

**Meeting Minutes of the 11th
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, February 17, 2009
1:04-3:04 p.m.**

Voting Members present:

Judge Karen Mitchell, Chair
Judge Mark Basham
Judge Steve Lee
Dennis Jontz (*via phone*)
Robert Mead
Dana Cox (*via video*)
Steve Prisoc
Paula Chacon
Kathy Gallegos

Voting Members absent:

Judge Stephen Bell
Arthur Pepin

Minutes taken by: LaurieAnn Trujillo

I. Approval of Agenda. Judge Karen Mitchell called the meeting to order at 1:04 p.m. and established a quorum. Judge Mitchell moved the agenda item *IV. Updates from January Meeting* to the second agenda item.

II. Updates from January Meeting. Judge Mitchell spoke of interest received from non-PAS members relative to the path that the PAS is taking. She spoke of the following points:

- The PAS positions have not been adopted by JIFFY or the Supreme Court at this point.
- The PAS recommendations would first go to JIFFY, and then JIFFY would determine where the recommendations should be sent from there.
- PAS membership began with judicial-type entities and would evolve to include a broader membership, i.e., the New Mexico Sentencing Commission, the Department of Health, Children’s, Youth and Families Department, and the media.
- It was never the intent of PAS to exclude these other entities. PAS originally intended to include these other entities at the end of the process as opposed to the front-end. However, after her conversation with the Chief Justice, they felt that these other entities should be involved earlier in the process. She spoke of some options to include other entities.
- PAS meetings are open meetings and anyone is welcome to attend. The intent is to gather input from all interested parties prior to the draft document being forwarded to JIFFY; however, she would seek JIFFY’s direction on this point.

- Her conversation with Joey Moya, the Chairperson of the Joint Sealing Rule Committee (“JSRC”), wherein he suggested a public hearing with PAS, the JSRC and the public to address all issues and concerns relative to the court copy hard file and the internet file. However, she did not want to delay the PAS’ comment period.

There was discussion on the following points:

- The Chief Justice received an inquiry from the media about the PAS positions. He asked that PAS obtain public comment earlier and not just at the publication time.
- Dennis Jontz spoke of inquiries he received from lawyers asking for the opportunity to comment on all of the issues prior to PAS making a preliminary recommendation to JIFFY.
- Other entities that may be interested in commenting.
- Dana Cox spoke of the two dissents she composed. She referred to her memo of today’s date regarding *Dissenting Positions on PAS’ adoption of policies regarding removal from the internet record of certain closed or aged criminal cases*.
- Options for how PAS could obtain public comment
- Concerns that PAS meeting agendas, meeting materials and meeting minutes are not currently published to the outside Judiciary web site.
- How the Motor Vehicle Department handled changes in their Administrative Code. They heard public comment, took notes, and crafted their final document based on everything they heard.
- Steve Prisoc explained that JIFFY meeting minutes were removed from the outside Judiciary web site because JIFFY frequently discussed sensitive issues. He suggested that members carefully review the draft minutes that LaurieAnn Trujillo sends out and edit out sensitive information prior to the minutes being approved. He noted that JIFFY may receive pressure to publish their minutes to the outside Judiciary web site as the PAS is subordinate to JIFFY.
- Options for how to invite the public to PAS meetings.
- PAS meeting minutes. Judge Mitchell instructed Ms. Trujillo to capture discussions in the meeting minutes because she sees the minutes as a working tool to draft the final document. However, Mr. Prisoc asked Ms. Trujillo to summarize and bullet point discussions as she has other administrative responsibilities to do.
- Establishing meeting process rules if JIFFY authorized PAS to have a public comment period at PAS meetings.
- Mr. Prisoc spoke of his discussion with the Chief Justice.

Action Item: Per Judge Mitchell, Ms. Trujillo will reserve the JID Conference/Training Rooms for PAS to begin meeting in April to accommodate parties who may be interested in providing comments during the public comment period.

Action Item: At JIFFY tomorrow, Judge Mitchell will seek direction on the following items: (1) PAS adding a public comment period to future PAS agendas; (2) publishing agendas, meeting materials, and meeting minutes to the outside Judiciary web site.

Action Item: *If JIFFY approves that PAS include a public comment period at PAS meetings, Judge Mitchell asked Mr. Jontz and Robert Mead to assist her with contacting parties that may be interested in attending PAS meetings.*

III. PAS Final Document

A. Review of PAS' positions adopted thus far. Judge Mitchell distributed a document entitled *Judicial Information Systems Council (JIFFY), Public Access Subcommittee (PAS), Positions adopted in 2008*, which she constructed using the PAS minutes and matrices that Ms. Trujillo provided to her.

B. Review and recommendation of time frame to JIFFY. Judge Mitchell noted that the PAS is reaching the deadline of eighteen months that Justice Petra Jimenez Maes gave for the PAS to draft a document. There was discussion on the following points:

- The sealing rule proposals from 1983 and 1999.
- JSRC is drafting a sealing rule.
- Mr. Prisoc explained the document he composed and distributed entitled *Working Draft of PAS Document 2-17-09*.
- Utilizing the AOC attorney staff to assist with drafting the PAS document.
- Ms. Cox suggested that footnotes be used to explain legal basis or to provide a detailed explanation.
- JSRC will draft their sealing rule in a rule format.
- Minnesota and New York's documents.
- New Mexico's local sealing rules currently in effect.
- JIFFY's guideline that is currently in effect, and a Supreme Court rule that grew from that JIFFY guideline.
- Mr. Prisoc's outline entitled *Draft: Public Access Committee Template Issue Document* that he composed and distributed to PAS several months ago.
- Practical obscurity.
- Focusing on the current state of the law rather than introduced legislation.
- No data bills were introduced to the Legislature this year.
- Harm to individuals who have never been convicted of a crime—damage to reputation.
- Deferred sentence versus conditional discharge.
- With respect to the PAS position: *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*, PAS needs to determine if dismissal includes deferred cases.
- Statute 31-20-9 language: *Whenever the period of deferment expires, the defendant is relieved of any obligations imposed on him by the order of the court and has satisfied his criminal liability for the crime, the court shall enter a dismissal of the criminal charges.*
- Dismissed cases.
- Suspension of sentence.
- Article distributed at the JSRC that mixes the issue of the hard copy record with the internet record.

- New Mexico Judiciary is on the cutting edge of internet access, nationwide.
- Supreme Court bulk records' order.
- Expanding exceptions' bill to the Inspection of Public Records Act ("IPRA"). The third exception that was added was drafted by the Attorney General's Office, and it included an exception to public records for personal identifying information, and that exception received huge opposition from many different groups.

Action Item: Per Judge Mitchell, PAS members to review Mr. Prisoc's document "Working Draft of PAS Document 2-17-09," and Ms. Cox's memo of February 17, 2009 regarding dissenting positions on PAS' adoption of policies regarding removal from the internet record of certain closed or aged criminal cases.

Action Item: Mr. Prisoc will email Ms. Cox his document entitled "Working Draft of PAS Document 2-17-09."

Action Item: Judge Mark Basham will provide Mr. Prisoc the legal research he conducted on deferred sentences, so he can incorporate that information into the draft final document.

Action Item: Mr. Mead offered to define the terms: conviction, deferral and dismissal.

Action Item: Judge Mitchell will email PAS the article provided at JSRC.

Action Item: Judge Mitchell will work with Mr. Prisoc, Mr. Mead, Ms. Cox and Ms. Trujillo to draft the April meeting agenda.

Action Item: Mr. Prisoc and Mr. Mead will draft an outline similar to the Minnesota or the New York document for discussion at the April meeting.

Action Item: PAS decided to remove the following position from PAS position list: "The Judiciary should continue to handle bulk records consistent with the Supreme Court Order #: 04-8500, filed on October 14, 2004, "In the Matter of the Approval of the Digital Recording Policy and Bulk Records Policy for the Judicial Branch of Government."

Mr. Prisoc moved to modify the PAS position language of: "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," to the following language: "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, excluding dismissals subsequent to a deferred sentence." Mr. Mead seconded. There was further discussion on conditional discharge. Deferred sentence cases would remain on the internet record. **No further discussion. No opposition noted. Motion carried.**

IV. Review of draft notice to case parties that they are primarily responsible for ensuring that sensitive information is kept out of the court record. Judge Mitchell spoke of last month's discussion wherein PAS discussed placing a notice at the court clerk's counter that informed case parties that they are primarily responsible for ensuring that sensitive information is kept out of the court record. Arthur Pepin was tasked with drafting the notice. Mr. Prisoc noted that due to the Legislative Session, Mr. Pepin had not completed the draft notice.

V. Future Meetings. The next meeting will be held on Tuesday, April 14, 2009 at 1:00 p.m. at JID. Mr. Prisoc, Ms. Cox, Mr. Mead and Judge Mitchell will meet on March 17, 2009 at 1:00 p.m. at JID to draft the outline.

VI. Adjourn. Judge Mitchell adjourned today's meeting at 3:04 p.m.

Final minutes approved by Judge Mitchell on March 9, 2009.