

INDIANA SUPREME COURT
RECORDS ACCESS AND MANAGEMENT COMMITTEE MINUTES

May 14, 2024 via Zoom

Members present:

Permanent Members: Justice Mark Massa, Indiana Supreme Court, Chair, Chris Naylor, Esquire, Executive Director, Indiana Prosecuting Attorneys Council; Bernice Corley, Esquire, Executive Director, Indiana Public Defenders Council, and Greg Pachmayr, Clerk, Indiana Supreme Court, Court of Appeals and Tax Court.

Judicial/Lawyer Members: Jon Laramore, Esq., Executive Director of Indiana Legal Services; Judges Christine Haseman, Monroe Circuit Court, Hunter Reece, Warren Circuit Court, Emily Anderson, Court Administrator, Delaware County, Douglas Church, Esq., and Chris Nancarrow, Allen County Clerk.

Members Not Present:

Mary DePrez, Executive Director, Court Technology, Amelia McClure, Counsel, Hoosier State Press Association, Judges Kelly Scanlan, Marshelle Broadwell and Sarah Mullican were unable to attend.

Staff Present:

Richard Payne, Staff Attorney to the Committee, Indiana Office of Court Services; Jeff Wiese, Deputy Director, Indiana Office of Court Services and Tom Jones, Indiana Office of Court Services.

Guests Present:

Janelle O'Malley, Office of Court Technology, Kerry H. Bennett, Chief Counsel, Indiana Coalition Against Domestic Violence, and Kathryn Dolan, Indiana Supreme Court Public Information Officer.

- I. Introduction-** Justice Massa, welcomed the attendees.
- II. Minutes** – The minutes of the meeting of November 14, 2023, were corrected for a typographical error and then unanimously approved.

III. Reports

A. Party Access to Case Documents Implementation

Janelle O'Malley reported that:

- The “my case party access” feature was rolled out in February of this year
- An average of 60-100 mail requests per day for case access.
- Clerks receive 2-4 in-person requests per day statewide.
- The majority of users access cases online rather than in person.
- The team continues to support public users, with most questions related to login and logistics.
- Overall process is moving along smoothly.

B. Allen Co. E-filing of Criminal Cases

Janelle O'Malley reported that:

- Allen County began e-filing criminal cases on April 2nd of this year.
- The prosecutor successfully accessed Imp CMS to e-file criminal cases.
- The clerk's office accepted the cases and entered them into Odyssey.
- Committee monitoring the process reports that e-filing is proceeding smoothly.

C. Special Judge Process – TR 79

Jeff Wiese reported that:

- The RAM committee voted to advance the proposed amendment to Trial Rule 79 to the court.
- At the last meeting, the Court committee sought input from the Civil Benchbook and Strategic Planning committees to ensure broad support.
- The Civil Benchbook committee has reviewed and supports the proposed changes.
- Input from the Strategic Planning committee is still pending. It was hoped to receive this input by the end of the week.
- The Rules Committee will meet again, and receiving the Strategic Planning committee's input in time would help move the process forward.
- Despite the uncertainty with Strategic Planning's feedback, the goal is to finalize and implement the amendment by the beginning of next year.
- The process is on track to be completed within this year.

D. Trial Court Calendars

Janelle O'Malley reported that:

- In November, the committee approved the addition of juvenile cases to the trial court calendars, including only the case number and hearing date/time (without party names).

- Protection orders and juvenile cases were added to the online trial court calendars in February of this year.
- The implementation has been proceeding smoothly with no objections reported.
- Currently, 162 court postings are updated online, including juvenile and protection order cases.

E. Party Access - GAL/CASA Cases

Janelle O'Malley and Bernice Corley reported that:

- In November, the committee approved granting Guardian ad Litem (GAL) and CASA parties' access to JD and JC cases online through MyCase, provided they obtain an access code from the clerk.
- GAL and CASA parties currently have access to JD and JC case types online.
- A request was received from a GAL to expand this access to adoption cases.
- The request proposed that GAL and CASA parties also access adoption cases through MyCase with an access code.
- Court Technology consulted with Court Services and decided to deny the request for now, as no non-attorney access to adoption cases through MyCase has been granted yet.
- The matter is being brought to the committee for potential discussion.
- From the council's perspective, we do not see a problem with granting Gals and CASAs access to this information. However, their request raises a related issue concerning the attorneys for the biological parents involved in CHINS and TPR cases.
- Attorneys are not aware of an adoption being filed. This lack of awareness can be due to:
 - Parents not informing their attorneys.
 - Attorneys not receiving proper notice of the adoption.
- It is essential that all relevant parties, including the attorneys representing the biological parents, are notified about adoption proceedings to prevent issues arising from lack of awareness.

Committee Discussion

Judge Haseman commented that:

- Drawing from experience as both a public defender and a GAL, I recognize the value in this proposal.
- Although records are accessible through the court, having direct access would be beneficial.
- I support granting access to the information.

Janelle O'Malley replied that:

- There are some logistical challenges in extending access to both GAL Casa and the parents' attorneys.
- Technologically, the system requires adding these attorneys and parties to the adoption case to grant them access, which will necessitate collaboration with clerks and court staff.
- We would like the committee to approve this before we offer online adoption access in November, a service we have not provided before.

Committee Action: Create a plan for submission to the Committee at the November, 2024 meeting.

IV. Old Business

A. Arrest Warrant & Records Confidentiality Group Report

Bernice Corley stated that:

- She reviewed J. T. Parker's proposal and finds it satisfactory and will reconnect with Jeff to discuss the minor suggestions and proceed with the proposal. November would be a suitable time to continue.

B. Evidence Retention

Jeff Wiese stated that:

- About a year ago, a task force was formed to explore a possible statewide rule for evidence retention. The task force members were me, Bernice, and Jon Laramore.
- Currently, there is no statewide evidence retention rule; some counties have their own local rules.
- The task force was tasked with researching how other states manage evidence retention.
- Chris Naylor expressed interest in joining the task force.
- I have no new updates or progress to report at this time.
- While this is a valuable project, I have concerns about the potential costs for counties with limited budgets.
- I have gathered information on how other states address evidence retention and assist counties with costs, but I am uncertain if a similar approach would be feasible here.

Bernice Corley stated that:

- It would be beneficial for the group to meet and discuss evidence retention practices and examine different approaches.
- Indiana's unique aspect includes the exoneration work done by CGI, which provides compensation for those wrongfully convicted after serving time.

- CGI has a workgroup and attorneys who handle record gathering and communication with involved attorneys.
- Although physical evidence like test results may not be directly necessary, it could still support exoneration efforts.
- Indiana is advanced in exoneration practices compared to other states, making it important to address this issue.
- If the group finds this worthwhile, suggestions can be made, and an advocacy plan could be developed to seek support from the General Assembly.
- I propose that we continue to meet and discuss these matters further.

Committee Action: Emily Anderson, Chris Naylor, and State Public Defender, Amy Karozos, will be added to the group (Jeff Wiese, Bernice Corley, and Jon Laramore.

C. Attorney Access to PO cases

Jeff Wiese stated that:

- We received a request regarding making protective order cases accessible to attorneys through party access.
- Currently, these cases are only available to attorneys who have filed an appearance in the case.
- Some attorneys would prefer to review the case before deciding to represent a party.
- I brought this issue to the court, but they requested more information.
- The matter was then referred to our committee.
- We would appreciate Kerry's perspective and any additional details that can provide to help the committee make a recommendation.

Kerry Bennet stated:

- The federal law provides a narrow exception for court-generated, and law enforcement-generated information stored in secure governmental registries for protection or enforcement purposes.
- The National Confidentiality Institute, a national partner in this area, suggests that the definition of a public database is crucial in this context.
- There is concern that broad attorney access to protection order cases does not fit within this narrow exception.
- Allowing any attorney access to protection orders might have a chilling effect on survivors seeking remedies and could impact funding from the Office on Violence Against Women (OVW) and VAWA, which supports many court programs.
- The opinion is that this broader access does not align with the federal law's intended exception and could jeopardize compliance and funding.
- There is no definitive answer, and it remains a discretionary decision, but the recommendation is to avoid broad access to protect compliance and funding.

- A memo with more detailed legislative and statutory history is available for those interested.

Jon Laramore asked if there is a way for a lawyer interested in a case to review its details before formally getting involved? This could involve visiting the courthouse and requesting access from the judge. Practical alternatives to straightforward record access are needed considering the federal law restrictions.

Kerry Bennett responded that:

- To access information in a protective order petition, you need a signed confidentiality waiver from the survivor.
- You cannot access the protective order details unless the survivor grants permission or provides the necessary documentation.
- Law enforcement has access to the protective order registry through Insight, which helps them identify active protective orders during their work.
- The registry allows law enforcement to know if there is a protective order against someone when they respond to a location.
- The registry supports enforcement by providing critical information to officers in real-time.
- Even with your role, you cannot access the specific protective order details without the survivor's or their advocate's direct involvement.

Justice Masa suggested that it might be beneficial for everyone on the committee to spend more time reviewing the legal memorandum and include it on the November agenda for a final recommendation.

V. New Business

A. Public Access to case documents

Janelle O'Malley stated that:

- The staff is requesting that the committee review the current online access provisions, based on the 2017 and 2018 recommendations from the Remote Access Task Force.
- There have been numerous requests for increased access or modifications to the existing online offerings.
- The main proposal is for the committee to examine the current online access available and decide whether to continue with the 2017 and 2018 recommendations or adjustments.
- The goal is to evaluate the current provisions and address any requests for changes.

Jon Laramore stated that:

- The task force took a cautious approach, and it would be valuable to review the types of requests we are receiving regularly.
- We should consider whether to revisit some decisions we made to keep certain things closed, as technology and perspectives have evolved significantly since then.
- Given the advancements in technology and changes in how people view these issues, it is worth reassessing our approach.
- The previous process was resourceful and time-intensive; finding ways to streamline it would be advisable.

Justice Massa suggested that a subcommittee be formed by Jon Laramore, Kathryn Dolan, Janelle, and other volunteers to review requests received by Court Tech. Ruth Johnson-on Bernice's staff- would also be a valuable subcommittee member. Subcommittee to report at November, 2024 meeting.

B. Section 7 Expungement Notice Location

Janelle O'Malley stated that:

- We added a visual indicator at the top of criminal case records on MyCase.
- The indicator is red and marks cases that have been expunged.
- Although these cases remain public and searchable, the expungement order is noted.
- This indicator has also been added to PC cases, not just criminal cases, as these also contain expungement orders.
- The same red indicator is used for expunged PC cases.
- We have retroactively applied this indicator to all cases with expungement orders under IC 35-38-9.

C. Odyssey Access Accounts for Journalists

Kathryn Dolan stated that:

- The media is requesting more robust access to records through MyCase or Odyssey.
- Chief Justice Rush for annual consideration of this issue.
- Each year, the court publishes an annual report, and a media availability is held where the Chief Justice meets with the media.
- This year, media specifically asked for access to probable cause records, which are currently not accessible online via MyCase.
- Currently, you can see that a probable cause has been filed if you have a case number, but you cannot view the document online; you must contact the clerk's office or visit the courthouse in person.
- Decisions about what records are available online were made years ago in a methodical manner.
- The committee is being asked to consider whether updates are needed to make probable cause records and other information more accessible remotely.

Committee Discussion

Jeff Wiese stated that:

- In 2017-2018, he participated in discussions with the task force.
- The task force decided that only final orders for criminal cases would be available online.
- No other details are accessible on MyCase for criminal cases.
- The task force's rationale was that allegations, which have not been proven, could be harmful if publicly accessible.
- To mitigate this, the task force decided that while information would remain available, it would require a visit to the courthouse rather than being accessible online.
- This decision may warrant a review to determine if it remains appropriate.

Judge Reece stated that:

- Keeping information confidential limits its accessibility to prospective jurors.
- Allowing easier access to information increases the risk of contaminating the jury pool.
- Contamination of the jury pool is detrimental to both the defendant and the state.
- While few might visit the courthouse for local gossip, many might access and share information online, which could further taint the jury pool.
- Less concern about media access, but it is important to define boundaries, as noted by Katherine.

Emily Anderson stated that:

- Courts face revenue loss when more documents are made publicly available.
- Increasing document accessibility reduces the revenue courts generate from copy fees.
- The availability of more documents diminishes the income that courts rely on from charging for copies.

Committee Action: Subcommittee to provide a recommendation at the November, 2024 meeting.

D. Section 7 Expungement Location

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- This indicator has also been added to PC cases, not just criminal cases, as these also contain expungement orders.
- The same red indicator is used for expunged PC cases.

- The indicator has been retroactively applied to all cases with expungement orders under I.C. 35-38-9.

VI. Next Meeting - November 26, 2024 - 10:00am to 3:00 p.m. via Zoom with staff to estimate actual length of meeting when sending out meeting materials.

VII. Adjournment - The meeting was adjourned at 10:49 a.m. upon motion made, seconded, and unanimously approved.