

**Minutes of Public Access Task Force
Committee on Access to Court Records
August 21, 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, August 21, 2006 from 3:10 PM to 4:45 PM. Those in attendance: Judge Alander, Dr. Cibes, Judge Clifford, Ms. Collins, and Judge Lavine. The minutes of the last meeting, as circulated, were approved.

Judge Alander called the meeting to order at 3:10 p.m. The purpose of the meeting is to review the comments and suggestions received from the full Task Force at the meeting of August 10th. The committee is aware that only five of the eight members were able to attend today's meeting and will change the recommendations if there is a consensus among the members present.

The first item on the agenda was family financial affidavits. The committee's consideration of changes to the rule on financial affidavits in family cases had ended in a tie vote. Judge Lavine proposed that although the handling of family financial affidavits is well-within the rule-making authority of the judges, given the strong public policy considerations of this issue, perhaps the committee should consider referring this issue to the legislature. He suggested the possibility of recommending that the Judicial Branch phase out the present rule in the next 12 to 18 months so as to give the legislature time to fully debate this issue. This course seems appropriate because there is a fundamental divide on the issue that does not affect the litigation aspects of a case. Judge Lavine did say that the affidavits should remain sealed where there has been an agreement. A discussion ensued on the proposal. Judge Clifford said he felt the issue should be decided by the judges. Judge Alander pointed out that the legislature has already spoken on the sealing of documents in Sec. 46b-11 of the Connecticut General Statutes, which adds impetus to Judge Lavine's suggestion that the legislature address the financial affidavit issue as well. Dr. Cibes said his concern is that there is a difference in the treatment of financial affidavits between contested and uncontested cases. He could see keeping them all sealed, and said that having looked today at the list of things that have to be disclosed, he could see an argument for them all to be sealed, but he is not clear on why there is a distinction between contested and uncontested. He also said that he did not know that the legislature would feel that strongly about this issue. Ms. Collins said that by the tie vote, the committee was unable to take a position one way or the other, but that this proposal gives another opportunity to open these affidavits up.

Further discussion ensued as to what the position of the committee should be on this proposal, given that there is no majority position on the handling of these affidavits. Judge Clifford said the full Task Force would not have the benefit of the committee's extensive prior discussions. Judge Alander said that Justice Palmer had suggested that the committee prepare a concise statement as to the pros and cons of changing the rule. He will prepare a statement in favor of opening the affidavits to the public; Judge Lavine has agreed to prepare a statement in favor of keeping the current rule. After further

discussion, the committee agreed to say it had discussed Judge Lavine's proposal and was aware that he would raise this option at the Task Force meeting.

The next item on the agenda involved identity theft concerns in connection with posting online criminal docket information that includes the defendant's birth date. At the Task Force meeting, Judge Lavery said that online posting of the birth dates could lead to identity theft. A discussion ensued on various issues, including whether a name and a birth date alone would lead to identity theft, the need for a birth date to identify people, the availability of this information at the courthouses and on the Department of Corrections website, and the possibility of redacting a portion of the birth date before posting. Some jurisdictions, for example, redact the day and use only the year. After the discussion, the committee decided to leave the recommendation as it is unless the Judicial Branch determines that there is a serious risk of identity theft in putting the birth date on the web. If there is a serious risk, then the recommendation would be that the Branch post a redacted version of the birth date on the web.

The next item on the agenda was the handling of a police report in the situation when no probable cause is found. Judge Lavery had expressed concern about retaining these reports in a court file because of the potential damage to a person's reputation as a result of rumor, innuendo, and triple hearsay. Judge Clifford reiterated his concerns about the practical difficulty in having someone go through and redact information contained in a police report that should not be made public, i.e., personally identifying information in a sexual assault case, whether or not probable cause is found. A discussion ensued. Judge Clifford and Judge Lavine expressed concern about the person, for example when scandalous allegations are made but no probable cause is found. Dr. Cibes also said that the Judge could always seal the police report in the event of scandalous accusations. Judge Alander said that the practice in the criminal courts would change, i.e., the prosecutor will summarize the important factors in the police report rather than giving it to the Judge to read. After discussion, there was a vote taken on leaving the recommendation as it is. Judge Clifford dissented. No change in the recommendation will be made.

The next item on the agenda involved arrest warrants. The committee will add to the recommendation language making clear that the Judge would insert the sealing termination date "when he/she signs the sealing order." Discussion then turned to the recommendation of the committee on the extension of the sealing of search warrant affidavits. The current recommendation is that upon arrest, the sealing on a search warrant affidavit may only be done in open court on the record. Concern was expressed at the Task Force regarding the need to keep certain information secret. Judge Lavery had asked if the representation by the State's Attorney that the extension of the sealing order was need for specific reason would be sufficient good cause. After a brief discussion as to appropriate language to add, the committee agreed to the following revision:

Following an arrest, all requests to extend any order sealing or limiting the disclosure of search warrant affidavits must be done on the record for stated reasons as set forth in Practice Book Sec. 42-49a or for good cause shown. Depending on the circumstances, an oral representation by the State's Attorney that (1) the personal safety of a confidential informant would be jeopardized, (2) the search is part of a continuing investigation which would be adversely affected, or (3) the unsealing of the affidavits would require disclosure of information or material prohibited from being disclosed by chapter 959a (Wiretapping and Electronic Surveillance), may be sufficient to establish good cause. A request for an extension of such sealing or limited disclosure must be made to a date certain, with no single extension to exceed 90 days.

The next item on the agenda is competency reports. Judge Lavery expressed concern about the automatic unsealing of competency reports upon their use by the court. Discussion ensued as to the nature and contents of these reports, their uncertain current status, and the recommendation that permits a judge to order the report sealed upon motion of one of the parties. After discussion, there was consensus to leave the recommendation as it is.

Judge Alander then moved on to the recommendation on erased records. Subsequent to the Task Force meeting, he had received an email from Justice Palmer suggesting that the committee consider adding to its recommendation on currently erased records an option for the person whose information was involved the right to decide whether their information would be sealed or not. Part of the rationale behind the recommendation was that erasing the record of a disposition could, in fact, disadvantage a person when only the information about his/her arrest remains available electronically. Another part of the committee's consideration was that the public has a right to know what happened to a case. Judge Alander pointed out that allowing the defendant a choice in this situation perpetuates the idea that information on the case actually does disappear, when in reality, in an electronic world, it remains available. After discussion, the committee decided to leave the recommendation as it is.

The next item on the agenda involved Section 4.20 of the policy that makes certain records remotely accessible. At the Task Force meeting, both Judge Lavery and Judge Stevens pointed out that liens affecting property are not found in court records. The committee agreed to remove reference to those liens in subsection (e) of Section 4.20. After discussion, the committee also agreed to limit subsection (e) to civil and family cases. That subsection was amended to read as follows:

- (e) Entry of judgments, orders, or decrees in a civil or family case; and

The next item on the agenda was a comment regarding the permitting of the use of portable copiers in a clerk's office. Judge Alander asked if based on the comment, the committee wanted to include portable copiers in its recommendation of handheld

scanners. After a discussion regarding the need to take a file apart to use a copier, and the current statute requiring the collection of a fee for “copies,” the committee agreed to limit the recommendation to handheld scanners.

Judge Alander then said he had received an email from Judge Pittman regarding the possibility of posting notices of sale in foreclosure actions on the web, in lieu of publication in a newspaper, as is currently done. Her intent is to reduce the costs imposed in a foreclosure since newspaper publication is quite costly. Judge Sam Freedman expressed concern that web notice would not reach as many people as newspaper publication, thereby impacting negatively on the selling price of a property, although he said it might be appropriate in addition to newspaper publication. After a discussion, the committee did not make a recommendation on this suggestion, given the short amount of time remaining.

Judge Alander then referred the committee to the comments submitted by the Reporters Committee for Freedom of the Press on public access to the juror questionnaire. He asked if the comments caused anyone to rethink the committee’s prior recommendation that the questionnaire remain confidential. A discussion ensued regarding the current policy of the Judicial Branch which allows the release of the name and town of the juror in a case. Judge Alander did not want the policy on juror questionnaires to be interpreted in such a way as to alter this current practice. He wanted to include in the recommendation that that Judicial Branch continue to provide that name and town of jurors. The committee agreed to add to its recommendation the following:

The policy of the Judicial Branch is that the name and town of the juror is public and it is the consensus of the committee that this practice should continue.

The committee then approved language that Judge Alander had drafted for inclusion in the revised committee report regarding the current practice to make it clear what the committee was recommending.

The meeting adjourned at 4:45 p.m.