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 G*eneral 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