

Public Access to Court Records: Implementing the *CCJ/COSCA Guidelines* Final Project Report

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Public Access to Court Records: Implementing the CCJ/COSCA Guidelines



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TABLE OF CONTENTS

Acknowledgements	v
Introduction	vii
A. <i>CCJ/COSCA Guidelines</i>	vii
B. Follow up State Interest and Activity	vii
C. Limits of the Current Report	ix
Section I: Educating Litigants and the Public about Public Access to Court Records	1
A. Introduction.....	1
B. Template of Educational/Information Materials	6
Section II: Further Thoughts on Family Court Records	29
A. Introduction.....	29
B. <i>CCJ/COSCA Guidelines</i> Framework for Considering Family Court Records	30
C. Special Issues Involved in Family Court Records Suggest Special Privacy Considerations.....	30
D. Range of Family Law Case Types Present Different Challenges.....	31
E. Evolving Policy Context for Family Court Records	32
F. Confidentiality and Sharing Records In Multi-System Initiatives.....	33
G. Interest Among Other National Groups.....	34
Section III: Internal Policies and Practices for Courts and Clerks of Court Implementing Laws and Policies Governing Public Access to Court Records.....	35
A. Introduction.....	35
B. Possible Provisions of an Internal Policy Regarding Public Access and Information Quality	37
C. Sample Curriculum Topics for Training Staff Regarding Public Access to Court Records Policies and Practices.....	40
D. Possible Elements of a Contract or Memorandum of Understanding with an Information Technology Provider	47
Conclusions and Next Steps	52
Appendix A: Materials Related to Section I: Education	53
Appendix A Part 1: Relevant Excerpts from <i>CCJ/COSCA Guidelines</i>	53
Appendix A Part 2: Web Sites and Examples of FAQ Pages Regarding Court Records	56

Appendix B: Materials Related to Section II: Family Court Records.....	57
Appendix B Part 1: Relevant Excerpts from <i>CCJ/COSCA Guidelines</i>	57
Appendix B Part 2: Web Sites and Examples of State Statutes and Court Rules Relevant to Family Court Records.....	64
Appendix C: Materials Related to Section III: Internal Court Policies and Practices	69

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INTRODUCTION

This project provides the second chapter to an earlier project conducted by the National Center for State Courts (NCSC) and the Justice Management Institute (JMI) for the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA), funded by the State Justice Institute (SJI). The original project resulted in a policy framework or set of *Guidelines*, that were endorsed by CCJ and COSCA in August 2002 and published in a final project report in October 2002.¹

The first phase of the project was the most involved, focusing on getting a wide range of voices and interests together to acknowledge and articulate both concerns and satisfaction about the state of policy and practice in the United States related to access to court records. This follow-on project allowed a group of the original CCJ/COSCA *Guidelines* drafters and committee members to discuss a set of additional philosophical and practical concerns and developments relating to implementation of some aspects of the *Guidelines*.

A. **CCJ/COSCA Guidelines**

The current project was proposed to continue the work initiated under SJI projects SJI-01-N-054 and SJI-02-N-007, which produced CCJ/COSCA *Guidelines* endorsed by CCJ and COSCA on August 1, 2002 and finalized in October 2002, that were intended to facilitate policy development by state courts in the area of public access to court records. As noted in the original funding proposal for this project, “The development and promulgation of the CCJ/COSCA *Guidelines* has touched a nerve in the field of judicial administration.” State judiciaries, major segments of the information industry, and all forms of media continue to track the work of the project and the resulting *Guidelines*. Project staff have reported on its development and follow-up activities at over twenty national and local conferences, and continue to write about its progeny and to participate in ongoing related activities.

The *Guidelines* were intended to provide an initial outline of issues and to propose some draft language, to give state jurisdictions a starting point for their own necessary and detailed discussion. The *Guidelines* have taken on a life of their own.

B. **Follow-Up State Interest and Activity**

States currently engaged in drafting court records access policies or that have recently concluded committee or commission processes, rule development or modifications, or other formal processes in the past few years have approached their task in a range of ways.

¹ Steketee, M.W. and A. Carlson (October 18, 2002). Developing CCJ/COSCA Guidelines for Public Access to Court Records: A National Project to Assist State Courts. Williamsburg, VA: National Center for State Courts. Final report to the State Justice Institute (SJI-01-N-054 and SJI-02-N-007) <http://www.courtaccess.org/modelpolicy/18Oct2002FinalReport.pdf>.

- Some jurisdictions have adopted the template of the *Guidelines* with slight adaptations (e.g. South Dakota adopted sections of text from the *Guidelines* with slight edits to comport with local conditions in February of 2004 – creating a rule where none existed before).
- Some jurisdictions have worked on nuanced revisions to established state rules, including several of the six states that we looked to in detail early in the initial *Guidelines* development process. Minnesota, Washington, Arizona, and Vermont have held meetings, conducted commission reviews, and have adapted new rules in the almost three years since the finalization and endorsement of the *Guidelines*.
- And some states are now in the middle of, or have recently completed, extended development efforts. For example, the state of Alaska and the state of Ohio have recently adapted or put out for final comment new and revised older rules addressing access to court records.

Several states are re-addressing their access policies, or have begun new efforts, and are using the *Guidelines* as a template or a starting point, and have contacted project staff for assistance or materials. Maryland has drafted a policy using the *Guidelines* as a framework. Colorado initiated a review and revision of their policies when the *Guidelines* were issued. Washington and Vermont are continuing to revise their policies. The Federal Judiciary is also keeping in close touch with the project. The legislature of the Commonwealth of Virginia recently looked at the issue of public access to court records. New York's Commission that addressed this issue reviewed the *Guidelines* at their first meetings and their staff remained in close touch with the *Guidelines* project staff. Several other states actively utilized *Guidelines* project staff in starting a review process, including several that received SJI TA funding in 2004 to support these efforts (e.g. Minnesota, Alaska, and Ohio). Finally, several states, including Florida and Pennsylvania, indicated to staff throughout the prior project phases that they were waiting for the final *Guidelines* before initiating a review in their state. The state judiciaries have unequivocally expressed a need for assistance in the area, and the *Guidelines* are meeting their needs.

What have we learned about what is happening in the states? The main theme is committee composition and the need for open processes. The *Guidelines* recommended that the committees convened to do this work be multidisciplinary large committees to bring all the debate to the table before the rules are drafted. The state experiences suggest that each state has its own culture for development, release, refinement of the rules about access to court records and protecting personal information in those records.

C. Limits of the current report

The current project continues the work initiated under SJI project SJI-01-N-054 and SJI-02-N-007, which produced the *CCJ/COSCA Guidelines* to facilitate policy development by state courts in the area of public access to court records that were endorsed by CCJ and COSCA on August 1, 2002 and finalized in October 2002.

Originally there were five proposed objectives of the project.

- Conduct a national survey of all states and the District of Columbia to assess the current status of access policies;
- Develop key components of a policy developments process for states to follow, to draw a road map for the process;
- Expand *CCJ/COSCA Guidelines* Commentary on Family Court Records;
- Develop internal court policies and procedures on access; and
- Develop education materials to implement *CCJ/COSCA Guidelines* addressing the obligation of the court to inform and educate litigants, lawyers, the public, and court personnel about accessing information in court records.

In the end, only the final three objectives were funded for this project. As a result, this report and project does not purport to provide an exhaustive listing or index of the status of court rules and policies in the 50 U.S. states and the District of Columbia. This report and project does not address the policy development and implementation stories that have been occurring and continue to occur – varied and nuanced and unique stories in each jurisdiction that has engaged in the discussions and hard decisions involved in developing court policies in this area.

What this report does attempt to provide is some additional thinking, language, discussion, and exemplars addressing three distinct areas included in the *CCJ/COSCA Guidelines* endorsed in 2002:

- materials for educating litigants and public;
- expanded considerations of the challenges of access to family court records; and
- considerations of internal court policies and procedures.

Section I: Educating Litigants and the Public about Public Access to Court Records

A. Introduction

The *CCJ/COSCA Guidelines on Public Access to Court Records* contain sections recommending educating litigants and the public about the concepts and provisions of a jurisdiction's public access policy (sections 8.10 and 8.20, excerpted in Appendix A below). The commentary to that section noted that the *Guidelines* did not propose specific language for the Web site, brochure, or other document that could be used to educate litigants and the public. The objective of this document is to provide that language.

Why Educational Efforts are Needed

Generally, information in court records is open to the public. This contributes to the transparency and legitimacy of the judiciary—the public is always able to find out what is happening. However, the public, and litigants in particular, may not always be aware that the information in court records is open. Some may assume some or all of it is private. Some may be from other cultures where this information is assumed to be private. It is therefore appropriate to educate litigants and the public so that when they act relative to court cases, they will be acting based on complete and accurate information. With regard to litigants this may be especially relevant, as litigants should be aware of the public nature of court records when making decisions about what to include in documents they file with the court in their case.

Overview of the Section

This report section contains two subsections. First is an overview of what the educational effort is intended to accomplish. Second is a template intended as a first draft of the materials to be used to educate the public and litigants about public access to court records.

The first section begins with a discussion of who the audiences for the educational effort could be and the possible approaches that could be used to educate them. This is followed by a discussion of the structure of the templates and the underlying assumptions. Finally, there is a discussion of what a jurisdiction needs to do to tailor the language proposed in the second part to serve its needs.

The second section provides a template for use in developing educational materials. It includes a set of possible topics that could be addressed in an education effort. For each topic, there is sample language that could be used in the educational materials. References are also provided to existing Web sites containing similar language. Not every topic suggested is relevant to every audience or jurisdiction, nor is the language necessarily appropriate for each educational format. The approach is to

start with a more exhaustive set, and allow a jurisdiction to edit it to the intended audience and format, as appropriate.

Audiences or Categories of Users

There are several groups of people who should be aware of policies regarding, or who will seek, access to court records. Each has slightly different interests and objectives in accessing court records, thus, their educational needs will be different. The major groups are listed below, with some comments about their different educational needs.

- Litigants and others involved in a case. In addition to knowing the basics about public access to court records, litigants need to understand that the court records in their case are open to the public, and that anything that they, or any other party in the case, include in a court document or offer into evidence is generally open, even if they think it is erroneous or should be kept private. [See *CCJ/COSCA Guidelines*, sec. 8.10.] Since they are sometimes not represented by lawyers extra care should be taken to ensure that unrepresented litigants understand the access provisions. Finally, there are others in cases who are not parties, for example witnesses, victims, and jurors, who should be made aware of the type of information that may be available to the public in a case and what they can do to request that the information not be open to public access.
- General Public. The general public needs to know the basics – what is available, what is not available, and how to obtain access. In those rare instances where a member of the public, not a party, is mentioned in a court record, they should be able to find out how to request restriction of public access to information about them, where appropriate. [See *CCJ/COSCA Guidelines*, sec. 8.20.]
- Lawyers. Although they would be presumed to be aware of public access policies, it is likely they are unaware of many of the nuances, or exceptions. In addition, they may need to be alerted to the sensitive nature of information and the need to protect it from public access on behalf of their clients. While they may be more adept than the public at finding the law, it will help them to know what to look for and what they should be concerned about.
- Vendors supporting a court's case management system and the court's public access portals. Those who provide IT services to the court to manage the court records must also be made aware of the rules and restrictions regarding public access. [See *CCJ/COSCA Guidelines*, sec. 7.00(b).] If not, there is the risk that the vendor or its agents will reveal information to the public that should not be. There is also the need to alert vendor staff to the issues of data quality that affect people about whom information may be incorrect or stale, causing injury to these people. For purposes here, 'vendor' includes executive branch agencies providing IT services to the judicial branch as well as private vendors.

- Records researchers. It is quite common for certain businesses to routinely access court records for information of interest to their clients. This includes credit bureaus, land title services, and background check agencies, for example. Because these entities are in the business of passing information in court records on to others, it is especially important that they understand what information is publicly available, and what is not. In addition, if they understand the proper means to access court records, they will be less of a burden on the court or clerk of court staff who assist the public, including researchers, in viewing and copying the court records.

Format – Alternative Education Approaches

The educational or informational materials could take any one of several formats. The most appropriate format depends on the audience, the form (electronic or paper) in which the public information is available, and under what circumstances the information will be provided to people. Format options include the following:

- A brochure, handout, or pamphlet. This could be written for the general public, or there could be a version written specifically for litigants, jurors, or witnesses and victims. It could be distributed through the clerk's office, mailed to people upon request, or handed out in a self-help center.
- Frequently Asked Questions (FAQ). This could be made available as a written handout or on a Web page. Again, this could be directed toward the general public, or towards a particular audience, such as litigants.
- Notice to Litigants. A written document or pamphlet given to a party who files a case, and given to parties who are served or appear. The serving party could be required to serve the notice along with other papers, or the court could provide the notice to parties appearing.
- Videotapes or video clips on a Web site. The court could also produce video tapes or video clips explaining the points listed in the templates below. The videotapes could be distributed through a self-help center, an ombudsperson, or through libraries and other public service points.
- A tutorial available on a public access terminal in courthouse or through a Web site that covers the key points about public access.
- A curriculum for use in self-help programs directed at litigants or the public to educate them about public access to court records.

The most appropriate format to use would vary with the audience and with the form of the court records being accessed. The most appropriate format would also depend on the resources available to produce the material and the demand for information. Consideration should also be given to producing the material in other languages and in formats available to the disabled. Whatever format is chosen, it should refer the public or litigants to further sources of information about public access.

Structure of the Template

The template provided below is set up in a FAQ (Frequently Asked Questions) format. This is done both because it is a common format used on Web sites, and that it is readily edited to other forms, for example a brochure or pamphlet.

The template provided below is based on several concepts. It is drafted for use on either a state or local jurisdiction level, as electronic public access to court records may involve a statewide system, or a local system. Because neither level is assumed, it is necessary to edit the language suggested below to reflect the jurisdictional level to which it applies. Similarly, the language can be used for either paper records or electronic records, or both. Again, the language suggested should be edited to reflect the form of record involved. Finally, the language is written to a middle school language level, not for lawyers, to maximize understanding by the public or litigants who are affected by the public access policies.

Several patterns are used in the proposed language. Brackets around italicized language indicate where a state or local court needs to insert jurisdiction specific terms or details in place of the bracketed language. References are also provided to the relevant sections in the *CCJ/COSCA Guidelines* as an aid to cross-referencing to the applicable public access policy. Finally, citations, usually including a Universal Resource Locator (URL), are given to existing educational materials already in use in jurisdictions. Citation to a jurisdiction's URL does not necessarily mean the language is the best that was found; rather, it provides an example, in a context, of language currently being used.

What a Jurisdiction Needs to Do to Adapt the Template to Their Purposes

It would not be possible to provide language for educational materials that could be adopted without modification in every jurisdiction. Rather, the proposal here provides relatively universal language that a jurisdiction can edit to be consistent with their public access policies. There are several steps a jurisdiction should take to adapt the language provided below to their jurisdiction:

1. Decide who the primary audience(s) of the educational materials will be. For example, will the audience be the general public, or is it intended specifically for litigants? Who the intended audience is will affect both the format of the materials, what is included, and the level of language.

2. Decide what format(s) will be developed for the educational materials? Will a brochure or pamphlet be developed, a Web site, or both?
3. Decide whether the educational material applies to paper records, electronic records, or both. If both, there could be one educational piece, or two, one for each form of record.
4. Based on these decisions, a jurisdiction should review and edit the template by:
 - a) Deleting paragraphs that are not relevant, based on the public access policy applicable in the jurisdiction, or not relevant to the audience or means of access for which the materials are being drafted;
 - b) Adding paragraphs for provisions that are not addressed here, but are part of the jurisdiction's access policies;
 - c) Changing key terms to those used in the jurisdiction. For example, the jurisdiction may use the term "sealing" or "closed" to refer to court records that the template refers to as having "restricted" public access;
 - d) Adding details to lists identified in brackets in the language below. For example, list case types of those cases where the case records are categorically not available to the public;
 - e) Adding details where indicated of the office or person the user should contact to obtain further information or ask questions, etc.; and
 - f) Adding the citations to the specific laws and polices defining public access to court records in the jurisdiction that are referred to at the end of the materials.

Once edited it is suggested that the jurisdiction submit the draft to the local self-help center or legal aid group for review and comments about the understandability of the draft and usability of the format.

B. Template of Educational/Information Materials

Topics and language that might be included in educational or informational materials are provided here. As noted above, some topics, or paragraphs, relate only to paper records, whereas others relate primarily to electronic records available through a Web page or subscription service. Similarly, some of the proposed language relates only to a specific audience or type of case, which is generally noted before the proposed language.

1. INTRODUCTION

This [brochure/Web site] describes in general terms the public's access to court records and the restrictions on public access. It is meant to be a guide, not a legal document. For more details about the law and public access to court records, please look up the laws listed at the end of this [brochure/Web site].

2. ARE COURT RECORDS OPEN TO THE PUBLIC?

Court records in cases filed in this [state/court] are generally open to the public. Anyone may request to see a court record. You may look at court records for any reason, and, usually, no matter what use you will make of the information. In order to look at court records in a case you do not have to be a party in the case. You may look at both pending and finished cases. There are a few exceptions to this open access based on federal law, state law, or a court order that are described below.

Sources and Examples:

CCJ/COSCA Guidelines, section 4.10(a)

3. WHY ARE COURT RECORDS OPEN TO THE PUBLIC?

There are several reasons why court records are open to the public. Some reasons are for the benefit of the parties in a case, some are for the benefit of people even if they are not parties, and others are for the benefit of the public generally. One important reason court records are open to the public is to allow the public to see what the courts are doing and how the courts work. This not only benefits the parties by helping to make sure that everyone is treated the same, it also helps people have confidence in the courts as being a fair and safe place to go to resolve disputes. Being able to see court records also allows people to protect themselves against people, businesses, or organizations that have hurt others, including through criminal activity. Finally, being able to see court records helps people know what they can and cannot do when dealing with each other.

Sources and Examples:

CCJ/COSCA Guidelines, section 1.00

4. WHAT ARE COURT RECORDS?

Court records include any document, information, exhibit, or other thing filed in a court case by the parties or their lawyers. It also includes documents prepared by the court in a case. Court records also include any information in a computer case management system that is used by the [court/clerk of court] to track cases. Examples of court records are: complaints, petitions, answers, motions, transcripts, calendars, minutes of a court proceeding, and court orders, decrees, or judgments.

Sources and Examples:

CCJ/COSCA Guidelines, section 3.10(a)

SPECIFIC NOTICE TO LITIGANTS

The language suggested next is for a notice to litigants regarding availability of information in their case and ways to protect sensitive personal information.

5. WHAT SHOULD I KNOW ABOUT PUBLIC ACCESS TO MY CASE IF I AM A PARTY?

Anyone who is a party in a case should be aware that information they or their attorney provide to the court, or that other parties or their attorneys provide to the court, is generally accessible to the public. There are few exceptions. Litigants can ask to limit or prohibit public access to information in their court case. However, the basis for a judge limiting public access to court records is quite limited.

Anyone filing documents with a court should not put in a document filed with the court sensitive personal information that you do not want the public to see unless including the information is required by law or ordered by the court. Any sensitive personal information in a court record not protected by law can be seen by the public at the courthouse [*and may also be available through a Web site/subscription service*].

It is the responsibility of the person filing a document to make sure that the document follows the law when sensitive personal information is involved. The [*court/clerk of court*] will not review documents submitted for filing to see if it has information that should not be there, or information which should be protected from public access.

Sources and Examples:

Washington Courts, Notice Regarding Availability of Case File Information page at:
<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.noticetofilers>

EXCLUDING OR REDACTING SPECIFIC INFORMATION

If there are specific rules in the jurisdiction regarding the redaction or exclusion of specific types of information, consider including the following language:

6. ARE THERE SOME KINDS OF INFORMATION I SHOULD NOT PUT IN A DOCUMENT I AM FILING?

Persons filing documents with the court should not include, and if it is already present in the document to be filed, should erase or black out the following types of information from the document before filing it, unless the information is required by law or ordered by the court to be included:

[List specific kinds of information that the jurisdiction's laws have determined to be not public, for example, social security number, names of minor children, financial account numbers, and driver's license numbers.]

Sources and Examples:

Washington Courts, Notice Regarding Availability of Case File Information page at:
<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.noticetofilers>

7. IS THERE A WAY TO FILE SENSITIVE PERSONAL INFORMATION REQUIRED BY THE COURT, SO THAT IT IS NOT AVAILABLE TO THE PUBLIC?

If there are specific rules in the jurisdiction regarding specific types of information in certain case types and there are procedures specified for filing the information in a protected manner, consider including the following language:

Public access to some information in documents in *[specify the case type where specific rules apply, for example, in family law cases]* is restricted by law. In these cases the following information *[list the specific types of information, for example, financial account numbers in a dissolution case]* is to be *[specify how the information is to be provided to the court and other parties, but protected from public access, for example, filing under seal, or exchanging with the other parties, but not filing, and then include a list of the information that is to be protected in this manner]*.

Sources and Examples:

Delaware, "OTHER NOTICES," "Records Access in the Family Courts," see no. 5, and no. 7, at
http://courts.state.de.us/How%20To/Record%20Access/?fc_records.htm
Washington Courts, Notice Regarding Availability of Case File Information page at:
<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.noticetofilers>

8. WHAT COURT RECORDS CAN I SEE?

The following types of cases are filed in this court and the court records in these cases can be seen by the public:

[List the case types of cases filed in your court that area accessible by the public. For example, civil, criminal, family law, probate, etc. Also consider adding information at the end of the brochure or pamphlet or a link to a Web site subpage that provides the detailed definitions for each of the case types.]

Court records are kept in the court where the case was filed. Court records in cases not filed in this court cannot be seen at this [court/Web site/subscription service]. You must go to the [court/Web site/subscription service] of the court where the case was filed.

Sources and Examples:

Superior Court of Orange County (CA) Criminal home page at:

<http://www.occourts.org/criminal/#records>

9. WHAT COURT RECORDS CAN I SEE ON THIS [WEB SITE/SUBSCRIPTION SERVICE]?

If the educational materials relate to a Web site or subscription service, as opposed to the court's paper files, consider using:

This [Web site/subscription service] provides access to [some] court records in the following types of cases:

[Provide a list the case types of those cases that are accessible by the public through the Web site/subscription service, for example, civil, criminal, family law, probate, etc. Also consider adding for each of the case types a hot link from the case type name to a more detailed definition of the case type. Provide a list of the types of documents that area available through the Web site/ subscription service if only certain types of documents are available.]

For each of the case types listed above, the following are the types of information that are available in these cases:

[List examples of the types of documents accessible by the public in the case types listed above. Examples include:

- *detailed case information – case type, charges, filing and court event dates;*
- *the parties involved in the case, not including victims and witnesses; etc.]*

Sources and Examples:

Arizona Judicial Branch, under “Welcome” paragraph at:

<http://www.supreme.state.az.us/publicaccess/>

Colorado Judicial Branch, “Public Access: Court Records Searches” page, under paragraph starting “eInfoData.com, Inc. has agreed . . .” at:

<http://www.courts.state.co.us/panda/publicaccess/ctrecords.htm>

Colorado Judicial Branch records available through CoCourts.com Web site, at “Products” page, under “Colorado Courts” at: <http://www.cocourts.com/public/products.cfm>

Florida Clerk’s of Court MyFloridaCounty.com Web page; example of documents available from Duval County at:

<https://www.myfloridacounty.com/serv/MyFloridaCounty/ORI/Order?thisPage=MyFloridaCounty.ORI.Order.state.CountyDates&thisSession=&countydocs=16>

Superior Court of Orange County (CA) Criminal home page, see list of items just below box indicating locations, at: <http://www.occourts.org/criminal/#records>

10. IS INFORMATION ABOUT [SPECIFY CLASS OF PEOPLE, FOR EXAMPLE, JURORS] AVAILABLE TO THE PUBLIC?

If there is information in court records available about specific categories of people, for example, witnesses or jurors, a paragraph should be added making it clear that information is available, and the nature of the information that the public can see.

Yes, information about *[specify the type of information about this class of persons that is available to the public, for example, names of jurors]* is available to the public. All other information is considered private. If additional information about *[indicate the class of persons, for example, jurors]* is desired, the person requesting the information would need to ask the trial court and show why more information should be given to them.

Sources and Examples:

Jurors - Washington State Courts “Access to Court Records” page, under “Is information about jurors available to the public?” at:

<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.accesstocourtrecords>

11. HOW LONG ARE COURT RECORDS KEPT?

Court records are generally kept for very long periods and for this reason are available to the public for a long time. Case information is kept at a minimum for at least the following number of years:

[Provide a list of each case type and an indication of how far back the records are kept and are available, for example, civil case records are available back to 1916.]

Sources and Examples:

Colorado Courts CoCourts.com Web page, see “Colorado Courts” under “Products” at:

<http://www.cocourts.com/public/products.cfm>; page on coverage by county at:

<http://www.cocourts.com/public/coverage.cfm>; and “Site Disclaimer” page at:

<http://www.cocourts.com/public/Disclaimer.cfm>

Florida Clerk’s of Court MyFloridaCounty Web pages table of date ranges for case availability by county at:

<https://www.myfloridacounty.com/serv/MyFloridaCounty/ORI/Order?thisPage=MyFloridaCounty.ORI.Order.state.AdvancedPowerSearch&thisSession=&countydates>

Harris County (TX) District Clerk’s Web site, see description of site contents at: <https://e-docs.hcdistrictclerk.com/eDocs.Web/Login.aspx>

Superior Court of Ventura County (CA) Case Inquiry page at:

http://www.ventura.courts.ca.gov/vent_frameset_puba.htm

Wisconsin Circuit Court Access (WCCA) Web site, “Frequently Asked Questions” page, “How long are cases kept on WCCA?” at:

<http://wcca.wicourts.gov/faqnav.xsl;jsessionid=8036D1470A038AB3CBB55B35613773C6.render4#Faq1>

12. HOW FAR BACK DO THE CASES ON THE [WEB SITE / SUBSCRIPTION SERVICE] GO?

The *[court/clerk of court]* began making cases available to the public through the *[Web site/subscription service]* on *[indicate the start date for the records in electronic database or Web site]*. Court records in any case filed after this date will be available through the *[Web site/subscription service]*. Some older cases may have been added and be available, while other, older cases may not be available. Information that is not available in this system can be seen at *[indicate where the older records can be found]*. Paper versions of the court records available through the *[Web site/subscription service]* are located at *[indicate where the paper version of the court records can be found]*.

Sources and Examples:

Colorado Courts CoCourts.com site, Frequently Asked Questions page, under “With the new

CoCourts link to Denver County Courts, how far back do the Denver County Courts records go?” at: <http://www.cocourts.com/public/faq.cfm#qAbout12>

Colorado Courts CoCourts.com site description “Disclaimer” at:

<http://www.cocourts.com/public/Disclaimer.cfm>

Superior Court of Orange County (CA), Civil Records Management page, under “Viewing Files” and “Records Searches” at: <http://www.occourts.org/civil/civilcrd.asp#viewing#viewing>

Superior Court of Ventura County (CA) “Case Inquiries” page at:

http://www.ventura.courts.ca.gov/vent_frameset_puba.htm

13. WHAT COURT RECORDS ARE NOT AVAILABLE FOR THE PUBLIC TO SEE?

There are certain types of cases, documents, and information that the public is not allowed to see. Restrictions on public access help protect people's privacy and may also protect them from harm. Public access is usually restricted because these court records contain sensitive personal information as determined by federal or state law, court rules, or a court order in a case. *[If your public access policy so provides, add: Although some court records cannot be seen by the general public, there will still be an indication that the court record exists, even if you cannot see the court record itself.]*

Sources and Examples:

Indication of existence of a record - *CCJ/COSCA Guidelines*, section 4.10(b)

14. ARE SOME TYPES OF CASE NOT AVAILABLE TO THE PUBLIC?

For some types of cases, none of the court records in these cases are available to the public. Generally, this is because of the nature of the cases and the sensitive personal information in these cases. In the following types of cases none of the court records are available to the public:

[Include a list of the case types whose records are not available to the public, for example, adoption cases, mental health cases, juvenile dependency cases, termination of parental rights cases, etc.]

Sources and Examples:

CCJ/COSCA Guidelines, section 3.10(b) and 4.60

Arizona judiciary "Public Access to Court Information" search page at:

<http://www.supreme.state.az.us/publicaccess/search.asp>

Washington State Courts "Access to Court Records" page, under "What kinds of records are not available to the public?" at:

<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.accesstocourtrecords>

15. ARE SOME TYPES OF COURT DOCUMENTS NOT AVAILABLE TO THE PUBLIC?

There are also some types of court documents that are not available to the public in any type of case even if other documents in the case are available to the public. The following types of documents are not available to the public:

[Include a list of those types of documents that are not available to the public, for example, pre-sentence reports, child custody investigations, medical and psychological evaluations and reports, financial disclosure statements in family law cases containing financial account records, medical records and health care information, etc.]

Sources and Examples:

Colorado judiciary CoCourts.com, Frequently Asked Questions, "What court records can I search?" at: <http://www.cocourts.com/public/FAQ.cfm#qAbout4>
Superior Court of Los Angeles County (CA), Public Information Policy page, list under "Policy" available through: <http://www.lasuperiorcourt.org/courtnews/>
Washington Courts, "Access to Court Records" page, under "What kinds of records are not available to the public?" at:
<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.accesstocourtrecords>

16. ARE SOME TYPES OF SPECIFIC INFORMATION NOT AVAILABLE TO THE PUBLIC?

There are some specific pieces of information that are not accessible by the public, for example:

[Include a list of those kinds of information that are not available to the public, for example, social security number, driver's license number, Federal income or business tax returns, information such as names and street addresses of jurors, victims, or witnesses, medical records and health care information, etc.]

Sources and Examples:

Colorado judiciary CoCourts.com, Frequently Asked Questions, "What court records can I search?" at: <http://www.cocourts.com/public/FAQ.cfm#qAbout4>
Superior Court of Los Angeles County (CA), Public Information Policy page, list under "Policy" available through: <http://www.lasuperiorcourt.org/courtnews/>

17. ARE THERE ANY SPECIAL RESTRICTIONS FOR [FAMILY LAW/ JUVENILE/ETC.] CASES?

Yes, ***[indicate the type of cases with special restrictions, for example, family law, juvenile, etc.]*** cases have some additional restrictions on public access. Access to some types of documents and some kinds of information is restricted and they are not available to the public to see or copy.

Examples of types of documents in these cases that the public cannot see include:

[Include a list of specific types of documents or kinds of information not available to the public in these types of cases, for example, child custody reports, evaluations by doctors or psychologists, etc.]

Examples of kinds of information in these cases that the public cannot see include:

[Include a list of specific kinds of information not available to the public in these types of cases, for example, social security numbers, names of children, etc.]

18. SOME CASES ARE CLOSED BY JUDICIAL ORDER

There are some cases where a judge has ordered that some or all of the court records in the case shall not be available to the public. Such an order is based on a specific request to the court, and a court's decision that the *[specify the standard for closing a case, for example, information is so sensitive or personal that it should not be available for the public to see]*.

19. WHY ARE SOME RECORDS ONLY AVAILABLE AT THE COURTHOUSE?

If some court records are only available at the courthouse, add the following language:

Some court records may only be seen at the courthouse, they will not be available on the *[Web site/subscription service]* because of concerns about the sensitivity of some information being available over the Internet.

[Provide a list of the types of court records that are not available on the Web site, and can only be seen at the courthouse.]

Sources and Examples:
CCJ/COSCA Guidelines, section 4.50.

WHERE ARE COURT RECORDS AVAILABLE TO THE PUBLIC?

20. WHERE CAN I SEE THE PAPER COURT FILES?

The following language is for access to physical court records at a courthouse:

To view court records in person, go to *[give the location (city, street address, building, and room number) where a person must go to see the records]*. Court records may be only viewed in *[specify the room where people can look at records]* and may not be taken from this room. This is done to prevent someone from taking documents from, adding documents to, or changing documents in a court file.

The records you can see at this location are only for those cases filed in this court. You cannot look at court records from another court at this location. *[Consider providing a means for someone to look up information about where to find records from another court. For example: Click on this link (www . . .) to see a map of the counties/judicial districts or circuits. Select the appropriate county to go to their homepage. From there you can click on the Clerk of Courts to find their Web site where records can be seen, or location information as to where the courthouse is that contains the records.]*

Sources and Examples:

California Rules of Court, Rule 243(a), at: <http://www.courtinfo.ca.gov/rules/titletwo/title2-1-106.htm#TopOfPage>

Colorado Judicial Branch, “Public Access: Court Records Searches” page, under paragraph starting “For specific information . . .” at:

<http://www.courts.state.co.us/panda/publicaccess/ctrecords.htm>

Delaware State Courts, “Records Access in the Family Court” page, under “1. May I review my Court file?” at: http://courts.delaware.gov/How%20To/Record%20Access/?fc_records.htm

Florida Clerks’ MyFloridaCounty Web site, at:

http://myfloridacounty.com/services/officialrecords_intro.shtml

Superior County of Orange County (CA), “Civil Records Management” page, under “Viewing Files” at: <http://www.occourts.org/civil/civilcrd.asp#viewing>

21. WHERE CAN I SEE ELECTRONIC COURT RECORDS?

The following language is for access to electronic court records through a court or private vendor Web site or subscription service:

Court records for this [court/state] can be accessed through [indicate the URLs for sites through which the public can obtain access to court records, which may include private vendor sites as well as public agency sites].

Electronic court records can also be viewed at computer terminals in room [specify location] at the courthouse located at [provide address].

Sources and Examples:

Colorado Judicial Branch, “Public Access: Court Records Searches” page, under paragraph starting “Records can be accessed . . .” at:

<http://www.courts.state.co.us/panda/publicaccess/ctrecords.htm>

Utah State Courts, “What is XChange” Web page at: http://www.utcourts.gov/c_srch/index.asp

22. WHO KEEPS THESE COURT RECORDS AND MAKES THEM AVAILABLE TO THE PUBLIC?

Court records for the [indicate the official name of the court whose records this educational material refers to] are kept by [indicate the identity of the entity that maintains the court records, for example the Clerk of Court].

Sources and Examples:

Washington State Courts “Access to Court Records” page, under “How can I view a court record or obtain a copy of a court record?” at:

<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.accesstocourtrecords>

23. WHO OWNS THE INFORMATION IN THESE COURT RECORDS?

Although court records are open to the public, they may contain information in which a party or someone else has a copyright and other proprietary rights. Use of such information is allowed only to the extent permitted by law, and the fact that it is in a court record does not free you from legal limitations regarding the use of the information.

Sources and Examples:

Superior Court of Los Angeles County (CA), Civil Case Document Images page, Frequently Asked Questions link, under “Q: The Web page disclaimer says information obtained from this site does not constitute the official record of the court. Who owns the information?” at: <https://www.lasuperiorcourt.org/OnlineServices/CivillImages/index.asp> (based on California Rules of Court, Rule 2074(d)(2)).

24. WHEN ARE COURT RECORDS AVAILABLE TO THE PUBLIC?

The [*specify the record viewing location or Web site*] is open [*Monday*] through [*Friday*] from [*indicate the hours the record viewing room is open*].

Sources and Examples:

CCJ/COSCA Guidelines, section 5.00

25. HOW DO I ACCESS COURT RECORDS?

The response will be slightly different for access to physical records at the courthouse and electronic records.

In order to access court records you will need to have the following information:

[List what information the person needs to provide, for example, case number, defendant’s, party’s name, hearing date, etc.]

If you do not have the case number, there are indexes at the courthouse where you can search by the name of the party and find the case number you need.

A piece of current picture identification, such as a driver’s license, is required to view documents. The identification will be returned when you return the court record to the [*court/clerk of court*].

If access to the original record would result in disclosure of information which is (a) not available to the public, (b) risks the security of the record, or (c) is impractical, you may only be allowed to see a copy of the record, or to see only the public part of the record.

When you request to see court records, the *[court/clerk]* should provide these records to you within *[indicate the time frame within which the court or clerk should provide the record]*. There may be a delay if the records are kept in a storage facility and not in the courthouse.

If you have questions about locating and viewing court records, please contact *[indicate what office, or who, people should contact if they are having difficulties obtaining access to court records]*.

If you need assistance to access court records because of a disability, please contact *[indicate what office, or who, people should contact if they need assistance in obtaining access to court records]*.

Sources and Examples:

Colorado Courts CoCourts.com site, Frequently Asked Questions page, under “What information is needed to conduct a court records search?” at:

<http://www.cocourts.com/public/faq.cfm#qAbout5>

Harris County (TX) District Clerk e-Clerk System home page, middle paragraph, at: <https://e-docs.hcdistrictclerk.com/eDocs.Web/Login.aspx>

Maryland Judiciary Web site, “Dial Up Access to Maryland Court Systems” page, under “Dial Up Access” at: <http://www.courts.state.md.us/dialup.html>

Washington Courts, “Access to Court Records” page, under “How can I view a court record or obtain a copy of a court record?” at:

<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.accesstocourtrecords>

26. IF I CANNOT GET TO THE COURTHOUSE OR I DON'T HAVE ACCESS TO A COMPUTER, CAN I REQUEST A RECORDS SEARCH BY FAX OR MAIL?

Yes. In order to obtain information by *[fax/mail]* you must give the following information to the *[court/clerk of court]*:

[List the specific information someone must provide to the court/clerk in order to have the court's records searched, and information provided. For example, the requesting person must provide: 1) the case number, 2) the name of plaintiff/petitioner or defendant/respondent, and/or 3) the name of the document and date of filing, if known.]

To request a records search by *[fax/mail]*, you must *[fax/mail]* the information to *[indicate the fax number or provide the mailing address to which requests are to be directed]*. Please provide *[indicate what information is required, for example, name, address, and telephone number]* and *[if information is to be mailed]* be sure to include a large self-addressed, stamped envelope. If you do not provide a self-addressed, stamped envelope, postage will be calculated and added to your costs (see cost information below).

Sources and Examples:

Superior Court of Orange County (CA), Civil Records Management page, under “Records Searches” at: <http://www.occourts.org/criminal/#records>

King County (Seattle, WA) Superior Court Department of Court Administration page at: <http://www.metrokc.gov/kcsccl/copies.htm>

27. WILL I HAVE TO PAY TO SEE OR TO GET A COPY FOR COURT RECORDS?

There is no fee to view a court record *[at the courthouse/through the Web site]* but the *[court/clerk of court]* may charge a fee for a copy a court record. If electronic access to court records through the Internet is available, the *[court/clerk of court]* may charge a fee for being able to access court documents through the Web site. There may be fees both to subscribe to access and for each specific court record for which a copy is requested. *[Consider specifying the fee structure, or linking to a subpage where the fee structure is spelled out in more detail.]*

Sources and Examples:

CCJ/COSCA Guidelines, section 6.00

Colorado Courts CoCourts.com site, Frequently Asked Questions page, under “How much does it cost?” at: <http://www.cocourts.com/public/faq.cfm#qPayment1>

Colorado Judicial Branch, “Public Access: Court Records Searches” page, paragraph starting “Records can be accessed . . .” at:

<http://www.courts.state.co.us/panda/publicaccess/ctrecords.htm>

Harris County (TX) District Clerk e-Clerk System home page, second to last paragraph, at:

<https://e-docs.hcdistrictclerk.com/eDocs.Web/Login.aspx>

King County (Seattle, WA) Superior Court page on “How to obtain copies” at

<http://www.metrokc.gov/kcsccl/copies.htm>

28. DOES THE [COURT/CLERK OF COURT] KEEP TRACK OF WHO WANTS TO LOOK AT CASES [OR WHO USES THIS WEB SITE/SUBSCRIPTION SERVICE]?

If the court or clerk of court keeps a log of who requests to see court records, this should be disclosed to the public.

The *[specify the entity, for example the court or clerk of court]* keeps track of who asks to look at a court record. *[If this is done only for a specified period of time or only for a specific case types or reasons, this should be spelled out.]*

OR

The *[specify the entity, for example the court or clerk of court]* may keep track of who uses this Web site to check for illegal, criminal, and unauthorized activities. If such activities are detected, the *[entity]* may provide evidence of those unlawful activities to law enforcement officials.

Sources and Examples:

Colorado Courts CoCourts.com site, Frequently Asked Questions page, under “Does your site track me as I use the Web?” at: <http://www.cocourts.com/public/faq.cfm#qPrivacy5>
Harris County (TX) District Clerk “e-Clerk” homepage, last paragraph, at: <https://e-docs.hcdistrictclerk.com/eDocs.Web/Login.aspx>
Superior Court of Los Angeles County (CA), “LA eCourt Online Civil Case Document Images” page, “privacy and security policy” link at: <http://www.lasuperiorcourt.org/privacy/index.asp>
Virginia's Judicial System, “Disclaimer About this System” page at: <http://208.210.219.132/vadistrict/disclaimer.jsp?court=district>

29. HOW CAN I GET COPIES OF COURT RECORDS?

You can get copies of the original of court records that are open to the public at the location where the court records are kept. You will have to pay a fee to the [court/clerk of court] to get copies of court records. *[Consider adding a sentence describing the difference between obtaining a copy and obtaining a certified copy.]* You cannot obtain a copy of court records that are not open to the public unless a judicial officer has ordered that you can have a copy of these documents. Unless authorized by the *[clerk of court or a judicial order]*, records cannot be removed from the location where they are kept in order to make copies.

Sources and Examples:

CCJ/COSCA Guidelines, section 3.20
Delaware State Courts, “Records Access in the Family Courts” page, question no. 5 at: http://courts.delaware.gov/How%20To/Record%20Access/?fc_records.htm
Superior Court of Orange County (CA), Civil Records Management page, under “To Request Copies by Mail” at: <http://www.occourts.org/civil/civilcrd.asp#viewing#viewing>

30. CAN I OBTAIN COPIES OF COURT RECORDS IN A WHOLE GROUP OF CASES, RATHER THAN JUST ONE CASE?

Obtaining information about a group of cases, as opposed to just one, is called “bulk distribution.” Bulk distribution means getting all, or a large amount, of the court’s electronic records. The court can provide bulk distribution of certain court records in certain types of cases. *[Specify the case types and court records for which bulk distribution is allowed and available, such as the court’s electronic calendar, register of actions, name index, etc.]*. It is up to the court whether you can have bulk distribution. *[The court will not give you bulk distribution of all court records in all available case types to prevent the exploitation of the information for commercial or other purposes unrelated to the operations of the court.]* The *[court/clerk of court]* may charge a fee for providing bulk distribution.

Sources and Examples:

CCJ/COSCA Guidelines, section 4.30
Washington State Courts “Access to Court Records” page, under “Can I obtain court records in bulk?” at: <http://www.courts.wa.gov/newsinfo/?fa=newsinfo.accesstocourtrecords>

31. CAN I OBTAIN SUMMARY INFORMATION ABOUT A SELECTED GROUP OF CASES?

Summary information about a group of cases is referred to as “compiled information.” This usually involves a report generated by a computer that summarizes characteristics of a select group of cases. To see what information might be available from reports, please contact *[specify the person or agency to whom such requests should be directed, for example the court administrator]*. The *[court/clerk of court]* may charge a fee for providing compiled information.

Sources and Examples:

CCJ/COSCA Guidelines, section 4.40

Washington State Judiciary page providing access to compiled reports on “Caseloads of the Courts of Washington” at: <http://www.courts.wa.gov/caseload/>

QUALITY OF INFORMATION IN ELECTRONIC COURT RECORDS

The following sections provide the public information about the quality, reliability, and validity of the information in court records that are publicly available. Specific provisions are suggested for electronic records because they are generally not as complete as paper records.

32. HOW ACCURATE IS THE INFORMATION ON THE *[WEB SITE/SUBSCRIPTION SERVICE]*?

The information made available through this *[Web site/subsription service]* is provided as a service to the public. The intent of the *[Web site/subsription service]* is to provide information on historical and current court cases. It should be used only to gain a general understanding of the cases that can be found here. Every effort is made to provide accurate and current information. However, there may be some inaccurate or outdated information.

It is also important to remember that just because a party to a case has filed a document with the court does not mean that all of the information in the document is accurate or complete. Because there are generally no restrictions on what parties can say in documents filed with the court, there may be information in a court record that the public can see that another party in the case feels is inaccurate, incomplete, untrue or unsubstantiated.

Sources and Examples:

Arizona Supreme Court, Public Access to Court Information page, Disclaimer at:

<http://www.supreme.state.az.us/publicaccess/>

Superior Court of Los Angeles County (CA), Web page Disclaimer at:

<https://www.lasuperiorcourt.org/disclaimer/index.htm>

Superior Court of San Francisco County (CA), "Electronic Information Center", Applications Web Site Web page Disclaimer at: http://www.sftc.org/browser_pages/main_pages/disclaimer.htm

Virginia's Judicial System, Disclaimer About this System, at:

<http://208.210.219.132/vadistrict/disclaimer.jsp?court=district>

33. HOW CURRENT IS THE INFORMATION ON THE [WEB SITE/SUBSCRIPTION SERVICE]?

The information is updated [*indicate how frequently, for example, hourly or daily*]. The [*court/clerk of court*] may add to, remove, or make changes to the information at any time and without notice.

Sources and Examples:

Colorado Courts CoCourts.com site, Frequently Asked Questions page, under "How timely is the information??" at: <http://www.cocourts.com/public/faq.cfm#qAbout9>

Colorado Courts CoCourts.com site "Questions about Court Records vs. newly available CBI Arrest Records" #4 at: <http://www.cocourts.com/public/cbicompare.cfm>

Superior Court of San Francisco County (CA), Applications Web Site, Frequently Asked Questions at: http://www.sftc.org/browser_pages/main_pages/faq.htm#1 and

http://www.sftc.org/browser_pages/main_pages/faq.htm#9

Virginia's Judicial System, "Disclaimer About this System" page at:

<http://208.210.219.132/vadistrict/disclaimer.jsp?court=district>

34. CAN I CORRECT THE INFORMATION IN A COURT RECORD?

Every effort is made to provide accurate and current information. However, court records can and do contain errors or old information. Only the court can change information in a court record. A company or service which keeps the court's records or makes copies of court records available for you to see cannot change the court record.

If you feel the information is in error and are asking that it be corrected, please contact [*specify the entity to contact, for example, clerk of court, and the contact information who will indicate how to ask for a correction*]. Whether the information is changed depends on the type of error argued and what the law is about changing information. [*Consider specifying the criteria or standard for changing information.*] [*Consider also specifying who a person can appeal to if the court denies the request.*]

Sources and Examples:

Arizona Rules of the Supreme Court, Rule 123 - Public Access to the Judicial Records of the State of Arizona, subsection (g)(6).

Colorado Courts CoCourts.com site, Frequently Asked Questions page, under “What if the information provided is inaccurate?” at: <http://www.cocourts.com/public/faq.cfm#qAbout7>

Minnesota Court Rules, Rules on Public Access to Records of the Judicial Branch, Rule 7, subd. 5, at:

http://www.courts.state.mn.us/documents/CIO/courtOrders/050506_Access_Rules_Final_050506.pdf

Virginia's Judicial System, “Disclaimer About this System” page at:

<http://208.210.219.132/vadistrict/disclaimer.jsp?court=district>

Wisconsin Circuit Court Access (WCCA) Web site, “The information on a case is incorrect. Could you correct the information?” at:

<http://wcca.wicourts.gov/faqnav.xsl;jsessionid=8036D1470A038AB3CBB55B35613773C6.render4#Faq11> and “Who do I contact if I want clarification about information displayed on WCCA?” at:

<http://wcca.wicourts.gov/faqnav.xsl;jsessionid=8036D1470A038AB3CBB55B35613773C6.render4#Faq18>

35. IS THE INFORMATION IN THE COURT RECORD AVAILABLE THROUGH THE [WEB SITE/SUBSCRIPTION SERVICE] THE ‘OFFICIAL RECORD’?

The information provided should not be considered, or used, as the official record of the court. You can look at the official record at *[indicate where the official record can be seen]*. If the official record of the court differs from the contents of records or publications included on the *[Web site/subscription service]*, the official record should be relied upon, not the *[Web site/subscription service]*. Also, the information provided through the *[Web site/subscription service]* should not be used instead of getting the advice of competent legal counsel.

Sources and Examples:

Arizona Supreme Court, Public Access to Court Information page, Disclaimer at:

<http://www.supreme.state.az.us/publicaccess/>

Colorado Courts CoCourts.com site, Frequently Asked Questions page, under “Are you the official Web site of the Colorado Judicial Branch?” at:

<http://www.cocourts.com/public/faq.cfm#qAbout3>

Superior Court of Los Angeles County (CA), Disclaimer at:

<https://www.lasuperiorcourt.org/disclaimer/index.htm>

Superior Court of San Francisco County (CA), “Electronic Information Center”, Applications Web Site Web page Disclaimer at: http://www.sftc.org/browser_pages/main_pages/disclaimer.htm

Virginia's Judicial System, “Disclaimer About this System” page at:

<http://208.210.219.132/vadistrict/disclaimer.jsp?court=district>

Superior Court of Ventura County (CA) Case Inquiries page “Disclaimer” at:

http://www.ventura.courts.ca.gov/vent_frameset_puba.htm

36. WHERE DO I GO TO GET MORE COMPLETE INFORMATION OR TO VERIFY INFORMATION FROM THE [WEB SITE/SUBSCRIPTION SERVICE]?

You can see the court's official records at *[give the location (city, street address, building, and room number) where a person must go to see the records]*.

Sources and Examples:

Colorado Courts CoCourts.com site description "Disclaimer" at:

<http://www.cocourts.com/public/Disclaimer.cfm>

Maryland Judiciary Web site, "Dial Up Access to Maryland Court Systems" page, under "Dial Up Access" at: <http://www.courts.state.md.us/dialup.html>

Superior Court of Orange County (CA), Civil Records Management page, under "Viewing Files" and "Records Searches" at: <http://www.occourts.org/civil/civilcrd.asp#viewing#viewing>

37. CAN I RELY ON THIS INFORMATION TO FIND OUT A PERSON'S CRIMINAL HISTORY?

The information contained on this Web site does not constitute a full and complete criminal history. It does not include all cases, in particular, old cases or cases where public access to the information has been restricted. Nothing contained herein is intended to imply or infer the guilt or wrongdoing of any person(s) listed on this site. The information should not be used for "background check" purposes without checking the official records to verify the information and that it is about the right person. An official criminal history can be obtained from *[indicate where someone can obtain a complete criminal history]*.

Sources and Examples:

Colorado Courts CoCourts.com site description "Disclaimer" at:

<http://www.cocourts.com/public/Disclaimer.cfm>

Maryland Judiciary, "Dial Up Access to Maryland Court Systems" section, under "DIAL UP ACCESS" at: <http://www.courts.state.md.us/dialup.html>

38. HOW DO I KNOW IF THE INFORMATION I FIND IS ABOUT THE PERSON I AM LOOKING FOR?

The person you are searching for may or may not be the person you find information about. Using only the name to search on this *[Web site/subscription service]* does not guarantee a positive identification. You should verify that this is the right person by checking other information, such as address, date of birth, etc.

Sources and Examples:

Colorado Courts CoCourts.com site description "Disclaimer" at:

<http://www.cocourts.com/public/Disclaimer.cfm>

Colorado Courts CoCourts.com site "Questions about Court Records vs. newly available CBI Arrest Records" at: <http://www.cocourts.com/public/cbicomp.cfm>

LIMITING ACCESS TO COURT RECORDS AND SHARING

39. CAN I ASK TO RESTRICT PUBLIC ACCESS TO A COURT RECORD? HOW DO I DO THIS?

Any member of the public, any party to a case, or any individual about whom information is present in the court record may ask that public access to court records be limited. However, limiting public access is very unlikely.

To ask to limit public access to court records you must *[describe what a person must do, for example, file a written motion in court]* asking to restrict access to a court record. A *[judge/clerk of court/court administrator]* will decide in each case if there is sufficient reason to limit access. *[Consider specifying the criteria or standard for limiting public access to information.]* The court can decide to limit public access to only certain pieces of information, an entire document, or the entire case file. The court may also decide that the information can only be seen at the courthouse, or is not to be available through a Web site.

If the court approves your request, you will need to *[describe the process to be followed to see the information, for example, where to go]*.

[Consider also specifying who a person can appeal to if the court denies the request.]

Sources and Examples:

CCJ/COSCA Guidelines, section 4.70(a)

Washington State Courts, Court Records page, under "Adult Court Records" at:

http://www.courts.wa.gov/newsinfo/resources/?fa=newsinfo_jury.display&folderID=brochure_criminal&altMenu=crim&fileID=courtrecords

Wisconsin Circuit Court Access (WCCA) Web site, "Frequently Asked Questions" page, "I don't want my criminal case on WCCA. How can I get it removed?" at:

<http://wcca.wicourts.gov/faqnonav.xsl;jsessionid=8036D1470A038AB3CBB55B35613773C6.render4#Faq8>

and "I don't want my private information on WCCA. How can I get it removed?" at:

<http://wcca.wicourts.gov/faqnonav.xsl;jsessionid=8036D1470A038AB3CBB55B35613773C6.render4#Faq10>

40. HOW CAN I ASK TO SEE RESTRICTED INFORMATION IN COURT RECORDS?

Anyone can request to obtain access to restricted information in a court record. However, access will not always be given. A *[judge/clerk of court/court administrator]* will review the request and determine if access will be allowed. *[Consider specifying the criteria or standard for obtaining access to restricted information.]*

In order to get access to court records not available to the public, you must *[describe what a person must do, for example, file a written motion in court]* requesting access to a restricted court record. The *[judge/clerk of court/court administrator]* will decide whether you can see only pieces of information, only certain documents, or the entire case file.

If the court approves your request, you will need to *[describe the process to be followed to see the information, for example, where to go]*.

The *[judge/clerk of court/court administrator]* may impose restrictions on your access and whether you can share the information, for example, that you can only see the information at the courthouse or that you cannot show the information to anyone else.

[Consider also specifying who a person can appeal to if the court denies the request.]

Sources and Examples:
CCJ/COSCA Guidelines, section 4.70.

MISCELLANEOUS PROVISIONS

41. WHAT HAPPENS IF SOMEONE TRIES TO REMOVE OR CHANGE A COURT RECORD?

Any person who changes, removes, or destroys any court record on purpose may be charged with a crime.

Sources and Examples:
California Government Code, Section 6200 and 6201

42. IS THE COURT LIABLE FOR ERRORS IN COURT RECORDS?

The court and its employees, the county, and the state are NOT responsible for the accuracy, reliability or validity of any of the information provided. As a user of this Web site, you are responsible for verifying the accuracy, currency, and completeness of the information.

Sources and Examples:
Arizona Supreme Court, Public Access to Court Information page, "Notice of Disclaimer" at: <http://www.supreme.state.az.us/publicaccess/>
Superior Court of Los Angeles County (CA), Disclaimer at: <https://www.lasuperiorcourt.org/disclaimer/index.htm>
Miami-Dade (FL) County Recorder's Record Search, "Disclaimer" paragraph at: <http://www.miami-dadeclerk.com/public-records/pubsearch.asp>

Superior Court of San Francisco County (CA), "Electronic Information Center", Applications Web Site Web page Disclaimer at: http://www.sftc.org/browser_pages/main_pages/disclaimer.htm

Superior Court of Ventura County (CA) "Case Inquiries page" "Disclaimer" at:
http://www.ventura.courts.ca.gov/vent_frameset_puba.htm

Virginia's Judicial System, "Disclaimer About this System" page at:
<http://208.210.219.132/vadistrict/disclaimer.jsp?court=district>

43. CAN I GIVE THE INFORMATION I GET FROM COURT RECORDS TO OTHER PEOPLE OR SELL IT?

If the information in court records is not to be republished to others or a third party, add the following paragraph.

No publication or copying of the information you get from court records is allowed without the express written consent of *[indicate whose permission is required, for example, the person(s), and the court/clerk of court]*. Any unauthorized use of this information is forbidden and subject to criminal prosecution.

44. IS THE COURT RESPONSIBLE FOR WHAT HAPPENS WHEN OTHER PEOPLE USE INFORMATION THEY GOT FROM A COURT RECORD?

The court cannot control the use of information someone gets from court records. The court is not liable for any harm caused by someone who uses information obtained from a court record.

45. IS THE COURT RESPONSIBLE FOR INFORMATION MADE AVAILABLE BY OTHERS WHO SAY THEY GOT INFORMATION FROM COURT RECORDS?

The *[court/clerk of court]* is not responsible for the contents, accuracy, or completeness of any information contained on non-court Web site pages claiming to provide court records or information from court records.

Sources and Examples:

Virginia's Judicial System, "Disclaimer About this System" page at:
<http://208.210.219.132/vadistrict/disclaimer.jsp?court=district>

46. IS THE COURT RESPONSIBLE FOR INFORMATION FROM WEB SITES TO WHICH THE COURT PROVIDES LINKS?

The *[court/clerk of court]* site provides links to sites maintained by other organizations or companies, but is not responsible for the contents, accuracy, or completeness of any information contained in these non-court Web site pages.

Sources and Examples:

Superior Court of San Francisco County (CA), "Electronic Information Center", Applications Web Site Web page Disclaimer at: http://www.sftc.org/browser_pages/main_pages/disclaimer.htm

47. IS THE COURT LIABLE IF MY COMPUTER IS HURT BY ACCESSING COURT INFORMATION?

The use of this Web site, like all Web sites, may cause damage to the user's computer system because of the presence of computer viruses, software and hardware incompatibility or defects, and other factors associated with use of this Internet site. Users of this Web site assume all risks associated with the use of this Web site, including any damages that might result from its usage. The court is not responsible for any damages.

Sources and Examples:

Virginia's Judicial System, "Disclaimer About this System" page at:
<http://208.210.219.132/vadistrict/disclaimer.jsp?court=district>

48. THE WEB SITE REFERS TO COMMERCIAL PRODUCTS, DOES THIS MEAN THE COURT ENDORSES THESE PRODUCTS?

References on any of the [court/clerk of court]'s Web page to commercial products and services does not mean the court endorses or recommends the use of that product or service.

Sources and Examples:

Virginia's Judicial System, "Disclaimer About this System" page at:
<http://208.210.219.132/vadistrict/disclaimer.jsp?court=district>

49. WHERE CAN I FIND OUT MORE ABOUT THE PUBLIC ACCESS POLICY?

There are several laws that govern access to court records. Here is a list of the most common ones:

State Statutes:

[List the titles, provide legal citations, and provide URLs, if available, for the state statutes governing public access to court records.]

Court Rules:

[List the titles, provide legal citations, and provide URLs, if available, for the court rules governing public access to court records.]

Other publications or resources:

[List the titles, provide legal citations, and provide URLs or information about where to obtain guides, articles, descriptions, etc., governing public access to court records.]

Sources and Examples:

Washington State Courts “Access to Court Records” page, under “What laws and rules govern access to court records?” at:

<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.accesstocourtrecords>

Section II: Further Thoughts on Family Court Records

A. Introduction

During the development of *CCJ/COSCA Guidelines on Public Access to Court Records*, the project's advisory committee recognized that family and domestic relations records require special attention and review in local jurisdictions, beyond the scope of any national policy debate. In the present project we had the opportunity to expand the thinking of the original project, explore the application of the *Guidelines* in several states, and discuss state strategies to provide appropriate public access to court records while ensuring privacy of personal information contained in those family court records. This section will outline some areas in which family policy is shifting in recent years related to the openness of proceedings and records themselves, and provide examples of strategies to protect access to delicate records from a sample of states. Some examples will be provided in this section, and some will be provided in Appendix B at the back of this report. This section is not designed to provide absolute answers but to raise questions and to provide alternative frameworks for considering the special challenges presented by family court records when we attempt to weight personal privacy against public access and other interests in public records generally and in court records in particular.

Some key questions for family and domestic relations court records were identified at a special session on family court records during the 2nd Courtroom 21 Conference on Privacy and Public Access to Court Records at the William & Mary Law School in November 2002. These questions provoked tremendous conversations, many of which continue in legislatures and in court rules drafting committees today. Some of these baseline questions include:

- Should we protect interests of third parties involved in family cases?
- Should court restrict access to some personal identifiers in family case records?
- Should detailed financial information contained in family case records be accessible to the public?
- Should sensitive reports (e.g., financial and mental health) in family cases be available to the public?
- How can courts address the special concerns presented in domestic violence case court documents?
- How are court rules enforced in this arena, especially when many parties in family and domestic relations court cases are unrepresented?

This section begins with a discussion of the types of family court records under review. The section then moves into the special challenges and concerns raised by each type of family court issue covered by the courts, and therefore reflected in court files that track the courts deliberations in that area. Next the section highlights a shifting public policy context in recent years for family court records: Can we assume that dependency and delinquency proceedings and their records are, or should be, closed to public scrutiny? Finally, the memo outlines attention being paid to this issue by other

organizations at the present time, especially focused on the challenges presented by these records when multiple types of individual level information is merged to facilitate social service case coordination and tracking.

“Family Law” for purposes of this project includes the widest possible range of types of civil court cases that touch family members: dependency, juvenile delinquency, and domestic relations cases, including custody and support court cases. In addition, our definition of family law includes civil protection order and domestic dispute resolution cases.

B. CCJ/COSCA Guidelines Framework for Considering Family Court Records

The *CCJ/COSCA Guidelines* provide a clear framework for looking at family law issues and for limiting access to family case information. The *Guidelines* in general presume that case records are open, but provide great latitude to restrict access to part or all of those records, given common statute, rules, and expectations.

The *CCJ/COSCA Guidelines* presume records are open (as stated in the “Purpose” section 1.00, see Appendix B for language). The Commentary to this section notes that “there may be sound reasons for restricting access to these records.”

It is also true that the *Guidelines* recognize reasons that can form the basis for restricting access, including: [1] public safety, [2] privacy, [3] risk of injury, and [4] minimizing public reluctance to use courts, all of which are among the “interests to be furthered” numerated in section 1.00. All of these mitigating concerns operate in the family law environment, and at minimum should support a heightened level of scrutiny of family records when considering making them public, and certainly when considering making them remotely accessible.

C. Special Issues Involved in Family Court Records Suggest Special Privacy Considerations

There are special issues involved in family court records that suggest that some information be kept private regardless of their form (paper or electronic):

- Sensitive information about individuals contained in the records (including mental health and other reports);
- The danger of identify theft due to high amount of personally identifiable information contained in the records (e.g. financial statements in custody and support filings);
- The therapeutic role of the court could be challenged if participants don’t trust the security of the disclosures made there due to inadequate privacy protections;
- The historical “family privacy” value in American society has some weight that needs to be balanced here.

D. Range of Family Law Case Types Present Different Challenges

The possibly artificially broad category of “family records” includes a range of cases that present different challenges, policy considerations, and practice responses. Each type of case must be considered on its own merits and the values of opening case information to the public must be considered along with alternative public policy concerns.

- Abuse and neglect, or child protection, cases typically involve cases in which a child is the victim of active violence or passive neglect perpetrated by another person. In this case, the public policy interests served by releasing child specific information are less than, arguably, the public policy interests served by releasing information about the perpetrator of the violence.
- Delinquency cases involve a status offense (e.g. curfew violation, school truancy, and other violations that are wrongs only for non-adults) or law violations (e.g. violations that are wrongs for persons of any age, such as burglary or manslaughter) of a person defined as a “juvenile” under state law (that can vary from an upper age of 14 in some states, to an upper age of 18 in a minority of other states).
- Divorce, custody, visitation, and support records involving families with and without children, and a range of related records.
- Interpersonal violence (DV) (civil proceedings to obtain temporary and permanent protection orders or restraining orders protecting victims of abuse – adult and children).

E. Evolving Policy Context for Family Court Records

There is a shifting policy context for family court records related to access to the court proceedings themselves, which might have ramifications for access to the records of those proceedings. While the common historical assumption has been that dependency and delinquency proceedings should be closed, and the court records of those proceedings similarly unavailable to the public, this assumption has been changing in recent years.

- Abuse and Neglect. For abuse and neglect cases, the argument for public access to abuse and neglect proceedings and records is being made more often. Historically we tend to assume that these cases are closed to public view.² According to a July 2003 NCSC *Issue Brief on Public Access to Child Abuse and Neglect Proceedings*:
 - In 2 jurisdictions, open proceedings in all cases;
 - In 14 jurisdictions, proceedings are presumed open with judicial discretion to close;
 - In 10 jurisdictions, proceedings presumed closed with judicial discretion to open;
 - In 6 jurisdiction proceedings are closed for all cases with some exceptions;
 - In only 21 jurisdictions, proceedings closed for all cases; and
 - Two jurisdictions present special cases (one has a pilot project with varying presumptions among counties; one does not have a presumption).³

As of 1999: In 14 states, the general public has a statutory right to findings or information about a case of child abuse or neglect that resulted in a child fatality or near fatality.⁴

² National Council of Juvenile and Family Court Judges Permanency Planning for Children Department. *Technical Assistance Brief: To Open or Not to Open: The Issue of Public Access in Child Protection Proceedings*, June 29004.

³ National Center for State Courts, Government Relations Office, *Issue Brief: Public Access to Child Abuse and Neglect Proceedings*, Vol. 4, No. 5, July 2003.

⁴ National Center for Juvenile Justice, "Frequently Asked Questions: Confidentiality Issues", <http://ncjj.servehttp.com/NCJJWebsite/faq/faq3.htm> [accessed 12/5/2003].

- Delinquency. The argument for increased public access to court proceedings is being made in the name of public accountability and within the framework of the retributive, rather than rehabilitative, purpose of the court. Again, historically we have assumed that juvenile records will be expunged when the juvenile reaches majority and that these were family-only hearings. But the contemporary reality of the status of these hearings and their records is at odds with this belief.
 - 15 states generally close delinquency proceedings;
 - 22 states have open hearings with some age and offense restrictions;
 - 13 states as of the end of the 1999 legislative session permit or require delinquency hearings to be open to general public;
 - As of 2000, 9 states allow public release of juvenile court records without restrictions;
 - 15 states allow open court records if certain offenses are involved, regardless of age;
 - 14 states allow open court records if certain offenses are involved and an age requirement is met;
 - 24 states now have provisions that certain juvenile records can never be sealed/expunged/destroyed, typically due to violent nature of offense committed;
 - 32 states required adjudicated juvenile sex offenders to register under the state's Megan's Law as of the end of the 2003 legislative session;
 - 30 jurisdictions have provisions to allow access to sealed or expunged records.⁵

F. Confidentiality and Sharing Records in Multi-System Initiatives

There is currently extensive attention focused on community level initiatives that address the needs of women who are battered and who also have children involved in, or at risk of involvement in, the child protection system. In these cases, the systems created to meet the needs of children can come into conflict with their custodial parent who may also be the victim of abuse and is often served by programs designed to empower and strengthen them.

Juvenile delinquency records can also become part of integrated justice information systems in the form of "criminal history" information on the former juvenile, with the same concerns about confidentiality, potential court expungement and loss of control once data have flowed "downstream."

⁵ National Center for Juvenile Justice, "Frequently Asked Questions: Confidentiality Issues", <http://ncjj.servehttp.com/NCJJWebsite/faq/faq.htm>, <http://ncjj.servehttp.com/NCJJWebsite/faq/faq2.htm>, and <http://ncjj.servehttp.com/NCJJWebsite/faq/faq3.htm> [accessed 12/5/2003].

Resources:

Every Child Matters and Family Legacy Institute (2003). *Making Good Decisions about Confidentiality in Child Welfare*. www.legacyfamilyinstitute.org; www.everychildmatters.org
Family Violence Prevention Fund, National Council of Juvenile and Family Court Judges Family Violence Department, and American Public Human Services Association (n.d.).
Confidentiality & Information Sharing Issues for Domestic Violence Advocates Working with Child Protection and Juvenile Court Systems. www.endabuse.org

G. Interest Among Other National Groups

A range of national and regional policy and advocacy groups are also focusing on family records and the special issues presented by the struggle to balance personal privacy and public access to those records. For example:

- National Network to End Domestic Violence (an organization that serves all the state DV coalitions) has created and widely distributed talking points and educational materials on the issue of public and Internet access to the court records of domestic violence victims. Their concern is the stalking of DV victims by their batterers, and their strategy is to educate the women who seek recourse through the courts about the security of their court case records.
- The National Council of Juvenile and Family Court Judges has held special meetings on this issue (July 2003) and has recently published a document on the issue of public access in child protection proceedings (June 2004).
- The Conference of State Court Administrators held special session on the issue, including a session during their December 2003 meeting on “Privacy and Public Access: Are Family Records Too Valuable to be On-Line?”
- A national project of the Pennsylvania Coalition Against Domestic Violence [LAPTOP] held a meeting for attorney victims advocates in February 2004 on the topic “Court Records and Confidentiality: Guidelines for Access.”

When one strain or theme of this policy web is not recognized, unintended consequences are sure to result. Some of this issues raised in this report section are designed to highlight some of these themes rather than provide conclusive answers. Work in this area is continuing in many locations, and there is much left to accomplish.

Section III: Internal Policies and Practices for Courts and Clerks of Court Implementing Laws and Policies Governing Public Access to Court Records

A. Introduction

The *CCJ/COSCA Guidelines on Public Access to Court Records* included a provision requiring education of court staff and judges about the concepts and elements of a jurisdiction's policy on public access to court records (section 8.30 excerpted in Appendix C, following). The commentary to that section noted that the *Guidelines* did not propose specific language for an internal court policy implementing this section of the access policy. It also noted such a policy should include provisions regarding the accuracy and quality of information in court records, as well as provisions stating the consequences of improper use or disclosure of restricted information in court records.

The purpose of this addendum to the *Guidelines* is threefold. First is to suggest language that a jurisdiction could adopt or incorporate into existing personnel policies regarding access to, and use of, information in court records by court and clerk employees and judges, as opposed to the public. The suggested provisions also address data quality and the consequences for improper disclosure of information by staff. Secondly, there are curriculum topics for training employees and judges about a jurisdiction's public access policy. Finally, suggestions are made to address the common situation where the court or clerk contracts with a private company or the executive branch to provide information technology services related to court records, including making court records accessible to the public.

Why Internal Policies and Practices are Needed

Generally, information in court records is open to the public. This contributes to the transparency and legitimacy of the judiciary – the public is always able to find out what is happening. There are, however, certain kinds of information, for example, adoption records, that have been determined not to be accessible to the public. However, this information may be accessible to certain categories of users in certain circumstances, for example the parties and their lawyers. The policy on what is accessible, and by whom, is generally established by the state judiciary or the Legislature and covers the elements identified in the *CCJ/COSCA Guidelines on Public Access to Court Records*. But the effectiveness of such a policy is only as good as its implementation. The public wants to know they can access those records they should be able to access, that nothing is being hidden. The public also wants to know that the courts will properly protect individual's privacy, especially if it is theirs, by preventing public access to restricted information.

Most courts are only just beginning to have an extensive amount of court records in electronic form. The types of information now in electronic form include that in case management systems, electronic filing systems, imaging systems, and transcripts of court proceedings. Courts new to large amounts of electronic records may not yet have encountered all of the ways in which inappropriate access to information by court employees or misuse of the information can occur. The creation of databases, with data being entered by court employees, not litigants, also heightens concerns about the accuracy of data, and the timeliness of data entry. The risk of errors in data entry and of information becoming stale are greater when the electronic information can readily be made publicly available on a large scale. The advent of court records in electronic form has therefore heightened the need to adequately protect privacy while providing more convenient public access.

The “front lines” in implementing a public access policy are the court and clerk staff and judges who have access to, and control of, the court record. They must be aware of the policy and its expectations. One way to insure proper implementation is to have an internal court policy that guides court and clerk personnel and judges on how to conduct the business of the court in a way that protects privacy while maintaining appropriate public access to court records. There is a concomitant need to have contractors who assist the court or clerk in maintaining its record be aware of, and comply with, access policies. Another method is to provide training to staff and judges about the policy. Together these techniques will insure greater accountability for the judiciary and improve its ability to properly fulfill its role.

Format and Use of Work Products

The internal policy provisions, curriculum topics, and IT agreement clauses suggested here take the following forms:

- Sample personnel policy language;
- Sample curriculum for training staff and judges; and
- Sample clauses to include in a contract with an IT vendor or executive branch agency providing IT services to the judiciary.

The suggestions provided in this addendum serve as starting points for a jurisdiction’s work. Since there can be many variations and nuances of public access policies, it is not possible to provide language and curricula that are useable in every jurisdiction without modification. It is necessary for someone knowledgeable about a jurisdiction’s public access policy to review the suggestions made here and modify them to conform to that policy. This process is aided by directions included in the text. In particular, brackets around italicized language indicate where a state or local court needs to insert jurisdiction specific terms or details in place of the bracketed language. Generally, if the modifications are made once for a state, the resulting language will be usable in most courts in that state.

Most of the suggested provisions are followed by a list of “Sources.” These are citations to examples of actual provisions used by a jurisdiction. References to these sources does not necessarily imply that they are ‘best practices,’ rather, they are intended to demonstrate how jurisdictions have actually implemented the concepts in the provisions suggested here.

The suggestions made here presume there is authority and direction in the jurisdiction’s laws or policy on public access to court records to adopt and use the type of policy and contract elements proposed below. If not, the jurisdiction should consider adding to their access policy provisions based on those included in Appendix A. While the suggestions made here do not depend on the authority and direction of the access policy, their strength is bolstered by such provisions.

B. Possible Provisions of an Internal Policy Regarding Public Access and Information Quality

BASIC PROVISION REGARDING ACCESS TO COURT RECORDS

The following provision includes a number of basic requirements for employees to follow in providing access to court records. The provisions apply to all types of court information and to all types of requestors, regardless of whether the information is publicly accessible or the requestor is entitled to access beyond that provided to the public.

The intent is that a provision such as this would be included in a jurisdiction’s human resources policy or in an employee handbook distributed to all employees.

In order for employees to be held to a certain standard of performance, they must be told what the standard of performance is. This provision makes proper conduct and performance standards relative to accessing court records explicit.

1. ***[Court/clerk]* employees will comply with the following policies and practices when providing access to information maintained by the *[court/clerk]* and shall:**
 - a) **Access and use court records only for the purpose of conducting official court business;**
 - b) **Make properly requested information available to an entitled user in a timely manner;**
 - c) **Provide reasonable accommodation to a person with a disability who is entitled to access that will enable the person to access the information;**
 - d) **Not deny access to information to an individual entitled to access based on who the individual is, whom they represent or are employed by, why they want the information, or what use they will make of the information;**

- e) For information to which access is restricted, allow access only to those authorized to have access and who need the information in the course of their work;
- f) Not provide access to anyone not entitled to have access to the information;
- g) Not accept any remuneration or benefit, personally or indirectly, for making information available, whether the individual is entitled to access or not;
- h) Promptly report to the appropriate supervisor a request to obtain access to restricted information [*specify a standard, for example, within 1 hour, if the court/clerk has established one*], regardless of the likelihood of the request being granted;
- i) Promptly report to the appropriate supervisor a request to restrict public access to information [*specify a standard, for example, within 1 hour, if the court/clerk has established one*], regardless of the likelihood of the request being granted;
- j) Promptly report any alleged errors or requests for correction or deletion of information to the appropriate supervisor [*specify a standard, for example, within 1 hour, if the court/clerk has established one*];
- k) Provide consistent access over time and regardless of court location; and
- l) Conduct themselves in a manner, including when using information technology devices, that protects information from improper access, including unintentional, and maintains the integrity of information storage systems, whether manual or automated.

Sources and Examples:

Supreme Court of Ohio, Judicial and Court Services, Technology Resources, INFORMATION SYSTEMS, POLICIES & PROCEDURES, section on “Responsibility for Security and Confidentiality of Data Files.”

Washington Supreme Court, Rules of Court, Rule GR31, (Access to Court Records), subsection (f)(2).

Subsections (d) and (f): Alaska Stats., sec. 40.25.125.]

Subsection (f): 26 USC §§ 6103(a) and 7213(a) –provisions regarding federal tax records

Subsection (g): Alaska Stats., sec. 11.56.860

INFORMATION QUALITY - TIMELY, ACCURATE, AND COMPLETE DATA ENTRY

One important aspect of public access and the protection of personal privacy has to do with the quality of the information in the court record. The information in the records must be accurate, timely, complete, and not ambiguous. If it is not, the public may receive inaccurate information about someone or about court proceedings, or information intended to be private is disclosed because it is not recognized or treated as private. 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.

The intent is that a provision such as this would be included in a jurisdiction's human resources policy or in an employee handbook distributed to all employees.

In order for employees to be held to a certain standard of performance, they must be told what the standard of performance is. The provisions here seek to make performance standards relative to the information quality of court records explicit.

- 2. When accepting information or documents or creating electronic court records [court/clerk] employees shall:**
- a) Make every reasonable effort to ensure that information entered into an automated system is:**
 - 1) Accurate, including consistent use of standard coding and input procedures;**
 - 2) Linked to the correct case;**
 - 3) Entered in a timely manner [specify a standard, for example, within 24 hours, if the court/clerk has established one];**
 - 4) Current; and**
 - 5) Complete. Employees should avoid incomplete data entry or partial entry of information.**
 - b) File documents in the correct court file in a timely manner [specify a standard, for example, within 24 hours, if the court/clerk has established one];**
 - c) Properly code, label, and store information or records to reflect any applicable restrictions on access; and**
 - d) Make corrections of information in a timely manner [specify a standard, for example, within 24 hours, if the court/clerk has established one] when authorized by a supervisor to make the correction.**

Sources and Examples:

Alaska Court System, Office of the Administrative Director, Administrative Bulletin No. 48, Case File Management Standards.

Colorado, Supreme Court of Colorado, Office of the Chief Justice, Directive 05-01, adopted April 27, 2005, sections 3.00 (d) and (e) and 9.00.

Colorado, Supreme Court of Colorado, Office of the Chief Justice, Directive 99-02, January 1999 and Directive 97-03, March 1997.

MD Report of the Committee on Access to Court Records, 5FEB02, Recommendations no. 4 and 5, p. 12-13.

National Center for State Courts, CourTools, Trial Court Performance Measures, Measure 6, Reliability and Integrity of Case Files, at

http://www.ncsconline.org/D_Research/CourTools/Images/m6.pdf.

CONSEQUENCES FOR MISUSE, ABUSE OR INAPPROPRIATE ACCESS TO, OR DISCLOSURE OF, INFORMATION IN COURT RECORDS

Having an access policy is of little value if there is no effective enforcement of the provisions of the policy. One incentive for compliance with the policy is to have employees and users understand the purposes of the policy. Another incentive is to make clear the negative consequences of not complying with the policy. The provision here seeks to explicitly state what can happen when an employee fails to comply with the access policy.

The intent is that a provision such as this would be included in a jurisdiction's human resources policy or in an employee handbook distributed to all employees

3. **If an employee is suspected or found not to be complying with the provisions of any policy regarding access to court records, whether intentionally or inadvertently, the [court/clerk] may, as necessary to effectuate the purposes of the access policy:**
 - a) Suspend or discontinue access to information by the employee,
 - b) Suspend, demote, transfer or terminate the employee as permitted by applicable personnel policies,
 - c) Apply other sanctions or administrative actions as provided in applicable personnel policies, or
 - d) Refer the matter to appropriate authorities for criminal prosecution.

C. Sample Curriculum Topics for Training Staff Regarding Public Access to Court Records Policies and Practices

The specifics of topics on which courts should instruct employees and judges were not included in the *CCJ/COSCA Guidelines*. Subjects suggested in the *Guidelines* for employee and judge training included 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) protocol for those 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. It was also recommended that a court adopt personnel policy provisions indicating consequences for misuse, abuse or inappropriate disclosure of information in court records.

AUDIENCE

Court and clerk of court employees and judges who have access to court records covered by the access policy or who, as part of their duties, are responsible for providing or monitoring access to court records.

LEARNING OBJECTIVES

By the end of a training session incorporating these topics, attendees should be able to:

- Describe why it is important to properly implement public access policies;
- State the basic concepts of the jurisdiction's public access policy;
- State who to ask when they have questions about the policy;
- List the categories of restrictions to public access to court records;
- Describe the protocols for preventing inappropriate access to restricted information;
- Describe the process by which a person can request access to restricted information and who to refer questions to from those seeking access to records;
- Describe the process by which a person can request restrictions be imposed on access to information about them and who to refer questions to from those seeking to restrict access to records;
- Describe the protocols for obtaining bulk or compiled access to records, if that is permitted; and
- List the possible sanctions for failure to comply with the access policy.

PURPOSES AND CONCEPTS OF PUBLIC ACCESS TO COURT RECORDS

It is important to alert court and clerk staff as to the existence of access policies and restrictions, and the public policy basis for the policies. Aspects of “explaining why” might include:

- Purposes: Reasons for court records being open
 - Summarize concepts in your jurisdiction’s policy comparable to those in section 1.00 of the *Guidelines* as to why court records are open and why access to others is restricted

- Risks of improper disclosure
 - Concept of “personally identifiable information” involving the greatest risk; definition of “personally identifiable information” in this jurisdiction
 - Properties of the Internet and the greater risks regarding disclosure with electronic information, especially if the court makes information available over the Internet
 - Specific examples:
 - Information about the victim in the Kobe Bryant sexual assault case
 - Problem of criminal identity theft – person ‘stealing’ someone’s identity and using it when arrested

- Concepts Underlying Access Policy
 - Presumption of openness
 - Access to public records does not depend on who asks to see records, or why they want to see them
 - Restrictions to access must be based on specific laws, rules or court orders
 - Need for uniformity of access across courts

AWARENESS OF ACCESS PROVISIONS

What is appropriate and inappropriate access; restrictions on access to information generally, and to certain types of information

- Access may vary with type of information:
 - Categories of cases, documents, and information to which public access is restricted
 - Cases, for example, adoptions, mental health
 - Documents, for example, medical reports, custody evaluations
 - Information, for example, social security numbers or financial account numbers

- Court records vs. administrative records
 - Records to which the policy applies [See *CCJ/COSCA Guidelines*, section 3.10]
 - Restricted access to certain types of administrative records
 - Personnel information of court employees
 - Phone numbers and e-mails of judges and others – notion of preventing ex parte access
 - “work product” of judges and law clerks
- Access to special categories of information
 - Jurors
 - Crime victims
 - Juvenile
 - Family law, particularly financial information
 - Health and medical information, in particular mental health, psychiatric or psychological information or reports
- Information available at the courthouse, but not electronically/remotely [See *CCJ/COSCA Guidelines*, section 4.50]
- Types of access restrictions
 - Describe how various types of restrictions, sealing, confidential, etc., are implemented, for example, files or documents kept in separate location, document is in a sealed envelope in the file, etc.
- Access may vary depending on who is seeking access
 - Access by the public
 - Public includes the media and third party information users
 - Access by parties and their lawyers
 - Access granted to someone based on a court order
 - Access to information in shared systems, for example, integrated criminal justice information systems (CJIS or IJIS) or criminal history records system (CHRS)
 - Access granted to staff of other government agencies
 - Law enforcement
 - Other agencies involved in other types of enforcement laws, for example, planning, environmental protection, etc.
 - Employee access to information restricted from general public access is limited to access as part of job responsibilities
- How people can obtain access to information?
 - Protocols: request at the courthouse, by phone, mail, e-mail, etc., through a Web site
 - What methods of requesting are permitted
 - What information must be provided for each method of requesting, for example, do they need the party name, case number, document, etc.

- Method of access may vary with nature of information source – case file, case management system, electronic filing system, imaging system, or transcript of court proceedings
- What types of assistance on how to request access is available, for example, brochures, Web site, self-help center, etc.
- How to comply with the Americans with Disabilities Act for those who are unable to access information in the normal manner or form

- Responding to requests for access
 - Manner of response
 - Timeliness
 - Copying
 - Certification, authentication, etc., of copies
 - Collecting fee, if any, for copies
 - How to respond if information is not publicly available
 - Logging request, if required

- Protecting against improper access, including inadvertent – what can staff do to minimize the risk of improper access
 - Don't leave your computer on with programs running unattended, allowing someone else to access information under your password
 - Safeguard user IDs and passwords, change passwords regularly
 - Expecting employees to watch who is around records and report to supervisor presence of anyone who should not be there

- Requests for access to restricted information
 - Procedure
 - To whom is request submitted
 - Review of request
 - Whether there is a requirement to log requests for access to restricted information – even if not granted
 - Appeal of denial of request

- Requests for bulk or compiled information - This discussion is only relevant if the jurisdiction allows bulk or compiled access
 - Definition of bulk and compiled access
 - Is bulk or compiled access allowed, or only case by case access?
 - Protocol for responding to such requests
 - What to do with requests for bulk or compiled disclosure – who to inform; standard for access; fees
 - Who to notify about such a request
 - What information must be provided

INFORMATION QUALITY - IMPORTANCE AND ELEMENTS

In order for employees to be held to a certain standard of performance, they must be told what the standard of performance is. The topics here seek to make explicit the performance standards relative to information in court records.

- Timely, accurate and complete data entry
 - Employee will make every effort to ensure information in the court record is ACCURATE
 - Employee will make every effort to maintain CONSISTENCY in records, including using:
 - Standardize coding for data entry
 - Minimal use of “miscellaneous” or free form text fields which are harder to interpret and are a source of inconsistency
 - Employee will COMPLETE filing or data entry to avoid incomplete data entry or partial inclusion of information in files or computer systems
 - Filing of documents and data entry of information should be made in a TIMELY MANNER, consistent with established time frames about when information will be available relative to filing or a hearing
- Correcting information in court record
 - Employees are expected to correct errors discovered or brought to their attention according to error correction protocols
 - Employees should notify a supervisor or manager of suspected errors
 - Employees should notify a supervisor or manager of a request for correction
 - Who can change a record; authority to change
 - What the criteria are the court will use in deciding whether to change a record
 - When must a record be kept of a request for a change
 - When to keep a record of what was changed

IMPROPER ACTIVITIES ASSOCIATED WITH ACCESS OR DISCLOSURE OF INFORMATION IN COURT RECORDS

- Disclosure can occur in many ways:
 - Inadvertent disclosure
 - Intentional disclosure
 - Mis-use of information
 - Accessing information not relevant to employee’s duties

- Consequences for misuse, abuse or inappropriate access to or disclosure of public information in court records
 - Accessing public information, but which is not related to job duties
 - Limitations on accessing, using, copying, disseminating, publishing, or selling information in court records
 - What to do about requests to access data gathered and maintained by other agencies, to which the court has access
 - Example of a probation officer who is a court employee accessing information at the behest of a spouse who is a sheriff's deputy about a matter not within the scope of the deputy's work.

- Consequences for misuse, abuse or inappropriate access to or disclosure of information in court records to which public access is restricted
 - Prohibitions on mis-use of information NOT available to the public
 - Possible consequences for accessing, using, copying, disseminating, publishing, or selling information in court records not available to the public

- The nature and possible penalties for violations of the policy. Consequences for misuse or abuse of access to or improper release of restricted information, including:
 - Transfer to a different position or department
 - Suspension
 - Dismissal
 - Civil and criminal liability for damages from disclosure

REFRESHER COURSE: WHEN IS ONE NEEDED?

- When the access rule is amended
- When a new CMS is implemented, or functionality changes that substantively affect access, or records now publicly accessible

Sources:

Alaska Court System, Office of the Administrative Director, Administrative Bulletin No. 12, as amended 23FEB90 – “*Guidelines for Inspecting and Obtaining Copies of Public Records*”

D. Possible Elements of a Contract or Memorandum of Understanding with an Information Technology Provider

Many courts or clerks of court have purchased software from, or contracted with, a private vendor to provide information technology (IT) services related to court records. There are many types of IT support for court records, for example, case management systems, electronic filing, document management systems for electronic or imaged documents, and third parties who obtain bulk downloads of court records and make them available to the public. Alternatively many courts and clerks rely on the executive branch of government in their jurisdiction to provide these types of services or support. Even if purchased from a private vendor, court record software and databases often runs or stores files on executive branch computers, servers, or networks. Having another entity provide IT services to the court or clerk of court does not absolve the court or clerk of its responsibilities regarding court records, and their safe keeping. The clerk of court is the custodian of the record. This was recognized in the *CCJ/COSCA Guidelines* (see section 7.00 in Appendix C below). The court’s or clerk’s obligation can be addressed in part by including provisions in the contract for services that alert the contractor or executive branch of the provisions of the applicable policies and the possible sanctions for failure to comply. In addition to having provisions in the contract about the policy the court or clerk of court must have the ability to enforce the access policies by monitoring the contractors or executive branch’s performance and conduct of contractor or executive branch employees.

The following provisions should be considered for inclusion in an agreement defining the relationship between the court or clerk of court and the IT provider regarding court records. For ease of reference the term ‘vendor’ is used here to refer both to private entities and to governmental entities providing IT services and support to the court or clerk of court.

GENERAL PROVISIONS

The following provisions should be considered for inclusion in the contract or memorandum of understanding between the IT provider and the court or clerk of court if the IT provider is essentially in the background, that is, providing computing, storage, or network capabilities to the court or clerk of court, but the court or clerk of court has primary control over the day-to-day application software, in particular, providing access to court information through a Web site or subscription service.

- 1. The contractor, its employees, and users it authorizes shall not disclose any information to anyone or in a manner not authorized by the laws applicable to the release or sharing of the information.**
- 2. The contractor shall notify the *[court/clerk of court]* of any actual, suspected, or attempted abuse, mis-use, or other violations of applicable access policies, including actions of the contractor's employees, agents, or users.**
- 3. The contractor shall provide training of its employees, agents, and subcontractors about applicable access policies as is required by the *[court/clerk of court]*.**

If the jurisdiction has a law or policy prohibiting the use of court or criminal justice records for the solicitation of business, consider including:

- 4. Records of official actions and *[court/criminal justice]* records and the names, addresses, telephone numbers, and other information in such records shall not be used by contractor, its employees, agents, or users for the purpose of soliciting business for pecuniary gain.**

REQUIREMENT FOR COMPLIANCE WITH ACCESS POLICIES

If one of the roles of the IT provider is to provide access to court records to other governmental agencies or to the public, consider including the following provision:

- 5. The contractor, its employees, agents, and users shall comply with the following policies and practices regarding access to information in court records that the contractor maintains on behalf of the *[court/clerk of court]*:**
 - a) Properly requested information shall be made available to an entitled user in a timely manner;**
 - b) Reasonable accommodation will be provided to a person with a disability who is entitled to access;**

- c) An individual entitled to access to information shall not be denied access based on who the individual is, whom they represent or are employed by, why they want the information, or what use they will make of the information;
- d) An individual entitled to access to information shall not be denied access based on conditions, requirements, or fees not approved in advance by the court;
- e) Only allow access to information for which there are access restrictions to those authorized to have access and who need the information in the course of their work;
- f) Not provide access to anyone not entitled to have access to the information;
- g) Not allow employees, agents, or users to accept any remuneration or benefit, personally or indirectly, for making information available, whether or not the requesting individual is entitled to access;
- h) Promptly report to the *[court/clerk of court]* a request to obtain access to restricted information *[specify a reporting standard, for example, within 1 day]*;
- i) Promptly report to the *[court/clerk of court]* a request to restrict public access to information *[consider specifying a reporting standard, for example, within 1 day]*;
- j) Promptly report to the *[court/clerk of court]* any alleged errors or requests for correction or deletion of information *[consider specifying a time standard, for example, within 1 day]*;
- k) Notify the *[court/clerk of court]* of any requests for compiled information or bulk distribution of information, including the contractor's requests for such information for its own use. [You may need to add definitions of bulk and compiled access, see *CCJ/COSCA Guidelines*, sections 4.30 and 4.40.];
- l) Provide training to litigants and the public about applicable access policies as required by the *[court/clerk of court]*;
- m) Post on contractor's access portal a statement approved by the *[court/clerk of court]* about 1) the currency of the information made available, 2) the completeness of the information, and 3) the need to verify information from official sources; and
- n) Contractor, its employees, agents, and users shall conduct themselves in a manner that protects information from improper access and maintains the integrity of applications and information storage systems.

If the contractor provides information to the public about criminal activities, such as arrests or convictions, and there are legal restrictions about what information is available to the public, or how it may be used, consider adding provisions such as:

- o) Require each public requestor to sign an acknowledgement of the requestor's responsibility to comply with applicable laws, including checking the accuracy of the information.**

In providing access to information through a vendor a state or court should consider whether it wants to control through the contract "downstream" access and distribution of information from court records that is maintained and made available through the contractor. For example, consider including the following type of provision:

- p) The contractor and anyone to whom it distributes information from court records must comply with *[specify the laws to be followed, for example, the court's policy on public access to court records, applicable state laws about use of information, or the Fair Credit Reporting Act, 15 USC §§ 1681 et seq.]*.**
- 6. The contractor agrees to update its records within *[specify the time frame, for example, 24 hours]* after receipt from the *[court/clerk of court]* of any new, changed, and to be deleted court information.**

Provision requiring timely correction of information provided to the IT provider by the court or clerk of court.

- 7. The contractor agrees to correct information when directed by the *[court/clerk of court]* in a timely manner *[specify a standard, for example, within 24 hours]*.**

MONITORING COMPLIANCE

In order to monitor contractor's compliance with access policies the court or clerk of court must be able to obtain information from the contractor about its activities and those of its employees, agents, and users. This could be done on either a continuous basis, for example through a requirement that the contractor "log" all requests, or on an ad hoc basis through an audit. The contract should authorize and establish a process for monitoring or auditing compliance with the access policies and its record keeping practices. Consider adding one of the following provisions:

8. **Contractor shall establish procedures and practices to maintain an electronic searchable log of all access requests *[OR specify a subset of requests to be continuously monitored, for example, requests to access restricted information]* to access court information. The log shall include *[specify what information the court/clerk of court requires, for example, who made the request, when the request was made, etc.]*. When requested by the *[court/clerk of court]*, the contractor shall provide the log information within *[specify a time frame]*.**

OR

9. **Contractor shall permit the *[court/clerk of court]* access to its employees, agents, and user records regarding access to court information, including physical access to contractor's locations and computer equipment and software, for the purposes of conducting an audit of contractor's access policies and practices.**

PENALTY FOR FAILURE TO COMPLY WITH CONTRACT PROVISIONS REGARDING ACCESS TO COURT INFORMATION

The intent of this provision is to indicate what the penalties are for failure of the contractor or its employees or users to comply with contract provisions regarding compliance with policies on access to court records.

10. If the contractor or any of its employees or users fails to comply with the provisions of this agreement regarding proper access to, sharing, disclosure, or updating of information obtained from court records, the [court/clerk of court], at its discretion, may:
- a) suspend or discontinue the contractor's access to the information;
 - b) require the contractor to suspend or discontinue access to information by an employer or a user who is not complying with the terms of this agreement;
 - c) apply other remedies as provided for in this contract or applicable public contracting law;
 - d) refer the matter to appropriate authorities for criminal prosecution; or
 - e) offer to provide an independent review, evaluation, or technical assistance to the contractor to establish compliance.

CONCLUSIONS AND NEXT STEPS

It is clear that the efforts of the current project touched only a limited set of areas for future work in developing, refining, and implementing policies and practices related to the protection of personal privacy while maintaining appropriate public access to court records. Materials for educating litigants and the public are described and discussed. Emerging themes in the maintenance of and access to family records are addressed. And internal court policies and practices for the maintenance of records and for educating and monitoring court employees are provided in the final report section.

There is much left to do, and much left to learn from local colleagues across the fifty states and the District of Columbia, and indeed colleagues from other areas of the world. It is essential that we continue to monitor the evolution of these policies and to track the stumbling blocks encountered by the public and by the courts themselves in developing these policies and implementing them fairly and completely. It will take all of us nationally, regionally, and locally, working together, to craft policies and practices that appropriately govern access to court records in this quickly changing field.

Early in the development of the original *CCJ/COSCA Guidelines*, one of the key participants said that the group had to be mindful of both the process and the final product. In fact, he said, "The process *is* the product". The wisdom of that comment still resonates.

Appendix A
Materials Related to Section I: Education

Part 1:
Relevant Excerpts From:
Developing CCJ/COSCA Guidelines
for Public Access to Court Records:
A National Project to Assist State Courts

(Available at: <http://www.courtaccess.org/modelpolicy/18Oct2002FinalReport.pdf>)

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.

Appendix A, Part 2:

Web Sites and Examples of FAQ Pages Regarding Court Records

CoCourts.com - Colorado judiciary's public web site for searching Colorado Judicial Branch records, located at: <http://www.cocourts.com/public/faq.cfm>

Delaware State Courts RECORDS ACCESS IN THE FAMILY COURT page at:
http://courts.delaware.gov/How%20To/Record%20Access/?fc_records.htm

Superior Court of San Francisco County (CA) Applications Web Site, Frequently Asked Questions page at: http://www.sftc.org/browser_pages/main_pages/faq.htm

Washington State Courts "ACCESS TO COURT RECORDS" page at:
<http://www.courts.wa.gov/newsinfo/?fa=newsinfo.accesstocourtrecords>

Wisconsin Circuit Court Access (WCCA) Frequently Asked Questions page at:
<http://wcca.wicourts.gov/faqnav.xsl;jsessionid=26461873127B7FE7B30484BD62DA3299.render4>

Appendix B
Materials Related to Section II: Family Court Records

Part 1:
Relevant Excerpts From:
Developing CCJ/COSCA Guidelines for Public Access to Court
Records: A National Project to Assist State Courts

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.

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. . . .

Note: [In addition, the commentary to *Guidelines* sections 1.00(a)(5) and 1.00(a)(6) are pertinent to ongoing discussions of family court records]

Commentary

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. . . .

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.

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.]

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. . . .

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.

MORE Access to What [outline of section 4.00]

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

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).

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). . . .

[commentary continues]

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 alternative 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 commentators 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.

[commentary continues]

A major focus of attention of the original *CCJ/COSCA Guideline* Committee and of those jurisdictions attempting to use the *Guidelines* in their local jurisdictions has been on *Guidelines* section 4.60, highlighting the right or even obligation to exclude records from public access based on existing federal and state laws.

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*.

Appendix B, Part 2:

Web Sites and Examples of State Statutes and Court Rules Relevant to Family Court Records

Minnesota Rules of Public Access to Records of The Judicial Branch (As amended effective July 1, 2005)

Rule 4. Accessibility to Case Records.

Subd. 1. Accessibility. All case records are accessible to the public except the following:

(a) *Domestic Abuse Records.* Records maintained by a court administrator in accordance with the domestic abuse act, MINN. STAT. § 518B.01, until a court order as authorized by subdivision 5 or 7 of section 518B.01 is executed or served upon the record subject who is the respondent to the action;

Rule 8. Inspection, Copying, Bulk Distribution and Remote Access.

. . . .

Subd. 2. Remote Access to Electronic Records.

. . . .

(b) **Certain Data Not To Be Disclosed.** Notwithstanding Rule 8, subd. 2 (a), the public shall not have remote access to the following data in an electronic case record with regard to parties or their family members, jurors, witnesses, or victims of a criminal or delinquent act:

- (1) social security numbers and employer identification numbers;
- (2) street addresses;
- (3) telephone numbers;
- (4) financial account numbers; and
- (5) in the case of a juror, witness, or victim of a criminal or delinquent act, information that either specifically identifies the individual or from which the identity of the individual could be ascertained.

. . . .

(d) **“Remotely Accessible” Defined.** “Remotely accessible” means that information in a court record can be electronically searched, inspected, or copied without the need to physically visit a court facility.

**Colorado Judicial Department
Public Access To Court Records
Attachment to Chief Justice Directive 05-01
(Adopted April 8, 2005)**

Section 4.60 – COURT RECORDS EXCLUDED FROM PUBLIC ACCESS

The State Court Administrator or his designee will create a procedure to assist courts with the implementation of the following Section. Additionally, the State Court Administrator may permit exceptions when exclusion is not possible due to resource limitations, provided that the court seeking the exception takes reasonable steps toward full implementation.

(a) Information in court records, as defined in Section 3.10(a) that is not to be accessible to the public pursuant to federal law, state law, court rule, court order, or case law including, but not limited to:

....

Victim's name or identifying information in sexual assault case

....

(b) The following information in court records is not accessible in electronic format due to the inability to protect confidential information. It may be available at local courthouses.

....

Codes and information related to victims of crime
Codes and information related to witnesses in cases

....

Utah Court Rules
(Effective November 1, 2004)

Judicial Council Rules of Judicial Administration
Chapter 4 Operation of the Courts.
Article 2. Court Records, Exhibits and Files

Rule 4-202.02. Records classification.

Intent:

To classify records created or maintained by the judicial branch.

Applicability:

This rule applies to all courts of record and not of record and to the Administrative Office of the Courts.

Statement of the Rule:

....

(6) Controlled judicial records. The following judicial records are controlled:

....

(6)(D) any record which the judicial branch reasonably believes would be detrimental to the subject's mental health or to the safety of an individual if released;

....

Rule 4-202.03. Records access.

Intent:

To provide for or limit access to records created or maintained by the judicial branch.

Applicability:

This rule applies to all courts of record and not of record and to the Administrative Office of the Courts.

Statement of the Rule:

....

(6) Controlled judicial records. Upon request, the judicial branch shall disclose a controlled judicial record to the following:

(A) counsel for the subject of the record in the proceeding;

(B) the individual who submitted the record;

(C) a physician, psychologist, or certified social worker upon submission of a notarized release from the subject of the record that is dated no more than 90 days prior to the date the request is made and a signed acknowledgment of the terms of disclosure of controlled information as provided below; or

(D) any person to whom the record must be provided pursuant to a court order.

A person who receives a controlled judicial record may not disclose controlled information from that record to any person, including the subject of the record.

Rule 4-202.12. Access to electronic data elements.

Intent:

To define the extent of access to data elements maintained in a computer data base.

To protect the right of access by the public to information regarding the conduct of court business.

To protect privacy interests from intrusion made possible by the increased accessibility of information recorded, stored, and transmitted in an electronic medium.

To protect the independence of the judicial decision making process from undue influence due to the release of court data.

Applicability:

Notwithstanding any other provision of law, this rule shall apply to all requests for data elements contained in case management applications of the court computer systems.

This rule does not apply to data elements contained in other applications on court computers.

This rule does not apply to requests for data elements by the Judicial Council and its Boards and Committees, state court judges, court commissioners, or employees of the state judiciary.

This rule imposes no obligation upon the judiciary to create a data element or to make a data element available electronically when it is not technologically feasible to do so.

Statement of the Rule:

(1) Public data only. Data elements classified by Rule 4 202.02 or other provision of law as other than public records will not be made available.

.....

**Wisconsin Circuit Court Access
Policy on Disclosure of Public Information Over the Internet**

4. Privacy for victims, witnesses and jurors:
 - a. The data fields that contain the names of victims, witnesses and jurors are not available on WCCA.
 - b. Various documents completed by court personnel using CCAP occasionally require the insertion of names of victims, witnesses or jurors. Examples include:
 1. court minutes that provide the names of witnesses called to testify or jurors who have been considered for jury duty;
 2. judgments of conviction that may provide "no-contact" provisions concerning victims;
 3. restitution orders that may contain the name of a victim;
 4. restraining orders/injunctions that may provide victim identities.These data elements are normally inserted into "additional text" fields by circuit court personnel based on the individual county's policies and procedures on the amount, detail, or type of data inserted. CCAP and WCCA recommend that court personnel entering information concerning crime victims into court documents use initials and dates of birth rather than full names whenever doing so would not defeat the purpose of the court document.
 - c. Because the "additional text" fields contain information critical to the understanding of many of the court record entries, denying access to those fields because of the occasional inclusion of the name of a victim, witness or juror would be contrary to the public interest in providing meaningful access to open court records.

Appendix C

Materials Related to Section III: Internal Court Polices and Practices

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

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.⁶

⁶ Fair Credit Reporting Act, 15 USC §§ 1681 et seq.