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## Briefly: PACER comes to Minnesota

By: Eric J. Magnuson © April 20, 2021

For those of us who practice in both state and federal court, the access to state court records has been a source of frustration ranging between mild and extreme. Although electronic filing has made things easier in the trial court, for many state District Courts, remotely locating documents on the court system has been virtually impossible. In some cases, at best, you would get a list of pleadings with largely indecipherable headings and names, and you were unable to actually retrieve the documents remotely.

In contrast, for years, federal practitioners have been able to stroll through trial court records by simply logging into the federal Public Access to Court Electronic Records system, or "PACER." Nearly everything filed in a federal case is accessible at the click of a button. Downloading the entire docket would give you a snapshot of all the things that had transpired in the case. You could then pick and choose publicly available documents and either view them or download them. Batch downloads were possible, so you could separate the important pleadings from the purely administrative filings like notices of appearance, substitution of counsel, etc.

Of course, the federal system was not a panacea. First, you had to register to use it. Second, retrieving documents often involved a fee, which, although nominal, could add up. And some documents were just not available. In addition to those sealed by the court at the request of the parties, transcripts have to be obtained directly from the court reporter. But all in all, for an appellate lawyer, it was easy to get your arms around the federal case and see the way of the land.

Recently, the Minnesota Supreme Court announced the rollout of Minnesota Court Records Online (MCRO). It looks like the system will be both user-friendly and robust. Previously in Minnesota, in order to obtain copies of any documents filed in the state court system, if you were not a party or an attorney on the "service list" in the Odyssey e-filing system, you could

view the docket under the Minnesota Public Access (MPA) Remote system (a/k/a MNCIS), and then dispatch a runner to the courthouse to physically pick up any filed documents, a system mirrored around the country. During the pandemic, this procedure became even more problematic, as staff in courthouses across the country were required to stay at home or were even furloughed, making retrievable virtually impossible.

The new MCRO system is currently being rolled out in three phases: (i) all public documents in major and minor civil and criminal cases, (ii) all public formal probate, other probate, guardianship and conservatorship, and trust cases, and (iii) all public orders, appellate opinions, and notices prepared by the court in public family case types and post-adjudication paternity proceedings. Access to documents filed before July 1, 2015, will be limited. Most documents filed after July 1, 2015, will be available for public viewing and download. Future phases will provide users with the ability to search using party and attorney names, while the use of advanced search features will include calendar and judgment searches.

Until the system is fully implemented in 2022, downloads are free; after that, we can anticipate a charge per download, probably similar in price to downloads from PACER. Once the MCRO system is in full effect, it will replace the Minnesota Public Access (MPA) Remote system.

One might wonder why it took the state so long to get where federal courts, and numerous other state courts, have been for years. There's no simple answer to that. Technology systems can be complex, and one size doesn't fit all. Anyone who has tried to renew their car license online in Minnesota or even in person knows that technology systems can be frustrating.

There is also an economic component. Courts are constantly being told by the governor and the Legislature to do more with less. And technology has allowed that to happen. When I started practicing, filings in District Court were all paper. They were either hand-delivered or mailed to the courthouse. A court clerk would have to open the envelope, pull the papers out, stamp them as "filed", figure out what case they related to, make some entries in the court docket, then find the paper file, punch holes in the top of the document, and clip it on top of all the other pleadings previously filed. With electronic filing, all of that is done automatically, and it is the lawyer for the filing party that does most of the clerical work. That system works exceptionally well, and has allowed the courts to use their precious staff resources for other things.

The new system will be especially helpful for appellants writing their opening briefs using the record citation form in Minn. R. App. P. 128.03(c) and 2016 Advisory Committee Comment. Previously, the nondescript headings in the Register of Actions accessed through MPA were decidedly unhelpful, especially when multiple filings occurred on the same day. Currently the District Court record is not transmitted to the appellate court until seven days after appellant's brief is due. Because they don't get the detailed docket index until that time, appellants are often at a disadvantage when it comes to identifying document index numbers without going to the courthouse to request a detailed version of the Register of Actions. And

the accessible documents should include the appealable judgment, a required submission with the notice of appeal. Many court administrators do not electronically serve this, requiring a courthouse trip to gather all of the documents necessary to file an appeal.

But the technology is not free. Courts are faced with the choice among building their own system, using systems developed in other states, or purchasing systems from vendors. Each approach has its pluses and minuses. But one thing is certain — state-of-the-market is probably better than state-of-the-art. Being on the cutting edge of technology also means that you're on the bleeding edge. Smart management from the State Court Administrator's office has allowed Minnesota to move into a mature system that should work relatively seamlessly.

Of course, there will be issues. First, people take time to get used to something new. There will be a learning curve, just as there was with electronic filing.

Second, the system will have to be rolled out in phases over time.

Third, at a time when many of the court patrons are proceeding pro se, enhanced technology may not be the best answer for them. A layperson trying to file a pleading might get the job done easier in person, when they would have at least the opportunity to speak with knowledgeable court staff who could help them avoid clerical errors. Increasing technology in some ways has made access to the courts more difficult. See Eric J. Magnuson, *The High Cost Of Efficiency: Courthouse Tech And Access To Justice*, *The Professional Lawyer*, Volume 22, Number 4.

But at the end of the day, progress is a good thing. In a relatively short time, Minnesota will have a more accessible and user-friendly court records system. That will be good for everyone as the courts and those who use the courts can get to the substance of things, and not get bogged down in paperwork and access issues.

Eric J. Magnuson is a partner at Robins Kaplan LLP and served as Chief Justice of the Minnesota Supreme Court from 2008 to 2010.

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#### ABOUT ERIC J. MAGNUSON

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