

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

**MINUTES**  
December 8, 2005  
9:30 a.m.

Garden Level Conference Room  
Tenney Building  
Madison, WI

MEMBERS PRESENT: 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; Attorney Gerald Mowris; Sheriff Randy Roderick, Green County; Jeffrey Schmidt, Ozaukee County Clerk of Circuit Court; and Rep. Marlin Schneider.

MEMBERS ABSENT: John Barrett, Milwaukee County Clerk of Circuit Court.

OTHERS PRESENT: Jon Sanfillippo, Milwaukee County Deputy Clerk of Circuit Court; Marcia Vandercook, Office of Court Operations; and Lori Irmien, Director of State Courts Office.

1. **Approval of Minutes**

The minutes of the November 11, 2005 subcommittee meeting were approved as submitted.

2. **Overview of Remaining Issues to be Considered by Subcommittee**

Mr. Moore distributed the meeting agenda and explained he developed it by listing the outstanding issues. He asked if there were any additions to the agenda. No additional issues were identified.

3. **Discussion of "Read-in" Report by Attorney Burke**

Mr. Moore said at the last meeting Atty. Burke offered to conduct research on the nature of read-in charges. He said the result of her research was distributed to the members by e-mail prior to the meeting. She proposed this language for the case summary involving read-ins:

The charge(s) in this case were read-in to this or other case(s). A "read-in" is an uncharged crime or a criminal charge that is dismissed as part of a plea agreement, but to which the defendant: (1) admits guilt, and (2) agrees to be held responsible for and have the court consider when sentencing for another crime. The defendant has not been convicted of or found guilty of the read-in charge(s).

Judge Kahn said he received an e-mail from Judge Pasell citing a conflicting interpretation based on very recent case law. Atty. Burke said she would be interested in taking a look at the case. Judge Kahn will forward the information to Atty. Burke. Judge Carlson thought it should be included in the summary that the defendant cannot be charged again and suggested it be listed as a third point. Mr. Moore said that might be a true statement but questioned if it would be helpful to the user. Mr. Schmidt agreed and said more explanation would be required if it is included in the case summary. Judge Kahn said he believes using a bullet format instead of numbering the points inside the summary text provides the information in a clearer manner. He also suggested the summary language be as brief as possible and use links to provide further definition. Mr. Lueders said the language proposed at the last meeting could be used with a link to the language proposed by Atty. Burke. Judge Carlson suggested this language:

The charge(s) in this case was “read-in” to this or another case. A “read-in” is a crime (either charged or uncharged) that is resolved as part of a plea agreement with the following effect:

- The defendant is not convicted or found guilty of the read-in;
- The defendant admits to the crime and agrees to be held responsible for it;
- The judge can consider the charge(s) when sentencing on other charges;
- The judge can require the defendant to make restitution for read-in offenses; and
- The defendant can never again be charged with the specific criminal acts that were read-in.

The subcommittee agreed to the proposed language with the understanding it may need to be refined after Atty. Burke reviews the case referred to by Judge Pasell.

#### 4. **Review of re-drafted Executive Case Summaries**

Ms. Bousquet said the case summaries that were redrafted after discussion at the last meeting were sent out to subcommittee members by e-mail prior to the meeting. The subcommittee reviewed each draft:

- The mock-up reflecting the situation where multiple charges were filed and some were dismissed - the subcommittee approved the language but made a few minor formatting changes.
- The mock-up reflecting the situation where all cases were dismissed - Atty. Mowris asked why the notice to employers indicates that it “may” be a violation of law to discriminate against a job applicant when it clearly “is” a violation in dismissed cases. Mr. Moore said the notice to employer language is taken from the current language on the main page of the WCCA website. Ms. Bousquet said the language is generic and will be consistent among all the case summaries and will not change based on the situation. Rep. Schneider said he is concerned about laws in other states. Mr. Lueders suggested language could be added that would indicate that it is never lawful to job discriminate on the basis of dismissed cases. Atty. Burke added that it should be made clear the law referred to is Wisconsin law. Mr. Moore commented it would be difficult to program different notices based on the case summary type and that could be avoided by including such a statement. Judge Kahn said pending cases and convicted cases can only be

considered if it relates to the job and dismissed cases cannot be considered at all. Judge Carlson said there might be federal laws that may apply and Atty. Burke offered to research it. The subcommittee agreed to use the draft language, including the statement proposed by Mr. Lueders, but any suggestions for additional language can be e-mailed to Mr. Moore and Ms. Bousquet.

Rep. Schneider asked when conducting searches by name, if “sounds like” names appear or if the exact name must be typed in. Ms. Bousquet said that WCCA does not use a “Soundex” system for name searches. The last name needs to be an exact match, but only the first two letters are required for the first name for party searches. Rep. Schneider said the open records law provides the right for the public to know but in some instances, notification to the person is made prior to the release of the information. He believes that the person should know who is accessing the information and that a registration or sign-in would accomplish that.

- The mock-up reflecting that the case is pending. Mr. Lueders asked if the statement referring to reasonable doubt was accurate. Atty. Mowris said at this point in the case it is true but Judge Carlson pointed out the end result can change. Mr. Moore suggested the entire sentence be removed and the subcommittee agreed that would be acceptable.

The subcommittee then reviewed two case summary drafts relating to deferred prosecution situations. The first draft case summary refers to deferred prosecution agreements:

The deferred judgment agreement(s) on this case was fulfilled, and the charge(s) are dismissed.

Under certain "first offense" Chapter 961 drug charges, a defendant can receive a deferred judgment. There is a "Guilty" finding, but the conviction is not entered unless the defendant does not fulfill the conditions of the deferred judgment agreement. The department of Probation and Parole supervises this agreement.

**Notice to employers:** Standard Language

Atty. Burke suggested that a sentence be added to the end of the first paragraph indicating that the defendant has not been convicted of these charges. Judge Kahn agreed and thought possibly the dismissed text that indicates the presumption of innocence could be used. There was some discussion on whether or not that statement was completely accurate. Mr. Lueders thought that explaining there was no conviction would be sufficient. Atty. Mowris said the second paragraph could be completely removed, as its purpose is only to explain the deferred judgment agreement. Atty. Burke agreed and suggested a link from the first paragraph to the definition could be an alternative. The subcommittee agreed the charges would not be listed. Ms. Bousquet will redraft the case summary for review at the next meeting.

The second draft case summary refers to deferred prosecution or sentencing agreements:

The deferred prosecution or sentencing agreement(s) on this case were fulfilled, and the charge(s) are dismissed.

Under Wisconsin law, a deferred prosecution agreement allows a person facing criminal charges to enter into an agreement with the court to fulfill certain conditions in return for a dismissal. To be eligible to participate in deferred prosecution an offender usually does not have a criminal record, accepts responsibility for the offense, and must be willing to participate in the agreement.

**Notice to employers:** Standard language.

The subcommittee determined that it was not necessary to differentiate between the deferred prosecution situations and the language used from the first draft could be used on both instances.

The subcommittee discussed situations that need case summaries drafted for the next meeting:

- Not guilty and judgments of acquittal
- Amendments from criminal to civil ordinances. The subcommittee discussed adding definitions of criminal charges and civil ordinance violations to the FAQ but will further discuss it at the next meeting.

## 5. **Discussion of Sealing and Expunging Policies**

Atty. Mowris said the November 11 meeting minutes indicated that expunged records will still appear in the Crime Information Bureau (CIB) records. He said it should be noted that there is a mechanism in place to remove the entry from the CIB record.

Mr. Moore introduced Ms. Marcia Vandercook who is a policy analyst with the Office of Court Operations. He asked her to provide a brief overview about sealing and expunging records.

Ms. Vandercook said the power for a judge to seal a single case or document is within the circuit court's inherent powers but the judge needs to determine that the reason for the closure outweighs the right for the public to know. She said given the strong state policy favoring openness, closure will only rarely be justifiable. She said courts may seal cases or court documents as provided by statute or required to protect constitutional rights but the single argument that the openness of the record is ruining the person's life is not adequate. Ms. Vandercook said when a record is sealed the record remains in the CCAP database but is hidden from view. Mr. Moore said a modification to the CCAP software will be included in the next upgrade expected in January 2006. He said judges will be allowed to seal the complete case or portions of the case. He said currently the software only allows the complete case to be sealed. Ms. Bousquet said the upgraded version will be programmed to search sealed cases in this manner:

1. If the case and party records are both sealed and a search is conducted by case number, the case number and caption would be returned, but the "sealed party" would be replaced with sealed information (e.g. 2005CM200 State of Wisconsin vs. Party Sealed by Judge Jones). You cannot access the case detail and an informational message will be displayed, "This case is sealed and is not available for viewing by order of Judge Jones".

2. If the case and the party records are sealed and a search is conducted by party name, no information would be returned.
3. If the case is sealed but the party is not, searching on the case number or party will return the case with the full caption. You can not access the case detail and an informational message will be displayed, "This case is sealed and is not available for viewing by order of Judge Jones".
4. If the party is sealed but the case is not searching on the case number will return the case with the "sealed party" caption (see Number 1.)
5. If the party is sealed but the case is not, a search conducted by party name will return no information.

Judge Kahn said there are procedures for sealing a case and Ms. Vandercook said case law has set the criteria. Judge Kahn said it might be useful to ask the Records Management Committee (RMC) to create a form to formalize the criteria set in case law.

Ms. Vandercook said expunction is regulated by Wisconsin statutes and is available as an option in limited situations. She said statutes provide for expunction in misdemeanor convictions where the person is age 21 or under. Ms. Bousquet said when a record is expunged the record is deleted from CCAP except for very basic skeletal case information. Judge Carlson said the paper records are also destroyed. Atty. Mowris said the authority to expunge cases should be expanded to include other circumstances, such as dismissed cases. Judge Kahn said the current expunction law is flawed but it would be detrimental to an open democracy to remove dismissed cases from WCCA. Atty. Mowris said his position does not include the expunction of all dismissed cases automatically. He said the law should be changed to give courts the power to expunge under certain circumstances such as when a judge finds that society will not be harmed by removing the record and it will benefit the person. He said it does not make sense that a conviction is a requirement for case expunction and that an innocent person whose case has been dismissed cannot have it expunged. Judge Carlson said there must be accountability for the expunction. Mr. Moore said the role of subcommittee is not legislative in nature and they cannot change case law so discussions should focus on the best method to accurately display cases that are sealed and expunged.

The subcommittee concluded that the current policy is acceptable but noted if the expunction laws are changed or if new case law comes along that this issue should be revisited at that time. They also agreed the RMC should be asked to create a mandatory form to formalize the procedures/criteria set in case law for sealing documents or cases.

#### 6. **Procedure for Address Removal Petition**

Mr. Moore said the subcommittee agreed at the October 14 meeting that a procedure for address removal from WCCA should be created along with a form to petition the court. Mr. Lueders clarified that the address removal referred to the website only and not to the paper files. The subcommittee agreed with that clarification.

Ms. Doeppers asked if the average person would require a lawyer to file this petition and if other reasons beyond a direct threat would be reason enough for the petition to be granted. Judge Kahn said an attorney would not be necessary and it was discussed that information about the process would be included in the FAQ section of the website. He suggested that possibly the same criteria used for sealing a record could be used for this petition. He also thought that a judge should make the finding on the record, which could be accomplished by two ways, either by calling the case for a brief formal hearing with a court reporter present or by ruling on the petition via paper. Mr. Lueders asked if there should be some general standards for approving the petition. Judge Carlson said normally the RMC will develop a procedure to accompany the form. He said it is helpful to the RMC to give them a starting point. Judge Carlson volunteered to draft procedures and forms for sealing records, and the petition to remove an address, for the subcommittee to review at the next meeting. The subcommittee agreed with this approach.

7. **Consideration of Additional Information to add to WCCA**

a. **Electronic Documents**

Mr. Moore said the ability to post electronic documents was not an option at the onset of WCCA because CCAP did not have an electronic documents database. He said interfaces with other agencies are in progress that could make posting some court documents on WCCA possible. He said many counties are also now scanning documents into the CCAP case management system. Judge Carlson said he is an advocate of having as much information available online as possible but redacting information from the documents is very problematic. Sheriff Roderick said there is more data on citations, including personal information such as driver's license number. He said some law enforcement agencies do use the TRACS system but many do not. Judge Kahn pointed out that TRACS has two data fields that CCAP and PROTECT (the District Attorneys' case management system) do not have. Atty. Mowris asked what additional information would be of interest. Judge Carlson said the officer's narrative report would be included. Judge Carlson added that in divorce actions, Wisconsin statutes require the collection of social security numbers of all members of the family as well as children and that is an example of information that would need to be redacted. Atty. Mowris said that the federal court system, PACER, has some documents available electronically but noted there is a tracking system in place. He said a log-in and password is required and a fee is charged for using the system. Mr. Lueders said the complaint typically is split into two sections, basic charging information and detailed narrative of the facts. He thought maybe it would be possible to post the basic charging section. Judge Carlson said complaints are drawn up in many formats and would differ from county to county. Mr. Moore said the information contained in that section probably would not provide much more information than is already in the system.

The subcommittee concluded that it would not be advisable to post electronic documents on WCCA at this time.

b. **Audio Files**

Judge Carlson said Supreme Court cases are broadcasted live over the court's website so consideration should be given to broadcasting circuit court cases. He said there could be technical issues that might present obstacles. Mr. Lueders asked if there is public access to the audio files that are being created now. Ms. Bousquet said CDs can be purchased for \$10. Atty. Burke said circuit courts tend to deal more personally with individuals where the Supreme Court reviews matters that are more an issue of law. Judge Carlson added that once the transmission is broadcasted, it is impossible to redact information. Mr. Moore said ordering a court transcript is another available alternative to get a precise written record of the proceedings.

The subcommittee concluded that broadcasting circuit court cases on WCCA is not recommended at this time.

c. Identifying Demographic Information

Mr. Moore explained that demographic information includes height, weight, scars, marks, tattoos, eye color, hair color and any other identifying characteristics. It was noted that this information is not captured in all case types but is typically included in criminal cases. Judge Kahn thought this information is irrelevant for court purposes and incorrect presumptions could be made. Mr. Lueders said the more information identifying an individual there would be less risk of being misidentified. Sheriff Roderick said this information is included in the National Crime Information Center database as well as law enforcement systems so it would not be widely used by law enforcement. Ms. Doeppers said these characteristics can change rapidly and she is not convinced it would be that helpful.

The subcommittee concluded that it is not necessary to add demographic information to WCCA at this time.

d. Glossary of Terms

Mr. Schmidt said a generic list of legal terms could be listed but thought it would be difficult to have a glossary of acronyms used by the counties. He said it is unlikely that all of the counties would agree to use the same acronyms so it would be necessary to have 72 different sets of acronyms. He thought that approach would be very difficult to manage. Judge Carlson said some counties are using some of the same acronyms and he would encourage standardized use whenever possible but agreed that maintaining 72 separate glossaries would not be efficient. Ms. Bousquet said a glossary of general court terms could be posted. Rep. Schneider said it would be helpful to have a standard glossary of acronyms and work toward achieving consistency among the counties by education. Mr. Moore said CCAP is identifying some of the acronyms in their training sessions.

The subcommittee agreed that a general glossary of court terms should be posted to WCCA.

8. **Bulk Data Subscriptions – Risk/Benefit & Other Considerations**

Ms. Doeppers asked what the appropriate role of government is. She said the law allows for open records but should the government contribute to private companies in making money. Rep.

Schneider said the open records law was enacted many years ago when the concept of having this information on computer was not thought of.

Ms. Bousquet said bulk data subscriptions allow for computer-to-computer data extraction. She said information about the data extraction option is posted on the website. She said a subscription is necessary and a fee is charged which is \$5,000 per year. Ms. Bousquet said in the past, data miners would scrape data off of the WCCA system, and by allowing these subscriptions there is less stress and disruptions to the system for general public use. She said data miners will collect the data regardless of whether CCAP offers the SOAP subscription and this method provides a means for them to obtain their data without impacting other system users.

Rep. Schneider said he is concerned about the person who is wrongly identified and also that there is no control over the information. He said people are being victimized by this system. Ms. Bousquet said if WCCA website was dismantled, the records within the CCAP system would still have to be released to requestors based on our current Open Records law. Judge Carlson said the information would remain until the subscriber draws updated data. Mr. Moore asked if the customers of the data miners are receiving the notice to employer information. Ms. Bousquet said normally subscribers take certain pieces of the information. CCAP does not monitor it but she assumes data is drawn regularly. She said each time data is received it should overwrite the previous information but it is only the data elements, not all of the text, notices and formatting. Mr. Moore said the subscriber agreement indicates that the subscriber is responsible for the currency and accuracy of the data. Judge Carlson said the agreement also specifies that the subscriber must notify customers of the limitations of the data. He said there is probably not a way to enforce it but subscribers should be informing customers. Judge Kahn said it might be beneficial to add language to the subscriber agreement outlining the notice to employer as well as including the pending/dismissed language that there is no conviction. The subcommittee agreed to include that suggestion as a recommendation in the report.

## 9. **Other Business**

- Rep. Schneider said a link to the federal courts and federal government might be useful to include in the link's section. The subcommittee reviewed the listed links to external websites on WCCA. They agreed links to the federal courts should be provided.

- Judge Kahn suggested they discuss a timetable to accomplish some of the recommendations. Ms. Bousquet said the WCCA Oversight Committee's final report will be submitted to the Director and after approval is given, planning will begin for the programming changes. She said the proposed recommendations will require substantial reprogramming but since some programming was expected as a result of the committee's work, resources have been allocated to this project as part of CCAP's 2006 annual plan.

- The next meeting is January 20. Mr. Voelker said the final meeting will either be February 23 or March 3. He asked members to contact Ms. Irmen with which date they prefer. (NOTE: The majority preferred March 3).

With all matters being discussed, the meeting was adjourned.