

**Minutes of Public Access Task Force
Committee on Access to Court Records
June 13, 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 13, 2006 from 2:00 PM to 4:00 PM.

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

The meeting was called to order by Judge Alander at 2:00 PM.

The committee reviewed the Guiding Principles that had been discussed at last week's meeting. Judge Lavine suggested adding a statement about the return of filed information to the parties once a decision has been made. His concern was that some of these documents contain personal identifiers and the legitimate reason for the court to maintain it no longer exists once the decision is made. The consensus was that the record should contain everything that is used in the making of a decision.

At Dr. Cibes' suggestion, the clause "that will need to be sealed" was added after the words "not to collect information" in the fourth guiding principle. It now reads: "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." A discussion ensued regarding what happens if a person files such information and upon whom the obligation to prevent such filing should fall. No guiding principle will be added for the moment but it may be necessary to be more specific in the future. After further discussion, one additional guiding principle was added: Any decision to exclude public access shall be no broader than necessary to protect the compelling interest at issue.

Judge Alander introduced the discussion of the second item on the agenda regarding "what is a court record". The discussion began with the definition of court record set forth in the COSCA Guidelines for Public Access to Court Records:

- (a) "Court record" includes:
 - (1) Any document, information, or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;
 - (2) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding; and
 - (3) The following information maintained by the court or clerk of court pertaining to the administration of the court or clerk of court office and not associated with any particular case.

- (b) "Court record" does not include:
 - (1) Other records maintained by the public official who also serves as clerk of court.

- (2) Information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in section 3.10(a)(1).

There was a discussion as to the need for including (b)(1) under the items excluded from the definition of a court record. According to Attorney D'Alesio, there may be miscellaneous information in various court clerks' offices from the past, but none of those items (i.e., in connection with county clerk's certificates and notary publics) fall within the definition under (a). There was also a discussion regarding including (a)(3) and the consensus was to leave this section out of the definition since it is not the charge of this committee to look at administrative records.

The discussion proceeded to question whether the definition needed to include (b)(2). For example access to CJIS (Criminal Justice Information System) would be excluded under (b)(2). Dr. Cibes referred to the commentary included in the *Guidelines* as possibly providing guidance; he suggested it may be worthwhile to include similar commentary as part of the work product of this Committee.

There was a question whether there is any difference between a judicial proceeding and a court proceeding. Judge Ment indicated that COSCA tries to take into account the possible state-to-state variations so that for Connecticut, there may be no difference between the two, but in another state, there might be.

Judge Alander mentioned a Second Circuit Court ruling that indicated there is no right of public access to a document filed with the court if the document is not used for adjudication. He indicated that it would be better to keep the rule as broad as possible and handle problems (i.e., filing of scandalous or irrelevant material) by other means so that anything filed with the court is open to public access, whether used for decision-making or not. There may, however, still be categories of records excluded from public access.

A question was raised by Ms. Collins regarding the availability of a competency report (C.G. S. Sec. 54-56d). This question led to a discussion of statutes and rules that currently control public access to records. A list of these will be available for the next meeting of the committee.

The committee returned to discussing (b)(1) of the definition. After discussion, the group decided to include (b)(2) and not (b)(1), and to include in the commentary recognition that there may be other records maintained by clerks' offices, but the committee will not take a position on them. The consensus was that such records, while not court records, were open to public access because they are administrative records and the committee did not want to act beyond the scope of court records.

Discussion then turned to (b)(2). First, CJIS (Criminal Justice Information Service) was mentioned as being excluded. Then Judge Alander asked about the child support enforcement databases and federal databases. Atty. D'Alesio indicated that if the Branch has access to a database, unless there is a statute or rule, it would be open to public access. Ms. Collins pointed out that the commentary (p.15) specifically excludes

information gathered or stored by other agencies and shared systems. This exclusion would include CJIS, and DSS support enforcement databases.

Dr. Cibes, referring to the commentary at the bottom of pages 15 16, suggested that the committee look at some items that are not covered by the COSCA guidelines/definition to identify examples that might be raised later. The first item was information exchanged by parties (discovery) but not otherwise filed with the court. There was general agreement that this type of information was not a court record. The next item was information associated with ADR/private judging that are independent of the court. Judge Ment pointed out that this exception would be a way to avoid disclosure. The consensus was that it would be up to the court, once the parties seek court intervention, to ask for underlying documents in this instance. Once the documents were filed, they would be public under the definition. The next item was records dealing with the management of detention facilities. The response is that anything dealing with staff (not juvenile records or proceedings) is administrative and is open to the public. Next, information given to the court whether or not it is relevant to the judicial decision-making process was discussed. After discussion, the consensus was that anything that is filed will be public, relevant or not.

Ms. Griffin raised the issue about going back and forth between the state's attorney's office and the clerk's office and the need for education of court personnel. She does not like having the clerk as the gatekeeper of the records. Atty. D'Alesio asked if there is a burden on the clerk to get something from the party if they fail to file it (i.e., affidavit in connection with an arrest warrant). If they have it, the clerks will provide it, but they cannot provide what they have not received. Judge Lavine said a motion could be filed with the court. A long discussion ensued regarding the way to handle this situation. Judge Ment mentioned the "Fire Brigade" concept as a possible solution to these types of access disputes. Suggestions were made that if the judge uses a document, the judge must order that it be placed in the file. Judge Alander suggested and the committee decided this was a problem that needed to be looked at when Judge Clifford was in attendance: what about documents that should be part of the file that have not been made part of the file; or documents that the judge has looked at and are not made part of the file.

The committee then returned to items that will be excluded from being made public, like information relating to an informant. The next item was information included or submitted to the court and damaging to a party and includes information that never should have been submitted to the court. The example was allegations in a dissolution action regarding child sexual abuse by one of the spouses. When it is filed, no one knows if it is relevant or scandalous. One suggested approach would remove the immunity that attaches in such situations, and perhaps allow treble damages if such a document is filed without justification.

Judge Alander asked about notes, drafts, etc. prepared by a judge. These types of items are excluded under work product and are addressed later in the guidelines (see page 46, Sec. 4.6). The guidelines include them in the definition of court records but exclude them from public access. The consensus of the committee was that this exclusion should probably be put in early, as part of the definition, perhaps as an item

that is a court record but is excluded from public access, in addition to addressing this concern in the commentary.

Dr. Cibes felt there may be other items that the committee would want to include in the commentary. Judge Alander then volunteered to look at the commentary and report back to the committee.

The next item on the agenda was to begin the review of the COSCA guidelines. Judge Alander believes that the most difficult issue is which court records should be categorically excluded. Because the staff will be forwarding information to the Committee on what is excluded categorically in other states, Judge Alander suggested moving on to Sec. 1 of the guidelines to see what the committee would choose to adopt. The discussion began with the purpose of the COSCA Guidelines, set forth on page 4. He would prefer to state that the purpose of these guidelines is to provide a policy on public access to court records. After an extended discussion, Judge Dewey volunteered to look at the text of the commentary on Purpose (pp. 4-9) and propose language appropriate for Connecticut.

The committee then proceeded to a discussion of Sec. 2.0 – Who has access under the guidelines. Dr. Cibes noted that some people might have greater or lesser access. A discussion ensued as to how best to define access. Judge Alander prefers to indicate those that are not included as “public” in the commentary rather than setting the exceptions out in the section itself.

The next item was a discussion of the meaning of “public access” as set forth in Section 3.2 on page 17. The definition does not include any limitation on the timing of that inspection and obtaining of copies. Dr. Cibes indicated that when court records may be accessed is covered in a later section. Judge Dewey also raised the issue of documents or records that have been sealed or redacted. The consensus is that this particular section relates on to the meaning of access; it does not provide the right to access. Anyone seeking access may be subject to other prohibitions and restrictions, i.e., in Sec. 4.6 and 4.70. The committee left off its discussion at 3.2 on page 17 at this point.

There was a discussion about future meetings, currently scheduled for the next two Tuesdays. The committee plans to discuss what to exclude at the next meeting, and Judge Alander would like to be certain that Judge Clifford will be at that meeting.

Judge Alander mentioned the idea of rolling recommendations. One possibility is the posting of the criminal docket and calendar and docket online. A second one that Judge Alander suggested was adding the word “open” to the Judicial Branch mission statement. The committee agrees with this second suggestion, which Judge Alander will bring up with the full Task Force at Thursday’s meeting. He will also report that the COSCA Guidelines are a good guide for the committee.

The meeting adjourned at 4:00 PM.

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.

IF THERE IS A COMPELLING REASON NOT TO OPEN A RECORD TO THE PUBLIC, THEN THAT REASON SHOULD BE INTERPRETED AS NARROWLY AS POSSIBLE.

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.

THERE SHOULD BE CLEARLY DEFINED GUIDELINES THAT ARE UNIVERSALLY APPLIED REGARDING PUBLIC ACCESS TO COURT RECORDS.

ANY DECISION TO EXCLUDE PUBLIC ACCESS SHALL BE NO BROADER THAN NECESSARY TO PROTECT THE COMPELLING INTEREST AT ISSUE.