



CIRCUIT COURT  
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

JUDITH L. KREEGER  
CIRCUIT JUDGE

COURTHOUSE CENTER  
175 N.W. FIRST AVENUE  
MIAMI, FLORIDA 33128

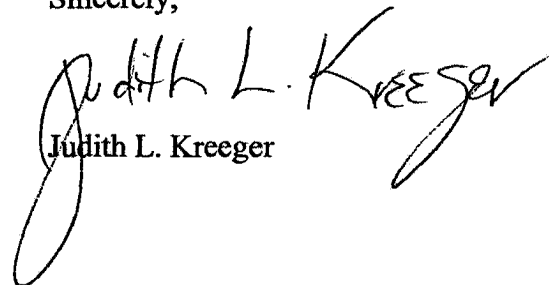
January 14, 2010

Mr. Joseph Brigham  
Staff Director  
Technology Review Workgroup  
Room 215, Knott Building  
111 W. St Augustine St.  
Tallahassee, Florida 32399-1100

Dear Mr. Brigham:

Enclosed is the Florida Courts Technology Commission's (FCTC) response to the six questions posed to the members by the Technology Review Workgroup. I want to thank you for providing a one week extension for submission of this response to your office. Additional information will be forthcoming after the February FCTC meeting as indicated in this document.

Sincerely,

  
Judith L. Creeger

## **TRW QUESTIONS FOR THE FCTC**

1. What court functions need to be automated/ integrated in the various court divisions?

- What is the recommended business priority and implementation sequence?

As courts move from a paper based environment for receiving, maintaining, using, and distributing digital records and information, courts must reexamine all of their functions. The courts are currently gathering information in order to answer this question appropriately. A plan to do this in a systematic fashion has commenced, including meetings with chief judges, trial court administrators, chief technology officers, and groups of the clerks of court for their input.

Also being taken into consideration are the chief judges TRW survey responses (business functions, integration needs, etc.). The main categories being addressed include:

- Case processing/case management
- Document processing/document management
- Technology Management
- Research and Data Management
- Performance measurement/accountability
- Resource Management
- Budget and financial processing
- Personnel management
- Customer service
- General administration, management and oversight
- Integration with other systems

When all of the information has been compiled, a report will be submitted to the FCTC for approval at their meeting in February. Upon approval, the OSCA will submit the Commission's response to the TRW.

2. What specific uniform technical and substantive standards have been or need to be developed?

- What process is needed to implement such standards?

The Supreme Court issued Administrative Order AOSC03-16 in 2003 and AOSC09-30 in 2009 which mandates the standards developed by the FCTC and approved by the Supreme Court are presently in effect. The court is also in the process of identifying data elements for each court division to be captured by the statewide e-portal, to implement e-filing in all divisions of the courts.

Setting standards will continue to be a dynamic process as technology, court rules, statutory law, and case law changes. The standards will be updated from time to time to reflect these changes.

When a circuit or county is ready to implement an e-filing system (or electronic process), the chief judge and the clerk of court must submit a plan to the FCTC for approval. The plan is reviewed to ensure that it complies with all technical standards. Copies of the applications are listed on our website:

[http://www.flcourts.org/gen\\_public/technology/e-filinginfostatus.shtml#efilingapplications](http://www.flcourts.org/gen_public/technology/e-filinginfostatus.shtml#efilingapplications)

- What is the recommended/established governance structure for ensuring compliance with such standards?

The FCTC has drafted a proposed rule of judicial administration to govern state courts technology and a petition to submit that rule to the Supreme Court. The proposed governance rule states:

“The Florida Courts Technology Commission (FCTC) is responsible to establish, periodically review, and update technical standards for technology used and to be used in the judicial branch to receive, manage, maintain, use, secure, and distribute court records by electronic means, consistent with the technology policies established by the Supreme Court. These standards shall be coordinated with the strategic plans of the judicial branch, rules of procedure, applicable law, and directions from the Supreme Court, and shall incorporate input from the public, clerks of court, Supreme Court committees and commissions, and other groups involved in the application of current technology to the judicial branch”.

The rule as drafted will ensure that the FCTC will develop any and all standards for the court system and receive and review all applications for new court technology systems to ensure compliance with current technology standards. The Supreme Court has and will continue to have the authority to enforce those standards, through administrative orders and through its inherent powers.

3. What security precautions are necessary to protect confidential and private information in the automatic extraction of information in court records?

The protection of confidential information<sup>[1]</sup> in court records is an issue with both legal and practical dimensions. The Supreme Court has directed its committees during the past several years to address both aspects, most notably through the Committee on Privacy and Court Records (2003-2005) and the Committee on Access to Court Records (2006-2008). The former committee addressed broad issues of policy, the latter was charged with developing implementation measures. Responsibility for issues regarding access and confidential information is now consolidated under the Florida Court Technology Commission and its Subcommittee on Access to Court Records.

To address the legal issues, the Committee on Access to Court Records filed two petitions to amend court rules with the Florida Supreme Court. One of these petitions (SC08-2443) proposes to protect private information through comprehensive amendments to hundreds of court rules and forms that would minimize the intake of personal information into court files. The second petition (SC07-2050) proposes major revision of Rule of Judicial Administration 2.420, governing confidentiality and access to judicial branch records. The new proposed rule would provide that most readily identifiable instances of confidential information included in court records must be identified by the filer and protected by the clerk of court. The information that is within the purview of this portion of the rule is confidential pursuant to nineteen enumerated statutes. Many of these are amenable to redaction through a specialized software program. The rule also provides for a motion process to adjudicate any other assertions of confidentiality arising under other statutes or circumstances.

The desired result of this new rule is that all confidential information will be identified through either a categorical application of the nineteen enumerated statutory exemptions; or through a clear and transparent judicial process as to other categories of confidential information or filings. The rule further provides for an appellate process to resolve disputed outcomes. It is hoped that the new rule would provide the mechanism for resolution of the legal problems associated with protecting confidential court records in Florida.

Solutions to the practical aspect of protection of confidential information are aided by resolution of the legal issues. The proposed rule would enable authoritative identification of confidential information, thus then allowing electronic access to the remaining non-confidential information. Without the new rule, there is no clearly established process to quickly protect statutorily confidential information or filings, without which online access to court records is impracticable.

The Committee on Privacy and Court Records recommended that access to court records online be permitted only when certain conditions are met. Among these conditions is a requirement that screening and redaction processes be in place to ensure that confidential information is not released without authorization. Until recently, standards had not been promulgated describing precisely how such screening and redaction must be conducted. Adoption of standard XML in all circuits and the appellate courts will facilitate automated redaction when confidential information is properly identified and tagged. A pilot program for online access has been authorized and is ongoing in Manatee County. A complete evaluation of the efficacy of the pilot program's protocols for redaction is not yet available, but preliminary reports are promising.

4. Have any "user" fee-based funding models been identified for potential statewide implementation?
  - If such funding models were implemented, what role would the FCTC play in their statewide implementation?

The FCTC is currently studying issues of funding and fee models for electronic records system, along with other matters related to user access

policies. Results of this review are scheduled to be submitted to the Supreme Court as a part of the commission's overall report it will file at the end of its term, which is currently scheduled for June 30, 2010.

While a specific proposal cannot be advanced at this time, the commission anticipates advancing a funding model that is consistent with the following principles:

- E-filing and e-access should not be bifurcated but instead considered as parts of a comprehensive electronic records system. Any funding and fee structures should incorporate both.
  - Fee structures should optimize access by litigants and counsel of record, encourage accountability, transparency, fairness and efficiency, and minimize non-beneficial and illegal uses of court records (commercial exploitation, voyeuristic, criminal).
  - Fee structure should be uniform statewide.
  - Any and all fees for access to state court records must be authorized by statute. The extent of access should be subject to court rules.
  - All revenues should be submitted to state trust funds to support the court related functions of the courts and the clerks.
5. What role should the FCTC play to ensure adequate integration of technology?
- What is the process for fully integrating the technology utilized at all levels of the State Courts System?

While funding is a constraint, the present statutorily divided responsibility and funding for court technology, and divided responsibility for case maintenance (the clerks of court) and case management (the court) remains the biggest obstacle to integration. For that reason, there is no

process in place to integrate the technology among counties, circuits, or districts. Each circuit/county/clerk has implemented technology as it determines for its own local use. However, if the Supreme Court promulgates the new proposed governance rule, the FCTC will have more control over what is being developed and implemented in each circuit/county, to achieve greater consistency and compatibility statewide as new technology is developed. This should address some of the problems that the lack of integration causes.

- What criteria are used to determine what business process and systems must be integrated?

As noted in the response to question #1 above, activities are currently underway which will assist with the identification of what court functions need to be automated/integrated within the various court divisions. Upon completion of that task, the criteria specific to those functions will be easier to identify and appropriately associated with the business process and systems to be integrated. Therefore the response regarding criteria will be included in the report to be submitted after the February FCTC meeting.

6. What ongoing role does/should the FCTC play in technology integration in the State Courts System?

The FCTC will always have a major role in the technology integration in the court system, and should have an even greater role if the proposed new governance rule is adopted.

The following point was recently submitted to the Rules of Judicial Administration (RJA) Committee members by an FCTC member who is also a member of the RJA to provide information and to summarize the need to establish a rule specific to the FCTC (proposed Rule 2.236). The “Rule 2.236, by itself, is neither revolutionary nor a marked departure from the previous AO’s governing the commission. What it is is an important governance document recognizing the position of the FCTC as the “right-hand commission” of the Court [and not just of each Chief Justice every two years] in all areas of technology that directly impact the Judicial Branch as it fulfills its constitutional role in the Florida system of government.”