

WCCA OVERSIGHT COMMITTEE MEETING MINUTES

TUESDAY, MARCH 21, 2017, 9:30 AM

CONFERENCE ROOM 150A

RISSER JUSTICE CENTER, MADISON

MEMBERS PRESENT: J. Denis Moran, Sara Ward-Cassady, Jean Bousquet, Judge James Babler, Judge Everett Mitchell, Judge Richard Sankovitz, Representative Robin Vos, Senator Van Wanggaard, John Barrett, Theresa Russell, Beth Bennett, Pat Brummond, Raymond Dall'osto, Bill Lueders, Taavi McMahon, Gregg Moore, Theresa Owens, Adam Plotkin, Kate Spitz, Michelle Vetterkind, and Kimberly Walker

MEMBERS ABSENT: Judge Derek Mosley, Judge Jean DiMotto, Judge Thomas Gritton, Judge John Storck, and Sheriff Brent Oleson

OTHER GUESTS: Steve Fawcett (Speaker Vos's office), Valirie Maxim (Senator Wanggaard's office), Lynn Davis (State Bar of Wisconsin), Lisa Roys (State Bar of Wisconsin), Peggy Hurley, and Melissa Lamb

1. INTRODUCTIONS

Mr. Moran led introductions of the committee members and guests.

2. APPROVAL OF MINUTES

Ms. Owens motioned to approve the minutes from the February meeting and Ms. Russell seconded the motion, all members approved.

3. DECISION ON SPECIFIC CHANGES TO DISPLAY PERIODS

Dismissed and acquitted felonies:

Tyler Brandt from the Office of Court Operations provided data showing how many cases would be removed from WCCA if the display periods changed. Currently, 9.3 percent of the felony cases on WCCA are fully dismissed or acquitted, and if the display period is changed to five years that percentage will go down to 2.7 percent. Speaker Vos asked about cases where one count was guilty and other charges dismissed, but Ms. Ward-Cassady explained that only cases where all charges are dismissed or acquitted are being considered for removal because it is not possible to remove counts or individual charges within a case. Mr. Lueders said the previous WCCA Oversight Committee created the executive summaries for these instances, explaining that some charges were dismissed. Speaker Vos asked if a fraudulent domestic violence restraining order filed in a divorce can be removed, but Judge Sankovitz explained that a restraining order is filed as a separate case and not within a divorce case. Speaker Vos said if someone sees one charge on a case is convicted but other charges are dismissed they may still assume guilt on all charges. Ms. Ward-Cassady said this committee decided at a previous meeting to reduce the display period of dismissed cases, not individual charges, but the recommendations to the Director can be revisited to consider removing individual dismissed charges. Ms. Ward-Cassady said a vote is needed on the reduced display period of dismissed or

acquitted felony cases. Mr. Barrett asked why the data presented does not show much of a change if the display period is changed to 20, 30, or 40 years, and Ms. Ward-Cassady explained the data was only run from 2005 to the present, so it does not show a projected change that many years out.

Judge Mitchell asked if a display period of zero days/years is possible for dismissed cases. Speaker Vos asked if there is a technological minimum amount of time needed for the system, such as one day or 30 days, but Ms. Bousquet said the cases can be removed at any time. Speaker Vos asked if removing dismissed cases immediately would eliminate the possibility of others selling or using the data. Ms. Ward-Cassady said the cases would still be displayed while they are pending and only removed after disposition, so bulk data subscribers and those who search the data daily would still see it and be able to use it. Mr. Barrett said he believes there is some value for having dismissed cases available for a limited time, and Theresa Owens agreed about an administrative need for dismissed cases to be displayed but for a shorter period of time. Judge Mitchell said many people are not able to get an attorney appointed until after they are charged, and people are unable to get jobs because of dismissed cases coming up on their background checks. Mr. Barrett said expungement of a court record does not remove the record from criminal background checks. Ms. Ward-Cassady said there is an expungement bill circulating that proposes removal from the Crime Information Bureau background checks as well as the court record. Mr. Moore proposed a WCCA display period of one to two years for dismissed and acquitted cases. Judge Sankovitz said the worst-case scenario of wrongful prosecution must be considered, but there are also situations in domestic violence cases where victims are intimidated to drop charges or not show up for hearings and he believes there is value in displaying the dismissed cases for a shorter period of time. Ms. Ward-Cassady asked if anyone who voted for a shorter display period for dismissed and acquitted felony cases believes the display period should be for more than five years. Mr. Lueders said he thought the WCCA display period should remain the same as the retention of the cases in the Supreme Court Rule, for consistency and matching the records in the clerks' offices, and Ms. Spitz agreed. Ms. Russell said even when cases are dismissed the defendants sometimes still owe money to the court or are referred to collection agencies, and cases where money is owed are not currently removed from WCCA even if they are past the retention period.

Ms. Ward-Cassady asked if no time, one year, and two years are the proposed display periods the committee wants to vote on for dismissed or acquitted felony cases. Mr. Brummond said there is definitely value in having dismissed or acquitted cases displayed for a short period of time, but he would like the "dismissed" to be displayed more emphatically than it is now, perhaps a watermark on the page or something that stands out more than the current display. Speaker Vos motioned to recommend a one year display of dismissed or acquitted felony cases on WCCA, and Mr. Dall'osto seconded the motion. Judge Sankovitz proposed a two year display, in consideration of how long a case takes for prosecution, and Judge Mitchell said one year from post-disposition would be his vote. Mr. Lueders said the public is able to make discerning judgments about the information available on WCCA, but Speaker Vos and Judge Mitchell said people are discriminated against for dismissed cases. The vote was called for reducing the display period on WCCA of dismissed or acquitted felony cases to one year: yes – 9, no – 9. Judge Sankovitz moved to vote for a two-year display period and Ms. Owens seconded: yes – 8, no – 10. Judge Sankovitz moved to recommend reducing the display period on WCCA for

dismissed and acquitted felony cases to less than five years, Speaker Vos made a friendly amendment to two years or less and Judge Mitchell seconded: yes – 14, abstain – 4.

Dismissed and acquitted misdemeanors:

Ms. Ward-Cassady said the committee voted at the last meeting to reduce the display period on WCCA for dismissed or acquitted misdemeanors. Judge Mitchell said these cases should be removed from WCCA immediately and Senator Wanggaard agreed. Mr. Brummond said the argument for the value in displaying the dismissed misdemeanor cases for a short period of time is the same as for felonies. Speaker Vos made a motion for the display period of dismissed or acquitted misdemeanors to be half of the time the Director of State Courts recommends for the display of dismissed or acquitted felonies, and Judge Sankovitz seconded. Ms. Russell said the WCCA display period for dismissed small claims cases is currently two years and she does not think it should change. Mr. Lueders made a friendly amendment for the display period on WCCA of dismissed or acquitted misdemeanor cases be six months to one year: yes – 11, no – 4, abstain – 3.

Stipulated dismissals in small claims:

Mr. Lueders said the committee should consider the protection it is offering to serial litigators who file cases and never show up for hearings, but Ms. Ward-Cassady said those cases are already removed from WCCA after two years. Mr. Lueders said the stigma for being sued for not paying a water bill is not the same as being charged with a felony. Mr. Barrett said there is certainly stigma for someone with small claims cases filed against them and many people have difficulty obtaining housing in these situations. Speaker Vos asked for clarification on a stipulated dismissal, and Ms. Ward-Cassady explained that if a party does not adhere to the agreement there is an immediate judgment in the case. Mr. Barrett would like the vote to include regular small claims case dismissals and not just stipulated or no-show dismissals. Mr. Dall’osto made a motion for the display period on WCCA for dismissed (stipulated and other) small claims cases to be two years or less, and Speaker Vos made a friendly amendment for two years (not less) and Judge Sankovitz seconded: yes – 16, no – 1.

Dismissed injunctions:

Ms. Ward-Cassady distributed handouts with the correct data for dismissed injunctions on WCCA. Mr. Brandt said about half of all injunctions are denied or dismissed. Judge Sankovitz said he was surprised by the high number of dismissals, higher than any other kind of cases. Mr. Lueders asked if this high rate of dismissals is because victims change their mind or do not appear and Ms. Ward-Cassady said this was likely the reason. Ms. Ward-Cassady also said many domestic violence victims seek a harassment restraining order because it does not have the firearms restriction, and she would propose retaining the cases by class code rather than case type. Speaker Vos asked if repeat offenders could have cases displayed for two years from their last case filed, but Ms. Ward-Cassady said person-specific display is not possible. Mr. Lueders made a motion to keep the display period on WCCA the same as it is now, since most often abusers are pressuring victims to back down. Judge Babler said there are many factors involved in dismissals, and he is in favor of a reduced display period. Judge Babler motioned to reduce the display period on WCCA for dismissed injunctions to two years, and Mr. Dall’osto seconded: yes – 9, no – 8. Ms. Ward-Cassady asked if anyone wanted to recommend a different display period to the Director, and Judge Sankovitz pointed out an injunction lasts for four years so the

dismissal could be the same. Judge Sankovitz made a motion to reduce the display period of dismissed injunctions on WCCA to between two and four years, and Mr. Barrett seconded: yes – 8, no – 8. Mr. Lueders said it is illogical to remove dismissed or denied injunctions because a series of dismissals is concerning. Mr. Barrett asked if the harassment and domestic violence orders can be separated, but Ms. Ward-Cassady said this would be problematic as there is not enough consistent practice statewide to ensure accuracy. Ms. Russell said many of these cases are pro se and the parties make the choice whether to file as harassment or domestic violence.

4. CHARGING FOR ACCESS TO WCCA

Ms. Bousquet provided information about how other states charge for online access to court records, based on a request from Mr. Lueders at the February meeting. Ms. Bousquet said 31 of 50 states offer online access to court records, and of that 31, nine charge for access. Some of the states charge a subscription fee and others charge per search. Nebraska includes access to documents but limits the documents to judgments. Ms. Bousquet said most states offering court records online are doing so for free, but Wisconsin offers more information on WCCA than most states. Mr. Dall'osto asked if the states who charge have fee exemptions for attorneys and other agencies and Ms. Bousquet said yes. Speaker Vos said if the goal is for the cost to reflect what the cost of operation is, access to WCCA should not be free. Senator Wanggaard asked what the minimum amount is that would need to be charged to cover the cost, and Ms. Bousquet said it is difficult to determine based on page views per day when that number would likely decrease if charging for access. Mr. Moore said there are many public services where user fees are appropriate, but he does not believe WCCA access is one of them as it is a by-product of the CCAP case management system. Mr. Dall'osto said it was proposed at a previous meeting to increase the fee for bulk subscribers. Ms. Bousquet said the existing WCCA website is just the online version of what is in CCAP case management and does not currently require much additional programming, but to create logins or subscription fees would necessitate extra maintenance and staff programming time so it would cost money to make money.

Judge Sankovitz said the idea of charging for access to WCCA is a business decision and outside the scope of this committee. Speaker Vos said if WCCA was being created today it would likely have a fee. Mr. Lueders said if a cost or fee was to directly support the service of WCCA he would approve, but if the act of charging for access would create additional administrative costs for CCAP it does not make sense. Ms. Spitz said WCCA is not being created today and there are existing expectations from the public and many people use the information for non-nefarious purposes and to track activity in their ongoing case without needing to contact a clerk's office. Mr. Dall'osto asked if a study can be done to consider charging for access in the future, and Ms. Bousquet said she can put together a fiscal estimate. Ms. Ward-Cassady said this committee is recommending the Director of State Courts consider raising the fee for bulk data subscribers. Speaker Vos asked how much taxpayers spend to support CCAP, and Mr. Brummond pointed out CCAP and WCCA are not the same thing. Speaker Vos asked if there is a CCAP fee when a case is filed in court, and Ms. Ward-Cassady said there is a fee for some cases. Ms. Bousquet will provide information on costs to enable charging for access to WCCA at a future meeting. Judge Sankovitz said he thought the mission of this committee was to address misuse of public information and the discussion on charging for access should be done by a different committee. Speaker Vos agreed, but said the bulk subscriber fee should be addressed. Mr. Dall'osto made a

motion for a future iteration of this committee to consider charging a fee for access to WCCA in the future, and Judge Sankovitz seconded: yes – 13, no – 3.

5. SEALING COURT RECORDS

Ms. Ward-Cassady said there are still a few items from the original list of issues to be addressed by this committee (discussed at the September meeting and distributed with November meeting materials), including whether the committee should recommend the Director of State Courts consider education for judges on sealing court records. Additional issues for the committee to discuss are court minutes taken by clerks, and clarity of WCCA display. Ms. Ward-Cassady and Ms. Bousquet will provide information about misunderstandings of how and what things are displayed on WCCA.

6. COURT MINUTES

These items will be discussed at a future meeting.

- a. Should the court record on WCCA be more limited as it relates to court minutes?
- b. Should minutes be hidden from WCCA completely?
- c. If only limited portions of minutes are shown, how should those be defined and enforced?

7. OTHER BUSINESS

Judge Babler and Mr. Moore were recently contacted by attorneys in their judicial district after a murder-suicide in Eau Claire involving a married couple. Judge Babler said the wife contacted an attorney in Chippewa Falls to file for divorce from her husband, and the attorney prepared the paperwork and filed the case but the respondent/husband had not yet been served. Judge Babler and Mr. Moore were told attorneys in the area look up court filings on WCCA and send letters to the other parties regarding representation, and when this woman's husband received one of these letters it is how he found out about the divorce and he killed her and himself. Judge Babler said there is a proposal to not put case information on WCCA until there is an affidavit of service. Judge Sankovitz said it is important to consider the domestic violence victims and attempts to end or leave relationships are very vulnerable times.

8. FUTURE MEETING DATES

May 2, 2017 – Room 150A, Risser Justice Center

Additional meeting dates to add:

June 6, 2017 – State Bar Center

July 11, 2017 – State Bar Center

August 16, 2017 – Location TBD

With all agenda items discussed, the meeting was adjourned.