

**Minutes of the 7th
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, September 16, 2008
1:13-3:14 p.m.**

Voting Members present:

Judge Karen Mitchell, Chair
Judge Steve Lee
Dana Cox (*via telephone*)
Dennis Jontz (*via telephone*)
Steve Prisoc
Paula Chacon

Voting Members absent:

Judge Steven Bell
Judge Mark Basham
Robert Mead
Arthur Pepin
Geri Lynn Sanchez

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 1:13 p.m. and established a quorum.

I. Approval of Agenda. The agenda was accepted as presented.

II. Vote on “*Should the Judiciary treat hard copy case files the same as electronic records?*”

Judge Mitchell noted that this was the original question that the State of Minnesota and the State of New York addressed. Steve Prisoc explained his email of August 21, 2008 addressed to Dennis Jontz and Arthur Pepin, which he distributed. It contained the following proposed motion language that was discussed last month relative to this question: *1. Should complete, unfiltered, online access to court records be provided to any and all anonymous online requesters, excluding sealed cases and cases restricted by statute? 2. Members of the public should not have access to electronic court records [to the extent they exist] in the same way [or, to the same extent] that they now have access to paper records at the courthouse [or, those identical records at the courthouse].*

Mr. Jontz referred to his proposed language, which was distributed: *Court records should be provided to the public to the same extent that paper court records are available to the public. This policy does not impose upon the courts a requirement to expend money to provide on-line access, but if on-line access is feasible, then the restrictions should be no different than paper.*

Some court paper records access is restricted, and only by determining who the requestor is can they be properly released. In such situations, those records should not be released electronically until and unless the requestor can be identified as a proper user." He explained the following points:

- The first sentence served as the essence of what he believed the motion language should be.
- The language that Mr. Prisoc proposed was unclear to someone that had not involved in the process from day one.
- Whether there should be distinction in the release of records between paper and online.
- If it is feasible for the courts, documents should be available online.
- State Bar Technology Committee.
- Public policy of screening.
- Documents should be available to everybody with the same economic burden.

Mr. Prisoc spoke of the following points:

- Alternatives
- Preventing the idly curious or intentionally malicious persons from having access to data.
- Outsourcing data to consolidators which could then provide data to their subscribers.
- Data consolidators offer better data security and protection than courts could.
- Palm Beach County
- State of Colorado
- Preventing unintended consequences, such as, identity theft.
- The courts maintaining the current summary system to assist those persons that do not subscribe to a consolidator.
- Supreme Court's Strategic Planning Committee.
- Future plans

There was discussion relative to the following points:

- Concerns that the summary index that is currently displayed online does not accurately reflect the actual hard copy court case file.
- Secretary of State online filings.
- Society's expectation that courts be responsible with court records.
- Handling requests in-person provides some control over what information is released.
- Coming up with controls to provide online access to court records.
- Inspection of Public Records Act requests.
- Issuing varying degrees of access dependent upon user.
- Consequences with providing too much information online.
- Case Lookup
- Acquittals (grand jury documents versus preliminary hearing documents)
- Including language in Mr. Jontz's proposed motion that would address technological changes; stipulations on time delay; time that access is granted (to allow courts the chance to review the case file to ensure it is accurate and complete); and granting access to the file online through a password.

- Burdens imposed on court personnel.
- Fees
- Cases that are not displayed online due to statutory constraints; however, information on such cases being released in-person at the court clerk's counter.

Mr. Jontz moved the adoption of policy of Judge Mitchell's refinement of the first sentence of his proposed motion, as follows: "Internet access to court records should be provided to the public to the same extent that courthouse official records are available to the public." Motion failed for lack of a second.

Several attempts were made to include language in Mr. Jontz's proposed motion relative to the following points:

- Including safeguards and controls for the courts.
- Redacting personal identifiers from court documents.
- State of Minnesota concluded that internet public access indexes to court records are by nature fundamentally different than that of the official courthouse record.
- Defining what documents should be made available online.
- Including language that prohibits release of information that is protected by law.
- Deciphering the correct person from others with the same name.
- Consequences with publishing unproven allegation information.

Judge Steve Lee moved the adoption of a philosophical premise to move forward that internet public access of court records are by nature fundamentally different than that of the courthouse official record. Paula Chacon seconded. Mr. Jontz noted concern with the meaning of Judge Lee's motion. Judge Lee explained that it opened the door to acknowledging that internet access to court records may be treated differently; and PAS could later address how that access would be treated differently. There was discussion on different uses and consequences of the records, and recognition that what is currently displayed on the internet is simply an index of what is in the official court record. Mr. Jontz added that he was focused on a future policy, but it appeared that PAS was addressing what is currently available online. There was further discussion relative to current restrictions regarding online records not reflecting arrest warrants until they are served, and the summary index not being reliable. **Mr. Jontz opposed the motion. No further discussion. Motion carried.**

Action Item: At October's meeting, Dana Cox suggested that PAS address the question of whether or not internet access should be different; and if so, what restrictions/control should PAS put in place to respond to the different concerns that can result from that access.

Action Item: For the October meeting, Judge Mitchell asked Mr. Prisoc to provide PAS with a list of what is currently displayed on the internet to the public. PAS members will then discuss what should be provided.

III. Discussion on “Criminal Cases: Who is responsible for ensuring that prohibited information is kept out of the court record?” Judge Mitchell spoke of PAS’ determination that the litigants are responsible for ensuring that prohibited information is kept out of the court record in civil cases. There is not much policy relative to criminal cases. Judge Lee and Judge Mitchell found that the courts are more capable of ensuring that prohibited information is kept out court record in criminal cases. There was discussion relative to the following:

- Litigants bearing the responsibility of redacting sensitive information on documents they generate and file with the courts.
- Redaction software.
- Charging documents that display personal identifiers and how to redact such information.
- Identity theft issues.
- Courts already practice removing sensitive information from documents prior to documents being released to the public.

Action Item: *Per Judge Mitchell, Judge Lee will draft motion language that PAS can vote on next month relative to who would be responsible for removing prohibited information from criminal case files.*

Action Item: *Per Judge Mitchell, Mr. Prisoc will work with her to create a template of the final policy document for PAS to begin plugging in information.*

IV. Updates from August Meeting. There were no updates to report from the August meeting.

V. Future Meetings. The next meeting will be held on Tuesday, October 14, 2008 at 1:00 p.m. at JID.

VI. Adjourn. Judge Mitchell adjourned today’s meeting at 3:14 p.m.

Final Minutes Approved by Judge Mitchell on October 6, 2008.