

**Minutes of Public Access Task Force
Committee on Access to Meetings and
Judicial Branch Administrative Records
July 27, 2006**

The Committee on Access to Meetings and Judicial Branch Administrative Records met in Courtroom 5D at the Superior Court at 1061 Main Street, Bridgeport, on Thursday, July 27, 2006, from 2:00 PM to 2:50 PM. Those in attendance were: Judge William J. Lavery, Mr. Zach Lowe, Judge Aaron Ment, and Attorney Alan Neigher.

The first item on the agenda was the review and approval of the minutes from the meetings of June 28th and July 18th. The minutes were unanimously approved.

The next item on the agenda was a discussion of the definition of administrative records. (A copy of the definition is attached to and incorporated into these minutes.) A discussion ensued as to what was included and excluded by the definition as it has been revised. Attorney Neigher wanted to ensure that the definition did not limit the types of records that might be available from the Judicial Branch. After extensive discussion, Attorney Neigher proposed the following language:

“Administrative Record” includes the following information maintained by the Judicial Branch (which, for purposes of this definition shall include any of its departments, offices, committees or panels) pertaining to the Administration of the Judicial Branch with respect to, *inter alia*, its budget, personnel, facilities and physical operations which is not associated with any particular case and includes (1) summaries, indices, minutes and official records of any proceeding of the Judicial Branch, and (2) information maintained or stored by the Judicial Branch, not otherwise exempted, in all paper and electronic platforms and formats.

Upon motion, the proposed language was accepted unanimously by the committee.

The next item on the agenda was a continuation of the discussion of the definition of meeting in light of the proposed option for committees to go into closed session pursuant to specific guidelines. (A copy of the definition of meeting and closed session is attached to and incorporated into these minutes.) The committee’s decision on this language may have an impact on the vote on making the Criminal Task Force open to the public. Extensive discussion ensued regarding the proposed language including a discussion of what would be included under the exception based on the “chilling or deleterious impact on debate or the receipt of information” under section (2) of the proposal. Mr. Lowe pointed out the last paragraph of the definition which explained in more detail what would be considered to constitute such chilling or deleterious impact. Judge Lavery provided some examples from his experience with the Criminal Task Force. Judge Ment said that this provision addresses legitimate concerns of the judges regarding opening meetings to public access. It also provides an open procedure for going into a closed session and requires a vote of two-thirds of the members present at the meeting in favor of the closed session. After further discussion regarding individual subsections of the proposal, the committee agreed to remove the subsection regarding a closed session when a judge would provide comment on pending or impending proceeding, since such comment is already the subject of a Canon of Judicial Ethics. Therefore, there is no need to provide for such comments to be made in closed session. Mr. Lowe expressed concern regarding subsection (4) of the proposal. That section

allows a closed session when the members determine that their need for information obtainable only on a promise of confidentiality outweighs the public's interest in attending the portion of the meeting at which the confidential information will be received or debated. Judge Ment reiterated that the decision requires a two-thirds vote and is done openly so that abuses of the section are unlikely, and if they did occur, could be reported. Attorney Neigher suggested some revisions and the proposed language on which the committee will vote is as follows:

Closed Session

Upon motion and a two-thirds vote of the members present and voting at a meeting, the members may go into closed session (1) for any purpose permitted by the Freedom of Information Act, or (2) if a public session would have a chilling or deleterious impact on debate or the receipt of information. Any motion to go into closed session shall specify the permissible purpose, in accordance with the Freedom of Information Act, for the closed session, or the reason a public session would have a chilling or deleterious impact on debate or the receipt of information.

No vote shall be taken at a closed session except as permitted pursuant to the Freedom of Information Act.

Examples of a public session that may have a chilling or deleterious impact on debate or receipt of information includes, but are not limited to, situation where: (1) the information sought to be disclosed would invade "personal privacy" as that term has been construed in C.G.S. § 1-210(b)(2), (2) disclosure or discussion of information would be likely to give a party to pending or impending litigation a procedural or tactical advantage, and (3) the members determine that their need for information that is obtainable only on a promise of confidentiality outweighs the public's interest in attending the portion of the meeting at which the confidential information will be received or debated.

After the committee had the opportunity to review the proposal, the vote was Attorney Neigher, Judge Ment, and Judge Lavery voting in favor of the proposed language and Mr. Lowe voting against the language.

Judge Ment then raised the question of including the Criminal Task Force in the list of meetings that the committee will recommend should be open to the public. Judge Lavery expressed opposition because the meetings frequently include the exchange of information that would not be shared in the presence of the public because people would be unwilling to be as open in their concerns and complaints at the public meeting. Judge Ment said that as chairs of committees become accustomed to this provision, the personnel types of issues will come up at the end of meetings rather than throughout the meetings.

Attorney Neigher said that the committee had worked hard and had attained definitions of records and meetings and that the committee's charge was to allow access unless there are specific reasons which make that access impossible. With respect to the

Criminal Task Force, the committee has provided opportunities for closed session, so there is no reason to exempt the Task Force from public access.

Judge Ment then moved that the committee vote on this issue. A yes vote means that the Criminal Task Force should be open and a no vote would exclude the Criminal Task Force from public access. Attorney Neigher, Judge Ment, and Mr. Lowe voted yes; Judge Lavery voted no. The motion to open the Criminal Task Force to the public was passed.

The next item on the agenda was a discussion of security issues. Judge Ment pointed out that many meetings take place in courthouses, as that is the venue that is available to the Judicial Branch. Currently, the rules do not permit people to bring electronic a camera into a courthouse. This prohibition effectively closes meetings in courthouses to the electronic media. Judge Ment suggested that the committee recommend that the camera rules be amended to allow for electronic media access to meetings. The recommendation should include the understanding that a marshal would escort the media person with equipment to the room (no interviews in the hallways) and also escort the person with the equipment out of the facility. This recommendation would require a rule change so it cannot be done immediately. Attorney Neigher asked if this rule would include audio. Judge Ment said that it would include audio, and it would not require pool coverage. This recommendation is strictly in connection with permitting electronic access to meetings that take place in courthouses. The judicial proceedings committee is dealing with issues of electronic access by the media to court proceedings. Judge Ment's suggestion is intended to make sure that the media is not excluded while protecting the interest of the judges in maintaining order and control in their courtrooms. Judge Ment will work with the staff to draft a proposal which will be circulated to the committee members for review and comment.

The next item on the agenda was a review of the list of issues that were referred to the committee for consideration by the Task Force. After a discussion, the committee agreed that most issues had been discussed. The only exceptions were the issue about education and training and the issue of how to notify the public about meetings. Judge Ment said that the training and education issue was important overall, but with specific reference to this committee, it is less of an issue since most of the answers to questions on administrative records come from Hartford. Judge Lavery suggested that the committee recommend that court personnel be trained in whatever procedures are adopted by the committee. This recommendation was unanimously adopted by the committee.

The only other issue was what means to use to notify the public about meetings and what should that notice consist of. After discussion, the committee reached a consensus on a recommendation that the Judicial Branch should use the website to announce the committee name, and the time, place, and agenda of the meetings as early as practicable, unless otherwise mandated by statute or rule.

Judge Ment also suggested that the committee recommend that the Judicial Branch use its media list serve to provide information about upcoming meetings.

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The final item on the agenda was the discussion of the draft report and future meetings. Staff will draft a committee report which will include the number of times the committee met, the issues referred to and addressed by the committee, and the list of recommendations and proposals. The draft will be circulated by Tuesday.

The meeting was adjourned at 2:51 PM.

7/25/06

DEFINITION OF “ADMINISTRATIVE RECORD”

“Administrative Record” includes the following information maintained by the Judicial Branch (which, for purposes of this definition shall include any of its departments, offices, committees or panels) pertaining to the Administration of the Judicial Branch **with respect to its budget, personnel, facilities and physical operations** ~~and~~ **which is** not associated with any particular case:

Summaries, indices, minutes and official records of any proceeding of the Judicial Branch and information maintained or stored by the Judicial Branch, not otherwise exempted, in all paper and electronic platforms and formats.

Definition of "Meeting"

- (a) For purposes of this provision, a "meeting" is defined as a hearing or other proceeding of (1) the Rules Committee of the Superior Court, (2) the Appellate Court Rules Committee, (3) the Annual Meeting of the Judges of the Superior Court, (4) the Executive Committee of the Superior Court, (5) a multi-member Judicial entity established by Practice Book rule, statute, or administrative authority of the Judges of the Superior Court, the Appellate Court, or the Justices of the Supreme Court or (6) any subcommittee of the foregoing bodies.
- (b) A meeting as defined in subsection (a) shall not include: any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; an administrative or staff meeting of a single-member public agency; and communications limited to notice of meeting of any public agency or the agendas thereof. A quorum of the members of a committee included within the definition of a meeting in subsection (a) who are present at any event other than a meeting of the committee of which they are a member shall not be deemed to be at a meeting of that committee provided that no discussion of official business related to their committee occurs.
- (c) Except as otherwise provided by statute or Practice Book rule, any meeting as defined in subsection (a) shall be open to the public. Notice of the time and place of such a meeting, as well as a copy of the agenda for such a meeting, shall be posted on the Judicial Branch Internet website at least 48 hours in advance of the meeting.

Closed Session

Upon motion and a two-thirds vote of the members present and voting at a meeting, the members a committee may go into closed session (1) for any purpose permitted by the Freedom of Information Act, or (2) if a public session would have a chilling or deleterious impact on debate or the receipt of information. Any motion to go into closed session shall specify the permissible purpose, in accordance with the Freedom of Information Act, for the closed session, or the reason a public session would have a chilling or deleterious impact on debate or the receipt of information.

No vote shall be taken at a closed session except as permitted pursuant to the Freedom of Information Act.

Examples of a public session that may have a chilling or deleterious impact on debate or receipt of information includes, but are not limited to, situation where: (1) the information sought to be disclosed would invade "personal privacy" as that term has been construed in C.G.S. § 1-210(b)(2), (2) a judge would provide comment on a pending or impending proceeding¹, (3) disclosure or discussion of information would be likely to give a party to pending or impending litigation a procedural or tactical advantage, and (4) the members committee determines that its their need for information obtainable only on a promise of confidentiality outweighs the public's interest in attending the portion of the meeting at which the confidential information will be received or debated.

¹ Pursuant to Canon 3(a)(6) of the Code of Judicial Conduct, a judge "should abstain from **public comment** about a pending or impending proceeding in any court...: (Emphasis added.) By making various judges' committee meetings public, any discussion by a judge regarding pending or impending proceedings relevant to the committee would be public and hence prohibited under the Code.