ADMINISTRATIVE DIRECTIVE NO. 167

This 23rd day of April 2008,

IT APPEARS THAT:

(1) Administrative Directive No. 162 (revised), dated June 27, 2007, provides that all courts will adopt formal public access policies or procedures covering the release of court administrative records, and offers a template for the courts to consider when establishing their policies related to the release of administrative records.

(2) The template offers a format for each court to use as it balances the fundamental goal of openness of court administrative records with the limited circumstances occurring in an individual court necessitating the restriction of that access.

(3) Consistent with Administrative Directive No. 162 (revised), it is appropriate for the Supreme Court to clarify its approach with regard to public access to the administrative records of the Supreme Court.

NOW THEREFORE, IT IS DIRECTED, with the unanimous approval of the members of the Supreme Court, pursuant to Del. Const. Art. IV, § 13(1), that:

The attached "Policy on Public Access to Supreme Court Administrative Records" shall become effective immediately.

BY THE COURT:

Chief Justice

c: The Honorable Ruth Ann Minner
The Honorable Randy J. Holland
The Honorable Carolyn Berger
The Honorable Jack B. Jacobs
The Honorable Henry duPont Ridgely
Members of the Judicial Conference
The Honorable Joseph R. Biden, III
The Honorable Lawrence Sullivan
State Court Administrator
Court Administrators
Clerk of the Supreme Court
Counsel to the Governor
Chair Senate Judiciary Committee
Chair House Judiciary Committee

POLICY ON PUBLIC ACCESS TO SUPREME COURT ADMINISTRATIVE RECORDS

I. SCOPE. This policy applies to public access to administrative court records of the Delaware Supreme Court only, whether such records are maintained by the Delaware Supreme Court or by the Administrative Office of the Courts. It does not apply to records of any agency or Arm of Court that falls under the supervision of the Administrative Office of the Courts, the Supreme Court, or the Judicial Branch generally.

II. DEFINITIONS

A. *Administrative Court Record.* "Administrative court record" means any document, information, data, or other item created, collected, received and maintained by the Supreme Court in the offices of the Clerk of Court and of the Court Administrator pertaining to the administration of the judicial branch and not associated with any case record. These records do not include records maintained in the files of individual Justices, whether maintained in paper, computer or other format.

B. *Case Record.* "Case record" means any document, information, data, or other item created, collected, received and maintained by the Supreme Court in connection with a particular case, as well as compiled information that is derived from the selection, aggregation or reformulation of information from multiple cases.

C. *Administrator.* Administrator means the Delaware Supreme Court Administrator or his or her designee.

III. GENERAL ACCESS TO ADMINISTRATIVE RECORDS

Administrative court records are open to the public except the following:

A. *Personnel, applicant, unpaid volunteer, and independent contractor records.*

1. Personnel records and records of employment investigations and hearings are not subject to disclosure except for:
   a). Name of individual
   b). Dates of employment
   c). Name of office to which the individual has been appointed
   d). Position classification, pay grade, and gross salary
   e). Basis for and amount of any added remuneration; and
   f). Travel expenses as provided for in Appendix A of this policy.
   g). Other expense reimbursements

2. Records on individuals collected because the individual is or was an applicant for employment.
3. Information about unpaid volunteers other than the names of such volunteers.
4. Information about independent contractors other than name, type of work performed and amount paid.

B. *Court interpreter information.* Records relating to individual court interpreters other than the name of interpreter, type of work performed, and the amount billed.

C. *Attorney billing records.* Billing records of any court appointed attorney before the case is final unless otherwise ordered by a judge.

D. *Testing records.* Test questions, scoring keys, other examination data, including testing results (unless the person tested has consented to the release) used in administering an examination given for employment or for inclusion on any roster.

E. *Proprietary and licensed materials.* Any materials, including, but not limited to, computer programs and related records and proposals from and contracts with independent contractors, shall be disclosed only in accordance with the terms and conditions of the agreements or licenses.

F. *Competitive bidding records.* Sealed bids, including the number of bids received prior to the opening of the bids at the time specified in the judiciary's bid request.

G. *Trade secrets.* Trade secrets and commercial or financial information obtained from a person that is of a privileged or confidential nature.

H. *Judicial case assignments.* The name of the Justice to whom any matter is to be assigned is not subject to disclosure until after the submission date.

I. *Informal/preliminary correspondence, internal deliberations, notes, memoranda, drafts or work product.* The following administrative court records are not subject to disclosure:

1. Any correspondence transmitted by whatever means, including electronic, that is not a formal declaration of policy or procedures, or is not a formal record of a transaction or a receipt.

2. Internal deliberations on, or records relating to cases before a court on, judicial administration matters. Any record relating to internal deliberations.
3. Notes, outlines, and similar preliminary materials.
4. Preliminary and draft reports, documents, records, evaluations, investigations, audits, or compliance reviews, including materials prepared by a consultant.
5. The work product of any attorney, law clerk or law intern employed by or representing the judiciary which is created in the regular course of business or representation of the judiciary.

J. *Records relating to litigation.* Administrative court records pertaining to pending or potential litigation which are not filed with a court as part of a case shall not be disclosed.

K. *Security records.* Administrative court records that would be likely to substantially jeopardize or diminish the security of information, possessions, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal disclosure, trespass or physical injury such as security plans or codes or individual records of telephone or cell phone calls.

L. *Law library information.* Any record in a law library that links a patron's name with the materials requested or borrowed.

M. *Calendar information.* Any administrative court record that reflects an individual's appointments or engagements, other than case assignments, that are in the future or that constitute a clearly unwarranted invasion of privacy.

N. *Juror Records.* Personal information regarding jurors, such as name, juror address, and phone number are not subject to disclosures unless authorized by a judge.

O. *Records otherwise made inaccessible.*

1. Administrative court records that are made inaccessible to the public pursuant to state or federal statutes, common law, or rule or directive promulgated by the Delaware Supreme Court.
2. Information presenting a risk to personal privacy, or the fair, impartial and orderly administration of justice as determined by the Chief Justice.

IV. PROCEDURES FOR REQUESTING ACCESS

A. *In General.*

1. *To whom the request is made.* A request to inspect or obtain copies of administrative court records that are open to the public shall be made in writing addressed as follows:

Stephen D. Taylor, Court Administrator of the Supreme Court
Elbert N. Carvel State Office Building
820 North French Street
Wilmington, DE 19899
Phone: 302-577-8742
FAX: 302-577-3702

All requests must include sufficient detail to reasonably identify what information is being sought and to allow the information to be accessed. A form for records requests is attached to this policy.

2. *Response.* The administrator shall respond to a request for examination of public records orally or in writing within 10 working days.

a. If the administrator determines the records can be made available for inspection or can be copied without unreasonable disruption to the operations of the Court, the administrator shall notify the requestor within 10 working days and shall provide an estimate of the administrative and/or computer costs if they will exceed $100. If the administrator determines that there will be a delay of more than 10 working days from the date of receipt of the request before the administrator can determine whether access to the records is permissible, the administrator shall notify the requestor of the reasons for the delay and when a determination will be made. If the administrator determines that access to the records is permissible, once the requestor has agreed to any cost estimate and provided any required deposit for costs, the records shall be available for inspection or copying or the information otherwise produced as soon as practicable.

b. If access to the records is not permitted, the response shall indicate the basis for the denial of the inspection request and the statute, rule, or policy that is the basis of the denial.

c. If the records do not exist, the response shall so indicate.

d. If the request does not provide sufficient information to locate the records, the request shall be returned, and the requestor notified.

e. If the administrator determines that compliance with the request would create an undue burden on operations, or if the number of records requested is so great that inspection or reproduction would create an unreasonable disruption to the work of the court, the administrator may require that the request be limited, or the administrator may limit the request.

f. If the person making the request does not inspect or obtain the copies of the records during the time period permitted by the administrator, the request shall be deemed withdrawn, but may be renewed by re-submitting the request.

B. *Inspection and photocopying*

1. *Access to original records.* Upon request, a person shall be allowed to inspect or to obtain copies of original versions of records that are open to the public in the location where such records are kept during regular working hours. If access to the original records would result in disclosure of information which is not permitted, jeopardizes the security of the records, or is otherwise impractical, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection. Unless expressly authorized by the administrator or judicial order, records shall not be removed from the location where they are normally kept.

2. *Costs.* The person requesting the information shall bear the cost of complying with the request as determined by the administrator. Reasonable fees may be imposed for providing public access to administrative records pursuant to this policy. The administrator may charge a copying charge of $.25 per page and an administrative charge equal to the cost of the staff time in fulfilling the request based upon the salary and benefits of the lowest paid person capable of fulfilling the request. If electronic retrieval of documents is required, the administrator may, in addition to staff time, assess a charge for computer time based upon the reasonable direct costs of computer processing time. If the administrator believes that the costs may exceed $100, the administrator shall prepare an estimate of the costs and notify the requestor to determine whether the requestor wishes to proceed. The final

fees charged may not exceed the estimated cost by more than 30%. If the requestor wishes to proceed, the administrator may require a deposit of one-half of the estimated costs. If the requestor has an unpaid balance from a previous request, the administrator may require payment of the unpaid balance before fulfilling the new request. The administrator may reduce or waive the charge if doing so is in the public interest, i.e., when providing the copy of the record would primarily benefit the general public or the cost of processing collection of the charge will exceed the amount of the charge.

C. ***Appeal of denial of access to records.***

Appeals from decisions denying access to information shall be made to the Delaware Supreme Court within 10 business days from the date of that decision.

APPENDIX A

SUPREME COURT
TRAVEL EXPENSES

In the interest of extending the openness of the Delaware courts whenever possible, without unduly impacting the administrative operations of the Courts, information available from administrative court records of the Supreme Court and Administrative Office of the Courts related to expenses for travel of the Chief Justice and the Justices or court staff will be provided, pursuant to any requests under this policy, by the State Court Administrator, in the following format:

- Name of the traveler
- Purpose or description of a trip, which includes all work-related out-of-state travel and work-related non-routine in-state travel (i.e., in-state continuing legal education programs) funded by state or federal funding, or third parties. Third parties may include, for example, the American Bar Association, the National Center for State Courts, the State Justice Institute (judicial scholarships) and various law schools and foundations.
- Date(s) of the trip, including either specific dates or general dates (i.e., fall) if a trip occurs on a regular basis such that disclosure could create a security risk.
- City and state of the trip destination, unless disclosing the location of a trip, occurring on a regular basis could create a security risk.
- It will be noted whether each trip has been funded through the court's state or federal grant funding, or through a third party.
- If funded by state or federal funds, total costs for each trip, with the total travel costs, including transportation, lodging, meals and trip incidentals, and registration costs noted separately except that costs for attending Judicial Conference educational activities need not be broken out separately for each judge, unless reimbursements are obtained separately from their individual court. The total cost for Judicial Conference events covering lodging, meals and program costs will be given instead of the individual breakdowns by judge.
- If funded by a third party, the following information will be provided from available court and Administrative Office of the Courts records: 1) the name of the third party which funded the trip, and 2) whether the trip included the traveler's participation in an event, such as making a speech, presenting a paper, participating in a panel discussion, etc., which served to promote the interest of the State of Delaware and the Delaware Judiciary. If State funds are initially expended and then reimbursed by the third party, information about the reimbursement to the State will be provided.

THE SUPREME COURT
APPLICATION FOR ACCESS TO
ADMINISTRATIVE RECORDS

NOTICE TO APPLICANT:

This application will be processed and evaluated in accordance with the policy of the Supreme Court related to public access to administrative court records. The applicant agrees to indemnify and hold harmless the Court and/or the Administrative Office of the Courts and its officers and employees from any claim for damages that may arise from the applicant's use or distribution of the information provided pursuant to this application

The applicant shall be responsible for the costs incurred in responding to this request. An estimate of costs will be provided if the administrative or computer costs will exceed $100. A deposit for costs may be required.

APPLICANT DATA: (Please print)

Name: _____

Daytime telephone: _____

Address:_____

City:_____ **State:**_____ **Zip**_____

E-mail address: _____

REQUEST (Describe the records requested in as much detail as possible and attach additional pages as required)**:**

Applicant Signature: _____ **Date:** _____

REQUESTS SHOULD BE SUBMITTED TO:

Stephen D. Taylor, Court Administrator
Elbert N. Carvel State Office Building
820 North French Street
P.O.Box 1997
Wilmington, DE 19899
Phone: 302-577-8742; FAX: 302-577-3702