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**IMPLEMENTATION OF THE IDOCKET PORTAL
TO OBTAIN RECORDS IN THE FAMILY DISTRICT COURTS**

I. BACKGROUND

As the custodian of record for the State District Courts of Dallas County, the district clerk is charged with the responsibility of properly conserving the records under her care and making them available pursuant to the public's common law right of access. For most of the one-hundred and fifty year history of our Dallas County court system, records were made available in-person at the courthouse in a secured setting where clerk staff could carefully monitor the use of the records. An extensive card-catalogue containing all of the basic case information was used to track those records and available only to the clerk.

The post-war era saw the beginning of a revolution in the management and retention of all forms of records and documents. In the 1970s, larger public institutions including Dallas County deployed 'mainframe' computer technology enabling record custodians to use sophisticated software applications to manage record data. By the 1990s, only the smallest libraries still maintained card catalogues.

Further development of mainframe technology in the 1980s permitted the public for the first time to access court record data and docket information from courthouse-based terminals without the assistance of clerk staff. Private individuals could then conduct elaborate cross-referenced record searches that previously had not been possible even to clerk staff. Suddenly a wealth of information on court cases and litigants became easily accessible or "functionally accessible" for a variety of purposes, some of which nefarious.

The stunning innovation in computer technology and the proliferation of micro-computers since that time has gradually brought the courthouse literally into the living room. By the mid-1990s the public could obtain direct access for a fee to court record information via their private modems. That system was replaced at the beginning of the new millennium when courthouse data became available on the World Wide Web.

II. COURT CASE MANANGEMENT APPLICATIONS

The Judicial Conference of the United States pioneered making court records generally available to the public by deploying a specific court record management application and public access portal called PACER in 1988. In 2001, PACER became available over the internet. The development of that system and the consequent demand it produced in state and local jurisdictions inaugurated the development of a new generation of applications

designed specifically for the courts.

In response to this demand from the both the Judiciary and the Bar, the Dallas County District Clerk implemented the Tyler Technologies case management system known as “Odyssey”. That application facilitated a considerably more robust means of managing cases both within the clerk’s office, but also the judiciary along with a sophisticated public portal. It also permitted the development of a fully automated, paper-on-demand “digital court” system already implemented in the Federal courts.

III. DIGITAL COURTS IN DALLAS COUNTY

In the summer of 2008, the district clerk’s office released its “Digital Courts Vision Plan” and over the next three years, ‘eConverted’ the district courts beginning with the Family court section. That process finally integrated the case record information with the case records themselves. For the first time, the courts of Dallas County did not need a paper ‘case jacket’ to adjudicate cases.

The court system is not alone in making records documents freely available to the public. We are all aware of the tremendous corpus of information now available to anyone with a web connection whether derived from public sources are private marketing firms. Information that only two decades ago would have been time consuming and difficult, if not impossible, to compile can now be done so in seconds. Information of the most sensitive nature can be found with little effort.

This new ‘state of affairs’ has generated an intense concern for the erosion of privacy and exposure to ‘identity fraud’ and other criminal acts in the public. Although much of the information has always been available, never before has it been so “functionally available”. In the case of the Family courts, this problem of exposure is particularly acute.

IV. PROTECTING PRIVACY / SENSITIVE DATA

The district clerk’s office has found an enormous amount of sensitive and personal information included, and inappropriately so, in many different types of pleadings. This is especially so in cases where one or more of the litigants are “pro se” (self-represented) but regrettably also with those represented by attorneys. In many of these cases, the sensitive information including social security numbers is connected to litigants who were children at the time of their parents’ divorce or custody issue.

The district clerk implemented a ‘restricted’ category of document and implemented procedures to restrict online access to certain documents that are likely to contain sensitive data. This is not exhaustive but it has eliminated some of the more obvious issues, yet much sensitive material remains.

V. THE CHALLENGE OF ELECTRONIC FILING

Almost fifteen years ago, the Texas Supreme court appointed a special committee to

investigate and make recommendations for rule changes that would protect sensitive data from public view. The committee recommended the mandatory implementation of a special ‘sensitive data sheet’ kept as a confidential document by the clerk upon filing of a case. Any sensitive data included in a public pleading would have to be redacted.

Regrettably the court never acted on that recommendation. As a consequence, the court created a “perfect storm” with its implementation of mandatory eFiling in January of 2014. Had the court previously implemented the committee’s recommendation in a timely way, pleadings submitted to our courts would have long since been redacted thus mitigating much of the risk. A year later, the court issued new amendments to the Rules of Civil Procedure to address the inclusion of sensitive data in pleadings. However, those rule changes have proven to be both confusing and largely ineffective.

The district clerk’s decision to move forward with the iDocket solution is designed principally to protect the taxpayer and litigants from potential liability occasioned by the dissemination of sensitive, private information contained in court records. iDocket provides an automated redaction function that allows certain data types to be obscured from view when a document is pulled up. Some data may still be available, but much will be shielded.

VI. REDACTION FOR THE FUTURE

The district clerk understands that the use of iDocket does involve a fee born principally by litigants in the Family courts. The actual redaction of the records does entail a cost. It also creates a delay in viewing the record because the redaction routines involve the scanning of the record for the sensitive data. However, redaction addresses the source of the problem – access to the data types. Other jurisdictions place their records behind pay subscription portals which do constrain some functional access, but once paid, permit full access to the sensitive data.

The district clerk has asked the Dallas County Commissioners Court to approve her plan to purchase a fully functional redaction software package that would operate in conjunction with her public access portal. This will give litigants and the Bar another option in obtaining access to the records they need successfully litigate matters in our district courts. The clerk hopes that implementation will occur sometime prior to the end of Fiscal Year 2016.

Redaction will become an increasingly important and necessary part of any record management system for every level of government and every jurisdiction in the state. Recent case law in September 2015 and has dramatically expanded the data-types considered “private”, and likely legislative action will expand that even further. Moving forward, every jurisdiction in the state will be required to implement the same and associated costs should be expected.