

JIFFY Online Access Subcommittee

Meeting Minutes

Thursday, December 8, 2016, 1:00 p.m.

Subcommittee Members:

Brenda Castello, Chair
Senior Justice Petra Jimenez Maes
Judge Karen Mitchell
Barry Massey
Ian Bezpalko
Gregory J. Saunders
Joey D. Moya
James A. Noel
Judge Henry Alaniz
Weldon Neff
Artie Pepin

OAS Staff:

Terri L. Saxon

JID Staff:

Genevieve Grant
Laura Orchard

Call to order. Brenda Castello called the meeting to order at 1:00 p.m. Deborah Baker from the Albuquerque Journal and Pat Rogers also attended the meeting.

Agenda Item # 1. Evaluation of public comments to finalize proposed online access policy for 12/15/16 JIFFY. The subcommittee began the meeting with a discussion of the comments received online and at the public comment forum, which was held from 9:00 a.m. to noon on December 8. The subcommittee received comments from members of the public, members of the press, the University of New Mexico School of Law, attorneys, private investigators, the Legislative Council Service, representatives of the judiciary, people identified as parenting coordinators, the New Mexico Coalition Against Domestic Violence, and the New Mexico Department of Health. Given the diversity of comments and commenters, the subcommittee decided to use the draft online case access policy as its guide to evaluate the comments.

The first access group identified in the draft policy is attorneys. Ian Bezpalko offered that the State Bar of New Mexico supports the subcommittee's actions. Some of the attorneys' comments included requests for broader access than is currently available to juvenile cases, such as access to all abuse and neglect cases. At present, and as contemplated by the draft policy, attorneys would only have access to juvenile cases in which they are attorney of record. After a thorough

discussion regarding these types of cases and the comments received, the subcommittee determined that the present access given only to attorneys of record was appropriate and consistent with the governing laws. Attorneys seeking additional access to juvenile cases will need to file separate applications, and the subcommittee will evaluate those on a case by case basis.

The subcommittee next discussed the comments received by the UNM SOL, which included requests that access be given to law library staff and students enrolled in legal research classes, staff and law students participating in law school clinics, and visiting professors. The subcommittee recognized the reasons behind the requests, but was concerned about granting special access to visiting professors and other non-attorneys. The burden on JID staff would be significant, given that JID would need to change the access every semester. The request for treating visiting law professors the same as attorneys also created some concern. The subcommittee discussed different options, such as treating students the same as attorney staff or justice partners, and treating visiting professors the same as pro hac vice attorneys. Greg Saunders also suggested that some of the people requesting access may already have it. Given the several layers of requests by the law school and law school clinic and the lack of clarity about the scope of the access certain people have and what is requested, the subcommittee determined that it needed more information from the UNM SOL in order to consider the request. The subcommittee agreed to set aside its discussion of the request from the SOL, and that one of its members will reach out to the SOL to get more information about what, exactly, it is seeking.

The subcommittee then discussed the comments of the Legislative Council Service, made on behalf of the Legislative Council Service, Legislative Education Study Committee, Legislative Finance Committee, House Chief Clerk's Office, and Senate Chief Clerk's Office, requesting full access for these agencies. The subcommittee determined that while the limited access contemplated for the public may not be convenient for the legislative agencies, there was no compelling reason to treat these agencies differently from the public. The subcommittee did note that attorneys working for the Legislative Council Service will have access granted to all licensed New Mexico attorneys under the attorney access group.

The Second Judicial District Court raised a concern about the "notes" tab in Odyssey, and whether information in that tab would be available to the public. Many of the hearing officers in that court write hearing notes in this section that should not be made public. Genevieve Grant agreed to investigate whether the setting for entries in this tab can be made to default to private.

At this point, having agreed to set aside the UNM SOL issues and have a meeting to clarify those issues, the subcommittee agreed that the draft policy as it relates to access given to attorneys is acceptable and ready to present to JIFFY.

The next access group on the draft online case access policy is attorney staff. The subcommittee did not receive any comments regarding this access group, and agreed that there is no need to revisit this group as it is defined in the draft policy.

The subcommittee next discussed the pro hac vice access group, and also agreed that, since there were not any comments regarding this access group, there is no need to revisit this group as it is defined in the draft policy.

The next access group discussed was justice partners. The subcommittee received several requests that parenting coordinators, private investigators, process servers, public researchers, and investigators working for regulatory agencies be included in this access group. Sr. Justice Maes said that in all of her years in the judiciary, she had never heard of parenting coordinators and did not understand why people identified as parenting coordinators should be granted access. Ian shared his understanding, which is that parenting coordinators are experts appointed in domestic relations cases involving custody who facilitate with parenting decisions. Sr. Justice Maes said parenting coordinators seem to play a role similar to that of a mediator and did not believe they should be included in the justice partners. If they want broader access to a particular case, they can apply and explain their reasoning.

The subcommittee then discussed the comments suggesting that private investigators, process servers, and others in related fields be included in the justice partner category, and the concerns expressed by the New Mexico Coalition Against Domestic Violence that the justice partner definition was overly broad and could jeopardize the protection of domestic violence survivors whose location has been deliberately hidden. Members of the subcommittee had reviewed and carefully considered these comments, and determined that private investigators and others should not have any access other than what is granted to the public, until such time as the judiciary is able to redact protect personal identifiers (“PPIs”) from the court records. With this determination, the subcommittee agreed not to make any changes to the definition of justice partners.

The subcommittee then discussed the access group of the press. While most of the comments from representatives of the press supported the draft policy as it

relates to the press, one commenter cautioned against limiting the definition in such a way as to license the press, and suggested, for example, that anyone using Twitter is a member of the press. Artie Pepin followed by saying that bloggers and people using Twitter would have the same access as the more mainstream press members. Greg suggested that until JID begins receiving and processing applications, he and his staff really do not know who in these various categories, bloggers, people with Twitter feeds, etc., will be considered as press and who will not. Weldon Neff suggested that consistency in handling the various applications is key, and the subcommittee agreed. JID will build its rule regarding these applications as it receives applications and begins to see the patterns that develop. When questions arise, JID will ask OAS to make a determination regarding whether access should be granted. The subcommittee also received a comment suggesting that the press should not have the full online access contemplated. Given the First Amendment right of freedom of the press, the subcommittee determined that the request to restrict this access is not feasible. With this determination, the subcommittee agreed that the definition of the press is acceptable in its current form.

The next access group discussed was self-represented litigants. That group has full online access to cases in which they are a party, much like pro hac vice attorneys have access to cases in which they are attorneys of record. This is greater than the access currently afforded to self-represented litigants. The subcommittee agreed that including this information as an educational component of the rollout is important so that self-represented litigants will understand that their access is being expanded, not reduced. The subcommittee agreed that the definition of self-represented litigants does not need to be modified.

Regarding the access group of the public, the subcommittee agrees that until the judiciary has funding for redaction software, the access granted to the public cannot be expanded. Again, including an educational component regarding the laws that require protection of PPIs and the First Amendment right of freedom of the press will be an important part of the rollout of this policy. Judge Mitchell observed that the comments evidenced some confusion about what constitutes a public record. The subcommittee agreed that the definition of this access group does not need to be changed at this time, and when the policy is approved and the access it contemplates is available, the public will see exactly what it can and cannot view under the policy.

The final part of the discussion regarding the draft online access policy concerned the footnotes. The subcommittee determined that no changes to the footnotes are necessary.

Artie Pepin moved to reaffirm the draft online case access policy that the subcommittee will recommend to JIFFY to present for the Supreme Court's approval. Greg Saunders seconded the motion. Judge Mitchell moved to amend the motion, to amend the "*" footnote to change the opening sentence from "View/print document access" to "Online document access," to change the second instance of "View/print" in this footnote to "View or print," and to change the column heading "View/Print Access" to "View or Print Access." There being no opposition to the amended motion, it passed on a unanimous vote.

Agenda Item #2. Implementation and timeline for notice to access groups. Genevieve took the subcommittee through the draft timeline for SOPA implementation, and discussed JID's reasoning behind the time frames suggested. Assuming that the Supreme Court approves the online case access policy on January 4, the activation date of February 17 allows six weeks for notice to be given through the various outlets available, applicants to complete and submit their applications, and JID to process the applications. Joey pointed out that a Court approval date of January 4, 2017, does not allow sufficient time to publish the rule amendments in the *Bar Bulletin* the week of January 9, as is contemplated in item 4(a)(i) of the draft timeline. The subcommittee determined that there are sufficient other vehicles for notice, including press releases, email blasts, the State Bar weekly emails, that the single delay in publishing notice in the *Bar Bulletin* is not reason to delay the activation date.

The subcommittee discussed how to make the applications available for those wishing to apply, and the need for JID and OAS, where appropriate, to vet the applications to ensure that the access sought is appropriate for the applicant. The subcommittee agreed that the applications will be available on JID's website, with a separate description for each access group and a link to the application for that access group.

Agenda Item #3. Confirmation of determinations of approved juvenile case access. The discussion of this agenda item was primarily guided by a list of case type codes, case type descriptions, and case categories that JID staff obtained from Odyssey. Genevieve said that the Department of Public Safety wants access to cases in which orders of protection have been entered, and that is not identified

by case category but rather is an event in a domestic violence case. The Department of Corrections also has asked for this access. The subcommittee reviewed each of the case type codes, case type descriptions, and case categories on the Odyssey list, some of which created confusion or concern among the members. Sr. Justice Maes questioned the categories that included “miscellaneous,” for example, “Domestic Matters Misc.,” “Administrative: Juvenile Misc.,” etc., and said that the courts have been moving away from miscellaneous categories so that cases can be more clearly identified and categorized. The subcommittee reviewed the various categories of juvenile cases, and discussed which juvenile cases are automatically sealed. Access to sealed cases will be granted to attorneys of record, but blanket access to certain categories of cases will not be granted. Instead, applications for blanket access will be denied, and the applicant can then bring its request to OAS for consideration. One of the concerns is the large groups of attorneys that will routinely want access, being the district attorneys’ offices, public defenders’ offices, and CYFD attorneys, and the fact that those groups historically have a high rate of turnover, so attorneys who are granted access to these sequestered cases may continue to have access even after they have left the agency and no longer represent a party in the sequestered case. Joey Moya suggested that the Supreme Court can notify JID when a change is made to the Official Roll of Attorneys showing that an attorney is no longer with one of these agencies.

The subcommittee had previously decided to include a checkbox on the applications for attorneys, justice partners, and attorney and justice partner staff if the applicant was seeking access to juvenile cases. Upon further discussion, the subcommittee determined that the better course of action would be to have applicants complete an addendum if they sought access to juvenile cases. Judge Mitchell suggested language for these applications to replace the existing checkbox, and Genevieve made those changes. With those changes, the subcommittee agreed that the discussion of agenda items 2 and 3 was complete.

Agenda Item #4. Next OAS meeting. The subcommittee agreed that it was appropriate to schedule meetings for January, February, and March, given the anticipated timing of the Supreme Court’s approval of the rule amendments and online case access policy and resulting applications that will be submitted. The subcommittee scheduled meetings at JID for Monday, January 23, 2017, at 1:30 p.m.; Friday, February 17, 2017, at 9:00 a.m.; and Thursday, March 23, 2017, at 9:00 a.m.

There being no further business, Brenda adjourned the meeting at 3:30 p.m.