

Public Access to Court Records Task Force
September 22, 2004
Little Rock, Arkansas

Minutes

The Public Access to Court Records Task Force met on Wednesday, September 22, 2004 in Room 101 of the Justice Building in Little Rock with the Honorable John Plegge, Chair, presiding.

The meeting was called to order by John Plegge. Those in attendance were John Plegge, Circuit Judge Retired; Kathy Gattin, Office of Information Technologies; Jeff Moore, Arkansas Bar Association; Jayne Ann Kita, Arkansas Coalition Against Domestic Violence; Matt Largent, Little Rock Chamber of Commerce; Alison Bratton, Arkansas District Judges Council; Tom Tatum, Arkansas Prosecutor's Association; Tim Tarvin, University of Arkansas School of Law; Senator Jodie Mahony; Steve Sipes, Pulaski Co. Court Administrator; Didi Sallings, Public Defender's Commission; Andy Gentry, Public Defender's Commission; Tom Larimer, Arkansas Press Association; John Burnett, Attorney at Law; Ben Story, Arkansas Judicial Council; Teresa Marks, Attorney General's Office; Rick Peltz, Bowen School of Law; Jeanne Steen, Arkansas Circuit Clerk's Association; Mark Johnson, Law Clerk, Administrative Office of the Courts; J. D. Gingerich, Director, Administrative Office of the Courts; Tim Holthoff, Court Information Services Director, Administrative Office of the Courts; Karolyn Bond, Public Information Officer, Administrative Office of the Courts; and Pam King, Office Manager, Administrative Office of the Courts.

John Plegge stated that the Task Force was a sub-committee of the Supreme Court Committee on Automation and the purpose of the task force will be to develop a policy on public access to court records to provide to the Supreme Court for its review and adoption. He stated that this was an enormous project with numerous issues to be addressed. Additionally, the task force will attempt to identify the need for legislative changes. He advised that copies of model policies had been provided for review and input between now and the next meeting date of Wednesday, October 27, 2004 at 1:00 p.m.

John Plegge advised that he had designated Tim Holthoff and Steve Sipes to draft a model policy based on the COSCA guidelines to present to the task force at the next meeting for review and comment.

John Plegge turned the meeting over to Steve Sipes and Tim Holthoff.

Steve Sipes reported that there are approximately ten states that have adopted policies for accessing public records. He stated that the Supreme Court had acquired a court case

management software system from a nation wide software provider that is currently being implemented under the Arkansas Court Automation Project. Steve Sipes advised that this software would be available to all circuit courts and clerk offices and all district courts and clerk offices. He advised that this software has the ability through a component called CourtConnect to provide Internet access to court records. He stated that the Automation Committee was trying to pay attention to the technological capabilities of the software in addition to the best policy that could be drafted for public access.

Senator Jodie Mahoney stated that there was a bill on record retention and was concerned as to if there might be any conflicts or overlaps with the potential record retention bill and this task force's mission.

J. D. Gingerich stated that there was a broader issue and that would be whether it was a legislative issue or a court issue. He stated that Arkansas had never had a Supreme Court Rule on record retention.

Tim Holthoff advised that the task force when developing a policy has to include not only electronic records but also court records kept in the court house.

John Plegge asked for clarification on what records were going to be shifted online and available to the public.

Steve Sipes responded that any cases could be, but the most problematic would be domestic relations cases, abuse cases, divorce cases, child support cases, paternity cases, etc. He stated that Arkansas code 9-14-205 requires that any pleading, and any order has to contain a person's name, address, work address, social security number, and date of birth. He stated that as it is now a person can obtain all this information by going to the court house and accessing these records. He stated that some states have decided that even though they have to collect this information they only make available the last four digits of a person's social security number.

Tim Holthoff stated that there are a few court questions that will need to be decided:

- 1.) Should this be done by Supreme Court Rule or Legislatively or both?
- 2.) Should electronic access to court documents be the same or different than access to court documents in the court house?
- 3.) How does the Task Force recommend to the Supreme Court how to balance the needs of public access and privacy in making court records to the public?

Matt Largen with the Little Rock Chamber of Commerce asked if the ten states that had adopted policies were already online?

Tim Holthoff responded that the majority of them are online. He stated that Karolyn Bond would be getting with INA and that they would be building a Task Force website.

Rick Peltz, Professor from the Bowen School of Law commented that he had concerns about the CCJ guidelines. He stated that they had been heavily criticized by the Reporter's Committee for

Freedom of the Press. Professor Peltz asked if he might be able to distribute copies of the Reporter's Committee Critique of the CCJ guidelines to the members of the Task Force. He stated that Arkansas is possibly the best state in FOI and that it was important to keep with that when addressing the judiciary.

Kathy Gattin, Information Office of Technology commented that three issues come to mind when talking about a public access policy: 1.) The Arkansas Crime Information Center (ACIC) which is the central depository for criminal information history; 2.) The victim privacy issue when dealing with domestic violence cases; 3.) The accuracy of background checks.

Steve Sipes responded that at the national conferences he has attended that each one of those interest mentioned had ample forum opportunity to express those concerns and interest about these issues with regards to responsibility and reliability.

Teresa Marks, Attorney General's Office inquired if everything that was going to be made available over the Internet was already a matter of public record.

Steve Sipes responded that everything that would be available over the Internet is already public record at the court houses.

Tim Holthoff commented are all members of the public equal? Should an attorneys or litigants be treated differently with access to court records than someone off the street? Should the same information be available from your home that is available at the courthouse?

Jeff Moore, Arkansas Bar Association asked if there was anything more private in terms of information other than social security numbers, date of birth, addresses, phone numbers, and expungement that they might want to protect on the Internet.

Steve Sipes responded that this had been addressed by one of the states which was putting the actual imaged documents on the Internet and they had concluded that what would go on the Internet site was anything that was signed by the judge.

Rick Peltz stated that the FOI Coalition was offered public ACIC access last year and rejected it due to cost. He commented that the FOI Coalition would probably rather have the information taken away from them in paper form than to draw a difference between electronic and paper records.

Ben Story, Arkansas Judicial Council commented on whether the financial information contained in domestic relation cases should be accessible to the public.

Tom Tatum, Arkansas Prosecutor's Association responded not only in domestic relations but also in commercial litigation. He stated that he was afraid that there would be a rash to the judiciary of everybody wanting to seal everything.

Didi Sallings, Public Defender's Commission stated that maybe the court would need to make a new rule as to when it is appropriate to seal and when it is not.

Tim Holthoff commented that following along the criminal issue, is pre-adjudication information something that should be easily accessible?

Jeff Moore stated that in commercial cases they are able to file less information now than in the past. He stated that the task force needed to think about whether they were going to image everything or just the pleadings.

Steve Sipes responded that documents can still be imaged and not made available electronically with this software.

Tim Tarvin, Professor U of A Law School stated that Bankruptcy Court has already gone completely paperless.

John Plegge stated that the task force needed to discover what legislation is going to need to be changed and what court rules are going to need to be changed. He advised that a proposed model policy would be ready and disbursed to the task force members one week prior to the meeting on October 27th.

Jayne Ann Kita, Arkansas Coalition Against Domestic Violence advised that she had collected some national data that addressed some of these issues and would like for these documents to be copied and disbursed at the next meeting.

J. D. Gingerich stated that the CCJ guidelines are based upon the assumption that there is a difference between access to the hard record and access to the electronic record and a difference between bulk access and access to records on someone specific. He advised that the task force may have questions about these assumptions being inappropriate and should be considered before the next meeting. J. D. Gingerich referenced page 39 and 40 of the CCJ guidelines which talks about these differences.

J. D. Gingerich stated that Senator Mahony stated that someone from the Child Support Enforcement Unit should probably be asked to sit on the task force. He stated that if there are any other groups of interest that should be present to please advise so that they may be contacted.

John Plegge stated that someone representing the title companies should be involved.

Jayne Ann Kita state that someone representing the Arkansas Commission on Child Abuse, Rape, & Domestic Violence should be invited to join the task force.

John Plegge stated that he would try to contact someone with the title companies before the next meeting.

John Plegge stated that Karolyn Bond would be running press releases about the meetings of the task force and that all the meetings were open to the public.

John Plegge stated that after the task force has adopted a model policy that a public hearing would be held.

Rick Peltz inquired as to how the model policy developed by the task force would be approved.

Tim Holthoff responded that the ultimate decision will be up to the Supreme Court.

J. D. Gingerich advised that the Supreme Court would most likely publish the policy for comment before making a recommendation to the legislature.

There being no further business the meeting was adjourned.