

**Minutes of the 8th
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, October 14, 2008
1:12-3:21 p.m.**

Voting Members present:

Judge Karen Mitchell, Chair
Judge Steve Lee
Dana Cox (*via telephone*)
Arthur Pepin
Robert Mead
Steve Prisoc
Paula Chacon (*via telephone*)

Voting Members absent:

Judge Steven Bell
Judge Mark Basham
Dennis Jontz
Geri Lynn Sanchez

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 1:12 p.m. and established a quorum.

I. Approval of Agenda.

Robert Mead moved to approve today’s agenda. Judge Steve Lee seconded. No further discussion. No opposition noted. Motion carried.

II. Vote on “Criminal Cases: Who is responsible for ensuring that prohibited information is kept out of the court record?” Judge Mitchell reminded PAS of their decision that civil case litigants would be primarily responsible for ensuring that prohibited information is kept out of the court record; and court personnel would serve as a second tier to ensure that prohibited information is kept out of the court record.

Judge Lee referred to the language he drafted, which was distributed, as follows: “*With respect to criminal cases only, the agency and/or party generating the documents is 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.*”

There was discussion on the following points:

- Difficulties law enforcement agencies would face if they are required to remove sensitive information on criminal case filings.
- Requesting law enforcement agencies to file documents with the courts in two forms (one with required information for the court file and one with sensitive information stricken for purposes of public access).
- Federal court system.
- Identifying information that the courts require for specific documents.
- Not including sensitive information on documents filed with the court if the court does not require such information.
- Retain the internet access that is currently available to the public—display register of actions only. If an individual wants more, that person can make an Inspection of Public Records Act request—this provides court personnel the opportunity to remove sensitive information from documents before they are released to the public.
- Steve Prisoc pointed to the document entitled *Draft: Public Access Committee Template Issue Document*, which was distributed. He referenced the heading *Protection of Personal Identifiers*. This information was obtained from the New York Commission Report.
 - The online record should eliminate names of victims, minor children and anyone else who is not a direct party to a court action.
 - Agencies and private attorneys should filter information on documents, so court personnel do not inadvertently post sensitive information.
 - Unnecessary inclusion of sensitive information for those individuals that were acquitted or their case was dismissed.
- Minnesota's report.
- Exhibits to pleadings that may contain sensitive information.
- Mr. Prisoc referenced the article he distributed entitled, *Elected Officials Can Be Sued in ID Theft, Court Rules*, by Kimball Perry, 09/27/08.
- Train clerks that memo fields in the case management system should never contain confidential information.
- E-Filing Subcommittee and electronic filing.
- Redaction software.
- NCIC
- Liability the Judiciary would face if redaction software failed to redact sensitive information.

Judge Mitchell reminded PAS that their focus was on internet court records and the fact the Judiciary does not currently have the capability to display documents online.

Mr. Mead moved that with respect to criminal cases, the agency and/or party generating the documents is responsible for ensuring that sensitive information is kept out of the court record. Court personnel will serve as a second tier to remove sensitive information,

especially with respect to electronic access. Arthur Pepin seconded. No further discussion. No opposition noted. Motion carried.

III. Review information currently available on nmcourts.com public access web site. Mr. Prisoc explained the document that was distributed entitled *New Mexico Courts Case Lookup*. There was discussion relative to the following points:

- Legislative intent to provide less and less information online.
- Criminal cases.
- Redaction software.
- Employment and housing issues.
- New York Commission.
- Considering Minnesota's report on rules imposed for posting pre-convictions and acquittals.
- Arrest records.
- American Bar Association ("ABA") - Mr. Prisoc referenced the document entitled *Draft: Public Access Committee Template Issue Document*. He pointed to the heading entitled *ABA's Commission on Effective Criminal Sanctions*.
- Resource issues.
- Expungement laws.
- Magistrate court records.
- Charges versus convictions.

Mr. Mead moved that PAS adopt the ABA's policy that records of closed criminal cases where charges were dismissed, nolle'd, acquitted, reversed on appeal, or vacated would be removed from the internet record. Mr. Pepin asked for an amendment to exclude the language "reversed on appeal" because those cases are subject to continuing prosecution. Mr. Mead accepted Mr. Pepin's amendment. Mr. Prisoc seconded. No further discussion. No opposition noted. Motion carried.

IV. Discussion: How to develop recommendations on appropriate posting of records to the internet. Judge Mitchell began by asking PAS how the official, hard copy court record is different than the internet court record. She reminded PAS of their decision to remove from the internet closed cases that did not result in a conviction. There was discussion relative to the following possibilities:

- Removing misdemeanor convictions after three years.
- Retaining online access to felony convictions, permanently.
- Not displaying petty misdemeanors, other than DWIs up to the third offense.
- ABA's recommendation to limit public access to records of misdemeanor and felony convictions (depending on seriousness), unless the offense included substantial violence, large scale drug trafficking or conduct of equivalent gravity.

There was further discussion regarding the following:

- The problems when the hard copy misdemeanor case file has been destroyed but the case still displays on the internet, and visa versa.
- The inconsistencies practiced within the magistrate courts relative to misdemeanor case files that should be destroyed and removed from internet public access.
- State police organizations and their obligation to provide criminal history information; and states that are earning money by making this information available to landlords and employers.
- NCIC does not display petty misdemeanor cases, except for DWIs.
- It would be helpful to judges when sentencing a defendant if they had access to information of other crimes that same defendant may have committed in other courts.
- Training versus performance issues.

Mr. Prisoc moved that JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date. Mr. Prisoc explained that the third anniversary date could be easily programmed into the system. Judge Mitchell asked for an amendment to exclude those cases with outstanding warrants and/or cases with fines/fees due. Mr. Prisoc clarified that his motion only involved the public Case Lookup. Court personnel would still have online access to those cases through the inside Judiciary web site. Dana Cox asked to abstain so as to obtain feedback from others at the Bernalillo County Metropolitan Court. Mr. Mead asked for an amendment to exclude domestic violence, DWI and crimes explicitly mentioned in the Adam Walsh Act. Mr. Prisoc accepted Judge Mitchell's and Mr. Mead's amendments. Judge Lee asked if Mr. Prisoc's motion included petty misdemeanors, and Mr. Prisoc noted that it included petty misdemeanors. There was consensus that PAS members not in attendance today would be given the opportunity to write a dissent if they were in disagreement with this motion. Because a formal second to this motion was not voiced, Judge Mitchell asked that this motion be voted on at the November meeting.

V. Review template/draft for final document. Mr. Prisoc explained the document entitled *Draft: Public Access Committee Template Issue Document*, as follows:

- He gathered information from the New York document, the Minnesota document, the ABA, and documents from the National Center for State Courts.
- Reentry while not compromising the availability of information to law enforcement, judges and citizens.
- He explained the topic headings.
- With respect to the topic heading *Administrative Records*, Mr. Prisoc spoke of employment records and how PAS should deal with those. Mr. Mead noted that there is a committee who deals specifically with those types of records. Judge Mitchell reminded PAS that their focus was on internet access to court records.

Mr. Prisoc concluded his report by asking PAS to review the draft document and let him know of other matters that PAS needed to address.

Action Item: Per Judge Mitchell, at the November PAS meeting, PAS will begin to address how to handle bulk records.

Action Item: Mr. Prisoc will email the “Draft: Public Access Committee Template Issue Document” to PAS in Word format.

Action Item: Per Judge Mitchell, PAS will consider if there should be a difference between the access that law enforcement officials (public defenders, district attorneys) have to the access that court personnel have.

Action Item: Mr. Prisoc offered to investigate better audio for those attending via teleconference for meetings that are held in the JID Meeting Room.

Action Item: Mr. Mead offered to obtain the disposition numbers for the non-court record questions.

VI. Updates from September Meeting. Judge Mitchell advised that there were no updates to report from the September meeting.

Action Item: Per Judge Mitchell, LaurieAnn Trujillo will type up the motions passed today for Judge Mitchell to present to JIFFY.

VII. Future Meetings. The next meeting will be held on Tuesday, November 18, 2008 at 1:00 p.m. at JID.

VIII. Adjourn. Judge Mitchell adjourned today’s meeting at 3:21 p.m.

Final Minutes Approved by Judge Mitchell on November 12, 2008.