

Meeting Minutes of the 183rd
Judicial Information Systems Council (JIFFY)
Judicial Information Division (JID)
Thursday, May 20, 2010
9:31-11:43 a.m.

Voting Members present:

Judge Michael Bustamante, Chair
Judge Karen Mitchell, Vice Chair
Judge Richard Knowles (*via phone*)
Judge Camille Martinez-Olguin
Judge Clay Campbell (*via video*)
Judge Duane Castleberry
Juanita Duran
Jan Perry (*via video*)
Helen Miller (*via video*)
Robert Mead
Brian Gilmore
Dennis Jontz

Voting Members absent:

Judge Alan Kirk

JID Staff present:

Andre O'Brien
Brian Eckert
Tom Edwards
Grace Catanach

Non-Voting Members present:

Justice Petra Jimenez Maes
Arthur Pepin
Steve Prisoc
Pauline Toevs

Guests present:

Orlando Ulibarri (*9th DC*)(*via video*)
Oscar Arevalo (*AOC-Fiscal*)
Gloria Landin (*1st DC*)
Phil Hedrick (*BCMC*)(*via video*)
Deborah Gutierrez-Torres (*2nd DC*)(*via video*)
Sarah Welsh (*NMFOG*)
Dr. Julie Carroll (*BCA*)
Frank Dimaggio (*2nd DC*)(*via video*)

Minutes taken by: LaurieAnn Trujillo

Judge Michael Bustamante called the meeting to order at 9:31 a.m. and established a quorum.

I. Approval of Agenda. Steve Prisoc requested that *Review and Approval, Discussion on Public Access Subcommittee Document* be moved up on the agenda to accommodate Judge Richard Knowles who is out of town attending today's meeting via teleconference. Justice Petra Jimenez Maes requested that *Odyssey Steering Committee* and the *IV&V Report* be moved up on the agenda to accommodate Dr. Julie Carroll's schedule. No objections were voiced, so the agenda was changed as requested.

II. Budget and Revenue

JID Revenue Pipeline Report Fiscal Year 2010 Projection Report

Oscar Arevalo reported the following:

- He referred to the document entitled *JID's Revenue Pipeline-FY10*, which was attached to the JIFFY agenda. The SCAF Fund could exceed \$4 million on the revenue side if collections/transfers continue to come in.
- He then referred to the document entitled *Case Management Revenue Pipeline-FY10*, which was attached to the JIFFY agenda. The breakdown is holding at approximately \$820,000.00. In July or August, he will provide JIFFY with possible revenue adjustments to consider relative to the case management fund.
- The third quarter transfer from the Las Cruces red light camera revenue came in at \$75,000.00. Based on this figure, there is a potential to receive \$302,000.00 per year from this program; however, because they are awaiting the results of the Las Cruces' census, it is unclear at this point if this revenue will be recurring.
- The Santa Fe Police Department is interested in the red light camera program. Rio Rancho is also considering the red light camera program.
- Issues with a video arraignment full time employee position that will need to be addressed next year.
- Year-end Budget Adjustment Request was done and the SCAF Fund will be within budget this fiscal year. The SCAF Fund approved budget amount is \$4,169,600.00. Mr. Arevalo will provide JIFFY with the final budget amounts after all of the expenditures have been accounted for.
- Fiscal Year 2011 - Tyler Technologies' (Tyler) maintenance agreement payments will draw down the SCAF Fund balance. The SCAF Fund projection for Fiscal Year 2011 will be about \$4.3 million with the capacity to increase it to almost \$4.8 million.
- Budget Committee met yesterday. The Administrative Office of the Courts (AOC) management team discussed impacts to JID. Any reduction in the General Fund puts more strain on the SCAF Fund.
- The \$6 million appropriation is on track. He is working with Tom Edwards and Grace Catanach to draw that fund balance down.
- EDMS Funds: A small balance remains on the Thirteenth Judicial District Court's side.
- He expects all of the appropriations to zero out before the fiscal year ends.
- He projected the \$2 million appropriation to draw down well before the end of the next fiscal year and to start tapping into the other amounts associated with the \$10.00 civil filing fee increase.
- The magistrate courts agreed to allocate all of their capital monies to the Video Arraignment Program next year.

There was discussion on the following points:

- There is a balance of \$6,800.00 left in the \$750,000.00 appropriation. Mr. Arevalo is working with Ms. Catanach to determine if that balance can be shifted to another area.

Mr. Prisoc added that since yesterday, the University of Alabama advised that they would not bill the Judiciary for \$22,000.00 of the \$150,000.00 that was allocated for the electronic citations project. He spoke to Ms. Catanach and Mr. Edwards and they will reallocate those funds to be used for security in June.

- The electronic citations pilot is now live in Roswell.
- TRACS meeting.
- Confirmation that an encumbrance is in place from the \$750,000.00 appropriation for the network study for the Second Judicial District Court (Second).

III. Odyssey Steering Committee. Judge Karen Mitchell reported the following:

- The Odyssey Steering Committee (OSC) met yesterday.
- Grants Magistrate Court is now live with Odyssey, and it was a smooth implementation.
- Helen Miller confirmed that the Farmington Magistrate Court staff is pleased with Odyssey.
- No changes to the risk register or the issues log.
- Administrative report
 - Mr. Prisoc advised that the \$6 million contract with Tyler was closed and the Judiciary is moving into the new contract.
 - JID Staff conducted meetings with the Tyler president and other Tyler representatives that resulted in Tyler deferring the maintenance payments on the add-ons until the end of calendar year 2014.
 - The hot site is in the initial planning phase. JID Staff are testing the replication device that will be located at the Bernalillo County Metropolitan Court (BCMC). The hot site will be a scaled-down array of all of the servers that run Odyssey at JID.

IV&V Report. Dr. Carroll reported the following:

- Reaffirmed the new level of comfort in the rollouts by JID Staff and the AOC Fiscal Staff. Tyler is less involved, and JID Staff are assuming more responsibilities.
- Lessons Learned Meeting wherein key areas were identified to make implementations go smoother.
- The BCMC is looking forward to a formal kickoff of the BCMC and Tyler activities.
- Concern relative to the decision to convert the BCMC old data and the potential risks to the budget and schedule.
- The Second is currently working on their integrations.
- Rollouts are going well.

IV. Review and Approval

Discussion on Public Access Subcommittee Document. Judge Mitchell reported the following:

- The Public Access Subcommittee (PAS) met on Tuesday.
- In March, JIFFY asked the PAS to do some additional work on the executive summary

- and for clarification on some of the matters.
- PAS met in April but they did not have an opportunity to perform what JIFFY asked of them.
 - At the Tuesday meeting, the PAS finalized their documents. She referred to the packet entitled *Public Access Subcommittee*, which was distributed to the JIFFY members. It contained the following documents:
 - *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 the Public Access to Court Case Records via the Internet, November 10, 2009 (PAS Document)*
 - *Executive Summary*
 - *PAS Voting Matrix*
 - PAS determined that the PAS Document dated November 10, 2009 was PAS's final document to be considered by JIFFY.
 - PAS discussed its role and what JIFFY wanted the PAS to accomplish. PAS felt it was important that it maintain the integrity of what it did, so they asked JIFFY to consider the following options:
 - If JIFFY makes changes to the PAS Document that it then become JIFFY's document; or,
 - JIFFY leave the PAS Document and Executive Summary as presented to JIFFY and any JIFFY changes be noted in a separate cover report from JIFFY to the Supreme Court.
 - PAS's preference is that the PAS Document remains in tact.
 - PAS approved the Executive Summary as presented to JIFFY. She recognized Robert Mead, Mr. Prisoc and Dana Cox for drafting it.
 - One of the underlying premises that PAS worked under was that the New Mexico Judiciary would continue to provide a no fee public Internet access to court records.
 - PAS discussed the possibility of re-voting on the PAS Recommendations.
 - PAS used the New York and the Minnesota public access documents as their models.
 - Early on, PAS voted and made recommendations.
 - PAS members took assignments of writing a pro or a con about the recommendations. PAS heard from the public and had their own discussions.
 - PAS asks that JIFFY not include the PAS Voting Matrix as part of the PAS Document because the PAS Voting Matrix did not accurately represent the diversity that the PAS discussed when it addressed each of the issues. The votes represented that the PAS needed to research and discuss an issue.
 - The PAS meetings were public.
 - PAS Recommendation B and JIFFY's requested changes relative to conditional discharges and including the word "public" before Internet records.
 - PAS clearly defined that it only addressed Internet public access.
 - PAS did not address the New Mexico Consolidated Offender Query (NMCOQ) that law enforcement have access to. She pointed out that law enforcement entities should not be using the Judiciary's Case Lookup system as it does not provide complete information.

- The PAS asked that Mr. Prisoc's research entitled *Online Court "Case Lookup" Systems by State* not be included in the PAS Document because that information came out after the PAS endorsed the November document.
- PAS voted to suspend further PAS meetings, unless directed otherwise by JIFFY.

There was discussion on the following points:

- It is unfair to the PAS members who are not JIFFY members to doctor the PAS Document without the PAS's input.
- Concerns with incorporating the PAS Voting Matrix into the PAS Document.
- PAS members that may have changed their position on the PAS Recommendations after public involvement and after the PAS Document was written.
- Clarification that PAS only addressed public Internet records, not records available through the inside Judiciary website.

Judge Bustamante asked JIFFY members if they wanted to reconsider their position on the PAS Recommendations A and B that they previously voted on. Because there was not interest voiced to reconsider the PAS Recommendations A and B, Judge Mitchell referred to the Executive Summary, and read the PAS Recommendation C, as follows: *PAS recommends that cases on Case Lookup should only be those cases for which the physical files have been retained by the courts in accordance with the retention schedules as established by the New Mexico Administrative Code.* She pointed out the following:

- District courts are courts of record, so this recommendation does not in any way affect district court records.
- The BCMC is a court of record for DWI and domestic violence cases.
- The magistrate courts are not courts of record but they have been instructed by rules of the Supreme Court to retain DWI and domestic violence records.
- This recommendation solely relates to non-record charges.
- If the physical file is destroyed, then the Internet record should also be eliminated.
- The fundamental reason for this recommendation is there is no way to verify an Internet court record once the physical file is destroyed.
- PAS heard testimony that employers and landlords use the Judiciary's Case Lookup as a defacto criminal history check; however, the inability to correct old information in Case Lookup once the physical file is purged is troubling to the PAS members who supported this recommendation.
- The New Mexico Department of Public Safety (NMDPS) is the official criminal history repository.
- The opposition to this recommendation voiced the following:
 - While they recognize that NMDPS is the official repository for case information, that information is not available online and is subject to certain statutory limitations.
 - Because criminal history is not easily obtained by NMDPS, the public has become dependent on the Judiciary's Case Lookup system.
 - New Mexico Foundation for Open Government advocates testified to the PAS

- that the Judiciary's Case Lookup system is easier to use than NMDPS' request system or making a formal request under the Inspection of Public Records Act.
- Acknowledgment that while the State Records and Archives Department may have limited space issues necessitating their routine of destruction of paper court files, that does not abrogate the right of the public to have access to such information.
- Concerns expressed about destroying files involving violent misdemeanor charges.
- After the PAS Document was written, PAS learned that the BCMC is scanning files before they destroy their paper files.

There was discussion on the following points:

- Concerns expressed with the BCMC scanning destroyed paper files.
- How the BCMC uses the scanned documents.
- PAS did not address the issue of the BCMC scanning destroyed paper files and providing access to those records. The PAS felt they would address those issues when they discussed public access to electronically-filed documents.
- The majority of the PAS believed that Internet access to digital copies of records is fundamentally different than that of the hard copy.
- To date, the Judiciary's public Case Lookup system is limited to a register of court actions.
- New Mexico Administrative Code is a regulation based upon statute.
- Concerns that some may be making an assumption that there is a limitation on retention based on space but there may be other factors involved.
- Concern with more being made available online than what would be available if someone went to a courthouse.

Judge Knowles moved adoption of the PAS Recommendation C. Juanita Duran asked how the Second would address public access to records once document management is implemented. **Judge Mitchell seconded.** There was further discussion on: (1) the PAS revisiting the issue of scanned and digitized files within the next eighteen months; (2) public perception that court records are open for all to see; (3) concerns with destroying case information for space and convenience sake; (4) retention schedules do not address electronic court files; (5) case management systems allow for a file to be marked when the physical file is destroyed so it will not appear on the public website; (6) concerns with removing information from public Internet access that would prevent people from knowing if there is a pattern of misconduct on a particular individual; (7) concerns with JIFFY and PAS trying to resolve issues related to public access; (8) misleading to display a record online when the paper file has been destroyed; and, (9) New Mexico Administrative Code does not require agencies to destroy paper files—they can retain them but it becomes a space and cost issue for that particular agency. **Mr. Mead called the question. Judge Bustamante asked for a show of hands of those members in favor of the motion: Judge Knowles, Judge Mitchell, Judge Camille Martinez-Olguin, Judge Duane**

Castleberry, Ms. Duran, Mr. Mead, Ms. Miller and Jan Perry. Members who opposed the motion: Dennis Jontz, Brian Gilmore and Judge Clay Campbell. Motion carried.

Judge Mitchell proceeded to read the PAS Recommendation D, as follows: *PAS recommends the continued application of the policy set forth “In the Matter of the Approval of the Digital Recording Policy and Bulk Records Policy for the Judicial Branch of Government,” Supreme Court Order No. 04-8500, entered on October 14, 2004.* She spoke of the following:

- Concerns expressed that some data consolidators only provide a snapshot of records and the potential risk of consolidators not refreshing data on a regular basis.
- PAS members in favor of this position recommend that the Judiciary not sell its data to resellers.
- PAS members in opposition to this recommendation advocate the following:
 - Court records should be provided online to the public to the same extent that paper court files are available to the public.
 - It is more convenient to access court records online than to go to a courthouse.
 - Updated information is more likely to be obtained electronically than if someone visits a courthouse and makes a copy and then never goes back to see if there was any follow-up.
 - Technology is available that would protect personal identifiers.

Judge Mitchell moved approval of the PAS Recommendation D. Judge Martinez-Olguin seconded. Mr. Jontz pointed out that this is a significant issue to lawyers. He consulted with the State Bar of New Mexico on this issue and the Board of Bar Commissioners unanimously adopted the minority position. Judge Bustamante noted that the Board of Bar Commissioners’ letter was distributed to JIFFY members at a previous meeting. There was discussion on the following: (1) it is not unusual for courts to sell bulk data; (2) placing controls on bulk data through Odyssey; (3) people are currently coming into the courts on a regular basis to obtain case file information; (4) only three state courts have a free public Case Lookup system in the country—the rest charge for information; (5) JID Staff receive complaints regarding mistakes in criminal histories; (6) Criminal Searches.com; (7) Appendix V of the PAS Document is the bulk records policy as it currently exists; (8) Appendix VI of the PAS Document is a proposed revision to the bulk records policy; (9) go slow approach if this policy is revised; and, (10) issuing requests for information in the vendor community. **Clarification was made that if JIFFY members voted yes to this motion, it meant that JIFFY was recommending that the bulk records policy remain as is. If JIFFY members voted against this motion, it meant that JIFFY members were recommending that the Supreme Court revisit the bulk records policy. Members in favor of the motion: Ms. Miller. Members who opposed to the motion: Mr. Mead, Judge Mitchell, Judge Campbell, Judge Martinez-Olguin, Ms. Duran, Mr. Jontz, Judge Castleberry, Ms. Perry and Mr. Gilmore. Motion failed.**

Mr. Mead moved that in light of the vote above that JIFFY send the question of bulk sales to the Bulk Sales Subcommittee for further research and analysis before making a

recommendation to the Supreme Court. There was discussion relative to the Bulk Sales Subcommittee membership. Judge Bustamante suggested that the Supreme Court needed to rethink the policy and it would decide how that would be done. **Mr. Mead withdrew his motion.**

Mr. Jontz moved that JIFFY recommend to the Supreme Court that it rethink its policy on bulk records. Mr. Mead seconded. There was discussion on: (1) the basis for why the Supreme Court would be requested to do this; curiosity was expressed on how Odyssey handled public access; (2) Judge Bustamante advised that the Supreme Court would receive from JIFFY all of PAS' work, JIFFY's reaction to the PAS's work, and a separate JIFFY recommendation on the PAS Recommendation D; (3) concerns about voting on the opposition report; and, (4) the PAS Document Appendix VI. **Mr. Jontz restated his motion as follows: JIFFY advise the Supreme Court that it did not adopt the PAS Recommendation D and that JIFFY recommend that the Supreme Court review the policy and consider the arguments of the opposition report in doing so.** Judge Bustamante voiced concern that the wording was too narrow. He suggested that the Supreme Court consider all of the pros and cons to determine if a change to the policy was necessary. **Mr. Jontz withdrew his motion.**

There was a lengthy discussion on the PAS Voting Matrix.

Mr. Jontz moved that the opposition report on the PAS Recommendation D be the recommendation of JIFFY to the Supreme Court. Judge Campbell seconded. Judge Mitchell called the question. Judge Bustamante asked for a show of hands of those members in favor of the motion: Judge Knowles, Mr. Jontz, Mr. Gilmore, Judge Campbell, Ms. Duran, Ms. Miller and Mr. Mead. Those members who opposed the motion: Judge Mitchell, Judge Martinez-Olguin, Judge Castleberry and Ms. Perry. Motion carried.

Mr. Mead moved that after the above vote that JIFFY recommend to the Supreme Court to delay adopting any change to the bulk records policy until such time as additional specific research has been done, so we don't change it immediately but look at the business landscape before making any change. Mr. Mead clarified that his motion is for the Supreme Court to decide who will conduct the research. Judge Mitchell seconded. Judge Bustamante asked for a show of hands of those members in favor of the motion: All in favor. No further discussion. Motion carried.

Mr. Mead moved that JIFFY not send the PAS Voting Matrix to the Supreme Court. Mr. Jontz seconded. Judge Campbell opposed the motion. No further discussion. Motion carried.

Judge Mitchell moved that JIFFY not send the document entitled *Online Court "Case Lookup" Systems By State* as part of the PAS Document. She noted that it is not currently

part of the PAS Document, so she withdrew her motion.

Action Item: Mr. Prisoc offered to investigate how Odyssey courts throughout the country are handling bulk data.

V. Purchase Requests

Fifth Judicial District Court's request to purchase network backup devices. Mr. Prisoc advised that the Fifth Judicial District Court (Fifth) would like to purchase network backup devices in conjunction with Odyssey to eventually store images and other data documents. He supported their request and suggested a spending cap of \$10,000.00. The Fifth will fund the purchase.

Judge Martinez-Olguin moved approval of the Fifth's request to purchase network backup devices for up to \$10,000.00. Mr. Mead seconded. No opposition noted. No further discussion. Motion carried.

VI. JIFFY Sub-Committee Activities

Judges User Group. The Judges User Group did not meet in May.

Record E-Mail Subcommittee. Judge Campbell reported that Mr. Mead, Mr. Prisoc and Arthur Pepin voted in favor of the proposed email retention policy that was circulated to JIFFY in August. He and Mr. Gilmore voted in favor of no policy. At the next JIFFY meeting, he will present both positions for JIFFY to consider and vote on.

Action Item: Per Judge Bustamante, Judge Campbell to provide JIFFY members with a document noting the positions of the Record E-Mail Subcommittee for JIFFY to review and consider prior to the next JIFFY meeting.

Public Access Subcommittee. Please see *Review and Approval* above regarding the discussions that took place relative to the Public Access Subcommittee.

VII. CIO Report. Due to the limited time, Mr. Prisoc offered to present his CIO Report at the next JIFFY meeting.

VIII. The next meeting will be held on Thursday, June 17, 2010 at 9:30 a.m. at JID.

IX. Adjourn. Judge Bustamante adjourned today's meeting at 11:43 a.m.

X. Additional Attachments

Project Status Reports. There was not discussion relative to the *Project Status Reports*, which were attached to the JIFFY agenda.

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