

**Minutes of Public Access Task Force  
Committee on Access to Court Records  
June 6, 2006**

The Committee on Access to Court Records met in the Supreme Court Attorney's Conference Room at 231 Capitol Avenue in Hartford on Tuesday, June 6, 2006 from 2:00 PM to 4:05 PM.

Those in attendance: Dr. Cibes, Judge Ment, Judge Lavine, Judge Alander, Judge Dewey, Judge Clifford, and Ms. Collins.

The meeting was called to order by Judge Alander at 2:05 PM.

Judge Alander welcomed everyone and explained that he and Heather had met with us yesterday. He then asked Atty. D'Alesio to present to the committee the process utilized by the staff in organizing and prioritizing the issues raised by the full Task Force at its meeting on May 25, 2006.

Atty. D'Alesio described the process of categorizing and prioritizing the issues and handed out materials. Wall charts of the issues regarding access to court records were displayed and explained. (Copies of the materials are attached and incorporated into these minutes.) Atty. D'Alesio emphasized that the committee is free to add or remove issues or to rearrange categories or priorities, but based upon the results of the process, the first issue that needs to be addressed is defining what a court record is.

Atty. D'Alesio went through all issues that had been captured. Dr. Cibes asked to include family/children to the list of privacy issues. He also asked what was meant by judicial databases. The response was any database maintained by the judicial branch, but not including any database accessible to the branch. There was a brief discussion regarding the charge for obtaining records. (\$1.00/page by statute)

The next item on the agenda was determining if there were any issues that the committee wanted to add. A discussion of specific items ensued, including juror information (already listed), education of the public as to what records are available (added to the list), and redacting of information not properly included in a court record.

There was further discussion of what type of information is already in the court files and how that information is handled or protected. Judge Ment suggested that the best way to handle such sensitive information is not to request it in the first place. The collection and handling of this type of information (i.e., social security numbers, birth dates, and credit card numbers) will become more of an issue as electronic filing expands and allows greater remote public access. The question was raised as to whether there should be a bullet about what specific items make up the court record. There was a brief discussion and the consensus was that this item would be covered in defining a court record. Judge Ment is advocating against making that definition too narrow.

New issues can be added to the lists at any time.

Judge Alander moved to the third item on the agenda: developing guiding principles. He felt it would be helpful to have principles to guide us as we make tough decisions on some of these things. An extensive discussion ensued regarding the principles that

should be underlying decisions of the committee, including the presumption of openness, the need for clearly stated and compelling reasons for any closure, the duty of the courts to educate the public as to what should or should not be filed, and the affirmative duty of the court to limit the collection of information that would subsequently need to be sealed.

The proposed guiding principles are attached and incorporated into these minutes.

Judge Alander referenced the model guidelines and suggested that the committee familiarize themselves with the guidelines and perhaps consider using them as a template in terms of organizing the issues regarding access to court records.

The fourth item on the agenda, regarding the need for insuring that there is an opportunity for the public and the judiciary to make comments on any potential recommendations, was then discussed. The opportunity for Judges to comment is important because much of what this committee will recommend will have to go to the Rules Committee and to the Annual Judges' Meeting. The consensus was that it would be better to have input, not only from the Judges, but also from the Bar and the media. There were additional questions as to by whom (full task force or committee), when, and how (public hearings, written) comments should be solicited. The committee agreed that the co-chairs would talk to Justice Palmer regarding his plans for soliciting public feedback. The existence of the Public Access Task Force website and the e-mail address was mentioned as a means of providing the public with the opportunity to comment on what is being discussed.

The next item on the agenda was the timeline for task completion. The report of the full Task Force is due on September 15<sup>th</sup>, but it is unclear when the reports from the individual committees will be due. A discussion ensued regarding the tasks before the committee in relationship to the COSCA guidelines and the prioritization chart that was presented to the committee at the outset of the meeting. The decision as to the overall timeline will be deferred until more information is obtained regarding the Task Force's overall timeline.

Judge Alander asked what the timeline was for obtaining information on what records are currently closed by statute, rule, and/or judicial branch policy. He also indicated that he wanted information from staff regarding access policies in federal and other state courts, particularly regarding documents that should be categorically closed.

The sixth item on the agenda was other business. After discussion, the consensus was that the definition of a court record would be discussed at the next meeting. Judge Alander asked that members of the committee review the COSCA guidelines before that meeting in connection with developing a definition.

Justice Palmer was available and joined the committee to discuss the questions raised as to type and timing of opportunities for public comment. The suggestion was made to put information out on the Judges' listserv, the media advisory list, and the website, inviting comment. Judge Alander suggested that he and Ms. Collins send an e-mail to the Judges telling them what we are doing and seeking their input now. Then their input would be solicited at the end. With respect to the members of the public, all Task Force

and committee minutes will be posted on the website and comments may be made through the e-mail address shown on that website. There will also be public hearings when the Task Force has recommendations to present.

Justice Palmer indicated that he and Justice Borden would be addressing the Judges' Association regarding the Task Force.

After some discussion as to timelines for reports/recommendations, Justice Palmer indicated that the beginning of August would probably be the deadline for committee reports, but reiterated that any interim recommendations were welcome. He also indicated that the September 15<sup>th</sup> deadline is relatively firm.

The next meeting is scheduled for Tuesday, June 13<sup>th</sup> at 2:00 PM. The overall plan is to meet weekly on Tuesday afternoons, with the understanding that not every member of the committee will be at every meeting.

The meeting was adjourned at 4:35 PM.

## ISSUES FROM THE FLIP CHARTS

Maximize and facilitate access to judicial records with proper regard for legitimate privacy interests

- What records will be available electronically and remotely
- Distinguish individual from bulk requests for records
- Is there a further distinction by case type
- Privacy concerns
- Distinguish records available to parties from those available to public
- Extent judicial databases are available to public
- Are there categories of individuals that should be considered
- What records should not be open to the public
- Identity theft in e-filing
- Redacting information
- Daily docket sheet availability including how long
- Cost for electronic information
- Bulk
- Distinction between availability of information on paper/paperless
- Correcting electronic record
- Retroactive availability of docket information
- What is presently not available
- Access to electronic evidence (DVDs etc.)
- Use of pseudonyms
- Should category of super sealed files exist
- Distinction between openness of electronic and paper records
- Access to daily paper docket for specified period of time
- Should all records/hearings be presumed open unless otherwise specified
- Access to records when someone receives program as disposition
- Non-conviction record information availability
- Closed settlements – and opening
- Access to reasons for granting/denying warrant
- What records are open - or are all open?
- Categories of information that should remain confidential
- Redaction
- Timely release and affordability of transcripts
- Re-examine rules re sealing at parties' request
- Re-visit automatic sealing of financial affidavits in family
- Abuse of sealing of affidavits by attorneys
- Revisit statutory closing of proceedings
- Access to exhibits
- What is a court record
- Distinction between court records and records lodged with the court
- Must we compile records

- When is a court record available
- Privacy concerns
- Timing of release of information, e.g. YO
- Categories of individuals (minors, victims, jurors, juror questionnaires)

## LIST OF ISSUES FROM MEETING NOTES – 5/25/06

### Access to Records

- What is a court record?
- Is there a distinction between court records and records lodged with the court?  
Should there be a distinction?
- What court records should be available electronically?
- Be sure court staff is uniformly trained in what is accessible to the public (update field guide-staff, media, judges)
- Does access to court records include creation of records not created in the ordinary course of judicial business?
- Should requests for individual case information be treated differently from requests for bulk case information for electronic records?
- Should criminal, civil, and family court records be subject to the same rules and procedures regarding accessibility?
- Current rules and statutes regarding ability to access court records should be followed (e.g., sealing and unsealing of criminal warrants and affidavits)
- When is a court record available?
- What privacy concerns should be considered? (minors, victims, witnesses, and jurors)
- Should there be a distinction between court records available to the parties and those available to the public?
- To what extent should judicial databases be available to the public? (Is database information available to the public by direct access or other means?)
- Timing of access/release of records in light of the obligation of court staff to update records? (updating records may affect availability)
- What are the parameters regarding accessibility to information on settlement negotiations and agreements in cases? (medical malpractice, product liability)
- Should there be a simple statement of what court records are not open?
- Should there be a streamlined record request process?
- How do you protect against identity theft? (electronic files)
- Is it feasible to redact information from court files?
- Should criminal docket sheets be visible online or on paper and if so, for how long?
- Under what circumstances is an *in camera* hearing appropriate and at what point should transcripts be available for public inspection?
- Should we reexamine rules on sealing of court records?
- Should plea bargaining be more transparent?
- Should we revisit the automatic sealing of financial affidavits in family cases? (abuse by parties)
- Should trial exhibits be available to the public?
- If information is not disclosed, should it be possible at some point in the future to open that information without notice? (parties, victims, etc.)
- What about timely release and affordability of transcripts? (CD/tape)
- Are there categories of information that should remain confidential? (psychiatric evaluations, medical information, personal identifiers, financial information)

- Can there be access to the decision on granting or denying warrants? (wiretapping, grand jury)
- Should there be an expedited appeals process in the event of denial of access to a court record?
- What do other states do in terms of providing access to court records?
- When can a person use a pseudonym?
- Should there be a charge/fee for access to electronic court records?
- Should there be a charge for bulk transfer of court records? (i.e., criminal conviction information)
- Should the category of level 1 super secret case files exist?
- Can we better coordinate communication between clerk's office and prosecutor's offices?
- Should there be a distinction between the accessibility of electronic records and paper records?
- Should there be a process for people to correct an electronic record?
- Should there be a process for people to seek removal of information from a court record?
- Should all court records be open unless specifically exempted?
- Should there be a reason provided when a court record is sealed?
- Should the process to determine the accessibility of court records be open?
- What court records are currently accessible to the public?
- Should there be access to electronic evidence? (CDs, DVDs)
- Should judicial retention schedules be reviewed, especially in light of electronic storage capabilities?
- Should there be access to court records after a defendant is enrolled in a statutorily sealed program? (Alcohol Education Program)
- Can transcripts/recordings be made available more quickly? (CD/tape)
- Should access to permanent nonconviction criminal information be limited to state/federal agencies?
- To what extent should security concerns impact on court record availability?
- Review statutory costs for copying of court records
- Review statutory provisions regarding closing of records

## Records

- What is a court record?
  - What are the parameters regarding accessibility to settlement negotiations and agreements in cases? (medical malpractice, product liability)
  - Should trial exhibits be available to the public?
  - Can there be access to the decision of granting or denying warrants? (wiretapping, grand jury)
  - Is there a distinction between court records and records lodged with the courts? Should there be a distinction?
- What court records should be available electronically?
  - Should criminal docket sheets be visible online and if so, for how long? (or on paper)
  - Should there be a distinction between the accessibility of electronic and paper records?
  - Should there be access to electronic evidence? (DVDs, CDs)
  - To what extent should judicial databases be available to the public? (Is database information available to public via direct access or other means)
- Adequate training to insure compliance with rules, statutes, and court orders
  - Be sure court staff is uniformly trained in what is accessible to the public (update field guide – staff, media, judges)
  - Current rules and statutes regarding accessibility to court records should be followed (e.g. sealing and unsealing of criminal warrants and affidavits)
  - What efforts should be made to educate the public regarding what is accessible?
- What is the format and cost of access to electronic records?
  - Does access to records include creation of records not kept in the ordinary course of judicial business?
  - Should requests for individual case information be treated differently from requests for bulk case information?
  - Should there be a charge for access to electronic court records?
  - Should there be a charge for bulk transfer of records? (i.e., criminal conviction information)
  - Affordability of transcripts (CDs, tapes)
  - Review statutory costs for copying of court records (including transcripts)
- When is a court record available?
  - Timing of access/release of court records in light of obligation of court staff to update records? (updating records may affect availability)
  - When is a trial exhibit available? (Are they part of the court record?)



- Can we better coordinate communication between clerks and prosecutors?
  - Should judicial retention schedules be reviewed in light of electronic storage capabilities?
  - Timely release and availability of transcripts
- To what extent should privacy concerns impact on the availability of court records?
    - What privacy concerns should be considered? (minors, victims, jurors, parties, children, (family unit) and witnesses)
    - Should a transcript of an in camera proceeding be available?
    - Should we re-examine rules regarding sealing of court records?
    - Should we revisit automatic sealing of financial affidavits in family cases? (abuse by parties)
    - If information is not disclosed, should it be possible at some point in the future to open that information without notice? (parties, victims, etc.)
    - Are there categories of information that should remain confidential? (personal identifiers, financial information, psychiatric evaluations and medical information)
    - When can a person use a pseudonym?
    - Should the category of Level 1 super secret case files exist?
    - Should there be access to court records after a defendant is enrolled in a statutorily sealed program? (AEP)
    - Should access to permanent nonconviction criminal information be limited to state/federal agencies?
    - Review statutes regarding closing of records?
  - What court records are/are not open and to whom?
    - Should there be a simple statement of what court records are not open?
    - Should there be a distinction between court records available to the parties and the public?
    - Should all court records be open unless specifically exempted?
    - What court records are currently accessible to the public?
    - Should criminal, civil and family court records be subject to the same rules and procedures regarding accessibility?
    - Can there be access to the decision of granting or denying warrants? (wiretapping, grand jury)
  - What security issues need to be addressed regarding accessibility of court records?
    - How do you protect court files from identity theft?
    - Is it feasible to redact information from court files?
    - To what extent should security concerns impact on court records' availability?

- What type of process should there be to request records and appeal decisions on such requests?
  - Should there be an expedited appeals process in the event of denial of court record?
  - Should there be a stream-lined record request process?
  - Should there be a reason provided when the record is sealed?
  - Should the process to determine the accessibility of court records be open?
  
- Should there be a process for people to seek correction/removal of information from a court record?
  - Should there be a process for people to correct an electronic record?
  - Should there be a process for people to seek removal of information from a court record?

**RESULTS FROM THE INTERRELATIONSHIP DIGRAPH  
 COURT RECORDS**

ISSUES	OUT	IN
What is a court record?	9	0
To what extent should privacy concerns impact on the availability of court records?	8	1
What security issues need to be addressed regarding accessibility of court records?	7	2
What court records should be available electronically?	6	3
What court records are/are not open and to whom?	6	3
When is a court record available?	4	5
What is the format and cost of access to electronic records?	3	6
What type of process should there be to request records and appeal decisions on such requests?	1	7
Should there be a process for people to seek correction/removal of information from a court record?	1	7
Adequate training to insure compliance with rules, statutes, and court orders	0	9

GUIDING PRINCIPLES  
COMMITTEE ON ACCESS TO COURT RECORDS

All records are presumptively open.

Records should be closed to the public only if there is a compelling reason to do so.

There should be clearly defined guidelines that are universally applied regarding public access to court records.

The courts have an affirmative obligation not to collect information that will need to be sealed and to inform the parties not to file information that will need to be sealed unless needed for the adjudication process.