

Minutes: Court Services Administration Committee

(Unofficial until approved)

August 9, 2016

10:00 – 2:00 p.m.

Conference Room 210/212

2nd Floor, Judicial Wing

State Capitol, Bismarck

Members Present:

Justice Daniel Crothers, Chair
Aaron Birst
Michael Williams
Susan Hoffer
Hon. Stacy Louser
Kathryn Hinds
Hon. Steven Marquart (by phone)
Sen. Karen Krebsbach

Members Absent:

Levi Andrist
Alvin Boucher
Meredith Vukelic
Hon. Joshua Rustad
Barbara Hill

Others Present:

Sally Holewa
Nial Raaen, National Center for State Courts
Larry Zubke, ITD
Becky Lingle, ITD Records Management
Ann Jenks, State Historical Society
Lindsey Schott, State Historical Society
Rep. Gail Mooney
Cammie Schock, ITD
Jeff Stillwell, ITD
William Phillips, ITD

Staff:

Lindsey Nieuwsma

Chair Justice Daniel Crothers called the meeting to order at 10:02 a.m. and provided background on the current project goals for the committee. Attendees introduced themselves and Sally Holewa provided opening remarks. Ms. Holewa stated that the committee would be hearing issues related to technology, the evolution of court file storage, issues with digital records, court record contents, and electronic court record access and retention. She provided background relating to the development of the current court record retention and access policies which were developed in the 1990's. Ms. Holewa stated that the goal is for this committee to review and potentially rewrite Administrative Rule 19, Court Records

Management Program, and Administrative Rule 41, Access to Court Records, and present the proposed rules to the Supreme Court.

Ms. Holewa introduced Nial Raaen, consultant from the National Center for State Courts. Mr. Raaen gave information on his experience with digital record management and retention. He presented to the committee and guests on keeping and managing digital information. (Copy of presentation slides - "[Planning for Digital Continuity](#)")

Becky Lingle, State Records Management Coordinator, presented to the committee on fundamental electronic records information such as types of records, components of records, other electronic records issues. (Copy of presentation slides - "[Records Management for Electronic Records](#)")

Ann Jenks, State Archivist, and Lindsay Schott, Electronic Records Archivist, State Historical Society presented to the committee on the State Archives, the processes followed by the state archivists, the services provided to state agencies and counties, and the development of an electronic records archive. (Copy of presentation slides - "[Data Preservation: State Archives](#)")

After a recess for lunch, the committee members returned to hear a presentation from Larry Zubke, Director of Judicial Branch Information Technology. Mr. Zubke provided information regarding types of storage, storage process and disaster recovery for court records, types of files, data being consumed, categories of data, and costs for data storage. (Copy of presentation charts - "[Data Retention Disk Structures](#)," "[Terabyte Storage](#)," and "[Disk Drive Costs](#).".) Mr. Zubke stated that the takeaway is that digital storage is not really that cheap; they are able get more storage for cheaper, but currently use more storage than in the past. Chair Crothers asked if the court has ever looked at what records need to be preserved. Ms. Holewa said that preservation needs have not been determined at the front end, and the only recent changes have been to what needs to be filed with the court; e.g. do not need 3 copies of originals for probate when e-filing. Ms. Holewa said that there is also an issue of which records should be preserved when a court employees leaves. The default is to save and transfer all files to the successor. Oftentimes no one is aware of what all is contained in the files.

Mr. Zubke stated that the court is currently using about 30 terabytes out of 132 total and adding an average of 6 GB of data each day, but that can fluctuate considerably. The court is adding an average of 2.11 terabytes of data per year, not including digital audio, which is another almost terabyte.

Chair Crothers asked if the court currently has a retention policy for electronic records. Ms. Holewa said that there is a retention policy which applies to paper and electronic records, but that it is a policy from 1995 and the electronic records that were anticipated were cassette tapes from the county courts. Chair Crothers stated that the current policy then, is that basically everything is being kept.

Sen. Krebsbach asked whether the current storage is all in-house and whether anything was being stored in the Cloud. Mr. Zubke stated that everything is in-house and transferred through the state network. Nothing is stored in the Cloud and the data is very confined and secured.

Ms. Holewa gave comments regarding the overwhelming nature of the project. She referred the members to two items in the meeting packet that were not reviewed, the digital continuity checklist and a records management assessment. Ms. Holewa and Larry Zubke have committed to completing the checklist to present to the members at the next meeting. She stated that the committee's goals should be to come up with a basic policy or policies for access and retention, and identify a main driving factor behind the policies. Because of the related nature of access and retention, she felt that the two topics would need to be addressed together.

Chair Crothers asked for feedback from the members regarding what they saw as the committee's objectives. William Phillips gave the group a description of how public access to court records is currently provided. Under the Odyssey system, a member of the public can remotely access a case docket with text for docket entries whereas a registered attorney and different state agencies can access a secure version which provides access to the e-filed and scanned-in documents under each docket entry. A member of the public can use public terminals within a courthouse to view and print paper documents. Attorney and authorized personnel can access restricted documents in their own cases (based on login). Documents that are marked confidential or restricted cannot be accessed by the public.

Chair Crothers answered affirmatively Judge Marquart's question whether the committee would be amending Rule 19 and 41. Staff asked about the origin of the current access policy. Ms. Holewa provided background on the current policy, which originated from the Operations Oversight Committee when Odyssey was put in place and was discussed within the Court Technology Committee.

Susan Hoffer asked whether there has been any discussion on big picture goals. Chair Crothers answered that is the goal of this committee. The justices have had discussions, but not all are on the same page.

Mr. Phillips stated that he receives many calls from members of the public seeking court record access, and from an IT perspective, the images on court records could potentially be tons and tons of information with large costs to transfer data to the website if current access is expanded.

Ms. Holewa stated that the discussion on vision or strategy for the policies will need to be built on reasons such as costs, historical value of documents, privacy protection for litigants, etc.

Mr. Zubke mentioned that computerized bots from all over the world hit the public database data and download data frequently, though he is not sure what is being done with the information. Once they become aware of it, IT will kill the IP address for frequenters.

Mr. Raaen offered closing comments on three main areas: 1) Long-term preservation, which is in part a technical issue and partly a policy issue, and ties directly to, 2) development of a retention schedule, and 3) access. Under preservation, the first step is to perform the assessment with a focus on the judiciary. Next, the committee will want to perform data-mapping or analysis on current capability, and discuss the role of archives. Ms. Holewa pointed out that under the current rules, any retention schedule must be done in conjunction with the state archivist, state auditor and the Attorney General's office. There is also a need for basic policy on unstructured files and emails and how to organize files.

Mr. Raaen suggested that the assessment and determination of what data the group is working with is the first priority, then likely the development of committee subgroups. He recommended that the first issue to address would be the retention schedule.

Ms. Holewa asked whether the committee could get to the retention schedule without first addressing policy and articulated goals for the retention periods. Mr. Raaen answered that in the records management industry and literature there is a grid to help determine the value of the document; whether there is a legal, fiscal, business, or historical value that requires the document to be retained, as well as the public interest in the document that is unique to court records.

Mr. Raaen commented that North Dakota appears to have a more restrictive access policy than some states. Personally, he likes the approach that North Dakota takes because it mitigates some of the abuse and potential risk posed by unrestricted access. There was discussion about the nature of the information and whether that changes depending on who was using the information and how it was being used, which will need to be revisited to form a retention schedule and access policy.

There was a question regarding the costs to the court for different methods of accessing court documents. Currently, the court system does not charge for public access documents.

Ms. Holewa pointed out two issues that have not been addressed: First, in providing attorneys with free access, the hope was that the savings would be passed on to the client. It is unclear whether that is happening in practice. Second, the court also currently sells data. Mr. Phillips pointed out that other states do charge for document access, such as PACER. There was discussion about other methods of charging for online access and unrestricted access. There was suggestion that the committee could look to different states and the different approaches to guide future discussions. Mr. Raaen referred the committee to the National Center for State Court's website, which contains a collection of as many states' retention schedules as they could find.

Ms. Hinds stated that the question of why a document is being retained is a first tier question and should be addressed before the question of how to retain it and for how long. Mr. Raaen gave an example of Arizona's development of retention schedule to illustrate the challenges of

a short retention schedule where info that was wrongly posted on the web outlasts the destroyed court record. Mr. Raaen also gave information about a situation in Iowa where Iowa released information to private companies under contract and conditions; an expungement scenario happened and Iowa was sued for a lost employment opportunity. Because there was a clear contract, the liability fell on the vendor, rather than the state. Ms. Holewa pointed out that North Dakota also sells data, but currently shifts liability to the vendor.

Mr. Williams stated that he understood more about the depth of the issue after this meeting, and that he liked the approach to address retention first, then access. But, he stated that the committee first needs to look at what constitutes "court record" and what is included and excluded under the rules. Rule 19 and 41 are slightly different in definitions. Ms. Holewa and Mr. Raaen agreed that the definition of court records was a fundamental piece to be addressed.

Ms. Holewa brought up that a representative from the Attorney General's Office should be present for future discussions because a final schedule will need to be approved by their office.

There was discussion of the next meeting date. With no further business, the meeting adjourned at 1:46 p.m.