

**Meeting Minutes of the 10th
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, January 13, 2009
1:07-3:11 p.m.**

Voting Members present:

Judge Karen Mitchell, Chair
Judge Mark Basham
Dana Cox
Robert Mead
Arthur Pepin
Steve Prisoc
Paula Chacon (*via telephone conference*)
Kathy Gallegos

Voting Members absent:

Judge Steven Bell
Judge Steve Lee
Dennis Jontz

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 1:07 p.m. and established a quorum.

I. Approval of Agenda. Judge Mitchell welcomed Kathy Gallegos from the Thirteenth Judicial District Court. She replaced Geri Lynn Sanchez on the PAS.

Dana Cox moved to approve today’s meeting agenda. Robert Mead seconded. No opposition noted. No further discussion. Motion carried.

II. Report on Sealing Committee Meeting. Judge Mitchell reported the following points relative to the Joint Sealing Rule Committee (“JSRC”):

- The JSRC was established by the Supreme Court to work on a global sealing rule to be used in all courts, statewide. Joey Moya is responsible for the JSRC. It is comprised of a diverse group of individuals with representatives from all of the Supreme Court rules committees. The document they draft will be forwarded directly to the Supreme Court for consideration.
- The JSRC met for the first time yesterday. Judge Mitchell, Ms. Cox and Mr. Mead attended the meeting and reported the following:
 - JSRC will focus on the official court paper file. PAS will focus on what should be available online to the public.

- Ms. Cox provided the PAS with a list entitled *Joint Sealing Rule Committee, List of Types of Information for Sealing Consideration*, which represented some of the items the JSRC needs to look at.
- PAS will seal the same types of information that the JSRC seals. However, the PAS may be more restrictive as to what is provided to the public online.
- JSRC anticipates including a definition section in their document, which should be very helpful to the PAS.
- JSRC anticipates developing a procedure to seal and unseal with a commentary section to include information on what the JSRC discussed and any dissenting positions received.
- Technical discussion relative to a uniform state rule and where it should be placed.
- JSRC will provide the PAS with guidelines and definitions.
- JSRC would like the PAS to explore tiers of access.

The PAS discussed the following:

- Types of documents that should be sealed in the different levels of court.
- Open Meetings Act
- Inspection of the Public Records Act
- Acquittals
- Identity theft concerns
- White collar criminals
- Media
- Those that are given online access to court data having an obligation not to misuse data by virtue of their profession.
- PACER
- Affects on JID
- State courts that are revenue-driven.
- Support for what is currently displayed on the outside Judiciary web site.
- Pleadings that contain sensitive information.
- Practical obscurity
- Blogger that gained access to juvenile records.
- Juvenile records

III. Review of the Positions Taken by PAS Thus Far. Judge Mitchell referred to the document entitled *Judicial Information Systems Council (JIFFY), Public Access Subcommittee (PAS), Positions Adopted in 2008*, which she constructed using the *Voting Matrix for Calendar Year 2008* constructed and maintained by LaurieAnn Trujillo.

There was discussion on the following points:

- Pre-conviction records
- Vacated cases
- Inserting the words *continue to* after the word *should* in the following motion that the PAS adopted: *The Judiciary should handle bulk records consistent with the Supreme Court Order*

#: 04-8500, filed on October 14, 2004, "In the Matter of the Digital Recording Policy and Bulk Records Policy for the Judicial Branch of Government."

- With regard to the motion the PAS adopted on October 14, 2008, *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*, there was discussion on whether or not the PAS should adopt some type of notification to the parties that they are primarily responsible to ensure that sensitive information is kept out of the court record.
- There was discussion on the origins of the motion the PAS adopted on November 18, 2008: *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 and fees due and excluding domestic violence cases, DWI cases and crimes explicitly mentioned in the Adam Walsh Act.* Concerns were voiced that this information could be helpful to judges when sentencing a defendant and how the PAS could address such concerns.
- The Department of Public Safety ("DPS").

Arthur Pepin moved that the PAS make a recommendation to JIFFY that the Judiciary provide notice to case parties that they are primarily responsible for ensuring that sensitive information is kept out of the court record. The notice shall be posted with the other public notices at the courts. Mr. Mead seconded. No further discussion. No opposition noted. Motion carried.

Action Item: Per Judge Mitchell, Mr. Pepin will draft the notice for PAS to review and approve.

Ms. Cox moved that Mr. Prisoc add in the draft template that the Judiciary recognizes that DPS is the official repository of criminal case histories. Judge Mark Basham seconded. No further discussion. No opposition noted. Motion carried.

Action Item: Mr. Pepin suggested that JID Staff download criminal case history data onto a CD each year and send a letter to DPS stating that the data is available anytime DPS is ready to receive it.

Action Item: Ms. Cox offered to write a minority position on the following PAS motions: (1)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; and (2)PAS adopt the American Bar Association policy that records of closed criminal cases where charges were dismissed, nolle'd, acquitted, or vacated would be removed from the internet record.

Action Item: PAS will recommend to JIFFY that they discuss how to address concerns relative to misdemeanor criminal case histories that are purged after three years but could be helpful to judges relative to the PAS motion: “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.”

Action Item: Judge Mitchell will forward the PAS positions to Mr. Moya.

IV. Discussion and Review of the Draft Final Document. Judge Mitchell referred to the draft document that Mr. Prisoc constructed entitled *Draft: Public Access Committee Template Issue Document*. She spoke of the meeting she had with Mr. Prisoc, Justice Petra Jimenez Maes and Mr. Moya about what the Supreme Court would like to see as far as the PAS’ final work product.

A. Judge Mark Basham offered to assist Steve Prisoc with language relative to deferrals. Under the topic heading *Unproven Criminal Allegations*, Judge Basham will assist Mr. Prisoc with language relative to deferral/dismissal issues. There was discussion on what a deferment means.

B. Dana Cox and Robert Mead offered to assist Mr. Prisoc with language on the following topic headings:

- 1. Court Reporter Notes and Audio.** Judge Mitchell reported that Justice Maes noted that this topic heading was not relevant.
- 2. Privacy Advocate Perspective on Unintended Consequences of Unregulated Availability of Court Records.** This topic provides the basis for why the PAS is making these decisions.
- 3. ABA’s Commission on Effective Criminal Sanctions.** Judge Mitchell asked Mr. Mead and Ms. Cox to work with Mr. Prisoc on this topic heading.

C. Mr. Prisoc was to add a topic heading for “Levels of Access to Inside Judiciary Web Site.” There was no discussion relative to this agenda item.

Action Item: Judge Mitchell and Mr. Prisoc will re-draft the final document with the topic headings that were discussed with Justice Maes and then email it out to the PAS for review.

V. Updates from November Meeting. There were no updates reported.

VI. Future Meetings. The next meeting will be held on Tuesday, February 17, 2009 at 1:00 p.m. at JID.

VII. Adjourn. Judge Mitchell adjourned today’s meeting at 3:11 p.m.

VIII. Additional Attachments

PAS 2009 Meeting Calendar. Judge Mitchell referred to the *Public Access Subcommittee Meeting Calendar for 2009*, which was attached to the PAS meeting agenda.

PAS 2009 Membership List. Judge Mitchell referred to the *Public Access Subcommittee Membership -2009 List*, which was attached to the PAS meeting agenda.

Final Minutes Approved by Judge Mitchell on February 4, 2009.