

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**  
455 Golden Gate Avenue  
San Francisco, California 94102-3660

**Report**

TO: Members of the Judicial Council

FROM: Court Technology Advisory Committee  
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DATE: December 11, 2001

SUBJECT: Public Access to Electronic Trial Court Records (adopt Cal. Rules of Court,  
rules 2070–2076; repeal Cal. Standards Jud. Admin., § section 38)  
(Action Required)

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Introduction

This report supplements the one submitted to the Judicial Council at its October 2001 business meeting. At that meeting, the council asked the Court Technology Advisory Committee and staff to provide answers to certain questions and deferred action on the proposed rules to its December meeting. Memoranda addressing the issues raised at the October meeting are attached to this report as Appendixes A through E.

Recently, the Court Technology Advisory Committee met and approved a set of revised rules. These revised rules are equivalent in substance to the advisory committee's original proposal but are improved in organization and clarity. In addition, the Advisory Committee Comments to the rules were reduced in length to provide only the information that is the most critical to understanding and applying the rules.

Because the council deferred action on this item, the advisory committee now recommends that the proposed rules go into effect on July 1, 2002, rather than January 1, 2002, as previously proposed. The delayed effective date will give the courts time to learn about and comply with the rules.

### Recommendation

The Court Technology Advisory Committee recommends that the Judicial Council, effective July 1, 2002:

1. Adopt rules 2070–2076 of the California Rules of Court to establish (a) statewide policies on public access to trial courts’ electronic records that provide reasonable electronic access while protecting privacy and other legitimate interests and (b) statewide policies regarding courts’ contracts with vendors to provide public access to electronic court records.
2. Repeal section 38 of the California Standards of Judicial Administration.

The text of the proposed rules and the standard to be repealed is attached at pages 5–13.

### Summary of Major Provisions of the Proposed Rules

The rules apply to records that trial courts maintain in electronic form. They do not require courts to maintain any records electronically, but if a court does, the rules specify the requirements for providing public access to those records.

The rules require courts to provide electronic access to the following types of records to the extent feasible, both remotely and in the courthouse:

- Registers of actions and calendars in all cases; and
- Other records in civil cases (rule 2073(c)).

The register of actions includes the title of each cause, the date it commenced, “and a memorandum of every subsequent proceeding in the action with its date.” (Gov. Code, § 69845.) Thus, basic information about each case could be accessed through computer terminals at the courthouse or remotely (over the Internet).

Additional records in the following types of cases would be available electronically at the courthouse to the extent feasible, but not remotely:

- Family law;
- Juvenile;
- Guardianship or conservatorship;
- Mental health;
- Criminal; and
- Civil harassment (rule 2073).

If electronic access is not feasible because a court does not have the resources or technical capacity to provide it, the court must still make all of its electronic records available in some form—for example, by printing out copies of the information contained in electronic records (rule 2073(a)). However, the court may not provide electronic access to any part of a record that is sealed by court order or made confidential by law (rule 2073(a)).

When a court provides electronic access to records other than calendars, registers, and indexes, it may do so only on a case-by-case basis, using the case number, caption, or name of party to identify the record. Likewise, the court may not provide “bulk distribution” of its electronic records, other than registers, calendars, and indexes. “Bulk distribution” is defined as “distribution of all, or a significant subset, of the court’s electronic records.”<sup>1</sup>

#### Rationale for Recommendation

The rationale for the recommendation is contained in the October 2001 report and in the memoranda in Appendixes A through E, which address the following issues:

- A. What are the arguments for and against limiting electronic access to a case-by-case basis?
- B. Why should the rule prohibit remote electronic access (other than to the register and calendar) in case types other than civil?
- C. What are other jurisdictions doing to provide electronic access to trial court records?
- D. What is the electronic access environment in California courts?
  - What electronic access is offered by California courts?
  - Do California courts have the ability to provide remote electronic access?
  - What is being done to improve courts’ ability to provide electronic access?
- E. Has the Judicial Council adopted relevant plans and policies?

#### Comments From Interested Parties

The comments on the proposal as it circulated for comment are summarized in the October 2001 report. After the October meeting, a coalition of newspaper and press-related organizations, represented by Gray, Cary & Freidenrich, submitted a letter with

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<sup>1</sup> This definition of “bulk distribution” is based on the Justice Management Institute’s draft *Model Policy on Public Access to Court Records*.

additional comments in response to the October 2001 report and proposal. The Gray Cary letter is attached at Appendix F.

Most of the points in the letter have been addressed in the earlier report or in the materials in appendixes A and E. However, one objection raised requires clarification. Gray Cary objects to the “case-by-case” limitation on electronic access on the following basis:

The proposed rules would . . . prohibit access where, for example, a requestor wants to see the cases filed on a particular day and does not know the case numbers, captions, or parties. The requestor would not have the necessary data to submit a request that would comply with the rule, and even if he or she did the rule would not permit the requestor to obtain more than one case at a time. Similarly, a requestor who wanted to see all cases filed by or against a particular party and had the name of the party would be precluded from obtaining more than a single case. (Gray Cary letter, Appendix F, p. 2.)

This objection misinterprets the rule. First, a reporter who wanted to see all of the cases filed on a particular day could identify the names or numbers of those cases by accessing the register of actions, which would be available remotely for all case types and to which the case-by-case limitation does not apply. With the case names or numbers supplied by the register, the reporter could then access the files (if available electronically) for each of the cases filed.

Second, the rules would not prohibit a reporter from accessing more than one case involving a single party. It is contemplated that a search for cases by party name would produce a list of cases involving that party, each of which the reporter could access on a case-by-case basis.





1  
2 **(b) [Applicability]** The rules in this chapter apply only to trial court records.

3  
4 **(c) [Access by parties and attorneys]** The rules in this chapter apply only to  
5 access to court records by the public. They do not limit access to court records  
6 by a party to an action or proceeding, by the attorney of a party, or by other  
7 persons or entities that are entitled to access by statute or California Rules of  
8 Court.

9  
10 **Rule 2072. Definitions**

11  
12 **(a) [Court record]** As used in this chapter, “court record” is any document, paper,  
13 or exhibit filed by the parties to an action or proceeding; any order or judgment  
14 of the court; and any item listed in subdivision (a) of Government Code section  
15 68151, excluding any reporter’s transcript for which the reporter is entitled to  
16 receive a fee for any copy. The term does not include the personal notes or  
17 preliminary memoranda of judges or other judicial branch personnel.

18  
19 **(b) [Electronic record]** As used in this chapter, “electronic record” is a computer-  
20 ized court record, regardless of the manner in which it has been computerized.  
21 The term includes both a document that has been filed electronically and an  
22 electronic copy or version of a record that was filed in paper form. The term  
23 does not include a court record that is maintained only on microfiche, paper, or  
24 any other medium that can be read without the use of an electronic device.

25  
26 **(c) [The public]** As used in this chapter, “the public” is an individual, a group, or  
27 an entity, including print or electronic media, or the representative of an  
28 individual, a group, or an entity.

29  
30 **(d) [Electronic access]** “Electronic access” means computer access to court  
31 records available to the public through both public terminals at the courthouse  
32 and remotely, unless otherwise specified in these rules.

33  
34 **Rule 2073. Public access**

35  
36 **(a) [General right of access]** All electronic records must be made reasonably  
37 available to the public in some form, whether in electronic or in paper form,  
38 except those that are sealed by court order or are made confidential by law.

39  
40 **(b) [Electronic access required to extent feasible]** A court that maintains the  
41 following records in electronic form must provide electronic access to them,  
42 both remotely and at the courthouse, to the extent it is feasible to do so.



1           (1) Register of actions (as defined in Gov. Code, § 69845), calendars, and  
 2           indexes; and

3  
 4           (2) All records in civil cases, except those listed in (c).

5  
 6       **(c) [Courthouse electronic access only]** A court that maintains the following  
 7       records in electronic form must provide electronic access to them at the  
 8       courthouse, to the extent it is feasible to do so, but may provide remote  
 9       electronic access **only to the records governed by (b)(1):**

10  
 11       (1) Any record in a proceeding under the Family Code, including, but not  
 12       limited to, proceedings for dissolution, legal separation, and nullity of  
 13       marriage; child and spousal support proceedings; and child custody  
 14       proceedings;

15  
 16       (2) Any record in a juvenile court proceeding;

17  
 18       (3) Any record in a guardianship or conservatorship proceeding;

19  
 20       (4) Any record in a mental health proceeding;

21  
 22       (5) Any record in a criminal proceeding; and

23  
 24       (6) Any record in a civil harassment proceeding under Code of  
 25       Civil Procedure section 527.6.

26  
 27       **(d) [“Feasible” defined]** The requirement that a court provide electronic access to  
 28       its electronic records “to the extent it is feasible to do so” means that a court is  
 29       required to provide electronic access to the extent it determines it has the  
 30       resources and technical capacity to do so.

31  
 32       **(e) [Access only on case-by-case basis]** A court may only grant electronic access  
 33       to an electronic record when the record is identified by the number of the case,  
 34       the caption of the case, or the name of a party, and only on a case-by-case  
 35       basis. This case-by-case limitation does not apply to a calendar, register of  
 36       actions, or index.

37  
 38       **(f) [Bulk distribution]** A court may provide bulk distribution of only its  
 39       electronic calendar, register of actions, and index. “Bulk distribution” means  
 40       distribution of all, or a significant subset, of the court’s electronic records.

41  
 42       **(g) [Records that become inaccessible]** If an electronic record to which the court  
 43       has provided electronic access is made inaccessible to the public by court order





1           (1) Register of actions (as defined in Gov. Code, § 69845), calendars, and  
2           indexes; and

3  
4           (2) All records in civil cases, except those listed in (c).

5  
6           **(c) [Courthouse electronic access only]** A court that maintains the following  
7           records in electronic form must provide electronic access to them at the  
8           courthouse, to the extent it is feasible to do so, but may not provide remote  
9           electronic access:

10  
11           (1) Any record in a proceeding under the Family Code, including, but not  
12           limited to, proceedings for dissolution, legal separation, and nullity of  
13           marriage; child and spousal support proceedings; and child custody  
14           proceedings;

15  
16           (2) Any record in a juvenile court proceeding;

17  
18           (3) Any record in a guardianship or conservatorship proceeding;

19  
20           (4) Any record in a mental health proceeding;

21  
22           (5) Any record in a criminal proceeding; and

23  
24           (6) Any record in a civil harassment proceeding under Code of  
25           Civil Procedure section 527.6.

26  
27           **(d) [“Feasible” defined]** The requirement that a court provide electronic access to  
28           its electronic records “to the extent it is feasible to do so” means that a court is  
29           required to provide electronic access to the extent it determines it has the  
30           resources and technical capacity to do so.

31  
32           **(e) [Access only on case-by-case basis]** A court may only grant electronic access  
33           to an electronic record when the record is identified by the number of the case,  
34           the caption of the case, or the name of a party, and only on a case-by-case  
35           basis. This case-by-case limitation does not apply to a calendar, register of  
36           actions, or index.

37  
38           **(f) [Bulk distribution]** A court may provide bulk distribution of only its  
39           electronic calendar, register of actions, and index. “Bulk distribution” means  
40           distribution of all, or a significant subset, of the court’s electronic records.

41  
42           **(g) [Records that become inaccessible]** If an electronic record to which the court  
43           has provided electronic access is made inaccessible to the public by court order

1 or by operation of law, the court is not required to take action with respect to  
2 any copy of the record that was made by the public before the record became  
3 inaccessible.

4  
5 **(h) [Off-site access]** Courts should encourage availability of electronic access to  
6 court records at public off-site locations.

7  
8 *Advisory Committee Comment*

9  
10 *The rule allows a level of access to all electronic records that is at least equivalent to the*  
11 *access that is available for paper records and, for some types of records, is much greater.*  
12 *At the same time, it seeks to protect legitimate privacy concerns.*

13  
14 *Subdivision (c) excludes certain records (those other than the register, calendar, and*  
15 *indexes) in specified types of cases from remote electronic access. The committee*  
16 *recognized that while these case records are public records and should remain available*  
17 *at the courthouse, either in paper or electronic form, they often contain sensitive*  
18 *personal information. The court should not publish that information over the Internet.*

19  
20 *Subdivisions (e) and (f) limit electronic access to records (other than the register,*  
21 *calendars, or indexes) to a case-by-case basis and prohibit bulk distribution of those*  
22 *records. These limitations are based on the qualitative difference between obtaining*  
23 *information from a specific case file and obtaining bulk information that may be*  
24 *manipulated to compile personal information culled from any document, paper, or*  
25 *exhibit filed in a lawsuit. This type of aggregate information may be exploited for*  
26 *commercial or other purposes unrelated to the operations of the courts, at the expense of*  
27 *privacy rights of individuals.*

28  
29 **Rule 2074. Limitations and Conditions**

30  
31 **(a) [Means of access]** A court must provide electronic access by means of a  
32 network or software that is based on industry standards or is in the public  
33 domain.

34  
35 **(b) [Official record]** Unless electronically certified by the court, a trial court  
36 record available by electronic access does not constitute the official record of  
37 the court.

38  
39 **(c) [Conditions of use by persons accessing records]** A court may condition  
40 electronic access to its records on (1) the user's consent to access the records  
41 only as instructed by the court and (2) the user's consent to the court's  
42 monitoring of access to its records. A court must give notice of these



1 conditions, in any manner it deems appropriate. The court may deny access to a  
2 member of the public for failure to comply with any of these conditions of use.

3  
4 **(d) [Notices to persons accessing records]** A court must give notice of the  
5 following information to members of the public accessing its electronic  
6 records, in any manner it deems appropriate:

7  
8 (1) The court staff member to contact about the requirements for accessing  
9 the court's records electronically.

10  
11 (2) That copyright and other proprietary rights may apply to information in a  
12 case file absent an express grant of additional rights by the holder of the  
13 copyright or other proprietary right. The notice should indicate that (A)  
14 use of such information is permissible only to the extent permitted by law  
15 or court order and (B) any use inconsistent with proprietary rights is  
16 prohibited.

17  
18 (3) Whether electronic records constitute the official records of the court. The  
19 notice should indicate the procedure and any fee required for obtaining a  
20 certified copy of an official record of the court.

21  
22 (4) Any person who willfully destroys or alters any court record maintained  
23 in electronic form is subject to the penalties imposed by Government  
24 Code section 6201.

25  
26 **(e) [Access policy]** A court must post a privacy policy on its public-access Web  
27 site to inform members of the public accessing its electronic records of the  
28 information it collects regarding access transactions and the uses that the court  
29 may make of the collected information.

30  
31 **Rule 2075. Contracts with vendors**

32  
33 A court's contract with a vendor to provide public access to its electronic records must be  
34 consistent with these rules and must require the vendor to provide public access to court  
35 records and to protect the confidentiality of court records as required by law or by court  
36 order. Any contract between a court and a vendor to provide public access to the court's  
37 records maintained in electronic form must specify that the court is the owner of these  
38 records and has the exclusive right to control their use.

39  
40 **Rule 2076. Fees for electronic access**

41  
42 A court may impose fees for the costs of providing public access to its electronic records,  
43 as provided by Government Code section 68150(h). On request, a court must provide the





1 conditions, in any manner it deems appropriate. The court may deny access to  
2 a member of the public for failure to comply with these conditions of use.

3  
4 **(d) [Notices to persons accessing records]** A court must give notice of the  
5 following information to members of the public accessing its electronic  
6 records, in any manner it deems appropriate:

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8 (1) The court staff member to contact about the requirements for accessing  
9 the court's records electronically.

10  
11 (2) That copyright and other proprietary rights may apply to information in a  
12 case file absent an express grant of additional rights by the holder of the  
13 copyright or other proprietary right. The notice should indicate that (A)  
14 use of such information is permissible only to the extent permitted by law  
15 or court order and (B) any use inconsistent with proprietary rights is  
16 prohibited.

17  
18 (3) Whether electronic records constitute the official records of the court. The  
19 notice should indicate the procedure and any fee required for obtaining a  
20 certified copy of an official record of the court.

21  
22 (4) Any person who willfully destroys or alters any court record maintained  
23 in electronic form is subject to the penalties imposed by Government  
24 Code section 6201.

25  
26 **(e) [Access policy]** A court must post a privacy policy on its public-access Web  
27 site to inform members of the public accessing its electronic records of the  
28 information it collects regarding access transactions and the uses that the court  
29 may make of the collected information.

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31 **Rule 2075. Contracts with vendors**

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33 A court's contract with a vendor to provide public access to its electronic records must be  
34 consistent with these rules and must require the vendor to provide public access to court  
35 records and to protect the confidentiality of court records as required by law or by court  
36 order. Any contract between a court and a vendor to provide public access to the court's  
37 records maintained in electronic form must specify that the court is the owner of these  
38 records and has the exclusive right to control their use.

39  
40 **Rule 2076. Fees for electronic access**

41  
42 A court may impose fees for the costs of providing public access to its electronic records,  
43 as provided by Government Code section 68150(h). On request, a court must provide the

1 public with a statement of the costs on which these fees are based. To the extent that  
2 public access to a court's electronic records is provided exclusively through a vendor, the  
3 court must ensure that any fees the vendor imposes for the costs of providing access are  
4 reasonable.  
5

Section 38 of the California Standards of Judicial Administration is repealed, effective July 1, 2002.

1 ~~Sec. 38. Access to electronic records~~

2  
3 ~~(a) [Intent] Improved technologies provide courts with many alternatives to~~  
4 ~~the historical paper-based record receipt and retention process,~~  
5 ~~including the creation and use of electronic records. Access to trial~~  
6 ~~courts' electronic records can save the public time, money, and effort~~  
7 ~~and encourage the courts to be efficient in their operations. Improved~~  
8 ~~access to court records may also foster a more comprehensive~~  
9 ~~understanding of the trial court system. Because of such benefits, trial~~  
10 ~~courts are encouraged to explore possibilities for creating electronic~~  
11 ~~court records and to offer public access to such records if their resources~~  
12 ~~permit. Such access should not harm legitimate privacy interests or~~  
13 ~~compromise protections established by law or court order.~~

14  
15 ~~(b) [Definitions] The following definitions apply to this standard:~~

16  
17 ~~(1) A "record" is any information that is part of an official case file of a~~  
18 ~~court, that constitutes court action, or that otherwise reflects an~~  
19 ~~official action of a court. Records include those items listed in~~  
20 ~~Government Code section 68151(a). Records do not include~~  
21 ~~personal notes or preliminary memoranda of judges or other~~  
22 ~~judicial branch personnel.~~

23  
24 ~~(2) An "electronic record" is any record that is accessible electronically,~~  
25 ~~regardless of how it was created. The term does not include~~  
26 ~~records on microfiche, paper, or any other medium that can be read~~  
27 ~~without the use of an electronic or mechanical device.~~

28  
29 ~~(3) "Access" is the ability to obtain or make use of electronic records by~~  
30 ~~any means.~~

31  
32 ~~(4) "Public access" is access that is not restricted by law or an order of~~  
33 ~~the court.~~

34  
35 ~~(5) A "summary report" is a compilation of public records that is~~  
36 ~~produced in the ordinary course of business.~~

37  
38 ~~(c) [Scope] This standard applies only to public access to the electronic~~  
39 ~~records that trial courts prepare, own, use, or retain. The standard does~~  
40 ~~not apply to electronic access by a person who is a party to a case or the~~



1 attorney of such a person, the electronic filing of documents, or the  
2 electronic distribution of any court calendar records. A court should not  
3 grant access to an electronic record that is sealed, is made confidential,  
4 or is required to be expunged after a time or event determined by law or  
5 an order of the court. Cases involving family law, child support,  
6 juvenile law, mental health, probate, criminal law, or public offenses, as  
7 they are defined in Penal Code section 15, should not be included in  
8 electronic records made available through remote access.  
9

10 **(d) [Policies]** The objective of this standard is to provide a trial court (“a  
11 court”) with a reasonable framework for providing public access  
12 (“access”) to its electronic records.  
13

14 (1) (*Electronic records*) A court should grant access to an  
15 electronic record only when the record is identified by the  
16 name or number of a case and only on a case by case basis. A  
17 court need not grant access to all or part of an electronic  
18 record if access is not feasible because of the court’s resource  
19 limitations.  
20

21 (2) (*Summary reports*) A court may provide access to electronic  
22 versions of summary reports.  
23

24 (3) (*Direct electronic access for the public*) Direct electronic  
25 access to court records should be reasonably available to the  
26 public remotely, through the Internet, or by means of  
27 software based on industry standards or in the public domain.  
28 When feasible, remote access should be available at public  
29 off-site locations such as public libraries. Access should also  
30 be available at public terminals at the courthouse.  
31

32 (4) (*Contracts with vendors*) A court that elects to contract with a  
33 vendor to release its records electronically should, in  
34 accordance with these policies, require the vendor to protect  
35 confidentiality as required by law or court order and should  
36 provide the public with direct electronic access to such  
37 records without requiring access through the vendor.  
38

39 (5) (*Disclaimers*) As appropriate, a court should provide  
40 disclaimers regarding the accuracy of its electronic records.  
41

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~~(6) (*Information on access*) A court that provides access to its electronic records should provide the public with information on the requirements for access.~~

~~(c) [Evaluation] Any trial court that provides public access to its electronic records should submit to the Judicial Council a copy and an evaluation of its access policies as directed by the council.~~





# **APPENDIX A**



**Judicial Council of California**  
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**TO:** Chief Justice Ronald M. George  
Members of the Judicial Council

**FROM:** Melissa Johnson, Assistant General Counsel  
Joshua Weinstein, Attorney  
Victor Rowley, Special Consultant

**DATE:** December 10, 2001

**SUBJECT/ PURPOSE OF MEMO:** Case-by-Case Electronic Access

**CONTACT FOR FURTHER INFORMATION:**

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At the October 26, 2001, Judicial Council meeting, council members asked for a discussion of the arguments for and against restricting electronic access to court records to a case-by-case basis. This memorandum discusses the advantages and disadvantages to the court system of restricting electronic access to a case-by-case basis and the underlying policy and resource issues.

### **Background**

The proposed rules require, to the extent feasible:

- Remote electronic access to the electronic register of actions, indexes, and calendars in all cases, and to other electronic records in civil cases.
- Electronic access at the courthouse to electronic records other than the registers, indexes, and calendars in other types of cases (family law, criminal, probate, etc.).

Except for the register, calendars, and indexes, electronic access is allowed only on a case-by case basis. This means that a court could not provide access—either remotely or at the courthouse—in a manner that would allow its database of case records to be searched except by caption, case number, or name of party. In addition, a court could not provide “bulk distribution” of its electronic records, i.e., distribution of all or a large part of its records in bulk, except for the register, calendar, and indexes.

## **Discussion**

One of the major advantages of electronic record-keeping over paper record keeping is the increased ease of (1) extracting data from individual files that can show trends and statistics, and (2) compiling information about individuals from a large number of different files. Allowing public access to electronic information in a form from which information can be easily extracted would make it much easier for members of the public to compile information from court records. With sufficient resources, courts could provide this type of access, either by access to a database of case files with search capabilities (similar to WestLaw or Lexis) or by bulk distribution of data that individuals could use to construct their own search mechanism. However, the Court Technology Advisory Committee (“the committee”) believes that the public benefit of providing this type of access is outweighed by the costs, particularly by the potential damage to privacy interests.

### **1. Privacy issues**

The primary reason that the committee recommends limiting remote electronic access to a case-by-case basis is the protection of privacy interests. Bulk distribution of case files presents privacy concerns because there is a tremendous amount of sensitive or personal information in court records that could be compiled and exploited. For example, many civil and family law cases include financial information about individuals, including their account numbers or balances, tax returns, pay stubs, or Social Security numbers. Personal identifying information, such as date of birth, address, and telephone number, is included in many documents filed with the court.

While these records may be public, providing them in bulk electronic format is qualitatively different from providing them on a case-by-case basis. Currently, those seeking information contained in court records must physically visit the court that has them with the knowledge that an action was filed in the particular court by a specific

party or against one or more specific parties. With that information, they can review the case index or register and identify documents or records, which they can then request be made available to them for their physical inspection at the court clerk's office. Getting information from court files, therefore, imposes a burden in terms of knowledge and effort. The U.S. Supreme Court has noted that information in case records enjoys what it has termed "practical obscurity."<sup>1</sup>

Practical obscurity provides significant privacy protection to individuals who are involved in adjudications as parties or witnesses and who have been compelled to disclose their private information in court proceedings. As the custodian of their records, courts should be cognizant of the privacy interests in the records they keep. (See *Pantos v. Superior Court* (1984) 151 Cal.App.3d 258, [court, as custodian of records, may assert privacy interests of person submitting the private information].) Many court records are obtained from members of the public who are compelled to participate in the court system involuntarily, such as defendants, jurors, and witnesses who are subpoenaed. This information is obtained for a specific purpose related to the case, either because it is needed for a fair adjudication or because it is needed for administrative reasons. Making the records available only on a case-by-case basis will, it is hoped, help to ensure that the aggregations that were not feasible before the records were electronic will be prevented when they are electronic.

## 2. Resource issues

The case-by-case limitation also recognizes that court resources are limited and that providing either a searchable database or bulk distribution of court records would entail

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<sup>1</sup> The United States Supreme Court in *United States Department of Justice v Reporters Committee for Freedom of the Press* (1989) 489 US 749, 109 S Ct 1468, 103 L Ed 2d 774, referred to the relative difficulty of gathering paper files as "practical obscurity." In this case, which involved a request under the Freedom of Information Act for the release of information contained in a database that summarized criminal history data, the Court recognized a privacy interest in information that is publicly available through other means, but is "practically obscure." The court noted that "the issue here is whether the compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information." It specifically commented on "the vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country, and a computerized summary located in a single clearinghouse of information." (489 US at p. 764.) In weighing the public interest in releasing personal information against the privacy interest of individuals, the court defined the public's interest as "shedding light on the conduct of any Government agency or official," rather than acquiring information about particular private citizens. (489 US at p. 773.) The court also noted "the fact that an event is not wholly private does not mean that an individual has no interest in limiting disclosure or dissemination of the information." (489 U.S. at p. 770.)

costs. The argument in favor of the case-by-case limitation is that courts should not invest their limited resources to provide such data, which may be used for private purposes that have nothing to do with the function of the court or with the reasons that court records are open to public access.

The courts have a strong public policy reason for making case data available upon request to persons seeking information about a particular case. Court case management systems are designed to retrieve and display case data based on a request noting the name of a party or the case number. However, case management systems are currently not designed to provide bulk case data or to compile information except on a very limited basis.

In the near future, systems are expected to provide the statistical information required by the Judicial Branch Statistical Information System (JBSIS). The experience with trying to adapt case management systems to return the data needed by JBSIS has shown that extracting data from a case management system is neither a trivial nor a low-priced task. In theory, any case management system can be programmed to return any data desired. In practice, the determination of what data is obtainable is often sharply limited by the cost of modifying the case management system to provide the data.

The case-by-case approach also avoids some of the practical limitations with data interpretation that are posed by definitional and historical problems. Commentary on a provision for Access to Compiled Information from Court Records (Section 4.50) included in the Justice Management Institute's *Model Policy on Access to Court Records* notes that compiled data presents two significant problems in interpretation.

First, "Analysis of the data without an understanding of the meaning of the data elements or codes used, or without an understanding [of] the limitations of the data can result in conclusions not substantiated by the data." Second, electronic records can represent a skewed set of data that results from norms that have not been applied consistently to all case types or over the entire span of time covered by the case inventory. In other words, computer-generated reports will be unreliable if data elements have not been clearly defined and the definitions consistently applied. Case management systems do not yet consistently apply standard data definitions across all case types. Even if they did, a correct interpretation of the reports would require explanatory materials that do not exist in standardized form. For the time being, case-by-case access would obviate these problems.

3. Arguments against case-by-case limitation

The same ease of compiling information from electronic records that causes the committee's concerns for privacy interests also has public benefits. With paper records or even with case-by-case electronic access, anyone who wishes to determine a case trend must go through a tedious process of reviewing individual files. For example, if someone wanted to find out how many times a particular type of civil case resulted in a jury verdict for plaintiff or defendant, the researcher would have to go through individual cases to find out if (1) it is the type of civil case in which the researcher is interested; (2) a jury trial was held; and (3) the judgment was for the plaintiff or defendant. The process is time-consuming and labor-intensive.

If bulk case data is available electronically and the proper software tools have been developed to interrogate the database, a computer can quickly and easily search the database to find the desired information.

Bulk data would be of interest to individuals, academics, and members of the press for a variety of purposes that would arguably be of benefit to the public without interfering with personal privacy. Examples of information that might be extracted or compiled from bulk data include:

- ◆ How mediation affects the rate of settlement in civil cases;
- ◆ How specific judges in a court tend to rule in particular type of cases;
- ◆ How often specific attorneys or law firms are found on the winning or losing side of general civil cases or in specific types of civil cases; and
- ◆ Average jury awards in general civil cases or specific types of civil cases.

The argument against the case-by-case limitation is that the benefit to the public of having this data available outweighs the privacy concerns.

Furthermore, as a practical matter, if electronic access is available remotely, as it would be under the proposed rules in civil cases, a private individual or entity can undermine the case-by-case limitations. Anyone who has the interest and the resources could program a "robot" or "drone" computer to continuously request and download files sequentially,

eventually compiling bulk data. Such a scenario has occurred in one county that already allows remote electronic access. That individual or entity could then market access to the bulk-compiled data. Thus, if remote access is allowed, the attempt to protect privacy interests by limiting access may be futile.

Since the court cannot prevent private interests from compiling data from electronic records that are provided remotely, the question becomes whether the court should be the provider of compiled data or whether it should be left up to market forces to determine what electronic data will be compiled. If compilation of court data is left exclusively to the private sector, there is a risk that compilations may be inconsistent with public policy objectives. There is also a risk that those without the requisite money, tools, or skill would effectively be denied access to compiled data.

### **Conclusion**

There are significant privacy concerns warranting restricting electronic access to court records to a case-by-case basis. Court records often contain private or sensitive information. Court records, while public, are usually only accessed for case-specific purposes. Making electronic records available remotely only on a case-by-case basis guards against the possibility that the destruction of individual privacy (and the accompanying harms) that would otherwise flow from access to electronic case records will be minimized while still permitting the increased efficiency in judicial administration that electronic court records offer.



## **APPENDIX B**



**Judicial Council of California**  
**Administrative Office of the Courts**

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RONALD M. GEORGE  
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*Director*  
*Information Services Division*

**TO:** Chief Justice Ronald M. George  
Members of the Judicial Council

**FROM:** Charlene Hammitt, Manager  
Victor Rowley, Special Consultant

**DATE:** December 10, 2001

**SUBJECT/ PURPOSE OF MEMO:** Proposed Rules on Electronic Access to Court Records

<b>CONTACT FOR FURTHER INFORMATION:</b>	<b>NAME:</b> Charlene Hammitt	<b>TEL:</b> 415-865-7410	<b>FAX:</b> 415-865-7497	<b>EMAIL:</b> charlene.hammitt@jud.a.gov
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**QUESTION PRESENTED**

Why should the rule prohibit remote electronic access (other than to the register and calendar) in case types other than civil?

**REASONS FOR PRECLUDING REMOTE ACCESS TO SPECIFIC CATEGORIES OF CASE FILES**

Proposed rules 2070-2076 require courts to provide electronic access to general information about court cases and prohibit them from providing access to case files in certain types of cases.

Rule 2073(b) would require courts to provide remote access to registers of actions (as defined in Government Code section 69845) and calendars when they can feasibly do so.

Rule 2073(c), however, would require courts to restrict access to electronic versions of the documents and other records that are found in case files. Under this rule, only case files in civil cases would be available remotely. Files in other types of cases, which are listed in 2073(c), would not be accessible remotely at this time.

The proposed rules represent an initial approach to providing remote access to electronic case files that are likely to contain sensitive and personal information. Electronic records in all case types could be available through terminals at the courthouse. This approach provides them the same de facto privacy protection traditionally afforded paper records. The United States Supreme Court has characterized this protection as a "practical obscurity" that is attributable to the relative difficulty of gathering paper files. See *United States Dep't of Justice v. Reporters Committee for Freedom of the Press* 489 U.S. 749 [109 S.Ct. 1468, 103 L.Ed.2d 774].

Delivery of court records on the Internet constitutes publication and typically facilitates republication. With the exception of docket information, trial courts generally have not been publishers of case records. Electronically published data can be easily copied disseminated, and its dissemination is irretrievably beyond the court's control. Publication of court records on the Internet creates a much greater threat to privacy interests than does access to paper records, or access to electronic records through terminals at the courthouse.

The case-types set out in rule 2073 (c) would be precluded from remote access for the following reasons:

- *Sensitive personal information unrelated to adjudication.* Courts sometimes collect sensitive personal information that has no bearing on the merits of a case but that assists the court in contacting parties or in record keeping. Such information could include unlisted home telephone numbers, home addresses, driver's license numbers, and Social Security numbers. Before such information is published on the Internet, the Judicial Council should survey trial courts to identify the sensitive or personal information they collect, determine whether or not this information is essential to workload management, and then consider how to protect such information when it is legitimately needed.
- *Privacy of involuntary participants.* Individuals who are sued, subpoenaed, or summoned for jury duty are involuntary participants in legal proceedings and may be

compelled to provide the court with sensitive personal information. As records custodians, courts should proceed with caution in publishing such information, as it has relatively little relevance to the public's ability to monitor the institutional operation of the courts but relatively great impact on the privacy of citizens who come in contact with the court as defendants, litigants, witnesses, or jurors. Publication of sensitive financial, medical, or family information provided by involuntary court participants could, for instance, harm individuals by holding them up to ridicule, damaging their personal relationships, and foreclosing business opportunities.

- *Investigations in criminal cases.* The Federal Judicial Conference<sup>1</sup> in September 2001 adopted a policy that makes criminal cases unavailable remotely for a two-year period. The Judicial Conference identified two reasons for this exclusion of criminal cases. First, electronic publication of criminal case records could jeopardize investigations that are under way and create safety risks for victims, witnesses, and their families. Second, access to preindictment information, such as unexecuted arrest and search warrants, could severely hamper law enforcement efforts and put law enforcement personnel at risk. These reasons would apply to the proposed California policy as well.
- *Criminal histories.* Allowing remote electronic access to criminal cases would greatly facilitate the compilation of individual criminal histories, in contravention of public policy as established in statute. (See *Westbrook v. City of Los Angeles* (1994) 27 Cal.App.4<sup>th</sup> 157 [court note required to provide to public database containing criminal case information].) For this reason, the Attorney General supports excluding criminal cases from remote electronic access:

Our principal concern is with criminal records and the threat that the electronic release of these records poses to individual privacy and to the legislative and judicial safeguards that have been created to insure that only accurate information is disclosed to authorized recipients. (See, e.g., Penal Code sec. 11105.) The

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<sup>1</sup> "The federal court system governs itself on the national level through the Judicial Conference of the United States. The Judicial Conference is a body of 27 federal judges. It is composed of the Chief Justice of the United States, who serves as the presiding officer; the chief judges of the 13 courts of appeal; the chief judge of the Court of International Trade; and 12 district judges from the regional circuits who are chosen by the judges of their circuit to serve terms of three years. The Judicial Conference meets twice yearly to consider policy issues affecting the federal courts, to make recommendations to Congress on legislation affecting the judicial system, to propose amendments to the federal rules of practice and procedure, and to consider the administrative problems of the courts." See [http://www.uscourts.gov/understanding\\_courts/89914.htm](http://www.uscourts.gov/understanding_courts/89914.htm).

electronic dissemination of criminal records is a tremendous danger to individual privacy because it will enable the creation of virtual rap sheets or private databases of criminal proceedings which will not be subject to the administrative, legislative or judicial safeguards that currently regulate disclosure of criminal record information. (Letter from Attorney General Daniel E. Lungren commenting on draft rules (March 6, 1997); See letter from Attorney General Bill Lockyer (Dec. 15, 2000), reaffirming position taken in March 6, 1997 letter.)

- *Risk of physical harm to victims and witnesses.* The safety of victims and witnesses could be compromised if courts were to publish their addresses, telephone numbers, and other information that would allow them to be located. Such risk is perhaps most common in criminal and family cases.
- *Fraud and identity theft.* Although sensitive personal information, such as Social Security and financial account numbers, may already be available in paper files at the courthouse, its “practical obscurity” has provided it with de facto privacy protection. Publishing such information on the Internet exposes it to a substantial risk of criminal misuse. Participation in court proceedings, whether voluntary or involuntary, should not expose participants to such victimization.
- *Determination of reliability.* Ex parte allegations, particularly in family cases, present a problem in that they may be skewed by self-interest and subsequently determined to be unreliable. Although such allegations could be read in case files at the courthouse, the physical demands of accessing such files would afford them “practical obscurity.” Courts should not broadcast ex parte allegations on the Internet until there are policies and procedures to address the problems of unvetted ex parte allegations.
- *Statutory rehabilitation policies.* Various sections of the Penal Code allow for sealing of a defendant’s criminal record provided that certain conditions are met. Such sealing does not occur by operation of law; see for instance the entries on arrest or conviction for marijuana possession and the record of a “factually innocent” defendant in Table 1. If such information is published before conditions for sealing are met, the publication would make the subsequent sealing ineffectual and thus thwart the rehabilitative intent of the authorizing legislation. Admittedly, information could be published from files accessed at the courthouse, but the “practical obscurity” of such files has lessened the likelihood of publication and reduced the risk of thwarting rehabilitation policies. Publication on the Internet would make it difficult to implement such policies.

- *Tools to apply confidentiality policies.* By statute, courts are obligated to protect confidential information in many types of case records, including some of the types of case records specified in rule 2073(c) (see Table 1). This obligation may be absolute or defined by statutorily set or judicially determined time limits. Courts have traditionally met these obligations on an ad hoc basis, as individual case records have been requested at the courthouse. To respond in a responsible manner to remote electronic requests, courts would need to meet these obligations by applying appropriately protective criteria to all records, not only those that are requested but those that might be. Courts simply do not have staff who can review and monitor all records to make them available for remote electronic access. They will need to use automated tools to address the review and monitoring problem. Effective tools should be based on standards. Standards should then be applied by case management systems. Until these standards can be developed and applied by case management systems, the proposed rules would make specified case types unavailable by remote electronic access.
- *Inadvertent exposure of sensitive or personal information.* Parties to the excepted case types (particularly family law) who are unaware that sensitive or personal information included in court filings is publicly accessible will also be unaware they can take steps to protect such information, by requesting a sealing or protective order. For example, in family law proceedings, it is not unusual for litigants to attach copies of their tax returns to their filings, even though tax returns are made confidential by statute. Similarly, in family law proceedings, allegations of abuse are not uncommon; however, litigants may not be aware that there are procedures for limiting public access to this highly sensitive and personal information to protect not only their own privacy, but that of their minor children. The exceptions to remote access in rule 2073 (c) afford time for the Judicial Council to consider how the privacy interests of litigants, particularly the self-represented, might be protected before courts electronically publish case files that include sensitive or personal information that litigants have inadvertently disclosed.

*Policy development.* While the proposed rules encourage courts to use technology to facilitate access to court records (in accordance with long-term goals of the judicial branch), they do so cautiously, providing breathing room while privacy issues and records policies are more thoroughly reexamined at state and federal levels. The rules allow remote access to civil case files. Civil cases do present some of the same privacy

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concerns discussed above, but generally to a lesser degree than in the types of case records that are unavailable under 2073(c). The courts' experiences with remote access to civil cases will guide the council's policy-making in the future. This incremental approach allows further debate and experimentation. Such an approach is in line with the approach adopted by the Judicial Conference of the United States and other states.



Proposed Rule 2073(c)  
**RECORDS NOT AVAILABLE BY REMOTE ELECTRONIC ACCESS**

Under proposed Rule 2073(c), the public would be provided with electronic access to court records in specified case types only at the courthouse and not remotely, pending the development and implementation of software standards that enable the courts to meet their legal obligations to protect confidentiality and privacy. This table illustrates the confidentiality and privacy issues that the courts must resolve before providing such remote electronic access to the public.

<i>Case type</i>	<i>Record type</i>	<i>Restricted data</i>	<i>Legal authority</i>	<i>Comment</i>
CIVIL				
Civil or criminal	Subpoenaed business records	Entire record	Evid. Code § 1560(d) (confidential until introduced into evidence or entered into record).	As with court records generally, these records are not accessible by public unless and until relied on by court as part of adjudicative process. See <i>Copley Press Inc. v. Superior Court</i> (1992) 6 CA4th 106, 113-15 (public right of access to court records does not apply to all of court's records and files, but only to records that officially reflect work of court).
All cases involving fee waiver application	Fee waiver application	Entire record	Cal. Rules of Court, rule 985(h) (records of application to proceed without paying court fees and costs are confidential).	Purpose is to prevent disclosure of applicant's financial information.
All cases involving attachment	Records in attachment action	Entire record	Code Civ. Proc. § 482.050(a) (attachment action records are confidential for 30 days from filing complaint or return of service, on plaintiff's request).	
All cases involving garnishment	Judicial Council forms 982.5 (11S) and 982.5 (14S) Register of Actions	Entire form	Judicial Council forms 982.5 (11S) and 982.5 (14S)	Purpose is to prevent disclosure of debtor's Social Security Number (SSN).
Unlawful detainer	Case title, date of commencement, memorandum of		Code Civ. Proc. § 1162(a) (in certain unlawful detainer actions, Register of Actions unavailable for 60 days from	

		every subsequent proceeding and date (see Gov. Code § 69845).	filing of complaint).
<b>CIVIL HARASSMENT</b>			
Harassment generally		Address and telephone number of applicant for restraining order.	CCP § 527.6 (requires showing of unlawful violence, credible threat of violence, or course of conduct resulting in "substantial emotional distress," including stalking).  Fam. Code § 6322.5 (court may issue ex parte order prohibiting disclosure of address or other identifying information of a party, child, parent, guardian, or other caretaker of child in proceeding under Domestic Violence Prevention Act).
Domestic Violence		Address and telephone number of applicant for restraining order and or his or her minor children.	No explicit statutory authority, but publication of the restricted information might facilitate further harassment. Analogous to authority given to court under Fam. Code to prohibit disclosure of identifying information in proceeding under Domestic Violence Prevention Act (see below). Publication of the restricted information might facilitate further harassment.
<b>CRIMINAL</b>			
Grand jury proceedings			Records not public unless indictment returned.
Search warrants and affidavits	Entire record until return of service or 10 days after issuance, whichever is first	Pen. Code § 938.1(b) (transcript not subject to disclosure until 10 days after delivery to defendant or attorney, subject to specified conditions).  Pen. Code § 1534(a) (these records are confidential for time period specified).	
Police reports	Address or telephone number of victims, witnesses	Pen. Code § 1054.2 (no attorney may disclose unless permitted to do so by the court after a hearing and a showing of good cause).	Conforms to policy of Pen. Code § 841.5 (no law enforcement officer or employee of law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, address or telephone number of victim or witness in alleged offense).
Pre-sentence	Entire record	Pen. Code § 1203.05 (pre-sentence	Publication on Internet would effectively be

probation report		probation report is confidential after 60 days from sentencing or granting of probation and under certain other conditions).	permanent and thus thwart policy behind making record unavailable after 60 days.
Pre-sentence diagnostic report Defendant's statement of assets	Entire record	Pen. Code § 1203.03 (report is confidential). Pen. Code § 1202.4 (mandatory Judicial Council form (CR-115) is confidential).	Unavailable as public record in any form absent change in legislative policy. Purpose is to prevent disclosure of defendant's financial information.
Criminal history information	Summaries of criminal history information	Summaries of criminal history information are confidential ( <i>Westbrook v. Los Angeles</i> (1994) 27 CA4th 157, 164; Pen. Code §§ 11105, 13300-13326). Public officials have duty to preserve confidentiality of defendant's criminal history ( <i>Craig v. Municipal Court</i> (1979) 100 CA3d 69, 76).	Court in <i>Westbrook</i> noted adverse impact of disseminating this information with its potential for frustrating policies permitting subsequent sealing or destruction of records, or limiting dissemination of similar records by other criminal justice agencies (pp. 166-67). Pen. Code § 11105 limits access to state summary criminal history information to public agencies and others given express right of access by statute. Pen. Code § 13300 contains similar limitations on public access with respect to local summary criminal history information.
Arrest or conviction for marijuana possession	All records except for transcripts or appellate opinions; see Health & Saf. Code § 11361.5(d). Any information	Health & Saf. Code §§ 11361.5-11361.7 (generally, records of arrest or conviction for marijuana possession to be destroyed two years from date of arrest or conviction). 42 CFR 2.12 (restricts disclosure of patient identity in federally assisted alcohol or drug abuse rehabilitation program).	Publication on Internet would effectively be permanent and thus thwart policy behind sealing after sentencing.
Record of "factually innocent" defendant	Entire record	Pen. Code §§ 851.8, 851.85 (on acquittal, or if no accusatory pleading is filed or, after filing, there is a judicial determination that defendant was	Publication is antithetical to goal of rehabilitation.  Publication on Internet would effectively be permanent and thus thwart policy behind sealing.

<p>Indigent defendant requests</p> <p>Plea based on insanity or defense based on defendant's mental or emotional condition</p>	<p>Indigent defendant's in forma pauperis records and request for experts in capital case</p> <p>Entire record</p>	<p>"factually innocent" of the charges, court records, including arrest records may be sealed).</p> <p>Cal Rules of Ct 985(h) (indigent defendant's in forma pauperis records are confidential) and Pen. Code § 987.9 (request for experts in capital case are confidential).</p>	<p>Purpose of Rule 985(h) is to prevent disclosure of defendant's financial information. Purpose of sec. 987.9 is to preserve confidentiality of defense.</p>
<p>Reports concerning mentally disordered prisoners</p> <p>Victim/witness information</p>	<p>Entire record</p> <p>Specified victim personal identifying information and victim impact statements</p>	<p>Evid. Code § 1017 (psychotherapist appointed by order of court on request of lawyer for defendant in criminal proceeding, to provide lawyer with information to advise defendant whether to enter or withdraw plea based on insanity or to present defense based on mental or emotional condition).</p> <p>Pen. Code § 4011.6 (reports to evaluate whether prisoners are mentally disordered are confidential).</p> <p>Gov. Code § 6254(f)(2) and Pen. Code § 293 (in specified abuse and sexual assault cases, victim's name and address, and the offense, confidential on victim's request). Pen. Code § 293.5(a) (at request of victim of certain sexual offenses, court may order that victim's identity in all records be either Jane Doe or John Doe, on finding that order is reasonably necessary to protect victim's privacy and will not unduly prejudice prosecution or defense). Pen. Code § 1191.15 (victim impact</p>	<p>Purpose is to preserve confidentiality of defense.</p> <p>Purpose is to protect victim's privacy.</p>

Misdemeanor proceedings	Dismissal of accusatory pleading and setting aside of guilty verdict.		statements are confidential before judgment and sentencing and may not be copied. After judgment and sentencing, statement must be made available as public record of court).  Pen. Code § 1203.4a (misdemeanor proceedings resulting in conviction may be modified on petition and proof that one year has elapsed from date of judgment, sentence has been fully complied with, and no other crimes have been committed).	Publication is antithetical to goal of rehabilitation.
Fines, fees, forfeitures	Any record containing Social Security Number (SSN)	Social Security Number	Gov. Code § 68107 (court may order criminal defendant on whom fine, forfeiture, or penalty is imposed to disclose social security number to assist court in collection, but number is not a public record and is not to be disclosed except for collection purposes); see also 42 U.S.C. § 405(c)(2)(C)(viii)(I).	Purpose is to prevent disclosure of defendant's Social Security Number (SSN).
FAMILY				
Child or spousal support	Tax return	Entire record	Fam. Code § 3552 (parties' tax returns filed in support proceedings must be sealed).	Unavailable as public record in any form absent change in legislative policy.
Child custody	Custody evaluation report  All, when noncustodial parent is registered sex offender, or convicted of child	Entire record  Custodial parent's place of residence and employment, and child's school.	Fam. Code § 3111 (report is available only to court, parties, and their attorneys).  Fam. Code § 3030(e) (this information may not be disclosed unless court finds that disclosure would be in child's best interest).	In general, these records are made confidential to protect privacy of parties and their minor children.

Other	abuse, child molestation, or rape that resulted in child's conception.	Entire record	Fam. Code § 1818(b) (files of family conciliation court shall be closed).
	Records in conciliation proceedings	Entire record	Fam. Code § 7643(a) (records are subject to public inspection only in exceptional cases, on court order for good cause shown).
	Records in action under Uniform Parentage Act (UPA)	All records, except for final judgment	Fam. Code § 7805 (records are to be disclosed only to court personnel, the parties, and persons designated by the judge).
	Petition and probation or social services report in proceeding to terminate parental rights	Entire record	Fam. Code § 9200(a) (judge may not authorize public inspection except in exceptional circumstances and for good cause "approaching the necessitous").
	Adoption records	Entire record	Fam. Code § 17212 (records generally confidential with specified exceptions).
	Support enforcement, child abduction	Entire record	Fam. Code § 4926 (on finding that health, safety, or liberty of party or child would be unreasonably put at risk by disclosure of identifying information, court shall order that address of child or party or other identifying information not be disclosed in any pleading or other document filed
	Support enforcement under Uniform Interstate Family Support	Address of child or party or other identifying information	

Act	Confidential Counseling Statement (Marriage)	Judicial Council Form 1284	in proceeding under Act). Judicial Council Form 1284.
GUARDIANSHIP, CONSERVATORSHIP			
Confidential Guardian Screening Form (Probate Guardianship)	Entire Judicial Council Form GC-212	Prob. Code § 1516; Cal. Rules of Court, rule 7.1001.	
Confidential Conservator Screening Forms (Probate Conservatorship)	Entire Judicial Council Forms GC-314 and GC-312	Prob. Code § 1821(a); Cal. Rules of Court, rule 7.1050.	
Report and recommendation re: proposed guardianship	Entire record	Prob. Code § 1513(d) (report of investigation and recommendation concerning proposed guardianship is confidential).	Unavailable as public record in any form absent change in legislative policy.
Report and recommendation re: proposed conservatorship	Entire record	Prob. Code § 1826(n) (report of investigation and recommendation concerning proposed conservatorship is confidential, except that court has discretion to release report if it would serve conservatee's interests).	
Report arising from periodic review of conservatorship	Entire record	Prob. Code § 1851(e) (report is confidential, except that court has discretion to release report if it would serve conservatee's interests).	
Periodic accounting of assets in estate or	Accounting containing ward's or conservatee's	Prob. Code § 2620(d) [AB 1286, 1517] (accounting containing this information should be filed under seal).	



	ward or conservatee	Social Security number or any other personal information not otherwise required to be submitted to court		
JUROR RECORDS	Juror questionnaires and personal identifying information	Jurors' names, addresses, and telephone numbers	Code Civ. Proc. § 237 (juror personal identifying information after verdict in criminal case, to be confidential). <i>Bellas v. Superior Court</i> (2000) 85 CA4th 636, 646 (jurors' responses to questionnaires used in voir dire are accessible by public unless judge orders them to be sealed). <i>Townsel v. Superior Court</i> (1999) 20 C4th 1084, 1091 (trial courts have inherent power to protect juror safety and juror privacy). <i>Copley Press, Inc. v. Superior Court</i> (1991) 228 CA3d 77, 88 (public should not be given access to personal information furnished to determine juror qualification or necessary for management of the jury system, but not properly part of voir dire, e.g., the prospective juror's telephone number, SSN, or driver's license number). See also Cal. Rules of Court, rule 33.6 (sealing juror-identifying information in record on appeal).	Do courts have an obligation to protect the privacy of these nonparties to the proceeding?
JUVENILE	All	Entire record	Welf. & Inst. Code § 827 and Cal. Rules of Court 1423 (access to case files in juvenile court proceedings is generally restricted); Pen. Code § 676 (certain violent offenses excepted).	General purpose behind confidentiality of these records is to promote rehabilitation of juvenile offenders.

	<p>Adult court criminal records</p>	<p>Record of "factually innocent" defendant Judgments</p>	<p>Entire record, including arrest record</p>	<p>Pen. Code § 851.7 and Welf. &amp; Inst. Code § 707.4 (adult court criminal records involving minors that do not result in conviction to be sent to juvenile court, to obliterate minor's name in adult court index or record book).  Pen. Code § 1203.45 (minor would qualify for judgment modification as a probationer or misdemeanant).  Pen. Code § 851.85 (any criminal proceedings, after acquittal plus judicial finding of factual innocence).  Pen. Code § 1203.4 (criminal judgments may be modified for convicted probationers after successful completion of probationary period) or Pen. Code § 1203.4a (criminal judgments may be modified for convicted misdemeanants after one year and successful completion of sentence).  Welf. &amp; Inst. Code § 781 (juveniles declared wards of the court may on petition have their juvenile court records (including those made public by Welf. &amp; Inst. Code § 676) sealed five years after the jurisdiction of the court ceases or the juvenile reaches 18, if there are no subsequent convictions involving felonies or moral turpitude, and there is a finding of rehabilitation).</p>
<p>MENTAL HEALTH</p>				

Civil and criminal	Mental health service records.	Entire record	Welf. & Inst. Code §§ 5328-5330 (specified records confidential and can be disclosed only to authorized recipients, including records related to the Dept. of Mental Health; Developmental Services; Community Mental Health Services; services for developmentally disabled; voluntary admission to mental hospitals and mental institutions).	Publication on Internet would effectively be permanent and thus thwart policy behind sealing after sentencing.
Developmentally Disabled Assessment Reports	Entire record	Entire record	Welf. & Inst. Code § 4514 (Developmentally Disabled Assessment Reports, to be sealed after sentencing).	Publication on Internet would effectively be permanent and thus thwart policy behind sealing after sentencing.

**SOCIAL SECURITY NUMBERS.** By statute SSNs are required in the following court proceedings:

- (1) The judgment debtor's SSN (if known to the judgment creditor) must be set forth on the abstract of judgment. CCP § 674(a)(6).
- (2) The application for an earnings withholding order must include the judgment debtor's SSN (if known to the judgment creditor. CCP § 706.121(a). The earnings withholding order and the employer's return must also include this SSN if known. CCP §§ 706.125(a) (order), 706.126(a)(3) (return).
- (3) As noted above with regard to criminal cases, courts are authorized to collect SSNs from criminal defendants with fines, forfeitures, or penalties imposed, but these numbers are not to become public records and are not to be disclosed except for collection purposes. Govt. Code § 68107.

In civil and bankruptcy cases in the federal courts, only the last four digits of a party's SSN should be set forth in any document filed with the court. See [http://www.uscourts.gov/Press\\_Releases/att81501.pdf](http://www.uscourts.gov/Press_Releases/att81501.pdf).

## **APPENDIX C**



**Judicial Council of California**  
**Administrative Office of the Courts**

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**TO:** Chief Justice Ronald M. George  
Members of the Judicial Council

**FROM:** Charlene Hammitt, Manager  
Jane Evans, Senior Business Systems Analyst

**DATE:** November 27, 2001

**SUBJECT/ PURPOSE OF MEMO:** Proposed Rules on Electronic Access to Court Records

**CONTACT FOR FURTHER INFORMATION:**      **NAME:** Jane Evans      **TEL:** 415-865-7414      **FAX:** 415-865-7497      **EMAIL:** jane.evans@jud.ca.gov

### **QUESTION PRESENTED**

What are other jurisdictions doing to provide electronic access to trial court records?

### **FEDERAL COURTS**

The Judicial Conference of the United States approved on September 19, 2001 a report and recommendations by the Committee on Court Administration and Case Management that provides that:

- Public access to civil case files: documents in civil case files should be made available electronically to the same extent that they are available at the courthouse, except for Social Security cases because they contain detailed medical and other personal information. Bankruptcy case files should also be made available electronically, except that personal data identifiers should be removed.

- Public access to criminal case files: documents in criminal case files should not be available to the public remotely at this time. This policy will be reexamined in two years. The committee determined that any benefits of remote access were outweighed by public safety and law enforcement risks.
- Federal courts are not required to provide electronic access to case files if a paper file is maintained.
- Remote electronic access will be available only through the PACERNet system, requiring registration, a log-in and password.

The approach taken by the federal courts is similar to that in the proposed rules, providing the broadest access to civil documents while recommending a cautious approach to criminal documents and recognizing that sensitive personal information is contained in case files.

## **OTHER STATE COURTS**

Currently, state courts that provide electronic access offer docket information only with the exception of Arizona. About half the states offer little or no electronic access, but some of these states are analyzing issues related to privacy and access, and have appointed committees to investigate policy issues and technological readiness with a goal of developing court rules (see State-by-State Comparison, first attachment).

## **ARIZONA**

At this time, only Arizona provides broad electronic access to court documents. For many years, Arizona has had a rule (Rule 123) that provides for public access to electronic court records. This rule was recently reviewed by an ad hoc committee appointed by the Chief Justice of the Arizona Supreme Court. The committee's charge was to examine the issues surrounding public access to electronic court records and to develop recommendations to modify Rule 123 and to suggest additional rules governing access to electronic court records.

The Report and Recommendation of the Ad Hoc Committee to Study Public Access to Electronic Court Records (March 2001) specifically recommends that electronic records be made available at public terminals at the courthouse, but that courts have the option of providing access on the Internet (p. 8). It recommends phasing in Internet access by case type, beginning with civil and criminal, followed by family, juvenile, and probate.

The committee notes that Rule 123 was written before the Internet came into prominent usage. The electronic access the rule envisioned was not via the Internet, but by a subscription dial-up into a private network. The rule anticipated that this system would probably be used only by those with a need to know, i.e., attorneys, litigants, investigators, credit bureaus, and commercial data resellers. It did not anticipate that the general public would access court records remotely in large numbers. The report notes that courts may choose to delay making case information available on the Internet for a variety of good reasons, including lack of resources (p. 8). It specifically recommends that records in domestic relations, juvenile, mental health, and probate cases not be made available on the Internet until Social Security and financial account numbers are redacted (p. 9).

#### FLORIDA

On November 15, 2001, a committee of judges, lawyers, court officials and others recommended that the Florida Supreme Court impose a moratorium on public access to complete court documents via the Internet. Florida law (Florida Statutes, section 28.2221) requires clerks to have electronic images of documents available on the county's official web site by January 1, 2006. The state's Judicial Management Council recommended that courts not provide unrestricted electronic access to records until policies balancing privacy and access are developed. (see article *Partial Ban for Records on Net*, second attachment).

#### VIRGINIA

Virginia has recently established a pilot project to put the case management abstract data of selected courts on the Internet, after removing parties' Social Security numbers, telephone numbers, and street addresses. It has also recently adopted a rule (Virginia Supreme Court Rule 1.17, Electronic Filing and Service) restricting access to electronically filed data filed to the parties, their attorneys, and court personnel.

#### OTHER STATES

A few states, such as Vermont (Vermont Supreme Court Rules for Public Access to Court Records 1-8), provide remote access to commentary in connection with docket entries that describe the contents of the filings and not just their titles. Other states, such as Missouri (Missouri Court Operating Rule 2), provide electronic access to judgments, but not to other filings.

#### ADDITIONAL INFORMATION



The National Center for State Courts maintains a web page on public access to court records (<http://ctl.ncsc.dni.us/publicaccess/>), which describes the actions being taken by most state courts with respect to providing public access while addressing the privacy issues that are arising as courts move from paper to electronic filing. The Arizona report and the various rules and policies of other states, noted above, are accessible through this web page.

#### OTHER POLICY INITIATIVES

The Justice Management Institute and the National Center for State Courts are developing Model Rules for providing access to electronic court records. Under the Model Rules, remote access is limited to the register of actions, calendars of court proceedings, and final judgments, orders, and decrees.

The Conference of State Court Administrators (COSCA) is also considering the issue of providing public access to electronic court records. In August 2000, COSCA issued a Concept Paper on Access to Court Records (see [cosca.ncsc.dni.us](http://cosca.ncsc.dni.us)) that states that the conference should do all it can to encourage Internet access to public court records, both in its own self interest and to fulfill a more fundamental obligation to encourage convenient access to the courts (pp. 13-14). It concludes that it "should work diligently and with consummate public input to determine which court records should be restricted and to obtain funding for the most convenient access available" (p. 14).

STATE POLICY ON ELECTRONIC ACCESS TO COURT RECORDS

State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
ALABAMA	yes	<p>State employs dial-up access program similar to Maryland. Public access terminals are available in every county. Remote access sites are available for a monthly fee.</p> <p>New rule charges a fee for requests that require a special computer program to locate information, which discourages people from requesting wholesale information.</p>	yes
ALASKA	yes	Nothing documented on electronic access.	yes
ARIZONA	yes	<p>State employs dial-up access program similar to Maryland. Recent report from Ad Hoc Committee recommended the opening of court records electronically, with the general exception of personal information, such as social security and credit card numbers, and cases related to domestic relations, juvenile, mental health, and probate. For the most part, criminal information should be accessible.</p>	yes
ARKANSAS	no	<p>Electronic access is provided for a small fee. The AOC is working towards employing an electronic case management system for many of the trial courts that will be made available to the public. No electronic access policies yet. Access guidelines are covered by law rather than by court rules. Aside from juvenile and adoption records, most records are open.</p>	yes
CALIFORNIA	yes	<p>Proposed rule changes include a general right of electronic access to trial court records, and preclude remote electronic access to filings in family law, juvenile, mental health, guardianship, and criminal proceedings. Also, the court may limit access to any court record based on overriding public or private interests.</p>	yes

State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
CONNECTICUT	yes	<p>The Judicial Branch offers to members of the press, bar and public, dial-in access to its civil/family system for a fee. This access allows users of the system to inquire directly into the civil and family case records contained in the Superior Court's database and to review the status of computerized court records.</p> <p>Available information includes: whether an appearance has been filed on behalf of a party and by whom; whether a motion has been filed or acted upon; whether the case is pending or disposed, and calendar information for the short calendar, family magistrate, civil assignment list, family assignment list and dormancy short calendar.</p> <p>The Electronic Bulletin Board System allows the electronic transfer of information from the Judicial Branch to a subscriber's personal computer. In addition to viewing the information, subscribers are able to download text onto their personal computers.</p>	yes

State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
COLORADO	yes	<p>CoCourts.com is the first online, real-time court records site in the United States. It was created as an initiative of the Colorado Judicial Branch and developed, under contract, by a private company, e-InfoData.com of Boulder. Users can search both open and closed cases. Sealed cases are not available on the site. Also not included are these case types— probate, mental health and juvenile. Additionally, certain information within each case is non-public.</p> <p>Social security numbers are omitted, as are street addresses. All parties to a case except the plaintiff and defendant (and in domestic relations cases, the petitioner and the respondent) are considered non-public. This includes judges, victims, police officers and jurors. Attorney names, however, are public. Long narratives are excluded from the database, as are suppressed, sealed, or confidential filings. Financial information such as fines are summarized.</p>	yes
Delaware	yes	<p>Few court record data is on the Internet. Court rules are linked to judiciary's main site. Court access policy varies depending on jurisdiction and type of court. Courts for the most part set their own policies regarding access.</p>	no
District of Columbia	yes	<p>Could not locate access to court records on the web sites.</p>	no
FEDERAL		<p>Federal Judiciary has several electronic access services to obtain federal court information, including records.</p>	yes
FLORIDA	yes	<p>Electronic access authorized by statute, but not uniform statewide. A few jurisdictions provide web access to civil and/or criminal case information.</p>	no



State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
HAWAII		<p>Program titled <i>Ho'ohiki</i> is the state's online public records access system. Court pleadings and home addresses are not available online.</p> <p><i>Ho'ohiki</i> has an interesting disclaimer which must be read before proceeding to the program.</p>	yes
Georgia		No perceived electronic access to court records.	yes
Idaho	yes	No perceived electronic access to court records.	yes
ILLINOIS	yes	<p>Special Supreme Court Committee on Electronic Transmission of Data studies and will make recommendations to the Supreme Court on permitting the service of notice and other papers and the filing of documents by facsimile transmission to the clerk's offices and on allowing the electronic receipt of dissemination of information regarding cases and other court business.</p>	yes
INDIANA	yes	<p>Judges Technical Committee is looking into electronic records-keeping access. Will likely institute a limited access policy. 1998 Task Force recommended broader implementation of electronic access to public records.</p>	yes
IOWA	no	Electronic Iowa Court Information System (ICIS) is available at courthouses.	no
KANSAS	yes	Some general docket/case information is available online.	yes

State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
KENTUCKY	no	<p>The State will soon implement a new policy that will provide more electronic access to court information. Currently, each county collects information that feeds into a mainframe. State is looking into providing access to that information via the Internet.</p> <p>Contact Ed Crocket at 502/573-2350 ext. 2029 for specifics on the policy and electronic access to court records.</p>	no
LOUISIANA	varies	No electronic access.	no
Maine	yes	<p>Newly created web page to include all administrative orders. Information will soon be available via public access terminals, but is already implemented in some jurisdictions.</p> <p>Criminal data information pretty much open and computerized. However, civil information more restricted.</p>	yes
MASSACHUSETTS	yes	A web advisory committee is seeking comments on a draft report regarding the dissemination of court records on the Internet. Draft report includes specific recommendations on what should and should not be made available on the Internet.	yes
MICHIGAN	yes	No statewide electronic access policy as of yet, and no real firm plans for one in the future. However, a few trial courts are offering electronic access to court records. Dan Voss 517/373-2106	no
Minnesota	yes	No perceived electronic access to court records.	yes

State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
MISSISSIPPI	no	State supreme court is moving toward electronic access to its docket, and soon will have links to the actual motions and petitions before the court. Citizen electronic access to the trial courts far down the road.	yes
MISSOURI	yes	Case.net provides access to the Missouri State Courts Automated Case Management System. From here you are able to inquire on case records including docket entries, parties, judgments, and charges in public court. Only courts that have implemented the case management software as part of the Missouri Court Automation Project and only cases that have been deemed public under the Missouri Revised Statutes can be accessed through Case.net.	yes
MONTANA	yes	Supreme Court is far behind in terms of electronic access to court records.	no
NEBRASKA	yes	No electronic access.	no
Nevada	no	Rules not yet available on the Internet. Courts seeking funds to establish web site for rules and other pertinent court information.	no
NEW HAMPSHIRE	yes	No perceived electronic access to court records.	no
New Jersey	no	Almost all court records on paper are available electronically. Nominal fee is charged for electronic services, but special program requests are not accepted.	yes

State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
NEW MEXICO	no	Electronic access provided without fee. Addresses and phone numbers not provided on the Internet. Internet contains case management information for all cases in the state, as well as statutes and rules.	yes
NEW YORK	yes	Electronic access to court records is provided. Fees are charged based on costs and revenue. State was in litigation over denying access to entire database for resale.	yes
NORTH CAROLINA	no	State has an electronic criminal calendar, which can be searched by county, court type, or last name of the defendant.	yes
North Dakota	no	Online Dakota Information Network provides general judicial information, but no access to court records.	no
OHIO	yes	Currently no electronic access to court records. Supreme Court website provides party names, filing dates, entries, attorney names, and summaries.	no
Oklahoma	no	Electronic access is provided at no charge. No difference between electronic and paper in terms of public information access.	no
Oregon	yes	State maintains 18 regional databases known as Oregon Judicial Information Network. Dial-up access is permitted for all non-confidential (defined by statute) court cases.	no
Pennsylvania	yes	State provides electronic access for a fee. Court system is moving towards better unification.	no

State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
Rhode Island	no	Electronic access is limited. State was involved in access lawsuit with local paper. Paper requested detailed statewide traffic court information, but was refused because state sells that information to private insurance companies. State argued that if information was given to the paper, they would have to also provide it to private insurance companies free of charge. By law, state can either refuse or charge for information not normally collected.	yes
SOUTH CAROLINA	no	Technology plan is looking at making all records electronic, first for internal use and then for the public. A few counties provide electronic access of some court information for free.	no
SOUTH DAKOTA	yes	Electronic access to court records not provided.	no
TENNESSEE		No apparent electronic access to court records.	no
TEXAS	yes	No apparent electronic access to court records.	yes
Utah	yes	Utah Court Information Xchange database charges monthly fee, service charge; and usage fee; contract.	yes
Vermont	no	Electronic access to court records is limited for the time being. Recent committee, comprised of citizens, judicial officers, administrative personnel, and media, will offer suggestions regarding public access to court documents. Recommendations will address what should and should not be public accessible, what information should be provided on the Internet, and how to handle juvenile records.	yes



State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
VIRGINIA		Electronic access is available for many Circuit Court records in a pilot format. Committee is looking into the issues surrounding electronic access vs. paper access.	yes
WASHINGTON	yes	Under statute, electronic access is available for a fee. New legislation has been drawn up to limit Internet access to private information and some records. State has encountered cases of identity theft.	yes
West Virginia	varies	No specific provisions covering electronic case records. Majestries use the same electronic case system, but only accessible on a case-by-case basis. Limited information available via dial-up for a fee. Currently looking at web application that will make limited, basic case information available on main site.	no
Wisconsin	no	All unrestricted cases—excluding juvenile, mental, paternity, and adoption cases—are available on the Internet. However, text field may be missing, which may cause confusion. For example, a case may note that a motion was passed, but it may not explain what type of motion was passed. Internet service free and often includes phone numbers, addresses, date of birth, etc. Site gets between 200,000 and 250,000 hits per day, receives positive press, and has saved Clerks of the Court substantial time previously spent collecting court records requests. However, privacy advocates have complained about easy access to information deemed sensitive. Legislatures have contacted the Admin. office complaining, but nothing has advanced further...yet.	yes

State	Court Rules on Public Access?	Electronic Access?	Materials/Info on the web?
Wyoming		At this point, no electronic access to court records, but moving in that direction.	no

Note: All available court rules and state judicial sites can be accessed via [www.courts.net](http://www.courts.net).  
States in SMALL CAPS have recent changes.

Access chart prepared by Todd Silver, Maryland Judiciary Court Information Office.

## **APPENDIX D**



**Judicial Council of California**  
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**TO:** Chief Justice Ronald M. George  
Members of the Judicial Council

**FROM:** Charlene Hammitt, Manager  
Jane Evans, Senior Business Systems Analyst

**DATE:** November 27, 2001

**SUBJECT/ PURPOSE OF MEMO:** Proposed Rules on Electronic Access to Court Records

<b>CONTACT FOR FURTHER INFORMATION:</b>	<b>NAME:</b> Jane Evans	<b>TEL:</b> 415-865-7414	<b>FAX:</b> 415-865-7497	<b>EMAIL:</b> jane.evans@jud.ca.gov
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### **QUESTION PRESENTED**

What is the electronic access environment in California courts?

#### **What electronic access is offered by California courts?**

Currently, of the California trial courts providing electronic access to court information, most offer only calendar and docket information on the Internet, searchable by entering the case name or case number (see Electronic Access in the Trial Courts, first attachment). Accessing and searching calendar and docket information is not standardized statewide, but requires a different approach in each county (see Electronic Access to Trial Court Case Management Information, screen views, second attachment). Case types and years covered also vary from court to court.

A few courts are providing images of the actual documents filed by the parties and the court, but only for very limited case types or consolidated complex litigation.

- Alameda County Superior Court, on its web site, has recently begun providing images of documents filed in all civil cases, both limited and general.
- Riverside County Superior Court provides access to imaged case files, but only at the courthouse.
- San Francisco Superior Court provides Internet access to orders filed in its complex asbestos litigation, but provides for public access only on public terminals at the courthouse to documents that have been electronically filed in that litigation.
- Los Angeles County Superior Court provides web access to complaints, answers, and orders in the coordinated diet drug cases.
- San Diego County Superior Court is providing web access to calendar, orders, and minutes in coordinated breast implant, latex glove, tobacco, and firearm cases.

California courts have had little experience with providing remote access to court records and with evaluating how providing such access might impact litigants and third parties. This limited access to electronic case materials currently offered by a handful of courts would comply with the proposed rules.

**Do California courts have the ability to provide remote electronic access?**

Most courts are currently not equipped to provide more than basic case information on the Internet, even if they wanted to. Sixteen courts have a local version of a static web site developed by the Information Services Division of the AOC, offering directory-type information only, with no link to case information. Case management system (CMS) vendors offering products to California courts have had difficulty developing web-based CMS's, and CMS's currently in use in California courts are unlikely to have the ability to segregate or redact confidential information from a specific case file. An incremental approach to remote access allows the Judicial Council to develop programs that support the objective of maximum availability of records by remote access, initially by addressing basic needs of all the courts and then by prioritizing their secondary needs.

**What is being done to improve courts' ability to provide electronic access?**

Because most courts do not currently have the technological capability to provide electronic access to case information, and because most case files are available in paper only, the Court Technology Advisory Committee is overseeing several statewide initiatives by the AOC Information Services Division to upgrade court information systems so that courts can offer electronic access to case information in the future. The Telecommunications Architecture initiative is evaluating the current physical infrastructure (cabling, equipment rooms, physical connectivity) and networking



Chief Justice Ronald M. George

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capability in the trial courts while developing standards for cabling, network performance, and bandwidth to enable the courts to improve information flows. The Service Bureau initiative is working with a vendor to develop a centrally-supported, up-to-date CMS for small courts. The CMS Certification initiative is working to insure that case management systems, either vendor or local, meet California-specific needs.

In addition, the courts have identified imaging as a technology priority for the 2002-2003 budget. Imaging technology would allow courts to convert paper case files to electronic documents that could be remotely accessed. The Finance Division, in developing budget requests for 2002-2003, received requests from several trial courts for records management projects that included imaging, so that these courts would be able to create an electronic database of their paper documents.

Finally, Information Services is supporting electronic filing in two initiatives, so that courts would have original documents in an electronic medium and would not have expend resources to convert them to an electronic medium using imaging technology. The first initiative is grant funding for e-filing projects and the second is development of the California Electronic Filing Technical Standards, working with Legal XML, a national organization engaged in the definition of electronic filing standards based on Extensible Markup Language (XML). Filing standards would integrate with a variety of case management systems, and would for example allow court case management systems to segregate sensitive personal information data elements to render them unreadable by the public on a remote system.

Given time, adequate resources, and technological innovation, courts in California will be able to move toward a more electronic environment and thus provide increased electronic access to information.



**Electronic Access in the Trial Courts**  
**Current Status**  
**Nov. 2001**


While all courts have web sites, many offer only static information about location, hours, organization, judges, and court personnel. Sixteen courts have web sites developed by AOC Information Services Division with basic information. Some courts have web sites that offer searchable information about specific cases as listed below. Coverage ranges from Sacramento's probate case index starting in 1991 to San Francisco's civil index that started October 9, 2001.

TRIAL COURT	SEARCHABLE FEATURES	ELECTRONIC FILING
Alameda	<ul style="list-style-type: none"> <li>▪ Case summary by case number</li> <li>▪ Register of actions with imaged document links where available               <ul style="list-style-type: none"> <li>▪ 30 days calendar</li> <li>▪ Complex litigation</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Unlawful detainer using XML</li> </ul>
Contra Costa	<ul style="list-style-type: none"> <li>▪ Dial up access to civil, probate, family law CMS for \$100 yearly subscription</li> </ul>	
Kern	<ul style="list-style-type: none"> <li>▪ Daily calendar by name, number, date</li> </ul>	
Los Angeles	<ul style="list-style-type: none"> <li>▪ Civil, small claims case summary by case number</li> <li>▪ Calendars by number, type, location</li> </ul>	<ul style="list-style-type: none"> <li>▪ E-filing projects in planning stage</li> </ul>
Marin	<ul style="list-style-type: none"> <li>▪ Calendar by name</li> </ul>	
Mariposa	<ul style="list-style-type: none"> <li>▪ Stayner case docket</li> </ul>	
Monterey	<ul style="list-style-type: none"> <li>▪ Calendar by name, date, case type, number</li> </ul>	
Orange	<ul style="list-style-type: none"> <li>▪ Calendars by case name for civil, family, probate</li> <li>▪ Case information "coming soon"</li> <li>▪ Name indexes on CD-Rom for sale</li> </ul>	<ul style="list-style-type: none"> <li>▪ Family law using XML</li> </ul>


TRIAL COURT	SEARCHABLE FEATURES	ELECTRONIC FILING
Riverside	<ul style="list-style-type: none"> <li>▪ Telnet access to civil, criminal, family, probate, and traffic to print dockets. Also calendars, name searches, minute orders, parties, bail status</li> <li>▪ Imaged case files searchable at courthouse</li> </ul>	<ul style="list-style-type: none"> <li>▪ Civil, family, small claims and unlawful detainer</li> </ul>
Sacramento	<ul style="list-style-type: none"> <li>▪ Indexes in civil, family, criminal, and probate by number, name, date, case type</li> </ul>	<ul style="list-style-type: none"> <li>▪ Web-enabled small claims filing using XML</li> </ul>
San Diego	<ul style="list-style-type: none"> <li>▪ New cases filed five days name search</li> <li>▪ CD-Rom for sale civil, criminal, domestic, mental, probate by name, number, dates, party types, category codes</li> </ul>	
San Francisco	<ul style="list-style-type: none"> <li>▪ Case management system for civil cases</li> </ul>	<ul style="list-style-type: none"> <li>▪ Traffic, complex litigation</li> </ul>
San Joaquin	<ul style="list-style-type: none"> <li>▪ Register of actions or case summaries by number</li> </ul>	
Santa Cruz	<ul style="list-style-type: none"> <li>▪ Case index for civil, family, probate, small claims by name</li> <li>▪ Calendar by number</li> </ul>	
Shasta	<ul style="list-style-type: none"> <li>▪ Case index for criminal and civil by name to get case number</li> </ul>	
Solano	<ul style="list-style-type: none"> <li>▪ Case management system by name, case type</li> <li>▪ Civil docket report gives name, number, party type, filing date, case type</li> </ul>	
Ventura	<ul style="list-style-type: none"> <li>▪ Case inquiry for criminal, traffic, civil by name and DOB together, driver's license number, bail receipt number</li> <li>▪ Calendar by date, time, courtroom together, date and attorney together, attorney</li> </ul>	<ul style="list-style-type: none"> <li>▪ Civil and family</li> </ul>

## Electronic Access to Trial Court Case Management System Information

Alameda <http://www.co.alameda.ca.us/courts/> select *DomainWeb*


 <b>Superior Court of California</b> County of Alameda	<a href="#">Welcome Page</a> <a href="#">Calendar Information</a> <a href="#">Case Summary</a> <a href="#">Complex Litigation</a>
<b>Case Summary</b>	
<b>Case Summary</b>	
Enter the case number: <input type="text"/>	
<input type="button" value="Submit"/> <input type="button" value="Reset"/>	
<p><i>Note:</i> Please consult the Local Rules and/or Civil Divisions regarding Tentative Ruling procedures.</p> <p><i>Note:</i> Effective May 24, 1999, pursuant to Code of Civil Procedure § 1161.2, DomainWeb will not display any information regarding unlawful detainer matters until 60 days following the date the complaint was filed. Parties to whom this statute does not apply should contact the court location in which a case is pending to obtain information.</p>	

Los Angeles <http://www.lasuperiorcourt.org/> select *Civil Case Summary*

<b>Superior Court of California</b> County of Los Angeles			<a href="#">Home</a> <a href="#">Search</a> <a href="#">Court Locations</a>
<a href="#">About The Court</a> <a href="#">News &amp; Media</a> <a href="#">Jury</a> <a href="#">Civil</a> <a href="#">Small Claims</a> <a href="#">Family</a> <a href="#">Probate</a> <a href="#">Juvenile</a> <a href="#">Traffic</a> <a href="#">Criminal</a> <a href="#">Mental Health</a>			
<b>Civil</b>	<b>Case Summary</b>		
<a href="#">General Information</a>	The Courts and County of Los Angeles declare that information provided by and obtained from this site, intended for use on a case-by-case basis and typically by parties of record and participants, does not constitute the official record of the court. Any user of the information is hereby advised that it is being provided as is and that it may be subject to error or omission. The user acknowledges and agrees that neither the Los Angeles Superior Court nor the County of Los Angeles are liable in any way whatsoever for the accuracy or validity of the information provided.		
<a href="#">Case Summary</a>	This site includes general and limited jurisdiction civil cases from all districts, except for Van Nuys (general jurisdiction) cases filed before January 8, 2001.		
<a href="#">Calendars</a>	Case Number: <input type="text"/>		
<a href="#">Tentative Rulings</a>	Filing Court: (Optional) <input type="text"/>		
<a href="#">ADR</a>	Apply to limited civil only <input type="checkbox"/>		
<a href="#">Appear by Phone</a>			
<a href="#">Diet Drug</a>			



Monterey <http://www.co.monterey.ca.us/court> select *Calendar*



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

November 8, 2001

To find a court case, enter any information that you have on the case and click "Search"

Search all cases for a specific name or case number:  
 search


Search all cases by case type:  
- Select Case Type -

Search all cases for a specific date:  
 /  /  search

Or search a specific case type by date:  
 /  /  AND - All Case Types -

- Home
- General Court Information
- State Judicial Council
- Legal Forms
- Self Help Center
- Public Classes
- Local Rules/ Fee Schedule
- Employment Opportunities
- Small Claims
- Traffic
- Calendar's Tentative Rulings
- Jury Duty
- Grand Jury
- County Law Library

Sacramento <http://www.saccourt.com> select *Online Services/Case Index Program*



## Civil Index - Basic Inquiry

Please enter search information:

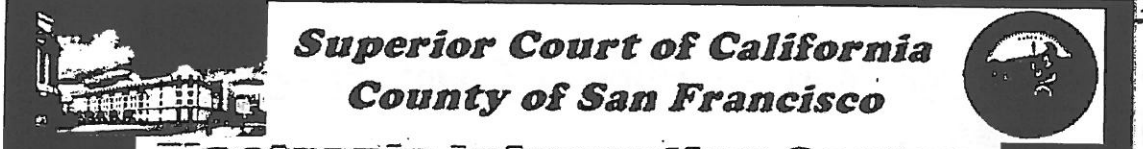
LAST Name,  FIRST Name

Click on the year to change Search Year

*(Please use the Advanced Search feature for Business Names)*

- Civil
- Criminal
- Family Law
- Probate
- Home

San Francisco <http://www.sftc.org> select *New* for civil CMS

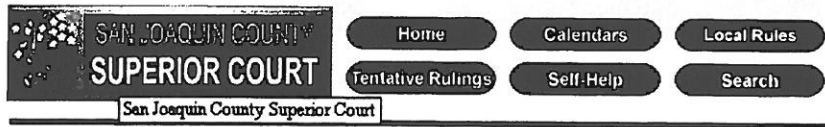


**Superior Court of California  
County of San Francisco**

Electronic Information Gateway

This site is designed to provide the user with the capability to access available data within the Court Case Management Systems. To use this site, you will need to have all of the necessary software and browser plug-ins.

San Joaquin <http://www.stocktoncourt.org/courts/> select *Calendars*



**SAN JOAQUIN COUNTY  
SUPERIOR COURT**

Home Calendars Local Rules  
Tentative Rulings Self-Help Search

San Joaquin County Superior Court

**Please note: The information on this site is provided to increase public access to your local courts. We make every attempt to keep the information current but that is not always possible. The information contained here does not constitute the official record of the court and may contain errors or omissions. By selecting an option below, you signify that you have read the foregoing.**

Select from the list below how you want to search the Calendars:

- [Court Calendar by Date](#)
- [Court Calendar by Department and Date](#)
- [Court Calendar by Case Number](#)
- [Court Calendar by Party Name](#)

Please contact the [webmaster](#) with your suggestions or comments.  
[\[Privacy Policy\]](#)

Santa Cruz <http://www.co.santa-cruz.ca.us/crt/courts.htm> select *Civil Case Index*

## Superior Court of California, County of Santa Cruz



Civil, Family Law, Probate and Small Claims

Case and Calendar Information



To find the case number, click on **Index Menu**.

To find the court date when you know the case number, click on **Court Date Menu**.

**Index Menu**

For Person or Business Name Search

**Court Date Menu**

For Calendar Information by Case Number

**Court Home Page**




CONTACT US! [court@co.santa-cruz.ca.us](mailto:court@co.santa-cruz.ca.us)

You are visitor number 128

Solano <http://www.solanocourts.com> select *Court Connect*


## Banner CourtConnect




**Superior Court of California  
County of Solano**


- [Search by person name, business name or case type](#)
- [Search for judgments against a person or business](#)
- [Display case information and activities](#)

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[Help for First Time Users](#)

Powered by SCT  
Web Technology 

Ventura <http://courts.countyofventura.org> select *Public Access/Case Inquiries*



*Superior Court of California*  
County of Ventura



**What do you know about the case?**

Court Case Number	<input type="text"/>	Case Type	<input type="text"/>
Defendant Name - Last	<input type="text"/>	First	<input type="text"/>
Business	<input type="text"/>		
Plaintiff Name - Last	<input type="text"/>	First	<input type="text"/>
Business	<input type="text"/>		
Calendar - Date	<input type="text"/>	Dept	<input type="text" value="(All)"/>
<small>Please qualify your search further by specifying one or more of the following.</small>			
Filed Date	<input type="text"/>	through	<input type="text"/>
Limit results to	<input type="text" value="50"/>	items	





## **APPENDIX E**



**Judicial Council of California**  
**Administrative Office of the Courts**

Information Services Division  
455 Golden Gate Avenue ♦ San Francisco, CA 94102-3660  
Telephone 415-865-7400 ♦ Fax 415-865-7496 ♦ TDD 415-865-4272

RONALD M. GEORGE  
*Chief Justice of California*  
*Chair of the Judicial Council*

WILLIAM C. VICKREY  
*Administrative Director of the Courts*

RONALD G. OVERHOLT  
*Chief Deputy Director*

PATRICIA YERIAN  
*Director*  
*Information Services Division*

**TO:** Chief Justice Ronald M. George  
Members of the Judicial Council

**FROM:** Charlene Hammitt, Manager  
Jane Evans, Senior Business Systems Analyst

**DATE:** November 27, 2001

**SUBJECT/ PURPOSE OF MEMO:** Proposed Rules on Electronic Access to Court Records

<b>CONTACT FOR FURTHER INFORMATION:</b>	<b>NAME:</b> Jane Evans	<b>TEL:</b> 415-865-7414	<b>FAX:</b> 415-865-7498	<b>EMAIL:</b> jane.evans@jud.ca.gov
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### QUESTION PRESENTED

Has the Judicial Council adopted relevant plans and policies?

#### JUSTICE IN THE BALANCE 2020

The long-term goals of the judicial branch in affording public access to electronic records were succinctly described in the Report of the Commission on the Future of the California Courts: *Justice in the Balance 2020*. That report envisions that by 2020, paper will have nearly vanished from the courts, and all pleadings and other documents will be transmitted, processed, and filed electronically (p. 101). It foresees that technology will make justice more efficient, more accessible, more understandable, and of higher quality, while at the same time unburdening judicial branch personnel of routine and mechanical tasks, freeing them to focus on the needs of court users (p. 101). The report acknowledges that public access to court records under the current system, which requires an individual to go to the courthouse, stand in line to request a case file that may or may not be in the

courthouse, and search through the file page by page, in many cases has the practical result of giving only the legal community effective access to court-related information (p. 105). It argues that technology has the proven potential to provide more accessible, user-comprehensible justice, which is basic to the commission's vision of a preferred future for the courts (p. 105). With respect to the protection of privacy in court records that are accessible by the public electronically, the report suggests that by 2020, the information technology revolution will have changed notions of privacy fundamentally, but that the public debate about whether the Bill of Rights protects people in cyberspace will be a thing of the past, because the Supreme Court "will have reaffirmed every person's right to a legitimate expectation of privacy, in any medium" (p. 102).

#### JUDICIAL COUNCIL OPERATIONAL AND STRATEGIC PLANS

Both the Judicial Council Operational and Strategic Plans, *Leading Justice Into the Future*, in Goal VI, note that "[t]echnology will enhance the quality of justice by improving the ability of the judicial branch to collect, process, analyze, and share information and by increasing the public's access to information about the judicial branch." The Operational Plan, in Goal VI(f), proposes an E-government initiative to "Expand the ability of the California Courts, Serranus, and local trial court Web sites to provide information and services."

#### STRATEGIC PLAN FOR COURT TECHNOLOGY

The plan, approved by the Judicial Council August 14, 1998, in its Goal IV, calls to "Make justice system information more accessible through the use of common, well-understood technology."

#### TACTICAL PLAN FOR COURT TECHNOLOGY

The Tactical Plan, adopted by the Judicial Council January 26, 2000, provides the framework discussed elsewhere for the statewide initiatives to upgrade and enhance court information systems capabilities, including telecommunications architecture, the Service Bureau, and certification of case management systems as meeting California needs.

#### STANDARDS OF JUDICIAL ADMINISTRATION, SECTION 38

Section 38, Access to Electronic Records, was adopted by the Judicial Council and became effective January 1, 1999. The standard has provided guidance to trial courts as they have begun small projects to provide public access to electronic records in limited case types. Feedback from courts on their project outcomes under Section 38 has informed the Court Technology Advisory Committee as it developed the proposed rules.

Chief Justice Ronald M. George  
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Much of the language in Section 38 has been incorporated into the proposed rules, as the provisions, although only advisory in nature, have proved workable for both the courts and the public seeking access to electronic court information.





## **APPENDIX F**

# GRAYCARY.

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O] 650-833-2293  
F] 650-320-7401

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CHAMBERS OF THE  
CHIEF JUSTICE.

November 27, 2001  
VIA FEDERAL EXPRESS

California Judicial Council  
455 Golden Gate Avenue  
San Francisco, CA 94102

**Re: Response to October 5, 2001 Report of the Court Technology Advisory Committee  
Regarding Public Access to Electronic Court Records**

Dear Justice George and Honorable Members of the Judicial Council:

We are writing on behalf of the California Newspaper Publishers Association, the California First Amendment Coalition, The Copley Press, Inc., Freedom Communications, Inc., Hearst Corporation, the Los Angeles Times, McClatchy Company, the Reporters Committee for Freedom of the Press, and the San Jose Mercury News. As you know, this group of concerned organizations and media previously submitted comments on the rules regarding electronic access to court records proposed by the Court Technology Advisory Committee ("CTAC" or "Committee"). We take the liberty of writing again at this time to express our profound concern regarding certain aspects of the proposed rules as finally described by the CTAC.

### **Legal Standard.**

First, the CTAC Report of October 5, 2001 ("Report") proceeds from an incomplete legal analysis. This may explain some of the conclusions it reaches, and therefore requires some clarification. The CTAC states that "[u]nlike many other states, California does not provide for a right of public access to court records by statute or rule of court, whether records are in paper or electronic form. Instead, public access to court records is afforded under the common law." Report, p. 5. However, the Judicial Council, relying on the California Supreme Court's decision in *NBC Subsidiary, Inc. v. Superior Court*, 20 Cal. 4th 1178 (1999), has adopted rules of court expressly addressing public access to court records, and narrowly circumscribing the situations in which public access to court records can be denied. See Cal. Rules of Court 243.1, *et seq.* Moreover, the right of the public and the press to court records is not merely a creature of California common law. On the contrary, it is guaranteed by both the First Amendment to the United States Constitution and by the California Constitution. *NBC Subsidiary*, 20 Cal. 4th at 1212; *Copley Press, Inc. v. Superior Court*, 63 Cal. App. 4th 367, 373 (1998); *Copley Press, Inc. v. Superior Court*, 6 Cal. App. 4th 106, 111 (1992). The Legislature has provided that court records maintained in electronic form must "be made reasonably accessible to all members of the public for viewing and duplication as would the paper records." Gov't Code § 68150(h). Thus, the standards imposed by the First Amendment, the California Constitution, California statute, and the California Rules of Court govern access to electronic court records.

**Case-by Case Access Restriction.**

Second, the CTAC has maintained the proposed restriction of "case-by-case" access, and it has eliminated any discretion on the part of the trial courts to permit access on any other basis. We believe that this restriction is both pragmatically and legally unjustified.

As it now reads, proposed rule 2073(b) provides that "[a] trial court must grant public access to its trial court records maintained in electronic form only when the record is identified by the number of the case, the caption of the case, or the name of the party, and only on a case-by-case basis." Report, p. 28. Although the proposed rule is ambiguous, it apparently imposes two sets of limitations. First, it apparently permits access to court records only if a requestor already has some information regarding a matter, i.e., the case number, caption, or name of a party. Second, it apparently permits the electronic access system to display cases only one at a time.

The proposed rule would therefore prohibit access where, for example, a requestor wants to see the cases filed on a particular day and does not know the case numbers, captions, or parties. The requestor would not have the necessary data to submit a request that would comply with the rule, and even if he or she did the rule would not permit the requestor to obtain more than one case at a time. Similarly, a requestor who wanted to see all cases filed by or against a particular party and had the name of the party would be precluded from obtaining more than a single case. (Moreover, it is unclear how the electronic access system would determine which case to display if there was more than a single responsive case, or whether the electronic access system could or would be configured to recognize that a subsequent query from the same user should be answered with a different case than that originally provided.) In addition, a requestor would not be able to search for and retrieve cases by any criteria other than the case number, case caption, or party name. Thus, it would be impossible to retrieve a case by, for example, the name of the judge who decided it, the type of case, or the counsel involved.

The Report states that "[t]he committee's legal justification for limiting access on a case-by-case basis has been that courts clearly have authority to place reasonable time, place, and manner restrictions on public access so as not to interfere with the business of the court." Report, p. 19. However, the CTAC does not explain why providing access to multiple cases in response to a single inquiry or permitting inquiries to employ fields other than the case number, caption, or party would in any way interfere with the business of the courts. Given the practicalities of modern computer databases, there is no reason to believe that it would. In fact, there is every reason to believe that enhancing electronic access to court records will reduce the burden on court personnel, and thereby minimize interference with the business of the courts. It is difficult to imagine that a court's own information system would not permit its personnel to call up cases sorted by any number of fields (a day's, week's or month's filings, or by party, counsel, or judge names, etc.), and likewise difficult to imagine why the system would not or should not permit the same facility to be shared with the public.

The Committee suggests that the problems created by the proposed rule can be overcome by submitting multiple requests. Report, p. 19. However, unless the electronic access system is specifically designed to recognize repeated requests from a unique user and provide a different response (i.e., the next responsive case in a sequence), submitting multiple requests will achieve nothing. The Committee also asserts that new cases could be identified by referring to the court's

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register of actions. Report, p. 19. To the extent that the trial courts maintain an electronic register of actions, and to the extent that the proposed rules require an electronic register of actions to be made available to the public without the limitations on access imposed by the proposed rules (as they now apparently do), this may indeed provide a solution. However, while the Superior Courts may maintain a register of actions, they are not required to do so. See Gov't Code 698554.

The CTAC offers different justifications for the case-by-case limitation in the proposed "Advisory Committee Comment" on proposed rule 2073(b). It asserts that the case-by-case limitation is "consistent with the procedures courts employ for requests for access to paper files; i.e., courts make paper files available upon request, one file at a time, to individuals who ask for a particular file." Report, p. 28. However, the fact that this may be the manner in which access is typically provided does not mean that it is the *only* manner in which access is provided. For example, trial courts in California have traditionally provided access to all new cases filed each day without demanding that the requestor identify the case by number, caption, or party name, and without insisting that the requestor can review only one case at a time. In addition, members of the public and the media have generally been permitted to obtain and review multiple case files at the same time.

The proposed Advisory Committee Comment also asserts that the case-by-case limitation is necessary to address the court of appeal's decision in *Westbrook v. County of Los Angeles*, 27 Cal. App. 4th 1157 (1994). Report, pp. 28-29. *Westbrook* addressed a request by a commercial information provider for the regular periodic delivery of computer tapes containing Los Angeles Municipal Court's compilation of information regarding criminal defendants, and held that the requester was not entitled to such tapes. The viability of the *Westbrook* decision is questionable, however, for several reasons. First, it failed even to consider the well-developed body of law establishing the constitutional right of access to court records under both the First Amendment and the California Constitution, and thus failed to apply the correct standard in determining whether access should be granted to the information sought in that case. *Westbrook* held, in essence, that court records can be withheld whenever there is "a countervailing public policy." *Id.*, at 163-64. As discussed above, that is not the standard that governs access to court records. Second, to the extent that the *Westbrook* decision could be deemed to establish any valid precedent with respect to public access to court records, it has clearly been superseded by the California Supreme Court's decision in *NBC Subsidiary*, 20 Cal. 4th 1178. Finally, it is important to recognize that the information at issue in the *Westbrook* case was not ordinary court records of individual cases, but rather a court-created compilation of many categories of data, sometimes obtained from multiple cases. *Westbrook*, 27 Cal. App. 4th at 160-61. As the *Westbrook* court itself emphasized, "[t]his information goes far beyond that which would routinely be found in a minute order, court file or the public index of criminal cases . . . ." *Id.*, at 161. Ultimately, then, this case also fails to support the imposition of restrictions on electronic access to ordinary court records.<sup>1</sup>

The Report further states that the "committee was quite concerned by the problem Mr. Rumble faced in his court [the Superior Court of Santa Clara County]—how to respond to a media request for the court's entire database, which includes confidential information to which the public does not

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<sup>1</sup> It should be noted that the Los Angeles County Superior Court subsequently adopted a policy of selling civil case management information to information providers like Westbrook.

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have a right of access." Report, p. 19. The Committee expressed the concern that "[i]n order to comply with such a request, it would be necessary for court personnel to carefully review each record in the database and redact all confidential information from the records—a costly, time-consuming, and perhaps impossible task." Report, p. 19. The CTAC apparently concluded that the case-by-case limitation was necessary to ensure that no trial court would be required or permitted to comply with such a request.

However, the Committee's pragmatic concerns do not justify the restrictions it has proposed. The request directed to the Santa Clara Superior Court, to which the comments of Mr. Rumble and the CTAC pertain, was made by the San Jose Mercury News, Inc., and did not seek access to "the court's entire database," nor to a database containing the actual content of any court filing. Rather, the request was only for access to the Superior Court's civil case management database, which consists exclusively of case history information regarding civil cases that has long been available to the public both through computer terminals in the courthouse and through printed case dockets provided by the court clerks.

Furthermore, this database contains little if any confidential information. The only possible exception would be information pertaining to cases which by law are required to be sealed in their entirety, so that even the identity of the parties is not made public. Adoptions and perhaps a few other civil cases may fall into this category. There is little foundation for any concern that public access to the Santa Clara Superior Court database would present any issues of privacy or confidentiality, given that the public had access to the database through computers located in the courthouse for many years. Moreover, even if redaction of a few cases from the database were necessary, it does not follow that access to the entire database must be denied. An alternative solution that would eliminate any burden on the courts—and that would better comply with the mandates of the First Amendment and California law—would be to require the requestor to pay for the cost of automated redaction of any categories of cases in which access to ordinary docket information might disclose information required to be kept confidential as a matter of law. (It should be noted that this is precisely what the San Jose Mercury News offered to do.)

Looking forward, even this process of retroactive redaction would not be necessary with regard to databases of information generated in the future. Rather, with some planning it would be relatively simple to incorporate into the data entry process or the database software a system for automatically restricting public access to any confidential information. For example, every new case filed in the Superior Courts is required to be accompanied by a civil case cover sheet, which identifies among other things the case type. Cases of a type in which information required to be kept confidential will necessarily be provided to the court can simply be coded in a manner such that, by automatic operation of the database software, confidential information will not be made public. Similarly, requests such as that of the Mercury News—which are motivated primarily by the desire to search the courts' case histories using data fields other than or in addition to case number, caption, or party name, and to identify all cases responsive to each search—could be readily accommodated without disclosure of any confidential information. In addition, if the electronic access system configured to permit all responsive cases to be displayed in response to a search employing any available data field (i.e., if the system were not restricted to searches using case number, caption, or party names), the need for copying a court database would be largely if not entirely eliminated.



Finally, it must be emphasized that court records are not exempt from constitutional and common law mandates of public access simply because they are maintained in electronic rather than paper form. Those mandates require that any restrictions on public access to court records that exist only in electronic form must meet the same stringent requirements that limitations on access to traditional paper records must meet. Court records subject to the public's right of access may not be sealed unless a court expressly finds that "(i) there exists an overriding interest supporting closure and/or sealing; (ii) there is a substantial probability that the interest will be prejudiced absent closure and/or sealing; (iii) the proposed closure and/or sealing is narrowly tailored to serve the overriding interest; and (iv) there is no less restrictive means of achieving the overriding interest." *NBC Subsidiary*, 20 Cal. 4th at 1217-18. See also California Rules of Court 243.1 *et seq.* There is no justification for imposing a different standard when the public or the press seek access to an electronic database of court records rather than a single file, and the restrictions imposed by proposed rule 2073(b) simply do not satisfy this standard.

#### **Categorical Exemptions from Remote Access.**

Third, the Judicial Council should carefully consider the CTAC's recommendation that broad categories of cases be exempted from remote electronic access, and in particular the exclusion of any form of remote access to criminal cases. The CTAC states that its exclusion of the enumerated categories of cases is based on "the sensitive nature of the information that parties are required to provide in them." Report, p. 21. However, the public benefits to be derived from removing barriers to access to information about criminal proceedings clearly outweigh any competing privacy concerns. The courts have consistently recognized that crimes and those who commit them are legitimate subjects of public interest, and therefore that the subjects of criminal proceedings have substantially reduced privacy interests. See, e.g., *Kapellas v. Kofman*, 1 Cal. 3d 20, 38 (1969) ("Newspapers have traditionally reported arrests or other incidents involving suspected criminal activity, and courts have universally concluded that such events are newsworthy matters of which the public has the right to be informed."). Furthermore, broad public access to information about public proceedings is necessary to promote the "'community therapeutic value' of openness." *Press-Enterprise II*, 478 U.S. at 13. "Criminal acts, especially certain violent crimes, provoke public concern, outrage, and hostility. 'When the public is aware that the law is being enforced and the criminal justice system is functioning, an outlet is provided for these understandable reactions and emotions.'" *Id.* Moreover, criminal cases typically involve fewer records containing less factual detail (with the exception of reporters' transcripts, which are apparently exempted from the electronic access rules). To the extent that sensitive victim or witness information is contained in court records—which should by no means be presumed—the courts have the power and the opportunity to prevent public access to such information by sealing it. If there is a sound basis for keeping such information from the public, then it can and should be sealed. If not, there is no sound reason for permitting it to be disclosed to anyone who is willing to go to the courthouse while denying it to those who establish accounts permitting them to obtain remote access.

Finally, we refer the Judicial Council to our previous comments. The CTAC has declined to address a number of other problematic aspects of the proposed rules, and its summary of our comments on those issues is by no means comprehensive. We therefore respectfully request that the Judicial Council consider our previous comments on the proposed rules, and request that revisions to the proposed rules be made to address those comments.



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It is difficult to free ourselves from an understanding of access to court records that is based on tradition, that is, on the way in which the courts have in the past provided the public with access to paper court records. However, in order to establish functional rules that preserve and promote the values served by public access to the courts, we have to project those rules into a future in which electronic access is the dominant means of public access to court records. These rules will therefore become not a mere adjunct to the traditional means of access, but the governing principles of public access to all court records. We therefore ask that the Judicial Council consider the proposed rules with the greatest care and deliberation, and ensure that they will protect and promote the public access to the courts that has been a bulwark of public discourse and democracy since the foundation of this country.

We very much appreciate the Judicial Council's careful attention to these rules, which are of profound importance to the media and the public. We also appreciate the Council's consideration of our comments.

Sincerely,

**Gray Cary Ware & Freidenrich LLP**

By:

  
James M. Chadwick  
[jchadwick@graycary.com](mailto:jchadwick@graycary.com)