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July 1, 2005

The Honorable Harold Cushenberry, Jr.
Chairman
Privacy and Public Access to Electronic Court Records Committee
District of Columbia Courts
500 Indiana Avenue, NW, Chambers 5610
Washington, DC 20001

Dear Mr. Chairman and Members of the Committee:

We write today to offer the comments of the Council for Court Excellence on the DC Courts' Proposed Policy on Remote Public Access to Electronic Files in Probate Division Cases, as published in the May 24, 2005 Daily Washington Law Reporter. No judicial member of the Council for Court Excellence participated in the formulation of these comments.

The Council strongly supports the development of such a policy for Probate Division case files because it will enhance public access to court records, provide a better tool for monitoring the operation of the judicial system, and increase the public's trust and confidence in the courts. The Council last provided comments to the Public Access Policy Committee on July 30, 2004 regarding the Court's then-proposed policy on remote access to civil case files.

Founded in 1982, the Council for Court Excellence is a nonpartisan, civic organization based in the District of Columbia. Our organizational purposes include promoting public education about the judicial system, fostering improvements in the administration of justice in the District of Columbia and in the nation, and supporting the federal and DC courts. Our membership includes attorneys, business people, judges, and members of the public.

The first three questions posed in the "E-Access Committee's" notice address the personal identifying information dealt with in last year's proposed policy on remote access to civil division case files. Then, as now, the Council supports partial disclosure of personal identifying and financial information. Excluding the full name and address of minor children, full social security and birth date information, or full financial account information is critical to maintaining an appropriate balance between privacy concerns and an open government. Providing access to the last digits of personal identifiers, however, is important to ensure that parties are properly identified, while still protecting vital information from theft. Only the last four digits of a social security number, only the year of date of birth information, and only the last four digits of financial account numbers should be provided. Further, only the initials of the names of minor children should be provided.



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At the public hearing on this topic held on June 23, we understand the Court raised the possibility of establishing a unique identifier in lieu of using partial social security number, partial date of birth, and partial financial account information to establish the unique identity of an individual. We support this approach, because it avoids the potential for identity theft while still enabling public oversight of the vulnerable individuals who are in the court's care.

Questions 4, 5, and 7 posed in the May 24 notice relate to physical and mental condition, medical records, and the location of the subject of an intervention proceeding. It is appropriate to exclude medical records themselves from public access, whether paper or electronic files. However, we take a different view of the reports filed with the court by guardians, visitors or other court-appointed individuals. When the court is considering whether to remove, or has removed, an individual's right to make decisions for him or herself, these reports, which often contain medical and psychological information, are crucial. They offer a critical check on governmental intervention and enable public oversight once a guardian is in place. An important and recent example of this is the reporting done by the Washington Post in 2003 on the sometimes lax oversight of adult wards-of-the-court. This reporting prompted the Court to make vital changes and also spurred further studies of guardianship and conservatorship monitoring procedures.

We are encouraged to see the DC Courts moving in the direction of electronic case records systems, especially since internet access to case records will mean that members of the public can see these records without going to the courthouse. On the other hand, issues of personal and financial safety warrant redaction of some identifying information from case files before they are released for electronic access.

As we understand it, the proposed policy will serve to define the types of data that will not be publicly accessible when the technology to provide electronic access is implemented. Electronic public access to Probate Division case records, therefore, will not be immediate. Such a policy is long overdue, and we strongly urge the court to consider and implement the following, as soon as possible:

- provide terminals at the courthouse to access electronic records;
- offer simple, internet-based remote access to electronic records; and
- expand the policy to apply to all open case records, including Criminal, Family, and appellate matters.



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The Council for Court Excellence appreciates the thorough and thoughtful process that the DC Courts have established to elicit public comment on this important issue. We thank you for the opportunity to provide these comments. Public access to court records is critical to ensure the public accountability of government, and the proposed policy is the first step down a much longer road. The Council for Court Excellence would be happy to assist the DC Courts to educate the public about electronic and internet access to court records once a strategy to do so is in place.

Sincerely,

Rodney F. Page

Rodney F. Page
President