

**Minutes of the 5th
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, June 17, 2008
1:20 - 3:26 p.m.**

Voting Members present:

Judge Karen Mitchell, Chair
Judge Mark A. Basham
Judge Steve Lee
Dana Cox
Arthur W. Pepin
Steve Prisoc
Geri Lynn Sanchez (*via phone*)
Paula Chacon

Voting Members absent:

Judge Steven Bell
Dennis Jontz
Robert Mead

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 1:20 p.m. and established a quorum.

I. Approval of Agenda

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

II. Welcome Paula Chacon

Judge Mitchell welcomed Paula Chacon to the PAS. Ms. Chacon said she was honored to be selected to serve on the PAS. Ms. Chacon replaced Veronica Maestas on the PAS.

III. Discussion on “*Is there a strong legal presumption that court records are public?*”

Arthur Pepin explained his position paper that only court personnel should have unfiltered electronic access to court records. Judge Mitchell explained Judge Steven Bell’s position paper that only attorneys should have electronic access to court records as long as the paper files are available for inspection by others. Robert Mead’s position paper noted that once a person files a lawsuit, his/her life becomes open to public review.

There was discussion relative to:

- Retention schedule for records
- Bulk downloading
- Pre-conviction court records
- Written requests allow court personnel the opportunity to review the court records prior

to release of information

- Recent request that Mr. Pepin denied relative to foreclosure information
- The business of the courts
- Trends of lawsuits
- Risk of public exposure once a lawsuit is filed
- The issues surrounding people who are pulled into a court case involuntarily (witnesses, etc.)
- A bill that was introduced at a previous legislative session that would have required all government entities to provide complete, unfettered access to entire databases; and the statutory obligations
- Florida case (*In re Amendments to Florida Rule of Judicial Administration 2.420 Sealing of Court Records and Dockets*, No. SC06-2136).
- Arizona rule
- Other states utilizing value added Internet public access for a fee
- Court personnel workload issues
- The public's reliance on the Judiciary's Case Look Up application
- Retracting information slowly and incrementally so as to avoid great disruption for court personnel and the public
- Process for sealing records

Judge Mitchell asked that further discussion on this issue be tabled until next month to provide PAS more time to review the documentation.

IV. Vote on issue, “*Who is responsible for ensuring that prohibited information is kept out of the court records?*” Judge Mitchell explained her position that the parties that submit the documents are responsible for any redaction. Judge Lee explained his position that the courts should be responsible for redaction because the public may not be aware of information that should not be made public.

There was discussion relative to:

- Redaction software
- Liability issues
- Requiring parties/attorneys in civil cases to perform pre-redaction prior to filing documents with the courts; and court personnel serving as a safety net by reviewing filed documents to ensure that sensitive information is redacted
- Statutory obligations requiring court personnel to protect certain sensitive information
- Pre-conviction records
- Inspection of Public Records Act (“IPRA”)
- Involving law enforcement and district attorneys to help facilitate the protection of sensitive information
- Adopting an initial cover sheet that would contain all of the sensitive information on a case, or placing all sensitive information in a clearly labeled manila envelope that would be pulled from the file prior to the file being released for review

- Keeping all sensitive information on one side of a case file so it is clear what information is protected
- Providing the public with personal identifiers, so they are able to distinguish between two people of the same name in criminal cases, or requiring the public to contact the courts with the date of birth and/or social security number of a person, so court personnel can verify if the person is calling about the right person
- The statute that requires judges to perform background checks to find out how many DWIs a convicted defendant has, so the judge can sentence the defendant accordingly
- Concerns about how much information is provided to the public at the clerk's office
- Setting up the system, or training court clerks, to black out certain fields that contain sensitive information
- SID number being arrest-related only and not person-specific
- Department of Public Safety serving as the identification bureau

Judge Mitchell noted that from a criminal standpoint, she did not believe that the PAS was ready to vote. However, she entertained a motion relative to the civil standpoint.

Judge Basham moved that with respect to civil cases only, the litigants and/or those filing documents with the courts, are primarily responsible for ensuring that sensitive information is kept out of the court records. Court personnel will serve as a second tier to remove sensitive information. Ms. Cox asked for an amendment that the word “primarily” be removed. Judge Basham accepted the amendment. No further discussion. No opposition noted. Motion carried.

V. Discussion on draft sealing rule. Ms. Cox explained her position in favor of sealing and protecting sensitive information, and what is confidential; and Mr. Mead's position to the adversary. She referred to the document she distributed entitled, *Draft Sealing Rule*. She explained how she constructed the draft rule.

There was discussion on:

- Non-party being able to request notice in the event that someone moves to vacate a sealing order
- The person whose identity is sealed having a right to be noticed
- Non-party who wants a record unsealed requesting information under IPRA
- Adding cross reference to IPRA by which a non-party would seek access to sealed records
- An IPRA request Mr. Pepin received from Tom Cole relating to sealed cases
- Name changes for protection and filing cases under an assumed identity
- Sealing cases should be a rare event
- Too many cases being sealed because there are not standards in place
- Creating a structure where one would have to go before a judge to challenge a sealing order

Action Item: Ms. Cox will incorporate the suggestions/changes discussed today to the “Draft Sealing Order” in redline, and bring it back to PAS next month for further discussion.

Action Item: Mr. Pepin will compare the “Draft Sealing Order” with IPRA to ensure there are no conflicts.

VI. Discussion and Review / Updates from May Meeting

Judge Mitchell briefly spoke about the Arizona rule and the Florida case that were distributed last month. She voiced support for the value added and the associated fees.

VII. Future Meetings

The next meeting will be held on Tuesday, July 15, 2008 at 1:00 p.m. at JID.

VIII. Adjourn

Judge Basham moved to adjourn today’s meeting. Judge Lee seconded. No further discussion. No opposition noted. Motion carried. Judge Mitchell adjourned the meeting at 3:26 p.m.

Final minutes approved by Judge Mitchell on July 7, 2008