

ATTEST: A TRUE COPY

Joey D. Maye

Chief Clerk of the Supreme Court
of the State of New Mexico

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IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

August 28, 2013

NO. 13-8500

**IN THE MATTER OF POLICIES REGARDING THE CREATION,
ACCESS, USE, MAINTENANCE, AND RETENTION OF ELECTRONIC
COURT RECORDS IN THE JUDICIARY**

ORDER

WHEREAS, this Court previously encouraged all courts to use reasonably available resources to accurately image court records in Supreme Court Order No. 10-8500, *In the Matter of Policies Regarding Public Access to Court Records Via the Internet*;

WHEREAS, this Court has approved the implementation of a mandatory electronic filing system for the district courts to be rolled out statewide;

WHEREAS, this Court has previously adopted procedural rules that prohibit the display of protected personal identifier information on publicly accessible court web sites. *See, e.g.* Rules 1-079, 5-123, and 10-166 NMRA;

WHEREAS, a working group of JIFFY's public access and electronic filing committees (the working group) submitted a number of recommendations to JIFFY for managing the Judiciary's transition from paper court records to electronic court records; and

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WHEREAS, upon the recommendation of the Judicial Information Systems Council to adopt policies governing the creation, access, use, maintenance, and retention of electronic court records in the Judiciary this Court issued Supreme Court Order 11-8500 on November 18, 2011, and the Court being desirous of reaffirming the policies adopted in that order, Chief Justice Petra Jimenez Maes, Justice Richard C. Bosson, Justice Edward L. Chávez, Justice Charles W. Daniels, and Justice Barbara J. Vigil concurring;

NOW, THEREFORE, IT IS ORDERED that this Court reaffirms its prior adoption of the following policies for electronic court records in the district courts:

- A. All electronic court records, whether electronically filed or filed as a traditional paper court record and subsequently converted by the court into an electronic format, shall be considered the official record of the court and shall have the same force and effect as a traditional paper court record;
- B. For those courts using the Odyssey Case Management System, any paper court records filed on or after January 1, 2015, shall be scanned by the court for conversion into the Odyssey Case Management System in a form approved by the Judicial Information Systems Council;
- C. For those courts not yet using the Odyssey Case Management System, paper court records shall not be scanned by the court for conversion into the Odyssey Case Management System. This shall not prohibit courts from scanning documents into microform for retention purposes;

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- D. When a paper court record is converted into an electronic court record, the paper court record may be destroyed unless the original paper format of the record must be preserved as provided by law;
- E. If a court maintains an electronic court record pursuant to Paragraph B or Paragraph C of this order, the court shall maintain a means to provide public access to the court record at the courthouse at no charge. Other public access to electronic documents shall be governed as required by law or approved by the Supreme Court;
- F. If a court record is partially or completely sealed under Rules 1-079, 5-123, or 10-166 NMRA, that limitation on public access shall apply with equal force to electronic and paper court records. The courts shall not be responsible for ensuring that information protected by the foregoing rules will remain protected by third-parties who are lawfully authorized to have access to such electronic court records or protected personal identifier information contained in electronic court records;
- G. As the Judiciary implements electronic filing, attorneys who are registered to electronically file shall have remote access to the electronic court records in their cases at no charge;
- H. Public access to electronic court records at the clerk's office shall be provided at no charge, provided that anyone who elects to print an electronic court record from a public access terminal at the clerk's office shall be assessed a charge consistent with the charge for copying a paper court record;
- I. The Judiciary shall seek approval from the New Mexico Records Center and Archives (NMRCA) of a statewide policy and procedure for the maintenance and retention of electronic court records. Until the NMRCA agrees to accept electronic records for permanent retention on a statewide basis, the Judicial Information Division of the Administrative Office of the Courts shall maintain all electronic court records, stored in Odyssey, in a fully redundant

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manner, with local and offsite storage, to ensure the preservation of all electronic court records;

- J. Audio and stenographic transcripts of in-court proceedings shall not be incorporated by the court into the electronic court file for a case unless portions of a transcript are incorporated into a pleading or other electronic court record. When feasible, however, any existing electronic files containing recordings of events or transcripts shall be attached to the docket within the Odyssey Case Management System for ease of retrieval and use. The use of such files shall be in compliance with the most appropriate retention schedule at the time of filing and shall provide adequate protection for the copyright interests of the individual court reporter who created the file.

IT IS FURTHER ORDERED that this Court's Joint Committee on Rules for Public Inspection and Sealing of Court Records shall review the recommendations from the working group regarding amendments to the rules of procedure to develop a confidential cover sheet procedure to protect personal identifier information that must be referenced or relied upon in court records.

IT IS FURTHER ORDERED that, to prevent the public disclosure of protected personal identifier information, JIFFY shall promote the incorporation of redaction software as part of the Judiciary's regular software improvement and enhancement effort consistent with the specifications contained in the recommendations of the working group.

IT IS FURTHER ORDERED that JIFFY propose to this Court policies to

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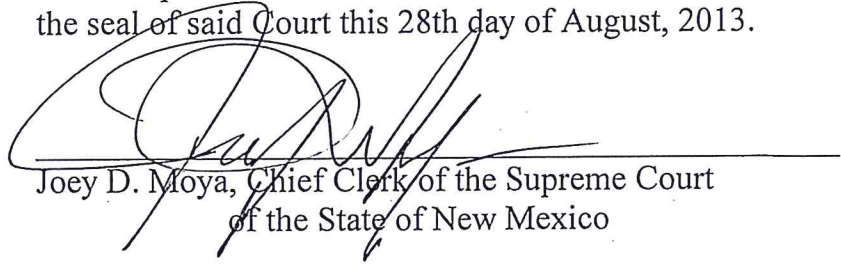
govern electronic court records in the appellate courts and courts of limited jurisdiction that are consistent with those contained in this order.

IT IS FURTHER ORDERED that JIFFY shall propose methods for funding the resources necessary to provide for the creation, access, use, maintenance, and retention of electronic court records as embodied in this order. To that end, JIFFY may consider proposals that generate revenue from data in court repositories as contemplated by Paragraph C of Supreme Court Order 10-8500, that impose a fee, as approved by the Supreme Court, for remote access to electronic court records in a case by a non-party, and that seek continued funding from the Legislature for the services contemplated by these policies.

IT IS SO ORDERED.

WITNESS, Honorable Petra Jimenez Maes, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 28th day of August, 2013.

(SEAL)


Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico