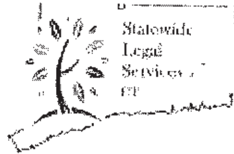

VIA ELECTRONIC MAIL

December 1, 2021

Rules Committee of the Superior Court
Attn: Joseph J. Del Ciampo, Counsel
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Re: Proposal to Amend Practice Book §§ 7-10 and 7-11 concerning the retention and destruction of summary process records

Dear Members of the Rules Committee:

We write on behalf of the undersigned legal services programs to ask this Committee to recommend amendment of Practice Book §§ 7-10 and 7-11 so as to minimize the adverse consequences of the misuse of summary process records for purposes for which they are not intended. It is well-known and well-documented that eviction records are used as a filter to deny housing to applicants who have "an eviction record." This is the case even if the action was withdrawn or dismissed; even if the tenant won judgment in the action; and even if the proceeding was settled to the benefit of the tenant or to the mutual benefit of both parties. It is the case even if the action was based on a "no fault" ground such as lapse of time. Indeed, it is the case even if the applicant was not the subject of the eviction record at all, but merely a person with the same or a similar name. The Judicial Branch has acknowledged the potential for misuse of its summary process records.[1] These proposed reforms are crucial because tenants, disproportionately women of color with children, often are unfairly penalized by eviction records as they seek alternative housing.

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[1] The notice, which can be found on the Housing Case Look-Up page, reads: "Housing case information on the Judicial Branch website is not intended for use in landlord or tenant screening. It does not contain personal identifying information necessary to adequately identify the parties." *See* https://www.jud.ct.gov/housing.htm.

In particular, we propose the following Practice Book amendments:

- Summary process actions disposed of by withdrawal, dismissal, or judgment in favor of the defendant shall be removed from the public website as quickly as is administratively feasible, but in any event within 30 days. All identifying information regarding the matter shall be removed from the Judicial Branch web site.[2] The retention period should match this requirement.[3]

- Summary process actions disposed of by judgment for the plaintiff, including judgments entered as stipulated judgments, shall be removed from the public website within one year. All identifying information regarding the matter shall be removed from the Judicial Branch web site. The retention period should match this requirement.

- The Practice Book shall include a requirement mirroring the Judicial Branch User Acknowledgment Form JD-ES-251, Appendix B, stating that any entity purchasing summary process records from the Judicial Branch for commercial purposes on a periodic basis, including but not limited to consumer reporting and tenant screening entities, shall agree to disclose only the most recent version of such records.

This issue is very timely, because, as this Committee is aware, many Connecticut renters are vulnerable to eviction following the pandemic. *See* Ginny Monk, *As Evictions in CT Climb, Experts Fear the Worst Is Yet to* Come, CT Post, September 25, 2021, *available at* https://www.ctpost.com/business/article/As-evictions-in-CT-climb-experts-fear-the-worst-16485817.php. Indeed, the pandemic has created a whole new class of renters who, because of the pandemic, faced eviction for the first time, including tenants whose arrearage ultimately was paid through UniteCT, the state's nearly $400 million program to prevent evictions by paying rental arrearages. These renters are experiencing the devastating impact that even a single eviction record can have on finding appropriate housing in the future.

The Misuse of Internet Eviction Dockets for Tenant Screening

Currently, the Connecticut Judicial Branch keeps the entire docket of a summary process action available on its internet web site according to the timeframes outlined for destruction of files and records in Practice Book §§ 7-10 and 7-11. An eviction that is withdrawn or dismissed remains visible on the internet for one year. Practice Book § 7-10. An eviction in which the

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[2] Currently, an address search on the Judicial Branch web site will reveal the captions of cases that were withdrawn or dismissed more than one year ago – sometimes much more than one year ago – revealing the name of the defendant tenant.

[3] We have framed this proposal in terms of retention period, because it is our understanding that, under present practice, the Judicial Branch uses the retention period to determine how long a summary process record is available to the general public on the Judicial Branch website and available for commercial use by data purchasers. These are the two areas of our primary concern. We would not object if the result that we propose were to be produced by an amendment to the Practice Book other than an amendment to the retention period.

tenant prevails on the merits, or in which the parties enter into a settlement agreement with a stipulated judgment against the tenant, remains visible on the Judicial Branch web site for three years under § 7-11(d)(6).

These time periods create unique problems that can force tenants into substandard housing or homelessness, because the mere filing of an eviction action affects a tenant's ability to find a new apartment, regardless of the outcome. Our attorneys often get calls from former housing clients, upset that an application for housing was denied because of an eviction that was withdrawn or dismissed. *See also* Housing Action Illinois, *Prejudged: The Stigma of Eviction Records* at 7 (March 2018), *available at* https://www.lcbh.org/reports/prejudged, last visited on November 11, 2021.

Internet eviction records often result in denials of housing, without regard to: (a) the grounds for eviction; (b) the disposition of the case; (c) the individual circumstances surrounding the case; or (d) the degree of certainty that the record actually refers to the applicant. The records, in other words, are not appropriate for tenant screening because users who access the records do not examine them in a way that allows them to distinguish between good and bad prospects. The Judicial Branch posts a warning on the web site, but, in our experience and according to studies, landlords and screening agencies still utilize these records, harming tenants. *Prejudged: The Stigma of Eviction Records* at 7 (March 2018), *available at* https://www.lcbh.org/reports/prejudged ("Too often, people do not understand that an eviction filing does not mean someone was actually evicted.").

The UniteCT rental assistance program participation agreement requires immediate withdrawal of the eviction after UniteCT payment to minimize the adverse impact on the tenant's ability to find future housing. *See* https://portal.ct.gov/-/media/DOH/UniteCT/Program-Participation-Agreement-as-of-11-04-21.pdf. The longer a withdrawal stays on the website, the longer it will make it very difficult for the tenant to move to other housing. Indeed, in those cases in which the landlord rejects UniteCT payments and insists on proceeding with eviction, it is extremely difficult for the tenant to find any other rentals at all.

The legal services programs also have seen an unintended consequence in that UniteCT gives priority in processing cases in eviction over non-payments that are earlier in the process. As a result, landlords sometimes have an incentive to start an eviction to get quicker payment. The legal services programs have direct experience of such cases, in which a landlord has filed an eviction, even though UniteCT is processing or has even approved an application for which the landlord is waiting for payment. In such a case, the eviction eventually will be withdrawn, but it will remain visible online for at least a year after withdrawal. Indeed, there is a common misconception that a withdrawal protects the tenant's credit record when in fact it does not, since the record of the filing remains available for one year or more.

The Racially Disparate Impact of Eviction Filings

The long digital life of eviction complaints is especially troubling given that households of color—and particularly those headed by women of color—are subject to a disproportionately high rate of eviction filings. One study found a "striking" racial disparity in eviction filings against African-Americans, and higher filings against both African-American and Latinx women than their male counterparts. Peter Hepburn, Renee Louis, Matthew Desmond, *Racial*

and Gender Disparities Among Evicted Americans, Sociological Sciences 7: 649-662 (December 2020). *See also Affordable Housing, Eviction, and Health*, Evidence Matters, Housing and Urban Development, at 5 https://www.huduser.gov/portal/periodicals/em/Summer21/index.html (Summer 2021)("[C]hildren in African-American and Hispanic households were more likely to experience evictions than those in White households.").

African-American women, in particular, are targeted for eviction. As Matthew Desmond has explained, "For many low-income black women looking for a place to live, a prior eviction can leave a mark. As landlords like to say, 'I'll rent to you as long as you don't have an *e*viction or a *con*viction.' These twinned processes—eviction and conviction—work together to propagate economic disadvantage in the inner city. Poor black men are locked up while poor black women are locked out." Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MacArthur Foundation (March 2014), *available at* https://www.macfound.org/media/files/hhm_research_brief_-_poor_black_women_are_evicted_at_alarming_rates.pdf. *See also* Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, American Journal of Sociology, vol. 118, no. 1 (July 2012), at 88-133.

The obstacles to finding housing that are imposed on families with summary process records result in increased costs to the community, including shelter expenses and lost earnings. *See* Samantha Batko & Amy Rogin, *The End of the National Eviction Moratorium Will Be Costly for Everyone*, *available at* https://www.urban.org/urban-wire/end-national-eviction-moratorium-will-be-costly-everyone (June 24, 2021).

The burden is greatest on the communities suffering the highest rate of eviction, again disproportionately communities of color, especially in Connecticut's cities. *See* Carl Romer, Andre Perry, & Kristen Broady, The Brookings Institute, *The Coming Eviction Crisis Will Hit Black Communities the Hardest*, *available at* https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest/ (August 2, 2021); Rebecca Luyre, *Waterbury, Hartford Among Top Evicting Cities in U.S.*, Hartford Courant, September 7, 2018, *available at https://www.courant.com/business/hc-news-eviction-rates-connecticut-20180907-story.html.* To the extent that those burdens can reasonably be reduced by restricting the misuse of summary process records, Judicial Branch policy should seek to reduce this impact.

A Better Balancing of Interests

The Practice Book recognizes a presumption of openness in documents filed with the court. Practice Book § 11-20A(a)("[e]xcept as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public."). Our rules also recognize, however, that this presumption of openness can be overcome when necessary "to preserve an interest which is determined to override the public's interest in viewing such materials." Practice Book § 11-20A (c). The existing Practice Book provisions recognize this balancing process, in that they do not require that summary process actions remain on the website forever, or even for as long as other civil judgments. They already require a shorter

retention period for withdrawals and dismissals than for judgments, and they limit judgment retention to three years.

The legal services programs ask the Judicial Branch to rebalance these interests, in acknowledgment of the impact of the misuse of an internet record of eviction filing on tenants' ability to find housing and the racially disparate impact of tenant records. In regard to actions that are not decided in favor of the landlord, there is limited value to the public in retaining information on the internet regarding evictions *after* they have been withdrawn or dismissed, or when the tenant has prevailed. Any minimal, residual value to the public in keeping this information on the internet is outweighed by the considerable harm to individual tenants.

In regard to actions in which a judgment for the plaintiff is entered, there are at least two factors that come into play that justify a retention period of less than three years. First, summary process judgments often do not determine whether or not the defendant was at fault. The overwhelming majority of judgments (other than default judgments) are by stipulation, not by trial. Historically, more than 90% of judgments have been by stipulation, Report of the Connecticut Advisory Council on Housing Matters, January 9, 2019, p. 6, *available at* https://portal.ct.gov/-/media/CACHM/2019biennialreportwithappendicespdf.pdf. As this Committee is aware, stipulated judgments reflect an agreement between the parties based on their assessment of the benefits and risks of going to trial—not a judicial determination. For example, if a tenant in a non-payment case has refused to pay in protest of the landlord's failure to maintain the property, there is no judicial determination as to whether or not the refusal was justified. If the judgment is based on lapse of time, i.e., a "no fault" eviction, a judgment for the landlord does not even contain a claim that the tenant was at fault. *See* Rudy Kleysteuber, *Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 Yale L. J. 1344 (2007) (arguing for an "outcome-dependent" approach to disclosure of eviction records). Even default judgments for the landlord do not necessarily confirm fault on the part of the tenant. For example, in our experience, it is not unusual for tenants who have already moved, knowing that the case is moot, to fail to file an appearance. Tenants also might be defaulted because of barriers to literacy, language access, or mobility.

Second, the three-year time period for maintaining eviction records on the internet is too long, even in true fault-based summary process cases. A shorter post-disposition period will continue to provide landlords a reasonable amount of information about a tenant's history. A one-year retention period provides a better balance, in light of the tremendous impact on a tenant's ability to rent.

Nothing in our proposal would prevent a court from shortening the retention period in individual cases. The Practice Book recognizes, however, that the starting point must necessarily be a blanket rule rather than an individualized determination regarding each summary process action.

Incorporating requirements for commercial use into the Practice Book

We also recommend that the Practice Book articulate what, to a large extent, is already included by the Judicial Branch in its User Acknowledgement Form (JD-ES-251), Appendix B, which must be accepted by commercial buyers of Judicial Branch data. It would undercut the

purpose of limiting access to data if purchasers could, on their own, archive old, superseded data and use it in their commercial activities. The User Acknowledgement Form already makes it the purchaser's responsibility to "confirm" that information obtained from the Judicial Branch database is "accurate, current and disclosable." In regard to erased records, where explicit statutory requirements apply, it also requires purchasers to purchase available updates and incorporate them. ¶ 6.

A simple way to incorporate new information, particularly for regular subscribers, is for them to replace each old version with the current newest version, deleting the older version. We note that the Minnesota Supreme Court's Rules of Public Access incorporate this concept by requiring of commercial purchasers the "periodic updating of the recipient's data no less often than the state court administrator's office updates its bulk records." Minnesota Rules of Public Access to Records of the Judicial Branch, Rule 8, Subdivision 3(b)(1).[4] Appendix C.

While the details of the mechanics of the marketing of bulk records may best be left to Judicial Branch administration, we believe that a Practice Book rule is appropriate for laying out the parameters of a mechanism for promoting compliance with an updating requirement.

We ask for an opportunity to address the Rules Committee regarding our proposal at its December 13, 2021 meeting and thank the Committee for its consideration.

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[4] The formal Comment to the Minnesota Rules states that, as of 2016, the Rules "establish a subscription approach for commercial recipients of bulk court records. The approach contemplates a subscriber agreement that would detail requirements for installing a completely refreshed database on no less than the same time frame (currently a weekly basis) that the state court administrator's office updates its bulk records . . . ," Advisory Council Comment – 2016 at page 28. Appendix C.

Respectfully submitted,

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cc:

The Honorable Patrick L. Carroll III, Chief Court Administrator
The Honorable Elizabeth Bozzuto, Deputy Chief Court Administrator
The Honorable James Abrams, Chief Administrative Judge for Civil Matters

APPENDIX A – PROPOSED AMENDMENT TO THE CONNECTICUT PRACTICE BOOK

The undersigned respectfully propose the following amendments to Practice Book §§ 7-10 and 7-11:

Sec. 7-10. Retention and Destruction of Files and Records; Withdrawals, Dismissals, Satisfactions of Judgment The files in all civil, family and juvenile actions, including ~~summary process and~~ small claims, which, before a final judgment has been rendered on the issues, have been terminated by the filing of a withdrawal or by a judgment of dismissal or nonsuit when the issues have not been resolved on the merits or upon motion by any party or the court, or in which judgment for money damages only has been rendered and a full satisfaction of such judgment has been filed, may be destroyed upon the expiration of one year after such termination or the rendition of such judgment, except that all internet records and identifying information concerning summary process actions terminated by the filing of a withdrawal, by a judgment of dismissal or nonsuit, or by a judgment for the defendant, shall be removed from the Connecticut Judicial Branch web site as quickly as is administratively feasible, but in any event not later than 30 days following disposition, or earlier by order of the court.

Sec. 7-11. —Judgments on the Merits— Stripping and Retention

* * *

(d) The following is a schedule which sets forth when a file may be stripped and the length of time the file shall be retained. The time periods indicated herein shall run from the date judgment is rendered, except receivership actions or actions for injunctive relief, which shall run from the date of the termination of the receivership or injunction.

* * *

(6) Landlord/Tenant -Summary process [3 years] 1 year, or earlier by order of the court, except that all internet records and identifying information concerning summary process actions subject to earlier removal pursuant to Section 7-10 shall be removed in accordance with that section.

Sec. 7-11A (New) – Updating of summary process records

Any person or entity purchasing bulk summary process records from the Judicial Branch for commercial purposes, including but not limited to consumer reporting and tenant screening entities, shall agree to disclose only the most recent version of such records.

USER ACKNOWLEDGMENT FORM

JD-ES-251 Rev. 4-18
C.G.S. §§ 54-142a, 54-142e

STATE OF CONNECTICUT
JUDICIAL BRANCH
www.jud.ct.gov

Instructions to Person Receiving Information from the Judicial Branch Information Technology Division

1. *Complete this form and mail original with payment, if required, to:*
   State of Connecticut, Judicial Branch
   Fiscal Administration,
   90 Washington Street, 4th floor
   Hartford, CT 06105-4406
2. *Please be advised that your request for service cannot be processed until this form and any payment required is received by the Judicial Branch.*

The User acknowledges that (1) the Judicial Branch's computer file containing court information is not always the official court record in these cases and that due to delays in data entry and/or data entry errors, the computer file may contain errors, omissions, or information that is not disclosable, (2) when the court's paper file is the official case file, the paper file is the most accurate record of court proceedings, (3) it is the responsibility of the User and/or its subscribers, customers, clients or other third parties to confirm either independently or from the court's paper file (when the paper file is the official court file) that information obtained from the Judicial Branch database is accurate, current and disclosable, (4) the Judicial Branch recommends that the User resolve any discrepancies between the court's paper file (when it is the official case file) and the information obtained from the database in favor of the court's paper file, (5) information identifying a party protected by a restraining order or a foreign protective order will not be provided, and (6) the Judicial Branch reserves the right to change its policy regarding access to the computer file and may alter and/or terminate this agreement upon thirty (30) days written notice.

In addition, User agrees to the following:

1. User agrees to comply with all applicable laws and rules governing the confidentiality of any data provided by the Judicial Branch and also to comply with any applicable Judicial Branch confidentiality policies that may be in effect during the term of this Agreement, provided that notice of such policies has been provided.
2. User shall not misrepresent the data provided, or any portion thereof, and shall not use the data provided, or any portion thereof, for any tortious, criminal or other unlawful purpose.
3. To the extent permitted by law, the User agrees, without costs to Judicial, to defend, indemnify and hold harmless the Judicial Branch, its officers, agents and employees, against all claims, demands, suits, losses, damages, penalties, expenses and liabilities (including reasonable attorney's fees and all costs incurred) arising from the User's use of the data provided. The terms of this provision shall survive the expiration or termination of this agreement.
4. User agrees not to use the data to allow, enable or otherwise support the transmission by e-mail, telephone or facsimile of mass, unsolicited, commercial advertising or solicitations to entities other than its own existing customers.
5. User agrees not to sell or redistribute the data except insofar as it has been incorporated by the User into a value-added product or service that does not permit the extraction of a substantial portion of the bulk data from the value-added product or service used by other parties.
6. Users who purchase records of criminal matters of public record shall, prior to disclosing such records, (a) purchase from the Judicial Branch any available updates concerning matters that have been erased pursuant to section 54-142a of the Connecticut General Statutes, (b) update its record of criminal matters to permanently delete such records, and (c) not further disclose such erased records. C.G.S. § 54-142e.
7. Users who purchase records of infractions convictions understand that they are not criminal convictions and shall not misrepresent them as criminal convictions.

I have read/had read to me and I understand and agree to all the terms and conditions stated in the above User Acknowledgment Agreement. I understand that the User's right to obtain or use the information provided may be terminated if the User does not comply with the above terms and conditions.

Please type or print

Approved by , Duly Authorized	Title
Business name	E-mail address
Address	Phone number Fax number
Signed	Date

APPENDIX C

Minnesota Rules Of Public Access To Records Of The Judicial Branch

Effective July 1, 1988
With amendments effective January 23, 2017

Rule 1. Scope of Rule

Rule 2. General Policy

Rule 3. Definitions

Rule 4. Accessibility to Case Records

Rule 5. Accessibility to Administrative Records

Rule 6. Vital Statistics Records

Rule 7. Procedures for Requesting Record Access or Case Record Correction

Rule 8. Inspection, Copying, Bulk Distribution and Remote Access

Rule 9. Appeal from Denial of Access

Rule 10. Contracting with Vendors for Information Technology Services

Rule 11. Immunity

(h) *Remote Access to Appellate Court Records*. The Clerk of the Appellate Courts will provide remote access to publicly accessible appellate court records filed on or after July 1, 2015, except:

(1) The record on appeal as defined in MINN. R. CIV. APP. P. 110.01;

(2) Data elements listed in clause (b)(1)–(5) of this rule contained in the appellate court records case management system (currently known as "PMACS");

(3) Appellate briefs, provided that the State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs provided that the following are redacted: appendices or addenda to briefs, data listed in clause (b)(1)–(5) of this rule, and other records that are not accessible to the public.

To the extent that the Clerk of the Appellate Courts has the resources and technical capacity to do so, the Clerk of the Appellate Courts may provide remote access to appellate records filed between January 1, 2013 and June 30, 2015, and shall, along with the State Law Library, provide remote access to an archive of current and historical appellate opinions dating back as far as resources and technology permit. Public appellate records for which remote access is not available may be accessible at public terminals in the State Law Library or at any district courthouse.

(i) *Exceptions.*

(1) *Particular Case*. After notice to the parties and an opportunity to be heard, the presiding judge may by order direct the court administrator to provide remote electronic access to records of a particular case that would not otherwise be remotely accessible under parts (b) through (h) of this rule.

(2) *E-mail and Other Means of Transmission.* Any record custodian may, in the custodian's discretion and subject to applicable fees, provide public access by e-mail or other means of transmission to publicly accessible records that would not otherwise be remotely accessible under parts (b) through (h) of this rule.

(3) *E-filed Records.* Documents electronically filed or served using the E-Filing System designated by the state court administrator shall be remotely accessible to the person filing or serving them and the recipient of them, on the E-Filing System for the period designated by the court, and on the court's case management system to the extent technically feasible.

Subd. 3. Bulk Distribution of Court Records. A custodian shall, to the extent that the custodian has the resources and technical capacity to do so, provide bulk distribution of its publicly accessible electronic case records as follows:

(a) Records subject to remote access limitations in Rule 8, subd. 2, shall not be provided in bulk to any individual or entity except as authorized by order or directive of the Supreme Court or its designee.

(b) All other electronic case records that are remotely accessible to the public under Rule 8, subd. 2 shall be provided to any individual or entity that executes an access agreement in a form approved by the state court administrator that includes provisions that: (1) mandate periodic updating of the recipient's data no less often than the state court administrator's office updates its bulk records: (2) explain that records are valid only as of a certain date; and (3) address compliance, verification of records, and indemnification of the court.

(c) An individual or entity that does not execute the agreement required under clause (b) of this rule may receive electronic case records that include a case number as the only identifier.

(d) The state court administrator may also permit the release of bulk records without periodic updating provided that the recipient: (1) is an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or a representative of the news media; and (2) executes an agreement in a form approved by the state court administrator including provisions that limit use of the data.

Subd. 4. Criminal Justice and Other Government Agencies. Notwithstanding other rules, access to non-publicly accessible records and remote and bulk access to publicly accessible records by criminal justice and other government agencies shall be governed by order or directive of the Supreme Court or its designees.

Subd. 5. Access to Certain Evidence.

(a) General. Except for medical records under part (b) of this rule, where access is restricted by court order or the evidence is no longer retained by the court under a court rule, order or retention schedule, documents and physical objects admitted into evidence in a proceeding that is open to the public shall be available for public inspection under such conditions as the court administrator may deem appropriate to protect the security of the evidence.

(b) Medical Record Exhibits. Medical records under Rule 4, subd. 1(f), of these rules that are admitted into evidence in a commitment proceeding that is open to the public shall be available for public inspection only as ordered by the presiding judge.

(c) No Remote Access to Trial or Hearing Exhibits. Evidentiary exhibits from a hearing or trial shall not be remotely accessible, but this shall not preclude remote access to full or partial versions of such records that are or were otherwise submitted to the court as a publicly accessible record.

Advisory Committee on Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act felt strongly about this approach and that committee has also codified this approach in its recommended changes to the commitment rules. A number of district courts also have standing orders accomplishing the same result. This rule change would obviate the need for such standing orders.

Rule 8, subd. 5, is also amended to clarify that trial exhibits are not remotely accessible. Many exhibits because of their physical nature cannot be digitized, and therefore would not be remotely accessible. This clarification attempts to provide consistency for remote public access treatment of exhibits.

Advisory Committee Comment – 2016

Rule 8, subd. 2(h), is amended in 2016 to clarify that the appellate opinion archive currently maintained by the state law library must continue to be made remotely accessible to the public. In addition access to the appellate court case management system currently known as PMACS is now available at public access terminals in any courthouse in the state.

Rule 8, subd. 3, is amended in 2016 to establish a subscription approach for commercial recipients of bulk court records. The approach contemplates a subscriber agreement that would detail requirements for installing a completely refreshed database on no less than the same time frame (currently a weekly basis) that the state court administrator's office updates its bulk records, explain that the records are valid as of a certain date, and explain what compliance, verification and indemnification risks the recipient must bear. Underlying this approach is a menu of common bulk data extracts that would be made available on this subscription basis. Commercial users have requested a subscription approach, and many are already required to comply with various state and federal laws that address accuracy and verification of records, provide redress procedures, and permit enforcement from entities including the Federal Trade Commission, the Consumer Financial Protection Bureau, and state attorney generals. See, e.g., 15 U.S.C. § 1681 et seq. (Fair Credit Reporting Act); MINN. STAT. § 332.70 (Business Screening services); MINN. STAT. § 13C.001 et seq. (Access to Consumer Reports Prepared by Consumer Reporting Agencies); 18 U.S. C. § 2721 (Drivers Privacy Protection Act); and MINN. STAT. §§ 504B.235-.245 (tenant screening agencies).

Alternatives for commercial entities that do not or cannot support a subscription approach include obtaining various records through common reports that are automatically emailed out from the trial court case management system. Examples include the Disposition Bulletin, which contains criminal dispositions, and the civil judgement abstract report, which includes judgment information. These reports have the added data element of party street addresses which would otherwise be a data element that is not remotely accessible and therefore not accessible in bulk format under Rule 8. Subd. 2(b)(2) unless the recipient enters into a user agreement approved by the state court administrator. The advisory committee intends that a subscription agreement permitted under new Rule 8, subd. 3(b) would meet this requirement and that street addresses could be included in the bulk data extracts available under a subscription approach. This may make the disposition bulletin and judgment abstract report less popular for commercial entities who can afford to follow the subscription approach.

The option in rule 8, subd. 3(c), for bulk data without individual identifiers is most likely to be attractive to researchers who are just interested in aggregate data analysis. The exception in Rule 8, subd. 3(d) for academia and the media is based on the long standing practice of the judicial branch to waive commercial fees for researchers and the media who will limit their use to research or to preparing their news stories. This approach contemplates a fee waiver agreement that would explain that the records are valid as of a certain date, and explain what use and verification requirements and risks the recipient must bear.

RULE 9. APPEAL FROM DENIAL OF ACCESS.

If the custodian, other than a judge, denies a request to inspect records, the denial may be appealed in writing to the state court administrator. The state court administrator shall promptly make a determination and forward it in writing to the interested parties as soon as possible. This remedy need not be exhausted before other relief is sought.

Advisory Committee Comment-2005

The 2005 deletion of the phrase "by mail" in Rule 9 recognizes that a determination is often issued in electronic format, such as e-mail or facsimile transmission.

RULE 10. CONTRACTING WITH VENDORS FOR INFORMATION TECHNOLOGY SERVICES.

If a court or court administrator contracts with a vendor to perform information technology related services for the judicial branch: (a) "court records" shall include all recorded information collected, created, received, maintained or disseminated by the vendor in the performance of such services, regardless of physical form or method of storage, excluding any vendor-owned or third-party-licensed intellectual property (trade secrets or copyrighted or patented materials) expressly identified as such in the contract; (b) the vendor shall not, unless expressly authorized in the contract, disclose to any third party court records that are inaccessible to the public under these rules; (c) unless assigned in the contract to the vendor in whole or in part, the court shall remain the custodian of all court records for the purpose of providing public access to publicly accessible court records in accordance with these rules, and the vendor shall provide the court with access to such records for the purpose of complying with the public access requirements of these rules.

Advisory Committee Comment-2005

The 2005 addition of Rule 10 is necessary to ensure the proper protection and use of court records when independent contractors are used to perform information technology related services for the courts. Where the service involves coding, designing, or developing software or managing a software development project for a court or court administrator, the court or court administrator would typically retain all record custodian responsibilities under these rules and the contract would, among other things: (a) require the vendor to immediately notify the court or court administrator if the vendor receives a request for release of, or access to, court records; (b) prohibit the disclosure of court records that are