

WCCA OVERSIGHT COMMITTEE MEETING MINUTES

TUESDAY, DECEMBER 20, 2016, 9:30 AM

MONONA ROOM

STATE BAR CENTER, MADISON

MEMBERS PRESENT: Sara Ward-Cassady, Jean Bousquet, Judge James Babler, Judge Thomas Gritton, Judge Everett Mitchell, Judge Richard Sankovitz, Judge John Storck, John Barrett, Theresa Russell, Senator Van Wanggaard, Beth Bennett, Pat Brummond, Raymond Dall'osto, Bill Lueders, Taavi McMahon, Gregg Moore, Sheriff Brent Oleson, Theresa Owens, Adam Plotkin, Kate Spitz

MEMBERS ABSENT: J. Denis Moran, Judge Derek Mosley, Judge Jean DiMotto (Ret.), Chief Michael Koval, Michelle Vetterkind, Representative Robin Vos, Kimberly Walker

OTHER GUESTS: Abbey Fabick (Robin Vos's office), Peggy Hurley, and Melissa Lamb

1. INTRODUCTIONS

Taavi McMahon, District Attorney in Trempealeau County, introduced himself to the group.

2. APPROVAL OF MINUTES

The minutes from the November meeting were approved with changes.

3. REVIEW OF DISMISSED CASES

Ms. Ward-Cassady said the various viewpoints on information on WCCA and how the information affects citizens, businesses, attorneys, and landlords were represented at the previous meetings and she said the committee needs to start making decisions at the rest of the scheduled meetings on whether any changes will be made to WCCA. Ms. Ward-Cassady and Ms. Bousquet will bring data to the February meeting showing the number of dismissed cases for a particular time period, and what would be removed from WCCA for various time period retentions. Ms. Ward-Cassady asked if there were other types of cases or disposals the committee would like to see data for at the next meeting, and Mr. Moore suggested cases where the defendant is acquitted at trial and Ms. Ward-Cassady will see if this data can be collected. Mr. Lueders asked if a defendant is charged with 10 counts but pleads down to only a few, will the original counts be removed from WCCA, but Ms. Ward-Cassady explained the entire case would have to be dismissed and not just particular charges. Judge Gritton suggested looking for cases dismissed because of mistaken identity or DNA exoneration, but Ms. Ward-Cassady said all dismissals will be included in the data run, not just specific types, and the statistics on dismissed but read-in will be included as well. Judge Storck expressed concerns about affecting the way defense and prosecuting attorneys practice if dismissals will be removed from WCCA. Mr. McMahon asked if CCAP can be searched for cases dismissed because of successful completion of diversion programs, and Ms. Bousquet and Ms. Ward-Cassady said yes. Mr. McMahon said since cases cannot be expunged if they are dismissed, some attorneys will push for a conviction so the case is eligible for expungement. Mr. Dall'osto said expunged cases are not removed from the Crime

Information Bureau database background checks. Mr. McMahon said the expungement statute needs to be updated to include expungement of treatment court convictions. Ms. Ward-Cassady said there are at least two potential expungement legislation bills seeking sponsorship. Ms. Ward-Cassady said WCCA is just a record of what happens in circuit courts, but the committee may recommend the Director of State Courts Office make changes to what is displayed on WCCA, or recommend policy changes. Ms. Ward-Cassady said the committee could also recommend training for clerks to better ensure accuracy of codes used in CCAP. Mr. Lueders asked if there is a way to include judicial discretion when deciding whether a case appears on WCCA, and Ms. Ward-Cassady said this would lead to a lot of inconsistency across the state. Mr. Brummond said judges do have the option to seal cases. Mr. Barrett asked what the number of dismissed cases to potentially remove from WCCA will be measured against, and Ms. Ward-Cassady explained the number of dismissed cases will be shown versus the number of criminal cases disposed overall. Mr. Brummond asked if other types of dismissed cases are being considered for removal from WCCA or just criminal, and Ms. Ward-Cassady said a shorter retention period for dismissed small claims is up for consideration and asked if there are other types of dismissed cases the committee wants to review. Judge Mitchell suggested dismissed evictions. Mr. Barrett asked about large claim dismissals, but Judge Sankovitz said almost all large claim civil cases are dismissed. Ms. Bousquet asked the committee to send any recommendations for CCAP data to her right away so it can all be run simultaneously.

4. MATCHING OF RETENTION PERIODS ON WCCA WITH SCR 72.01

Ms. Ward-Cassady said the Director's office will petition the Supreme Court to change the retention rule to retain cases according to the conviction case type and not the initial filing. The previous iteration of the WCCA Oversight Committee recommended matching the retention period of cases on WCCA to the records in CCAP and clerk's offices. Ms. Bousquet explained at the time the last committee met, there was not a purge feature on WCCA so information was displayed there even longer than in court records, but the purge functionality now allows for changing the case records displayed on WCCA. Ms. Ward-Cassady asked the committee to discuss whether the retention policy should remain as is, or if the WCCA retention should change. Mr. Lueders said the previous committee decided to keep the retention in court files and WCCA the same because they did not want records available in one place and not the other. Ms. Ward-Cassady said the paper records retention schedule was devised considering the business need of the court record. Mr. Dall'osto said the Department of Transportation purges traffic forfeitures after three years, and recommended WCCA do the same. Judge Sankovitz said this committee is to discuss the retention of cases on WCCA, but not in the court record, and whether reducing the public availability of the information is necessary to prevent misuse. Ms. Russell agreed there were reasons for matching court record retention on WCCA for the last committee, but now believes non-criminal cases should have shorter retention on WCCA than in the clerk of court case files. Mr. Lueders said the public would not know a file might be available at a clerk's office if the information was not on WCCA, and Judge Sankovitz suggested adding language to WCCA searches about more information available at the clerk of court office, or a limited amount of information available online. Mr. Barrett asked if it is possible to look at how many cases would be removed if retention is changed, and Ms. Bousquet said yes and she will also find information about how other states are handling online retention of court records. Ms. Spitz said WCCA contains public court records and members of the public are used to being able to access

the information and to remove or restrict the access seems imprudent. Mr. Plotkin agrees there is a need for a balancing test for open records, but does not believe the legislature intended to harm individuals by making records available to the public. Ms. Ward-Cassady explained the open records requirement is at the clerks of court offices but there is no requirement to have records on WCCA or publicly available online at all. Mr. Dall'osto said the information on WCCA will be used for both good and bad if it is available, but he said the companies who use the data to mislead people about removing it or extort their money with deceitful claims to do so are the real problem. Ms. Ward-Cassady said any information available online on non-WCCA sites cannot be removed, and possibly removing information from WCCA will drive the private industry further to charge fees to obtain information from their sites. Judge Sankovitz asked if the bulk data subscriber information would change in the future if changes are made to what is available on WCCA, but Ms. Bousquet said the subscription allows live data queries and they are under no obligation to change or update their data when retention periods lapse. Judge Sankovitz said if all bulk data subscriptions were terminated then everyone would have to go into cases one by one, and Ms. Bousquet said in other states these companies go to individual courthouses to obtain the information. Ms. Ward-Cassady will bring data to the February meeting on potential changes to WCCA retention periods, but asked the committee what is needed to make decisions about changes. Ms. Ward-Cassady said the draft minutes and meeting materials will be sent out earlier for review before the next meeting, and decisions need to be made about whether or not to make changes to WCCA. Judge Storck proposed changing the retention of dismissed cases but not making any other changes and does not believe the committee should discuss every case type. Judge Storck motioned for the retention period on WCCA to remain the same except in dismissed criminal cases and stipulated small claims eviction dismissals, and Ms. Owens seconded the motion. Ms. Ward-Cassady suggested limiting any WCCA retention to 20 years, and Judge Sankovitz would like to see the data for removing anything over 20 years old. Judge Storck amended his motion to provide a limit for the number of years a case is retained on WCCA. Judge Sankovitz asked for data on the number of harassment and TRO injunction dismissals. Ms. Ward-Cassady suggested tabling the motion and she will send out the list of proposed data requests to the entire committee for review by January 3 before bringing the data to the February meeting.

5. SELLING DOCUMENTS ON WCCA

Ms. Bousquet provided a handout to show how other states handle access to court file documents online. Currently, 10 states provide online access to court documents, and all charge for the access either by case or by page. Mr. Barrett asked who would receive the revenue from online document access and Ms. Ward-Cassady said there is no intention to change the clerk of circuit court fee for providing copies of court documents. Mr. Lueders asked if the charge would still be at least \$1.25 per page and Ms. Ward-Cassady said it would unless there is a statutory change. Mr. Plotkin suggested the committee discuss whether access should be provided at all before discussing any fees, and said the impact of case information available on WCCA is nothing compared to case documents becoming available to bulk data subscribers. Ms. Ward-Cassady pointed out anyone has access to (non-sealed, non-confidential) case documents at the clerks of court offices. Judge Sankovitz asked if there was any information about document availability on the federal court PACER site, and Mr. Brummond said the business of the federal courts is much different than the circuit courts and their case volume is much less. Ms. Russell said many pro se

litigants file documents without protected information redacted. Ms. Bousquet suggested making documents available from 2018 cases forward and not on older cases. Mr. Moore said limiting the documents available would be a good idea, perhaps just filings dispositive of a case or motion and not something like a criminal complaint with a lot of information unnecessary to publicize. Ms. Owens said there would also be a concern for availability of jurors with access to too much case information online. Judge Babler made a motion to not sell case documents online, and Mr. Dall'osto seconded the motion. It was determined there was not quorum at the meeting at this time in order to vote on the motion, and this vote will be taken at the beginning of the next meeting. Ms. Spitz said more discussion of the issue is needed before she can vote one way or the other, and Mr. Lueders said the documents will most likely be made available online eventually.

Ms. Ward-Cassady asked the committee for feedback on charging for access to WCCA, to view case records but not all court record events or documents. Judge Sankovitz said the only reason for a fee is if there is a business need for it. Judge Storck said CCAP is under great financial pressure and asked if it might be necessary to charge a fee in order to maintain it. Ms. Bousquet said CCAP revenues are down about 25% and if this continues CCAP will be tremendously underfunded for the long term. Ms. Bousquet said other states do charge for access to court records. Mr. Brummond said limiting the information or offering varying levels of access is not desirable. Mr. Lueders said there was proposed legislation at one time to charge an annual fee for access to WCCA, rather than based on how many records are accessed. Ms. Ward-Cassady said a vote will be taken on this issue at the next meeting, and she will send the voting information out prior to the meeting.

6. BULK DATA SUBSCRIBER POLICIES

Judge Sankovitz asked for information on how many bulk data subscribers there are and how they use the data. Mr. Barrett said not all bulk data subscribers are malicious and some have legitimate business purposes. Judge Sankovitz said if case information is limited on WCCA but bulk subscribers still have all the information, it could create problems. Mr. Dall'osto said it would seem like the courts are attempting to hide information if records are available on sites other than WCCA. Judge Gritton asked how many bulk subscribers there are currently and Ms. Bousquet said approximately 24. Mr. Dall'osto inquired about the cost of a bulk subscription, and Ms. Bousquet said it is \$500 per month or \$5,000 per year with unlimited access during the paid time period. Mr. McMahon asked for information about who the bulk subscribers are, and Ms. Bousquet said she will provide a list for the next meeting.

7. FUTURE MEETING DATES

The next meeting is February 14, at the State Bar Center, 5302 Eastpark Blvd., Madison.

With all agenda items discussed, the meeting was adjourned.