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**Public Works for a Better Government**

March 2, 2015

Honorable Mike Honda  
U.S. House of Representatives  
1713 Longworth HOB  
Washington, D.C. 20515

Dear Congressman Honda:

I am writing to you today in regard to your work as a member of the Commerce, Justice and Science Subcommittee of the Committee on Appropriations. As you consider your FY2016 Budget, I hope you will spend a few minutes considering the fee structure imposed by the Administrative Office of the U.S. Courts for access to the PACER system, which provides access to the dockets, opinions, briefs, and orders that are the materials of our federal system of justice.

The PACER fee structure is based a cost of \$0.10/page, with the only nod to free access being a \$15/quarter floor below which fees are not charged (but a valid credit card is required for registration), as well as a complicated and very restricted fee exemption application procedure. The \$15/quarter floor purchases a handful of documents and is not at all useful for a journalist, student, or citizen. For more intensive uses, such as the research I have conducted in the past to audit the courts for privacy violations, the fee structure is totally prohibitive.

The rationale advanced by the Administrative Office for this expensive and restrictive access to the working of our courts is that they were ordered to do so by Congress. They cite the Judiciary Appropriations Act of 1992, Public Law 102-140 (105 Stat. 782), which states that the Judiciary Conference may “prescribe reasonable fees” but then goes on to add “these fees may distinguish between classes of persons, and shall provide for exempting persons or classes of persons from the fees in order to avoid unreasonable burdens and to promote public access to such information.”

I do not believe the Administrative Office is in compliance with the requirements of the Appropriations Act, and is certainly not in compliance with the requirements of the E-Government Act of 2002. Senate Report 107-174 on that act states “the Committee intends to encourage the Judicial Conference to move from a fee structure in which electronic docketing systems are supported primarily by user fees to a fee structure in which this information is freely available to the greatest extent possible.”

There are two possible alternatives to the current fee structure that the Committee on Appropriations may wish to consider.

First, even if fees are to be charged for access to PACER, the current system is unduly restrictive. I am not convinced that if citizens were allowed to use the system at no charge, but fees were imposed for commercial bulk users (such as legal information retailers and law firms), that the Administrative Office would see any drop in revenue. Nor am I convinced that the Administrative Office has even considered such a possibility or conducted market research to determine the different classes of users. The Administrative Office does not report on PACER financials in any meaningful fashion, so it is unclear where the money comes from and where it goes.

My recommendation on this first alternative is that the Administrative Office be asked to submit a report discussing alternative fee structures under the current system and the feasibility of allowing significantly greater public and noncommercial access. As part of that report, the Administrative Office should provide much more comprehensive information about sources and uses of funds.

Secondly, PACER revenues are significant, but compared to revenues from filing fees, they are are small. It would not be very difficult to provide a modest increase in filing fees (with appropriate allowances for small practitioners, pro se filers, and nonprofit and public interest legal defense services) and simply eliminate charging for PACER.

This alternative is a much fairer system, putting the costs on those that are using our justice system, not on those that wish to monitor the operations of our courts. Filing fees are a drop in the bucket compared to the other costs of litigation, such as attorney time and expenses and this would not be a significant burden.

I would be pleased to discuss these suggestions further with you or with other members or staff of the Subcommittee. I've written about some of these topics in my recent publication "In Re: PACER" which you may find online at:

<https://Yo.YourHonor.Org>

Thanks for considering these suggestions, and it would be a pleasure to see you again the next time I'm in Washington, D.C.

With best regards,



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