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November 9, 2020

Ms. Kristen Hickman  
Chair, Committee on Judicial Review  
Administrative Conference of the United States  
1120 20th St NW, Suite 706 South  
Washington, DC 20036

## **RE: Agency Litigation Webpages Project Draft Proposed Recommendations**

Dear Ms. Hickman:

On behalf of the American Association of Law Libraries (AALL), an organization representing 4,000 law librarians and legal information professionals, I write to provide comments in response to the Administrative Conference of the United States' (ACUS) Committee on Judicial Review's "Draft Proposed Recommendations for Committee", dated October 30, 2020.

One of the primary roles of law librarians and legal information professionals is to assist faculty, attorneys, law students, and the public in accessing court records through the Public Access to Court Electronic Records (PACER) system and through agency websites. The need for greater access to legal materials is key in this process. Hence, AALL supports the Committee on Judicial Review's recommendations that agencies consider creating litigation webpages that provide access to publicly filed agency litigation materials, as well as access to court decisions. AALL concurs that public access to agency litigation materials helps individuals understand their legal obligations and promotes an accountable and transparent government. AALL strongly believes that greater access to legal information means greater access to justice.

### **Comments on the Draft Introduction**

AALL agrees with the Committee that the PACER system does not sufficiently address the need for public access to agency litigation materials. With PACER being a fee-based resource, access to materials on PACER is limited to those with a PACER account. The creation of agency litigation webpages would enable free access to these materials and increase accessibility for interested parties.

AALL offers the following suggestions for additional language in the introduction:

- **Lines 12-14:** The Freedom of Information Act (FOIA) is not an adequate alternative to accessing critical agency litigation documents that may assist in interpreting federal government guidance on key issues. This is because the time involved in preparing and submitting FOIA requests, and the turnaround time for a response, are barriers for many requestors, including members of the public.
- **Lines 23-25:** The searching capability on PACER often makes it difficult to locate specific agency filed materials. Different district and circuit courts are not consistent



with case indexing and naming conventions, making a universal search cumbersome and often leading to inaccurate results.

- **Lines 36-40:** Paid databases make access cost prohibitive to many users, including members of the public.

AALL also recommends that the Committee adds a reference to the *Open Courts Act of 2020*, H.R. 8235. Similar to the *Electronic Court Records Reform Act of 2019*, H.R. 1164 cited in footnote 4, the *Open Courts Act of 2020* modernizes the federal Judiciary's case management and electronic case filing system and eliminates the paywall that restricts access to court records through PACER. The U.S. House Judiciary Committee approved H.R. 8235 on September 15, 2020.

### **Comments on the Committee Recommendations**

AALL understands that each agency may be impacted in different ways by this project depending on privacy concerns and costs that will be incurred. With this in mind, we offer the following suggested additions to the Committee's Recommendations:

- **Lines 96-106:** We encourage agencies to consider the cost of creating and maintaining agency litigation webpages, including the resources needed to keep the webpages up-to-date, when developing their agency budgets to support successful implementation.
- **Lines 147-155:** We recommend that agencies add multiple search filters by date, topic, and keyword. It is also helpful to list and link materials in reverse chronological order.
- **Lines 157-168:** We recommend that agencies provide users with sufficient information to make assessments about the accuracy and currency of legal information published on the website.

### **Conclusion**

AALL thanks ACUS and the Committee on Judicial Review for the opportunity to provide these comments. We hope our comments provide additional ideas as the Committee finalizes its recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Emily R. Florio', written in a cursive style.

Emily R. Florio  
President, 2020-2021  
American Association of Law Libraries