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The Family Court of the State of Delaware

900 KING STREET
P.O. BOX 2359
WILMINGTON, DE 19899

VINCENT J. POPPITI
CHIEF JUDGE

ADMINISTRATIVE DIRECTIVE 98.02

This 2nd day of February, 1998,

IT APPEARING THAT:

(1) The General Assembly has passed House Joint Resolution 4 for the two-fold purpose of enhancing the integrity of the Family Court process by opening court proceedings and records, to the extent permitted by law, and to study the effects of opening Family Court proceedings and records to determine whether existing laws regarding the privacy of Family Court proceedings and records should be modified; and

(2) The General Assembly has resolved that all Family Court proceedings and records may be open to the public, except as otherwise provided by statute, unless the Court determines in a particular case that privacy is in the interest of the public, the parties or the Court; and

(3) The General Assembly has further resolved that in matters subject to the provisions of 13 *Del. C.* §§ 724, 725, 726, 815, 924, 1107, 1112 and 1516, regarding privacy of such proceedings or records, the Family Court shall affirmatively determine in each case falling under those provisions, whether the proceeding or records should be open, in accordance with the standard set forth in the applicable statute; and

(4) The General Assembly has further resolved that the Family Court study the effects of opening court proceedings on security, timeliness of hearings, records management, quality of litigation and the privacy concerns of litigants and their families; that the Court collect data on security incidents, the number of hearings closed and the reasons for closure and any other pertinent information; and that the Court submit a report describing the information collected and containing recommendations as to how to best implement the General Assembly's intent that more Family Court proceedings be open to the public; and

(5) The General Assembly has directed that the provisions of House Joint Resolution 4 shall only apply to matters filed in the Family Court after the effective date of the resolution, July 16, 1997; and

(6) It is necessary to implement House Joint Resolution 4 and to inform the Court's staff of the provisions of the resolution, in an efficient manner;

NOW, THEREFORE, IT IS DIRECTED THAT:

1. Those Family Court matters which are *not* subject to the provisions of 13 *Del. C.* §§ 724, 725, 726, 815, 924, 1107, 1112 and 1516, and which do not pertain to children alleged to be dependent, neglected or abused, shall be designated as **Category I** cases.

Category I cases include the following matters:

a. Adult criminal
b. Juvenile delinquency, including drug court, but not including arbitrated matters
c. Child and spousal support, except for mediation conferences
d. Protection from Abuse

2. Those Family Court matters involving allegations of child dependency, neglect or abuse and the review of foster care placements of children who have been found to be dependent, neglected or abused shall be designated as **Category II** cases.

Category II cases include the following matters:

a. Custody matters in which allegations of dependency, neglect and abuse exist, whether in connection with an *ex parte*, probable cause or adjudicatory hearing
b. Foster care review matters

Due to the sensitive nature of **Category II** proceedings, the judges of the Family Court have determined that this category should be subject to the presumption of privacy embodied in 10 *Del. C.* § 1063(a).

3. Those matters subject to the provisions of 13 *Del. C.* §§ 724, 725, 726, 815, and 1516 regarding privacy shall be designated as **Category III** cases.

Category III cases include the following matters:

a. Custody and visitation
b. Paternity
c. Divorce, property division and alimony

4. Those matters subject to the provisions of 13 *Del. C.* §§ 924, 1107 and 1112 shall be designated as **Category IV** cases. **Category IV** matters are broken out as a separate category from Category III due to the sensitive nature of these proceedings and the need to handle requests to open such proceedings with care and strict adherence to the requirements of the respective statutes.

Category IV cases include the following matters:

a. Adoption
b. Termination of parental rights

Category I Matters

5. In those matters which fall within **Category I**, all hearings and records pertaining to issues or incidents which were filed with the Family Court after July 16, 1997 are open to the public, unless the judicial officer to whom the matter is assigned determines in a particular case that the hearing, or the records, or both, should be closed.

6. In making a determination that the hearing or the records in a particular matter that falls under **Category I** should be closed, the judicial officer must determine that privacy is in the interest of the public, the parties or the Court. In making that determination, the judicial officer may consider the following factors:

a. the person is causing or is likely to cause a disruption in the proceedings;

b. the presence of the person is objected to by one of the parties for a compelling reason;

c. the orderly and sound administration of justice, including the nature of the proceeding, the privacy interests of individuals before the court, and the need for protection of the litigants, in particular, children, from harm requires that some or all observers be excluded from the courtroom;

d. less restrictive alternatives to exclusion are unavailable or inappropriate to the circumstances of the particular case;

e. any other factor which warrants closure in a particular matter.

7. Whenever a judicial officer determines that a hearing or the records, or both, in a **Category I** matter should be private, the judicial officer shall make written findings as to the reasons why privacy must be accorded, so that staff may collect data on the closure and the reasons therefor and so that staff may be informed that the records, if the closure is applicable to the records, may not be disclosed to the public.

Category II and III Matters

8. In those matters which fall within **Category II** or **Category III**, the determination that such a matter should be open shall be affirmatively determined by the judge or other judicial officer assigned to hear the matter, upon motion of a party or upon *sua sponte* motion of the Court. A motion to open the proceeding, the records or both shall be filed within 5 days of the filing of an answer to the petition or, if no answer is required, within 5 days of service of the petition. Petitioners shall file the motion at the time of filing the petition. All motions to open shall be in the form prescribed by the Court, shall be double-spaced and shall be no more than two pages. The motion shall be accompanied by a notice of motion. The moving party shall attach a form of order as prescribed by the Court for such motions.

The other party shall have the period of time provided for in the Court's Rules to file a written response, which shall be double-spaced and shall be no more than two pages. After a response has been filed or the time for filing a response has passed, the judge or other judicial officer shall decide the motion on the papers submitted and record his or her decision on the form of order submitted by the moving party.

The prescribed forms for the motion to open and the order of the Court referred to herein are attached and will be distributed to members of the Bar and to *pro se* litigants. These forms were developed for the purpose of aiding the Court with the collection and study of data gathered in accordance with the provisions of House Joint Resolution 4.

9. A motion to open a **Category II** or **Category III** matter shall be determined in accordance with the standard set forth in the relevant statute. In applying the relevant statutory standard in a **Category II** or **Category III** case, the judge or judicial officer should bear in mind the stated reasons of the General Assembly in approving House Joint Resolution 4, i.e. enhancement of the integrity of the Family Court process and the need to study the effects of opening Court proceedings and records to determine whether existing laws regarding such proceedings and records should be modified. The following queries contain pertinent factors worthy of consideration by the judge or judicial officer in determining whether the hearing and/or records should be open or remain closed.

a. Will an open proceeding and open records clarify the perceptions of the parties and the general public with regard to the Family Court and criticisms of the Court, and thereby enhance the integrity of the Court?

b. Will openness in this particular case assist the General Assembly in studying the effects of open proceedings and records in order to determine whether existing laws should be modified?

c. Are there other considerations in connection with a particular case which override those considerations which weigh in favor of openness, e.g. the glare of publicity already attendant to the case; the age or sensibility of a party; or the sensitive nature of the proceeding as a whole, or of a particular portion of the proceeding?

10. When a judge or judicial officer affirmatively determines that a **Category II** or **Category III** case should be open or should remain closed, the judge or judicial officer shall record his or her reasons for opening or closing the hearing and/or records on the prescribed form of order so that staff may collect data on opening or closure and the reasons therefor and so that staff may be informed that the records, if the records remain closed, are not open to the public.

Category IV Matters

11. In those matters which fall within **Category IV**, the determination that such a matter should be open shall be affirmatively determined by the judge assigned to hear the matter, unless that judge is no longer available; in which case, any judge may determine whether a matter in this category may be open. A request to open a **Category IV** matter shall be determined in accordance with the standard set forth in the appropriate statute. All requests to open shall be by motion of a party or upon *sua sponte* motion of the Court.

A motion to open the proceeding, the records or both shall be filed within 5 days of the filing of an answer to the petition or, if no answer is required, within 5 days of service of the petition. All motions to open **Category IV** matters shall be in the form prescribed by the Court, shall be double-spaced and shall be no more than two pages. The motion shall be accompanied by a notice of motion. The moving party shall attach a form of order as prescribed by the Court for such motions. The other party shall have the period of time provided for in the Court's Rules to file a written response, which shall be double-spaced and shall be no more than two pages. After a response has been filed or the time for filing a response has passed, the judge shall decide the motion on the papers submitted and record his or her decision on the form of order submitted by the moving party.

A motion to open a **Category IV** matter shall be determined in accordance with the standard set forth in the relevant statute. In applying the relevant statutory standard in a **Category IV** case, the judge should bear in mind the stated reasons of the General Assembly in approving House Joint Resolution 4, i.e. enhancement of the integrity of the Family Court process and the need to study the effects of opening Court proceedings and records to determine whether existing laws regarding such proceedings and records should be modified. The following queries contain pertinent factors worthy of consideration by the judge in determining whether the hearing and/or records should be open or remain closed.

a. Will an open proceeding and open records clarify the perceptions of the parties and the general public with regard to the Family Court and criticisms of the Court, and thereby enhance the integrity of the Court?

b. Will openness in this particular case assist the General Assembly in studying the effects of open proceedings and records in order to determine whether existing laws should be modified?

c. Are there other considerations in connection with a particular case which override those considerations which weigh in favor of openness, e.g. the glare of publicity already attendant to the case; the age or sensibility of a party; or the sensitive nature of the proceeding as a whole, or of a particular portion of the proceeding?

12. When a judge affirmatively determines that a **Category IV** case should be open or should remain closed, the judge shall record his or her reasons for opening or closing the hearing and/or records on the prescribed form of order so that staff may collect data on opening or closure and the reasons therefor and so that staff may be informed that the records, if the records remain closed, are not open to the public.

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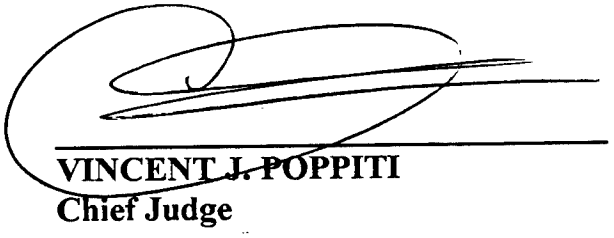
13. The attached data collection form shall be utilized in all cases where a judicial officer has determined that a matter shall not be open to the public, whether herein designated as a **Category I, II, III or IV** matter. Completion of the form shall be the responsibility of the judicial officer who has made a determination regarding the closure or openness of Family Court proceedings and records so that the Court may fulfill its responsibilities under House Joint Resolution 4.

14. This directive regarding openness of Family Court proceedings should not be taken to restrict the discretion of any judicial officer to close or limit access to a proceeding when the interests of security or decorum demand closure or limitation.



VINCENT J. POPPITI
Chief Judge

CASE BY NAME _____
CASE NUMBER _____

REQUEST of MEDIA OR MEMBER OF PUBLIC
for
ACCESS TO HEARING OR RECORDS

I, _____, am a member of the ( ) media
(Name of Person Requesting)

or ( ) public. I am requesting access to a hearing scheduled to be held on

_____ at _____ before _____.
(Date) (Time) (Judicial Officer)

I agree to abide by any conditions imposed by the judicial officer hearing the matter for purposes of protecting the identity or privacy of the parties, their children or any witness.

(Check if applicable:)

____ I am also requesting access to the records of the above-referenced matter, as permissible within the scope of House Joint Resolution 4.

_____ _____
Signature Date

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APPROVAL OF ACCESS

Pursuant to House Joint Resolution 4, _____

is granted access to the hearing on _____ at _____,
Date Time
since his or her presence is determined to be in accord with the public interest.

Access to records within the scope of House Joint Resolution 4 is
_____.

_____ _____
Judicial Officer Date

cc: Kevin Agne

cc: Court Administrator