

# 2012-2013 Policy Paper

## To Protect and Preserve: Standards for Maintaining and Managing 21st Century Court Records

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## Part I: Introduction

The United States Constitution and the constitutions of the several states guarantee fundamental rights, including the right to due process of law, the right to a jury trial and the right to a speedy trial.<sup>1</sup> Cases throughout the states hold there is a fundamental right to appeal a civil or criminal verdict. These essential tenets of the American judicial system rest on the assumption that accurate and accessible court records exist to document court proceedings. Maintaining and managing court records are vital responsibilities for every court.

We stand at a pivotal point in the management of court records across the United States. The footing is changing beneath us: the shift toward electronic records is underway and its outcome is inevitable. Records are being converted from paper into electronic formats at a rapid pace, and this conversion effort requires court leaders to play a greater role in ensuring proper management of court records. In the changing world of 21<sup>st</sup> Century court records management, courts and the public have a right to insist on professional records management standards – standards that are established by the courts statewide and then implemented by court personnel in a consistent manner across every court in every state. This policy paper proposes a framework for those standards and identifies the responsibilities for those standards, which the public expects and deserves. While this paper focuses primarily on standards for records management, as executed by the court personnel who are primarily responsible for creating and maintaining court records, it

should be stated at the outset that the standards set out herein should be applied equally to all persons and entities charged with maintaining court records at all stages, including judicial officers, court reporters, court administrative offices, and executive branch record keepers such as the secretary of state.

Ultimately, the state court system – as expressed in many state constitutions, state court cases and state supreme court rules nationwide – bears the responsibility to the public to provide professionally maintained records that are supported by appropriately resourced and trained personnel. While implementation can be delegated, responsibility cannot. Many states with different structures have achieved this objective, proving that courts have the inherent capability to fulfill this obligation of protecting court records regardless of political barriers.

Crafting uniform 21st Century court records management standards in the face of rapidly changing technology is a formidable challenge. As of 2012, fifteen state court systems had implemented statewide electronic filing in all trial courts (a threefold increase in three years)<sup>2</sup>, and an additional eleven states had implemented e-filing in their largest jurisdictions. This trend in state courts is but a

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<sup>2</sup> In 2009, an NCSC survey reported five states with statewide e-filing for all trial courts. The NCSC online reference guide, *State Court Organization*, contains the most current and complete data on e-filing (data current as of August 2013), and reports the following states having implemented statewide e-filing in their trial courts: Alabama, Arkansas, Colorado, Delaware, Georgia, Iowa, Missouri, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, South Dakota, Utah, and Wisconsin. See S. Strickland, R. Schauffler, R. LaFountain & K. Holt, eds. *State Court Organization*. Table 57 E-Filing: Trial Courts. Last updated 02 August 2013. National Center for State Courts. (Accessed September 4, 2013) [www.ncsc.org/sco](http://www.ncsc.org/sco).

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<sup>1</sup> Constitution of the United States, Articles V, VI, VII

small reflection of the trend in government and society toward electronic records. The result of this shift is that users expect more uniform, professional standards for the management of records and standards that make records easily available in a user-friendly electronic format. Users do not care that government barriers might prevent them from easily accessing records. Additionally, once automated records are created, standards become necessary to ensure uniform retention of records, so that records can be quickly produced, accurately and, with respect to protected or confidential information, securely maintained. Thus, the creation and enforcement of management standards are equally important to both paper and electronic records.

## **Part II: What are Court Records and Why Do We Care?**

To understand what constitutes a court's records, it is important to look at objective national standards. While individual court systems all have rules dictating what is or is not "of record" in a particular jurisdiction, the basic principles of what constitutes a court record have not been made as clear nationally. Fortunately, a clearer definition is beginning to emerge. In this paper, the Conference of State Court Administrators (COSCA) seeks to adapt general records management standards, such as those developed by the American Records Management Association (ARMA),<sup>3</sup> into the court context in order to create national court records management standards. More importantly, COSCA identifies specific

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<sup>3</sup> ARMA International is a not-for-profit professional association and the leading authority on governing information as a strategic asset. The association also develops and publishes standards related to records management.

principles of implementation in which those standards can be applied.

What are court records? The Conference of Chief Justices (CCJ) and COSCA set out to address this issue in 2002 in their guidelines for public access, creating a broad definition that included all documents and information collected, received, maintained, or prepared relating to either a case or the administration of the court.<sup>4</sup> This definition seemingly includes anything related to a judicial proceeding or court administration. Moreover, in the eleven years since the creation of this definition, courts have seen vast technological leaps in the transmission and synthesis of data elements – leading to the birth of the now-commonly used, yet little understood, term, "metadata." In the court context, "metadata" refers to information -- whether entered in the court's own system or transmitted to a court from another source -- that describes how and when and by whom a particular set of data was collected, how the data was formatted, and how the data should be used within the court's system.<sup>5</sup> These data elements – which must now be considered as part of the core of any definition of court records – add a layer of complexity that requires courts to manage all digital aspects of

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<sup>4</sup> Carlson, Alan and Stetekee, Martha. *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts*; State Justice Institute, 2002. These guidelines defined a court record as "Any document, information, or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding; any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minutes, and any information in a case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding; and information maintained by the court or clerk of court pertaining to the administration of the court or clerk of court office and not associated with any particular case."

<sup>5</sup> Modified from [www.webopedia.com/TERM/M/metedata.html](http://www.webopedia.com/TERM/M/metedata.html)

their operation, as well as the various video, audio, and other evidentiary records that they must maintain. If this vast array of information is not properly maintained, public trust and confidence in the judiciary will quickly erode. Thus, courts must have the technical competency and flexibility to adjust quickly to the rapidly changing trends in modern data management.

In addition to defining what court records are, it is equally important to understand what constitutes a comprehensive and effective court records management program. An organization that has adopted such a program should be able to<sup>6</sup>

- Create and accept records that are necessary to the business function;
- Retain records as evidence of business activity;
- Eliminate obsolete records;
- Store records safely and securely;
- Retrieve information quickly through efficient access and retrieval systems;
- Apply information technology to records management effectively;
- Develop and enforce records management policies; and
- Provide appropriate public access.

To ensure the ongoing effectiveness of a court records management program, courts must have the appropriate policies and processes in place. These policies and processes must be applied by every entity that maintains court records regardless of the judicial

organizational structure. In particular, all courts within a state court system must ensure proper adoption of the principles of *governance, compliance, integrity, access, preservation and disposition* – principles originally set out by ARMA but adapted to courts in this paper. Since proper governance is the foundation for all the other principles, it is necessary to define, examine and address governance first.

### **Part III: Establishing Core Principles for Records Governance**

Governance is the paramount principle of judicial records management principles. To understand the principle's importance, it is necessary to understand the primary objective of court records governance. The public rightfully expects accurate and accessible court records that are created through uniform standards applicable to all courts and persons throughout the state. The focus of sound records governance must be on the uniformity and the enforceability of the records management standards, *not* on the person who manages the records. As some of the case law demonstrates, courts have an enforceable non-delegable obligation to manage court records properly by insisting upon proper court records governance. These trends in case law support the emerging consensus – especially in light of increasingly sophisticated electronic records management systems – of the ever-growing need for consistent records governance.

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<sup>6</sup> Norris, Thomas. *The Seven Attributes of an Effective Record Management Program*, New York State Archives, Albany, NY 2002.

COSCA supports the fundamental principle of records governance through the state judicial system's implementation of uniform records management principles. In the 21st Century, we no longer can rely on an 18th or 19th Century vision for our systems<sup>7</sup> -- particularly as they relate to management and maintenance of the court records. And while these 18<sup>th</sup> or 19<sup>th</sup> Century systems may not be problematic in many instances because qualified people are doing good work, standards in place will help good people do better,<sup>8</sup> particularly when the rapidly-shifting ground of modern records management is concerned. As Michael Buenger pointed out in his article *Do We Have 18<sup>th</sup> Century Courts for the 21<sup>st</sup> Century*, "Local parochialism that spurns institutional cohesion and accountability can undercut the standing of the state courts as an institution of government, making the judiciary look more like an assortment of independent actors rather than a group of people dedicated to a common mission."<sup>9</sup> Parochialism is not a concept that can be allowed to apply to governance of court records. The content or format of a record in a state court system should not be different because of the fortuitous factor of local or court structure. Whether accessing a court record from a courthouse terminal, a public counter, or a laptop from the comfort of home, the 21<sup>st</sup> Century court customer has a right to insist on uniform records governance throughout the state.

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<sup>7</sup> Michael L. Buenger, *Do We Have 18th Century Courts for the 21st Century?*, 100 Kentucky Law Journal 856 (2011-2012).

<sup>8</sup> Christine M. Durham and Daniel J. Becker, *A Case for Court Governance Principles 2* (2011), available at <http://www.ncsc.org/Services-and-Experts/Court-leadership/Harvard-Executive-Session/A-Case-for-Court-Governance-Principles.aspx>.

<sup>9</sup> See Buenger, *supra* note 18.

North Dakota provides a case study in how a court system exercised its responsibility to insist on such standards. North Dakota requires clerks – whether they are employed by the state or elected or appointed by the county – to carry out their duties in accordance with the standards and procedures established by the Supreme Court. The North Dakota law provides that, in the event the county fails to provide services in the manner required, the Supreme Court may provide for those services in any manner it considers appropriate.<sup>10</sup>

Missouri's records management statute similarly contemplates the need for standards to be set at the statewide judicial level – and to be modified on a regular basis at that same level. Not only is the Supreme Court of Missouri authorized under the statute to set records management standards; the statute also explicitly recognizes that all staff responsible for maintaining court records should be "empowered to utilize improved methods, systems and techniques of keeping records of essential matters," further implying that the state judiciary – not the legislature – would be more likely to possess this knowledge and, thus, should be responsible for implementing future improvements in records management techniques.<sup>11</sup>

Perhaps the best example of a court rule designed to promote court records governance in a somewhat decentralized state comes from Pennsylvania. Pennsylvania's Rules of

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<sup>10</sup> North Dakota Century Code, 27-05.2-02, section 6

<sup>11</sup> Revised Statutes of Missouri, 2012: Section 483.082. 1 See also *Petusky v. Cannon* 742 P.2d 1117 (Okla. 1987) (elected county court clerk is included within the "judicial personnel" subject to the authority of the Chief Justice, as delegated to district court judges, and thus is under the administrative control and direction of the court).

Judicial Administration (505), pertaining to the authority of the state court administrator and the administrative office, establishes the responsibility “To supervise all administrative matters relating to the offices of the prothonotaries [civil clerks] and clerks of court [criminal clerks] and other system and related personnel engaged in clerical functions, including the institution of such uniform procedures, indexes and dockets as may be approved by the Supreme Court.”<sup>12</sup> Such a declaration of policy and authority could be beneficial to many states.

In addition, case law appears to support the proposition that courts have the right to ensure proper governance of court records. It has been held in several cases that the presiding or administrative judge of the circuit or district has administrative control of the court.<sup>13</sup>

Debates over court records governance can exist at both an inter-branch and an intra-branch level. In either situation, case law supports the proposition that when in question, proper records governance should rest with the supervising court. This point is important, less from a personnel management perspective, than from the perspective of consistency and the public’s expectation of consistent records management governance.

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<sup>12</sup> Pennsylvania Rules of Judicial Administration, 505 (12).

<sup>13</sup> See Rutledge v. Workman, 175 W.Va. 375, 332 S.E.2d 332 (W.Va. 1985) (elected clerk is “completely subject [through authority delegated from the Chief Justice and State court Administrator] to the control of the chief circuit judge of the circuit court and failure to follow to the letter and in the utmost good faith the direction of the judge or chief circuit judge is grounds for removal from office”), In re Vorhees, 739 S.W.2d 178 (Mo. 1987) (1976) (presiding judge has “administrative control over the entire court, including the divisions” that overrides the objections of the associate circuit judges).

In the inter-branch context, courts in California have held that “The records of the courts are necessarily subject to the control of the judges, so far as may be essential to the proper administration of justice. . .

[L]egislation which could take from its control its records, would leave it impotent for good, and the just object of ridicule and contempt.”<sup>14</sup>

A recent Nevada Supreme Court opinion has held that a municipal court has inherent authority to manage its personnel without interference from the city (*i.e.*, the executive and legislative functions), including language supporting the municipal court’s refusal to reduce salaries or lay off employees when the court determines they are essential to the court’s function.<sup>15</sup> These cases recognize that courts retain the necessary authority – and, more importantly, the independence – to enforce proper court records governance.

In the intra-branch context, case law generally makes clear that records governance will not be impeded by constitutional claims of authority made by persons who are not properly maintaining court records in a manner consistent with acceptable standards. For example, in a case involving the Second Judicial District Court in Washoe County, the Nevada Supreme Court held that the district court did not usurp the office of county clerk by assuming direct control over the functions of the court clerk. The court clerk was held to be a ministerial office inherent to the judicial branch of government, not a constitutional

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<sup>14</sup> Houston v. Williams, 13 Cal. 24, 28

<sup>15</sup> Sparks v. Sparks Municipal Court, 302 P.2d 1118 (Nev. 2013)

office. The court clerk's duties could be performed either by the county clerk pursuant to legislative enactment, or by the district court pursuant to court rule. The district court had the authority to supervise the county clerk when the county clerk was acting in the capacity of court clerk.<sup>16</sup> While it is hoped that it is not necessary to assert authority over the management of court records by asserting authority over personnel, the fact that courts have found it necessary to uphold such authority demonstrates the criticality of creating clear, effective records governance structures in advance.

Even if most case law indicates the judge or the court system has the ultimate duty over court records – and thus the authority necessary to insist that court personnel must implement professional records management standards – states must have plans that can work across both inter-branch and intra-branch barriers toward more effective governance of court records before such problems ever arise. An ongoing dialogue about records governance must be held so all parties can move beyond a governance discussion that merely encompasses supervision toward the much more important discussion that includes the policies and accountability mechanisms necessary to make effective court records governance work. After all, it is the professionally managed and maintained 21<sup>st</sup> century record – and not any of us who are responsible for maintaining it – that is of interest to the public who access our courts.

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<sup>16</sup> State ex rel. Harvey v. Second Judicial District Court, 117 Nev. 754, 32 P.3d 1263 (Nev. 2001)

#### **Part IV: Beyond Governance: What Must an Effective Court Records Management System Do for Our Courts?**

Having established the importance of governance to the proper maintenance of court records, courts then must consider how the rest of ARMA's recordkeeping principles, as adapted for courts in this paper, flows from that governance. No matter how court records are governed – and it is clear they can be and are governed in myriad ways – one can rest assured this governance is of no use to the end user if the records cannot be produced for their intended purposes. Thus all governance structures must support records that ensure proper legal *compliance*, factual and legal *integrity, access* for all, and proper consideration for timely *preservation* and *disposition*.

##### Compliance

Compliance requires that management practices be in line with applicable statutes, rules of court, administrative orders and organizational policies. The legal framework for court records includes established laws and rules of procedure that apply to case-related records, as well as local, state and federal laws and regulations governing records and the administration of the court, such as personnel management, accounting and purchasing. Compliance with the record-keeping requirements of case records is particularly critical, since these records are the documentation of decisions and actions that create and enforce rights. Compliance includes adherence to both statutes and rules in individual cases, as well as mandatory statewide requirements for court records. The

following practices apply to the standard of compliance:

- Courts should follow statutes, court rules and administrative directives concerning
  - Creation and maintenance of records;
  - Entry of required data and information;
  - Timeliness of record creation, entry of data and information;
  - Organization, labeling and indexing;
  - Access by the public, court staff and other branches' agencies.
- Records should be audited periodically to ensure compliance.
- Staff responsible for records must receive updated training and information regarding changes to laws and regulations.

### Integrity

The principle of Integrity addresses the need for records to be created and preserved in a manner that guarantees their authenticity, reliability and accessibility. Maintaining the integrity of judicial records is fundamental to the rule of law, because records provide evidence of the judicial decision-making process and, therefore, directly affect the rights of individuals and organizations. Records integrity includes demonstrable proof that a record is created by the person or entity that claims to have created it, and that the record has not been altered. Records' systems, whether paper or electronic, need to be designed to ensure that the proper data elements (in the case of many electronic systems, the "metadata" referenced earlier) are captured to locate and identify records. State systems must ensure that both the policy and

the capacity exist to ensure proper maintenance and custody of these records.

Records must not only include content information but also structural and contextual information that identifies how a record was created, who created it and why. Records must also be meaningful -- that is, they need to contain the information necessary to understand the events or transactions being documented. Proper security controls, documentation of chain of custody and requirements for signatures or certification are requirements that help ensure authenticity. The accessibility of court records is another aspect of integrity, since the inability to locate a document or record compromises its value.

There are a number of factors that may compromise records integrity. Natural disasters frequently are the cause of catastrophic record losses. Improper storage conditions, frequent handling and lack of attention to proper filing procedures can compromise records. The increasing use of digital information to support court business functions requires attention to the maintenance and updating of computer hardware and software. Disk and system crashes, software bugs, network failures, and other software problems can cause disruptions ranging from temporarily annoying to permanently catastrophic. Tampering with court records through deletion of documents or files, alteration of records, or even intentional damage to electronic media also are areas of vulnerability. In some instances it may not be possible to maintain all of the characteristics of an original electronic record over a long period of time. For instance, records created using a particular word processing feature may not be forward compatible with newer

versions or with archival formats, resulting in the loss of such features as formatting and macros over time.

Maintaining records integrity involves developing and enforcing policies for records control, as well as having systems in place (electronic and manual) that provide physical protection and access control. This also applies to third parties that participate in the records management program. Third party storage of archived paper records has been a long-standing practice in many courts. The availability of cloud services extends the third party model to include storage and management of electronic records as well. The records manager must ensure that standards and practices employed by the court are met or exceeded by third party vendors.

To maintain the integrity of records, courts should

- Maintain procedures and policies to ensure the chain of custody is documented for critical records;
- Establish safeguards to prevent the unauthorized release of records to third parties;
- Adopt technical systems for storage and retrieval of records to meet reliability standards;
- Protect records from physical damage or destruction, and provide for redundant capacity in case of physical damage or destruction (See principle of Preservation.);
- Monitor third party compliance routinely with standards and contract conditions;
- Establish controls to identify missing or altered records, and the responsible party;

- Establish and review audit trails to verify record integrity;
- Maintain systems and equipment in good working order according to industry or vendor standards.

### Access

The principle of Access addresses the ability of judges, court staff, litigants and the public to obtain information to which they are entitled. An effective records management system promotes accessibility to court records while at the same time preserving information and preventing unauthorized access consistent with constitutional and legal requirements. Access to court records is important to the public's perception of the transparency and fairness of our judicial systems. Records provide information that allows the public to monitor judicial performance and hold courts accountable. Accessibility also applies to the ability of court staff to retrieve and update records within the shortest time frame possible.

The ways in which the courts provide access to records are changing profoundly. Previously, when court records were limited to bound docket books and paper files, public access was limited by a kind of practical obscurity created by the inconvenience of going to the courthouse and waiting for staff to pull files. That is no longer the case. Accessible public records have increasingly become an important part of our information economy, affecting consumer credit, housing and employment decisions, and individual rights. Part of this emerging trend has been the increasing use of court records for commercial and research purposes. The availability of large amounts of court information in

electronic form has made it feasible to access and distribute court-based information on an unprecedented scale. Courts must weigh the presumption of open access against the potential invasions of personal information that may result from granting unrestricted access to records and the resources available to provide that access. Thus, courts must ensure accessibility while maintaining proper safeguards.

To ensure best practices for proper access to records, courts should

- Maintain accessible systems for storage of digital and paper records;
- Create and maintain accurate and reliable index and retrieval systems;
- Provide tools to support search and retrieval of electronic records;
- Establish controls to ensure protection of confidential and restricted information and data;
- Provide access through different media, including physical or electronic formats that are also accessible to persons with disabilities;
- Assess the reliability of system performance periodically for accessing records;
- Ensure that fees do not cause unequal access to court information if fees are charged for public access.

### Preservation

The principle of Preservation requires that the integrity and accessibility of judicial records are maintained throughout their life cycle. For the foreseeable future, most courts will continue to operate in a hybrid records environment with responsibility for preserving

both paper and electronic materials. Although much of the business conducted by courts relies on electronic case files, such as word processing documents and spreadsheets, audio and video records, and other electronic content, the volume of paper will continue to be significant. This complicates the task of preservation. The nature of some court proceedings requires preservation for long periods (more than ten years) of time, if not permanently. For paper records long-term retention periods create often expensive storage and access problems, but if suitable space is available with adequate environmental and storage conditions, the on-going maintenance of these records is minimal.

Electronic records present different challenges. The preservation of electronic records requires more intervention and expertise than is the case with paper records. Long-term storage involves regular monitoring, frequent intervention and the assistance of technically trained professionals. The challenge of digital record keeping is two-fold: first, the physical media that hold data must be preserved and protected from damage and degradation. Secondly, the information must be able to be read and understood, including the ability to access the data with the proper hardware and software and to make the information comprehensible. The lack of certainty about the longevity and reliability of various media and devices compounds the problem.

A records preservation program should include periodic inspection of records and records systems to guard against the deterioration of media and to ensure that steps can be taken to halt, if not reverse, information

and data losses. To preserve both paper and electronic records, courts should

- Provide duplication and back-up for vital and critical records, as well as physical redundancy for the systems that maintain those records;
- Select appropriate storage media, taking into account needs for access, projected longevity, stability and usability of the media;
- Provide levels of protection appropriate for the type of record;
- Conduct periodic audits of electronic and paper media to assess condition;
- Restore or re-create damaged or corrupted records and electronic data promptly;
- Maintain storage system environments according to established standards;
- Develop a strategy for the continued integrity and accessibility of records independent of the formats and media in which they were created;
- Create a disaster preparation and mitigation plan;
- Review third party records management providers' compliance periodically with terms of service.

### Disposition

The principle of Disposition recognizes that all records reach a point in their lifecycles where they are committed to long-term archival storage and preservation, or are scheduled for destruction. State court systems must ensure that records disposition policies are implemented statewide in a consistent manner, particularly considering the fact that individuals' rights can be adversely affected if such records are managed inconsistently from

jurisdiction to jurisdiction. One of the most important tools for managing the disposition of records is a records retention schedule. The primary purpose of a retention schedule is to help the organization meet legal, fiscal and administrative requirements for maintenance of records. The schedule is also the source of authority for destruction of designated records.

Additional benefits of implementing a records schedule include

- Identification of the records custodian for multi-copy or official records;
- Improvement of space management and reduced storage costs with the disposal of inactive, duplicate or obsolete records;
- Identification of records that can be moved to less costly archival storage;
- Identification and removal of duplicate and redundant material; and
- Application of retention and destruction rules on a consistent and regular basis.

A records retention schedule also can specify the transfer of records to different media at specific stages in the life cycle of a records series. Most state court systems and archives already have clear retention requirements for case files and related records. However, some types of records may not be covered under a general records retention policy, leaving individual courts to determine their final disposition, provided there is no expressed state policy interest in the records. In many such cases courts take a "save everything" approach. The problem with this approach is that staff wastes valuable time and resources managing and storing records that have exceeded their useful lifespan, not to mention the inconsistent effect on the individuals

whose records are maintained differently in multiple jurisdictions under such approaches. Thus, in cases where a statewide records management policy does not exist, local rules or administrative orders should be established to avoid confusion and ensure procedural fairness.

To maintain best practices under the principle of disposition, courts should

- Maintain records according to established statewide retention schedules;
- Remove non-essential, obsolete or duplicate records routinely;
- Use destruction methods appropriate to record content and media;
- Ensure that destruction is conducted in a secure manner;
- Conduct a records inventory and appraisal periodically to re-assess value and determine if retention is up-to-date, including all electronic records and data.

## **Part V: Applying Governance Standards and the Judicial Records Management Maturity Model**

Having defined what constitutes judicial records and the principles that apply to their management, it is useful to take a further look at governance, not in terms of structure as was done earlier, but in terms of applying the principle of governance across the wide variety of court environments that exist nationwide. Today's records environment demands coordination and collaboration. Just as the principles of court records management are interdependent, so is the relationship of judges, administrative staff and elected officials who have executive-level responsibility for records. An effective

governance system will guide staff and users and ensure consistent application of the principles. An effective records governance model must enable courts to do the following:

*Develop corporate policy:* All court records management policies should contain a clear, declarative statement that defines the court's responsibility for records, the roles of various staff and departments, and a structure for policy-making. This statement will demonstrate the importance that management places on the records program.

*Document business procedures:* Not only should the organization provide documentation of the processes and steps staff must follow in performing their work, but policies that address issues of records storage, file formats and standards for imaging should be addressed.

*Adopt court-wide standards:* Many of the best practices identified in this document refer to guidelines and standards. Fortunately, there is a growing body of records management standards available for reference and use, covering paper, microfilm, audio, multi-media, and electronic records. Recognized standards have been developed by the International Organization for Standardization (IOS), ARMA International, the Association for Information and Image Management (AIIM) and the American National Standards Institute (ANSI). In this paper, COSCA has proposed standards based on these sources – particularly ARMA – and adapted them as appropriate for state courts. These standards can be extended and further modified to apply to the particular needs of specific state courts.

*Develop a records management strategy:* An important lesson learned from organizations that practice effective records management is the need for a continuous process of monitoring and improvement. The challenge for leadership is to create a culture in which these principles are fully embraced and put into practice throughout the organization. Using the principles' framework, the court can identify areas of strength and weakness, and develop an action plan and timetable for achieving performance improvement goals.

*Use performance measures:* Finally, records management should be integrated into the court's performance measurement and improvement system. The Trial Court Performance Standards Implementation Manual and the National Center for State Courts *CourTools* include standards for measuring file integrity, access and consistency. Various other methods have been developed by trial courts across the country to assess the quality and effectiveness of their records management systems, which can be adopted easily by most courts.

As to this last point of assessing records management performance, the ARMA "Maturity Model®"<sup>17</sup> has been designed as a tool for evaluating records management programs across a wide variety of industries. Using the ARMA model as a foundation, the National Center for State Courts has developed the *Judicial Records Management Maturity Model* based on the six principles identified in this paper. By focusing on the principles, rather than on the people who manage records, a critical shift of focus occurs

that allows courts of any structure to assess how effectively they are managing their records and records systems. The *Judicial Records Maturity Model* goes one step further than the ARMA model by identifying key elements under each principle. Each key area is scored on the basis of a question or statement that best describes current practice or policy. This allows court leadership to determine more precisely where best practices are in place and where improvement is needed. This model defines four levels of maturity: substandard, minimal, compliant, and progressive.

Level 1, "substandard," indicates that the court has not addressed the key area or does so in an *ad hoc* manner. Courts with consistent rankings at this level will likely not pass legal or regulatory scrutiny. This is sometimes the situation in jurisdictions that have developed localized or person-driven court records systems, such as small municipal courts with very few personnel or little connection to larger statewide management standards, as well as larger courts that operate in organizational or information "silos." As was seen from some of the litigation cited in Part III, steps need to be taken in these types of situations to bring standards into compliance with generally accepted record-keeping principles, as well as jurisdiction-specific rules and regulations. This may require assistance or intervention from state administrative offices to help courts achieve higher levels of compliance.

Level 2, "minimal," describes a situation in which there is some recognizable level of implementation in the court or units of the court in the key area. At this level the court may be compliant for some record types but

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<sup>17</sup> ARMA International's Information Governance Maturity Model available at <http://www.arma.org/r2/generally-accepted-br-recordkeeping-principles/metrics>.

not others. There is a growing recognition that records management is an essential component of court administration and that the organization will benefit from a stronger information governance program. In Level 2, the court may still be non-compliant with legal or regulatory requirements since practices may not be consistently applied to all record types or in all units of the court. This may be the case in courts where there are multiple appointing authority structures that have resulted in a variety of records management policies or records management systems.

Level 3, “compliant,” indicates a level of practice that meets minimum and generally accepted standards within the key area. It is the position of COSCA that courts should strive to achieve at least level 3 in as many aspects of records management as possible. Performance at Level 3 – where consistent, statewide rules and procedures exist and are being followed – should be the standard. Regular meetings of records policymaking bodies, as well as iterative training and dissemination of standards and updates, should be considered identifiable hallmarks of a Level 3 system. If courts cannot meet this standard, they should identify and address the barriers to improvement.

Courts that meet a basic Level 3 standard in most areas should not be complacent. Ideally, courts should strive to reach the standards set forth in Level 4, “progressive,” by anticipating future trends and developments in the field, as well as actively measuring compliance and seeking opportunities for continuous improvement. A court that is able to achieve Level 4 results in a number of key areas is likely implementing records management improvements throughout its business

operations and has established a mature level of governance. At this level the court easily meets or exceeds legal and regulatory requirements. Courts that are achieving a high level of maturity are transformative; that is, they continually evolve to maintain a high level of performance. States such as Oklahoma, where a well-defined and routine statewide training regimen exists even with clerk offices being independently elected officials, are worth noting in this regard. Another concrete example of Level 4 records management activity would be the integration of records management specifications into initial design requests and RFPs for e-filing systems and case management systems. Level 4 courts would have a standard iterative process of feedback from users that helps to build future records management policy implementations. Courts at this advanced maturity level are likely integrating information governance into corporate planning and are implementing business processes to such an extent that compliance with the program requirements is routine.

As a practical matter, a court will likely find that maturity levels vary across the principles and key areas. The benefit of the model is in helping court leaders establish a baseline for records management performance, identify specific areas for improvement within each principle, and continuously monitor compliance. To assist in this regard, the *Judicial Records Maturity Model* includes a scorecard that provides a graphic representation of the court’s level of maturity in each area. It is important to note that the model is an evolving tool which will be periodically refined and adjusted based on user feedback and new developments in the field of records management.

## Part VI: Conclusion

Courts – and the persons who operate them – have a solemn duty to the citizenry to maintain their records with integrity. Working with all court stakeholders to develop standards for maintaining those records has never been more important than it is today. As ARMA’s Generally Accepted Recordkeeping Principle® of Integrity points out, “A recordkeeping program shall be constructed so the records and information generated or managed by or for the organization have a reasonable and suitable guarantee of authenticity and reliability.” Without enforcement of this critical principle, then “records may be at risk of not being accepted in evidentiary value.”<sup>18</sup> Nowhere is this of greater consequence than in the context of a court record. Using the Judicial Records Management Maturity Model as a qualitative tool to evaluate a court’s records management process can be a catalyst to ensure that well-defined policies, procedures and -- most importantly -- practices exist that will maintain court records with integrity for generations to come.

COSCA also recognizes that implementation of such standards cannot occur without the proper tools and training necessary to make them so. Just as COSCA insists in this paper on professional maintenance of court records, so should all persons responsible for maintaining and managing court records have the right to insist that COSCA and all other court leaders stand with them in ensuring that proper funds are dedicated to the acquisition

and maintenance of uniform and accurate record systems, and that proper training and feedback be consistently provided. In this way, COSCA can lead by example in engaging in an ongoing and productive dialogue with our colleagues at all levels of the court system who do the challenging work of maintaining and managing 21<sup>st</sup> century court records on a daily basis. By court personnel taking the time and effort necessary to implement proper court recordkeeping principles and to ensure adequate resources to support our records management professionals, the members of the public will be able to view courts as the procedurally fair, professionally managed institutions that people expect and so clearly deserve.

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<sup>18</sup> ARMA International’s Generally Accepted Recordkeeping Principles available at <http://www.arma.org/r2/generally-accepted-br-recordkeeping-principles>.