

TASK FORCE ON PUBLIC ACCESS AND PRIVACY
Of the Committee on Automation of the Arkansas Supreme Court
Justice Building
625 Marshall Street
Little Rock, Arkansas 72201

21 March 2005

The Honorable Jim Hannah
and the Justices of the Arkansas Supreme Court
Justice Building
625 Marshall St.
Little Rock, Ark. 72201

Dear Chief Justice Hannah and Supreme Court Justices:

On September 1, 2004, Betty C. Dickey, then Chief Justice of the Arkansas Supreme Court, invited governmental and nongovernmental organizations to designate persons to participate on the Task Force on Public Access and Privacy in connection with the work of the Supreme Court's Committee on Automation. The Task Force has completed its work and is pleased to transmit herewith a Proposed Administrative Order on Access to Court Records.

Justice Dickey charged the Task Force with the development of a Court policy on access to court records. The Task Force was instructed to balance the public's right to know with the need to protect individual privacy from threats such as identity theft. The need for this policy arose amid the work of the Committee on Automation to develop and implement a statewide automated case management system for the District and Circuit Courts.

The Task Force met roughly monthly from September 22, 2004, to March 14, 2005. Retired Circuit Judge John Plegge initially chaired the Task Force; however, when Judge Plegge became otherwise obligated, Judge Ben Story, representing the Arkansas Judicial Council, assumed the chairmanship. Tim Holthoff of Court Information Services, Administrative Office of the Courts (AOC), and Steve Sipes, Pulaski County Court Administrator, took the lead in drafting the proposed policy and leading Task Force discussions. Pam King, AOC Office Manager, and Mark Johnson, AOC Law Clerk, provided invaluable services in, respectively, keeping careful minutes of Task Force meetings, and updating working drafts. A listing of Task Force members follows this letter.

The Proposed Administrative Order consists of eleven sections and commentary pertinent to each section. Sections I, II, and IX address the purpose and scope of the Proposed Order, and Section III provides definitions. Section IV describes a presumptive right of access to court records, while Sections V through X detail terms of and

limitations on access that pertain in different circumstances, such as remote access, bulk access, and access to court records maintained by third-party vendors.

Justice Dickey further charged the Task Force with identifying the need for legislative changes to be addressed in the January 2005 legislative session. While the Supreme Court has inherent authority to set policy for access to the judicial records, many statutes bear on judicial process and public access. Consequent to discussions of the Task Force, Representative Jodie Mahoney introduced House Bill 2706, An Act to Amend Arkansas Laws Concerning the Use of Social Security Numbers in Pleadings, Motions, and Decrees, and for Other Purposes. As of March 18, 2005, that bill had passed the House and had been introduced in the Senate. Additionally, House Bill 1117, An Act to Amend the Petition Form for an Order of Protection to Eliminate any Requirement for Disclosure of Social Security Numbers; and for Other Purposes, passed the House and Senate and became 2005 Act 55 on February 1.

The Task Force recognizes that both public access and personal privacy are compelling interests, and that it is impossible to serve both interests at all times with absolute fealty. Unqualified transparency in judicial processes would render some parties to judicial processes vulnerable to identity theft and other crimes. At the same time, judicial processes may not be drawn behind a cloak of anonymity, lest the public be ignorant of the conduct of government and the judicial branch be unbounded by public accountability. The Task Force believes that the Proposed Administrative Order, in tandem with legislative action to protect social security numbers from ready public disclosure, strikes the proper balance between the public's right to know the business of the judiciary and the privacy right of individuals involved in judicial processes.

Sincerely,

Ben Story
Arkansas Judicial Council

On behalf of the Task Force
on Public Access and Privacy

MEMBERS OF THE TASK FORCE ON PUBLIC ACCESS AND PRIVACY

Karolyn Bond, Public Information Officer,
Administrative Office of the Courts

Alison Bratton, Arkansas District Judges
Council

John Burnett, Attorney

Kathy Gattin, Office of Information
Technologies

Andy Gentry, Public Defender Commission

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Jayne Ann Kita, Arkansas Coalition Against
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Matt Largen, Little Rock Chamber of
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