

**Minutes of Public Access Task Force
Committee on Access to Court Records
June 20, 2006**

Those attending: Judge Alander, Judge Clifford, Ms. Collins, Judge Dewey, Ms. Griffin, Judge Lavine, and Judge Ment.

The meeting was called to order at 2:05 p.m.

The minutes were approved as distributed and will be posted on the Task Force website.

Judge Alander thanked staff for getting the information regarding the status of records in CT and in other states. The committee then began a review of the court records in Connecticut that are currently categorically excluded from public access. He suggested going over some of the records that are currently closed to the public in order to see if the committee believed changes should be made. Presentence Investigation Reports and Assessments were the first item discussed. Currently, these reports are closed to the public by court rule. Many states and federal courts close them as well.

An extensive discussion ensued regarding the nature of these reports and the underlying rationale for the closing of these reports. Information included in these reports may relate to victims, raising concerns that victims might not be as open in discussing the crime and its impact on them. Also, these reports and assessments currently contain a great deal of personal information (i.e., the mental health status, health records, family background, educational background, socio-economic status) which defendants and victims might not want available to the public. If the reports were open, it could result in a less complete picture's being presented to the sentencing judge since people would be less forthcoming knowing that the information would be public. The countervailing argument suggests that if these reports are used in making a decision, they should be available to the public. There was not agreement for the proposition that anything a judge relied on should be part of the court record.

Subsequent discussion involved questions as to how confidential these reports are in that they are shared with the judge, the prosecutor, and the defense attorney as well as the question of what is said to victims about the confidential nature of their statements. A discussion ensued as to the right of the public to see information that they can hear about in the courtroom and that is relied upon by the judge in making a decision, even though the judge may articulate the basis for his/her decision at the time of sentencing.

In general, the concern of some members of the committee about opening presentence investigation reports and assessments to the public involved the chilling effect on victims/families who might be loathe to reveal full information about the impact of the crime of them, the chilling effect on others who would be reluctant to speak fully and openly about the defendant, resulting in an incomplete and unreliable report, and the privacy rights of a defendant, a victim, and the families. The suggestion was made that the presentence investigation report and assessment be open except for the victim impact statement and any portion that is specifically redacted or sealed. This "hybrid" would protect victim's rights to privacy and also allow the public to be aware of the contents of much of the presentence investigation report. Also, the committee was reminded of the existence of the constitutional amendment regarding victim's rights. There was a consensus of the committee that the victim's impact statement should continue to be confidential.

There was further discussion of the defendant's right to privacy in connection with medical and mental health information. A defense attorney might want to share some information with the judge in connection with sentencing that he/she would not be comfortable sharing with the public, i.e., a defendant's history of sexual/physical abuse.

It was suggested that before making any further recommendation on these reports and assessments, the staff should obtain specific information for the committee from states regarding their access policies and experience with presentence investigation reports. The committee is particularly interested in whether states that have opened their presentence reports to public access have noticed a difference in the completeness of the information that is provided in those reports. It was also suggested that the committee obtain information from victim's advocates, public defenders, private defense attorneys, prosecutors, probation, and the Connecticut Defense Lawyers Association regarding their position on opening these presentence reports. Staff will make contact with these people and try to obtain comments for the next meeting on the following question: What impact would the opening of the presentence investigation report and assessment to the public have on the ability of each of these parties to do their job? Judge Ment suggested that the national association of probation officers might have some information on states' handling of these presentence investigations.

The committee next discussed family relations evaluations. By court rule and statute, these reports are considered confidential. Lawyers may refer to the contents of the report in a proceeding, but the report itself is deemed confidential. The basis for keeping the report confidential is the potential impact on the children and the family as a result of the information that is contained in the report, including mental health evaluations, allegations or incidences of abuse, and other personal information. These reports involve information in terms of custody, not financial information, for the most part.

After an extensive discussion regarding the purpose, content, and creation of these evaluations, the committee agreed that such evaluations should remain confidential, both in light of the strong privacy interest of the children and families involved and the absence of any legitimate public interest in these private proceedings.

The next item discussed was an alternate incarceration assessment report, which is a report that is usually a part of a presentence investigation report that is requested by a judge. It would contain the probation officer's recommendations with respect to alternate incarceration, but if it is taken out of context, it could be misleading. It is only prepared because the judge asks for it, not because a probation officer is coming up with a recommendation. There was no consensus on this issue so that it will be discussed at the next meeting when the committee revisits the presentence investigation reports.

The next item discussed was the issue of records or documents created in connection with mediation. The discussion included pre-trials in the civil, family, and criminal contexts as well as outside mediators, when no agreements are submitted to the court for enforcement or filing. The consensus was that opening these items to public access would inhibit the negotiation process; therefore, all documents submitted in conjunction with mediation or pretrials should not be open.

Judge Alander then asked the committee to review its guiding principles in light of the guiding principles of the full Task Force to be certain that both sets of principles are in harmony. After discussion of the extra principle the committee had and of any need for a principle that refers to privacy/security interests, there was a consensus that the committee's principles as written are in harmony with those of the full Task Force and explicitly recognize that there are interests that can overcome the public's right to know.

The next item involved health and medical information that is protected from public disclosure when an attorney for a case wants to subpoena medical records. These records are filed under seal and can be looked at by the parties. If they are subsequently admitted in court, there are different rules that apply. There was a consensus that the health and medical information should remain sealed pursuant to §§ 7-18, 15-4, and 25-55 of the Practice Book.

With respect to investigations and proceedings of Grievance Panels, these documents are not court records unless there is a finding of probable cause, at which time documents would be filed with the court and would no longer be confidential. Consequently, the consensus was that these are not within the purview of the committee. With respect to the proceedings of the State Bar Examining Committee and Standing Committees pursuant to § 2-50 of the Practice Book and § 2-9 of the Practice Book, regarding conditional admittance of applicants, it is the intent of the committee on meetings and administrative records to make recommendations on this information. The consensus was to leave these proceedings and records to that committee.

The next item involved records of grievance proceedings. There was a discussion regarding these proceedings as to whether or not they are judicial proceedings or actually were court records. Practice Book Sec. 2-56 seemed to involve court records and staff will obtain additional information from the Statewide Grievance Committee so that the committee can discuss these records in more detail at the next meeting.

The next item was claims submitted to the Client Security Fund Committee. The goal of this committee is to recompense people who have been financially harmed through the actions of their attorney. There was discussion as to whether this was, in fact, a court record. The consensus was that this did not involve a court record unless some action was filed with a court, i.e., a wrongful conversion or a criminal action for larceny. It should be handled by the meetings and administrative records committee.

The next item concerned the crisis intervention and referral assistance records submitted to the Lawyers Concerned for Lawyers. Judge Lavine explained the purpose for and funding of the group, and the need for confidentiality to encourage lawyers with problems to seek help. The consensus was that this is not a court record and does not include any judicial involvement and is beyond the purview of this committee.

The next item contemplated opening juvenile records. The consensus of the committee was that the judicial proceedings committee would be looking at the access to juvenile courts and the discussion of opening of court records of these proceedings would duplicate their efforts.

The next item involved sealed files. There was a brief discussion of the procedure in the practice book on sealing and objecting to the sealing of files and documents as well as the automatic sealing of financial affidavits in family cases. The committee will start at this point at the next meeting.

Judge Alander then discussed future meetings. Because the draft of the committee report is due on August 3rd, the committee will have about five weeks to complete its work. In order to accomplish this, it was suggested that the meetings of the committee be extended from two hours to three hours or that the committee meet more than once a week. After a brief discussion, the committee agreed to meet for a longer period of time for the next several weeks. The dates and times for the upcoming meetings will be: June 27th, July 6th, July 11th, and July 18th from 2:00 – 5:00 PM.

The meeting was adjourned at 4:00 PM.

Records Not Available to the Public
Pursuant to Federal and/or State Law

Note: The below list is the result of an online search of the Practice Book and Titles 1, 46b, 51, 52, 53, 53a and 54 using the following search terms: "private or confidential or seal or erase or close or disclose or open."

The following categories of information to which public access is restricted:

Health and Medical Information- P.B. §§7-18, 15-4, 25-55; HIPAA

Investigations and proceedings of Grievance Panels, P.B. §2-32; C.G.S. §51-90f

Records and transcripts of State Bar Examining and Standing Committees, P.B. §2-50

Records of Grievance Proceeding, dismissals, P.B. §2-50

Inactive status petitions, at the discretion of the court, P.B. §2-56

Claims submitted to the Client Security Fund Committee, P.B. §2-76

Client Security Fund- crisis intervention and referral assistance records, P.B. §2-76;
C.G.S. §51-81d (f)

Records maintained in Juvenile Matters, P.B. §30a-8, 32a-7, 32a-8, 35a-10, 79-3
(Appellate); C.G.S. §§46b-122, 46b-124, 46b-127, 46b-142 (Appellate)

Sealed files/documents, P.B. §§7-4A, 11-20A (Civil), 25-59A (Family), 42-49A (Criminal),
77-1 & 77-2 (Appellate); C.G.S. §46b-11 (Family), 51-164x (Appellate)

Lodged Records, P.B. §7-4C, 77-2 (Appellate)

Files/Records Stripped and Destroyed pursuant to Retention Schedule, P.B. §§7-10
through 7-16

Short Calendar Records, retained as determined by CCA, P.B. §7-20

Exhibits and other papers, may be destroyed 4 months after final determination, P.B. §7-
21

Protective Orders, P.B. §§13-5, 40-41, 40-43

Protective Order Registry, C.G.S. §51-5c

Statement of Amount in Demand, not disclosed to jury, P.B. §16-19

Motion for leave to withdraw appearance of appointed counsel, P.B. §23-41

Family Division Evaluations, Studies and Reports, P.B. §25-60; C.G.S. §46b-38c

Attempts at reconciliation in action for dissolution, separation, annulment, C.G.S. § 46b-10

Conciliator records, C.G.S. § 46b-53

Mediation program records, C.G.S. §46b-53a

Mediation, non-court ordered, C.G.S. §52-235d

Sealed affidavits in support of arrest warrant application, P.B. §36-2

Court ordered subpoenas, discovery (Criminal), P.B. §40-2

Objection to disclosure (Criminal), P.B. §40-8

Personal residence addresses of police or correction officer, P.B. §40-13

Witness addresses, sealed per court order, P.B. §40-13

Record of In Camera Proceeding (Criminal), P.B. §40-42

Return of Deposition (Criminal), P.B. §40-53

Extrajudicial statements (Criminal), P.B. §42-48

Presentence Investigation Reports & Assessments, P.B. §§43-7, 43-8, 43-9; C.G.S. §§54-91b, 54-142g (a)

Alternate Incarceration Assessment Reports, P.B. §§43-7, 43-8, 43-9

Erased records

- Completion of Pretrial Family Violence Education Program, C.G.S. §46b-38c
- Nolle prosequi in delinquency matters, C.G.S. §46b-133a
- Delinquency records, C.G.S. § 46b-146
- Completion of Accelerated pretrial rehabilitation, C.G.S. §54-56e
- Youthful offender records, C.G.S. §54-76o
- Criminal records, C.G.S. §54-142a
- Girl in manifest danger, C.G.S. 54-142b
- Disclosure of erased records, C.G.S. §54-142c

Requests for nondisclosure of location information, C.G.S. §46b-115s

Nondisclosure of location/identifying information (Support), C.G.S. §46b-212x

Access to records by Judicial Branch employees, contractors, authorized agents, C.G.S. §51-36a

Juror questionnaire, C.G.S. §51-232

Privileged communications made to clergymen, C.G.S. §52-146b

Privileged communications between psychologist and patient, C.G.S. §52-146c

Privileged communications between psychiatrist and patient, C.G.S. §52-146d, 52-146e, 52-146f, 52-146i

Privileged communications between battered women's or sexual assault counselor and victim,
C.G.S. §52-146k

Disclosure of confidential communication by interpreter prohibited, C.G.S. §52-146l

Communication made by or to deaf or hearing impaired person with assistance of operator of special telecommunications equipment deemed privileged, C.G.S. §52-146m

Communication between Judicial employee and employee assistance program counselor prohibited, C.G.S. §52-146n

Privileged communications between physician, surgeon or health care provider and patient, C.G.S. §52-146o

Privileged communications between marital and family therapist and person consulting therapist, C.G.S. §52-146p

Confidential communications between social worker and person consulting social worker, C.G.S. §52-146q

Confidential communications between government attorney and public official or employee of public agency, C.G.S. §52-146r

Confidential communications between professional counselor and person consulting professional counselor, C.G.S. §52-146s

Deposition (Civil), C.G.S. §52-156

Arrest warrant affidavit, C.G.S. §54-33c

Wiretap records, C.G.S. §§54-41a, et seq.

Record of grand jury proceedings, C.G.S. §§54-45, et seq.

Pretrial alcohol education, C.G.S. §54-56g

Pretrial drug education, C.G.S. §54-56i

Alcohol or drug dependency report, C.G.S. §17a-694

Pretrial school violence prevention, C.G.S. §54-56j

CSSD files, with exceptions, C.G.S. §54-63d

Youthful offender, C.G.S. §§54-76c, 54-76l

Witness receiving or considered for receipt of protective service, identity and location, C.G.S. §54-82t

Sexual assault victim, name, address and identifying information, C.G.S. §54-86e

HIV information and testing C.G.S. §§54-102a, 54-102b, 54-102c

Nonconviction information, C.G.S. §§54-142k, 54-142m, 54-142n

OVS records, re: sexual assault/domestic violence victims, C.G.S. §§54-203(b)(7)(J)

Confidential information in OVS compensation and restitution files, C.G.S. §54-204

OVS victim requests for notification and victim mailing address, C.G.S. §§54-228; 54-230

Sex Offender Registry, name of victim, C.G.S. §54-258

Photographs and computerized images of individuals, C.G.S. §1-17a

Financial statement of judges' spouse and dependent children, C.G.S. §51-46a