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Committee on Defender Services**

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April 24, 2007

MEMORANDUM

To: Chief Judges, United States District Courts

From: Honorable John Gleeson 
Chair, Committee on Defender Services

Honorable Paul G. Cassell 
Chair, Committee on Criminal Law

RE: PROTOCOL FOR A LOCAL WORKING GROUP ON ELECTRONIC TECHNOLOGY
IN THE CRIMINAL JUSTICE SYSTEM **(ACTION REQUESTED)**

Attached for consideration in your district is a recommended protocol for districts that choose to establish local working groups on electronic technology in the criminal justice system. The Committees on Criminal Law and on Defender Services, which share an interest in avoiding unnecessary duplication of discovery costs, have recently examined the work of the Administrative Office/Department of Justice Joint Working Group on Electronic Technology in the Criminal Justice System. The ongoing mission of the Working Group, which was established in 1998 by the Director of the Administrative Office and the Attorney General, is to examine the use of electronic technology in the federal criminal justice system and its effect on the cost of evidence collection, analysis, and presentation.

Both Committees have endorsed the protocol developed by the Working Group, which recommends procedures for forming and operating local working groups in districts that choose this method of addressing the problem of unnecessary duplication of discovery costs. The AO/DOJ Working Group recognized that local working groups provide an effective means for addressing technological issues in criminal proceedings. We encourage you to consider forming them in your districts.

Our Committees support the Working Group's projects, which are focused on best practices. We invite you to visit the Working Group's website, which contains helpful information on electronic discovery in the criminal context, <http://www.fjc.gov/jet-wg/home.nsf/>. Our Committees welcome your thoughts and suggestions on other means of controlling discovery costs and increasing efficiencies. Contact Jim Oleson, Chief, Criminal Law Policy Staff, Office of Probation and Pretrial Services, (202) 502-1647 or Judith Mroczka, Chief, Legal and Policy Branch, Office of Defender Services, (202) 502-3051.

Attachment

cc: Chief Judges, United States Courts of Appeals
United States Magistrate Judges
Federal Public/Community Defenders
CJA Panel Attorney District Representatives

Recommended Protocol for Establishing Local Working Groups on Electronic Technology in the Criminal Justice System

Introduction

The Administrative Office/Department of Justice Joint Working Group on Electronic Technology in the Criminal Justice System (AO/DOJ Working Group) published a report in 2003, with findings and recommendations designed to promote the fair handling of electronic data and discovery in criminal cases in an efficient and cost-effective manner.

The AO/DOJ Working Group recommends that each federal district court form a local working group to explore and implement methods to maximize the use of technology in criminal justice litigation, so as to promote efficiency and to minimize costs associated with electronic discovery and electronic presentation of evidence for all parties. Ideally, the local working group will help establish methods, guidelines, and best practices in each district court for fairly and reasonably dealing with electronic data in criminal cases.

Membership

The local working group should include representatives or liaisons from all affected constituent groups in the criminal justice system. Below is a suggested list of participants:

- Judge (Magistrate Judge and/or District Judge)
- United States Attorney's Office staff (including a USAO computer systems administrator or litigation support specialist)
- Federal Defender or CJA Resource Counsel or designee (including an FDO computer systems administrator or litigation support specialist)
- CJA panel attorney district representative
- CJA panel coordinator (if any)
- Clerk's Office staff (including a technology systems administrator)
- Federal Bar Association liaison and/or a liaison from other bar groups that practice regularly in federal court
- Investigative agencies' representatives
- Department of Justice component representatives, such as the Federal Bureau of Prisons and/or U.S. Marshals Service

Duration

The local working group should be a standing working group. Membership may change based upon the goals and objectives identified by the group. A core group membership, however, should be maintained for continuity and historical perspective.

Goals and Objectives

The local working group should identify goals and objectives at the outset.

The non-exhaustive list below illustrates possible goals for the local working group. The goals and objectives for the local working group should be driven by general and specific, current and, to the greatest extent possible, projected technological needs, adapted to local custom and practice.

Some examples of goals for the local working group would be to:

- Develop criteria to enable the bench and bar to identify types of cases in which technology issues may arise, e.g., issues related to electronic discovery, electronic presentation of evidence, and the Case Management/Electronic Case Files (CM/ECF) system.
- Articulate circumstances where efficiencies and cost-savings can be realized, and then foster, at a local level, the appropriate approach to dealing with electronic technology issues.
- Develop litigation management tools for use during discovery and trial presentation, for example, and then document “best practices,” checklists, and sample or form orders, motions, and procedures, so they can be duplicated, and improved upon in the future.
- Develop, promote, and provide training for the bench and bar on matters related to electronic discovery and compilation, preservation, and presentation of evidence in electronic media.
- Evaluate local rules and administrative orders relating to issues of electronic technology, and the relation of those rules and orders to CM/ECF procedures, federal rules of practice, and national guidelines (e.g., CJA Guidelines, AO regulations on procurement, and the U.S. Attorneys Manual).
- Recommend solutions to technology issues that are timely, fair, equitable, and cost efficient, and then coordinate implementation of those solutions with local rules committees, CM/ECF committees, etc.
- Identify external resources, e.g., Federal Judicial Center website and other methods and practices used by local groups elsewhere for interaction between the constituent parties in the case(s).

Specific objectives would flow from the goals accepted by the local working group.

Tasks to Accomplish

The local working group should decide what tasks are critical and must be accomplished through the working group process. Tasks should support the goals and objectives determined by the local working group, reflecting priorities and resources. The following is a list of recommended areas of consideration:

- Conduct a case-by-case self-evaluation
- Inventory hardware and software typically used by court/federal defender/USAO for presentation and automated litigation support
- Identify issues peculiar to the District
- Identify what local rules are in place and what needs to be established
- Determine staff resources
- Develop a protocol for a meet-and-confer conference after arraignment (per case and to include a checklist of questions to ask)
- Develop training on courtroom presentation equipment
 - ▶ Determine what is currently available in the District
 - ▶ Obtain training materials from outside the District
 - ▶ Develop training modules
 - ▶ Determine who will be responsible for training

Sample resource materials can be found at the AO/DOJ Working Group's website, <http://www.fjc.gov/jet-wg/home.nsf/>.

Implementation

Once tasks have been delineated, the local working group should assign responsibility for task completion to representatives on the group, set out a list of priorities, and establish a schedule for completion and implementation.

- Disseminate information
- Establish meet-and-confer conferences in appropriate cases
- Determine training needs and target audiences
- Conduct periodic reviews assessing the relevancy and timeliness of the working group's tasks and recommendations

Share the Progress of the Local Group with the AO/DOJ Working Group

- Forward best practices, motions and orders
- Post documents and samples on the AO/DOJ Working Group website, blog, or other communications channels
- Be available for consultation and/or training for new local working groups