

**WISCONSIN CIRCUIT COURT ACCESS
OVERSIGHT COMMITTEE
RETENTION AND ACCURACY SUBCOMMITTEE
MINUTES**

Friday, October 14, 2005
Room 415 N.W. – State Capitol
9:30 a.m. – 12:00 p.m.

PRESENT: Kathleen Murphy, District 8 Court Administrator, Chair; Attorney Larry Bensky; Robbie Brooks, CCAP; Attorney Richard Dufour; Carolyn Evenson, Waukesha County Clerk of Circuit Court; Peter Fox, Wisconsin Newspaper Association; Sheryl Gervasi, Deputy Director of State Courts; Stacy James, CCAP; John Laabs, Wisconsin Broadcasters Association; Police Chief Rick Myers, Appleton Police Department; Judge Dale Pasell, La Crosse County; Judge Ralph Ramirez, Waukesha County; Attorney Kelli Thompson; A. John Voelker, Director of State Courts

1. **Introductions**

Ms. Murphy welcomed the members of the Subcommittee and introductions were made. Corrections to the meeting minutes from the last meeting were proposed. She stated that the necessary changes would be made. She reviewed the amended agenda for the meeting and stated that she had hoped to get through the retention issues and reach an agreement. She then reviewed the results of the survey that was sent out to the clerks of circuit court and stated that after she has received responses from all of the clerks she will complete the document and send a copy to the subcommittee members.

2. **WCCA v. SCR 72**

After a brief recap of the difference between WCCA and CCAP, Ms. Murphy went on to the first topic - whether or not there is justification for keeping records on WCCA longer than the court keeps the paper records. She discussed that by request of the press in the predecessor committee, it was decided to keep records on WCCA for a minimum of 10 years. The differences in the WCCA retention schedule and SCR 72 requirements were shown in a chart format. The consensus at the last meeting seemed to be that the two retention schedules ought to be the same. It was also discussed that SCR 72 is a minimum requirement, not a maximum.

Attorney Bensky recommended that the retention schedule not be based on the charge at the time of filing, but on the charge at the time of disposition of the case. He requested that this be discussed within the committee. Attorney Dufour commented that he would prefer the retention schedule be based upon the initial charge for the sole reason that some information is not being sent through to the DOJ by the counties, so he relies on CCAP to get that information.

Judge Ramirez posed the question of why the dates for WCCA are compared to the rule. He feels that SCR 72 is based on storage space, and with WCCA there is an infinite amount of space for storage. Ms. Evenson stated that if a case shows up on WCCA and the clerks have destroyed the file, it could create a problem. Ms. Murphy explained that once the clerks are ready to dispose of a file per SCR 72, it is offered to the historical society, which usually keeps only felony and civil cases. All other case types are generally destroyed. She stated that at the last subcommittee meeting there were two primary issues with retention of information on WCCA: 1. if someone sees the information and says it is wrong after the case file has been destroyed, there is no underlying record to resolve the issue, and 2. people like to know that at some time the case will be gone. Ms. Evenson said the other area for discussion is retention of cases

where there is still an outstanding financial debt, and that maybe these cases should be kept on WCCA until the financial obligation is taken care of.

Judge Ramirez then stated that if there is infinite ability to store the record and it is correct, why not keep it on WCCA forever? Judge Passel countered that sometimes even if the information is correct it can be misleading. Judge Ramirez acknowledged that as a good point and said that it does happen like that frequently. Attorney Bensky pointed out that another point to look at is the policy of privacy versus openness and that there needs to be a balance for a variety of reasons.

Chief Myers stated that many of the rules and policies that are in effect today are based on 18th century protocol. He says that the criminal justice system relies heavily on WCCA and not having that information available would be a problem. He commented that WCCA could maybe be used as more of a public site with less information and tighter retention schedules and legal people should have long-term access to CCAP records.

Ms. Murphy explained how SCR 72 came about. It used to be that the judge could declare whether or not records were obsolete, and then they were destroyed. This was done so inconsistently among counties that there was an effort made to put good record keeping practices in effect to make retention policies consistent and efficient. The reasoning behind the rule is the business necessity, how long a file would potentially be needed to do court business. Beyond this, records may have an historical value, and that is why the files are offered to the Historical Society before being destroyed.

Mr. Laabs commented that he feels public access needs need to be discussed and taken into consideration when it comes to record retention. He feels that the goal of the committee is to eventually be able to keep total record files infinitely. Attorney Bensky commented that he agrees in theory, but the difference in opinion is in the public access to those files. His view is that if some people need to access the record after a certain period of time they should have that ability to do so, but it should not be on WCCA and available for everyone to view. Chief Myers suggested that maybe a layered system of what people have access to might be a solution. A decision has to be made and then everyone needs to be prepared for any onslaught that comes with it. Attorney Bensky agreed. He stated that as an attorney he can always go through the process of getting paperwork, but the DA shouldn't have to be going to the public access site to get that information.

Ms. Gervasi pointed out that a change of law might be necessary to give DAs full access because of issues of confidentiality with juveniles. Judge Passel agreed that there are reasons to restrict the information to the general public, but he also pointed out that some information that doesn't need to be seen on WCCA could be found elsewhere if a person looks for it.

Ms. Evenson reminded the committee that there is a significant cost to retaining case files forever. If you decide to image the court files, you have to take into account the cost for the personnel to scan the information and there is also the cost of the equipment.

Judge Passel asked if the idea of electronic filing had been considered. Ms. Evenson answered that this would be practical from a point going forward. Ms. Gervasi stated that the court system is a long way from electronic filing. Some steps in this direction have been made but it will be quite a bit of time before this system is widely implemented in the courts.

Attorney Dufour voiced the opinion that some files should be kept longer for the purpose of determining later offenses, e.g. first offense drunken driving. Ms. Murphy said she believed the DOT records could be used in such cases. Attorney Dufour countered that they cannot be used for challenging a prior criminal conviction.

Judge Passel felt that this raised the issue of comparing WCCA retention with SCR 72 file retention. He felt that it does little good to have the information on WCCA if the file is gone. He stated that it doesn't help you much if you don't know what the facts are, and without the files, you can't check the facts for court use. He stated that no matter how long it is decided to keep the records, WCCA should not keep them longer than SCR. Ms. Murphy said that this comment sounded like a motion for a recommendation from the committee, to which Attorney Bensky said he would second. After a brief discussion the potential motion was clarified as being "WCCA not keep records available to the public longer than the underlying case file". To which Judge Passel added that it should not exceed SCR. Attorney Bensky later commented that maybe it should be added to the motion, "...and we recommend that these records be kept forever."

Chief Myers suggested that the courts link removal of a case from WCCA with the destruction of the file. Ms. Murphy stated that it is a good idea, however there is a potential workload issue. This would require the clerks to make notes in the records that could be retrieved by destruction date. Mr. Brooks stated that the clerks are already doing so.

Mr. Fox asked to step back for a moment. He made the comment that when WCCA was put together in 1999, the internet was not the same as it is today, it has changed drastically. He stated that the courts need to recognize this is a whole new world and we shouldn't try to retrofit the two together. He feels that we should start over from a new perspective. Ms. Murphy said she did not disagree, but she stated that rewriting SCR 72 might be beyond the charge and the expertise of this subcommittee. However, this group is able to make recommendations and give advice.

Chief Myers expanded on Mr. Fox's comment stating that the group has an obligation to make decisions that so that meeting again every five years to make changes will not be necessary. Ms. Murphy stated that 10 years ago a committee would not have been able to foresee the current problems that were being discussed so having a 20-year horizon would be not feasible.

Mr. Fox explained that the discomfort from the press and possibly others on the subcommittee was the lack of time period alignment between WCCA and SCR 72. He stated that it might be necessary for the committee to make a recommendation for SCR 72 to be readdressed in light of today's technology. He feels that Rule 72 is no longer adequate because of the advancement in technology. More people have access to this technology, people's expectations have been raised because of it and the Rule may need to be changed to reflect that.

Ms. Evenson voiced her concern regarding a number of issues that may need to be addressed before a decision can be made. Attorney Bensky stated that he felt the entire group could at the very minimum agree that SCR 72 ought to be changed. Mr. Laabs stated that he could agree with the pending motion, but it has to be taken into context that SCR 72 ought to be changed.

After a brief discussion, the committee voted on the principle that a court record should not be on WCCA if the file is not available. Ms. Murphy, Attorney Bensky, Mr. Brooks, Attorney Dufour, Ms. Evenson, Mr. Fox, Ms. Gervasi, Chief Myers, Judge Dale Passel, Judge Ramirez, and Attorney Thompson agreed while Mr. Laabs disagreed. Ms. Murphy restated that the group did not all agree on how this principle

should be implemented. Attorney Bensky asked if it would make sense to have a motion that the committee recommends that the Supreme Court revise SCR72. Ms. Murphy agreed that it would, but there needs to be a few more specifics in order to discuss it.

She then requested that everyone make their recommendations in the form of an e-mail to her in regard to having longer term records retention and how they would like to incorporate the new technology into the recommendation. She stated that she would gather the recommendations and distribute them to the group before the next meeting. Ms. Evenson asked for Ms. Murphy to provide the group with an explanation of why the retention schedule is currently set up the way it is.

Mr. Fox stated that he is unsure how the Supreme Court or rule proposals would take into consideration society's need for public information. He feels there should be a good public policy purpose for SCR 72 rule beyond just the business purpose. Ms. Murphy stated that while she agreed with him, she isn't sure the court is the right entity to answer that need. She said that there might be some other repository to address the need. Chief Myers feels that ultimately the final record comes from the courts, so they should be the ones in charge of it. Chief Myers further stated that there is currently no integrated system for the justice system and it may be time to define who owns the right to change that. Mr. Fox voiced the opinion that he feels the owners of the records are the public, and the clerks are just the custodians.

After a brief review of what topics had been covered at this meeting and what needs to be moved on to the next meeting, the group was dismissed for lunch.

The meeting was adjourned at 12:00 p.m.