

**Committee on the Time Periods for the Electronic Display
of Superior Court Case Records
DRAFT MINUTES
September 25, 2015
10:00 a.m. to 2:00 p.m., Room 119
State Courts Building, 1501 W. Washington Street
Phoenix, AZ 85007**

Present: Marcus Reinkensmeyer, chair; David Bodney; Judge Pamela Gates; Toni Hellon; Judge Lee Jantzen; Janet Sell; Andrew Silverman; Mikel Steinfield; Billie Tarascio

Telephonic: Amanda Stanford

Absent/Excused: Eric Silverberg; Jon R. Smith

Administrative Office of the Courts (AOC) Staff: Theresa Barrett; Sabrina Nash; Nickolas Olm; Kay Radwanski

Presenters/Guests: Stewart Bruner (AOC); Eric Ciminski (AOC); Frankie Kounouho (AOC)

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the first meeting of the Committee on the Time Periods for Electronic Display of Superior Court Case Records was called to order at 10:04 a.m. by Marcus Reinkensmeyer, chair. Mr. Reinkensmeyer welcomed members, guests, and staff, and introductions were made around the room.

B. Review of Committee Charge and Scope of Work

Mr. Reinkensmeyer reviewed the committee charge as set out in Administrative Order 2015-68 and gave a background of prior committees that focused on records retention or public access to court documents:

- a. 2002 – **Ad Hoc Committee to Study Public Access to Electronic Court Records** (Hon. Sheldon Weisberg, chair) was established to study restrictions on Internet access to protective orders, criminal case records, and individual case information (data elements).
- b. 2007 - **Rule 123 Data and Dissemination Committee** (Michael Jeanes, chair; Dave Byers, vice chair) was established to examine the issues surrounding the need for statewide consistency in responding to bulk data requests and the expanding role of case management databases in data sharing and public access to court records.
- c. 2012 – **Advisory Committee on Rule 123 and Rule 125** (Mike Baumstark, chair) was established to examine and make recommendations on the issues surrounding which documents and minute entries in family law and probate cases can be made available online and which should be available only at the courthouse.
- d. 2013 – **Electronic Records Retention and Destruction Advisory Committee** (Marcus Reinkensmeyer, chair) was established to examine and make

recommendations on the issues surrounding records retention and destruction schedules and access to electronic court records.

- e. 2014 – **Superior Court Records Retention Schedule Revision Committee** (Judge Pamela Gates, chair) was established to review and update the superior court records retention schedule found in [ACJA § 3-402](#). The revised schedules will make it easier for court employees and for technology systems to consistently classify content for retention in a standard way; reduce the total cost of ownership of records, including training and maintenance costs; mitigate the risk of retaining records too long; and provide court employees and management confidence in records classification and destruction action. The schedule applies to paper *and* electronic court records. Some of the changes in the new schedule include:
1. A section titled *General Provisions* that offers a more comprehensive view of the overall court records retention process, as well as a view of the complete life cycle of an individual record;
 2. Parallel definitions, requirements, and general provisions between the limited jurisdiction and the general jurisdiction court schedules to avoid confusion and maintain consistency;
 3. An explanation in the GJ schedule of why certain retention periods are set as they are and the addition of a new column identifying whether the Arizona State Library, Archives, and Public Records (LAPR) considers the record to be permanent; and
 4. Recognizing that consistent application of published retention periods in all courts across the state is expected by those who use court records, both new retention and disposition schedules require automatic destruction of electronic case records at the end of the retention period. Superior courts are still required to send certain records to LAPR.

C. Emerging Issues in Electronic Access to Personal Information

Nick Olm, AOC staff, explained that the objective of this committee is to determine the time period for *electronic display* of court case records on *public access websites*. Terminology that the committee may hear includes the right to be forgotten, intentional inconvenience, practical obscurity, and the public's right to know. These terms are important because the committee, in producing a recommendation, may need to weigh the right to be forgotten, intentional inconvenience, and practical obscurity against the public's right to know.

Regarding the right to be forgotten, Mr. Olm explained that the European Union's Court of Justice recently ruled that search engines like Google must remove search listings about people if they get the appropriate court orders. Google, on a case-by-case basis, must process the request and remove all search results about the person if it has been determined that the information is inaccurate, inadequate, irrelevant or excessive for

purposes of data processing. The United States currently has no “right to be forgotten” law.

Members provided the following comments:

- People who have criminal convictions often face discrimination. For example, a person with an arrest record from years ago may have difficulty getting a job because of the arrest, even if the charge was dismissed or never pursued.
- Clerks of Court are looking for guidance and statewide consistency regarding records handling.
- A case management system like iCIS, used in the Maricopa County Superior Court, cannot segregate criminal cases with convictions from those in which defendants were not convicted.
- The European Union’s “the right to be forgotten” ruling has made Google’s operating costs rise in Europe because of the number of attorneys needed to monitor requests for redaction of search listings. The EU ruling runs counter to the American philosophy. In *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), the court said a publisher cannot be forced to publish a retraction upon demand. The public is protected by having access to official information about what law enforcement does and what the judiciary does with those acts.
- Private companies, like LexisNexis or a background search business, can acquire public records at courthouses and republish them online. A business also could publish statistics based on records that a court may no longer retain, resulting in an inability to fact check the information.
- A Rule 28 petition—R-15-0027—provided the impetus for formation of this committee. The petition proposed a change to Supreme Court Rule 123 (g)(5) that would require courts or clerks to remove case management system data and case records from online display once the applicable records retention schedule period has been met. Currently, this procedure is permissive rather than mandatory.

D. Technology Implications Regarding Electronic Access to Court Records; e-Access Project

Eric Ciminski and Stewart Bruner presented on information technology projects in progress: e-Bench, e-Filing and, more important to this committee’s task, the e-Access project. E-Access is a single statewide public access web portal for court case documents, court case information, bulk data subscriptions, customized data queries and reports. Its infrastructure also supports document and data access by government entities and organizations serving a public purpose. E-Access will provide efficient access to court documents and data 24/7, ensure the security of confidential information, and increase operational efficiency. E-Access is a self-sustaining business model supported by user

and subscription fees. This project will ease the burden of Clerks of Court for public records requests and will save time and money for attorneys and researchers.

Whatever recommendation the Supreme Court adopts regarding online public access will also govern the availability of records for purchase through E-Access. E-access and public access websites are different in that e-Access retrieves viewable documents only from July 2010 forward while public access websites retrieve case data—not necessarily documents—from the beginning of the case management system.

Mr. Ciminski stated that e-Access, e-Bench and e-Filing are all still in development, and e-Filing is projected to go live in September in Yavapai County.

A member asked how e-Access would function in a situation where a case may be excluded from e-Access based on the charge but then the charge is subsequently changed because of a plea agreement. Would e-Access block the case based on the initial indictment or based on the charge for which the person was convicted? Mr. Ciminski agreed to follow up on the question and report back to the committee.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Committee Resource Materials

Kay Radwanski discussed the Superior Court Records Retention and Disposition Schedule (ACJA § 3-402). Although the schedule includes 76 types of case records, the committee will consider only Records Series #1-18, which are records held by the Clerks of Court. She reiterated that the records retention schedule is not the focus of this committee as the schedule was revised last year and took effect on January 1, 2015.

B. Committee Process and Guiding Principles

Mr. Reinkensmeyer explained that the committee's process will be to discuss any concerns before making recommendations. For each category of documents (except records that are confidential by rule or statute), the committee must recommend:

1. For records with a permanent retention period --
 - a. Should the record be accessible through remote electronic access indefinitely or for a finite period of time?
 - b. If finite, what is the recommended duration for that case type?
2. For records that do not have a permanent retention period—
 - a. Should the record be accessible through remote electronic access for the full duration of the retention period or a shorter period of time?
 - b. If a shorter period of time is deemed appropriate, what is the recommended duration for each case type?

Members requested more information about the cost of keeping electronic files if the committee were to recommend that digital records remain online indefinitely. Mr. Reinkensmeyer explained that the Electronic Records Retention and Destruction Committee had discussed record storage, indexing and ascension plans. The storage cost

is factored into the way the central case index for e-Access currently operates; the cost of displaying information online does not change and should not be a concern of the committee.

Ms. Radwanski pointed out that if a record is displayed online indefinitely while the physical record is destroyed pursuant to the records retention schedule, a problem can be created if someone wants to verify that the digital record is accurate or see more information than the digital record allows.

Members also discussed the transfer of permanent court records to LAPR after the retention period with the court has ended. Mr. Ciminski stated that LAPR cannot currently accept digital records but they do currently have a project in the works that will enable them to accept digital records sometime in the future. A member requested that a LAPR representative be invited to the next meeting to explain LAPR's processes and future projects.

The discussion focused on the negatives of keeping records online indefinitely. Members and staff comments included:

- There are ascension issues and cost considerations with ever-changing technology and the need to keep records in various formats over the years (i.e., microfilm, microfiche, etc.). Also, the more digital records retained, the greater amount of server space is needed to store this data.
- Keeping records online indefinitely for research and historical purposes has value; however, requiring Clerks of Court to keep records for a longer period and adding costs to their offices is a concern.
- Maintaining electronic display until the retention period with the court is reached is a viable option.
- Should all or just part (i.e., the docket that only contains case data) of an online record be available on public access after the record has reached the end of retention?
- Is the court's role to be an historical or simply functional resource?
- Information technology managers do not favor indefinite storage as this is a significant cost consideration for them.
- The court's records system is the source of the official record. If the cost to keep records online is minimal, then keep the courts should keep its case records, which are authentic and reliable, online indefinitely.
- Orders of Protection, juvenile traffic, and juvenile delinquency case files should not remain available after their retention period expires because they affect juveniles and

victims. There are advantages, however, to having the appeals from lower courts available because they may have value to the public for research purposes.

Upon inquiry from members, Mr. Ciminski stated that the public access websites will remain active even after e-Access is implemented. At some future time, when there is confidence that the e-Access site is an accurate reflection of what is contained within the case management systems, public access will come offline.

III. OTHER BUSINESS

A. Miscellaneous

A third meeting will be set in November; staff will contact members to determine availability.

B. Good of the Order/ Call to the Public

There was no response to a call to the public.

C. Adjournment

The meeting adjourned at 1:57 p.m.

D. Next Meeting

October 16, 2015

10:00 a.m. to 2:00 p.m.

State Courts Building, Conference Room 345 A/B

1501 W. Washington

Phoenix, Arizona 85007

**Committee on the Time Periods for the Electronic Display of
Superior Court Case Records
DRAFT MINUTES
October 16, 2015
10:00 a.m. to 2:00 p.m., Room 345
State Courts Building, 1501 W. Washington Street
Phoenix, AZ 85007**

Present: Marcus Reinkensmeyer, chair; Judge Pamela Gates; Toni Hellon; Therese Martin, proxy for Janet Sell; Eric Silverberg; Dr. Andrew Silverman; Amanda Stanford; Mikel Steinfield

Telephonic: Judge Lee Jantzen; Jon R. Smith; Billie Tarascio

Absent/Excused: David Bodney

Administrative Office of the Courts (AOC) Staff: Theresa Barrett; Sabrina Nash; Nickolas Olm; Kay Radwanski

Presenters/Guests: Stewart Bruner (AOC); Eric Ciminski (AOC); Dr. Melanie Sturgeon

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the second meeting of the Committee on the Time Periods for Electronic Display of Superior Court Case Records was called to order at 10:05 a.m. by Marcus Reinkensmeyer, chair.

B. Committee Rules of Procedure and Proxy Form

Motion: Eric Silverberg moved to approve the committee rules of procedure as presented. Seconded: Mikel Steinfield. Vote: Unanimous.

C. Approval of Minutes – September 25, 2015

Motion: Mr. Steinfield moved to approve the September 25, 2015, meeting minutes, as presented. Seconded: Dr. Andrew Silverman. Vote: Unanimous.

D. Arizona State Library, Archives and Public Records

Dr. Melanie Sturgeon, director of Archives and Records Management, Arizona State Library, Archives and Public Records (LAPR) provided an overview of LAPR's handling of state records.

Dr. Sturgeon noted the historical value of court records, as they are rich with information; they document the social, economic, and political landscape of a specific time and place, and they document broad historical themes. These records cut across class, race, and gender, go far beyond legal precedents, and are used by historians, sociologists, criminal justice, journalists, writers, legal scholars, and attorneys.

She explained that court records in the State Archives building are secured, and all records are accessible to the public with the exception of sealed court records. A researcher must provide a court order to view sealed records.

In 2013 and 2014, LAPR made legislative funding requests for an electronic records repository or digital vault, to no avail. In 2015, with new administration at LAPR, no legislative funding was requested; rather, the focus was on what LAPR can build and fund itself. LAPR administration has restructured staff to direct resources, funds, and expertise to digital vault development, and they are revisiting potential vendor solutions and are continuing their networking and professional development at the national level on related technologies and similar projects. Ultimately, LAPR anticipates it will have the ability to receive electronic records by the time the first digitized cases are due to be transferred to LAPR (approximately the year 2027).

Dr. Sturgeon said that if LAPR makes another funding request for digital vault development, it would be helpful to have support not only from the AOC but from the counties as well.

E. Records-Related Costs

Stewart Bruner, AOC, discussed records-related costs. He noted that every five years, IT storage needs to double its capacity, and said there are enormous administrative costs with maintaining storage technology. The Electronic Record Retention and Destruction Committee (ERR&D), having been provided with cost information, decided there was a need to implement a retention schedule that included both paper and electronic records. The ERR&D Committee then questioned whether clerks should be mandated or be given permission to remove a record from online display even if the digital record is still retained by the court's case management system pursuant to the records retention schedule. That question formed the basis for this committee's charge.

Mr. Bruner provided answers to questions asked at the first committee meeting.

- **Question:** How much savings will result if records are removed from public access display sooner rather than later?
Answer: None.
- **Question:** If fewer records were displayed, would fewer resources be used?
Answer: No, all CMS data is fully replicated prior to being filtered for Rule 123 restrictions. Storage size must be able to accommodate all records that could possibly be shown, since future rules and their impact are impossible to predict.
- **Question:** If a record is kept online indefinitely, should all of the record or only part of the record (e.g., the docket) be displayed?
Answer: All of the record. ERR&D deemed purging to be overly labor intensive for electronic records. Purging is considered a relic of the "keep forever on paper" past. The time used to remove individual contents was considered wasteful when specific retention limits are being enforced.

- **Question:** What is the storage capacity of current case management systems?
Answer: Essentially infinite since they connect to a massive array of disks.
- **Question:** How much cost do courts incur for keeping records after they reach the end of the retention period at the court?
Answer: Courts are currently required by rule to maintain all electronic records destined for LAPR until such time as LAPR can accept the transfer. Those records remain in the CMS until a successful transfer.
- **Question:** When an e-record (eventually) is transferred to LAPR, will it be deleted from the CMS?
Answer: Yes.
- **Question:** Will the case data also disappear from public access upon transfer?
Answer: Yes.
- **Question:** What is the cost of requiring clerks to keep records indefinitely? Is that cost an unreasonable burden?
Answer: Clerks are required to keep case management system records in accordance with the records retention durations. There is no cost to back up the public access website. Public access data is created from CMS records, and there is no need to back it up.

During discussion, it was noted:

- Courts have created digital case records in any volume only since the early 2000s. Using 2002 as the earliest, and ACJA § 3-402 retention periods of 50 years, 75 years, and 100 years before transfers are made to LAPR, initial transfers would not begin to be made until 2052, 2077, and 2102. The courts would only incur additional costs for holding records *beyond* those dates.
- Dr. Sturgeon stated that there is a negotiated agreement and official transfer form that is signed between the courts and LAPR when records move from a court to LAPR. The Clerk of the Court uses the form to inform LAPR of special instructions regarding any record. For example, if a record is sealed or restricted, LAPR will keep it sealed or restricted.
- The courts are not obligated to provide public access to court records but do so as a convenience to the public.

Judge Pamela Gates recommended grouping the case types into three “buckets” to help guide the decision-making process. The first group of cases would include those that are retained by the court for at least 50 years and then have permanent retention at LAPR. The cases in the second group have a shorter retention period with the court and are not transferred to LAPR at any time. Rather, they are destroyed at the end of the retention period with the court. The third group is comprised of two special case types—general stream adjudication and lower court appeals—that have retention periods of less than 50 years.

Bucket 1 (50+ years with court; permanent at LAPR)	Bucket 2 (Shorter retention, not transferred to LAPR)	Bucket 3 (Shorter retention, special case type)
Civil (pre and post-1960)	Orders of Protection	General Stream Adjudication
Family (pre and post-1960)	Juvenile delinquency	Lower court appeals
Mental Health (pre and post-1960)	Juvenile traffic	
Probate (pre and post-1960)	<i>*Juvenile abortion</i>	
Criminal (pre and post-1960)		
Criminal capital felony cases		
<i>*Juvenile adoption, severance, dependency</i>		

**Juvenile abortion, adoption, severance, and dependency cases are confidential by statute and are not displayed on public access websites.*

The following points were raised during committee discussion:

- The cost to send the electronic records to LAPR, when the time comes, will be an ordinary cost of doing business.
- Electronic records can be destroyed in two ways. For one method, the clerk would receive a list of cases eligible for destruction. The clerk can review the list and stop destruction of the case if it is on the list in error. In the second method, a “logical delete” would initially remove the case index and then it would go through a hard delete. A record deleted in this manner is nearly impossible to reconstruct; it could be done, but the process would be costly and time consuming.
- If a case type is removed from public access earlier than its scheduled record retention, no information on the case will be available on the public access website; however, the paper record will still be available at the clerk’s office.
- There is a concern about criminal cases being displayed online for the full retention period of 50 years. For an offender, 50 years can be most of that person’s adult life. A person with a criminal conviction—or even a person who was found innocent of a crime—can experience difficulty in getting employment or rental housing because of information found on public access. Likewise, cases that are overturned on appeal are problematic because the trial court record of conviction and the appellate court reversal are not attached to each other.
- Should a criminal case in which a set-aside is removed from public access? While a set-aside results in certain civil rights being restored to an offender, it does not erase the underlying criminal conviction.

Permanent
 Not permanent
 Confidential by rule or statute

- Some employers have started a “ban the box” movement so those applicants who do have criminal records can still get job interviews and not be excluded because they checked a box indicating they have been convicted of a crime.
- If there are multiple defendants in a case and one defendant’s charge is dismissed, is the entire record sealed? In some courts, the practice is to assign each defendant a separate case number, thus avoiding the multiple defendant issue.
- Information contained in mental health cases can be as damaging as well. These cases are not sealed by law, but Rule 123, Rules of the Supreme Court, limits online display to party names, judicial assignment, case number, and attorney names. Although the rule allows this case data to be displayed, the AJACS case management system used by the 13 rural superior courts currently filters it out.
- Probate cases are also filtered by AJACS and are not displayed online.
- In the wake of Miller v. Alabama, there is a concern with removing online access to capital cases with long-term incarceration sentences. The case could be revisited in the future, and there could be a need for records to be easily accessed online. It was noted, though, that records have not always been available online, and there have been capital cases in which access to records was not an issue.
- Members asked whether other states have made a distinction between the time period for electronic display of criminal and non-criminal cases as well as mental health cases. Mr. Bruner and Eric Ciminski will look into this further.

Mr. Reinkensmeyer summarized the committee consensus (with no formal vote) that all cases, except for criminal and possibly mental health cases, should be displayed online for the same time period as their retention schedule. Criminal cases and mental health court cases will be the focus of the next meeting. Any dissenting opinions on the time period for electronic display for certain records after the next meeting on December 1, then those will be reflected in the committee’s final report to the Supreme Court.

III. OTHER BUSINESS

A. Miscellaneous

Kay Radwanski, AOC, explained that one of the committee’s options is to propose a change to Rule 123. Rule 123 allows clerks to take records offline after 25 years, and if the committee is leaning toward mandatory removal, a petition to amend the rule would have to be filed by January 10, 2016. Typically, the comment period would remain open until May 20, and the committee could reply to any comments by June 20, 2016. As the committee does not expire until July 31, 2016, a meeting could be set to discuss any comments.

B. Call to the Public—There was no response to a call to the public.

C. Adjournment—The meeting adjourned at 1:44 p.m.

Next Meeting—December 1, 2015; 10:00 a.m.

State Courts Building, Conference Room 119 A/B
1501 W. Washington, Phoenix, AZ 85007