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The Supreme Court of Texas

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November 2, 2004

Mr. Charles L. Babcock
Jackson Walker LLP
1401 McKinney, Suite 1900
Houston, TX 77010

Re: Proposed Rule of Judicial Administration 14

Dear Chip:

After six public hearings over the last year and extensive research, the Texas Judicial Council has submitted their final Report on Public Access to Court Records to the Supreme Court of Texas. The report includes a proposed Rule of Judicial Administration 14.

The Court asks that I submit the report to the Supreme Court Advisory Committee for study. Specifically, the Court requests that the subcommittee on the Rules of Judicial Administration consider the mechanics of the proposed rule, assuming the Court adopts the policy recommendations of the Judicial Council, and present the rule, with any recommendations, to the full committee during the November 12th meeting. In the meantime, the Court will continue studying the policy recommendations of the Texas Judicial Council and, hopefully, report to the subcommittee informally sometime next week.

I apologize for the short time frame. However, as you probably know, there currently are no applicable Texas statutes, court rules, or court orders in place to address the publication and distribution of electronic state court records in Texas. Court clerks implementing electronic record keeping and remote access systems have proceeded on an individualized ad hoc basis without any limitations or guidance. The Court believes this is a matter better addressed by the judiciary than the legislature.

Kindest Regards,

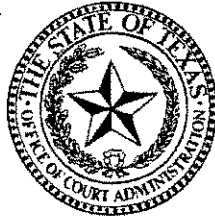
A handwritten signature in black ink, appearing to read "Lisa Hobbs".

Lisa Hobbs
Rules Attorney

Enclosures (3)

cc: Hon. Nathan L. Hecht (w/o enclosures)
Supreme Court of Texas

Michael A. Hatchell, Chair
Subcommittee on Rules of Judicial Administration



PUBLIC ACCESS TO COURT CASE RECORDS IN TEXAS

**A REPORT WITH RECOMMENDATIONS
- TEXAS JUDICIAL COUNCIL -**

August 2004



TEXAS JUDICIAL COUNCIL

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HON. THOMAS R. PHILLIPS
Chief Justice, Supreme Court

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

August 30, 2004

Chief Justice and Justices
The Supreme Court of Texas

Ladies and Gentleman:

With input from the judiciary, the legislature, and the public, I am pleased to submit to you our report and recommendations *Public Access to Court Case Records in Texas*.

As you know, the Texas judiciary has long recognized the common law right and the presumption of public access to court case records. With recent technological advances, court clerks are now able to increase that accessibility by maintaining and disseminating court documents in an electronic format. Because court case records often contain sensitive and personal information, (e.g., financial documents, social security numbers, medical records), the Texas Judicial Council (Council) created the *Committee on Public Access to Court Records* (Committee) to examine and make recommendations regarding the personal privacy and public safety implications that arise when case records are made available to the public through the internet.

In July 2004, after holding six public hearings, conducting extensive research, and analyzing the relevant federal and state policies, rules, and statutes, the Committee submitted its report and recommendations to the Council for consideration. During our August 2004 public hearing, the Council discussed the work of the Committee, took additional public testimony, amended the recommendations, and adopted this report.

The Council is appreciative to those who have contributed their time and expertise to this important endeavor. Your valuable input and dedication to the judiciary is imperative to the continued success of the Council's initiatives.

Sincerely,

Thomas R. Phillips
Chair, Texas Judicial Council
Chief Justice, Texas Supreme Court



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VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

July 16, 2004

Members, Texas Judicial Council

Dear Members,

As chair of the Committee on Public Access to Court Records (Committee), I am pleased to submit to the Texas Judicial Council (Council) the attached report *Public Access to Court Case Records in Texas*.

In November 2003, Chief Justice Phillips appointed this Committee to develop a comprehensive access policy that protects the public's access to court documents and maintains the integrity of the Texas Judicial System. To comply with the charge, the Committee held six public hearings, conducted extensive research, and analyzed the federal and state policies, rules, and statutes. The Committee focused on the privacy and safety implications that arise when electronic adjudicative-type case records are made available to the public on the internet. With input from the legislature, the judiciary and the public, the Committee adopted the following unanimous recommendations:

1. The Texas Supreme Court (Court) should require that a Sensitive Data Form be completed for each case file whether in paper or electronic format for each matter in which this information must be included. The form would include in full: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a person who is a crime victim as defined by Article 56.32, Code of Criminal Procedure, in the proceeding; and the name of a minor child. References to the sensitive data in any pleading or party filing would be made in an abbreviated format as specified by the Court. The form would be exchanged among parties and attorneys and be filed at the courthouse but not be made available to the public.
2. The Council should appoint a committee to examine and make recommendations regarding case records or proceedings that should be closed to the public both at the courthouse and on the internet. While several members recommend that public access to paper documents and electronic documents be treated the same, some of those members acknowledged that there may be some information that is not appropriate for internet publication and that should be made confidential both at the courthouse and on the internet.

3. The Council should appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The Committee should report to the Council prior to the 80th Regular Legislative Session.

While the Committee strived to reach a consensus on one comprehensive statewide access policy, the members ultimately adopted two alternative approaches for your consideration.

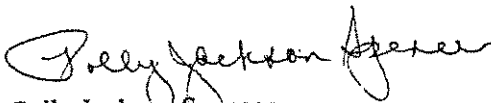
Alternative I: Open Remote Access. Treat remote public access the same as public access at the courthouse. If a court record is open to the public at the courthouse, then that record may be published on the internet. Any document considered too sensitive or personal for publication on the internet should be made confidential at the courthouse by statute, court rule, or court order.

Alternative II: Modified Remote Access. Place the following limitations on remote public access:

- (1) Only court-created records (e.g., indexes, court calendars, dockets) may be accessible by remote electronic means.
- (2) Remote access to case records, other than court-created case records, may be granted through a subscriber-type system that requires users to register with the court and obtain a log-in and password.
- (3) Regardless of whether a subscriber-type system is in place, the following case records should be excluded from remote access: (a) medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records; (b) pretrial bail or presentence investigation reports; (c) statements of reasons or defendant stipulations in criminal proceedings, including any attachments thereto; and (d) income tax returns.
- (4) Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-created case records, should be excluded from remote access.

Thank you for the opportunity to participate in this endeavor. I hope that the work and recommendations of the Committee will provide the Council, the Court, and future policymakers with the information needed to make informed decisions that benefit the citizens of Texas.

Sincerely,



Polly Jackson Spencer
Judge, Bexar County Probate Court #1
Chair, Committee on Public Access to Court Records



PUBLIC ACCESS TO COURT CASE RECORDS IN TEXAS

**A REPORT WITH RECOMMENDATIONS
- TEXAS JUDICIAL COUNCIL -**

August 2004

TEXAS JUDICIAL COUNCIL

COMMITTEE ON PUBLIC ACCESS TO COURT CASE RECORDS

ACKNOWLEDGMENTS

Judicial Council Members

Judge Polly Jackson Spencer, Probate Court No. 1 (San Antonio)
Mr. Lance Byrd, Sendero Energy, Inc. (Dallas)
Senator Robert Duncan, (Lubbock)
Judge Allen Gilbert, San Angelo Municipal Court (San Angelo)
Judge Melissa Goodwin, Justice of the Peace, Precinct 3 (Austin)
Representative Will Hartnett (Dallas)
Ms. Ann Manning, McWhorter, Cobb & Johnson, L.L.P. (Lubbock)
Judge Orlinda Naranjo, Travis County, Court at Law No. 2 (Austin)
Chief Justice Thomas R. Phillips, Supreme Court of Texas (Austin)
Chief Justice Sherry Radack, 1st Court of Appeals (Houston)
Judge Sharolyn Wood, 127th Judicial District Court (Houston)

Non-Council Members

Mr. Charles Bacarisse, Harris County District Clerk (Houston)
Ms. Wanda Garner Cash, Freedom of Information Foundation of Texas (Baytown)
Mr. David Gavin, Department of Public Safety (Austin)
Dr. Tony Reese, University of Texas School of Law (Austin)
Dr. Dianne Wilson, Fort Bend County Clerk (Richmond)
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Appendix B: Confidential Court Case Records in Texas

Appendix C: Washington Confidential Information Form and Financial Source Document
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Appendix D: Public Access to Case Records Draft Rule

I. Introduction

The judiciary has long recognized that case file documents, unless sealed or otherwise restricted by statute or court rule, are available at the courthouse for public inspection and copying. The common law right and the presumption of public access to court records “relate to the public’s right to monitor the functioning of our courts, thereby insuring quality, honesty, and respect for our legal system.”¹ Yet, those access rights have traditionally been subjected to the “practical obscurity” of physically locating documents and information maintained among the voluminous paper files in courthouses located throughout the country. With the emerging use of electronic filing and imaging technology, however, court documents can now be easily accessed, duplicated, and disseminated from locations outside the courthouse. The “[i]ncreased use of the Internet and other powerful databases—both in the judicial system and among the general public—is lowering the barriers to access for parties that have an interest in that information. Personal, often sensitive, information now may be accessed and manipulated from a distance and used in ways not envisioned...”²

Fortunately, the judiciary has been mindful of the potential privacy and safety implications associated with modern technologies. See *Whalen v. Roe*, 429 U.S. 589, 605 (1977) (“We are not unaware of the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive government files. The collection of taxes, the distribution of welfare and social security benefits, the supervision of public health, the direction of our Armed Forces, and the enforcement of the criminal laws all require the orderly preservation of great quantities of information, much of which is personal in character and potentially embarrassing or harmful if disclosed”); *United States Dep’t of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749, 764 (1989) (“Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information...”).

Likewise, the judiciary has recognized that the public’s right to access court documents may be limited in some circumstances. See *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents... It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes”); *Taylor v. State*, 938 S.W.2d 754, 757 (Tex. App.—Waco 1997) (quoting *Nixon*); *Dallas Morning News, Inc. v. Fifth Court of Appeals*, 842 S.W.2d 655, 658-659 (Tex. 1992) (quoting *Nixon*); *United States v. Amodeo*, 71 F.3rd 1044, 1048-1049 (2d Cir. 1995) (“Unlimited access to every item turned up in the course of litigation would be unthinkable. Reputations would be impaired, personal relationships ruined, and businesses destroyed on the basis of misleading or downright false information... Unlimited access, while perhaps aiding the professional and public monitoring of courts, might adversely affect law enforcement interests or judicial performance...”).

¹ See *In re Continental Illinois Securities Litigation*, 732 F.2d 1303, 1308 (7th Cir. 1984).

² See *Study of Financial Privacy and Bankruptcy*, U.S. Justice Department, Treasury Department, and Office of Management and Budget (January 2001).

Further, the courts have acknowledged Congress's awareness that the privacy concerns of private citizens may outweigh the need for public access to information maintained by a federal agency. See *Sherman v. Department of the Army*, 244 F.3d 357, 360-361 (5th Cir. 2001) "...Congress created nine exemptions [in the Freedom of Information Act] through which federal agencies may restrict public disclosure of information that would threaten broader societal concerns. See 5 U.S.C. § 552(b). The informational privacy interests of private citizens are among those concerns recognized and addressed by Congress in these exemptions.); *Reporter's Comm.*, 489 U.S. at 770 ("...the fact that 'an event is not wholly 'private' does not mean that an individual has no interest in limiting disclosure or dissemination of the information' (citations omitted)"). Today, the judiciary faces a challenge presented by advanced technology to promote increased access to court information while preserving the use of our court system as a meaningful avenue to enforce the laws of our country.

II. Committee Charge

In November 2003, Chief Justice Thomas R. Phillips, chair of the Texas Judicial Council, appointed the *Committee on Public Access to Court Records* (Committee) to develop a comprehensive statewide access policy that maintains the integrity of the judicial process while protecting the important interests of public access. Because of the sensitive information contained in many court documents, (e.g., financial documents, social security numbers, medical records, personnel files, proprietary information, tax returns, plea agreements, juror information, victim information, and names of minor children), the Committee was instructed to consider the personal privacy and public safety implications that arise when electronic adjudicative-type case records are made available on the internet.

To comply with the charge, the Committee held six public hearings,³ conducted extensive research, and analyzed the relevant federal and state policies, rules, and statutes. In July 2004, after receiving input from the legislature, the judiciary, and the public, the Committee submitted its report with recommendations to the Council for consideration.⁴ This report: (1) provides an overview of the Committee deliberations; (2) discusses the development of the federal public access policy; (3) provides information about the public access policies implemented in other states; and (4) details the Council's key recommendations.

III. Committee Deliberations

The Need for Guidance

Currently, there are no applicable Texas statutes, court rules, or court orders in place to address the publication and distribution of electronic state court records in Texas. Court clerks implementing electronic record keeping and remote access systems have proceeded on an individualized ad hoc basis without any limitations or guidance from the judiciary or legislature. For example, the Tarrant County District Clerk and the Fort Bend County Clerk both maintain all of their respective court records in an electronic format and provide public access through the

³ See Appendix A for a copy of the official minutes of each public hearing.

⁴ See Judge Spencer's cover letter to this report for the Committee's recommendations.

internet to those documents that are not otherwise sealed by the court or made confidential by statute. While the clerk in Tarrant County provides remote access only to subscribers who apply for a log-in and password and submit a deposit and monthly fee, the clerk in Fort Bend County provides remote access to the public at no charge. In Harris County, the district clerk provides remote access to the court's civil orders for a fee. However, due to concerns expressed by the Houston Family Bar Association, family law orders are available only to practicing family law attorneys who must obtain a log in and password.

After learning about these and other state court websites, the Committee acknowledged the need for uniformity and guidance through the development of a statewide policy that governs the remote electronic distribution of court documents. Without a comprehensive policy in place, the public will likely encounter many variations of remote court access systems that offer different levels of access, service, and user requirements.

Public Trust and Safety

The Committee was concerned about the sensitive and personal information that is scattered throughout a typical case file. Some members believe that without the historical "face-to-face" encounter at the courthouse, the likelihood that information will be retrieved for improper purposes is greatly increased. Internet access to guardianships, conservatorships, custody, or competency proceedings that contain information about an individual's physical, mental, or financial well-being would provide the public with detailed information about those individuals who are most vulnerable in our society. The civil courts monitor children, families, and business dealings. People generally trust the court system to settle their personal and professional disputes. But some members fear that the judiciary may lose that trust if too much information becomes readily available to the public. If engaging in a court process means that an individual's personal information may be broadcast on the internet, then the nature of civil litigation may move from a public to a private forum. Members discussed the possibility that high school students would be able to access the divorce records or custody dispute records of their friend's parents and display them at school. They also recognized that an individual who is not even a party to a suit may be mentioned in a court record and that some parties involved in a court case are not in court on a voluntarily basis. The Committee questioned how the judiciary might protect the identity and location of sexual assault or domestic abuse victims, handle victim statements and sensitive exhibits that are attached to motions or pleadings, ensure the accuracy of the information published, and handle temporary orders, protective orders, and peace bonds that have not been ruled upon.⁵

Some members believe that statutory protections are the appropriate means of protecting such privacy interests.⁶ They maintain that if a document is available at the courthouse, it should be made available on the internet. They see no reason to differentiate between court records that are maintained in electronic form rather than paper form. Nevertheless, other members point out that the Texas legislature has not examined the confidentiality of court records in the context of an electronic environment. Consequently, the current statutory scheme does not take into account the posting of electronic court records on local court websites. Likewise, they note that

⁵ The Committee was cognizant of the difficulties encountered in the Kobe Bryant rape case where sealed court documents that included the accuser's last name were mistakenly posted to the court's web site.

⁶ See Appendix B for a detailed list of those court records that are confidential by Texas statute.

the Texas Legislature has recently placed additional restrictions on public access to otherwise open court records. The 78th Texas Legislature amended the Texas Family Code to provide that in Harris County, all pleadings and documents filed with the court in a suit for the dissolution of marriage are confidential until after the date of service of citation or the 31st day after the suit was filed. Also, an application for a protective order in Harris County is confidential until after the date of service of notice of the application or the date of the hearing on the application, whichever is sooner, and an application for the issuance of a temporary ex parte order is confidential until after the date that the court or law enforcement informs the respondent of the court's order.⁷ Further, those members referred to Florida's experience, discussed in Section V below, where public outcry prompted a legislative, and later a judicial, moratorium on remote public access to court records.

Benefits of Remote Access

Given these concerns, some members questioned the rationale for placing *any* case records on the internet for world-wide access and scrutiny. They felt that an institutional change of this magnitude ought to be justified and were curious about the need for any access beyond the traditional method of inspecting court records at the courthouse. Nevertheless, advocates of electronic distribution responded by pointing to the strong public demand, ease of access, the mobility of our society, and the large cost savings associated with both storing and retrieving paper documents. By maintaining all recorded documents since 1838 in an electronic format, the county clerk in Fort Bend County reduced the amount of staff necessary to respond to public records requests. Over the next 5 years, the district clerk in Harris County expects to image over 400 million documents, reducing the court's physical storage requirements from approximately 180,000 to 40,000 square feet. Likewise, parties, attorneys, and the general public benefit from the convenience of accessing case information from a remote location, even on weekends and after regular business hours, without the necessity of traveling to the courthouse.

Identity Theft

The Committee unanimously agreed that certain personal identifiers maintained in both paper and electronic court files, generally for administrative purposes, should not be accessible to the public. Following the lead of the Federal Judiciary and in an effort to address increasing incidences of identity theft, the members deemed as confidential the following personal identifiers in their complete form: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a crime victim in the proceeding; and the name of a minor child. The Committee envisioned the implementation of a confidential "Sensitive Data Form" such that the above personal identifiers would be documented in their complete form, but referred to throughout the case file in pleadings, motions, interrogatories, and other documents in an abbreviated or partially obscured format. Recognizing that it is impracticable, if not impossible, for the courts and court clerks to redact or police the personal or sensitive information that might be filed in a typical case, the Committee agreed that the burden of compliance should fall on the individual filing a court document and should be followed only on a prospective basis.

⁷ See House Bill 1391, 78th Regular Session (2003).

Court-Created Documents

The Committee chose to differentiate between court-created documents prepared by the judge or court personnel and party or non-party case filings prepared by someone outside the court. The Committee generally agreed that providing remote access to court-created calendars, dockets, or indexes of cases serves a legitimate public interest by enhancing the public's ability to monitor the functions of the courts. Additionally, such remote access allows the parties and their attorneys to track the status and activities of their respective cases without the inconvenience of contacting court personnel or physically visiting the courthouse. Likewise, the Committee agreed that because the court controls the contents of the court minutes, notices, orders and judgments, remote public access to those documents should not significantly impair individual privacy interests. However, the Committee noted that the state judges and court personnel should be cognizant of the privacy implications associated with information provided in court-created documents that may be published on the internet. Further, state judges and court personnel should minimize and avoid the inclusion of unnecessary personal or sensitive information in any court created document.

Party and Non-Party filings

As discussions moved beyond personal identifiers and court-created records, the Committee focused on the contents of party and non-party filings. The members revisited the public safety and privacy implications associated with the electronic publication of extremely sensitive information, including, but not limited to: medical records, tax returns, divorce proceedings, harassment proceedings, proprietary business information, asset inventories, pre-sentence investigation reports, search warrants, arrest warrants, and exhibits depicting nudity, violence or death. The Committee questioned whether people will continue to use and trust the court system to settle their personal and professional disputes knowing that the information contained in the case file may be published on the internet. Likewise, the members discussed the court's lack of control regarding the contents of those documents that are filed by the parties and non-parties in a case. Given the Committee's desire to maintain broad public access while ensuring privacy, personal safety, and public confidence, the members considered some electronic protections including, but not limited to: requiring users to obtain a log-in and password; charging a user or subscriber fee; requiring that any data disseminated by the court not be sold or otherwise distributed to third parties nor be used for commercial or solicitation purposes; and prohibiting the bulk distribution of electronic records. For additional guidance, the Committee reviewed and examined the electronic access policies established by the Federal Judiciary and the judiciaries in other states.

IV. Federal Policy Development

When the United States Judicial Conference examined public access to electronic federal court records, the Administrative Office of the United States Courts (AOUSC) made several assumptions to guide policy development including the following:⁸

- There is a strong legal presumption that documents in case files, unless sealed, are public records available for public inspection and copying;

⁸ See *Privacy and Access to Electronic Case Files in the Federal Courts*, Administrative Office of the United States Courts, staff paper at pp. 8-9, (1999).

- The presumption of unrestricted public access to case files promotes public understanding of and confidence in the court system;
 - The transition to electronic case files raises important legal and policy issues that are not addressed explicitly in current law or judiciary access policies;
 - The traditional reliance on litigants to protect their privacy interests through protective orders or motions to seal may be inadequate to protect privacy interests;
 - Access rights, whether based on the common law or on the Constitution, are not absolute. The inherent authority of the judiciary to control the dissemination of case files may justify restriction on access to electronic case files to protect privacy;
 - Making case files available on the internet may lead to the dissemination of information that would harm the privacy interests of individuals. It also may deter litigants from using the courts to resolve their disputes; and
 - The judiciary has a special custodial responsibility to balance access and privacy interests in making decisions about the disclosure and dissemination of case files.
- Like other government entities that collect and maintain sensitive persona information the judiciary must balance the public interest in open court records against privacy and other legitimate interests of nondisclosure.

The AOUSC also presented several national policy alternatives on access to electronic case files.⁹

- 1. Extend current open access policies to cover electronic case files.** This approach would follow the belief that electronic case files should be treated the same as paper files. There would be no restriction on remote access. Litigants and others would have to assert their privacy interests with appropriate motions.
- 2. Review the elements of the "public" case file to better accommodate privacy interests.** This approach would evaluate the need to include specific information or documents in the public case file, whether in paper or electronic format. A new definition of the "public case file" would need to be developed to better accommodate privacy interests. Like alternative #1, this approach assumes that the entire public case file would be made available electronically without restriction. Private or sensitive information would be excluded from the public case file, whether in paper or electronic format.
- 3. Provide limited access to certain electronic case file information to address privacy concerns.** Under this approach, judicial leaders would limit remote electronic access by identifying categories of case file information or specific documents that may implicate privacy concerns. Remote electronic access might be limited depending on the level of access granted to a particular individual. For example, judges and court staff would have unlimited access, while litigants and attorneys would have unrestricted access to the files relevant to their own cases. The public would have remote electronic access to a subset of the entire case file that includes pleadings, briefs, orders, and opinions. This

⁹ See *Privacy and Access to Electronic Case Files in the Federal Courts*, Administrative Office of the United States Courts, staff paper at pp. 9-10, (1999).

approach assumes that the complete electronic case file would be available for public review at the courthouse, just as the entire paper file is available for inspection in person.

In September 2001, the Judicial Conference adopted a policy regarding privacy and public access to electronic case files as follows:¹⁰

► General Principles:

1. There should be consistent, nationwide policies in federal courts in order to ensure that similar privacy protections and access presumptions apply regardless of which federal court is the custodian of a particular case file.
2. Notice of these nationwide policies should be given to all litigants in federal court so that they will be aware of the fact that materials which they submit in a federal court proceeding could become available on the internet.
3. Members of the bar must be educated about the policies and the fact that they must protect their clients by carefully examining the documents that they file in federal court for sensitive, private information and by making the appropriate motions to protect documents from electronic access when necessary.
4. Except where otherwise noted, the policies apply to both paper and electronic files.
5. Electronic access to docket sheets through PACERNet and court opinions through court websites will not be affected by these policies.
6. The availability of case files at the courthouse will not be affected or limited by these policies.
7. Nothing in these recommendations is intended to create a private right of action or to limit the application of Rule 11 of the Federal Rules of Civil Procedure.

► Civil Cases: Documents in civil case files should be made available electronically to the same extent that they are available at the courthouse except that Social Security cases should be excluded from electronic access and certain "personal data identifiers" should be modified or partially redacted by the litigants. These identifiers are social security numbers (only the last four digits should be used), dates of birth (only the year should be used), financial account numbers (only the last four digits should be used) and names of minor children (only the initials should be used).

► Criminal Cases: Public remote electronic access to criminal case documents is prohibited.

► Bankruptcy Cases: Documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse, with a similar policy change for personal identifiers as in civil cases; Section 107(b)(2) of the Bankruptcy Code should be amended to establish privacy and security concerns as a basis for the sealing of a document; and that the Bankruptcy Code and Rules should be amended to allow the court to collect a debtor's full Social Security number but display only the last four digits.

► Appellate Cases: Appellate case files are to be treated the same as lower level cases. The *case file*, whether electronic or paper, is defined as the collection of documents officially filed by the litigants or the court in the context of litigation, the

¹⁰ See *Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access to Electronic Case Files* (2001).

docket entries that catalog such filings, and transcripts of judicial proceedings. The term generally does not include non-filed discovery material, trial exhibits that have not been admitted into evidence, drafts or notes by judges or court staff.

The federal courts provide public access to electronic files, both at the courthouse and beyond the courthouse, through a web-based system, the Public Access to Court Electronic Records (or "PACER") system, that contains both the dockets (a list of the documents filed in the case) and the actual case file documents. Users must open a PACER account and obtain a login and password which creates an electronic trail.

In March 2002, the following two modifications to the policy were adopted: (1) remote public access became permissible for "high profile" criminal case file documents in cases where demand for copies of documents places an unnecessary burden on the clerk's office, the parties have consented to such access, and the presiding judge finds that such access is warranted by the circumstances; and (2) a pilot project was created to allow several courts to return to the level of remote public access to electronic criminal case files that they provided prior to the Conference adoption of the policy restricting such access. In September 2003, the Conference amended the prohibition regarding criminal cases to permit electronic access to criminal cases. As in civil cases, certain "personal data identifiers" should be modified or partially redacted by attorneys and litigants in criminal cases.

V. State Court Policy Development

a. Model Policy

In an effort to provide guidance to and consistency among state judiciaries, the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) issued the CCJ/COSCA Guidelines in August 2002.¹¹ The project "Developing a Model Written Policy for Access to Court Records," was funded by the State Justice Institute and staffed by the National Center for State Courts and the Justice Management Institute. The model policy provides a framework from which judicial leaders can develop their own public access policy. The CCJ/COSCA Guidelines are based on the following premises:

- Retain the traditional policy that court records are presumptively open to public;
- As a general rule access should not change depending upon whether the court record is in paper or electronic form, although the manner of access may vary;
- The nature of certain information in some court records is such that remote electronic public access may be inappropriate, even though public access at the courthouse is maintained;
- The nature of the information in some records is such that all public access to the information should be precluded, unless authorized by a judge; and
- Access policies should be clear, consistently applied, and not subject to interpretation by individual court or clerk personnel.

¹¹ See *Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts*, Martha Wade Steketee, Alan Carlson (Oct. 18, 2002).

The CCJ/COSCA Guidelines do not require state courts to convert their court records to electronic form or to make records available remotely. In developing a public access policy, the CCJ/COSCA Guidelines suggest that state judiciaries examine the effectiveness of existing state statutes or rules and focus on a policy that will provide guidance to courts as their technology is upgraded.

b. Other State Policies

Several states, including Colorado, Idaho, and Missouri, have enacted public access policies for electronic records in the context of a database or case management system and generally allow remote electronic access to the calendar, register or actions, and general docket-type information rather than to the actual party and non-party case filings. For example, in Colorado, only data elements contained in the Integrated Court On-Line Network database and approved by the *Public Access Committee* may be released electronically.¹² Those records generally include case numbers, court, division, primary party name(s), date of birth, attorney, calendar events, bonds, judgments, charges case dispositions, and sentences for felony, misdemeanor, traffic, civil and domestic relations cases. Other states, including Arizona, California, Florida, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New York, Utah, Vermont, Washington, and Wisconsin, have adopted or continue to debate policies to address the personal privacy and personal safety implications associated with remote electronic access to case records.

Arizona

In August 2000, the chief justice created the *Committee to Study Public Access to Electronic Court Records* to develop policy recommendations regarding public access to electronic judicial records. Arizona Supreme Court Rule 123, which governs judicial records policy, prohibits public access to financial account and social security numbers appearing in administrative files and bars disclosure of the following information contained in case records: any record protected by law, certain juvenile treatment records including dependency, adoption, severance and related proceedings; adult criminal history, medical and psychiatric records, and certain probation and pretrial services records. Most identifying juror information including phone and address is confidential.

In October 2002, the committee issued recommendations which provide that remote electronic public inspection would not be available for certain case records and data elements (presentence reports; criminal case exhibits unless attached to a filing; petitions for orders of protection or injunctions against harassment; victims' names; and docket and calendar information on unserved orders of protection or injunctions against harassment). The parties' residential addresses would not be displayed on Web sites offering basic case information from a court's case management system. The committee suggests that the Arizona Supreme Court should develop a confidential form for sensitive data that would be available for public inspection at the courthouse only on a showing of good cause, and also educate judges, attorneys, and the public that case records are publicly accessible and may be available on the internet. The form would contain financial account numbers, social security numbers, victims' addresses and phone numbers and names of juvenile victims. The parties would be responsible for omitting or redacting such confidential information in documents filed with the court. Also, to determine the

¹² See Chief Justice Directive 98-05; Public Access Policy 98-01 through 98-03.

costs and benefits of offering remote electronic access to state court criminal case files, the committee recommends that the judicial department conduct a three year pilot project that would provide fee-based remote access to users who register with the court for a log-in and password. Remote electronic access would be afforded on a case-by-case basis and bulk data would not be electronically accessible on the internet.

The Arizona Supreme Court has formed a workgroup to review and refine the committee's recommendations.

California

California Rules of Court 2070-2077 are intended to provide the public with reasonable access to electronic trial court records, while protecting privacy interests. They are based on the conclusion of the *Court Technology Advisory Committee* that electronic records differ from paper records in three important respects: (1) ease of access, (2) ease of compilation, and (3) ease of wholesale duplication. The rules are also based on the committee's conclusion that the judiciary has a custodial responsibility to balance access and privacy interests in making decisions about the disclosure and dissemination of electronic case files. They are not intended to create a right of public access to any record the public is not otherwise entitled to access. The rules provide that to the extent feasible, courts must provide electronic access both remotely and at the courthouse to the registers of action, calendars, indexes, and all civil case records except that remote electronic access is not available for the following proceedings: family code; mental health; juvenile court; criminal; guardianship or conservatorship; and civil harassment.¹³ Likewise, certain data elements must be excluded from the calendar, index, and register of actions: social security numbers; financial information; arrest warrant information; search warrant information; victim information; witness information; ethnicity; age; gender; government-issued identification numbers; driver's license numbers; and dates of birth.

Electronic case record access is available on a *case-by-case basis* when the record is identified by the number, the caption, or the name of a party. A court may provide *bulk distribution* of only its calendar, register of actions, and index.¹⁴ If an electronic record becomes inaccessible by court order or operation of law, the court is not required to take action with respect to any copy that was made by the public before it became inaccessible. Users must consent to access the records only as instructed by the court and must consent to the court's monitoring such access. Contracts with vendors to provide public access must be consistent with the policy and must require the vendor to protect the confidentiality of court records as required by law or court

¹³ See *Public Access to Electronic Court Records*, Court Technology Advisory Committee, pp. 23-24 (Oct. 2001) ("In drafting the rules, the committee considered restricting remote access to specific data elements in a court record, such as a party's financial account numbers, but concluded that the problem with this approach is one of practical implementation: it would require someone in the clerk's office to carefully read each document filed with the court to ascertain whether there are any matters in the document that need to be redacted, and might subject the courts to liability for failing to redact all confidential data elements. Therefore, the committee concluded that the more workable approach is to limit remote electronic access to certain categories of cases....").

¹⁴ *Id.* at 19 (The committee was concerned about media requests for the court's entire database, which includes confidential information. To comply with such requests, court personnel would have to review each record in the database and redact all confidential information from the records – "a costly, time-consuming, and perhaps impossible task.").

order and must specify that the court is the owner of the records with the exclusive right to control their use. To the extent feasible, specifies minimum data requirements for electronic court calendars, indexes, and registers of action.

In February 2004, the California Judicial Council issued an interim rule which will sunset at the end of 2004 to provide for remote electronic access to state court records in high profile criminal cases where there is extraordinary demand that significantly burdens court operations. Trial courts should redact personal information including social security numbers, home addresses and telephone numbers, and medical and psychiatric records prior to posting them on the internet.

Florida

In April 2002, the Judicial Management Council submitted to the Florida Supreme Court a preliminary report which included a recommendation that the Supreme Court take steps to keep confidential and sensitive information secure from inappropriate disclosure through the implementation of a uniform regulation. In June 2002, the Florida Legislature created a 21-member *Study Committee on Public Records* to address electronic access to court records and established a temporary moratorium on unrestricted electronic access of court records that prohibited any clerk from placing on a publicly available internet website an image or copy of an official record of (1) a military discharge; (2) a death certificate; or (3) a court record relating to matters of cases governed by the family law, juvenile, or probate rules. The committee issued its final report in February 2003 and called upon the Florida courts to minimize the collection of unnecessary personal and identifying information and to determine to what extent information should be accessible over the internet.

In November 2003, the Florida Supreme Court issued an administrative order creating the *Committee on Privacy and Court Records* to recommend comprehensive policies to regulate the electronic release of court records.¹⁵ The order specifies that the committee consider a plan that includes, at a minimum: requirements as conditions of release; a process for a clerk to request and gain release approval; categories of records that may not be electronically released; and procedures for ensuring that any electronic release system comply with applicable law, rules, and orders. The committee must also initiate strategies to reduce the amount of personal and sensitive information that unnecessarily becomes part of a court record and recommend categories of information that are routinely included in court records that the legislature should consider for public access exemptions. The court further ordered that, effective immediately, no court record may be released in electronic form excluding: a court record which has become an "official record" (i.e., court orders, property records, liens and similar documents); a court record transmitted to a party or an attorney of record; a record transmitted to certain governmental agencies or agents; a record that has been solitarily and individually requested, has been manually inspected by the clerk, and contains no confidential or exempt information; a record in a case which the chief justice has designated as a significant public interest after manual inspection for confidential information; progress dockets (limited to case numbers; case types; party names, addresses and dates of birth; names and addresses of counsel; lists of indices of judgments, orders, pleadings, motions, notices; court events; clerk actions and dispositions provided that no confidential information is released); schedules and calendars; records

¹⁵ See Supreme Court of Florida Administrative Order No. AOSC03-49, Committee on Privacy and Court Records.

regarding traffic cases; appellate briefs, orders and opinions; and court records inspected by the clerk and viewed via a terminal within the office of the clerk, provided no confidential information is released.

Indiana

Based on the recommendations of the *Task Force on Access to Court Records*, in February 2004, the Indiana Supreme Court adopted revisions to Indiana Administrative Rule 9 to take into account public access to electronic court records. The revised rule generally follows the CCJ/COSCA Guidelines. Information already made confidential by Indiana statute includes records regarding adoptions, AIDS, child abuse, drug testing, grand jury proceedings, juvenile proceedings, paternity, presentence reports, marriage petitions w/o consent for underage persons, arrest/search warrants, indictments/information prior to return of service, medical, mental health, or tax records, juror information, protection orders, mediation proceedings, and probation files. In addition to those records made confidential by federal law, state statute or court rule, the rule excludes from public access social security numbers; addresses, phone numbers, dates of birth and other personal identifiers for: witnesses or victims in criminal domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings; account numbers, credit card numbers and PINs; and orders of expungement in criminal or juvenile proceedings. While bulk distributions are permitted, all such requests must go through the administrative office of the courts.

Maryland

In March 2001, the Court of Appeals Chief Judge Robert M. Bell appointed the *Committee on Access to Court Records* to study the court's system of public access to court records and, in particular, to electronic court records. Records that are confidential by statute or rule include records regarding adoptions, guardianships, certain juvenile proceedings, certain marriage applications, certain abuse/neglect records, HIV records, certain search/arrest warrants, presentence investigation reports, grand jury information, certain medical or psychological records, tax returns, and social security numbers.

In December 2003, the committee issued its final report and recommendations which suggested in large part the continuation of the original policy that court records generally remain open to the public.¹⁶ The committee concluded that the information currently available in electronic form, excluding some pilot programs, consists of docket sheets that contain identifying party information and describe case events such as filing and disposition, and that this information does not warrant protection beyond the current protections provided by statute and case sealing orders. The committee noted that as case files become computerized, the nature of some information in case files (e.g., bank acct numbers, credit card numbers, and medical records) is such that remote access may harm individuals or businesses, and the court may then want to consider whether the existing protections are adequate.¹⁷

In March 2004, after further examination and public comment, the Court of Appeals of Maryland adopted Title 16, Chapter 1000 of the Maryland Rules, Access to Court Records, which are based in part on the committee's recommendations and create a general presumption of

¹⁶ See Maryland's *Report of the Committee on Access to Court Records*, pg. 6 (2002).

¹⁷ *Id.* at 11.

openness.¹⁸ The rules generally treat paper and electronic records the same. Records custodians that choose to provide access to electronic documents are encouraged provide the same level of access as is available at the courthouse, but are allowed to limit the manner and form of electronic access based upon system capabilities.¹⁹ The Rules recognize the public access limitations established by statute or rule and generally provide that all other exclusions must be by court order after examination by a judge on a case-by-case basis.²⁰

Massachusetts

The Policy Statement by the Justices of the Supreme Judicial Court Concerning Publication of Court Case Information on the Web, May 2003, governs public access to docket and calendar information that is or will be maintained in computerized case management systems. At this time, the policy does not allow documents submitted to the courts in connection with a case to be published on the internet. The Chief Justice for Administration and Management (CJAM), the Departmental Chief Justices, and others found that the ramifications of publishing information on the web are qualitatively different from those of making information available at the courthouse. The policy allows for publication of certain case information that enables litigants and attorneys to check the status and scheduling of cases in which they are involved. The following principles are in place to guide publication of trial court (and generally appellate court) case information on the internet:

- Provide some information about every case, except those that are categorically excluded as permitted below;
- For civil cases, all basic case information should be provided including the case caption, names of the parties, docket number, judge, court, case type, attorney information, past and future calendar events, and docket entries (unless excluded below);
- The same information provided in civil cases should be provided in criminal cases except that the defendant's name should not be disclosed and information regarding the offenses should be available;
- Impounded cases should include the case docket number, indicate the case is impounded, give information about the progress of the case, the name of the judge, and the attorneys who appear in the case. Any information that might identify the parties or the type of case, including docket entries, should be excluded;
- Case information that is excluded from public access by statute, case law, or court rule should not be included on the internet;
- Personal identifying information, including an individual's address, telephone number, social security number or date of birth, should not appear on a court web site; and
- The CJAM, in consultation with the Departmental Chief Justices, and subject to Supreme Judicial Court (SJC) approval, may decide that certain categories of cases or information or certain docket entries should be excluded or sanitized (provided that it is made clear that the docket entry available on the web site is not the same as the docket entry available at the courthouse).

The public may access case information located on a court web site through one or more of the following searches (subject to any CJAM amendments):

¹⁸ See Maryland Rule 16-1002. General Policy.

¹⁹ See Maryland Rule 16-1008. Electronic Records and Retrieval.

²⁰ See Maryland Rule 16-1006. Required Denial of Inspection – Certain Categories of Case Records and Maryland Rule 16-1007. Required Denial of Inspection – Specific Information in Case Records.

- Civil cases may be searched by docket number, party name, judge, attorney, calendar event date, court and type of case;
- Criminal cases may be searched by docket number, judge, attorney, calendar event date, and court (searches by the name of the defendant, a victim or a witness is not permitted); and
- Impounded cases may be searched by docket number, judge, attorney and court (searches by party name, victim name, or witness name is not permitted).

Minnesota

In January 2003, the Minnesota Supreme Court established the *Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch* to review the Rules of Public Access to Records of the Judicial Branch (Access Rules). In June 2004, the advisory committee issued its final report and recommendations. Among the several alternatives considered by the advisory committee were the following two approaches: (1) allow internet access to all court records that are accessible to the public in paper format, and make any necessary adjustments to both paper and internet records, or (2) try to retain the same level of public access to paper records and publish only a limited amount of those records on the internet. Noting that the "courts that have simply begun posting all public records on the internet have encountered numerous problems and have had to pull back and reconsider their policy in light of privacy concerns raised by persons identified in the records. The committee agreed that the potential for damage to individuals necessitates a careful approach."²¹ Therefore, the advisory committee chose the second "go-slow" approach to providing more remote access to information. While the recommendations encourage courts to provide remote electronic access to the register of actions, calendars, indexes, judgment docket, or judgments, orders, appellate opinions, and notices prepared by the court, all other electronic case records would not be made remotely accessible. "The rule limits Internet access to records that are created by the courts themselves as this is the only practical method of ensuring that necessary redaction will occur."²² Further, the public would not be granted remote access to the following data elements with regard to their family members, jurors, witnesses, or victims of a criminal or delinquent act: social security numbers and employer identification numbers; street addresses; telephone numbers; financial account numbers; and in the case of a juror, witness or victim, information that would provide for the identify of the individual.

Case records that are protected from public access under the current Access Rules include: domestic abuse records, until a temporary court order is executed or served upon the respondent; child protection records; court services records that are gathered at the request of the court to determine an individual's need for counseling or treatment, to assist in assigning an appropriate sentence or disposition, to provide the court with a recommendation regarding custody, and to provide the court with a psychological evaluation; criminal case records made inaccessible pursuant to the rules of criminal procedure; juvenile case records; records protected by statute – abortion, adoption, artificial insemination, commitments, compulsory treatment, wiretap warrants, identity of juvenile victims of sexual assault, presentence investigation report, custody

²¹ See *Final Report, Recommendations of the Minnesota Supreme Court Advisory Committee on Rules of Public Access to Records of the Judicial Branch*, p. 18 (June 2004).

²² *Id.* at 42.

proceedings, juvenile court records, paternity proceedings, wills deposited for safekeeping, and juror data; and civil case records protected by order of the court.

Missouri

Missouri Supreme Court Operating Rule 2 governs public access to judicial records. All court records are presumed to be open to any member of the public for inspection or copying. The policy is not applicable to records made confidential pursuant to statute, court rules or court order. The rule does not create an obligation to make data available electronically. Data that identifies a person is available on a case-by-case basis. Electronic public indexes will be available by case number, file date, party name and calendar date, and may contain the case title, case type and status. The rule provides that electronic records that identify a person can include only the following data elements for civil cases, unless confidential by statute or rule: attorneys' addresses and names; file date and calendar dates; case number and type; date of birth; disposition type; docket entries; judge; judgment or appellate decision/mandate date; party address and name; and satisfaction of judgment date. Likewise, electronic records that identify a person can include only the following data elements for criminal cases, unless confidential by statute or rule: appellate mandate date; appellate opinion; attorneys' addresses and names; file date and calendar dates; bail amount; charges; case number and type; date of birth; disposition type; docket entries; defendant address and name; disposition type; finding and date; judgment and date; sentence and date; judge and law enforcement agency; offense tracking number; violation code and description. Note that case records containing social security numbers cannot be disseminated and court personnel cannot expunge or redact those numbers that appear in case records.

New York

In February 2004, the *Commission on Public Access to Court Records* submitted its report and recommendations to the Chief Judge of the State of New York.²³ The committee followed the lead of the Federal Judiciary with its recommendation that paper and electronic be treated the same and that no public case record should include full: social security numbers (use last 4 digits only), financial account numbers (use last 4 digits only), names of minor children (use initials only), and birth dates of any individual (use the year only). Compliance with these provisions lies with attorneys or self-represented litigants. The committee also recommended that in implementing internet access to case records, priority should be given to court calendars, case indices, dockets and judicial opinions. Other case records, such as pleadings and papers filed by the parties, should be made available on the internet on a pilot basis, in part, to test the policy and the need to exclude or redact certain data elements from filed documents. The recommended principles should apply prospectively. Information already confidential by statute includes records regarding: matrimonial actions, child custody, visitation and support; family court proceedings, abuse, neglect, support, custody & paternity; identity of victims of sexual offenses; HIV information; pre-sentence reports and memoranda in criminal proceedings; and sealed documents.

The committee also suggested that the UCS should determine whether additional rules should be adopted to assure compliance from filing attorneys, and consider what steps may be necessary to

²³ See *The Report to the Chief Judge of the State of New York*, Commission on Public Access to Court Records (February 2004).

assure compliance by self-represented litigants; provide education to attorneys, litigants and judges concerning public access to court records over the internet; determine how to protect at-risk individuals such as victims of domestic violence and stalking from being identified and located by use of their home/work phone numbers and addresses in public court records; and adopt rules regarding earlier created case records that may be placed on the internet.

Utah

In January 2003, the Utah Judicial Council appointed the *Committee on Privacy and Public Court Records* to consider the policies favoring public access to court records and the policies favoring privacy, and to recommend the classification of records as public or not public. The Committee has been asked to closely examine access to court records through electronic means such as the internet. The Committee was also asked to assess the current classification scheme regarding public access to judicial records which is set forth in 4-202.02 of the Utah Rules of Judicial Administration as follows:

- public;
- private – divorce records, driver's license histories, records involving commitment, juror information;
- controlled – records containing medical, psychiatric, or psychological data; custodial evaluations or home studies; presentence reports; the official court record of court sessions closed to the public and any transcript of them; any record the judicial branch reasonably believes would be detrimental to the subject's mental health or safety if released; any record reasonably believed to constitute a violation of normal professional practice or medical ethics if released;
- protected – personal notes or memoranda of a judge or person charged with a judicial function, drafts of opinions or orders, memoranda by staff)
- juvenile court legal records;
- juvenile court social and probation records;
- sealed – adoption case files; and
- expunged.

In general, the public may access public records, while the protected records and expunged records are exempt from disclosure. Sealed records may only be disclosed upon court order. The other categories may be disclosed to certain individuals involved in the proceedings or court personnel as specified.

The Utah courts currently provide free internet access to appellate opinions and dockets, general docket information maintained in the district court's case management systems, court rules and forms, reports and publications, and other information. More detailed district court case information is available through a subscription service. Rule 4-202.12 governs access to electronic data elements and provides that data elements other than public records will not be made available. Electronic records from which a person can be identified will be available on a case-by-case basis. Select data elements, known as indexes, which are limited to the amount in controversy, case number, case type, judgment date and amount, party address, party name assist the public in finding cases of interest and may be reported in bulk. The rule states that the judiciary is not responsible for incomplete or erroneous information and sets forth a process for requests.

Vermont

The Supreme Court of Vermont approved the Rules for Public Access to Court Records during the October 2000 Term. The rules provide that all case and administrative records of the Judicial Branch are open to any member of the public for inspection or to obtain copies except that the public does not have access to the following records: adoptions; sterilization proceedings; grand jury; juvenile; a will deposited for safekeeping; medical or treatment records; mental evaluations in probate court; juror information; social security numbers; transcripts; involuntary commitment; mental health/retardation; presentence investigation reports; DNA records in family court; discovery records unless used by a party; denial of a search warrant; issuance of a search warrant until the date of the return; supplemental financial information with application for an attorney; guardianship proceedings if the respondent is not mentally disabled; records filed regarding the initiation of a criminal proceeding, if the judicial officer does not have probable cause to believe an offense has been committed; civil filings prior to service or disposition; complaint and affidavit filed in abuse prevention proceedings until the defendant has an opportunity for a hearing; records of criminal proceedings involving adult diversion programs; evidence introduced to which the public does not have access; any other record to which public access is prohibited by statute.

The presiding judge by order may grant public access to a case record or seal from public access a record or redact information from a record upon a showing of good cause and exceptional circumstances. Affected parties have a right to notice and a hearing before such order is issued, except for temporary orders. To the extent possible, physical case records that are not public, must be segregated from records to which the public has access. Judicial branch records kept in electronic form must be designated as open or closed in whole or in part. The rules should not be construed to permit online access to any case record. VRCRP 5, VRCRP 49 and VRPP 5 require parties to redact social security numbers from any papers they file unless the court has requested the number.

In June 2002, the court approved the Rules Governing Dissemination of Electronic Case Records which provides that except for notices, decisions and orders of the court, the public shall not have electronic access to case records filed electronically or to scanned images of the case records. The rule permits access to docket-type information from case management databases and compilation prepared by the court system, with the exception of social security numbers, street addresses, telephone numbers, and personal identification numbers, including financial account numbers and driver's license numbers.

Washington

Washington's Judicial Information System Data Dissemination Policy governs access to records in the statewide Judicial Information system (JIS), a case management database. It provides that direct downloading of the database is prohibited except for the index items. Privacy protections accorded by the Legislature to records held by other state agencies are to be applied to requests for computerized information from court records, unless admitted in the record of a judicial proceeding, or otherwise made a part of a file in such proceeding, so that the court computer records will not be used to circumvent such protections. Access is not permitted to effectuate lists of individuals for commercial purposes or to facilitate profit expecting activity. Electronic

records are to be made available on a case-by-case basis and a court-by-court basis. All access to JIS information is subject to the availability of data, specificity of the request, potential for infringement of personal privacy created by release, and potential disruption of the internal ongoing business of the courts. Although, it provides that compiled reports are generally not disseminated if they contain information which permits a person, other than a judicial officer or attorney, to be identified as an individual, this section of the policy has been informally abrogated and will be formally superseded if GR 31, described below, is adopted. The privacy and confidentiality policies are as follows:

records that are sealed, exempted or otherwise restricted by law or court rule may not be released except by court order and confidential information regarding individual litigants, witnesses, or jurors that is collected for internal administrative operations of the courts will not be disseminated, including, but not limited to, credit card and PIN numbers, social security numbers, residential addresses and phone numbers.

General Rule 22 governs public access to family law records, whether maintained in paper or electronic form. The rule requires the parties to record personal identifiers including social security numbers, driver's license numbers, telephone numbers, and a minor's date of birth on a Confidential Information Form. Similarly, parties must attach a Financial Source Document Cover Sheet to certain financial records which are then automatically sealed by the court. Financial source documents include income tax returns, W-2's and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other similar records.²⁴

Washington's Judicial Information System Committee has proposed a new rule, General Rule 31, which covers access to court (i.e., case, but not administrative) records regardless of form. It would generally place no limits on internet access to non-confidential court records. Parties must refrain from using, or must redact, the following personal identifiers from pleadings filed electronically or on paper - social security numbers (use last 4 digits if necessary) names of minor children (use initials) and financial account numbers (last 4 digits only). Compliance rests solely with the parties and attorneys. The rule would allow for bulk distributions, but bans commercial solicitation. The rule also allows access to closed records by public purpose agencies for scholarly, governmental or research purposes where the identification of individuals is ancillary to the purpose of the inquiry. On October 7, 2004, the Washington Supreme Court will consider GR 31 for adoption. If it is adopted, it will supersede much of the Data Dissemination Policy.

Wisconsin

In April 2003, the Wisconsin courts released an internet access policy for case management information on individual cases. The Policy on Disclosure of Public Information Over the Internet permits free remote access to non-confidential case documents. The following records are not available on the internet: closed records that would not otherwise be accessible by law because of specific statutory exceptions such as juvenile court records, guardianship proceedings, and other such case types or records; an expunged criminal conviction (court not responsible for access prior to expunction); the "day" from the date of birth field for non-

²⁴ See Appendix C for a copy of Washington's Confidential Information Form and Financial Source Document Cover Sheet.

criminal cases; the driver's license number in traffic cases; and the "additional text" or data fields that often contain the names of victims, witnesses and jurors.

The policy provides a disclaimer regarding updates or corrections and states that the WCCA is not responsible for notifying prior requesters of updates. The WCCA Oversight Committee is currently charged with evaluating whether to provide access to electronically filed, scanned, or imaged documents.

VI. Recommendations

After discussing the work of the Committee, examining the federal and state court remote access policies, reviewing the relevant Texas statutes, and considering the public input and privacy concerns, the Council adopted the following recommendations:

1. Sensitive/Confidential Data Form. The Supreme Court should require that a Sensitive Data Form be completed for each case file whether in paper or electronic format. Implementation of the form will help to prevent identity theft by minimizing the distribution and publication of certain personal identifying information.

- The form should include in full: social security numbers; bank account, credit card or other financial account and associated PIN numbers; date of birth; driver's license, passport or similar government-issued identification numbers (excluding state bar numbers); the address and phone number of a person who is a crime victim as defined by Article 56.32, Code of Criminal Procedure, in the proceeding; and the name of a minor child.
- Unless otherwise ordered by the court, any party filing a pleading or other document with the court should not include any sensitive data in such pleading or document, whether filed on paper or in electronic form, regardless of the person to whom the sensitive data relates.
- Unless otherwise ordered by a court, if reference to any sensitive data is necessary in a pleading or other case record filed with the court, the filing party should refer to that sensitive data as follows: if a social security number or financial account number of an individual must be included in a case record, only the last four digits should be used; if the involvement of a minor child must be mentioned in a case record, only that child's initials should be used; and if a date of birth must be included in a case record, only the month and year should be used. However, the Committee recommends further study regarding the reference to a date of birth or to the name of a minor child.
- The responsibility for omitting or redacting from those documents filed with the court the sensitive data identified above should rest solely with counsel

and the filing party. The court or court clerk should have no obligation to review each pleading or other filed document for compliance.

- Unless otherwise ordered by the court, the form should not be accessible to the general public either remotely or at the courthouse.
- Unless otherwise ordered by the court, the parties should be required to copy one another with the form.

2. **Remote Access Policy.**²⁵ The policy treats remote public access and public access at the courthouse differently by placing the following limitations on remote access:
(1) Court-Created Records. Only court-created records (i.e., indexes, court calendars, dockets, register of actions, court minutes and notices, judgments and orders of the court) may be accessible to the general public by remote electronic means.²⁶

(2) Case Records other than Court-Created Records. Remote access by the general public to case records, other than court-created case records, may be granted through a subscriber-type system that requires users to register with the court and obtain a login and password.²⁷

(3) Specific Types of Records Regardless of whether a subscriber-type system is in place, the following case records are extremely sensitive and should be excluded from remote access by the general public:

- (a) Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records;
- (b) Pretrial bail or presentence investigation reports;
- (c) Statements of reasons or defendant stipulations, including any attachments thereto; and
- (d) income tax returns

(4) Family Code Proceedings. Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-

²⁵ See Appendix D for a copy of the Council's Public Access to Case Records Draft Rule. Also note, as discussed in Judge Spencer's cover letter to this report, the Committee submitted two alternative approaches to the Council regarding remote access – the Council adopted the approach as detailed in Recommendation No. 2 and rejected the alternative that any court record otherwise open at the courthouse may be published on the internet.

²⁶ The Council acknowledges that some court orders are required by law to contain some of those personal identifiers deemed confidential by this Committee (e.g., divorce decrees must contain a social security number). However, the Council leaves the decision as to how to handle those situations to the Texas Supreme Court, local administrative judge, or individual judge.

²⁷ The parameters of the system need to be defined. The Committee generally favored the subscriber-agreement system implemented in Tarrant County, but would not mandate that a user fee be charged.

created case records, are extremely sensitive and should be excluded from remote access by the general public.²⁸

3. **The Texas Judicial Council should appoint a committee to examine and make recommendations regarding case records or proceedings that should be closed to the public both at the courthouse and on the internet. While some members recommend that access to paper documents and electronic documents be the same, they acknowledge that there may be records (e.g., medical, psychological and psychiatric reports, tax returns, and defendant stipulations) or proceedings (e.g., child custody disputes, adoption or divorce proceedings) that are not appropriate for internet publication and should therefore be made confidential both at the courthouse and on the internet.²⁹ The committee should examine and make recommendations to protect victims of sexual assault, domestic violence, stalking, or other such victims from being identified and located by use of the information contained in public court records.**
4. **The Texas Judicial Council should appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The Committee should report to the Council prior to the 80th Regular Legislative Session.**

The Council is confident that with the implementation of the recommendations outlined above, the public's trust, confidence, and use of the court system will continue to thrive. Likewise, with the implementation of a confidential Sensitive Data Form, the public safety concerns associated with identify theft and other improper motives can be minimized while the integrity of the judicial system is preserved.

²⁸ This provision recognizes the personal nature of those disputes involving children, marriages, and parental rights and restricts remote access to such proceedings by the general public.

²⁹ The Committee noted the publicity recently encountered by Republican candidate Jack Ryan of Illinois who dropped out of the U.S. Senate race after unsealed divorce and child custody records revealed unfavorable allegations.

Appendix A

Minutes of Meetings

December 11, 2003

February 25, 2004

April, 27, 2004

May 13, 2004

June 16, 2004

July 13, 2004



TEXAS JUDICIAL COUNCIL

205 WEST 14TH STREET, SUITE 600 • TOM C. CLARK BUILDING • (512) 463-1625 • FAX (512) 936-2423
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HON. THOMAS R. PHILLIPS
Chief Justice, Supreme Court

DIRECTOR:
MS. ELIZABETH KILGO, J.D.

VICE CHAIR:
HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

December 11, 2003

10:30 a.m.

Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:30 a.m. on December 11, 2003 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Charles Bacarisse	District Clerk, Harris County
Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1 st Court of Appeals
Tony Reese	Professor, University of Texas School of Law
Dianne Wilson	County Clerk, Fort Bend County
Sharolyn P. Wood	Judge, 127 th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were Mr. Lance Byrd, Senator Robert Duncan, Representative Will Hartnett, Ms. Ann Manning, and the Honorable Orlinda Naranjo.

With a quorum established, the Committee on Public Access to Court Records took the following action.

Judge Spencer welcomed the Committee members and provided an overview of the Committee's charge.

Ms. Kilgo then summarized the issue for the Committee, describing concerns associated with the recent use of the internet to distribute court documents and records.

Judge Spencer addressed the issues faced by the probate courts in Bexar County where court records often include bank account numbers, social security numbers, detailed property records, guardianship record information, and medical data.

Mr. Bacarisse described the types of court records available on the internet for Harris County and the resources required to make those records available online. The Harris County District Clerk's office images all new court documents and continues to image backfiles for internet availability. Ms. Wilson described the availability of court records in Fort Bend County where all of the fifteen million documents dating back to the 1830s are published online and on CD ROM.

Committee members questioned, "Why court records should be available on the internet?" Potential reasons discussed included, judicial accountability, empirical research, cost and space savings in the clerk's office, and public expectation and demand.

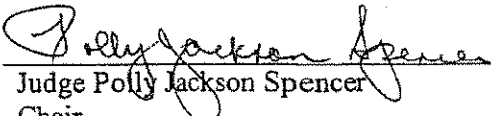
Committee members then addressed the potential harms resulting from unlimited online access to court records including identity theft; the dissemination of sensitive personal and medical information; decreases in jury participation; the use of court information by data collection and sales companies; the use of court information by industry for questionable purposes, such as insurance sales or employment decisions; and the threat of "court publication" as a litigation tactic, which could cause a potential litigant to avoid the court system as a means of recourse.

The Committee generally discussed information that might be withheld from online court records and how it could be withheld. Should there be different levels of access to online court records? Should the documents available at the courthouse differ from those available online? What information should be withheld both online and at the courthouse? How does a user fee for online access limit the problems associated with online access to court records? Should litigants bear any of the responsibility for assuring that sensitive information does not become available online? What potential burdens exist for court clerks if required to redact portions of documents rather than entire documents?

After lengthy discussion, the Committee decided to meet again in February of 2004. The members requested that a representative of law enforcement be available at the next meeting.

ADJOURNMENT

There being no further business before the Committee, the meeting was adjourned at approximately 12:15 p.m.



Judge Polly Jackson Spencer
Chair



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Presiding Judge, Court of Criminal Appeals

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

February 25, 2004

10:30 a.m.

Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:35 a.m. on February 25, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Lance Byrd	President & CEO, Sendero Energy, Inc.
Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
Robert Duncan	Senator, Lubbock
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1 st Court of Appeals
Tony Reese	Professor, University of Texas School of Law
Dianne Wilson	County Clerk, Fort Bend County
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were, Mr. Charles Bacarisse, Representative Will Hartnett, Ms. Ann Manning, and the Honorable Sharolyn P. Wood.

Judge John J. Specia (225th District Court, Bexar County), Judge Lamar McCorkle (133rd District Court, Harris County), and Tom Wilder (District Clerk, Tarrant County) participated via conference phone. Paul Billingsly (Director, Technical Services Bureau, Harris County District Clerk's Office) and James Brubaker, (Commander of Narcotics, Department of Public Safety) testified as resource witnesses.

With a quorum established, the Committee on Public Access to Court Records took the following actions.

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the December 11, 2003 Committee meeting. After a motion and a vote, the Committee adopted the minutes.

Judge Specia described the PACER system used by federal bankruptcy courts, and expressed his concern over the possibility of family case information on the internet.

Judge McCorkle discussed some concerns regarding case records on the internet, for example, property inventories in divorce cases, which may potentially send litigants to private dispute resolution. Judge McCorkle expressed support for a standard form that might be used to automatically seal certain confidential information.

Tom Wilder described the development and functionality of the dial-in information system used in Tarrant County. The system is a fee for service arrangement allowing access to scanned case files. Judges have the power to make any document "unavailable" for the online service, although this designation is rarely used by the judges. Out of state subscribers do include information vendors.

Paul Billingsly then presented and described Harris County's "E-Clerk" system, which is a fee-based court information system that makes imaged court documents available via the internet. The system uses a cover sheet, does not include family law orders, and does not allow text searches.

Bulk Dissemination

The Committee discussed the value of the information for legitimate academic aggregate research. Senator Duncan suggested that privacy concerns of the litigants should outweigh any research benefits. Professor Young suggested that there should be an exception for academic research. Judge Spencer called for a policy regarding bulk dissemination of court case information. Ms. Wilson noted a lawsuit against her office, which required her office to provide an enormous number of cases.

The members questioned the extent to which information vendors already have scanned documents from the courthouse. Doctor Young suggested shifting liability for misused information to the vendor to curtail the availability of scanned court documents.

The members discussed the possibility of a lag time from filing to availability on the internet for certain case types to subvert any negative effects of widespread dissemination. The committee discussed a bill concealing protective orders for 48 hours, which was passed during the 78th legislative session.

A Prospective or Retrospective Rule

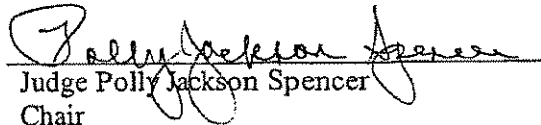
Judge Spencer stated that any rule adopted by the Committee should apply only to documents filed after the enactment of the rule because of the exorbitant redaction costs associated with a retrospective rule. Mr. Gavin stated that the Committee should consider a transition strategy when implementing the new rule.

NEXT MEETING

After the lengthy discussion, the Committee decided to meet again in April or May of 2004.

ADJOURNMENT

There being no further business before the Committee, the meeting was adjourned at approximately 1:20 p.m.


Judge Polly Jackson Spencer
Chair



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HON. SHARON KELLER
Presiding Judge, Court of Criminal Appeals

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

April 27, 2004

10:30 a.m.

Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:40 a.m. on April 27, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Charles Baccarise	District Clerk, Harris County
Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Ann Manning	Attorney at Law, Lubbock
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Tony Reese	Professor, University of Texas School of Law
Sharolyn P. Wood	Judge, 127 th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were: Mr. Lance Byrd, Senator Robert Duncan, Mr. David Gavin, Representative Will Hartnett, Chief Justice Sherry Radack, and Ms. Dianne Wilson.

Judge Juanita Vasquez-Gardner (399th District Court, Bexar County) attended as an invited resource witness. Marc Hamlin (District Clerk, Brazos County and former president of the District and County Clerks Association) and Michael Grenet (citizen of Bryan, Texas) registered as witnesses and testified before the Committee.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the February 25, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Judge Vasquez-Gardner testified before the Committee as follows: she expressed her concerns regarding the availability of personal identifiers on the internet and at the courthouse; noted that while redaction might provide some protection, in many instances it will not provide enough protection; and questioned how the Committee might protect sexual assault victims or individuals who undergo drug treatment.

Mr. Grenet testified before the Committee as follows: he expressed his personal concerns as a former victim of identity theft and recent divorcee, stating that he feels vulnerable because of the amount of personal information that is available to the public with the internet publication of divorce cases by his district clerk.

Professor Reese explained the draft rule submitted to the Committee by him and Professor Young. Professor Reese pointed out that the draft rule allows the Committee to identify individual items to be placed on a confidential data form; to identify a list of documents that would be unavailable on the internet; and to identify classes of cases that would be unavailable on the internet. Professor Reese reminded the Committee that the draft rule is currently written to address access by the public and thus would not prohibit differential access to the parties.

Mr. Baccarise reminded the Committee that the clerks should not be required to make judgment calls regarding the availability of information on the internet. The Committee discussed placing the burden of excluding confidential data from court filings on the parties and their attorneys.

Mr. Hamlin testified before the Committee as follows: he stated the Committees should establish a prospective rule because a retrospective rule would place a tremendous burden on clerks' offices; he noted that the clerk cannot legally certify a document that has been redacted; and he expressed his opinion that because this information is readily available from other sources, the courts should have little concern that increased internet access to court records is significantly adding to the availability of sensitive information.

Judge Wood noted that the reason for keeping court records is to facilitate court business. She expressed her concern that making court documents available on the internet may shut down the availability of those documents at the courthouse. She suggested that the Committee limit

internet access to the official court minutes and general docket information, including the calendar, index and register of actions. She also suggested that the Committee consider limiting internet access to the pleadings and other such documents to the parties and their attorneys.

Judge Wood made a motion that only the court minutes (documents signed by the judge), docket, calendar, and case index (or register of actions) be available by remote electronic means such as through the internet. (The pleadings and case files would not be publicly available online.) That motion failed with 3 yes, 5 no, and 4 present not voting.

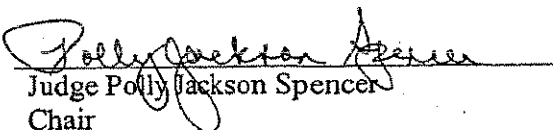
Mr. Baccarise made a motion to adopt the draft rule as presented as a working document to be used as a foundation to outline more specific policies as the Committee's work progresses. That motion was adopted by a non-record vote.

NEXT MEETING

The Committee will meet again in early May or early June.

ADJOURNMENT

There being no further business before the Committee, the meeting was adjourned at approximately 1:10 p.m.


Judge Polly Jackson Spencer
Chair



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Presiding Judge, Court of Criminal Appeals

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

May 13, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:50 a.m. on May 13, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Ann Manning	Attorney at Law, Lubbock
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1 st Court of Appeals
Tony Reese	Professor, University of Texas School of Law
Ms. Dianne Wilson	County Clerk, Fort Bend County
Sharolyn P. Wood	Judge, 127 th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were: Mr. Charles Baccarise, Mr. Lance Byrd, Ms. Wanda Garner Cash, Senator Robert Duncan, and Representative Will Hartnett.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the April 27, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Upon proper motion and discussion, the Committee adopted a motion to generally support the implementation of a "Sensitive/Confidential Data Form" which would govern both paper and electronic filings such that the form would not be accessible to the public either remotely or at the courthouse. The confidential data form would include: social security numbers; bank account numbers, credit card numbers, other financial account numbers, and PIN numbers; driver's license numbers; date of birth; government-issued identification numbers (except for state bar numbers); a victim's address and phone number (with the understanding that the definition of "victim" needs to be clarified); and the name of a minor child.

Upon proper motion and discussion, the Committee adopted a related motion that "without court permission" be added to the language of the first motion and that the rule incorporate the requirement that parties copy one another with the form.

Ms. Wilson suggested that the Committee define the word "remote" to refer to the internet as we know it today. The term should not refer to court personnel at remote locations. Professor Reese reminded the Committee that the proposed rules apply only to the public.

Judge Naranjo expressed her concern about the distinction between information available at the courthouse and information available online with the development of a two-tier system of access, and stated that any protections should be implemented at the courthouse.

Ms. Wilson stated that in four years of having all case documents online she has never received complaints from the public regarding internet accessible information other than those regarding personal identifiers and financial account information.

Upon proper motion and discussion, the Committee adopted a motion that certain specific types of *records*, to be determined by this Committee, Not be made available to the public remotely – but remain accessible and open to the public at the courthouse – on a prospective basis.

Upon proper motion and discussion, the Committee adopted a motion that the case records relating to certain *proceedings*, to be determined by this Committee, Not be made available to the public remotely – but remain accessible and open to the public at the courthouse – on a prospective basis.

Upon proper motion and discussion, the Committee adopted a motion to recommend to the Legislature that certain specific types of *records*, to be determined by this Committee, Not be made available to the public either remotely or at the courthouse on a prospective basis.

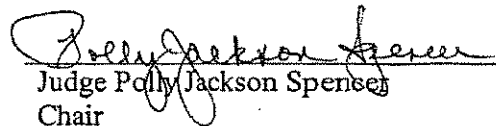
The membership briefly discussed bulk distributions of information, but tabled the discussion until future meetings.

NEXT MEETING

The Committee will meet again in June.

ADJOURNMENT

There being no further business before the Committee, the meeting was adjourned at approximately 1:10 p.m.



Judge Polly Jackson Spence
Chair



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Presiding Judge, Court of Criminal Appeals

COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

June 16, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:45 a.m. on June 16, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Mr. Charles Baccarise	District Clerk, Harris County
Ms. Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Allen Gilbert	Judge, San Angelo Municipal Court
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Ann Manning	Attorney at Law, Lubbock
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1 st Court of Appeals
Tony Reese	Professor, University of Texas School of Law
Sharolyn P. Wood	Judge, 127 th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were: Mr. Lance Byrd, Senator Robert Duncan, Representative Will Hartnett and Ms. Dianne Wilson. Also attending were Mr. Thomas Wilder, Tarrant County District Clerk and Ms. Monica Latin, Sedona Conference.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the May 13, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Judge Spencer reviewed the Committee's progress from the previous four meetings and asked the committee to consider several proposed motions after discussion.

Judge Wood discussed a draft rule she developed with Chief Justice Radack. Specific provisions included public access to court created documents and calendars; greater access for the litigant if possible; access to be made available only through case number searches rather than through "Google" searches; and a prohibition on bulk access.

Committee members discussed the possibility of requiring local courts to develop a plan to be approved by the Supreme Court before making court records available remotely. Mr. Baccarise stated that the counties are already required to submit such plans to the state library. Chief Justice Phillips did not think that the Supreme Court would want to review remote access plans for every county.

Judge Wood suggested that the Committee send alternative proposals to the Supreme Court Rules Committee for consideration. Such an approach would allow this Committee to provide valuable input to the Rules Committee while keeping the issue open for discussion. Judge Spencer outlined three public remote access options already discussed by the committee: (1) remote access only to docket-type information; (2) partial remote access with an exclusion list; and (3) unlimited remote access to otherwise open records. All options would include the confidential data form with the burden of compliance would be on the filing party.

The committee then discussed the burden of compliance on the filing party. The committee also discussed the use of a filing cover sheet to be completed by the filing party for determining the nature of a court document and its contents; the role of the court regarding enforcement and the role of the clerks when an error is made.

Committee members discussed the "practical obscurity" attained when a subscriber system is in place. Mr. Wilder (Tarrant County District Clerk) and Mr. Baccarise discussed the differences between a subscriber system as used in Tarrant county, which requires all users to register with the clerk's office, and a non-subscriber system like that used in Harris county, which only tracks users for billing purposes.

Judge Gilbert and Justice Goodwin agreed to develop a list of potentially sensitive criminal case information.

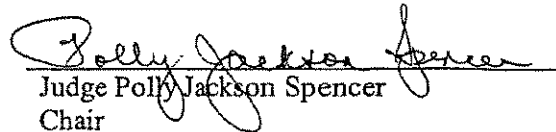
Judge Spencer then asked the Committee members to be ready to vote on substantive motions at the next meeting.

NEXT MEETING

The Committee will meet again on June 29.

ADJOURNMENT

There being no further business before the Committee, the meeting was adjourned at approximately 2:20 p.m.


Judge Polly Jackson Spencer
Chair



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COMMITTEE ON PUBLIC ACCESS TO COURT RECORDS

MINUTES OF MEETING

July 13, 2004
10:30 a.m.
Supreme Court Courtroom
201 West 14th Street
Austin, Texas

COMMENCEMENT OF MEETING

Judge Polly Jackson Spencer called the meeting of the Committee on Public Access to Court Records (Committee) to order at 10:45 a.m. on July 13, 2004 in the Supreme Court Courtroom in the Supreme Court Building.

ATTENDANCE OF MEMBERS

Ms. Elizabeth Kilgo called the roll. The following members of the Committee were present:

Chair, Polly Jackson Spencer	Judge, Bexar County, Probate Court No. 1
Mr. Lance Byrd	President & CEO, Sendero Energy, Inc.
Ms. Wanda Garner Cash	President, Freedom of Information Foundation of Texas; Editor & Publisher, Baytown Sun
David Gavin	Assistant Chief of Administration, Crime Records Division, Department of Public Safety
Melissa Goodwin	Justice of the Peace, Travis County, Pct. 3
Ann Manning	Attorney at Law, Lubbock
Orlinda Naranjo	Judge, County Court at Law #2, Travis County
Thomas R. Phillips	Chief Justice, Supreme Court of Texas
Sherry Radack	Chief Justice, 1 st Court of Appeals
Ms. Dianne Wilson	County Clerk, Fort Bend County
Sharolyn P. Wood	Judge, 127 th Judicial District Court
Ernie Young	Professor, University of Texas School of Law

Members not in attendance were: Mr. Charles Baccarise, Senator Robert Duncan, Representative Will Hartnett and Mr. Tony Reese. Judge Allen Gilbert attended via conference call. Also attending was Mr. Thomas Wilder, Tarrant County District Clerk.

With a quorum established, the Committee on Public Access to Court Records took the following actions:

Judge Polly Jackson Spencer welcomed the members to the meeting and asked the members to review the minutes of the June 16, 2004 Committee meeting. After a proper motion and a vote, the Committee adopted the minutes.

Judge Spencer informed the members that this would be the last meeting of the Committee before the August Texas Judicial Council meeting and that the Committee should adopt its final recommendations for presentation at the August Council meeting. Judge Spencer thanked the members for their time and their dedication.

Judge Spencer suggested that the Committee adopt alternative proposals for presentation to the Council given the divergent viewpoints of Committee members.

Ms. Diane Wilson reminded the Committee that any requirement on the court clerk to redact information from a part of a court document would create significant burdens on the clerk's office. To address her concerns, upon proper motion and discussion, the Committee adopted an amendment to Draft Rule 14.5(f) such that the provision would read "If under this Rule public access is allowed only to part of a requested case record, the court may order the redaction of that portion of the case record to which public access is not allowed."

Mr. David Gavin asked whether access to the sensitive data form would be available to criminal justice agencies for criminal justice purposes under the proposed rule. Upon proper motion and discussion, the Committee adopted an amendment to Draft Rule 14.3 to state that the rule does not limit access to case records by criminal justice agencies for criminal justice purposes.

Upon proper motion and discussion, the Committee adopted a motion to recommend that the Supreme Court require that a Sensitive Data Form be completed for each case file whether in paper or electronic format. Implementation of the form will help to prevent identity theft by minimizing the distribution and publication of certain personal identifying information.

Upon proper motion and discussion, the Committee adopted a motion to recommend that the Texas Judicial Council appoint an oversight committee to review the electronic publication of Texas' state court records. The committee should monitor and track public access, public safety, and judicial accountability. The committee should report to the Council prior to the 80th Regular Legislative Session.

Upon proper motion and discussion, the Committee adopted a motion to submit the following two alternative recommendations to the full Council.

Alternative I: Open Remote Access. This approach treats remote public access the same as public access at the courthouse. If a court record is open to the public at the courthouse, then that record may be published on the internet. Any document considered too sensitive or personal for publication on the internet should be made confidential at the courthouse by statute, court rule, or court order.

Alternative II: Modified Remote Access. This approach treats remote public access and public access at the courthouse differently by placing the following limitations on remote access:

- (1) *Court-Created Records.* Only court-created records (i.e., indexes, court calendars, dockets, register of actions, court minutes and notices, judgments and orders of the court) may be accessible to the general public by remote electronic means.
- (2) *Case Records other than Court-Created Records.* Remote access by the general public to case records, other than court-created case records, may be granted through a subscriber-type system that requires user's to register with the court and obtain a log-in and password.
- (3) *Specific Types of Records.* Regardless of whether a subscriber-type system is in place, the following case records are extremely sensitive and should be excluded from *remote access* by the general public:
 - (a) Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records
 - (b) Pretrial bail or presentence investigation reports;
 - (c) Statements of reasons or defendant stipulations, including any attachments thereto; and
 - (d) Income tax returns.
- (4) *Family Code Proceedings.* Regardless of whether a subscriber-type system is in place, the case records filed as part of any family code proceeding, other than court-created case records, are extremely sensitive and should be excluded from *remote access* by the general public.

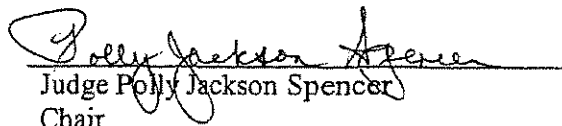
Upon proper motion and discussion, the Committee adopted a motion to recommend to the Council that a new committee be formed to determine whether additional case records or proceedings should be closed at the courthouse. While some members felt that public access to paper documents and electronic documents should be treated the same, they acknowledged that there may be some records or proceedings that are not appropriate for internet publication.

NEXT MEETING

The Committee will present its recommendations to the full Texas Judicial Council in August.

ADJOURNMENT

There being no further business before the Committee, the meeting was adjourned at approximately 3:00 p.m.


Judge Polly Jackson Spencer
Chair

Appendix B

Confidential Court Case Records in Texas

b. Temporary Protection from Public Access

Birth Records §552.115 Gov't Code – until the 75th anniversary of the date of birth

Death Records §552.115 Gov't Code until the 25th anniversary of the death

Dissolution of Marriage Pleadings §6.410 & §102.0086 Family Code – (Harris County) until after the date of service of citation or the 31st day after the date the suit was filed.

Protective Orders/Temporary Ex Parte Orders Applications §82.010 Family Code – (Harris County) until after the date of service of notice of the application or the hearing date/until after the date the respondent is informed of the court's order

c. Documents on which a social security number, driver's license number name, address, phone, name of employer, or birth date is required

Final Orders in SAPCR Suits §105.006 Family Code- other than termination or adoption orders

Child Support Lien Notice §157.313

Child Support Petition for Modification §159.311

Suspension of License Petition §232.005

Name Change §45.102 Family Code - or must provide a reason for exclusion

d. Documents on which a social security number may be excluded

Deeds, Mortgages and Deeds of Trust §11.008 Property Code - executed on or after January 1, 2004 are *not* required to contain a social security number or a driver license number. The Code permits the filer to delete the information prior to filing.

Appendix C

***Washington's Confidential Information Form
and
Financial Source Document Cover Sheet***

List the names and present addresses of any person besides you and the respondent who has physical custody of, or claims rights of custody or visitation with, the child(ren):

Except for petitions in protection order cases (Domestic Violence/Antiharassment), the following information is required:	
Petitioner's Information	Respondent's Information
Soc. Sec. No.:	Soc. Sec. No.:
Residential Address (Street, City, State, Zip)	Residential Address (Street, City, State, Zip)
Telephone No.: ()	Telephone No.: ()
Employer:	Employer:
Empl. Address:	Empl. Address:
Empl. Phone No.: ()	Empl. Phone No.: ()
For Nonparental Custody Petitions only, list other Adults in Petitioner(s) household (Name/DOB):	

Additional information: _____

☐ Addendum To Confidential Information Form is attached.

I certify under penalty of perjury under the laws of the state of Washington that the above information is true and accurate concerning myself and is accurate to the best of my knowledge as to the other party, or is unavailable. The information is unavailable because _____

Signed on _____ (Date) at _____ (City and State).

 Petitioner/Respondent

ADDENDUM TO CONFIDENTIAL INFORMATION FORM (AD)					
County:		Cause Number:		Do not file in a public access file.	
COURT CLERK: THIS IS A RESTRICTED ACCESS DOCUMENT					
The following information about additional parties is required in all cases.					
Additional Petitioner Information			Type or Print only	Additional Respondent Information	
Name (Last, First, Middle)			Name (Last, first, Middle)		
Race	Sex	Birthdate	Race	Sex	Birthdate
Drivers Lic. or Identicard (# and State)			Drivers Lic. or Identicard (# and State), (or, if unavailable, residential address)		
Mailing Address (P.O. Box/Street, City, State, Zip)			Mailing Address (P.O. Box/Street, City, State, Zip)		
Relationship to Child(ren)			Relationship to Child(ren)		
The following information is required if there are additional children involved in the proceeding (Soc. Sec. No. is not required for petitions in protection order cases (Domestic Violence/Antiharassment)).					
3) Child's Name (Last, First, Middle)					
Child's Race/Sex/Birthdate					
Child's Soc. Sec. No. (If required)					
Child's Present Address or Whereabouts					
4) Child's Name (Last, First, Middle)					
Child's Race/Sex/Birthdate					
Child's Soc. Sec. No. (If required)					
Child's Present Address or Whereabouts					
Except for petitions in protection order cases (Domestic Violence/Antiharassment), the following information is required:					
Additional Petitioner Information			Additional Respondent Information		
Soc. Sec. No.:			Soc. Sec. No.:		
Residential Address (Street, City, State, Zip)			Residential Address (Street, City, State, Zip)		
Telephone No.:			Telephone No.:		
Employer:			Employer:		
Empl. Address:			Empl. Address:		
Empl. Phone No.:			Empl. Phone No.:		

**SUPERIOR COURT OF WASHINGTON
COUNTY OF**

In re:

and

Petitioner(s),

Respondent(s).

NO.

**SEALED FINANCIAL SOURCE
DOCUMENTS**

(SEALFN)

CLERK'S ACTION REQUIRED

SEALED FINANCIAL SOURCE DOCUMENTS

(List documents below and write "Sealed" at least one inch from the top of the first page of each document.)

- ☐ Income Tax records.
Period Covered:
- ☐ Bank statements.
Period Covered:
- ☐ Pay Stubs.
Period Covered:
- ☐ Credit Card Statements.
Period Covered:
- ☐ Other:

Submitted by:

NOTICE: The other party will have access to these financial source documents. If you are concerned for your safety or the safety of the children, you may redact (block out or delete) information that identifies your location.

Appendix D

Public Access to Case Records Draft Rule

Public Access to Case Records Draft Rule

RULES OF JUDICIAL ADMINISTRATION

RULE 14. PUBLIC ACCESS TO CASE RECORDS

14.1 Policy. The purpose of this Rule is to facilitate public access to case information while protecting personal safety and privacy interests. In addition to the paper-based record receipt and retention process, courts are now equipped to create, use and maintain case records in electronic form. This Rule informs and instructs the courts, practitioners, and the public regarding access to case records regardless of the physical form of the record.

14.2 Definitions. In this Rule:

(a) *Access* means the ability to view or obtain a copy of a case record.

(b) *Bulk distribution* means the distribution of all, or a significant subset, of the information in multiple case records, as is, and without modification or compilation.

(c) *Case record* means a record of any nature created or maintained by, or filed by any person with, a court in connection with any matter that is or has been before a court in its adjudicative function, regardless of the physical form of the record, the method of recording the record, or the method of storage of the record, and includes any compiled information, index, calendar, docket, register of actions, minute, notice, order, or judgment, and any information in a case management system created or prepared by the court that is related to a judicial proceeding.

(d) *Compiled information* means information that is derived from the selection, aggregation, or reformulation by the court of some of the information from more than one individual case record.

(e) *Court* means any court created by the Constitution or laws of the State of Texas including the Texas Supreme Court, the Court of Criminal Appeals, the intermediate courts of appeals, the district courts, the constitutional and statutory county courts at law, the statutory probate courts, justice of the peace and small claims courts, and municipal courts.

(f) *Court-Created Record* means a record of any nature created by a court or court clerk in connection with any matter that is or has been before a court in its adjudicative function, regardless of the physical form of the record, the method of recording the

record, or the method of storage of the record, and includes any compiled information, index, calendar, docket, register of actions, minute, notice, order, or judgment, and any information in a case management system created or prepared by the court that is related to a judicial proceeding.

(g) A case record is in *electronic form* if that case record is in a form that is readable through the use of an electronic device, regardless of the manner in which it was created.

(h) *Remote access* means the ability to electronically search, inspect, or copy information in a court record by a member of the general public without the need to physically visit a court facility.

14.3 Authority and Applicability.

(a) This Rule is adopted under the authority granted to the Supreme Court of Texas in the Texas Constitution, Article V, Section 31(a) and (c), as well as Texas Government Code Section 552.0035(a).

(b) This Rule governs access by the general public to all case records. This Rule does not limit access to case records in any given action or proceeding by a party to that action or proceeding or by the attorney of such a party. This Rule does not limit access to case records by criminal justice agencies for criminal justice purposes, or other persons or entities that are entitled to access by law or court order.

(c) This rule does not apply to court records that are filed with the county clerk and are unrelated to the court's adjudicative functions including land title records, vital statistics, birth records, naturalization records, voter records and other such recorded instruments.

(d) This Rule does not require any court or clerk of court to redact, or restrict information that was otherwise public in, any case record created before the effective date of this Rule.

14.4 Public Access to Case Records.

(a) *Generally.* Case records other than those covered by Rule 14.5 are open to the general public for viewing and copying during the regular business hours established by the court. But this Rule does not itself require a court or court clerk to:

- (1) create a case record, other than to print information stored in a computer;
- (2) retain a case record for a specific period of time beyond that time otherwise required by law; or
- (3) respond to or comply with a request for a case record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in

Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction.

(b) Remote Access to Case Records. A court or court clerk may, but is not required to, provide to the general public remote access to case records in accordance with the provisions of this Rule. A court or court clerk that chooses to provide such remote access must employ appropriate security measures, procedures, devices and software to protect the security and integrity of those records and to prevent unauthorized access to them. The specific case records to which remote access is granted, as well as the specific information that is included, its format, method of dissemination, and any subsequent changes thereto, must comply with the provisions of this Rule.

(c) Case-by-Case Basis for Access to Case Records in Electronic Form. A court or court clerk may only grant public access to a case record in electronic form when the party requesting access to the case record identifies the case record by the number of the case, the caption of the case, or the name of a party, and only on a case-by-case basis. The case-by-case limitation does not apply to the index, calendar, docket, or register of actions.

(d) Changes in Public Access to Case Records. If by court order or operation of law a court or court clerk is required to deny public access to a case record to which the court has previously provided public access, the court or court clerk is not required to take any action with respect to any copy of the case record that was made by any member of the public before public access to the case record became unavailable.

(e) Conditions of use. A court, or a court clerk with the consent of the judges served by the court clerk, may adopt local rules to provide for the orderly public access to case records consistent with the provisions of this Rule. The local rules may provide for conditions of use for public access to case records, including, without limitation, (1) the user's consent to access the case records only as authorized by the court; (2) the user's consent to not attempt any unauthorized access; and (3) the user's consent to monitoring by the court of all access to its case records. The court adopting such local rules shall provide users with notice of such conditions of use, and obtain users' agreement to comply with them, in any reasonable manner that the court deems appropriate. The court or court clerk establishing such rules may deny access to case records to a member of the public for past failure to comply with any conditions of use provided for in such local rules. The *conditions of use* provisions may not apply to public access to the court-created case records of the court.

(f) Inquiry to requestor. Except for requests for bulk distribution or access to compiled information as provided in Rule 14.4(h)(1), a person requesting access to a case record may not be asked to disclose the purpose of the request as a condition of obtaining access to the case record. But a court or court clerk may make inquiry to establish the proper identification of the requestor or to clarify the nature or scope of a request.

(g) **Uniform treatment of requests.** A court or court clerk must treat all requests for public access to case records uniformly without regard to the position or occupation of the requestor or the person on whose behalf a request is made, including whether the requestor or such person is a member of the media.

(h) **Bulk Distribution.** Except as permitted in Rule 14.4(h)(1), a court or court clerk may provide bulk distribution in electronic form to the general public only of any index, calendar, docket, or register of actions, and not of any other case record.

(1) **Limited exception.** A request to a court or a court clerk for bulk distribution or access to compiled information, other than any index, calendar, docket, or register of actions, may be granted to individuals or entities having a bona fide scholarly, journalistic, political, governmental, or other legitimate research purpose, and where the identification of specific individuals is ancillary to the purpose of the inquiry. A requestor under this subsection must:

(A) fully identify the requestor and describe the requestor's research and purpose of the inquiry;

(B) identify what information is sought;

(C) explain provisions for the secure protection of the information requested;

(D) agree to maintain as confidential the identification of specific individuals in the case records; and

(E) acknowledge that the court is the owner of the case records and has the exclusive right to control their use.

(i) **Historic Cases.** Notwithstanding the provisions of Rule 14.5(d) and (e), a court or court clerk may allow remote access by the general public to any case record, or to all case records in any proceeding, that is determined to have historic significance, either (a) on order of the administrative judge for the county in which the court is located or (b) fifty years after the date on which the case record was file or on which the proceeding was commenced.

14.5 Exemptions from Public Access. Public access (or, where specified, remote access by the general public) is not allowed under this Rule to the following case records, as specified:

(a) **Federal Law.** Any case record containing information that is excluded from public access pursuant to federal law.

(b) **Texas Law.** Any case record containing information that is excluded from public access pursuant to Texas statute or court rule.

(c) **Court Order.** Any case record containing information excluded from public access by specific court order.

(d) **Limitation on Remote Access.** Remote access to the following records or proceedings is limited as follows:

(1) **Case Records other than Court-Created Records.** Remote access by the general public to case records, other than court-created case records, may be granted only through a subscriber-type system that requires user's to register with the court and obtain a log-in and password.

(2) **Specific Types of Records** Notwithstanding Rule 14.5(d)(1), the following case records are excluded from remote access by the general public:

(a) Medical, psychological or psychiatric records, including any expert reports based upon medical, psychological or psychiatric records;

(b) Pretrial bail or presentence investigation reports;

(c) Statements of reasons or defendant stipulations, including any attachments thereto; and

(d) income tax returns

(3) **Family Code Proceedings.** Notwithstanding Rule 14.5(d)(1), the case records filed as part of any family code proceeding, other than court-created case records, are excluded from remote access by the general public.

(4) **Procedures.** Unless otherwise ordered by the court, any party filing with a court any case record that is or that includes a document identified in Rule 14.5(d)(2) or (3) shall at the time of filing notify the court that the filing includes a case record to which access is restricted under this section. Such notification shall occur as provided by local court rule; in the absence of such a rule, the party shall include with the filing a cover sheet identifying the relevant case record. The court or court clerk shall have no obligation to review each case record submitted to it to determine whether it is or includes a document identified in Rule 14.5(d).

(e) **Sensitive Data Form.** A Sensitive Data Form, as provided for in Rule 14.6.

(f) **Public Access to Part of Case Record.** If under this Rule public access is allowed only to part of a requested case record, the court may order the redaction of that portion of the case record to which public access is not allowed.

14.6 Sensitive Data.

(a) The court or court clerk shall maintain, as a case record to which public access is not allowed, a Sensitive Data Form submitted to the court and containing any items of sensitive data. "*Sensitive data*" consists of the following information:

- (1) social security numbers;
- (2) bank account, credit card, or other financial account number and associated PIN numbers;
- (3) driver's license numbers, passport numbers, or similar government-issued identification card numbers, excluding attorney state bar numbers;
- (5) date of birth;
- (6) the address and phone number of a person who is a crime victim, as defined by Article 56.32, Code of Criminal Procedure, in the proceeding in which the case record is filed or in a related proceeding; and
- (7) the name of a minor child.

(b)(1) Unless otherwise ordered by the court, any party filing a pleading or any other case record (other than a Sensitive Data Form) with the court shall not include any sensitive data in such pleading or case record, whether filed on paper or in electronic form, regardless of the person to whom the sensitive data relates.

(2) Unless otherwise ordered by a court, if reference to any of the following items of sensitive data is necessary in a pleading or any other case record (other than a Sensitive Data Form) filed with the court, the party filing such pleading or case record shall refer to that sensitive data as follows:

(A) **Social Security Numbers.** If the Social Security Number of an individual must be included in a case record, only the last four digits should be used.

(B) **Names of Minor Children.** If the involvement of a minor child must be mentioned in a case record, only that child's initials should be used, unless otherwise necessary.

(C) **Financial Account Numbers.** If financial account numbers must be included in a case record, only the last four digits should be used.

(D) **Date of Birth.** If a date of birth must be included in a case record, only the month and year should be used.

(c) The responsibility for omitting or redacting from case records filed with the court the sensitive data identified in this Rule rests solely with counsel and the party filing the case record. The court or court clerk shall have no obligation to review each pleading or other submitted case record for compliance with this Rule.

14.7 Disallowing Public Access. In addition to any other remedy provided by law, any interested person seeking to disallow public access to any case record containing sensitive data or excluded from public access under Rule 14.5, may apply for relief to the court or court clerk of the court in which the case record was originally filed. The court may, upon application by any interested person or on its own motion, disallow public access or remote access to, or order a party to redact, any case record that contains sensitive data in violation of this Rule or that is or includes a document identified in Rule 14.5(d).

14.8 Sanctions. A court shall have the authority to impose appropriate sanctions on any party failing to comply with the provisions of Rule 14.5 or Rule 14.6 in a filing with that court.

14.9 Immunity. A court, court clerk, or court employee who unintentionally and unknowingly discloses a case record that is exempt from public access or that includes erroneous information is immune from liability for such disclosure. A court, court clerk, or court employee is not liable for inaccurate or untimely information, or for misinterpretation or misuse of the data, included in any case record.

14.10 Costs for Copies of Case Records. The cost for a copy of a case record is either:

- (1) the cost prescribed by statute, or
- (2) if no statute prescribes the cost, the actual cost, as defined in Section 111.62, Title 1, Texas Administrative Code, not to exceed 125 percent of the amount prescribed by the Building and Procurement Commission for providing public information under Title 1, Texas Administrative Code, Sections 111.63, 111.69, and 111.70.

14.11 Contracts with vendors providing information technology services. If a court or court clerk contracts with a vendor to provide information technology support to gather, store, or provide public access to case records, the contract must require the vendor to comply with the provisions of this Rule. Each contract shall prohibit vendors from making bulk distribution of case records or from disseminating compiled information, except as provided by this Rule. Each contract shall require the vendor to acknowledge that case records remain the property of the court and are subject to the directions and orders of the court with respect to the handling of and public access to the case records, as well as the provisions of this Rule. These requirements are in addition to those otherwise imposed by law. For purposes of this Rule, the term "vendor" includes a state, county or local governmental agency that provides information technology services to a court.

14.12 Requests for Deviations. A court or court clerk, with the consent of a majority of the judges served by the court clerk, may submit to the Supreme Court of Texas a written request to deviate from this Rule in providing public access to case records. Such request must:

- (1) describe in detail the deviation requested;
- (2) describe the purpose for the deviation; and
- (3) identify the benefits and detriments of the deviation.

Approved deviations from this Rule may be implemented only upon written order by the Supreme Court of Texas.

Nancy W. Hamilton
(713) 752-4222 (Direct Dial)
(713) 308-4125 (Direct Fax)
nhamilton@jw.com

January 6, 2005

By Hand

Honorable Michael Milby
United States District Clerk
Bob Casey United States Court House
515 Rusk Street
Houston, Texas 77002

Re: C.A. No. H-04-4543; *Excellent Inventions, LLC, v. FKA Distributing Co., operating under the assumed name HOMEDICS, INC., and HOMEDICS-USA, INC.*; In the United States District Court for the Southern District of Texas, Houston Division.

Dear Mr. Milby:

Enclosed for filing among the papers in the above-referenced cause, please find an original and two copies of the following documents:

- 1) **Defendants' Answer to Complaint, Affirmative Defenses, Counterclaims and Jury Demand; and**
- 2) **Motion and Order for Admission Pro Hac Vice for Marc Lorelli.**

Please signify receipt of same by placing your file mark on the enclosed copies and return to us for our files. By copy of this letter, all counsel of record are being served with this document.

Sincerely yours,

Nancy W. Hamilton

NWH:lhb
Enclosures

cc: Mr. James D. Petruzzi
Mason & Petruzzi
4900 Woodway, Suite 745
Houston, Texas 77056

Via Facsimile No. 713-877-9100