



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

HONORABLE ROSLYNN R. MAUSKOPF
Director

WASHINGTON, D.C. 20544

September 27, 2021

Honorable Henry C. "Hank" Johnson, Jr.
Chair
Subcommittee on Courts, Intellectual
Property, and the Internet
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Johnson:

I write to reaffirm the federal Judiciary's commitment to modernize our Case Management and Electronic Case Files (CM/ECF) system and to improve Public Access to Court Electronic Records (PACER). As I stated in our conversation on April 27, 2021, regarding the Open Courts Act (OCA), I agree that we need to modernize that system and improve public access to the records it contains.

Majority Leader Hoyer, in his floor statement prior to the OCA's passage in December 2020, indicated that the House was open to further discussions with the Judiciary and would consider any new information we could provide. Since then, with a renewed commitment to this modernization effort, and the progress we have achieved in partnership with one of the General Services Administration's (GSA) technology consultancies, 18F, we look forward to further discussions with you before additional legislation on this issue is introduced or considered. I concur in your assessment that we must be careful how we develop, operate, and maintain a new system; provide for its funding; and ensure we can incorporate everchanging technology as appropriate.

We acknowledge the Congressional goals of making federal court case records freely available to the public, eliminating PACER fees, and ensuring that the public can easily search for and access public court case records. In order to achieve these goals, CM/ECF, the system through which all court case records are electronically filed, first must be modernized. PACER is the public access portal to CM/ECF. A fully modernized PACER user experience is dependent on a modernized CM/ECF system. While PACER fees already are waived for the overwhelming majority of PACER users, the fees the Judiciary collects from high-volume users are currently essential to the maintenance and operation of the CM/ECF system from which the

PACER service accesses federal court case records. The Judicial Conference does not oppose moving away from a fee-based model for public access to case records, so long as a workable alternative funding source for CM/ECF and PACER is in place that does not impede access to justice. We would like to discuss with you a reasonable approach to such a transition.

As I conveyed to you in my letter of April 26, 2021, the Administrative Office of the United States Courts (AO) has been partnering with 18F to assess the status of CM/ECF and to develop a path forward for the modernization of the system. In May 2021, we provided you with a copy of 18F's report from the first phase of the assessment and thereafter joined 18F in briefing Committee staff on its findings and recommendations. We agree with 18F's findings that the current CM/ECF system is outdated, unsustainable, and requires replacement. We accept 18F's recommendation that the Judiciary build a modern case management system that will serve the Judiciary's needs and enhance public access to electronic court case records.

The AO has been working with 18F (phase two of the assessment) to test the feasibility of 18F's recommendations. In addition, 18F has been briefing AO staff on user-centered research principles and agile, iterative software development methodologies. The AO and 18F have made significant progress and in the second phase of our partnership are taking steps to ensure greater public engagement in the new system's development. We would like to arrange a time to brief your staff on what we expect to accomplish in the coming weeks and months.

Since we last spoke, I have directed my staff to develop a plan for how the Judiciary can successfully build a new CM/ECF. Although the plan is still in the early phases of development, at this time, in building the new system, the Judiciary will:

- Use information technology industry best practices in design, development, security, and operations, and incorporate, to the greatest extent practicable, commercial technology solutions.
- Provide a simplified/unified electronic case filing and case management system for the federal Judiciary and litigants.
- Provide the public a simplified/unified electronic search capability for public federal court case records.
- Establish data, security and reliability standards for the system and make the standards publicly available.
- Maintain the inherent and statutory role of individual courts in managing and controlling their own case records.

The Judiciary has the necessary authority to replace CM/ECF, in accordance with the above parameters, using 18F's recommended "agile, iterative development" process. If you determine that Congressional action is necessary, we would request you consider limited legislation that will (1) provide enhanced flexibility on the choice of methods and schedule, (2) preserve or create adequate, predictable, and stable financial resources to fund the necessary work, and (3) not impose prescriptive language that might create delays or that could impede our ability to take advantage of changing technology.

We are grateful for the dialogue and improvements to the bill in the last Congress. The AO, however, has remaining concerns with the OCA, as passed by the House last December, in that the bill could:

- limit flexibility and competition;
- inhibit us from purchasing commercially available products;
- overly constrain our ability to develop the system in a manner consistent with industry best practices;
- limit our ability to purchase and contract for the project;
- lock us into a timeline that is likely not feasible and which 18F advises is not realistic to meet;
- constrain our funding in ways that would reduce the likelihood of success.

If PACER fees are eliminated without a sufficient replacement, we will be unable to successfully pursue this project, as the costs of modernization are likely to be substantial over a number of years. As I noted in my previous letter, 18F has concluded that accurately determining in advance the whole project cost, as both branches unsuccessfully attempted last year, is antithetical to the "agile, iterative" approach we now agree we should use. Nevertheless, any legislation relating to this project should recognize that a dependable funding stream is required. We appreciate the discussions with staff on this issue last fall, which resulted in better proposed funding solutions than previous iterations of the bill, and added mechanisms to identify and address any potential funding shortfalls. Still, finding sufficient, stable funding for electronic public access (including CM/ECF and PACER) while providing potentially unlimited PACER access to the public will not be a simple exercise. We hope the Congress appreciates the Judiciary's concern with relying on increased filing fees – which the Judicial Conference strongly opposes due to the fees' limiting impact on access to justice – as well as our concern over pursuing annual appropriations, which could result in unpredictable year-to-year funding streams or force the Judiciary to choose between supporting modernization efforts and maintaining funds for other critical activities. I believe that both Branches would benefit from additional discussions on this topic.

Over the past several months, we have further studied the funding necessary to replace CM/ECF and would like to discuss with you an approach that allows the Judiciary access to multiple alternative funding streams while also providing necessary implementation flexibility in the event of a potential budget shortfall. Possible funding mechanisms for discussion include

Honorable Henry C. "Hank" Johnson, Jr.

Page 4

some streams that were envisioned in the OCA, as well as new suggestions that would further improve the prospects for reliable funding. We would, for example, like to raise with you the possibility of making the Judiciary an authorized user of GSA's Technology Modernization Fund (TMF) in order to provide the branch access to the TMF's considerable resources for the development costs associated with system modernization.

I appreciate your offer to go back to the drawing board to develop a joint path forward that offers the greatest opportunity for building the modernized systems the Judiciary and public deserve. We hope this can result in further collaboration with the House to craft new legislation that does not unduly constrain our effort and offers the greatest opportunities for us to succeed in building the modernized systems the Judiciary and the public need and deserve.

Sincerely,

A handwritten signature in black ink that reads "Roslynn R. Mausekopf". The signature is written in a cursive, flowing style.

Roslynn R. Mausekopf
Director

cc: Honorable Darrell Issa



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

HONORABLE ROSLYNN R. MAUSKOPF
Director

WASHINGTON, D.C. 20544

April 26, 2021

Honorable Henry C. "Hank" Johnson
Chair
Subcommittee on Courts, Intellectual
Property, and the Internet
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Johnson:

As the new Director of the Administrative Office of the United States Courts (AO), I am eager to resume our inter-branch dialogue regarding the need for a new approach to the Federal Judiciary's electronic case management system and the system portal by which the public accesses federal court records.

The Federal Judiciary shares your goal of improved public access to justice and access to court records. The AO is prepared to partner with Congress to work to replace the Judiciary's electronic case management system with a more modern one and to expand the accessibility of court documents consistent with Judicial Conference policy and subject to available resources.

I have asked my staff to take a fresh look at both the case management/electronic case files (CM/ECF) system (which both helps courts manage cases and allows for case filings to be recorded, stored, organized, searched, retrieved, and retransmitted) and its Public Access to Court Electronic Records (PACER) system portal. In doing so, I have directed AO staff to bear in mind Congress' expressed interests and concerns with these systems, as well as the essential needs of the Judiciary. Accordingly, while there are some remaining important matters we hope to discuss with you before the Committee again considers legislative action, we are eager to work successfully with you during this session of Congress to agree on a framework that will lead us to achieving our mutual goals.

Last year, the AO entered into a partnership with 18F, a technology consultancy within the General Services Administration, to evaluate the state of CM/ECF and to provide recommendations and a roadmap to replace the current system. The interagency agreement provides for at least two phases to assess the current state of the Judiciary's system and develop a path forward. During Phase 1, 18F has created a roadmap laying out options for delivering an effective, functional, scalable, secure, and reliable case management and electronic case filing system. We now have been briefed on 18F's Phase 1 findings and recommendations and agree with 18F that the current CM/ECF system is outdated, unsustainable, and requires replacement. We think it would be useful to schedule a briefing with you and 18F to discuss their Phase 1 findings and describe the plans for the Phase 2 approach/strategy.

With regard to project costs and financing, which were our primary remaining concerns with the Open Courts Act (OCA) as passed by the House in December 2020, we have learned that 18F does not make upfront cost estimates for this type of information technology development project because of the iterative nature of modern software development. As such, the cost representations made on both sides of the debate last December are unlikely to be useful in our discussions going forward. A more productive and timely conversation might focus on how to ensure reasonable and effective funding mechanisms are put in place to provide confidence that the implementation of the OCA will not impair the Judiciary's ability to fund its critical operations.

The concerns we expressed last year with the legislative proposals were longstanding and serious. Because our case management system is so complex and does much more than provide public access to court records, we anticipated that a CM/ECF overhaul would be extremely expensive, difficult, and time consuming. The Judicial Conference was concerned about legislative provisions that eliminated our funding sources and either provided no replacement revenue to fund a system overhaul or included open-ended and potentially massive case filing fee requirements.

We are grateful to you and the House leadership for the discussions we had after markup last year, and for making significant improvements to the OCA before it passed the House. When the bill passed the House, my predecessor, AO Director James C. Duff, wrote to the House and Senate to express remaining concerns about the scale and costs included in the bill, but also to express the hope that the branches could continue discussions after further study this year.

With our understanding of the necessity of a full CM/ECF redesign, I too am hopeful we can continue the substantive dialogue with Congress on the OCA. Replacing PACER and CM/ECF remains an enormous undertaking and there are some areas on which I believe we must still seek to reach consensus. CM/ECF is a mission critical

Honorable Henry C. "Hank" Johnson

Page 3

system. It is the backbone of case management in the federal courts, and the way we conduct our day-to-day business. Both litigants and the public rely on it for access to justice. Any serious disruption or lapse in funding could cripple or even halt the administration of justice. In light of that, we continue to believe that both branches must further review and refine the OCA before it is reconsidered in the House.

As the Judiciary moves forward under our agreement with 18F, we want to ensure that we are appropriately and responsibly accomplishing the goals of technical modernization and expanded access to information. To that end, we believe that we need additional legislative flexibility to complement the steps we expect to take with 18F to modernize our case management system. We also want to ensure that any legislation appropriately addresses funding streams and project timelines, and that any new funding streams do not impede access to justice. 18F's Phase 1 findings underscore that a project of this magnitude needs the appropriate flexibility, timelines and secure revenue sources throughout its development, implementation, and operation. It further provides sound, expert analysis on which decisions can be made as we move forward.

We look forward to working with you in this endeavor.

Sincerely,

A handwritten signature in black ink that reads "Roslynn R. Mausekopf". The signature is written in a cursive, flowing style.

Roslynn R. Mausekopf
Director

cc: Honorable Darrell Issa