

**CONTENT/ACCESS SUBCOMMITTEE
Wisconsin Circuit Court Access (WCCA)
Oversight Committee**

MINUTES

August 26, 2005
10:00 a.m.

G.A.R. Room
Wisconsin State Capitol
Madison, WI

MEMBERS PRESENT: MEMBERS PRESENT: Gregg Moore, District Court Administrator, Chair; John Barrett, Milwaukee County Clerk of Court; Jean Bousquet, CIO CCAP; Attorney Mary Burke, Department of Justice; Judge Gary Carlson, Taylor County; Carole Doeppers, Government Privacy Consultant; Judge Charles Kahn Jr., Milwaukee County; Bill Lueders, President Wisconsin Freedom of Information Council; Attorney Gerald Mowris; Sheriff Randy Roderick, Green County; and Representative Marlin Schneider.

OTHERS PRESENT: Lori Irmen, Director of State Courts Office.

Mr. Moore distributed the list of issues Mr. Voelker referred to at the plenary session for discussion. Ms. Doeppers suggested that bulk subscription issues be added to the list for further discussion. The group agreed with Ms. Doeppers and the item was added as number 6 to the issues list.

1) Overall, should electronic court records be accessible to the public or should they be restricted?

Judge Carlson said pursuant to Wisconsin State Statutes Chapter 19, the records are open to the public and the real question is if the records should be made available on the internet. He suggested the words, "on the internet through WCCA" be added to the question.

Judge Kahn said this may be an opportunity to provide the legislature with suggestions for changes in the open records law as it pertains to the judiciary. Representative Schneider said the open records law was enacted in the post-Watergate era, before the internet. He said the internet has provided accessibility to persons worldwide. He said he has heard from several constituents who have been negatively impacted by WCCA. Representative Schneider provided an example where a credit card thief used WCCA to find base information from a divorce action, called one of the parties involved, and was able to get bank account and credit card information from that person. He also provided examples of employment ramifications because of records on WCCA. Representative Schneider said many times the person is unaware that the information is being used in that manner.

Sheriff Roderick said the answer to the question is dependant on whether safeguards are implemented. He said the subcommittee should assume the other committee will address how to correct inaccurate data. Mr. Lueders said there is a process posted on WCCA providing instructions on how to correct information but improvements to the process should be discussed. Mr. Barrett said in some instances, corrections are made fairly easily, and in other instances it is more difficult. Judge Carlson said in some cases it might be necessary for the judge to reopen the case for a hearing. The subcommittee agreed it was appropriate for the Retention/Accuracy Subcommittee to deal with corrections issues and this subcommittee will address the removal of information as indicated in number 4 of the issues list.

Ms. Doeppers said in order to answer the first question, the subcommittee should determine what the principles of WCCA are. For example, is the value of WCCA for gaining efficiencies, as a convenience to the court system or to protect victims? She inquired if including only criminal cases on WCCA might be a viable alternative. Mr. Lueders said civil actions, including small claims, is a huge category. He said landlords and title companies are just a few examples of people who access civil records for business purposes. Mr. Barrett said including these case types provides some protection to consumers, such as small claims against builders or businesses. Judge Carlson said he posed the question to the family law section of the State Bar and distributed a hand-out of the mix of responses that he received. He said many responses suggested that having more information available would alleviate some assumptions that users make.

Mr. Lueders said the advantages of WCCA outweigh the negatives. He said placing restrictions on the data will not result in stopping information from getting out. He said the subcommittee should look at how the information is being abused, discuss options to combat the abuse, and urge the appropriate authorities to take action if the information is being used illegally, such as employment discrimination. Ms. Bousquet agreed that the information would be out there regardless. She said the court system cares about the integrity of the information and the committee should take this opportunity to improve on WCCA.

Judge Carlson made a motion the subcommittee answer yes to the question, "Overall, should electronic records be accessible to the public on the internet through WCCA?" Judge Kahn seconded the motion. The motion carried with 10 members voting yes, and one no vote cast by Representative Schneider.

Ms. Doeppers said question one contains two parts, and the restriction question was not addressed in the motion. She asked for clarification on what the restriction refers to, restricting information on WCCA or restricting people who have access to it. Judge Kahn said he would be in favor of maintaining the system that is currently available. Judge Carlson said the information is already restricted to non-confidential case types as well as other information, such as victim's names etc. as discussed earlier at the plenary session.

Mr. Lueders made a motion to amend the second part of question one to "Should improvements be made to WCCA to increase clarity and reduce the potential for misuse?" Attorney Mowris seconded the motion. Judge Kahn wanted it noted that it is not the role of the committee to

decide how people use the information. Judge Carlson added it should be recognized that data has been misused long before the inception of WCCA. The motion carried unanimously.

2) If electronic records are accessible, is there agreement on the general premises in the CCJ/COSCA guidelines policy development by state courts?

Mr. Moore said the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) developed model guidelines in order to assist states in developing record access policies. He said the guidelines are based on five premises and distributed a copy of those premises.

- Retain the traditional policy that court records are presumptively open to public access.

The subcommittee agreed with this premise.

- As a general rule access should not change depending upon whether the court record is in paper or electronic form. Whether access should be the same regardless of the form of the records although the manner of access may vary. The CCJ/COSCA Guidelines apply to all court records.

Judge Carlson said it should be clarified whether this is referring to the ability to access the record or requiring the records, regardless of form, to be identical. Ms. Burke said the next bullet appears to differentiate items that are in the court file but are not necessarily appropriate for internet access. The subcommittee adopted the general premise but agreed that further clarification and discussion is warranted.

- The nature of certain information in some court records, however, is such that remote public access to the information in electronic form may be inappropriate, even though public access at the courthouse is maintained.

The subcommittee is unclear who determines what is inappropriate but adopted the general premise.

- The nature of the information in some records is such that all public access to the information should be precluded, unless authorized by a judge.

The subcommittee adopted this premise with the agreement that the precluded records referred to are legally confidential records.

- Access policies should be clear, consistently applied, and not subject to interpretation by individual court or clerk personnel.

Mr. Barrett pointed out that the information entered into CCAP varies from county to county. He said Milwaukee County uses CCAP to record case minutes and other counties do not do that. Ms. Bousquet said the baseline is the same for all counties but some counties do docket events differently. She said in time, more counties will likely begin using in-court processing features.

Judge Carlson added there are policies in effect that dictate rules for entering in the information, such as using initials for victim's names.

Judge Carlson made a motion the subcommittee adopt the premises of the CCJ/COSCA guidelines as general principles to guide the subcommittee. The motion carried unanimously.

3) If electronic records are accessible to the public, two questions regarding specific information currently contained within the Website should be addressed.

- What information should be removed?
 - What is the policy justification for removal

Mr. Moore explained this question pertains to policy and refers to information that is on WCCA now that they feel should not be and why.

- What information should be clarified?
 - How

Judge Carlson said maybe the question should include what should be added to WCCA. Ms. Bousquet said that is addressed in question 5. The subcommittee agreed to amend question 5 to read, "what additional future information should be made available?"

Mr. Barrett said a significant problem is that users often misread the record information and make judgments simply because a case exists. He speculated if providing an abbreviated summary of the final disposition in the case as the first thing a user sees, would alleviate some of the problem. Judge Kahn agreed and added it could be useful if a reason why a case was dismissed, such as the person was not convicted or completed a deferred prosecution program, was included in the summary.

Attorney Mowris said the expungement laws are limited and should be expanded. He said 40 other states allow expungements. He distributed a proposal to amend SCR 72 that would deal with expungements in cases that do not involve convictions, such as dismissals. He asked the subcommittee to support the proposal. Attorney Mowris said legislative action would be required to deal with cases with convictions. He said bill AB280 was introduced to the legislature but it was sent to committee where it will likely remain. Judge Carlson said he opposed AB280 because in his opinion, expungement as currently defined, has no meaning. He said expungement only destroys the record and it does not vacate the conviction. He said if a person asks for an expunged file, the clerk must tell them no file exists, lending the appearance that the court is hiding something. In addition, if the defendant is asked if they have been convicted of a crime, they have to answer yes even though the case has been expunged and no case file exists. Mr. Barrett said when a case is expunged, court records are the only records destroyed. He said records still remain at the Crime Information Bureau and the Department of Transportation. The subcommittee agreed that expungement is an area that deserves further discussion and that it is premature for them to take a position on Attorney Mowris' proposal or AB280.

Representative Schneider asked if it is likely that district attorneys may be overcharging and then amending down charges later. He said the original charge appears on the record. Judge Kahn said charging decisions are made by the district attorney and the court system does not have a role in determining what charges will be filed. Attorney Mowris added that the retention period is applied based on the original charge, not the amended conviction and noted the WCCA retention period varies from Supreme Court rules. Mr. Moore said the Retention/Accuracy subcommittee should be addressing that issue.

Ms. Doeppers said she would like to revisit the possibility of removing all non-criminal cases from WCCA. She said she is very concerned about the situations related by Representative Schneider and the harm that is caused to some people because these records are on the internet. She is not convinced that maintaining these records on the internet for the convenience of the stakeholders outweighs the potential for harming people. Ms. Doeppers said she is not proposing sidestepping the open records law, she is questioning whether or not the records should be available on the internet. Mr. Barrett said the information is going to get out anyway and by keeping it available on the court system's website, safeguards are in place to ensure the information is as accurate as possible. He added those records provide information to consumers to help them make informed decisions about using their services, such as building contractors and doctors. Mr. Moore said it is also useful to parents in protecting their children, such as checking driving records of friends before allowing them in a car with them. Judge Carlson said landlords also find it helpful to know if a prospective tenant has been evicted in the past or does not pay their bills. Judge Kahn said some people check records before entering into personal relationships. He said he would not speculate if these uses are considered inappropriate but nevertheless they are helpful to people in making life decisions.

Due to time constraints, the subcommittee meeting adjourned and reconvened with the full committee for the afternoon plenary session.