

Public Access To Court Records Task Force  
November 9, 2004  
UALR William Bowen School of Law  
Friday Courtroom - Room 114  
Little Rock, Arkansas

Minutes

The Public Access to Court Records Task Force met on Tuesday, November 9, 2004 in the Friday Courtroom, Room 114 of the William Bowen School of Law in Little Rock with the Honorable Ben Story, Interim Chair presiding.

The meeting was called to order by Ben Story. Those in attendance were Ben Story, Arkansas Judicial Council; Steve Sipes, Pulaski County Court Administrator; Rick Peltz, UALR Law School; Didi Sallings, Arkansas Public Defender Commission; Andy Gentry, Arkansas Public Defender Commission; Tim Tarvin, U of A School of Law; Kathy Gattin, Office of Information Technology; Jeff Moore, Arkansas Bar Association; Matthew Miller, Bureau of Legislative Research; John Burnett, Attorney at Law; Tim Holthoff, AOC; John Stewart, AOC; Karolyn Bond, AOC; Mark Johnson, AOC; Pam King, AOC.

A motion was made by Karolyn Bond, seconded by Didi Sallings and approved to accept the minutes of October 27, 2004 as presented. Karolyn Bond will post the minutes on the Website.

Rick Peltz distributed some suggested revisions on the confidentiality issue. After discussion of the suggested revisions it was decided to add the language, or by law, to the end of each statement under Section III, (11), (12), (13), and (14).

Section III

(11) “Expunged” shall mean that the record or records in question shall be sealed, sequestered, and treated as confidential, and neither the contents, nor the existence of, the court record may be disclosed unless otherwise permitted by this order. Unless otherwise provided by this order or by law “expunged” shall not mean the physical destruction of any records.

(12) “Confidential” shall mean that ~~neither the contents, nor the existence of,~~ of the court record may not be disclosed unless otherwise permitted by this court, or by law.

(13) “Sealed” shall mean that ~~neither the contents, nor the existence of,~~ of the court record may not be disclosed unless otherwise permitted by this order, or by law.

(14) “Protective order” shall mean that ~~only the existence of, but not the contents of,~~ the court record may not be disclosed unless otherwise permitted by this order, or by law.

#### Section III Commentary

The definitions of “expunged,”; “confidential information,”; “sealed,” and protective order” in Section III. A.(11)-(14) recognize that in some circumstances ~~not only is the court is~~ prohibited from disclosing the contents of a court record, ~~but also.~~ In case of expungement, the court is prohibited from disclosing even the existence of a court record, pursuant to ~~The definitions of “expunge”, “confidential information”, and sealed” are based on Ark. Code Ann. §§ 16-90-901, et seq. (Repl. ????)~~. This order distinguishes between court records that are sealed or made confidential in part under protective order, such as to protect a trade secret that includes information necessary to adjudication, but which would be harmful to the litigant if disclosed to the public, and court records that are sealed or made confidential, sealed or expunged by expungement, which means that both the existence of and the contents of the records may not be disclosed.

Ben Story stated that under Section IV. A. the language, or by law need to be added.

#### Section IV.

A. A court record is accessible to the public except as provided in Sections VII and VIII of this order, or by law or as otherwise ordered sealed by the court.

Rick Peltz had the following suggested revisions for Section IV. C. and for Section IV Commentary.

#### Section IV.

C. If a court record, or ~~part portion~~ thereof, is excluded from public access by protective order, there shall be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This sub-section C does not apply to court records that are sealed; or made confidential, or expunged by expungement.

#### Section IV Commentary

However, the Court recognized that for public policy reasons, such as to assist first-time offenders to remain productive members of society, it is sometimes necessary to conceal, by expungement, not only the contents of the court records, but also the very existence of them from the general public.

Ben Story inquired under Section V. A. (3) what was a register of actions?

Steve Sipes stated that it was the docket sheet.

Didi Sallings stated that for purposes of clarity that court docket and docket sheet should be defined. She also stated that under Section V. A. (2) that attorneys of record should be included.

Tim Holthoff stated that under Section V. A. (2) he would add the language attorneys of record.

Rick Peltz expressed concern with Section VI. A.: The word “may” leaves bulk/compiled access entirely at the discretion of the court. He stated that he was sympathetic to concerns about overburdening the courts when “compiled” information is requested, or when “bulk” information is requested and cannot readily be rendered in the format or medium desired, making it a “compiling” request, by definition.

Rick Peltz questioned under Section VI. B. why must all requests go through the AOC or state designee? If a county clerk can quickly and simply download public information to a disk, why trouble the requester to contact Little Rock?

Steve Sipes responded that the bulk access requests should be covered at the state level. He stated that national requesters want to make as few requests as possible and so it would make more sense for them to make one request to the AOC and get a statewide result.

Rick Peltz stated that under Section VI. C. again the use of the word “may” makes access to public information more difficult than access to non-public information. He stated that Section VI. C. sets out three prerequisites for providing access: (1) “that the information sought is consistent with the [Section I] purposes of this order”; (2) that resources are available to prepare the information; and (3) “that fulfilling the request is an appropriate use of public resources” and that the latter two points are redundant of the first.

Didi Sallings expressed concern with Section VI. D. (3) and the liability of the Director of the Administrative Office of the Courts when making a determination if a request should be granted.

Rick Peltz stated that under Section VI. D. (1) that the language “bona fide” appears but is not included in subsection D. (3) (c). and should be removed. He stated that under Section VI. subsection D. (1) (f) made extraordinary demands and should be eliminated.

Tim Tarvin addressed that under Section VI. B. request for bulk distribution or compiled information shall be made to the Director of the Administrative Office of the Courts or other designee of the Arkansas Supreme Court. He stated that the implication is that there may be other designees other than just the Director. He stated he was concerned with the consistency under Section VI. D. (3) which says requests may be granted only upon determination by the Director of the Administrative Office of the Courts. He inquired as to whether they needed to add the language or other designee? He also addressed under Section VI. D. (1) (e) under the waiver provision that this language would need to be added here as well.

A motion was made by Rick Peltz, seconded by Tim Tarvin and approved to strike the language “bona fide” from Section VI. D. (1) and to strike in its entirety Section VI. D. (1) (f).

There being no further business the meeting was adjourned.

