

Electronic Case Filing — The Future Is Now, But You Will Be OK

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Case Management / Electronic Case Files (“CM/ECF”) is the official name of the electronic filing system being deployed nationally in the federal courts. The purpose of the system is to make a court’s docket and case files completely electronic, and hence digitally transferable over the Internet as Portable Document Format (“PDF”) files. Attorneys thus will be able to file documents and review the complete record of any case over the Internet anytime from anywhere in the world.¹

Under the CM/ECF system, attorneys must use computers, software, and scanners to generate case filings in the form of PDF files and an Internet connection to upload and download these files from the court’s CM/ECF servers. This is simpler than it sounds because CM/ECF is architecturally only one step removed from the paper-driven process used by attorneys already—the only part changed by CM/ECF is the paper itself. Instead of printing the word processing file on her computer into a paper document, signing it, and carrying it to the courthouse, an attorney will now print the word processing file to a PDF file and upload it to the court over the Internet. The process is reversed when she needs to retrieve the filings of other attorneys or review the record: instead of opening an envelope or driving to the courthouse and paying for copies, the attorney now logs into the CM/ECF system and downloads whatever she needs.

Computers, software, scanners, Internet connections, servers, databases, email, etc. are all collectively referred to as information technology (“IT”), and making sense of IT today is challenging to say the least. While IT, within the context of CM/ECF or otherwise, is never more than a business tool used to achieve some business objective, it

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¹ For a more complete description of the CM/ECF system and PDF files, please see the article “CM/ECF – It’s That Easy” by Derrick and Monica Villarejos Kindt, Esq., originally published in the NACTT Quarterly, October 2002, and included in the MRBS binder materials for this breakout session.

just happens to be the most powerful and rapidly evolving tool ever conceived. IT also is unlike any other functional business area because it touches every part of your organization. Whereas litigation is entrusted only to your star courtroom warriors, receivables are your accounting team’s problem, and it’s up to HR to handle the group health plan, none of the above can do their jobs without IT, and neither can anyone else in your firm. IT can support any practice style, from those attorneys who use PCs for seemingly everything, to those who want them for nothing more than basic document production, and IT can likewise support any level of ability, from those who have made their humble PCs into ultra-efficient automation systems, to those who can barely get a page to come out of the printer.

Similarly challenging is placing IT correctly within your firm’s overall strategic plan as the performance lever having the single greatest impact on how much work you can do, how fast you can do it, and how much it costs you to get it done. Nonetheless, many business leaders are out of their element when faced with core IT decisions and complain that IT is moving “too fast” for them to keep pace. Thoughtful analysis and disciplined planning in connection with IT investments remain more the exception than the rule, and the result often is reactionary purchasing of a hodgepodge of ill-matched products in support of ill-defined business objectives, with predictably less-than-thrilling results.

However, IT need not be that mysterious to non-geeks, and CM/ECF certainly is not that difficult. The technology of CM/ECF is relatively basic and easily understood, while IT itself is today far more accessible to everyone, especially in industry sectors with straightforward business models defined largely around individual professional skill sets—like your law office. For the average law office, IT is actually pretty easy.

CM/ECF and IT in the Only Context that Matters—Your Office

Aggressively deployed IT in support of intelligent business strategy will ultimately have the same effect in law offices of every size as it will anywhere else: it will significantly (and often, dramatically) increase the efficiency and productivity of your staff, meaning you can do more work with the same number of people or you can do the same work with fewer people. You can, and likely should, leverage IT at every opportunity to enable your people to keep their time and effort focused on those tasks requiring their judgment, expertise, and skill, especially if you have more work than you can presently handle, or could get more work if you could handle it.

However, unlike a highly-automated manufacturing concern or a transaction-based service provider where

every fraction of a cent counts because intense price competition is necessary to stay ahead of competitors, the typical legal office competes on the reputation of its attorneys, not the scalable cost efficiencies of its technological infrastructure. There is no “killer app” in the legal industry that will instantly put you out of business if your competitor has it and you do not, and there is no first-mover advantage with CM/ECF. There are no industry-changing secrets lurking on some super-geek’s hard drive that will change the legal profession overnight and leave you out in the cold. There is no panacea combination of hardware and software that will obviate your every IT frustration. There is simply a minimum necessary IT infrastructure that you must have in order to process your work, now within CM/ECF, and you probably already have most of it.

When planning for IT needs, it is easiest to think in two dimensions: functionality and capacity. Functionality is what you must be able to do, and capacity is how much, how fast. For example, you must be able to convert documents that you produce in paper form to PDF files (functionality), and your office might on average need to produce 20 PDF files per day (capacity). Returning to the essentials of CM/ECF, you need to add to two basic IT capabilities in that you must now be able to produce documents in PDF and you must be able to upload and download them over the Internet. That in turn requires three specific functionalities: (1) converting electronic word-processing files to PDF; (2) converting paper documents to PDF; and (3) moving them around over the Internet.

There are many ways to produce PDF documents, the most popular and versatile of which remains Adobe’s own Acrobat PDF Writer. First decide the functionality: how specifically do you want to produce PDFs? Do you want to use Adobe software or some other software? Secondly, decide the frequency with which you need to produce PDFs so that you can estimate the number of PDF-capable computers you need. You will almost certainly need the software installed on several computers (anyone you want to be able to produce a PDF), but you almost just as certainly do not need to incur the cost of installing it on every computer in your office.

For documents that you only have in paper form (e.g., attachments to pleadings), CM/ECF requires that you be able to scan paper documents to PDF. There are several models of scanners that can scan paper into electronic PDF documents, and you can choose any of them. Scanners come in two basic varieties today, dedicated stand-alone machines, and multifunction machines, which are combination printers, copiers, faxes, and scanners. The essential selection criteria for a scanner are reliability, the quality of the image, and the speed of the scanner expressed in pages per minute, or “PPM”. Almost any scanner today will produce an image more than adequate to make the electronic copies necessary for CM/ECF, so

the primary criteria you need to look at are reliability and speed. Even speed probably is not that great a concern, because the slowest scanners today still clock in around 6-8 PPM, meaning you can scan approximately 360-480 pages in an hour, far more than the average bankruptcy firm should need to image attachments. Slightly more expensive production-class units typically scan in the 12-15 PPM range, and ultra-fast systems capable of 90 PPM or more are readily available as well. However, a note of caution here: many people tend to substantially overestimate scanning capacity needs when first looking at CM/ECF, so make sure you really need all of that expensive capacity before you start shelling out your hard-earned money for it.

Finally, CM/ECF requires that you have an Internet connection. That’s the functionality you need. As far as capacity, it depends on how much you file and how often you otherwise need to access the Court’s case files. Dial-up connections, while technically feasible for infrequent access, should nonetheless be considered unsuitable for any regular use of CM/ECF, and the minimum that attorneys should consider is a broadband-class connection such as a cable modem (e.g., RoadRunner) or a Digital Subscriber Line (DSL) connection from your phone carrier. A note of caution here as well: the convenience factor often makes it worthwhile to splurge a little on your Internet connections even past your technical capacity needs, because few things are more frustrating than having to sit and wait for a document to finish loading when you have a million other things to do.

Deploying IT for CM/ECF

While CM/ECF isn’t rocket science and neither is the technology it requires, this is nevertheless new ground for the vast majority of attorneys and may well be the first time most attorneys have ever had to think about IT past whether their own computers work. Four key considerations are often helpful in making these decisions, whether your particular organizational unit is a five-person practice group or a five-continent multinational.

The first is so simple as to be cliché, but absolutely critical to your success: begin with an end in mind. You must understand your business model and where you want to go before you can address with competence the distinctly different issue of how IT can help you get there. The typical law office is a very straightforward operation and thus your business and workflow models can be similarly straightforward, but you cannot determine the critical path functionality your office needs without a detailed understanding of how you want your office to function. Whether you personally formulate business strategies and review market offerings or have someone else do it, you, as the business leader in your firm, must come away from the process able to state with precision

your business objectives, what you want your IT to be able to do in support of those objectives, and how much it is worth to you in terms of capital investment and training costs. If you start from there, you will find IT decisions much easier—you will in fact find these decisions are just like any other business decision you make in any other area of running your practice.

Second is the concept of “throughput,” which essentially is how much work your organizational unit can do and how fast. It is often analogized to the engineering measures used with pipelines in terms of volume multiplied by velocity, e.g., cubic meters per second. It can make you money here because you can get away with far less capacity if you can effectively manage the “velocity” of your firm’s “volume.” Simply put, it is a workflow queuing problem of balancing how long you can afford to wait to have your document printed in PDF or your paper scanned to PDF or your file uploaded/downloaded on CM/ECF, versus how long you must wait with a reduced capacity if that functionality is installed only on *X*-number of machines in your office. As long as your average wait is shorter than the maximum time you can afford to wait (and you can keep your people doing other productive things in the meantime), you don’t need to run up your IT costs on more capacity.

The third is probably the single most often overlooked aspect of IT capacity planning: you can always add more. You must think realistically both about the functionality and capacity you really need to get the job done, as well as how much you need to satisfy firm politics and keep production from becoming too inconvenient. For example, after looking at how much paper your firm currently produces as documents and attachments and using that to estimate your capacity needs, you might be fine with three PDF writers and one scanner. However, you may still need to add more if the senior partner insists on having one as well, or your legal assistants are spending half of their day doing laps around your office because the machine they need is on the other side of your building. Unless it is cost prohibitive (and PDF writers and scanners are not), you should also have at least two machines capable of the functionality you need just so each can backup the other. But once you have a range of realistic configurations, it is often wise to start out at the low end of the range and then add additional functionality and capacity only once you are sure the additional expense is justified.

The fourth consideration is undeniably the single most critical factor in the success of any IT deployment—training, and that means you, too. The popular business press is full of cautionary tales and success stories alike regarding IT at every level of every type of organization; however, a close look will reveal that the IT itself changes little between the successes and failures. IT after all is so ubiquitous that it is practically a commodity today. Anybody can buy anything they need, and anything that you can buy, your competitors can buy as well. But while

the technology is readily available to all, the talent to leverage it effectively in support of your business is in critically short supply. It is no accident that some people can barely use Microsoft Office while others can run entire enterprises with nothing else. It is similarly no accident that some users seem to get little done other than complaining about their computers and talking to support staff, while others run their computers day in and day out and get their work done without a problem.

In training your staff, it is important to train according to the functionality they need to master, but even more important is to train them how to find things out about the tools of their trade. Just like you did not become an attorney after only one class in law school, there is no one class that you can take to learn all you need to know about using IT. Those individuals who “know computers” have with time and effort attained a critical mass of knowledge and experience such that they now have a conceptual framework of how IT works and know where to go to find the additional information they need. Whether they achieved that through formal training or consistent use of the F1–Help key, that ability to figure out how to get the job done and how to expand one’s own capabilities on demand is the key determinant between a mere “biological IT interface” and a skilled IT operator with great value to the organization.

In any significant IT initiative, you must train your staff competently and thoroughly, you must give them generous opportunity to practice their new skills, you must provide comprehensive user support to assist them in transitioning to a higher level of IT use, and you must be prepared to retrain occasionally. However, you must at some point also hold them accountable for having mastered the tools of their trade, because none of your IT objectives will be realized if your staff cannot use the tools effectively. Some organizations today carry this to the extreme of actually withdrawing or curtailing application support after an adequate transition period under the theory that after using a new application for six months, users should no longer need help to perform basic functions. Large organizations with internal support teams now routinely bill the user’s manager for support calls, impacting the entire business unit’s profitability. While such measures are likely too extreme for the typical legal office, the point is nonetheless well taken in that the efficiency and productivity gains achievable with IT depend directly on your staff’s ability to use the tools proficiently and cannot be achieved otherwise.

Managing IT (Lest IT Manage You)

With all of the above in mind, both within the CM/ECF context and otherwise, there are a few recurring IT themes which might be helpful to mention here. Please remember that CM/ECF is the reason for this article and

for this Panel Presentation at the Midwest Regional Bankruptcy Seminar, but that your law practice has operational and strategic needs far beyond CM/ECF, and IT likewise goes far beyond CM/ECF.

Use Automation to Free Your “Human Capital”.

If there is a “point” to information technology, it is to spare people the menial and mundane so they can focus on those tasks requiring their judgment and expertise. CM/ECF is all about sparing people the menial and mundane jobs of making copies and driving back and forth to the courthouse, so that they and their staffs can focus instead on serving clients and practicing law. People can be spared huge expenditures of time and effort, such as a legal assistant retrieving a file in seconds from her keyboard rather than minutes or hours from her file room. People can also be spared small encroachments that add up to large time losses, such as an attorney being able to format an entire document with a single mouse-click instead of having to take the time to individually access the dozen or so specific word-processing functions entailed—perhaps not an eye-popping savings, until you consider how many documents the attorney formats over any given period of time, or that now the attorney, her staff, or anyone else, always does it perfectly every time and never forgets any of the steps.

As you deploy IT, always look for opportunities to extend it. After all, you have already paid for it, so you might as well wring every benefit from your investment that you can. A recurring theme in achieving that is the capture of information. For example, having your client information in a database means no one has to dig it out of a file ever again, nor does anyone have to retype it onto a document. Use your system, click the button, and there it is. Similarly, many of your documents are probably pretty standard fare (e.g., client agreements), and even those that are not have standard components (e.g., the caption and attorney signature block on every pleading). Any word processor software worth its salt can make such things available to the user with a single click.

Macros and Templates. Among the most underused functions in word processing today are the humble macro and template, which is surprising because these can be among the most powerful and profitable time-savers in any organization if intelligently and consistently used. A macro is simply a series of recorded keystrokes that can be replayed on demand. For example, the typical attorney signature block is a line drawn for the signature, followed by the all the required information, such as the attorney’s name, bar ID number, firm, address, email, phone, fax, etc. A macro can record those keystrokes and then automatically insert a perfectly-formatted signature block anytime the user needs one. Macros are so easy to record and so powerful in application, that they are worth considering for almost any repetitive task. Templates are essentially fill-in-the-blank form documents. For example, every pleading contains a caption and a signature block.

You could use macros to create these in a blank file, or you could use a template file that, upon opening, already contains the caption and signature block.

Both macros and templates are easily created and used, but both can also be very sophisticated and powerful automation tools. Macros can launch templates. Templates can contain macros. Both can be setup to accept information from the user, such as names, dates, etc. to insert at the appropriate location within the automated document. Also, a special word about macros here: although the typical user never sees it, a macro is essentially a little computer program, perhaps consisting of only a few lines. However, macros can also be very large programs rivaling the best of custom development. In particular, Microsoft Office uses Visual Basic for Applications as its macro programming language, which essentially is the same code kernel as full-power Visual Basic, which was in turn the world’s premier business development tool until recently unseated by Visual Studio.NET. The point is that very powerful automation systems can be constructed from these tools with surprisingly little effort, making any office denizen well advised to master at least the basics of each.

Email Rules. The one thing that comes to everyone’s mind when CM/ECF is mentioned is email. A lot of it. The reason is that when the Administrative Office of the United States Courts designed and coded the core modules of CM/ECF, they insisted on an “either in or out” approach to attorney noticing. That means an attorney who requests an email notice of ANY activity in a case, gets an email notice of ALL activity in that case. Think of the number of cases you have pending right now, think of the number of documents and filings in each, multiply those two numbers together, and you have a rough estimate of how much email you will be receiving from CM/ECF. Even for a small practice, it can quickly climb into the thousands, and you really do not want to have to pay a person to do nothing but sit there and read email all day.

One answer is the humble email processing “rule.” This is essentially a macro for your email in-box which you setup via a simple software wizard. The concept is that of the massive quantities of email coming your way, you only really care about a small portion of them. Those messages will be formatted in some standard way by your court, making them searchable for keywords. All an email rule does is search for inclusion or exclusion of certain keywords and then do what you told it to do when the condition is satisfied. An example would be a rule that moves everything marked “order” to a particular directory. Just like templates and macros, and perhaps even more so under CM/ECF, email rules are automation tools that you neglect to your own great detriment.

File Management. In addition to email, something else you will soon find yourself awash in are electronic files. Pretty much everything you have a piece of paper

for now, you will have a file for then. It is absolutely imperative to your ability to function under CM/ECF, as well as to your sanity, that you have a file management system in place within your organizational unit that is religiously followed. The information in those files is how you make your living, and if you cannot find those files when you need them, you may as well not even have them. Your file management system need not be especially sophisticated or even minutely detailed. All that is required is that everyone knows where to look for a particular file and what name it should have. For example, your file system could use directories (electronic folders) with case numbers and clients' last names to hold everything having to do with those cases. Within that master directory, you could have a research subdirectory, a filed documents subdirectory, etc. The point is that when anyone needs to find the adversary complaint in the Smith case, that person knows precisely where to go and what filename to look for. Also keep in mind that establishing a file management system should be easy for you because you already have one—however you currently manage paper files in terms of folder and subfolder organization will probably work just fine for electronic files with a few minor adjustments so long as it is both systematic and comprehensive.

Backups. Again, the information in those files is how you make your living, so create backups regularly. You really only need to back up data files, which typically comprise only a small portion of today's massive hard drives, but you must create backups without fail, and your goal in doing so should be no less than the ability to completely restore your data system at any time with minimal loss. The size and sophistication of your operation will determine the size and sophistication of the backups you need to create. Whatever your size and however you choose to do it, make sure your information is backed up and stored offsite regularly.

The Role of Paper. Some unfortunate hype that was attached to CM/ECF early on pandered about phrases such as “paperless court” and “paperless law office,” and promptly frightened a great many people who could not imagine getting through their days without paper. No one is requiring you to do this, nor are very many people likely to achieve it even if they try. CM/ECF is a paperless clerk's office as the hub of an Internet-based distribution system. It is not in any way an attempt at the wholesale elimination of paper from the federal court system. Although communicating and transmitting documents are now best accomplished via computers and digital online connections, some of the writing of documents and likely the vast majority of the reading of documents are likely to remain paper-based activities for years, because the physicality of paper makes those kinds of tasks easier and more convenient for most people. All CM/ECF requires is that the original document in the Court's official record be electronic so that it can be easily accessed by any authorized person, who can then read it however she likes.