

Task Force on Court Management of Digital Evidence

Friday, January 20, 2017
Conference Room 329/330, Arizona State Courts
Building 1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Samuel Thumma, Mike Baumstark, David Bodney, Judge Kyle Bryson, Colleen Clase, Jessica Cortes, Judge David Cunanan, Karen Emerson, Judge Maria Felix, Jeffrey Fine, Jennifer Garcia, Judge Charles Gurtler, Aaron Harder, Michael Jeanes, Michael Kurtenbach, Zora Manjencich, James Melendres, Michael Mitchell, Jamie Sheppard, Inspector William Long (proxy for Lt. Commander Heston Silbert), Judge Don Taylor

Guests: Paul Embley, National Center for State Courts; Kay Chopard Cohen, National District Attorneys Association; Wendy Thompson and Donna Hall, Clerk of the Superior Court in Maricopa County

Administrative Office of the Courts (AOC): Dave Byers, Administrative Director

AOC Staff: Kay Radwanski, Jennifer Albright, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The January 20, 2017, meeting of the Task Force on Court Management of Digital Evidence was called to order at 10:03 a.m. by Judge Samuel Thumma, chair. Sam welcomed task force members and asked members to introduce themselves.

Sam offered a few thoughts on what digital evidence means depending on a person's perspective, background and involvement with the justice system. He related that digital evidence can mean preservation of electronically stored evidence when litigation is threatened, discovery and disclosure of electronically stored information (ESI) in litigation, chain of custody issues with ESI and digital evidence, and admissibility of ESI and digital evidence as well as the applicability of the Rules of Evidence. He noted that these issues deal with ESI and digital evidence before it comes to the court, while the task force's emphasis will be on what to do with ESI and digital evidence after it comes to the courts. Sam referenced the *JTC Resource Bulletin: Managing Digital Evidence in Courts* (Tab 2) in the task force briefing book, asking members to review it and become familiar with it. He also noted that Administrative Order 2016-129 (Tab 1) outlined five specific policy questions for the task force to review and make recommendations on by October 1, 2017.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Overview: *JTC Resource Bulletin*

Paul Embley, Technology Division, National Center for State Courts (NCSC), explained that the *JTC Resource Bulletin* brought the issue of digital evidence and the need for formal discussions on digital evidence to the forefront. NCSC established a focus group to discuss the issue of digital evidence and develop the bulletin.

Discussion ensued on native media players, cloud storage, frame rates, the ability to preserve digital evidence for up to eight years, centralized versus decentralized media storage, costs for storage, and the conversion of digital media.

B. Prosecutors' Experiences with Digital Evidence

Kay Chopard Cohen, executive director of the National District Attorneys Association, appeared via WebEx and provided ideas for consideration on digital evidence policies.

- Digital evidence can be in the form of body worn cameras, social media, cellphones, computers, and tablets.
- Training for all stakeholders is needed on how and where to look for digital evidence.
- Conversations on retention of digital evidence should take into consideration the discovery process, pre- and post-trial, and appellate needs; cost of storage; as well as privacy issues for the defendant, innocent bystanders, victims, and juveniles. Current rules or statutes were written with paper or physical evidence in mind
- Redaction of information should consider victims, innocent bystanders, and juveniles. HIPAA concerns may also factor into the redaction equation.
- Cost could be a factor among rural versus urban jurisdictions.
- Who will be responsible preserving evidence for appeals - the prosecutor, the court, or the defense? These questions need to be addressed at or before discovery.
- What is the protocol regarding witness intimidation - what happens when digital evidence is made available through public records requests and a witness or witnesses receive threats through social media?

C. Law Enforcement Experiences with Digital Evidence

Executive Assistant Chief Michael Kurtenbach, Phoenix Police Department, discussed how the Phoenix Police Department has worked on creating its policies on body worn camera digital evidence. He described how the city consulted with various stakeholders and took into consideration the questions of how long to store the evidence, the cost of storing the evidence, local versus cloud storage, the number of manpower hours needed to redact videos for legal purposes, and the hierarchical access of who could view a video, along with public information requests for captured video.

D. Defenders' Experiences with Digital Evidence

Karen Emerson, Maricopa County Public Defender's Office, stated that from the defense's perspective, lifetime (measured by the defendant's lifetime) storage of digital evidence is needed. Ms. Emerson also asked the question, "Can evidence received be enhanced?" She then outlined some of the issues regarding digital evidence:

- Courtrooms - ease/availability of courtroom technology to view evidence as technology changes quickly.
- Procedures on enhancing video evidence, disclosure of how evidence was enhanced, and when to present enhanced evidence to the jury.
- Admission of evidence - possible evidentiary challenges on the editing and redaction of digital evidence for legal purposes.
- File retention, particularly the defense's ethical requirements and the requirements of the appellate process on what the client file contains, where the client's file is kept, and accessibility of digital evidence that is part of the client file.

Jennifer Garcia, Federal Public Defender's Office, explained that the Capital Habeas Unit is now receiving cases ten years after trial that include evidence from pagers or undeveloped camera film. Ms. Garcia noted that there are questions on the collection and preservation of

digital records, especially when companies that provided the technology are out of business; lack of documentation of what portion of video or audio evidence was played for a jury; whether counsel has native or original format of the evidence for reconstruction; and lack of trial transcripts to support or back up evidence that was used at trial.

E. Victims' Rights in the Age of Digital Evidence

Collen Clase, senior attorney, Arizona Voice for Crime Victims, shared that the concerns of victims will differ from those of the court, prosecutor, and defense. Ms. Clase related that victims are most concerned with who has access to digital evidence and protection of their constitutional and individual rights. Primarily victims wish to be treated with fairness, respect, and dignity and to be free of intimidation, harassment, and abuse before, during, and after the court process. She also discussed that in certain circumstances, victims will exercise their right to refuse discovery. Ms. Clase noted that victim concerns about privacy and who has access to digital evidence involves policies, procedures, and laws on how the public can request digital evidence and when that evidence may be released or used by the public and the judicial system. She provided examples of how having identifying personal information redacted or releasing the information in an alternative format, such as a transcript instead of releasing the video, can balance victims' rights and concerns with the needs and concerns of the public and the judicial system.

F. Exhibits Workflow Process and Procedure

Wendy Thompson, courtroom services supervisor, Clerk of the Superior Court, Maricopa County, provided an overview on court procedures for accepting, tracking, and preserving evidence up to the end of the matter in the trial court. Ms. Thompson emphasized that currently evidence must be in a tangible format that a jury can review. Currently, for trial purposes, there is no process for management of digital evidence stored in a remote location or in the cloud. Donna Hall, court operations manager, Clerk of the Superior Court, Maricopa County, gave an overview on post-trial processes for evidence retention for appeal; transfer of evidence to appellate courts; transfer of evidence to the State Library, Archives and Public Records (LAPR) when required; return of evidence to a party or entity when appropriate by law, as well as evidence destruction. Ms. Hall also noted that transfer of evidence to appellate courts or to LAPR requires evidence to be in some tangible form.

G. Next Steps/Discussion

Sam outlined ideas for creating and developing deliverable objectives through interest driven workgroups. He noted that replicating the evidence management as it exists in the paper or tangible world may be aiming too low and that the task force should strive to aim higher as technology is advancing rapidly. Sam noted that the administrative order establishing the task force provided five policy questions for consideration:

1. Should court digital evidence be stored locally, offsite, or using cloud services and how long and in what manner should such evidence be retained?
2. Should management of court digital evidence be centralized or decentralized considering technology costs, expertise, and infrastructure necessary to manage it?
3. Should court rules governing public records be revised to address access and privacy concerns, including for victims, non-victim witnesses, and other identifying information often included in video evidence?
4. Should new or amended rules on chain of custody evidence be developed for handling court digital evidence?
5. Should standardized acceptable formats, viewing, storage, preservation, and conversion formats or technical protocols for digital evidence be adopted for all courts?

Sam suggested that members might consider whether three workgroups would be appropriate to address the five policy questions. A storage and management workgroup (questions 1 and 2); a court rules workgroup (questions 3 and 4) and a formats workgroup (question 5). He suggested the workgroup approach would give structure to the work of the task force and asked members to contact him with preferences for participation in such workgroups. He also solicited input going forward and stated he would put together a list of issues to discuss at the next meeting.

III. OTHER BUSINESS

Good of the Order/Call to the Public. There was no additional business for the good of the order. A call to the public was issued, but no one from the public was present.

Adjournment: The meeting adjourned at 2:57 p.m.

Next Meeting: February 17, 2017
10:00 a.m.

Task Force on Court Management of Digital Evidence

Friday, February 17, 2017
Conference Room 101, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Sam Thumma, Mike Baumstark, David Bodney, Colleen Clase, Jessica Cortes, Judge David Cunanan, Karen Emerson, Jeffrey Fine, Jennifer Garcia, Judge Charles Gurtler, Aaron Harder, Chris Kelley (proxy for Michael Jeanes for part of the meeting), Michael Jeanes, Marcia Johnson (proxy for Commander Heston Silbert), Assistant Chief Michael Kurtenbach, Zora Manjencich, James Melendres, Michael Mitchell, Jamie Sheppard, Judge Don Taylor

Telephonic: Judge Maria Felix

Absent/Excused: Judge Kyle Bryson

Guests: Dennis Preisler, Arizona State Library, Archives and Public Records; Laura Keller, Arizona State Library, Archives and Public Records; Terry Froseth, Maricopa County Attorney's Office

Administrative Office of the Courts (AOC): Karl Heckart, Chief Information Officer

AOC Staff: Kay Radwanski, Jennifer Albright, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The February 17, 2017, meeting of the Task Force on Court Management of Digital Evidence (DETF) was called to order at 10:00 a.m. by Sam Thumma, chair. After introductions, he explained that during the second half of the meeting, the task force would break out into workgroups to begin the discussion on setting policy and procedures for digital evidence. He also pointed out two additional documents in the meeting packet. One is petition [R-17-0027](#), which seeks to modify Rules 15.1 and 15.4, Rules of Criminal Procedure, to provide procedures for disclosure of video from officer-worn body cameras. The petition is open for comment until May 22, 2017; the Supreme Court will consider the petition at its Rules Agenda meeting in late August. The second document is a Draft Convention on Electronic Evidence, which was developed in Europe.

Approval of Minutes from January 20, 2017

The draft minutes from the January 20, 2017, meeting of the DETF were presented for approval.

Motion: Michael Mitchell moved to approve the January 20, 2017, minutes as presented.

Seconded: Judge Charles Gurtler. **Vote:** Unanimous.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Court Use of Cloud Technology

Karl Heckart, AOC Chief Information Officer, presented on cloud technology, with the goal of providing a common understanding of what the cloud is, what its capabilities are, how some courts are using it, and an overview of the parts and pieces to be considered when using the cloud. He noted that the storage of digital evidence is in a constant state of evolution, and the market is in a heavy shift to the cloud. He then described different types of cloud storage, using the following categories, and the advantages of each.

- **Public Cloud** – is typically constructed for general consumer use, uses a common platform, and allows for an unlimited number of users. It is generally available free and is easily and frequently hacked. Using the public cloud has risks because information is mined to target advertising to the user based on the user's interests. Examples of public clouds are Google Drive, Box, iCloud, OneDrive, and Dropbox.

The public cloud consists of three types of services:

1. SaaS – “Software as a service” is a pay-as-you-go system that maintains and manages all aspects of cloud technology.
 2. PaaS – “Platform as a service” provides the user with middle tier services (i.e., providing software updates, ensures databases are running).
 3. IaaS – “Infrastructure as a service” allows the user to buy capacity as needed without the expense of buying the infrastructure. This allows the user to maintain control of its databases and applications.
- **Community Cloud** – has a limited number of users linked by a special interest (e.g., a “government cloud” that allows connected users to share information without having to connect to each other's networks, bypass firewalls, etc.). The community cloud conforms to government standards as mandated by either the Department of Defense or the Federal Bureau of Investigation.
 - **Hybrid Cloud** – is an integrated combination of private, public, or community cloud services from different cloud providers.
 - **Private Cloud** – is completely controlled and operated by the user, can be built to meet the user's needs, can be located in-house or hosted offsite, and can be used by one or more internal organizations.

Mr. Heckart also advised consideration of the following security issues when contemplating cloud computing options:

- **Vendor** – Is the vendor certified and complying with federal laws regarding cloud use and the security and release of information, e.g., HIPAA and other federally protected information?
- **Data Mining** - Is the information being used for the benefit of the vendors or the users?
- **Security Breaches** - Does the vendor make notifications when security breaches occur, and are they tracking and auditing data in a manner that will notify them when the system is hacked and what information was taken? When does the vendor notify the

user of the breach and any resulting safeguards put into place?

- **General Auditability** – Can the system backtrack what employees or partners are doing, and if so, who has access to the information? Is there a procedure in place for legal holds?
- **Availability and Reliability** – Is the system available 24 hours a day and how often does the vendor shut down the system for maintenance?
- **Recoverability** – If a disaster occurs, does the vendor have a data recovery site where the user’s data is stored, and how quickly could the information be recovered and available to the user?
- **Connectivity** –The Internet is often used to connect to the cloud, but in the event of a crisis, it may not be available. If private dedicated connectivity to the cloud is built, who will maintain it?

B. Hurdles & Challenges with Permanent Digital Records Storage

Dennis Preisler, Ph.D., Assistant Director, Arizona State Library, Archives and Public Records (LAPR), and Laura Keller, M.A., LAPR Electronic Records Archivist, spoke about the challenges LAPR is facing regarding storage of digital records. Dr. Preisler explained that LAPR currently receives court records that are 50 years old and mostly in paper or audio format. Even those formats present challenges; for example, cassette tape can tear as it ages. LAPR has no cloud storage, and digitized information currently resides in a “dark archive” because it has not yet been recovered. Ms. Keller noted that LAPR cannot yet accept “born digital” records. She briefly discussed the challenges for digital preservation and storage. She shared the state library’s attempts to meet the challenges of digital records storage through budget requests to the legislature and pursuit of grants for the Preservica Digital Preservation pilot.

C. Body Camera Cloud Storage Solutions via Evidence.com (demonstration)

Michael Mitchell, Special Assistant to the Chief Deputy, Maricopa County Attorney’s Office, shared the history of the digitalization of the of County Attorney’s Office from server-based to the cloud. Terry Froseth, Business Analyst, Maricopa County Attorney’s Office, presented information on Evidence.com, a cloud-based server provided by Axon/Taser to share, store, redact and disseminate body worn camera video. Agencies using Evidence.com also have the ability to view and share body camera information with other agencies on Evidence.com.

D. Workgroup Organization

Sam announced the three workgroups and the designated leads for each group. They are: **Storage and Management** - Jeff Fine, lead; **Court Rules** – Aaron Harder, lead; and **Formats** – Jamie Sheppard, lead. The groups were asked to meet during and after lunch and to report back to the task force before the end of the meeting.

E. Workgroup Reports

Storage and Management – Mr. Fine stated that his group discussed the need to define requirements for media storage, decentralized versus centralized statewide system for the storage of evidence, cost of cloud storage, and bandwidth requirements. He also suggested that Mr. Heckart be invited back to provide input regarding bandwidth, cost of cloud storage. The next workgroup meeting date is to be determined.

Court Rules – Mr. Harder reported that his group expressed the need for a standard format for digital submission but also flexibility in applicable court rules. They also considered which rules may be affected such as Rule 123, Rules of the Supreme Court; Rules of Evidence; victim’s rights rules; Rules of Criminal Procedure; Rules of the Juvenile Court, and rules affecting limited jurisdiction courts. He noted the possibility that the Rules of Family Law Procedure and the Rules of Civil Procedure may be affected. The next workgroup meeting will be February 28, 2017.

Formats – Ms. Sheppard explained that digital evidence consists of different mediums and that the storage and preservation would be different for each. Her group discussed the issue that standard formats such as Microsoft may not be standard in future and the need to retain support for today’s technology while considering future needs and compatibility. The next workgroup meeting will be March 2, 2017.

III. OTHER BUSINESS

Good of the Order/Call to the Public

Jennifer Albright, AOC, showed task force members a Workgroups webpage that is in development. Once it is completed, she or Sabrina Nash will notify task force members about its use for posting meeting locations, times, and materials. She also informed task force members that AOC staff are available to help the workgroups secure a conference call line, WebEx, conference room, or meeting materials.

No one from the public was present to answer the call to the public.

Adjournment: The meeting adjourned at 2:32 p.m.

Next Meeting: March 17, 2017
 10:00 a.m.
 Conference Room 345 A/B

Task Force on Court Management of Digital Evidence

Friday, March 17, 2017
Conference Room 345 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Sam Thumma; chair; Mike Baumstark, David Bodney, Judge Kyle Bryson, Colleen Clase, Jessica Cortes, Judge David Cunanan, Karen Emerson, Judge Maria Felix, Jeff Fine, Jennifer Garcia, Judge Charles Gurtler, Aaron Harder, Marcia Johnson (proxy for Commander Bill Long), Chris Kelly (proxy for Michael Jeanes), Laura Keller, Zora Manjencich, Michael Mitchell, Jamie Sheppard

Absent/Excused: Assistant Chief Michael Kurtenbach, James Melendres, Judge Don Taylor

Guests/Presenters: Chief Justice Scott Bales; Jennifer Thorson (law clerk to Judge Bryson); Ken Crenshaw, Diana Hegyi, and Jayne Pendergast, Superior Court in Maricopa County

Administrative Office of the Courts (AOC): Theresa Barrett, Court Services Division; Karl Heckart, CIO, IT Division

AOC Staff: Kay Radwanski, Jennifer Albright, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The March 17, 2017, meeting of the Task Force on Court Management of Digital Evidence (DETF) was called to order at 10:04 a.m. by Judge Sam Thumma, chair. He introduced and welcomed two new members who have been appointed to the task force: Laura Keller, electronic records archivist, Arizona State Library, Archives and Records, and Inspector William Long, Arizona Department of Public Safety. Inspector Long, who was at training, was represented by his proxy Marcia Johnson. Sam introduced Chief Justice Scott Bales, who thanked task force members for their participation and emphasized the importance of the work they are doing.

Sam reported back that he met with Commission on Victims in the Courts (COVIC) earlier this month and explained the charge of the task force. He encouraged COVIC members to follow the task force's work on its webpage and provide input on matters of importance to their mission and goals. He first visited COVIC in 2016 and heard of their interest in victims' rights as they relate to digital evidence issues. Sam also has reached out to the National Center for State Courts (NCSC), the Federal Judicial Center, the Sedona Conference, and Thomson Reuters to learn if others are working on the topic of digital evidence and storage being addressed by the task force. None have addressed these issues, developed standards, or made recommendations for standards.

Approval of Minutes from February 17, 2017 (taken out of order)

The draft minutes from the February 17, 2017, meeting of the DETF were presented for approval.

Motion: Judge Charles Gurtler moved to approve the February 17, 2017, minutes as presented.

Vote: The motion passed unanimously.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Integrated Court Information System Next Generation (iCISng) Concepts and Demo. Diana Hegyi, deputy court administrator, Superior Court in Maricopa County, explained that she took on the challenge of upgrading Maricopa County's iCIS case management system into a modern case management system, with the goal of going paperless and reducing redundant processes. The concept of iCISng is to push information out to judicial officers by creating work queues that consolidate work flows and processes. Clerks, other courtroom staff, Probation and Pretrial Services also work in queues that hold the information they need. Case data is entered once and populates throughout the system, resulting in greater accuracy ("data alignment"). Ms. Hegyi demonstrated how the system works and how it is used by various departments within the superior court.

B. Future Plans for Digital Evidence Storage. Jayne Pendergast, CIO, Superior Court in Maricopa County, discussed management of the court's electronic records (e.g., For the Record (FTR) recordings). She provided the following statistics on the amount of electronic records stored since 2003:

Maricopa County Superior Court: 29,000 DVDs and 1,000 CDs totaling 124,900,000 megabytes of data weighing 3,750 pounds.

Maricopa County Justice Courts: 8,160 DVDs totaling 32,000,000 megabytes weighing 927 pounds.

Ms. Pendergast reported that the superior court has been speaking with vendors regarding cloud storage. They are also speaking with Microsoft about creating their own cloud so that they would have an online system that would be accessible by court staff. She will be assembling a committee to decide what the superior court will need for cloud storage, how often it will be accessed, the amount of data that can be stored, and the costs.

The court also averages 100 records requests per week. It takes 5-10 minutes per request to locate materials plus additional time to download the material to a location for an employee to pick up and either play or copy to a DVD or CD. Ms. Pendergast clarified that the DVDs currently in storage are strictly courtroom video recordings and not courtroom exhibits, which are managed by the Clerk of the Court. The superior court recordings can be audio, video, or both; the justice court recordings are audio only.

C. Digital Technology in the Courtroom. Ken Crenshaw, administrator of Courtroom Technology and Electronic Records, Superior Court in Maricopa County, noted that the superior court's digital recording began in 2001 in eight courtrooms. Today there are 157 courtrooms, all of which have digital recording systems. There are two to five cameras in

each courtroom, depending on its size, to record courtroom activity. The recording is the official record if a court reporter is not present.

The digital files are stored on a computer server, which has a five-month capacity for live retrieval of courtroom recordings. Once the server reaches capacity, the information is archived and stored. He noted that the courtrooms have standard equipment—a document camera, DVD/VCR player, printer, computer, and power cables—to assist in memorializing courtroom activity and presenting exhibits. Mr. Crenshaw described additional digital technology that is used in the courtrooms to present and preserve evidence (e.g., freeze and print an image from a cell phone). He noted that, in some respects, both the audio and video components can be integrated with the FTR record.

- D. Continuing Discussion—Courts and Digital Technology.** Karl Heckart, AOC Chief Information Officer, addressed members' questions about backing up and recovering information, compression of large files, back-up formats, security, and viruses. He noted that the Supreme Court has adopted standards ([ACJA § 1-501](#) *et seq.*) recommended by the Commission on Technology (COT).

Mr. Heckart also discussed considerations when deciding on feasibility of cloud storage: the size and volume of data to be sent to the cloud, access to the information (i.e., how often is it needed and who needs it); security and virus issues, and recovery options. He suggested that the task force separate and tackle the issues regarding the presentation of information and exhibits in the courtroom versus the archival needs.

E. Workgroup Reports

Storage and Management – Jeff Fine stated that the first time the workgroup met, they developed a list of 20-25 topics. Today the workgroup focused on setting up requirements for storage and management (things that need to be done) and considerations (things that decision makers should take into consideration). The workgroup will meet telephonically on March 31 at 1:30 p.m.

Court Rules – Aaron Harder reported that the workgroup will meet by telephone on April 6 to review the Code of Judicial Administration and current court rules. The workgroup also discussed technology and jury deliberations, public access to FTR, technology for all parties, and preventing hacker access.

Formats – Jamie Sheppard announced that the workgroup has been reviewing the Code of Judicial Administration regarding document filing. The workgroup will meet again on Friday, April 7.

III. OTHER BUSINESS

Good of the Order/Call to the Public

Sam noted that he would like to get more information about the Commission on Technology (COT) and OnBase. He also requested that each workgroup be prepared to deliver a 45-minute presentation and provide material for review and further discussion at the April 21 meeting. He suggested that workgroups consider multiple recommendations based on unlimited funds, limited funds, and wants and needs for implementing recommendations.

He also announced that, given scheduling and other issues, he will consider cancelling the May 26 task force meeting if the workgroups continue to make good progress.

Jennifer Albright provided information about a password-protected workgroup webpage that gives the workgroups the ability to post information about upcoming meetings and share resources with DETF members.

Sam ended the meeting by stating that he would continue to share information with judges and court administrators regarding task force's work and purpose.

Adjournment: After the call to the public, the meeting adjourned at 2:28 p.m.

Next Meeting: April 21, 2017, 10:00 a.m.
Conference Room 329/330

Task Force on Court Management of Digital Evidence

DRAFT MINUTES

Friday, April 21, 2017

Conference Room 119 A/B, Arizona State Courts Building, 1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Samuel Thumma, Mike Baumstark, Judge Kyle Bryson, Colleen Clase, Jessica Cortes, Judge David Cunanan, Karen Emerson, Jeffrey Fine, Jennifer Garcia, Judge Charles Gurtler, Aaron Harder, Marcia Johnson (proxy for Inspector William Long), James Melendres, Michael Mitchell, Nancy Rodriguez (proxy for Michael Jeanes), Jamie Sheppard, Judge Don Taylor

Absent/Excused: David Bodney, Judge Maria Felix, Laura Keller, Michael Kurtenbach, Zora Manjencich

Guests: Jennifer Thorson

Administrative Office of the Courts (AOC): Stewart Bruner

AOC Staff: Sabrina Nash, Kay Radwanski

I. REGULAR BUSINESS

Welcome and Opening Remarks. The April 21, 2017, meeting of the Task Force on Court Management of Digital Evidence was called to order at 10:02 a.m. by Sam Thumma, chair.

Minutes. The draft minutes of the March 17, 2017, task force meeting were presented for approval. Hearing no corrections to the draft, the minutes were approved as circulated.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Formats Workgroup

Jamie Sheppard, workgroup lead, reported that the workgroup members had finalized notes from their last meeting, revised outstanding questions, and updated their considerations. Michael Mitchell then presented a summary to the task force. He explained that the workgroup believes, in response to Policy Question 5, that all courts should adopt acceptable standardized formats for the viewing, storage, preservation, and conversion of digital evidence. He referenced the Arizona Code of Judicial Administration (ACJA), chapters 5–6, which address court records. In particular, section 1-507 addresses both electronic and text-based documents. He then discussed the various parts of the policy question.

Conversion – Where should conversion take place and who is responsible for the conversion of evidence before submitting it to the court? It was suggested that this is a discussion that needs to happen between the parties involved and the courts. Mr. Mitchell emphasized that a caveat would be needed to allow exceptions should the conversion process cause the loss of integrity.

Viewing and Presentation is closely related to conversion. The workgroup felt that the process for viewing and presentation should be consistent with the ACJA and the Rules of Evidence, with possible exceptions for limited jurisdiction, appellate, and superior courts because of the differences in court procedure and case types.

On this point, the task force asked questions about how to manage evidence that requires a proprietary player, the use of cloud storage for the player and the accessibility of player in the cloud, and how to minimize the risk of losing evidence needed in appellate and capital cases should the technology not be available in the future. They discussed whether the party admitting evidence should be responsible for maintaining a player for the evidence and if there is a need for an exception to standards when it will promote the interest of justice.

Storage – The ACJA leans toward standard or non-propriety formats for case records. Longevity, retention accessibility, transparency, and accountability need to be considered when considering storage options. Arizona’s public records rules generally require evidence to be accessible to the public and the courts to be transparent in their dealings with the public.

Preservation – Storage and preservation of evidence go hand in hand—both require security, backup, and restoration. Preservation technology has grown in recent years, and security is constantly evolving. Preservation of court records is the court’s responsibility, but it does not preclude the admitting party from keeping duplicate copies.

B. Overview: Commission on Technology; OnBase

Stewart Bruner, AOC, discussed the charge of the Commission on Technology (COT). Information technology has a three-tiered structure over court administration—policy, business, and technology governance—that all work together. He noted that ACJA § 1-109 authorizes COT to set statewide technical standards for all courts to include security, disaster recovery, and communication standards. COT also oversees state-sponsored automation systems and encourages courts to be efficient and effective. The advantage of statewide standards is compatibility, quality, interoperability, and safety. Current technology standards are available on the [COT webpage](http://www.azcourts.gov) at www.azcourts.gov.

OnBase is a commercial electronic document management system (EDMS) that uses keywords and metadata to file, store, and retrieve data from a pool of stored information. It is server based and integrates with court management systems to provide the courts with an official record of information transmitted to OnBase. It provides the courts with the ability to view and store case files electronically and acts as a central repository, allows e-filing, and provides access to e-filers and the general public to public files.

Task force members discussed the Arizona Judicial Automated Case System (AJACs) and OnBase, Granicus storage for the management of videos and documents, whether bandwidth and fiber optic affect display and run times in rural communities, and the cost. Microwave could be considered and may increase run times in rural communities. Mr. Bruner reiterated that cost is always going to be a factor with technology.

C. Storage and Management Workgroup

Jeff Fine, workgroup lead, said the Storage and Management Workgroup considered the following policy questions: Should digital evidence be stored locally or offsite? Should a centralized or decentralized storage model be used? They then identified as many issues as

possible associated with storing and managing digital evidence and divided them into two categories:

Requirements are the specifics that would be given to vendors that would explain what the courts need for the product to serve them. Among the identified requirements are:

- Statewide solution with an opt-out provision for jurisdictions that are able to meet requirements
- Ability to safely intake digital evidence on various media such as DVD, CD, and USB without compromising the security of the system
- Ability for customers to safely upload via web interface and mobile applications
- Virus protection for court systems downloading and uploading stored evidence
- Ability to manage retention and accommodate retention schedules
- Ability to satisfy records requests for physical media requests (CD, DVD, USB) and via a link or web access
- Ability to seal, redact, or obscure digital evidence; consideration of whether courts have an obligation to obscure digital evidence that has not been properly redacted or obscured
- Require technical integration with courts' automated systems to eliminate the need to log onto a separate system to view evidence
- Ability to detect and respond to security breaches
- Audit trail that shows who has accessed or viewed evidence and when
- Ability to control user level of access; decide who has authority to delete evidence
- Ability to backup and recover data; data should be backed up frequently; in the event of a disaster, recovery of lost data is crucial
- Complexity of program—program must be able to accommodate users of varying skill levels
- Ability to preview content for faster access to evidence needed

Considerations address concerns that the courts and judicial branch should consider when looking at storage and management of digital evidence.

- Capacity to manage program locally
- Cost, fiscal challenges around the state faced by various courts
- Security should be considered broadly for both sending and receiving evidence
- What evidence courts store; limit stored evidence to what was admitted in court
- Revision of records retention schedules
- Bandwidth requirements and costs
- Single solution for all digital content whether evidence or case files

Mr. Fine noted that discussions were had regarding what existing solutions may exist for courts, whether courts would be required to redact content, should there be cost recovery fees in family and civil cases, and should there be an interim plan to give courts guidance on how to prepare and improve.

D. Rules Workgroup

Aaron Harder, workgroup lead, explained the workgroup began its process by reviewing existing rules of evidence, civil, criminal, juvenile and victim's rights rules to determine what, if any, rules needed to be revised or new rules created. They also reviewed the ACJA, finding that Chapters 5 and 6 provide a road map for what needs to be done. He noted that the rules

do not define what is considered evidence (admitted and non-admitted), which might be a good place for the workgroup to start. Mr. Harder said the workgroup will consider ideas generated by the other two workgroups and asked the task force for its thoughts on what should be considered in court rules.

Among the suggestions offered were consideration of metadata as a foundational issue; treatment of evidence after it reaches the court; deciding when discovery has become a fishing expedition; the need for any changes to accommodate the current video world; whether the rules define what the record on appeals is and if the rules need to be changed; and whether there would be merit in a Supreme Court rule authorizing implementation.

III. OTHER BUSINESS

Good of the Order/Call to the Public.

Sam announced that the May 26 meeting will be cancelled so the workgroups can meet and work on a preliminary draft report that fills in the outlines discussed at the meeting. Workgroups are to deliver their drafts by the end of May for his review and comments. The first draft will be presented at the June 30, 2017, task force meeting. Sam encouraged task force members to mention the task force's work to their peers and point them to the website.

There were no members of the public present in response to the call made to the public.

Adjournment: The meeting adjourned at 1:38 p.m.

Next Meeting: June 30, 2017

Task Force on Court Management of Digital Evidence

DRAFT MINUTES

Friday, June 30, 2017

Conference Room 119 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Sam Thumma, chair; Mike Baumstark, David Bodney, Judge Kyle Bryson, Judge David Cunanan, Karen Emerson, Judge Maria Elena Felix, Jennifer Garcia, Aaron Harder, Chris Kelly (proxy for Michael Jeanes), Sgt. Kevin Johnson (proxy for Michael Kurtenbach), Laura Keller, Zora Manjencich, Michael Mitchell, Jamie Sheppard

Telephonic: Colleen Clase, Judge Charles Gurtler, Inspector Bill Long

Absent/Excused: Jessica Cortes, Jeffrey Fine, James Melendres, Judge Don Taylor

Guests: Jennifer Thorson

AOC Staff: Jennifer Albright, Sabrina Nash, Kay Radwanski

I. REGULAR BUSINESS

Welcome and Opening Remarks. The June 30, 2017, meeting of the Task Force on Court Management of Digital Evidence was called to order at 10:01 a.m. by Sam Thumma, chair. Sam thanked the task force for their efforts in getting their draft recommendations to him so that he, Kay, and Jennifer could draft the report.

Minutes. The draft minutes of the April 21, 2017, task force meeting were presented for approval. Hearing no corrections to the draft, the minutes were approved as circulated.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Discussion of Draft Report

Sam explained that the report consists of three parts: the executive summary, the report, and the appendix. He asked task force members for their input on the layout, content, and headings in the report and mentioned that in the process of drafting the report, some changes were made to the materials submitted by the workgroups. He emphasized the changes were meant to be non-substantive for consistency and style purposes only.

Discussion ensued on the following:

- Standardization of e-discovery, using scheduling orders to stipulate what format would be used for evidence submitted prior to trial, proposed Civil Justice Reform Committee (CJRC) rules in relation to e-discovery, education on standardization for the judiciary, and self-represented litigants
- Adding an additional report section to address future and next-generation needs
- Preserving current rules if they provide a framework that works appropriately

- Redaction to protect victim and civilian rights and responsibility for redaction, review of current Rule 123 on this topic, and pending rule petition R-17-0027
- Meeting Arizona judicial code minimum technology requirements and considerations for local courts to have local storage and management systems versus a centralized storage system adopted by the Supreme Court and administered by the AOC

B. Workgroup Breakouts to Discuss Recommendations

Task force members broke into workgroups to discuss the draft report further, keeping in mind the topics discussed above and the pending edits agreed upon during the group discussion. Workgroups were asked to work on identifying specific recommendations related to the policy questions assigned to their group.

C. Workgroup Reports

Each workgroup presented an update on their current status, where they are headed, concerns, and open issues that need further consideration.

Storage and Management:

Mike Baumstark stated that the workgroup needs to update its section to better discuss any minimum requirements for adopting a storage and management system—regardless of whether centralized or decentralized. The goal remains to allow for local courts who have the technical ability and financial resources to have local storage and management systems to do so.

Digital Formats:

Jaimie Sheppard and Michael Mitchell shared that while the workgroup has some further editing and clarifications to make to their part of the report, unless the next version of other workgroup reports impacts their recommendations, they will have no substantive changes. They are endeavoring to articulate recommendations in relation to the content of their group’s work.

Court Rules:

With the other two workgroups having more concrete reports and recommendations, the Rules Workgroup determined that another round of review of procedural rules and the rules of evidence is needed to determine if any rules needed either modernization or other amendment in keeping with the recommendations of the other workgroups. Aaron Harder indicated that the workgroup will meet to delve into a further review. They expect to have some developed content for input at the August meeting.

Discussion followed on generating rules regarding the use of video in the courtroom, how video is used in the courtroom, the use of unredacted FTR recordings for general consumption, and how to deal with these issues to avoid unintended consequences.

D. Next Steps

Sam proposed that instead of the July 21, 2017, meeting being used for the full task force that the workgroups use that day, or set another day before that date, to meet and work on their recommendations and any further edits. He encouraged the workgroups to talk to each other regarding any overlap ng in recommendations. He asked the workgroups to submit revised version of their report to Kay or Jennifer by July 26, 2017. Sam indicated the revisions will be reviewed and consolidated into the report and recirculated to the task force in advance of the August 25, 2017, meeting. The August 25 meeting will be the next-to-last meeting, and he would like to be close to finalizing the report.

III. OTHER BUSINESS

Good of the Order

A question was raised regarding a preference for a policy or rule change. Sam and Mike Baumstark both stated that either would be accepted. Sam said he is pleased with the progress being made by the task force and thanked members for their participation and hard work.

Call to the Public.

There were no members of the public present in response to the call to the public.

Adjournment: The meeting adjourned at 1:38 p.m.

Next Meeting: August 25, 2017

Task Force on Court Management of Digital Evidence

DRAFT MINUTES

Friday, August 25, 2017
Conference Room 119 A/B, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Sam Thumma, chair; Mike Baumstark, David Bodney, Judge Kyle Bryson, Colleen Clase, Jessica Cortes, Judge David Cunanan, Lindsay Abramson (as proxy for Karen Emerson), Judge Maria Elena Felix, Jeffrey Fine, Judge Charles Gurtler, Aaron Harder, Michael Jeanes, Chris Kelly (proxy for Michael Jeanes), Sgt. Kevin Johnson (proxy for Michael Kurtenbach), Laura Keller, Zora Manjencich, Michael Mitchell, Jamie Sheppard, Judge Don Taylor

Absent/Excused: Jennifer Garcia, Inspector Bill Long, James Melendres

Guests: Jennifer Thorson

AOC Staff: Jennifer Albright, Jodi Jerich, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The August 25, 2017, meeting of the Task Force on Court Management of Digital Evidence was called to order at 10:03 a.m. by Sam Thumma, chair. Sam thanked the Task Force members for their efforts in getting their latest draft report content to him so that he, Kay, and Jennifer could further develop the draft report.

Minutes. The draft minutes of the June 30, 2017, Task Force meeting were presented for approval. Hearing no corrections to the draft, the minutes were approved as circulated.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Updates and Outreach

Sam updated the members on upcoming presentations and outreach to stakeholders. He reminded the Task Force that the final report and recommendations are due October 1, 2017, and the report will be presented to the Arizona Judicial Council on October 11, 2017. Leading up to the AJC presentation, Sam noted presentations will be made to the Committee on Limited Jurisdiction Courts, the Committee on Superior Court, and the Presiding Judges. He thanked Judges Gurtler and Cunanan for agreeing to assist by presenting to COSC. Michael Jeanes noted that the Clerk's Association meets during the Leadership Conference in mid-October 2017 and invited Sam to make a presentation to that meeting about work of the Task Force.

Sam also shared that the State Archives, of which Task Force member Laura Keller is a part, will be hosting the National Association of Government Archives and Records Administrators (NAGARA) Western Forum in October. Ms. Keller is presenting on

electronic records, which will include a presentation on the Task Force's work with Sam as a co-presenter.

Finally, Sam shared that in October, there will be a State Justice Institute (SJI) Digital Evidence Summit. Although details are being finalized for the Summit, a "team" from Arizona has been invited and that invitation has been accepted. A team including Sam, Mike Baumstark, Judge Kyle Bryson, Chief Michael Kurtenbach, Karen Emerson, Michael Mitchell, Chris Kelly, and Inspector Bill Long will be attending.

B. Discussion of Draft Report

Sam reviewed the layout of the draft report. He asked members for their positions on the organization of the workgroup reports. The report to date was designed around the numerical order of the policy questions contained in the administrative order creating the task force's charge. He suggested reordering the workgroup presentations in the report for purposes of flow, and given that they build on each other, to start with Formats, then Storage and Management, and then Rules. The Task Force members agreed the revised organizational format.

Discussion ensued on the following:

- The recommendation that there be a requirement that digital evidence be submitted in a digital format included an exception for allowing parties to submit such evidence in a proprietary form when the interest of justice so required. Discussion ensued about further developing recommendations related to the factors a judge should consider and how a judge should make findings to support such an exception.
- The topic of redaction and its relationship to the sealing or restricting of digital evidence to protect victim and civilian privacy rights was discussed. Edits to the Storage and Management content on this topic were discussed. The consensus of the Task Force was that the current rules and policies appear, in general, to be working and would work for digital evidence. It was agreed the related recommendation would articulate that a digital evidence storage and management system adopted by a court would include the capability for a clerk of court to redact a copy of digital evidence before providing to the public if the clerk was ordered to do so by a court.
- The Rules Workgroup presented its recommendations for amendments to several rule sets. Those recommendations included adding a standardized definition of "digital evidence" to all rule sets, defining the term video in the Arizona Rules of Evidence, and adding references to video, digital evidence, and electronic evidence to procedural rule sets that have not yet been updated to modernize them. It was noted the Arizona Rules of Civil Procedure are a good example of where such modernization has already occurred. The Task Force generally supported the recommended amendments with some suggested edits.
- The Rules Workgroup shared that work related to victim's rights and public access to digital evidence was still ongoing.

C. Workgroup Breakouts to Discuss Recommendations

Task Force members broke into workgroups to further discuss the draft report and the suggested edits of the preceding discussions.

D. Workgroup Reports

Each workgroup presented an update on their current status, where they are headed, concerns, and open issues that need further consideration. Each workgroup had developed specific edits on several of the items discussed and shared those with the Task Force. Each item presented received support, and staff indicated they would assist in updating the draft report to include the agreed-upon edits before the next meeting.

E. Next Steps

Sam proposed that the workgroups submit to staff any further edits by September 12, 2017. He and staff will then work on integrating edits and developing the next version of the report to share with the members in advance of the September 22, 2017, meeting. Sam noted the September meeting is the Task Force's last regularly scheduled meeting, with the report due the following week. He explained that he expected members to be prepared to work on detailed edits at the September meeting so he and staff can finalize the publication on time.

III. OTHER BUSINESS

Good of the Order

Sam echoed the praise for the good progress being made by the Task Force and thanked members for their continued participation and hard work.

Call to the Public.

There were no members of the public present in response to the call to the public.

Adjournment: The meeting adjourned at 1:56 p.m.

Next Meeting: September 22, 2017

Task Force on Court Management of Digital Evidence

DRAFT MINUTES

Friday, September 22, 2017
Conference Room 345, Arizona State Courts Building
1501 West Washington Street
Phoenix, AZ 85007

Present: Judge Sam Thumma, chair; Mike Baumstark, David Bodney, Judge Kyle Bryson, Jessica Cortes, Judge David Cunanan, Karen Emerson, Judge Maria Elena Felix, Jeffrey Fine, Judge Charles Gurtler, Aaron Harder, Michael Jeanes, Michael Jeanes, Michael Kurtenbach, Laura Keller, Michael Mitchell, Jamie Sheppard, Judge Don Taylor

Absent/Excused: Colleen Clase, Jennifer Garcia, Inspector Bill Long, Zora Manjencich, James Melendres

Guests: Jennifer Thorson

AOC Staff: Jennifer Albright, Kay Radwanski, Sabrina Nash

I. REGULAR BUSINESS

Welcome and Opening Remarks. The September 22, 2017, meeting of the Task Force on Court Management of Digital Evidence was called to order at 10:03 a.m. by Sam Thumma, chair. Sam thanked the Task Force members for their efforts in getting their latest draft report content to him so that he, Kay, and Jennifer could further develop the draft.

Minutes. The draft minutes of the August 25, 2017, Task Force meeting were presented for approval. One correction noted to a member's name. Hearing no other corrections to the draft, the minutes were approved as circulated.

II. BUSINESS ITEMS AND POTENTIAL ACTION ITEMS

A. Updates and Outreach

Sam updated the members on upcoming presentations and outreach to stakeholders. He reminded the Task Force that the final report and recommendations are due October 1, 2017, and the report will be presented to the Arizona Judicial Council (AJC) on October 11, 2017. Leading up to the AJC presentation, Sam noted a presentation was made to the Committee on Superior Courts Courts by Judges Gurtler and Cunanan, and that Sam presented to the Committee on Limited Jurisdiction Courts with assistance from Jeff Fine and Judge Felix. Both groups expressed support for the recommendations in the current draft report. Sam indicated that he would be presenting to the Superior Court Presiding Judges and AJC the second week of October. In addition, a panel including himself, Judge Gurtler, Mike Baumstark, Jessica Cortes, and Michael Jeanes, would be presenting a session during the annual Leadership Conference in Flagstaff. Michael Jeanes indicated that report would be discussed at the Clerk's Association meeting during the Leadership Conference.

Sam also shared that the State Archives, of which Task Force member Laura Keller is a part, will be hosting the National Association of Government Archives and Records Administrators (NAGARA) Western Forum in October. Ms. Keller is presenting on electronic records, which will include a presentation on the Task Force's work with Sam as a co-presenter.

Finally, Sam asked the Task Force's position on and thoughts about trying to publish the report, or at least a portion thereof, in a scholarly journal. The Task Force supported the effort and Sam will follow up accordingly.

B. R-17-0027: Petition to Modify Rules 15.1 and 15.4, Arizona Rules of Criminal Procedure

Sam mentioned that, on August 31, 2017, the Arizona Supreme Court had referred this Rule Change Petition to the Task Force. The Rules Workgroup will consider this and endeavor to make recommendations to for the Task Force as a whole to consider.

C. Discussion of Draft Report

Sam reviewed the layout of the draft report and current status of the content.

Discussion ensued on the following:

- Discussion on there being a more obvious statement related to self-represented litigants. It was noted that topics addressing needs of and challenges for self-represented litigants are found throughout the report, something more obvious summarizing how the needs of these stakeholders was suggested.
- It was suggested a sentence or two be added to the Formats Workgroup to make more express the need to account for self-represented litigants with limited resources.
- A reminder to ensure that the language of the report related to redaction and sealing not create a new duty for Clerks and the courts. It was discussed how Clerks and court employees cannot give legal advice and cannot assist with case preparation. Accordingly, having information for self-represented litigants is needed to allow Clerks and the courts to facilitate communications with parties of all types, but to not violate any limitation on duties.
- Some edits on language to make it consistent, moving a paragraph from one place to another in a Workgroup report, and a few other stylistic changes were also recommended and agreed upon.
- Suggestion to have language that recommends a statewide form or template for form and communication on what the requirements are for presenting digital evidence at a given local court. References were made to Northern District Court of California (federal) webpage that provides such instructions as well as use of AZCourtHelp.org as examples and locations to share that kind of information.
- Discussion was had on definition of "digital evidence." After discussion, the task force agreed to an amended definition that was incorporated into the final report.
- Addition of recommendation that the Arizona Rules of Juvenile Procedure be amended consistent with the amendments suggested for the Arizona Rules of Criminal Procedure.

D. Next Steps

Sam proposed that members submit to staff any further edits by September 25, 2017. He and staff will then work on integrating edits and finalize the report for submission to the AJC by the October 1, 2017, deadline.

Motion to approve the report subject to the edits discussed during this meeting, with permission for the Chair and AOC staff to make grammatical and stylistic changes or edits needed for the good of the report, but not substantive changes. Motion by: Judge Bryson
Second: Judge Felix Motion approved by unanimous vote.

Discussion was had on the Supreme Court's request that the task force review rule petition R-17-0027 and generate a comment or recommendation. Discussion was that in October the Rules Workgroup would meet to review the petition and comments and then the Task Force would meet, most likely by mid-November, to discuss and hopefully reach consensus on a comment.

Finally, the Rules Workgroup will also work with Sam on the rule petition(s), if approval by the AJC and adoption by the Supreme Court of the recommendation in the final report.

III. OTHER BUSINESS

Good of the Order

Sam echoed the praise for the good work of the Task Force and thanked members for their continued participation and hard work.

Call to the Public.

There were no members of the public present in response to the call to the public.

Adjournment: The meeting adjourned at 1:56 p.m.

Next Meeting: TBD, likely late November 2017