

Cite as 2018 Ark. 231
SUPREME COURT OF ARKANSAS

IN RE AMENDMENTS TO
ADMINISTRATIVE ORDER
NUMBER 19

Opinion Delivered: June 21, 2018

PER CURIAM

The Supreme Court Committee on Automation is recommending amendments to Administrative Order Number 19 in the following areas:

1. Amend Section II to authorize the Administrative Office of the Courts (AOC) to promulgate policies and procedures governing public access to court records through the Contexte Case Management System.
2. Amend Section 2 to clarify a potential conflict with Ark. Code Ann. § 25-19-105(a)(1)(B) providing that Ark. Code Ann. § 25-19-105(a)(1)(B) does not apply to court records.
3. Amend Section VI to clarify that the bulk and compiled licenses and data do not include document images.

The proposed amendments are being published for comment. The commentary explains the changes, and the proposed changes are set out in “line-in, line-out” fashion (new material is underlined; deleted material is lined through).

Comments on the suggested rule changes should be made in writing before September 1, 2018, and they should be addressed to: Stacey Pectol, Clerk, Supreme Court of Arkansas, Attn.: Administrative Order No. 19, Justice Building, 625 Marshall Street, Little Rock, Arkansas 72201.

Administrative Order Number 19. Access to Court Records

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Section II. Who Has Access Under This Order.

A. All persons have access to court records as provided in this order, ~~except as provided in section II(B) of this order.~~

B. The following persons, in accordance with their functions within the judicial system, may have greater access than the public to court records:

- (1) employees of the court, court agency, or clerk of court;
- (2) private or governmental persons or entities who assist a court in providing court services;
- (3) public agencies whose access to court records is defined by other statutes, rules, orders or policies; and
- (4) the parties to a case or their lawyers with respect to their own case.

C. Notwithstanding other rules, the Administrative Office of the Courts is authorized to promulgate policies and procedures governing greater access than the public through AOC-provided systems to court records by entities enumerated in Section II.B. above.

D. Arkansas Code Ann. § 25-19-105(a)(1)(B), which limits access to public records by incarcerated individuals, shall not apply to court records. Nevertheless, an incarcerated

individual who seeks, at public expense, a photocopy of a court record must file a motion with the court having jurisdiction over the record stating that he or she has requested the documents from his or her counsel and that counsel did not provide the documents. Furthermore, the motion must demonstrate that the incarcerated individual has a compelling need for the court record and an inability to pay.

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Section VI. Bulk Distribution and Compiled Information.

A. Requests for bulk distribution or compiled information stored on computers maintained by the Administrative Office of the Courts (AOC) shall be made in writing on the form provided to the Director of the AOC or other designee of the Arkansas Supreme Court. Requests for bulk distribution or compiled information that is not stored on computers maintained by the AOC shall be made in writing on the form provided to the court or court agency having jurisdiction over the records. Requests for bulk distribution or compiled information that exists as electronic representations of text or graphic documents; an electronic image, including a video image of a document, exhibit, or other thing; or an audio or video recording (analog or digital) of an event or notes in an electronic file from which a transcript of an event can be prepared shall be made in writing on the form provided to the court or court agency having jurisdiction over the records even if stored on computers maintained by the AOC. The AOC shall maintain on the Arkansas Judiciary website a current description of the records available on AOC computers. Requests will be acted upon or responded to within a reasonable period of time.

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Section II. Commentary.

Section II(A) provides the general rule that all persons, including members of the general public, the media, and commercial and noncommercial entities, are entitled to the same basic level of access to court records. Generally, access to court records is not determined by who is seeking access or the purpose for seeking access; however, some users, such as court employees or the parties to a particular case, may have greater access to those particular records than is afforded the general public.

Section II(B) provides the exception to the general rule and specifies the entities and persons for whom courts may provide greater access. This greater level of access is a result of the need for effective management of the judicial system and the protection of the right to a fair trial.

Sections II(B)(1) through (4) identify groups whose authority to access court records is different from that of the public.

Subsection (1): Employees of the court, court agency, and clerk of court need greater access than the public in order to do their work and therefore work under different access rules.

Subsection (2): Employees and subcontractors of entities who provide services to the court or clerk of court or court agency, that is, court services that have been "outsourced," may also need greater access to information to do their jobs and therefore operate under a different access policy. Section X provides the requirements under this order for contracts with vendors concerning court records. Private entities such as private process servers and bail bond companies may also need greater access in order to fulfill their duties to the court.

Subsection (3): This subsection is intended to cover personnel in other governmental agencies who have a need for information in court records in order to do their work. An example of this would be an integrated justice system operated on behalf of several justice system agencies where access is governed by internal policies or statutes or rules applicable to all users of the integrated system.

Subsection (4): This subsection continues nearly unrestricted access by litigants and their lawyers to information in their own cases but no higher level of access to information in other cases. As to cases in which they are not the attorney of record, attorneys would have the same access as any other member of the public.

Section II was amended in 20 to add Section II.C. in order to facilitate uniform access through the AOC-provided case-management and eFiling systems. As the number of courts using the statewide system has grown, management of access has become challenging. The AOC is responsible for user administration of the case-management and electronic-filing systems. Experience has shown that, because of the general policy permitting greater access, user management is difficult when dealing with requests by agencies and entities outside the court that require greater than public access. The same is true even within the courts in multi county jurisdictions, which now include overlapping jurisdictions of state district courts. Now that the AOC systems are being used statewide, access to court information should be uniform. This section grants authority to the Administrative Office of the Courts to promulgate system access policies and procedures consistent with this order.

Arkansas Code Ann. § 25-19-105(a)(1)(B) is a F.O.I.A. exception that provides:

(B) However, access to inspect and copy public records shall be denied to:

(i) A person who at the time of the request has pleaded guilty to or been found guilty of a felony and is incarcerated in a correctional facility; and

(ii) The representative of a person under subdivision (a)(1)(B)(i) of this section unless the representative is the person's attorney who is requesting information that is subject to disclosure under this section.

Subsection II.D. of this Order was added to clarify that Ark. Code Ann. § 25-19-105(a)(1)(B) does not apply to court records subject to this Order. A recent Attorney General opinion acknowledges that, with respect to court records, F.O.I.A. merely serves as a gap filler. Op. Ark. Att’y Gen. No. 121 (2015). Incarcerated individuals do not lose their right of access to court records under Section II.B.(4) by virtue of their incarceration. Their incarceration also does not grant a right to unlimited photocopies of court records at no charge. Section VI.B.2(e) provides that costs for compiled records requested from a court or court agency having jurisdiction over the records shall be as otherwise permitted by state law or county or city ordinance. The new section also provides language consistent with Ark. R. App. P.--Crim. 19 adopted March 16, 2016, which was intended “to address a recurrent issue faced by the appellate courts: convicted offenders frequently request that the appellate court provide at public expense a copy of the party’s brief or appellate record that had previously been filed.” *In re Arkansas Supreme Court Committee on Criminal Practice – Arkansas Rule of Appellate Procedure--Crim. 19*, 2016 Ark. 145 (per curiam). The amendment to F.O.I.A. was adopted for the same reason, and this amendment will address the burden faced by clerks of the lower courts.

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Section VI. Commentary.

In the past, court information other than that required to be reported to the Administrative Office of the Courts, was available only directly from the courts. In 2001, the Arkansas Court Automation Project began, with its long-term goal to provide a centralized case management system for all courts in the State of Arkansas. This project is the foundation to provide statewide electronic filing and document imaging for the courts. As courts go online with the new system, the public will have a more convenient central location from which to request court records. Before 2012, the AOC did not store documents, images, or digital court recordings for the courts, so this order did not contemplate requests for this information. As the electronic-filing system is being rolled out to the courts, more electronic information is being stored on AOC computers beyond information about the court records. Because the AOC is not the custodian of these records and because the electronic versions of these documents may contain sensitive or confidential information, requests for bulk or compiled distribution of information that exists as electronic representations of text or graphic documents; an electronic image, including a video image of a document, exhibit or other thing; or an audio or video recording (analog or digital) of an event or notes in an electronic file from which a transcript of an event can be prepared should be directed to the court or court agency having jurisdiction over the records even if the information is stored on computers maintained by the AOC.