

WCCA OVERSIGHT COMMITTEE MEETING MINUTES

TUESDAY, SEPTEMBER 27, 2016, 9:30 AM

CONFERENCE ROOM 150A

RISSER JUSTICE CENTER, MADISON

MEMBERS PRESENT: J. Denis Moran, Sara Ward-Cassady, Jean Bousquet, Judge James Babler, Judge Thomas Gritton, Judge Richard Sankovitz, Judge John Storck, John Barrett, Peg Feuerhelm, Sheriff Brent Oleson, Theresa Russell, Senator Van Wanggaard, Beth Bennett, Raymond Dall'osto, Chief Michael Koval, Bill Lueders, Theresa Owens, Adam Plotkin, Kate Spitz, Michelle Vetterkind

MEMBERS ABSENT: Patrick Brummond, Judge Jean DiMotto (Ret.), Taavi McMahon, Gregg Moore, Judge Derek Mosley, Representative Robin Vos

OTHER GUESTS: Zach Bemis (Robin Vos's office), Peggy Hurley, and Melissa Lamb.

1. INTRODUCTIONS

Mr. Moran welcomed everyone to the committee and led introductions.

2. HISTORY OF COMMITTEE

Ms. Bousquet discussed the history of the Wisconsin Circuit Court Access (WCCA) website and previous iterations of this committee. Ms. Bousquet said the first WCCA Oversight Committee created the policy still in use on the WCCA website. The committee reconvened at the end of 2005 to clarify information on the website, create forms for removing addresses for safety reasons, and create executive summaries for criminal cases. Ms. Bousquet said the 2005-06 committee also recommended the Legislative Council study expunction of criminal records.

Ms. Ward-Cassady said the Director of State Courts Office (DSCO) implemented or referred all the recommendations of the previous WCCA Oversight Committee, but all previous recommendations are on the table for revisiting by this committee. One of the recommendations in 2006 was to retain information on WCCA pertaining to case type retention periods set forth in Supreme Court Rule (SCR) 72, but the committee also recommended a review of SCR 72. Ms. Ward-Cassady said the review of SCR 72 resulted in a petition to the Supreme Court to retain a case record based on the disposition of the case rather than the filing because a case filed as a felony but pled down to a misdemeanor is retained for the felony case type (50-75 years) rather than the misdemeanor (20 years). Mr. Lueders asked why a committee other than this one decided to recommend changing the retention rule based on disposition, and Ms. Ward-Cassady said the 2006 WCCA Oversight Committee recommended a committee to review SCR 72, where the recommendation came from. Mr. Lueders asked what the proposed retention is for a dismissed case, and Ms. Ward-Cassady said there is not a retention rule for dismissed cases and it should be discussed by this committee. Judge Sankovitz said a case filed as a felony but later dismissed is retained as if it is a felony. Ms. Ward-Cassady explained the retention rules were based on the business need for court records and also considered the ability to keep paper records, but storage of paper records is not as much of a concern now with scanning documents.

DSCO staff drafted an expungement bill and Ms. Ward-Cassady said sponsorship from the legislature is needed for this potential legislation.

3. COMMITTEE LOGISTICS

Ms. Ward-Cassady said the committee can discuss whether to split into subcommittees, in 2005 the group split into two subcommittees: Content and Access, and Retention and Accuracy.

4. ISSUES TO BE ADDRESSED

DISMISSED CASES / REMOVING INFORMATION FROM WCCA

Mr. Barrett expressed concern about people using information on WCCA maliciously by filing actions but never intending to be present for prosecution of the action, and he believes these types of dismissed cases should not remain on WCCA very long. Mr. Barrett said some stipulated dismissals, particularly in evictions, should only be retained on WCCA for a short time. Ms. Ward-Cassady asked if only stipulated dismissals or all dismissals in general should have a shorter retention on WCCA. Mr. Dall'osto asked this committee to review all dismissals, and said landlords and others sometimes use the information detrimentally. Chief Koval said he often hears about unintended consequences of the transparency of information on WCCA being used to discriminate. Mr. Lueders asked for specific examples of abusive use of WCCA, rather than unproven anecdotes to warrant removing information from WCCA. If parties are using small claims court abusively, Mr. Lueders thinks it is important for people to have access to the information. The Wisconsin Freedom of Information Council supported a provision in AB 253 in 2013, which would have required landlords and employers to inform applicants of their use of WCCA as a screening device, but the legislation did not pass. Mr. Lueders requested the information on WCCA be maintained as it is and not removed, but did not request any additional information become available on the site. Ms. Ward-Cassady said any questions her office receives from attorneys requesting clarification of information on WCCA are about information on the first page of a search. Ms. Bousquet suggested review of the labels and court terms used on the site to make them more understandable to the public. Judge Sankovitz said it would be helpful to look at examples of cases on WCCA, and Ms. Bousquet said she will do an online demonstration at the next meeting. Judge Gritton asked if the disposition of a case should be the first item viewed on WCCA, and Judge Sankovitz said this issue was discussed at the CCAP Steering Committee where they decided to refer it to this committee.

ACCOUNTABILITY / INAPPROPRIATE USE OF WCCA

Judge Sankovitz said WCCA is provided as a service to citizens and is one of the best ways for citizens to see if justice is being served and to hold justice partners accountable for how cases are handled. Judge Gritton added his concerns about misinformation being used against innocent parties and gave an example of a case with a defendant charged with a violent sexual assault proven innocent by DNA evidence before trial, yet the dismissed case remains on WCCA. Mr. Lueders said the 2005-06 WCCA Oversight Committee created the executive summaries added to dismissed cases on WCCA, and he asked how to draw the line of what information should not be shown. Judge Sankovitz asked if there is a way to track how long people stay on particular pages of WCCA, or if people are reading the executive summaries about dismissals. Ms. Bousquet said there is not a way to measure how long pages are viewed. Ms. Feuerhelm said

most people do not pay attention to the executive summary screen about dismissed cases or see amended charges, they focus on the charge. Judge Sankovitz said individual district attorneys charge things differently, some wait for charges they can prove before filing and others file charges before DNA results are in, so WCCA users should understand there are differences in charging methods and this can increase dismissals. Mr. Lueders has used WCCA to investigate issues of prosecutorial misconduct, and said the public interest in having the information available is important.

EXPUNGEMENT AND SEALING

Judge Storck discussed expungement of some types of cases for individuals under 25, which erases the court record of the case, but he believes expungement should also be available for individuals who complete successful deferred prosecution agreements. Judge Gritton asked if the drafted expungement legislation includes deferred prosecution as eligible for expungement and Ms. Ward-Cassady said it does. Judge Storck said the deferred prosecution and treatment court programs attempt to help individuals avoid a criminal conviction and successful participants should not be punished by keeping those records on WCCA. Mr. Barrett said a case expunged by the court remains available through criminal background checks, and people have more questions about why the court record is unavailable. Mr. Barrett also said consistent procedures based on case law are needed regarding sealing cases as it is exercised very inconsistently and sometimes inappropriately. Judge Gritton asked why a case should be sealed for any reason other than containing confidential information. Judge Sankovitz said many inexperienced litigants need more guidance so they do not include too much information in filings. Mr. Dall'osto said the State Bar has recommendations for exhibits and sealing. Mr. Lueders agreed that clarification is needed for what can and should be sealed and what the correct process is for sealing a case. Judge Storck said it is unfortunate when a young person misses their opportunity for expungement, and Ms. Bennett asked how this happens. Judge Gritton said expungement does not just happen automatically if the case is eligible, the defendant must petition the court for expungement and a judge has to approve.

IN-COURT PROCESSING

Ms. Ward-Cassady asked if more guidance is needed for clerks doing in-court processing, to create uniformity in court minutes among counties. Judge Storck said this is a struggle for many clerks and it also varies by case type. Ms. Ward-Cassady said the standards for in-court processing minutes establish minimums but they are still inconsistent across counties. Mr. Barret said with so many clerks and differing abilities and varying judge expectations, it's impossible to have uniformity even within Milwaukee County. Senator Wanggaard asked who enters the information on WCCA, and Ms. Bousquet explained clerks of court enter the information during court proceedings according to model recordkeeping procedures. Senator Wanggaard asked how erroneous case information is corrected, and Judge Gritton said the defendant may file a form to remove or clarify information from WCCA. Senator Wanggaard said the responsibility of correcting the record should be on the court and not the defendant. Sheriff Oleson recommended labeling public officials on the court record with their title if they are being targeted because of their position, e.g. judges sued by sovereign citizens.

ELECTRONIC DOCUMENTS

Mr. Barrett said the committee should discuss availability of electronic documents on WCCA, and consider the financial and workload implications for clerks of court with additional redaction issues and less record copy revenue. Judge Storck said anyone who comes to a clerk's office in person has access to all scanned documents in a case, and asked if all records available in person should be available online. He said federal courts have used document access as a source of revenue, and suggested users pay to log in for access to scanned documents on WCCA. Mr. Dall'osto said a username and fee are required for document access on the federal PACER system, and recommended researching their process and fees. Ms. Russell said errors occur in efilings when attorneys submit documents to the wrong case and it takes time for the corrections, so this timeline needs to be considered before making documents available online. Ms. Bousquet said digital audio files are also available in some counties. Judge Storck suggested the audio files of court proceedings be made available on WCCA for an additional fee. Judge Sankovitz asked if other states have digital audio or court files available online to look to for guidance. Ms. Bousquet said many states are selling documents and Ms. Ward-Cassady will collect information about online document availability and access in other states for the next meeting.

BULK DATA

Ms. Bousquet said there are currently over two dozen bulk data subscriptions to WCCA, which gives the subscriber access to all the records available on WCCA and allows for sorting, and some use this to sell the data. No change or removal of records is possible for the information bulk data subscribers currently have, but the policy could be changed for the future subscribers and future case data. Mr. Dall'osto mentioned the misleading websites offering to remove court records for a fee, and Ms. Ward-Cassady said CCAP has tried to prevent this the best they can and Mr. Barrett said the CAPTCHA technology was implemented for this reason.

OTHER ISSUES

Chief Koval said he does not see the public's interest or any diversity represented by this committee and if there is no ability for this committee to address restorative justice issues or techniques he will need to recuse himself. Ms. Ward-Cassady said the public view point is very important and welcome on the committee and while she cannot promise outcomes the concerns are valid and are what Chief Koval is here to represent. Ms. Ward-Cassady explained attempts were made for diverse representation on this committee, and not all members are present at this meeting but more outreach to Legal Action and others may be done. She also said expungement is an important aspect of this committee and will address some of the issues Chief Koval mentioned. Mr. Barrett agreed about the importance of diversity on this committee and said the perspective of real people affected by WCCA is important. Mr. Lueders also recommended representation from landlords and employers on the committee.

5. FUTURE MEETING DATES

Mr. Moran said future meetings are planned through May 2017, but the committee may have to add another meeting. Ms. Ward-Cassady asked the committee members to send her any additional topics or issues to be addressed at future meetings.

With all agenda items discussed, the meeting was adjourned.