ADMINISTRATIVE DIRECTIVE
OF THE
CHIEF JUDGE OF THE COURT OF COMMON PLEAS
OF THE STATE OF DELAWARE

NO. 2007-2

POLICY ON PUBLIC ACCESS TO
THE COURT OF COMMON PLEAS JUDICIAL RECORDS

This 12th day of March, 2007,

This policy supersedes Administrative Directive 2000-1. The purpose of this policy is to facilitate public access to records of the Court of Common Pleas consistent with any court order, decision, rule, applicable state or federal law which require that certain records are confidential and shall not be disclosed to the public. This policy applies to all requests to access court records submitted by an individual, association, organization or agency, whether public or private.

I. ACCESS TO COURT RECORDS:

Generally, all case records and information are open to the public except as follows:

A. **Records controlled by statute or common law**. Case records that are made inaccessible to the public pursuant to state statutes or common law may not be disclosed, unless disclosure is authorized by the Chief Judge or the Judge hearing the case.

B. **Sealed records**. Records which are sealed or closed to the public by court order or decision shall not be disclosed, unless disclosure is authorized by a Judge.

C. **Judicial work product**. Notes, memoranda or drafts prepared by a judicial officer or by a court employed attorney, law clerk, legal assistant, secretary or other court personnel and used in the process of preparing a final decision or order shall not be disclosed.

D. **Presentence investigation reports**.

E. **Unexecuted or unreturned warrants**. Unreturned search warrants, arrest warrants or summonses in a criminal case and affidavits or sworn testimony and records of proceedings in support of the issuance of search or arrest warrants, except related to grand jury indictments, shall not be disclosed until such time as the warrants are returned.

F. **Criminal history records**. Criminal history records containing cumulative case-related information on individuals related to criminal proceedings in more than one court (i.e., criminal history records obtained through DELJIS) shall not be disclosed. Case-related records providing information on a person related to proceedings occurring at Court of Common Pleas may be disclosed.

G. **Drivers license records.** Driver's license records maintained by the Division of Motor Vehicles shall not be disclosed.

H. **Witness or Victim Information**. The identity of witnesses, including the names and identification numbers of police, probation, and parole officers, or the residential address, telephone number or place of employment of a victim or witness, except to the extent that disclosure is of the site of the crime or is required by law or the Rules of Criminal Procedure pursuant to 11 *Del.C.* § 9403.

I. **AIDS/HIV status**. The AIDS/HIV status of crime victims, or other litigants and witnesses is confidential and shall not be disclosed, pursuant to 11 Del. C. § 3913.

J. **Jury panels**. Personal information regarding jurors, such as juror address, phone number and social security number, shall be exempt from disclosure, unless disclosure is authorized by the Chief Judge or the Judge hearing the case.

K. **Expunged records**. Expunged judicial records are exempt from disclosure.

L. **Court reporters' notes**. Court Reporters' manual or electronic notes, audio and videotape recordings of court proceedings which do not represent the official record shall not be disclosed.

M. **Medical and psychological records**, including, but not limited to, records of court-ordered examinations and drug and alcohol treatment records, should not be released. *See, e.g.,* D.R.E. 503(b), (d)(2), 42 USCA § 290dd-2.

II. ACCESS TO ADMINISTRATIVE RECORDS

Generally, all administrative records are open to the public except as follows:

A. **Personnel records, applications for employment and records of employment investigations and hearings**. Information contained within personnel records, applications for employment and records of employment investigations and hearings shall not be disclosed, except for (1) name of individual, (2) dates of employment, (3) name, location and phone number of court and/or office to which the

individual has been appointed, and (4) position classification, pay grade, pay range, and gross salary.

B. **Proprietary and licensed materials.** Computer programs and related records, which are subject to proprietary rights or licensing agreements (including technical users manuals) shall only be disclosed in accordance with the terms and conditions of the agreements or licenses.

C. **Judicial case assignments.** The name of the Judge to whom any matter is to be assigned shall not be disclosed until after the assignment is made.

D. **Security records.** 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 are exempt from disclosure.

E. **Trade secrets.** Trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature shall not be disclosed.

F. **Attorney work product.** The work product of any attorney or law clerk employed or representing the judiciary which is produced in the regular course of business or representation of the judiciary is exempt from disclosure.

G. **Preliminary and draft reports.** Preliminary or draft reports, documents, records, evaluations, investigations, audits, or compliance reviews are confidential unless disclosed by the court.

H. **Records controlled by statute or common law.** Case records that are made inaccessible to the public pursuant to state statutes or common law may not be disclosed.

III. GENERAL PROCEDURE FOR REQUESTING ACCESS

A. **To whom the request is made.** A request to inspect or obtain copies of records that are open to the public shall be made to the custodian of records in writing or orally, as prescribed by the court. All requests for administrative records shall be referred to the Court Administrator. All requests must include sufficient information to reasonably identify what is being sought and to allow the information to be accessed.

B. **Response.** The custodian of the records shall respond to a request for examination of public records orally or in writing as promptly as practicable. In determining whether to grant the request and for the purposes of estimating the time period necessary for providing information, the custodian will consider whether information is normally generated as requested; the difficulty of making the information available that is not normally generally as requested; the extent to which information must be compiled to satisfy the request; the amount of equipment, materials, staff time and other resources required to satisfy the request; and whether preparation or release of information would disrupt or adversely impact internal operations or functions of the Court.

C. **Explanation for delay or denial.** If a request cannot be granted promptly, or at all, the custodian shall inform the person requesting the information orally or in writing of the nature of any problem delaying or preventing access and the specific statute, federal law, or court or administrative policy or rule that is the basis of the denial.

D. **Referral of certain cases.** If the custodian is uncertain as to the status of the record, the custodian may ask for a determination on the request from the court official designated by the presiding judge of the court to handle these referrals.

E. **Appeal from denial of access.** If the custodian denies a request to inspect records, the denial may be appealed in writing to the Chief Judge.

IV. INSPECTION AND PHOTOCOPYING

A. **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 judicial order, records shall not be removed from the location where they are normally kept.

B. **Access to certain evidence.** Documents and physical objects admitted into evidence shall be available for public inspection under such conditions as the reasonable custodian deems appropriate to protect the security of the evidence.

C. **Cost.** The person requesting the information shall bear the cost of complying with the request for information as determined by the Rules of the Court of Common Pleas.

/s/Alex J. Smalls
Chief Judge