Appendix C

TEXAS JUDICIAL COUNCIL

PUBLIC ACCESS TO JUDICIAL RECORDS

I. INTRODUCTION

In September 1997, questions arising from a request under the Public Information Act prompted the Supreme Court of Texas to ask the Texas Judicial Council to study ways to improve access to court administrative records and to propose a rule to the Court for promulgation. In October 1997, the Texas Judicial Council appointed some of its members to the Committee on Court Records with the charge "to examine open records' statutes and rules as they apply to courts in other states and to use this information to develop language for a proposed rule governing access to judicial records in Texas." The proposed rule was submitted to the Court in September 1998.

This report: (1) summarizes the procedures and policies that are generally used to provide access to judicial records-records relating to the administrative operations of the courts; (2) discusses why in other states court rules have been the best means for providing access to judicial records; and (3) discusses why a rule is a more viable option for providing access to judicial records in Texas than the Public Information Act.

This report does not directly address the issue of public access to court records, that is, records or documents that are filed in connection with a matter before a court.

II. PUBLIC ACCESS TO JUDICIAL RECORDS: OVERVIEW

The following section is an overview of the legal authorities and policy considerations that determine how judicial records are made accessible to the public.

A. Authorities Governing Access. Access to judicial records is governed by one or more of the following legal authorities:
(1) statute;
(2) judicial decision;
(3) executive agency opinion; or
(4) court rule or policy.

(1) Access to judicial records by statute - State open records acts ("ORA's") generally address access to judicial records by expressly stating that the statute

in its entirety applies to judicial records; that the statute applies to judicial records, unless disclosure of the records is governed by court rule; or by expressly excluding the judiciary from ORA coverage altogether.[1]

(2) Access to judicial records by judicial decision - Although judicial decisions are frequently used in conjunction with other authorities (e.g., statutes and court rules) to determine rights of access,[2] in many states judicial decisions are the *only* authority. These decisions are typically based on the common law right to inspect and copy public records and documents[3] or, in fewer instances, the "open courts" provision of the state constitution.[4] According to some legal scholars, common law traditionally has been the most significant vehicle through which the public has exercised a right of access to records held by the courts.[5]

(3) Access to judicial records by executive agency opinion - There are two types of executive agency opinions that can significantly affect the accessibility of judicial records: (1) attorney general opinions;[6] and (2) opinions issued by executive agencies that administer the public information statutes, such as the Connecticut Freedom of Information Commission, or Hawaii's Office of Information Practices.[7]

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[1]When the language of an open records statute includes judicial records, courts may be excluded under the constitutional separation of powers doctrine, vagueness, or other legal principles. Privacy and Public Access to Judicial Records, National Center for State Courts, 1995. Page 12.

[2]*See* Rules Committee v. Freedom of Information Commission, 472 A.2d 9 (Conn. 1984) (judicial rule-making power is not an administrative function), and generally, Connecticut Bar Examining Committee, 550 A.2d 633 (Conn. 1988).

[3]See Nixon v. Warner Communications, 435 U.S. 589 (1978) (recognizing a general common law right to inspect and copy public documents held by judiciary. "It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.")

[4]Since neither the courts nor the judicial branch are mentioned in Nebraska's statutory definition of "public records," the constitutional open courts provision has widely been interpreted to mean that records held by courts are presumed to be open.

[5] Public Access to Court Records, National Center for State Courts, 1995, Page 8.

[6]See Kansas AG Opinion No.96-77 (finding that because the Open Records Act specifically excludes judges from the definition of "public agency," that judges' telephone records were not public information).

[7]See Hawaii Office of Information Practices Opinion No. 93-8 (ruling that a bar applicant's right to inspect that applicant's scores and graded answers on a bar examination and the correct answers on the bar examination relates to a non-administrative function of the courts and is therefore governed by laws other than the public information statute.). The Office of Information Practices adopted the rationale of the Connecticut Supreme Court's decision in Rules Committee v. Freedom of Information Commission, 472 A.2d 9 (Conn. 1984). Also See Hawaii of Information Practices Opinion No. 92-3 (ruling that information maintained by the Hawaii Commission on Judicial Selection is a government record and is subject to the freedom of information statute).

(4) Access to judicial records by court rule - A number of states have enacted rules or other internal policies to establish consistent procedures access to judicial records. States that include the judicial branch, moreover, often use court rules to address the many procedural issues that statutes cannot effectively address.[8] Wherever practicable, these rules embody the public access policies of the particular state.

B. Policy Considerations - There are six policy issues to consider when determining which judicial records should be made public and the procedures that should govern their release.

1. Judicial Accountability - The judicial branch is, by its very nature, insulated from the popular pressures that are an integral part of the operation of the legislative and executive branches. And unlike governmental agencies, who are obliged to take most of their direction from legislative mandates, state judiciaries are expected to exercise substantial control over their operations.[9] This expectation largely assumes the public's right to know about those operations and that the courts will not conduct their business under a cloak of secrecy. This relationship between the judicial branch and the public is a fundamental component of judicial accountability. But the accountability of judges to their "customers" (i.e., parties, witnesses, and jurors) bears equal consideration. To what extent should customers' rights be compromised by the public's right to court information?

2. Availability of judicial resources - The release of a judicial record requires judges and court personnel to balance the public's right to information about publicly funded institutions against their own duties to conduct the business of the courts efficiently. A number of questions arise in this context. How much, for example, should a court reallocate its resources to respond to a request, if that reallocation would significantly disrupt court business or productivity? Should a court with very limited resources or personnel be required to meet a request in the same manner as a court with better administrative or technological capabilities?[10]

3. Costs - There are numerous (and substantial) costs associated with providing public access to judicial records. Among other things, copies must be made, personnel compensated, data collected, stored, and managed, and expensive equipment -- computers, copy machines, and communications hardware -- must be purchased. The question for policymakers is simply: "Who should shoulder the burden?"

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[8]See comments regarding Hawaii, (Appendix A).

[9]Public Access to Court Records, National Center for State Courts, 1995. Page 27.

[10]See "Privacy and Public Access to Court Records." National Center for State Courts, 1995. Pages 28-29.

There are three possibilities. First, fees may be assessed directly to parties requesting information. Second, valuable court resources may be reallocated, as discussed above. Third, the general public may meet the expenses through additional taxation. Each of these options, however, has inherent difficulties. Assessing fees directly from parties requesting information could have the undesired effect of discouraging requests. The reallocation of existing court resources could, as mentioned previously, diminish judicial efficiency. And increasing taxes, of course, presents a number of political challenges.

The public's perception that government bureaucracy has become bloated, unwieldy, and hinders rather than encourages good government further complicates the funding issue. Any initiative that involves expanding state government faces automatic resistance. In the judicial records context, this view presents policymakers with the challenge of developing access policies that use existing resources, are procedurally workable and that do not increase government bureaucracy.

Despite the difficulties discussed above; funds for providing public access to judicial records have to come from somewhere, the problem for policymakers is how to provide reasonable access at a reasonable cost.

4. **Privacy** - The right of public access to judicial records must also be balanced against the right of privacy. This right, which is inherent in constitutional, statutory,[11] or in common law, protects private citizens from unwarranted intrusion. In the judicial records context, some discretionary authority is necessary to protect the privacy rights of citizens.

5. **Open courts** - A basic tenet of American jurisprudence is that open trials are essential to the integrity of the judicial process.[12] In recent years, this concept has been extended beyond trials to apply generally to the operation of courts, based on the view that the integrity of the judicial process, as well as the public's confidence in that process, benefit from maintaining reasonably open access to court information. This tradition of openness is therefore an important consideration for states formulating their public access policies for judicial records.

6. **Security of information and individuals** - The security of court-related information--especially information that is stored in a computer system- is an important policy issue that can affect access to judicial records. While access to some electronically stored data is appropriate, both judges and their staff who

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[11] *See* Section 552.305(a), Government Code (governmental entity may decline to release information involving a person's privacy interest for the purpose of requesting an attorney general opinion) and Inwood West Civic Association v. Touchy, 754 S.W.2d 276 (Houston--14th Dist. 1988), which construed Section 306.004, Government Code (public disclosure of written or otherwise recorded communication from a citizen of Texas to a member of the Legislature is prohibited unless either party authorizes disclosure.).

[12] *See generally* Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980).

rely on technology to increase their productivity must be able to protect information relating to unreleased judicial opinions, case deliberations, and other judicial work products from unauthorized release. Free and unrestricted access to electronic court information would run counter to this objective. More importantly, no judicial records policy should allow the release of information that would endanger the safety of judges and court personnel, even if that policy limits access rights.[13]

III. PUBLIC ACCESS TO JUDICIAL RECORDS: THE CASE FOR A COURT RULE

Early in its research, Council staff determined that a simple reading of each state's ORA could neither furnish an accurate picture of how states provide access to judicial records in practice nor explain why courts are developing rules or policies for the release of those records. To obtain a thorough representation, court administrators, court counsel, public information officers, and assistant attorneys general in each of the 50 states were interviewed at length. This section briefly discusses the main reasons that states identified as the basis for providing access to judicial records by court rule.[14]

A. Separation of Powers; Judicial Independence - Every state constitution has a separation of powers provision to prevent one branch of government from exercising excessive control over the other branches.[15] The judicial branch's duty to impartially interpret the law - and to perform that function independently and without criminal or civil punishment - is a basic component of the separation of powers doctrine. In the administrative sense, separation of powers and its corollary, judicial independence, refer to the right of the judicial branch "to operate according to procedural rules and administrative machinery that it fashions for itself through its own governance structures."[16]

In developing policies and procedures for access to judicial records legislative, executive, and judicial branches have generally sought to preserve separation of powers and judicial independence. In Minnesota, Alaska, New York, and Hawaii, for example, this goal was successfully achieved through the promulgation of a

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[13] *See* Rule 2.051 (Public Access to Judicial Records), Florida Rules of Judicial Administration; Administrative Order 1997-10 (Access to Judicial Branch Administrative Information), Michigan Supreme Court; Rule 5 (Rules of Public Access to Records of the Judicial Branch); and Rule 123 (Public Access to Judicial Records of the State of Arizona), Rules of the Supreme Court of Arizona.

[14] For an analysis of access to judicial records in each of the 50 states, see Appendix A.

[15] *See generally* Marbury v. Madison, 5 U.S. 137 (1803).

[16] See Gordon Bermant and Russell R. Wheeler, p 845 *Federal Judges and the Judicial Branch: Their Independence and Accountability,* 46 Mercer Law Review 845 (1995) (Describing judicial branch independence as a corollary of the separation of powers doctrine and administrative independence as a key component of judicial branch independence.)

court rule.[17] The Supreme Court of Minnesota, at the Legislature's request, developed a judicial records rule because the ORA's appeal and review procedures are concentrated in the executive branch. In Alaska similar concerns (i.e., problems arising from the application of the procedures for access to records held by the executive branch to the judiciary), prompted the Supreme Court to develop a rule on its own initiative. New York's judicial records rules were created in response to a lower court decision which held that the central court administrative office was covered by the state open records law.[18] The Supreme Court of Hawaii, which is in the final stages of promulgating its judicial records rule, is doing so to clarify the relationship between the judicial branch and the Office of Information Practices, the executive agency that processes judicial records requests.

B. Procedural Concerns

1. **Administration or enforcement of the statute by an executive agency** - Providing access to judicial records presents a number of procedural and legal questions for both the courts and the agencies that administer the ORA (i.e., executive agencies). At what point, for example, does information that is in the custody of a judge become an administrative or judicial record? When does a judge function in an administrative capacity? How long should a judicial record be retained? When these and other questions arise, the ORA alone is seldom -- if ever -- a sufficient authority for resolution.

   One such example is the Connecticut Freedom of Information Commission which, despite its statutory authority to issue opinions about the release of records relating to the administrative functions of the judicial branch, is obliged to follow the Supreme Court's determination of which judicial actions constitute an administrative function.[19] A second example, Hawaii, is in the latter stages of promulgating a court rule to address the concern that the Uniform Information Practices Act provides inadequate procedures for courts to respond to judicial records requests. For the interim, Hawaii's Office of Information Practices has adopted the Connecticut Court's definition of "administrative functions" in cases involving the release of judicial records.[20]

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[17] Supreme courts in most states, including Texas, are vested with the power to administer their courts systems. *See* Article V, Section 31(a), Texas Constitution, and Section 74.024(a), Government Code.

[18] *See* Babigan v. Evans, 427 N.Y.S.2d 688 (N.Y.Sup.Ct. 1980).

[19] *See* Connecticut Bar Examining Committee v. Freedom of Information Commission, 550 A.2d 633 (Conn. 1988) (holding that information must involve the institutional machinery of the court to be administrative), and Rules Committee v. Freedom of Information Commission, 472 A.2d 9 (Conn. 1984) (holding that the rules committee of the Superior Court of Connecticut did not perform "administrative functions" under the Freedom of Information Act.).

[20] *See* Hawaii Office of Information Practices Opinion No. 93-8 (Adopting the rationale of Rules Committee v. Freedom of Information Commission, 472 A.2d 9 (Conn. 1984)).

2. **Efficient use of court resources -** Many of the ORAs procedures for responding to freedom of information requests imposed are applied to the judicial branch under the false assumption that the daily operations of courts are the same as those of government agencies. The daily operations of the courts are highly decentralized, and many of the procedural requirements of an ORA are simply unworkable. Moreover, some of the requirements outlined in state ORAs erroneously assume that personnel and other resources that are readily available to help large government bodies respond to information requests are equally available to the courts.[21] In many cases, these assumptions can lead to undesirable results for both the individuals who are seeking information and to the court that must provide it.[22]

   In three states -- Arizona, New Mexico, and Washington-- judicial records rules were adopted to facilitate the management of open records requests. In the past two years, two supreme courts, Arizona and New Mexico, have issued orders to address concerns raised by the general public and the media about the way that records requests were managed by local courts. In Washington, a court policy was developed to provide the courts with a clear and consistent procedure for responding to an increased number of judicial records requests.

3. **Costs** - This report has discussed the challenge of developing judicial records policies that provide reasonable access at a reasonable cost. It has also been noted that this challenge is compounded by public resistance to measures that would expand government bureaucracy.[23] In states with large, decentralized judicial systems, the most effective way of meeting this challenge has been through the promulgation of a court rule.

   A court rule is cost-effective for three reasons. First, it can be created, adopted, and amended without the large expenses associated with legislative action. Second, existing bureaucratic structures can be used to respond to information requests. Third, courts with limited administrative resources can provide reasonable access without incurring expenses that are required to update their capabilities to meet the demands of open records statutes. One example of a large court system that has implemented a judicial records rule with minimal costs to its operations is Florida.

   The Florida Rule for Public Access to Judicial Records, provides that "(r)equests and responses to requests for access to public records under this rule

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[21] *See* Section B(2), supra.

[22] *See* *Ex Parte Farley*, S.W.2d 617, 625 (Ky. 1978) (Finding that some details of the Open Records Law, such as the adoption and conformance to certain procedures, presented interferences that were viewed as inconsistent with the courts' orderly conduct of business and those matters couldn't be accepted by the courts.).

[23] Section II-B, supra.

shall be made in a reasonable manner."[24] This provision is complemented by staff training on how to respond to requests for judicial records and by each court's determination as to who will be the records custodian, how to streamline the appeals process, and how legal support will be provided (i.e., to address legal questions about the text of the rule).

[24] Rule 2.051, Florida Rules of Judicial Administration.

IV. PUBLIC ACCESS TO JUDICIAL RECORDS IN TEXAS

A. Access to Judicial Information Under Current Law - The Public Information Act ("PIA"), which was adopted in 1973 by the 63rd Texas Legislature, applies only to information that is held by a "governmental body," the definition of which "does not include the judiciary."[25] Although the judicial branch is expressly excluded from the PIA, various types of records held by judges and court personnel (many of which are administrative in nature) have historically been accessible to the public through other provisions such as court rules,[26] statutes, or simply as a matter of public policy. For example, members of the public currently have access to the General Appropriations Act (which provides information about court budgets and judicial salaries),[27] and information about court operational budgets which are made available by local governments. Financial and campaign information about judges is accessible through the Texas Ethics Commission,[28] and information relating to disciplinary action against a judge for judicial misconduct is available after a formal hearing has been convened by the Judicial Conduct Commission.[29]

B. A Few of the Problems with PIA Coverage - Some individuals argue that the only way to make judicial records truly accessible is to place the judicial branch under the Public Information Act. Though well-meaning, this argument loses credibility when the negative procedural and legal consequences -- many of them unintended -- are considered.

The following are some of the problems that are presented by extending the PIA's application to judicial records.

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[25]Section 552.003(1)(B), Government Code, which excludes the judiciary from the definition of "governmental body." *Also See* Attorney General Opinion (ORD 657) (Statutory exclusion applies only to records relating to the exercise of judicial powers) and Misc. Docket No. 97-9141 (Supreme Court Order denying an open records request for telephone billing records of the Supreme Court and finding ORD 657 incorrect).

[26]TRCP 76a (recognizing the public's right of access to court records). Rule 76a was promulgated by the Texas Supreme Court at the direction of the Legislature to adopt a system governing the sealing of court records. *Also See* TRCP 166b(5)(c), which prohibits a court from using a protective order to circumvent the requirements of TRCP 76a, and Ashpole v. Millard, 778 S.W.2d 169, 170 (Tex. App.--Houston [1st Dist.] 1989, no writ) (public has right to inspect and copy records held by a court subject to that court's inherent power to control public access to its records.)

[27]*See* Article IV, General Appropriations Act (H.B. No. 1, 75th Regular Session.), and "Not All Court Information Should Be Open To Public" Editorial by David Crump, Amarillo Daily News, December 15, 1997 Page 9A (stating that records concerning how the courts spend taxpayers' money "are generally open already.")

[28]State ethics laws require every state officer to file annual financial disclosure statements. A financial statement that is filed with the Texas Ethics Commission under Chapter 572, Government Code, is a public record. See Section 572.032(a). Also see Chapter 254, Election Code, which provides procedures for reporting and inspection of political contributions.

[29]*See* Article 5, Section 1-a(1), Texas Const., Sections 33.032 and 33.034, Government Code, and Rule 17, Rules for Removal or Retirement of Judges.

1. **Separation of Powers** - In Texas, a "strong separation of powers tradition is a prominent feature" of the state constitution.[30] Under the (PIA), the attorney general determines whether information that is held by a governmental body is subject to a statutory exception.[31] The PIA further provides that a governmental body may request a ruling from the attorney general if it receives a request for a record that it believes falls under an exception to the PIA.

   This statutory procedure poses two concerns. First, by virtue of their exclusion from the PIA, courts are not authorized to request attorney general opinions. Second, even if the statute were amended to authorize courts to seek attorney general opinions on matters relating to judicial records requests, those opinions would not be binding on the courts because the PIA "assigns the courts with the final say on whether records are public."[32] The authority of the courts to interpret the PIA is not coincidental but rather, inherent in their fundamental duty under the Texas Constitution to construe and apply laws that are passed by the Legislature.

2. **"Procedural absurdities"** - Under the PIA,[33] the attorney general may file a suit for a writ of mandamus to compel a governmental body to release information that the attorney general has ruled public. The PIA also authorizes a governmental body to file a suit challenging a decision by the attorney general.[34] Such a challenge would be filed in district court under regular venue procedures, and the Supreme Court would have final jurisdiction over the action. This scenario would present numerous "procedural absurdities"[35] the most extreme of which would arise in cases involving judicial records in the possession of the Supreme Court:

   > How can this Court ask a district court to decide whether this Court's legal position is correct? Even if the lower courts could choose to follow an Attorney General's opinion rather than this Court's view of the law, appeal would ultimately lie with this court. Even if every Justice recused and the Governor appointed a

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[30] Harold H. Bruff, *Separation of Powers Under the Texas Constitution* 68 Texas Law Review 7 1337 (1990).

[31] Sections 552.301-303, Government Code.

[32] "*Texas Supreme Court, Too, Must Give Public Access."* Walt Borges, Houston Chronicle, September 4, 1997. *See* Holmes v. Morales, 924 S.W.2d 920 (Tex. 1996), citing Houston Chronicle Publishing Co. V. City of Houston, 531 S.W.2d 177, 185 (Tex. Civ.-App.-Houston [14th Dist.] 1975), *writ ref'd per curiam* 536 S.W.2d 559 (Tex. 1976).

[33] Section 552.321, Government Code.

[34] Sections 552.324-25, Government Code.

[35] In written testimony submitted to the Senate Interim Committee on Public Information on October 7, 1997, Texas Citizen Action stated that "Bringing the judicial branch under the Public Information Act would ...create procedural absurdities in the review of a judge's refusal to release judicial records ."

> Special Court to hear the appeal, the tribunal would still be the court whose records were at issue and whose decision was contested. [36]

3. **Enforcement provisions of the PIA -** In addition to the separation of powers and procedural problems that are posed by the PIA's application to the judiciary, the enforcement provisions of the PIA results in two unintended consequences. First, imposing a civil or criminal penalty against a judge who fails to comply with the PIA would lead to the unintended consequence of punishing the judge for exercising the constitutional power to interpret the PIA.[37] Second, fear of criminal prosecution under the PIA could disrupt important trials at substantial costs to jurors, witnesses, parties, and justice itself. Consider, for example, the dilemma faced by a judge who presides over a large, multiple- judicial district and who is hearing a criminal case in which double jeopardy has attached.

4. **Maximum costs -** A third issue that is particularly relevant to Texas is the fiscal impact of providing access to judicial records under the Public Information Act. The size, geographic diversity, and complexity of Texas' judicial system and the administration of that system under the procedures outlined in the PIA presents numerous fiscal challenges that would strain state, county, and municipal budgets. For example, budgetary issues are presented by PIA coverage of justice and municipal courts who conduct the bulk of the state's judicial business and who usually have little (if any) administrative staff and office facilities for the storage of judicial records. Would allowances be made for part-time judges in rural areas of the state who have neither the support staff nor the technological resources to respond to information requests as promptly as judges who sit on courts that are located in urban areas?

   Table 1 lists some of the costs to both state and local governments if the judicial branch were subject to the disclosure procedures in the Public Information Act.

[36] Misc. Docket No. 97-9141 (Order and Opinion Denying Request Under Open Records Act, 1997).

[37] *See Section IV-B(1), supra.*

TABLE 1

COST FACTORS FOR ACCESS TO JUDICIAL RECORDS UNDER THE TEXAS PUBLIC INFORMATION ACT*

COSTS WITHIN THE JUDICIAL BRANCH	COSTS OUTSIDE OF THE JUDICIAL BRANCH
1. Support services for requests for information held by: ***Judges (2,984 total)*** ***Support staff/administrative personnel for each court*** ***District and county clerks*** **Support staff/administrative personnel for each judge* ***Personnel for judicial agencies which were previously excluded from the Act to answer judicial records requests*** **2. Copying equipment and storage space for judicial records**	**1. Legal and administrative costs for OAG to serve each judge that OAG is required by law to represent** **2. Legal and administrative costs for OAG to serve the support personnel of each judge that OAG is required to represent on judicial records matters** **3. Legal and administrative costs for OAG to serve the personnel of each judicial agency (e.g., the Office of Court Administration) that the OAG is required to represent on judicial records matters** **4. Legal and administrative costs for OAG to serve county and district attorneys who request AG opinions** **5. Legal and administrative costs for county or district attorneys to serve county judges and justices of the peace on judicial records matters** **6. Legal and administrative costs for county or district attorneys to serve the personnel of each county judge or justice of the peace on judicial records matters** **7. Legal and administrative costs for city attorneys to serve municipal court judges on judicial records matters** **8. Legal and administrative costs for city attorneys to serve the staff of municipal court judges on judicial records matters** **9. Incidental administrative costs incurred by the GSC in serving each judicial agency, judicial officer, officer and the support staff/personnel of each judicial officer in the state**

* These costs are exclusive of legal and administrative costs that are associated with litigation pertaining to the release of a judicial record.

C. Proposed Texas Rule

1. **Background-** As part of its charge to develop a rule for public access to judicial records in Texas, the Committee on Court Records considered which policies and procedures in other states could best be adapted to Texas' special needs. The Committee conducted eight public hearings around the state to obtain input from members of the general public about each change to the proposed rule. Drafts of the rule were published on the internet, and input was solicited from the general public, the media, freedom of information organizations, and other public interest groups. The diverse composition of the Council also provided a constructive forum for developing a proposed rule. A number of Council members not on the Committee made significant contributions to the discussion, drafting, and publication of the rule.

   In addition to devoting the bulk of three of its meetings to revising and discussing the Committee's draft, members of the Council attended the regional judicial conferences, the annual convention of the State Bar of Texas, and the annual convention of the Texas Municipal Courts Association to solicit suggestions for improving the rule's language. Many of the suggestions from each of these groups and from the general public were included in the Council's final draft of the rule (see Appendix C).

B. Summary of Proposed Judicial Records Rule

1. **Maximum access, minimum cost**. The rule provides for maximum public access to judicial records by providing limited exemptions from disclosure (Section 5), and by allowing a judge to deny access to a judicial record only on certain grounds (Section 8). Additionally, the rule minimizes administrative costs to state and local governments judges, court personnel, judicial agencies, and the executive branch because it does not establish complex or excessively bureaucratic procedures. More importantly, costs to persons who are seeking judicial records are minimized by: (1) the adoption of the General Services Commission's cost schedule for public information; and (2) a simple and inexpensive administrative procedure for aggrieved parties to appeal the denial of access to judicial records.

2. **Enforcement of the rule -** Unlike the executive and legislative branches, the judiciary has a constitutionally created body to police the conduct of its members-the Texas Judicial Conduct Commission.[38] As part of its duties, the Commission, which has jurisdiction over more than 3,000 judges and judicial officers in Texas, is responsible for enforcing the Texas Code of Judicial Conduct, which each judge in Texas is obliged to comply with or face disciplinary action (including removal from office). Because of its

[38] Article V, Section 1-a, Texas Constitution and Chapter 33, Government Code.

enforcement authority, the Commission provides the most appropriate means for insuring that every judge complies with the rule.[39]

V. CONCLUSION

Providing access to judicial records presents significant challenges for policymakers, courts, and the general public. Each of these challenges must be addressed with the expectation that government should respond to the needs of its citizens with measures that are both workable and cost-effective.

Because courts are supported by public funds, they are no less accountable to taxpayers for the resources that they use. This accountability (the public's right to court administrative records) must, however, be balanced against the courts' obligation to administer justice without compromising the rights of parties, jurors, and other court customers.

[39]Section 10 of the proposed rule makes failure to comply with rule grounds for sanctionable conduct under the Code of Judicial Conduct.

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