ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Online Processes in Agency Adjudication

Committee on Adjudication

Draft Recommendation for Committee | April 20, 2023

1　　[Preamble To Come]

RECOMMENDATION

Accessing Online Processes

2　1.　Agencies should ensure that online processes used by members of the public work
3　　　effectively with any electronic case management system (eCMS) and any website where
4　　　agency adjudication materials are made publicly available.

5　2.　Agencies should develop online self-help portals that allow users to, as applicable:

6　　　　a.　Update contact information, including email addresses, phone numbers, and
7　　　　　　physical addresses;

8　　　　b.　Complete and submit forms;

9　　　　c.　File briefs, evidence, and other documents;

10　　　　d.　Receive service of documents, including documents filed by other parties and
11　　　　　　agency notices and orders;

12　　　　e.　View and download case documents;

13　　　　f.　Make payments (e.g., filing fees, application fees, civil penalties);

14　　　　g.　Schedule meetings, conferences, hearings, and other appointments;

15　　　　h.　Access virtual appointments;

16　　　　i.　View case status information and information about deadlines, appointments, and
17　　　　　　wait times, but only if they can reliably predict them;

18　　　　j.　Receive reminders about upcoming deadlines and appointments; and

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19   k. Receive notifications about new documents, status changes, and other
20   developments in their cases.
21   3. Online self-help portals should be designed to allow different functionality, with
22   appropriate permissions, for different types of users including parties, intervenors,
23   representatives and their staff, and amici curiae.
24   4. Agencies should ensure online self-help portals have security mechanisms in place to
25   protect user privacy. Agencies that require users to register for and log in to online self-
26   help portals should allow users to use Login.gov or other universal login used by
27   government agencies.

Electronic Filing and Forms

28   5. Agencies should <mark>permit all parties and require all represented parties</mark> to file documents
29   electronically, except in instances when electronic filing would be impossible or
30   impracticable or a party has good cause for needing alternative means of submission.
31   6. Agencies should ensure that their processes for electronic filing allow all users to, as
32   applicable:
33   a. File documents in batch;
34   b. File documents at significant size to allow for all common filings;
35   c. File documents in multiple file formats, except that users should be required to
36   file documents in a format that cannot be edited, such as Portable Document
37   Format (PDF), unless a specific procedure requires parties to submit documents
38   that can be edited (e.g., a proposed order);
39   d. Notify the agency that documents being filed contain legally protected or other
40   sensitive information; and
41   e. Notify the agency that documents are being filed under seal or in camera.
42   7. Agencies without an eCMS should allow parties to file briefs, evidence, and other
43   documents electronically, by emailing documents to a designated agency email address,
44   uploading them to a web-accessible file-hosting service, or transferring them to the
45   agency using the file transfer protocol (FTP).

> **Commented [MG1]:** Question for the Committee: Would it be a "best" practice at this point to make e-filing the default?

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8. Agencies with an eCMS should develop web-based tools that can be used to submit documents directly into the eCMS. These tools should allow users to input structured metadata collected by the eCMS, such as document type, so long as it would not be confusing or burdensome for members of the public to do so.

9. Agencies with an eCMS should develop application programming interfaces (APIs) that allow users, such as representatives, who use their own eCMS to directly transfer data between a user's eCMS and the agency's eCMS, without needing to use an online form or self-help portal as an intermediary.

10. Agencies that have forms or templates for use in adjudications (e.g., applications, appointment of representative, hearing requests, requests for agency appellate review, subpoena requests) should post PDF versions of the forms on their websites and allow users to complete, sign, and submit them electronically. Agencies should adapt frequently used forms as web-based forms that users can complete and submit using a web browser. When feasible, web-based forms should:

    a. Be prepopulated with information about a user or case that the agency already has collected in an eCMS or other database; and

    b. Based on prepopulated data and previous responses, only require users to answer questions that are relevant to them.

11. Except when explicitly prohibited by statute, agencies should allow participants in adjudications to sign documents electronically and, as applicable, should accept the following as valid electronic signatures:

    a. Submitting a form or document through an agency's online self-help portal while registered for and logged in to the portal;

    b. A cryptographic digital signature;

    c. A scanned or other graphical representation of a handwritten signature;

    d. A conformed signature (e.g., "/s/ Jane Doe"); and

    e. An email used to transmit the document.

12. Agencies should only review electronically filed documents before associating them with a case file if there is a need to do so, for example to ensure nondisclosure of legally

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75   protected or other sensitive information, for quality assurance purposes, or when a party
76   files or requests to file a document under seal or in camera.

Electronic Service

77   13. Agencies should allow parties to serve documents to other represented parties
78   electronically, except in instances when electronic service would be impossible or
79   impracticable or a party has good cause for needing alternative means of delivery.
80   14. Agencies without an eCMS should allow parties to serve documents to other parties
81   electronically, by emailing documents to other parties. In addition, or as an alternative,
82   agencies that allow parties to submit documents using a file-hosting service or FTP
83   should notify other parties when new documents become available.

Management of Sensitive Documents

84   15. Agencies that redact legally protected or other sensitive information from documents
85   before making them available to other parties or publicly available should clarify whether
86   parties should submit redacted versions of documents or whether the agency will make
87   redactions.

Fees and Other Payments

88   16. Agencies that require filing fees, application fees, payment of civil penalties, or other
89   payments should accept electronic payments.

Scheduling, Notifications, and Reminders

90   17. Agencies should, as applicable, allow parties to use an appointment-booking tool or
91   scheduling tool to help schedule meetings, conferences, hearings, and other appointments
92   efficiently and at times that are reasonably convenient for the agency and all non-agency
93   participants.
94   18. Agencies with an eCMS should provide automatic notifications or reminders to users
95   about important developments in their cases, such as when (a) a new document submitted

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96   by another party is available to view; (b) an agency notice or order is available to view;
97   (c) a filing deadline is approaching; (d) a meeting, conference, hearing, or other
98   appointment is scheduled; (e) an appointment is upcoming; and (f) a case status changes.
99   Notifications and reminders should be sent through an online self-service portal, by
100   email, and/or by text message, according to user preferences.

Developing and Improving Online Processes

101   19. When designing and implementing online processes, agencies should consult potential
102   users and relevant stakeholders, including parties, representatives, adjudicators and
103   adjudicative staff, agency personnel who represent the government in adjudicative
104   proceedings, and personnel who provide customer service or oversee customer
105   experience functions for the agency. Agencies should also continuously solicit feedback
106   from users on their online processes, for example through online surveys and listening
107   sessions, and should use that feedback to identify and prioritize improvements.
108   20. When designing or working with a contractor to design their online processes, agencies
109   should create systems that can be expanded to incorporate new technologies without
110   requiring replacement.
111   21. Agencies should ensure that their online processes function on multiple platforms
112   including, when practicable, on mobile devices.

Guidance, Training, and Outreach

113   22. Agencies should update their rules of practice to permit or, when appropriate, require the
114   use of online processes.
115   23. Agencies should develop self-help materials (e.g., instruction manuals, reference guides,
116   instructional videos) and, if needed, hold training sessions to help agency personnel and
117   members of the public understand how to use the agency's online processes. Materials
118   intended for public users should be posted in an appropriate location on the agency's
119   website and made accessible through any online self-help portal.

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120   24. Agencies should conduct public outreach if needed to encourage parties and
121   representatives to adopt their online processes, in particular prior to making an online
122   process mandatory.
123   25. Agencies should make staff available to help agency personnel and members of the
124   public use online processes and should clarify when assistance is available (e.g., during
125   normal business hours).

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