

Litigation Searching

In terms of litigation searching, a docket is a list of filings in a court or administrative proceeding. Also referred to as an "index," the docket will list the case number, judge, court, relief requested, nature of suit or claim or criminal charge alleged, litigants, and attorneys. For litigators, it is an important way to monitor the status of a case or to pinpoint and to download documents that may lend support to arguments they are developing for their own briefs and motions.

The utility of docket searching is not limited to litigators, however. Transactional attorneys, particularly corporate attorneys, are aware of the value of the information to be gleaned from the docket. Checking for judgments and case filings against a particular entity or key individual has become an important part of due diligence. A search done for background information in anticipation of a deal or transaction will thus usually include a check with all reasonably accessible case filing systems in the company's primary areas of business.

Searching for case filings in the federal courts has become relatively painless over the past five years with nothing more demanded of the researcher than access to the Internet. Almost all federal courts have become part of the PACER system. After registering for a password, the researcher can log into the docket computer of any court using PACER and run a search for the inexpensive price of \$.07 per page displayed.¹ Moreover, as a result of electronic filing or CM/ECF, it is becoming increasingly possible to download copies of filed documents (pleadings, orders, motions, etc.), saving the cost of a courthouse runner and copy charges levied by most clerks' offices. As with searches and dockets, it costs \$.07 per page to download a document, and the Federal Judicial Conference has set a cap for documents over 30 pages at \$2.10.

Over the years, commercial vendors began to develop databases that offered researchers

enhancements over the basic PACER database. When using PACER entailed setting up DOS-based software to dial into individual courts, these companies offered the researcher a more user-friendly gateway into the federal courts as a whole. CourtLink, itself once a dial-up system, evolved into a very sophisticated web-based application about the time it was purchased by Lexis-Nexis. Like most, if not all, commercial vendors that offer access to federal dockets and documents, CourtLink uses PACER as its information base.² Every night, CourtLink trawls the PACER system looking for new filings that it then adds to its database. The researcher can do not only the typical filing date, party, and case number query, but may also search by attorney, judge, multiple litigants and litigant name variations, subject matter, and even docket keyword. CourtLink also allows the user to check multiple jurisdictions with one search, although this same feature is available more inexpensively on PACER with the U.S. Party Case Index.³ The important thing to remember about pulling up a docket on CourtLink, however, is that you are not necessarily seeing the most current version of that docket. Once CourtLink adds the initial filing information to its database, the docket is updated only when a user searches for the case, downloads, and then updates it. One drawback of this process is that costs to do this quickly add up. The initial or "basic" search costs \$5 to \$7. The researcher is then charged another \$4 to view the docket and finally, another \$4 to have CourtLink dial into the court and bring it up to date. Unless pressed for time, many researchers will download the results list and then retrieve the docket or dockets from PACER.

To avoid repetition of a costly or time-consuming search, CourtLink allows the researcher to set up filings alerts for particular parties, attorneys, and judges. The subject matter alert is very helpful for practice groups that want to monitor filings in a particular area of interest. The search is set to run on a periodic basis determined by the researcher and when there are "hits," the researcher receives an email notification telling him or her to log on to retrieve results. The cost of the alert is based on number of hits on a given day; for example, the subject matter search costs 50 cents for every case retrieved. We have sometimes noted a delay of a few days in notification of a filing, but the alerts are generally timely.

In an effort to keep pace with these "value added" docket systems, West recently has made efforts to streamline WestDockets both in terms of price and search capabilities. Once technologically clunky and prohibitively expensive when compared to PACER and other vendors, WestDockets has dropped the cost of a federal court search to about \$7 and allows you to search for a case using "snippets" of information—I was, for example, recently successful in finding a case filed in the Eastern District of Michigan when I knew only the name of the judge and the attorney involved! WestDockets, like CourtLink, also charges a fee for viewing (\$5) and updating the docket (\$2). In some of the dockets databases, the researcher is able to choose between using a template or doing a free text search of filings documents (NOT dockets) more akin to a Westlaw Terms and Connectors search.

Of considerably more challenge to the researcher than federal litigation searching is

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the location of case filings in state courts. Commercial services have made the effort to include online access to various trial and appellate court systems across the country although to this author's knowledge no one has developed "the magic button" site where a user can sit down at a terminal and have statewide results comparable to those found in a federal search. The services are able to provide selective electronic access to various courts systems either by acting as a gateway to that court's system or by purchasing and loading filings records.

A second method of searching state court filings is familiar to Lexis and Westlaw public records users. Both providers have databases allowing for a "quick and dirty" search of case filings. As a rule, we caution attorneys that these are neither necessarily exhaustive nor timely. For example, the Westlaw Lawsuit Filings databases cover "civil lawsuit records from approximately 500 counties in 44 states," and coverage "varies by court." In Michigan, this means you may pick up filings from some of the more populous counties such as Wayne, Oakland, or Macomb, but it is no guarantee that you will find a lawsuit filed two days ago in Wayne or even two months ago in Lapeer. While this may seem like belaboring the obvious, it is so easy to be lulled by the power of the Internet into thinking that everything is readily available, it is worth pointing out that a second look at the source's scope is necessary as confirmation of exactly what information you are getting.

State courts around the country are also increasingly offering case filing and docket information to remote users at no charge. In Michigan, researchers can keep abreast of courts "going live" by using the State's One Court of Justice website, <http://courts.michigan.gov>, (Select Trial Courts then Local Trial Court Links) as a starting point.⁴ Oakland County Circuit Court is on the Internet, but is available by subscription only.⁵ Remote access to Wayne County Circuit Court's system is limited at present to subscribers who purchase special communications software, although probate filings can be accessed on the web at <http://www.probatewayneco.org/>.⁶

Another area of potential interest to those checking into a corporate background is agency actions and decisions. It is entirely

possible, in this age of regulation, that the subject has taken a swim in the "alphabet soup," coming in close and not particularly friendly contact with the SEC, the IRS, the FTC, or any of the other myriad federal and state agencies having jurisdiction over its activities. Administrative decisions and rulings are available from a number of commercial services, while newer materials are becoming a regular feature of agency websites. There are, however, apparently no comprehensive sources for determining if the company is involved in an *open* agency proceeding or investigation. The researcher may thus want to consider some of the following sources as a starting point:

- News searches on Westlaw, Lexis, or Google.
- Form 10K filings for public companies: Item 3 of the 10K is devoted to a description of "legal proceedings" in which the company is involved, including actions filed with or being investigated by agencies. Filings are available at no cost from the U.S. Securities and Exchange Commission website at www.sec.gov. Fee-based services like Global Securities Information's Livedgar, www.gsonline.com, allow free text searching of US EDGAR filings.
- U.S. Tax Court: <http://www.ustaxcourt.gov>, Docket Inquiries tab. Searches can be done by individual name or by "corporate keyword."
- Individual agency websites for proceedings information or for publicly-available news on investigations the agency is conducting.
- Information about agency proceedings or complaints received concerning a particular individual or company is often only available by means of a FOIA request. Agency websites sometimes explain to researchers how to make a FOIA request. There is also FOIA contact information for a number of federal agencies at <http://www.usdoj.gov/04foia/foiacontacts.htm>. ♦

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FOOTNOTES

1. As of January 2004, PACER now permits "instant registration" using a credit card to which all future charges will be billed. The "traditional way" involves registering online, after which a password is mailed to the applicant after about 5 business days. For details, go to the PACER website at <http://pacer.psc.uscourts.gov>.
2. Another well-known system is Court Express, see <http://www.courtexpress.com> for information.
3. Access the Index through <http://pacer.psc.uscourts.gov>. The Index also permits searching by nature of suit and allows you to search all courts—civil, criminal, bankruptcy, and appellate—in one search while CourtLink requires a separate search for each court system.
4. Another "one-stop" site for checking the availability of electronic access to a particular court can be found through the legal research site LLRX.com, <http://www.llrx.com/>, *Court Rules, Forms, and Dockets*, although as of this writing, I found the Michigan Trial Courts link to be more current for this state. For other states, we often use FindLaw, <http://www.findlaw.com>, as a jumping off point for locating a court's website. A subscription website pulling together all searchable courts and agencies in a given jurisdiction is Legal Dockets Online, <http://www.LegalDockets.com>
5. To subscribe to the Oakland County Circuit Court's remote access system (includes civil and criminal circuit court filings), send a letter with your contact information to: Office of G. William Caddell, Oakland County Clerk, 1200 N. Telegraph Road, Pontiac, MI 48341, Attention: Pam. Court staff will then contact the applicant with information on cost and technical requirements.
6. Inquiries about remote access to the Court's caseflow tracking system (CTS) may be directed to: George Walker, Third Judicial Circuit Court of Michigan, Information Technology Service Bureau, 645 Griswold, Suite 750, Detroit, MI 48226, Telephone: 313-224-5051.