

**WISCONSIN CIRCUIT COURT ACCESS (WCCA)  
OVERSIGHT COMMITTEE**

**MINUTES**

March 3, 2006  
9:30 a.m.

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

MEMBERS PRESENT: A. John Voelker, Director of State Courts; John Barrett, Milwaukee County Clerk of Circuit Court; Jean Bousquet, CIO CCAP; Attorney Larry Bensky; Attorney Mary Burke, Department of Justice; Judge Gary Carlson, Taylor County; Attorney Richard Dufour, Marquette County District Attorney; Carolyn Evenson, Waukesha County Clerk of Circuit Court; Peter Fox, Wisconsin Newspaper Association; Sheryl Gervasi, Deputy Director for Court Operations; Judge Charles Kahn Jr., Milwaukee County; Bill Lueders, President Wisconsin Freedom of Information Council; Gregg Moore, District Court Administrator; Kathleen Murphy, District Court Administrator; Police Chief Rick Myers, Appleton; Judge Dale Pasell, La Crosse County; Sheriff Randy Roderick, Green County; Jeffrey Schmidt, Ozaukee County Clerk of Circuit Court; Representative Marlin Schneider; and Attorney Kelli Thompson, State Public Defenders Office.

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

MEMBERS ABSENT: Carole Doeppers, Government Privacy Consultant; Representative Donald Friske; John Laabs, President Wisconsin Broadcasters Association; Attorney Gerald Mowris; and Judge Ralph Ramirez, Waukesha County.

1. **Approval of Minutes**

a. **Plenary Session**

The minutes from the January 20, 2006 were approved as submitted.

b. **Subcommittees**

The minutes from the January 20, 2006 Content/Access Subcommittee meeting were approved as submitted. The draft minutes from the January 20, 2006 Retention/Accuracy subcommittee were corrected to reflect the attendance of Attorney Bensky and were approved as corrected.

2. **Review and Action on Subcommittee Recommendations**

Mr. Voelker said the draft final report was distributed to members about two weeks prior to the meeting. The committee reviewed, discussed and voted on each recommendation beginning with the recommendations from the Content/Access Subcommittee:

Recommendation 1: Electronic court records should be accessible to the public on the Internet through WCCA

The committee accepted this recommendation.

Recommendation 2: The following premises of the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) Guidelines for Public Access to Court Records should be adopted as general principles to guide policy development

- a. Retain the traditional policy that court records are presumptively open to public access.
- b. As a general rule access should not change depending upon whether the court record is in paper or electronic form. Whether there should be access should be the same regardless of the form of the record, although the manner of access may vary. The CCJ/COSCA Guidelines apply to all court records.
- c. The nature of certain information in some court records, however, is such that remote public access to the information in electronic form may be inappropriate, even though public access at the courthouse is maintained.
- d. The nature of the information in some records is such that all public access to the information should be precluded, unless authorized by a judge.
- e. Access policies should be clear, consistently applied, and not subject to interpretation by individual court or clerk personnel.

Attorney Bensky verified the 2.c. is ambiguous to Recommendation #1. Mr. Voelker said Recommendation #1 is an agreement that WCCA should exist at all.

The committee accepted this recommendation.

Recommendation 3: Improvements should be made to WCCA to increase clarity and reduce the potential for misuse

The committee unanimously accepted this recommendation.

Recommendation 4: Executive Case Summaries should be the first screen displayed in all criminal cases. Final criminal dispositions should be prominently displayed in the summary, with more clarification on the page to better reflect the outcome; also, charge history should remain but be located further into the record

Judge Kahn pointed out that fine-tuning to the case summaries will be needed during development. Mr. Voelker agreed and said the opportunity for members to comment on the particulars will be available after the meeting today. He said it is likely that he will call on certain members to assist with language and format development.

The committee unanimously accepted this recommendation.

Recommendation 5: A statewide form and procedures should be developed to petition the court to remove home addresses for safety reasons

- a. Available only in non-criminal cases. Addresses in criminal cases will remain on WCCA.
- b. Family and household members can be included in petitions.
- c. A demonstrated harm or threat to the person or person's family or household members is required criteria.
- d. A judge will make the determination. If the petition is successful, a message will be displayed indicating that the address has been removed by order of a judge. The responsible judge's name will be included in the message.
- e. Both the street and city will be removed.
- f. The petition will apply to an individual case only. Separate petitions are necessary for each case. The petition will be filed in the originating county.
- g. Information about the process should be put in the FAQ section.

Ms. Evenson clarified that this procedure applies to online records only and does not apply to the paper record. Judge Carlson verified that was correct.

The committee rejected this recommendation by a narrow margin.

Attorney DuFour said it is his opinion that including the address is not particularly useful and addresses should not be listed for any case type. Mr. Moore said misidentification in criminal cases would likely result in more serious consequences to the person and that risk should be minimized. Judge Pasell agreed but thought it should not be prohibited because in some instances there could be legitimate reasons to hide the address from view and it would be appropriate for a judge to make that decision. Attorney Bensky said the procedure should not apply only to non-criminal cases, particularly since the original charge is maintained, regardless if it is amended to a lesser charge or dismissed. Mr. Schmidt asked if the address would be erased or sealed. Judge Carlson said it would be sealed and a notice would appear that the address is sealed due to a judge's order and the judge's name would appear.

Attorney Bensky made a motion that item a. be removed in its entirety and to add "the county of residence will be included" to item e. Judge Carlson pointed out that the county of residence is information that is not currently collected and a field would need to be added to CCAP. He said there is not a good way to get that information because a ZIP code does not reflect the county of residence.

Mr. Voelker said Attorney Bensky's motion should be split into two motions. He said the first motion to consider is removing item a. Attorney Burke seconded the motion to remove item a. The motion failed.

Judge Carlson then made a motion that item a. be amended to "available in non-felony cases" instead of "available in non-criminal cases" and omitting the second sentence. He said this amendment would allow the procedure to be available in all misdemeanors cases. Ms. Gervasi asked if this would refer to the original charge or the convicted charge. Judge Carlson said the original charge. Judge Kahn seconded the motion. The motion carried. Attorney Bensky withdrew his motion regarding item e.

Recommendation 6: A statewide form and procedures should be developed to petition the court to remove personal information from WCCA in cases of mistaken identity and identity theft

The committee rejected this recommendation.

Ms. Murphy said the recommendation should be more explicit that the procedure is only available in mistaken identity and identity theft cases. She said the language that a citation was issued in error would clarify that it is not a procedure for dismissed or not guilty cases. Attorney DuFour asked that any reference to district attorney in the recommendation be changed to prosecutor and the group agreed. Ms. Murphy made a motion that the recommendation be amended to:

A statewide form and procedures should be developed to petition the court to remove personal information from WCCA where the prosecutor certifies or a judge makes a finding of fact that the complaint or citation was issued in error.

Attorney Burke said the proposed language infers that the procedure is not available in civil cases. Judge Kahn said it probably should not be available in civil cases because there is a risk that it will become a subject of negotiation in every single civil case. Ms. Murphy said her motion, as it applies to civil cases, would require a judge to make a finding of fact because there is not a prosecutor to certify in a civil case. Judge Carlson agreed that the procedure should not be available in civil cases. Ms. Murphy amended her motion to limit the procedure availability to criminal, traffic and ordinance violations cases. Mr. Lueders said the language about mistaken identity or identity theft should be maintained. Attorney Bensky said he will support this recommendation but feels that removing records from WCCA should not be done in this way. He said that an expansion of the expunction law would be a better method to achieve removing records. Ms. Murphy then amended her motion to:

A statewide form and procedures should be developed to petition the court to remove personal information from WCCA specifically in criminal, traffic or ordinance violation cases where the prosecutor certifies or the judge makes a finding of fact that the complaint or citation was issued in error due to mistaken identity or identity theft.

Ms. Gervasi seconded the motion. Judge Kahn suggested the motion be amended to reflect that a request to the prosecutor is a pre-requisite before going to the judge. Ms. Murphy and Ms. Gervasi accepted the motion amendment. The motion passed.

Recommendation 7: The current approach to handling Date of Birth should be maintained

The committee accepted this recommendation.

Recommendation 8: GAL field should be removed from criminal cases

The Committee unanimously accepted this recommendation.

Recommendation 9: Defer to the CCAP Steering Committee regarding the Race field

The committee accepted this recommendation.

Recommendation 10: Aliases should be changed to AKA (also known as) and some type of clarification should be made if it is a result of a typographical correction

The committee unanimously accepted this recommendation.

Mr. Voelker mentioned that all committee members received a letter from Attorney Richard C. Kelly regarding a client who is allegedly being affected by multiple entries due to incorrect name entries. He said this recommendation resolves situations such as these and Ms. Bousquet is drafting a response to Attorney Kelly.

Recommendation 11: Future scheduled activity should remain on WCCA

The committee unanimously accepted this recommendation.

Recommendation 12: No changes should be made concerning the display of family cases

The committee accepted this recommendation.

Recommendation 13: The Supreme Court should request the Legislative Council to study the issues of expunction and “second chance” legislation, and note that subcommittee members would offer their services

Sheriff Roderick said he was the lone no vote on this recommendation in the subcommittee deliberations because a law is already in place and he does not feel this is a charge of the committee. Attorney DuFour agreed. Judge Kahn said this is an issue that has been struggled with for some years and the committee has an opportunity to express these concerns and offer their expertise. Ms. Murphy said the Retention/Accuracy subcommittee also has included some recommendations that request a referral because they were part of the complaints that are received on WCCA but not a charge of the committee. However, she said it would be unusual for the Supreme Court to make such a request. Ms. Gervasi said it might be more appropriate if the Director made the request. Rep. Schneider said that anyone could make the request and thought it would carry more weight if it is submitted by the Supreme Court.

Rep. Schneider made a motion that the recommendation be amended to having the request to the Legislative Council be submitted by the Director of State Courts. Judge Kahn seconded the motion. The motion carried.

Recommendation 14: Concerning expungement and sealing of records, the current WCCA policy is acceptable, although if the expunction laws are changed or new case law is promulgated, this issue should be revisited at that time. Also, the Records Management Committee should be asked to create a mandatory form to formalize the procedures and criteria set in case law for sealing documents or cases

The committee unanimously accepted this recommendation.

Recommendation 15: Electronic documents should not be posted on WCCA at this time

The committee unanimously accepted this recommendation.

Recommendation 16: Audio files should not be made available on WCCA at this time

The committee accepted this recommendation.

Recommendation 17: Continue the current practice of not posting demographic information on WCCA

Mr. Fox noted that the descriptor should be physical description instead of demographics. The committee agreed to this change and accepted this recommendation.

Recommendation 18: A general glossary of court terms and links to federal court websites should be posted on WCCA

The committee accepted this recommendation.

Recommendation 19: For bulk data subscribers, language should be added to the subscriber agreement outlining the Notice to Employer concerning employment discrimination as well as including the language used in the Executive Case Summaries for pending and dismissed criminal cases where there is no conviction

The committee unanimously accepted this recommendation.

The next set of recommendations considered (Recommendations #20-#30) were submitted by the Retention and Accuracy Subcommittee:

Recommendation 20: Change the disclaimer regarding accuracy on the WCCA entry page

To improve clarity for the average user the subcommittee recommends changing this language from:

*If you believe any of the data contained in this database is inaccurate, please contact the circuit court where the original record was created and filed. CCAP provides no warranties insuring the accuracy of the information contained in records available on WCCA . . .*

to: *ACCURACY: If you believe any of the information displayed here is inaccurate and wish to request a correction please [click here](#)*

Ms. Evenson suggested the ending of the sentence be changed to *wish to request an error correction*. She said this language would be more consistent with other recommendations. The committee agreed with the amendment and unanimously accepted the recommendation.

Recommendation 21: Move that language in Recommendation 20 from in the disclaimer window to under it

The committee accepted the recommendation.

Recommendation 22: Provide a link from the WCCA entry page to an FAQ (frequently asked questions) explaining the error correction procedure

The committee unanimously accepted the recommendation.

Recommendation 23: Provide a link from the FAQ explaining the error correction procedure to a form

The committee unanimously accepted the recommendation. Ms. Murphy said during development she will be working with Judge Carlson to change the form to be less formal.

Recommendation 24: Add FAQ regarding last known address

Judge Kahn asked if there is any time limitation to having an address updated. Ms. Murphy said it would likely be limited to active cases. She added a clerk might change it upon request from the person but addresses are not updated as routine maintenance. She said that information will be included in the FAQ. Mr. Fox said that is the way it should be because this is an archive of information. Judge Carlson noted the date of when an address is changed is included in the court record events.

The committee unanimously accepted this recommendation.

Recommendation 25: Clerks of circuit court should be consulted and involved in finalizing and implementing the error correction procedure.

The committee unanimously accepted this recommendation.

Recommendation 26: Change the language in the introductory paragraph on the WCCA entry page.

*This website provides public access to the records of the Wisconsin circuit courts for counties using the Consolidated Court Automation Programs (CCAP) Case Management system. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39, Wisconsin Statutes.*

to: *The Wisconsin Circuit Court Access (WCCA) Web site is the statewide source for public circuit court case information. It is an archived summary of cases filed at the county level. Under Wisconsin Statutes, certain circuit court case records are confidential and available only to the judiciary and certain legally authorized officers of the court. Court records summaries viewed here are public records under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.*

The committee unanimously accepted the recommendation.

Recommendation 27: Retention of case records on WCCA should not be longer than the existence of the underlying physical record in the Circuit Court.

Ms. Evenson clarified that this recommendation refers to the existence of the record regardless of the medium. Ms. Murphy said that was correct, it would be the underlying paper record unless it has been converted to microfilm or another storage format. The committee accepted the recommendation.

Recommendation 28: Case records should not be removed from WCCA until the clerk of circuit court notifies CCAP that the underlying circuit court record has been destroyed or transferred pursuant to SCR 72.

The committee rejected the recommendation.

Ms. Murphy said the recommendation represents a subcommittee compromise between those members favoring longer and shorter retention on WCCA. She said some concerns expressed about the proposed retention schedule included the potential burden to the clerk of court to notify CCAP of record destruction and the inconsistency of the retention length among the counties. Judge Kahn asked what happens to the CCAP record when the paper file is destroyed. Ms. Murphy said the systems are separate and distinct so there is no correlation.

Attorney Bensky said the Retention/Accuracy Subcommittee discussed including a “minority report” and as a result, he prepared a different proposed retention schedule. He said the proposal was included in the report draft as Appendix 9. He said a memo discussing the proposal had been distributed prior to the meeting but explained that the proposal includes a uniform period of time and provides a distinction between convictions and dismissals. Attorney Bensky said the committee has two questions to address, if the retention time should be uniform across the state and if so, what the length of time should be. It was the consensus of the group that a uniform time period would be the approach supported by a majority of the committee.

Four options were put on the table:

1. Mr. Moore suggested that the minimum time periods set in Supreme Court Rule (SCR) 72 be the maximum amount of time that records are retained on WCCA. However, he added that he would support the committee including a recommendation that the Supreme Court comprehensively review SCR 72.
2. Judge Kahn suggested that felonies, large claims and Chapter 980 cases be retained on WCCA for 50 years and everything else be retained for 10 years.
3. The retention schedule proposed by Attorney Bensky, Appendix 9, generally with a lesser retention time than SCR.
4. Mr. Fox said another alternative is to recommend that the Supreme Court review SCR 72 as suggested by Mr. Moore but maintain the current WCCA retention policy until the review is complete. He added after the SCR 72 review is complete, the minimum time periods set in SCR 72 would become the maximum amount of time the records are retained on WCCA as outlined in Mr. Moore’s proposal. Mr. Barrett said if this option is selected, until SCR 72 is reviewed, the current WCCA policy would need to be adjusted so the electronic entry is not on WCCA longer than the paper record is in existence as approved in Recommendation #27. The committee agreed with Mr. Barrett.

The committee accepted option #1 and the amendment of Recommendation #28 to reflect that decision.

Recommendation 29: Ask the Director of State Courts Records Management Committee to consider the following changes to SCR 72:

- Retain Ch. 980 cases (Sexually Violent Persons Commitment) for 75 years. It was the consensus of the subcommittee that retention should be extended from 50 to 75 years to match the retention of Class A Felonies.

The committee accepted this portion of the recommendation.

- Retain Criminal OWI case records longer than 20 years. The District Attorney on the subcommittee strongly believed that a longer retention of these records is necessary to defend collateral attacks raised in the context of subsequent OWI offenses.

The committee accepted this portion of the recommendation.

- Consider shortening the retention time for dismissed divorce cases. The judge members of the subcommittee were of the opinion that there is no further court involvement after a divorce case is dismissed and no business purpose for keeping these records. The subcommittee asks RMC to consider handling these cases similarly to dismissed small claims cases under SCR 72.

The committee rejected this portion of the recommendation by a narrow margin.

Recommendation 30: In the event a maximum retention schedule is adopted for WCCA three exceptions are recommended. Records should be displayed on WCCA past any maximum retention time if there is money due and owing the court. The same exception should be made in the rare event that a warrant is outstanding or a case is on appeal.

The committee unanimously accepted the recommendation.

The committee then considered additional proposals submitted by the Retention/Accuracy Subcommittee:

Additional Proposal 1: Base record retention of criminal cases on the most serious charge type at conviction rather than at initial charging.

Attorney Bensky said his opinion was included in his memo distributed prior to the meeting. Attorney DuFour said he would support the proposal if the conviction would be a true reflection of the actions but he is concerned about the effects of plea bargaining. Mr. Fox said the record is historic synopsis of actual proceedings and basing retention on the original charge is appropriate. Judge Kahn said the person is convicted of the amended charge and the consequences should be in alignment with that conviction as a matter of fairness. Judge Carlson said he agrees with Mr. Fox, that the website is an archived summary of cases filed.

The committee rejected the proposal.

Additional Proposal 2: Retain Misdemeanor, Traffic and Ordinance cases (preferably based on case type at conviction) on WCCA no longer than 5 years.

Due to the amendment of Recommendation #28, additional proposal #2 was no longer applicable.

Additional Proposal 3: Make provisions for retaining court records in perpetuity.

Mr. Fox said his proposal was distributed by e-mail prior to the meeting. He said the proposal is his motion:

In recognition of the fact that information technology and electronic data management advances have created new possibilities for greater and more accurate record retention, and that technology evolution promises even greater advances, we recommend the Wisconsin Supreme Court periodically review SCR 72 vis-à-vis current information technology based on the principle of the Wisconsin Open Records Law for "... complete public access consistent with the conduct of government business." The purpose of such a periodic review would be:

- 1) To provide for the retention of all original court records for current and historical purposes insofar as electronic record-keeping at a given time will allow, and;
- 2) To provide for a continuing court-records oversight committee to review from time to time progress toward that goal and to make recommendations to the Supreme Court.

Rep. Schneider said it would be wise to keep the records in perpetuity for historical purposes. Ms. Murphy said the retention in SCR is based on the business needs of the courts and historical preservation is not the court's job. Judge Carlson said he was a member of the Records Management Committee at the time SCR 72 was promulgated. He said the Historical Society was involved at that time and was encouraged to come to the Records Management Committee if modifications to the rule are necessary.

The committee rejected the proposal.

Additional Proposal 4: Consider removing the domestic violence checkbox from the WCCA (and local CCAP) case record.

Ms. Murphy said at present, counties that choose to use this feature show the checkbox when the district attorney makes this designation at case filing. Even if the defendant is acquitted, or the offense is found not to include domestic abuse, the check box continues to show on the case record. Attorney Bensky said the memo he distributed regarding the retention schedule also included information about the domestic violence checkbox and its effect on the recipients.

Mr. Moore made a motion that the domestic violence checkbox be removed from WCCA and that CCAP further investigate the reason for its existence. Ms. Murphy seconded the motion. The motion carried unanimously.

Additional Proposal 5: Replace the three criminal case type alpha identifiers with a single identifier of CR.

The committee rejected the proposal.

3. **Approval of Final Report**

Mr. Voelker said the final report will be revised based on the committee's decisions. He said another meeting is not planned but the revised report will be distributed to members and there will be an opportunity to submit corrections. Mr. Voelker said he hopes to begin implementation on some of the recommendations as soon as possible. He added that in the future he may call upon committee members for ad-hoc assignments.

4. **Other Business**

Mr. Voelker thanked the committee for their dedicated service to this effort and for a job well done.

With all matters being discussed, the meeting was adjourned.