

**Minutes of the 6th
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, August 19, 2008
1:18-3:49 p.m.**

Voting Members present:

Judge Karen Mitchell, Chair
Judge Mark A. Basham
Judge Steve Lee
Dana Cox
Robert Mead
Dennis Jontz (*via telephone*)
Arthur W. Pepin
Steve Prisoc

Guests present:

Joey Moya

Voting Members absent:

Judge Steven Bell
Geri Lynn Sanchez
Paula Chacon

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 1:18 p.m. and established a quorum.

I. Approval of Agenda

Judge Mitchell welcomed Joey Moya, Senior Staff Attorney of the Supreme Court, who attended today’s meeting to share information relative to sealing issues.

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

II. Sealing Issues

Discussion on request received for additional sealed case information that was denied by JIFFY. Judge Mitchell spoke of a request wherein a reporter requested sealed case information that was provided to him. The reporter returned and requested additional sealed case information, which JIFFY recently denied. Steve Prisoc spoke of how this reporter then went to some of the courts and misrepresented JIFFY’s position. Mr. Prisoc informed the Court Administrators’ Council (“CAC”) of JIFFY’s position. Judge Mitchell added that courts need to be advised when JIFFY makes decisions such as this.

Discussion on sealing committee established by Supreme Court. Mr. Moya thanked PAS for inviting him. Mr. Moya assists the Supreme Court and all of its various rules committees with requested rule changes. He explained the processes involved and reported that

the Supreme Court formed a joint committee comprised of representatives from all of the various rules committees to draft a sealing rule to be submitted to the Supreme Court within six months. The joint committee would be responsible for evaluating the input received during the comment period and making a final recommendation to the Supreme Court. Judge Mitchell and Robert Mead will represent the PAS on the joint committee. The sealing rule would replace existing sealing rules or the joint committee may consider recommending multiple rules to cover the different courts.

Revised draft sealing rule. Dana Cox explained the research she conducted and the thought process she used when drafting the sealing rule. Judge Mitchell noted that the Supreme Court joint committee would resume work on the sealing rule, but the PAS would continue to address internet public access to court records. There was discussion relative to:

- Concerns relative the current sealing processes.
- Sealing of cases in courts of limited jurisdiction versus what is done in the district courts.

III. Discussion on “*Is there a strong legal presumption that court records are public?*” Mr. Mead explained his position on this issue that court records should be open to the public because the courts are a public entity. Arthur Pepin agreed that court records are public but he did not believe that court records should be available through unfiltered internet access. He believed this contributed to an erosion of privacy to which the courts should not be a voluntary party. There was discussion on:

- Access to physical hard copy court records versus what is available online.
- Fiscal issues.
- Risks related to misuse of information by resellers when courts publish records electronically.
- The effect on resellers when courts publish records online for free.
- Resellers harvesting court records.
- Mr. Prisoc spoke of the article he distributed entitled, “Keeping Your Enemies Close,” by Gary Rivlin, New York Times, November 12, 2006.
- Other state agencies that sell data to resellers.
- At present, sensitive data is released if it is part of the court file.
- Imaging court files and using redaction software to prevent releasing sensitive data.
- State of New York’s and State of Minnesota’s comprehensive internet access policies.
- Inspection of Public Records Act (“IPRA”).
- Legislation
- Practical obscurity.
- The possibility of data being mined from the Judiciary and what JID is doing on a daily basis to prevent that.
- Mr. Prisoc referred to a second article he handed out entitled, “If You Run a Red Light, Will Everyone Know?” by Brad Stone, New York Times, August 3, 2008.
- JID does not have currently have statutory authority to charge for internet access to court records.
- Gatekeeper function.
- Supreme Court Case 489 U.S. 749, U.S. Department of Justice v. Reporters Committee.
- Historical records that may need to be redacted.

- Unfair burden that could be placed on court clerks to make judgments on what should and should not be redacted.
- Ideas on how to reword the question, “*Is there a strong legal presumption that court records are public?*”

Action Item: Per Judge Mitchell, PAS will address the issue of archiving historical court records.

Judge Mark Basham moved that there is a strong legal presumption that written court case files are public. Ms. Cox seconded but asked that the wording of the motion be changed to: there is a strong legal presumption that the original, hard copy of court case files are public, subject to statutory exceptions. No opposition noted. No further discussion. Motion carried.

Judge Mitchell then asked PAS if the Judiciary should treat the hard copy court record the same as an electronic record. There was a lengthy discussion on the following points:

- Electronic access versus access to hard copy court files.
- IPRA requests submitted through email.
- Courts going electronic to make their business more efficient rather than making information more accessible to the public to obtain records.
- Federal courts process- PACER.
- Information that is currently displayed on Case Lookup.
- Case types that should be displayed on Case Lookup.
- Different levels of access.
- Legislation that required the Judiciary to design a database for public access.
- Legislation required to charge for access which could then be used to fund a system similar to federal courts.

Action Item: Several attempts were made to phrase a motion to address whether or not the Judiciary should treat hard copy case files the same as electronic records; however, due Judge Mitchell’s concern that PAS members may not be clear on what they were to vote on, she asked Mr. Pepin, Dennis Jontz and Mr. Prisoc to work together to draft the motion language relative to this matter.

IV. Discussion on “Criminal Cases: Who is responsible for ensuring that prohibited information is kept out of the court record?” Judge Mitchell noted that a decision on civil cases was voted on by PAS in June that the parties are responsible for ensuring that prohibited information is kept out of the court record. She tabled the discussion relative to criminal cases because there are points that PAS needed to take into consideration, such as redaction that the Judiciary would need to do with respect to sensitive case information.

V. Updates from June Meeting. Judge Mitchell noted that updates had already been addressed in earlier discussions.

VI. Discussion how PAS will publish meeting materials. PAS members agreed to continue publishing the PAS meeting materials the way they have been published up to this point—documents attached to meeting agendas and the meeting materials attached to the approved meeting minutes.

VII. Future Meetings. Judge Mitchell noted that the next PAS meeting would be held on Tuesday, September 16, 2008 at 1:00 p.m. at JID. Mr. Mead noted that he would be out of town but would try to attend the meeting via telephone conference.

VIII. Adjourn. Judge Mitchell adjourned today's meeting at 3:49 p.m.

Final Minutes Approved by Judge Mitchell on September 10, 2008.