



Advancing Access to Justice Through Technology

GUIDING PRINCIPLES FOR
CALIFORNIA JUDICIAL BRANCH
INITIATIVES

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JUDICIAL COUNCIL
OF CALIFORNIA

COURT TECHNOLOGY
ADVISORY COMMITTEE

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These guiding principles establish a set of considerations for technology project decision-makers. As principles, they are not mandates nor do they establish conditions for technology project advancement. These guiding principles are in no way intended to obligate courts to invest in new, or to modify existing, solutions and services. Instead, these guiding principles articulate the fundamental values that provide overall direction to technology programs within the justice network. The examples provided within each section are for illustrative purposes only and do not introduce any specific directives.



Purpose

Technology permeates almost every aspect of our personal and professional lives, often providing more efficient ways to accomplish a variety of tasks. The public has adopted these services to conduct activities such as online banking, travel reservations, social networking, and shopping.

These technologies can similarly help people access court services. In the past decade, statewide and local court technology initiatives have presented opportunities to administer justice more efficiently and to a larger community of court users. These guiding principles are intended to provide guidance and assurance to courts and court users that technology will be implemented in a way that builds trust in our justice system and advances access and fairness to justice. Now more than ever, it is imperative that access remains a central focus in the design, development, and deployment of court technology solutions.

The Judicial Council of California has encouraged the courts to ensure access and fairness while modernizing court services through technology. This document recognizes two key principles set out in the council's strategic goals:

Goal I: Access, Fairness, and Diversity

California's courts will treat everyone in a fair and just manner. All persons will have equal access to the courts and court proceedings and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds. The makeup of California's judicial branch will reflect the diversity of the state's residents.¹

Goal VI: Branchwide Infrastructure for Service Excellence

The judicial branch will enhance the quality of justice by providing an administrative, technological, and physical infrastructure that supports and meets

¹ Judicial Council of Cal., *Justice in Focus: The Strategic Plan for California's Judicial Branch, 2006–2012* (2007), p. 26.

the needs of the public, the branch, and its justice system and community partners, and that ensures business continuity.²

The guiding principles discussed in this document are intended to further the Judicial Council’s commitment to access and fairness while pursuing modernization of court practices through technology. Therefore, the introduction of technology or changes in the use of technology should advance access and increase participation whenever possible. The Judicial Council is sensitive to the fact that resources are extremely limited, and this document is in no way intended to obligate courts to invest in or modify existing solutions. This document is intended only to serve as a statement of general principles for consideration by the individual courts of this state when planning for, or implementing, technology. Courts will continue to successfully balance their financial resources with how best to provide access through technology.

Although the level of resources available to the California judicial branch and to each appellate and trial court within the branch varies, the judicial branch and individual courts have embraced technology as a way to improve access to justice, create efficiencies in court processes, and effectively use human and financial resources. Whether it is electronic access to case records, electronic filing of documents, or handling jury service matters online, all these services in some way promote access to the courts. Additionally, these services are expected to grow substantially as local court and statewide initiatives become available.

While they are intended to be long-standing, the guiding principles in this document do not mandate new expenditures, create new causes of action, repeal or modify any rules of court, or seek to address existing or pending law relating to access to the courts. Rather, they advise justice system decision makers to consider and take steps to use technology to enhance access to justice.

Although it is critical that the courts comply with the relevant laws and policies that may affect technology services, particularly related to privacy and access, these guiding principles do not—and are not intended to—specify the legal obligations of the courts. Technology initiatives can push the boundaries of current laws and rules in providing access for conducting business in ways not previously considered. As a result, technology is a relatively dynamic area for judicial branch laws and policy. Thus, it is important that the judicial branch communicate advances and changes in policy and that those within the branch closely track these developments.

² *Id.* at p. 46. Goal VI of the Judicial Council’s strategic plan for 2000–2006 was previously titled “Technology.”

Guiding Principles

Court technology and the new ways it allows interaction with the courts should always advance access and participation in the justice system in order to improve the trust and confidence Californians have in their court system.

- 1. Ensure Access and Fairness.** Use technologies that allow all court users to have impartial and effective access to justice.
- 2. Include Self-Represented Litigants.** Provide services to those representing themselves, as well as to those represented by attorneys.
- 3. Preserve Traditional Access.** Promote innovative approaches for public access to the courts while accommodating persons needing access through conventional means.
- 4. Design for Ease of Use.** Build services that are user-friendly, and use technology that is widely available.
- 5. Provide Education and Support.** Develop and provide training and support for all technology solutions, particularly those intended for use by the public.
- 6. Secure Private Information.** Design services to comply with privacy laws and to assure users that personal information is properly protected.
- 7. Provide Reliable Information.** Ensure the accuracy and timeliness of information provided to judges, parties, and others.
- 8. Protect from Technology Failure.** Define contingencies and remedies to guarantee that users do not forfeit legal rights when technologies fail and users are unable to operate systems successfully.
- 9. Improve Court Operations.** Advance court operational practices to make full use of technology and, in turn, provide better service to court users.
- 10. Plan Ahead.** Create technology solutions that are forward thinking and that enable courts to favorably adapt to the changing expectations of the public and court users.

Guiding Principle 1. Ensure Access and Fairness

Statement

Use technologies to allow all court users to have impartial and effective access to justice.

Rationale

Experience in California has shown that technology can be used to enhance Californians' access to the courts. The courts have many users: litigants, lawyers, jurors, businesses, law enforcement, social services agencies, the press, and the general public. Many users are eager to conduct their business with the court through electronic means.

Electronic access to court case management information and case records, for example, can be of great assistance to any number of court users. Remote services allow those with geographic, age, health, financial, language, physical, or other restrictions to access the courts in a more comfortable fashion at their convenience. Because these services are typically available 24/7, people can conduct their court business in the evening after children have gone to bed or on the weekends and at other times without having to miss work. Additionally, technology includes not only computer-based solutions but also delivery models such as videoconferencing, telephone hotlines, and cable access to provide greater access to people living in more rural areas.

Electronic self-help services can help those with specific needs access required information. Similar to the investment that courts have been and are making to improve access to court facilities, courts must also make a commitment to design online services and websites with the same focus on providing access to all. This includes building accessible websites and tools as well as providing content in multiple languages.

Providing these types of services allows people to conduct their court business without having to come to the courthouse, allowing courts to more effectively use their staff.

Implications

In recognition of the far-reaching benefits of providing access to court services online, technological solutions should meet the needs of most court users. Building systems for use by most or all types of court users helps ensure that all users feel that they are treated fairly by the courts.

Some court users may be unable to use these technologies, for example, users from underserved communities, including but not limited to persons with disabilities, non- and limited-English speakers, and those with limited or no access to technology due to remote geographic location. Rather than not implementing the technologies, courts should develop a strategy improving the accessibility of the solution or make court resources available to assist these customers. Furthermore, not all court users' needs must be met on the first day of a service's rollout, depending on how the service is deployed. But it is critical that at no time in the rollout of such services should a party or parties be unfairly disadvantaged as a result of technology. Issues of fees, functionality, and usability should all be addressed before such services are offered; also, where appropriate, plans and methods for extending technology solutions and benefits to more and more users should be considered.

Guiding Principle 2. Include Self-Represented Litigants

Statement

Provide services to those representing themselves, as well as to those represented by attorneys.

Rationale

The percentage of self-represented litigants filing cases is steadily growing in California's courts. These clients, understandably unfamiliar with court business practices, require additional support and attention. The use of technology can be of great assistance in providing outreach, information, and support to those navigating the courts for the first time. And, if designed properly, these solutions also can provide reassurance to self-represented litigants by giving them immediate access to case information or the current status of filings or case events.

Because so many cases now involve self-represented parties, technology must be implemented in ways that benefit those with or without legal representation so that all parties have equal access to the courts. Any court-sponsored technology service is limited in its scope and its benefit to both the public and the court until it can adequately serve this growing group of court users.

In rules of court and legislation, California presently limits the ability of courts to mandate e-filing and e-service to only complex civil matters, where parties are almost always represented by an attorney. Furthermore, California courts may make online services available for use around the clock, but e-filing hours are limited to a court's hours of operation at its physical locations. These rules and laws were designed specifically to prevent any one party from being unfairly advantaged by having access to a court because of technology when another may not have that same access.

While this is the situation today, recent trial court projects demonstrate that e-filing will evolve and expand in functionality and use, including services for self-represented litigants. Likewise, adoption of and trust in e-filing will also grow and expand. As this happens, perceptions of balance and fairness will also change and the framework of policies, laws, and rules supporting e-filing may need to evolve. As it does, courts must continue to ensure fair and equal electronic access to all parties, including self-represented litigants.

Implications

California courts have invested in many successful services directed toward self-represented litigants, such as small claims e-filing portals, TurboTax-style form-completion engines, and self-help websites. Attorneys have also found value in these services.

Accommodating the needs of self-represented litigants, including those from underserved communities,³ adds complexity and may influence a court's strategy for implementing e-filing

³ Underserved communities include but are not limited to, persons with disabilities, non- and limited-English speakers, low-income persons, and those with limited or no access to technology due to remote geographic location.

and other online services. Vendors, for example, historically have been willing to serve only attorneys and companies that have shown a willingness to pay for such services. Also, attorneys are apt to file repeatedly, so a user-account style filing system makes sense, whereas self-represented litigants and others should have a way to access such services on a one-time basis.

Because of the added complexity of e-filing in other case types, many California courts have chosen to implement e-filing in complex civil matters where e-filing can be mandated. Also, vendors have been willing to set up and host such services at little or no cost to the courts; private vendors provide these services at a cost to the filer. Because these cases are generally handled by attorneys, courts can rely on these vendors, with limited concerns about access. When a court considers implementing e-filing in any other case type, it must weigh the implications regarding access and consider ways to offset any costs or provide the service in-house.

In addition to cost considerations, courts should take into account other aspects of usability and access for self-represented litigants. For example, these parties are likely to access court systems from home, public libraries, legal aid offices, and court self-help centers. Security precautions and registration requirements may need to be tailored to make accessing online court services from these locations feasible and secure.

Allowing e-filing in a greater number of case types presents a major advantage for the court in terms of labor savings on filings. By reducing the time to process cases and documents, clerks are able to focus more time and attention on other activities and services, and by speeding the filing process, court records and information can be available to parties and others more quickly. All of this benefits the courts and their users, including self-represented litigants.

Through the proliferation and adoption of e-filing solutions, courts and court users will realize the mutual benefits of such tools. Based on these experiences, implications regarding access will evolve and so should court policies.

Guiding Principle 3. Preserve Traditional Access

Statement

Promote innovative approaches for public access to the courts while accommodating persons needing access through conventional means.

Rationale

Newer, more advanced technologies are appearing in the marketplace at an astonishing rate. As a result, these technologies, such as laptops and cell phones, are becoming faster, cheaper, and better. But not everyone is able to afford these technologies or is comfortable using them.

Therefore, courts cannot assume that technology can completely replace services provided at traditional points of access, such as at the filing counter or self-help center. Even those who may have the means to access courts' electronic services may feel most comfortable interacting with the courts in person. Therefore, courts should promote and encourage the use of technology-based services but must do so in a way that does not impinge on traditional means of accessing justice.

Implications

As courts aim to move their users online rather than having them stand in line at the courthouse, it may be tempting to look to technology to replace certain services provided today at the courthouse. Technology can be used to offset or reduce the demand for these services but cannot eliminate them altogether. Courts will need to consider this when budgeting for and designing online services. Also, many users may opt to use both online and in-person services depending on what is most convenient, provides the most effective access, and provides the greatest assurance.

To ensure trust in the courts and their systems, it is important to design online systems in a way that is consistent with and complementary to the in-person experience. This may include standardizing instructional materials, protocols, and naming conventions to help users feel more confident as they navigate the courts both online and in person.

Furthermore, policies supporting both in-person and online services should be developed in tandem to promote ease of use and to avoid presenting users with undue burdens or seemingly unnecessary or confusing steps in completing court business.

Guiding Principle 4. Design for Ease of Use

Statement

Build services that are user-friendly, and use technology that is widely available.

Rationale

Court online services are increasingly not just about sharing information but about enabling court users to conduct court business without having to come to the courthouse. This makes designing for user needs all the more important. By identifying and reaching out to different court users, people who develop technology gain a better understanding of what services are needed and how best to provide them. This also helps promote the adoption of these services once they are deployed.

Designing for usability means creating systems that users find easy to follow and that involve a minimal number of steps and screens. User-friendly solutions should be designed in a way that makes the technology as seamless as possible. Designing for ease of use must involve consideration of a broad range of user needs. Considerations for those with special needs and from underserved communities—including those with disabilities, low-income persons, seniors, those for whom English is not their first language, or those who might access such services from a remote location (such as a library)—are critical in establishing an online service system that is far-reaching, equitable and usable. Also, designing easy-to-use systems minimizes training needs and support for these systems, whether provided in-house by the court or by external agencies like legal aid societies and law libraries that work directly with court users.

With the increased adoption of such services, the courts can free up resources to provide enhanced service to judges and court customers alike. And, more important, by creating systems that are logical and easy to use, the court is making it clear that it is a fair and respectful place in which to resolve a dispute.

Implications

Ease of use can mean different things to different court users. It is important for systems to be built for their intended audience. Justice partners may want to be able to query specific items such as protective orders quickly, using a limited number of well-trained staff members. An unsophisticated user is helped by being led deliberately through each data entry decision; a sophisticated user wants to be able to enter data as quickly and efficiently as possible. Therefore, it is critical to understand the intended audience for a system and design it appropriately.

While solutions may be tailored to meet the needs of an intended user group, the overall suite of solutions should provide multiple services or layered services that meet the needs of a broad range of court users. An important way to ensure that systems meet user requirements is to encourage community and justice partner involvement in system design and testing before the solution is launched.

Guiding Principle 5. Provide Education and Support

Statement

Develop and provide training and support for all technology applications, particularly those intended for use by the public.

Rationale

Court users are aware of the great stakes involved in going to court. Currently many users prefer the hands-on support and service they get when going to the courthouse, even if it means waiting in long lines for several hours. Many of those court users could be helped by online solutions if appropriate training support were provided so that they felt comfortable and confident in using these systems.

Providing training on online technology is a key way of reassuring users that a new system is a viable way to conduct court business and that they will be treated as fairly using these new systems as they would by coming to the physical courthouse. Training also makes new systems more visible, which can further increase adoption.

Education and support are not a one-time occurrence. Most people do not use the courts regularly and so may need to be reminded of the services available and how to use them with each court contact. Courts should not assume that court users are aware of the technologies available to them and should continually publicize the availability of such resources.

Implications

The education and training of court users does not happen without resources and expertise and is directly linked to the success of an online service. Therefore, the resources required to develop and administer training should be included in any project proposal.

Training and support plans should include identifying and implementing ways to promote, train, and support users on new technologies and solutions. Activities may include adding information about new technologies on notices and informational handouts, hosting open houses, and marketing the services to potential users. Even after a service is well established, new users will want to know how to use the system, so training and support must be recurring and ongoing.

Also, the level of training and methods for delivering training should be appropriate for the complexity of the system and the sophistication of the intended users. Training can be delivered in a variety of ways. For one-time users, it should be built into the program itself; sometimes the development of web-based training programs is sufficient. Holding a series of live seminars or workshops at the court is often effective. Or perhaps the court could target users in key organizations to set up a “train the trainer” program. This allows the court to shift some of the burden of training all users to external groups such as large law firms or legal aid societies.

Additionally, the court may want to extend its training and support in the online environment by posting instructional videos, responding to frequently asked questions, and offering multilingual content. Courts may even want to provide training sessions through webinars and other online venues.

More often than not, some combination of these training delivery methods is required to effectively support an online service. The more a court can do to provide training and support—online and in person—the more incentive people will have to use online services.

Guiding Principle 6. Secure Private Information

Statement

Design services to comply with privacy laws and to assure users that personal information is properly protected.

Rationale

Technology initiatives often push the boundaries of current laws and rules of court when it comes to providing access to court business in ways not previously considered. This is particularly true for online access to case information, where the evolution of services and facilitation of public access to information may conflict with people's privacy, such as when personal and confidential information becomes part of court documents.

Much of the responsibility for redacting or simply not including personal or confidential information on case documents lies with the filers themselves. However, courts have the responsibility to maintain the confidentiality of certain types of cases and information. Trust and confidence in California's courts and its online court systems may be undermined if such information is improperly disclosed through public access to court files and systems. Thus, while providing reasonable access to court information, courts must also protect privacy interests in accordance with the law.

Another example of privacy vulnerability is a litigant's use of a public or otherwise shared computer to access court information. Therefore, it is important to inform users that their Internet search history is available on the computer until it is explicitly deleted (e.g., by clearing the cache and deleting cookies) and to provide users with instructions on how to do so.

In sum, it is critical to communicate the obligations of the users and of the courts when filing and accessing case information to prevent the unintended release of confidential information (such as trade secrets) or personal information (such as credit card information, social security numbers, and other personal identifiers) that can compromise individual privacy, safety, and security.

Implications

Rules, policies, and law concerning privacy and technology provide some guidance to courts on how to design systems to protect user privacy. Courts must design systems that comply with these laws. It is equally critical that technologies provide confidence that personal and other confidential information is being handled securely and reliably.

More and more, courts post documents online that have been filed electronically or scan documents filed on paper. Providing services electronically may actually make court users more conscious of the fact that digital information provided to the court may end up on the Internet. Courts should help filers understand what can and needs to be included on filed documents and what should not be included regardless of whether users file electronically or on paper.

If the obligation of court transparency and the value of personal privacy conflict, decision makers should consider both values and their underlying purposes and seek to maximize benefits while minimizing detriments. The judicial branch should develop privacy policies and requirements for incorporation into contracts with vendors and for publication to users who access publicly available systems. Such policies should delineate the responsibilities of vendors, users, and the court regarding information provided by filers to those accessing case data and documents. As public-access technology evolves, courts should identify issues that may need to be addressed by modified rules of court or statutory changes and raise these issues regarding private information for consideration by the Judicial Council.

Guiding Principle 7. Provide Reliable Information

Statement

Ensure the accuracy and timeliness of information provided to judges, parties, and others.

Rationale

As more information is available electronically from courts, it is important that judges, parties, and others get the latest information and that it is correct. This issue is heightened in an online environment where in-person contact between court users and court staff is reduced.

As courts share more information with the public and justice partners, data accuracy is critical. Outside the judicial system, decisions about a person's character, fitness for hire, or even suitability for dating can be influenced by information posted on publicly accessible court sites. Inside the court, judges could issue warrants or protective orders based on erroneous or outdated information, possibly resulting in a mistaken arrest or the unintentional compromising of someone's safety. The public's expectation of greater transparency and accountability of its institutions demands that courts move toward sharing court information electronically, either through direct access or on publicly accessible websites. But along with this expectation comes a greater responsibility to ensure that shared data is accurate, complete, and up to date.

Implications

Courts deal daily with the repercussions of having incomplete or incorrect records. Nonetheless, judges are expected to make decisions and provide direction on matters that affect people's personal safety every day. This is an area where technology can provide great benefit if used properly.

Reducing the number of times information is manually inputted and expediting the time it takes data to advance through the system can lead to more accurate court information; true accuracy, however, relies on the presence of proper audit and quality assurance procedures—irrespective of technology.

Improving data integrity within court systems can provide judges and other decision makers with more reliable information with which to make critical decisions. Information should be comprehensive and also consumable by the court and its users. This improvement in court data and in the ability to compile and display such data to judges and others will have further effects, such as reducing the number of conflicting orders or unneeded warrants.

Such improvements can ultimately help build the public's trust and confidence in the court system.

Guiding Principle 8. Protect from Technology Failure

Statement

Define contingencies and remedies to guarantee that users do not forfeit legal rights when technologies fail and users are unable to operate systems successfully.

Rationale

A principal fear of users of court technology is that the application will fail in some way and the user will forfeit time—or worse—legal rights as a result. It is important to create measures for assuring users that there are ways to rectify a problem when technology fails. A technology failure can be the result of actual problems with physical access to, and use of, a system itself; or, a failure can also be a result of a system logic problem, which introduces an unintentional bias or outcome in court decisionmaking. The measures used to reassure users must be clearly communicated to all court users, judges, attorneys, and stakeholders.

Implications

When developing new online services, courts should examine how to fix problems caused by failures in technology. This includes thinking about what can be resolved by a front-counter clerk and what must go before a judge for resolution. These rules should be included as part of the promotion of and training for a new online service.

Court technology implementers must strive to ensure that technology solutions improve not only access to justice, but also the legal appropriateness and neutrality of substantive outcomes. For example, an electronic mediation system may contain design flaws such that even when used correctly, the system introduces bias toward one or another result, rather than maintaining neutrality.

Another consideration is that technology should provide ongoing, real-time feedback on a transaction's status or other information to users to reassure them that the system is still operational.

It can be difficult to determine whether a court user has had difficulty using technology or is simply “working the system” (i.e., claiming that technology failed as an excuse to hide a user error such as missing a deadline or supplying incomplete information). Therefore, it is critical that courts identify the potential points of failure in any online system and implement appropriate monitoring and reporting tools. Then when an issue arises, the court can evaluate whether something should be remedied in a case.

Also, it is important to use familiar and stable technologies as a foundation in building online services to improve the trustworthiness of any new system.

Guiding Principle 9. Improve Court Operations

Statement

Advance court operational practices to make full use of technology and, in turn, provide better service to court users.

Rationale

Looking at court operations with the goal of increasing efficiency and determining the role that technology can play sets a foundation for establishing a complementary and collaborative relationship between staff and technology.

By examining workflows and optimizing them with technology, courts can improve access in any number of ways, whether by presenting a consistent online and in-person experience or by being able to reallocate resources to better serve those who need special attention. Furthermore, reexamining workflows can help ensure that processes for paper-based and electronic ways of doing business are integrated. The work done to improve court operations can also help courts free up resources to create new online services and better support existing ones.

Implications

Improving court operations may require courts or their partners to invest more time analyzing court operations and processes. Additionally, people are often uncomfortable with change, so court managers may need to educate their workforce on the value of these changes.

These efforts allow an opportunity for a better experience for court users and staff. Technology solutions geared toward court operations can improve the experience for the court user without the user's awareness or direct interaction with a technology solution—for example, by providing data that enables court staff to more easily answer questions and serve their customers.

Additionally, freeing up resources can result in the redirection of remaining resources to where they are most needed or their reallocation to introduce new services.

Guiding Principle 10. Plan Ahead

Statement

Create technology solutions that are forward thinking and that enable courts to favorably adapt to the changing expectations of the public and court users.

Rationale

With the rapid state of innovation and the corresponding evolution in people's expectations of what they can do with technology, courts must consider future change and growth with any technology project. Building a technology infrastructure that can grow and adapt is critical to the sustainability and evolution of online services. This may mean looking at what might be needed across different case types or considering how to incorporate technologies that are now on the horizon in future releases.

To ensure fairness and build trust with court users for new online services, each new service must grow with users' needs and remain consistently available to them. By thinking ahead, courts can be more confident that services they provide online will be stable and long lasting.

Implications

Planning should balance the development of online services with staff-supported customer service. The numbers of people unable or unwilling to access the courts via online systems may diminish with technological innovations.

Planning for technology solutions should consider online services accessed remotely, as well as technology that can assist users while at the courthouse. Like grocery stores, banks, and libraries, courts can also benefit from technology solutions that improve access for those trying to conduct court business within the courthouse itself. These solutions, in particular, should help users transition from doing court business in person to doing their business online with confidence.