

Judicial Information Systems Council (JIFFY)
Public Forum Minutes on the document entitled:
Report and Recommendations of the Public Access Subcommittee to the Judicial Information
Systems Council, an Information Technology Advisory Board to the New Mexico Supreme
Court on Public Access to Court Case Records Via the Internet
State Bar of New Mexico
Thursday, February 25, 2010
11:11 a.m. - 12:04 p.m.

JIFFY Voting Members present:

Judge Michael Bustamante, Chair
Judge Karen Mitchell, Vice Chair
Judge Richard Knowles
Judge Clay Campbell
Judge Camille Martinez-Olguin
Judge Duane Castleberry
Judge Alan Kirk
Juanita Duran
Jan Perry
Robert Mead
Dennis Jontz
Brian Gilmore

JIFFY Voting Members absent:

Helen Miller

JIFFY Non-Voting Members present:

Justice Petra Jimenez Maes
Arthur Pepin
Steve Prisoc

JIFFY Non-Voting Members absent:

Pauline Toevs

Public Access Subcommittee Members present:

Judge Karen Mitchell, Chair
Robert Mead
Arthur Pepin
Dana Cox
Steve Prisoc

Public Access Subcommittee Members absent:

Judge Mark Basham
Judge Steven Bell
Judge Steve Lee
Kathy Gallegos
Paula Chacon

Members of the Public present:

Ian Bezpalko, Esq.
Sarah Welsh
Kip Purcell, Esq.

JID Staff present:

Grace Catanach

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 11:11 a.m.

I. Approval of Agenda. The agenda was accepted as presented. Judge Mitchell explained that JIFFY arranged today's forum to hear public comment on the document entitled *Report and Recommendations of the Public Access Subcommittee to the Judicial Information Systems Council, an Information Technology Advisory Board to the New Mexico Supreme Court on*

Public Access to Court Case Records Via the Internet (PAS document), which was provided to all in attendance today. She noted that JIFFY reviewed the document last month and added a few comments relative to conditional discharge cases remaining available on the Judiciary website.

II. Introduction to the Public Access Subcommittee Document. Judge Mitchell spoke of the following points:

- The Public Access Subcommittee (PAS) was formed on August 16, 2007.
- PAS met monthly and performed extensive research.
- PAS was tasked with focusing on access to court records via the Internet.
- The Joint Sealing Rules Committee drafted a sealing rule.
- PAS investigated the issues relative to Internet access and drafted the document that would be considered by JIFFY and then by the New Mexico Supreme Court.
- Judge Mitchell referred to the PAS document and read through each of the PAS recommendations, listed on page 3. She noted that each recommendation included an argument in support and an argument in opposition.
- PAS membership was very active and performed significant work on the PAS document. She recognized Dana Cox, Robert Mead, Steve Prisoc and Dennis Jontz for their hard work on the PAS document. She also recognized LaurieAnn Trujillo for her minute-taking and proofreading contributions.
- Judge Mitchell referred to the document entitled *Guidelines for Public Comment on the Public Access Subcommittee's Document*, which was distributed. She asked members of the public to sign the attendance sheet, to step up to the podium when commenting, to state their name and the organization they represent, and to make their comments brief and to the point to allow others the opportunity to comment.

III. Public Comment. Judge Mitchell opened up the forum to public comment. She asked if anyone had general comments to make. No comments were offered.

Judge Mitchell recommended that the forum address the PAS recommendations individually, as follows:

- **Recommendation A:** *In both civil and criminal cases, the responsibility for the content of pleadings and for ensuring that any confidential, identifying or other such sensitive or private information is protected should lie with the litigants who come before the court, with the court's policy to further remove or redact personal identifiers as feasible, particularly if such records are to be made electronically available to the public via the Internet, pages 20-22.* No comments were offered relative to this PAS recommendation.
- **Recommendation B:** *The Supreme Court should adopt the policy that records of closed criminal cases be removed from the court Internet record where the charges were dismissed, nolle'd, acquitted, or vacated, but with the exception that records of dismissals subsequent to a deferred sentence or conditional discharge not be removed from court Internet records, pages 24-27.* The following comments were offered:
 - Sarah Welsh, Executive Director of the New Mexico Foundation for Open

Government (NMFOG). Ms. Welsh thanked PAS for the opportunity to participate in the process. She supported the *Argument in Opposition to PAS's Recommendation B*, contained on page 27.

- Kip Purcell, Esq., President of NMFOG. Mr. Purcell echoed Ms. Welsh's comment on the opportunity to participate in the process and added that he found the process transparent. He believed that the *Argument in Opposition to PAS's Recommendation B*, contained on page 27, captured the NMFOG's view relative to this recommendation. He voiced his concern about PAS and JIFFY dealing with these issues and noted that these issues should be addressed by the Legislature. The Judiciary does not prohibit employers/landlords from asking applicants/prospective tenants to provide information, so it is impossible, except for the most resourceful employers/landlords, to obtain information. Job applicants/prospective tenants are provided a license to lie. It is not fair to the public, particularly the small business owner, to uncover the record. A criminal trial is a public event that is funded by the public and the result of the trial should be public. It is a step backward to restrict public access. Mr. Purcell encouraged the PAS to reconsider this recommendation.
- Judge Mitchell recognized that if the PAS had re-voted on the issues, they may have voted differently; however, PAS declined to re-vote so as not to prolong the process and so they could provide the document to JIFFY and to the New Mexico Supreme Court.
- Mr. Purcell recognized the rationale of the recommendation as access to closed criminal cases could be stigmatizing to an individual. However, he mentioned other events that are stigmatizing but remain public, such as malpractice lawsuits. He asked the PAS to err on the side of providing more information.
- **Recommendation C:** *PAS recommends that the cases on Case Lookup should be those for which the physical files are being retained by the courts in accordance with the retention schedules as established by the New Mexico Administrative Code, pages 28-30.* The following comments were offered:
 - Judge Mitchell noted that the PAS encouraged that the retention schedules for the Judiciary be reviewed because they had not been vetted in quite some time.
 - Dana Cox, Deputy General Council for the Bernalillo County Metropolitan Court and PAS Member. She supported the *Argument in Opposition to PAS's Recommendation C*, contained on page 30, because space limitations for storage and retention of paper case files should not dictate the electronic availability of court case file information; and, regardless of whether the paper case file continues to exist, case information should be electronically accessible to the public.
 - Robert Mead, Supreme Court Law Librarian, JIFFY Member, PAS Member and Public Records Commissioner. State Records and Archives is out of space. It places an economic burden on the courts to retain records. He noted that the Judiciary's Public Records Commission last met in the mid-1990s. He pointed out that courts of limited jurisdiction means records are not retained permanently.

- He encouraged JIFFY to give the majority position serious consideration.
- Ms. Welsh. The NMFOG supported the *Argument in Opposition to PAS's Recommendation C*, contained on page 30.
- **Recommendation D:** *PAS recommends the continued application of the policy set forth "In the Matter of the Approval of the Digital Recording Policy and Bulk Records Policy for the Judicial Branch of Government," Supreme Court Order No. 04-8500, entered on October 14, 2004, contained on page 33. The following comments were offered:*
 - Judge Mitchell advised that the PAS did not address electronic filing in their document because they felt it was best left to be addressed by the JIFFY E-Filing Subcommittee.
 - Dennis Jontz, Esq., State Bar of New Mexico. He noted the new members on JIFFY and spoke of his experiences related to upholding the twenty-three year tradition of the State Bar of New Mexico to make access to court records available electronically. Attorneys rely and trust bulk resellers, such as Lexis Nexis. He did not know if a statutory change would be required to allow for bulk sales as the Motor Vehicle Department (MVD) has been selling databases for years. MVD performs regular audits of their resellers to ensure they are in compliance. When not in compliance, MVD revokes that company's access. Mr. Jontz would like to see the Supreme Court's support of bulk sales and then the issue of whether a statutory change is necessary could be addressed later. He referred to Appendix VI, contained on pages 51-52, which represented his rewrite of the current policy that would allow resale to companies such as Lexis Nexis.
 - Justice Petra Jimenez Maes, New Mexico Supreme Court. The New Mexico Compilation Commission retains their copyrights on annotations.
 - Mr. Jontz commented that there should not be copyright issues relative to public records. He indicated that resellers are interested in raw data, not annotations.
 - Mr. Mead advised that he switched positions on this recommendation and is now in support of Mr. Jontz's proposal. He noted his concern on fly-by-night publishers not updating data, but noted that the Judiciary could create a system to manage the content and quality. The New Mexico Compilation Commission would not be interested in large public access and they would defend their copyrights on annotations. His last point was that the New Mexico Compilation Commission is not in the market of resale.
 - Ms. Welsh noted that the NMFOG supported the *Argument in Opposition to Continued Application of Current Bulk Records Policy*, contained on pages 33-35.

Judge Mitchell mentioned that the PAS reviewed the State of New York's and the State of Minnesota's documents and used their templates to draft the PAS document. She referred to the document entitled *Online Court "Case Lookup" Systems, By State*, which was distributed. Mr. Prisoc constructed this document. It outlined how other states are handling public access via the Internet. Judge Mitchell pointed out that New Mexico is one of the few states in the nation that provides free public access. Mr. Prisoc added that more states over time are setting up profit sites to charge for information.

Action Item: Per Judge Mitchell, JIFFY to consider incorporating the document entitled “Online Court “Case Lookup” Systems, By State” into the PAS document.

IV. Adjourn. No further comments were offered, so Judge Michael Bustamante adjourned today’s forum at 12:04 p.m.

Final Minutes Approved by Judge Mitchell on March 9, 2010.