

**Minutes of Public Access Task Force
Committee on Access to Court Records
July 17, 2006**

The Committee on Access to Court Records met in the Supreme Court Attorney's Conference Room at 231 Capitol Avenue in Hartford on Monday, July 17, 2006 from 2:08 PM to 4:55 PM. Those in attendance: Judge Alander, Dr. Cibes, Judge Clifford, Judge Dewey, Ms. Griffin, Judge Lavine, and Judge Ment.

The meeting was called to order at 2:07 PM by Judge Alander. The minutes from July 11th were approved as distributed.

The next item on the agenda concerned the e-mail that Ms. Griffin and Ms. Collins prepared for distribution through the media list serve. Ms. Griffin said that the e-mail seeking comments from the media has been drafted. Judge Alander asked that a specific date be given as a suggested deadline for input so that the comments would be available to the committee before their recommendations are completed.

The next agenda item addressed was Judge Aurigemma's comment regarding the notes made by caseload coordinators. Currently, the committee had determined that judges' notes and clerk notes related to the decision-making process would not be accessible to the public. Notes in WebEdison, the program which staff uses to keep track of cases, could be considered part of court records according to the definition the committee has agreed upon. Judges' notes are only accessible to the author of the notes; caseload notes are available to other caseload staff. Judge Alander asked whether there should be a place for confidential notes. Judge Ment suggested that clerk's notes along with judges' notes should not be accessible. Dr. Cibes felt the public should have information as to the dates for which cases are scheduled. This information is already available to the public online. The committee decided that it needed more information before making a decision. Staff will contact clerks and caseload coordinators to determine what types of notes are being kept in Edison, and to whom they are accessible.

The next item on the agenda was a discussion of the comments from Alex Wood, who had made four recommendations to the committee. One of his suggestions was that the courts should permit the use of handheld scanners by the public. Judge Ment said that some courts already allow these scanners. He then moved that the committee recommend to the Judicial Branch the implementation of a policy permitting the use of handheld scanners so long as such use is not disruptive to the office or the file itself. Judge Lavine seconded the motion. The recommendation was unanimously adopted.

A second comment from Mr. Wood relates to the use of police reports. The judge in a criminal case is given a police report by the prosecutor to make a finding of probable cause, but the police report itself is returned to the prosecutor, not placed in the court file. An extensive discussion ensued regarding the sensitive nature of some information in the report, i.e., the victim's name and address, names and addresses of witnesses, the difficulty of redacting this sensitive information, and the need for the public to be aware of what the police are doing as well as to know what the judge relies on in making his/her finding of probable cause. The following recommendation was proposed:

Any time a police report is used to determine if there is or is not probable cause, then that police report should be made a part of the court file and available to the

public unless the court, on its own motion or on the motion of one of the parties, shall order, for good cause shown, all or a portion of the report shall be sealed for fourteen days, subject to review after that period.

Judge Ment moved that the committee adopt the proposal; Ms. Griffin seconded the motion. The vote was: in favor - Judge Alander, Dr. Cibes, Judge Clifford, Ms. Griffin, Judge Lavine, and Judge Ment; opposed - Judge Dewey; abstentions – none.

Mr. Wood also commented on the sealing of documents in chambers. Judge Dewey, Judge Alander, and Judge Ment said that a rule requiring that sealing be done on the record is already in place. The consensus was that although further education of judges and clerks on sealing requirements may be needed, no additional rule is needed. The committee noted that the Connecticut rules are quite rigorous in this regard.

The last comment that Mr. Woods made involved the creation of a mechanism that would allow limited-purpose intervention in criminal cases by non-parties seeking access to information. After discussion, the committee agreed that this issue was complicated and not resolvable in the limited period of time the committee has. It should be recommended for future discussion and study.

The next item on the agenda is the resolution of no-consensus issues that have been deferred for further discussion by the committee. Judge Alander stated that Ms. Collins was unable to be at the meeting today because of a story that she has been covering and asked if everyone would be available on Thursday. After discussion, it was agreed that the committee would take up the discussion of the no-consensus items, but allow Ms. Collins' the opportunity to comment on Thursday. A list of the twelve no-consensus items that had previously been discussed by the committee had previously been distributed electronically and is attached to and incorporated into these minutes. The first item on the list concerned the opening of all or some portions of the presentence reports. An extensive discussion ensued of what could be open (i.e., the defendant's version of the crime, criminal history of defendant) and what portions would be problematic (i.e., defendant's medical, mental health, or substance abuse treatment information, third party information), as well as means of providing some access through changes in the form used by probation, redacting of information, and the usefulness of the redacted document. Judge Alander recommended that portions of the PSI be accessible to the public in keeping with the committee's guiding principle to seal only what needs to be sealed. He said that the defendant's demographics (i.e., age and gender), defendant's address, the offender's version and victim's version of the crime, the defendant's criminal history, the defendant's financial situation, the probation officer's recommendations, and the alternative incarceration assessments could be open. He recommended that the victim's impact statement be confidential at the option of the victim. After discussion, Judge Clifford moved that the presentence investigation report remain closed. Judge Lavine seconded the motion. Those voting in favor were Judge Dewey, Judge Ment, Judge Lavine, Judge Clifford, and Dr. Cibes. Those opposed were Ms. Griffin and Judge Alander. The motion was passed.

The second item on the list was alternate incarceration assessments. After extensive discussion as to the nature and use of these assessments, Judge Alander made a motion to recommend that alternate incarceration assessments be made part of the

record if they are ordered by the judge. Dr. Cibes seconded the motion, which was then unanimously approved.

The third no-consensus item was the records of proceedings pursuant to Practice Book Sec. 2-56, wherein attorneys may seek or be granted inactive status, generally because of medical or mental health issues. This section does not involve fraud situations or preclude the filing of grievance complaints against an attorney. After discussion, Judge Clifford moved to recommend that these records remain closed to public access in accordance with current practice. Judge Lavine seconded the motion. Those voting in favor were Judge Dewey, Judge Ment, Judge Lavine, Judge Clifford, Judge Alander, and Dr. Cibes; opposed was Ms. Griffin.

The fourth item was a recommendation to change the current practice book rule in order to permit public access to financial affidavits filed in all family cases. An extensive discussion ensued regarding the contents of these forms, the fact that they must be filed in order for parties to obtain a dissolution, and the issue of financial privacy and potential identity theft. Comments from judges and magistrates were also discussed. Judge Ment said there might be a difference between opening these documents at the courthouse as opposed to making them available online as electronic filing expands to family cases. He would be opposed to the affidavits' being available electronically. Judge Alander said the issue of electronic access to court files will be deferred for further review and study. The effect of this motion would be to make financial affidavits accessible in the courthouse only. After discussion, Judge Alander moved that the committee recommend that financial affidavits no longer be presumptively closed to public access, but be dealt with in the same way as documents are handled in all other cases. This motion was seconded by Ms. Griffin. Judge Dewey, Judge Lavine, and Judge Clifford voted against the motion. Judge Alander, Dr. Cibes, and Ms. Griffin voted in favor of the motion. Judge Ment abstained. Since the vote ended in a tie, the motion failed; it was anticipated this item would again be raised on Thursday.

The fifth item was a recommendation to change the current rules or forms on public access to search warrant affidavits and arrest warrant affidavits. The only issue on the arrest warrant affidavits was whether to recommend added language to the affidavit in support of an arrest warrant to indicate the expiration date of the sealing order. After discussion, the committee agreed to recommend the addition of such language. The next discussion was in connection with the process for continuing the sealing of an affidavit on a search warrant, which is currently not subject to the same requirements as those for an arrest warrant, pursuant to Practice Book Sec. 42-49a. Specifically, the committee was considering recommendations on the handling of sealing of an affidavit in support of a search warrant where an arrest has ensued. Judge Lavine raised concerns regarding the imposition of an undue burden on law enforcement personnel, and the risk of hampering an ongoing investigation and exposing people to harm by revealing information in open court. Ms. Griffin stated that it is possible to have a hearing without revealing such information. After extensive discussion, Judge Ment moved that the committee make a recommendation that once an arrest is made, any extension of the sealing order on a search warrant affidavit must be made (1) on the record for stated reasons, as set forth in Practice Book Sec. 42-49a or for good cause shown, and (2) is not to exceed ninety days. Dr. Cibes seconded this motion. The motion was passed unanimously.

The sixth item on the list of no-consensus matters involved making recommendations with respect to permitting access to erased records, dismissals, not guilty verdicts, and nolle. An extensive discussion ensued addressing the need to make such information regarding dispositions available because of the availability electronically of the original arrest, and the need to include information regarding the docket number, the case name, date of birth, the charges, the date of disposition, and the disposition itself, and concerns that providing this information is unfair to the defendants who, under current law, can state that they have never been arrested.

Judge Dewey expressed concern about including the charges in what is made available after the disposition, especially where substitute charges may have been filed. After further discussion, Judge Ment moved that the committee recommend that the name, docket number, the charge, the date of disposition, and the nature of disposition be available in the case of dismissals, nolle after thirteen months, declining prosecution pursuant to practice book, pardons, and not guilty verdicts. Those voting in favor of the motion were Ms. Griffin, Judge Ment, Judge Lavine, Judge Clifford, Judge Alander, and Dr. Cibes; opposed was Judge Dewey.

The seventh item was making a recommendation on allowing public access to a motion for leave to withdraw appearance as appointed counsel pursuant to Practice Book Sec. 23-41. After discussion, the committee agreed that this provision, which relates to habeas petitions, should remain unchanged.

The eighth no-consensus item was making a recommendation on public access to pending criminal case information. One of the problems is that certain programs (i.e., AEP and school violence) are sealed upon application so that any delay in processing information on such programs would result in the posting of information on the Internet that is not supposed to be there. An extensive discussion ensued regarding the handling of these files, in the courthouse and on the Internet, and the types of documents and records that are filed in the court files. A question was raised as to what kinds of evaluation are actually filed in the clerk's file on these pre-trial diversionary programs. Staff will solicit input from someone at CSSD to provide information on this question. This item will be discussed further at the next meeting.

The ninth no-consensus item was regarding a recommendation on permitting public access to conviction information online, including all information currently sold to credit bureaus and background information firms. The only items provided on which there is not a consensus were race and defendant's address. Judge Dewey questioned the fairness of posting (and selling) information on the charges that were originally filed by the police, which are not the result of any adjudicative process, and are more often than not, different than the charges on which the defendant is ultimately convicted. After discussion, Dr. Cibes moved that the committee recommend permitting public access to conviction information to the extent that such information is currently sold, with the exception of the defendant's home address and motor vehicle operator's license number. Judge Ment seconded the motion. Those voting in favor of the motion were Ms. Griffin, Judge Ment, Judge Lavine, Judge Clifford, Judge Alander, and Dr. Cibes; opposed was Judge Dewey.

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Judge Alander said another meeting is scheduled for August 1st and that he and Ms. Collins were not available next week. The committee agreed, because of the short time left before the committee report was due, to meet this Thursday from 1:00 PM until discussion is complete.

The meeting adjourned at 4:55 PM.

The committee has discussed numerous issues and at this point, there are several on which there is no consensus:

- Any recommendation on permitting public access to all or some portions of the presentence investigation reports
- Any recommendation on permitting public access to alternate incarceration assessments
- Any recommendation on permitting public access to records of proceedings pursuant to Practice Book Sec. 2-56 (Grievance Proceedings – Inactive Status of Attorney)
- Any recommendation on changing the current rule in order to permit public access to financial affidavits filed in all family cases
- Any recommendation on changing the current rules/forms on public access to search warrant affidavits and arrest warrant affidavits
- Any recommendation on permitting public access to erased records, dismissals, not guilty verdicts, and nolles.
- Any recommendation on permitting public access to motion for leave to withdraw appearance as appointed counsel pursuant to Practice Book Sec. 23-41
- Any recommendation on permitting public access to **pending** criminal case information on the Internet
- Any recommendation on permitting public access to conviction information on line, including all information currently provided to credit bureaus for a fee (note: the no-consensus portion of this issue is public access to information on race, defendant's home address.)
- Any recommendation on expanding public access to the information in juror questionnaires
- Any recommendation on the handling of access to information on youthful offenders who are processed initially as adults, but become youthful offenders subsequently (i.e., as a result of the substitution of lesser charges by the prosecutor).
- Public access to competency evaluations pursuant to C.G.S. 54-56d.