges makes introducing new technology particularly challenging. If at all possible, judicial training should be conducted by individuals well versed in and highly sensitive to the particular needs, desires, hopes and fears of the judges being trained.

Training staff and judges is not enough. The court occupies a central role in the justice system. The court's users and business partners, from lawyers and their staff to law enforcement to corrections to the news media all need training. Beyond training, they need guidance and cooperation reengineering their own processes so they fit with the new ECMS.

An analogous situation from the manufacturing world provides an excellent example: When Toyota shifted from the traditional assembly line auto manufacturing process to its then radically new Just-In-Time manufacturing system, the company found that its suppliers, sales force and customers did not know how to react. Toyota had to show its business partners how to operate in the new paradigm, and it had to provide the requisite training. Courts moving from paper to ECM face a similar challenge.

As has been stressed throughout, leveraging ECM requires cooperation, buy-in and participation across the board. But getting buy-in and providing appropriate training is only the tip of the Human Resource Management challenges involved in migrating to ECM. It isn't like going from one filing system to another, or one word processing system to another. It's more like going from using wagon trains to using airplanes to move people across the country. There is no longer a need for wranglers, blacksmiths and axle makers. There is a big need for pilots, mechanics and flight attendants. The old job descriptions just won't do.

Likewise, in courts that move to ECM, there is no file room clerk. Indeed, there is no file room. There is no file cart; files are accessed electronically on demand. Preparing files for a

judge, once configured into the workflow, will automatically occur when needed.

There is, however, a big need for people to identify, articulate, document and maintain the business processes that drive the workflow. Users, both internal and external, will need lots of support as they work with the new system. Because courtroom workflows, [as discussed in my last post](#), will be faster and more streamlined, staff will need to be able to understand entire processes, like sentencing or arraignment, rather than focusing one small piece, such as filling in a form or serving paper files to the judge.

Many of the old job descriptions - and perhaps pay scales - simply will not do. The expertise and skills the court must seek to acquire through training and hiring will be quite different from the historical requirements. Both for retention and for new hiring, the court will have to revise and draft new job descriptions, with new qualifications and new responsibilities.

In conjunction with the change in job responsibilities and process flows, both the shape and style of management must change. Courts find that with the introduction of ECM, cross training becomes both essential and much more feasible than in the "manual" environment. One result is that particular tasks, once handled at one or several near by desks, can be spread across an entire courthouse or even across multiple locations.

Consider, for example, redaction. In a paper environment, this time-consuming task would probably be performed by a person or team co-located, where all documents would be brought to be reviewed. With ECM, using intelligent redaction tools, the electronic documents can be staged to a single queue, or electronic in-box. Staff with the requisite business knowledge can verify documents that have been processed for redaction from wherever they are located; after which the workflow routes them on their way.

But to whom do these disparate staff report and who is responsible for overall quality of the redaction process? Indeed, many courts find themselves moving to forms of

matrix management, where management of the person (hiring, leave scheduling, training, etc.) is handled by one manager, while responsibility for managing how the task or tasks are performed may be managed by one or more other managers. The vastly increased capability to monitor and control quality makes this form of management organization particularly appropriate.

Judges may find they wish to reexamine some judicial processes in light of the capabilities provided by ECM. Where existing court practice may be to send documents to a "covering" or "duty" judge when other judges are not physically available to sign their orders, mobile computing and electronic signature may obviate such a need. Likewise, judges may be much more able and inclined to cover for one another when files and papers need not be transported. Indeed, one major hurdle to such collaboration has been that each judge may prefer files arranged "his or her way". With ECM, each judge can see each document and file arranged according to his or her own preferences, with no staff intervention. Thus, different rules for presenting matters to individual judges may no longer be necessary, to the great relief and happiness of the bar.

Politics

Politics? Absolutely. Beyond getting the buy-in and support necessary to obtain funding and authorization, major political matters must be confronted from the very outset. For starters, the determination of how to fund acquisition and operation of the system will fundamentally define relationships among the court, its business partners, users and funding authority.

As courts have implemented E-Filing, it has become clear that maximizing the value of E-Filing requires making E-Filing mandatory. If the court uses a "self-funded" model, using budget dollars for acquisition and operation, then the political push-back from filers tends to be muted. Likewise, if the court self-funds the ECM and provides online access to court documents for free, little political resistance will be forthcoming. On the other hand, if all or part of the cost is to

be transferred, directly or indirectly, to users, great care must be given to managing political expectations.

When it comes to access, no matter what decisions the court makes regarding who gets to see what, someone will be unhappy. Can parties view unredacted documents in their own files, even if filed by an opposing party? Can prosecutors view all juvenile matters, including dependencies; or only those involving juveniles who have current delinquency matters? The question of what constitutes "appropriate" access, versus the desire for confidentiality, privacy, and security will always be politically fraught.

Some existing businesses may be more than a little impacted by the advent of ECM, and not all of them will necessarily be happy about it. For example, courier services used to deriving significant business from hand-carrying filings to the court have resisted changes allowing, mandating, or expediting electronic filing, particularly in larger courts.

Although the general label of "the court" often includes both the Court Clerk's Office, the Court Administrator and judges, in many jurisdictions the two offices are politically and financially separate. In that circumstance, the dynamic between them will probably be the most important political relationship of all. Generally, much of the financial benefits of ECM accrue on the Clerk's side, but to make the system work well, the judicial and court administration side must have incentive to cooperate. Clerks who fail to take judicial and court administration needs into account invariably find themselves de facto operating dual systems: the ECM or E-Filing systems for themselves, while sending paper to and receiving paper from the court.

Once I visited a large court that had implemented mandatory E-Filing. In the clerk's processing area sat two very large, industrial strength printers, which ran non-stop all day. Every document filed electronically with the clerk was printed, then assembled into files for delivery to the court. I learned later that, not surprisingly, the Clerk and the Trial Court Administrator did not communicate with each other except when absolutely necessary.

Rather than soft-pedal, ignore, or worst of all fail to understand the political implications of ECM, both good and bad, the court should be proactive in identifying, planning for and managing them. The first post of this series identified the need for a Champion as a key to success. Nowhere does the need for a Champion manifest itself more than in artfully dealing with the political aspects of ECM.

Governance

Decades, even centuries of laws, rules, and procedures govern the management of court documents. Statutes may specifically refer to "filing the papers"; or "The Clerk Shall affix a raised stamp no less than one and no more than three inches from the upper right corner of the page". Federal and state laws and rules of procedure have made great strides in rooting out, or, when necessary, simply providing blanket authority to disregard, anachronistic references that impede use of electronic documents; but problems still crop up nevertheless. Even though the laws may allow electronic documents, long-standing court rules or administrative orders may not have been updated.

Moreover, they are not always under the direct control of the court to change. Jail rules requiring paper orders or wet signatures on documents to process prisoners in and out, or Family Services procedures requiring certified paper copies of divorce decrees can only be updated with the cooperation of the agencies themselves. Rules regarding time, place and manner of filing will require not only consideration of court needs, but also the needs and desires of the filers.

Requirements for "wet" signatures, which of course require paper, are particularly ubiquitous and often deeply imbedded in processes, for the court, its business partners and "down-stream" users like banks, schools, licensing agencies and so on. Perhaps the most common, and one of the most wasteful, processes involves printing documents for the judge's signature, then scanning the signed document back into the system.

For all these reasons, the court should establish a standing team or committee to deal with and attempt to eliminate or

revise laws, rules or procedures that mandate use of paper and/or wet signatures. Dealing with such matters "ad-hoc", as they come up will prove frustrating and even more time consuming than otherwise necessary, and will lead to uneven and perhaps conflicting resolutions. Failure to deal with them at all will result in maintenance of paper based systems in addition to the ECMS.

Focusing on funding, hardware and software, training and timelines is of course vital to the success of ECM. But it is not enough. From the very start, the court should establish teams comprised of judicial, human resources and governance professionals charged with responsibility for the human resource management, political, and governance facets of moving to and successfully leveraging ECM.

For tips and best practices setting up court workflow, sign up for my upcoming webinar, 4 Pillars for Successful Court Records Management.



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