Judicial Information System Committee Meeting April 25, 2014

DECISION POINT – Guidelines for Flagging Individual Cases for Permanent Retention as Allowed for in the Courts of Limited Jurisdiction JIS Retention Schedule

MOTION:

I move to adopt the proposed guidelines for flagging individual cases for permanent retention as allowed for in the Courts of Limited Jurisdiction JIS retention schedule and as approved by the District and Municipal Court Judges' Association and the Data Dissemination Committee.

I. BACKGROUND

The Data Dissemination Committee (DDC) was established by Article 7 of the JISC Bylaws and acts on the behalf of the Judicial Information System Committee (JISC) in addressing issues regarding the access to the JIS and the dissemination of information from the database. The DDC also recommends to the JISC changes to the JIS policy and to statutes or court rules regarding access to court records. Per JISCR 8, the JISC may make recommendations to the Administrative Office of the Courts (AOC) for establishing a policy regarding the retention of JIS court records.

In 2008, a work group was organized at the direction of the DDC, and chaired by Pierce County District Court Judge James Heller, to review the retention schedules of courts of limited jurisdiction. Based on the work group's recommendations, the DDC and the JISC voted to enact a retention schedule. However, the schedule was never implemented. In 2011, AOC began work on IT Governance (ITG) Request 41 to implement the destruction rules decided by the JISC in 2008. In the course of the project, the DDC made a number of policy decisions further refining the original retention decisions. On May 31, 2013, the DDC voted unanimously on a retention schedule for CLJ JIS records and forwarded it to the JISC for approval. The DDC also provided a comment period for interested parties to submit their commentary about the proposed change. After considering the received comments, the JISC established another workgroup to review the proposed policy and make a recommendation to the JISC.

On October 25, 2013, the workgroup came back to the JISC as it was unable to unanimously agree on a policy that would satisfy all concerns. The workgroup presented the JISC with six options and requested direction from the JISC on which of the alternatives would be preferable. After reviewing the options, the JISC adopted a policy that allows for the destruction of records as originally proposed by the DDC, with the exception that domestic violence cases will be retained for 15 years. Furthermore, records set to be deleted after three years would be held for five years, until the data needs for the Judicial Needs Estimate are resolved, then records will be deleted after three years.

The policy also allowed for a judge to flag individual cases for permanent retention after considering certain criteria proposed by the District and Municipal Court Judges' Association (DMCJA) and approved by the DDC and the JISC. Once the Committees approve the criteria, the case flagging process and the CLJ JIS records retention schedule would then be

recommended to the AOC for establishing a policy. Judge Rosen and Judge Heller were directed by the JISC to provide guidance to the DMCJA on the individual case flagging criteria.

On November 7, 2013, Judge Heller, Judge Rosen and the third CLJ workgroup member, Aimee Vance, issued a letter to the DMCJA, providing recommendations for individual case flagging criteria. The letter was presented to the DMCJA on November 15, 2013, and Judge Svaren requested members of the Association to provide him any further comments or suggestions regarding the guidelines.

At the December 13, 2013, DMCJA meeting, the Association voted to approve the recommended guidelines as provided by the CLJ workgroup. The proposed guidelines were then brought before the DDC on February 28, 2014, who also approved them. Once approved by the JISC, the AOC will incorporate the guidelines into its policy for the retention of CLJ JIS records.

II. DISCUSSION

The proposed guidelines suggest judges consider the following non-exclusive factors when flagging individual cases for permanent retention:

- Defendant criminal history;
- Nature of the current crime;
- If the case involves any mental health issues;
- If the case involves any substance abuse issues;
- If the Defendant has a high risk of repetitive contact with the court system;
- If the alleged crime was sexual in nature;
- If the Defendant has a history of repetitive contact, or has the potential of repetitive contact, with the alleged victim; and
- If domestic violence was involved.

The workgroup also recommended that judges should consider these factors with the knowledge that the dismissed record is not a record of conviction and therefore, if retained, it may have negative consequences for the Defendant in acquiring employment or housing. Furthermore, flagging of individual cases, especially those that are dismissed, should be considered the exception and not the norm in judicial proceedings. If a judge decides that a case should be flagged, findings supporting the flag must be put on the record and docket entries must show the criteria used in making that decision. A flag may be removed from a case upon good cause shown. Last, the record and docket entries must reflect the reasons as to why the case was un-flagged.

III. DATA DISSEMINATION COMMITTEE RECOMMENDATION

The Data Dissemination Committee recommends to the Judicial Information System Committee to approve the individual case flagging guidelines and recommend them to the AOC for publishing in its policy regarding retention of JIS court records by Courts of Limited Jurisdiction.

IV. OUTCOME IF NOT PASSED

Provide direction to the Data Dissemination Committee for amending the case flagging guidelines.