

Meeting Minutes of the 17th
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, November 10, 2009
1:07-3:03 p.m.

Voting Members present:

Judge Karen Mitchell, Chair
Judge Steve Lee
Judge Mark Basham
Robert Mead
Dennis Jontz
Dana Cox
Steve Prisoc
Paula Chacon

Guests present:

Sarah Welsh (*New Mexico Foundation for Open Government*)
Ian Bezpalho (*State Bar of New Mexico*)

Voting Members absent:

Judge Stephen Bell
Arthur Pepin
Kathy Gallegos

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 1:07 p.m. and established a quorum. She thanked Robert Mead, Dana Cox and Steve Prisoc for their work on the draft PAS document. She welcomed Sarah Welsh, Chair of the New Mexico Foundation for Open Government (“NMFOG”); and Ian Bezpalho, Co-Chair of the Technology Committee of the State Bar of New Mexico.

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

II. Final Review and Comments on Public Access Subcommittee’s Document in Progress.

Judge Mitchell pointed out that the PAS had been meeting since August of 2007; and today’s meeting would focus on the final review of the draft PAS document.

Judge Mitchell referred to the document entitled *Report and Recommendations of the Public Access Subcommittee to the Judicial Information Systems Council an Information Technology Advisory Board to the New Mexico Supreme Court on Public Access to Court Case Records via the Internet, November 10, 2009*, which was emailed to the PAS members and to Ms. Welsh this morning. A hard copy of the document was provided to those in attendance.

Judge Mitchell summarized section I, on page 3.

There was discussion on the following points:

- The draft document will be submitted to JIFFY for consideration.
- Electronic filing. PAS may need to meet again to reconcile electronic filing with the PAS recommendations.

The audience members did not offer comments relative to this section.

Mr. Mead summarized section II, on pages 3-5. He pointed out the following:

- A strong presumption that the paper copy is the official copy and is open subject to statutory exceptions.
- PAS recognized that there is a fundamental difference between the public's access to court case files via the Internet as compared to physically going into a courthouse and reviewing a case file. The document recognizes a strong minority position that there should no difference.
- PAS adopted a "go slow" approach and to not follow what Florida did by allowing full access to information and then pulling it back.
- Practical obscurity relative to the *Reporters' Committee* case.
- PAS determined that in both civil and criminal cases, the responsibility for content of pleadings and for ensuring that any confidential, identifying or other such sensitive or private information is protected should lie with the litigants who come before the court as opposed to the court being primarily responsible for protecting sensitive information. There was a strong minority position on this determination.
- National Crime Information Center ("NCIC").
- Coversheets. Recently, Joey Moya sent out a memorandum with the final Joint Sealing Rules Committee ("JSRC") rule that is being submitted to the Bar Bulletin for comment.
- ABA Commission on effective criminal sanctions.
- Making *Case Lookup* mirror the retention schedules. There was a strong minority opinion.
- PAS recommended no change relative to bulk records. There was a strong minority opinion.

There was discussion on the following points:

- Coversheets were rejected by the JSRC due to the concern that it is easy for documents to get separated from other documents.
- Ms. Cox explained the reasons the last paragraph of page 4 was rewritten.
- PAS's recommendation to follow the ABA Commission's recommendation relative to removing closed cases is the biggest diversion from what the Judiciary currently practices. This recommendation is most likely to draw criticism and the biggest change, technically.
- Concern that some PAS members may have changed their position on some of the issues voted on.
- Rather than re-voting on the issues, a suggestion was made to include an acknowledgment that PAS is the recommending body and tried to articulate both sides of the issues.
- Concern that a re-vote would prolong the process.

- Discussion on how the PAS document will be presented to JIFFY. Suggestion to encourage JIFFY to look at both sides of the issues.
- Suggestion that JIFFY allow 10-15 minutes for those interested in presenting their position on the issues.
- Add language that votes may have changed.
- Discussion on how the public will comment on the PAS document before it is adopted by the Supreme Court.
- Suggestion to move the last paragraph of section IV, on page 10, to the first or the last paragraph of section II.
- Concerns that JIFFY members may not read the entire PAS document.

The audience members did not offer comments to this section.

Action Item: Judge Mitchell will seek direction from Judge Michael Bustamante in terms of how he would like the PAS document presented to JIFFY.

Action Item: Ms. Cox and Mr. Mead to move the last paragraph of section IV, on page 10, to the last paragraph of section I; and insert a transition sentence such as “In examining the issues discussed in this document, the committee engaged in rather lively debates. This document is an outgrowth of the deep controversies...”; and then add a conclusion at the end of section IV.

Mr. Mead summarized section III, on pages 5-9, as follows:

- Language removed from this section.
- Florida’s experience of making everything available and then back-tracking.
- Automated redaction.

Judge Mitchell, Ms. Cox and Mr. Mead commended LaurieAnn Trujillo for her help with the PAS minutes.

The audience members did not offer comments to this section.

Mr. Mead advised that only formatting changes had been made to section IV, on pages 9-10.

Action Item: Ms. Cox will add language to conclude section IV. She suggested the following language: “These trends form the basis of many of the discussions and debates of the committee.”

Mr. Mead explained section V, on pages 10-11, by noting that he removed the details of *Reporters’ Committee* case because it had been explained in other areas of the document.

There was discussion on the following:

- Practical obscurity.

- The constraints of PAS.
- Legislation.
- PAS agreed that the current Records and Retention Act needed to be reviewed.

The audience members did not offer comments to this section.

Mr. Mead spoke of the following points from section VI, on pages 11-18, as follows:

- New Mexico Inspection of Public Records Act (“IPRA”).
- Prohibition on juvenile records.
- Appendix VII on pages 51-54.

The audience members did not offer comments to this section.

Mr. Mead referred to section VII, on pages 18-22. He read position A, as follows: *In both civil and criminal cases, the responsibility for the content of pleadings and for ensuring that any confidential, identifying or other such sensitive or private information is protected should lie with the litigants who come before the court, with the court’s policy to further remove or redact personal identifiers as feasible, particularly if such records are to be made electronically available to the public via the Internet.* He spoke of the following points:

- Argument in support
 - A “do nothing” approach is not an option.
 - Terms “social security” should be lower case unless one is referring to the Social Security Administration.
 - Litigants are better suited for doing the first redaction of personal, identifying information; and the courts have an obligation to follow-up to ensure that types of confidential information, as outlined on page 19, are removed from pleadings that are electronically available on the Internet.
- Argument in opposition - courts need to be primarily responsible for redaction in order to prevent the problem that PACER had when it made millions of court pleadings available to the public.

Mr. Mead read section VII, position B, on pages 22-26, as follows: *The Supreme Court should adopt the policy that records of closed criminal cases be removed from the court Internet record where the charges were dismissed, nolle’d, acquitted, or vacated, but with the exception that records of dismissals subsequent to a deferred sentence not be removed from court Internet records.* He spoke of the following:

- Argument in support
 - There are problems in the way that the general public uses information.
 - The ABA Commission on effective criminal sanctions.
 - Studies that support this position.
- Argument in opposition
 - People use this information.
 - By not providing this information, it creates a social harm to the public.

- Chamber of Commerce uses this information on a daily basis as do other entities.
- *Case Lookup* versus the Department of Public Safety's system.
- *Case Lookup* is a ready source of information for people who do not have an opportunity to pay for costly background checks.

Ms. Welsh commented that the NMFOG's basic argument is information is public record.

Mr. Mead read position C, on page 26, as follows: *PAS recommends that the cases on Case Lookup should be those for which the physical files are being retained by the courts in accordance with the retention schedules as established by the New Mexico Administrative Code.* He spoke of the following points:

- Argument in support is that it does not make sense for non-record courts to create a permanent record.
- Argument in opposition is people are using this information for important uses. Space limitations on paper files should not drive the life of an electronic file.

Mr. Mead read position D, on page 31, as follows: *PAS recommends the continued application of the policy set forth "In the Matter of the Approval of the Digital Recording Policy and Bulk Records Policy for the Judicial Branch of Government," Supreme Court Order No. 04-8500, entered on October 14, 2004.* He summarized both sides of the issue.

There was discussion on the following points:

- IPRA prohibits the commercial use of agency database information.
- Motor Vehicle Division.
- Revenue audits.

Action Item: Dennis Jontz offered to research if IPRA applies to the Judicial branch of government.

Action Item: Mr. Mead and Ms. Cox to delete the fourth paragraph on page 31.

Action Item: Mr. Mead and Ms. Cox to change the date noted in the last paragraph of position D, on page 33, to the date the Supreme Court Order was entered (October 14, 2004).

Mr. Mead referred to Appendix I, on pages 34-36. He noted that the online address was added to page 36.

Action Item: Mr. Mead and Ms. Cox to add a second column so as to list the committee members on one page.

Mr. Mead referred to Appendix II, on page 37; and advised that the NMFOG was added to this page.

Mr. Mead referred to Appendix III, on pages 38-44. This appendix is the full analysis of the *Reporters' Committee* case from the Department of Justice. It is a direct copy and paste from the *Reporters' Committee* decision, so he was unable to correct the grammatical errors.

Action Item: Mr. Mead and Ms. Cox to spell out "OJP" as Office of Justice Programs.

Action Item: Mr. Mead and Ms. Cox to add a note so it is clear that this appendix is a direct copy and paste from the Reporters' Committee decision.

Mr. Mead referred to Appendix IV, on pages 45-46. He spoke of the following errors:

- #6: the statute has been changed to 9-26-14.
- #8: re-format so it appears on one line. The statute was revised in 2009 shortening the length to five days for audit investigations.
- #20: re-format so it appears on one line. Change to 29-11A-5.1. Remove space between the section symbol and the statute.
- # 32: change to 57-12-12.

There was discussion on full versus left justification formatting. A consensus was reached for the document to remain in full justification format.

Action Item: Mr. Mead offered to make the changes he outlined relative to Appendix IV.

Mr. Mead referred to Appendix V, on page 47.

Action Item: Ms. Trujillo will scan the Supreme Court Order and policy to insert into this appendix.

Mr. Mead referred to Appendix VI, on pages 48-50. This appendix is the proposed changes to Appendix V.

Action Item: Mr. Jontz will redline the original against his last version of proposed changes.

Mr. Mead explained Appendix VII, on pages 51-54, as the analysis prepared by Steve Prisoc on data theft on court websites.

There was consensus that a conclusion to the document was not necessary as it would be redundant.

Action Item: Ms. Cox offered to insert the Table of Contents.

Action Item: The PAS document will be introduced as a hard copy to JIFFY as part of a supplemental meeting packet. The PAS document can then be emailed to JIFFY members after next Thursday's JIFFY meeting.

There were no comments offered by the audience members.

III. Future Meetings. Judge Mitchell advised that the PAS may not meet again depending upon JIFFY's direction.

There was discussion on the following points:

- Judicial Records Retention Committee.
- Supreme Court Orders versus rules.
- State Bar members appearing at JIFFY by video conference.

Action Item: Per Judge Mitchell, Ms. Cox, Mr. Mead and Mr. Jontz to make the changes discussed today, and to then provide the document to Ms. Trujillo by Monday, November 16th, so she can proofread it before it is presented to JIFFY.

IV. Adjourn. Judge Mitchell adjourned today's meeting at 3:03 p.m.

Final Minutes Approved by Judge Mitchell on December 2, 2009.