

**Meeting Minutes of the 19th
Judicial Information Systems Council (“JIFFY”)
Public Access Subcommittee (“PAS”)
Judicial Information Division (“JID”)
Tuesday, May 18, 2010
1:02-3:39 p.m.**

Voting Members present:

Judge Karen Mitchell, Chair
Judge Mark Basham
Robert Mead
Dennis Jontz
Dana Cox
Arthur Pepin
Steve Prisoc
Kathy Gallegos (*via phone*)
Paula Chacon

JIFFY Members present:

Judge Michael Bustamante (*via phone*)

Voting Members absent:

Judge Stephen Bell
Judge Steve Lee

Minutes taken by: LaurieAnn Trujillo

Judge Karen Mitchell called the meeting to order at 1:02 p.m. and established a quorum.

I. Approval of Agenda.

Judge Mark Basham moved approval of today’s agenda. Robert Mead seconded. No further discussion. No opposition noted. Motion carried.

II. JIFFY’s Instruction Regarding the PAS Executive Summary and the PAS Document.

Judge Mitchell referred to the document entitled *Executive Summary* (PAS Executive Summary), which was distributed to the PAS members. She spoke of the following points:

- PAS created the PAS Executive Summary, but it was not as detailed as JIFFY wanted.
- PAS members reviewed the PAS Executive Summary and decided that it would represent PAS’s executive summary and not JIFFY’s executive summary.
- Confusion over how the *Report and Recommendations of the Public Access Subcommittee to the Judicial Information Systems Council an Information Technology Advisory Board to the New Mexico Supreme Court on Public Access to Court Case Records via the Internet, February 2, 1010* (PAS Document), which was attached to the PAS agenda, will go up to the Supreme Court.
- JIFFY’s actions items to the PAS.

- JIFFY will vote or make determinations about accepting the PAS Document or the recommendations that are contained in the PAS Document.
- At one point, language relative to conditional discharged was added to the PAS Document, per JIFFY's request.
- JIFFY can include a cover sheet with the PAS Document noting their changes.
- JIFFY's request to include the document entitled *Judicial Information Systems Council, Public Access Subcommittee, Voting Matrix for Calendar Years 2008 and 2009* (PAS Voting Matrix).
- PAS already approved the PAS Document.
- JIFFY will vote on PAS Recommendations C and D on Thursday.

There was discussion on the following points:

- Concerns were voiced with JIFFY requesting and making changes to the PAS Document without the PAS meeting to discuss and consider the requested changes.
- Concerns were voiced about JIFFY's request to include the PAS Voting Matrix because of the flaw in the PAS process that substantive votes were not taken after the oppositions were written and after the public was involved.
- Conditional discharge language.
- It was unclear when the PAS Document was presented to JIFFY whether or not JIFFY would prepare a separate executive summary.
- PAS can support the PAS Document that was approved in November, which is the one that does not include the change on conditional discharges, and then any recommended changes by JIFFY could go in a separate cover document from JIFFY.
- JIFFY specifically asked for a PAS Executive Summary, which Mr. Mead drafted out of a JIFFY meeting, but it did not come before the PAS for consideration and approval prior to today.
- With regard to the concerns raised about voting on the issues prior to public involvement, the comment was made that the PAS did not have any positions to take to the public until it went through the issues and discussed them.
- The PAS process should have been that it presented both sides of the issues rather than creating majority and minority reports.
- JIFFY is not interested in the individual PAS member votes. They are interested in knowing how close the votes were; however, the PAS Voting Matrix is not indicative of the PAS process.
- The PAS Voting Matrix does not reflect the opposition and the healthy disagreements.
- PAS minutes are submitted to JIFFY.
- JIFFY has the final vote and their vote was informed by the public comment meeting that occurred at the State Bar of New Mexico.
- PAS is a subcommittee of JIFFY.

III. Review and Approval

A. PAS Executive Summary

Supreme Court Sealing Rule.

Mr. Mead read the document entitled *Draft PAS Executive Summary, Version 5*, which was distributed to the PAS members.

The following changes were suggested:

- Page 1, first paragraph: add a period at the end of the last sentence.
- Page 1, second paragraph, first sentence: add “no fee” between “provide” and “public”.
- Page 1, third paragraph, first sentence: add “The majority of” as the beginning of the first sentence; and, change “recognize” to “believed”. Delete last sentence and replace with the following sentence: “Further, to date New Mexico public Internet access is limited to a registry of actions of court records.”
- Page 1, fourth paragraph, second sentence: change “move toward” to “adopt”. Last sentence: add “any” between “before” and “digitized”.
- Page 1, fifth paragraph, first sentence: add “public” between “regarding” and “Internet”; and, add “records” to the end of the first sentence. Second sentence: change “had” to “have”. Delete the third sentence. Fourth sentence: add “after” between “but” and “publicized”.
- Page 2, first paragraph, first sentence: change “laws” to “law”. Delete third sentence.
- Page 2, second paragraph, second sentence: change “documents” to “document”. Third sentence: change “but” to “and”.
- Page 3, second paragraph, third sentence: delete “(Note:”); capitalize “justice”; add “(COQ)” after “Query”; add “New Mexico” between “secure” and “Consolidated”. Fourth sentence: delete “,and never has” after “...Case Lookup does not”; and, change “provided” to “provide”.
- Page 3, third paragraph, first sentence: delete “New Mexico Consolidated Query”. Fourth and fifth sentences: change “protective orders” to “orders of protection”.
- Page 3, fourth paragraph, third sentence: delete “and” after “employers”; change “etc.” to “and others”; and, delete “Therefore, contrary to the assertion of the ABA Commission”.
- Page 3, sixth paragraph, first sentence: change “district courts” to lower case; and, add “court” after “appellate”.
- Page 4, second paragraph, first sentence: change “espoused” to “contended”; and, add “Records and” after “State”.
- Page 4, fourth paragraph, fourth sentence: change “and” to “an”.
- Capitalize “internet” throughout document.

Judge Basham moved that the words “no fee” be added after “provide” in the first sentence of the second paragraph on page 1 of the PAS Executive Summary. Paula Chacon seconded. No further discussion. No opposition noted. Motion carried.

Dennis Jontz moved for deletion of the last sentence in the third paragraph on page 1 of the PAS Executive Summary (*The practical obscurity in relation to criminal defendant data concept was firmly established by the 1989 U.S. Supreme Court decision in Reporters Committee v. DOJ*). Judge Basham seconded. No further discussion. No opposition noted. Motion carried.

Mr. Mead moved to add the following language as the last sentence of the third paragraph on page 1 of the PAS Executive Summary: “*further to date New Mexico public Internet access is limited to a register of action of court records.*” Judge Basham seconded. There was discussion on what the Judiciary is currently able to provide online—a registry of court actions but not the actual documents; Reporters Committee v. DOJ; phishing; and, protecting personal identifiers. No further discussion. No opposition noted. Motion carried.

Judge Basham moved approval of the following changes to the fourth paragraph of page 1 of the PAS Executive Summary: (1) Second sentence- add the word “adopt” between the words “courts” and “electronic” (2) Last sentence- add the word “any” between the words “before” and “digitized”. Ms. Chacon seconded. No further discussion. No opposition noted. Motion carried.

Mr. Mead moved approval of the following changes to the fifth paragraph of page 1 of the PAS Executive Summary: (1) First sentence- add the word “public” between the words “regarding” and “Internet”; end the sentence with the word “records” (2) Second sentence- change the word “had” to “have” (3) Delete the third sentence “The members decided to intensively study the New York and Minnesota public access documents to determine if the contents of those documents might guide creation of a similar document by PAS.” (4) Fourth sentence- add the word “after” between the words “but” and “publicized”. Judge Basham seconded. No further discussion. No opposition noted. Motion carried.

Mr. Mead moved that the PAS make the changes discussed to the PAS Executive Summary and submit it to JIFFY. Judge Basham seconded. Ms. Cox reminded the PAS that they needed to revisit the first paragraph of Page 2 of the PAS Executive Summary after the agenda item *Discussion on PAS Voting Matrix*. No further discussion. No opposition noted. Motion carried.

B. PAS Document

Discussion on Possible Re-Vote of PAS Recommendations. Judge Mitchell referred to the PAS Document and spoke of the following:

- The PAS had lively discussions.
- The PAS actively looked at the issues.
- As the PAS discussed the issues, some members may have changed their position on the issues, but PAS did not re-vote on them.
- PAS passed on their document to JIFFY in November of 2009.

- An issue was raised of whether or not the PAS should re-vote on the recommendations.

There was discussion on the following points:

- Concerns with the process—the PAS Document should remain as it was presented to JIFFY in November of 2009.
- The positions are well stated in the PAS Document.
- Suggestion that those who do not support the majority positions in the PAS Document lobby the Supreme Court when it considers the recommendations.
- Concerns voiced with incorporating the PAS Voting Matrix into the PAS Document because on its face, it appears that there was unanimous support for the positions and there was not. It was a flaw in the process and it was unfortunate that the PAS did not take a substantive vote after the oppositions were fleshed out or after the public was made a part the process.
- The PAS Voting Matrix is historically accurate because it reflects the votes. It also reflects the thorough process that the PAS followed.
- JIFFY is more interested in the pros and cons being suggested to them. They are not concerned how each PAS member voted.
- Concerns voiced with the PAS Executive Summary initially being added to the PAS Document before the PAS met to consider it.
- Oversight of the PAS process not to re-vote on the recommendations after they were fleshed out and after the public was involved.
- The Supreme Court’s intent to publish in some form the PAS Recommendations for public comment.
- Individual PAS votes will not sway JIFFY’s or the Supreme Court’s view of the recommendations.
- Minority and majority language was changed to *argument in support of* and *argument in opposition of*.
- Ms. Cox’s concern that she did not oppose the motions moved at the October 14, 2008 meeting because she was having trouble hearing the discussions due to the poor telephone connection.
- JIFFY’s assumption that the PAS votes were closer.
- Suggestion that the PAS provide JIFFY with a modified voting matrix that does not include the process issues, but the votes relative to the four main recommendations.

Mr. Mead moved that the PAS not re-vote on the PAS Recommendations. Arthur Pepin seconded. Ms. Cox opposed the motion. No further discussion. Motion carried.

Discussion on PAS Recommendation B. Judge Mitchell spoke of the following points:

- She added this item to today’s agenda because JIFFY made several comments on the PAS Recommendation B.
- She accepted responsibility for asking Steve Prisoc to include conditional discharge language in this recommendation, per JIFFY’s request.

- It is truer to the PAS for it to go back to the PAS Document of November 10, 2010.
- Every document that JIFFY has been presented by the PAS has been stamped “draft”.
- She entertained a motion that PAS fix PAS Recommendation B back to the way it appeared in the November 10, 2009 PAS Document.
- There were no other changes made to the PAS Document of November 10, 2009.

Mr. Prisoc moved that PAS go back to the PAS Document dated November 10, 2009, excluding conditional discharge in Recommendation B. Mr. Pepin seconded. There was discussion about letting JIFFY include their change relative to conditional discharge in their executive summary, and suggestion that JIFFY not remand their changes to the PAS to make. Judge Mitchell commented that this motion upheld the integrity of what the PAS did. **Ms. Cox opposed the motion because she supported the opposition position. No further discussion. Motion carried.**

Consideration of Insertion of Language to Clarify that Cases Would be Removed from the “Public” Court Internet Record Only. Judge Mitchell reported that she verbally clarified to JIFFY that the PAS solely addressed public Internet records. She noted that the PAS Executive Summary captured this fact, and there was consensus on PAS that was sufficient enough.

Consideration of JIFFY Language Concerning Conditional Discharge. Judge Mitchell advised that this item was addressed in earlier discussions.

Discussion on the PAS Voting Matrix.

Mr. Jontz moved that PAS not include the PAS Voting Matrix because it is inaccurate, not up to date and misleading. Ms. Cox seconded. There was concern voiced about the word “misleading.” **Mr. Jontz amended his motion to remove the word “misleading”.** **Mr. Pepin suggested that the motion be amended to the following language: “PAS not include the PAS Voting Matrix because it does not reflect the full consideration of the issues that occurred after the votes were taken.”** **Mr. Jontz and Ms. Cox accepted Mr. Pepin’s suggestion.** Concerns were raised about not providing JIFFY with the information they requested; providing JIFFY with a modified voting matrix that would reflect the votes on the four PAS Recommendations; and, concerns that the PAS Voting Matrix is misleading. **Judge Basham called the question. Judge Mitchell asked for a show of hands of those members in favor of the motion: Mr. Jontz, Ms. Cox, Kathy Gallegos, Ms. Chacon, Mr. Mead, Mr. Pepin and Judge Basham. Mr. Prisoc opposed the motion. Motion carried.**

Mr. Pepin moved that the PAS provide to JIFFY a modified voting matrix that reflects the votes taken on the four recommendations outlined in the PAS Document. Judge Basham seconded. Mr. Mead asked for a friendly amendment of the motion that the modified voting matrix not be attached as an appendix to the PAS Document. Mr. Pepin and Judge Basham accepted the amendment. Ms. Cox and Mr. Jontz opposed the motion. No further discussion. Motion carried.

Action Item: With respect to the first paragraph of page 2 of the PAS Executive Summary, Mr. Pepin suggested that in light of the above vote that PAS remove the sentence “The PAS votes are included in Appendix ____.”

PAS then went through the document entitled *Judicial Information Systems Council, Public Access Subcommittee Voting Matrix for Calendar Years 2008 and 2009*, which was attached to the PAS agenda, and selected the following votes that would be passed on to JIFFY in a modified voting matrix:

- Page 1: 06/17/08: *With respect to civil cases only, the litigants and/or those filing documents with the courts, are primarily responsible for ensuring that sensitive information is kept out of the court records. Court personnel will serve as a second tier to remove sensitive information.*
- Page 2: 08/19/08: *There is a strong legal presumption that written court files are public. Remove PAS member name from the amendment language.*
- Page 2: 09/16/08: *Adoption of a philosophical premise to move forward that Internet public access of court records are by nature fundamentally different than that of the courthouse official record.*
- Page 3: 10/14/08: *With respect to criminal cases, the agency and/or party generating the documents is responsible for ensuring that sensitive information is kept out of the court record. Court personnel will serve as a second tier to remove sensitive information, especially with respect to electronic access.*
- Page 3: 10/14/08: *PAS adopt the American Bar Association policy that records of closed criminal cases where charges were dismissed, nolle'd, acquitted, reversed on appeal, or vacated would be removed from the Internet record. Remove PAS members' names from the amendment language.*
- Page 3: 11/18/08: *JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date, excluding those cases with outstanding warrants and/or fines/fees due and excluding domestic violence cases, DWI cases, and crimes explicitly mentioned in the Adam Walsh Act. There was discussion about showing the evolution of the votes.*
- Page 4: 11/18/08: *With respect to how the Judiciary should handle bulk records' requests, Judge Basham moved that PAS adopt the “In the Matter of the Approval of the Digital Recording Policy and Bulk Records Policy for the Judicial Branch of Government, Supreme Court Order #: 04-8500, filed on October 14, 2004.”*
- Page 5: 02/17/09: *Modify the PAS position language of: “PAS adopt the American Bar Association policy that records of closed criminal cases where charges were dismissed, nolle'd, acquitted, or vacated would be removed from the Internet record” to the following: “PAS adopt the American Bar Association policy that records of closed criminal cases where charges were dismissed, nolle'd, acquitted, or vacated would be removed from the Internet record, excluding dismissals subsequent to a deferred sentence.”*
- Page 7: 08/18/09: *Amend the PAS recommendation to: “In both civil and criminal cases, the responsibility for the content of pleadings and for ensuring that any confidential,*

identifying or other such sensitive or private information is protected should lie with litigants who come before the court, with the courts' policy to further remove or redact personal identifiers as feasible, particularly if such records are to be made electronically available to the public via the Internet."

- Page 7: 08/18/09: Amend the recommendation (JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date, excluding those cases with outstanding warrants and/or fines/fees due and excluding domestic violence cases, DWI cases and crimes explicitly mentioned in the Adam Walsh Act) that Case Lookup should mirror the retention schedule for physical files.

Ms. Cox reiterated her concern relative to the vote taken on November 18, 2008 (*JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date, excluding those cases with outstanding warrants and/or fines/fees due and excluding domestic violence cases, DWI cases, and crimes explicitly mentioned in the Adam Walsh Act.*) Ms. Cox said she thought she abstained from this vote. LaurieAnn Trujillo's notes did not indicate that Ms. Cox had abstained. Judge Mitchell noted that the recording could be pulled to verify the vote in question, and then she noted the action item assigned to Ms. Cox (*Ms. Cox will return to the BCMC with the clarification of Mr. Prisoc's motion. If she receives concerns relative to the motion, Ms. Cox offered to write a dissent relative to the following PAS motions: (1) PAS adopt the ABA's policy that records of closed criminal cases where charges were dismissed, nolle'd, acquitted, or vacated would be removed from the Internet record."* (2) *JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date, excluding those cases with outstanding warrants and/or fines/fees due and excluding domestic violence cases, DWI cases, and crimes explicitly mentioned in the Adam Walsh Act."*)

Mr. Pepin moved that the PAS November 18, 2008 meeting minutes be amended to reflect that Ms. Cox abstained from the vote: "*JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date, excluding those cases with outstanding warrants and/or fines/fees due and excluding domestic violence cases, DWI cases, and crimes explicitly mentioned in the Adam Walsh Act.*" Mr. Mead seconded. No further discussion. No opposition noted. Motion carried.

Action Item: In light of the above vote, PAS to make the following change to the PAS Voting Matrix, page 3: "*11/18/08, JID Staff be directed to remove all misdemeanor cases from court online systems on the third anniversary after the final adjudication date, excluding those cases with outstanding warrants and/or fines/fees due and excluding domestic violence cases, DWI cases, and crimes explicitly mentioned in the Adam Walsh Act; 5 votes in favor, and 1 abstained.*"

There was discussion that the JIFFY vote on PAS Recommendation B was a tie that was broken by a vote in favor of by the chairman.

Discussion on Possible Inclusion of “Online Court Case Lookup Systems by State”. Judge Mitchell referred to the document entitled “*Online Court Case Lookup Systems by State*”, which was distributed to the PAS members. She noted that this document was not included in the PAS Document.

Ms. Cox moved that the document entitled “*Online Court Case Lookup Systems by State*” not be added to the PAS Document. Mr. Mead seconded. No further discussion. No opposition noted. Motion carried.

IV. The next PAS meeting will be held on Tuesday, June 15, 2010 at 1:00 p.m. at JID. Mr. Pepin suggested that the PAS suspend any further meetings of the PAS until such time as it needs to be called back into session.

Mr. Prisoc shared his gratitude to serve on this subcommittee.

PAS recognized Judge Mitchell for serving as their chairperson. The document drafters were also recognized for their hard work. Judge Mitchell thanked the PAS members.

V. Adjourn. Judge Mitchell adjourned today’s meeting at 3:39 p.m.

Final Minutes Approved by Judge Mitchell on June 4, 2010.