



Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on August 31, 2012

Title	Agenda Item Type
Court Technology and Access: <i>Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives</i>	Action Required
	Effective Date
	August 31, 2012
Rules, Forms, Standards, or Statutes Affected	Date of Report
N/A	August 8, 2012
Recommended by	Contact
Court Technology Advisory Committee	Jamel Jones, 415-865-4629
Hon. Ming W. Chin, Chair	jamel.jones@jud.ca.gov
Hon. Terence L. Bruiniers, Vice-Chair	

Executive Summary

The Court Technology Advisory Committee (CTAC) recommends adopting the proposed “*Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives*,” effective immediately. These guiding principles are intended to help leaders and decision makers of technology initiatives in the California judicial branch address issues of access and fairness while pursuing modernization of court practices through technology. The principles are not mandates; nor do they establish conditions for technology advancement. Instead, they articulate the fundamental values that provide overall direction for technology initiatives in the branch.

During its agenda-setting meeting in January, the Executive and Planning Committee (E&P) referred the *Guiding Principles* to the former CCMS Internal Committee, now the Technology Committee, for formal review and approval. The Technology Committee voted unanimously on August 7, 2012 to have the *Guiding Principles* placed on the Judicial Council consent agenda.

Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council adopt, effective August 31, 2012, the document *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives* to articulate the fundamental values that provide overall direction for technology initiatives in the branch.

The guiding principles document is included as Attachment A.

Previous Council Action

The council has not previously taken action concerning guiding principles for access and technology.

Rationale for Recommendation

Under rule 10.53 of the California Rules of Court, CTAC makes recommendations to the Judicial Council “for improving the administration of justice through the use of technology and for fostering cooperative endeavors to resolve common technological issues with other stakeholders in the justice system.” (Rule 10.53(a).)

In carrying out this charge, CTAC has identified a set of guiding principles to consider when planning and implementing technology initiatives. Specifically, in 2009 CTAC tasked its Outreach Subcommittee with developing and recommending a set of principles related to the advancement of access to justice through the use of technology. This directive was prompted by feedback following discussions with self-represented litigant aid organizations regarding the benefits and pursuit of electronic filing of court documents. Generally, there appeared to be a strong desire for assurance that constituent needs be considered when adopting new technologies. Subsequently, CTAC learned that other states had adopted or were in the process of developing their own guidelines or principles intended to protect access to justice while promoting technological innovation.

In the endeavor to develop a set of guiding principles, CTAC first partnered with the Public Interest Clearinghouse, which surveyed legal aid organizations and identified the specific concerns raised by traditionally underserved communities. Through focus groups and surveys, and additional research and analysis, a set of 10 principles were identified that CTAC thought would enhance access to justice through the use of technology. The guiding principles were further refined based on input from various advisory bodies, including the Task Force on Self-Represented Litigants, the Access and Fairness Advisory Committee, and the California Court Case Management System Executive Committee, as well as from the public.

In this report, CTAC recommends that the council adopt a guiding principles document, which includes the 10 guiding principles listed below:

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 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 changing expectations of the public and court users.

Comments, Alternative Considered, and Policy Implications

The recommended guiding principles document was circulated for public comment between September 15 and November 28, 2011. During the formal comment period, eight individuals and organizations submitted comments on the proposal. One commentator agreed with the proposal, two indicated they agreed with the proposal if modified, and five did not indicate their position on the proposal as a whole, but provided comments on specific aspects of the proposal. Overall, the feedback received by way of the public comment process was generally supportive and very constructive, helping to clarify ambiguities in the document.

Issues raised by commentators

Commentators expressed concerns about the following issues:

- Two commentators noted concerns that the principles could be interpreted as imposing new mandates on the courts or requiring additional resources for technology projects. As a result, the committee re-titled the document “Guiding Principles,” and further refined the Purpose section to clarify that the guiding principles organize and present a set of considerations for technology project decision makers, and do not intend to introduce new obligations for the courts or establish conditions for technology project advancement. Rather, the general principles articulate the fundamental values that provide overall direction to technology programs within the justice network.
- Two commentators expressed that the document should cite laws, statutes, industry standards, or other policies applicable to courts in the areas of accessibility and technology. The committee, in keeping with the aim of adopting long-standing guiding principles, intentionally did not outline specific mandates of the courts and the branch. However, the committee did feel that it would be worthwhile to remind readers to comply with the law, and thus modified the Purpose to include this reminder.
- Several commentators highlighted language ambiguities in the document. The committee found this particularly helpful and, as a result, made a number of clarifications throughout the document, with a concentration of edits in the Purpose and in Principle 8.

A chart summarizing the comments received and the committee’s responses is attached at pages 6–19.

Alternatives and policy implications

Based on the history and positive responses to the proposal, CTAC thinks that the adoption of the principles by the Judicial Council at this time will be very beneficial for the branch and the public. Their adoption will provide guidance and assistance to those in courts and the public involved in technology projects and innovations. The alternative of not adopting any guiding principles seems undesirable because it would leave this important area without any guiding framework for decision makers.

The guiding principles document should be helpful in shaping policy in the crucial area of technology initiatives and innovation while still being flexible and general enough to provide broad discretion to decision makers.

Implementation Requirements, Costs, and Operational Impacts

There are no implementation requirements, costs, or operational impacts on the local courts arising out of the recommended guidelines. CTAC is sensitive to the fact that resources are extremely limited, and this report is in no way intended to obligate courts to invest in new, or to modify existing, solutions and services.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommended guidelines in this report support the following Judicial Council strategic plan goals: Goal I (Access, Fairness, and Diversity) and Goal VI (Branchwide Infrastructure for Service Excellence). The principles combine these major sets of goals into an integrated, effective framework for future policymaking and innovation.

Attachments

1. Comment chart at pages 6–19
2. Attachment A: *Advancing Access to Justice Through Technology: Guiding Principles for California Judicial Branch Initiatives*

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Michael Cole Senior Information Technology Analyst Superior Court of California, County of Stanislaus	NI	This looks great! It appears that the committee took into consideration the prior invitation to comment responses. Thank you for reaching out.	No response required.
2.	Superior Court of California, County of Placer Jake Chatters Court Executive Officer	NI	<p>It is clear that great care and effort was taken in crafting the <i>Advancing Access to Justice Through Technology: Principles for Judicial Branch Initiatives</i>. In this short document your Committee has outlined many of the challenges presented by implementing change, and in particular those involving technology. There can be no argument that each technology project should consider its impact on access and fairness and it is encouraging to know the Court Technology Advisory Committee is at the forefront of these issues.</p> <p>With that said, I wish to express concern regarding the presentation of the concepts in this document. With revision, it is an important document and one that bears support. However, in its current form, it may establish barriers to the improvements it seeks to encourage.</p> <p>The use of the word "principal" is confusing when placed in context with much of the underlying text in the document. Upon initial read, the assumption was that by using "principal" the Committee was establishing additional rules and tenets that must be followed when implementing new technology. And with only small exception, the ten bolded principals seem fair in that regard. However, when reading the text it often includes:</p> <ul style="list-style-type: none"> • Statements as to the business case for technology...: "By reducing the time to process cases and documents, clerks are able to focus more time and attention on other activities and services." • Statements of best practice...: "may include standardizing instructional materials, protocols, and naming conventions to 	<p>The committee appreciates the commentators concern regarding the possible misinterpretation of this proposal's intention.</p> <p>The document was drafted to establish <i>guiding</i> principles, which organize and present a set of considerations for technology project decision-makers. As guiding principles, they are not mandates nor do they establish conditions for technology project advancement. Instead, these general principles articulate the fundamental values that provide overall direction to technology programs within the justice network. Furthermore, the examples provided under each section are for illustrative purposes only and do not introduce any specific directives.</p> <p>The committee has included minor modifications to both the document title and Purpose section to further clarify this intent.</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>help users feel more confident," suggestions in style of implementation...: "[a]n important way to ensure that systems meet user requirements is to have users participate in system design and testing before the launch."</p> <ul style="list-style-type: none"> • Items to consider when designing solutions...: "registration requirements may need to be tailored to make accessing online court services from these locations feasible and secure." • Apparent system design requirements/mandates...: "self-represented litigants and others should have a way to access such services on a one-time basis." • Clear directives...: "must do so in a way that does not impinge on traditional means of accessing justice." <p>The variance in style of statements makes it difficult to determine which elements <i>must</i> be adhered to before a technology initiative can proceed and which are simple suggestions or items that should be considered, but not necessarily acted upon, when an initiative is being developed. Some will read the language as clear mandates even where the Committee has not intended them to be so. Such an interpretation will be detrimental, in some respects, to the improvements to access that the Committee is intending to promote. For example, a strict constructionist may take the statement... "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 working," to mean that no project may move forward <i>unless</i> this condition is met. Such a condition may not always be appropriate or, in some cases, perhaps a slightly less than real-time solution is cost effective without reducing the intended goal. In all likelihood the Committee does not intend for this to be a clear mandate, but rather a suggestion on what to consider when deploying these systems. But by defining these items as "principles" question is raised to that fact.</p> <p>The Committee may wish to consider simply modifying the word</p>	<p>The term guiding principles, in the context of a framework, is widely referenced in many judicial branch artifacts nationwide.</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>"principles" to something more clearly advisory than directive. I would offer "best practices" or "key concepts" as alternatives. Modifying in this way would more clearly establish the Committee's intent ... that the information is intended to "advise justice system decision makers."</p> <p>The concepts outlined by the Committee are important and should be topics of discussion during any major technology initiative. However, to establish them, as written, as rules to which technology projects must adhere would inadvertently harm current and future technology initiatives of the Judicial Branch to improve our services to the public.</p> <p>Thank you for your consideration and continuing to encourage technology adoption throughout our Branch.</p>	
3.	<p>Superior Court of California, County of Contra Costa Mimi Lyster Director, Business Planning, Information & Programs</p>	NI	<p>As written, this statement of principles, is overbroad, and might quickly become prohibitively resource-intensive to implement. For example:</p> <p>a. By maintaining both manual and electronic filing options, the court may have significant workload issues trying to maintain mixed-filing case files integrated in an electronic format. Although there is a perception that e-filing will reduce workloads dramatically, many courts have experienced the reverse to be true.</p> <p>b. The cost of designing "easy to use" information and court access solutions can become enormously expensive. If all of these applications are translated into multiple languages, both the development and maintenance costs escalate quickly.</p> <p>c. The stated objective is to create "integrated" suites of applications that are multi-layered to meet the needs of multiple user populations (justice partners as well as litigants), but the expectation is that they will be developed one at a time as funding allows. Given the pace of change in</p>	<p>The committee has refined the Purpose section of the document to clarify what is intended by this statement of guiding principles and more specifically address the commentator's general concern and the examples a, b, and c.</p> <p>The intent of this statement of guiding principles is to establish a set of considerations when planning for, or implementing, technology initiatives. As guiding principles, they are not mandates. Furthermore, examples provided in the proposal (and referenced in comment a, b and c) are to be used as illustrative purposes only, as discussed in the document's Purpose.</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>technologies, it is unlikely that this is really achievable - especially court by court. Perhaps these kinds of initiatives should be undertaken statewide to achieve consistency and provide the funding needed to accomplish the stated goal.</p> <p>d. Allocating dedicated resources to "promote, train, and support users on new technologies" makes sense in the abstract, but might be prohibitively expensive to implement given the huge gap between those who are and are not conversant with different technologies and applications. This may end up requiring development of tandem systems - one to make the technology work, and one to provide information, training, and assistance to all types of court users. This becomes even more challenging as the objective to provide this information and assistance is expanded across different media formats.</p> <p>e. The underlying assumption in Principle 7 seems to be that the accuracy of court filings will increase the more these filings are automated. In fact, that may or may not be true. Often courts and others discover that they are trading one set of inaccuracies for another. The only way to ensure the accuracy of filings data - regardless of format - is to audit them.</p>	<p><u>Comment d.</u> The committee has made a slight edit to this section to shift the emphasis from “dedicating resources” to the importance of including plans for training and user support along with the roll-out of a technology service in an effort to help broaden access and ensure user adoption.</p> <p><u>Comment e.</u> The committee agrees with the commentator’s suggestion and has modified the Implication section of Guiding Principle 7 to eliminate the word “will” that connotes an assumption; and also to clarify the need for quality assurance despite the solution in place.</p>
4.	Richard Zorza, Consultant	NI	<p>First, let me congratulate the California Courts and Court Technology Advisory Committee for your farsightedness in advancing this proposal.</p> <p>I was the primary consultant a few years ago in a similar project in Washington State, and am well familiar with the difficulties inherent in working to draft a document that is general enough to be relevant in a broad range of situations, while specific enough to provide concrete guidance in difficult situations. I think you have succeeded admirably in doing so.</p>	

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>Some specific comments follow:</p> <ol style="list-style-type: none"> 1. Principle 1. Ensure Access and Fairness I would encourage you to consider the idea that even though not all users need to be served on day one, there should be planning or a process to make possible the extension of the benefits to as many as possible. 2. Principle 2. Include Self-Represented Litigants This is obviously critical. I would consider including a statement that in many situations investment in self-represented litigant services will have a greater access payback than other forms of technology investment. 3. Principle 3. Preserve Traditional Access This is an appropriate approach. However, consideration should be given to the possibility that behind the scenes technology can improve access that can be experienced by the court user as “traditional.” For example, the court staffer having access to a database does not mean that when the staffer talks to a litigant about the content, that the user necessarily experiences this as a barrier. See Principle 9. 4. Principle 4. Design for Ease of Use You might consider drawing attention to the use of community partnerships to strengthen the design and testing process, as well as to provide the kind of access points that increase general availability. 5. Principle 5. Provide Education and Support I think I would emphasize the need for this to be built in as a matter of culture into both the system design process, and the delivery 	<p><u>Comment 1.</u> The committee agrees in concept with the commentator and has incorporated the idea of extensibility in the final paragraph of Guiding Principle 1, Implications.</p> <p><u>Comment 2.</u> The committee considered this suggestion, but disagrees with the need to incorporate this assumption into the proposal.</p> <p><u>Comment 3.</u> The committee agrees in concept with the commentator and believes this consideration is detailed in Guiding Principle 9. Additionally, the committee has slightly modified the language in Guiding Principle 9 to more clearly describe this potential benefit.</p> <p><u>Comment 4.</u> The committee agrees with the comments and, with minor edits, has incorporated them into the final paragraph of Guiding Principle 4, Implications.</p> <p><u>Comment 5.</u> The committee believes this feedback is already contained within Guiding Principle 5,</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>environment (the courthouse or community outreach location).</p> <p>6. Principle 6. Secure Private Information I would seriously consider being more explicit (beyond the reference in the last paragraph) to the transparency obligations of courts. I think all agree that privacy is important, indeed critical, but I think this draft does not make sufficiently clear that the protection of privacy must occur in the context of a commitment to transparency in the operation of an institution of democracy. It is important to note that privacy is for human beings, and much less for institutions, and that there is a public interest in the general transparency of institutions, including courts.</p> <p>Another important point, usually lost, is that while technology increases the risk of broad distribution of private information, once released at any point or in any way, at the same time, it provides the capacity for much greater control over the detail of the initial release.</p> <p>7. Principle 7. Provide Reliable Information I would add that the information must be comprehensive (to the extent permitted by law) and comprehensible. For example, systems that display criminal and/or court records should be reviewed as to whether they are not sufficiently comprehensive, and as to whether the information is displayed in ways that are easy to understand and therefore to apply.</p> <p>8. Principle 8. Protect Legal Rights This is good as far as it goes. It fails to recognize, however, that failures of protection of legal rights may occur from other than technical breakdowns. It might be, for example, that a court might build an electronic mediation system that in fact contained structural weaknesses such that even when used correctly it pushed toward one</p>	<p>Implications.</p> <p><u>Comment 6.</u> The committee agrees in concept with the commentator and has incorporated minor revisions to the second and third paragraph of Guiding Principle 6, Rationale.</p> <p>The committee is unclear as to the intent of this comment.</p> <p><u>Comment 7.</u> The committee agrees with the comment and has incorporated a minor revision to the second paragraph of Guiding Principle 7, Implications.</p> <p><u>Comment 8.</u> The committee agrees in concept with the commentator and has incorporated revisions to Guiding Principle 8, its title, Rationale, and Implications, to more clearly articulate the scope of system</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>or another kind of outcome. Broader language is needed to underline the responsibility of courts to make sure that technology systems increase, rather than reduce, not only access, but the legal appropriateness and neutrality of substantive outcomes.</p> <p>9. Principle 9. Improve Court Operations No comments.</p> <p>10. Principle 10. Plan Ahead I would add the concept that planning must include for ongoing flexibility and short-life-cycle enhancements. All too often staff enthusiasm is lost when needed improvements take months or years rather than weeks or days.</p>	<p>failures.</p> <p><u>Comment 9.</u> No response required.</p> <p><u>Comment 10.</u> The committee believes the proposed suggestion is too tactically focused on project management methodology to include into the guiding principles document.</p>
5.	State Bar of California’s Standing Committee on the Delivery of Legal Services Catherine Bennett, Chair	A	<p>The State Bar of California’s Standing Committee on the Delivery of Legal Services (SCDLS) has reviewed Item SP11-15, <i>Advancing Access to Justice Through Technology: Principles for Judicial Branch Initiatives</i>, proposed by the Court Technology Advisory Committee (CTAC).</p> <p>SCDLS appreciates CTAC’s development of guiding principles for leaders of technology initiatives in the judicial branch and commitment to ensure that courts continue to develop policies and technologies that protect and foster equal access to justice. We support all of the draft principles in concept and agree with the proposal as a whole.</p> <p>We also appreciate that the proposal generally is sensitive to issues of access for a broad range of users. Given the great diversity of court users in California, it is critical that their needs be taken into consideration as technology changes. Principle 2. Include Self-Represented Litigants is thoughtful with respect to the needs of a significant user group, those without representation. However, the principles as a whole would be improved if they were more sensitive to the needs of other vulnerable</p>	The committee appreciates the SDLC’s feedback and their long term commitment to the delivery of legal services.

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>court 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. SCDLS offers these examples for consideration:</p> <ol style="list-style-type: none"> 1. Principle 1. Ensure Access and Fairness: Clarify the word “accessible” if it is meant to be used in the context of persons with disabilities (last sentence in the third paragraph of the Rationale section); 2. Principle 2. Include Self-Represented Litigants: Under the Implications section, address challenges faced by self-represented litigants who are disabled, non- or limited-English speakers, or from remote locations with respect to other aspects of usability and access to be taken into consideration by the courts. 3. Principle 3. Preserve Traditional Access: Include challenges faced by non- and limited- English speakers, persons with disabilities and others in the Implications section. 4. Principle 4. Design for Ease of Use: Provide a more inclusive definition of “special needs” (third sentence, second paragraph of the Rationale section) and address accessibility issues for persons with disabilities. 	<p><u>Comment 1.</u> The committee disagrees with the commentator’s concern, believes “accessible websites” is a common term in the discussion of accessibility, and prefers not to constrain its meaning.</p> <p><u>Comment 2.</u> The committee agrees in concept with the commentator’s suggestion and has revised the document to highlight underserved communities as presenting a specific group of needs in Guiding Principles 1 and 2.</p> <p><u>Comment 3.</u> The committee believes these challenges are sufficiently addressed under Guiding Principles 1, 2, 4 and 5; and are not specific to this principle since it relates to protecting “in place” methods of access when new solutions do not adequately provide access.</p> <p><u>Comment 4.</u> The committee agrees in concept with the commentator’s comment and has revised the second paragraph of Guiding Principle 4,</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>5. Principle 5. Provide Education and Support: Training and support for users should be culturally competent and offered in languages spoken by a threshold percentage of people in the applicable county;</p> <p>6. Principles 6 through 10: Incorporate suggestions above as appropriate.</p>	<p>Implications to be more inclusive.</p> <p><u>Comment 5.</u> The committee agrees in concept with the suggestion and has revised the fourth paragraph of Guiding Principle 5, Implications to include multi-lingual support.</p> <p><u>Comment 6.</u> The committee reviewed the proposal and believes its revisions to Guiding Principles 1, 2, 4 and 5 with regard to underserved communities sufficiently addresses the concern expressed.</p>
6.	Michael B. Stone Attorney at Law Seal Beach, California	NI	<p>* The commentator noted his experience with technology policies and expressed his general discontent with the level of writing in the proposal.</p> <p>The document promulgates no objective standards by which future judicial branch IT initiatives can be measured or audited. Who can determine whether an IT investment is (or is not) “user friendly” or “consistent and complementary to the in-person experience”?</p> <p>1. Deliver Value For The Taxpayers. Aren’t you the same people who spent \$2 billion on IT initiatives and now have nothing to show for it? Use enterprise architecture and other accepted project management techniques.</p> <p>2. Don’t Reinvent The Wheel. Make use of accepted engineering standards. For example, issues of confidentiality, integrity and</p>	<p><u>General and Comments 1, 2.</u> The committee appreciates the concern of the commentator but, as indicated in response to previous comments, believes the intent of the guiding principles document is to introduce a framework of considerations for technology project decision-makers and not to articulate legal obligations, nor to outline preferred project management methodologies or specific industry standards.</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>availability of data (security controls) are addressed in the NIST standards. Standards for making systems accessible to the differently-abled are based on Section 504 of the Rehabilitation Act. Not only are these standards useful, if you accept federal funding they're mandatory.</p> <p>3. Learn To Crawl Before You Learn To Walk. Accessibility for self-represented litigants is a laudable goal, but first make the IT investment work for its primary users, in this case judges, attorneys, and court staff.</p> <p>4. Be Consistent From County to County. This is California and the year is 2011, but right now some county court websites have case information (indices and dockets); others have no information at all online and you have to physically go to the courthouse to look at a docket or index. Some counties have imaged documents online, others don't. Some counties take fax filings, others require the use of expensive contractors. Some counties charge lots of money for information other counties make available for free, and vice versa.</p> <p>5. Don't Overcharge. Federal court PACER charges \$0.08 per page image, and they are profitable. One page of an imaged court document from Orange County will set you back \$7.50, and one index search in Los Angeles County is \$4.50 (but is free in Orange County). Both these fees are grossly disproportionate to the actual cost of providing the service. There is also an explosion in the growth of high-cost private contracting services for services that ought to be offered directly by the courts (for example the \$80-130 charged by CourtCall for allowing attorneys to place calls to courtroom speakerphones). Not all attorneys and clients are rich, but some services are priced as if they are.</p>	<p><u>Comment 3.</u> The proposal does not prioritize which users need be served first or last by technology solutions as a whole. Instead, when a project is being proposed, it asks implementers to consider relevant issues of access.</p> <p><u>Comment 4.</u> The committee considered this comment and thinks these guiding principles apply to the California judicial branch, including all courts.</p> <p><u>Comment 5.</u> The guiding principles include a brief discussion of cost considerations when deploying e-filing. However, this document does not seek to set specific mandates (e.g., for fees).</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
7.	Disability Rights Legal Center Public Interest Law Center Los Angeles, CA 90017 Rebecca Craemer, Attorney	AM	<p>Recommendations: Amendments applicable to all Principles:</p> <ol style="list-style-type: none"> 1. The Administrative Office of the Courts should alert the Superior Courts that they must comply with the Section 508 Standards, and that there are pending standards being considered by the Department of Justice in the Principles so that Superior Courts can make more successful decisions about their investments in technology. The Administrative Office of the Courts should also consider integrating the Section 508 Standards into the Principles so that Superior Courts are on notice of their requirements under state and federal law. <p>The Administrative Office of the Courts should also amend the Principles to make clear that all court services must be accessible. See 42 U.S.C 12132. Without this understanding, many Superior Courts may invest in technology or web based content without realizing that, much like physical courthouses, these services are also required by law to be accessible.</p> <ol style="list-style-type: none"> 2. Additional Recommendations: <ol style="list-style-type: none"> a. Principle 1 should be amended in the rationale and implication sections. Currently, the rationale section fails to alert the Superior Courts to the legal requirements governing new technology but instead is written as if accessible services are a general goal. Moreover, the final sentence of the implications section should include accessibility as a legal requirement to be addressed prior to offering services. b. Principal 4 should be amended to also reference accessibility. The rationale for Principal 4 should also be amended so it is clear that consideration for those with special needs is not only critical, it is legally mandated. c. At times, accessibility will require that the Superior Courts offer 	<p>The committee appreciates Disability Rights Legal Center’s comments and its long standing commitment to promote the rights of persons with disabilities. The committee believes the proposal, in entirety, speaks to what decision-makers should consider to enable more and more users to successfully adopt technology solutions.</p> <p><u>Comments 1, 2a and 2b.</u> As indicated in the responses above, the intent of these long-standing, guiding principles is not to articulate the specific legal obligations of the courts. However, the committee agrees that it is worthwhile to remind readers to comply with the law and thus has modified the Purpose to include this assumption and address the general concerns of the commentator.</p> <p><u>Comment 2c.</u> Based on multiple</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>an alternative to the web-based services and other forms of new technology. Principle 8 should be amended to reference California Rule of Court 1.100 and include some reference that new accessibility concerns will arise with the integration of new technology and Courts will need to ensure and prepare for such requests in this new context.</p>	<p>comments including this one, the committee concluded that the proposed Guiding Principle 8 was somewhat ambiguous. Therefore, the committee has revised the principle title, statement, and discussion to more accurately convey the guiding principle's intent and focus on the capacity of a technology solution, rather than on a users' capacity to operate such a system.</p>
8.	<p>California Court Case Management System (CCMS) Program Management Office (PMO) Judicial Council of California- Administrative Office of the Courts Alice L. Lopez, Director of Court Operations- CCMS</p>	AM	<p>Thank you for the hard work of those involved in putting this together. We agree wholeheartedly as proponents of advancing court technologies. We feel the best thing we can do is comment on the overall tone of the Purpose and Principles - for the tone to be more positive, putting these 10 principles into a positive framework that courts can actually follow, (not using negative or admonishing phrases), that moves us into the future (not where we've been).</p> <p>* The commentator generally suggested changes to language to put the principles into a more positive framework, illustrated via an attached redlined copy of the document.</p> <p>Such as ...: "Any court-sponsored technology service is limited" (too broad and definite, puts the reader on defense).</p> <p>[In] Principle 3 - we would like to suggest the statement be more inclusive (and not point out persons "challenged"). Something like:</p>	<p>The committee appreciates and considered the concern of the commentator and, in the spirit of this suggestion, made a number of minor edits to the document without changing the meaning the guiding principles were intended to convey.</p> <p>The committee believes changing this language would alter the meaning this guiding principle is intended to convey; no edit was made in this case.</p> <p>The committee agrees in concept with the suggestion and has revised</p>

SP11-15

Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>"Promote innovative approaches to access courts while accommodating those who want to access by conventional means."</p> <p>In Principle 4, the term 'widely available' really doesn't convey a meaning to the reader. Suggestion: 'Provide and build services that are user-friendly and accessible within and outside of the court environment.' We think the most important point we can convey is the tone, phrasing these principles in a positive manner.</p> <p>In Purpose section of the document "Most recently, California has implemented CCPOR, Phoenix, ACCMS, and CCMS as a result of these initiatives, hence providing services in a more timely manner to a larger public and increasing efficiency within the judicial branch and interactions with justice partners."</p>	<p>the Statement section of Guiding Principle 3.</p> <p>The committee considered this suggestion and refined the Statement Section of Guiding Principle 4 to clarify what is intended by the term "widely available."</p> <p>The committee excluded these comments as it believes the given initiatives are time bound and the specific examples refer to currently employed technologies.</p>

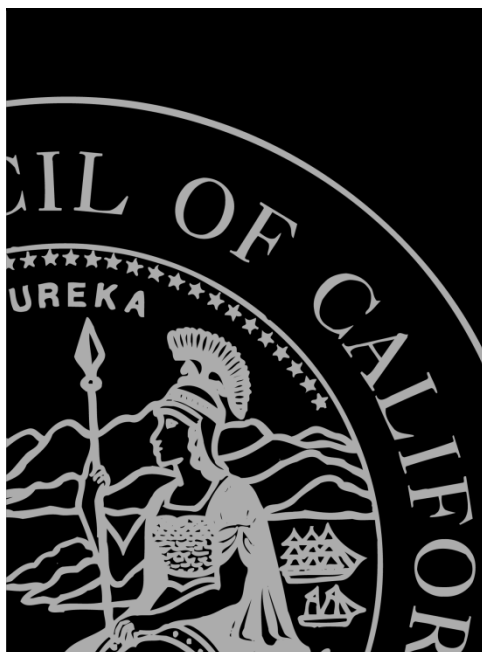
Additional comments received following close of formal public comment period on November 28, 2011:

	Commentator	Position	Comment	Committee Response
9.	<p>Phil Malone Professor of Law Director, Cyberlaw Clinic Harvard Law School Cambridge, MA</p>	NI	<p>*The commentator noted his experience, as the Director of Cyberlaw Clinic at Harvard Law School, with the Massachusetts Trial Courts and their Special Adviser for Access to Justice (A2J) Initiatives helping them assess A2J technologies and develop best practices for their effective use.</p> <p>From the perspective of all the work I have been doing in this area the last several years, my reaction to the draft Technology Principles is that they are important and very impressive. These Technology Principles will help ensure California's continued leadership and commitment to what is now a critical area for all courts in our country.</p>	<p>No response required. The Committee appreciates the feedback and thanked the commentator for his remarks.</p>

SP11-15***Advancing Access to Justice Through Technology: Guiding Principles for Judicial Branch Initiatives***

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
			<p>In my work on this subject, it has become clear to me that effective use of technology is increasingly essential to enhance the efficient operation of courts at a time of serious budget pressures and to expand access to the courts at lower cost for all users. But widespread adoption of a variety of court technologies, including electronic filing systems and portals for accessing digital case files, runs the risk of furthering, rather than reducing, the difficulty self-represented and underrepresented parties face in using our court system. For that reason, thoughtful, informed and nuanced approaches to the use of technology, such as those represented in California's draft Technology Principles, are essential to ensure that courts fulfill their core missions of protecting fair and equal access to justice for all users.</p> <p>Guided by sound, carefully developed principles such as California's, technology can be a powerful tool to increase fairness and access. I was especially struck in reviewing the draft Principles at how thorough and comprehensive they are and how they reflect the best thinking and best lessons of other states and other technology efforts.</p> <p>The Principles have really captured the key takeaways from a large and scattered body of experience and knowledge and crystallized them into clear, practical and easily implementable principles. They are not mere pie-in-the-sky, aspirational observations, but rather concrete goals and recommendations that will have a real impact in practice.</p>	



Advancing Access to Justice Through Technology

GUIDING PRINCIPLES FOR
CALIFORNIA JUDICIAL BRANCH
INITIATIVES

DRAFT
JANUARY 4, 2012



JUDICIAL COUNCIL
OF CALIFORNIA

COURT TECHNOLOGY
ADVISORY COMMITTEE

CONTENTS

Purpose.....	1
Principles.....	3
1. Ensure Access and Fairness	4
2. Include Self-Represented Litigants	6
3. Preserve Traditional Access	8
4. Design for Ease of Use.....	9
5. Provide Education and Support.....	10
6. Secure Private Information.....	12
7. Provide Reliable Information	14
8. Protect from Technology Failure	15
9. Improve Court Operations.....	16
10. Plan Ahead.....	17

~

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. Instead, these guiding principles articulate the fundamental values that provide overall direction to technology programs within the justice network. The examples provided under 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

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

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 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 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.

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.

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.

