

DRAFT REPORT OF THE COMMITTEE ON ACCESS TO MEETINGS AND JUDICIAL BRANCH ADMINISTRATIVE RECORDS

August 21, 2006

The Committee on Access to Meetings and Judicial Branch Administrative Records (Committee) was charged with making concrete recommendations for the maximum degree of public access, consistent with the needs of the Judicial Branch to balance legitimate security and confidentiality concerns.¹ At the first meeting, the Committee developed the following guiding principles:

- A presumption that all Judicial Branch meetings, as defined by the Committee, are open to the public,
- A presumption that all administrative records of the Judicial Branch, as defined, shall be open to the public unless they are part of an adjudicatory proceeding or subject to statutory exclusions, and
- Anyone denied access to meetings or administrative records should have prompt and efficient recourse to appeal the denial of access.

The Committee first took up the subject of Judicial Branch meetings, and adopted the following definition of “meeting”:

- (a) For purposes of this provision, a “meeting” is defined as a hearing or other proceeding of (1) the Rules Committee of the Superior Court, (2) the Appellate Court Rules Committee, (3) the Annual Meeting of the Judges of the Superior Court, (4) the Executive Committee of the Superior Court, (5) a multi-member Judicial entity established by Practice Book rule, statute, or administrative authority of the Judges of the Superior Court, the Appellate Court, or the Justices of the Supreme Court² or (6) any subcommittee of the foregoing bodies.

¹ The Committee on Access to Meetings and Judicial Branch Administrative Records was co-chaired by the Honorable Aaron Ment and Attorney Alan Neigher. Other members of the Committee were: the Honorable William Lavery, Mr. Zach Lowe, the Honorable Barry Stevens, and Attorney Aaron Bayer. It met on five occasions throughout June and July of 2006 and considered all issues referred to it by the Task Force.

² Examples listed, *infra*.

- (b) A meeting as defined in subsection (a) shall not include: any meeting of a personnel search committee for executive level employment candidates; any chance meeting, or a social meeting neither planned nor intended for the purpose of discussing matters relating to official business; strategy or negotiations with respect to collective bargaining; an administrative or staff meeting of a single-member public agency; and communications limited to notice of meeting of any public agency or the agendas thereof. A quorum of the members of a committee included within the definition of a meeting in subsection (a) who are present at any event other than a meeting of the committee of which they are a member shall not be deemed to be at a meeting of that committee provided that no discussion of official business related to their committee occurs.
- (c) Except as otherwise provided by statute or Practice Book rule, any meeting as defined in subsection (a) shall be open to the public. Notice of the time and place of such a meeting, as well as a copy of the agenda for such a meeting, shall be posted on the Judicial Branch Internet website at least 48 hours in advance of the meeting.

Applying this definition, the Committee then cited examples of committees that would be open to the public:

- Advisory Committee to Judicial Department Concerning Parenting Education Programs, Annual Meeting of the Judges, Appellate Court Rules Committee, Bar Examining Committee, Board of Examiners for Court Reporters, the Civil Commission, the Criminal Division Task Force, the Code of Evidence Oversight Committee, the E-Filing Judges' Advisory Committee, the Executive Committee, the Law Library Advisory Committee, the Legal Internship Committee, the Legal Specialization Screening Committee, the State Advisory Council to the Office of Victim Services, and the Superior Court Rules Committee.

The Committee further concluded that meetings or committees concerning the education and training of judges, such as the Judges' Institute, judges' education seminars, the Education Committee, and the Criminal and Civil Jury Instruction Committees, should not be open to the public.

While stressing the need for a maximum degree of openness, the Committee also recognized that there may be occasions when, due to the sensitive nature of the discussion, it would be appropriate for the meeting to continue in closed session. To this end, the Committee adopted the following definition of "closed session":

- (a) Upon motion and a two-thirds vote of the members present and voting at a meeting, the members may go into closed session (1) for any purpose permitted by the Freedom of Information Act, or (2) if a public session would have a deleterious impact on debate or the receipt of information and thereby substantially impede the ability of the committee or entity to perform its duties. Any motion to go into closed session shall specify the permissible purpose, in accordance with the Freedom of Information Act, for the closed session, or the reason a public session would have a deleterious impact on debate or the receipt of information. The closed session should continue only so long as needed to serve those purposes.
- (b) No vote shall be taken at a closed session except as permitted pursuant to the Freedom of Information Act.
- (c) Examples of a public session that may have a deleterious impact on debate or receipt of information, and for which a closed session would be permissible under subsection (a), include, but are not limited to, situations where: (1) the information sought to be disclosed would invade “personal privacy” as that term has been construed in C.G.S. § 1-210(b), (2) disclosure or discussion of information would be likely to give a party to pending or impending litigation a procedural or tactical advantage, or (3) the members determine that their need for information is obtainable only on a promise of confidentiality and outweighs the public’s interest in attending the portion of the meeting at which the confidential information will be received or debated.

Recognizing that many committee meetings take place in Judicial Branch courthouses, the Committee also felt it was appropriate to seek a rule change specifically permitting electronic or photographic access to meetings. The Committee recommends:

- Practice Book § 1-10 be amended to permit broadcasting, televising, recording, or photographing of Judicial Branch meetings that are open to the public and scheduled in court facilities. Members of the media attending a meeting with equipment for the purposes enumerated above may only use such equipment in connection with the meeting. A marshal shall ensure that the equipment is being utilized in accordance with this rule.

A committee shall notify the administrative judge of the judicial district in which the court facility is located anytime a meeting is scheduled.

- Practice Book § 70-9 be amended to permit broadcasting, televising, recording, or photographing of Judicial Branch meetings that are open to the public and scheduled in court facilities. Members of the media attending a meeting with equipment for the purposes enumerated above may only use such equipment in connection with the meeting. A Supreme Court Police Officer or marshal shall ensure that the equipment is being utilized in accordance with this rule.

In regard to administrative records held by the Judicial Branch, the Committee agreed that all such records are open to the public, unless there is a specific statutory provision providing otherwise or an exemption noted below. The Committee then adopted the following definition:

- “Administrative Record” includes the following information maintained by the Judicial Branch (which, for purposes of this definition shall include any of its departments, offices, committees or panels) pertaining to the administration of the Judicial Branch with respect to, *inter alia*, its budget, personnel, facilities and physical operations which is not associated with any particular case and includes:
 - 1) Summaries, indices, minutes and official records of any meeting of the Judicial Branch, and
 - 2) Information maintained or stored by the Judicial Branch, not otherwise exempted, in all paper and electronic platforms and formats.

The Committee specifically reviewed three types of records pertaining exclusively to judges: judges’ attendance records, performance evaluation records, and complaints received by the Judicial Branch regarding a particular judge. On the first two issues, the Committee took the following action:

- Confirmed that attendance records of judges are open to the public, and
- Recommended that the statute governing access to Judicial Performance Evaluation records – currently available to members of the General Assembly’s Judiciary Committee and to members of the Judicial Selection Commission – not be amended.

On the third issue – complaints received by the Judicial Branch regarding a particular judge – the Committee made the following recommendations:

- All complaints received by the Office of the Chief Court Administrator regarding the conduct of a judge shall be reviewed by the Chief Court Administrator to determine if there is reason to believe that the allegations warrant further

investigation by the Judicial Review Council. If the allegations so warrant, the complaint shall be forwarded to the Judicial Review Council, and shall thereafter be governed by the statutes governing such complaints.

- In those instances where the complaint is without merit, is properly the subject of review through an existing adjudicatory procedure (such as an appeal, where the complaint concerns a decision made by a judge in litigation), or is otherwise not within the purview of the Office of the Chief Court Administrator, such complaint shall not be open.

The Committee also believes that complaints that warrant administrative action, but do not rise to a level that is appropriate for a referral to the Judicial Review Council, such as letters of admonishment, should continue to be handled in a manner consistent with C.G.S. § 51-45a. As provided in that statute, any such action taken by the Chief Court Administrator shall become a part of any performance evaluation record of the judge, and shall be disclosed pursuant to statutes governing the release of performance evaluations.

The Committee further recommended that the Chief Court Administrator be charged with creating a retention schedule for all administrative records held by the Judicial Branch.

In sum, members of the Committee on Access to Meetings and Judicial Branch administrative records unanimously re-affirmed the principle that meetings and records should be open and accessible to members of the public. Only in certain, narrowly defined matters is it appropriate to limit access; in all other instances, the public trust demands openness and accountability. It is the expectation of the membership of this Committee that its recommendations will achieve this objective.