

WCCA OVERSIGHT COMMITTEE MEETING MINUTES

TUESDAY, FEBRUARY 14, 2017, 9:30 AM

MONONA ROOM

STATE BAR CENTER, MADISON

MEMBERS PRESENT: J. Denis Moran, Sara Ward-Cassady, Jean Bousquet, Judge James Babler, Judge Thomas Gritton, Judge Richard Sankovitz, Judge Derek Mosley, Representative Robin Vos, John Barrett, Judge Jean DiMotto, Judge John Storck, Beth Bennett, Pat Brummond, Raymond Dall'osto, Bill Lueders, Taavi McMahon, Gregg Moore, Sheriff Brent Oleson, Theresa Owens, Adam Plotkin, Kate Spitz, Michelle Vetterkind, Kimberly Walker,

MEMBERS ABSENT: Judge Everett Mitchell (voted by email), Theresa Russell, Senator Van Wanggaard,

OTHER GUESTS: Carla Robinson, Steve Fawcett (Speaker Vos's office), Raphael Ramos (Legal Action of Wisconsin), Valirie Maxim (Senator Wanggaard's office), Peggy Hurley, and Melissa Lamb

1. INTRODUCTIONS

Mr. Moran led introductions of the committee members and guests.

2. APPROVAL OF MINUTES

Mr. Brummond motioned to approve the minutes from the December meeting and Mr. Plotkin seconded the motion, all members approved.

3. REVIEW AND DISCUSSION OF WCCA DATA

Ms. Ward-Cassady distributed the data the committee asked to review at the last meeting. Mr. Barrett discovered an error in the temporary restraining order/injunction data so it will be corrected and redistributed prior to the next meeting.

Ms. Ward-Cassady said the criminal cases (includes felony, misdemeanor, and criminal traffic) average approximately 134,000 dispositions per year, and the number of dispositions include those dismissed on motions and acquittals and those dismissed after successful completion of deferred prosecution agreements. Judge Storck asked if the number of dismissed criminal cases includes dismissed but read-in, and Ms. Ward-Cassady said it does not as the committee did not want those included in consideration of shorter display periods on WCCA. Mr. McMahon asked if these numbers reflect whole cases and not individual charges, and Ms. Ward-Cassady said they are dismissed cases and any cases with a conviction or dismissed but read-in charge are not included in this data.

Ms. Ward-Cassady said the number of civil cases disposed (10-year average of about 67,000 cases) includes temporary restraining orders (TROs) and injunctions filed as civil cases, except in Milwaukee County where TROs and injunctions are filed as family cases. Speaker Vos asked how a family case that includes ongoing custody or maintenance issues is disposed, and Ms. Ward-Cassady said child support agencies have a demonstrated need for keeping case

information for 30 or more years, but 20 years on WCCA is sufficient. Ms. Ward-Cassady explained the display on WCCA currently matches the retention schedule of the paper court records, and the committee is only discussing changing retention on WCCA, not changing the retention of the court records.

Ms. Ward-Cassady said the small claims case data shows an average of 13,000 stipulated dismissals per year, and the average of 30,000 disposed small claims eviction cases per year includes all types of dispositions and judgments.

Ms. Ward-Cassady said the data for TROs and injunctions is incorrect and will be redistributed to the committee, but the average number of 50% of injunctions being dismissed is correct. The vote on this issue will be delayed until the data is accurate. Mr. Dall'osto said TROs can be a barrier to possession of or acquiring firearms so a shorter retention period would be preferred.

Judge Sankovitz asked if there are any current circumstances where a case only appears on WCCA for a limited time, and Ms. Ward-Cassady said the WCCA retention matches the Supreme Court Rule for retention of paper records. Judge Sankovitz asked if the paper files are destroyed when the retention period ends, and Ms. Ward-Cassady said the records are sometimes retained past their retention periods and the policy is the clerk must provide a record if they have it on hand.

Judge Sankovitz asked if there is any way to limit the way bulk data subscribers use their data, or require them to update their records, because he does not want to create more opportunity for malicious websites to extort money from the public or for this committee to suggest changes to information on WCCA if subscribers will have different access. Ms. Ward-Cassady said after reviewing other states' bulk data subscriber policies she learned Minnesota has strict guidelines on requiring subscribers to update their search results, but did not see any information about how they check for adherence to these requirements or consequences of not following the guidelines. Mr. Lueders suggested taking away access to bulk data for not updating records or using data maliciously, but Judge Sankovitz said companies who do data scrapes can still do so without a bulk data subscription. Speaker Vos asked who set the \$5,000 bulk data subscription fee, and Ms. Bousquet said the fee was set by the Director of State Courts. Speaker Vos said he believes the fee is extremely low for the access given and asked if the time clerks of court staff spend entering information in CCAP is included in calculating the fee. Ms. Ward-Cassady said the fee calculation did not include staff time. Ms. Bousquet said the reason the bulk data subscription was offered was to decrease the amount of traffic on the public WCCA website because data scrapers were slowing down searches for users. Judge Sankovitz said the bulk data subscription was devised to make the site more accessible to regular users, and Ms. Bousquet said the fee was meant to cover the cost of doing business but not to generate profit or deter subscribers. Ms. Ward-Cassady said if the WCCA display periods remain as they are, matching court record retention, it allows for more control of the dissemination of the data and decreases the chance of private industry profiting from shorter online record retention. Judge Sankovitz asked if the committee is willing to decrease retention periods on WCCA with the knowledge that some will access the information or provide it in other ways, for the prospect of more responsible use of the information by most users. Mr. Lueders said he believes if any information is removed from WCCA it will only drive business to private industries and less scrupulous providers. Mr. Brummond asked if bulk data subscribers perform a new search if it overrides their previous data, and Ms. Bousquet said it does not and there is no way to control how they search for the

data or how it is used. Speaker Vos said this committee should still consider changes to the display of information on WCCA, and figure out a way to address malicious users and websites separately. Ms. Bousquet said before the WCCA website existed, CCAP had to provide bulk data to requesters for the cost of copying the records, and Mr. Moore added that clerks of court offices were disrupted by companies coming to their offices for copies of all court files. Mr. Moore said the Supreme Court Rule determined the retention period for case files based on the business need for the records, but he said if the retention of dismissed cases is shortened on WCCA this will not result in the majority of users seeking out the records in other ways or paying for access to them. Judge Gritton said if bulk data subscribers are blackmailing people with the data, their access should be taken away or the contract should restrict passing along the data. Mr. Moran said he would be interested in learning how other states enforce stricter guidelines on their bulk data subscribers. Judge DiMotto expressed concerns about misuse and cost of providing bulk data and motioned for the Director of State Courts to consider stricter access for bulk data subscribers, and Mr. Dall'osto seconded the motion. Speaker Vos asked if there is any way to find out if bulk data subscribers are selling the data, and Mr. Moran said his office will look into it. Judge Sankovitz suggested adding the cost of auditing the data to the subscription fee, and Judge DiMotto accepted the suggestions from Speaker Vos and Judge Sankovitz as friendly amendments to her motion. Mr. Lueders asked if it is illegal for companies to extort people over this data, and Ms. Ward-Cassady said the Department of Justice investigated these website and could not determine whether they could be stopped or prosecuted. Ms. Maxim said Senator Wanggaard introduced a bill in the last legislative session to curtail the extortion done by mugshots.com but it did not pass, although it could be reintroduced if there is greater interest. Ms. Spitz said she would like to re-raise this issue at DOJ and Ms. Ward-Cassady will let her know who worked on the extortion website issue previously.

Motion: The Director of State Courts will look into making more restrictive elements to the bulk data contract to require updating of data and restrict resale of data, and also propose increasing the cost of access to include an auditing function and oversight. All in favor of the motion.

4. VOTING

a. Changes to Display on WCCA

Criminal cases:

Mr. Plotkin said he supports a shorter display period on WCCA for dismissed felony cases, and suggested using the statute of limitations (6 years) as the guide for the display time. Ms. Ward-Cassady said the committee will vote on whether to shorten any display times before determining what those times will be. Mr. Dall'osto agreed that the display time for dismissed cases should be shorter. Mr. Lueders said the previous incarnation of this committee discussed shorter retentions for dismissed cases on WCCA, but ultimately decided to keep the retention consistent with the Supreme Court Rule on court record retention for logistical and practical purposes. Mr. Lueders said different retention periods for records in courthouses and online will create inconsistencies, and the retention should be changed in the Supreme Court Rule and then changed on WCCA to match. Mr. Moore said the Supreme Court Rule sets retention of records for the court for business and legal needs, but the display on WCCA does not need to be the same. Mr. Moore added that other factors need to be considered, such as the adverse affect on the public when dismissed cases remain on WCCA

for decades. Ms. Ward-Cassady said part of the decision to match the retention on WCCA with the Supreme Court Rule was to shorten some retention periods on WCCA as some case types were displayed even longer. Speaker Vos said even five years is a long time for a dismissal to follow a person, and suggested cases be removed from WCCA upon dismissal. Mr. Lueders said dismissals are an accurate reflection of what happens in the court system, and the standpoint for removing them is predicated on the notion that people are incapable of rational analysis of court records. Speaker Vos said it is far more likely for people to make snap judgments. Mr. Lueders said the Freedom of Information Council drafted legislation to require employers and landlords who use WCCA for background checks to disclose it to applicants, and Speaker Vos said he would support such legislation. Judge Gritton said he believed if 100 people with dismissed cases were asked if they would like them to be removed from WCCA, all 100 would, and Mr. Moran said he believes many think dismissed cases are already not displayed on WCCA. Mr. McMahon said the legislature may be addressing some of these issues if legislation to expand expungement parameters is passed. Judge Sankovitz said the circumstances of dismissals in domestic violence cases can be very different, particularly relating to victims, and asked if victim witness advocates or reporters would still have access to information on dismissed cases. Speaker Vos said the records would still be available at the courthouse.

Mr. Plotkin asked if it is possible to give judges discretion on removing cases after deferred prosecutions, and Ms. Ward-Cassady said there would be too many inconsistencies with picking and choosing. Mr. Dall'osto said deferred prosecutions occur for many reasons and successful completion of those agreements can lead to a case being dismissed or charges reduced. Judge Storck said deferred prosecutions include a guilty plea and the understanding if terms are not adhered to a conviction will occur. Mr. Brummond said the end result is the same, and all dismissals should be treated equally. Mr. McMahon said dismissed cases are not currently eligible for expungement.

Mr. Plotkin motioned for a vote on shorter display periods for criminal cases dismissed or acquitted (first three votes) and Mr. Dall'osto seconded the motion. **All three votes to create a separate display period on WCCA for dismissed felony cases (including deferred prosecutions), dismissed misdemeanor cases (including deferred prosecutions), and acquitted criminal cases passed.**

Small Claims cases:

Mr. Barrett asked if all dismissals in small claims can be considered for shorter display on WCCA, not just stipulated dismissals, and Ms. Ward-Cassady said she will amend the vote to include all dismissed small claims. Mr. Lueders asked if the dismissed small claims would have a retention period of less than two years if the vote passed, and Ms. Ward-Cassady said the cases with two year display on WCCA are different cases than the dismissed. **The vote to create a separate display period on WCCA for dismissed small claims cases passed.**

Temporary Restraining Order/Injunction cases:

Ms. Ward-Cassady said the vote for these case types will take place after the data is corrected and sent to the committee, but asked if the different TRO dismissal types should be reviewed. Judge Babler said other factors need to be considered for TRO dismissals because victims can be intimidated into dropping the case. Mr. Barrett said these types of cases are sometimes filed punitively, and sometimes a TRO is granted but not an injunction. Judge Babler said no

grounds are required to get a hearing on a domestic abuse TRO. Mr. Brummond said he agrees with Judge Babler on the value of keeping these dismissed cases for a period of time, but not 20 or 30 years. Judge Sankovitz said he knows dismissed injunctions create difficulties for employment and renting and thinks they should be considered consistently with other case type dismissals. Ms. Ward-Cassady said the vote on this item can take place without the data. **The vote to create a separate display period on WCCA for dismissed or denied TRO/injunction cases passed.**

Family cases:

Ms. Ward-Cassady explained that divorce cases have a great deal of postjudgment activity regarding child support, placement, maintenance, etc. and many parties without attorneys rely on the information displayed on WCCA for their ongoing cases. Mr. Barrett said people often need information from their divorce cases when applying for social security and removing it from WCCA could be a hindrance. Mr. Lueders asked what the negative consequences are of displaying family cases on WCCA for 30 years instead of 20. Ms. Ward-Cassady said most complaints regarding family cases on WCCA are because they are displayed at all, not how long they are displayed. Ms. Bousquet added that these cases have very specific notes with more personal detail in the case information on WCCA than other types of cases. Mr. Brummond asked if it is possible to set a removal from WCCA 20 years after the last activity in the case, but Judge Sankovitz pointed out some activity in case management (administrative, technological) has nothing to do with activity on a case. Mr. Dall'osto said postjudgment issues for children attending college can feasibly go on for at least 25 years after a divorce so he did not see the benefit of changing from a 30 year display. **The vote to change the display time on WCCA for family cases from 30 to 20 years did not pass.**

b. Document Access

Mr. Barrett asked if documents would be printable if made available, and Ms. Bousquet said they would and all other states who provide access to documents charge for the access. Speaker Vos asked if making documents available would be providing more information about dismissed cases, and Ms. Bousquet said yes. Mr. Brummond said this would change the access point for obtaining court files from the clerks' offices in the courthouses. Mr. Moore said he sees no compelling public interest in having easy access to documents that may or may not be accurate or truthful, perhaps access to dispositive case records someday but not at this time. Ms. Owens agreed with Mr. Moore. Speaker Vos asked what the fiscal impact to counties would be if documents were made available on WCCA in addition to the clerks' offices. Ms. Ward-Cassady said counties report their revenue collections to the Director's office, so she can find out how much is collected for copies of court files. Judge Storck said he sees the value in public transparency but much more training is needed before documents can be made available online, especially for proper redaction of confidential information. Mr. Moran said he believes documents being available online is inevitable but it is premature to do so at this time. Ms. Robinson said many final court orders, especially marital settlement agreements, contain a lot of financial information. Judge Gritton said more time is needed for attorneys and the public to learn about redaction with efilings. Ms. Ward-Cassady said the Supreme Court Rule about redaction gives the responsibility for redacting confidential information to the person filing a case. Mr. Dall'osto made a motion to hold off on making court documents available on WCCA. Judge Babler said there is no good policy

reason to make documents available online right now, and motioned for no court documents to be made available on WCCA for any user, including bulk data subscribers, and Ms. Walker seconded the motion. **The vote to not make documents or digital audio recordings available with or without cost to individuals or bulk data subscribers passed.**

Judge Sankovitz moved for CCAP to develop a proposal to make dispositional orders (excluding marital settlement agreements) available for purchase. Ms. Ward-Cassady said it may be shortsighted to only exclude marital settlement agreements. **Judge Sankovitz then moved for the Director's office to study the feasibility of making dispositional orders available on WCCA and project the possible revenue, and Judge DiMotto seconded the motion. The vote passed unanimously.**

5. DISCUSSION OF SPECIFIC WCCA DISPLAY PERIODS

Ms. Ward-Cassady said the specific time periods for display of case types approved for change will be discussed at the March meeting. Judge Sankovitz said the statute of limitations on some cases would be a helpful benchmark to consider. Mr. Brummond said there is value in having information from dismissed cases displayed for a shorter period of time, but would suggest a more emphatic notation or display of the dismissed status. Mr. Barrett asked if foreclosures could also be considered for reduced display time, and Ms. Ward-Cassady said yes but no other additional items will be added for consideration before the next meeting.

6. FUTURE MEETING DATES

The meetings on March 21 and May 2 will be held in Room 150A of the Risser Justice Center, 120 Martin Luther King, Jr. Blvd. in Madison.

7. OTHER BUSINESS

Mr. Lueders asked about the possibility of charging a fee for access to WCCA, and Ms. Ward-Cassady said the topic can be added to the agenda for the next meeting. Mr. Lueders would like to consider the operating cost of the system and any associated costs to implement charging a fee. Ms. Ward-Cassady said charging for access to WCCA would reopen the discussion of document availability as well. Ms. Bennett asked if sharing the revenue for document availability with county clerks of circuit court has been discussed, and Ms. Ward-Cassady said yes. Ms. Ward-Cassady will add charging for WCCA access to the agenda for the next meeting.

With all agenda items discussed, the meeting was adjourned.