



for the **RECORD**

NEWS FOR THE OHIO COURTS

WHEN THE EVIDENCE IS IN - JUDGING

When the witnesses and attorneys are done talking it is your turn – a time to shine – drawing upon a lifetime of learning and observing human behavior. Now applying the relevant law to the facts just revealed, you decide. It is the high point in your day, and, in high volume courts, it is experienced thousands of times each year. Judging is an intensely personal experience, involving drama and often huge consequences for those appearing before you.

Judge Kate Huffman and Judge George McCarthy have both contributed articles in this edition connecting judges with innovations in technology that can save you precious time and minimize disruptions as you work to move cases to a timely resolution. For the past six months artificial intelligence has been the hottest topic in the business world. It is coming fast to everything we encounter including the administration of justice. As the name indicates it is “artificial.” It is another tool to be used assisting you in judging, not a substitute for your judgment.

Clarity of mind, so essential to good judging, does not come without effort and constant practice. Downtime is critical: whether it is a thirty second pause before announcing your decision or how you spend your time away from your desk, computer, and cell phone. Embrace technology that suits you but be passionate about enjoying your life away from judging. Do that every day and your professional life as a judge will become even more rewarding.

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Developing a Local Electronic Search Warrant Program*

Judge Kate Huffman
Second District Court of Appeals

In September, 2020, the Ohio Supreme Court authorized the formation of the iCourt (Improving Court Operations Using Remote Technology) Task Force, charging members with studying the ways in which courts employed technology during the pandemic. The task force mandate focused on recommending rule changes to expand the use of technology to improve access to justice and modernize court operations.

In recent years, judges and attorneys have come to embrace technology in legal proceedings, including, among other innovations, remote depositions, hearings and electronic discovery. The pandemic brought an opportunity to explore innovations in law practice and court operations. The Ohio Supreme Court recommended, during the early days of the pandemic, that courts evaluate the appropriate use of technology in legal proceedings, inspiring the reimagining of how courts procedurally do business.

In its 2021 report, the iCourt Task Force recommended that courts robustly utilize technology in court proceedings and adapt rules governing the practice and procedure of courts to incorporate into the culture of the legal practice and court operations the use of technology, with the corresponding effect of promoting access to justice.

Supported by the recommendations of the iCourt Task Force, the Ohio Supreme Court amended Crim. R. 41(C)(1), effective July 1, 2021, permitting the presentation and execution of search warrants by reliable electronic means. Thus, any court of record in Ohio may exercise its responsibility to issue search warrants based upon probable cause by utilizing remote means to not only receive a proposed affidavit as well as the accompanying search warrant, but also to administer the oath to the affiant and complete the necessary signatures.

The U.S. Supreme Court effectively sanctioned utilizing reliable electronic means in search warrant procedures in *Missouri v. McNeely*, 569 U.S. 141(2013), where the Court acknowledged that “[w]ell over a majority of States have innovated with technology-based developments that allow applications for search warrants to be made remotely through various reliable electronic means.”

The terms “expedited warrant,” “electronic warrant,” and “e-warrants,” all describe a system that utilizes remote technology to more efficiently complete the judicial function of authorizing a search warrant. Perhaps most importantly, any electronic search warrant system must maintain the same standard of probable cause as required when the judicial officer meets with the law enforcement officer in person and manually executes the affidavit and warrant.

Thus, armed with both a rule sanctioning search warrant procedures utilizing reliable electronic means, and a U.S. Supreme Court decision essentially acknowledging the constitutionality of electronic search warrant procedures, in mid-2021, and in anticipation of the July 1, 2021 effective date of revised Crim. R. 41(C)(1), stakeholders in Montgomery County

began exploring the potential to implement a local electronic search warrant system. A team of judges and judicial staff, law enforcement officers, prosecutors, court administrators, clerks of court and IT professionals met to evaluate the needs, benefits and potential concerns of implementing a remote search warrant system.

Using technology to secure a search warrant by reliable electronic means reduces the time and costs of securing a search warrant. The typical process for obtaining a search warrant usually involves an officer completing the affidavit and preparing the proposed search warrant; locating, contacting and traveling to a judicial officer’s location; sometimes waiting a significant amount of time for the judge to be available; sufficient opportunity for the judge to review the affidavit and the warrant; securing signatures; and then traveling to the search location or returning to service. Where time is of the essence in securing the warrant, such as in impaired driving cases, obtaining a search warrant by expedited means proves important.

Following extensive study, the Montgomery County team acknowledged the importance of a customizable county-wide system to meet the unique needs of all stakeholders in the county. The team recognized that expedited warrants can save resources, including time and money, by allowing officers to quickly return to service rather than expending valuable time traveling to and awaiting the availability of a judicial officer, eliminating the potential for scrivener’s errors, improving records management, and reducing disruption to judges. Equally important, though, in *Commonwealth v. Almonor*, 482 Mass. 35 (2019), a Massachusetts court recognized that the opportunity to obtain a search warrant by remote electronic means may reduce the frequency with which law enforcement officers resort to exigent circumstances to support a warrantless search. A concurring opinion in *Almonor* acknowledged that the time has come for courts to embrace technology in the submission and authorization of search warrants, noting that “after properly obtaining a warrant or facing exigent circumstances [law enforcement officers] may employ Twenty-first Century technologies to solve Twenty-first Century crimes. But requiring officers to locate and then personally appear before a judge or magistrate when the courthouse is closed — or when the affiant is far away from the judge or magistrate — is hardly a Twenty-first Century procedure.”

Areas of concern for the Montgomery County team focused on system integrity and security, necessary equipment, workflow, processes and procedures, ease of use and accessibility, records retention, administrative concerns, and cost allocation. In order to maintain the integrity of the warrant process, the team’s expectations in selecting the system included:

- The defendant must receive the same information and documentation as if the warrant was presented and signed in person
- Potential scrivener’s errors must be eliminated
- The system must alert any judicial officer when any affidavit had previously been reviewed by another judge, who had found probable cause was lacking
- End-to-end encryption

After evaluating several expedited warrant systems, the team recognized that many of the available options required an expensive individual license or a fee, failed to utilize sufficient safeguards to maintain integrity, or were business-based, rather than customized to the justice

system. Ultimately, the Montgomery County team selected the ezWarrant system, an application available through the ezJustice Platform. The ezWarrant system represents one in a suite of products available from the same company that provides many courts with supervision services applications through the Ohio Community Supervision System (OCSS), and is an authorized vendor on the state term schedule. The team's security concerns were satisfied upon learning that the ezWarrant system is housed on the same data center as LEADS, the State of Ohio Computer Center.

The ezWarrant product proved easy to implement and use for all stakeholders. The ezWarrant system provides access to all persons involved in the warrant process, including prosecutors, who have access to review warrants prior to submission to the judge. Application access may be accomplished with any web-enabled electronic device, including a cell phone, tablet, desk-top computer, or cruiser computer.

Connection to the application by law enforcement remains limited to those officers who have been authorized by their department, much like access to LEADS and other law-enforcement related databases and other systems. Each law enforcement agency assigns to the system an administrator, who enables an officer's connection to the ezWarrant application. The Montgomery County team also chose to designate a county-wide administrator for the system to serve as a liaison between the courts, prosecutors, law enforcement and the vendor, and to assist with on-boarding application users.

To further add to the expeditious submission of the necessary documents to an available judge, Montgomery County prosecutors provided templates in the application which are available to all law enforcement officers for use in preparing a proposed affidavit and search warrant. The templates include those for Facebook, Google, electronic devices, DNA, impaired driving and other frequently requested searches.

Once the law enforcement officer completes the proposed affidavit and search warrant, the officer selects a judge to review the documents, and the system then automatically contacts the judicial officer by means designated by the judge, including through text message, telephone call or e-mail. If a court designates a duty judge for a particular time period, the system generates an immediate notification directly to the duty judge. The communication sent to the judge includes contact information for the requesting law enforcement officer. The judge signs into the application, acknowledges receipt of the affidavit and warrant and, after reviewing the documents, will either find probable cause and accept the warrant for signature, or, lacking probable cause, reject the warrant. If the warrant is accepted based upon a finding of probable cause, the judge then calls the affiant, administers the oath by telephone, and signs the warrant by clicking on the signature button. Because of the security within the application, no one other than an authorized officer could communicate with the court through the ezWarrant system, but if the judge prefers to visually confirm the officer's identity, corroboration can be completed through FaceTime, Zoom or some other electronic means. Using a two-factor security system, the application requires the judge to confirm authorization of the warrant by supplying a unique four digit identifier. The affiant immediately receives notification from the system that the warrant was signed.

The Montgomery County team also recognized that some courts or law enforcement agencies might choose not to participate in the project if the cost of the system was borne by the users. The team also evaluated the cost versus potential financial savings, particularly for law enforcement agencies, associated with a system use. By collecting information on the number of search warrants sought per year by all law enforcement agencies serving Montgomery County and estimating a very conservative one hour of time savings for law enforcement to obtain a search warrant by remote electronic means, the team estimated an annual cost savings across the county at approximately \$70,000. With the supporting data on potential financial savings, the team sought assistance for the project from the Montgomery County Commissioners. Commenting on the value of the electronic search warrant system to the local community, County Administrator Michael Colbert stated "the ezWarrant system is a great collaboration between the Board of County Commissioners and our courts. It saves us so much time and money in accomplishing a signed warrant, often in critical moments that affect public safety. At a cost of just \$25,000 annually, this was a no-brainer for the County. It is a secure electronic system that also puts everyone on the same page and our prosecutor's office and law enforcement know when a judge has authorized a warrant and can proceed in their investigation."

The successful implementation of any local electronic search warrant program necessarily requires collaboration between stakeholders. Each entity provides valuable input to improve access to justice and court operations through the use of technology, while maintaining the standards necessary for the issuance of a warrant based upon probable cause.

*The purpose of this article is to discuss the development of an electronic search warrant program in any court or jurisdiction. This article is not intended to endorse any product or particular platform for an electronic search warrant program, but instead to discuss one county's experience in developing a local program.

OJC 2023 COURT TECHNOLOGY CONFERENCE A SUCCESS!

by Judge George McCarthy, Co-Chair - OJC Tech Committee

One hundred fifty participants had a wonderful time at the Ohio Judicial Conference (OJC) annual Court Technology Conference held April 13, 2023. This one-day event is an exhibit showcase bringing together 40 vendors from across the country to meet and explain their products and services for court, clerk, probation and related personnel. The conference is open to all that are interested.

Some of the products exhibited include case management systems, e-filing, text messaging reminders, probation monitoring services, jury management programs, SCRAM drug/alcohol detection ankle monitors, panic button systems, court reporting, judicial bench tools, online education for defendants, juvenile case management software, and credit card payment systems to name a few. Vendors set up tables and display their products, most of which are interactive, and are available to answer questions specific to any situation.

Vendors include Thomson Reuters, Tybera, Equivant, Henschen & Associates, just to name a few, who set up tables of information and have representatives to explain their products and services. It is a convenient and unique opportunity to see what is available and to contrast and compare services from different vendors at one time. Not only that, it is a unique opportunity to talk with out-of-state business representatives and sometimes company owners face-to-face whom you would likely not otherwise meet.

In addition to the vendors, we had three speakers giving informative and interesting presentations on 1) Artificial Intelligence, 2) Using today's technology in the courtroom, and 3) Accessing an existing online service to help pro se litigants draft their own documents.

The presenters included Frederic I. Lederer, Chancellor Professor of Law (William and Mary Law School) and Director of the [Center of Legal and Court Technology](#), a non-profit research, education, and consulting organization that works to improve the administration of justice through the use of technology (www.legaltechcenter.net).

His organization created the "Courtroom of the Future" which is the most technologically advanced courtroom applauded worldwide as a model for courtroom development. He presented on Artificial Intelligence (AI), its usefulness, and implications of using AI in the legal system.



Professor Frederick Lederer, Chancellor Professor of Law and Director, CLCT, William and Mary Law School

[Barron Henley, Esq.](#), presented on bridging the gap and strategies for deploying technology in the courtroom. He is a founding partner of the Affinity Group which is a technology consulting agency for attorneys. He specializes in automating extremely complex documents (www.affinityconsulting.com).

Also presenting was Susan Choe, Esq., Executive Director at Ohio Legal Help (OLH) who presented on [Ohio Legal Help's online service for pro se litigants](#). This is a web-based interactive program that walks pro se litigants through document preparation for a variety of areas such as domestic relations and juvenile court filings, evictions. It also provides information for veterans and seniors about consumer debt and other areas.

This self-help guide is available free of charge (www.ohiolegalhelp.org). It can be accessed from your computer or added to your library by adding the link to a desktop. OLH can also help tailor or add documents specific to your jurisdiction.

As a result of the website's comprehensiveness, they have provided services to 1.2 million people many of whom are indigent ([see report](#)).

Those interested in participating in or attending next year's conference can contact Jenn Whetstone, Judicial Services Program Manager, Ohio Judicial Conference at 614.387.9766 or Jennifer.Whetstone@sc.ohio.gov

Judicial College Offerings

The Judicial College CLE schedule has been upgraded starting this year. To view the calendar and sign up for courses, please visit this [site](#).

VISIT THE OHIO JUDICIAL CONFERENCE WEBSITE!

WWW.OHIOJUDGES.ORG

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WEEKLY FYI:

NATIONAL NEWS:

- Arkansas's Cruel and Unusual Killing Spree
- I Went to a Town Hall Meeting in a County Ravaged by Opioids. What I Saw Broke My Heart.
- OxyContin Maker Asks Judge to Toss Case Brought by City
- Gorsuch Might Be Tough to Predict on Criminal Justice Cases

STATE NEWS:

- Justice Insider: Murderer's Attorney Tries Punctuation Defense in Sentencing
- Summit Prosecutor Campaign Reaches out to Victims in Different Languages
- Drunk Driver Gets 180 Days After Coroner's Office Says Crash Victim Died of Cancer
- Retired Stark County Family Court Judge Michael Howard to Speak at 2017 LEAD Conference at Georgetown University



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