

**Minutes of the 3rd
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, April 15, 2008
1:01-3:22 p.m.**

Voting Members present:

Judge Karen Mitchell, Chair
Judge Mark A. Basham
Judge Steve Lee
Judge Steven Bell (*via phone*)
Arthur Pepin
Robert Mead
Steve Prisoc
Dana Cox
Dennis Jontz (*via phone*)
Geri Lynn Sanchez (*via phone*)

Voting Members absent:

Veronica Maestas

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 1:01 p.m. A quorum was established.

I. Welcome and approval of agenda. Judge Mitchell welcomed the members and asked for a motion to approve today’s agenda.

Dana Cox moved to approve today’s meeting agenda. Judge Mark Basham seconded. No opposition noted. No further discussion. Motion carried.

II. Brief demonstration and discussion on the Judiciary’s Case Lookup Website. Judge Mitchell directed the members attending by telephone to get on the internet and to go to www.nmcourts.com.

Steve Prisoc explained the differences between the inside Judiciary website (access given to Judiciary employees), and the outside Judiciary website (for the public). He demonstrated how the outside Judiciary website Case Lookup application worked. Judge Basham spoke of a case that he was unable to view using the outside Judiciary Case Lookup application.

Action Item: Judge Basham will provide Mr. Prisoc with the complete information regarding the case he has problems viewing on the public Case Lookup application, so Mr. Prisoc can investigate the problem.

There was discussion relative to the federal courts' website and process for filing and viewing electronic records; the problems that the federal courts have experienced with electronic filing; state courts eventually allowing access to view pleadings online; balancing access among the public, court personnel and attorneys; storage issues; Judge Basham's court currently scanning past years' pleadings; the law library allowing a trial for free PACER for the public use; disclaimer language on the current outside Judiciary website; blocking certain websites; for profit public record searches; answering the "should we" questions; and JID removing all references to juvenile and domestic violence cases on the outside Judiciary, per statute.

Robert Mead gave a brief demonstration of one of the fee-based, for profit public records searches. Website www.westlaw.com.

Action Item: Mr. Mead advised that he would email an Adobe version of what he demonstrated to the members who attended via telephone.

III. Comparison of the Minnesota and New York Public Access Recommendations. Mr. Mead provided the members with the document he drafted entitled, "Draft-Comparison Table for MN and NY Access Rules." PAS went through the issues outlined in the table, and members volunteered to draft a one-page executive summary that supported a position on some of the issues that they would bring back next month to further discuss.

Action Item: With respect to the issue, "Should pre-conviction records be publicly available on the internet," Judge Basham will draft a summary to support New York's "yes" position; and Mr. Prisoc will draft a summary to support Minnesota's "no" position.

Action Item: Ms. Cox will draft a summary outlining the documents that should be sealed by the courts, and why; and Mr. Mead will draft a counter argument relative to the following issues:

- ***Are there categories of information that should not be included in otherwise unsealed, public court records?***
- ***Are there categories of cases that are currently sealed and will continue to be sealed, regardless of format?***
- ***Can courts seal records from digital publication on their own motion or a motion of the parties?***
- ***What types of court files are categorically sealed as a matter of law?***

Action Item: With respect to the issue, "Who is responsible for ensuring that prohibited information is kept out of the court records," Judge Mitchell will draft a summary to support New York's position that the parties are responsible; and Judge Steve Lee will draft a summary to support the position that the courts are responsible for redacting prohibited information from court records.

Action Item: With respect to the issue, “Should self-represented litigants be held to the same standards as attorneys for adhering to non-disclosure rules,” Judge Mitchell will draft a summary to support New York’s position on this issue; and Judge Lee will draft a summary that supports the adverse position.

Action Item: Dennis Jontz will draft a summary to support Minnesota’s position of “yes” on the issue, “Should bulk downloading of records by private companies be allowed?” Judge Basham will draft a summary supporting the “no” position on this issue.

Action Item: With respect to the issue “Is there a strong legal presumption that court records are public,” Judge Steven Bell will draft a summary to support that court records are restricted to bar members only. Mr. Mead will draft a summary to support the position that everyone should have access to court records. Arthur Pepin will draft a summary to support the position that only court personnel should have access to court records. Judge Lee will categorize the records that should be made digital.

IV. Overview of the New Mexico Public Records Act

Mr. Pepin referred to the handout entitled, “*Inspection of Public Records Act (IPRA), Summary for JIFFY’s Public Access Subcommittee (PAS), Prepared by Artie Pepin, April 15, 2008.*” He also distributed the document entitled, “*Inspection of Public Records Act Compliance Guide, Provided by the Office of the New Mexico Attorney General Gary K. King.*” The Judiciary should serve the public to the extent that it can without compromising the privacy interest that IPRA is intended to protect. Mr. Pepin summarized how he interpreted the Act. He asked that the PAS pay special attention to the following exceptions: statutory limitation restriction on state databases for commercial, political or solicitation purposes; juvenile records; social records that relate to parolees and probationers; and records in the courts’ possession relating to a family in need of services. He noted that there is a possibility that Judiciary employees may not be well-versed on their obligations under the IPRA, or of the restrictions in the IPRA as well as the restrictions in the statutes. Mr. Prisoc spoke of nominal fees that are being charged to cover the database administrator’s time, but not administrative time. There was discussion about Florida compiling anything for a fee. Mr. Pepin urged all court personnel to respond to requests.

V. Discussion on the ABA’s Pending Recommendation to Limit Access to Criminal Records. Mr. Prisoc referred to the handouts entitled:

- *American Bar Association Recommendation* relative to criminal records, which has not been approved by the American Bar Association House of Delegates (“ABA House”), but was submitted for consideration by the ABA House in August 2007.
- *Plans would limit access to some court records*, by Dan Benson of the Milwaukee Journal Sentinel, August 6, 2007.
- *ABA withdraws resolution seeking to spur federal, state and local governments into cutting off access to all criminal records*, by Loren Cochran of The Reporters Committee for Freedom of the Press, November 1, 2007.
- *A Better Way to Sanction Bad Behavior*, by Stephen A. Saltzburg, article published in Criminal Justice, Volume 22, Number 3, Fall 2007 by the American Bar Association.

VI. Follow-up Discussion on Request from the Albuquerque Journal for a Sealed Case Report. Mr. Pepin reported that he met with his general counsel and Tom Cole of the Albuquerque Journal relative to Mr. Cole's formal IPRA written request for sealed cases in New Mexico over a five year period from January 2003 through January 2008. He explained that this is one of those instances where the Judiciary does not keep such records, so Mr. Cole's request could be denied. However, because Mr. Pepin could not offer that Mr. Cole go physically to the courts to obtain such information because sealed cases are not accessible, he intended to provide Mr. Cole with a list naming the parties, case numbers and judge. He noted that he would caution Mr. Cole that he could not distinguish very readily whether the sealing order was lifted, if it applied in a limited manner, or if it expired; however, he would advise him whether an order to seal was entered in a case, and then it would be up to Mr. Cole to go to the court that entered the order if he wanted to pursue it any further. Mr. Pepin recommended that the PAS develop a procedure for sealing cases, so there is more guidance for the courts.

Mr. Mead moved that PAS recommend that JIFFY authorize Mr. Pepin to take the course of action that he outlined by providing Mr. Cole with the party name, judge name, date and case number. Judge Lee seconded. Judge Mitchell asked for an amendment that the information exclude juvenile and domestic violence case information. No further discussion. No opposition noted. Motion carried.

VII. The next meeting will be held on Tuesday, May 13, 2008, at 1:00 p.m. at JID.

Judge Mitchell adjourned the meeting at 3:22 p.m.

Final Minutes approved by Judge Mitchell on May 1, 2008.