

## **WCCA OVERSIGHT COMMITTEE MEETING MINUTES**

**TUESDAY, NOVEMBER 8, 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 Everett Mitchell, Judge Richard Sankovitz, John Barrett, Theresa Russell, Senator Van Wanggaard, Beth Bennett, Pat Brummond, Judge Jean DiMotto (Ret.), Chief Michael Koval, Bill Lueders, Gregg Moore, Theresa Owens, Adam Plotkin, Michelle Vetterkind, and Kimberly Walker

**MEMBERS ABSENT:** Judge Thomas Gritton, Judge Derek Mosley, Judge John Storck, Peg Feuerhelm, Taavi McMahon, Sheriff Brent Oleson, Representative Robin Vos, Raymond Dall'osto, and Kate Spitz

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

### **1. INTRODUCTIONS**

Ms. Ward-Cassady welcomed new members to the committee, Judge Everett Mitchell from Dane County Circuit Court and Kimberly Walker from the Legal Aid Society in Milwaukee.

### **2. APPROVAL OF MINUTES**

The minutes from the September meeting were approved with changes.

### **3. WCCA DEMONSTRATION**

Ms. Bousquet explained the different options for accessing Wisconsin court records. The original paper file in a clerk of circuit court office contains every item in a case, including confidential information. As counties transition to paperless files and eFiling, the paper case files will go away but the information will not. The CCAP case management system contains case information not available to the public and is only for authorized court users (judges, clerks, and staff). Public access terminals are available in county courthouses and non-confidential case information is available on these terminals through temporary access codes granted by the clerks of circuit court. The WCCA website available to the public does not include case documents, or sealed or confidential cases or documents. Each county has a restricted WCCA website with access for child support offices, controlled by clerks of circuit court, to view paternity case information. CCAP is required by law to provide bulk data to requestors, and there is a fee for the bulk data subscription. Bulk data does not include confidential or sealed cases, but allows access to WCCA information to be downloaded into databases for queries or selling the information.

Ms. Bousquet gave a demonstration of how various types of cases appear on WCCA. Executive summaries are the first screen to appear when clicking into a criminal case, regardless of the

disposition or case status. The executive summary on a pending case explains the case has not been concluded, and the defendant is presumed innocent. All the charges a defendant is convicted of are listed individually in the executive summary. Upon clicking into the case, the details of the case can be accessed to view all charges, dispositions, sentences, and prior (dismissed or pled down) charges. On a dismissed case, the executive summary explains the charges were not proven and the person is presumed innocent and “dismissed” is in bold type. Dismissed and pending cases include a notice to employers section about discrimination. Deferred prosecutions are also described in the executive summary and listed in the disposition. Chief Koval asked how long a case is retained if terms of the deferred prosecution are met, and Ms. Bousquet said the retention is the same as any other case of the same type. Mr. Barrett said cases are currently retained based on the filing case type and not disposition, but Ms. Ward-Cassady said this is one of the changes this committee will possibly recommend, as well as decreasing the retention period for dismissed cases.

The court record events from in-court processing minutes are available by clicking into them but the amount of information contained varies by county and even by judicial branch. Judge Sankovitz explained much of the information in court minutes is standard text, and Ms. Russell said each clerk can also create their own standard text. Senator Wanggaard asked who reviews the information in the court minutes for completeness and accuracy before it goes online, and Ms. Ward-Cassady said clerks are statutorily required to keep an accurate record of the court and not editorializing. Senator Wanggaard asked if there is a process for modifying what is in the court record, and Judge Sankovitz said a party or attorney can motion to correct the record. Complaints come in about too much information in court minutes in family cases, but Ms. Ward-Cassady said court minutes are only electronic now and there is nowhere else for clerks to take notes on court proceedings. Judge Babler said he uses the court minutes to draft final judgments for pro se parties, and Mr. Barrett said many attorneys use the minutes for similar purposes. Ms. Bousquet pulled up examples of cases with different levels of detail in court minutes, but added the case with less information in minutes was conducted when the court files were kept on paper.

Sealed cases are still listed by case number on WCCA, but only show the name of the case and add “sealed by Judge (last name)”. Ms. Ward-Cassady said a judge can seal a party name, individual court record entry, or an entire case. Senator Wanggaard asked what the criteria is for sealing, and Ms. Ward-Cassady said there is existing case law and it is up to a judge’s discretion but she also added information statutorily protected as confidential does not have to be sealed and does not appear on WCCA. Ms. Ward-Cassady said there is no policy or practice to seal information only on WCCA and not in the full court file, but many judges do this. Mr. Lueders asked how judges are allowed to seal public information against the advice of administrative office attorneys, and Ms. Ward-Cassady said judges are legally allowed to do so and they are elected officials not supervised by the Director of State Courts Office. Mr. Lueders asked if a judge can seal a case for someone they know, but Judge Sankovitz said a judge has to issue a sealing order and there is a paper trail. Ms. Bousquet added clerks of court are the custodian of all records and judges view records but are not able to alter them.

There are currently no executive summaries on WCCA for non-criminal cases. Ms. Bousquet said small claims cases, including evictions, contain information about money and other judgments, debtors, and creditors. Judge Mitchell asked what a dismissed eviction case looks like

on WCCA, and Ms. Bousquet showed the dismissal is only indicated in the court record events. Judge Mitchell said an executive summary for dismissed evictions similar to criminal dismissals should be added. Ms. Ward-Cassady said she or Ms. Bousquet could send a list of cases for the committee to review on WCCA and give feedback and suggestions for changes. Mr. Moore asked if CCAP hears feedback on the “notice to employers” section about discrimination, and Ms. Bousquet said the feedback is discrimination happens anyway. Mr. Moore asked if the Department of Workforce Development has ever recommended changing or strengthening this language, and Ms. Bousquet said they have not. Judge Mitchell suggested adding a similar notice to landlords about discrimination, or adding landlords to the existing employer notice.

Ms. Owens asked what status is displayed for a case in treatment court. Ms. Ward-Cassady said pre-disposition treatment court cases are displayed as pending open cases, but treatment court recordkeeping and other procedures are still being developed as these cases are relatively new for the court system. Judge Sankovitz said some treatment court cases are listed as deferred judgment or deferred prosecution because the disposition of the case depends on the performance in treatment court. Ms. Ward-Cassady added cases dismissed upon successful completion of treatment court are not eligible for expungement because current statute does not allow expungement of a dismissed case.

#### 4. ISSUES IDENTIFIED AT LAST MEETING FOR COMMITTEE CONSIDERATION

Ms. Ward-Cassady recommended a focus on specific issues at future meetings, dividing the issues below among the scheduled future meeting agendas. Ms. Ward-Cassady said this committee may propose changes to WCCA retention times, but is not authorized to change retention periods of paper/electronic court files in Supreme Court Rule 72. Ms. Ward-Cassady stated this committee may recommend a review of court record retention in SCR 72, and Mr. Barrett said this committee should consider such a recommendation. Mr. Barrett said it has always been the policy to keep retention of paper and WCCA court records consistent, but thinks this should be revisited as individuals can be damaged by readily available information online.

#### ISSUES FOR COMMITTEE CONSIDERATION

Dismissed cases: Ms. Owens asked if it is possible to include definitions for different types of dismissals, such as “dismissed but read-in” being different than other dismissals. Judge Sankovitz explained dismissed but read-in charges are dismissed as part of a plea agreement but taken under consideration when sentencing another case.

Clarity of WCCA display: Judge Mitchell suggested adding landlords to the employer notice about discrimination and adding a dismissed executive summary for dismissed eviction cases. Mr. Barrett agreed with the suggestion to add executive summaries to civil cases on WCCA. Judge Sankovitz would also like to discuss the format of executive summaries, and inquired about the possibility of a pop-up screen.

Expungement: Ms. Ward-Cassady said this committee is able to make recommendations for legislative changes to expungement. Judge Mitchell asked what is prompting the push for broadening expungement, and Ms. Ward-Cassady said the Director of State Courts Office is

sponsoring legislation to expand expungement as a result of feedback from the public. The changes in the proposed legislation would add the ability to request expungement after sentencing, and to expunge dismissed cases. Judge DiMotto recommended addressing expungement issues sooner rather than later, especially if there is potential legislation on the topic. Mr. Brummond asked if the potential legislation was a reason to wait to see if it is passed, and Mr. Bemis said the state budget will be the first thing the legislature focuses on in the beginning of 2017 with other legislation discussed later.

Sealing: Ms. Ward-Cassady pointed out the inconsistency among judges sealing cases, but Judge Sankovitz said this issue should be a lower priority for this committee because some of the reasons people request sealing information or cases will be resolved with other issues this committee is addressing.

Court minutes: Ms. Ward-Cassady explained minute-taking standards were established by a committee of clerks of court and the Office of Court Operations, but there are still many variations in the practice even within the same county. Mr. Barrett asked whether there is a public need for child placement agreements online as it could potentially be a safety issue, and Ms. Ward-Cassady asked where the information would go for later document preparation if not in the court minutes. Mr. Lueders asked if a judge can exclude information from the court record, and Ms. Bousquet said there are no secret or confidential fields in the court record, but judges are able to make their own notes on a case and those notes are not part of the case file or public record. Judge Babler said now with court files transitioning from paper to electronic, the judges and clerks are also evolving into a new way of operating and recordkeeping as well. Ms. Owens said pro se litigants refer to court minutes for drafting any documents, and would have to go to the courthouse to access the file if it is not on WCCA.

Electronic documents: Ms. Bousquet said CCAP staff is still compiling information from other states on how they handle case document availability online, and many charge for access. Mr. Brummond said making only some documents available should be discussed, and Ms. Owens said Indiana recently implemented a policy for availability of specific documents.

Digital audio files: The availability of digital audio files is only relevant in courts with digital audio available, which Ms. Bousquet said is approximately seven or eight judges and about 24 court commissioners. Ms. Ward-Cassady said this could change in the future as court reporter positions are becoming very difficult to fill.

Bulk data: Ms. Ward-Cassady asked if subscribers should be required to update their data to account for expungements and other changes to court records. Ms. Bousquet said CCAP is looking into other states' bulk data subscription agreements, but Wisconsin's public records law is much broader than many other states.

## 5. DISCUSSION OF ADDITIONAL ISSUES FOR COMMITTEE CONSIDERATION

Ms. Ward-Cassady mentioned charging for access to WCCA, similar to the way federal courts charge for access to particular cases on their PACER system. Ms. Bousquet said another option is charging a fee to receive case updates.

Mr. Moore asked for review of the frequently asked questions section of WCCA to see if any issues covered there should be addressed by this committee, and Ms. Bousquet said her staff will look at the list of questions and answers. Ms. Ward-Cassady said many of the existing questions and answers were added by recommendation of the previous WCCA Oversight committees.

## 6. REVIEW/DISCUSSION OF DISMISSED CASES

Ms. Ward-Cassady asked if the retention period should change for dismissed cases, and if the dismissed retention should vary among case types. Judge Mitchell said many cases are dismissed on prosecutor's motions when they receive additional evidence or information. Mr. Lueders said the Freedom of Information Council does not support changing records or retention on WCCA and believes these changes would create incomplete records. Mr. Lueders emphasized the importance of showing the entire picture of a case's records including dismissals and he said the push to remove information assumes people do not have the capacity to understand dismissed. Judge Mitchell said this committee needs diverse perspectives, and he knows people in the Dane County community have been affected adversely by employers and landlords using information from WCCA, and he said there is no disrespect to the public's intelligence to assume they do not understand the intricacies of the criminal justice system. Judge Mitchell again stressed the instances where prosecutors make charges later disproven, or charges are not pled down because a defendant cannot afford a private attorney and public defenders do not hold pre-charge conferences with clients. Ms. Walker said the Legal Aid Society of Milwaukee sees a large number of clients with convictions remaining on their record for so long because of their inability to pay fines and court costs, and she also sees a real impact on availability of housing and predatory lenders and landlords using information from WCCA. Judge Babler is a judge in a small rural county and sees housing issues for people all the time because there are fewer rental options, so this is not just an urban issue.

Mr. Moore said the public's best interest should be the guiding principal for the availability of information on WCCA, and the presumption of innocence when a case is dismissed should remove a case from WCCA more quickly. Mr. Moore said the courts are still held accountable by publishing annual statistics and anyone can go to the courthouse in person for access to case files, so the impact on individual lives should be given a great deal of weight. Mr. Plotkin said district attorney offices have staff shortages and are relying more on video evidence and the collateral impact of a person's mistaken identity or unproven charges is not to be underestimated. Mr. Barrett said mistakes should not remain online for 20 or 75 years. Ms. Ward-Cassady asked how to determine which cases are dismissed because of an error versus cases dismissed for other reasons, and Judge Mitchell said "dismissed on prosecutor's motion" is a specific court record event. Ms. Ward-Cassady asked if only those dismissals should be removed from WCCA, and Judge Mitchell said it would be a good starting point. If prosecutors overcharge innocent people, Mr. Lueders proclaimed this as a reason to keep the information available. Judge Mitchell explained only probable cause is needed to file charges, but at trial charges must be proven beyond a reasonable doubt, and Judge Babler added prosecutors often move to dismiss cases based on plea agreements. Mr. Brummond said the type of dismissal does not matter, the end result is still a dismissed case, and he asked if all dismissed cases should have a shorter retention on WCCA. Mr. Lueders stated turning WCCA into a database of only guilty parties with no balancing test could produce more problems, and Ms. Ward-Cassady asked if he believes a

dismissed felony case should remain on WCCA for 75 years the same as a conviction. Mr. Lueders did not have an amount of time to propose for dismissed cases, but emphasized his presence on the committee to represent the perspective of open records and said his profession is one of verification and not anecdotes.

Ms. Ward-Cassady asked what the committee needs in order to be able to make a decision or vote on some of these proposals. Mr. Plotkin suggested reviewing the short list of case type retention to recommend changes, and Mr. Brummond proposed using a percentage of the case type retention for dismissed cases (e.g., 5 or 10 percent). Ms. Ward-Cassady will provide a list of current and proposed reduced retention periods for dismissals. Mr. Brummond asked if other states have done similar work weighing the public interest in case information and online availability, and Ms. Bousquet said other states alleviate the issue by charging for the information as it keeps out a lot of random searching. Ms. Bousquet said the existing bulk data subscribers put the information online and it would not be possible to take back any of their data or previous access, although future access or updates could be changed.

#### 7. REVIEW/DISCUSSION OF BULK DATA SUBSCRIBER POLICIES

This discussion will occur at a future meeting.

#### 8. FUTURE MEETING DATES

The next meeting is December 20, at the State Bar Center, 5302 Eastpark Blvd., Madison.

With all agenda items discussed, the meeting was adjourned.