



## **Electronic Case Management in Federal Administrative Adjudication**

### **Joint ad hoc Committee of the Committee on Adjudication and Committee on Administration and Management**

#### **Proposed Recommendation from Joint ad hoc Committee | April 16, 2018**

1            Courts and adjudicative agencies have increasingly come to rely on technology to  
2 manage various aspects of their adjudicative activities. Some of these federal agencies have  
3 adopted and implemented a form of electronic management for their casework, but others have  
4 not done so. Although practical considerations or resource constraints may sometimes weigh  
5 against the use of an electronic case management system (“eCMS”), agencies can often realize  
6 considerable efficiencies and reap other benefits by adopting such a system.

#### **7            Benefits of an Electronic Case Management System**

8            As referred to here, an electronic case management system includes the functions usually  
9 associated with a paper-based case management system from the filing of a case to its resolution  
10 and beyond, such as: the initial receipt of the claim, complaint, or petition; the receipt,  
11 organization, and secure storage of evidence and briefs; the scheduling of hearings or other  
12 proceedings; the maintenance of tools to facilitate the analysis and resolution of the case; and the  
13 collection and reporting of data relating to the case, including when evidence was received, the  
14 time the case has remained pending, employees who have processed the case, and the outcome of  
15 the case, including any agency decision.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

16 An eCMS, properly implemented, may perform these functions in a more efficient and  
17 cost-effective manner than a paper-based management system.<sup>1</sup> For example, maintaining paper  
18 records can be costly with respect to storage space, mailing fees, and staff time for agency  
19 employees needed to receive, store, track, and retrieve records, and locate lost or misfiled  
20 records. An eCMS may reduce these costs in addition to reducing processing time and improving  
21 interactions with litigants and the public. In addition to improving the traditional functions of a  
22 paper-based case management system, an eCMS may also provide new functionalities, such as  
23 making structured data available for analysis that can be used to improve an agency's operations.

24 Perhaps more importantly, an eCMS can assist adjudicative agencies in fulfilling their  
25 duties under various laws that impose requirements related to paperwork reduction, agency  
26 efficiency, public access to records, and technology management. For example, the Government  
27 Paperwork Elimination Act requires that federal agencies use electronic forms, electronic filing,  
28 and electronic signatures to conduct official business with the public, when practicable.<sup>2</sup> Further,  
29 the E-Government Act of 2002 directs agencies to establish “a broad framework of measures that  
30 require using Internet-based information technology to improve citizen access to government  
31 information and services.”<sup>3</sup> And finally, beyond statutory requirements, an eCMS can also assist  
32 an agency's implementation of best practices for public access and participation, consistent with  
33 the objectives of past ACUS recommendations relating to both adjudication and rulemaking.<sup>4</sup>

### 34 **Considerations in Adopting an Electronic Case Management System**

35 Despite the advantages of an eCMS, the decision to implement an eCMS must be  
36 carefully considered. It may not be cost efficient for every adjudicative agency to implement an

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<sup>1</sup> Felix F. Bajandas & Gerald K. Ray, Implementation and the Use of Electronic Case Management Systems in Federal Adjudication (Feb. 23, 2018) (draft report to the Admin. Conf. of the U.S.), <https://acus.gov/report/draft-report-electronic-case-management-federal-administrative-adjudication>.

<sup>2</sup> Government Paperwork Elimination Act, Pub. L. No. 105-277, 112 Stat. 2681, 749 (1998) (codified at 44 U.S.C. § 3504 note).

<sup>3</sup> E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899 (codified at 44 U.S.C. § 101 note).

<sup>4</sup> See Admin. Conf. of the U.S., Recommendation 2017-1, *Adjudication Materials on Agency Websites*, 82 Fed. Reg. 31,039, 31,039 (Jul. 5, 2017); Admin. Conf. of the U.S., Recommendation 2013-5, *Social Media in Rulemaking*, 78 Fed. Reg. 76,269, 76,269 (Dec. 17, 2013); and Admin. Conf. of the U.S., Recommendation 2011-1, *Agency Innovations in E-Rulemaking*, 77 Fed. Reg. 2,257, 2,264 (Jan. 17, 2012).



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

37 eCMS given agency-specific factors such as caseload volume. For example, there may be  
38 significant costs associated with the development, purchase, and maintenance of new hardware  
39 and software. Further, the need to train agency staff in new business processes associated with  
40 the eCMS may also be significant, as the new operations may be substantially different. In  
41 addition, an agency may need to allocate resources to ensure that any new eCMS complies with  
42 existing legal requirements, such as the protection of private information about individuals, as  
43 required by the Privacy Act.<sup>5</sup>

44 If, after considering the costs, an agency decides to implement an eCMS to partially or  
45 fully replace a paper-based case management system, the agency must consider a number of  
46 factors in deciding *what* particular eCMS features are to be used and *how* they are to be designed  
47 and implemented. Planning for an eCMS implementation thus requires a comprehensive  
48 understanding of an agency's structure and business process. Agencies considering  
49 implementing or enhancing an eCMS may find further benefit in studying the experiences of  
50 other agencies' eCMS implementations due to the highly fact-specific nature of a consideration  
51 of the costs and benefits of an eCMS.

52 The implementation or expansion of an eCMS deserves full and careful consideration by  
53 federal adjudicative agencies. In recognition that each agency is unique in terms of its mission,  
54 caseload, and challenges, this Recommendation suggests that agencies implement or expand an  
55 eCMS only after conducting a thorough consideration of the costs and benefits, and concluding  
56 that doing so would lead to benefits such as reduced costs and improved efficiency, accuracy,  
57 public access, and transparency without impairing the fairness of the proceedings or the  
58 participants' satisfaction with them.

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<sup>5</sup> Privacy Act of 1974 (codified at 5 U.S.C. § 552a), as amended by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (codified at 5 U.S.C. § 101 note).



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### RECOMMENDATION

- 59 1. Federal adjudicative agencies should consider implementing electronic case management  
60 systems (“eCMS”) in order to reduce costs, expand public access and transparency,  
61 increase both efficiency and accuracy in the processing of cases, identify opportunities  
62 for improvement through the analysis of captured data, and honor statutory requirements  
63 such as the protection of personally identifiable information.
- 64 2. Federal adjudicative agencies should consider whether their proceedings are conducive to  
65 an eCMS and whether their facilities and staff can support the eCMS technology. If so,  
66 agencies should then consider the costs and benefits to determine whether the  
67 implementation or expansion of an eCMS would promote the objectives identified in  
68 Recommendation 1 as well as the agency’s statutory mission without impairing the  
69 fairness of proceedings or the participants’ satisfaction with them. This consideration of  
70 the costs and benefits should include the following non-exclusive factors:
- 71 a. Whether the agency’s budget would allow for investment in appropriate and  
72 secure technology as well as adequate training for agency staff.
- 73 b. Whether the use of an eCMS would reduce case processing times and save costs,  
74 including printing of paper and the use of staff resources to store, track, retrieve,  
75 and maintain paper records.
- 76 c. Whether the use of an eCMS would foster greater accessibility and better public  
77 service.
- 78 d. Whether users of an eCMS, such as administrative law judges, other adjudicators,  
79 other agency staff, parties, witnesses, attorneys or other party representatives, and  
80 reviewing officials would find the eCMS beneficial.
- 81 e. Whether the experiences of other agencies’ eCMS implementations provide  
82 insight regarding other factors which may bear on the manner of an eCMS  
83 implementation.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 84 3. The following possible eCMS features, currently implemented by some federal  
85 adjudicative agencies, should be considered by other agencies for their potential benefits:
- 86 a. Web access to the eCMS that allows parties the flexibility to file a claim,  
87 complaint, or petition; submit documents; and obtain case information at any  
88 time.
- 89 b. Streamlining of agency tasks in maintaining a case file, such as sorting and  
90 organizing case files, providing simultaneous access to files and documents by  
91 authorized users, tracking deadlines and elapsed age of a case, notifying parties of  
92 new activity in a case, and pre-populating forms with data from the case file.
- 93 c. The comprehensive capture of structured and unstructured data that allows for  
94 robust data analysis to identify opportunities for improving an agency's  
95 operations, budget formulation, and reporting.
- 96 d. Streamlined publication of summary data on agency operations.
- 97 4. Federal adjudicative agencies that decide to implement or expand an eCMS should plan  
98 and manage their budgets and operations in a way that balances the needs of a sustainable  
99 eCMS with the possibility of future funding limitations. Those agencies should also:
- 100 a. Consider the costs associated with building, maintaining, and improving the  
101 eCMS.
- 102 b. Consider the implications of an eCMS on an agency's procedural rules, including  
103 whether the paper or electronic version of a case file will constitute the official  
104 record of a case, and whether procedural rules are different if a case file is  
105 electronic rather than on paper.
- 106 c. Consider whether to require non-agency individuals to file claims, complaints, or  
107 petitions using the eCMS. Such consideration should include accessibility and  
108 whether creating exceptions to mandatory electronic filing would assist in  
109 maintaining sufficient public access.
- 110 d. Create a map or flow chart of their adjudicative processes in order to identify the  
111 needs of an eCMS. This involves listing the tasks performed by employees at each  
112 step in the process to ensure the eCMS captures all of the activities that occur



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 113 while the case is pending, from initial filing to final resolution. It also includes  
114 identifying how members of the public or other non-agency users will access and  
115 interact with the eCMS. To the extent practical, this effort should also involve  
116 mapping or flow-charting the legal and policy requirements to decisional  
117 outcomes.
- 118 e. Put in place a management structure capable of: (1) restoring normal operations  
119 after an eCMS goes down (incident management); (2) eliminating recurring  
120 problems and minimizing the impact of problems that cannot be prevented  
121 (problem management); (3) overseeing a new release of an eCMS with multiple  
122 technical or functional changes (release management); (4) handling modifications,  
123 improvements, and repairs to the eCMS to minimize service interruptions (change  
124 management); and (5) identifying, controlling, and maintaining the versions of all  
125 of the components of the eCMS (configuration management).
- 126 f. Establish a “service desk” or central hub for reporting issues with the eCMS and  
127 providing support to eCMS users, including providing feedback on the resolution  
128 of problems. A service desk should gather statistics of eCMS issues in order to  
129 help guide future improvements of the eCMS. A service desk could also enable  
130 eCMS users to offer suggestions for improving the eCMS.
- 131 g. Plan adequate and timely training for staff on the use of the eCMS.
- 132 5. Federal adjudicative agencies that decide to implement or expand an eCMS must do so in  
133 such a way that appropriate protections for privacy, transparency, and security are  
134 preserved by:
- 135 a. Ensuring that the agency’s compliance with the Privacy Act, other statutes  
136 protecting privacy, and the agency’s own privacy regulations and policies remains  
137 undiminished by the implementation or expansion of an eCMS.
- 138 b. To the extent it is consistent with Recommendation 5(a) above, making case  
139 information available online to parties and, when appropriate, the public, taking  
140 into account both the interests of transparency (as embodied in, for example, the



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 141 Freedom of Information Act's proactive disclosure requirements) as well as the  
142 benefits of having important adjudicative documents publicly available.
- 143 c. Adopting security measures, such as encryption, to ensure that information held in  
144 an eCMS cannot be accessed or changed by unauthorized persons.
- 145 d. Ensuring that sensitive information is not provided to unintended third parties  
146 through private email services, unsecured data transmission, or otherwise.
- 147 e. Keeping track of the evolution of security technologies and considering the  
148 adoption of those technologies as they mature in order to ensure the integrity of  
149 agency information systems.
- 150 6. Federal adjudicative agencies that decide to implement or expand an eCMS should  
151 consider how to analyze and leverage data that is captured by the eCMS to improve their  
152 adjudicative processes, including through the use of natural language processing,  
153 machine learning, and predictive algorithms. Agencies should consider:
- 154 a. Evaluating how eCMS features could generate the types of data that would be  
155 useful for evaluating the effectiveness of their adjudicative processes and policies.
- 156 b. Capturing and analyzing such data about adjudicative processes and policies to  
157 detect and define problem areas that present opportunities for improvement.
- 158 c. Upon identification of areas for improvement in the adjudication process, taking  
159 corrective action, refining performance goals, and measuring performance under  
160 the newly improved process.
- 161 d. Hiring staff trained in data science to facilitate data analysis and giving that staff  
162 access to subject matter experts within agencies.
- 163 e. Collaborating with other agencies on best practices for data analytics.