

The ongoing case for remote access to Case.net

Access to documents on Case.net, the state court's electronic court system, continues to remain an uncomfortable burr in the saddle of journalists in this state. For years, we have sought to get login access for journalists, the way lawyers have such access, allowing for viewing of pleadings from your home or office, rather than requiring a trip to the courthouse (or a call, always welcome, to your hotline attorney).

The response we've repeatedly heard from the Missouri Judiciary (and the Office of State Courts Administrator, which manages the Case.net system for the Courts), is that the technology to accomplish this goal would be a significant cost and the courts simply don't have the revenue to pay for it, with budgets in this state being tight. I do not dispute what they say, but that does not mean this situation is not just wrong.

But right now is not the time to argue that issue. Instead, there's a recent court decision that you should know about because it helps demonstrate the mental status of the courts in terms of access to court records – in this case, the federal district court of the Eastern District of Missouri, in St. Louis, speaking in regard to Case.net records in Missouri.

Courthouse News Service (CNS) is a publication primarily used by attorneys to monitor new litigation

that might affect their clients. CNS has reporters in state and federal courts across the country covering new filings and the status of cases through the appellate system, writing about arguments before the U.S. Supreme Court and even covering live activities in Congress. But the covering of new filings on a daily basis, particularly those against businesses and public entities, is a company specialty.

In the past, circuit court clerks in Missouri would set aside new lawsuits for CNS reporters to review, and at times this happened even before the cases were processed into files. Then when Case.net arrived, CNS reporters went from paper access to viewing new cases on terminals in the clerk's offices. But that often meant CNS was required to wait days, maybe even weeks, before reporting on a new case, due to delay by the clerks in processing the new lawsuit and getting it up online.

CNS filed suit in federal court in St. Louis over this frustration and asked for issuance of a preliminary injunction to stop the delay it was encountering.

The federal judge pointed to the fact that other federal courts in the Seventh and Ninth Circuits had issued differing rulings – the Ninth Circuit believed that federal interference in acts of the state court judicial system was appropriate where federal court intervention would

be of a limited scope, rather than an ongoing intrusion into the state court actions. But the Seventh Circuit held that a state has wide latitude in terms of handling its internal affairs and the federal court should not step in and take control of state court operations.

Inasmuch as the Eighth Circuit (which includes Missouri) has entertained no similar case, this federal judge decided that he stood with the Seventh Circuit ruling. "This Court does not wish to dictate to, oversee, or otherwise insert itself into the ... operations and administration of its co-equal Missouri state courts," wrote the Hon. Henry Edward Autrey, the St. Louis federal judge, noting that even the Missouri Supreme Court delays posting filings until a review by its clerks for acceptability.

Given that the order was entered within the last few days, it is too early to know if CNS will appeal, but it appears likely, given their interest in this subject.

Meanwhile, last fall, the Missouri Supreme Court issued a revision to several of its Court Operating Rules that appear to envision remote access to the public to court public records on or after the "Expanded Remote Access Implementation Date." That term is further defined by the Court as "... a date set by order of this Court made and entered no less than six months in advance of such date."

So it's clear remote access is coming, just not as clear when that date will be. It may not mean immediate access, but it will definitely be an improvement for the Missouri public. Stay tuned!

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