

MINUTES OF THE PUBLIC ACCESS TASK FORCE MEETING  
June 15, 2006

Task Force members in attendance: Justice Richard Palmer, chair, Judge Jon Alander, Attorney Aaron Bayer, Dr. William J. Cibes, Jr., Judge Patrick Clifford, Ms. Heather Nann Collins, Judge Julia DiCocco Dewey, Ms. Alaine Griffin, Judge William Lavery, Mr. Zach Lowe, Mr. Ken Margolfo, Judge Aaron Ment, Attorney Alan Neigher, and Judge Barbara Quinn.

Justice Palmer called the meeting to order at 1:35 PM.

Justice Palmer expressed his appreciation to the members for their attendance at this meeting as well as the exceptional participation of all Task Force members in the individual committees. He reported that the Judiciary Committee of the legislature is conducting a hearing on June 27<sup>th</sup> where he will be reporting on the work of this Task Force. The Committee is interested in receiving the reports of both Task Forces before taking up or making recommendations on specific legislation. Justice Palmer also noted that the staff from this task force is assisting the Governor's Task Force as well.

A motion to accept the minutes was made, seconded, and unanimously approved. The minutes from the full Task Force and those from the three committees will be posted on the website once the minutes are approved.

Justice Palmer then introduced Atty. D'Alesio to guide the Task Force in reviewing the committee guiding principles and the development of principles for the full Task Force.

The guiding principles of each committee were displayed and distributed for review and discussion. Each set of principles was read and comments and questions were solicited. The first question raised involved the principles adopted by the Meetings and Administrative Records committee. Following discussion, it was agreed that the Administrative Records committee will revise one of their principles to clarify its application to administrative records included in an adjudicative proceeding. The next question addressed the principle for the Judicial Proceedings committee that stated any closure of a judicial proceeding should require a stated rationale that is made public. Atty. Bayer, the co-chair of the Committee, indicated the principle was intended to be about the process, and not about specific standards for closure. A proposal regarding those standards has not yet been brought forward. The ensuing discussion recognized that some information related to the reason for closure should not be disclosed, as well as an acknowledgement that some proceedings are closed by statute.

Atty. D'Alesio asked if the task force wanted to adopt its own guiding principles. Judge Ment suggested that the full Task Force do so and that each committee then conform its principles to those of the Task Force, which suggestion was accepted. Atty. D'Alesio posited that there was consistency among all three committee's principles and it might be possible to combine each of the first principles from the individual committees into a single principle: All court records, judicial proceedings, administrative records, and judicial branch- sponsored meetings are presumed to be open.

A discussion questioning the definition of "meeting" and "court record" ensued, but the consensus was that definitions were not necessary for the purpose of adopting guiding principles.

The second guiding principle was discussed and consensus was reached that it would state that: Exceptions to the presumption of openness should be narrow and clearly defined.

Judge Ment suggested adding a guiding principle: The Judicial Branch shall assure full access to all court records, judicial proceedings, administrative records, and judicial branch- sponsored meetings while at the same time balancing important privacy and security interests and the integrity of the adjudicative process.

An extensive discussion ensued regarding the need to include language about balancing interests, perhaps as an amplification of the second guiding principle. Judge Ment said that there is some concern among the judges and members of the public that the Task Force is not paying attention to issues of privacy, security, and judge's work product, so he wanted to indicate an awareness of these interests in the guiding principles. Judge Alander suggested that paralleling the language of Sec. 11-20A of the Practice Book (on sealing documents) might allow the Task Force to acknowledge that other interests exist, but not require the Task Force to specifically articulate those interests.

There was an extensive discussion about the standard to be articulated in balancing interests, who would make the decision in balancing the interests, and the difficulty of knowing what types of issues might arise. Justice Palmer reminded the Task Force that the task was to develop general principles to guide the Task Force and the committees. Atty. Neigher referred to the language of P.B. Sec. 11-20A (c) as including all the necessary elements. Judge Alander suggested adding the word compelling to the principle and combining it with the principle from court records so it would read: All court records, judicial proceedings, judicial branch meetings, and judicial branch administrative records should be closed to the public only if there is a compelling reason to do so. Exceptions to the presumption of openness should be narrow and clearly defined.

Atty. Neigher then suggested the following change in language: Public access to all court records, judicial proceedings, judicial branch meetings, and administrative records should be limited only if there is a compelling reason to do so, there are no reasonable alternatives to such limitations, and the limitation is no broader than necessary to protect the compelling interest at issue.

The Task Force agreed on that wording. There was then a brief discussion on the language of a guiding principle addressing the process to be created for resolving access disputes. That principle is: There should be an expeditious and open process for resolving disputes regarding access to court records, judicial proceedings, judicial branch meetings, and administrative records

Finally, there was a discussion of a principle that would address the application of the guidelines. After discussion, the following wording was agreed upon: There should be clearly defined guidelines that are universally applied regarding public access to all court records, judicial proceedings, judicial branch meetings, and administrative records.

As all four guiding principles were read, Judge Lavery questioned the use of the phrase "Judicial Branch-sponsored meetings" and the wording of that guiding principle was

changed to eliminate the word “sponsored.” The four guiding principles of the Task Force currently read as follows:

1. All court records, judicial proceedings, judicial branch meetings, and administrative records are presumed open.
2. Public access to all court records, judicial proceedings, judicial branch meetings, and administrative records should be limited only if there is a compelling reason to do so, there are no reasonable alternatives to such limitations, and the limitation is no broader than necessary to protect the compelling interest at issue.
3. There should be an expeditious and open process for resolving disputes regarding access to all court records, judicial proceedings, judicial branch meetings, and administrative records.
4. There should be clearly defined guidelines that are universally applied regarding public access to all court records, judicial proceedings, judicial branch meetings, and administrative records.

The next item addressed on the agenda was presentation of committee reports.

Judge Alander, co-chair of the Committee on Access to Court Records reported that the committee had had two meetings, reviewed the issues identified at the full Task Force meeting, articulated its guiding principles, and agreed that the model guidelines would serve as a template for its discussion. That process of reviewing the COSCA guidelines has begun. The committee agrees that the early solicitation of comments from judges would be beneficial as the committee discusses what court records should be categorically excluded and what rules should be changed. Judge Borden had indicated that he would like rolling recommendations and the committee would like to submit one: that the Judicial Branch mission statement be amended to include the word “open” so it would read: It is the mission of the Connecticut Judicial Branch to resolve matters brought before it in a fair, timely, open, and efficient manner.

Justice Palmer thanked Judge Alander for the report and indicated that the Task Force would consider recommendation at its next meeting. He also stated that one method for soliciting comments from the judges would be the judges’ e-mailing list server.

Judge Alander indicated that the committee would specifically like comment on two areas: what records to categorically exclude and any changes that should be made regarding the closure of court records, along with the reasons behind their suggestions. Justice Palmer said he would include these areas in the inquiry that is sent out. He said he would also send an inquiry through the media advisory list serve. Responses can go directly to the co-chairs of the committee or through the website, monitored by staff, who will then direct the responses to the appropriate committee. ([Public.access@jud.ct.gov](mailto:Public.access@jud.ct.gov))

The next report was from Atty. Bayer, co-chair of the Committee on Judicial Proceedings. The committee had had only one meeting and had gone through a similar process in reviewing the issues and articulating its guiding principles. The committee began its discussion of what kinds of judicial proceedings should be open or closed. It was the consensus of the committee that input from people in specific areas would be beneficial. The committee also recognizes that proceedings that are statutorily closed

will probably fall into the category of later recommendations. Staff is providing information on statutes that impact on proceedings. The committee talked about three suggestions for the Task Force to consider. These are not presented for a vote today, but are rather presented as items that would be worth pursuing in the near future. They are as follows:

1. The creation of an informal process for dispute resolution, similar to the "Fire Brigade" that currently operates in Massachusetts. The process might well apply to other committees. It is a group of three judges and three members of the media who are available to resolve disputes. The committee is currently gathering specific information on the process, and hopes it will provide an informal option for resolving minor disputes.
2. The possible expansion of the use of video cameras in the appellate courts, initially avoiding the trial court level where all the major issues (privacy, jurors) are. The committee would like to solicit information from the justices and judges. There is an existing rule allowing only a single fixed camera. At the committee meeting tomorrow, Paul Giguere, founder of CT-N, will talk about technological issues and minimizing obtrusiveness.
3. The creation of a pilot program to allow cameras in sentencing and arraignments. The committee also intends to solicit input from the judges on this proposal. The committee is aware that this proposal would require a rule change.

Ms. Collins wanted to add Superior Court to the second proposal. She also said she felt the committee needed to do something about the banning of note-taking in the courtroom. A discussion then ensued regarding access for the media, through whom most people obtain their information on the judicial process, and access for every person that enters a courtroom. Justice Palmer indicated that the issue on note-taking is a committee issue and should be discussed there. The Task Force will address it at the point when a recommendation is made. In the meantime, comments may be sent to the co-chairs of the committee or through the website.

The last report was from the Committee on Administrative Records and Meetings. Judge Ment indicated that the committee had begun its discussion of what are administrative records, what are meetings, and how to address the issue of balancing openness with security and privacy concerns. Judge Ment stated that the sense of the group is that everything that is not closed by statute will be open.

The next agenda item is a discussion of the time table. Justice Palmer will ask for prompt comment from the judges and the media. The Task Force has a pretty tight time table and a proposed time line was handed out today. With respect to the opportunity for public input on the reports, there is a date proposed for a public hearing. Atty. Bayer asked if it would be possible to give committees a little longer and compress the Task Force meetings to allow more time for developing plans and recommendations. Ms. Griffin asked if September 5<sup>th</sup> would be the best day for a public hearing because of Labor Day. After discussion, revisions were made to the time line and those revisions will be circulated and attached to these minutes.

The next meeting is scheduled for August 3<sup>rd</sup>, although it might change to August 10<sup>th</sup>. Notice will be given of any changes. The meeting adjourned at 3:15 PM.

## **PUBLIC ACCESS TASK FORCE PROPOSED TIMELINE**

June 15, 2006	Meeting of Task Force
August 3, 2006	Committee Working Drafts Complete
August 10, 2006	Committee Final Reports at Meeting of Task Force
August 18, 2006	Distribution of Task Force Working Draft
August 24, 2006	Meeting of Task Force
September 1, 2006	Distribution of Task Force Second Draft
September 6 or 7, 2006	Public Hearing and Meeting of Task Force
September 12, 2006	Distribution of Final Report
September 15, 2006	Meeting of Task Force