

**Meeting Minutes of the 181st
Judicial Information Systems Council (JIFFY)
Judicial Information Division (JID)
Thursday, March 18, 2010
9:36-11:57 a.m.**

Voting Members present:

Judge Michael Bustamante, Chair
Judge Karen Mitchell, Vice Chair
Judge Richard Knowles
Judge Clay Campbell (*via video*)
Judge Duane Castleberry
Judge Alan Kirk
Juanita Duran (*via video*)
Jan Perry (*via video*)
Robert Mead
Brian Gilmore
Helen Miller (*via video*)

Voting Members absent:

Judge Camille Martinez-Olguin
Dennis Jontz

JID Staff present:

Tom Edwards
Renee Cascio
Andre O'Brien
Grace Catanach

Minutes taken by: LaurieAnn Trujillo

Judge Michael Bustamante called the meeting to order at 9:36 a.m. and established a quorum.

I. Approval of Agenda. Judge Bustamante moved the *Discussion on Public Access Subcommittee Document* to the first item so as to accommodate Steve Prisoc who had to leave early for an appointment. Robert Mead advised that Dennis Jontz could not attend today but asked if Mr. Mead could vote by proxy for him. Judge Bustamante noted that was not allowed under the committee rules.

Discussion on Public Access Subcommittee. Judge Karen 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*

Non-Voting Members present:

Justice Petra Jimenez Maes
Steve Prisoc

Non-Voting Members absent:

Arthur Pepin
Pauline Toevs

Guests present:

David Torres (*1st DC*)
Dr. Julie Carroll (*Burger, Carroll & Assoc.*)
Phil Hedrick (*BCMC*)(*via video*)
JoHanna Cox (*1st District Attorney's Office*)
Oscar Arevalo (*AOC-Fiscal*)

Supreme Court on Public Access to Court Case Records Via the Internet, dated February 2, 2010 (PAS document), which was attached to the JIFFY agenda. Judge Mitchell explained the document entitled *Executive Summary*, which she distributed. Judge Bustamante asked that JIFFY address and vote on each recommendation separately. Judge Mitchell distributed copies of the letter from Joe Conte, Executive Director of the State Bar of New Mexico, dated March 16, 2010, noting the State Bar of New Mexico's position endorsing the minority position on the bulk records recommendation in the PAS document.

Judge Mitchell spoke of the following points:

- The Public Access Subcommittee (PAS) was active and conducted extensive research.
- She thanked Dana Cox, Mr. Mead and Mr. Prisoc for writing the document. She also thanked LaurieAnn Trujillo for her minute-taking and proof-reading contributions.
- PAS concluded that any paper that is sealed in a case or is sealed by virtue of a sealing rule would not be accessible via the Internet.
- PAS Recommendation A: *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.*
 - The opposition position is that the primary responsibility should be that of the court.
 - The second opposing view that the PAS discussed but dismissed was a do nothing approach on behalf of the court.
 - PAS discussed identity theft and found case studies that prove identity theft issues could be traced back to court records in other states.
 - Redaction software could prove problematic because personal identifiers could be buried in the body of a document. To the extent that the Judiciary has the funding and capability, the PAS felt that the Judiciary should redact sensitive information.
 - JIFFY made the decision that the Judiciary not provide social security numbers on the Internet.
- PAS Recommendation B: *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 or conditional discharge not be removed from court Internet records.*
 - This position is the most significant change to what the Judiciary is currently doing.
 - Public policy and why information should or should not be removed.
 - The minority position would be that the Judiciary continue not to remove any cases from the Internet.

- The underlying philosophy that led the PAS to adopt this recommendation is that an individual is innocent until proven guilty; and, if an individual is innocent, then the record should not be displayed on the Internet to avoid the stigma that a court case might have on an individual.
- JID Staff receive calls from individuals who were acquitted and are concerned about their information being displayed on the Internet because it affects their housing and employment prospects.
- PAS concluded that if an individual had a conviction (a finding of guilt), regardless of what happened subsequent to that finding, such as a future dismissal, the public had a right to know.
- The statute allows an individual one chance at a conditional discharge.
- PAS Recommendation C: *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.*
 - District and appellate courts retain their records permanently, so this recommendation would not affect them.
 - This position would affect magistrate court case files, with the exception of domestic violence and DWI case files, which are retained permanently.
 - This position would affect municipal courts if they became part of the Judiciary's case management system.
 - This position would affect the metropolitan court case files, with the exception of domestic violence and DWI case files, which are retained permanently.
 - The minority position on this recommendation is that records should remain on public access regardless of the status of the physical file.
- PAS Recommendation D: *PAS recommends the continued application of the policy set forth "In the Matter of the Approval of Digital Recording Policy and Bulk Records Policy for the Judicial Branch of Government," Supreme Court Order No. 04-8500, entered on October 14, 2004.*
 - At the time PAS reviewed the current bulk records policy, electronic filing was far out in the future, so PAS did not believe that the bulk records policy needed to be modified.
 - The opposition to this recommendation advocates for revision of the current bulk records policy to allow the Judiciary to sell access to bulk records to information vendors.
- PAS reviewed the State of Minnesota and the State of New York reports, which were emailed to JIFFY.
- Judge Mitchell referred to the document entitled *Online Court "Case Lookup" Systems, By State*, which was provided to JIFFY members last month. This document is the product of the comprehensive research performed by Mr. Prisoc on how other states are handling public access. New Mexico is one of three states that has a comprehensive *Case Lookup* system, excluding municipal courts. New Mexico is one of two states that provides information free of charge. Most states, if they have a public access system, charge a fee.

- PAS briefly discussed a fee system.
- PAS opened their meetings to the public and they received good feedback.
- There was some public participation at the recent JIFFY Public Forum.
- PAS's recommendations do not affect access to the Consolidated Query, so agencies that currently have access to the Judiciary's data would retain such access.

There was discussion on the following points:

- The Supreme Court will seek comment on the PAS document from the Chief Judges Council.
- The PAS document went beyond the questions of technology and went directly to policy.
- The Supreme Court will make the final decision on the PAS document after JIFFY forwards it to them.
- PAS Recommendation A
 - As electronic filing is built in, the Judiciary will have to do its best to redact sensitive information from documents.
 - The primary responsibility to redact personal information is the litigant's responsibility.
 - PAS initially started with a civil and a criminal position; but over time, PAS merged both.
 - Judge Mitchell did not see this recommendation as contrary to the sealing rule.
 - Concerns that parties who file documents would not redact personal information.
 - Concerns that court staff would not make the effort to remove personal information from public access.
 - Concerns with placing responsibility on clerks to read through every pleading to find personal information to redact from public access.
 - PAS will need to reexamine this recommendation when electronic filing is implemented.
- With respect to the PAS Recommendation B, PAS contemplated this recommendation at great length. The exceptions for deferred and conditional discharge were simply because they were admissions of guilt on the part of the defendant, even though the defendant is given a pass, ultimately.

Action Item: Per Justice Petra Jimenez Maes, PAS to include in the Executive Summary more background information, the premises that PAS operated under, and how other states are handling public access. Justice Maes asked that PAS make it clear in the Executive Summary that it is recommending that the Judiciary continue the public access through the Case Lookup application.

Action Item: Per Judge Richard Knowles, PAS to indicate in the PAS document and in the Executive Summary that to the effect that working on the assumption that other access will be continued and these are JIFFY's and PAS's recommendations as to how that may be refined.

Action Item: Per Judge Bustamante, PAS to incorporate the PAS voting matrix as an appendix in the PAS document.

Action Item: Per Justice Maes, the PAS document will be published in the Bar Bulletin and the Supreme Court will ask for comments. The Supreme Court will have to determine how the information will be provided to the public. She recommended that JIFFY obtain the minority positions from those that attended the JIFFY Public Forum.

Action Item: To prevent the Judiciary from unintentionally encouraging or assisting with deception, Judge Knowles asked that if the PAS recommendations are adopted by the Supreme Court that JID Staff post language on the Judiciary's public access web site that outlines the Judiciary's policies and to note that if something is not displayed, it may have never existed or it may have been removed based on these policies.

Judge Knowles moved that JIFFY adopt the majority PAS Recommendation A, as described on page 20 of the PAS document. Robert Mead seconded. There was discussion on the minority position and if JIFFY could recommend both positions to the Supreme Court. **No further discussion. No opposition noted. Motion carried.**

Judge Knowles moved that JIFFY adopt the PAS Recommendation B, as described on page 24 of the PAS document, with the exception of not displaying conditional discharges on the public access web site. Mr. Mead seconded. There was discussion relative to deferred sentences, concerns with the deferred sentence statute, no-contest cases, Bernalillo County Metropolitan Court's (BCMC) philosophical position that the public has a right to know, frustrations of not being able to find records, balancing privacy versus the right to know, the problem with the public not being able to differentiate between an arrest and a conviction and the stigma attached. **No further discussion. Five members voted in favor of the motion. Five members were opposed. Due to a tie, Judge Bustamante voted in favor of the motion. Motion carried.**

Judge Knowles moved adoption of the following language in the PAS Recommendation B "but with the exception that records of dismissals subsequent to a deferred sentence". Mr. Mead seconded. No further discussion. Judge Clay Campbell opposed. Motion carried.

Judge Duane Castleberry moved that JIFFY adopt the rest of the language in the PAS Recommendation B, as follows "conditional discharge not be removed from the court Internet records". Judge Campbell seconded. No further discussion. Two members voted in favor of the motion. Eight members were opposed. Motion failed.

Judge Knowles moved that if the PAS Recommendation B is adopted by the Supreme Court that JID Staff post a flash screen on the public access web site so users understand the Judiciary's external database. Mr. Mead seconded. No further discussion. No opposition noted. Motion carried.

PAS Recommendation B ended up being: *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, conditionally discharged or vacated, but with the exception that records of dismissals subsequent to a deferred sentence not be removed from the public Internet records.*

Judge Bustamante deferred the two remaining PAS recommendations to next month's meeting.

II. Budget and Revenue

JID Revenue Pipeline Report.

Fiscal Year 2010 Projection Report. Oscar Arevalo spoke of the following points:

- A bill that passed to provide information from the SHARE system. He is working to find out what type of information they will be requiring from the Judiciary.
- Revenue projections.
- SCAF fund collections.
- He is working with Tom Edwards relative to the balances of the EDMS and case management funds. They are confident that those funds will be exhausted by June 30, 2010.
- Plans to begin discussions on how to proceed into FY2012 in terms of how they will incorporate the additional \$10.00 civil filing fee.
- House Bill 2.
- Budget Committee discussion relative to the \$5.1 billion budget that the governor is considering is based on a 6% revenue growth for FY2011.
- The governor has transfer authority of \$132,000,000.00 out of other funds to cover any shortfalls for FY2010 and FY2011.
- Language to extend the \$2,000,000.00 appropriation to FY2012.
- An error on the case management pipeline relative to the cash reconciliation on the top component. He will ensure that it is corrected for next month's meeting.

III. JIFFY Sub-Committee Activities

Judges User Group. Judge Mitchell reported that the Judges User Group (JUG) did not meet in March but they will meet in April. JUG now has a complete membership. She mentioned the recently appointed members.

Public Access Subcommittee. This was the first item discussed today.

Odyssey Steering Committee. Judge Mitchell reported the following:

- The Odyssey Steering Committee (OSC) met yesterday.
- OSC had a lengthy discussion about the Seventh Judicial District Court's (Seventh) implementation.
- She read two thank you notes OSC received from the Seventh regarding the success of their implementation.
- The Seventh's implementation has been the best rollout thus far.
- Conversion issues that occurred with Tyler Technologies (Tyler) and what Tyler is doing to ensure there is a repeatable conversion process.
- OSC will ensure that Tyler is not charging the Judiciary for things they failed to correct.
- To the extent possible, OSC felt that it is important for court staff that already have Odyssey in place to assist with follow-up training.
- JID Staff are currently testing a possible solution to the protective order flag issue.
- OSC voted on the position that all internal court employees and judges would be able to view all cases, except those that are sealed.
- New Odyssey Tyler contract.
- BCMC fit assessment. There is hope that the BCMC contract will be executed by the end of April.
- The Alabama electronic citation project is moving forward. The plan for a March implementation has been extended to April.
- Hot site project is moving forward. JID Staff tested the server and will begin testing it in the field. Jerry Wise was hired on contract to manage this project.
- Mr. Edwards' project manager's report.
- Mr. Todd's project status report.

There was discussion on the following points:

- Historically, JIFFY had a rule for approving the final form of contracts.
- Judge Bustamante spoke of what Tyler is doing internally to address the conversion issues.
- Mr. Edwards thanked the JID Applications Team for all the work and effort they have done on the project. He was pleased with the thank you notes received from the Seventh.
- The financial staff at the Seventh were prepared, which greatly contributed to the success of the Seventh's implementation.
- JID Staff have been holding video conferences with the rest of the pilot courts.
- The Chief Financial Officer meetings have addressed the Odyssey implementation.

Judge Knowles moved that JIFFY endorse the terms of the new Odyssey Tyler contract as reflected in the document entitled *Tyler New Contract Summary*, which was provided to OSC members yesterday. Judge Mitchell seconded. Judge Bustamante asked that management proceed on the contract and not to exceed \$2,000,000.00 as noted in the contract summary. No further discussion. No opposition noted. Motion carried.

IV&V Report. Dr. Julie Carroll of Burger, Carroll and Associates referred to her report, which was emailed to JIFFY members on March 16, 2010 by Mr. Edwards. She reported the following:

- Conversion issues related to Tyler were escalated.
- High level joint planning between the Second Judicial District Court (Second) and JID Staff was initiated.
- Integration assessments for the BCMC. Software enhancements constitute 50% of the cost, the remaining licensing costs are at 17%, and the implementation at 28% of that proposal.
- Concern with the timing of the implementation of civil courts, which was initially set for the end of this year.
- The risk relative to the budget status was closed.

IV. CIO Report. Mr. Prisoc left early, so he did not report on this item.

V. Purchase Requests. There were no purchase requests to discuss this month.

VI. Review and Approval

Discussion on Court Technology. Judge Bustamante advised that this item would not be discussed today.

Update on Second Judicial District's EDMS Project. Juanita Duran reported that this would be the last EDMS report as the majority of the EDMS appropriation had been expended. The Second is in the process of finishing the last of their hardware/software rollout and should have something in their support divisions by the end of June. She welcomed JIFFY members to visit the Second to see the system live.

Continuing Discussion on Draft E-Mail Retention Proposal. Judge Campbell reported that the subcommittee tasked with drafting the email retention proposal did not have anything to report at this time. They hope to have a report for JIFFY next month.

VII. The next meeting will be held on Thursday, April 15, 2010 at 9:30 a.m. at JID.

VIII. Adjourn. Judge Bustamante adjourned today's meeting at 11:57 a.m.

IX. Additional Attachments

Project Status Reports. There was not discussion relative to the *Project Status Reports*, which were attached to the JIFFY agenda.

Final Minutes Approved by Judge Bustamante on March 31, 2010.