JUDICIAL COMMITTEE ON INFORMATION TECHNOLOGY
MEETING MINUTES
November 18, 2010 - 10:00 a.m.
Texas Association of Counties, Austin

I. Call to Order

Justice Simmons called the meeting to order at 10:06 a.m. Casey Kennedy noted that a quorum was present.

JCIT Members:
Chair, Justice Rebecca Simmons
Honorable Mike Cantrell (phone)
Honorable Amalia Rodriguez-Mendoza
David Slayton (phone)

Honorable Frank Summers
Ed Wells
Bob Wessels

JCIT Liaison Members:
Miles Brissette
Honorable Jack Cagle
Randy Chapman
Honorable John Dietz
Honorable Gary Fitzsimmons
Honorable Blake Hawthorne
Gary Hutton
Roland Johnson
Honorable Josh Morriss
Cynthia Orr
Honorable Louise Pearson
Penny Redington
Sian Schilhab
Mark Unger (phone)
Dennis Van Metre
Jimmy Vaught
John Warren
Honorable Randy Wilson
Doug Gowin (phone)

Others in attendance:
David Burks
Tammy Carter, CaseFileXpress
Randy Chapman, Texas Legal Services
Michael Dunn, Sierra Systems
Janet Gilmore, Department of Information Resources

Honorable Loren Jackson, Harris County
Wroe Jackson
Todd Kimbriel, Department of Information Resources
Gayle Latham, CIRA
JoAnne Leger, 253rd District Court
Gary Miglicco, CaseFileXpress
Ellen Pate, Department of Information Resources
Tracy Powers
Kristy Smith, Dallas County
Rahul Sreenivasan, Representative Hochberg's Office
Brian Stevenson, NIC
Jake Stine, NIC
Ashley Storm, Senator Wentworth's Office
Martin Zelinsky, Department of Information Resources

Office of Court Administration Staff:
Mary Cowherd
Casey Kennedy
Scott Jones
Thomas Sullivan

II. Approval of Minutes – June 25, 2010

Judge Dietz moved to adopt the minutes. Jimmy Vaught seconded the motion. The committee adopted the minutes unanimously.

There was no quorum at the September meeting, so there are no minutes to approve from that meeting.

III. Reports from committee chairs on projects for 2010-2011

Justice Simmons asked if the chairs had anything specific to report beyond what would be discussed in the review of the report to the Supreme Court.

Blake Hawthorne and Amalia Rodriguez-Mendoza had nothing to add. David Slayton said that he was looking forward to Gayle Latham's meeting in February.

Jake Stine gave a brief update on eFiling. They have rolled out appellate and indigent eFiling. Appellate is ready to go once they have the rules for the 1st and 14th courts of appeal. No new counties have been added to eFiling since last meeting. The volume numbers are rising steadily. The millionth filing is coming up and a press release will be sent out. Also, a press release will be sent out on appellate and indigent. These may be done as a single press release, or two separate releases.

IV. Review of the report to the Supreme Court

Justice Simmons discussed the purpose of the report to the Supreme Court. The Court has legislative authorization to administer the judicial system. The Court is interested in moving forward with eFiling. This report will give the Court the history and the big picture of the three workgroups (eFiling, case management, and public access/standards). Some things require legislative approval. Justice Simmons cautioned that the likelihood of these items being considered this session might be low due to the current budget situation and redistricting, but that the process needs to get started even if it is only laying the groundwork for future sessions.

The information was generated by the committee, refined through the subcommittees, and then given to the executive committee. OCA provided a lot of background information, NIC provided numbers, and PACER information was provided by the feds. Justice Simmons reviewed the document and changed it with assistance from others. Comments are still being accepted; please email them to Justice Simmons. Justice Simmons apologized for not getting the document to the committee sooner, but she had been still reviewing it. Please note that the document is still a draft and the footnotes have to be added.

The group began discussing the specific recommendations.

a. *Statewide eFiling rules.* These were initially done locally so they could be tweaked but now they are ready to be implemented at a statewide level. David Slayton felt that the statewide rules would assist clerks who want to adopt eFiling. The Court of Criminal Appeals will need to provide their input into the rules, and Blake Hawthorne said that Judge Hecht and Kennon Peterson are aware of this need. Blake said the intent is not to make eFiling mandatory.

b. *Funding model.* Judge Dietz recommended that the document should explain why the new model should be within the governance of the Judicial Branch. It was explained that this is based on the feeling of some district clerks that NIC is not as responsive, and concerns with DIR dictating the terms of the contract. OCA would be responsible for the Request for Proposal because JCIT doesn't have statutory authority to do that. Gary Fitzsimmons doesn't see how the funding model solves the problem. Justice Simmons felt that we would have more control by carving out the eFiling from the Texas.Gov contract. Another request was to change the world "agitation" to "interest."

In the best world, a one-time fee would be on the front end (on the back-end for criminal cases). This fund would be used to contract with a vendor, such as NIC, to provide the eFiling services. It may also provide some funding that could help rural counties implement eFiling. It would not be a pay as you go system, but a flat one-time fee. We don't have the specific data to decide what the specific funding needs would be yet, but are working with DIR and NIC on this. There is no intent to get rid of EFSPs. If eFiling numbers go down, then the fund would be impacted. It doesn't look like PACER model will work in Texas, because there is not a centralized system in Texas. Blake feels we need a technology fee and a

PACER type system, if we want to have enough funding to provide the smaller counties with assistance. Judge Dietz feels the current funding model doesn't promote eFiling and is concerned about a few paying for everyone else. Blake said that the fee would apply to all cases (whether filing by paper or electronically), so there would be a greater pool to draw from. We won't be able to get everything up and running overnight. We need the technology fee for a flat-rate contract to get started. The PACER type system would generate the funding needed to improve the system and provide other technological improvements for all the courts. Concerns were raised by various members about their counties funding IT infrastructure for other counties, and they felt that their county commissioners and taxpayers wouldn't approve this. There was also concern that the same fee is charged regardless on the impact the filing has (a name change would cost the same as a class-action suit). There was discussion about the proposed Harris County free eFiling portal and how that would affect the funding model recommendation. JCIT's preference is for a unified filing system, so that filers don't need logins to multiple systems. Another concern was raised about adding a fee for the JPs.

Justice Simmons reiterated that the point is not to generate large funds. Mike Cantrell raised concerns about local control and the funds going to OCA. He suggested that the funds be split so that some funds would go to support the portal, some would go to grants, and the remainder would remain local. Justice Simmons agreed that local control is important, and said that there is no intent to have centralized control over case management. The technology fee would pay for the eFiling system and the file servers used for the system. Justice Simmons doesn't think there will be any extra money for the locals, since they will need the majority of the money just to fund eFiling. Mike Cantrell asked if the current revenue sharing funds could be used for eFiling instead of going to general revenue. The thought is that with the current budget situation, this is unlikely to occur. We don't have a defined amount from NIC for how much everything would cost, which is why the proposal has such a wide range for the possible fee. We are working with DIR and NIC to get those numbers tied down. For now, we have a placeholder of $10 to $20, but that is not a firm number. This is not an implementation document, it is a broad picture for the Supreme Court, and the specifics will come later.

Justice Simmons asked if the committee wanted to proceed with the funding model and to get more information. All the voting members agreed.

c. *Document and Case Management*. The recommendation is that all courts have some sort of case management system, but we are not suggesting that there be a giant, centralized case management system or that OCA develop a case management system. CUC, CIRA and others are working on case management systems that could assist smaller counties in getting a case management system.

Gayle Latham clarified that CIRA is not developing a system. They are only

developing the requirements for a case management system.

Everyone was ok with this recommendation.

d. *Smart Forms*. The recommendation is to come up with some standard forms for pleadings and filings.

Miles Brissette recommended that the smart forms have PDF/A capability.

Randy Chapman said Texas Legal Services Center would support this. They are trying to develop user-friendly legal forms for pro se litigants and others. The Texas Access to Justice Commission recommends the use of standardized forms, and recently designated a committee to look into this.

Justice Simmons says a subcommittee will be appointed to look further at this issue, and they will want to work with Randy. The smart forms won't be mandated, but will be available. Smart forms are already being used on the criminal side, and will likely show up on the civil side soon.

Casey Kennedy mentioned that the smart forms project is on OCA's LAR for 2012/2013, although that funding is up in the air.

e. *Update Government Code Chapter 77.* Justice Simmons is ambivalent about this. She thinks it is adequate as written today, and she doesn't want it to clutter up our request to the legislature. This recommendation was included because some members felt it was needed, but she doesn't feel it is necessary. We have the ability to do everything already; the changes would just make it more specific.

f. *Selective Exemption from Government Code Chapter 2154 for the Judicial Branch.* Casey talked about DIR's data center consolidation project which is going on across the state. Originally, OCA was to be part of the project but received waivers to not participate for the last two biennia. The waiver expires at the end of fiscal year 2011. The project is currently out for rebid, and there are problems with the project. It would affect OCA, Supreme Court, Court of Criminal Appeals, the appellate level courts, and several other judicial branch agencies. It is OCA's hope to get the chapter amended so that the Judicial Branch doesn't have to participate.

g. *OCA as Archival Agent*. Justice Simmons says this is a PACER system discussion. It would allow smaller populated courts to have an offsite storage location they don't have to pay for. There are all kinds of document data out there today. iDocket is used by several counties for docket sheets and the underlying documents. There is wide variety of ways to see documents in Texas. The goal is to come up with a solution where a person, a lawyer, or one of the

parties could look up the data for a case.

One way to do this for the rural counties would be for OCA or some other entity to hold images of those documents. For the larger counties, they could have an index that refers people to the appropriate location where the document is stored. People want the ability to look for documents, and the recommendation is that this system be developed.

Amalia suggested that the clerks sitting on JCIT define what "designate OCA" means, so everyone understands. Justice Simmons said the goal is not to change the custodian of the document; it is more for a backup or an index for the documents. Justice Simmons welcomes the clerks providing better language.

h. *Clarify the permissible users of Automated Registry (AR).* There are issues with when and for what purposes AR can be used. OCA received money to develop AR. The purpose of AR is to allow judges to pull up information from different state agency databases about a person appearing before the court, so that judges could make an informed decision. The usage of AR has been less than initially anticipated, and this recommendation is to get legislature to clarify what the legitimate uses are, so OCA can get more people using the system.

OCA has done several marketing efforts including articles in magazines and presentations at multiple conferences for different levels of courts. Interested parties can find information about how to sign up on the AR webpage. It is available for criminal and civil cases. The agencies set the rules on who can use the data.

i. *Adopt Rules Relating to Access to Sensitive Information in Court Documents.* JCIT did a county by county look at what data is out there, and there is a lot of sensitive data out there (such as SSN and birthdates). Lubbock County has already implemented the rules that the Supreme Court is looking at. The suggestion is to set-up another subcommittee to look at this.

Loren Jackson pointed out that in 2004; the Supreme Court put together a subcommittee to review public access to electronic court orders. The committee came up with guidelines that follow a federal order that came out of the United States District Court, for the Southern District of Texas (Order 2004-11). One of the key aspects is that the best way to prevent the data from being released is to not include the data in the record in the first place.

Diane Wilson has expressed interest in being on this committee. Gary Fitzsimmons and John Warren volunteered to be on the committee. There are some other people who have also expressed interest in being on the committee. Loren mentioned that he had some additional information about redaction techniques that he could share with the subcommittee.

V. Next Steps

a. eFiling committee will put together the funding model information, for circulation among the voting and advisory members. A conference call will be setup to discuss it more thoroughly.
b. If anyone has specific comments, please email them to Justice Simmons at Rebsimmons1@yahoo.com. Anyone can weigh in, not just the eFiling committee members.
c. One other thing to think about, if this is going to be presented to the legislature then we will need legislative support. Everyone needs to think about who the key legislators are in their area. We need to publicize more about eFiling. We will have to craft legislation if we are going that route.

VI. Adjournment

Next meeting will be February 25. It is important that everyone attend if possible.

Justice Simmons adjourned the meeting at 12:23 p.m.