

INDIANA SUPREME COURT

RECORDS ACCESS AND MANAGEMENT COMMITTEE MINUTES

Date November 12, 2019

Members present: Justice Mark Massa, Indiana Supreme Court, Chair; Christine Hickey, Attorney, Rubin-Levin; (by phone); Orval Schierholz, Esquire, Hamilton County Court Administration; Kelly Scanlan, Marion Probate Court Commissioner; Judge Bruce Parent, Lake Superior Court; Debra Berry, Clerk of Wayne Circuit Court; John Laramore, Executive Director of Indiana Legal Services; Mary DePrez, Director and Counsel, Trial Court Technology; Judge Gretchen Lund, Elkhart Superior Court #4; Stephen Key Esquire, Attorney; Chris Naylor, Esquire, Executive Director, Indiana Prosecuting Attorneys Council; Stephen Creason, Esquire; Office of the Indiana Attorney General; Hon. Christine Haseman; and Bernice Corley, Esquire, Executive Director, Indiana Public Defenders Council.

Staff Present: Justin Forkner, Chief Administrative Office, Indiana Judicial Administration; Jeff Wiese, Deputy Director, Indiana Office of Court Services; Richard Payne, Staff Attorney to the Committee, Indiana Office of Court Services; Tom Jones, Records Manager, Legal Support Division, Indiana Office of Court Services

I. Introduction- Justice Mark Massa, Committee Chair, Indiana Supreme Court, welcomed members and guests and all members introduced themselves.

II. Reports – Rich Payne and Jeff Wiese presented reports concerning

- A. Creation of a pre-trial service case retention period of six years after the case adjudication or sentencing
- B. Tax Sale & Tax Deed Case are maintained permanently in original, microfilm, or electronically if the court has a scanning system approved under Administrative Rule 6 that directly scans or electronically files documents into the court case management system and saves a digital image of a document as part of the electronic case file.
- C. The reorganization of Administrative Rule 9, effective January 1, 2020, results from adoption of the new Access to Court Records Rules which removes all or most of the sections from Administrative Rule 9. IOCS will create a list of documents that are confidential by statute which will be posted on the Supreme Court website.

III. New Business

A. Meeting Frequency

Committee Discussion - Justice Massa opened the discussion of meeting frequency for the committee and the committee's role in taking over duties of the former Public Access Taskforce. In discussion, the need for timing of meetings with the sessions of the General Assembly was noted along with the need for meet

more frequently than twice per year as was done in the Records Management Committee.

Committee Action - It was agreed that the committee avoid the first four months of the year due to the General Assembly session and plan on four meetings of which two might be telephonic. The committee will meet on November 16, 2020 and add a summer meeting through use of a member survey.

B. Court Access to Secure Cases – Judge Felix addressed the Committee on the need to adjust Odyssey for court staff to have the same access to all cases as do the judges for whom they work which would facilitate compliance with Judicial Canon 2.12. Providing such access would streamline the process of creating case entries and issuing orders and judgments since staff are often delegated the task of making entries by the judge they serve. Since staff are bound by the same judicial code as judges, the likelihood of improper action is low.

Committee Discussion

- In Special Judge cases, only the judge can take action
- Some judges decline the special judge assignment but accept jurisdiction of the case and creating a new case in their court.
- Special Judge assignments should be treated as Change of Venue from the County.
- Are Special Judges still needed given the ability to transfer cases?
- Where would the jury come from for trial?
- The record must disclose who took action in the case.
- Upon giving access to Odyssey staff should sign an agreement that they will not use the information for any illegitimate purposes.

Committee Action - IOCS should create a memo re the issues for circulation to the members.

C. Court Calendars Public Access - Mary DePrez spoke regarding Court Technology efforts under way to create a web-based court calendar that would be available to the public providing information for a period of a week prior to a date and four weeks forward. Calendar information is already available on DoxPop due to their purchase of the information. Court Technology wants recommendations from the committee to provide to the Supreme Court on the issue.

Committee Discussion

- Odyssey Public Portal to non-confidential case types excluding protection orders is My Case. My Case does not currently offer Judges court hearing calendar.

- Judge's calendar being online may give the appearance they are not doing much. Explanation can be added if there are confidential cases that will not appear on the Calendar.
- In confidential cases, the caption contains the whole name.
- An online calendar would probably reduce the number of calls to the clerk and court regarding the calendar.
- The judicial officer on the CCS is often not the officer who actually hears the case.

Committee Action – A motion was made, seconded, and passed that the plan should proceed.

D. Venue and Case Transfer Process- Gaye Lynn Strickland presented a description of the paper process for venue or transfer of cases and that created in Odyssey.

- When cases are transferred from one county to another a new cause number is given. Court reporter would make a copy of all the documents to date and mail documents and later started to email them.
- In Odyssey the receiving county will create a shell case (empty just to get case number).
- Court Technology's Help Desk does a copy process and the new CCS takes every event into the shell case including the original date filed.

Committee Discussion

- Consolidated cases? These are avoided.
- Upgraded criminal case numbers remain the same as on the original date of filing, i.e. an F6 does not become an F5 if an amendment of the information occurs.
- Judge Parent's process of accepting jurisdiction but not a special judge assignment would be solved via this process.
- MH cases are being venued with frequently upon transfer of the location of the incompetent; venue should be the county in which the person resided when the case was filed as treatment location does not require a venue change.
- No impact on Weighted Caseloads as it takes numerous cases to create significant impact.

Committee Action – A motion was made, seconded, and passed that the process should be expanded

E. CCS Entry Authority- Jeff Wiese reported that several counties have allowed the creation of CCS entries by other than court staff; e.g. probation officers or Sheriff. By rule, the Clerk's keeps the CCS, and the judicial officer supervises the CCS but does not prescribe who makes an entry.

Committee Discussion

- A probation officer making entries for violator then appearing in court as a witness to violation can be a problem.
- Having someone outside of the judicial family allowed to make a record themselves can be an issue.
- This presents an issue of integrity of the record.

Committee Action – A motion was made, seconded, and approved to refer the matter to the Rules Committee in regard to amending the rules to review who has access to place CCS entry and doing so consider both Probation Officers and Sheriff access.

F. MC Case Search Warrant Confidentiality- Jeff Wiese reported concerning amendments proposed a few years ago relating to confidentiality of search warrant applications. The rule as submitted to the Supreme Court would have required creation of a separate confidential case when the warrant did not arise within an existing criminal proceeding. The warrant, including those issued within a criminal case, would have remained confidential pending service.

Process unrelated to pending criminal proceedings, including but not limited to search warrants, subpoenas and other investigative requests are not confidential. Original requests of the Courts were that these become confidential until the Trial Court that has jurisdiction over criminal proceeding resulting from the investigatory cases. If there is no criminal charge that results, the Trial Court that had jurisdiction over investigatory proceeding would decide whether to 'permit public access' The rule as proposed was not accepted by the Supreme Court..

The Rules requires the opening of a case but some courts do not do so. We have questions coming to the division of whether a request for special prosecutor is confidential or not? The definition of administrative warrants needs to be more clearly stated. All applications for search warrants of any type outside an existing criminal case must be filed as an MC case.

Committee Discussion

- It is a problem when some things are never made public. There are situations where a trial court that issued an investigatory search warrant does not open a case in Odyssey for the search warrant.
- To avoid a secret process, there should be a time frame where this information is being made public. The person involved has a right to know if someone in the government has gotten into their bank records, phone records or something else. Should not be a permanent secret process.
- If the prior proposed language is to be considered by the Supreme Court again, it would be considered by the Rule Committee again.

Committee Action – It was moved and seconded that the issue be sent to the Rule Committee. A sub-committee of Bernice Corley, Chris Naylor, Steve Creason, and Steve Key will draft a rule proposal for submission.

G. Notice by Publication Website- Mary DePrez

This issue came from the Rules Committee to Court Technology to see if we could copy what Alaska was doing in building a legal publication website for the posting of legal notices. This would require rule and statutory changes because a lot of the statutes require publication in newspapers.

The Public Access Taskforce did not vote on the concept after receiving some issues raised within the taskforce. The Chief Justice wants the committee to consider the issue.

Court technology envisions building a website and things would be filed through the e-filing system or, if it's not an attorney filing, the filer could come and file their paperwork with the clerk or Court. Court Technology would feed the website from Odyssey so that it can control what gets published.

Committee Discussion

- Use of the website would be cost beneficial to litigants but would be adverse to newspapers due to loss of income.
- The younger generation would think about possibly looking on the Courts website, but older individuals might not. The newspaper provides notice of things you may not be aware of if you did not know to look for them.
- Newspapers have provided an independent organization for posting of notices.
- What outreach was done in Alaska when setting up their site?
- The greater the exposure the better and there would be opposition to the concept if the website is the only posting location.
- Some statutes require the posting in a newspaper. The use of the website could be an alternative for non-statutory situations.

Committee Action – On a seconded motion, the committee asks the Supreme Court to refer the matter to the Rules Committee.

H. Public Defender Access to Warrants- Bernice Corley

Some Chief Public Defenders and their attorneys are in situations when their client has a warrant in a case. When the warrant is issued (ex. Failure to appear), the attorney representing is completely blacked out and cannot even see their prior work. One Chief was told that if he informs his client about the warrant that if

anything happened to an officer in service of that warrant, the attorney will be held criminal liable.

Committee Discussion

- Court Technology developed an INcite Public Defender Information System application and maybe not getting feedback from Odyssey to be interfaced when that case is made confidential or they are using MyCase in which court staff make the case confidential while waiting for the warrant to be served.
- PDIS may be the problem.

I. LWOP Case Type/Notice to Public Defender Council- Bernice Corley

The Council's major charge is support for Public Defenders, so we provide trainings, technical support, even a hotline if they have questions. One of the services we provide is in a Death Penalty case by an expert paid to partner and assist that team. Currently when a death penalty case is filed, we get notice to reach out to that team and provide support. We don't have the similar notification for LWOP cases which can be challenging because by the time we find out the case is far down the road the support strategies that would have been given to them are moot.

A possible solution would be a rule change providing notice of LWOP cases or for a case number change once the prosecutor files for LWOP.

Committee Discussion

- The Attorney General uses a portal to learn of the initiation of LWOP proceedings.
- In death penalty cases, IOCS sends notice to the Public Defender by rule because the Supreme Court wanted to track death cases.
- A change in CR 24 to include LWOPs would be a good solution. Court Technology can track LWOPs.
- Perhaps an automated process in lieu of CR 24 would be better.

Committee Action – Upon a seconded motion, the committee referred the issue to the Rules Committee with a recommendation to amend CR 24 or create another method.

IV. 2020 Meeting Dates - May 12, 2020 and November 16, 2020 - 10:00am to 3:00 p.m.