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)	**Juvenile abortion*	
Criminal (pre and post-1960)		
Criminal capital felony cases		
**Juvenile adoption, severance, dependency*		

**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 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 be 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