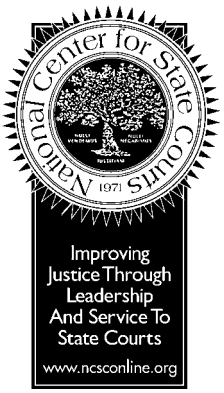
Developing *CCJ/COSCA Guidelines* for Public Access to Court Records: A National Project to Assist State Courts

Report Authors
Martha Wade Steketee
Alan Carlson

October 18, 2002



A Product of Projects SJI-01-N-054 and SJI-02-N-007
Developing a Model Written Policy Governing Access to Court Records
www.courtaccess.org/modelpolicy/

© 2002 The National Center for State Courts and The Justice Management Institute

This document was developed by the National Center for State Courts and the Justice Management Institute, on behalf of the Conference of Chief Justices and Conference of State Court Administrators, under grants SJI-01-N-054 and SJI-02-N-007 from the State Justice Institute. The points of view expressed do not necessarily represent the official position or policies of the National Center for State Courts, the Justice Management Institute, or the State Justice Institute.

TABLE OF CONTENTS

Acknowledgements iii

Project Process vi

CCJ/COSCA Resolution 33 Endorsing and Supporting Public Access to Court Records: Guidelines for Policy Development by State Courts xi

Public Access to Court Records: CCJ/COSCA *Guidelines for Policy Development by State Courts* 1

Introduction 1

Purpose 4
- Section 1.00 – Purpose of the CCJ/COSCA *Guidelines* 4

Access by Whom 10
- Section 2.00 – Who Has Access Under These CCJ/COSCA *Guidelines* 10

Access to What 12
- Section 3.00 – Definitions 12
  - Section 3.10 – Definition of Court Record 12
  - Section 3.20 – Definition of Public Access 17
  - Section 3.30 – Definition of Remote Access 19
  - Section 3.40 – Definition of In Electronic Form 20
- Section 4.00 – Applicability of Rule 22
  - Section 4.10 – General Access Rule 23
  - Section 4.20 – Court Records In Electronic Form Presumptively Subject To Remote Access by the Public 27
  - Section 4.30 – Requests for Bulk Distribution of Court Records 29
  - Section 4.40 – Access to Compiled Information from Court Records 34
  - Section 4.50 – Court Records that are Only Publicly Accessible at a Court Facility 39
  - Section 4.60 – Court Records Excluded from Public Access 45
  - Section 4.70 – Requests to Prohibit Public Access to Information in Court Records or to Obtain Access to Restricted Information 53

When Accessible 58
- Section 5.00 – When Court Records May Be Accessed 58

Fees 60
- Section 6.00 – Fees for Access 60

Obligation of Vendors 62
- Section 7.00 – Obligations of Vendors Providing Information Technology Support to a Court to Maintain Court Records 62

Obligation of the Court to Inform and Educate 64
Section 8.00 – Information and Education Regarding Access Policy..... 64
Section 8.10 – Dissemination of Information to Litigants about Access to Information in Court Records 64
Section 8.20 – Dissemination of Information to the Public About Accessing Court Records..... 66
Section 8.30 – Education of Judges and Court Personnel About an Access Policy 67
Section 8.40 – Education about Process to Change Inaccurate Information in a Court Record 69

Appendix A: Index to Terms Appearing in CCJ/COCCA *Guidelines* 70

Appendix B: Cross Reference to Selected State Rules and Case Law Used in CCJ/COSCA *Guidelines*..... 76
Appendix B Section 1: Primary State Statutes, Rules, and Policies Utilized in CCJ/COSCA *Guidelines* By State 77
Appendix B Section 2: Statutory Cross Reference to CCJ/COSCA *Guidelines* By Section 81

ACKNOWLEDGEMENTS

Numerous individuals contributed to the effort to initiate this project, carry out its activities, and to complete the *CCJ/COSCA Guidelines.* This project focused throughout on a process that would incorporate the voices of court practitioners as well as advocates and consumers of court information. With everyone's involvement, the report authors feel that there were at least two "products" of this project. The first product is the *CCJ/COSCA Guidelines* themselves, now endorsed by the memberships of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA). A second product is the process that was used to produce these documents. This process was broad-based, as inclusive as we could make it, open to all who were interested, and time-consuming. This process, briefly described in the next section, is one that we would endorse for states seeking to develop their own rules and regulations around access to and privacy of information in state court records. We are mindful of the words of Dave Byers, State Court Administrator of Arizona, made at a meeting of the Joint COSCA Court Management Committee: "The process is as important as the product". We hope that we have honored the process in the product that has been produced.

We are particularly indebted to the members of the Project Advisory Committee who served ably and well, and worked long hours. All members of the Committee strongly voiced their own opinions and perspectives, but also demonstrated a willingness to modify their perspective on issues when an impasse was reached, in order to move the process forward. These marvelous individuals are, in alphabetical order: Gerry Alexander, Chief Justice, Supreme Court of Washington, representing CCJ; Francis X. (Paco) Aumand, III, Director, Division of Criminal Justice Services, Vermont Department of Public Safety, representing law enforcement; Dave Byers, Administrative Director, Arizona Supreme Court, representing COSCA; Howard Conyers, Administrative Director of the Courts of Oklahoma, representing COSCA; Lucy A. Dalglish, Executive Director, Reporters Committee for Freedom of the Press, representing media; Sue K. Dosal, Co-Chair of the CCJ/COSCA Court Management Committee 2001-2002 and State Court Administrator, Supreme Court of Minnesota, representing COSCA; Steven M. Emmert, Director of Government & Industry Affairs, Reed Elsevier, Inc., Washington, DC, representing data industry; Dana Fabe, Chief Justice, Alaska Supreme Court, representing CCJ; Beth Givens, Director, Privacy Rights Clearinghouse, San Diego, California, representing privacy interests; Michael K. Jeanes, Clerk of Court, Arizona Superior Court, Maricopa County, representing National Association for Court Management (NACM); Jack Komar, Judge, Santa Clara Superior Court, San Jose, California, representing National Conference of Metropolitan Courts (NCMC); Gayle A. Nachtigal, Past Presiding Judge, Circuit Court of Washington County, Hillsboro, Oregon, representing American Judges Association (AJA) (2002); Kelli Sager, Attorney, Davis Wright Tremaine LLP, Los Angeles, California, representing media; Robert Ellis Smith, Publisher, Privacy Journal, Providence, Rhode Island, representing privacy interests; Linda Copple Trout, Co-Chair of the CCJ/COSCA Court Management Committee 2001-2002 and Chief Justice, Supreme Court of Idaho, representing CCJ; Richelle Uecker, Deputy District Administrator, Hennepin County (Minnesota) District Court, representing NACM; and Chris Williams, Judge, Municipal Court, Malvern, Arkansas, representing AJA (2001).

We also must thank the members of the CCJ/COSCA Court Management Committee who heard reports from this project while it developed, asked the hard questions when appropriate, and finally enthusiastically endorsed the penultimate draft of the *CCJ/COSCA Guidelines*. The Committee was Co-Chaired during 2000-2001 and 2001-2002 by the marvelous team of Chief Justice Linda Copple Trout of Idaho and State Court Administrator Sue K. Dosal of Minnesota. Committee members during 2000-2001 included: Chief Justice E. Riley Anderson, Tennessee; Chief Justice Jose A. Andreu-Garcia, Puerto Rico; Chief Justice Dana Fabe, Alaska; Chief Justice Gerry L. Alexander, Washington, Chief Justice Larry L. Lehman, Wyoming; David K. Byers, Arizona; Ken Palmer, Florida; and John Greacen, New Mexico. Committee members during 2001-2002 included: Chief Justice Gerry L. Alexander, Washington; Chief Justice Jeffrey L. Amestoy, Vermont; Chief Justice Maria M. Cabret, Virgin Islands; Chief Justice Maura D. Corrigan, Michigan; Chief Justice Dana Fabe, Alaska; Chief Justice Norman S. Fletcher, Georgia; Chief Justice Karla M. Gray, Montana; Chief Justice I. Beverly Lake, Jr., North Carolina; Chief Justice Larry L. Lehman, Wyoming; Chief Justice Mary J. Mullarkey, Colorado; David K. Byers, Arizona; Michael L. Buenger, Missouri; Howard W. Conyers, Oklahoma; and Ex-Officio Mercedes M. Bauermeister, Puerto Rico.

We must thank the original visionary and ongoing cheerleader for this effort, Barry Mahoney, President Emeritus of the Justice Management Institute. Barry wrote the original SJI project grant, attended Advisory Committee meetings and other project events, and served to raise probing questions and to summarize and synthesize the Committee's always energized and nuanced discussions at key moments. Tom Henderson, National Center for State Courts (NCSC) Executive Director of Government Relations, supported and encouraged the partnership between JMI and NCSC, and facilitated the project work and its incorporation into the work of the Joint Court Management Committee of CCJ and COSCA.

The project thanks and has been enriched by those who provided public comments and those who stayed involved in the project by email and other contact over the past 18 months. Others came to project meetings at their own expense to express their views and to listen to the discussions. All participants were generous with their time, and constructive with their criticism. The many individuals who attended project events and meetings are listed in the "Project Process" section below. Special thanks are extended to individuals from the state court administrator's office in several states and the federal judiciary whose existing policies or rules provided a source for the development of early drafts of the *CCJ/COSCA Guidelines*. These individuals assisted the project by providing current versions of rules and policies and updates on revisions, sometimes attending Advisory meetings or other project events, and reviewing the cross-reference list provided as an Appendix to this report. These stalwart colleagues include, in alphabetical order: Brian Backus in Washington, Jane Evans in California, Jennifer Greene in Arizona, Michael B. Johnson in Minnesota, Katherine Kuriyama in Washington, Bob Roper in Colorado, and Lee Suskin in Vermont. Robert Deyling and his colleagues in the Administrative Office of the U.S. Courts in the District of Columbia provided early guidance, support, and useful commentary on the project process and provided lessons learned from their experience in crafting privacy policy

recommendations that were adopted by the Judicial Conference of the United States at its September/October 2001 session.

We extend special thanks to Linda Perkins and Stacey Smith of the NCSC Conference Planning Office as well as NCSC staff members Toni Knorr and Lori Montgomery who provided essential staff support. Without all these hands, many project Advisory Committee meetings and the Public Hearing could not have occurred. Brenda Williams and Shelley Rockwell of NCSC Association services worked closely with CCJ and COSCA and with project staff and various steps of this Project and facilitated many details of this detail-laden effort. Kent J. Wagner of NCSC Institute for Court Management provided the opportunity for project staff to present the substance of the *CCJ/COSCA Guidelines* and discuss the July draft with the CCJ and COSCA memberships at their 2002 annual meeting. Pam Petrakis of the NCSC Research Division assisted and facilitated many project details. And Pam Casey, Court Research Program Director, assisted with many aspects of project planning, and asked probing project questions at key points of the initiative to keep us on track. Any one event or product along the way could have crushed our spirits, and all of these individuals (and more) made it possible for us to soldier forward.

Finally, we are very grateful for the State Justice Institute's support, to the original Project Manager Mitch Michkowski, to the current Project Manager Kathy Schwartz, to SJI Executive Director David Tevelin, and to the SJI Board of Directors for their consistent support throughout this project.

PROJECT PROCESS

This project began as an effort of the Justice Management Institute (JMI), the Joint Technology Committee of the Conference of State Court Administrators (COSCA), and the National Association of Court Management (NACM). The State Justice Institute funded the initial stage of the project beginning in January 2001 to: review current state policies, hold several meetings of an advisory committee comprised of court professionals and others interested in access to court records, and produce a final product that would provide a "model policy" and commentary following the format and intent of American Bar Association model rules. During this project phase (Phase I), members of the National Center for State Courts (NCSC) staff attended advisory meetings hosted and convened by JMI staff in May, July, and August of 2001. The CCJ and COSCA Joint Court Management Committee received reports from project staff on project activities. Six members of the CMC also participated as members of the *CCJ/COSCA Guidelines* project Advisory Board during this Project phase.

As the project work progressed, it became clear that the interest in access to court records was very topical, and that many states were considering changes in their rules or policies. The need for, and significance of, a model policy had increased dramatically during the first project year. After the third Phase I Advisory Committee meeting in August of 2001, staff from JMI and the NCSC decided to pursue additional funding from the State Justice Institute in order to expand the project Advisory Committee (to sixteen) to include additional non-court representatives; to continue Advisory Committee meetings; to include a public comment period for the draft policy; to hold a public hearing to receive comments on the policy; and to present the resulting policy to the membership of CCJ and COSCA for their review and endorsement at their annual meeting in July-August 2002. At this time, due primarily to NCSC's role in staffing substantive committees of the two Conferences and Ms. Steketee's role in staffing the Joint Court Management Committee in particular, NCSC and JMI agreed to shift the primary project grant administering responsibilities to NCSC, while retaining a substantial subcontract for JMI as staff for the project. The project became a true partnership between NCSC and JMI at this moment.

The NCSC and JMI on behalf of CCJ and COSCA submitted to SJI on 10/15/2001 a continuation grant for Project Phase II. An initial award for January through March 2002 was made in January 2002, and a second award was approved in March 2002 that extended funding through October 2002.

Phase II focused on process and revision, and successfully concluded several types of review of the *CCJ/COSCA Guidelines* drafts. The project held a public comment period to solicit broad range of comments from affected court, public, and private sector constituencies between February 26, 2002 (when the project web site posted the first complete draft) and April 30, 2002. Over 130 comments were received through May 9, 2002 and all are accessible on the project web site www.courtaccess.org/modelpolicy/. Project staff during this phase also planned and held one public hearing in Washington, DC on May 17, 2002. During the public hearing,

eight members of the Advisory Committee received comments from twelve individuals who had submitted comments during the Public Comment period. Project staff during this phase planned and held three Advisory Committee meetings (January 24-25, 2002 in Tucson, Arizona; May 18-19, 2002 in Washington, DC; and June 14-15, 2002 in Denver, Colorado) to incorporate comments, debate differences of opinion, finalize the *CCJ/COSCA Guidelines*, and prepare for presentations at CCJ/COSCA Annual Meeting beginning in late July 2002.

Project staff also held extended discussions with CCJ and COSCA members during the annual CCJ/COSCA in Maine on the content of the *CCJ/COSCA Guidelines* and the issues that were raised. An Executive Session was held on Sunday, July 28, 2002 with CCJ and COSA members that included a several hour presentation that outlined: major elements of the *CCJ/COSCA Guidelines* framework, the contentious and non-contentious issues for every jurisdiction to consider, and some of the lessons learned from the Committee process. The Joint Court Management Committee of CCJ and COSCA met on Monday, July 29, 2002 to comment on the *CCJ/COSCA Guidelines* and to finalize a Resolution on behalf of the *CCJ/COSCA Guidelines.* Members of the Project Advisory Committee -- Kelli Sager, Robert Ellis Smith, Steve Emmert, and Jack Komar-- participated on a panel convened as part of the Conference educational program on Tuesday, July 30, 2002 to describe the Advisory Committee journey that resulted in the current *CCJ/COSCA Guidelines*. Finally, memberships of CCJ and COSCA voted August 1, 2002 to endorse the Court Management Committee's resolution in support of the *CCJ/COSCA Guidelines*. The Board of the National Association for Court Management also endorsed the *CCJ/COSCA Guidelines* in July 2002.

All individuals who participated as members of the Project Advisory Committee, who attended meetings as guests, and who testified before the committee during the public hearing are included here in this section on "process" to acknowledge the important role they played in the development of this project, and to illustrate the range of interests that were included in the *CCJ/COSCA Guidelines* that follow.

Our "process" was involved but necessary in order to produce the intricate *CCJ/COSCA Guidelines* product. Inviting, welcoming, incorporating, and facilitating continued participation from a range individuals and perspectives, using similar mechanisms may be our primary recommendation to states and jurisdictions that wish to use these *CCJ/COSCA Guidelines* as a starting point for their own deliberations. Include a range of opinions. Facilitate the discussions. Work to obtain a compromise and acknowledge with respect those areas where compromise just is not possible. The resulting product will be richer, and the professional relationships that are built will be essential in implementing rules and routines to both ensure privacy and promote access to state court records.

Project Advisory Committee Members 2001-2002

Honorable Gerry L. Alexander (CCJ)
Chief Justice, Supreme Court of Washington
Olympia, WA

Mr. Francis X. Aumand, III (law enforcement)
Director, Division of Criminal Justice Services
Vermont Department of Public Safety
Waterbury, VT

Mr. David K. Byers (COSCA)
Administrative Director, Arizona Supreme Court
Phoenix, AZ

Mr. Howard W. Conyers (COSCA)
Administrative Director of the Courts
Oklahoma City, OK

Ms. Lucy A. Dalglish (media)
Executive Director
Reporters Committee for Freedom of the Press
Arlington, VA

Ms. Sue K. Dosal (COSCA)
State Court Administrator
Supreme Court of Minnesota
St Paul, MN

Mr. Steven M. Emmert (data industry)
Reed Elsevier, Inc.
Washington, DC

Honorable Dana Fabe (CCJ)
Chief Justice, Alaska Supreme Court
Anchorage, AK

Ms. Beth Givens (privacy interests)
Privacy Rights Clearinghouse
San Diego, CA

Mr. Michael K. Jeanes (NACM)
Superior Court, Maricopa County
Phoenix, AZ

Honorab1e Jack Komar (NCMC)
Judge, Santa Clara Superior Court
San Jose, CA

Honorable Gayle A. Nachtigal (AJA 2002)
Past Presiding Judge, Circuit Court of Washington County
Hillsboro, OR

Ms. Kelli L. Sager (media)
Attorney at Law, Davis Wright Tremaine LLP
Los Angeles, CA

Mr. Robert Ellis Smith (privacy interests)
Publisher, Privacy Journal
Providence RI

Honorable Linda Copple Trout (CCJ)
Chief Justice, Supreme Court of Idaho
Boise, ID

Ms. Richelle 0. Uecker (NACM)
Hennepin County District Court
Minneapolis, MN

Individuals Who Attended Project Meetings and Events (May 2001- June 2002)

Mr. Brian Backus (for Chief Justice Alexander)
Washington State Office of the Administrator for the Courts
Olympia, WA

Ms. Martha Campbell
Law Librarian, Colorado Supreme Court
Denver, CO

Mr. Robert P. Deyling
Judges Support Branch, Article III Judges Division
Administrative Office of the U.S. Courts
Washington, DC

Mr. John Dill
Dolan Media
Denver, CO

Mr. Eric J. Ellman
Consumer Data Industry Association
Washington, DC

Ms. Kay Farley
NCSC Washington Office
Arlington, VA

Mr. John Fearing
Arizona Newspapers Association, Inc.
Phoenix AZ

Ms. Julie Kunce Field
Consultant
Pennsylvania Coalition Against Domestic Violence
Fort Collins, CO

Mr. Kevin Galvin
Seattle Times (WA) reporter
Seattle, WA

Dr. Karen Gottlieb
Court Consultant
Nederland, CO

Mr. John M. Greacen
Greacen Associates, LLC
Santa Fe, NM

Mr. Jim Haase
CapitalOne Financial Corporation
Federal Way, WA

Dr. Thomas A. Henderson
NCSC Washington Office
Arlington, VA

Mr. Robert W. Holloran
National Background Data, LLC
Ocala, FL

Mr. Dennis Joyce
Arizona Newspapers Association, Inc.
Phoenix AZ

Mr. Mike Killeen (for Kelli Sager)
Attorney at Law, Davis Wright Tremaine LLP
Seattle, WA

Ms. Diana Kramer
Executive Director
Washington Newspaper Publishers Association
Seattle, WA

Mr. Gregg Leslie (for Lucy Dalglish)
Reporters Committee for Freedom of the Press
Arlington, VA

Ms. Mary Campbell McQueen
State Court Administrator
Supreme Court of Washington
Olympia, WA

Mr. Christopher Ryan
NCSC Denver Office
Denver, CO

Ms. Cindy Southworth
Consultant
National Network to End Domestic Violence
Washington, DC

Mr. Enric Volante
Arizona Daily Sun reporter
Phoenix, AZ

Mr. Clifford A. Webster (for Associated Credit Bureaus)
Carney Badley Smith & Spellman
Seattle, WA

Mr. Bill Whiteside (also Marianne and Kenneth Sutton)
IACREOT
International Association of Clerks, Recorders, Election Officials, and Treasurers

Ms. Rochelle Wilcox (for Kelli Sager)
Attorney at Law, Davis Wright Tremaine LLP
Los Angeles, CA

Individuals Who Testified at May 17, 2002 Public Hearing (Hilton Washington, 1919 Connecticut Avenue NW, Washington DC)

Ted Gest
President, Criminal Justice Journalists
Distinguished Senior Scholar, Jerry Lee Center of Criminology University of Pennsylvania
Washington, DC

Gregg Leslie
Legal Director
Reporters Committee for Freedom of the Press
Arlington, VA

Carolyn Elefant
The Law Offices of Carolyn Elefant
Washington, DC

Alice Neff Lucan
The Daily News Publishing Company
Washington, DC

Rene P. Milam
Newspaper Association of America
Fairfax, VA

Susan Smith Howley
Director Public Policy
National Center for Victims of Crime
Washington, DC

Andrea C. Farney
Managing Attorney, Legal Department
Pennsylvania Coalition Against Domestic Violence
Harrisburg, PA

Amy Bushyeager
Counsel
National Network to End Domestic Violence
Washington, DC

Mary Alice Baish
Associate Washington Affairs Representative
American Association of Law Libraries
Washington, DC

Chris Hoofnagle
Staff Counsel
Electronic Privacy Information Center
Washington, DC

Eric Ellman
Government Affairs
Consumer Data Industry Association
Washington, DC

Arthur M. “Monty” Ahalt
Chief Industry Advisor
CourtLink Corporation, speaking for Lexis-Nexis
Washington, DC

CONFERENCE OF CHIEF JUSTICES
CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 33

Endorsing and Supporting *Public Access to Court Records: Guidelines for Policy Development by State Courts*

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators requested the Joint Committee on Court Management to consider issues concerning public access to court records in light of emerging technologies, including the potential for electronic access to such records; and

WHEREAS, members of the Joint Committee have worked with a broad-based Advisory Committee to develop *Public Access to Court Records: Guidelines for Policy Development by State Courts* (the *Guidelines*) that has explored the numerous and complex issues concerning access to court records; and

WHEREAS, the Advisory Committee has held one public hearing and received hundreds of comments on drafts of the *Guidelines*; and

WHEREAS, the *Guidelines* have been prepared with the guidance of the Advisory Committee and the Joint Committee on Court Management, and incorporates comments received from all sources; and

WHEREAS, the Joint Committee has determined that the *Guidelines* will provide valuable assistance to state courts in the development of their own policies and court rules governing public access to court records;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators hereby agree to:

1. Endorse the *Guidelines* as a valuable tool for use in crafting court policy to address individual privacy concerns and public access requirements; and

2. Commend the *Guidelines* to each state as a starting point and means to assist local officials as they develop policies and procedures for their own jurisdictions.

Adopted as proposed by the CCJ/COSCA Court Management Committee in Rockport, Maine on August 1, 2002.

Note: after this resolution was passed, the *Guidelines* became known as the *CCJ/COSCA Guidelines*.

PUBLIC ACCESS TO COURT RECORDS: CCJ/COSCA GUIDELINES FOR POLICY DEVELOPMENT BY STATE COURTS

Introduction

Historically most court files have been open to anyone willing to come down to the courthouse and examine the files. The reason that court files are open is to allow the public to observe and monitor the judiciary and the cases it hears, to find out the status of parties to cases, for example dissolution of marriage, or to find out final judgments in cases. Technological innovations have resulted in more court records being available in electronic form and permit easier and wider access to the records that have always been available in the courthouse. Information in court records can now be "broadcast" by being made available through the Internet. Information in electronic records can be easily compiled in new ways. An entire database can be copied and distributed to others. At the same time not all courts have the same resources or the same level of technology, resulting in varying levels of access to records across courts in the same state. These new circumstances require new access policies to address the concern that the proper balance is maintained between public access, personal privacy, and public safety, while maintaining the integrity of the judicial process. In order to provide guidance to state judiciaries and local courts in this area, and to provide consistency of access across a state, these *CCJ/COSCA Guidelines* on access to court records have been developed.

The *CCJ/COSCA Guidelines* proposed here are based on the following premises:

- Retain the traditional policy that court records are presumptively open to public access;
- As a general rule access should not change depending upon whether the court record is in paper or electronic form. Whether there should be access should be the same regardless of the form of the record, although the manner of access may vary. The *CCJ/COSCA Guidelines* apply to all court records;
- The nature of certain information in some court records, however, is such that remote public access to the information in electronic form 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;
- Access policies should be clear, consistently applied, and not subject to interpretation by individual court or clerk personnel.

The *CCJ/COSCA Guidelines* are organized around the basic questions to be answered by such a policy: What is the purpose of the policy, and who has access to what information, how and when? The *CCJ/COSCA Guidelines* conclude with sections regarding notice about information collected, public education about accessing information, and obligations of the executive branch agencies and vendors providing information technology services to the court.

The objective of the *CCJ/COSCA Guidelines* is to assist and guide state or individual courts in drafting a policy on public access to court records. The *CCJ/COSCA Guidelines* are written to provide a starting point for drafting a policy, either by a state, for the state's judiciary, or by an individual court, if the state does not adopt a uniform statewide policy. There are two primary goals for these *CCJ/COSCA Guidelines*. First, they seek to raise the major issues that need to be addressed by such a policy. Second, the *CCJ/COSCA Guidelines* attempt to provide specific language and terminology as a starting point for drafting a policy tailored to the needs of a state or individual court. These goals work together to help jurisdictions avoid starting the drafting process from scratch while providing at least one alternative for how to address each of the major issues. A state or individual court can begin with the *CCJ/COSCA Guidelines* language and consider adjusting it to conform to applicable federal and state law regarding access, privacy and an open judiciary (including statutory provisions allowing or restricting access to information), and to technology currently available to the court and clerk of court. The *CCJ/COSCA Guidelines* are intended to be more of a map of the policy-making terrain than a specific set of directions a state can adopt as it own rule.

If a state or individual court chooses to adopt or revise a rule based on these *CCJ/COSCA Guidelines*, the state or individual court needs to examine its existing access and record keeping laws and policies for all judicial records of any kind or use regarding:

- What is considered to be part of the court record;
- What records, documents or other things should not be accepted by the court;
- What personal and financial information is required to be provided on standard forms or pleadings and what specific details are really needed by the court to perform its judicial role;
- What information is being gathered by the court that the court does not require for a judicial purpose;
- What records, documents or other things are to be filed, lodged or provided to the court to which access is restricted, at least partially;
- Case types and categories of information to which public access is restricted, in whole or in part;
- Procedures and standards for sealing records, making them confidential, or otherwise restricting public access;
- Records retention schedules; and

- Liability and consequences for releasing restricted information, for providing erroneous or incomplete information derived from court records, or for improperly withholding publicly accessible information.

Some of these issues may already be addressed in existing statutes or rules. Others may be addressed in case law. Part of the process of considering adoption of a new policy should be a review of the existing laws and decisions in light of the purposes of the policy and either amending them or incorporating them into the new access policy. The review of existing law should be with an eye toward the effectiveness of the legal provisions, as well as from a law and policy perspective.

A state or individual court considering adoption of an access rule should also be aware of the limits of judicial immunity. The development and adoption of an access rule and making information publicly available pursuant to the rule may not be shielded by judicial immunity provisions. This is another reason to review all existing access policies and rules.

It is also important that a state or individual court periodically review all existing access policies and rules to see if modifications of the policy are required.

The *CCJ/COSCA Guidelines* do not require courts to convert records to electronic form or to make records in electronic form available remotely, for example through the Internet. The *CCJ/COSCA Guidelines* address public access to court records, not internal court record management practices. The decision whether to convert and maintain records in electronic form, and whether to provide remote access to these records is a decision for the state court system or individual court, after taking into consideration the resources made available to it and the myriad of demands on these resources. In addition not all courts are currently in a position to provide remote public access to court records. The level and type of technology in use in courts varies widely, across courts within states, as well as across states. The *CCJ/COSCA Guidelines* are drafted to provide guidance to courts as their technology is upgraded, and they acquire the ability to make information in court records available remotely.

Purpose

Section 1.00 - Purpose of the *CCJ/COSCA Guidelines*

(a) The purpose of these *CCJ/COSCA Guidelines* is to provide a comprehensive framework for a policy on public access to court records. The *CCJ/COSCA Guidelines* provide for access in a manner that:

(1) Maximizes accessibility to court records,
(2) Supports the role of the judiciary,
(3) Promotes governmental accountability,
(4) Contributes to public safety,
(5) Minimizes risk of injury to individuals,
(6) Protects individual privacy rights and interests,
(7) Protects proprietary business information,
(8) Minimizes reluctance to use the court to resolve disputes,
(9) Makes most effective use of court and clerk of court staff,
(10) Provides excellent customer service, and
(11) Does not unduly burden the ongoing business of the judiciary.

(b) The *CCJ/COSCA Guidelines* are intended to provide guidance to 1) litigants, 2) those seeking access to court records, and 3) judges and court and clerk of court personnel responding to requests for access.

Commentary

The objective of these *CCJ/COSCA Guidelines* is to provide maximum public accessibility to court records, consistent with constitutional or other provisions of law and taking into account public policy interests that are not always fully compatible with unrestricted access. Eleven significant public policy interests are identified. Unrestricted access to certain information in court records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. Denial of access would compromise the judiciary's role in society, inhibit accountability, and might endanger public safety.

These *CCJ/COSCA Guidelines* start from the presumption of open public access to court records. In some circumstances, however, there may be sound reasons for restricting access to these records. Examples where there have historically been access restrictions include juvenile, mental health and grand jury proceedings. Additionally, certain interests, like right to privacy, may

sometimes justify restricting access to certain court records. The *CCJ/COSCA Guidelines* also reflect the view that any restriction to access must be implemented in a manner narrowly tailored to serve the interests in open access. How these issues interact varies from state to state.

It is not the intent of these *CCJ/COSCA Guidelines* to either attempt to summarize the current state of the law, or propose specific changes in the law applicable in each of the several states. Many members of the Advisory Committee expressed the view that the presumption of openness is constitutionally based, requiring a "compelling interest" to overcome the presumption. Other members expressed the view that the law in this area is evolving. The Joint Court Management of CCJ and COSCA took the position that, because the issue may well come before courts of last resort, the *CCJ/COSCA Guidelines* should not take a position as to the applicable legal standard. Rather, the intent of specifying the purposes in this section is to articulate those interests that might be relevant in determining whether there might be restrictions to open public access to information in a court record in a particular situation and how to implement minimal restrictions to access most efficiently. As noted in the introduction, a state or individual court should carefully review its existing laws, rules and policies regarding all judicial records when developing or revising its access policy.

Subsection (a)(1) Maximizes Accessibility to Court Records. The premise underlying these *CCJ/COSCA Guidelines* is that court records should generally be open and accessible to the public. Court records have historically been open to public access at the courthouse, with limited exceptions. This tradition is continued in the *CCJ/COSCA Guidelines*. Open access serves many public purposes. Open access supports the judiciary in fulfilling its role in our democratic form of government and in our society. Open access also promotes the accountability of the judiciary by readily allowing the public to monitor the performance of the judiciary. Other specific benefits of open court records are further elaborated in the remaining subsections.

Subsection (a)(2) Supports the Role of the Judiciary. The role of the judiciary is to resolve disputes, between private parties or between an individual or entity and the government, according to a set of rules. Although the dispute is between two people or entities, or with the government, having the process and result open to the public serves a societal interest in having a set of stable, predictable rules governing behavior and conduct. The open nature of court proceedings furthers the goal of providing public education about the results in cases and the evidence supporting them.

Another aspect of the court's dispute resolution function is establishing rights as between parties in a dispute. The decision of the court stating what the rights and obligations of the parties are is as important to the public as to the

litigants. The significance of this role is reflected in statutes and rules creating such things as judgment rolls and party indices with specific public accessibility.

Subsection (a)(3) Promotes Government Accountability. Open court records provide for accountability in at least three major areas: 1) the operations of the judiciary, 2) the operations of other governmental agencies, and 3) the enforcement of laws. Open court records allow the public to monitor the performance of the judiciary and, thereby, hold it accountable. Public access to court records allows anyone to review the proceedings and the decisions of the court, individually, across cases, and across courts, to determine whether the court is meeting its role of protecting the rule of law, and does so in a cost effective manner. Such access also promotes greater public trust and confidence in the judiciary. Openness also provides accountability for governmental agencies that are parties in court actions, or whose activities are being challenged in a court action. Finally, open court proceedings and open court records also demonstrate that laws are being enforced. This includes civil regulatory laws as well as criminal laws.

Subsection (a)(4) Contributes to Public Safety. Open public access contributes to public safety and compliance with the law. Availability of information about court proceedings and outcomes allows people to become aware of and watch out for people, circumstances or business propositions that might cause them injury. Open public access to information thus allows people to protect themselves. Examples of this are criminal conviction information, protective order information, and judgments in non-criminal cases. At the same time it should be noted that there might be a problem with reliance on incomplete information from yet unresolved cases, where allegations might not be proved. Further, the reliance on court records for information about an individual, where positive identification cannot be verified, may also create problems for an individual incorrectly associated with a particular court record.

Public safety, physical and economic, is also enhanced to the extent open public access to court records contributes to the accountability of corporations, businesses and individuals. Court cases are one source of information about unsafe products, improper business practices or dangerous conditions. Knowing this information is readily availability to the public from court records is one incentive for businesses and individuals to act appropriately. Open access to this information also allows individuals and businesses to better protect themselves from injury.

Subsection (a)(5) Minimizes Risk of Injury to Individuals. Other circumstances suggest unrestricted access is not always in the public interest. The interest in personal safety can be served by restricting access to information that someone could use to injure someone else, physically, psychologically or economically. Examples of actual injury to individuals based on information obtained from court records include: intimidation of, or physical violence towards,

victims, witnesses, or jurors, repeated domestic violence, sexual assault, stalking, identity theft, and housing or employment discrimination. While this does not require total restriction of access to court records, it supports restriction of access to certain information that would allow someone to identify and find a person to whom they intend harm. This is an especially serious problem in domestic violence cases where the abused person is seeking protection through the court.

Subsection (a)(6) Protects Individual Privacy Rights and Interests. The major countervailing public interest to open public access is the protection of personal privacy. The interest in privacy is protected by limiting public access to certain kinds of information. The presumption of public access is not absolute. Considerations identified regarding privacy interests include: a specific, legally protected privacy interest, the reasonableness (personally and objectively) of the expectation of privacy, the seriousness of the invasion of privacy, and the legitimate public interest in disclosure.

Appropriate respect for individual privacy also enhances public trust and confidence in the judiciary.

It is also important to remember that, generally, at least some of the parties in a court case are not in court voluntarily, but rather have been brought into court by plaintiffs or by the government. They have not consented to personal information related to the dispute being in the public domain. For those who have violated the law or an agreement, civilly or criminally, an argument can be made that they have impliedly consented to participation and disclosure by their actions. However, both civil suits and criminal cases are filed based on allegations, so innocent people and those who have not acted improperly can still find themselves in court as a defendant in a case.

Finally, at times a person who is not a party to the action may be mentioned in the court record. Care should be taken that the privacy rights and interests of such a ‘third’ person is not unduly compromised by public access to the court record containing information about the person.

Subsection (a)(7) Protects Proprietary Business Information. Another type of information to which access may be restricted is that related to the operations of a business. There may be a compelling reason to protect trade secrets or other proprietary business information in a particular case. Allowing public access to such information could both thwart a legitimate business advantage and give a competitor an unfair business advantage. It also reduces the willingness of a business to use the courts to resolve disputes. States generally have laws about this, usually involving a case-by-case analysis by a judge at the request of one of the parties.

Subsection (a)(8) Minimizes Reluctance To Use The Court To Resolve Disputes. The public availability of information in the court record can also affect the decision as to whether to use the court to resolve disputes. A policy that permits unfettered public access might result in some individuals avoiding the resolution of a dispute through the court because they are unwilling to have information become accessible to the public simply by virtue of it being in the court record. This would diminish access to the courts and undermine public confidence in the judiciary. There may also be an unintended effect of encouraging use of alternative dispute resolution mechanisms, which tend to be essentially private proceedings. If someone believes the courts are not available to help resolve their dispute, there is a risk they will resort to self-help, a response the existence of the courts is intended to minimize because of the societal interest in the peaceful resolution of disputes.

Subsection (a)(9) Makes Most Effective Use of Court and Clerk of Court Staff. This consideration relates to how access is provided rather than whether there is access. Staff time is required to maintain and provide public access to court records. If records are in electronic form, less staff time may be needed to provide public access. However, there can be significant costs to convert records to electronic form in the first place and to maintain them. There may also be added costs for court personnel needed to provide appropriate security for court databases and to prevent hackers from improperly accessing and altering court databases. These additional staff costs may at least partially offset any savings from improvements in workflow or from less use of staff time to respond to records requests. In providing public access the court and clerk should be mindful of doing it in a way that makes most effective use of court and clerk of court staff. Use of staff may also be a relevant consideration in identifying the method for limiting access under section 4.70(a). Note that the *CCJ/COSCA Guidelines* do not require a court to convert records to electronic form, nor to make electronic records available remotely.

The design of electronic databases used by the court is also relevant here. Court records management systems should be designed to improve public access to the court record as well as to improve the productivity of the court's employees and judges and the clerk's office. What is the added cost of providing both? The answer to this involves allocation of scarce resources as well as system design issues. If the public can help themselves to access, especially electronically, less staff time is needed to respond to requests for access. The best options would be to design a system to accommodate access restrictions to certain kinds of information without court staff involvement (see discussion in Commentary to Section 3.20).

Subsection (a)(10) Provides Excellent Customer Service. An access policy should also support excellent customer service while conserving court resources, particular court staff. Having information in electronic form offers more opportunities for easier, less costly access to anyone interested in the

information. This consideration relates to how access is provided rather than whether there is access.

Subsection (a)(11) Does Not Unduly Burden The Ongoing Business Of The Judiciary. Finally, an access policy and its implementation should not unduly burden the court in delivering its fundamental service – resolution of disputes. This consideration relates to how access is provided rather than whether there is access. Depending on the manner of public access, unrestricted public access could impinge on the day-to-day operations of the court. This subsection relates more to requests for bulk access (see section 4.30) or for compiled information (see section 4.40) than to the day-to-day, one at a time requests (see section 1.00, subdivision (a)(9)). Limited public resources and high case volume also suggest that courts should not add to their current information burden by collecting information not needed for immediate judicial decisions, even if the collection of this information facilitates subsequent use of the collected information. Making information available in electronic form, and making it remotely accessible, requires both staff and equipment resources. Courts receive a large volume of documents and other materials daily, and converting them to electronic form may be expensive. As is the case with all public institutions courts have limited resources to perform their work. The interest stated in this subsection attempts to recognize that access is not free, that there may be more than one approach to providing, or restricting access, and some approaches are less burdensome than others.

Access By Whom

Section 2.00 – Who Has Access Under These *CCJ/COSCA Guidelines*

Every member of the public will have the same access to court records as provided in these *CCJ/COSCA Guidelines*, except as provided in section 4.30(b) and 4.40(b).

"Public" includes:

- **(a) any person and any business or non-profit entity, organization or association;**
- **(b) any governmental agency for which there is no existing policy defining the agency's access to court records;**
- **(c) media organizations; and**
- **(d) entities that gather and disseminate information for whatever reason, regardless of whether it is done with the intent of making a profit, and without distinction as to nature or extent of access.**

"Public" does not include:

- **(e) court or clerk of court employees;**
- **(f) people or entities, private or governmental, who assist the court in providing court services;**
- **(g) public agencies whose access to court records is defined by another statute, rule, order or policy; and**
- **(h) the parties to a case or their lawyers regarding access to the court record in their case.**

Commentary

The point of this section is to explicitly state that access is the same for the general public, the media, and the information industry. Access does not depend on who is seeking access, the reason they want the information or what they are doing with it. Although whether there is access does not vary, how access is permitted may vary by type of information (see sections 4.20 to 4.70). The exceptions to equal access referred to (sections 4.30(b) and 4.40(b)) permit requests for greater access by an individual or entity based on specified intended uses of the information.

The section also indicates what groups of people are not subject to the policy, as there are other policies describing their access.

How the equality of access implied in this section is achieved is addressed in section 3.20 and the associated commentary.

Subsection (b) and (g): The *CCJ/COSCA Guidelines* apply to governmental agencies and their staff where there is no existing law specifying access to court records for that agency, for example a health department. Under subsection (g), if there are other applicable access rules, those rules apply.

Subsection (d): This subsection explicitly includes organizations in the information industry, watchdog groups, non-governmental organizations, academic institutions, private investigators, and other organizations sometimes referred to as information providers.

Subsections (e) through (h) identify groups whose authority to access court records is different from that of the public. The concept is that other laws or policies define the access authority for these groups, and these *CCJ/COSCA Guidelines* therefore do not apply.

Subsection (e): Court and clerk of court employees may need greater access than the public does to do their work and therefore work under different access rules. Courts should adopt an internal policy regarding court and clerk of court employee access and use of information in court records, including the need to protect the confidentiality of information in court records. See section 8.30 about the court's obligation to educate its employees about their access policy applicable to the public.

Subsection (f): Employees and subcontractors of entities who provide services to the court or clerk of court, that is, court services that have been "outsourced," may also need greater access to information to do their jobs and therefore operate under a different access policy. See section 7.00 about policies covering staff in entities that are providing services to the court to help the court conduct its business.

Subsection (g): This subsection is intended to cover personnel in other governmental agencies who have a need for information in court records in order to do their work. Generally there is another statute, rule or policy governing their access to court records and these *CCJ/COSCA Guidelines* do not apply to them. An example of this would be an integrated justice system operated on behalf of several justice system agencies where access is governed by internal policies or statutes or rules applicable to all users of the integrated system.

Subsection (h): This subsection continues nearly unrestricted access by litigants and their lawyers to information in their own case, but no higher level of access to information in other cases. Note that the *CCJ/COSCA Guidelines* do not preclude the court from providing different means of access for parties and their attorneys to their own case, for example remote access, which is not provided to the general public. As to cases in which they are not the attorney of record, attorneys would have the same access as any other member of the public.

Access to What

Section 3.00 – Definitions

Section 3.10 – Definition Of Court Record

For purposes of these *CCJ/COSCA Guidelines*:

(a) "Court record" includes:

(1) Any document, information, or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;

(2) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding; and

(3) The following information maintained by the court or clerk of court pertaining to the administration of the court or clerk of court office and not associated with any particular case.

[Include a list of court administrative records and information to be considered part of the court record for purposes of this policy.]

(b) "Court record" does not include:

(1) Other records maintained by the public official who also serves as clerk of court.

[Court should identify and list non-court records, for example: land title records, vital statistics, birth records, naturalization records and voter records];

(2) Information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in section 3.10(a)(1).

Commentary

This section defines the court record broadly. Three categories of information to which the *CCJ/COSCA Guidelines* apply are identified. First are the documents, etc., that constitute what is classically called the case file. The second category is information that is created by the court, some of which becomes part of the court file, but some resides only in documents or databases

that are not in a case file. The third category is information that relates to the operation of the court, but not to a specific case or cases. The definition deals with what is in the record, not whether the information is accessible. Limitations and exclusions to access are provided for in sections 4.50, 4.60, and 4.70.

These *CCJ/COSCA Guidelines* are intended to apply to every court record, regardless of the manner in which it was created, the form(s) in which it is stored, or other form(s) in which the information may exist (see section 4.00).

Subsection (a)(1): This definition is meant to be all inclusive of information that is provided to, or made available to, the court that relates to a judicial proceeding. The term "judicial proceeding" is used because there may not be a court case in every situation. The definition is not limited to information "filed" with the court or "made part of the court record" because some types of information the court needs to make a fully informed decision may not be "filed" or technically part of the court record. The language is, therefore, written to include information delivered to, or "lodged" with, the court, even if it is not "filed." An example is a complaint accompanying a motion to waive the filing fee based on indigency.

The definition is also intended to include exhibits offered in hearings or trials, even if not admitted into evidence. One issue is with the common practice in many courts of returning exhibits to the parties at the conclusion of the trial, particularly if they were not admitted into evidence. These policies will have to be reviewed in light of an access policy. It may be that this practice should be acknowledged in the access policy, indicating that some exhibits may only be available for public access until returned to the parties as provided by court policy and practice.

The definition includes all information used by a court to make its decision, even if an appellate court subsequently rules that the information should not have been considered or was not relevant to the judicial decision made. In order for a court to be held accountable for its decisions all of the information that a court considered and which formed the basis of the court's decision must be accessible to the public.

The language is intended to include within its scope materials that are submitted to the court, but upon which a court did not act because the matter was withdrawn or the case was resolved, for example settled, by the parties. Once relevant material has been submitted to the court, it does not become inaccessible because the court did not, in the end, act on the information in the materials because the parties resolved the issue without a court decision.

Subsection (a)(2): The definition is written to cover any information that relates to a judicial proceeding generated by the court itself, whether through the court administrator's personnel or the clerk's office personnel. This definition

applies to proceedings conducted by temporary judges or referees hearing cases in an official capacity. This includes two categories of information. One category includes documents, such as notices, minutes, orders and judgments, which become part of the court record. The second category includes information that is gathered, generated, or kept for the purpose of managing the court's cases. This information may never be in a document; it may only exist as information in a field of a database such as a case management system, an automated register of actions, or an index of cases or parties.

Another set of items included within the definition is the official record of the proceedings, whether it is notes and transcripts generated by a court reporter of what transpired at a hearing, or an audio or video recording (analog or digital) of the proceeding. In some states the court reporter's notes themselves may not be considered part of the record, but the transcript produced from the reporter's notes may be considered part of the record. In other states, the reporter's notes are owned by the court, whereas the transcripts are owned by the reporter. Whether the electronic version of notes produced by a computer assisted transcription system (CAT system), which does not constitute a verbatim transcript, fall within the definitions also needs to be addressed. A state or individual court considering adoption of an access policy should reconcile this section with applicable law regarding reporter's notes and transcripts or electronic recordings of proceedings.

A state or individual court should also address whether an access policy applies to an audio or video tape of a court proceeding other than the official record. If the state has a rule regarding broadcasting audio or video coverage of trial court proceedings, the access policy needs to specifically include or exclude such tapes in the definition of "court record," or specifically limiting access to them in section 4.60.

Subsection (a)(3): The definition of court record includes some information and records maintained by the court and clerk of court that is related to the management and administration of the court or the clerk's office, as opposed to a specific case. In many states these categories of information have traditionally not been considered part of the court record. Examples of this category of information include: internal court policies, memoranda and correspondence, court budget and fiscal records, and other routinely produced administrative records, memos and reports, and meeting minutes. The Commentary to subsection 4.60(b) discusses restriction of access to drafts and work products related to court administration or clerk's office administration.

The Subsection proposes that the state or individual court adopting a policy identify those documents to be included in the definition of a court record which are subject to the policy being adopted. A state may determine that non-case related administrative records should be governed by a different access

standard than case related information, and therefore not included within this definition.

Subsection (b)(1): This subsection makes it clear that the *CCJ/COSCA Guidelines* apply only to information related to court judicial proceedings. The types of information described are not court records, nor is the court responsible for their collection, maintenance, or accessibility. If the official who also serves as clerk of court has responsibilities for other information and records, for example land records, which do not relate to specific judicial proceedings, these *CCJ/COSCA Guidelines* do not apply to these records. The laws and access policies of the agency responsible for gathering and maintaining the information govern access to such information.

Subsection (b)(2): The definition excludes information gathered, maintained or stored by other agencies or entities that is not necessary to, or is not part of the basis of, a court's decision or the judicial process. Access to this information should be governed by the laws and access policy of the agency collecting and maintaining such information. The ability of a computer in a court or clerk's office to access the information because the computer uses shared software and databases should not, by itself, make the court records access policy applicable to the information. An example of this is information stored in an integrated criminal justice information system where all data is shared by law enforcement, the prosecutor, the court, defense counsel, and probation and corrections departments. The use of a shared system can blur the distinctions between agency records and court records. Under this section, if the information is provided to the court as part of a case or judicial proceeding, the court's access rules then apply, regardless of where the information came from or the access rules of that agency. Conversely, if the information is not made part of the court record, the access policy applicable to the agency collecting the data still applies even if the information is stored in a shared database. In reviewing the applicability of an access policy particular attention should be paid to information about pretrial proceedings, including bail decisions and search warrant requests.

Issues Not Addressed in the CCJ/COSCA Guidelines

Some types of information related to the prosecution of a court case are not covered by these *CCJ/COSCA Guidelines*. This includes information exchanged between the parties as part of the litigation, but not delivered to or filed with the court. For example, information exchanged as part of discovery in states where discovery requests and responses are not filed in the court file. If information such as this is exchanged via the court, but not used by the court, the state or individual court should consider adding a provision to this section to address whether this information becomes accessible by virtue of it having been in the court's possession during the exchange.

Another category of such information is that associated with activity in cases that is not occurring within the judicial sphere. An example of this non-judicial activity would be alternative dispute resolution (ADR) activities, including "private judging," in pending cases that are pursued by the parties with vendors that are independent of the court. Since the information is not delivered to the court, and does not form part of the basis of the court's decision, it does not fall within the definition of this section.

Courts in some states have responsibilities not directly associated with specific disputes. For example, a court may have some obligation to oversee the management of detention facilities. This section does not address information gathered by or presented to the court in fulfilling these types of obligations. If the courts in a state have such obligations, the access policy should indicate whether the information related to these duties are covered by the policy.

The definition in 3.10(a) includes all information that is given to the court, whether or not it is relevant to the court's judicial decision-making process. The issue implicit here that many courts do not now directly address is the exclusion from the record of legally irrelevant material. The court screens the introduction of materials at hearings and trials and generally relies on attorneys to screen materials submitted for filing. However, many cases these days do not involve an attorney for at least one of the parties, particularly in family law. Clerks generally are instructed not to reject materials offered for filing based on the content of the material. As a result there is nothing to prevent someone from making any information accessible to the public by including it in a document filed with the court. The wide scale public access possible with electronic records increases the risk of harm to an individual from disclosure, suggesting this issue be re-visited. The troubling issue is who decides whether something offered into the court record is relevant, and therefore to be accepted.

Another approach to the problem of the introduction of irrelevant material into the court record is to change, create, or expand the consequences for the introduction, or attempted introduction, of such information. One approach to the issue is to focus on the immunity and liability of people who offer materials into the court record as part of litigation. Currently there is quite broad immunity regarding documents "placed in the record." If immunity was more limited, or there was more explicit liability to third parties harmed by placing information into the court record, the record would be less likely to contain extraneous information that might be harmful to any of the interests stated in section 1.00 of these *CCJ/COSCA Guidelines*. A state or individual court considering the adoption of an access policy should review relevant state law and suggest changes that are designed to ensure that the court record contains only legally relevant information. Defining, creating, or expanding such liability is considered beyond the scope of these *CCJ/COSCA Guidelines*.

Section 3.20 – Definition Of Public Access

"Public access" means that the public may inspect and obtain a copy of the information in a court record.

Commentary

This section defines "public access" very broadly. The unrestricted language implies that access is not conditioned on the reason access is requested or on prior permission being granted by the court. Access is defined to include the ability to obtain a copy of the information, not just inspect it. The section does not address the form of the copy, as there are numerous forms the copy could take, and more will probably become possible as technology continues to evolve.

At a minimum inspection of the court record can be done at the courthouse where the record is maintained. It can also be done in any other manner determined by the court that makes most effective use of court staff, provides quality customer service and is least disruptive to the operations of the court—that is, consistent with the principles and interests specified in section 1.00. The inspection can be of the physical record or an electronic version of the court record. Access may be over the counter, by fax, by regular mail, by e-mail or by courier. The section does not preclude the court from making inspection possible via electronic means at other sites, or remotely. It also permits a court to satisfy the request to inspect by providing a printed report, computer disk, tape or other storage medium containing the information requested from the court record. The issue of the cost, if any, that must be paid before obtaining a copy is addressed in section 6.00.

The section implies an equality of the ability to "inspect and obtain a copy" across the public. Implementing this equality will require the court to address several sources of inequality of access. Some people have physical impairments that prevent them from using the form of access available to most of the public. The Americans with Disabilities Act may require the court or clerk to provide information in a form that is usable to someone with a disability. Another problem has to do with the existence of a 'digital divide' regarding access to information in electronic form. The court should provide equivalent access to those who do not have the necessary electronic equipment to obtain access. Finally, there is the issue of the format of electronic information and whether it is equally accessible to all computer platforms and operating systems. The court should make electronic information equally available, regardless of the computer used to access the information (in other words, in a manner that is hardware and software independent).

Another aspect of access is the need to redact restricted information in documents before allowing access to the balance of the document (see section

4.70(a) and associated commentary). In some circumstances this may be a quite costly. Lack of, or insufficient, resources may present the court with an awkward choice of deciding between funding normal operations and funding activities related to access to court records. As technology improves it is becoming easier to develop software that allows redaction of pieces of information in documents in electronic form based on “tags” (such as XML tags) accompanying the information. When software to include such tags in documents becomes available and court systems acquire the capability to use the tags, redaction will become more feasible, allowing the balance of a document to be accessible with little effort on the part of the court.

Section 3.30 – Definition Of Remote Access

"Remote access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.

Commentary

The objective of defining this term is to describe a means of access that is technology neutral that is used in the *CCJ/COSCA Guidelines* to distinguish means of access for different types of information. The term is used in section 4.20 regarding information that should be remotely accessible. The key elements are that: 1) the access is electronic, 2) the electronic form of the access allows searching of records, as well as viewing and making an electronic copy of the information, 3) a person is not required to visit the courthouse to access the record, and 4) no assistance of court or clerk of court staff is needed to gain access (other than staff maintaining the information technology systems).

This definition provides a term to be used in the policy that is independent of any particular technology or means of access, for example, the Internet or a dial-up system such as the federal court's PACER system.[1] Remote access may be accomplished electronically by any one or more of a number of existing technologies, including dedicated terminal, kiosk, dial-in service, or Internet site. Attaching electronic copies of information to e-mails, and mailing or faxing copies of documents in response to a letter or phone request for information would not constitute remote access under this definition.

[1] PACER (Public Access to Court Electronic Records) is the automated case management information system used by the federal courts to provide information about court cases that can be accessed remotely by a subscriber.

Section 3.40 – Definition Of In Electronic Form

Information in a court record "in electronic form" includes information that exists as:

- **(a) electronic representations of text or graphic documents;**
- **(b) an electronic image, including a video image, of a document, exhibit or other thing;**
- **(c) data in the fields or files of an electronic database; or**
- **(d) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.**

Commentary

The breadth of this definition makes clear that the *CCJ/COSCA Guidelines* apply to information that is available in any type of electronic form. The point of this section is to define what "in electronic form" means, not to define whether electronic information can be accessed or how it is accessed.

Subsection (a): This subsection refers to electronic versions of textual documents (for example documents produced on a word processor, or stored in some other text format such as PDF format), and pictures, charts, or other graphical representations of information (for example, graphics files, spreadsheet files, etc.).

Subsection (b): A document might be electronically available as an image of a paper document produced by scanning, or another imaging technique (but not filming or microfilming). This document can be viewed on a screen and it appears as a readable document, but it is not searchable without the aid of OCR (optical character recognition) applications that translate the image into a searchable text format. An electronic image may also be one produced of a document or other object through the use of a digital camera, for example in a courtroom as part of an evidence presentation system.

Subsection (c): Courts are increasingly using case management systems, data warehouses or similar tools to maintain data about cases and court activities. The *CCJ/COSCA Guidelines* apply equally to this information even though it is not produced or available in paper format unless a report containing the information is generated. This section, as well as subsection (a), would also cover files created for, and transmitted through, an electronic filing system for court documents.

Subsection (d): Evidence can be in the form of audio or videotapes of testimony or events. In addition audio and video recording (ER - electronic recording) and computer-aided transcription systems (CAT) using court reporters are increasingly being used to capture the verbatim record of court hearings and

trials. In the future real-time video streaming of trials or other proceedings is a possibility. Because this information is in electronic form, it would fall within this definition and the *CCJ/COSCA Guidelines* would apply to it as well. As noted in the commentary to section 3.10(a)(2) there may be laws or rules governing ownership of, and access to, court reporter notes, in paper or in electronic form as captured by a CAT system, or to electronic, audio or digital, recordings of proceedings with which a court's access polices must be consistent, including any fees for copies (see section 6.00).

Issues Not Addressed in the CCJ/COSCA Guidelines

The section makes no statement about whether the information in electronic form is the official record, as opposed to, or in addition to, the information in paper form. A state or individual court considering adoption of an access policy might consider whether there is a need to declare which form or are deemed official.

Section 4.00 – Applicability of Rule

These *CCJ/COSCA Guidelines* apply to all court records, regardless of the physical form of the court record, the method of recording the information in the court record or the method of storage of the information in the court record.

Commentary

The objective of this section is to make it clear that the *CCJ/COSCA Guidelines* apply to information in the court record regardless of the form in which the information was created or submitted to the court, the means of gathering, storing or presenting the information, or the form in which it is maintained. Section 3.10 defines what is considered to be part of the court record. However, the materials that are contained in the court record come from a variety of sources. The materials are offered and kept in a variety of forms. Information in electronic form exists in a variety of formats and databases and can be accessed by a variety of software programs. To support the general principle of open access, the application of the policy must be independent of technology, format and software and, instead, focus on the information itself.

Overview of Section 4.00 Provisions

Three categories of information accessibility are created in the following sections of the *CCJ/COSCA Guidelines*. The first reflects the general principle that information in court records is generally presumed to be accessible (section 4.10). Second, there is a section that indicates what information should be accessible remotely (section 4.20). Following these provisions are sections on bulk release of electronic information (section 4.30) and release of compiled information (section 4.40). A fifth category addresses information that will be available only at the courthouse, and not remotely (section 4.50). A sixth category identifies information prohibited from public access because of overriding privacy or other interests (section 4.60). Finally, having defined what information is accessible and not accessible, there is a section that indicates how to request the prohibition of access to information generally accessible, and how to gain access to information to which public access is prohibited (section 4.70).

Section 4.10 – General Access Rule

(a) Information in the court record is accessible to the public except as prohibited by section 4.60 or section 4.70(a).

(b) There shall be a publicly accessible indication of the existence of information in a court record to which access has been prohibited, which indication shall not disclose the nature of the information protected.

Commentary

Subsection (a) states the general premise that information in the court record will be publicly accessible unless access is specifically prohibited. There are two exceptions noted. One exception is information in the court record that is specifically excluded from public access by section 4.60. The second exception provides for those individual situations where the court orders a part of the record to be restricted from access pursuant to the procedure set forth in section 4.70(a).

The provision does not require any particular level of access, nor does it require a court to provide access in any particular form, for example, publishing court records in electronic form on a web site or dial-in database. (See section 4.20 on information that a court should make available remotely.)

The provision, by omission, reiterates the concept noted in the commentary to section 2.00 that access is not conditioned on proper use, nor is the burden on requestors to show they are entitled to access.

Subsection (b) provides a way for the public to know that information exists even though public access to the information itself is prohibited. This allows a member of the public to request access to the restricted record under section 4.70(b), which they would not know to do if the existence of the restricted information was not known. Making the existence of restricted information known enhances the accountability of the court. Hiding the existence of information not only reduces accountability, it also erodes public trust and confidence in the judiciary when the existence of the information becomes known.

In addition to disclosing the existence of information that is not available, there is also a value in indicating how much information is being withheld. For many redactions this could be as simple as using “placeholders,” such as gray boxes, when characters or numbers are redacted, or indicating how many pages have been excluded if part or all of a document is not accessible. Providing this level of detail about the information contributes to the transparency and credibility of the restriction process and rules.

There are two situations where this policy presents a dilemma. One is where access is restricted to an entire document and the other concerns a case where the entire file is ordered sealed. This section requires the existence of the sealed document or file to be public. The problem arises where the disclosing of the existence of a document or case involving a particular person, as opposed to some of the information in the court record, reveals the very information the restriction order seeks to protect. One example would be the title of a document in a register of actions which describes the type or nature of the information to which access restrictions is being sought. These problems can be avoided, to some extent, by using a more generic description in the caption of a document, or using initials, a pseudonym, or some other unique identifier instead of the parties full or real name.

This section requires disclosure of the existence of sealed information in the interest of a more open judicial record. A state or individual court considering adoption of an access policy may decide to allow a court, using the procedures provided in section 4.70, to decide that even the existence of the information not be made public. This could be readily done by adding an exception clause to the end of this subsection, and specifically allowing the court to restrict access to the existence of information in section 4.70(a).

There may be technical issues in implementing this provision. Some automated case management systems now being used by courts may not have the ability to indicate the existence of information without providing some of the very information that is not to be publicly accessible. For example, it may not be possible to indicate that there is a document to which access is restricted without providing too much information about what type of document it is, or what it is about. Other systems may be designed not to indicate the existence of a document that has been sealed, or the existence of a case that has been sealed. It may be possible in some systems to add codes for a document or case to which access is restricted. While it may be possible to modify these old systems, it may not be cost effective to do so. Rather, the court might have to wait for a new system that includes these capabilities.

The *CCJ/COSCA Guidelines* are drafted for consideration by a state for the state's judiciary, or by an individual court if the state does not adopt a uniform statewide policy. If a state adopts a policy, in the interest of statewide uniformity the state should consider adding a subsection such as the following to prevent local courts from adopting different policies:

> "**(c) A local court may not adopt a more restrictive access policy or otherwise restrict access beyond that provided for in this policy, nor provide greater access than that provided for in this policy**."

This not only promotes consistency and predictability across courts, it also furthers equal access to courts and court records.

Issues Not Addressed in the CCJ/COSCA Guidelines

Many states have provisions, generally in criminal cases, where a party can request that a case, record or conviction be made to effectively 'disappear' from the court's records. Examples include expungements, 'adjournment in contemplation of dismissal,' or 'continuance for dismissal' and the 'sealing' or modification of certain types of convictions. Another example is the reduction of a felony conviction to a misdemeanor conviction after successful completion of probation. This type of change to the historical record becomes very problematic if the record being changed was available in electronic form at some point prior to any change. If these types of proceedings are to be retained, the access policy must somehow provide for equivalent protection regarding the electronic and paper records.

The section does not address situations where documents or other parts of the court record are publicly accessible for only a fixed period of time, pursuant to some policy decision embodied in a statute or rule. Examples include: 1) a presentence report in a criminal case that is only publicly accessible for a fixed period of time, after which the report is sealed and not available except by court order, and 2) a criminal case that is sealed pending the defendants successfully completion of a diversion program. A state or individual court adopting an access policy might consider adding a provision that prevents such information from continuing to be publicly available in electronic form when it is no longer available in paper form.

Some states have statutes or rules that provide for short records retention periods for some types of court records, at which time the paper record is to be destroyed. For example, traffic citations are to be destroyed after one year. In order to prevent the electronic record from being out of sync with the paper record, these retention period policies should be reviewed and, possibly revised. If the objective of the short retention policy was simply to eliminate paper in the clerk's office, the court should consider changing the retention policy, at least for electronic versions of the information. If, however, the short retention period also has an objective of clearing people's records of past violations, maintaining an electronic record after the paper record has been destroyed circumvents the policy. If access to the electronic record has existed while the paper record existed, it is impossible to ensure destruction of all copies of the electronic record that have been obtained by, or delivered to, third parties beyond the court's control. Several approaches are possible. One is to have a policy that the electronic record not be accessible to the public for such records. Alternatively, no electronic version of the record would be made in the first place.

These *CCJ/COSCA Guidelines* are also silent about keeping track of, or logging, who requests to see which court records. Most courts require some form of identification when a physical file is "checked out" from the file room for examination within the courthouse. Most courts do not keep this information once the file is returned. States or individual courts considering some form of logging of user's access need to balance the practical inconvenience, intrusiveness and chilling effect of logging against the potential uses of logs. Maintaining a record of who has accessed information can have a chilling effect on access. Logs of access should also not be used as a basis for denying access. Who has access to such logs also becomes an issue that needs to be addressed. There are good reasons for maintaining logs of requestors, at least for certain types of information. For example, in a case of stalking it would be useful to know who accessed court information that may have aided the stalker in finding the victim. Logging is necessary to keep track of corrections of erroneous information that has been included in the court record, and for collecting fees, for example for a request for a printed copy of information in a court record. If a state or individual court decides to log access requests, they should inform requestors of the logging activity.

Section 4.20 – Court Records In Electronic Form Presumptively Subject to Remote Access by the Public

The following information in court records should be made remotely accessible to the public if it exists in electronic form, unless public access is restricted pursuant to sections 4.50, 4.60 or 4.70(a):

- **(a) Litigant/party indexes to cases filed with the court;**
- **(b) Listings of new case filings, including the names of the parties;**
- **(c) Register of actions showing what documents have been filed in a case;**
- **(d) Calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing;**
- **(e) Judgments, orders, or decrees in a case and liens affecting title to real property.**

Commentary

Several types of information in court records have traditionally been given wider public distribution than merely making them publicly accessible at the courthouse. Typical examples are listed in this section. Often this information is regularly published in newspapers, particularly legal papers. Many of the first automated case management systems included a capability to make this information available electronically, at least on computer terminals in the courthouse, or through dial-up connections. Similarly, courts have long prepared registers of actions that indicate for each case what documents or other materials have been filed in the case. Again, early case management systems often automated this function. The summary or general nature of the information is such that there is little risk of harm to an individual or unwarranted invasion of privacy or proprietary business interests. This section of the *CCJ/COSCA Guidelines* acknowledges and encourages this public distribution practice by making these records presumptively accessible remotely, particularly if they are in electronic form. When a court begins to make information available remotely, they are encouraged to start with the categories of information identified in this list.

While not every court, or every automated system, is capable of providing this type of access, courts are encouraged to develop the capability to do so. The listing of information that should be made remotely available in no way is intended to imply that other information should not be made remotely available. Some court's automated systems may also make more information available remotely to litigants and their lawyers than is available to the public, but this is outside the scope of this policy (see section 2.00(h)).

Making certain types of information remotely accessible allows the court to make cost effective use of public resources provided for its operation. If the information is not available, someone requesting the information will have to call the court or come down to the courthouse and request the information. Public resources will be consumed with court staff locating case files containing the record or information, providing it to the requestor, and returning the case file to the shelf. If the requestor can obtain the information remotely, without involvement of court staff, there will be less use of court resources.

In implementing this section a court should be mindful about what specific pieces of information are appropriately remotely accessible. Care should be taken that the release of information is consistent with all provisions of the access policy, especially regarding personal identification information. For example, the information remotely accessible should not include information presumptively excluded from public access pursuant to section 4.60, prohibited from public access by court order pursuant to 4.70(a), or not available remotely pursuant to 4.50. An example of calendar information that may not by accessible by law is that relating to juvenile cases, adoptions, and mental health cases (see commentary associated with section 4.60(b)).

Subsection (e): One role of the judiciary, in resolving disputes, is to state the respective rights, obligations and interests of the parties to the dispute. This declaration of rights, obligations and interests usually is in the form of a judgment or other type of final order. Judgments or final orders have often had greater public accessibility by a statutory requirement that they be recorded in a "judgment roll" or some similar practice. One reason this is done is to simplify public access by placing all such information in one place, rather than making someone step through numerous individual case files to find them. Recognizing such practices, the policy specifically encourages this information to be remotely accessible if in electronic form.

There are circumstances where information about charges and convictions in criminal cases can change over time, which could mean copies of such listings derived from court records can become inaccurate unless updated. For example, a defendant may be charged with a felony, but the charge may be dismissed, or modified or reduced to a misdemeanor when the case is concluded. In other circumstances a felony conviction may be reduced to a misdemeanor conviction if the defendant successfully completes probation. These types of circumstances suggests that there be a disclaimer associated with such information, and that education about these possibilities be provided to litigants and the public.

Section 4.30 – Requests for Bulk Distribution of Court Records

Bulk distribution is defined as the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation.

(a) Bulk distribution of information in the court record is permitted for court records that are publicly accessible under section 4.10.

(b) A request for bulk distribution of information not publicly accessible can be made to the court for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. Prior to the release of information pursuant to this subsection the requestor must comply with the provisions of section 4.40(c).

Commentary

This section addresses requests for large volumes of information in court records, as opposed to requesting information from a particular case or reformulated information from several cases (see section 4.40). The section authorizes bulk distribution for information that is publicly accessible. It also sets out a method of requesting bulk distribution of information to which public access is restricted.

There are advantages to allowing bulk access to court records. Allowing the public to obtain information from court records from a third party may reduce the number of requests to the court for the records. Fewer requests mean less court staff resources devoted to answering inquiries and requests.

However, there are costs associated with making the records available. There may also be technology, as well as cost, issues in providing bulk distribution of information. For example, a court's systems may not be able to identify and separate publicly accessible information from restricted information in creating a copy of information for bulk distribution. Permitting bulk distribution of information in this circumstance assumes providing the data will not interfere with the normal operations of the court. There is also the 'cost' of reduced public confidence in the judiciary from the existence of inaccurate, stale or incorrectly linked information available through third parties but derived from court records.

In allowing bulk data to be disseminated a court should be mindful not to gather information that it does not need to fulfill its judicial role, even if those requesting bulk information are interested in obtaining this information.

Subsection (a). Bulk transfer is allowed for information that is publicly accessible under these *CCJ/COSCA Guidelines*. There is no constitutional or other basis for providing greater access to bulk requestors than to the public generally, and this section implies there should be no less access.

Consistent with section 3.20, public access, including bulk access, is not dependent upon the reason the access is sought or the proposed use of the data. Court information provided through bulk distribution can be combined with information from other sources. Information from court records may be linked with other information and may be used for purposes that are unrelated to why the information was provided to the court in the first place.

Many states that have considered the bulk data issue for information in electronic form have adopted access policies that only allow case-by-case access, one case at a time, and no bulk distribution, even of otherwise publicly accessible information. However, existing technology and software, using repeated queries and "screen scraping," can accomplish bulk distribution from 'one-case-at-a-time' systems fairly rapidly. The *CCJ/COSCA Guidelines*, therefore, explicitly provides for bulk distribution in recognition of this potential.

It is significant to note that transferring information in the court record into databases that are then beyond the court's control creates the very real likelihood that the information will, over time, become incomplete, inaccurate, stale or contain information that has been removed from the court's records. Keeping information distributed in bulk current may require the court to provide "refreshed" information on a frequent, regular and periodic basis. This may raise issues of availability of court resources to do this. Although creating liability or penalties on the third party information provider (something beyond the scope of these *CCJ/COSCA Guidelines*) might reduce the risk of stale or incorrect information being distributed, meeting this standard still requires the court to provide updated and new information on a frequent basis.

A particular problem with bulk distribution of criminal conviction information has to do with expungement policies. If the intent of an expungement policy is to "erase" a conviction, the public policy may be impossible to implement if the information is already in another database as a result of a bulk transfer of the information. An approach needs to be devised that accommodates expungement and bulk distribution.

Potential mass access to electronic court information further highlights the question of the accuracy of the court's records. This is particularly important for databases created by court or clerk of court employees. The potential for bulk distribution of the information in a court database will require courts and clerks to be even more vigilant about both the accuracy of their databases and the timeliness of entering information into them. Policies relating to the internal

practices of the court and clerk regarding data entry quality and accuracy are beyond the scope of this access policy.

A counter-intuitive aspect of bulk data release has to do with the linking of the information from court records with information from other sources. In order to correctly link court information with information from other sources, the information vendor must have pieces of information that allow accurate matching of court information about someone or an entity with information from other sources. This type of personal identifier information is often the most sensitive in terms of privacy. If a court were interested in minimizing the risk of bulk data it provides being incorrectly linked to information from other sources, it might provide more personal identifier information, not less, in those situations where linking is contemplated. However, courts should not be gathering information it does not need for judicial purposes. Generally, court records do not contain key linking information, for example birth dates or social security numbers, for individuals.

As noted many states that have considered the bulk data issue have adopted access policies that only allow access to one case at a time, and no bulk data access. This reduces the likelihood of "stale" information existing in databases because a query directed to the court's database, one at a time, will be searching more current court data than a query to a database consisting of a bulk download of court information that may not be current, depending upon when the data was transferred or last updated. Not providing bulk distribution also eliminates the need to establish mechanisms to provide frequent and regular updates. If a state or individual court adopts a bulk access policy more restrictive than that in these *CCJ/COSCA Guidelines*, it might consider different bulk access rules for different types of information. For example, bulk access might be allowed for indexes, but not for the contents of the case management system or for electronic versions or images of documents filed in cases.

Subsection (b). Subsection (b) provides a process for obtaining bulk data for information not publicly accessible. One reason court records are publicly accessible is to allow the public to monitor the performance of the judiciary. One method of monitoring performance is to examine the information in a set of cases to see whether the court's decisions across cases are consistent, predictable, fair and just. This sort of examination requires access to all information considered by the court in making its decision, as it is difficult to say ahead of time that any piece or category of information is not relevant and therefore should not be made available. This section states that the request for bulk access should be made to the court, i.e., allowing bulk access is a judiciary decision. A state or individual court that adopts an access policy should provide more detail about where and to whom a request should be delivered, who makes the decision on the request, and what the legal standard is for granting or denying the request..

Subsection (b) includes the term "journalistic." This term is not defined in these *CCJ/COSCA Guidelines*. A state or individual court adopting an access rule should consider addressing this issue. Given the ease of "publishing" information on the Internet, the term may have broad application. However, any concern may be diminished by the reference to section 4.40(c) regarding use of the information, and protections provided for individual identifying information.

Issues Not Addressed in the CCJ/COSCA Guidelines

One issue not addressed in this section is what can be done to keep the information released in bulk in sync with the information in the court's record. One option would be to make the requestor receiving information by bulk distribution responsible for the currency and accuracy of any information before making it accessible to clients or the public. Alternatively, the information provider could be required to inform the clients or public of the limitations of the data. Another option would be for courts to refuse to continue supplying bulk data to a certain organization, or on a certain subject, if abuses occur regarding maintenance of accuracy or currency.

Conversely, the court could 'certify' entities or individuals to receive bulk data based on compliance with certain practices that improved the accuracy and currency of the information they receive and the accuracy of linking the information with information from other sources. Certification might be limited to entities subject to regulation, for instance under the Fair Credit Reporting Act[2], at the federal or state level.

The *CCJ/COSCA Guidelines* do not address the need for, or extent of, regulation of those obtaining bulk data who, in turn, provide information from court records to others. There are federal laws[3] regulating some information providers, and states may have some laws. Another approach to preventing misuse of information in court records would be through regulation of information providers who are given information from court records.

An alternative approach would be to strengthen or establish liability on the part of the information provider for errors or omissions in the information, or for disseminating information that is no longer publicly available from the court. Having obtained the information from the government would not be a defense. However, analyzing and proposing language for this sort of liability is beyond the scope of these *CCJ/COSCA Guidelines*.

Another concern with release of bulk data is the extent to which the electronic records are an atypical subset of data from all court records. The skewing arises from what is available in electronic form, versus paper form. As electronic versions of information start to become available, it generally is only in

[2] Fair Credit Reporting Act, 15 USC §§ 1681 et seq.
[3] For example the Fair Credit Reporting Act, 15 USC §§ 1681 et seq.

complex cases or a certain class of cases. Bulk data consisting of only electronic records may, therefore, not be representative of all cases. Skewing could also be due to the fact that very little information prior to a certain date is available in electronic form. If scanning or other conversion into electronic form is not done for historical records, then the electronic record may only be the recent cases or only the newer information in older cases, depending upon how a court implements the conversion of records to electronic form.

Another consideration related to the nature of bulk release is that a "dump" of the information in electronic form creates a snapshot of the information, whereas the database from which the information is extracted is dynamic, constantly changing and growing.

Section 4.40 – Access to Compiled Information From Court Records

(a) Compiled information is defined as information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record.

(b) Any member of the public may request compiled information that consists solely of information that is publicly accessible and that is not already available pursuant to section 4.20 or in an existing report. The court may compile and provide the information if it determines, in its discretion, that providing the information meets criteria established by the court, that the resources are available to compile the information and that it is an appropriate use of public resources. The court may delegate to its staff or the clerk of court the authority to make the initial determination as to whether to provide compiled information.

(c) (1) Compiled information that includes information to which public access has been restricted may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes.

(2) The request shall:

(i) identify what information is sought ,

(ii) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and

(iii) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

(3) The court may grant the request and compile the information if it determines that doing so meets criteria established by the court and is consistent with the purposes of the access policy, the resources are available to compile the information, and that it is an appropriate use of public resources.

(4) If the request is granted, the court may require the requestor to sign a declaration that:

(i) The data will not be sold or otherwise distributed, directly or indirectly, to third parties, except for journalistic purposes,

(ii) The information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes, and

(iii) There will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.

The court may make such additional orders as may be needed to protect information to which access has been restricted or prohibited.

Commentary

This section authorizes access to compiled information. The section describes how the compiled information is requested, the requirements for obtaining compiled information, and possible limitations on using the information.

The primary interests served by release of compiled information are supporting the role of the judiciary, promoting the accountability of the judiciary, and providing public education regarding the judiciary. Compiled data allows analysis and comparison of court decisions across cases, across judges and across courts. This information can also educate the public about the judicial process. It can provide guidance to individuals in the conduct of their everyday life and business. Although some judges may have legitimate concerns about misuse of compiled data, for example in comparing the decisions of judges, such an analysis is one approach to monitoring the performance of the judiciary.

Compiled data also allows the study of the effectiveness of the judiciary and the laws enforced in courts. For example, the studies of delay reduction leading to improved case management and faster case processing times were based on analysis of compiled data from thousands of cases in over a hundred courts across the country.

In allowing compiled data to be disseminated a court should be mindful not to gather information that it does not need to fulfill its judicial role, even if those requesting compiled information are interested in obtaining this information.

Subsection (a) provides a definition of compiled information. Compiled information is different from case-by-case access because it involves information from more than one case. Compiled information is different from bulk access in that it involves only some of the information from some cases and the information has been reformulated or aggregated; it is not just a copy of all the information in the court's records. Essentially compiled information involves the creation of a new court record. In order to provide compiled information a court generally must write a computer program to select the specific cases or information sought in the request, or otherwise use court resources to identify, gather, and copy the information.

Generating compiled data may require court resources and generating the compiled information may compete with the normal operations of the court for resources, which may be a reason for the court not to compile the information. It may be less costly for the court and less of an impact on the court to, instead, provide bulk distribution of the requested information pursuant to section 4.30, and let the requestor, rather than the court, compile the information.

Subsection (b) addresses requests for information that is publicly available. Since public resources are used in responding to the request, the question for the court is whether responding meets criteria established by the court for providing such information, whether the expenditure of public resources is appropriate, and whether the court will choose to expend available resources on the request. Before adapting such a policy, a state or individual court should identify what criteria and legal standard a requestor must meet before compiled information will be provided. A fee, if any, for providing the compiled information would be covered by section 6.00.

The reference in section 4.40(b) to section 4.20 and existing reports is intended to limit the section's application to requests for compiled data that are not already routinely prepared and made public. Party name indices, or a screen that reports the results of a name search of either civil or criminal cases, are examples of compiled information that already exist.

Section 4.40(c) addresses requests for information that is not publicly accessible. Since the information is not publicly accessible, the subsection is concerned about the purpose for requesting the information (subdivision (1)) and the court must consider more factors than whether resources are available and appropriately spent on compiling the information (subdivisions (2) and (3)). If the request is granted, subdivision (4) provides for protections of the restricted information.

Section 4.40(c) includes the term "journalistic." This term is not defined in the *CCJ/COSCA Guidelines*. A state or individual court adopting an access rule should consider addressing this issue. Given the ease of "publishing" information on the Internet, the term may have broad application. However, any concern

may be diminished by the balance of the subdivision provisions regarding use of the information and protections provided for personal identifier information.

The exception for "journalistic purposes" in subdivisions 4.40(c)(4) is included as a recognition that what journalism sells is information, and prohibiting a journalist from selling the information may defeat the purpose of providing the information to the journalist in the first place.

Subdivision 4.40(c)(4) identifies provisions for preventing improper disclosure of restricted or prohibited information. A state or individual court's policy might also consider a requirement of a nondisclosure agreement that includes injunctive relief and indemnities for improper disclosure. In order to get a court order releasing the information the appropriate nondisclosure agreement must be signed by the requestor. A state or individual court should also review what penalties, if any, are available for unauthorized disclosure, including contempt, under existing law. Note that there may be federal restrictions on release of personal information applicable to an entity requesting the data (see discussion in Commentary regarding "Research Involving Human Subjects" in 4.60(a).

One concern with the distribution of compiled data is the interpretation of the data. Analysis of the data without a full understanding of the meaning of the data elements or codes used, or without a full understanding the limitations of the data, can result in conclusions not substantiated by the data. To some extent this can be addressed by explanatory information provided with the transmittal of the compiled information. There are two issues here. One is the courts may not be asked to help recipients of compiled data understand and verify the data. The other issue is enforcement of restrictions on the use or dissemination of information provided. One option is for courts to refuse to continue supplying compiled data to a certain organization, or on a certain subject, if abuses occur. Another option is to create, or strengthen, penalties for the release of information to which access is restricted under these *CCJ/COSCA Guidelines*.

Another concern with release of compiled data in electronic form is the extent to which the electronic records are an atypical subset of data from all court records. The skewing arises from what is available in electronic form, versus paper form. As electronic versions of information became more available, it is generally only in complex cases or a certain class of cases. Compiled data from the electronic record may, therefore, not be representative of all cases. Skewing could also be due to the fact that very little information prior to a certain date is available in electronic form. If historical records are not scanned or otherwise converted into electronic form, the electronic records will only be recent cases or newer information in older cases. There are no obvious ways to avoid this problem, assuming the cost of producing electronic versions of all existing records is prohibitive.

Another consideration in the release of compiled information is that the extracted set of information is a snapshot of the information, whereas the database from which the information is extracted is dynamic, constantly changing and growing.

Section 4.50 – Court Records That Are Only Publicly Accessible At A Court Facility

(a) The following information in a court record will be publicly accessible only at a court facility in the jurisdiction, unless access is prohibited pursuant to section 4.60 or 4.70(a).

[Include a list of information available only at a court facility here.]

(b) A request to limit public access to information in a court record to a court facility in the jurisdiction may be made by any party to a case, an individual identified in the court record, or on the court's own motion. For good cause the court will limit the manner of public access. In limiting the manner of access the court will use the least restrictive means that achieves the purposes of the access policy and the needs of the requestor.

Commentary

This section defines another category of access to information. Section 4.10 states the basic presumption that records are publicly accessible. Section 4.60 identifies limited sets of information to which public access is prohibited. The objective of this section is to suggest that some information in the court record be available only at a court facility, not remotely. The access at the court facility may be electronic, through a terminal or kiosk connected to the court's database, or to the physical case file itself or a printout of information that exists only in electronic form. The limitation is to the manner of access, not whether there is access. It is anticipated that the categories of information to which access will be limited in this manner are not extensive. Some representatives of the media on the Advisory Committee were opposed to any type of tiered access approach, such as that outlined in this section.

The limitation of manner of access is one way of reducing the risk of negative impacts from public accessibility, such as injury to an individual, while maintaining traditional public access at the courthouse. There are alternatives means of achieving these protections. One alternative is to allow remote electronic access only through a subscription service (discussed further below). Another alternative adopted by several states is to limit remote, electronic access to one case at a time. All information remains available at the courthouse, but it can be accessed through the electronic case management system only by a requestor specifying which case they want to see, that is, access is on a case-by-case basis.

Section 4.50(a). If a court is considering making information in court records available electronically and remotely, for example on-line through a web site, they should consider whether some categories of information might, instead, only be accessible at a court facility within the jurisdiction. The following categories of information have been identified by the Advisory Committee or by commentors as candidates for being available only at a court facility. Often there was considerable disagreement among the Committee members about whether categories should be on the list, or whether limiting language should be added to some of the categories. Rather than including categories of items on a list as is contemplated by this section, several members of the Advisory Committee thought limitations on access to the items should, instead, only be considered on a case-by-case basis, to limit access under a provision like 4.50(b) or to prohibit access under section 4.70(a).

- Addresses, phone numbers and other contact information for victims (not including defendants) in domestic violence, stalking, sexual assault, and civil protection order proceedings;
- Addresses, phone numbers and other contact information for victims in criminal cases;
- Addresses, phone numbers and other contact information for witnesses (other than law enforcement witnesses) in criminal, domestic violence, sexual assault, stalking, and civil protection order cases;
- Social security numbers;
- Account numbers of specific assets, liabilities, accounts, credit cards, and PINs (Personal Identification Numbers);
- Photographs of involuntary nudity;
- Photographs of victims and witnesses involved in certain kinds of actions;
- Obscene photographs and other materials;
- Medical records;
- Family law proceedings including dissolution, child support, custody, visitation, adoption, domestic violence, and paternity, except final judgments and orders;
- Termination of parental rights proceedings;
- Abuse and neglect proceedings where access is not prohibited under section 4.60; and
- Names of minor children in certain types of actions.

All publicly accessible information would continue to be available at the courthouse. The phrase “at a court facility in the jurisdiction” is used in recognition that some jurisdictions have more than one courthouse and access could be at any courthouse within the jurisdiction. Restricting access to a court facility in a jurisdiction is problematic where the database is a statewide database used by all courts, or the database and software are shared over a statewide intranet. A state adopting an access policy may need to accommodate this section to the database system in use in the state. A state may also decide not

to limit the access to the courthouse within a jurisdiction, but allow access at any courthouse in the state.

The cross-reference to sections 4.60 and 4.70(a) makes it clear that this section does not imply that information to which access is prohibited pursuant to 4.60 or 4.70(a) would be publicly accessible at a court facility.

The approach proposed may be difficult to implement. To the extent it requires the court or clerk of court staff to look at each piece of information to decide whether it can be available remotely, it imposes added burdens on staff. "Reading" a document to determine whether it contains information on the list is unrealistic, suggesting sometimes access to documents will be limited because they contain such information, rather than attempting to redact the information. The burden is reduced to the extent the categories are straightforward in application, or if the parties indicate to the court that certain information fits into one of the categories. For example, the parties could be asked to complete a form with each filing indicating whether any information in the submission fits into one of the categories of this section. Advances in technology, for example using XML tagging, would greatly facilitate the implementation of this rule.

Another aspect of this approach is the inconvenience to some individuals who regularly access court records. For example, attorneys would be required to go to the courthouse to get this type of information even if it is in a neighboring jurisdiction, or across the state. While allowing electronic access would be more convenient, the convenience increases the risk of harm this section attempts to minimize.

It should be noted that this section would not prevent the information from being available in an electronic database operated by someone other than the court. If the information is publicly available in the courthouse, there is nothing to stop someone from coming to the courthouse, making notes of the information and entering it into an electronic database available remotely to anyone with access to the private database.

A policy that requires someone to physically go to the courthouse to obtain information is arguably creating unequal access, as compared to information that is remotely accessible. A counter-argument would be that there is no change to current access for the information, only expanded access for some types of information.

Alternative Approach – Remote Access by Subscription: An alternative to limiting access to the court facility for some categories of information is to allow remote electronic access to any publicly available information only to those who subscribe to such access. The subscription service would be available to any person or entity who signs up for the service by agreeing to abide by the conditions of the service agreement, and, possibly, paying a subscription fee. A

password would be required for a subscriber to obtain access, allowing a level of accountability for access, and permitting some controls in the event of abuse. The only information that could be remotely available without a subscription would be that provided for in section 4.20. With the subscription service there could be no identification or segregation of information in court records that ought not to be remotely available; everything not restricted by 4.60 or 4.70(a) could be available remotely to subscribers.

As technology advances, increasing the courts' ability to screen information in documents, or when a court determines that there is little risk of injury from posting certain categories of documents, then these categories of information could move from access only through the subscription service to broader remote public access under 4.20.

This alternative would provide greater protection of privacy rights and interest only to the extent the requirement of becoming a subscriber deters access. At the same time it would more conveniently make available information to regular users such as lawyers (for cases in which they are not attorney of record), credit bureaus, the media, etc. There can be no absolute guarantee that by requiring a person to become a subscriber the person won't be able to acquire court information that allows them to do harm.

There are two possible approaches regarding limitations on potential subscribers. One approach, consistent with the intent of sections 2.00 and 4.00, would be that signing up for subscription access could not be limited based on who was seeking access or the reason they wanted access. Rather, the expectation is that simply requiring identification, a fee, and agreement of compliance with certain conditions will forestall or minimize access that might lead to misuse of information or injury to individuals. This approach would not eliminate the possibility of misuse or injury, nor is it likely to be as effective in reducing the risk of misuse or injury as the restrictions to access contemplated by section 4.50, which focus on the specific pieces of information, like victim contact information, that are sought by those intending injury.

The other approach would involve some restrictions on becoming a subscriber. The ability to impose limitations could be based on the fact that access to records at a court facility would not change, so there is no reduction in historical levels of public access. Limitations on who could subscribe could be based on who the subscriber is, what they propose to do with the information, or could impose conditions on use of information obtained from court records. While it is always possible for someone to misrepresent who they are, or their intent, the requirements would reduce, but certainly not avoid, misuse of information, and the risk of use of information to cause injury. There is also the problem of a valid subscriber establishing a search engine accessible to others who are not subscribers, thus thwarting the possible protections. As with the first

approach, the protection comes from limiting who has access, not limiting access to the specific types of information that can be used to inflict injury.

Alternative Approach – Experimenting With Remote Access: Another approach would be to authorize one or a few jurisdictions in a state to make court records remotely accessible and to monitor the access and use. The intent of the monitoring would be to identify the extent of use of access and benefits and to see what adverse impacts arise and what might be done to avoid or minimize them. The federal courts are engaging in such an experiment regarding information in criminal cases.[4] The monitoring would be most useful if it involved logging of access to court records during the experiment. Logging would allow tracing to establish specific causal relationships if some injury occurred using information in a court record. It would also allow actual users of remote access to be surveyed to find out what information they sought and why, not for purposes of prior restraint, but to identify the real uses and benefits of making information in court records remotely available.

One risk of this approach is someone obtaining information from a court record remotely and using the information to inflict injury on, or even kill, someone. The most obvious risk is to victims, especially in domestic violence, sexual assault, or stalking cases, or witnesses in cases. This risk could be minimized by not making contact information for these categories of people available remotely, which is the objective of section 4.50. Note that judicial immunity may not cover the decision to make publicly available information that leads to harm being done.

Section (b) provides a procedure whereby a person can request a court to limit the manner of access for certain information about them by ordering that it be available only at a court facility. This subsection is similar to the process set forth in 4.70(a) allowing a person to request that public access to certain information be prohibited. However, the option of only restricting remote access is a less restrictive approach, since the information would still be available at a court facility.

The standard included in subsection (b) for limiting remote access is “good cause”. A state or individual court considering adoption of an access policy should determine whether this is an appropriate standard, or whether a higher standard is more appropriate. Since access at the courthouse is not being restricted or prohibited, it may not be necessary to use a higher standard required where public access is being prohibited altogether.

[4] See http://www.privacy.uscourts.gov/b4amend.htm.

Issues Not Addressed in the CCJ/COSCA Guidelines

The section does not address what access is permitted between the time a request to restrict access is made and the court rules on the request. This is particularly critical if the request is made simultaneously with the filing of the information. It is also more critical where the parties represent themselves and are unaware of appropriate procedures. A state or individual court considering adoption of an access policy might consider adding a provision that access will be restricted to the extent requested during the time a request is pending before the court. In order to avoid the use of such a provision to achieve at least temporary restriction a court should establish procedures that provide for prompt consideration of a request to restrict access. Alternatively a court could require that a party file a motion to restrict access with the information to be protected in a sealed envelope being lodged, but not filed, with the court. If the court grants the request, the information can be filed with restrictions to access. If the request is denied, the party has the option of filing the information without restriction, or not filing it.

The section does also not address possible remedies for violating restrictions on access.

A state or individual court adopting an access policy might also consider limiting remote access to other categories of court records where doing so furthers the purposes of their policy. The court might differentiate access to information based on the veracity of the information. For example, the court could limit remote access to unsworn allegations, while allowing remote access to sworn declarations and pleadings. The differentiation would be based on the categorization of the document, not the contents of the document; in the example above unsworn documents versus sworn documents.

Section 4.60 – Court Records Excluded From Public Access

The following information in a court record is not accessible to the public:

(a) Information that is not to be accessible to the public pursuant to federal law;

(b) Information that is not to be accessible to the public pursuant to state law, court rule or case law as follows:

[List those categories or types of information to which public access is to be restricted]

A member of the public may request the court to allow access to information excluded under this provision as provided for in section 4.70(b).

Commentary

The objective of this section is to identify those categories of information to which public access will be prohibited. The concept of the section is that for certain types of information an existing statute, rule or case law expresses a policy determination, made by the Legislature or the judiciary, that the presumption of public access has been overcome by a sufficient reason, and that the prohibition of public access applies on a categorical, as opposed to a case-by-case, basis. The *CCJ/COSCA Guidelines* contemplate that a state or individual court considering adoption of an access policy would examine its statutes, rules and case law and identify categories of information, if any, to which public access has been prohibited. The state or individual court might also consider the subjects described in the commentary below as possible additional items for the list. Those categories meeting the appropriate constitutional or other legal standard should be specified in this section of the *CCJ/COSCA Guidelines*.

The last paragraph of the section simply provides a cross-reference to the section that describes the process and standard for requesting access to information to which access is prohibited pursuant to this section.

The section suggests two sources of restrictions on access to information. The first is federal law, although there are few, if any, such limitations. The second source is those categories, if any, identified at the state level. The following commentary provides several lists of categories that currently exist in one or more states or have been suggested through the public comment process associated with the development of these *CCJ/COSCA Guidelines*.

Subsection (a) Federal Law: There are several types of information that are commonly, if incorrectly, considered to be protected from public disclosure by federal law. Although the laws or regulations may prohibit a federal agency, federal employees, or certain other specifically designated parties from disclosing certain information, the prohibition generally does not extend to disclosure by state courts where the information becomes part of the court record.[5] It may be that the federal laws or regulations apply to individuals who introduce restricted information onto the court records, perhaps requiring the individuals to request the court to restrict access under sections 4.50 or 4.70(a). Each category is discussed below.

Social Security Numbers. Although there may be restrictions on federal agencies disclosing Social Security Numbers (SSNs), they do not apply to state or local agencies such as courts.[6] One provision of the Social Security Act[7] does bar disclosure by state and local governments of SSNs collected pursuant to any law enacted on or after October 1, 1990. Assuming the section is applicable to state courts (there is some question about this), it would only apply to laws authorizing courts to collect SSNs that were adopted after this date. One possible example of this may be the law passed in the mid 1990s to facilitate child support collection[8] that requires inclusion of SSNs in orders granting dissolution of marriage, establishing child support or determining paternity. There does not appear to be any consensus as to whether the non-disclosure provision applies to, or is superseded by, the newer collection requirement.

Federal income or business tax returns. Federal law prohibits disclosure of tax returns by federal agencies or employees, but the prohibition does not extend to disclosure by others.

Educational information protected by federal law. A federal law protects information about students receiving federal aid from disclosure by a university or public school system, but it does not address disclosure of such information in a court record.[9]

---

[5] Section 7 of the Privacy Act of 1974 (5 USC § 552a) provides that an individual cannot be refused any right, benefit, or privilege because of a refusal to disclose a SSN, and that any agency that requests a SSN shall inform the individual whether or not the disclosure is mandatory, and the authority for requesting the SSN. However, neither provisions addresses disclosure of the SSN to the public.

[6] See "Social Security Numbers; Government Benefits from SSN Use but Could Provide Better Safeguards," United States General Accounting Office, GAO-02-352, May 2002, pp. 57-58. Note there is federal legislation pending in 2002 (S. 848 - Feinstein) that would prohibit the display of SSNs to the public.

[7] 42 USC § 405(c)(2)(C)(viii)(I), which provides: "Social security account numbers and related records that are obtained or maintained by an authorized person pursuant to any provision of law, enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security number."

[8] 42 USC § 405(c)(2)(C)(ii).

[9] 20 USC § 1232g.

Health and medical information. The Health Insurance Portability and Accountability Act of 1996[10] (HIPAA) and regulations adopted pursuant to it[11] limit disclosure of certain health related information about people by certain health-care entities. Whether the limitation extends to state court records is not clear. There are also federal restrictions regarding information in alcohol and drug abuse patient records[12] and requiring confidentiality of information acquired by drug court programs.[13]

Criminal History Information. There are federal regulations and state laws generally restricting the use of criminal history information contained in criminal records repositories maintained by executive branch agencies, particularly non-conviction information, to criminal justice purposes.[14] The provisions do not extend to information once it becomes part of a court record in a case; nor do they extend to court records containing criminal conviction information.

Research Involving Human Subjects. There are federal regulations establishing practices and, in certain circumstances, prohibiting disclosure of certain personal identifier information gathered in the course of federally funded research on human subjects.[15] This does not apply to information gathered by a state court in the normal course of judicial business,[16] but it might apply to individuals requesting information from court records for research purposes under section 4.30 (bulk access) or section 4.40 (compiled access).

Subsection (b) – State statutes, rules and case law: Most states already have statues or rules identifying certain types of information to which public access is restricted. There may also be case law upholding restrictions to access to a category of information. As noted above, a state or individual court adopting an access policy should review existing state law (statutes, court rules and case law) and identify information to which access is now restricted, and determine whether to include the category of information in this section of an access policy, or seek to change the law restricting access to the category of information.

Information that may not be accessible to the public pursuant to state law, whether in a statute or rule of court, generally falls into two categories. First are case types where the entire court record is generally not publicly accessible. Examples include:

---

[10] Public Law No. 104-191, sections 261-264

[11] "Standards for Privacy of Individually Identifiable Health Information," 45 CFR Part 160 and 164. The regulations became effective April 14, 2001, but compliance is not required until April 14, 2003.

[12] 42 CFR, Part 2 – Confidentiality of Alcohol and Drug Abuse Patient Records.

[13] 42 USC § 290dd-2. See "Federal Confidentiality Laws and How They Affect Drug Court Practitioners," National Drug Court Institute, April 1999.

[14] See "Report of the National Task Force on Privacy, Technology, and Criminal Justice Information," Bureau of Justice Statistics, NCJ-187669, August 2001.

[15] 28 CFR, Part 46 and 45 CFR section 46.

[16] 28 CFR § 46.101(b)(4).

- Juvenile dependency (abuse and neglect) proceedings;
- Termination of parental rights and relinquishment proceedings;
- Adoption proceedings;
- Guardianship proceedings;
- Conservatorship proceedings;
- Mental Health proceedings;
- Sterilization proceedings; and
- Petitions for waiver of parental consent for minor abortion.

Second are documents, parts of the court record, or pieces of information (as opposed to the whole case file) for which there may be a sufficient interest to prohibit public access. Examples include:

- Name, address, telephone number, e-mail, or places of employment of a victim, particularly in a sexual assault case, stalking or domestic violence case;
- Name, address or telephone number of witnesses (other than law enforcement personnel) in criminal or domestic violence protective order cases;
- Name, address or telephone number of informants in criminal cases;
- Names, addresses or telephone numbers of potential or sworn jurors in a criminal case;
- Juror questionnaire information;
- Wills deposited with the court for safekeeping;
- Medical or mental health records, including examination, diagnosis, evaluation, or treatment records;
- Psychological evaluations of a party, for example regarding competency to stand trial;
- Child custody evaluations in family law or juvenile dependency (abuse and neglect) actions;
- Description or analysis of a person's DNA or genetic material, or biometric identifiers;
- Financial information that provides identifying account numbers on specific assets, liabilities, accounts, credit cards, or Personal Identification Numbers (PINs) of individuals or business entities. (See further comments below);
- State income or business tax returns;
- Proprietary business information such as trade secrets, customer lists, etc. (See further comments below.);
- Grand Jury proceedings (at least until the indictment is presented and the defendant is arrested);
- Presentence investigation reports;
- Search warrants and affidavits (at least prior to the return on the warrant);

- Arrest warrants and affidavits (at least prior to the arrest of the person named);
- Applications and supporting documents that contain financial information filed as part of a request to waive court fees or to obtain appointment of counsel at public expense;
- Applications for accommodations under the Americans with Disabilities Act;
- Proceedings to determine the mental competency of a defendant in a criminal case or juvenile in a delinquency case;
- Judicial work product (see further comments below);
- Court administration and clerk of court work product (see further comments below);
- Certain court administration records (see further comments below);
- Proprietary interests of the government (see further comments below); and
- Personnel records of public employees.

Additional categories of information to which a state or individual court might also consider restricting general public access include:

- Names and address of children in a juvenile dependency proceeding;
- Names and addresses of children in a dissolution, guardianship, domestic violence, sexual assault, harassment, or protective order proceeding;
- Addresses and phone numbers of litigants in cases;
- Photographs depicting violence, death, or children subjected to abuse;
- Certain exhibits in trials such as photographs depicting violence, death, children subjected to abuse or depictions of medical information;
- Information gathered or created during the investigatory phase that is related to the performance, misconduct or discipline of a lawyer (where the judiciary has authority over lawyer admittance and discipline and there are not other provisions covering access to this information);
- Information gathered or created during the investigatory phase that is related to the performance, misconduct or discipline of a judicial officer (where the judiciary has authority over judicial officer discipline and there are not other provisions covering access to this information); and
- Information gathered or created during the investigatory phase that is related to alleged misconduct by entities or individuals licensed or regulated by the judiciary.

The categories of restricted information vary considerably across states. The list provided above is meant to be exemplary, and not exhaustive or definitive. There was a wide range of opinion among Advisory Committee members about what might be included on such a list.

Financial Information: While information about the existence and amount of an asset or liability may be relevant to a court decision and therefore publicly accessible, there is no general need to disclose the particular account numbers or means and codes for accessing the accounts. In those instances where the account numbers, or other information included within the definition of this subsection, may be relevant or otherwise possibly subject to public access, access can be requested under section 4.70(b).

Restricting information in this area is probably the most difficult to implement. Existing court records already contain large amounts of detailed financial information, particularly in family law and probate proceedings. Court forms often require this information, although it is not clear that the court always needs the details to make its decisions. Many parties, particularly those without legal representation, are not aware that this information may be accessible to the general public. There is also the problem of a party intentionally including this type of information in a document filed with the court, effectively misusing the court process. A state or individual court considering adoption of an access policy should review its forms and the information parties are required to provide to minimize the gathering of information to which public access ought not generally be provided. Alternatively the parties could be required to exchange the detailed information, but the forms filed in the court record would only contain summary information.

Proprietary Business Information: This is intended to protect proprietary business information on a categorical basis. When a state adopts a rule based on these *CCJ/COSCA Guidelines*, it should consider a cross-reference to the statutes that define proprietary information, or reference the standard in case law, so that the access policy is consistent with other law in the state about restricting access to this type of information. An alternative approach would be to leave this sort of information to individual, case-by-case analysis regarding restricting access under section 4.70(a).

Judicial Work Product: This category is intended to exclude public access to work product involved in the court decisional process, as opposed to the decision itself. This would include such things as notes and bench memos prepared by staff attorneys, draft opinions and orders, opinions being circulated between judges, etc. Any specification about this should include independent contractors working for a judge or the court, externs, students, and others assisting the judge but who are not employees of the court or the clerk of court's office.

Court Administration and Clerk of Court Work Product: The type of information here could include information collected, and notes, drafts and other work product generated during the process of developing policy relating to the court's administration of justice and its operations or the operation of the clerk of court. The exception is intended to cover the "work product" and "deliberative

process" but not the final policy, decision or report as defined in section 3.10(a)(3). In some states the clerk of court function is provided by an executive branch agency, often by an elected clerk. Because the activity concerns the court, these *CCJ/COSCA Guidelines* apply to such offices even though they may be part of the executive branch.

Another category of court work product is the notes produced by court reporters, whether in paper form or electronic form (from a CAT system). Whereas the transcript produced from notes is a public record, the state or court should address whether the notes themselves are publicly accessible.

Other non-case specific information in court administration records that some jurisdictions have excluded from general public access include:

- Telephone logs of judges and court staff;
- Logs of Internet access by judges and court staff;
- Minutes of Judges' meetings; and
- E-mails or other correspondence of judges and court staff.

Certain Court Administration Records: This category of information relates to court personnel, litigation involving the court, and court security. This category includes certain information whose release would infringe generally accepted privacy protections for court staff or job applicants, compromise the safety of judges, court staff and those that visit the courthouse, or compromise the integrity of the court's information technology and record keeping systems.

Court personnel information could include:

- Personnel and medical records of court employees;
- Information related to pending internal investigations of court personnel (including attorney discipline) or court activities;
- Applicants for positions in the court; and
- Personal identifier information about people applying or serving as unpaid volunteers to assist the court, such as serving as a guardian ad litem, court-appointed special advocate for a child, etc.

Information about court litigation could include:

- Information about pending litigation where the court is a party (and the information has not become part of the record in the case); and
- Work product of any attorney or law clerk employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch.

Information about court security could include:

- Court security plans and procedures;
- Logs of arrival and departure times of judges or court staff kept by court security systems;
- Records of when judges are scheduled to be on leave;
- Court information system cabling and network diagrams;
- Security information related to the court's information technology capabilities; and
- Software used by the court to maintain court records, whether purchased, leased, licensed or developed by or for the court.

Proprietary Interest of the government: This category is intended to protect information that is the property of a state or local government entity that, if it were owned by a business, would be subject to the protection of the law. The intent is to provide the government the same level of protection as is provided to businesses. Examples of information here would be computer software developed by the government, and reports or collections of information that are protected from disclosure by state statute or information owned by state or individual governmental units constituting trade secrets or whose release would otherwise infringe on the government's proprietary interests.

Section 4.70 – Requests To Prohibit Public Access to Information In Court Records Or To Obtain Access to Restricted Information

(a) A request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own motion. The court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider at least the following:

(1) Risk of injury to individuals;
(2) Individual privacy rights and interests;
(3) Proprietary business information; and
(4) Public safety.

In restricting access the court will use the least restrictive means that will achieve the purposes of the access policy and the needs of the requestor.

(b) A request to obtain access to information in a court record to which access is prohibited under section 4.60 or 4.70(a) of these *CCJ/COSCA Guidelines* may be made by any member of the public or on the court's own motion upon notice as provided in subsection 4.70(c). The court must decide whether there are sufficient grounds to continue to prohibit access according to applicable constitutional, statutory and common law. In deciding this the court should consider at least the following:

(1) Risk of injury to individuals;
(2) Individual privacy rights and interests;
(3) Proprietary business information;
(4) Access to court records; and
(5) Public safety.

(c) The request shall be made by a written motion to the court. The requestor will give notice to all parties in the case except as prohibited by law. The court may require notice to be given by the requestor or another party to any individuals or entities identified in the information that is the subject of the request. When the request is for access to information to which access was previously prohibited under section 4.60(a), the court will provide notice to the individual or entity that requested that access be prohibited either itself or by directing a party to give the notice.

Commentary

This section lays out the basic considerations and processes for prohibiting access to otherwise publicly available information (often referred to as sealing), or opening access to restricted information (whether prohibited under section 4.60 or section 4.70(a)). Requests to restrict remote public access, as opposed to prohibit public access altogether, are provided for in section 4.50. The language incorporates the presumption of openness, and the need for sufficient grounds to overcome the presumption. The section also specifies the mechanism for making the request and directs the court to use the least restrictive approach possible when restricting public access.

The section specifically lists several of the policy interests stated in section 1.00 that the court is to consider in deciding whether there is an interest justifying restriction of, or providing, public access. The Advisory Committee was closely divided as to whether to list any specific policy interests in the subsections. The concern was to avoid creating the impression that any of these policy interests always constituted an interest warranting restricting or opening access, and also to avoid creating the impression that these were the only such interests; none may apply and there may be others. Moreover, the consideration needs to be made by the court on a case-by-case basis. The language in the subsections is intended to provide guidance in developing a policy. The intent of the *CCJ/COSCA Guidelines* is not to rewrite the law of each state regarding prohibition of access, nor is it practical to try and report the applicable law for each state, and the variations within each state based on type of information or type of case.

Subsection (a) allows anyone who is identified in the court record to request prohibition of public access. This specification is quite broad, including a witness in a case or someone about whom personally identifiable information is present in the court record, but who is not a party to the action. While the reach of the policy is quite broad, this is required to meet the intent of subsection 1.00 (a)(6) regarding protection of individual privacy rights and interests, not just the privacy rights and interests of parties to a case. Protection is available for

someone who is referred to in the case, but does not have the options or protections a party to the case would have.

Subsection (a) provides only for prohibiting access to information, not prohibiting access to the existence of the information. Section 4.10(b) specifically provides that the existence of information to which access is prohibited will be publicly accessible. A state or individual court considering adoption of an access policy should consider whether to expand this subsection to also allow prohibiting access to the existence of such information (see discussion in Commentary to section 4.10(b)).

Subsection (a) does not have any restrictions regarding when the request can be made, implying it can be done at any time.

This subsection provides that it is the judge who decides whether access will be prohibited. Even if all parties agree that public access to information should be prohibited, this is not binding on the judge, who must still make the decision based on the applicable law and factors listed.

The last paragraph to subsection (a) requires the court to seek an approach that minimizes the amount of information that cannot be accessed, as opposed to an "all or nothing" approach. This is directed at the question of what to do about a document or other material in the court record that contains some information to which access should be prohibited along with other information that remains publicly accessible. The issue becomes one of whether it is technically possible to redact some information from a document and to allow the balance of the document to be publicly available. Less restrictive methods include redaction of pieces of information in the record, sealing of only certain pages of a document, as opposed to the entire document, or sealing of a document, but not the entire file. As noted previously (see commentary under section 3.20) newer technologies permit tagging of information in an electronic records in a way that readily allows electronic redaction of pieces of information in an electronic document, and courts are encouraged to obtain this capability when acquiring new systems. As discussed in the commentary to section 4.10 other approaches to restricting access to names could include using initials or a pseudonym rather than a full or real name. As discussed in section 4.50, another approach might be to preclude remote access to information while retaining access at the courthouse.

In addition to whether it is technically possible, there may be an issue of whether it is feasible to redact information in a record, and whether the court or clerk has the resources to do so. The work needed to exhaustively review a large file or document to find information to be redacted may be prohibitive, such that access to the whole file or document would be restricted, rather than attempting redaction.

Subsection (b) specifically allows a court to consider providing access to information to which access is categorically prohibited under section 4.60, as well as specific information in a court record to which access has previously been prohibited by a court pursuant to section 4.70(a). Allowing a court to order public access to categorically prohibited information may currently not be possible in many states. Allowing later reconsideration of a court's prior decision to prohibit access in a particular case under section 4.70(a) may also be new. The basis for authorizing this is to address a possible change in circumstances where the reasons for prohibiting access no longer apply, have changed, or there is new information suggesting now allowing public access. Examples include such things as a person now being a "public figure," the conclusion of a trial, the passage of time reducing the risk of injury, etc. A state or local court considering adopting or revising its access policy should consider adding such provisions if it does not already have them.

Subsection (b) suggests an explicit standard and procedure for reviewing a previous decision to prohibit public access to information. A state or individual court considering adoption of an access policy should clearly define the standard and burden of proof for lifting a prohibition on access.

Subsection (b) provides that "any member of the public" can make the request for access to prohibited information. This term is defined broadly in section 2.00, and includes the media and business entities as well as individuals.

Subsection (c) contemplates a written motion seeking to prohibit, or gain, access. Although a motion is specified, the section is silent as to the need for oral argument or testimony, leaving this up to the court. Notice is required to be given to all parties by the requestor, except where prohibited by law.[17] The subsection gives the court discretion to require notice to be given to others identified in the information that is the subject of the request. If public access to the information was restricted by a prior request, the subsection requires the court to arrange for notice to be given to the person who made the prior request. The process for seeking review by an appellate court is not specified in the policy, as the normal appeal process for a judicial decision is assumed to apply.

Issues Not Addressed in the CCJ/COSCA Guidelines

The section does not address what access is permitted between the time a request to prohibit access is made and the court rules on the request. This is particularly critical if the request is made simultaneously with the filing of the information. It is also more critical where the parties represent themselves and are unaware of appropriate procedures. A state or individual court considering adoption of an access policy might consider adding a provision that access will be prohibited to the extent requested during the time a request is pending before

[17] 18 USC § 2265(d)(1) – full faith and credit given to protective orders.

the court. In order to avoid the use of such a provision to achieve at least temporary restriction a court should establish procedures that provide for prompt consideration of a request to prohibit access. Alternatively a court could require that a party file a motion to prohibit access with the information to be protected in a sealed envelope being lodged, but not filed, with the court. If the court grants the request, the information can be filed with prohibition to access. If the request is denied, the party has the option of filing the information without prohibition of access, or not filing it.

The section does also not address possible remedies for violating prohibitions on access.

When Accessible

Section 5.00 – When Court Records May Be Accessed

(a) Court records will be available for public access in the courthouse during hours established by the court. Court records in electronic form to which the court allows remote access under this policy will be available for access at least during the hours established by the court for courthouse access, subject to unexpected technical failures or normal system maintenance announced in advance.

(b) Upon receiving a request for access to information the court will respond within a reasonable time regarding the availability of the information and provide the information within a reasonable time.

Commentary

This section of the *CCJ/COSCA Guidelines* requires a court to specify when court records are accessible. The *CCJ/COSCA Guidelines* direct, as a minimum, that remote access be available at the same times as records are accessible at the courthouse. This section does not preclude or require "after hours" access to court records in electronic form. Courts are encouraged to provide access to records in electronic form beyond the hours access is available at the courthouse, with a goal of 24 hours a day, seven days a week. However, it is not the intent of the *CCJ/COSCA Guidelines* to require courts to expend money or other resources to make remote access possible outside of normal business hours. The section acknowledges that access to electronic records may occasionally not be available during normal business hours because of unexpected interruptions to information technology systems, crashes, and during planned interruptions such as for back-up of databases, software upgrades or maintenance, or hardware upgrades or maintenance.

Subsection (b) addresses the question of how quickly the information will be made available. There are a number of factors that can affect how quickly the court responds to a request and provides the information, assuming it is publicly accessible. The response will be slower if the request is non-specific, is for a large amount of information, is for information that is in off-site storage, or requires significant amounts of court resources to respond to the request. The objective is to have a prompt and timely response to a request for information.

Issues Not Addressed in the CCJ/COSCA Guidelines

A state or individual court considering adoption of an access policy should consider adding provisions designating a custodian of the record to respond to requests, or denials of requests. The custodian (often designated as the information steward, chief information officer, chief privacy officer, or ombudsperson) would be the person responsible and accountable for the implementation of the access policy. There are many roles for the custodian, from responding to requests for access, responding to denials of access, responding to requests for bulk access (under section 4.30) or compiled access (under section 4.40), determining or reviewing fees to be charged for access, or addressing perceived delays in fulfilling requests.

Designating a custodian would be especially important where there has been a history of problems regarding access, or denial of access. However, designating a custodian may introduce a delay or add a layer of bureaucracy in jurisdictions where there has not been a problem. Courts should educate all judges, court employees, and the clerk of court staff regarding the requirements of the *CCJ/COSCA Guidelines* (see section 8.30) and expect them to comply with the policies provision. Having one individual specifically responsible for responding to requests and complaints may cause other staff to feel they have been relieved from compliance with, and vigilance about, the *CCJ/COSCA Guideline*'s provisions. However, if there have been ongoing problems, designating an individual may be one way to address the problems and bring others into compliance.

Another issue that might be covered in an access policy is a provision that gives litigants or the public the ability to access information in electronic form where they do not currently have the ability or equipment to obtain access. If information is only available in electronic form, the court should provide terminals or computers in the courthouse through which the public can obtain access, or make the information available through public libraries or other information access sites. See also the Commentary to section 3.20 regarding equal access to information.

Fees

Section 6.00 – Fees for Access

The court may charge a fee for access to court records in electronic form, for remote access, or for bulk distribution or compiled information. To the extent that public access to information is provided exclusively through a vendor, the court will ensure that any fee imposed by the vendor for the cost of providing access is reasonable.

Commentary

This section recognizes that providing access to information in court records does consume court resources. Access is not without public cost. The cost of access is either absorbed by the taxpayers in funding the courts, or by those requesting access. The policy question for the court and the appropriate funding body is what type and level of access should be funded by the taxpayer and at no cost to the requestor. Any fee imposed should not be so prohibitive as to effectively deter or restrict access or create unequal access to court records. This section provides that if access is provided exclusively through a vendor, any fee imposed should be reasonable.

If there are no existing provisions for determining a fee, a state or individual court considering adoption of an access policy should address which costs are allowable for purposes of determining the fee.

Fees for bulk access pursuant to section 4.30 or compiled access pursuant to section 4.40, which require special programming or actions because the information is not regularly available in the form requested, might be calculated differently from access fees for information regularly provided to the public or for “one at a time” access. One aspect of the cost could be the cost of staff time to produce a requested report where the staff is busy with court projects, and the work on the special report might need to be charged at overtime rates.

In some states, the preparation and access to the transcript of proceedings is within the authority of the court reporter, not the court. In such instances the existing state laws and rules governing the cost of the transcript, in paper or electronic form, are assumed to apply. The *CCJ/COSCA Guidelines* assume the court or court reporter will use existing laws and practices to determine the amount of the fee.

Issues Not Addressed in the CCJ/COSCA Guidelines

No provision is made in the section for waiver of any fee based on inability to pay. In most states there are provisions in existing law guiding waiver of fees, which could presumably be made applicable to any access fee. These *CCJ/COSCA Guidelines* are silent about whether providing access to the court record can be a revenue source for the court or level of government funding the court. The *CCJ/COSCA Guidelines* are also silent about what factors or costs should be considered in establishing a fee.

Obligation of Vendors

Section 7.00 – Obligations Of Vendors Providing Information Technology Support To A Court To Maintain Court Records

(a) If the court contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, "vendor" includes a state, county or local governmental agency that provides information technology services to a court.

(b) By contract the vendor will be required to comply with the requirement of sections 8.10, 8.20, 8.30, and 8.40 to educate litigants, the public, and its employees and subcontractors about the provisions of the access policy.

(c) By contract the vendor will be required to notify the court of any requests for compiled information or bulk distribution of information, including the vendor's requests for such information for its own use.

Commentary

This section is intended to deal with the common situation where information technology services are provided to a court by another agency, usually in the executive branch, or by outsourcing of court information technology services to non-governmental entities. The intent is to have the *CCJ/COSCA Guidelines* apply regardless of who is providing the services involving court records. Implicit in these *CCJ/COSCA Guidelines* is the concept that court records are under the control of the judiciary, and that the judiciary has the responsibility to ensure public access to court records and to restrict access where appropriate. This is the case even if the information is maintained in systems operated by the executive branch of government, including where the clerk of court function is provided by an elected clerk or a clerk appointed by the executive or legislative branch and not the court. The *CCJ/COSCA Guidelines* provide a standard applicable to vendors as well as the courts.

Regulating vendors is also relevant to the issue of liability of the court for release of information that causes harm, particularly if there is no judicial immunity regarding adoption or implementation of a local policy.

Subsection (a): "Information technology support" is meant to include a wide range of activities, including records management services or equipment, making and keeping the verbatim record, computer hardware or software,

database management, web sites, and communications services used by the court to maintain court records and provide public access to them. It would also apply to vendors who are only providing access to a copy of electronic court records maintained by the court itself or by an executive branch agency.

Vendor compliance is particularly important where the vendor's system is the only means of accessing the information. The court must ensure that the vendor is not using the exclusive control of access to limit access, whether through fees, technology requirements, or a requirement to sign a "user agreement," particularly if it imposes restrictions on the use of the information that the court could not impose.

Subsection (b): The requirements of the *CCJ/COSCA Guidelines* regarding a vendor educating its employees or subcontractors, litigants, and the public are in addition to any incentive to do so provided by the liability or indemnity provisions of applicable law or the contract or agreement with the court. A state or individual court considering adopting an access policy should review applicable law regarding misuse or abuse of information by vendors, court, or clerk of court employees so as to draft a policy that is consistent with, and supports the underlying policy of, existing liability laws.

Subsection (c): This subsection requires vendors to notify the court of requests for bulk information (pursuant to section 4.30) or compiled information (pursuant to section 4.40). The court must receive this notice in order to properly control the release of information in its records.

Issues Not Addressed in the CCJ/COSCA Guidelines

This section requires the vendor to comply with the provision of an access policy, but does not provide details regarding compliance. A state or court using a vendor should consider including in the contract for the service provisions such as: 1) requiring regular updates of the information in the vendor's database to match the information in the court's database, 2) forwarding complaints received about the accuracy of information in the database, and 3) establishing a process for monitoring the vendor's compliance with the policy and its record for providing appropriate access and protecting restricted information.

In considering adoption of an access policy a state or individual court should consider whether it wants to control, through its contract with the vendor, "downstream" access and distribution of information from court records that is held or maintained by the vendor. For example, the court could require that the vendor require anyone to whom it distributes information from court records to comply with this policy, or other laws such as the Fair Credit Reporting Act[18].

[18] Fair Credit Reporting Act, 15 USC §§ 1681 et seq.

Obligation of the Court to Inform and Educate

Section 8.00 – Information and Education Regarding Access Policy

Section 8.10 – Dissemination of Information to Litigants About Access To Information In Court Records

The court will make information available to litigants and the public that information in the court record about them is accessible to the public, including remotely and how to request to restrict the manner of access or to prohibit public access.

Commentary

This section of the *CCJ/COSCA Guidelines* recognizes that litigants may not be aware that information provided to the court, by them or other parties in the case, generally is accessible to the public, including, possibly, bulk downloads. Litigants may also be unaware that some of the information may be available in electronic form, possibly even remotely. To the extent litigants are unrepresented, this problem is even more significant, as they have no lawyer who can point this out. To address this possible lack of knowledge, this section requires a court to inform litigants about public access to court records. Providing notice to all litigants may also lessen unequal treatment and inequity of access based on wealth.

This section also specifically requires the court to inform litigants of the process for requesting restrictions to the manner of access under section 4.50, and to inform litigants about how to request prohibition of public access to information in their case pursuant to section 4.70. This would be especially important in cases involving domestic violence, sexual assault, stalking, or requests for protective orders, and witnesses where there is a greater risk of harm to individuals. The court should also provide information about the unlikelihood of prohibiting access to some types of information.

Issues Not Addressed in the CCJ/COSCA Guidelines

The *CCJ/COSCA Guidelines* do not specify how information will be provided, nor the extent or nature of detail required. These issues need to be addressed by a state or individual court adopting an access policy. There are several approaches to accomplishing this. The notice could be a written notice or pamphlet received when filing initial pleadings. The pamphlet could refer the litigant to other sources of information, including a web site. The court could also provide materials, including videotapes, through a self-help center or service, or an ombudsperson. Consideration should also be given to providing the information in several common languages. Finally, the court could encourage the local bar to assist in educating litigants.

Information provided to litigants could address the following issues:

- Any information a litigant includes in a document or other material filed with the court in a case is open, with very few exceptions, to public access pursuant to applicable law, including any access policy;
- The information may be available remotely, such as by searching the courts database of information through the Internet;
- Any person may request access to the information filed with the court, regardless of the reason access is desired or the use that will be made of the information;
- Because there are few restrictions on what parties can say in documents filed with the court, there may be information accessible to the public that you feel is inaccurate, incomplete, untrue or unsubstantiated; and
- Court records generally have very long retention periods, so the information in the records will be publicly available for a long time.

This section of the *CCJ/COSCA Guidelines* specifically requires the court to provide information to litigants, and to the public generally. Similar arguments can be made for informing jurors, victims, and witnesses that information about them included in the court record is publicly accessible. A state or individual court adopting a policy should consider including a provision to provide notice to these groups. While it is relatively easy to provide information to jurors, providing information to victims and witnesses is much more problematic, as often only the lawyers, or law enforcement agencies, not the courts, know who the victims and potential witnesses are, at least initially.

Section 8.20 – Dissemination of Information To The Public About Accessing Court Records

The Court will develop and make information available to the public about how to obtain access to court records pursuant to these *CCJ/COSCA Guidelines*.

Commentary

Public access to court records is meaningless if the public does not know how to access the records. This section establishes an obligation on the court to provide information to the public, which should include jurors, victims, witnesses and other participants in judicial proceedings, about how to access court records.

Issues Not Addressed in the CCJ/COSCA Guidelines

This section does not specify how the public should be informed, or what information should be provided. There are a number of techniques to accomplish this, and a court may use several simultaneously. Brochures can be developed explaining access. Access methods can also be explained on court web sites. Tutorials on terminals in the courthouse or on web sites can be used to instruct the public on access without the direct assistance of court or clerk's office personnel.

Subjects the public could be informed about include: 1) why court records are open, 2) where and how to obtain access, 3) when access is available, 4) how to request access to restricted information, whether restricted categorically or by specific court order, and the criteria the court will consider to allow access, 5) how to request restriction of access and the criteria the court will use to restrict access, 6) requests for bulk or compiled information, 7) possible fees for obtaining access or copies, and 8) consequences for misuse or abuse of access. If the court maintains logs of who requested information, this should be made known to users as well. Finally, it would be useful to point out to the public that the database is not 100% accurate, that there may be errors, and that the data may change as information is purged, sealed, or modified as time goes on.

Section 8.30 – Education of Judges and Court Personnel About An Access Policy

The Court and clerk of court will educate and train their personnel to comply with an access policy so that Court and clerk of court offices respond to requests for access to information in the court record in a manner consistent with this policy.

The Presiding Judge shall insure that all judges are informed about the access policy.

Commentary

This section mandates that the court and clerk of court educate and train their employees to be able to properly implement an access policy. Properly trained employees will provide better customer service, facilitating access when appropriate, and preventing access when access is restricted or prohibited. When properly trained, there is also less risk of inappropriate disclosure, thereby protecting privacy and lowering risk to individuals from disclosure of sensitive information. Training should also be provided to employees of other agencies, or their contractors, who have access to information in court records, for example as part of shared integrated criminal justice information systems.

The section also requires the Presiding or Chief Judge to make sure that judicial officers serving the court are aware of the local access policy and its implications for their work and decisions.

Issues Not Addressed in the CCJ/COSCA Guidelines

One concern about court records is that the information in the records is accurate, timely, and not ambiguous. The problem exists equally with paper court records and court records in electronic form, but the possibility of broad scale access to electronic records heightens the risk. This risk is minimized if the court's practices for generating and maintaining the court record are sound, and the employees are well trained in the practices. Specific internal court policies on accuracy and validation of data entry is not part of this policy, but should be addressed in internal policies and procedures.

The specifics of topics on which courts should instruct employees and judges are not included in these *CCJ/COSCA Guidelines*. Suggested subjects for employee and judge education include at least the following: 1) intent of the policy, 2) awareness of access and restriction provisions, including those governing employees of other entities, 3) appropriate response to requests for access, 4) process for requesting access or requesting restriction to access, 5) fees, 6) importance of timely and accurate data entry, and 7) consequences for misuse or abuse of access or improper release of restricted information. A court

should also adopt personnel policy provisions indicating consequences for misuse, abuse or inappropriate disclosure of information in court records.

In addressing the means of access, the court or clerk of court should be mindful of complying with the Americans with Disabilities Act[19]. Means of access should be developed for those who are unable to access the information in electronic form just as they should be developed for paper records.

[19] Americans with Disabilities Act of 1990, 42 USC §§12101-12213.

Section 8.40 – Education About Process To Change Inaccurate Information in A Court Record

The Court will have a policy and will inform the public of the policy by which the court will correct inaccurate information in a court record.

Commentary

Court records are as susceptible to errors or incomplete information as any other public record. This section requires that courts have a policy (whether a rule or statute) specifying the method for reviewing information in court records and making any changes or additions that will make the record more accurate or complete. This section of the *CCJ/COSCA Guidelines* requires the court to inform the public of its access policy. There may be different process for a "data entry" error, as opposed to other alleged errors in information.

Issues Not Addressed in the CCJ/COSCA Guidelines

These *CCJ/COSCA Guidelines* do not provide a standard for when information must be changed or supplemented. It is not the intent of the *CCJ/COSCA Guidelines* as drafted to create a method for modifying a court record; rather, the *CCJ/COSCA Guidelines* rely on existing procedures for introducing and challenging evidence or other information that is part of the court record.

The information provided to the public pursuant to this section should indicate: 1) that only a court order, not the clerk, nor a vendor, can make the change, 2) the criteria the court will use in deciding whether to change the record, 3) the likelihood of a change being made, and 4) that there will be a record of the request for the change as well as a record of what was changed.

Appendix A
Index[20] to Terms Appearing in *CCJ/COSCA Guidelines*

Abortion consent (parental consent for minor abortion) – 4.60
Abuse and neglect proceedings – 4.50
Access by the disabled – 3.20, 8.30
Access to restricted information – 1.00, 4.10(b), 4.30(b), 4.40(c), 4.60, 4.70(b), 8.20, 8.30
Access, generally – 1.00(a); 4.10
Account numbers – 4.50, 4.60
Accuracy of information – 4.30; 7.00, 8.30
ADA - see Americans with Disabilities Act
Address/addresses – 4.50, 4.60
Adjournment in contemplation of dismissal – 4.10
Adoption proceedings – 4.50, 4.60
ADR – 3.10
Alternative dispute resolution – see ADR
Americans With Disabilities Act – 3.20, 4.60(b), 8.30
Arrest warrant – 4.60(b)
Attorney discipline – 4.60(b)
Audio recording - part of court record – 3.10(a)(2), and 3.40(d)
Automated case management system – see Case management system

Biometric identifiers – 4.60(b)
Birth records – 3.10(b)(1)
Bulk access – 1.00, 4.30, 5.00, 6.00
Bulk data – 4.30

Calendar – 3.10(a)(2), 4.20
Case management system – 3.10(a), 3.40, 4.10(b), 4.20, 4.30, 4.50
Case-by-case – 1.00, 4.30, 4.40, 4.50, 4.60, 4.70
CAT – see computer assisted transcription
Chief Information Officer – see Custodian of the record
Chief Privacy Officer – see Custodian of the record
Child support – 4.50, 4.60
Civil protection order – 4.50
Clerk of court – Introduction, 2.00(e)
Compiled information – 4.00, 4.40, 4.60, 5.00, 6.00, 7.00, 8.20
Computer assisted transcription (CAT) – 3.10(a)(2)
Conference of Chief Justices (CCJ) – Acknowledgements, Resolution 33, 1.00
Conference of State Court Administrators (COSCA) – Acknowledgements, Resolution 33, 1.00
Confidentiality – 2.00, 4.60; see also “restricted access and sealing”

[20] Note that references throughout Appendix A are to Sections (rather than specific pages) of this report and of the *CCJ/COSCA Guidelines* within the report.

Conservatorship proceedings – 4.60(b)
Contact information – 4.50, 4.60, 8.10
Copy – 3.20, 3.30, 7.00
Correction of information – 8.40
Correspondence of judges or court staff – 4.60
Court Administrator – 3.10,
Court administration records and work product – 3.10(a)(3), 4.60(b)
Court employees, training – 8.30
Court record, defined – 3.10
Court reporters – 3.10(a)(2); 3.40, 4.60
Court security – 4.60
Credit card – 4.50, 4.60
Credit bureaus – 4.50
Criminal history – 4.60(a)
Criminal Justice Information System (CJIS) – 2.00(g); 3.10(b)(2), 4.60, 8.30
Custodian of record – 5.00
Custody (child) – 4.50, 4.60
Customer lists – 4.60(b)
Customer service – 1.00(10), 3.20, 8.30

Data entry – 4.30, 8.30, 8.40
Database – Introduction, 1.00(a)(9), 3.10(b)(2)
Decree – 3.10(a)(2), 4.20(e)
Denial of access – 1.00, 5.00
Dial-up; dial-in – 3.30, 4.10, 4.20
Discovery in civil cases – 3.10
Dissolution – Introduction, 4.50, 4.60
Diversion – 4.10
DNA – see Genetic Material
Docket – 3.10(a)(2), 4.20(d)
Domestic violence – 1.00, 4.50(a), 4.60(b)
Downstream use – 7.00
Dump of information – 4.30

E-mail – 3.20, 3.30, 4.60,
Educational information – 4.60(a)
Electronic filing – 3.40(c),
Electronic form, definition – 3.40
Electronic recording – 3.10
Executive branch providing IT services – 4.60(b), 7.00
Exhibits – 3.10(a)(1), 4.60
Expungement – 4.10, 4.30
Fair Credit Reporting Act (FCRA) – 4.30, 7.00
Fax – 3.20, 3.30
Fees – 3.40, 4.10, 4.60, 5.00, 6.00, 8.20, 8.30
Format of documents, PDF – 3.40

Forms, court – Introduction, 3.40, 4.60

Genetic material – 4.60(b)
Government accountability – 1.00(a)(3)
Grand jury – 1.00, 4.60(b)
Guardian ad litem – 4.60
Guardianship proceeding – 4.60(b)

Harassment proceedings – 4.60(b)
Hardware and Software independent – 3.20
Health Insurance Portability and Accountability Act of 1996 (HIPAA) – 4.60(a)
Hours of access – 5.00(a)

Immunity – see Judicial Immunity
Index, indexes – 3.10(a)(2); 4.70
Indigency – 3.10(a)(1)
Informants – 4.60(b)
Information industry – 2.00
Information provider – 2.00(d), 4.30
Information steward – see Custodian of the record
Information Technology – see IT services
Injury to individual – 1.00(a)(5), 4.50, 4.70
Inspect – 3.20, 3.30
Integrated justice information system (IJIS) – 2.00(g); 3.10(b)(2)
Interim access – see Temporary restriction to access
Internal court policy – Introduction, 2.00, 3.10, 4.30, 4.60, 8.30
Internal investigations – 4.60
Internet – Introduction, 3.30, 4.30, 4.40, 4.60, 8.10
IT services – see Vendor obligations

Job applicants – 4.60
Journalistic purposes – 4.30(b), 4.40
Judgment – Introduction, 1.00, 3.10(a)(2)
Judgment Roll – 1.00, 4.20,
Judicial discipline, internal investigations– 4.60(b)
Judicial immunity – Introduction; 7.00 (vendors)
Judicial performance – see Judicial discipline
Jurors – 1.00(a)(5), 4.60(b), 8.10, 8.20
Juvenile dependency – 4.60(b)

Kiosk – 3.30, 4.50,

Land title records – 3.10(b)(1)
Law enforcement witness – 4.50(a), 4.60, 4.70, 8.10, 8.20
Liability – Introduction, 3.10, 7.00(b) (vendors)
Lien – 4.20(e)

Litigants, definition – 2.00(h)
Litigants, education – 8.10
Local court rules – 4.10 (commentary section (c))
Lodged with the court – 3.10(a)(1)
Logging who accesses records – 4.10; 4.60, 8.20
Logs (telephone, Internet access, etc.) – 4.60

Media – 2.00(c), 4.50, 4.70(b)
Medical Information – 4.60(a)
Medical records – 4.50, 4.60
Mental competency – 4.60(b)
Mental Health proceedings – 1.00, 4.20, 4.60(b)
Minutes – 3.10(a)(2), 4.60

Name – 4.10, 4.20(b), 4.40(b), 4.50(a), 4.60, 4.70,
Naturalization records – 3.10(b)(1)
Notes, reporter's – 3.10(a)(2)
Notice – 4.70

Obscene photographs – 4.50(a),
Official record – 3.10(a)(2)
Ombudsperson - see Custodian of the record
Open access – 1.00, 4.00
Outsource, outsourcing – 2.00, 7.00

Parties to an action – Introduction, 1.00, 2.00(h), 3.10(a)(1), 4.10, 4.20, 4.30, 4.50, 4.60, 4.70, 8.10
Paternity – 4.50, 4.60,
Personal Identification Number (PIN) – 4.50; 4.60(b)
Personal safety – 1.00(a)(5)
Personnel records – 4.60(b)
Phone number - see Telephone number
Photographs – 4.50, 4.60
Place of employment (victim) – 4.60(b)
Platform neutral – 3.20; 4.00
Presentence investigation – 4.60(b)
Presentence report – 4.10
Privacy – Introduction, 1.00(6); 4.60, 4.70(a)(1), 4.70(b)(2), 8.30
Privacy Act of 1974 – footnote 5
Private judging – 3.10
Proprietary interests, business – 1.00(7); 4.70(a)(3)
Proprietary interests, government – 4.60(b)
Psychological evaluations – 4.60(b),
Public, definition – 2.00
Public access, definition – 3.20
Public employee – 4.60(b)

Public safety – Introduction, 1.00(4); 4.70(a)(4), 4.70(b)(5)

Records retention – Introduction, 4.10
Redaction – 3.20, 4.10; 4.70(a)
Register of actions – 3.10(a)(2), 4.20(c),
Regulation of information providers – 4.30
Remedies –4.50, 4.70
Remote access, definition – 3.30
Reporters – see court reporters and media
Research involving human subjects – 4.60(a)
Research purposes – 4.30(b); 4.40(c)(1), 4.60(a)
Restricting access, existence of information to which access is restricted – 4.10(b); 4.70(e)
Restricting access, procedure for – 4.70(a)
Restricting access, pending decision – 4.70
Revenue source – 6.00
Risk of injury to individuals – 1.00(5), 4.50, 4.70(a)(1), 4.70(b)(1)
Role of the judiciary – 1.00(a)(2), 4.20(e)

Screen scraping – 4.30
Sealing – see restricting access
Sealing records – Introduction, 4.10, 4.70(a), 4.70(c)
Search warrant – 3.10, 4.60(b)
Security – see Court security
Sexual assault – 1.00(a)(5), 4.50(a), 4.60(b), 8.10
Social Security Number (SSN) – 4.60(a), footnotes 5, 6, 7
SSN – see Social Security Number
Stalking – 1.00(a)(5), 4.10, 4.50(a); 4.60(b), 8.10
Statistical purposes – 4.30(b), 4.40(c)(1)
Sterilization proceedings – 4.60(b)
Subscription – 4.50

Tagging – see XML tags
Tax returns – 4.60(b)
Technology independent – see Platform neutral
Telephone logs – see Logs
Telephone number – 4.50(a), 4.60(b)
Temporary judge or referee hearing case, relating to definition of court record – 3.10(a)(2)
Temporary restriction to access – 4.50
Termination of parental rights – 4.50(a), 4.60(b)
Third parties – 3.10, 4.10, 4.30, 4.40(c)(1)(4)(i)
Trade secrets – 1.00(a)(7), 4.60(b)
Traffic citations – 4.10
Transcript – see Verbatim Record

Unsealing records – 4.70(b)

Vendor, fee – 6.00
Vendor, liability of information providers – 4.30, 7.00
Vendor, obligations – 7.00
Veracity of information – see Accuracy of information
Verbatim record – 3.10(a)(2); 3.40(d); 7.00(a)
Verbatim record, fee – 6.00
Victim, contact information about – 4.50, 4.60, 8.10
Video recording , part of court record – 3.10(a)(2), and 3.40(d)
Visitation – 4.50
Vital statistics – 3.10(b)(1)
Volunteer – 4.60
Voter records – 3.10(b)(1)

Waiver of fee – see Indigency
Wills – 4.60(b)
Witness, contact information about – 4.50, 4.60, 8.10
Work product, judicial – 4.60(b)

XML tags, tagging –3.20, 4.50

Appendix B
Cross Reference to Selected State Rules and Case Law Used in *CCJ/COSCA Guidelines*

Purpose and Structure of the Cross Reference

The development of the *CCJ/COSCA Guidelines* began with a review of existing rules and policies already adopted or under consideration in several states. The review was not only valuable in determining possible approaches to a public access policy but it also provided useful examples of specific language for various provisions of the *CCJ/COSCA Guidelines*. Since the rules and policies reviewed were so helpful in developing the *CCJ/COSCA Guidelines*, a list has been prepared providing cross-references from each section of the *CCJ/COSCA Guidelines* to specific sections in the rules and polices reviewed that address the same subject. The objective is to allow a state or local jurisdiction considering adoption of a public access rule to examine, in addition to the language in the *CCJ/COSCA Guidelines*, the specific language adopted in each of several states that have already been through the process. The rules referenced do not necessarily take the same policy positions as are contained in the *CCJ/COSCA Guidelines*. Moreover, many of the state policy sections identified in the cross-reference are not consistent with the language in the *CCJ/COSCA Guidelines*. For example, the *CCJ/COSCA Guidelines* cover court records in all forms, paper or electronic, and all case types. In contrast, some of the rules cross-referenced below only relate to records in electronic form, or computer based information, or only one type of case, for example, family law records.

The cross-references provided below are not exhaustive, but the list contains references for the primary rule or policy on public access to court records in each state. There generally are additional rules or statutes in each state that address access or restrictions to access generally, or to specific types of cases, court records, or types of information found in court records. These other provisions may be voluminous, and are often scattered through a state's rules or statutes. Where known, reference to these other rules, policies or statutes, or to a source with more specific references, is provided. Note that the cross-reference list is the work of the project staff, and any errors or incomplete references are the responsibility of project staff, not the states themselves.

Appendix B Section 1 provides abbreviations used elsewhere in the Appendix. A link to the web site(s) where the actual language of the rule or policy cited can be found is also provided, where available. **Appendix B Section 2** is labeled and ordered according to the sections of the *CCJ/COSCA Guidelines*, and lists cross-references to specific sections or subdivisions of the rules or policies reviewed

Appendix B Section 1: Primary State Statutes, Rules, and Policies Utilized in *CCJ/COSCA Guidelines* by State

Appendix B Section 2, in the next section, uses the following abbreviations. The official cite to the rule or policy is provided. A web site address of the actual language of each state's statute, rule, or policy is also provided.

ARIZONA

- **Ariz.R.Sup.Ct., Rule 123**: Rules of the Supreme Court of Arizona, XI. Miscellaneous Provisions, Rule 123 - Public Access to the Judicial Records of the State of Arizona, as amended through October 1, 2001
- Table of contents: http://www.courtaccess.org/states/az/documents/rule%20123%20table%20of%20contents.doc
- Text of rule: http://www.courtaccess.org/states/az/documents/rule%20123%20as%20of%206.23.00.doc
- Or: http://azrules.westgroup.com/Find/Default.wl?DocName=AZSCTR123&FindType=W&DB=AZ-TOC-WEB%3BSTAAZTOC&RS=WLW2%2E07&VR=2%2E0

CALIFORNIA

- **CA CRC**: California Rules of Court, Division VIb, Rules for Fax and Electronic Filing and Service, Title Five, Chapter 3. Public Access to Electronic Trial Court Records, Rules 2070-2076, effective July 1, 2002 http://www.courtaccess.org/states/ca/documents/carule2070to2076.doc
- Or: http://www.courtinfo.ca.gov/rules/ select Title Five, rules 2070-2076
- **CA CCP**: California Code of Civil Procedure
- **CA Evid. Code**: California Evidence Code
- **CA Govt. Code**: California Government Code
- **CA Welf. & Inst. Code**: California Welfare and Institutions Code
- California statutes available through: http://www.leginfo.ca.gov/calaw.html

COLORADO[21]

- **CO CJD 98-05**: Chief Justice Directive 98-05, Access of the Public to Documents and Materials in the Courts, as amended November 17, 2000 http://www.courts.state.co.us/panda/publicaccess/pacjdirective.htm
- **CO PAP 98-01**: Public Access Policy 98-01, Public Access Committee Policy Concerning the Release of Bulk Data, adopted December 14, 1998 http://www.courts.state.co.us/iis/policy98-1to3.doc
- **CO PAP 98-02**: Public Access Policy 98-02, Public Access Committee Policy Concerning the Release of Composite Data, adopted December 14, 1998
  At: http://www.courts.state.co.us/iis/policy98-1to3.doc
- **CO PAP 98-03**: Public Access Committee Policy Concerning the Recovery of Costs Related to the Release of Electronic Data, adopted December 14, 1998
  At: http://www.courts.state.co.us/iis/policy98-1to3.doc
  And at: http://www.courts.state.co.us/panda/publicaccess/pacjdirective.htm
- General Colorado public access home page: http://www.courts.state.co.us/panda/publicaccess/paindex.htm

MINNESOTA

- **Minn.R.Pub.AccessRec.Jud.Br.**: Minnesota Rules of Public Access to Records of the Judicial Branch
  http://www.courtaccess.org/states/mn/documents/rulev1.doc
- **Minn.R.Civ.P.**: Minnesota Rules of Civil Procedure
- **Minn.R.Crim.P.**: Minnesota Rules of Criminal Procedure

VERMONT

- **VT PACR**: State of Vermont, Vermont Supreme Court, Rules for Public Access to Court Records, effective May 1, 2001
  http://www.vermontjudiciary.org/rules/proposed/rules_pa.htm or
  http://www.courtaccess.org/states/vt/documents/rule,%20public%20access.rtf
  As amended:
  http://www.vermontjudiciary.org/rules/proposed/paAmend6b.htm or
  http://www.courtaccess.org/states/vt/documents/ve-amendment%20to%20the%20rules%20for%20public%20access.pdf
- **VT DECR**: State of Vermont, Vermont Supreme Court, Rules Governing Dissemination of Electronic Case Records, Supplementing the Rules for Public Access to Court Records, effective June 1, 2002
  http://www.vermontjudiciary.org/rules/proposed/ruleselectronic.htm

[21] Note that Colorado was in the process of revising its polices at the time this list was prepared.

WASHINGTON

- **WA State Constitution**
  http://www.leg.wa.gov/pub/other/washington_constitution.txt
- **WA GR Rule 15**: Washington State Court, Rules of General Application, Rule 15 - Destruction and Sealing of Court Records, as amended Sept 1, 2000
  http://www.courts.wa.gov/rules/display.cfm?group=ga&set=gr&ruleid=gagr15
- **WA JISCR Rule 15**: Washington State Court, Rules of General Application, Judicial Information Systems Committee Rules, Rule 15 - Data Dissemination of Computer-Based Court Information, effective July 1, 1987
  http://www.courts.wa.gov/rules/display.cfm?group=ga&set=jiscr&ruleid=gajiscr15
- **WA JISC DDP**: Washington State Courts, Judicial Information Systems Committee Data Dissemination Policy, effective June 18, 1995, as amended through June 26, 1998
  http://www.courts.wa.gov/datadis/policy.cfm
- **WA GR Rule 22**: Washington State Court, Rules of General Application, Rule 22 - Access to Family Law Court Records, effective October 1, 2001
  http://www.courts.wa.gov/rules/display.cfm?group=ga&set=GR&ruleid=gagr22
- **WA RCW**: Revised Code of Washington
- **WA RCW 26.30.330**:
  http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section&section=26.33.330
- **WA RCW 13.50.010, 13.50.020, 13.50.100**:
  http://www.leg.wa.gov/RCW/index.cfm?fuseaction=chapterdigest&chapter=13.50
- **WA RCW Chapter 71.05**:
  http://www.leg.wa.gov/RCW/index.cfm?fuseaction=chapterdigest&chapter=71.05
- **WA RCW 26.26.610**:
  http://www.leg.wa.gov/RCW/index.cfm?fuseaction=section&section=26.26.610
- **WA ARLJ**: Washington State Court, Rules for Courts of Limited Jurisdiction, Administrative Rules for Courts of Limited Jurisdiction (ARLJ), Rule 9 - Disclosure of Records
  http://www.courts.wa.gov/rules/display.cfm?group=clj&set=ARLJ&ruleid=cljarlj09

OTHER SOURCES OF ACCESS POLICY LANGUAGE

Federal Policy on Access

- The general site for the judiciary privacy policy: http://www.privacy.uscourts.gov
- URL for the federal policy and recent amendments: http://www.privacy.uscourts.gov/b4amend.htm

Other State Statutes, Rules and Policies

- Organized by State: http://www.courtaccess.org/states.htm

Organization for Economic Cooperation and Development (OECD) Fair Information Practices (FIP)

- Information on OECD privacy policy generator and FIPs can be found at: http://cs3-hq.oecd.org/scripts/pwv3/pwhome.htm

Appendix B Section 2:
Statutory Cross Reference to *CCJ/COSCA Guidelines* By Section

Purpose

Section 1.00 - Purpose of the *CCJ/COSCA Guidelines*

Generally
- CA CRC, Rule 2070(a)
- CO CJD 98-05, first paragraph
- VT PACR, Rule 1
- WA JISCR Rule 15 introduction
- WA GR Rule 22(a) - as to family law records
- WA JISC DDP III.A

1.00(a)(1) - Maximum Public Access to Court Records
- WA State Constitution, Article 1, Section 10
- WA JISC DDP I.A.1

1.00(a)(3) - Promotes Government Accountability
- WA JISC DDP III.A.1 and VIII.C

1.00(a)(6) - Protects Privacy
- Ariz.R.Sup.Ct., Rule 123(c)(1)
- CA CRC, Rule 2070(a)
- WA JISCR Rules 15 introduction and 15(f)(3)
- WA JISC DDP I.A.1 - citing WA State Constitution, Article I, section 7
- WA JISC DDP III.A.2 and IV
- WA GR Rule 22(a) - as to family law records

1.00(a)(9) and (10) - Makes Best Use of Court Resources and Improved Customer Service
- CA CRC, Rule 2070(b)
- VT DECR, Rule 6
- WA JISC DDP VIII.C.1

1.00(a)(11) - Burden On The Court

- Ariz.R.Sup.Ct., Rule 123(f)(4)(A)(i)
- Ariz.R.Sup.Ct., Rule 123(g)(5)(F)
- CA CRC, Rule 2073(d) - electronic access to the extent feasible to do so
- VT DECR, Rule 5(c)
- WA JISCR Rule 15 introduction and subsection (f)(4)
- WA JISC DDP III.B.2

Access By Whom

Section 2.00 - Who Has Access Under These *CCJ/COSCA Guidelines*

Generally

- CA CRC, Rule 2071(c)
- VT PACR, Rules 2 and 4
- WA GR Rule 15(a)

Section 2.00(a) through 2.00(d) - Def. of "Public"

- Ariz.R.Sup.Ct., Rule 123(b)(11)
- CA CRC, Rule 2072(c)
- VT PACR, Rule 3(i)

Section 2.00(e) through 2.00(h) - Other Rules re Access

- CA CRC, Rule 2071(c)
- VT PACR, Rule 2(b)
- WA GR JISCR Rule 15(a)
- WA JISC DDP I.A.2, III.B.4, III.B.5.a, VI, VII, and VIII
- WA GR Rule 22(f) - as to family law cases

Access to What

Section 3.00 – Definitions

Section 3.10 – Definition Of Court Record

3.10(a)(1) and 3.10(2) - Definition of Court Record - Court Record/File

- Ariz.R.Sup.Ct., Rule 123(b)(12)
- CA CRC, Rule 2072(a)
- CA CRC, Rule 243(c) - exhibits
- CO CJD 98-05, second paragraph
- Minn.R.Pub.AccessRec.Jud.Br., Rule 3, subd. 5(a)
- VT PACR, Rule 3, subds. (a), (b), and (j)
- VT DECR, Rule 2, subds. (a), (b) and (f)
- WA GR Rule 15(a)
- WA JISC DDP II.A.
- WA JISC DDP III.A.4
- WA GR Rule 22(b)(1) - as to family law records

Section 3.10(a)(3) - Definition Of Court Record - Court Administration Records

- Ariz.R.Sup.Ct., Rule 123, subds. (b)(12)(A) and (e)
- Minn.R.Pub.AccessRec.Jud.Br., Rule 3, subd. 5(b)
- Minn.R.Pub.AccessRec.Jud.Br., Rule 3, subd. 5(c) - vital statistics record
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 1
- Minn.R.Pub.AccessRec.Jud.Br., Rule 1, Appendix A - Boards and Commissions not covered by rule
- VT PACR, Rule 3, subds. (a) and (c)

Section 3.10(b) - Definition of Court Record - What is Excluded

- CA CRC, Rule 2072(a) - reporter's transcript
- CA CRC, Rule 2072(a) - work product of judges and court staff
- Minn.R.Pub.AccessRec.Jud.Br., Rule 1
- WA JISC DDP III.A.4
- WA JISC DDP IX - e-mail

Section 3.20 - Definition of "Public Access"

- Minn.R.Pub.AccessRec.Jud.Br., Rule 8, subd. 1
- VT PACR, Rules 4 and 6(f)
- WA GR Rule 22(b)(4) - as to family law records

Section 3.30 - Definition of "Remote Access"

- CA CRC, Rule 2072(d) - "electronic access"

Section 3.40 - Definition of "in Electronic Form"

- CA CRC, Rule 2072(b) - "electronic record"
- VT PACR, Rule 3(e) - "electronic record"
- VT DECR, Rule 2, subds. (b) - "electronic case record," and (f) - "electronic record"

Other Definitions

Closed or Confidential Record

- Ariz.R.Sup.Ct., Rule 123(b)(1)

Commercial Purpose

- Ariz.R.Sup.Ct., Rule 123(b)(2)

Criminal History Information

- Ariz.R.Sup.Ct., Rule 123(d)(2)(A)

Custodian of Records

- Ariz.R.Sup.Ct., Rules 123(b)(6)
- CO CJD 98-05 II.A, second paragraph
- Minn.R.Pub.AccessRec.Jud.Br., Rule 3, subd. 1 - def. and Rule 7, subd. 1
- VT PACR, Rule 3(f)
- WA JISC DDP II.C.2 - data dissemination manager

Electronic Data Dissemination Contract

- VT DECR, Rule 2(e)
- WA JISC DDP II.D

Feasibility of Providing Electronic Access

- CA CRC, Rule 2073(d)

Information

- Ariz.R.Sup.Ct., Rule 123(b)(7)

Judicial Officers

- Judge - VT PACR, Rule 3(g)
- Presiding Judge - VT PACR, Rule 3(h)

New Record

- Ariz.R.Sup.Ct., Rule 123(c)(4)

Official Record

- CA CRC, Rules 2074(b) and 2074(d)(3)

Physical Record

- VT PACR, Rule 3(d)

Public Purpose Organization

- VT DECR, Rule 2(g)

State Judiciary Computer System

- VT DECR, Rule 2, subds. (i), (j), and (k)

Statistical or other report

- VT DECR, Rule 2, subds. (d), (h) and (l)

Section 4.00 - Applicability Of Rule [Form of Record]

Generally

- CA CRC, Rule 2073
- Minn.R.Pub.AccessRec.Jud.Br., Rule 3, subd. 5
- VT PACR, Rule 1
- VT DECR, Rule 1
- WA JISC DDP I.A.
- WA JISC DDP III.A.6
- WA GR Rule 22(c)(1) - as to family law records

Use of Information

- WA JISC DDP III.A.5 and III.B.3

Section 4.10 - General Access Rule

Generally

- Ariz.R.Sup.Ct., Rule 123(c)(1)
- Ariz.R.Sup.Ct., Rule 123(c)(2)(C) - notice and extent of redaction
- Ariz.R.Sup.Ct., Rule 123 subds. (d) [case records] and (e) [administrative records]
- Ariz.R.Sup.Ct., Rule 123(g)(4)(A) - databases and electronic records
- Ariz.R.Sup.Ct., Rule 123(h)(2) - certain evidence
- CA CRC, Rule 2073(a)
- CA CRC, Rule 2073(b) – as to electronic access
- CA CRC, Rule 243.1(c)
- CO CJD 98-05 I.A.
- Minn.R.Pub.AccessRec.Jud.Br., Rule 2
- VT PACR, Rules 1, 4, and 6(a)
- VT DECR, Rule 3(a)
- WA GR Rule 15(a)

Court Administrative Records

- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 1
- VT PACR, Rule 5

Section 4.10(b) - Existence Of A Record With Restricted Access

- WA GR Rule, subds. 15(b)(1) and 15(e)(4)(A)
- WA GR Rule 22, subds. (d)(2) and (e)(2) - as to family law cases

Section 4.20 - Court Records in Electronic Form Presumptively Subject to Remote Access by the Public

- CA CRC, Rule 2073(b)
- CA CRC, Rule 2073(f) - bulk distribution
- CO CJD 98-05 II.A, third paragraph
- CO CJD 98-05 II.C.2

Section 4.30 - Requests for Bulk Distribution of Court Records

Definition of Bulk Access

- CA CRC, Rule 2073(f)
- CO CJD 98-05 II.C.1
- CO PAP 98-01, first paragraph

When Allowed, or Not Allowed

- CA CRC, Rule 2073(f)
- CO CJD 98-05 II.C.1
- CO PAP 98-01, first paragraph
- WA JISC DDP III.A.2

Purpose Of Use

- Ariz.R.Sup.Ct., Rule 123(f)(3) [although this subsection is about fees, it contains language about stating intended uses of information]
- CA CRC, Rule 2074(c) - conditions on use

Case By Case Access Only

- CA CRC, Rule 2073(e) – as to electronic access to records in electronic form
- CO CJD 98-05 II.C.2
- VT DECR, Rules 3(a) and 4
- WA JISC DDP III.A.2
- WA JISC DDP III.A.6

Section 4.40 - Access to Compiled Information from Court Records

Section 4.40(a) Definitions

- Ariz.R.Sup.Ct., Rule 123(c)(4) - definition of new record, which includes compiled information
- VT PACR, Rule 8 - statistical reports
- VT DECR, Rule 2, subds. (c) - "electronic case record compilation," (d) - "electronic case record report," and (h) and (l) - statistical reports
- WA JISC DDP II.B. and II.C.1
- WA JISC DDP III.B.6 - "index report"

Section 4.40 (b) and (c) When Compiled Access Allowed

- CO PAP 98-02
- CO CJD 98-05 II.C.3
- CO CJD 98-05 II.C.4 - statistical reports
- WA JISC DDP III.A.3, III.B.7, VIII.A

Section 4.40 (b) Compiled Access To Publicly Available Information

- VT DECR, Rules 4 and 5
- WA JISC DDP III.B.5

Section 4.40 (b) - standard for reviewing request for access to compiled information

- VT DECR, Rules 5(c) and 6
- WA JISCR Rule 15(f)

Section 4.40 (c)(1) - Request For Compiled Information For Scholarly, Journalistic, Political, Governmental, Research, Evaluation, Or Statistical Purposes

- VT DECR, Rules 5(c) and 6
- VT DECR, Rule 7 - procedure
- WA GR Rule 15(d) - authority to promulgate policies regarding applications for information
- WA GR Rule 15(e) - information to be supplied by requestor
- WA JISC DDP IV.C

Section 4.40 (c)(4) - Conditions On Use

- VT DECR, Rule 6
- WA JISCR Rule 15(e) and (f)
- WA JISC DDP II.D, III.A.2, III.B, IV.C, VII.D, and VIII.D

Denial Of Request And Appeal

- Ariz.R.Sup.Ct., Rule 123(f)(4) and (5)
- Minn.R.Pub.AccessRec.Jud.Br., Rule 7, subds. 3 and 4
- Minn.R.Pub.AccessRec.Jud.Br., Rule 9 - appeal from denial of request
- VT PACR, Rule 6, subds. (g), (h), and (i), and Rule 7(c)
- WA GR JISCR Rule 15(h)
- WA JISC DDP V.A

Section 4.50 – Court Records That Are Only Publicly Accessible At A Court Facility

Family Law Matters

- CA CRC, Rule 2073(c)(1)
- VT DECR, Rule 3(a) – provides order of phasing in access, with family law last
- WA GR Rule 22(c)(2)

Section 4.60 - Court Records Excluded from Public Access

Section 4.60(a) - Federal Restrictions

- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 13(b) and Appendix C

Section 4.60(b) - State Restrictions - Generally

- CA CRC, Rule 243.1(c) acknowledging exception for "confidentiality . . . required by law"
- CA CRC, Rule 2070(c) no right to access records not otherwise accessible
- Minn.R.Pub.AccessRec.Jud.Br., Rule 4, subd. 1(e) and Appendix B – categories of case records; see also tables found at: http://www.courtaccess.org/states/mn/documents/00case%20rev%20032100.doc
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 13(a) and Appendix C – categories of administrative records; see also tables found at: http://www.courtaccess.org/states/mn/documents/00admin%20rev%20040400.doc
- VT PACR, Rule 6(b)(33)
- WA GR JISCR Rule 15(b) - as to computer-based court information
- WA JISC DDP IV.A

Section 4.60(b) - Categories Of Cases

Adoption
- CA Family Code § 9200
- VT PACR, Rule 6(b)(1)
- WA RCW 26.33.330

Adult criminal records
- Ariz.R.Sup.Ct., Rule 123(d)(2)
- CA CRC, Rule 2073(c)(5) - restrict remote access
- Minn.R.Pub.AccessRec.Jud.Br., Rule 4, subds. 1(b) and (d)
- VT DECR Rule 3(a)

Civil
- VT DECR Rule 3(a)
- CA CRC, Rule 2073(b)(2)

Civil Harassment Proceeding
- CA CRC, Rule 2073(c)(6) - restrict remote access

Domestic Abuse
- Minn.R.Pub.AccessRec.Jud.Br., Rule 4, subd. 1(a)
- WA GR Rule 22(c)(2) - as to family law records

Family Law Matters
- CA CRC, Rule 2073(c)(1)
- VT DECR, Rule 3(a) on order of providing access to case types
- WA GR Rule 22

Guardianship or Conservatorship Proceedings
- CA CRC, Rule 2073(c)(3) - restrict remote access
- VT PACR, Rule 6(b)(22) and (23)

Juvenile Records
- Ariz.R.Sup.Ct., Rule 123(d)(1)
- CA CRC, Rule 2073(c)(2) - restrict remote access
- CO CJD 98-05 III.F.1
- Minn.R.Pub.AccessRec.Jud.Br., Rule 4, subd. 1(d)
- VT PACR, Rule 6(b)(4)
- WA RCW 13.50.010, 13.50.020, 13.50.100

Mental Health Proceedings
- CA CRC, Rule 2073(c)(4) - restrict remote access
- CO CJD 98-05 III.F.2
- VT PACR, Rule 6(b)(5)
- WA RCW Chapter 71.05

Parentage adjudications
- WA RCW 26.26.610

Sterilization
- VT PACR, Rule 6(b)(2)

Section 4.60(b) - Categories of Information

Application to proceed In Forma Pauperis
- CA CRC, Rule 985(h)
- VT PACR, Rule 6(b)(11)

Application for an Attorney at Public Expense
- VT PACR, Rule 6(b)(10)

Child Abuse Reports
- CO CJD 98-05 I.A.2

Civil Case Records
- Discovery
  - CA CCP 2017(e)
  - VT PACR, Rule 6(b)(9)
- New civil cases prior to service - VT PACR, Rule 6(b)(25)

Criminal Case Records
- Generally
  - CO CJD 98-05 I.A.2 - some types materials or exhibits
  - Minn.R.Crim.P., Rules 25.01, 26.03, 33.04 and 36.06
  - VT PACR, Rule 6(b)(24) - initiation of criminal proceedings
  - WA JISC DDP III.B.5 – as to identifying individuals in a case
  - WA ARLJ, Rule 9 as to courts of limited jurisdiction
- Diversion Cases
  - VT PACR, Rule 6(b)(28)
- Grand Jury
  - Minn.R.Crim.P., Rules 18.05 and 18.08
  - VT PACR, Rule 6(b)(3)
- Presentence Investigation
  - CA Penal Code § 1203.05
  - CO CJD 98-05 I.A.2
  - VT PACR, Rule 6(b)(6)
  - WA ARLJ, Rule 9 as to courts of limited jurisdiction
- Probation
  - CO CJD 98-05 III.A
- Search Warrant
  - VT PACR, Rule 6(b) (15) and (16)
- Mental Health Evaluation of a Defendant
  - VT PACR, Rule 6(b)(19)
- Victim Information
  - CA Penal Code § 293
  - CO CJD 98-05 III.I
- Driver's License Number
  - VT DECR, Rule 3(b)
  - WA GR Rule 22(b)(5) - as to family law records
- Electronically Filed Case Records
  - VT DECR, Rule 3(c)

- Evidence
  - CO CJD 98-05 I.A.2
  - VT PACR, Rule 6(b)(32) – in proceeding to which public does not have access
- Family Law Records
  - CA Family Code § 3111 custody evaluation report
  - CO CJD 98-05 I.A.2 - some types of records
  - Minn.R.Pub.AccessRec.Jud.Br., Rule 4, subd. 1(b) - family court services records
- Financial Related Information
  - Ariz.R.Sup.Ct., Rule 123(c)(3)
  - CO CJD 98-05 I.A.2
  - CO CJD 98-05 III.B
  - VT DECR, Rule 3(b)
  - WA JISC DDP IV.B
  - WA GR Rule 22(b)(6) - as to family law records
  - WA GR Rule 22(c)(2) - as to family law records
- Income Tax
  - CA Family Code § 3552 family law support
  - VT PACR, Rule 6(b)(13) - federal, state, or local tax return
  - WA GR Rule 22(b)(6) - as to family law records
- Juror Information
  - Ariz.R.Sup.Ct., Rule 123(e)(9)
  - CA CCP, section 237(b) - personal identifying information of jurors after criminal case verdict
  - Minn.R.Crim.P., Rule 26.02
  - VT PACR, Rule 6(b)(30)
  - WA GR Rule 15(j)
  - WA JISC DDP IV.B
- Law Library Records
  - Ariz.R.Sup.Ct., Rule 123(e)(7)
  - CA Govt. Code § 6254(j)
  - Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 10
- Medical Records
  - Ariz.R.Sup.Ct., Rule 123(d)(2)(A) - adult criminal
  - Ariz.R.Sup.Ct., Rule 123(d)(1)(C) - juvenile
  - VT PACR, Rule 6(b)(8) - DNA information in family law cases
  - VT PACR, Rule 6(b)(17) - patient records

- Mental Health Related Records
  - CA Welf. & Inst. Code § 5328-5330
  - Minnesota Special Rules Governing Proceedings under the Minnesota Commitment and Treatment Act, Rule 21(b)
  - Minn.R.Pub.AccessRec.Jud.Br., Rule 4, subd. 1(b) - assessments; psychological evaluations
  - VT PACR Rule 6(b)(19) - evaluation of a defendant in a criminal case
  - VT PACR Rule 6(b)(23) - evaluation in guardianship case
- Passport Records
  - Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 11
- PIN - Personal Identification Numbers
  - VT DECR, Rule 3(b)
  - WA JISC DDP IV.B
- Probate Case Records
  - CO CJD 98-05 I.A.2 - estate inventories and appraisals
- Proprietary Business Information
  - CA Evid. Code § 1560(d) subponead business records
- Scanned Images Of Court Documents
  - VT DECR, Rule 3(c)
- SSN Social Security Numbers
  - Ariz. R. Sup. Ct., Rule 123(c)(3) ("when collected for administrative purposes")
  - CA Govt. Code § 68107 - can collect SSN from criminal defendant with fines but not to be disclosed
  - CO CJD 98-05 III.H
  - VT PACR, Rule 6(b)(29)
  - VT DECR, Rule 3(b)
  - WA GR Rule 22(b)(5) - as to family law records
  - WA JISC DDP IV.B
- Street Address
  - VT DECR, Rule 3(b)
  - WA JISC DDP IV.B
- Telephone Number
  - VT DECR, Rule 3(b)
  - WA JISC DDP IV.B
- Transcripts, Reporter's Notes, Audio or Video Tape
  - VT PACR, Rule 6(b)(31)
- Vital Statistics Records
  - Minn.R.Pub.AccessRec.Jud.Br., Rule 6 and Appendix D
- Wills Deposited With Court
  - VT PACR, Rule 6(b)(26)

Section 4.60(b) - Judge Makes Confidential

- CO CJD 98-05 III.G
- Minn.R.Pub.AccessRec.Jud.Br., Rule 4, subd. 1(f) - in civil cases
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 13(c) - order of the Supreme Court

Section 4.60(b) - Judicial Work Product

- Ariz.R.Sup.Ct., Rule 123(d)(3)
- Ariz.R.Sup.Ct., Rule 123(e)(3) - judge assigned to a case
- Ariz.R.Sup.Ct., Rule 123(e)(8) - court attorney and judicial work product
- CA CRC, Rule 2072(a)
- CO CJD 98-05 III.K
- Minn.R.Pub.AccessRec.Jud.Br., Rule 4, subd. 1(c)
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 12 - attorney employed by court
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 3 - correspondence between individuals and judges
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 4 - judge assigned to a case
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 9 - judge compliance records
- VT PACR, Rule 6(b)(12)

Section 4.60(b) - administration of court work product

- Ariz.R.Sup.Ct., Rule 123(e)(6)
- CA CRC, Rule 2072(a)

Section 4.60(b) - Court procurement related records

- Ariz.R.Sup.Ct., Rule 123(e)(5)
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subds. 1 (independent contractors) and 8 (competitive bidding records)

Section 4.60(b) - on court employees or applicants

- Ariz.R.Sup.Ct., Rule 123(e)(1) - court employees
- Ariz.R.Sup.Ct., Rule 123(e)(2) - applicants
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 1 - court employees
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 2 - applicants

Section 4.60(b) - information about court security or IT

- Ariz.R.Sup.Ct., Rule 123(e)(4) and 123(g)(4)(B)
- CO CJD 98-05 III. C and D
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subd. 5

Section 4.60(b) - government owned proprietary information

- Ariz.R.Sup.Ct., Rule 123(e)(10)
- Ariz.R.Sup.Ct., Rule 123(e)(11)
- Minn.R.Pub.AccessRec.Jud.Br., Rule 5, subds. 6 and 7

Judicial Conduct

- Minn.R.Pub.AccessRec.Jud.Br., Appendix A
- VT PACR, Rule 6(b)(20)

Attorney Conduct

- Minn.R.Pub.AccessRec.Jud.Br., Appendix A
- VT PACR, Rule 6(b)(21)

Section 4.70 - Requests to Exclude Information in Court Records from Public Access or Obtain Access to Excluded Information

Section 4.70(a) "sealing" of records

- CA CRC, Rules 243.1 and 243.2
- CO CJD 98-05 I.A. 1 and 3
- Minn.R.Pub.AccessRec.Jud.Br., Rule 4 subd. 2; commentary cites Minn.R.Crim.P., Rule 25 and Minn.R.Civ.P., Rule 26.03
- VT PACR, Rule 7, subds. (a) - case records, (b) - administrative records
- WA GR Rules 15(c)(1)(B) and 15(c)(2)(B)
- WA GR Rule 15(b)(1) - definition of "seal"

Section 4.70(b) - "unsealing"

- CA CRC, Rule 243.2(h)
- VT PACR, Rule 7(a)
- WA GR Rules 15(d) and 15(b)(1) – definition of sealing
- WA GR Rule 22(g)(3) - as to family law cases

Section 4.70(c) - Procedure for "sealing" and "unsealing"

- CA CRC, Rule 243.2
- VT PACR, Rule 7(a)
- WA GR Rules 15(c)(1)(B) and 15(c)(2)(B)
- WA GR Rule 15(h) - appeal; as to computer based court information
- WA GR Rule 22(g)(3) - as to family law cases

Temporary "sealing" pending hearing

- CA CRC, Rule 243.2(d)
- VT PACR, Rule 7(a)
- VT PACR, Rule 6(i) - access during appeal

When Accessible

Section 5.00 - When Court Records May Be Accessed

Section 5.00(a) - generally

- Ariz.R.Sup.Ct., Rule 123(c)(1); 123(h)(1) - original records; and 123(h)(2) - certain evidence
- CO CJD 98-05 I.A.
- Minn.R.Pub.AccessRec.Jud.Br., Rule 2
- Minn.R.Pub.AccessRec.Jud.Br., Rule 8, subd. 2 - access to evidence
- VT PACR, Rule 6(f)

Section 5.00 (b) - access, response time

- Ariz.R.Sup.Ct., 123 (f)(2)
- Minn.R.Pub.AccessRec.Jud.Br., Rule 7, subd. 2
- VT PACR, Rule 6(f)

Custodian of Record

- Ariz.R.Sup.Ct., Rule 123(c)(2)(C)
- VT PACR, Rule 6(e), (f), (g), and (h)

Fees

Section 6.00 - Fees for Access

- Ariz.R.Sup.Ct., Rule 123(f)(3) - paper records; 123(g)(3) - electronic based records; 123(g)(5)(A) - remote access; and 123(g)(5)(E) - value added or custom remote access
- CA CRC, Rules 2076 and 2074(d)(3)
- CO PAP 98-03
- CO CJD 98-05 II.C.3 and CO PAP 98-02 for compiled data
- Minn.R.Pub.AccessRec.Jud.Br., Rule 8, subd. 3
- VT PACR, Rule 6(f) - as to court records
- VT PACR, Rule 5 - as to administrative records
- WA JISCR Rule 15(g)
- WA JISC DDP III.B.2
- WA GR Rule 22(c) - as to family law records

Obligation of Vendors

Section 7.00 - Obligations of Vendors Providing Information Technology Support to a Court to Maintain Court Records

- Ariz.R.Sup.Ct, Rule 123(g)(5)(D) – although this subsection refers to "users," it would appear to apply to a vendor used by the court to supply information to others
- CA CRC, Rules 2075 and 2076 (regarding fees charged by vendor)
- VT DECR, Rule 2(e) - definition of "Electronic Data Dissemination Contract"

Obligation of the Courts to Inform and Educate

Section 8.10 - Dissemination of Information to Litigants About Access to Information in Court Records

- CA CRC, Rule 2074, subds. (d) and (e)

Section 8.20 - Dissemination of Information to the Public About Accessing Court Records

- CA CRC, Rules 2074, subds. (d) and (e)

Section 8.30 - Education of Judges and Court Personnel About an Access Policy

- CO CJD 98-05 II.B.1

Section 8.40 - Education About Process to Change Inaccurate Information in a Court Record

- CO CJD 98-05 II.B.3

OTHER TOPICS MENTIONED IN ACCESS POLICES CATALOGED

Access to Records Previously Available Through Third Party After Sealing by the Court

- CA CRC, Rule 2073(g)

Access - Where

- CA CRC, Rule 243(a) – generally only in courthouse
- CA CRC, Rule 2073, subds. (c) and (h) – as to records in electronic form

Authority to Adopt Access Rule

- Ariz.R.Sup.Ct., 123(a) citing Arizona Constitution, Article VI, section 3.
- CA CRC, Rule 2071(a)
- WA JISC DDP I.A

Computer Platform

- Ariz.R.Sup.Ct., Rule 123(g)(5)(H)
- CA CRC, Rule 2074(a)

Design of Future Case Management System

- Ariz.R.Sup.Ct., Rule 123(g)(4(C)

Duty of Court, Clerk of Court, or Custodian of Record

- Ariz.R.Sup.Ct., Rule 123(c)(2)(A) – custodian's obligation to segregate confidential information
- Ariz.R.Sup.Ct., Rule 123(c)(2)(B) - obligation of custodian to use "reasonable records management practices and procedures"
- Ariz.R.Sup.Ct., Rule 123(f)(2) – obligation of custodian to timely respond to a request
- Ariz.R.Sup.Ct., Rule 123(f)(4)(A)
- Ariz.R.Sup.Ct., Rule 123(g)(5)(G)
- Ariz.R.Sup.Ct., Rule 124(b)(2) - electronic filing
- WA GR Rule 15(e)
- VT PACR, Rule 6, subds. (f), (g), and (h)
- VT DECR, Rule 7

Form of Request for Access

- Ariz.R.Sup.Ct., Rule 123(f)(1)
- CO CJD 98-05 I.B
- Minn.R.Pub.AccessRec.Jud.Br., Rule 7

Means of Access

- to Physical record - VT PACR, Rule 6(c)
- to electronic record - VT PACR, Rule 6(d)

Official Record

- CA CRC, Rule 2074(b)