The Future of CM/ECF

B*y Hon. Brian D. Lynch**

Case Management/Electronic Case Files ("CM/ECF") is the Federal Judiciary's system that allows parties to file case documents with federal courts online. Through Public Access to Court Electronic Records ("PACER"), CM/ECF allows users access to court dockets throughout the Judiciary. It was designed and built in the 1990s and was first rolled out nationally to bankruptcy courts in 2001, followed by district courts in 2002, and appellate courts in 2004. CM/ECF is by far the most distributed system in the Judiciary. And it has been highly successful, in particular for bankruptcy courts, trustees, and attorneys, who are the most robust users of CM/ECF and leverage CM/ECF with their own applications to facilitate bankruptcy filings and processes. However, CM/ECF has been the subject of considerable criticism recently.

Data Breaches and the 18F Reports

The SolarWinds hack in 2020 penetrated multiple important agencies and systems of the federal government. Because CM/ECF is a repository of sensitive legal documents, it became apparent that it requires modern cybersecurity protections to safeguard that data.

18F is a consulting team within the General Services Administration that works with other federal agencies to assist with fixing and improving technology within the government. Following the SolarWinds hack, 18F was engaged by the Administrative Office (the "AO") to analyze CM/ECF and came out with its first phase report in March 2021 (the "18F Report").   The 18F Report determined that the foundational technology of CM/ECF is outdated and not sustainable, and that the decentralization, customization, and complexity of CM/ECF cause system instability, high maintenance costs, and security risks. Also, NextGen, the major CM/ECF system upgrade initiated fifteen years ago and still in process today, suffers from some of the same problems as CurrentGen CM/ECF. The 18F Report recommended a new, open-source CM/ECF with modern technology and architecture. Two additional reports from 18F have followed: one referred to as

"Path Analysis," released in May 2021, and another referred to as "Experiment and Iterate," released in October 2021.

CM/ECF Modernization

The AO's Department of Program Services has already begun developing a new CM/ECF with a product team. An important part of that effort is to develop a modern search solution for the electronic public access interface, a successor to PACER. One of the first security changes is the Judiciary's adoption of multi-factor authentication (MFA) for all employees using government devices to access judiciary systems including CM/ECF. Future phases will include recommending an MFA solution for all public-facing access to Judiciary resources, e.g., CM/ECF.

Another important area of change is the process of software development. The 18F report advocated for an agile, iterative DevSecOps (short for "Development, Security, and Operations") methodology to software development in an effort to streamline the new CM/ECF development process in a secure environment.

A crucial issue is whether the judiciary should adopt a new custom software for CM/ECCF or use a commercial off-the-shelf ("COTS") software and configure it for CM/ECF. The AO is consulting with the National Center for State Courts and other federal agencies about COTS options, and a decision on a platform is expected soon. The AO Modernization Strategy for CM/ECF envisions the entire process for development of a new platform to take five years.

Conclusion

The 18F Report acknowledged what we in the Judiciary know. Internet Technology is no longer an aid to help courts do their work; It is the *"means by which Judges and Judiciary staff do their jobs*." It is also the means by which the constituent users of CM/ECF do their jobs. The changes coming to CM/ECF will affect not just courts and judges, but the attorneys and trustees that rely on CM/ECF for their work, as well as their software providers. It is an important, ambitious, and necessary project.

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