

**Minutes of the 9th
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, November 18, 2008
1:22-3:50 p.m.**

Voting Members present:

Judge Karen Mitchell, Chair
Judge Steve Lee
Judge Mark Basham
Dana Cox
Robert Mead
Steve Prisoc

Voting Members absent:

Judge Steven Bell
Arthur Pepin
Dennis Jontz
Geri Lynn Sanchez
Paula Chacon

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 1:22 p.m. and established a quorum.

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

II. Vote on Steve Prisoc’s motion from October meeting: “JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date, excluding those cases with outstanding warrants and/or fines/fees due and excluding domestic violence cases, DWI cases, and crimes explicitly mentioned in the Adam Walsh Act.” Judge Mitchell noted that a second was not voiced last month relative to Mr. Prisoc’s motion. She asked that the motion be brought back to PAS for clarification. The magistrate courts are required to purge their misdemeanor paper case files three years after the final adjudication date. The magistrate court clerks record a code in the current case management system, which directs JID Staff to remove the electronic case file from the outside Judiciary web site. Spot checks have proven inconsistencies in this process.

There was discussion relative to the following points:

- Adam Walsh Act.
- Dana Cox spoke of the Bernalillo County Metropolitan Court’s (“BCMC”) concerns relative to the proposed motion as well as the BCMC’s concerns relative to the following

PAS motion that passed last month: *PAS adopt the ABA's policy that records of closed criminal cases where charges were dismissed, nolle'd, acquitted, or vacated would be removed from the internet record.*

- In the event the Supreme Court adopts the proposed motion as part of policy, Ms. Cox noted that the BCMC information technology staff proposed that strict parameters be set as to what information would be pulled from the outside Judiciary web site due to the difference in the way that the BCMC codes their cases as opposed to the rest of the Judiciary.
- Concerns when a case is displaying on the outside Judiciary web site, but the court no longer has the paper file; and visa versa.
- Magistrate courts maintain the court record for domestic violence cases and DWI cases.
- Arrest records on all cases remain on file.
- NCIC
- Background criminal history checks.
- Concerns with career misdemeanor criminals and a proposal to hold off on purging paper and electronic case files if a criminal commits another crime within the three year period.
- During the Odyssey implementation, training magistrate court clerks to purge paper and electronic case files, simultaneously.
- Administrative Code directs destruction schedules.
- Inspection of Public Records Act ("IPRA") requests.

Action Item: *Ms. Cox will return to the BCMC with the clarification of Mr. Prisoc's motion. If she receives concerns relative to the motion, Ms. Cox offered to write a dissent relative to the following PAS motions: "PAS adopt the ABA's policy that records of closed criminal cases where charges were dismissed, nolle'd, acquitted, or vacated would be removed from the internet record" and "JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date, excluding those cases with outstanding warrants and/or fines/fees due and excluding domestic violence cases, DWI cases, and crimes explicitly mentioned in the Adam Walsh Act."*

With respect to Mr. Prisoc's motion made at last month's meeting: *"JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date, excluding those cases with outstanding warrants and/or fines/fees due and excluding domestic violence cases, DWI cases, and crimes explicitly mentioned in the Adam Walsh Act,"* after follow-up clarification discussions today, Mr. Mead seconded. No further discussion. No opposition noted. Motion carried.

III. Discussion on how the Judiciary should handle bulk records' requests. With respect to how the Judiciary should handle bulk records' requests, PAS discussed the following points:

- Mr. Prisoc spoke of a request he received today from law students wishing to create a database and put it online. They are requesting civil case information (judge, expert witness information, award and outcome).

- Judge Mark Basham distributed copies of the statute: *14-3-15.1. Records of state agencies; public records; copy fees; computer databases; criminal penalty*. He spoke of the case *Crutchfield v. Department of Taxation and Revenue*. Discussion ensued relating to the following:
 - Tension between the statute and the IPRA.
 - Originators of information.
 - User fee
 - Inconsistencies within statute.
- Supreme Court order: *In the Matter of the Approval of the Digital Recording Policy and Bulk Records Policy for Judicial Branch of Government*, No. 04-8500.
- Bulk data provided to the New Mexico Sentencing Commission (“NMSC”).
- Mr. Prisoc noted that he and Mr. Mead’s predecessor drafted the policy that JIFFY and the Supreme Court adopted.
- Current procedure for how requests for bulk data are handled.
- Non-exclusive contracts with money collected to go into the SCAF Fund.
- Outstanding warrants published.
- Anti-donation clause.
- Fees.
- Selling data for market value.
- JIFFY’s concerns with releasing bulk data.
- *Crutchfield v. Department of Taxation and Revenue*.
- NMSC releasing a report based on bulk data that the Judiciary provided.
- Memoranda of Understanding (“MOU”).
- Updates to data released are necessary to maintain accuracy of court records.
- Non-profit versus for-profit.
- Mr. Prisoc defined “bulk data” as two or more records.
- Mr. Prisoc noted that he and Arthur Pepin found the current Supreme Court policy sufficient.
- State agencies that the Judiciary statutorily provides data to.
- Placing governors in the Odyssey system to drop a person’s computer connection if someone is attempting to access too many cases within a certain time frame.
- JID Staff review logs daily for inappropriate/unusual activity.

With respect to how the Judiciary should handle bulk records’ requests, Judge Basham moved that PAS adopt the “*In the Matter of the Approval of the Digital Recording Policy and Bulk Records Policy for the Judicial Branch of Government*, Supreme Court Order #: 04-8500, filed on October 14, 2004.” Mr. Mead seconded. There was discussion relative to direct links to court databases. **No further discussion. No opposition noted. Motion carried.**

IV. Review Template/Draft for Final Document. Mr. Prisoc spoke of his goal when he constructed the draft final document. He went through the following topic headings:

- Protection of Personal Identifiers: State of New York report provided a method for handling personal identifiers.

- Practical Obscurity: Mr. Prisoc asked for assistance relative to this topic.
- What Can Be Published on the Internet and What Should Remain in the Court File - Disclaimers.
- Fiscal Impacts
 - Automatic redaction
 - Limitations of redaction software, including problems with handwriting.
 - Costs involved for automatic and manual redaction.
- Unproven Criminal Allegations
 - BCMC has found it helpful to direct employers/landlords to *Case Lookup* to verify information on prospective employees/tenants.
 - Mr. Prisoc spoke of a call he received from a man with an extensive juvenile record who has had a difficult time finding a job due to his juvenile record.
 - Need to Minimize Automated Harvesting.
 - Borrow State of Minnesota's form for recording votes/dissents.
- Attorney Records' topic heading to be removed from the draft final document.
- Conviction Records.
- Family Law Records (custody records do not display on the Internet but divorce records do display).
- Go Slow Approach Recommended - adopt State of Minnesota's "go slow" approach.
- Bulk Records Release and Expungement Consequences.
- Reseller Data Quality Issues.
- Problems with Name-only Lookups in New Mexico.
 - Common Spanish family names in Northern New Mexico.
 - Digital image fingerprint scanners.
 - Social security number search on *Case Lookup* stopped due to risks of identity theft.
 - Odyssey has the ability to assign a state number to criminals.
 - Driver license number to be used as an identifier.
 - Name check alone cannot verify if a person is the correct person.
- Court Reporter Notes and Audio.
 - IPRA
 - Litigation
 - Placing case/court notes in a separate area of the hard copy case file.
 - Judges using Odyssey to take notes.
- Privacy Advocate Perspective on Unintended Consequences of Unregulated Availability of Court Records.
- ABA's Commission on Effective Criminal Sanctions.
 - Note ABA Commission weighed heavily on PAS' discussions.
- Ms. Cox commended Mr. Mead's initial work on the analysis he conducted relative to the State of New York's and the State of Minnesota's documents.

Action Item: Judge Basham offered to assist Mr. Prisoc with language relative to deferrals to be inserted into the draft final document.

Action Item: Mr. Mead and Ms. Cox offered to assist Mr. Prisoc with language on the following topic headings: (1) Court Reporter Notes and Audio; (2) Privacy Advocate Perspective on Unintended Consequences of Unregulated Availability of Court Records; and (3) ABA's Commission on Effective Criminal Sanctions.

Action Item: Judge Mitchell offered to meet with Justice Petra Jimenez Maes and Judge Michael Bustamante relative to the draft final document to obtain their feedback and guidance prior to PAS proceeding further.

Action Item: Judge Mitchell offered to meet with Joey Moya regarding the status of the sealing rule.

V. Discussion on Whether or Not There Should be a Difference in the Level of Online Access to Court Records that Judiciary Employees Have to That of Law Enforcement Officials (public defenders, district attorneys). Judge Mitchell referenced earlier discussions relative to levels of access. The following points were discussed:

- Inside Judiciary web site only accessible to Judiciary employees at this time.
- District attorneys and public defenders can access the outside Judiciary web site.
- Active arrest warrants are not displayed on the outside Judiciary web site at this time. However, once an arrest has been executed, the information is displayed on the outside Judiciary web site.
- Consolidated Offender Query ("COQ") - Justice Information Systems Council ("JISC").
- Fees
- Electronic filing.
- Access for public criminal lawyers.
- Tradition in the United States: Prosecutors and law enforcement are considered law enforcement agencies. Public defender is not a law enforcement agency.
- Prosecutors should have access to the inside Judiciary web site because they carry additional burden and duty to do what is right. Prosecutors and public defenders currently access the COQ.
- Interface between Odyssey and the COQ.
- Everything on the outside Judiciary web site is public; everything on the inside Judiciary web site is not public.
- Contract attorneys.
- COQ obtains information from the inside Judiciary web site data. COQ access is password protected.
- Security breaches.

Action Item: Per Judge Mitchell, Mr. Prisoc will reference levels of access to the inside Judiciary web site in the draft final document.

VI. Updates from October Meeting. Judge Mitchell noted that Geri Lynn Sanchez asked to be replaced on the PAS due to other obligations. She would determine Ms. Sanchez's replacement and contact Judge Steven Bell because he has not participated in the PAS lately.

VII. Future Meetings. Judge Mitchell will contact Justice Maes and Judge Bustamante to obtain feedback and guidance on the draft final document. PAS is scheduled to meet again on Tuesday, December 16, 2008 at 1:00 p.m. at JID. Judge Mitchell will email the PAS to let them know if the December meeting will stand. If not, PAS will meet on Tuesday, January 13, 2009 at 1:00 p.m. at JID.

VIII. Adjourn. Judge Mitchell adjourned today's meeting at 3:50 p.m.

Final Minutes Approved by Judge Mitchell on December 5, 2008.