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What are the limits to assisting attorneys and improving the AV support process?

Why is this important?

With an increase in the availability of AV technology both within and outside the courtroom, the expectations of attorneys and other participants in the court system are increasing exponentially. Practical limits to technological assistance for these attorneys and other participants require management of personnel, development of court policy, and avoidance of challenges arising from perceived support of some parties over others.

Research

Court personnel are by nature very helpful. When there is a problem, they are more than willing to assist in solving it. The problem is that, with attorneys, this is not always a good thing. Unfortunately, too many cases occur in which court personnel assist attorneys are subsequently accused of damaging the attorneys' equipment or of helping those attorneys at the expense of other parties.

However, in a typical courtroom, when technical AV issues arise, they can impede a court's progress to the point of stopping proceedings. All parties and the judicial officer need a clear, simple understanding of the relevance of any technical support efforts and the impacts they could have on the court, and courts must establish set guidelines as to what is and is not acceptable assistance by court personnel in solving these problems.

Court personnel responsible for assisting attorneys are also responsible for a myriad of other support activities within the court system. Clearly understanding the limits of feasible assistance by court personnel will improve efficiency and set expectations on all sides of the litigation and with judicial officers.

Most courts have a common policy prohibiting court personnel from handling anything beyond court-supported equipment. They offer attorneys the opportunity to come in before their trials and perform test runs with available equipment so that they can see how their evidence might appear in the courtroom. This seems to be the safest policy because it avoids issues of bias.

Recommendation

In cases where judges direct court personnel to physically handle technological issues for attorneys, it is recommended that such personnel ask other parties to the litigation if they need assistance to demonstrate equality and fairness.

It is also recommended that written reports be created and sent to supervisors of court personnel directed to resolve technical issues. These reports should describe the requests, the directions of the judges involved, and the exact details of what was done.

It is further recommended that any request for assistance of court personnel be documented as an external support request for future reference and to aid in developing training and documentation programs, to use to support future technological implementation, and to track personnel or performance issues.

One method to reduce the likelihood of such technological issues arising is regularly scheduling hands-on technology training classes for attorneys with CLE credit. Doing so will increase attorneys' technological knowledge and reduce the number of support requests. Such training could be made mandatory for any attorney requiring the use of court technology.

What are the appropriate policies for attorney-provided AV technology in the courtroom?

Why is this important?

The use of attorney-provided technology in a courtroom is a difficult issue for most courts, which lack clear, published policies regarding such use and often encounter technical problems as a result. Nearly every court staff member can provide examples of problems stemming from attorneys who attempt to use their own equipment in court. Consequences can range from simple redundancy with existing court systems to damage to those systems and court infrastructure, which can often lead to delays in proceedings and additional costs and time invested for the court and all parties involved.

Research

Questions and issues associated with letting attorneys bring in their own AV equipment or connect such equipment to court-supported technology include:

- Why is the equipment necessary?
- Is the equipment available to both parties? If so, are both parties trained in its operation?
- Does the judge have control over attorney-provided equipment?
- Is there a potential to damage or change existing court-supported technology?
- Who will be responsible for damage to the courtroom if it occurs?

Although most issues are anecdotal and undocumented, they are widespread across all sizes of courtrooms and types of hearings.

Recommendation

If a court has a technology-enhanced courtroom and an attorney asks to use his or her own equipment, it is suggested that attorneys be required to provide the judge with reasons why using his or her own equipment is necessary. As one court administrator explained it, “If you’re spending taxpayer/court dollars to outfit your courtroom, why would you allow an attorney to duplicate the technology?”

Courts should develop clear and published policies regarding these and any other potential local issues associated with attorney-provided technology.

If a court allows the use of attorney-provided technology, the court should require the requesting attorney to test the equipment in the designated courtroom at least one week prior to trial to give the attorney and court an opportunity to make any necessary changes.

What information about AV in courtrooms should be provided on a website or in print?

Why is this important?

It is important for a court to clearly communicate to attorneys what AV equipment is available, how to use it, and what impact it could have on proceedings. This will promote improved adoption of court technology and allow attorneys to leverage the technology to their advantage. Courts should see increases in efficiency and productivity of the judicial process if all participants embrace court technology.

Research

Many court systems provide guides, procedures, and other general information for the technology present in their courtrooms and/or available for use by attorneys or litigants.

For example, the United States District Court for the Eastern District of California lists such information on its website. The United State District Court for the Western District of North Carolina provides, online and in PDF format, a recently-updated guide to the technology in its courtrooms. Some courts, such as the 16th Judicial Circuit Court, Macomb County, Michigan, even give basic troubleshooting tips to attorneys and court personnel in their guides.

The format, contents, and materials included in such documents and the frequency with which they are updated vary widely by jurisdiction.

Recommendation

It is recommended that courts adopt policies for how to access and reserve court-supported equipment and regarding media standards that will be accepted as evidence by those courts. These policies should be provided and easily found on the adopting courts' websites, in PDF format, and in print at their respective clerk's offices.

Additional instructions, such as how attorneys should connect to court-supported technology and any optimal or recommended settings that should be configured on attorney-provided devices, may be provided in text, or even video, form.

Any policies regarding attorney-provided equipment and responsibility for damage should be clearly explained on court websites and in print. These provisions should include in-court reference manuals.

It is important that policies are clearly delineated, readily accessible through multiple resources, and frequently updated in semiannual reviews or more frequently, if warranted. Such reviews should include discussions with attorneys practicing in relevant court settings.

References

United States District Court, Eastern District of California

- <http://www.caed.uscourts.gov/CAEDnew/index.cfm/attorney-info/attorney-resources/courtroom-technology/>

United States District Court, Western District of North Carolina

- <http://www.ncwd.uscourts.gov/courtroom-technology>
- Courtroom Technology Attorney Reference Guide. 2017. Western District of North Carolina 3/1/2017. PDF.

16th Judicial Circuit Court, Macomb County, Michigan

- Whitacre, M. 2017. Guide to Courtroom Technology, July 2017. 16th Judicial Circuit Court, Macomb County Probate Court and 42nd District Courts, PDF
- <https://circuitcourt.macombgov.org/CircuitCourt-Courtroom-Technology>

What policies are best for regulating wireless networks used by attorneys?

Why is this important?

Access to wireless networks within the courthouse and courtroom provides for rapid retrieval of information, forms, and other data relevant to litigation and court proceedings. Cloud-based data storage and applications are ubiquitous, but privacy concerns, cybersecurity weaknesses, and courts' unfamiliarity with technology can cripple provisions of Wi-Fi access for attorney use. Courts should have clearly delineated policies regarding wireless network access for attorneys, including the level of available support for such access.

Research

Attorney use of wireless networks in courtrooms is widely debated. Federal courts do not provide access to Wi-Fi since the cybersecurity of such networks often does not meet federal national security standards. Some state courts provide general Wi-Fi access to the public within the building but cannot guarantee its availability everywhere inside the building or the quality of service.

Two reasons why attorneys' Wi-Fi use is such a contested issue are the problems of support and security. If a court chooses to offer wireless network service, it must ensure the quality of its service throughout the courthouse, including inside all courtrooms. This places a huge burden on the court IT support group.

Some courts, like the United States District Court for the Eastern District of Washington, provide wireless networks to attorneys; non-attorneys, if they are involved with proceedings at the courthouse or an active case file; and media outlets and representatives. Many courts, such as the Superior Court of California, County of Riverside, provide wireless access to all individuals inside the courthouse. The Shelby County, Tennessee, courts provide this service and, in addition, provide an illustrated guide to setting up wireless access.

All of the above courts clearly state that court staff will not provide technical assistance and that the court does not guarantee reliability of their wireless networks.

Recommendation

It is recommended that courts carefully consider all aspects of the issues involved with supporting and maintaining wireless networks, as well as the possible benefits to attorneys who might use those networks, before setting up wireless networks specifically designated for attorney use. It will be hard to control the types of devices and associated operating systems

used by attorneys, and it will be even more difficult to monitor the applications and websites accessed through those devices. Requiring signed agreements by attorneys acknowledging the limits of their network usage, as the United States District Court for the Eastern District of Missouri does, can help limit problems but cannot eliminate them entirely. At best, doing so can limit issues of court liability in the event of attorney misuse of their wireless networks.

Attorney use of wireless access points highlights complex concerns regarding cybersecurity. With few exceptions (e.g., proceedings centered around special hearings) courts should emphasize the insecure nature of court-provided Wi-Fi access and place the burden of understanding and using such networks on the attorneys. (Ries, D. 2012.)

Figures, Tables, Addendums, References

United States District Court, Eastern District of Washington

<http://www.waed.uscourts.gov/wireless-network-acceptable-use-policy>

Superior Court of California, County of Riverside

http://www.riverside.courts.ca.gov/wirelessaccess_policy.pdf

Shelby County Circuit Court

<https://shelbycountyttn.gov/DocumentCenter/View/15295/Wireless-Instructions-2-6-2014?bidid=>

United States District Court, Northern District of California

<https://www.cand.uscourts.gov/wifi>

United States District Court, Eastern District of Missouri

<http://www.moed.uscourts.gov/sites/moed/files/documents/Attorney%20WiFi%20Agreement.pdf>

Ries, D. 2012. Cybersecurity for Attorneys: Understanding the Ethical Obligations.

https://www.americanbar.org/content/dam/aba/publications/law_practice_today/cyber-security-for-attorneys-understanding-the-ethical-obligations.pdf

What equipment should be provided in an attorney conference room?

Why is this important?

Depending on a court's business model, an attorney conference room could have multiple functions. These functions will necessarily influence the types of equipment used inside and will directly impact a court's budget, necessary support personnel, and infrastructure.

Research

It is challenging to establish consistent policies towards the types of equipment found in attorney conference rooms. An attorney conference room may have multiple functions depending on a given court's business model. The room may be used for remote communication with an incarcerated client; in that case, the room would require a telephone and video-conferencing equipment. The room might also be used for arbitration, in which case a large display with laptop connections would be particularly useful.

Sometimes federal and state bar associations will fund purchasing equipment for courts' attorney conference rooms, but they will generally leave support of the equipment up to the courts.

Recommendation

Proper recommendations in response to this issue must be rooted in the functions a given court wants an attorney conference room to perform. However, regardless of function, these rooms will impact budgetary requirements and necessary court support personnel and IT staff. It is recommended that a court publish guidelines for attorney conference room usage and support to its website and offer opportunities for attorneys to review the available technology in its attorney conference room before coming to court.