

## Meeting Summary<sup>1</sup>

### MINNESOTA SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH

Tuesday, September 16, 2014

Minnesota Judicial Center Room 230

#### **Members present:**

Hon. G. Barry Anderson, Chair  
Mark R. Anfinson  
Landon J. Ascheman  
Lee A. Bjorndal  
Hon. Peter A. Cahill  
Rita Coyle DeMeules  
Hon. Patrick C. Diamond  
Margaret K. Erickson  
Karrie Espinoza  
Lisa J. Kallemeyn  
Cindy Lehr  
Terri L. Lehr  
Eric N. Linsk  
Mary M. Lynch  
Lisa McNaughton  
AnnMarie S. O'Neill  
Elizabeth Reppe  
Kevin W. Rouse  
Julia Shmidov Latz  
Jeffrey Shorba  
Michael F. Upton  
Hon. Thomas Van Hon  
Michael Johnson, Staff Attorney  
Patrick Busch, Staff Attorney

**Guests present:** Beau Berentson, Deanna Dohrmann, Carla Heyl, Karen Mareck, Sarah Novak,  
Ann Peterson

**Welcome and Introductions:** Committee Chair Justice G. Barry Anderson welcomed all members of the committee and asked them to introduce themselves. The committee members

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<sup>1</sup> Unofficial comments prepared by committee staff.

did so. Justice Anderson explained that the Supreme Court appreciates the committee members' willingness to serve on the committee.

**Charge to the Committee.** Justice Anderson delivered the charge to the committee, noting:

- The committee has scheduled a total of five meeting dates in 2014; it may not be necessary to use all of the dates.
- Committee service is *pro bono*, and members will not be compensated for mileage or other travel expenses. Any member to whom this poses a severe hardship should contact the Court to make arrangements.
- There will be a telephone conference bridge available at meetings for members who are unable to attend in person, but members should attend in person if at all possible: there is no substitute for in-person conversation.
- All meetings are open to the public. All meeting materials will be distributed electronically, and members who want paper copies are asked to print their own.
- The role of the committee is to recommend changes to the public access rules. The committee will walk through the public access rules, and propose changes to the Supreme Court. The Court will then review the proposed rules changes, and determine whether to hold a public hearing or a notice-and-comment period on the proposed changes. The committee's proposed changes are due by the end of 2014 due to the need to meet publication deadlines and the Court's intent that e-filing be implemented expeditiously.
- The committee will first address the items on the agenda. If there are additional issues that merit the committee's attention, those may be addressed afterwards if there is time.
- The committee should endeavor to conduct its discussions by consensus. If necessary, the discussions will be conducted under Robert's Rules of Order. Everybody should have the opportunity to participate fully in the discussion.
- E-filing will be mandatory in the eleven pilot counties by July 1, 2015. E-filing will be mandatory in all 87 counties by July 1, 2016.

Staff Mike Johnson remarked that:

- The role of the committee is to advise the Court – the committee does not itself make rules.

- The role of the staff attorneys is to prevent committee meetings from turning into drafting sessions. If the committee does not reach consensus, it may produce minority reports. The Court has, at times, followed minority reports in the past.
- The committee should attempt to identify all potential issues that may arise with eCourtMN, and should not present half-baked ideas to the Court.
- The committee may elect to have one of its meetings be a public hearing so that members of the public can comment on the proposed changes to the rules.
- The committee should keep in mind that there are six other committees working on the court rules, and that their work will overlap. The staff attorneys will facilitate communication among the committees.

**Presentation on the eFS System:** Melissa Peterson gave the committee a presentation on the eFS system. The committee members asked several questions:

*Question*

*Answer*

Isn't it true that the restrictions on modifying service contacts once they have been entered (*i.e.* that the creator of the contact "owns" it) are intended as a security feature to prevent unauthorized modification of the contacts?

Yes.

What happens if the other side doesn't sign up for service?

That is a question for the committees to determine.

How can a filer see what the other side has filed?

That information is not available through the eFS website, which simply serves as a mechanism to transmit documents to the court and to other parties. The eFS website is not a case management tool.

What happens if a document is filed as sealed without prior court authorization?

*(by Michael Upton)* If it is submitted with a request to seal the document, the document is temporarily held as sealed until the request has been heard by a judge. In other situations, if the classification is changed to make a document more accessible, the clerks will in the second judicial district usually speak with the attorneys first.

What of anything does the public see when a document is filed as confidential?

Unless the event itself is confidential, the public can see the “event entry” on the case management system docket, which indicates that the document was filed.

Can the public see IFP petitions?

They are kept confidential.

**Overview of the Public Access Rules:** Mike Johnson gave the committee members an overview of the public access rules, including the following remarks:

**Rule 1.** This rule establishes the scope of the public access rules.

**Rule 2.** This rule establishes a presumption that judicial branch records, except for personnel records, are publicly accessible.

**Rule 3.** This rule contains definitions of words that appear throughout the rules. The definition of “custodian” does not prevent an office from designating a particular person to whom record access requests must be addressed. The definition of “record” is extremely broad, and would extend to Post-it® Notes that a court clerk wrote on in the course of doing her job. The distinctions between “case records” and “administrative records” are at times minimal.

**Rules 4, 5 and 6.** These rules correspond to the three categories of case, administrative and vital statistics records. Vital statistics are now handled by non-judicial branch

entities but some courts may still have older records. The committee will need to confirm this.

**Rule 7. subd. 1.** Records requests do not need to be made in writing unless a writing is necessary due to the complexity of the request or the number of documents involved.

**subd. 2.** The “as promptly as practical” provision replaced a provision that required responses to be made within 3 to 5 days. Under the old provision, it often took 5 days to get a response to even the most basic and simple request. The current provision has worked well: it promotes rapid responses, but also gives court staff adequate time to respond to labor-intensive requests.

**subd. 3.** The explanation-for-denial requirement promotes accountability, trust in the judicial branch, and appealability of denials of access.

**subd. 4.** This provision provides a mechanism for clarification, and promotes consistency of access statewide.

**subd. 5.** The correction of case records provision is intended to be a layman’s explanation for how to correct clerical errors, and to clarify which types of issues may be addressed by this process. It can’t be used for the purpose of recalculating child support or to modify orders or judgments of the court.

**Rule 8.** There is a distinction between public access and remote public access. Rule 8 took significant time to draft, and the previous advisory committee had its own public hearing. The public hearing was attended by the local Catholic archbishop, a senior figure from the local Lutheran church, various community organizations, and the Reporters Committee for Freedom of the Press, among many others. There was another public hearing before the Supreme Court.

**subd. 2(c).** The prohibition on searching preconviction criminal records by name was driven in part by a concern that there would be a disproportionate impact on members of racial minorities. The decision to allow searches by case numbers only was deliberate. The rules on access to preadjudication juvenile records have been recently changed.

**subd. 2(a).** This rule broadly excludes documents prepared by parties from remote public access, including, for example, the scurrilous affidavits often seen

in family law cases. A committee member noted that this is unlike the federal PACER system. The decision to differ from PACER was deliberate.

**subd. 3.** The restrictions on bulk distribution of court records are consistent with the other limits on remote access. Media organizations and other persons regularly request bulk distribution of court records.

**subd. 2(e).** The “particular case” exception is designed as a catchall for cases in which there may be significant public interest. For example, materials from a case involving Microsoft were made available by remote access and the website received millions of hits. The Coleman-Franken election suit similarly drew an overwhelming number of records requests.

The “e-mail and facsimile transmission” provision was added to reflect existing practice of routine public distribution of regular reports such as disposition reports for criminal matters. The committee should consider the possibility that this provision could eat up the limitations on remote access.

The “appellate briefs” provision was added at the request of the law library. The law library gets many requests for appellate briefs, but there are significant privacy concerns. The provision will need to be amended to reference addenda to briefs (rather than only appendices). Issues include the duty to screen for information excluded in Rule 8, subd. 2(b), and for information from inaccessible parts of trial court proceedings.

The committee members were asked to review Rule 8 and the committee comments in preparation for the next meeting. Justice Anderson remarked that Rule 8 will likely take up a significant part of the next meeting.

**Rule 9.** This rule establishes an administrative appeal vehicle for denials of record access. It is neither a substitute nor a prerequisite for filing a lawsuit. The State Court Administrator only receives a few of these requests per year, and usually responds very rapidly.

**Rule 10.** This is purely an administrative rule.

**Rule 11.** The immunity rule is a codification of caselaw. It was promulgated with the support of media organizations. It reflects the court's tradition of being the most open branch of government. Immunity provisions are rare in the court rules.

**Tables.** The court also has detailed tables online that attempt to list known case and administrative records that are NOT accessible to the public. Additionally, the judicial branch has access policies and Court Administrative Processes, including Court Administrative Process 110.41. CAP 110.41 is slightly broader than General Rule of Practice 11, which identifies confidential information that shall not be filed but states that court staff have no duty to screen filings for confidential information. CAP 110.41 requires court staff who know of confidential information to shield it from public view. This is an example of a branch policy filling in for a gap in the rules. Other committees are trying to address this issue as well; for example, the General Rules of Practice Committee is reviewing General Rule 11, and the Civil Rules Committee is reviewing Rule of Civil Procedure 5.04 which allows certain administrative rejection of filings for failure to follow certain rules.

**Remarks by Elizabeth Reppe:** State Law Librarian Elizabeth Reppe described the availability of MPA Courthouse View, which is the public access version of the trial court case management system, at the state law library. The law library very recently went live with courthouse view for P-MACS, which is the appellate court case management system.

**Review of Proposed Modifications to the Public Access Rules:**

Justice Anderson remarked that the proposed modifications are not written in stone. Committee members should feel free to comment on them, but should not turn the meeting into a drafting session.

**Rule 4, subd. 1(a).** This rule works in concert with the Order for Protection statutes which also provide confidentiality for the petitioner's location upon the petitioner's request. The proposed amendment to add caution data elements to the list of non-public information is intended to ensure that the pass through of this information to law enforcement continues as it did prior to the electronic environment. In paper the data

elements were filled out by the petitioner and simply handed to law enforcement. In the electronic world the caution data elements pass through the court's hands but the court does not consider those in reaching its decision; they are simply passed on for the benefit and protection of law enforcement. The term "caution data elements" may require a definition in the rule. The second part of this rule attempts to treat Harassment Restraining Order data similarly to OFP data, because many people bring cases that could qualify as OFPs through the HRO process. The HRO forms have been revised to ask the court to address the access concerns by issuing individual orders. This should continue existing practice, and will not increase restrictions on access to information used by the court in making determinations. One member queried whether the "caution data elements" language should be added to the HRO rule.

**subd. 1(b).** The additions are intended to be catchall provisions that will exclude court services types of records. Currently, the accessibility of the information depends on who introduced it. There was discussion over the scope of the term "support letters." There may need to be further discussion on this proposed modification to the rules. A committee member noted that historically court services records have not been publicly accessible.

**subd. 1(g).** This proposed addition is intended to clarify the rule and codify existing practice. Requests for assistance other than counsel often include expert testing, investigations, etc. Many judges issue orders sealing these records, and the Fourth Judicial District has a standing order sealing these records. When these issues come up on appeal, they are handled as confidential, and the Attorney General's office is asked to defend them without telling the trial court prosecuting authority.

**subd. 1(h).** The proposed language is intended to reflect the revisions to the statute. There was discussion over how a public agency could be sanctioned for improperly disclosing non-public data. One member suggested monetary fines.

**subd. 1(i).** The proposed language is intended to be consistent with the existing statutes and other rules on the deposits on wills for safekeeping. There are two options: keep the register of actions and name index public but the will sealed so that persons can determine whether a will is on file, and if a death has occurred,

authorize the court to open the will. Another option is to keep all information confidential but allow the court administrator to perform a search of wills upon presentation of a valid death certificate. This issue may be discussed further.

**subd. 1(j).** The proposed language on administrative warrants is intended to preserve the existing confidentiality of administrative warrants in the e-filing world. One member suggested that the rule should reference *McCaughtry v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013) in addition to the *Camara* decision. Other members noted that disclosure of administrative warrants could frustrate the execution of the warrants or put the executing officers in danger, and that the subjects of the warrants might also have an interest in keeping them confidential.

**subd. 1(k).** This proposed language is intended to prevent the disclosure of court records in a way that would frustrate the purpose of quashing administrative subpoenas and recognizes that those receiving a subpoena cannot publicly disclose it. Members noted that there was a potential for constitutional issues in regard to the entire process of such subpoenas.

**Rule 5, subd. 5.** The proposed amendment is intended to be a catchall that protects checking accounts, credit cards, etc. from identity theft. A committee member asked if there should be a reference to social security numbers; Mike Johnson suggested that this would fit well in a committee comment. Another committee member noted a typographical error: “provide” should be “provided.” The committee member also noted that the treatment of fiscal notes is parallel to the approach taken by the executive branch: the notes become public once they’re used.

**Rule 8:** Mike Johnson gave a brief introduction to Rule 8. The committee will need to consider modifications to the accessibility of the juvenile delinquency records, as this has been ordered by the Supreme Court. One committee member mentioned the importance of clarifying the accessibility of juvenile delinquency records on appeal. Currently all juvenile delinquency records are sealed on appeal, but it’s not clear what authority there is for sealing juvenile records that were open at the trial court. This makes things difficult for the law library and appellate clerks, because there is no ready way for them to determine whether proceedings were open at the trial court level. Other committee members mentioned the difficulties that arise in child protection cases, and in

delinquency cases where the charges have been amended so as to change the accessibility. One committee member mentioned the concern that prosecutors may threaten to charge matters as felonies to make the proceedings public. This matter will require additional discussions.

**subd. 2(e)(2).** The proposed amendment is intended to reflect the terminology change in the appellate rules.

**subd. 2(e)(3).** The proposed amendment is intended to broaden the permissible means of providing access to records. One committee member suggested that sometimes facsimile transmission is permissible where e-mail is not, due to privacy laws such as HIPAA.

**subd. 2(f).** This subdivision is no longer necessary. No committee member expressed concerns over deleting it.

**subd. 4.** This subdivision currently provides authority for providing access to non-public records to government partners, and the proposed change would move these provisions out of the public access rules and into judicial branch policy. Justice Anderson suggested changing the rule to read “Access to non-publicly-accessible records, including remote and bulk access, by certain criminal justice and other government agencies shall be governed by order of the Supreme Court or its designee.”

#### **Discussion on eCourtMN Steering Committee’s Proposed Principles:**

The committee discussed the eCourtMN Steering Committee’s Proposed Principles on Remote Public Access to court record. Judge Cahill, who is the current chair of the eCourt Steering Committee, explained that the Steering Committee does not establish policy, but refers policy issues to the Judicial Council or to an applicable rules committee as is the case with access rules. The numbered principles discussed are below in italics, followed by major points made during the discussion:

1. *All public documents should be available via remote access to the general public, unless excluded by a statute or rule. The identities of children and vulnerable adults should not be available via remote access.*

This principle is designed to strike a balance between expanding current access to court records and preventing potentially inappropriate access, such as neighbors idly snooping through their neighbors' divorce decrees. The principle does not address access to documents by parties. The principle is consistent with PACER access; it was noted that federal cases in PACER don't contain the same amounts and types of sensitive information that state court cases do.

Some committee members expressed concern that excluding the identities of children and vulnerable adults from remote access would be a substantial change: either documents would need to be redacted or the information would have to be excluded from filings. A committee member who practices in family law stated that use of "Child 1" in a judgment or decree is workable but that it was important for family law attorneys to be able to include the names of children in affidavits and written arguments: a text that contains a child's name is far more persuasive than a text that contains only a designation such as "Child 1." Another committee member suggested that this might be a reason for excluding family law affidavits from remote public access altogether: the affidavits frequently contain enough details that a snooping neighbor would be able to deduce the identity of the children. It was also noted that making the name and birthdate of a child publicly available could put the child at risk for identity theft.

10. *Audit trails of all remote access should be maintained, including IP addresses used to gain access.*

A committee member asked whether the audit trails would be public. Other committee members noted that making the audit trails public would go against the tradition of anonymous access to court records. Legal Counsel Division director Carla Heyl commented that the audit trail is intended to be used to track access to non-public documents that would be accessible to various government business partners such as prosecutors and public defenders.

8. *Remote access should be configured to prevent data harvesting, bulk downloads and automated downloads of documents.*

A committee member asked what the purpose of principle 8 was. Other committee members noted that the principle addressed the branch's commercial interest in court records and ensures consistency in not allowing remotely restricted information to be widely distributed. Currently the branch charges fees for providing bulk downloads of court records to commercial

users. Additionally, unregulated data harvesting could allow an unscrupulous person to download all of the public court records and search them for erroneously disclosed social security numbers. There would be no way of tracking this.

6. *Non-attorney staff working under the supervision of an attorney should have the same remote electronic access rights as their supervising attorney does in any particular case.*

9. *When an ID and password is required, sharing ID's or passwords should be strictly prohibited.*

Judge Cahill noted that these principles are intended to recognize that law is practiced in teams: frequently attorneys will have paralegals file documents. These principles accommodate this practice while promoting accountability for the use of user ID's and passwords.

**Presentation on remote public access in other states:** Patrick Busch presented for the committee an overview of remote public access in other states. The committee members discussed the purposes of charging fees for remote access: deterring casual snoopers and recovering costs of access. It was noted that the Minnesota Judicial Branch operates under appropriations from the legislature. There has historically been resistance to fee retention and revenue recapture programs. There has been a perception in the federal courts that the PACER fees have gone to general expenditures rather than towards remote access costs.

**Conclusion:**

There being no further business, the meeting was adjourned.

## Meeting Summary<sup>1</sup>

### MINNESOTA SUPREME COURT ADVISORY COMMITTEE

### ON THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH

Tuesday, October 14, 2014

Minnesota Judicial Center Room 230

#### Members present:

Hon. G. Barry Anderson, Chair  
Landon J. Ascherman  
Lee A. Bjorndal  
Hon. Peter A. Cahill  
Rita Coyle DeMeules  
Hon. Patrick C. Diamond  
Karen England  
Margaret K. Erickson  
Karrie Espinoza (*via telephone*)  
Cindy Lehr  
Terri L. Lehr  
Eric N. Linsk  
Mary M. Lynch  
Lisa McNaughton  
AnnMarie S. O'Neill  
Elizabeth Reppe  
Kevin W. Rouse  
Julia Shmidov Latz  
Jeffrey Shorba  
Michael F. Upton  
Hon. Thomas Van Hon  
Michael Johnson, Staff Attorney

**Demonstration of MPA Courthouse View and MPA Remote Access:** Staff Mike Johnson gave the committee a demonstration of the case information that is available to the public at courthouse access terminals and through remote access online. The demonstration included the limitations on searches of preconviction criminal cases through remote access online, and the limits on access to document images for party submitted documents through remote access online.

**Identification of Issues:** Chair Justice Anderson commented that the public access rules will need continued development, especially as technology continues to develop. For example, it is

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<sup>1</sup> Unofficial comments prepared by committee staff.

now becoming possible to give parties secure remote access to confidential documents that have been filed in their cases. He asked members to share their thoughts on what issues the committee needs to consider. Among the points made were:

- To the media, the current access rules are too restrictive. The press will not be satisfied with courthouse access, and will expect remote access. Media budgets have shrunk and most no longer can afford to send staff to courthouses every day. To the extent remote access raises concerns about data scraping, this is an issue that can be dealt with by technology including CAPTCHA and Turing-type filters.
- Except for confidential documents, there should be no difference between remote access and courthouse access. Otherwise, we'll have differences in access that are discriminatory in several respects: large firms vs. small firms; government vs. non-government attorneys; media vs. non-media; people who can afford to move for orders for remote access vs. those who cannot.
- From a customer service perspective, all kinds of things are available online, and court records should be no different. Public materials should be available through remote access.
- Agrees that public materials should be available through remote access, and that Record Access Rule 8 can pretty much be abolished. The committee should keep in mind, however, that there are some federal laws, such as the Violence Against Women's Act, that restrict remote access to court records.
- Remote access will be great for solo practitioners. Costs for downloading documents could be a significant hardship, especially for non-profits. For criminal defense attorneys, who typically provide free consultations, it's very helpful to be able to review cases beforehand. Costs could make it difficult to continue this. The term "preconviction criminal records" in Rule 8 seems off, and should be revised as otherwise it implies guilt.
- The committee needs to consider litigants' incomes in determining what costs there will be for remote access. The committee should consider what has been done in other states. The committee should also consider the type of information that is in the records, and who will see the information. This is especially so when remote access extends to criminal, juvenile, and family law cases.

- Public documents should be available by remote access. There are inconsistencies between what is public at the trial level and what is public at the appellate level. This should be addressed.
- There are some concerns raised by increasing public access. Many people don't fully understand how the legal system works, and won't fully understand court records. For example, landlords sometimes search court records and evict people who have records of law enforcement contacts, even if there is never a charge or a conviction. For most civil cases, remote public access should not be an issue, but family and probate/civil commitment cases should be treated differently.
- Some public cases, such as a family law cases, should be available only at courthouses. Family law attorneys used to be able to tell clients that hearings are public, but that it's unlikely anyone will watch. With remote access and the advent of pajama browsing, they won't be able to say this anymore. On the other hand, it's important that *pro se* and low-income parties are not at a disadvantage when they come into court. Remote access could help eliminate disadvantages.
- Some appellate court cases include the district court file numbers, which makes it easy to find the full names of children involved.
- Some OFP petitioners have been charged \$8 for a copy of one page of an OFP; these charges should be regulated.
- Landlords routinely search the public MNCIS and will discriminate against people who have any history in the court system. Criminal actions can be seen through court calendars; this defeats the purpose of precluding search-by-name for preconviction criminal records.
- The current system treats people differently depending on their finances: in the appellate courts, courier services will come in and buy copies of documents, while *pro se* litigants will spend hours copying documents by hand.
- Court staff need consistency and clarity in the access rules. The committee also needs to consider how to meet the court system's needs: the media is now asking for copies of documents as soon as they're docketed, even if they have not yet been sent to a judge.
- Penalties for improper disclosure of confidential information should be stiffer. The Judicial Branch could do better at informing people that the information sent to the courts

is public: many people are not aware of this. Denial of employment benefits cases are of particular concern when it comes to remote access, because they will often contain detailed allegations of employment misconduct.

- The court system is years behind the younger generation. Younger people are accustomed to easy and immediate access to information. In Norway, everyone's income and net worth is available online. All public court records should be remotely accessible, except for information relating to vulnerable people such as guardianship cases and restitution affidavits from victims of crime.
- Attorneys should be able to move for exclusion of information from remote access. For attorneys in federal courts, remote access has been wonderful.
- There was an incident in a criminal sexual conduct case where the victim's testimony was recorded and posted on Facebook. The courts should think carefully before opening the floodgates of information. This incident demonstrates the tension between considerations raised by remote access.
- The CAPTCHA automated search restriction and preconviction name search restriction can be circumvented by entering in sequential case numbers. It just takes time. Younger people will figure out how to work around access limitations. The courts should focus on creating true barriers to access where barriers are needed. The more exceptions there are to the presumption of public access, the more mistakes will be made.
- Remote access is very nice for attorneys who don't live or work near the courthouse. There need to be different levels of access for different types of court users.
- There are concerns about landlords and employers searching court records. It's appropriate for attorneys and self-represented litigants to be treated the same. There is a risk that information will be shared unexpectedly. Minnesota should follow Colorado's and Florida's limits on remote access. There is an access problem with juvenile delinquency cases involving a child who was 16 and allegedly commits a felony-level offense; if the felony charges are dropped the case remains public unless sealed by court order.
- Often, when information is released remotely, it is out of context and can be misunderstood. The public's need for access to court information is different from the need of parties and case participants.

- There's a huge inconsistency between judges when it comes to remote access. For example, some judges will allow parties to stipulate that a case will be confidential, but do not make the necessary findings to support this. The public has a valid interest in the operation of the courts, and courts need to be able to explain their decisions. In commitment cases, the medical records that are the basis of the court's ruling should be sealed. Otherwise, commitment cases should remain public. We have a shameful history of warehousing people in institutions, and the public disclosure of commitment proceedings is designed to prevent this through accountability.
- People often aren't really voluntarily coming in to court; they're coming in because they're in need of help. They should be able to do this without jeopardizing their private information.
- It's good that the committee members have a variety of opinions. There are lots of interests at stake. The rules need to have consistency when it comes to public access.
- Each confidentiality classification adds a layer of complexity to our access rules. We need to understand what is driving the data classifications. People are making a living sucking up our remote access data: this is tacky. Why should there be a distinction between public and remote access? The embarrassment justification doesn't hold water. It may be that there is a valid reason for distinguishing between public and remote access, but what is it?
- Remote and public access should be consistent. This is much easier for court administration. As is it, people come to the courthouse and search documents all day long. One concern is what will happen when transcript is filed containing testimony that includes confidential information.
- The agenda includes the same six-page memo from the last meeting summarizing remote access in other jurisdictions. The summary identifies the variety of fee mechanisms other courts have in place for remote access.

**Commitment Case Records.** Staff Mike Johnson explained that the Civil Commitment Committee appears to have reached somewhat of a consensus on public access to medical records in commitment proceedings. The consensus view in that committee is that medical records are not accessible to the public even if they have been formally admitted into evidence in

a publicly-accessible commitment proceeding. The rationale for this view includes, among other things:

- Many commitment proceeding exhibits contain extensive medical records that include medical histories. This can be an impediment to treatment, especially if there is media attention.
- People will be far less likely to speak openly with medical professionals if they are concerned that the records may become public later.
- Criminal case records are often included in post-criminal commitment matters, and those criminal records may include confidential minor victim identifiers that are also spread throughout the commitment records. There is no across the board minor victim identifier rule or law that requires consistent treatment of the minor victim identifiers. There is also a lack of clarity on whether the protections cease once the victim reaches the age of majority.
- Medical records are often supplied in one large filing; although the judge reviews it all, not all of it is relevant.
- Medical records in commitment cases are analogous to a presentence investigation report (PSI) in a criminal matter in that at criminal sentencing proceedings both sides and the court often refer to information in the PSI report but the report remains non-public.
- Sexually dangerous/sexual psychopathic personality cases heard before a three judge panel are a de novo review of a hospital review board decision regarding release. The hospital review board process is entirely closed to the public and the Oppheim case held that hospital review board records filed with the three judge panel are not public unless attached to and incorporated into the petition for review.
- Application of the commitment rules to the 3 judge panel process is not clear and should be clarified. The rules are also ambiguous regarding access to reports from retained as opposed to appointed examiners.
- The standing orders in the Fourth and Second Judicial Districts prohibiting public access to medical records even if they are formally admitted into evidence reflect a strong view that the trial bench is concerned about such access.
- Although standing orders and many stipulated closures approved by trial courts conflict with the balancing and specific fact finding required by the Minnesota Supreme Court for

closure or sealing of civil case records as set forth in the minor settlement case arising out of the Galaxy Airlines crash, commitments involve a court trial not jury trial, and a mountain of medical evidence, and requiring counsel to make a factual case for closure risks drawing attention to damaging evidence.

- Although personal injury cases often involve medical records admitted into evidence that are public unless sealed by individual court order, when an individual or their survivors bring a personal injury action they are waiving their privacy, while in commitments the proceedings are involuntary.
- Commitment committee was asked to consider whether access to medical and other commitment case records should be different based on the type of proceeding, such as a juvenile subject of the commitment, or the lack of predatory conduct as in the case of someone who is simply not able to care for themselves properly but presents no public danger. Remote access to commitment records may mean that the record will live on forever. To date that committee has seen no reason to differentiate.
- Commitment committee members appeared to be of the consensus that a rule allowing access to proceedings but absolutely no access to any written case records, was not going to be an acceptable approach.

Among the points noted by access to records advisory committee members were:

- The standing orders are also largely unknown to the appellate courts and many others despite some of them being posted on local websites.
- Standing orders are essentially local rules and local rules should require supreme court approval as is the case in both the civil and criminal rules.
- Commitment rule 21 allows parties to discuss the contents of confidential records in their pleadings and other submissions to the court, and at the appellate level this conflicts with appellate rule 112. The Court of Appeals has indicated in one case that parties can discuss confidential commitment records in appellate documents. There needs to be consistency across the rules.

**Draft Rule Modifications.** Staff Mike Johnson reviewed the proposed rule changes included in the draft. Changes from the prior draft are noted in red text. He explained that advisory

committee comments were included for issues where there appeared to be consensus. Comments from the discussion included:

**Rule 4:** Subdivision 1(a) on caution data elements should clarify that confidentiality applies only to law enforcement information sheets as a complete document, and not to the individual data elements that may also appear in other documents. Perhaps the document could be referenced by its form number. The race data clause includes language referencing data elements in other documents that might serve as a guide.

Subdivision 1(b) adds support letters and disposition advisor memos to the list of non-public documents. It was noted that at the prior meeting there was some concern about making advisor memos non-public. The consensus was that the additions were appropriate.

Subdivision 1(g) precludes public access to the substance of a request under MINN. STAT. § 611.21 for assistance other than counsel and any resulting order. The rule is intended to allow the register of actions to publicly disclose the existence of the request and the fact that an order granting or denying the request has been entered, but not to publicly disclose the substance of the assistance sought or granted. Approved by consensus.

Subdivision 1(h), (j) and (k) were approved by consensus. It was suggested that the rule might consider using the classifications “confidential” or “sealed” as is done in general rule 14 on e-filing. It was noted that this goes beyond public access and may be more appropriate for branch policy determinations.

Subdivision 1(i) clarifies the level and process for public access to wills deposited for safekeeping. The proposal has been modified to presume no public index access to wills until the court receives evidence of the testator’s death. A different approach would be inconsistent with the statutes and invite a separation of powers struggle that can be avoided. A few other jurisdictions that similarly preclude all public access until the testator’s death were identified in the margin notes. Approved by consensus.

**Rule 5.** The unofficial fiscal note provision promotes consistency with the legislature’s determination. It was queried whether consistency is good policy and that there may be significant public interest in knowing what legislative ideas are killed off prior to introduction and why. It was suggested that the rule may create more work for court staff. It was pointed out that the court cannot change the executive side of the equation and would create a significant intergovernmental issue if it did not handle its participation in the fiscal note process in a consistent manner. A different process would create more work for the courts, not less.

**Rule 8.**

- It was suggested that the word “original” be considered for removal from subdivision 1 of the rule.
- In subdivision 2(c), the suggestion to replace the phrase “preconviction criminal records” was again noted. The term makes it more difficult for defense attorneys to work with clients because it suggests that there will eventually be a conviction. Alternative phrasing will be reviewed.
- Deletion of the pre-adjudication portions of subdivision 2(c) are intended to comply with the Supreme Court’s recent order directing no remote access to juvenile delinquency cases involving felony-level conduct by a juvenile at least 16 years old at the time of the alleged offense.

**Remote Access.** Chair Justice Anderson queried whether the best place to begin a broader discussion of remote access principles is to review the proposal submitted by the eCourt Steering Committee. He asked Judge Cahill to identify the most important aspects of those principles.

Among Judge Cahill’s remarks were

- the most important principle of the eCourt Steering Committee’s proposal is #1: that public materials should be available by remote access. This does not mean that it should be too easy to access materials remotely: there should be a subscription fee and a per-document fee option. The ability to search documents should also be limited.
- Although the Steering Committee feels that it would be appropriate for attorneys to have remote access to confidential information on cases for which they are attorneys of

record, the access committee should focus on general public access issues and leave government partner access to confidential items to judicial branch policy.

- Although the Steering Committee did not discuss the potential that remote access might deter victims from reporting crimes, most prosecutors already make a practice of using victim initials in charging documents. It might be appropriate to expand the scope of restricted identifiers to include names of victims of crime.
- The steering committee wants to eliminate the access distinction between party-created documents and court-created documents.

**Restricted Identifiers and Enforcement.** Staff Mike Johnson noted that restricted identifiers are being discussed by other committees along with mechanisms for enforcing the confidentiality. One approach discussed by the civil rules committee is that once it is brought to the attention of court staff, either as a result of their own due diligence filing reviews or by phone call or other notice from any other party or person, that a filing improperly includes restricted identifiers, the court staff will immediately classify the document as confidential and send out a deficiency notice directing the filer to, within ten days, either (a) file a properly redacted filing plus a monetary fee (e.g., \$300 to \$500) to the court; or (b) file a motion for relief from the court. If no action is taken in the ten days, the filing is either stricken or the court will not consider it when deciding the issue/case.

Committee member comments regarding restricted identifiers included:

- It will not help to omit names of minor children from affidavits. People will be able to figure out which children are being referred to.
- The court is not in a good place to screen for restricted identifiers. The court should clearly explain the consequences for improper inclusion of restricted identifiers, but leave it to litigants to challenge inclusion. Court administration should not have to enforce the rules here.
- Redaction of names can result in incomprehensible documents.
- It's not clear what the term "victim" means.

**Delayed filing.** It was suggested that the rules impose a two- or three-day delay between the date of filing and the date of remote access: this would give parties an opportunity to review documents and object to their being remotely accessible. Committee members made the following points in response:

- The media can get copies of documents from filing parties immediately.
- The delay could create an implied duty for court staff to review each and every word of all documents for confidential information.
- Inappropriate implied duties can be addressed and nullified in the rules.
- Would the delay apply to documents that are filed immediately before a hearing?
- In the past, the media has threatened to sue the Judicial Branch because it wanted access to materials before they had even been accepted for filing.
- It would be difficult to keep track of objections to documents' being remotely accessible.
- How would this apply to situations where decisions must be made in under 48 hours? Courts are sometimes required to make decisions that quickly.
- If a document is available at a courthouse, why should it not be remotely accessible?
- Courthouse access is merely delayed remote access. [Other committee members argued that, because private information is brought to light in court proceedings, it's appropriate to have some barriers to access. For example, historically people had to sit in the courtroom to access private information.]

**Access barriers.** Committee members raised several points about barriers to access to court proceedings:

- We're currently considering allowing cameras in courtrooms. Other states do this already. It won't be possible to keep recording devices out of courtrooms.
- Many courts currently use fees as a barrier to access.
- There's a legitimate interest (the "creep factor") in wanting to restrict inappropriate viewing of private information.
- Restricting "pajama hunters" from browsing through court records remotely is just a value judgment that the committee appears to have made.
- It's hard to find a guiding principle. Why is the current level of access insufficient? Should people have to give up their privacy when they come to court?

- Remote access is essential because a lot of people who work during the day can't access records otherwise. Any physical or financial barriers to access are bad.
- Charging for remote access simply as a barrier appears to be making a value judgment and it might not be the correct value judgment.
- Fees for remote access to recover maintenance expenses seem inevitable. Most of the eCourtMN initiative is self-financed.
- Access promotes both transparency and confidence in the judiciary. We've already decided to be a publicly accessible branch of government.
- Increased access will mean there will be more requests to close files.
- The real issue here is whether documents should be public. This issue has already been decided for most items.
- There should be a *pro se* form for requests for sealing documents as most self-represented litigants will be unaware of the fact that one can request closure and unaware of the factors to address in such a request.
- The integrity of the court system is threatened when people use the court's records for personal gain.
- In civil commitment proceedings, employment and family histories are used. It's difficult to say whether these should be made public.
- Access should be allowed except when it results in demonstrable harm.
- Anyone can argue that his or her case is too personal to be publicly accessible.

**Which committee decides public access?** There was a suggestion that the access committee should defer to individual rules committees for decisions on which particular documents should and should not be accessible to the public. In response it was noted that although other committees include subject matter experts in their respective areas of practice, they do not include media representatives, they may not see the inconsistencies across case types, and the access committee has been charged with addressing the issue of public access. Any other committee can argue that something personal is involved in their case type. The bedrock principle that presumes records are public is included in the access rules. Chair Justice Anderson commented that the public access committee will likely have to decide what should be public with input from other committees.

Justice Anderson thanked members for providing a full and frank discussion with no motions. He asked the committee members to consider the remote issue carefully before the next meeting, and he noted that a meeting summary will be provided that may assist in this. He queried whether there may be a decision tree to follow, with the first question “Should we keep the remote access limits we have? The next question: “Do we keep fewer or other remote access limits?” The next question: “Do we not have any remote access limits and focus on expanding restricted identifiers?” A subsidiary question may be what fees to charge for access but that may in all reality come about on its own. He noted that the committee would seek input from other committees that are also discussing public access issues.

There being no further business, the meeting was adjourned.

**Meeting Summary<sup>1</sup>**  
**MINNESOTA SUPREME COURT ADVISORY COMMITTEE**  
**ON THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH**  
**Wednesday, October 29, 2014**  
**Minnesota Judicial Center Room 230**

**Members present:**

Hon. G. Barry Anderson, Chair  
Mark R. Anfinson  
Lee A. Bjorndal  
Hon. Peter A. Cahill  
Rita Coyle DeMeules  
Hon. Patrick D. Diamond  
Karen England  
Margaret K. Erickson  
Karrie Espinoza  
Lisa Kallemeyn (*via telephone*)  
Cindy Lehr  
Terri L. Lehr  
Eric N. Linsk  
Mary M. Lynch  
Lisa McNaughton  
Elizabeth Reppe  
Kevin W. Rouse  
Julia Shmidov Latz  
Jeffrey Shorba  
Michael F. Upton  
Hon. Thomas Van Hon  
Michael Johnson, Staff Attorney  
Patrick Busch, Staff Attorney

**Opening remarks.** Justice Anderson welcomed the committee members, and thanked them for their attendance. He explained that the meeting will consist of a review of the draft proposed changes to the public access rules, followed by an in-depth discussion of Rule 8 (remote public access). The committee will likely need to hold its scheduled November 13 meeting, but will hold its scheduled December 9 meeting only if necessary.

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<sup>1</sup> Unofficial comments prepared by committee staff.

**Review of proposed draft changes.** Staff Michael Johnson reviewed the latest changes to the proposed modifications to the public access rules:

**Rule 1:**

**Subdivision 1.** To promote clarity, the rule has been divided into paragraphs with headings. The rule now contains an express conflict-of-rules provision: the public access rules govern in case of a conflict with other rules. There may be situations where it's appropriate for the public access rules to defer to other rules, and the committee should consider the actions taken by the other advisory committees. For example, public access to guardian ad litem reports currently varies depending on whether they are filed in family court cases or CHIPS cases. If that variance is to continue, it will need to be recognized as an exception in the access rules.

The rule has been amended to restrict local rules and standing orders that affect public access. There are similar provisions limiting local rules in the Civil and Criminal Rules. There is a tradition that local rules were referred to the General Rules of Practice Committee, which would consider whether the local rules should be adopted statewide. The amendment is consistent with this tradition.

Justice Anderson noted that, under the proposed amendment, local rules and standing orders affecting public access would become effective only as ordered by the Supreme Court. This is consistent with the purpose of the public access rules: to be a comprehensive collection of the rules that affect public access.

A committee member suggested that the conflicts provision should also state that the public access rules would govern over conflicting statutes. Justice Anderson stated that he was not necessarily opposed to such a provision, but that it would raise a separation-of-powers issue. That issue might be better left for the Supreme Court to decide on a comity basis when it arises.

**Subdivision 2.** The proposed amendment simply clarifies the scope of the access rules. It is not intended to change the meaning of the rules.

**Subdivision 3.** The existing rule clarifies that records retention is not governed by the public access rules. There is a separate record retention schedule posted on the state court website. A committee member noted that although paper records can be completely destroyed

there is no current process for completely destroying electronic case records in MNCIS. The MNCIS register of actions still exists but filed documents would not. The existing case management system is designed to make it very difficult to delete records. The result, that records are retained indefinitely, raises some important policy questions that are beyond the scope of the public access committee. These policy questions are being discussed nationwide. The indefinite retention of records means that far more records are in existence than were available in the paper world.

**Subdivision 4.** The proposed amendment incorporates various references to the obligation of filers to redact confidential or restricted information from filings. It's important that filers comply with these obligations, because redaction would place a huge burden on the court system. The Civil Rules Committee is considering a provision that would require filers who fail to redact to pay a fine and file a properly redacted version within 10 days, or file a motion for relief. The reason for referencing the redaction obligation in the public access rules is to make it very clear that the obligation exists.

Justice Anderson suggested that the words "among other possible relief" be added to the last sentence of the proposed rule. He stated that he was opposed to rejecting filings for non-jurisdictional reasons, but that he did not intend to cut off discussion on this issue. He also suggested that the date of amendment in the committee comment be changed to 2015, because it is unlikely that the Court will have acted on the proposed amendments before the end of 2014.

#### **Rule 4:**

**Subdivision 1.** The proposed amendment on caution data elements is based upon the committee's discussion from the last meeting, and clarifies that the restriction is limited to the actual document and not to the data elements that may exist in numerous other documents, which might require significant redaction. The approach is based on existing language regarding race data.

Justice Anderson suggested that there should be a definition of the term "caution data elements." Another committee member suggested that the phrase "as provided by the petitioner" be included in the definition.

**Subdivision 2.** The proposed amendment on orders restricting access is intended to alert parties and judges of the existing case law. The case law, which is complex, is described in the comment. The following points were raised:

- The words “requisite findings” should be replaced with “findings required by law” or “findings required by law, applicable court rule, or precedent.”
- The legal definition of the term “restrict” is unclear. It may be that this is a problem created by the rules: the terms “confidential” and “sealed” are often used interchangeably.
- It’s not clear if the rule would permit a judge to restrict remote access only.
- In family law cases, self-represented litigants may need guidance for how to request that sensitive information be sealed.
- Perhaps the rule should reference the comment so that self-represented litigants will know to consult the comment. It was noted that this is a departure from the standard practice as court orders adopting rules state that comments are not adopted but included for the benefit of the readers.
- The rules establish a framework: if a judge wants to restrict access to records, he or she must identify a legal basis for doing so. This would also lead to orders that would be reviewable on appeal.
- The committee should allow case law to develop on the restriction of record access.

The committee may need to discuss this issue further at its next meeting.

**Subdivision 4.** This provision, which allows reference to the contents of certain confidential documents in other public documents, is based upon the existing Civil Commitment rule 21(b). By precluding public access to certain documents, such as medical records, in a commitment case, but allowing the parties and the court to discuss the relevant contents of the medical records in other publicly-accessible documents and on the record in open court minimizes the amount of redaction that might otherwise be required and ensures appropriate public disclosure of relevant information.

Staff Mike Johnson explained that exceptions must be identified to prohibit parties from inappropriately disclosing certain specific data elements such as social security numbers. The

list of exceptions will need to be carefully reviewed by the committee to ensure that it is complete.

The last sentence of the proposal that presumes that the presence of certain data elements in transcripts of a public proceeding have been authorized by the presiding judge. There may be other approaches that the committee might consider. In the federal courts, there is a 30-day delay in access to transcripts so parties have a chance to review them for potential redaction. A committee member stated that the federal rule would not be workable in appellate practice, and that the responsibility for restricting confidential information from transcripts should lie with the trial court judge. The committee members had no other suggestions on addressing this issue.

**Discussion on Rule 8/Remote Access.** Justice Anderson asked members to comment on whether the rules should retain some form of remote access, and if so, is it greater or lesser than the current rule, and what goals and objectives are furthered by such remote access. The ensuing discussion was extensive; among the points made were:

- Remote access to court records is convenient for the public, and convenient for court staff because it reduces the number of record requests that they must process.
- The premise should be that records are remotely accessible. That is how the world works today.
- Remote access to custody modification affidavits is concerning, because the affidavits must establish child endangerment. Children are very adept at finding information online: they may look up their classmates' court files and learn highly personal details about how they have been mistreated. In this context, privacy outweighs the public's interest in remote access.
- There should be no difference between public access and remote access, except as required by specific statutes, such as the federal Violence Against Women Act. Documents that are not available by remote access should be confidential.
- This approach would reduce the overall level of access to documents.
- The distinction between public access and remote access is artificial, because people can easily scan court documents and post them online. There's no principled reason to distinguish between public access and remote access.

- The responsibility of filers to redact confidential information needs to be clarified, because there is currently a lot of medical and psychiatric information in publicly accessible documents.
- The distinction between remote access and public access should be retained, especially for preconviction criminal cases. These records can be misused in housing and employment contexts. Allowing preconviction criminal cases to be remotely accessible will pulverize many people who are never convicted.
- The issue of remote access should be decided by individual committees, because the relevant considerations vary depending on the practice area.
- Allowing or prohibiting remote access won't solve the problem, because companies buy court data as it is. This is available on websites such as tenant.com.
- The courthouse access restriction is a good roadblock. It is a way of preserving individuals' right to privacy, their "right not to be messed with." Litigants are not always focused on the privacy interests of the people who are mentioned in court filings. Allowing unfettered remote access will have bad results.
- The concerns about preconviction criminal records can be addressed by retaining the current rule that precludes remote records searches of preconviction criminal records by name, and allow a remote search by case number only. And the court system is capable of preventing remotely accessible records from being indexed by search engines. A Google-type name search won't return such records.
- The current restrictions on access create a demand for data miners, who provide access to records of expunged cases. The restrictions on preconviction criminal records go against the principle that the state should not be able to charge people secretly. Also, the judicial branch should not give preferential remote access to attorneys.
- We are well down the path of becoming more accessible. This should continue.
- The committee should clearly identify, for court staff, the types of documents that should be restricted from public access. For example, affidavits in family law cases could be categorically excluded from remote access.
- In light of modern technology, the court system's current practical obscurity model no longer works. If remote public access is increased, the court system will have to handle many more motions to file documents as confidential.

- Data miners are not the only people who use remote access. Nosy adolescents, employees, and people looking for babysitters use it as well. For this reason, certain types of cases, such as preconviction criminal cases, should be excluded from remote access. Suicides and bullying might increase if broader remote access is permitted.
- One way of restricting remote access would be to impose a fee structure.
- It's very hard to come up with a general principle that governs access in all cases.
- Placing the redaction burden entirely on litigants will place a heavy burden on self-represented litigants. It will be very difficult for them to properly redact documents, and will be very difficult for them to know how to move to have documents restricted from access. They will go unprotected.
- This committee has been charged with making a recommendation on public access, and should do so.

**Motion:** Judge Cahill moved to amend the rules to allow remote access to public documents, except that searches in family law, juvenile delinquency, CHIPS, adoption, and preconviction criminal cases should be restricted to case numbers. Jeff Shorba seconded the motion. The committee members discussed the motion, and the following points were raised:

- Restricting searches to case numbers is technologically feasible.
- Restricting searches to case numbers will be a step backwards, because many people do not know their case numbers, or forget their case numbers. It will increase calls to the court asking for case numbers.
- Name searches should be prohibited in OFP cases and eviction cases. Perhaps they should be prohibited in civil commitment cases as well.
- It would be helpful to have more input from the other committees.
- It's not clear how the proposal compares to the access available on the federal PACER system. It was noted that the federal PACER system contains nowhere near the amount of sensitive personal information that the state court system must handle.
- Restricting remote access in all cases to file number searches would preclude the average member of the public from accessing cases.
- If a case number is required to access a case, people will simply call the clerks and ask for case numbers.

- Perhaps the committee should get input from the other committees, and then act as a clearinghouse before sending the recommendations to the Supreme Court.
- Minnesota is far ahead of other states when it comes to providing access to court records. This promotes accountability, but means that comparisons with other states' remote access are not particularly helpful.
- If a document is confidential in one case, it should be confidential in all cases.
- The public access committee should create a set of access principles for other committees to review. The public access committee cannot be an expert in every area of practice.
- The definitions of "Public 1" and "Public 2" should be revised – most of the documents that are now Public 2 should become Public 1. Public 2 should be reserved for statutorily-required exceptions to remote access, such as Orders for Protection.
- The limitation of remote access to searches by case number will exclude many members of the public and the press from remote access. The press and the public have legitimate interests in looking for patterns in case filings. In PACER, this has been used identify patent trolls and those who abuse the disability law process. It's also been used to identify frivolous litigants. If remote access is restricted to searches by case number, it will become an insider's club.
- Court business is public business. Restricting remote access in all cases to searches by case number would be a major retrograde movement.
- One option would be to try remote access with the existing definitions of Public 1 and Public 2, and then consider expanding the definition of Public 1.
- Another option would be to hold a "soft opening", in which remote access is available but not announced. A member questioned whether this would be legal.

The committee voted on Judge Cahill's motion. The motion carried. Justice Anderson stated that he would allow future discussion at future meetings.

**Future discussion of remote access:** The committee members asked that staff provide additional information on the definitions of Public 1 and Public 2. This issue will be discussed at future meetings.

**Access to evidence:** Currently exhibits are not remotely accessible, and are not imaged unless they are transmitted to the appellate courts. This issue may need future consideration, especially because many exhibits are medical records. A committee member noted that exhibits are frequently present in the file as attachments to affidavits. Judge Cahill noted that the eCourtMN Steering Committee had not discussed exhibits, because the issue was outside of the Steering Committee's purview.

The committee members discussed whether the current rule allows for members of the public to copy exhibits. It was noted that the rule expressly allows for inspection of exhibits, but does not allow for copying of exhibits. Some trial exhibits, however, are already filed with the court as support for a pre-trial motion. It was also noted that the rule provides little guidance for trial court judges. The committee members disagreed on whether exhibits were part of the court file.

**Closing comments.** Justice Anderson noted that the committee will meet again in November. The issues discussed by the committee today are important, and are necessary due to Minnesota's decision to allow more public access to court records than most other states.

The meeting adjourned.

## Meeting Summary<sup>1</sup>

### MINNESOTA SUPREME COURT ADVISORY COMMITTEE

### ON THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH

Thursday, November 13, 2014

Minnesota Judicial Center Room G-06

#### Members present:

Hon. G. Barry Anderson, Chair  
Landon Ascheman  
Hon. Peter A. Cahill  
Rita Coyle DeMeules  
Hon. Patrick D. Diamond  
Karen England  
Margaret K. Erickson  
Lisa Kallemeyn  
Cindy Lehr  
Terri L. Lehr  
Eric N. Linsk (*via telephone*)  
Mary M. Lynch  
Lisa McNaughton  
Elizabeth Reppe  
Kevin W. Rouse  
Julia Shmidov Latz  
Michael F. Upton  
Hon. Thomas Van Hon  
Michael Johnson, Staff Attorney

**Opening remarks:** Justice Anderson welcomed the committee members, and asked staff attorney Michael Johnson to review the revisions that had been made to the draft report since the committee's last meeting.

#### Review of revisions to draft report:

**Rule 1, subd. 4.** The proposed rule has been edited slightly for clarity. The proposed rule makes reference to a "proposed" modification to Rule of Civil Procedure 5.04 that has not been finalized and will be discussed by the Civil Rules Committee on November 14, 2014.

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<sup>1</sup> Unofficial comments prepared by committee staff.

**Rule 4, subd. 1(a)(2).** Judge Thomas Van Hon noted that in practice both addresses and phone numbers of petitioners in harassment restraining order cases are expressly deemed non-public, and that court forms for the petition include designated space for petitioners to request confidential treatment of both items. Staff Mike Johnson commented that the language of the rule “information ... regarding the petitioner’s location or residence” is broad enough to encompass both, and the committee agreed that this should be reflected in the comments to the rule.

**subd. 1(a)(3).** References to court forms have been added and the title of those forms, “Law Enforcement Information Form,” has been substituted for the term “caution data elements.”

**subd. 1(f).** The provision on genetic records has been expanded to encompass all “medical records” in all case types. Part of the definition is taken from proposed rules prepared by the commitment rules advisory committee. The difference is that the access rules draft makes all medical records admitted into evidence public while the commitment rules advisory committee keeps admitted records non-public in commitment cases. A letter from the commitment rules committee chair explains their rationale, and the access rule draft is intended as a basis for discussion by the access committee. Discussion reserved for later in the meeting, where the committee’s view changed.

**subd. 1(l).** A catchall provision has been expanded to recognize other rules that are not inconsistent with the access rules that make information non-public. The list is taken from the State Court Administrator’s public access tables. It was noted that different supplemental juror questionnaire restrictions apply in civil and criminal cases as the constitutional basis for access and closure in the two case types is different.

**subd. 2.** Based upon a suggestion by the committee, cross references to specific rules have been moved from the proposed comment into the rule so that self-represented litigants have a better chance of locating them. Comments retain an exemplary discussion.

**Lines 238-39.** The proposed language establishes a presumption that restricted information that appears in the transcript of a public proceeding was disclosed with the authorization of the judicial officer. It was noted that several members expressed concerns about this at the last meeting. No further concerns were expressed.

## **Rule 8**

**Subd. 4.** Staff Mike Johnson pointed out that that Rule 8, subd. 4, was intended to address government partner access to both non-public records and to bulk/remote access to non-public and public records. It was suggested that the word “including” be changed to “and” to reflect these separate concepts. The committee agreed.

**Subds. 1, 2, and 3.** Staff Mike Johnson explained that subdivisions 1, 2 and 3 have been modified to reflect the motion passed at the last meeting to allow remote access to public documents where permitted by law, except that remote searches in family law, juvenile delinquency, CHIPS, adoption, and preconviction criminal cases should be restricted to case numbers. It was not clear if the committee intended to make a distinction between family court cases involving children and those without children. There are separate case types within MNCIS that might support a distinction. The commitment rules committee chair suggests in her letter that the access committee consider adding commitments involving minors to the list of cases with no remote name search allowed. It was noted that bulk data provisions were made consistent with remote access so that bulk disclosures do not simply override remote access limits.

A concern was raised that the reference to “automated tools” does not encompass the MNCIS remote search. Mike Johnson explained that the last clause “including but not limited to the court’s own tools” was intended to encompass MNCIS. The committee agreed to use “electronic search tools.”

A committee member suggested that the first line of subd. 2 could be amended to make it clear that the provision applies only to publicly accessible cases. Staff Mike Johnson pointed out that the existing subdivision attempts to do this with the language “except as otherwise provided in Rule 4”, and that Rule 4 establishes non-public case types. He added that the rule could be clarified.

**Search by name/case number limitation:**

The committee discussed the existing limitation on searching pending criminal cases. It was clarified that a name search will not show that a pending criminal case exists, but that pending

criminal cases will show up on a search by case number. Some members commented that it is possible to identify pending criminal case numbers by searching through daily court calendars. A committee member asked if limitations on case record searches would conflict with court administrators' statutory duties to provide indices of cases. Staff noted that the proposed limitations applied only to remote access to records and that a full, public index is accessible at the courthouse.

An alternative to remote access limits was suggested: allow certain levels of access for certain case types, some including remote access to documents:

Tier 1: For example the broadest access level would provide all party name and other searches remotely, remote access to the Register of Actions, and remote access to all publicly-accessible documents except where prohibited by law, e.g., order for protection records precluded from remote access by the federal Violence Against Women Act. At the courthouse all searches, Register of Actions, and all publicly-accessible documents would be accessible. Examples of case types that would be covered in this level of access are general civil cases.

Tier 2: The next access level would simply remove all documents from remote access but provide all party name and other searches remotely, and remote access to the Register of Actions. Publicly-accessible documents would only be accessible at the courthouse.

Tier 3: The last level of access prohibits all remote access but would allow at the courthouse all party name and other searches, access to the Register of Actions, and access to all publicly-accessible documents.

The committee identified the following advantages and disadvantages of the name search limitation approach and the tiered, case type access:

#### Name Search Limitation

##### Advantages

*Cases and documents can be accessed by case number*

*Remote public access to documents is the same as courthouse access to documents (with limited exceptions based upon statutes)*

*Fewer records requests for staff to process*

Disadvantages:

*Greater access to certain family court/CHIPS documents if case numbers are known: there is a potential for a burden on court staff to provide case numbers*

*Without the case number, no records are available*

Tiered Access:

Advantages:

*Registers of Action are available*

*Less availability of sensitive information/more protection for privacy interests*

*Probably will result in fewer calls for file numbers – more easily administered?*

*Cleaner distinction than name search limitation*

*More documents are remotely accessible*

*Allows learning by experience/adaption*

Disadvantages:

*Somebody needs to classify the documents (this is current practice)*

*Some publicly-accessible documents aren't remotely accessible*

*For some cases, there will be less information available*

*It's uncertain whether attorneys should have special access to files; their motives for accessing files may differ from the general public's*

**Limitations on searching for family law cases:**

The committee discussed appropriate limitations on remote searches of family law cases. Points included:

- It may be appropriate to limit remote access by document types. For example, it might be possible to restrict access to affidavits in cases involving minor children. However, this would mean that somebody will have to classify the documents.
- General Rule of Practice 308 allows for public dissolution decrees to include a confidential component. It might be appropriate to expand this to other family law actions.
- Court staff should not be required to redact confidential information.

- Self-represented litigants will have difficulty understanding and complying with the redaction requirements.
- It would be appropriate to segregate portions of orders that address custody and parenting time. The public interest is limited, and the privacy interests are high.
- All orders issued by the court should be public, with limited exceptions (such as orders on in forma pauperis petitions).

**Other points of discussion on remote access limitations:**

- Excluding a document from remote access is not the same as making it non-public.
- It's very helpful for criminal defense attorneys to be able to pull up registers of actions in pending criminal cases and to see the documents. For example, they're able to assess prospective clients' cases.
- The Steering Committee's proposed principles on remote access state that public documents should be remotely accessible. The rules should create as few exceptions as possible.
- The search-by-case-number limitation will result in court staff being asked to give out case numbers. They will need clear direction on when they should give out case numbers. It was noted that case numbers are a matter of public record unless they are requested in bulk.

**Search-by-number limitation vs. document type limitation:**

Justice Anderson asked the committee to vote on retaining the search-by-number limitation versus limiting remote access by case and document type with differing levels of access. Seven committee members voted in favor of limiting remote access by case and document type, and four committee members voted in favor of retaining the current search-by-number limitation.

**Discussion on case and document type limitation:**

- Self-represented litigants will not be able to accurately classify documents into document types. This will result in more work for court staff.
- Classifications will be based upon MNCIS event codes, which court staff are already required to enter.
- The proposed multi-level approach would remove the remote access search limit on pending criminal cases. This can be a huge stain on the records of people who are charged but not convicted of crimes.

### **Note on data mining:**

A committee member noted that data mining is widespread, and that the judicial branch should make its search services reliable to avoid creating a market for more data mining.

### **Proposed categories of cases and documents:**

Judge Cahill outlined some proposed categories:

1. Postconviction criminal and civil cases:  
*Calendars, registers of action, and public documents and data are remotely accessible.*
2. Family law, pending criminal:  
*Registers of action and calendars are remotely accessible, as are public court orders.*
3. CHIPS, civil commitment, and paternity:  
*No remote access.*

Points raised in response included:

- Family law cases without minor children should be placed in category 1.
- Post-adjudication paternity decrees should be placed in category 2, because many people do not know whether a paternity adjudication exists.
- It's not clear whether an order for dismissal in a pending criminal case would be remotely accessible.
- Court orders should be drafted in accordance with General Rule of Practice 11 so that they can be made remotely accessible.
- It's concerning that CHIPS and civil commitment will apparently remain in category 3 forever. It's not appropriate to treat all civil commitment cases the same. Some civil commitment cases, such as SDP/SPP cases, should be treated differently because there is a greater public interest in disclosure. It may be appropriate to treat minor and adult commitments differently.
- The case type categorization is overly rigid. The privacy interests will vary within case type.
- The name search return message that displays when no remotely accessible cases exist should be changed. Currently the same message displays when there are no matching cases and when there are not remotely accessible cases. This means that the message is sometimes inaccurate.

Justice Anderson stated that committee staff would send out proposed language for the committee to review. It was suggested that the draft include as many case types as possible for differentiation purposes. He asked the committee members to review the proposal carefully in preparation for the next meeting.

**Discussion on definition of “medical records”:**

A state-by-state review of commitment record access was handed out at the beginning of the meeting. The committee discussed the proposed definition of “medical records.” The reasons for wanting to access medical records may differ. For example, there may be a greater public interest in accessing medical records in a personal injury case than in a civil commitment case. Other points of discussion included:

- Making medical records accessible may discourage people from seeking treatment for health problems, and may make them less willing to be candid with their medical care providers.
- Trial exhibits are not currently made remotely accessible, but are electronically imaged when sent to the appellate courts.
- One reason for excluding trial exhibits from remote access is that only some trial exhibits can be converted to remotely accessible form. For example, a picture can be digitally scanned, but a physical object cannot. This could lead to a skewed picture if only certain trial exhibits are made remotely accessible.
- In civil cases, most of the important exhibits are in the record as attachments to affidavits already.
- Making exhibits remotely accessible would conflict with the current practice of not retaining exhibits after the appeals period has run.
- The committee should consider the concerns raised by the civil commitment committee in its letter.
- It may be appropriate to treat civil commitment exhibits differently from other exhibits. The important parts of the record will be disclosed in the arguments of counsel and in the court’s findings. The records in civil commitment proceedings are often voluminous, and may contain private information about people other than the respondent, such as relatives.

- It may be appropriate to exclude all medical records from public access. People rarely come into court voluntarily; they should not be forced to give up their privacy rights.
- It should be made clear that judges should exercise care in referring to medical records in their orders, but that judges are able to reference non-public medical records in public orders.

The committee agreed that the civil commitment committee's proposed language on medical records was appropriate for civil commitment cases. The committee will discuss whether the restrictions on access should be extended to other kinds of cases.

A committee member noted that the proposed language in line 29 ("broadest possible public access") should be toned down.

**Conclusion:**

Justice Anderson thanked the committee members for their time and effort. The next meeting is scheduled for December 9, 2014. The meeting adjourned.

**Meeting Summary<sup>1</sup>**  
**MINNESOTA SUPREME COURT ADVISORY COMMITTEE**  
**ON THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH**  
**Tuesday, December 9, 2014**  
**Minnesota Judicial Center Room 230**

**Members present:**

Hon. G. Barry Anderson, Chair  
Mark R. Anfinson  
Landon Ascheman  
Lee A. Bjorndal  
Hon. Peter A. Cahill (*via telephone*)  
Rita Coyle DeMeules  
Karen England  
Margaret K. Erickson  
Karrie Espinoza  
Lisa Kallemeyn  
Cindy Lehr  
Terri L. Lehr  
Eric N. Linsk  
Mary M. Lynch  
Lisa McNaughton  
AnnMarie S. O'Neill  
Elizabeth Reppe  
Kevin W. Rouse  
Julia Shmidov Latz  
Dawn Torgerson *on behalf of* Jeffrey Shorba  
Michael F. Upton  
Hon. Thomas Van Hon  
Michael Johnson, Staff Attorney  
Patrick Busch, Staff Attorney

**Introduction**

Justice Anderson welcomed the committee members, thanked them for their efforts, and expressed hope that the committee would be able to finalize its proposals by the end of the meeting. Justice Anderson explained that the staff attorney would send out a draft report for the committee members to review, and asked that all committee members review the draft report carefully to preemptively catch potential issues. Justice Anderson noted that committee

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<sup>1</sup> Unofficial comments prepared by committee staff.

members who do not agree with the committee's recommendations are free to draft minority reports, although consensus is certainly desirable.

### **Review of draft report**

There have been few changes since the committee's last meeting. Rule 1 has not been changed except to clarify a cross-reference to Rule of Civil Procedure 5.04, and as the same provision is now being recommended for inclusion in General Rule of Practice 11.04, the cross-reference will be updated accordingly. A committee member noted that the "broadest possible" language in line 29 of the draft report should be toned down. It was also noted that the introductory clause to Rule 4, subd. 1 should be clarified.

Other additions to Rule 4 include:

- Language consistent with Minn. Stat. §§ 611A.90 and 256.045 has been added, to govern requests for access to recordings of interviews with children containing descriptions of sexual assault; if authorized the recordings would be used in private, administrative hearings in the human services sector. The language fills in a gap by ensuring that the information is not inadvertently disclosed to the public during the request process. The issue was only very recently brought to the attention of the committee's staff attorney.
- Language restricting access to the identifying information for minor alleged victims of criminal sexual conduct. The language is consistent with the statutory mandate, Minn. Stat. § 609.3471, and fills in gaps. The language includes a criminal sexual conduct provision that is omitted from the statutory mandate, and extends the restriction to commitment proceedings closely connected to criminal proceedings. The language clarifies that filers are responsible for ensuring that the information does not appear in public filings. The language repeats the statutory limiting clause to preserve constitutionally-required access to other information including the identity of the defendant. The language also provides that transcripts of public proceedings that contain references to the identifying information are presumptively public. Judges are free to order that the transcripts be non-public or that they be prepared without the identifying information. The language does not require court staff to bring transcripts to judges for review before allowing the public to review them. The language is intended to provide a more efficient process for court staff in determining whether and how to allow the public

to access the records. It was also noted that the transcripts are not currently remotely accessible.

- Language establishing a presumption that restricted information in transcripts of public proceedings was disclosed with the authorization of the presiding judge. This reflects a presumption of public access, but is not intended to establish a basis for waiver of confidentiality rights.
  - A committee member suggested, and the committee agreed, that the language on lines 271-272 should state that the information is “public” rather than “presumed authorized” or at least made consistent with a similar reference in lines 212-215. The court would always have discretion to order that information in the transcript be kept confidential.
  - Committee members pointed out the potential for confusion on appeal if the information were redacted from a transcript. It was suggested that the committee comment direct that orders to redact information be made on the record and in a way that will enable the appellate courts to piece the record together.
- Language in the comment explaining the type of information about petitioners in restraining order actions that is not publicly accessible.
  - A committee member suggested that the “cat out of the bag” language in line 306 was too colloquial. Alternative language will be used.

**Discussion on the proposed revisions to Rule 8:**

Subdivision 2(a) has been changed to a definitions section. Subdivision 2(b) retains existing restrictions on remote public access to certain data elements in computer systems. Subdivision 2, clauses (c)-(f), establishes tiers of remote access. The most restrictive tier includes OFPs, HROs, D-16 cases, CHIPS cases, and commitment cases, which are excluded from remote public access.

It was noted that dates of birth are available through remote access. Points of discussion included:

- It’s concerning that dates of birth are available through remote public access.
- Dates of birth make it possible to distinguish between different people with similar or identical names.

A committee member moved for an amendment that would prohibit dates of birth in family court cases from being remotely accessible in registers of action. The member was asked if the restriction was intended to extend to judgment dockets. A member expressed concern that the restriction could cause problems in MNCIS. The motion failed for lack of a second.

Committee members asked for clarification on the following points:

- Line 483 contains the term “case management system records”. This term should be defined in the rules.
- Lines 480-81 are confusing, and should be redrafted.

Based upon the committee’s prior discussions, the tier of access in part (c) precludes remote access to any documents, but not to the register of actions, index or calendars, and includes documents in pending criminal matters and in mentally ill and dangerous civil commitment cases. It was explained that the mentally ill and dangerous class was selected to match up with readily available filing statistics and that other subclasses such as sexually dangerous predator and sexual psychopathic personality can be considered. In the ensuing discussion, the following points were made:

- The draft rule does not address petty criminal cases. Staff Mike Johnson stated that petty criminal cases are included with minor criminal cases.
- Pending criminal cases should not be remotely accessible at all.
- This issue has already been discussed exhaustively by the committee.
- It should be clear that cases ending in an acquittal fall within the definition of “pending.”
- Pending criminal cases should be excluded from remote access entirely. Otherwise, the search-by-case-number-only restriction should be restored.
- Criminal defense attorneys need remote access to registers of action at a minimum. Registers of action are used by defense attorneys to control their calendars.
- The search-by-case-number-only restriction is ineffective because case numbers can be obtained over the phone. Also, private companies already make the information available.
- Changing the existing level of access to pending criminal cases will simply make criminal defendants more vulnerable. Remote access should be based upon need.
- Perhaps we should restrict access to criminal cases after there has been an acquittal.
- Expungement is available in case of an acquittal.

- It's important to remember the presumption of innocence. An expungement or acquittal will not get a job back.
- The term "pending" is amorphous. It's not clear how it would apply to cases that go to diversion programs. It also might conflict with MNCIS capabilities.

A committee member moved to exclude pending criminal cases from remote public access, and suggested that alternatively the search-by-case-number-only language could be reinstated. The motion to exclude pending criminal cases from remote public access was voted upon and failed.

A number of drafting considerations were raised that would be taken into consideration by the staff and chair in preparing the next draft; these included:

- To the extent that commitment mentally ill and dangerous case types are called out, SPP, and SPD commitments should also be addressed.
- Party-submitted documents reference should be clarified as it is likely intended to also include non-party submitted items such as from an entity or person who desires to intervene but has not obtained that status yet.
- Rule 8 might be clearer if items in (c) through (f) are reversed to list case types from the greatest level of remote access to the lowest level of remote access.

Committee members expressed concern about how appeals from denials of expungement petitions and IFP petitions would be accessible. The Court of Appeals utilizes initials in part as its rulings might not be the final appellate level decision.

A committee member expressed concern about classifying access by case type: MNCIS does not allow for case types to be changed once they have been selected. Filers routinely misclassify case types, and court staff must flag the case type as erroneous but cannot change the case type.

A committee member moved that all family court cases should be set within a single tier of access. In the ensuing discussion, a committee member suggested putting all family court cases in the greatest level of remote access, because this will help combat rampant fraudulent assertions in family court cases. Chair Justice Anderson stated that there are significant policy reasons for restricting remote access to affidavits and similar documents in family law cases involving children. The motion was voted upon and failed.

The committee discussed the definition of “conviction” set out in Minn. Stat. § 609.02, and how it would apply to situations in which a criminal defendant pleads guilty and later withdraws the plea before it’s accepted by the court. The committee members agreed that it made little sense to switch between tiers of remote access in these situations. A committee member pointed out that § 609.02’s definition of “conviction” includes a provision that the court must accept and record a plea or verdict of guilty before there is a conviction.

A committee member moved to retain the existing search-by-case-number-only remote access limitation on pending criminal cases. Points of discussion included:

- This will result in people calling the court clerks to get case numbers.
- Criminal defense attorneys routinely call court clerks to get case numbers under our current regime.
- The existing calendar search by attorney and judge name feature should be retained.
- Landlords can get access to pending criminal cases anyway.
- Phoning is an incomplete but effective barrier that will discourage casual snooping.
- Preconviction appeals will lead to greater exposure of pending criminal cases; there’s no way around this.

The motion was voted upon and carried.

A committee member expressed concern about remote access to guardianship cases creating opportunities for victimization of vulnerable persons. Chair Justice Anderson responded that there are important policy reasons that favor public oversight of the guardianship and conservatorship programs.

### **Technical and Logistical Factors:**

The committee discussed a summary of technical and logistical factors affecting the implementation of changes to public access, especially remote public access. Points of discussion included:

- Remote access will likely have to be on a go-forward basis only; the burden of reclassifying cases retroactively across the state would be daunting.
- It will be difficult to implement a distinction between family law cases with children and those without children.
- Numerous distinctions between case types are especially difficult for staff in smaller counties, who must handle multiple case types. The same staff may process an affidavit

for a motion on a civil case followed by an affidavit on a motion for a family case, and they must remember that each affidavit would need to be classified differently if remote access is different for these two case types.

- Minimizing the number of case types and sub-case types with differential treatment of remote record access will significantly reduce the burden on court staff.
- It might be appropriate to allow but not require retroactive remote access, because court staff will have requests for it and some court staff, such as at the appellate courts, may have the resources for it.

**Alternative case type access chart:**

The committee discussed an alternative set of access classifications that could be implemented with the least amount of burden on staff. The alternative was brought to the attention of staff by Judge Cahill and Legal Counsel Division director Carla Heyl and was presented as the following table:

Type of Remote Access	Case Type (changes that we would need for <b>document security</b> )
No Remote Access	<b>D-16, CHIPS</b> (change C2 to P2 –so available at MPA courthouse)
ROA only	<b>civil commitment</b> (change P1 to P2 so documents only available MPACourt) make minor commitments confidential case type
ROA and court filed documents	<b>family, paternity</b> (post adjudication)(post - change from C to P2 and P1)
ROA, court and party filed documents	<b>civil, criminal</b> (name search limitation on pending stays)(change p2 to p1).

Assumes “ROA” means register of actions, calendars, and index

It was explained that treating different subclasses of cases differently for remote access will significantly increase the burden on courts to implement the remote access scheme unless and until desired programming becomes available. Programming and its implementation would likely be delayed until well after the delivery of the next major software rollout in January 2017. Reconfiguration and reclassification of documents would involve staff training, running document classification scripts and testing those scripts, and could be accomplished sooner, but the size of the burden on court staff is directly related to the number of different classes and subclasses of cases that would be treated differently for remote access purposes. The alternative attempts to minimize the burden.

Justice Anderson asked whether the significant difference between the alternative approach and the one presented in the draft report is limited to remote access to family law. Staff Mike Johnson explained that commitment cases are also compressed and that there would be no public access to commitments involving minors which is consistent with one of the options suggested by the commitment committee in its November 2014 letter to the access committee. Justice Anderson noted that the access committee has already adopted the recommendation of the commitment committee in regard to medical records introduced into evidence. He asked whether there is a consensus on the committee to treat commitment records as proposed by the commitment committee and preclude public access to commitments involving minors. There were no objections and consensus was declared.

As a point of order it was noted that in order to consider the change in family law remote access as included in the alternative, it would be necessary to reconsider Judge Cahill's earlier motion to eliminate the remote access distinction between family law matters with children and those without children. It was explained that any person who voted with the majority could move for reconsideration. The motion for reconsideration was appropriately made and discussion ensued; among the points made were:

- Policies should not be driven by technology, because technology can be changed.
- Complicated access schemes are more likely to be compromised by human error. The committee should consider how long it wants to wait for remote access to become a reality and how much burden is reasonable to place on court staff in order to get there.
- Maximizing remote access to family law cases promotes judicial integrity. People shouldn't be given preferential treatment simply because they have children. Bullying is an issue, but it's one that predates remote access. The way to deal with bullying is to enforce anti-bullying laws. People under 30 get their information on the internet, and the court system should reflect that. Remote access to family law cases may assist working people in checking out potential romantic partners. The court system should not be in the business of covering up the truth. Children are involuntary participants in many non-family law cases.
- Registers of Action and orders will still be available remotely under the alternative proposal, and the orders would be the record with the most integrity.
- It's difficult to enforce laws against cyberbullying when the perpetrator is unknown.

- We have to balance privacy against the constitutional guarantee of access to the courts. Rule 11 sanctions are the appropriate way of keeping private information out of court filings.
- These concerns have already been discussed for 15-17 hours.

The motion to treat all family law cases alike for remote access with no remote access to party submitted items such as pleadings and affidavits was voted upon and carried.

**Effective date:**

Staff Mike Johnson asked if there should be any interim measures in place before the remote access provisions are able to be implemented. It was noted that changes making certain records non-public could be implemented by the initial July 1, 2015, mandatory e-filing rollout for the 111 pilot counties, while the remote access limits might be able to be implemented by the July 1, 2016 deadline for mandatory e-filing rollout statewide, but may take a few months longer than that. Committee members had no objections to continuing the remote access status quo until the remote access changes can be implemented.

**Circulation of draft:**

Staff will circulate a draft report for the committee members to review. Any member who wishes to present a minority report is free to do so. All members are asked to review the draft for inconsistencies and any potential misunderstandings – things that lawyers can fight about. The Supreme Court will allow public comments, and may well hold a public hearing as well.