

**NATIONAL CENTER FOR STATE COURTS**

***RECORDS ACCESS AND RELATED  
RECORDS MANAGEMENT ISSUES  
FOR SCOTT COUNTY  
IN THE SEVENTH JUDICIAL  
DISTRICT OF IOWA***

**FINAL REPORT**

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## **Summary of Recommendations**

**RECOMMENDATION 1:** *The court should prohibit removal of all files from the courthouse. Juvenile or other confidential files should be strictly controlled and not available even for checkout.*

**RECOMMENDATION 2:** *The clerk of court should dedicate either one or two clerk's office staff members for entering document information in ICIS and for filing court documents in order to streamline the document filing process 'from counter to shelf'.*

**RECOMMENDATION 3:** *The clerk of court should ensure that the actual filing of court documents in a case file is done in a central location within the clerk's office.*

**RECOMMENDATION 4:** *The court should adopt and routinely use a "Case File Locator (CFL)" form to give the clerk's office more consistent and reliable information about the status and location of case files in the courthouse.*

**RECOMMENDATION 5:** *The court should establish regular time intervals for collection of files and/or CFL forms from various locations in the courthouse and their return to the clerk's office. It should appoint specific individuals from among both clerk's office staff and court attendants to perform that task.*

**RECOMMENDATION 6:** *The court should monitor and control attorney access to court files during court hearings before associate judges and magistrates.*

**RECOMMENDATION 7:** *The court should require that all persons, including those in the County Attorney's office, use a sign-out form to check out files. The form should provide for entry of the date on which each file was signed out, the case number, the department and the person's name responsible for the file. In addition, file shelves in the clerk's office should be off-limits to all people who are not members of the clerk's office staff. Access should be strictly limited to clerk's office staff members.*

## **I. Introduction**

The Seventh Judicial District of Iowa includes court locations in five counties, each serving the citizenry through its general jurisdiction capabilities. Scott County is the largest of the five, with an estimated population of 158,591.<sup>1</sup> The district has twelve district court judges and five associate district judges, with seven district court judges and three associate district court judges sitting in Scott County. Each district court judge currently rotates among the five counties on a four-month rotation schedule. The trial court administrator of the judicial district works with the judges of all the courts in the district.

Scott County has been experiencing file management difficulties in recent years. Prior to 1995, Local Rule 3.1 stated that attorneys could check out files for up to ten days. This rule was subsequently amended to a 24-hour time period in which attorneys on their “honor” would complete an “outcard” and replace it in the files location on the shelf. Lately the rule has not been followed regularly. There have been several recent occurrences in which clerks were unable to locate files requested by pro se litigants. In fact, one such pro se litigant has filed an informal civil rights complaint against the clerk of court alleging discrimination.<sup>2</sup>

To alleviate some of these problems, the court has implemented some changes including the installation of a “Sensormatic” electronic monitoring system that helps to cut down on the number of files that may “inadvertently and discreetly make their way out of the clerk’s office.” There have also been several physical building changes made, including the placement of locks on doors and the creation of fence security on archived files in the basement. As a result of an incident involving “outcard” theft by a local bar member, another change that was implemented was a temporary policy that prohibited attorneys and abstractors from checking out files for more than one hour at a time.

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<sup>1</sup> U.S. Census Bureau, July 1, 1998 estimate, [www.census.gov](http://www.census.gov).

<sup>2</sup> It is important to note that criminal court files were never allowed to leave the courthouse. And, juvenile and domestic files were not as subject to mishandling due to confidentiality issues. However, systemic problems with file management have plagued the system for quite some time. According to more than one district associate court judge there have been instances that cases have been tried where the court file was not available for the judge’s review and they have been forced to rely on the attorney’s professional integrity.

All of these recent changes have contributed to a tighter control of court records. Yet the court and the clerk's office have not established a permanent policy on the management of case files, and they have not yet addressed related operational issues within the clerk's office.

After telephone discussions with the chief judge and the court administrator, as well as a review of information provided by the clerk of court, the National Center for State Courts (NCSC) project team visited the court on October 11-14, 1999. During their visit, NCSC project staff determined that the file checkout policy is not the only reason for problems that have occurred with court records. Since the clerk is the custodian of court records by law and is therefore responsible for maintenance and access to these files, NCSC project staff addressed workflow processes of the clerk's office related to creation and maintenance of files as well as checkout policies.

## **II. Methodology**

In accordance with the methodology outlined in the original NCSC proposal submitted to the Chief Judge of 7<sup>th</sup> Judicial District in August 1999, NCSC project staff designed a study that used interviews of court staff and other regular participants in the court process for problem identification. A listing of those interviewed can be found in Appendix A. Project staff also observed the workflow within the clerk's office and met with supervisors of various departments of the clerk's office including criminal, civil, uniform support, domestic abuse and probate. During these meetings and interviews, project staff reviewed options for various aspects of court records management. Based upon their appraisal of all the information they gathered, they proceeded to detail specific alternatives for more efficient management of court records.

Upon completion of their October site visit, the NCSC project team had phone conversations with court officials in two large Iowa counties. They also spoke to nationally recognized records management experts about records management policies and possible suggestions for Scott County. This report presents eight recommendations that are based on all of the information gathering activities undertaken by the NCSC representatives.

### **III. Records Management Checkout Policy**

One of the primary purposes of courts is to memorialize changes in the legal status of the citizens within their jurisdiction. This is done through the records of the court. The benefit to society of such court records can be seen in the areas of adoption, dissolution, marriage, relationship to property, and the probate of wills. Court records are equally essential in the areas of criminal histories, driving violation histories, and defendant probation status.

In 1990, a national committee of court leaders promulgated the Trial Court Performance Standards (TCPS) to provide a means for courts to assess and improve upon their performance.<sup>3</sup> Standard 3.6, the Production and Preservation of Records, address the concerns of this project.

#### **Trial Court Performance Standards, Standard 3.6**

*Records of all relevant court decisions and actions are accurate and properly preserved.*

Based on interview responses, it appears as if Scott County is experiencing some trouble in both areas of accuracy as well as preservation. Missing files and misfiled court documents can serve to undermine the entire process of fair and timely litigation. The commentary on TCPS Standard 3.6 goes on to say,

Preservation of the case record entails the full range of responsible record management practices. Because records may affect the rights and duties of individuals for generations, their protection and preservation over time are vital. Record systems must ensure that the location of case records is always known, whether the case is active and in frequent circulation, inactive, or in archive status. Inaccuracy, obscurity, loss of court records, or untimely availability of such records seriously compromises the court's integrity and subverts the judicial process.

It is important to realize that from a national perspective, court records, on the whole, are not allowed out of the courthouse. In fact, NCSC project staff verified in

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<sup>3</sup> Commission on Trial Court Performance Standards, *Trial Court Performance Standards, with Commentary* (Williamsburg, VA: National Center for State Courts, 1990).

several phone calls to records management experts across the country that the practice of allowing court files to leave the courthouse should be strongly discouraged. Simply stated, court officials and clerks of court in most jurisdictions believe there is too much at stake to allow original records of court proceedings to leave the building. In Scott County, closed and archived files are currently being microfilmed, and only court orders from the open and active caseload are being preserved. The recreation of lost or misplaced files is thus severely hampered, and there is considerable cost in staff time to perform such a duty.

It appears that the current local legal culture in Scott County is unusual when in comparison to the rest of the nation. As one judge stated, “The honor system with the use of ‘outcards’ arose out of the trusting legal environment that exists here.” Attorneys have had access and been able to use the court’s case files much like members of the public would utilize their local library. This arrangement was even more lax than a library because the clerk’s office allowed each individual attorney to complete his or her own “outcard” when removing a file from the clerk’s office.

***RECOMMENDATION 1: The court should prohibit removal of all files from the courthouse. Juvenile or other confidential files should be strictly controlled and not available even for checkout.***

Because of the problems that have recently arisen, it is now time for a change in the current local legal culture in Scott County as it relates to case file access and use. To protect valuable court records and make wise use of public resources, the court and clerk’s office serving Scott County must now accept what has been recognized elsewhere throughout the country in terms of records access policy.

Access to closed files in the basement of the courthouse should be managed by assigning responsibility for closed files either to a full-time dedicated file clerk or to different clerk’s office personnel taking that responsibility on a rotating basis. “Behind-the-counter” traffic in the clerk of court’s office should be kept to a minimum and should generally be limited to court employees. The use of such steps will work toward tightening clerk’s office control over court records.

#### **IV. Related Operational and File Management Issues**

The court's former file checkout policy was not the only cause for file mishandling in the Scott County courthouse. In fact, some of the problems that were identified by NCSC project staff while on-site are not necessarily associated with access to files. Such other issues as (a) the manner in which court documents are filed in the clerk's office, and (b) courtroom practices relating to court files, have also contributed to the difficulties that have been experienced. In this section, the NCSC project team addresses other related operational and file management issues and offers suggestions for improvement.

##### **A. Filing of Court Documents**

Court documents are often not filed in a timely manner or are misfiled. In addition, updates of all court proceedings and their results are not consistently entered into the Iowa Criminal Information System (ICIS) system in a timely manner.

Several of those interviewed for this study observed that documents do not always make their way into case file folders in the clerk's office as quickly as they should. Furthermore, said some interviewees, papers are sometimes misfiled. Related to this workflow issue is still another problem – that case updates are often not made promptly in the ICIS system.

These problems apparently arose from developments over the years that took away from the time that clerk's office staff had to actually perform each of their duties. The outcome of this situation was that documents were misfiled, and the atmosphere of the office also became one of inefficiency and disorganization.

It is imperative that duties be clarified to ensure the timeliness and accuracy of court filing. These problems are apparently not rare or isolated events, but are said to be fairly common. They should be considered matters of high priority and addressed promptly.

**RECOMMENDATION 2:** *The clerk of court should dedicate either one or two clerk's office staff members for entering document information in ICIS and for filing court documents in order to streamline the document filing process 'from counter to shelf'.*

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**RECOMMENDATION 3:** *The clerk of court should ensure that the actual filing of court documents in a case file is done in a central location within the clerk’s office.*

Clear responsibility should be assigned to one or two specific clerk’s office staff for (a) entering the data onto the ICIS system, (b) placing documents in file folders, and (c) placing files in their rightful place on the shelf. This should resolve most of the current problems associated with delayed filing and misfiling of court documents.

Document filing is not now performed in an organized workspace. Due to the high priority level of such a duty, it is important that it be done in a well-organized and centralized location. Centralizing this function should allow trouble-free access in the event that a particular file or court document is needed.

In terms of updating ICIS with court proceedings and their results, a long-term goal of the court should be that this function is done directly from the courtroom. NCSC project staff understand that this is possible due to several recent technological advances in at least two out of seven courtrooms. There may be some confusion or objections on the part of court attendants in fulfilling this role. Therefore, the court should consider clarifying responsibility in terms of amending the court attendants’ job description to include this function. This change would not only decrease the workload currently placed on the clerk’s office but allow for timely ICIS updating. To make this possible, the court should consider installation of ICIS terminals in all of the courtrooms.

**B. Judge Use of Files**

Of course, attorneys and abstractors are not the only people who use court files. In fact, the primary users of files are judges. Frequently, a file may not be accessible or cannot be located for use in court proceedings before a judge because it is in the hands of another judge or his or her staff.

**RECOMMENDATION 4:** *The court should adopt and routinely use a “Case File Locator (CFL)” form to give the clerk’s office more consistent and reliable information about the status and location of case files in the courthouse.*

***RECOMMENDATION 5:*** *The court should establish regular time intervals for collection of files and/or CFL forms from various locations in the courthouse and their return to the clerk’s office. It should appoint specific individuals from among both clerk’s office staff and court attendants to perform that task.*

A judge may often be obliged to retain a court file for case review and adjudication. At the same time, however, it is the clerk of court’s obligation as custodian of the public record to know a file’s whereabouts at all times, so that the file can be made available when needed for court proceedings. The use of a tickler form that might be known as a “Case File Locator (CFL)” can serve to alleviate any problems arising from the tension between these obligations.

The form might look like the sample shown in Appendix B. Basically, it works as a mechanism to inform the clerk’s office about the current and immediate future location of the file. If a judge needs a file over a weekend to write an order or opinion, or if he or she is planning to take the file to another county in order to try the case, then he or she would complete a CFL form with a minimal amount of information and give it to the clerk’s office. If a judge is expecting an order from an attorney by a specific date, then the judge might complete the CFL form and give it to the clerk’s office indicating the specific date when he or she will need the file again to ensure the timely filing of the order. Thus, the file is in its rightful place on the shelf should it be needed by other interested parties until the case is to be back before the judge.

There should be a specified set of locations in the judges’ offices where case files and CFL forms can be placed for return to the clerk’s office. Clerk’s office staff and court attendants should all be familiar with the various locations in which these important papers are to be located. Also, there should be set times for clerk’s office staff or court attendants to pick up files to be returned to the clerk’s office, in order to ensure timely delivery and strict monitoring of the files and CFL forms. There should be a collaborative effort between clerk’s office staff and court attendants to promote teamwork in the management of case files.

**C. Access to Files during Court Hearings**

The NCSC project team members understand that a routine practice is for attorneys to take case files out of associate judges’ or magistrates’ courtrooms, either to review them with clients or even to control when their respective cases will be called and heard by the court. To the extent that it occurs, this practice causes delays in the court. It also allows attorneys to control the court’s docket. It also promulgates the loss of court control over the file.

***RECOMMENDATION 6: The court should monitor and control attorney access to court files during court hearings before associate judges and magistrates.***

This issue has significance beyond questions of records management by the clerk’s office. In order for the court to meet its obligation to provide prompt and affordable justice for citizens, it is now universally agreed that the court must establish and maintain control of its dockets and of the pace of litigation. The National Conference of State Trial Judges has observed that, “To enable just and efficient resolution of cases, the court, not the lawyers or litigants, should control the pace of litigation.”<sup>4</sup> If attorney access to files in the courtrooms of associate judges and magistrates impedes the court’s ability to manage its dockets, then the court must exercise control in order to meet its responsibility to the public.

The court should control such access to files during court hearings. To the greatest extent possible, attorneys in Scott County should rely on their own files, as they are required to do in almost every other trial jurisdiction in the country. Attorneys should work with court administrative personnel before court appearances in order to reduce the possibility of scheduling conflicts.

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<sup>4</sup> National Conference of State Trial Judges, *Standards Relating to Court Delay Reduction* (Chicago: American Bar Association, 1984), Section 2.50.

#### **D. Sign-out of Criminal Files**

At present, different court and court-related personnel regularly take files off the shelves for criminal case files in the clerk’s office without notification and without indicating where the files will be located. This often causes problems when judges, attorneys or representatives of court-related organizations then wish to view the files.

***RECOMMENDATION 7:*** *The court should require that all persons, including those in the County Attorney’s office, use a sign-out form to check out files from the clerk’s office. The form should provide for entry of the date on which each file was signed out, the case number, the department and the person’s name responsible for the file. In addition, file shelves in the clerk’s office should be off-limits to all people who are not members of the clerk’s office staff. Access should be strictly limited to clerk’s office staff members.*

During the course of interviews held by the NCSC project team, several people commented on the ease of access in Scott County to criminal files maintained in the clerk’s office. In particular, interviewees noted that some staff members in the county attorney’s office tend to have a “grab and go” approach to criminal case files in the clerk’s office. In fact, one interview respondent stated that “when a file comes up missing, the first place we look is the county attorney’s office and it normally materializes there.”

The solution is simple. The court should limit access to court records to clerk’s office staff members and have each person requesting a case file complete a sign-out form to provide necessary information about the location of the file. The information should include the date in which the file was checked out, the case number, the office or department of the person permitted to take the file, and the name of person checking out the file. Whenever a judge or another person needs the file, the clerk’s office personnel can refer to the sign-out sheet to locate and retrieve the file.

#### **V. Conclusion**

Scott County has a long tradition of cooperation between the court and members of the bar for the accomplishment of court business. That relationship has been tested in recent months by events arising from problems

that have hampered the ability of the clerk's office to perform its functions of keeping court records and making them available to judges, attorneys, abstractors and parties. The recommendations offered in this report are intended to build upon the Scott County tradition of cooperation while acknowledging the rationale for nationally recognized best practices. These suggestions should permit the Seventh Judicial District of Iowa and the Scott County clerk's office, in coordination with the bar and others involved in the judicial process, to continue providing prompt and affordable justice to the people of the county.

**APPENDIX A**

**INTERVIEW RESPONDENTS**

## **Interview Respondents (in interview order)**

**Chief District Court Judge John A. Nagra**  
**Tom Betts, District Court Administrator**  
**Marlene K. Nelson, Clerk of Court**  
**J. Hobart Darbyshire, District Court Judge**  
**Marc Englemann, Attorney**  
**John G. Mullen, District Associate Court Judge**  
**Gary McKenrick, District Associate Court Judge**  
**Connie Hoffman, Trial Court Supervisor V**  
**Leona Lightner, Trial Court Supervisor III**  
**Paul Macek, Attorney/Scott County Bar President**  
**Janice Roemer, Attorney/Former Scott County Bar President**  
**Linda Bowman, Judicial Clerk III (Civil)**  
**Darci Decrane, Judicial Clerk III (Uniform Support)**  
**Lynn Desmet, Judicial Clerk III (Probate)**  
**Janet Harris, Judicial Clerk III (Domestic Abuse)**  
**Dennis Jasper, Attorney**  
**Maria Pauly, Attorney/Former Judicial Law Clerk**  
**Kent Simmons, Attorney**  
**Julie Carlin, Assistant District Court Administrator**  
**Marc Gellerman, Assistant County Attorney**  
**Mike Walton, Assistant County Attorney**  
**Scott Walters, Abstractor**  
**David Dettman, Attorney**

**APPENDIX B**

**SAMPLE CASE FILE LOCATOR FORM**

**IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY**

\_\_\_\_\_  
Plaintiff/Petitioner,

Case Number \_\_\_\_\_

**CASE FILE LOCATOR**

vs.

Judge will be retaining case file:

Yes       No

File will be: (check one, if applicable)

\_\_\_\_\_ In chambers

\_\_\_\_\_ In another county

\_\_\_\_\_  
Defendant/Respondent

On this date the above captioned parties have appeared and the Court has been informed by counsel \_\_\_\_\_ for Plaintiff/Petitioner and \_\_\_\_\_ for Defendant/Respondent that an agreement has been reached. The Court I informed of the following particulars, if any:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The Clerk shall return this file to the undersigned on \_\_\_\_\_ so that the Court can review the matter to be certain that an order has been signed and entered embodying the agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Judge