

Electric Records Retention and Destruction Advisory Committee
Meeting Minutes
Tuesday, April 30, 2013
10:00 a.m. – 3:00 p.m.
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Present: Judge Janet Barton, David Bodney, Raushanah Daniels, Christopher Hale, Judge Eric Jeffery, Mark Jensen, Janet Johnson, Judge Dorothy Little, William Mangold, Sandra Markham, Diane McGinnis, Judge John Nelson, Jeff Raynor, Marcus Reinkensmeyer, Melanie Sturgeon, Judge Samuel Thumma, Marty Vance.

Present Telephonically: Jon Smith.

Administrative Office the Courts (AOC) Staff: Stewart Bruner, Melinda Hardman, Karl Heckart, Kym Lopez.

Guests: Mike Baumstark (AOC), Eric Ciminski (AOC), Cheri Heppler (Payson Justice Court), Therese Martin (Arizona Attorney General's Office).

Call to Order/Welcome and Introductions

With a quorum present, the April 30, 2013 meeting of the Electronic Records Retention and Destruction Advisory Committee was called to order by Marcus Reinkensmeyer, chair. Mr. Reinkensmeyer welcomed members and introductions were made around the room.

Committee Rules of Procedure and Proxy Form

Mr. Reinkensmeyer presented the Committee Rules of Procedure and Proxy Form for approval.

Motion: Judge Nelson moved to approve the Committee Rules of Procedure and Proxy Form as presented. **Second:** Ms. Diane McGinnis. **Vote:** Motion passed unanimously.

Review of Committee Charge and Scope of Work

Mr. Reinkensmeyer reviewed the committee charge as set out in Administrative Order 2013-33. The committee is to consider retention and destruction of electronic *case* records, not *administrative* records. Electronic case records consist of images of case documents as well as data. Data is generally associated with a case management system. The committee shall report its recommendation to the Arizona Judicial Council not later than the Council's December 2013 meeting.

Mr. Reinkensmeyer also advised the committee that he and others at the AOC contacted Tom Clarke of the National Center for State Courts to obtain Mr. Clarke's expertise and advice on national trends and research in the area of retention and destruction of electronic records. Mr. Clarke noted that Arizona is actually on the forefront of these issues, that this is new ground, and presently there is no work like this being carried out in other states. So, Arizona will be cutting a new path with the recommendations this committee will make.

Review of the History of Policy Development in Arizona on Retention of and Access to Case Records

Melinda Hardman, CSD policy analyst, provided a brief overview of the historic policy development of Rule 123, Rules of the Supreme Court of Arizona; Access to the Judicial Records of the State of Arizona and of the four existing, statewide court records retention schedules. Ms. Hardman also asked members to consider that the focus of their task is electronic records, not paper records. Additionally, she noted many different terms are used indiscriminately to describe electronic case records, including “electronic record,” “original record,” “case record,” and “court record.” Finally, she asked members to consider the distinction between documents and data.

Mr. Reinkensmeyer asked whether any other changes to Rule 123 are anticipated. Ms. Hardman responded that there is a pending rule petition on Rule 123; however, the changes proposed in that petition do not impact this committee’s charge.

A member asked when a high profile case can be removed from the Internet. Ms. Hardman noted that Rule 123 requires a judge to designate a case as high profile; however, the rule does not establish when the case is to be removed from the Internet.

A Trend in Courts: Moving from Analog to Digital Records

Mr. Reinkensmeyer introduced Karl Heckart, ITD director, and explained that the topics Mr. Heckart will address in his presentation, as well as the recommendations this committee is being asked to make, will impact many projects at the AOC, including E-access, which is currently under construction, and E-bench, which is presently in the procurement stage. The E-Access project will offer remote electronic access to case documents, and the E-bench project will provide judges access to many different technology systems, including the court financial system and the case management system. It will also provide a variety of search features for judges.

Mr. Heckart then presented information about the path courts across the country and in Arizona are pursuing regarding moving from analog to digital case records. Mr. Heckart identified a variety of factors members should consider in establishing a policy on how long electronic case records should be retained including the need to: replicate or back-up electronic records, recover electronic records after a system crash, maintain electronic records in a secure environment, provide access to electronic records beyond the hours a court facility is open, maintain sufficient capacity to store electronic records, and pay the cost of providing all of these services. Mr. Heckart also elaborated on the key questions he felt must be answered to arrive at any policy recommended by the committee.

A member asked what happens to case data that is posted on the supreme court’s public access website when an individual court deletes electronic records. Mr. Heckart responded that if a court deletes a block of information, other than through the case management system, the AOC is unaware of the deletion. If a court deletes case information through the case management system, the deletion is picked up by the AOC through the nightly download of data from all courts.

A member expressed the desire that the destruction of electronic records should be automated, particularly for limited jurisdiction courts.

Review of Committee Notebook Material and Examples of Electronic Document and Data Issues

Ms. Hardman introduced the four records retention schedules in the member handbook. She also reviewed the results of her research on the records policies of certain states that are currently working with electronic case records.

Ms. Hardman then discussed the decision tree in the member handbook. She explained that she developed the decision tree by setting out the four issues identified in the committee's authorizing administrative order and then identifying the sub-issues that need to be addressed under each of the four issues. She indicated that the decision tree will be a starting point to help the committee reach its recommendations, however the committee should feel free to offer modifications to the decision tree as it carries out its work. Mr. Reinkensmeyer added that the decision tree will be the foundation of the committee's next meeting, so each member might want to take a look at it before the meeting.

Ms. Hardman and Stewart Bruner, ITD manager of strategic planning next presented a document that identified practical examples of electronic document and data issues facing Arizona courts. Several committee members added their own examples as well. Members discussed the examples and provided the following input:

- Definitions of the terms “record,” “original,” “case,” “record,” and “electronic record” vary in Arizona code, rule, and statute.
- Rule 123 is clear that orders of protection cannot be placed online, yet litigants want these orders online for ease of access.
- Perhaps once the records retention period under the schedule has been met, only specific, limited electronic data should be retained on a case for research purposes.
- The AOC could capture and retain data while individual courts delete the cases and data.
- The records retention schedule for limited jurisdiction courts requires these courts to retain civil traffic cases for one year; however, insurance companies research civil traffic violations back three years.
- When identity fraud is committed and certain case records are destroyed with no buffer, possible evidence is being destroyed.
- Is it unfair if some courts retain case records longer than other courts? Are people being treated differently around the state based on whether a court retains or destroys case records?
- Does the supreme court have the power and authority to state in the retention schedules that, after a certain number of years case records *must* be destroyed instead of case records *might* be destroyed – not be permissive? Another member responded, *yes* – courts exist to enact rules as they're written and as the courts understand them so that if a change is made to the retention schedule, which states that case records *must* be destroyed, then the records will be destroyed.
- Consideration should also be given to whether the case records that are retained are complete and accessible.

- Case information can be posted accurately by a court but then can be used inaccurately by the public. A person may be denied employment even if a court correctly shows a charge as dismissed.
- Many non-criminal cases (such as traffic offenses) show up on background reports as criminal in nature.
- Once information is published online, the information can be copied and posted anywhere or saved in any database.
- Can search warrants be deleted from online access and in the AJACS system after the one year retention period for these warrants has been met?
- When a juvenile paper case file is destroyed pursuant to court order, should the information about the case also be deleted from the case management system?
- Currently, electronic case records may remain online after MVD has destroyed its electronic record of the case and the court has destroyed its paper record of the case. The court's online record may be incomplete or contain errors but there is no way to resolve the discrepancy.
- Local charges generally only appear on the supreme court's public access website as a "local charge." A local charge can include anything from a barking dog to indecent exposure. Background check companies often read into this lack of detail and report to potential employers that the local charge could be a sex crime. This situation prevents people from being hired.
- What should be done with a record in the system under a person's name who is the victim of identity theft? Even when the charge is dismissed, the case still appears online under the name of the person who has been the victim of identity theft.
- A civil traffic charge may appear online as a criminal charge because the defendant plead "guilty" to the charge instead of "not responsible."

Future Meeting Dates

Members were given a list of potential future meeting dates and were asked to forward their availability to Kym Lopez.

Mr. Reinkensmeyer noted that the committee's authorizing administrative order directs the committee to deliver its report to the Arizona Judicial Council (AJC) at the Council's December meeting. Since Dr. Mangold is a member of the AJC, he will be able to help explain the committee's work. The administrative order also directs the committee to elicit extensive stakeholder comments. Some of this input can be obtained through the AOC's Website; however, we hope to also take the recommendations through the AOC's regular committee structure. Therefore, the committee should probably complete its work product by early fall.

Next Meeting Date

June 14, 2013; 10:00 a.m. – 3:00 p.m.

Arizona State Courts Building, Conference Room 119 A/B

Good of the Order/Call to the Public

No comments.

Adjourned at 1:40 p.m.

Electric Records Retention and Destruction Advisory Committee
Meeting Minutes
Friday, June 14, 2013
10:00 a.m. – 3:00 p.m.
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Present: David Bodney, Raushanah Daniels, Christopher Hale, Cheri Heppler (proxy for Judge Dorothy Little), Judge Eric Jeffery, Mark Jensen, Janet Johnson, William Mangold, Sandra Markham, Diane McGinnis, Jeff Raynor, Marcus Reinkensmeyer, Jon Smith, Melanie Sturgeon, Judge Samuel Thumma, Marty Vance.

Absent/Excused: Judge Janet Barton, Judge John Nelson.

Administrative Office the Courts (AOC) Staff: Stewart Bruner, Melinda Hardman, Kym Lopez.

Guests: Melanie Fay (Maricopa County Superior Court), Carrin Huff (AOC), Therese Martin (Arizona Attorney General's Office), Kay Radwanski (AOC), Linda Reib (ASLAPR), Lindsey Robertson (R3 Investigations), Richard Robertson (R3 Investigations), Amy Wood (AOC).

Call to Order/Welcome and Introductions

With a quorum present, the June 14, 2013, meeting of the Electronic Records Retention and Destruction Advisory Committee was called to order by Marcus Reinkensmeyer, chair. Mr. Reinkensmeyer welcomed members and introductions were made around the room.

Approval of Minutes

Mr. Reinkensmeyer presented the April 30, 2013, Electronic Records Retention and Destruction Advisory Committee meeting minutes for approval.

Motion: William Mangold moved to approve the April 30, 2013, Electronic Records Retention and Destruction Advisory Committee meeting minutes as presented. **Second:** Janet Johnson. **Vote:** Motion passed unanimously.

Update on Panepento vs. Lee/Riojas/State

Melinda Hardman reported that a Petition for Special Action Relief was filed in the Arizona Supreme Court in the Panepento case. However, on May 29, 2013, the court declined to accept jurisdiction of the Petition.

Statistical Requests Received by the AOC

Amy Wood provided a PowerPoint presentation on the types of statistical requests the AOC receives and the case data that is needed to respond to these requests. Ms. Wood also discussed basic statistical concepts and proposed factors to consider when assessing timeframes for data retention.

Additional presenter comments included:

- The AOC uses data to calculate judicial productivity credits for limited jurisdiction courts. Pursuant to statute, these credits are based on a two-year calendar cycle. However, in order to compare any two-year calendar cycle with the preceding cycle, the

AOC must retain four-years' worth of limited jurisdiction court case data. Finally, since Arizona courts operate on a fiscal year but judicial productivity credits are calculated on a calendar year, the AOC must actually retain five-years of case data.

- The longest period of time for which the AOC generally needs to study case data to analyze trends is 15 years; however, in this situation, old data may not be as reliable as the newer data.
- The AOC receives approximately 30-50 data research requests a year and another 50-100 requests that rely on already-compiled data.
- Requests for data come from the Arizona legislature, Arizona courts, Arizona probation departments, the National Center for State Courts, organizations that have received a grant from a national entity, the media, members of the public, universities and researchers, and other government agencies.
- Each year, the AOC collects data from Arizona courts and publishes this data. The AOC also receives requests for static numbers that the AOC does not regularly collect, so these requests are turned down.

Use of Electronic Court Records by Investigative Services

Rich Robertson, owner of R3 Investigations, is a private investigator. Mr. Robertson explained how he uses court records and the length of time for which he would like to have these records available. Mr. Robertson stated that he generally looks at individual case records for a particular client, while the AOC generally looks at aggregated data to analyze trends. Court records have considerable implications for people in areas such as employment, the purchase of firearms, immigration, and child custody. Mr. Robertson noted that some states have enacted statutes to limit how far back in time an employment background report can go. He asked that this committee consider a similar policy recommendation before it seeks to shorten any existing records retention time periods.

Mr. Robertson's comments included:

- When court records are destroyed, there is no opportunity for the person who is the subject of the record to challenge erroneous information in the record. Destroyed records cannot be challenged, refuted, corroborated, or resolved.
- Court records are not kept in isolation. Court records are often reported to other entities such as the FBI. The records will reside with these other entities long past the time the records are destroyed by the court.
- Investigators use court records for a variety of reasons, including to identify witnesses, assess credibility, construct a chronology of a person's life, check an alibi, verify assertions, locate people, link people and businesses, identify criminal activity, and determine civil employment.
- New advances in science have led to the reevaluation of old criminal cases, but if case records are destroyed, reevaluation is no longer available.
- Case records need to be available but not necessarily on the Internet.
- Once a juvenile becomes an adult, the juvenile's court records should be *sealed* rather than *destroyed*.
- There are legitimate policy questions on what should be available on the Internet. One thought is to limit the amount of time case records are available to the public but still have records available for research purposes.

- Private investigators often rely on private data aggregators and enter a search in the private database to determine whether a case ever existed. However, the federal fair credit reporting act requires the investigator to then follow up and obtain the original case record from the court.
- If a case file is physically destroyed, but a line of data is still available about the case from the court, Mr. Robertson wants to at least have this line of data preserved to indicate that a case existed at one point.

Discussion of Electronic Records Retention and Destruction Policy Questions (Administrative Order)

The committee discussed the four issues in the authorizing AO on which it is being asked to examine and make recommendations. Comments and ideas expressed by members included:

Issue 1: When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive?

- The current records retention schedules are permissive, and this fact has led to problems when some courts delete case records while others do not. The committee should settle this question. This issue had not been a critical factor for the Arizona Superior Court previously, since the Arizona Superior Court has not yet reached all of the timeframes in the schedule – most of which are 50+ years. Furthermore, there is no authority that instructs courts on what to do with case *data*.
- Courts are running out of physical space to store paper records.
- The retention of a case file and information in the case management system about the case should match. Either both should be retained or both should be destroyed.
- The elected clerks of court would like clarification on whether the current records retention schedules are intended to be mandatory or permissive.
- Perhaps case records could be retained for an extended period of time and only be made available via tiers of access.
- The committee needs to better understand whether the original records retention schedules were intended to be permissive or mandatory. These earlier reasons may no longer be valid.
- Retention schedules need to be applied consistently among courts and the schedules need to provide exceptions for retaining historically significant cases.
- Retention schedules need to be based, in part, on the long term historical value of a record. Municipal court case records generally do not have long term value. The State Archives holds many old justice and municipal court records from territorial days, but only because justice courts handled different types of cases then. Additionally, current records retention schedules must be mandatory, otherwise Arizonans will receive uneven treatment.
- Does the question the committee is being asked to address presuppose that *paper* records are to be preserved indefinitely? Rule 123, Rules of the Supreme Court, is premised on the notion that there will be paper records at the courthouse and that remote electronic access is supplementary.
- There should be a distinction between access to and retention of case records, but the format of the case record, whether it is paper or electronic, might not matter.

- Courts generally follow retention schedules for paper copies because of physical space constraints, but this is not always true with electronic copies, because of lack of personnel resources.

Issue 2: Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate?

- It might not be easier to systematically destroy electronic records.
- The committee needs to clarify the purpose for the existing records retention schedules before it can determine whether the current time periods are adequate.
- Additionally, the committee must ask, “Are the current retention periods adequate *to whom?*”
- The committee should consider how the use of technology is changing, including the fact that older criminal cases are being reviewed again using new technology. Perhaps some select criminal cases should have a longer retention period.
- Technology is being enhanced to the point where it is possible to develop a computer program that will delete an electronic case based on the case type and the case disposition code rather than on the age of the case. This could make records retention easier, but it may also result in loss of control of the record by the court.
- Current records retention schedule problems include the fact that civil traffic cases are required to be retained for only one year; however, statute establishes a look-back period of three years for violation of the motor vehicle financial responsibility requirement. Additionally, sex offenders are required to register for life; however, courts are not required to retain sex offender case records indefinitely. Perhaps both a permissive and a mandatory level of retention could be created.
- Some agencies currently have minimum and maximum retention periods in their records retention schedules.
- An analysis of the relative costs and benefits of retention vs. destruction of case records would be helpful.
- The committee should keep in mind the potential harm caused to a person when a court record haunts the person for years.
- Once a record gets out on the Internet, it cannot be controlled.
- Perhaps Dr. Sturgeon can provide additional information on what is involved with preserving case records over time.
- Most of the elected clerks of court believe the retention periods in the current superior court records retention schedule are long enough; however, some elected clerks believe some retention periods could be shorter.

Issue 3: Should policies regarding the length of time case documents and data are made available to the public online be consistent across court levels and from court to court within the same level?

- For courts that have case records online, the length of time the records are made available to the public should be consistent.
- The committee must think about the impact of records destruction on the public, not just about the cost of retention. Access to these records online should be consistent across the state.

- All courts should provide information to the Arizona Supreme Court's Public Access website. Arizona courts currently operate with ten different case management systems, and the systems that were built by individual courts do not always contribute information to the Public Access website. The site does identify the courts that contribute and the courts that do not. It is hoped that AJACS will provide a more universal system in this regard. This committee should identify this issue as a concern in its report to the AJC.

Issue 4: Once the destruction period is reached, should originals or copies of data or documents be retained for purposes of government research and analysis, and if so, should those records continue to be publicly available or released only pursuant to court order?

- If a record is retained, it is public.
- The best practice in records retention is that when the retention schedule time period has been reached, the record should be destroyed. If the record is not destroyed, it is open for discovery purposes, even if the original record is destroyed and only a digitized copy is kept. The digitized copy is still a public record.
- Adoption records in the possession of the State Archives are sealed until they are 100 years old. Then the State Archives opens the file. The file is not destroyed after 100 years.
- There are record systems that are not public, such as law enforcement criminal databases. The legislature can pass a statute to identify a particular reason to maintain a database and close the database to the public.
- Records that a government employee keeps in the course of his or her job are a public record, but many public records are closed. An example of a closed public record is adoption records.
- Redaction software tools cannot be relied upon as a solution to hide the identity of a person in court records. Human intervention is required for decisions on the information to be redacted from a document.
- Are courts able to quantify how often they do not have records someone has requested?

Next Meeting Date

July 30, 2013; 10:00 a.m. – 3:00 p.m.
Arizona State Courts Building, Conference Room 119 A/B

Good of the Order/Call to the Public

Therese Martin explained that there is a distinction between a *record* and a *public record*. Not all records that are generated by individuals in a government entity are public records. Ms. Martin also suggested that the committee might want to think about focusing on particular case types in its records retention efforts. For example, the committee might decide that criminal cases are of particular concern because if an error occurs in a criminal case, the error cannot be corrected when the case is destroyed. This situation may impact individual rights that are provided by the Arizona Constitution.

Adjourned at 1:30 p.m.

**Electronic Records Retention and Destruction Advisory Committee
Meeting Minutes**

Tuesday, July 30, 2013

10:00 a.m. – 3:00 p.m.

State Courts Building, 1501 W. Washington, Conf. Rm. 119 A/B, Phoenix, AZ 85007

Present: Marcus Reinkensmeyer (Chair), Judge Janet Barton, Christopher Hale, Cheri Heppler (proxy for Judge Dorothy Little), Judge Eric Jeffery, Mark Jensen, Janet Johnson, William Mangold, Sandra Markham, Diane McGinnis, Judge John Nelson, Jeff Raynor, Linda Reib (proxy for Melanie Sturgeon), Jon Smith (telephonic), Marty Vance.

Absent/Excused: David Bodney, Raushanah Daniels, Judge Samuel Thumma.

Administrative Office the Courts (AOC) Staff: Melinda Hardman, Julie Graber.

Guests/Presenters: Stewart Bruner (AOC), Pat McGrath (AOC), Laura Palma-Blandford (ASLAPR), Amy Wood (AOC).

Call to Order/Welcome and Introductions

With a quorum present, the July 30, 2013, meeting of the Electronic Records Retention and Destruction Advisory Committee was called to order by Marcus Reinkensmeyer, chair, at 10:05 a.m. Mr. Reinkensmeyer welcomed members and introduced Linda Reib, proxy for Melanie Sturgeon, and Cheri Heppler, proxy for Judge Dorothy Little.

Approval of Minutes

Mr. Reinkensmeyer presented the June 14, 2013, Electronic Records Retention and Destruction Advisory Committee meeting minutes for approval. Some changes were proposed to the minutes:

- On page 1, under Statistical Requests Received by the AOC, “Member comments included:” should be replaced by “Additional presenter comments included:”
- On page 4, under Issue 2, the last bullet was clarified by Sandra Markham by indicating, “The elected clerks of court believe retention periods in the current superior court records retention schedule *are long enough but some feel they could be shortened.*”

Motion: To approve the June 14, 2013, meeting minutes, with amendments to page 1 and page 4, as discussed. **Action:** Approve. **Moved by** Janet Johnson, **Seconded by** Sandra Markham. Motion passed unanimously.

Additional History of the Arizona Trial Court Records Retention Schedules, Federal Court Policies, and Other Issues Raised at Last Meeting

Melinda Hardman provided additional background on how existing records retention schedules were originally adopted in Arizona trial courts with a focus on Rule 29, Rules of the Supreme Court of Arizona, and whether the original records retention schedules were intended to be permissive or mandatory. Ms. Hardman focused on the trial court records retention schedules, which were adopted through the Arizona Code of Judicial Administration (ACJA), rather than the appellate court records retention schedules, which have been adopted by Administrative

Order. Finally, Ms. Hardman provided comments on the federal court and Colorado judiciary records retention schedules.

Ms. Hardman concluded, after a review of the 1990 Rule Petition filed by the Arizona Judicial Council resulting in the creation of Rule 29 and the 1990 legislation and testimony that prompted the filing of the Rule Petition, that there was almost nothing to provide insight into the historical consideration of whether court case records' retention periods should be permissive or mandatory. The legislative testimony, instead, focused on a desire to reduce the volume of paper case documents in the trial courts due to storage space concerns. At best, Ms. Hardman noted that several sections of Rule 29 provide that court "records shall be maintained and *may* be destroyed," thus lending support to the position that destruction of case records at the end of the retention period is permissive.

Ms. Hardman also commented that the federal judiciary case record retention schedules mandate the destruction of paper records at the end of the retention period, but the schedules do not cover electronic case records at this time. She noted that the U.S. Administrative Office of the Courts (AOC) intends to draft a schedule for electronic case records at a later date. The schedules governing paper case records contain an intermediate step, which Arizona has not adopted, whereby records are transferred to the federal records center, and when the retention period is reached, the records center asks the court to sign-off on a report so the records can be destroyed. Ms. Hardman asked the committee to consider whether Arizona would be able to enforce mandatory destruction of paper case records located in courthouses and not a central records center.

Finally, Ms. Hardman commented that the Colorado court records retention schedule specifically identifies case management system records as a record type, whereas the Arizona case records retention schedules are silent on the retention of case management system records.

Member comments included:

- If an agency keeps a record closed, the Arizona State Library, Archives, and Public Records (ASLAPR) will also keep that record closed, depending on state statutes, court rules, and case-by-case negotiations with the agency.
- ASLAPR focuses on the historical value of records and is a separate entity from the Records Management Center, which manages public records. The Records Center does not take ownership of the records. Records are only stored there. Records that are located at the records center are not available to the public, only to the agency. The public must ask the agency to obtain the records.
- Records transferred by a court to ASLAPR are retained at ASLAPR, permanently, unless federal or state law provides otherwise.

Retention Schedules with Minimum and Maximum Retention Periods

Laura Palma-Blandford, archivist at ASLAPR, explained that the purpose of records retention schedules is to manage the volume of records and to help identify records that can be destroyed and records of enduring value that should be preserved. Agencies have moved away from using minimum and maximum periods in their records retention schedules. At one time, minimum

retention periods were established to meet the needs of the agency and the public, whereas maximum retention periods were established to minimize risk and the cost of maintaining records. The minimum and maximum retention period approach is currently used in only a couple of municipal offices in the state. State agencies have moved in the direction of establishing only minimum retention periods in their record retention schedules. A member questioned why state agencies have moved in this direction, and Ms. Palma-Blandford offered to get back to the committee on this question.

Staff Note: On Aug. 6, 2013, Ms. Palma-Blandford explained that this change “resulted from negotiations with the Legislature.”

Concerns Raised about the Length of Time Data is Displayed on the Public Access to Court Information Website

Amy Wood, manager of the AOC, Caseflow Management Unit, presented concerns raised by some members of the public about the Public Access to Court Information Website (Public Access site). She began by describing the process by which case information appears on the site. After the courts enter information into the case management system (CMS), the information is uploaded into the data warehouse, which then drives the subset of data that appears on the Public Access site. The following concerns are most often raised by the public about the Public Access site:

- Length of time a record is displayed – Callers complain that their traffic or parking case was resolved years ago but still appears on the site. This may cause issues for potential employment and may make an electronic record available longer than a paper record. The AOC refers these callers to the court where the case originated. The CMS entry may still be at that court, but the paper file may have been destroyed.
- Expungement (set aside) of a criminal record – Callers believe that “set aside” means their criminal record has been expunged. Arizona law does not support expungement. When a defendant’s conviction is set aside, his or her civil rights are restored; however, this does not mean that the case record goes away or comes off the Public Access site. Both the record of the conviction and the set aside are public records.
- Local charge – Whenever there is a local ordinance violation in a case, the Public Access site displays the term “Local Charge” instead of displaying the specific charge. This can be confusing to users, who often misinterpret “local charge” to mean “criminal charge.” Often times, users and researchers jump to conclusions about a local charge instead of asking the local court for additional information.

Ms. Wood explained that the AOC plans to replace the current data warehouse arrangement with a consolidated, central case index (CCI). The CCI will support federated or multiple indexes and will allow local charge information to be pulled uniquely from different courts and will accurately show all local charges. The current data warehouse is not capable of this distinction.

Questions, responses, and comments included:

- The local charge issue applies only to limited jurisdiction courts, because there are no local charges in superior court. Superior court charges are based on state statutes.
- If a local court deletes information from its AZTEC CMS, the information will not appear on the Public Access site once the next refresh occurs. However, if a court restricts a record on the court's case master screen without actually deleting the information, the information will still appear on the Public Access site.
- The number of complaints the AOC receives from members of the public raising these concerns is not currently tracked. However, although the percentage of complaints the AOC receives is probably low, each complaint is time consuming.
- The AOC cannot remove anything from the Public Access site, because that site reflects action taken by the local courts.
- Some members of the committee recommended that records on the Public Access site be deleted, automatically, after a period of time, to reduce the number of complaints received. Members agreed that a 20-year-old traffic ticket should not still appear on the Public Access site.
- The Public Access site does not provide case information for all courts across the state.
- Mandatory destruction times for case records would be better than minimum retention periods, because minimum retention periods will result in some clerks destroying case records and others not destroying them.
- It may be easier to retain electronic records than to destroy them, since destruction is resource intensive. Under the present system, an individual decision must be made on each electronic record. Someone must pull up each case and enter a code to remove the data. Destruction of electronic records should be automated. Right now, it makes more sense for courts to apply resources to destruction of paper records, since paper records take up physical space.
- Perhaps information should be removed from the Public Access site but retained in AZTEC.

Ms. Wood asked the committee to consider establishing a separate retention period for the electronic records in each technology system (i.e. a set of rules for the Public Access site, a set of rules for the data warehouse, a set of rules for the case management system, and a set of rules for paper records), because this will be preferable to implement.

Additional Elements of the Cost of Digital Preservation

Linda Reib, electronic records archivist at ASLAPR, discussed variables related to the cost of preserving digital records. Ms. Reib explained that the longer a digital record is kept, the more cost and resources are needed to preserve it. She reviewed several factors for the committee's consideration in establishing how long digital records should be retained. She also illustrated some problems she has encountered in digital preservation. Ms Reib's comments included:

- Always ask yourself how quickly the storage media will become obsolete.
- Storage media can go bad. There is a 3-5% failure rate of storage media within 8 years. Disaster recovery solutions are necessary.

- When digital records are migrated to new storage media, data is easily lost.
- When technology systems are updated, there is an increased chance of failure and loss of data. Scanning parameters also change when there is an update to the system.
- File formats change when software is updated. For example, an Excel spreadsheet may recalculate formulas that were saved in an earlier version.
- Problems occur when codes are reused after a period of time. When criminal case codes that were used to identify felonies are reused, lower felonies can be reported as higher felonies.
- With historical records, there is also a risk that abbreviations will not be interpreted the same over time.
- Security and privacy concerns are a huge and complex issue. It is not easy to recognize a record that is not authentic.
- The volume of electronic records being generated is increasing much more rapidly than paper records ever did, and with the added ease of producing new electronic elements such as sound and graphics, the increase is exponential. This all increases the cost of storage and retention of electronic records.
- Because of a shortage of funding, ASLAPR is not currently accepting electronic data for archiving.

Comparison of Factors Related to Storage Costs of Electronic Court Records

Stewart Bruner, manager of AOC-ITD strategic planning, discussed factors related to storage costs of electronic court records.

Mr. Bruner explained the difference between storage hardware purchased for business use and storage hardware purchased for home use. He drew an analogy to “Grade 8” quality bolts. They have a lower failure rate and provide increased quality assurance; however, Grade 8 quality hardware costs more.

Mr. Bruner described common foundational items that are always necessary for storing electronic court records (i.e., floor space, physical and logical security, servers, environmental controls, operating system, database management system, EDMS application, backup software, vendor support/maintenance contracts, disaster recovery strategy, support personnel, management, documentation, testing resources), but stated the costs will vary depending on the total amount of data or documents being stored. Mr. Bruner identified several factors related to storage costs that must also be considered, and he compared the impact that storing a finite number of records versus an infinite number of records has on these factors, including:

- Hardware – The cost of disks, SAN controller, cabling, enclosures, power, and HVAC would be capped with a finite number of records but will bring ever increasing costs with an infinite number.
- Access speed – The AOC stores all documents online, none are in near- or offline storage. With a finite number of records, access speed will reach a steady state and access time will remain largely constant, but an infinite number of records will bring longer retrieval times unless processor power is added.
- Backup solutions – The AOC’s backup and restore strategy covers all records, not a subset, so with an infinite number of records, the time needed to complete a full backup

will grow until there is an insufficient number of hours to complete the backup overnight. Then the backup would grow to a size insufficient to be conducted over the weekend, and offsite media costs will perpetually increase. With a finite number of records, backup times and offsite storage costs will eventually level off.

- Recovery time – The AOC requires full database restore and full image repository restore, even to test, and an infinite number of records will require not only an ever increasing amount of disk space and computer resources but also an ever increasing length of time to test and perform recovery.

Discussion of Electronic Records Retention and Destruction Policy Questions (AO) and Draft Preliminary Recommendations

The committee continued its discussion of the issues it is being asked to examine.

Issue 1: When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive?

- The committee believes destruction of electronic case documents and data should be mandatory when the minimum retention period has been met.
- Stewart Bruner identified four types of case records: paper, CMS, data warehouse (statistical, feeds public access), and the Public Access site (a view of the data warehouse). He asked members where the committee wants automatic destruction to occur.
- Melinda Hardman suggested that the committee should be looking at data vs. documents (i.e. data vs. paper or electronic images of documents), not paper, CMS, data warehouse and the Public Access site.
- Some clerks of court would support mandatory destruction of electronic case documents and data, and some would not. However, at least there would be clear policy direction. There may be an issue among the counties, of resources being available to locate the records to destroy.
- The chair asked whether exceptions to mandatory destruction should be built in to policy. Mandatory destruction with exceptions was appealing to some but seemed to contradict Issue # 4, which the committee is being asked to decide. If the committee has a different retention schedule for the data warehouse, Issue #'s 3 and 4 need to be read together.
- All members wanted mandatory destruction of electronic records, but they were not sure about paper records.
- Destruction of electronic records (data and images) should occur from this date forward, instead of applying retrospective destruction.
- In limited jurisdiction courts, there may be no pictures or images of certain types of case documents, only data, and this data in the case management system is the court record.
- Stewart Bruner noted that with a paper record, the documents and data are one. In an electronic record, they are sometimes divorced and the CMS links them both. The image and data cannot be considered separately. The committee should not separate an electronic record between what is the data, what is an image, and what is an index.
- If data is kept for statistical purposes only, documents should not have to be kept.

- It would be useful to ask Amy Wood to identify the specific data elements needed for statistical and research purposes (e.g. name, date of birth, social security number, charge).
- The definition of destruction needs to be clarified. Does it cover images and/or data fields?
- The definition of a record needs to be broad enough so that it covers paper records and electronic records.

Issue 2: Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate?

Members reviewed the retention time periods in limited jurisdiction and general jurisdiction courts and suggested alternative time periods where they thought it was needed.

- Members first focused on general jurisdiction courts and whether the time periods in the current schedules were long enough or too long in an electronic world.
- Members questioned why divorce records should be retained for 75 years (from date of filing). Some thought this had to do with social security issues involving children.
- Arrest records are kept for 100 years with criminal felonies. A fingerprinting clearance card is only issued if the case was adjudicated and the record must be found to determine if a card should be issued. There are repercussions if the information is not found. It is rare to go back very far, but in less serious cases like felony possession of drugs, where the person was not charged, the charges were dropped, or the court imposed another sentence, and no record is found, the person may not be able to get a job.
- Probate records must be retained for 100 years. This probably makes sense, since probate cases may involve an adoption or a land transfer.
- Juvenile records must be retained until the person's 30th birthday, under the current schedule. This is very problematic because the system is not designed to calculate the number of years until someone reaches 30. Since 8 years old is the youngest age to be charged with juvenile delinquency, 22 years was suggested as the retention period for these cases.
- Dependency and severance actions usually go together. 100 years for retention of both seems good.
- Civil traffic cases currently have a one-year retention period. This is not an adequate period of time, considering that judicial productivity credit calculations and comparisons require five years of data.
- DUI cases were the subject of much discussion. The current 7-year retention period was not deemed adequate, because this period of time does not take into account the amount of time it takes to obtain a warrant and order records from another court. In the end, 10 years was recommended as an appropriate retention period.
- Since sex offenders are required to register for their lifetime, the underlying case record should not be destroyed after 25-50 years. Members agreed that for any misdemeanor or felony requiring lifetime registration in both limited and general jurisdiction courts, records should be retained for 100 years.
- In the Supreme Court, petitions where review is denied should only be retained for five years.

- Stewart Bruner expressed concerns about linking records for a long period of time before ultimately destroying a case (e.g., sex offender records), and about permanent records, due to electronic storage requirements.

Next Meeting Date

September 9, 2013, 10:00 a.m. - 3:00 p.m.
Arizona State Courts Building, Conference Room 119 A/B

Good of the Order/Call to the Public

Marcus Reinkensmeyer noted that the main issues discussed by the committee generated many sub-questions. These sub-issues will be reviewed at the next meeting. He also reminded members that the committee will be reporting its recommendation to the AJC at the December 2013 meeting. Therefore, the committee will need to complete its work by its November meeting, after obtaining input and bringing its recommendations through the supreme court's regular committee structure.

Adjourned at 2:11 p.m.

**Electronic Records Retention and Destruction Advisory Committee
MINUTES**

Monday, September 9, 2013

10:00 a.m. to 3:00 p.m.

State Courts Building, 1501 West Washington Street, Conf. Rm. 119, Phoenix, AZ 85007

Present: Marcus Reinkensmeyer (Chair), Judge Janet Barton, David Bodney, Raushanah Daniels, Christopher Hale, Mark Jensen, Janet Johnson, William Mangold, Sandra Markham, Diane McGinnis, Judge John Nelson, Jeff Raynor, Jon Smith (telephonically), Melanie Sturgeon, Judge Samuel Thumma, Marty Vance.

Absent/Excused: Judge Eric Jeffery, Judge Dorothy Little.

Staff: Melinda Hardman, Julie Graber.

Presenters/Guests: Stewart Bruner (AOC), Eric Ciminski (AOC), Bert Cisneros (AOC), Melanie Fay (Maricopa County Superior Court), Linda Reib (ASLAPR), Amy Wood (AOC).

Call to Order/Welcome and Introductions

With a quorum present, the September 9, 2013, meeting of the Electronic Records Retention and Destruction Advisory Committee was called to order by Marcus Reinkensmeyer, chair, at 10:04 a.m. Mr. Reinkensmeyer welcomed members to the meeting.

Approval of Minutes

Mr. Reinkensmeyer presented the July 30, 2013, Electronic Records Retention and Destruction Advisory Committee meeting minutes for approval.

Motion: To approve the July 30, 2013, meeting minutes, as presented. **Action:** Approve, **Moved by** Judge John Nelson, **Seconded by** Sandra Markham. Motion passed unanimously.

Data and Documents Required for Research Purposes

Amy Wood, manager of the AOC, Court Services Division, Caseflow Management Unit, discussed the implications of limiting the fields of case data that are saved in the AOC data warehouse. She noted that, from a research perspective, case data is more important than case documents. Ms. Wood explained that she recommends against limiting the fields of data that are saved, because: 1.) the structure of databases, generally, and the structure of the AOC data warehouse do not easily permit a reduction of the fields that are currently retained, 2.) the usefulness to the courts of any particular data field evolves over time, and 3.) alternative data that has been retained can sometimes be substituted for incomplete or missing items.

- *Database structure.* Data is pulled from local courts and stored at the AOC in the data warehouse, in multiple databases, using one or more fields as database keys. Items not currently in a key could become part of a key in the future. Data in the data warehouse is then organized into data marts, which run applications such as the Public Access website or FARE. Over time, more and more data has been pulled from local court case management systems (CMS's) into the data warehouse, and additional data marts have

been created. Eliminating some data would require determining which fields are related to which data marts to prevent breaking automated processes. This effort would take a great deal of time and would be costly.

- *The use of particular data fields evolves over time.* A data field that might seem inconsequential today could become substantially consequential in the future. For example, as veterans' courts are established around the state, the Military Service Flag in CMS's will likely become more relevant.
- *Alternative data.* To study recidivism rates, it is important to identify whether person "A" is the same as person "B." If data is missing, alternative data is needed to identify the person. When this occurs, the gender field, which is sometimes inconsequential, could become important.

Members' comments and presenter responses included:

- How does deletion of data at a local court impact data in the data warehouse?
 - Data presently transfers in only one direction – from a local CMS to the AOC data warehouse. The data in a CMS and the data warehouse are distinct and must be kept in sync. The data in a CMS is the official version.
 - Currently, the AOC cannot automatically delete data in a local court's CMS. Perhaps the AOC could develop a program for courts to use that would delete data in the local court's CMS. Execution of such a program would be under the local court's control.
- If data remains in the data warehouse, but is not posted to the Public Access website, the data is still subject to disclosure.
- The elected clerks would prefer a point in time where electronic case records are simply no longer available, anywhere. That is, once a record is deleted from AJACS, the record should be deleted everywhere.
- Is the amount of data in the data warehouse expanding, or is data in the data warehouse being deleted at a particular time?
 - Currently, the data warehouse continues to grow. Data is only removed from the data warehouse when data is removed by a local court from its CMS in the one-way sync. The data warehouse looks at the CMS for data changes each night.
- Courts should not retain a subset of data, since a subset cannot be easily segregated. Courts need to just delete the records.
- Mr. Bruner commented that the AOC would ideally include an automatic delete feature in the local CMS's so that when a case reaches its retention period, the local court would not have to do anything. The program feature would simply delete the records automatically.
- Mr. Cisneros noted that research topics generally vary from year to year and may include such topics as rate of recidivism, a new fee proposal, or domestic violence issues.
- Traffic citations often come to a court as a string of data, not in the form of a document.
- It is not good to have a repository of data when the underlying documents have been destroyed. The data cannot be supported or refuted without the documents.

Review of Recommended Records Retention Period Modifications; Draft Report, Appendix B

Member discussion included:

General Jurisdiction

- Retention periods in superior courts are adequate for research purposes and do not seem to warrant a bifurcated system of retaining case data for a certain period of time and case documents for another period of time.
- Juvenile delinquencies
 - A member noted that the A.R.S. citation in the records retention schedule should be changed to § 13-912.01. This A.R.S. section provides that a person cannot apply for restoration of civil rights for specific offenses until the person reaches the age of 30. If documents are needed to support this application, a proposed retention period of 22 years for juvenile delinquency cases would preclude many people from obtaining a restoration of rights by the time the person could apply. A longer retention period would make sense, but it is unclear what retention period would be long enough.
 - Mr. Reinkensmeyer asked that a workgroup comprised of Sandra Markham, Judge Janet Barton, and Judge Samuel Thumma, with Melinda Hardman's assistance, draft suggested language regarding a longer retention period for juvenile delinquency cases.
- Sex offense convictions:
 - At a previous meeting, a 100-year retention period had been recommended for sex offense cases in which the offender was required to register for life.
 - A member expressed concern about distinguishing between sex offense case records and other criminal records. Additionally, there is no way to easily track a 100-year retention period for sex offender convictions requiring registration for life.
 - The committee agreed that the current 50-year retention period for criminal cases was adequate and that a separate retention period for sex offense convictions requiring registration for life was not necessary.
- Criminal - General
 - The committee agreed that the current 50-year retention period for criminal cases was adequate, and there was no need to extend the retention period to 100 years.

Limited Jurisdiction

- Civil other than traffic - local ordinances (other than parking):
 - Data from this record type is not used to calculate judicial productivity credits. No change in the retention period is needed for research purposes.
- Parking violations
 - Data from this record type is not used to calculate judicial productivity credits. No change in the retention period is needed for research purposes.

- Civil traffic:
 - Data from this record type is used to calculate judicial productivity credits and judges' salaries. Although city courts do not compute judges' salaries based on these credits, productivity numbers are still calculated for both justice and city courts, and five years of data are needed. The current one-year retention period is too short.
 - A member inquired about the impact that extending the retention period would have on physical storage capacity in courts and whether electronic citations would lessen this impact.
 - A member commented that the actual case file is helpful in resolving insurance violation disputes between MVD and court dispositions.
 - One records retention model to consider for this case type is a bifurcated system in which records would be deleted from the local court's CMS but the records would be retained at the AOC in the data warehouse. The records would not be posted online but if requested, the records would be released to the requestor.

- Motor vehicle financial responsibility requirement:
 - This is not currently identified in the records retention schedule as a record type. A three-year retention period has been proposed.
 - The committee agreed that it is not necessary to list these cases as a record type, because they would already be covered under a five-year civil traffic retention period.

- DUI and OUI:
 - The previous proposal of a ten-year retention period for this case type seemed too long to some members. They recommended an eight-year retention period, instead.

- Sex offense convictions:
 - The committee concluded that lifetime registration for sex offense convictions does not apply to limited jurisdiction courts; therefore these cases are already covered under the 5-year retention period for criminal misdemeanors.

- Juvenile traffic offenses filed in a limited jurisdiction court:
 - Juvenile traffic offenses filed in limited jurisdiction courts are not currently identified as a separate record type.
 - This case type is used in calculating judicial productivity credits in limited jurisdiction courts.
 - A member indicated the legislature has tried to make juvenile case windows similar to adult cases, so juvenile traffic offenses should be treated the same as adult traffic offenses and retained for five years.
 - The committee agreed to treat juvenile traffic offenses the same as adult traffic offenses and retain both for the same retention period, according to the case type.

Review of Policy Recommendations of the Committee; Draft Report, pp 2 - 3

The committee reviewed each proposed policy recommendation in the draft report and provided the following comments:

Issue No. 4: Once the destruction period is reached, should originals or copies of data or documents be retained for purposes of government research and analysis, and if so, should those records continue to be publicly available or released only pursuant to court order?

- Limited jurisdiction courts' current records destruction practices do not seem to be consistent and uniform. Some limited jurisdiction courts are not destroying any records whereas other limited jurisdiction courts are destroying their records by shredding the paper records but not deleting records from their CMS.
- Members anticipated potential problems with storage space for paper records and server capacity for electronic records, and with implementation of a mandatory destruction period, but members also questioned whether these concerns were warranted. A mandate for destruction might even be of assistance to the limited jurisdiction courts.
- Education might be needed to address the misconception that storing records electronically does not involve costs.
- The committee agreed that a statewide survey of limited jurisdiction courts' current practices is needed to identify actual practices and understand the issues. Melinda will proceed with a survey. Therefore, this issue is on hold until the survey results are received.

Issue No. 1: When the minimum retention period has been met under the existing retention schedules, is destruction of electronic case documents and data mandatory or permissive?

- The committee agreed that destruction of electronic case documents and data must be mandatory and automatic. Destruction must occur simultaneously at the AOC and in the local court's CMS.
- A member expressed concern that mandatory and automatic deletion of electronic records could create resource issues for some courts and proposed that the effective date of implementing automatic destruction be delayed.
- The committee recommended that all courts be required to create an implementation plan for the mandatory and automatic destruction of electronic case records in a similar way as the courts developed a mandatory Language Access Plan. A custodian at each local court should be designated as the person responsible for destruction.
- The clerk (or custodian) of records at a court should be required to have a mandatory storage structure. A reminder must then be provided by the CMS to the custodian that the following files will be destroyed on mm/dd/yyyy, because the retention period has been met. Additionally, the clerk (or custodian) should then be able to click a button in the CMS to confirm the destruction of the specific files on the date identified, or perform the automatic transfer of the records to the Arizona State Library, Archives, and Public Records.

Issue No. 2: Given that it is easier to systematically destroy electronic records, are the current records retention time periods adequate?

- The current retention periods for general jurisdiction courts are generally sound, but the committee recommends that the retention period for juvenile delinquency case records be set at specific time period.
- The committee agreed that the retention periods for limited jurisdiction courts are generally too short.
- Currently in appellate courts, all case records must be retained permanently. The committee believes this retention period is too long for some case types. It was noted that the superior court is in the process of revising its records retention schedule, while the court of appeals may re-examine its records retention schedule, both outside the efforts of this committee.

Issue No. 3: Should policies regarding the length of time case documents and data are made available to the public online be consistent across court levels and from court to court within the same level?

- The committee believes strongly that actual record retention time periods should be consistent among all limited jurisdiction courts from one county to another county; and for the general jurisdiction court, from one county to another.

Other Recommendations

The committee agreed to include a fifth policy recommendation on the timeframe for implementation of its recommendations. Local courts must submit a plan, by a date certain, to identify how the court will comply with the new policy of mandatory and automatic destruction by January 1, or April 1, 2015.

Next Meeting Date

October 1, 2013, 10:00 a.m. to 3:00 p.m.
Arizona State Courts Building, Conference Room 119A/B

Good of the Order/Call to the Public

Mr. Reinkensmeyer noted that pages 6 – 8 of the draft report will be discussed at the next meeting. He also reminded members that the committee will obtain input on the recommendations in its report by presenting them to the various standing committees (e.g., COSC, COT, LJC) before presenting the report to the AJC on December 12, 2013. Due to scheduling issues, the recommendations will be presented to LJC in a special meeting.

Adjourned at 2:09 p.m.

**Electronic Records Retention and Destruction Advisory Committee
MINUTES**

Tuesday, October 1, 2013

10:00 a.m. to 3:00 p.m.

State Courts Building, 1501 W. Washington, Conf. Rm. 119 A/B, Phoenix, AZ 85007

Present: Marcus Reinkensmeyer (Chair), Judge Janet Barton, Raushanah Daniels, Christopher Hale, Judge Eric Jeffery, Mark Jensen, William Mangold, Sandra Markham, Diane McGinnis (telephonic), Judge John Nelson (telephonic), Jeff Raynor, Linda Reib (proxy for Melanie Sturgeon), Jon Smith, Marty Vance.

Absent/Excused: David Bodney, Janet Johnson, Judge Dorothy Little, Judge Samuel Thumma.

Staff: Melinda Hardman, Julie Graber.

Guests/Presenters: Stewart Bruner (AOC).

Call to Order/Welcome and Introductions

With a quorum present, the October 1, 2013, meeting of the Electronic Records Retention and Destruction Advisory Committee was called to order by Marcus Reinkensmeyer, chair, at 10:07 a.m. Mr. Reinkensmeyer welcomed members and guests.

Approval of Minutes

Mr. Reinkensmeyer presented the September 9, 2013, Electronic Records Retention and Destruction Advisory Committee meeting minutes for approval:

Motion: To approve the September 9, 2013, meeting minutes as presented. **Action:** Approve, **Moved by** William Mangold, **Seconded by** Raushanah Daniels. Motion passed unanimously.

Civil Traffic Records Survey Findings

Stewart Bruner and Melinda Hardman discussed the results of an informal survey conducted of limited jurisdiction court administrators regarding the receipt, processing, and destruction of civil traffic case records.

Responses were received and compiled from 16 courts (Maricopa County Justice Courts were counted as 1 court, rather than 26, since only one response was received on behalf of all). It was noted that the questions asked were not always answered fully and directly. Highlights of the presentation included:

Q #1 - Retention and destruction policies

- All 16 courts reported having a retention policy.
- 8 courts indicated that destruction of civil traffic records was included in the policy, 7 said they followed ACJA 4-302, and 1 had no destruction policy.

Q #2 - While several courts receive citations electronically, most courts receive citations primarily on paper.

- The annual volume of e-citations received was either 0 (in 8 courts) or ranged from 3,000 to 69,000 (in 5 courts).
- The percentage of citations received on paper ranged from a very small amount to 100%.
 - 6 courts receive 100% of their citations on paper.
 - 4 courts receive between 25% and 80% on paper.
 - Only 2 courts reported receiving a small percentage on paper (up to 3%).

Q #3 – The length of time these case records are retained varied greatly between electronic and paper formats. Electronic records are not being deleted routinely, while paper records are, for the most part, being destroyed pursuant to the retention schedule.

- CMS data is held indefinitely in 7 courts, from 1 to 10 years in 4 courts, since 2000 in 1 court, and since 2009 in 1 court.
- E-citations are held indefinitely (or TBD) in 7 courts, 3-10 years in 2 courts, and since 2009 in 1 court.
- Paper records are held 1 year in 7 courts. 1½-7 years in 5 courts, and “longer than the retention schedule” in 1 court.
- 2 courts retain paper records 30 days and then scan the file.

Q #4 – If the retention period for civil traffic cases were to be increased from the current 1-year retention period, courts indicated this would cause storage issues as well as added costs. Although one respondent was strongly opposed to any change in the current retention period, some courts stated that an increase in the retention period would not be of any impact to them.

Some of the takeaways from this survey include:

- Although larger courts are moving at a faster pace toward electronic records, smaller courts are still paper-based. There is a willingness on the part of courts to move towards electronic records.
- Committee members’ concerns that CMS data is being held for extended periods of time were confirmed.
- If the retention period for civil traffic cases is to be increased, courts are concerned about storage and resource issues.
- Courts are pursuing new directions on retention of these cases. Some courts are scanning paper records and getting rid of the paper. This approach can help a court that is faced with physical storage and space issues.

Civil traffic records:

In light of the survey results, the retention period for civil traffic case records previously proposed by the committee, of 5-years after final adjudication and satisfaction of sanctions, was revisited. Ms. Hardman presented draft language for two alternative civil traffic case records retention options.

In *Option A*, the electronic civil traffic case records (“records”) would be automatically deleted from the local CMS and the supreme court’s Public Access website 1 year after final adjudication and satisfaction of sanctions. These records would be retained in the AOC data

warehouse for statistical purposes for 5 years after final adjudication and satisfaction of sanctions, and then automatically deleted, but would be subject to disclosure upon request.

Member comments and questions included:

- If data is retained longer than the underlying case documents, the documents will not be available to refute or correct possible errors in the data.
- Should data be retained for 5 years or 7 years to satisfy research needs?

In *Option B*, the records would be automatically removed from the Public Access website 1 year after final adjudication and satisfaction of sanctions, and automatically deleted from the local CMS and the AOC data warehouse 5 years after final adjudication and satisfaction of sanctions.

Member comments and questions included:

- Both data and documents would be available for 5 years for research.
- A requirement to retain data and documents for 5 years might cause a hardship for limited jurisdiction courts.

Members agreed on Option A and amended the last sentence by adding the phrase “pursuant to law.”

Draft Policy Recommendations

Recommendation No. 2

(B) “The retention period for electronic case documents and data should be the same as for paper case documents.”

In response to this proposed policy statement, member comments included:

- Although retention of paper case records goes beyond the scope of this committee’s charge, the committee recommends that paper case records should be treated the same as electronic case records, and both should follow this committee’s records retention schedule recommendations, as of a future date. After the effective date, electronic and paper records should then be treated the same and the retention period for electronic records should be the same as for paper records.

Review of Recommended Records Retention Period Modifications (Appendix B)

Members reviewed the proposed retention periods in Appendix B of the draft report.

Limited Jurisdiction Courts:

- Civil traffic:
 - No recommended changes (the previously proposed 5-year retention period was returned to the current 1-year retention period).
- DUI and OUI:
 - The committee recommended increasing the current 7-year retention period to 8 years to provide a buffer beyond the 7-year statutory look-back period. This will allow time to obtain a warrant and order records from another court.
- Sex offense convictions:

- A member noted that, contrary to the conclusion reached at a previous meeting of the committee, lifetime registration for certain sex offenses *can* be ordered by limited jurisdiction court judges. Furthermore, lifetime registration is *required* by statute to be ordered upon a defendant's third misdemeanor sex offense conviction in certain instances. Statute does not establish a time period during which the 3 convictions must occur. Therefore, the current 5-year retention period for criminal misdemeanors might result in some case records being destroyed prior to the time a defendant could possibly be convicted of 3 sex offenses.
- After further discussion, the committee suggested that this issue be referred to a workgroup for further consideration.

No other concerns were raised about the retention periods for all other limited jurisdiction court case types in the draft report on page 13.

Report of the Juvenile Delinquency Records Retention Workgroup

The superior court records retention schedule does not establish a specific retention period for juvenile delinquency case records. Instead, it allows for destruction of the case following the juvenile's 30th birthday. However, courts generally do not store these case files according to the juvenile's birth date. Furthermore, A.R.S. § 13-912.01 allows a person to apply for restoration of the right to possess or carry a firearm once the person attains the age of 30, and A.R.S. § 8-348 allows a person who is at least 18, who has been adjudicated delinquent, to apply to have the adjudication set aside. Neither of these statutes establishes a time limit for application. The committee previously proposed a 22-year retention period for juvenile delinquency records, however, during the last meeting of the committee, a member suggested that a longer retention period might be appropriate to address these concerns.

At the last committee meeting, a workgroup was established to identify a definite retention period for these case records. The workgroup met and two different positions arose, as follows: 1.) Other superior court retention periods are 50 years, 75 years or 100 years. As a compromise, 75 years might be appropriate. This would easily cover the restoration of rights timeline (30+75=105) and would effectively cover almost all of the setting aside adjudication issues (18+75=93), and 2.) 50 years is an appropriate retention period, since this is the retention period for adult criminal cases filed after 1959.

Member comments included:

- Generally, no one makes a request to set these records aside.
- Juvenile delinquency case records used to be closed but are now open, so perhaps these cases were not of significant concern, previously.

After further discussion, the committee decided that this issue should be presented to the Superior Court Clerks for their recommendation.

Review of Policy Recommendations of the Committee (see Draft Report, pp. 7 – 8)

Members commented on the following policy recommendations in the report:

Recommendation No. 1

(A) Depending on whether electronic documents and data are located in a local EDMS, in a local CMS, at the AOC, or published to the Internet, the custodian of the documents and data may either be the local court, the judge, the elected clerk, the AOC, or another individual or entity. Ownership must be clearly identified.

- No amendments were made. Members agreed to include this general statement.

(B) Depending on the location where electronic documents and data are stored or displayed, one version may possibly be considered an original and all other versions a copy. This distinction must be explicit.

- The distinction between an “original” and “copy” versions is changing and may no longer be relevant with e-filing, e-signature, e-access, and e-citation. Should Statement B be stricken?
- A member noted that the Rules of Evidence have blurred any distinction between an “original” and a “copy.”
- A member suggested that an “original” should be defined as whatever is filed with the court without making a distinction between print or electronic records.

The consensus of the committee was that the “original” is whatever is filed with the court without making a distinction between print or electronic records.

(C) The location where electronic documents and data are stored and displayed affects the authority of the clerk, custodian, and AOC to destroy/ delete/ remove the documents and data under the records retention schedules. These roles must be determined.

- For statewide consistency, both the AOC and courts that use non-AOC CMSs need to build into their CMS a way to delete case records, automatically, based on the records retention schedule. The retention schedule requirements must apply to all CMSs throughout the state, whether supported by the AOC or not.
- Members agreed that a dual notice process for deletion is necessary and must be built into the CMS. The local court must receive notification that certain case records are ready for automatic deletion pursuant to the records retention schedule, and then the local court must confirm that the records can be deleted. This way, final approval for deletion remains with the local court.
- A member proposed that the retention schedule should be built into the Public Access website, and the AOC should pull records off of the Public Access website if the AOC believes the records are past the retention period, even if the local court has not deleted the record from its system. Records removed from the Public Access website would not be destroyed by the AOC. The records simply would not be displayed.
 - Members agreed that dual notice (AOC to local court & local court back to AOC) is essential to prevent the deletion of a record with an incorrect case status.
- Members raised concerns about courts that do not comply with the retention schedule and do not delete records.
 - Mr. Reinkensmeyer proposed that during operational reviews, courts can be monitored and a sample of records taken to assess compliance with deletion. Then courts can review and respond to the findings of the operational review.

(D) The option of whether to retain case records on paper or electronically lies with the local court, once all requirements of rule and law are met.

- This statement is to be removed from the report, since this concept is not within the scope of this committee.

(E) Any deletion of electronic documents and data by a local court must be by hard (physical) delete.

- Mr. Bruner and Ms. Hardman will adjust the wording of this statement, as necessary, to clarify how a local court must delete records to remove them from the data warehouse.

(F) Each court must submit a plan to the AOC, within eighteen months, as to how and when deletion of electronic records will take place in their court.

- Courts will be required to submit a plan to the AOC within 18 months to explain how the court will comply with mandatory deletion of electronic case records, including how the court will identify and code cases filed after 1/1/15 to enable automatic deletion.
- As of 1/1/15, cases need to be identified and coded as closed if all sanctions are satisfied.
- Training, audits, and lots of work will be needed to address data entry errors in order to comply with a mandatory retention schedule for electronic case records filed after 1/1/15.

Recommendation No. 2

(B) The retention period for electronic case documents and data should be the same as for paper case documents.

- Replace “should” with “shall.”
- Qualify the time period for which electronic civil traffic case records are to be retained to address the concept of data retention by the AOC, as previously agreed.

(C) The retention period for CMS data at the local court level must be the same as for the related case documents, while the retention period for case data at the AOC must be based on statistical research needs.

- Some members raised concerns that certain limited jurisdiction court records retention schedule time periods were too short to accommodate requests for set aside or restoration of civil rights.
- Mr. Reinkensmeyer recommended these concerns be referred to a workgroup of limited jurisdiction court representatives for further discussion.

(D) Imaged case documents should not be treated differently than e-filed (born digital) case documents for retention purposes.

- This statement is correct.

Recommendation No. 3

(A) Consistency of retention periods is expected by those who use court records across the state, including the public, attorneys, justice partners, the media, researchers, and others.

- Members agreed that consistency was needed.

(B) Bulk data subscribers should receive only data that is currently within the records retention schedule time periods and should not receive data beyond the established retention periods.

- Bulk data subscribers receive a subset of the data in the data warehouse and a superset of the data on the Public Access website.
- Members agreed that bulk data subscribers should not receive data that is beyond the records retention schedule time periods. Perhaps a filter can be applied to suppress electronic records beyond the retention period.
- Some members thought that a definite cutoff is needed so that unresolved records are no longer available after a time period, whether it be 50 or 100 years, because people are being harmed. Other members suggested that some employers might still want to confirm that a record has been set aside once the record has been posted to the Public Access website.

Recommendation No. 4

(TBD)

- Ms. Hardman will rewrite this recommendation, giving consideration to statistical research requirements and public disclosure implications.
- A member reiterated that the public needs consistency and uniformity in records retention, as well as reasonable access to records. Courts can transfer records to an electronic format and reduce the need for physical storage.

Next Meeting Date

October 31, 2013, 9:00 a.m. -- 1:00 p.m.
Arizona State Courts Building, Conference Room 119 A/B

Good of the Order/Call to the Public

The committee will be meeting on October 31, 2013, from 9:00 a.m. to 1:00 p.m. (instead of 10:00 a.m. to 3:00 p.m.)

A workgroup will meet in the next couple of weeks to discuss appropriate retention periods for certain limited jurisdiction court electronic data. Workgroup members will include Judge Jeffery, Marty Vance, and Chris Hale.

Adjourned at 2:30 p.m.

**Electronic Records Retention and Destruction Advisory Committee
MINUTES**

Thursday, October 31, 2013

9:00 a.m. to 1:00 p.m.

State Courts Building, 1501 West Washington Street, Conf. Rm. 119, Phoenix, AZ 85007

Present: Marcus Reinkensmeyer (Chair), Judge Janet Barton, David Bodney, Christopher Hale (telephonic), Judge Eric Jeffery, Mark Jensen, Janet Johnson, William Mangold, Sandra Markham, Diane McGinnis, Judge John Nelson, Linda Reib (proxy for Melanie Sturgeon), Jeff Raynor, Jon Smith, Judge Samuel Thumma, Marty Vance.

Absent/Excused: Raushanah Daniels, Judge Dorothy Little.

Staff: Melinda Hardman, Julie Graber, Sabrina Nash.

Presenters/Guests: Stewart Bruner (AOC), Eric Ciminski (AOC), Elizabeth Evans (AOC).

Call to Order/Welcome and Introductions

With a quorum present, the October 31, 2013, meeting of the Electronic Records Retention and Destruction Advisory Committee was called to order by Marcus Reinkensmeyer, chair, at 9:07 a.m. Mr. Reinkensmeyer welcomed members.

Approval of Minutes

Mr. Reinkensmeyer presented the October 1, 2013, Electronic Records Retention and Destruction Advisory Committee meeting minutes for approval.

Motion: To approve the October 1, 2013, meeting minutes, as presented. **Action:** Approve, **Moved by** William Mangold, **Seconded by** Judge Janet Barton. Motion passed unanimously.

Report of Juvenile Delinquency Case Records Discussion with the Clerks of Superior Court

Sandra Markham reported that the Clerks of Superior Court support a definitive retention period of 25 years for juvenile delinquency case records. The clerks believe that 25 years is sufficient, because juvenile delinquency adjudications do not get reported to DPS; therefore, juvenile delinquency adjudications do not appear on a criminal history report. The appearance of a conviction/adjudication on a criminal history report is usually what triggers an individual to apply for a set aside or a restoration of civil rights.

Member comments included:

- The report should note that a change in the statute, establishing a time limit within which an application for set aside or restoration of civil rights must be filed, would be helpful.
- Individuals adjudicated delinquent as a juvenile, who later request that the adjudication be set aside and civil rights be restored are not common, but they do occur, and when they do, they are important.

Ms. Markham agreed to take this issue back to the clerks for further discussion.

Report of LJC Records Retention Workgroup

Marcus Reinkensmeyer reported that the recommendations of the LJC records retention workgroup are now reflected in draft Appendix C. The workgroup is recommending that the schedule include three retention periods for each case type (in three separate columns), being: a) current/proposed records retention schedule (applicable to paper records), b) supreme court and local court public access websites, and c) case and electronic document management systems. Discussion ensued.

Member comments included:

- Since a third or subsequent domestic violence (DV) violation within 7 years can result in a charge of aggravated DV, perhaps DV case records should be retained for the same period of time as DUI cases – which have a similar look-back period.
- To clarify that scanned case documents are included in the proposed, longer electronic records retention period, the Case Management Systems column heading in draft Appendix C should be changed to “Case *and Document* Management Systems.” This revision will confirm that both *electronic data* and *electronic documents* are included in the term *electronic records* and are to be deleted at the same time.
- These same records will be removed from public access websites according to the retention period set out under the “Public Access Website” column.

Review of Draft Report of the Committee

Members proposed a number of modifications and additions to the draft report, including:

- It should be noted that the committee recognized a need for the use of statistical data beyond legislative inquiries, budget impact, and requests by the public. The data is also used by the AOC, itself.
- Courts should not be permitted to request an exemption from compliance with the electronic records retention requirements.
- Courts should be given 18 months to implement the new policies, but courts should not be required to submit a plan of implementation for cases that reach the retention period after adoption of these policies.
- There should be a process by which individual courts may apply for more time to implement the new requirements based on technology, resource, and funding constraints.
- Electronic records must be destroyed for cases that reach the retention period after an order is signed, adopting the new policies.
- Cases that reach the retention period before an order is signed and adopted by the supreme court must be destroyed by each court in due course, and each court must submit a plan describing how it will destroy these electronic records.
- In order to allow courts time to clean up records, the AOC must have the ability to remove electronic case records from its Public Access website, pursuant to the new retention schedule, regardless of when the case is destroyed by the local court.
- The report must specify that bulk data subscribers fit within the Public Access website column of Appendix C.
- Consistency is needed between Minimum Accounting Standards (MAS) requirements and the CMS retention period for records retained less than three years, such as petty offenses.

- A process should be developed within all court levels to request that records of a particular case be permanently retained, or retained for a longer period of time, along with a set of criteria to ensure uniformity, similar to the current historical records provisions for general jurisdiction courts set forth in ACJA § 3-402(F).

Next Steps: Review by other Standing Committees and Stakeholders

Marcus Reinkensmeyer noted that review by other standing committees and stakeholders would begin with a presentation to the Committee on Superior Court on 11/1/13, then to the Committee on Limited Jurisdiction Courts and the Commission on Technology. Mr. Reinkensmeyer reported that the Administrative Office of the Courts, Executive Office also requested that the committee share its recommendations with additional stakeholders. At the next and final meeting on 11/22/13, the committee will review all comments, finalize the report, and obtain a final consensus from members before presenting its recommendations to the Arizona Judicial Council on 12/12/13.

Next Meeting Date

November 22, 2013, 10:00 a.m. to 3:00 p.m.
Arizona State Courts Building, Conference Room 119A/B

Good of the Order/Call to the Public

Adjourned at 12:58 p.m.

**Electronic Records Retention and Destruction Advisory Committee
DRAFT MINUTES**

Friday, December 6, 2013

9:00 a.m. to 9:30 a.m.

State Courts Building, 1501 West Washington Street, Conf. Rm. 345A, Phoenix, AZ 85007

Present: Marcus Reinkensmeyer (Chair),

Telephonic: Judge Janet Barton, Judge Eric Jeffery, Mark Jensen, Janet Johnson, William Mangold, Sandra Markham, Diane McGinnis, Jeff Raynor, Melanie Sturgeon, Judge Samuel Thumma

Absent/Excused: David Bodney, Raushanah Daniels, Christopher Hale, Judge John Nelson, Jon R. Smith, Marty Vance

Staff: Melinda Hardman (AOC), Sabrina Nash (AOC)

Presenters/Guests: Stewart Bruner (AOC)

Call to Order

With a quorum present the December 6, 2013, meeting of the Electronic Records Retention and Destruction Advisory Committee was called to order at 9:04 a.m. by Mr. Marcus Reinkensmeyer, Chair.

Approval of Report

Mr. Reinkensmeyer announced that he had presented the committee's draft report to the Limited Jurisdiction Courts (LJC) Committee at their November, 25, 2013 meeting. During that meeting, the LJC Committee approved the draft report, with a modified recommendation that local courts be provided *twenty-four* months to implement the proposed, new policies, instead of eighteen months. Mr. Reinkensmeyer asked the Advisory Committee members whether they were in support of the LJC Committee's recommended modification.

Motion: To approve the change proposed by the LJC Committee that local courts be provided twenty-four months to implement the Advisory Committee's proposed, new policies, instead of eighteen months. **Moved by** Judge Eric Jeffery, **Seconded by** Sandra Markham. Motion passed unanimously.

Motion: To approve the Report of the Electronic Records Retention & Destruction Advisory Committee, as modified. **Moved by** Janet Johnson, **Seconded by** Diane McGinnis. Motion passed unanimously.

Call to the Public

None present

Conference call adjourned at 9:30 a.m.