

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

MINUTES

November 11, 2005

9:30 a.m.

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

MEMBERS PRESENT: John Barrett, Milwaukee County Clerk of Circuit 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; Gregg Moore, District Court Administrator; Sheriff Randy Roderick, Green County; Jeffrey Schmidt, Ozaukee County Clerk of Circuit Court.

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

1. **Approval of Minutes**

The minutes of the October 14, 2005 subcommittee meeting were approved with two amendments.

2. **Executive Case Summary**

Ms. Bousquet distributed four mock-ups of potential case summaries. Each mock-up portrayed a particular set of circumstances. Judge Carlson said the amount of text should be kept to a minimum because if there is too much, the user will not read it all. The subcommittee discussed each of the mock-ups:

a) This mock-up reflects the situation where all charges were dismissed. The subcommittee discussed language possibilities, such as adding "no finding of guilt." Judge Carlson suggested the language, "the defendant is presumed innocent." Judge Kahn said it would be helpful to have a hyperlink, a pop-up bubble or a glossary that would provide a definition for some of the key words. Judge Kahn added the disposition area on the second page lists the dismissal because of a PR motion. He asked if that information is useful or if it causes confusion. Mr. Lueders said it is helpful to know who filed the dismissal motion but admitted the first time he came across it, he needed further explanation of the abbreviations (e.g. PR means prosecutor). Mr. Moore said hyperlinks to key words or providing a glossary should be used universally throughout the records and suggested CCAP staff investigate what technical options are available.

The group agreed on a larger font and bolding certain key words. They also agreed that the Notice to Employers should remain in the summary and partially bolded. The employer notice is the same language as is currently posted on the “I agree” page and includes hyperlinks, one to Wis. Stats. and the other to a Department of Workforce Development publication.

In instances where all charges were dismissed, the subcommittee agreed upon this language:

All charges against defendant “name inserted” in this case have been **dismissed**. These charges were not proven and have no legal effect. “Name inserted” is presumed innocent.

Notice to Employers: the remaining language would not be bolded.

The group agreed that alternate language will be necessary in cases involving deferred prosecution. Ms. Bousquet agreed to mock-up a draft case summary for deferred prosecution cases for the next meeting.

b) This mock-up reflects the situation where multiple charges were filed and some were dismissed. The mock-up included language that indicated the defendant was found guilty beyond a reasonable doubt. Judge Kahn said that statement might not be technically correct in all instances. Mr. Lueders asked if the language relating to the presumption of innocence would be concerning to prosecutors in cases that are plea bargained. Judge Kahn said if the case is dismissed, the person should be presumed innocent but if the charges are read-in for sentencing purposes that would be a different situation. Ms. Bousquet said the next mock-up addresses read-ins.

Ms. Doeppers said the example does not list the statutory charge that was dismissed and thought it might be helpful to provide an explanation of the charge. Ms. Bousquet said the charge was dismissed so it is not relevant and pointed one that detailed information about the charge is included in the court records events. Mr. Moore inquired if the dismissed charges should even be listed in the summary. Mr. Lueders said the charges are part of the criminal history and they should be included in some manner. The subcommittee agreed on this language:

The defendant “name inserted” was found guilty of the following charge(s) in this case.

- “Name inserted” was found guilty of 943.10(1)(a) Burglary-Building or Dwelling, a class F Felony.

One or more other charges were dismissed. The dismissed charge(s) were not proven and have no legal effect. “Name inserted” is presumed innocent of the dismissed charge(s).

Notice to Employer: same language.

Judge Carlson asked if the key words of guilty and dismissed should be bolded to keep it consistent. The subcommittee agreed those words should not be bolded.

Judge Kahn said the disposition area on the second page is concerning as the disposition lists guilty / no contest. He said “no contest” is a plea and not a disposition. Judge Carlson said the Records Management Committee created the codes. Ms. Bousquet said the dispositional codes are a case management issue. Judge Kahn said that is correct but the code could be hidden from view.

c) This mock-up addresses the situation where charges are read in for sentencing purposes. The mock-up includes a brief definition of a read-in but none of the charges are listed. However a list of the cross-referenced cases are hyperlinked. Atty. Burke said it might be helpful to show which case the conviction was applied to. Judge Kahn said by taking that approach, the burden would fall to the court clerk to determine what charges are read in. Judge Carlson agreed and expressed concern that could result in errors. Judge Kahn said it is his opinion listing the cross-referenced cases causes confusion. He suggested each case be dealt with individually. Mr. Barrett said the cross-referenced cases are included in the detailed case information. He is concerned that cross-referencing cases is done inconsistently among the counties and is done for a variety of internal administrative reasons, such as scheduling. He said it is also troubling because the cross-referencing can be done at different stages during the life of the case. He also noted that other cases might be filed at different times and they might not be cross-referenced at all. Atty. Burke asked if the cross-referencing would only appear in read-ins or would they show anytime there is a cross-referenced case, such as situations where a co-defendant’s case is cross-referenced. Ms. Bousquet said the way it is programmed now, any case that is cross-referenced would appear but they could program it to limit it to read-ins. The subcommittee agreed the list of cross-referenced cases should not be listed in the case summary as the information is available in the detailed case information.

They also agreed on this language:

The charges in this case were read in to other charges on this case or others. A “read-in” charge is a charge that is dismissed as part of a plea agreement, but that the defendant agrees to have the court consider when sentencing for another crime, under Wis. Stats. 973.20(1g)(b).

Ms. Doeppers said in order to maintain consistency from summary to summary, the charge and description should be listed as bullet points. The subcommittee also agreed the standard notice to employers should be included on this summary and consistently applied to all of the case summaries.

Ms. Bousquet will redraft this example including the changes made, for review by the subcommittee at the next meeting.

d) Ms. Bousquet said the last example was not a case summary but the detailed case information and what would appear if the user selects the view history button. She said the user would be directed to another page instead of the current method of scrolling down on the same page.

e) Ms. Bousquet drafted proposed language to address situations where the case is pending in criminal cases.

This case has not been concluded. Unless a judgment of conviction is entered, the defendant is presumed innocent of all charges. The prosecutor must prove these charges beyond a reasonable doubt.

The subcommittee agreed with the language.

3. **Civil/Family Case Types**

Mr. Moore said at an earlier meeting, it was suggested the group further discuss if there is a compelling reason to remove civil and family case types from WCCA. Ms. Doeppers said she is concerned with the harm caused to some persons as well as the potential for discrimination. She said she is not convinced that the convenience of having the records available outweighs the potential harm. Ms. Doeppers said other institutions are doing similar evaluations to try and strike a reasonable balance. She asked if convenience should be the deciding factor and the intrusion into a person's life should be considered. Judge Kahn said it is his opinion the records should remain available. He said this information can be very important to people, such as domestic violence cases. He said marriage is a governmental action and to sever the relationship, court action is required and therefore is a public record. Judge Kahn said the use of online information is growing and becoming expected by society. He added the lack of resources also should be taken into consideration. Mr. Barrett said he receives the most complaints about the financial information. He said direct financial information is not provided but from the amount of child support, the income of the payer can be determined. It was discussed if a statement, similar to the case summary, that would include basic information such as the final divorce date, would be sufficient. Mr. Lueders said divorce petitions that are withdrawn are another category to consider. Judge Carlson said the Family Law Section of the State Bar would oppose removing any of this information. He also commented that providing a summary with a link to the case would not be that helpful. Mr. Moore agreed that it probably would not provide much increased protection. He said he has not received many complaints about family cases, perhaps because the information is mainly used by family practitioners. Atty. Burke said the information contained in family cases is usually straight-forward and less confusing.

Ms. Doeppers made a motion that an executive summary be developed for family cases and that there would not be a link to the remainder of the case information. Judge Carlson seconded the motion. The motion failed 9 to 1. Mr. Barrett made a motion that an executive summary be developed for family cases and that there would be a link provided to the remainder of the case information. Mr. Schmidt seconded the motion. The motion failed 6-3. With both motions failing, it is recommended that family case types will display on WCCA as they currently are.

4. **Dismissed Cases**

Judge Carlson said he would agree that one type of dismissed case should be removed and that is situations where there was a mistaken identity. He said it would be appropriate for a judge to

order the removal and reference the case by number but no name. He said that approach would provide accountability for the case number. It also was suggested that perhaps it could appear in the case summary that the person was wrongfully charged.

Sheriff Roderick described a situation on Rock County where a person was charged erroneously, warrants were issued and the wrong person was jailed. He said the person legally changed his name, as well as his son's name, to escape the stigma. Ms. Bousquet brought up the case on WCCA and did a search for the erroneous name and the case appeared with the correct person's name in the caption. The case appeared under the erroneous name because it was listed as alias. He said in this instance, the caption was changed from the wrong person to the correct person. Mr. Moore questioned whether it would be better if the case was dismissed and then refiled. Judge Carlson thought the way it was handled in Rock County was the correct procedure and Mr. Barrett agreed but did not know if that was being done consistently among the counties. Judge Carlson recommended that a request be made to the Records Management Committee to develop a procedure. He added the alias for the mistaken identity should somehow be removed. Mr. Barrett said the person may be continuing to use the alias so it is useful information to keep in the record. Judge Carlson said the Department of Transportation (DOT) or Crime Information Bureau (CIB) can include a message about the alias so law enforcement are aware of it when the person is stopped. The subcommittee agreed if the alias is because of mistaken identity, a code should be created so that field should not be searchable on WCCA.

Judge Carlson said Atty. Mowris was not able to attend the meeting so on his behalf he brought up whether cases where the defendant is found not guilty should be removed from WCCA. He said Atty. Mowris believes if the person is exonerated, the person's name and record should not be blemished by the fact that charges were filed. Mr. Barrett said based on his experience with expungements, when the name and case are taken out of the system, potential employers find out about the record from CIB and no court case file exists for the person to refute the information. He believes removing the case could be more detrimental to the person than having the information available. Judge Carlson said he believes the removal of records is not good policy for the court system institutionally. He said it gives the appearance that the court is hiding court cases. It is his opinion that the courts should be open and people have the right to know about these cases. Ms. Doeppers suggested that perhaps the language about the charges not being proven could be included in a case summary. Mr. Moore said some of these concerns might be dealt with as a retention issue by the Retention/Accuracy Subcommittee. Judge Carlson made a motion on behalf of Atty. Mowris that cases involving people in which the finding of not guilty has been reached should be removed from the system. Mr. Barrett seconded the motion. The motion failed 9 to 1.

5. **Multiple Harassment Cases**

Judge Carlson said they should discuss situations where multiple harassment petitions are filed and constantly dismissed because of non-merit. He said these are cases where the judge decides that the person is engaging in deliberate harassment and orders that no further petitions are allowed without the judge's approval. He asked if there should be a way to differentiate between these types of dismissals or provide a further explanation. Judge Kahn said in keeping with the decisions made earlier today, this information should remain on WCCA. He said the

person can keep a copy of the judge's order with them indicating that the charges are frivolous. Judge Carlson said for those using the internet, in order to get to the information you need to drill down quite deep into the record. Ms. Doeppers said the information could be located more prominently. Mr. Barrett said it could be difficult to program because it would require some kind of court record event code to trigger a case summary. He said perhaps in these instances sealing a case might be appropriate.

The subcommittee then adjourned and reconvened for the Plenary Session at 12:30 p.m.