

**CONTENT/ACCESS SUBCOMMITTEE
Wisconsin Circuit Court Access (WCCA)
Oversight Committee**

MINUTES

January 20, 2006

9:30 a.m.

G.A.R. Room
Wisconsin State Capitol
Madison, WI

MEMBERS PRESENT: John Barrett, Milwaukee County Clerk of Circuit Court ; Jean Bousquet, CIO CCAP; Attorney Mary Burke, Department of Justice; Judge Gary Carlson, Taylor County; Carole Doeppers, Government/Privacy Consultant; Judge Charles Kahn Jr., Milwaukee County; Bill Lueders, President Wisconsin Freedom of Information Council; Gregg Moore, District Court Administrator; Attorney Gerald Mowris; Sheriff Randy Roderick, Green County; and Rep. Marlin Schneider.

MEMBERS ABSENT: Jeffrey Schmidt, Ozaukee County Clerk of Circuit Court.

OTHERS PRESENT: Lori Irmen, Director of State Courts Office.

1. **Approval of Minutes**

The minutes of the December 8, 2005 subcommittee meeting were approved as submitted.

2. **Draft Forms for Removal of Address**

At the last meeting, Judge Carlson offered to draft a petition form for removal of address from WCCA. He said he drafted the form using the decisions previously made by the subcommittee that concluded that redaction of the address would be done using these criteria:

- only in civil, not criminal cases;
- allow the form to include removal to protect other family members;
- require a demonstrated harm or threat to the person to obtain removal;
- require a judge to make the decision;
- street and city name would be removed if granted;
- require separate petitions in each case where the address is to be removed;
- petition must be filed in the county in which the case information is located.

Judge Carlson said he drafted the forms using the basic template that the pro se divorce forms project adopted for pro se forms that includes instructions along the left side of the form. Judge Carlson said he drafted two versions of the form for the subcommittee to consider. He said one draft incorporates some of the criteria provisions of AB707, a bill to allow the removal of address from voter registration records. He said AB707 requires the person to include an affidavit of verification of "victim" status from the sheriff, chief of police, etc. He said the other

version does not require an affidavit and instead, a person merely cites to the case in which they are a victim. He said this version also provides a second ground for removal by a person who believes there is a threat but no case has been filed. He said the version without an affidavit would be less cumbersome and the easiest for most people to do. Mr. Lueders asked if the judge's decision could be appealed. Judge Carlson said that any motion brought before the court can be appealed.

Atty. Burke said she likes the format with the instructions appearing on the side and said requiring a notarized signature adds credibility to the form. She added that she saw no need to have an affidavit. Atty. Burke recommended that substituting "household" member for "family" member throughout the form might be a better reflection of persons potentially affected by the threat. Rep. Schneider agreed that a member of household should be added but thought that family member should remain so children that reside at another address, usually because of custody arrangements, could be covered in the petition.

Rep. Schneider asked what demonstrated a threat of harm. Judge Carlson said some kind of external act. Mr. Lueders said it was agreed at earlier meetings that being a member of a particular profession alone, such as law enforcement, was not reason enough to have the address removed. He said the language on the form should be specific as possible to reflect that. Judge Kahn suggested the subcommittee define threat of harm as physical body harm and not harm to reputation. He further added that the form should indicate whether or not the person has previously filed the petition in another court.

Rep. Schneider asked if it is possible to identify who is accessing the information via the IP address. Ms. Bousquet said CCAP Steering has discussed this in the past and they made a policy decision that IP addresses would not be kept.

The subcommittee agreed the version of the form that does not require the affidavit would be the best approach. They also agreed that household members should be included in the petition as well as language reflecting that the petition is not intended for a category of professions. They also agreed an indication if the petition had been filed elsewhere should be added to the form. Judge Carlson made a motion that the subcommittee accept the version of the form without the affidavit as updated with the mentioned amendments. Rep. Schneider seconded the motion. The motion carried unanimously.

3. **Mistaken Identity/Identity Theft Cases**

Mr. Moore said this subcommittee previously dealt with the manner in which aliases are searched and agreed that a code should be created to indicate when an alias is a result of mistaken identity/identity theft so the name would not be searchable. He said the Retention/Accuracy Subcommittee also discussed mistaken identity/identity theft but deferred the issue to this subcommittee. Mr. Moore said the Retention/Accuracy Subcommittee came up with a suggestion to develop a procedure to remove personal information from WCCA in cases of mistaken identity/identity theft. He asked the subcommittee if they wanted to consider the suggestion. Attorney Mowris said the procedure should include wrongly accused persons and

situations where charges were improperly brought by the district attorney. Mr. Moore said those situations should be dealt with separately.

Mr. Moore said the subcommittee previously discussed that the recommended procedure would be to change the name in the case to the correct person. He said that would create an alias for the incorrect person but the alias would not be searchable. Mr. Barrett said that it is reasonable if the correct person is known but it does not completely solve the problem if the correct person is unidentified or if the case against the incorrect person is dismissed and then it is refiled against the correct person. He said developing an affidavit to allow a person to petition to remove personal information in these situations might be an approach to further discuss. Attorney Burke wanted clarification that the records being discussed pertain to WCCA only and not the paper records. The subcommittee agreed with that clarification.

Ms. Doeppers asked where the affidavit would originate, such as from the victim or district attorney. She also inquired about any costs to file the petition. Attorney Mowris said he thought the victim should initiate the petition but require an affidavit from the district attorney supporting the removal. Judge Carlson said the petition would be part of a case file, not a new action, so a filing fee would not apply. Attorney Burke said possibly a form could be developed, similar to the form to petition the removal of the address. Rep. Schneider said it could be problematic if the district attorney will not support the petition.

Attorney Mowris made a motion that a petition form be drafted to request the removal of personal information from WCCA in cases of mistaken identity and identity theft. Judge Carlson seconded the motion. The motion carried unanimously. Judge Carlson offered to draft the form using a similar format he used for the petition to remove address information.

Judge Kahn asked about cases where there was a finding of not guilty. Judge Carlson said those situations would not be applicable because a judge or jury made the decision. He said those cases are not clearly mistaken identity or identity theft situations. Judge Kahn said it would be unlikely the district attorney would support removal in those instances because basically the affidavit is a certification that it is clear the person did not commit the crime. Mr. Barrett said the form should be as specific as possible. Rep. Schneider said there should be a way for a person to get the request to a judge if the district attorney will not provide the affidavit. Judge Carlson said a formal appeal probably would not be an option but instructions could be included on the form to write the judge if the person wants to pursue the petition without the district attorney's support. Judge Kahn said the notice should indicate to include any supporting documentation with the request. He also pointed out that if the petition was unsuccessful, a case summary will appear indicating that the case was dismissed and the person is presumed innocent.

4. **Read-in Charges**

Attorney Burke reported that she reviewed the case in question, *State v. Lackenshire*, 2005AP1189-CR, with Judge Kahn. She said they determined the read-in language agreed to at the last meeting was adequate.

5. **Review of Subcommittee's Recommendations to WCCA Oversight Committee**

Mr. Moore said this meeting is the last scheduled subcommittee meeting. He said the next meeting on March 3 will be the full WCCA Oversight Committee. Mr. Moore distributed a summary of the recommendations agreed upon by the subcommittee at previous meetings. He asked the members to review the recommendations and contact him by February 3 with any concerns. Mr. Barrett said item 5.b. should be clarified that the petition to remove address is not meant for a category of profession. Attorney Mowris also noted that item 14. needs to be redrafted based on the agreements made at the meeting today. Mr. Moore will update the document and will send out a final draft to the subcommittee members about two weeks prior to the next meeting.

6. **Other Business**

- Attorney Burke said at the last meeting she offered to research federal laws regarding employment discrimination. She said she consulted with employment law attorneys at the Department of Justice and they concluded criminal cases are not protected so it would be inappropriate to add federal law references to the notice to employer language.
- Judge Carlson said he would like to revisit whether or not this subcommittee is the appropriate body to recommend legislative action pertaining to second chance legislation. He said by enacting the misdemeanor expunction law, the legislature has recognized some people deserve a second chance. He said this is an opportunity for a diverse group to suggest legislation that is workable. Judge Kahn said he thought they should take the opportunity to make a statement on a rational and sensible approach. Mr. Moore disagreed that recommending legislation is a charge of this committee. Attorney Mowris said he has met with legislators, attorneys and district attorneys regarding the problems with the current expunction law. He said they are concerned that the same mistakes might be repeated with future expunction legislation and it would be helpful to them if the committee would provide some recommendations. Mr. Barrett said he thought legislation was not part of the role of the committee. Attorney Burke agreed but said the issue is closely related and is very complex. She said much more work would need to be done on it and it would not be fair to delay the other recommendations in the meantime. She suggested the subcommittee recognize there is an issue and recommend another body be appointed to specifically address legislation. Rep. Schneider said the Legislative Council may be an avenue to consider. Judge Kahn said the committee has expertise in this area, have spent a lot of time discussing the issues, and somehow they should offer their services.

Mr. Moore summarized what he perceived the subcommittee to have agreed on. He said the subcommittee recognizes there are problems with the current expunction law and that people's lives are being affected. He said the issues will be defined in the report with a recommendation that follow-up action be taken possibly by the Judicial Council, Legislative Council, Legislative Committee of the Judicial Conference or an ad hoc advisory committee. Sheriff Roderick said there is a current law in place and that he does not necessarily agree that it should be expanded but understood he was in the

minority. Mr. Barrett made a motion the subcommittee write a letter to the legislature pointing out the problems and asking them to look at the issue. Judge Carlson said he feels it is important for persons with expertise in the area to participate in the drafting of the legislation. Rep. Schneider agreed and said if the Legislative Council conducted a study, it would include people who have expertise. He added that the letter would carry more weight if it came from the Chief Justice and/or the justices. Judge Carlson made a motion the subcommittee include a recommendation to director that the Supreme Court request the Legislative Council to study these issues and that subcommittee members would offer their services. Mr. Barrett agreed with that approach and withdrew his motion. Rep. Schneider seconded the motion made by Judge Carlson. The motion carried with one no vote. Attorney Burke asked if there was a timeline when the letter should be sent. Rep. Schneider said as soon as possible would be best because the Legislative Council will soon be deciding what topics they will be undertaking.

With all matters being discussed, the meeting was adjourned.