PUBLIC ACCESS GUIDE

TO

COURT PROCEEDINGS AND RECORDS

USE OF ELECTRONIC DEVICES

AND

CAMERAS IN THE COURTS

3/18/2016

Disclaimer

The following Public Access Guide to Court Proceedings and records and Use of Electronic Devices and Cameras in the Courts is a compilation of information developed by a committee appointed by Seventh Judicial District Administrative Judge Craig J. Doran. Some of the information is excerpted from official Unified Court System information available on the internet, found in statute, court rules and in various CLE and other training presentations. Additionally, some original work was created to synthesize ideas and to organize materials from numerous sources into a concise document.

The user of these materials should note that although they are current as of the date of publication, actions by the legislature and Unified Court System could add new provisions, amend or repeal policy and practice referenced herein. Users should check sources to be certain the latest interpretation and guidance are being referenced.

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At the direction of 7th Judicial District Administrative Judge Craig J. Doran, the following information was compiled through the efforts of Committee Co-Chairs: Michael J. DeVito and Josephine Guard. Committee Members: Eugene Crimi, Charles Perreaud, Michael Morrisey, Elizabeth Young, James Culbertson, Mary Strickland, Loreen Nash, Robert Lewis, Hillary Merkel-McMillan, Peggy Lynn Plank, Cynthia Constantino, Diana Christodaro.

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SECTION I

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INTRODUCTION

The public has a common law right to review and copy many of the documents filed in New York Courts. (See, for example, Matter of Newsday v Sise, 71 N.Y. 2d 146 (1987). However, the public's right to inspect or reproduce certain documents may be restricted by statute. In New York, the legislature has enacted several such statutes that limit certain court records from public view. In the absence of a statute that specifically limits public access, court records are presumptively open to the public. (Nicholson v State Commission on Judicial Conduct, 50 N.Y. 2d 597 (1980).

This guide is intended to provide quick reference to applicable rules, regulations, and statutes regarding common requests from the public and/or the media seeking access to court records and information.

In pages that follow, you will find charts that address the most common situations that arise regarding release of court documents, and the appropriate manner in which to handle these requests. There are separate charts for criminal proceedings, civil proceedings, family court matters, and surrogate's court filings. Please refer to and follow the guidance provided in this booklet whenever you are faced with a request to inspect or copy court documents. The Appendix to this manual contains legal discussion and authority for the direction contained in the charts.

Note that even in the absence of a specific statute or court rule restricting the public's access to certain court documents, a Judge has the inherent power to "seal" court records. The exercise of this authority is governed by Part 216 of the Uniform Rules for Trial Courts (22 NYCRR), and provides that a Judge in a civil case , in his or her discretion, may seal a court record or document that is filed with the clerk, upon a "written finding of good cause" that considers, "the interests of the public as well as of the parties." If a court record is sealed by court order, in whole or in part, it may only be subject to public inspection upon a successful motion to vacate the Judge's sealing order.

Logistically, notwithstanding the presumptive right to access court documents, there is ***no right to immediate access to records***. (Stevenson v News Syndicate, Co., 276 A.D. 614 (2d Dept.1950). Instead, it is appropriate to subject requests to restrictions as to the time and method of inspection, as long as such restrictions are reasonable. (Werfel v Fitzgerald, 23 A.D. 2d 306 (2d Dept. 1965). For example, a Judge may not deny complete access to papers or documents he or she is working on, and in such a case, it may be reasonable for the clerk to make a copy of the documents requested by the public for inspection. In addition, while some documents may be copied in limited circumstances, most are only available for ***inspection*** by those requesting access.

Please be aware of the fact that some files, especially in criminal matters, may contain both public and confidential or sealed documents. It is generally the obligation of the trial court clerk to identify those documents that are made confidential by law (such as adoption or certain matrimonial records) or by sealing order of the court. These documents must be separated out by the records clerk when a request is made for access.

While it is important to recognize the public's right of access to court records and documents, it is also critical to limit access to confidential materials that may be a part of the court records. By following the guidelines contained herein, you will be able to determine which documents may be inspected, and which must remain confidential.

If, after review of these guidelines, you have a question as to whether public access to any court record or document is permitted, please refer your inquiry to the 7Th Judicial District's Information Officers as designated in this manual.

INFORMATION OFFICERS
and
LEGAL ADVISORS

SPECIFIC REQUESTS UPON WHICH COURT PERSONNEL HAVE QUESTIONS SHOULD BE REFERRED TO THE 7TH JUDICIAL DISTRICT INFORMATION OFFICERS DESIGNATED FOR EACH COUNTY AS FOLLOWS:

Cayuga County - Kelly Wejko
Livingston County - Jose Cruzado
Monroe Supreme/County - Lisa Preston
Monroe Family - Galo Proano, Christine Redfield
Rochester City - Eugene Crimi
Ontario County - Nicole Botti
Seneca County - Elizabeth Young
Steuben County - Mark Schlechter
Wayne County - Julie Brooks
Yates County - Margaret DiMartino

Town and Village Courts - Town and Village Resource Center (1-800-232-0630)

7th Judicial District Legal Advisors

Hillary Merkel-McMillan, Esq. - Monroe County

Kristin F. Splain, Esq. - Counties outside Monroe

Maryclaire Frank, Esq. - Town and Village Courts

INFORMATION GUIDELINES

CAN	CANNOT
1. Explain court rules and procedures	1. Suggest which of several available procedures a litigant should follow
2. Explain options available to litigants	2. Provide opinions as to which option to choose
3. Provide information about past rulings in a case	3. Predict what the court will do
4. Provide cites (or copies) of statutes, court rules and ordinances	4. Provide an analysis or interpretation of statutes or ordinances based on the specific facts of a litigant 's case
5. Explain public court operations and roles of court personnel	5. Provide information derived from the decision- making process
6. Explain what records are kept by the court and can be made available to the public	6. Provide access to court records that are sealed or made confidential by law
7. Provide public case information	7. Provide confidential case information
8. Explain how and where to file a complaint concerning a judge, court employee or private attorney	8. Provide opinions about the conduct of a judge, court employee or private attorney
9. Provide general referrals to other offices or persons	9. Provide referrals to other offices or persons based upon personal preference
10. Provide forms and instructions, and, in appropriate circumstances, enter the information provided by litigants on the form	10. Provide or suggest the information that should be entered on the forms

CONFIDENTIALITY GUIDELINES FOR CRIMINAL PROCEEDINGS: A CLERK'S GUIDE

Criminal Cases: Confidential Records	*Who may have access to or view records?*	*Authority*
Defendant's criminal history record (i.e., rapsheet, NYSIIS sheet)	• Defendant • Defendant's Attorney • District Attorney	• 42 USC § 3789(g) • 28 CFR Part 20 • NYS UCS & NYS DCJS Use & Dissemination Agreement
NYC Criminal Justice Agency (CJA) or other local Pretrial Services Agency report to Court regarding defendant's eligibility for release	• Defendant • Defendant's attorney • District Attorney	• NYS Pretrial Release Services Standards (VI. Confidentiality)
Alcohol/Drug Treatment records	• Patient • Patient's attorney or other person or entity with respect to whom patient has given written consent to disclosure which complies with 42 CFR Part 2.31 • Person or entity specified in disclosure order that complies with 42 CFR Part 2 (subpart E)	• 42 CFR Part 2
Documents that identify a victim of a sex offense (P.L. § 255.25), or an offense that involves the transmission of HIV, and portions of documents which tend to identify such victim	• Victim • Any person or agency upon victim's written consent to such disclosure • Public officers or employees charged with investigation or prosecution of case or keeping records of case • Defendant • Defendant's attorney • Any person upon court order for good cause shown	• Civil Rights Law § 50-b
Grand Jury Minutes	• District Attorney	• C.P.L. § 190.25(4)(a) • P.L. § 215.70

Conditionally sealed cases following successful completion of a judicially sanctioned drug treatment program	• Person accused • Designated agent" of accused • Qualified agencies under Executive Law § 835(9) for law enforcement purposes • state or local police or agencies responsible for issuing gun licenses in connection with an application • prospective employers of police or peace officers	• C.P.L. § 160.58(6)
Sealed records of criminal cases against juvenile offenders that are removed to family court	• No access except by court order or where a relevant statute expressly permits or requires access	• C.P.L. § 725.15 • Family Court provisions
Youthful Offender (Y.O.) Records	• Youthful offender • Youthful offender's attorney of "designated agent" • Designated Educational official (notice of Y.O. adjudication only) • Parole or probation, in accordance with C.P.L. § 720.35(2) • Statewide OP registry may maintain OP or TOP (or OP warrant) issued in Y.O. cases • Person or entity authorized pursuant to sentencing court's unsealing order	• C.P.L. § 720.35(2)
Pending records of an apparently eligible youthful offender (YO)	• No access to accusatory instrument by general public	• C.P.L. § 720.15(1)
Criminal Court Sex Offender Registry Forms	• Defendant • Defendant's attorney • District Attorney	• Correction Law § 168-b
Past records of convicted and incarcerated sex offenders (for purposes of civil commitment proceedings)	•Commissioner of Mental Health •Attorney General • "Case Review Panel"assigned to review defendant's case * If you receive a request for confidential information under Article 10 of the Mental Hygiene Law, you should ask for guidance from the Chief Clerk's office.	• Mental Hygiene Law Article 10

Probation reports and Pre-sentence memoranda	• Defendant • Defendant's Attorney • District Attorney (to be made available by court for examination and copying by above, not less than one court day prior to sentencing and also in connection with an appeal in the case)	• C.P.L. § 390.50(2)
Juror questionnaires and documents which contain juror's names & addresses, and/or information obtained from juror questionnaires	• County Jury Board only, except as otherwise permitted by the Appellate Division	• Judiciary Law § 509(a) • Matter of Newsday v. Sise, 71 NY2d 146
Mental Health records submitted in connection with criminal court proceedings	• Person authorized to obtain same pursuant to M.H.L. § 33.13(c), including, but not limited to, person with respect to whom patient has given written consent • Defendant's attorney & District Attorney where permitted or required by C.P.L § 330.20 or C.P.L Article 730	• C.P.L. § 330.20 • C.P.L Article 730 • Mental Hygiene Law Articles 9 & 15 • Mental Hygiene Law § 33.13(c)
Orders of Commitment of mentally ill inmates (and all papers in commitment proceedings)	• Parties to the proceeding and, upon court order, persons "properly interested" in the proceedings	• Corrections Law § 402(6)
Sealed records in cases which end favorably to the accused	• Person accused • Attorney or "designated agent" of person accused • Persons or agencies enumerated in C.P.L. § 160.50(1)(d)	• C.P.L. § 160.50(1)(d)

	Apparently Eligible Youth CPL 720.15(1) Pending Prosecution	Youthful Offender Adjudication CPL 720.35 Adjudicated (includes post sentence proceedings)
Criteria	Defendant at least 16 years old and less than 19 years old with case pending charging at least one misdemeanor as the highest charge. Defendant cannot have been convicted of a crime, or have been previously adjudicated as a Y.O.	Defendant whose criminal conviction is replaced with a Youthful Offender adjudication.
Public Inquiry (Phone, In-Person, Mail)	Regardless of the information that a member of the public may provide when making an inquiry (name, docket number, etc.), court staff should be instructed only to disclose the date, time and location of a court proceeding. The accusatory instrument and related information are confidential. There may be requests for case papers (such as general omnibus motions) that may not be covered by this section of law. These requests should be handled following your court's protocol for review.	Court staff should respond with "No Record Found".
Inquiry from Defendant or Defendant's Counsel	If the defendant can provide proper identification, they should have access to the same information as a defendant in any other criminal proceeding.	If the defendant can provide proper identification, they should have access to the same information as a defendant in any other criminal proceeding.
Printed Public Calendars and Rosters	Calendars and rosters should not display the name of the defendant or the charges on a docket/case.	Calendars and rosters should not display the name of the defendant or the charges on a docket/case.
Court Files and Accusatory Instruments	Court files and accusatory instruments should be conspicuously flagged to alert staff as to the confidential status of the case.	Court files and accusatory instruments should be conspicuously flagged to alert staff as to the confidential status of the case.
Order of Protection / Domestic Violence Registry	Charges should not display on the printed Temporary Order of Protection. Orders of Protection should not be suppressed from the Domestic Violence Registry.	Charges should not display on the printed Final Order of Protection. Orders of Protection should not be suppressed from the Domestic Violence Registry.
Other Agencies	Agencies that work in and with the court should not be barred from viewing or having access to the information related to a case pending against eligible youth, unless that information will, in turn, be made available to the public.	All official records and papers, whether on file with the court, a police agency or the Division of Criminal Justice Services, relating to a case involving youth who has been adjudicated as a youthful offender, are confidential and may not be made available to any person or public or private agency, other than: ▸ the designated educational official of the public or private elementary or secondary school in which the youth is enrolled as a student. ▸ such youth or such youth's designated agent (but only where the official records and papers sought are on file with a court and request therefore is made to the court or to a clerk thereof). ▸ an institution to which such youth has been committed. ▸ the division of parole and a probation department of this state that requires such official records and papers for the purpose of carrying out duties specifically authorized by law.

CONFIDENTIALITY GUIDELINES FOR CIVIL PROCEEDINGS: A CLERK'S GUIDE

Civil Cases: Confidential Records	Who may have access to or view records?	Authority
Matrimonial records	• party • party's attorney • court order	DRL § 235(1)
Adoption records	• Court order, finding good cause	DRL § 114
Involuntary Commitment Proceedings	• party • "someone properly interested" by court order	MHL § 9.31(f)
Court proceedings to compel isolation of persons with venereal diseases	• Order of JSC, finding good cause • Order of judge or magistrate in court where proceeding held, finding good cause	Public Health Law § 2301(3)
Proceedings to disclose HIV-related information	• public health officer showing clear and imminent danger to life or health • state, county or local health officer showing clear and imminent danger to public health • applicant establishing lawfully entitled to disclosure under statute, such as compelling need for adjudication of criminal or civil matter	Public Health Law § 2785(3)

Clinical records of patients in OMH facilities	• court order, finding interests of justice significantly outweigh confidentiality • MHLS • attorneys for patients in treatment proceedings • Commission on quality of care for mentally disabled • protection and advocacy contractors with Commission • medical review board of state commission of correction • endangered individual and law enforcement agency where serious and imminent danger • upon consent of patient or someone authorized to act for patient to persons and entities who establish need for information • state board for professional medical conduct or office of professional discipline • upon consent of appropriate Commissioner to listed persons or agencies • correctional facility • division of parole • qualified person under 33.16 • director of community services in exercise of duties • DCJS • FBI's criminal justice information services	MHL § 33.13(c)

RECORD ACCESS GUIDE

Family Courts of the Seventh Judicial District

RECORD	RULE/STATUTE	VIEW	COPY	DISSEMINATE	TO WHO
*Probation Reports	Court Policy	In Court Only	No	No	NA
Mental Health Reports	MHL 33.13(c)	In Court Only	No	No	Court
1034 Investigation	205.5 Rules FCA 1034	Atty/Pro-se (if unrepresented)	No	No	Court
Drug/ETOH -FTC	42 U.S.C-290dd-2(a)	Treatment team	No	No	Court/Team
Drug/ETOH (non-FTC)	42 U.S.C-290dd-2(a)	In Court Only	No	No	Court
Transcripts (once provided)	205.5 Rules	Atty/Litigants	Yes	Yes	Atty/Litigants
CASA Reports	205.5 Rules	Atty/Litigants	No	No	Atty/Litigants
** DCJS Reports	DCJS Reg				
**SORA Reports	DCJS Reg	In Court Only	No	No	Court
***Exhibits	OCA Rule	Atty/Litigants	Yes	Yes	Atty/Litigants
Registry Check	DCJS UAD	In Court Only	No	No	Court
Judge's notes	Court Policy	No	No	No	Judge only
Tax Returns	205.5 Rules	Any litigants	Yes	Yes	Atty/Litigants
**DCJS E-Justice (Adoption)	DCJS Reg	Court	No	No	Court
GMT Results	205.5 Rules	Atty/Litigants	Yes	Yes	Atty/Litigants
***Subpoenaed records	OCA Rules	Atty/Pro-se (if self-represented)	No	No	NA
Adoption	DRL 114	Court-sealed	Sealed	Sealed	NA
Surrender	205.5 Rules	Yes	Yes	Yes	

* Copies are provided by the Probation Dept for the Court, Law Guardian and Juvenile Prosecutor. Probation Orders shall be returned to Probation with copies retained only at Judge's request.

** All DCJS E-justice Reports may be viewed by the Court. At no time shall copies be made or disseminated. Upon disposition of the case these reports must be shredded and a notation made of the destruction of the record in the Court's file.

*** Return to Party who introduced it immediately after disposition unless otherwise directed by the Court. If not claimed, retain for 90 days, then destroy, provided notice has been given.

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RECORD ACCESS GUIDE
Surrogate's Courts of the Seventh Judicial District

RECORD	RULE/STATUTE	VIEW	COPY	DISSEMINATE	TO WHO
Adoptions	DRL 114	Court-sealed	Sealed *	Sealed	Court
Birth Certificates	DRL	No	No	No	
Correspondence	Court Policy	Yes	No	No	
Death Certificate	PHL Article 6	No	No	No	
Divorce Decree Transcript of Decree	DRL 235.5	No	No	No	
Estate Tax Records	Tax Law §994	In Court Only *	No	No	Title Company
Estate File **	Common law right of access	Yes	Yes	Yes	Any one
Fingerprint Documents		No	No	No	
Fiduciary Records	Part 36.5 (a)	Yes	Yes	No	
Guardianship files	Court Policy				
Affidavits or Affirmations of Physicians or Psychologists	HIPAA	No	No	No	
Judge's notes	Court Policy	No	No	No	
Living trusts ***	Court Policy	No	No	No	
OCFS 3909 Form	Court Policy	No	No	No	
Records containing Juror's names	Jud Law §509 (a)	No	No	No	
Subpoenaed records	OCA Rules	Atty/Pro-se	No	No	

*Sealed: a proceeding is available to petition the Court to unseal the record

** Estate file - minus specific documents listed

*** document not required for filing by law, therefore can be impounded or returned to attorney

Record Access Guide - Jury System

RECORD	Rule/Statute	View	Copy	Disseminate	To Who
Qualification Questionnaire & ALL DATA DERIVED FROM IT such as Name, Address, status	Judiciary Law 509 & 128.13 Rules of Chief Administrator	Commr. Or Jury Board	No	Only for Review under Sct. 509	Jury Board or Appellate division
Jury Summons & Notices	Jud. 509 128.6 &128.13	Commr. Or Jury Board also Trial Judge in Voir Dire	No	Only for Review under Sct. 509	Commr. Or Jury Board also Trial Judge in Voir Dire
Records of Postponement & Excuse	Jud. 509 128.6 &128.13	Commr. Or Jury Board also Trial Judge in Voir Dire	No	Only for Review under Sct. 509	Commr. Or Jury Board also Trial Judge in Voir Dire
Juror Attendance Records	Jud. 509 128.6 & 128.13	Commr. Or Jury Board also Trial Judge in Voir Dire	No	Only for Review under Sct. 509	Commr. Or Jury Board also Trial Judge in Voir Dire
Statistical Reports of Utilization	128.6	Commr. Or Jury Board	No	No	No
Minutes of Jury empanelling	Jud. 509 128.6 & 128.13	Commr. Or Jury Board	No	No	No
Minutes of meetings of the Jury Board	Jud. 503	Commr. Or Jury Board	Yes	Yes	On Request

Website Information

http://www.nycourts.gov/foil/

http://www.inside-ucs.org/courts/nya2j/fatpOverview.shtml

http://www.nycourts.gov/press/index.shtml

APPENDIX

ACCESS TO COURT RECORDS

1. Access in general

While the public has a common law right of access to court records, that right of access may be restricted by statute. See Nixon v. Warner Communications, 435 U. S. 597, 598 (1978); Matter of Newsday v. Sise, 71 N.Y.2d 146, 153 n.4 (1987); Matter of New York Post Corp. v. Leibowitz, 2 N.Y.2d 677, 686 (1957). The Freedom of Information Law ("FOIL") specifically exempts court records from disclosure. Public Officers Law § 86. Rather, access to court records is governed by Section 255 of the Judiciary Law.

Upon a request and the payment of "the fees allowed by law," Section 255 of the Judiciary Law requires a court clerk to "diligently search the files, papers, records and dockets of his office" and make copies or certify that the records cannot be found. The request must reasonably describe the specific records sought, and cannot simply be a request for general information or for the creation or compilation of records.

As to the fees allowed by law, Section 8019(f) of the CPLR indicates that a superior court clerk may charge the following: 50 cents per page to prepare a copy of any record or paper, with a minimum fee of $1.00; 50 cents per page to certify a prepared copy of any record or paper, with a minimum fee of $4. Pursuant to CPLR 8020(g), the clerk may charge $5 for certifying to a search of records in a particular court for a consecutive two-year period or fraction of that period. CPLR 8016 and various Uniform Court Acts set forth the fee that clerks of other courts may charge for providing copies of court records. If no such statute sets forth a fee that a clerk may charge for a copy of a court record, the clerk may charge the fee that the county clerk may charge for such a service. Judiciary Law § 255. These fees, in general, are set forth in CPLR Sections 8020 and 8021.

2. Statutory limitations to access

A number of statutes limit access to court records where the interest in confidentiality outweighs the public interest in disclosure:

A. Family Court Records

Access to court records in the Family Court is governed by Section 166 of the Family Court Act, which provides that the records of any proceeding in Family Court are not open to indiscriminate public inspection. In order to access a particular Family Court record, the requesting party must make an application to the Court and set forth the reasons for the request. It is solely within the discretion of the Court whether to permit the inspection of such records. Certain individuals, such as the parties and their representatives, are permitted access to Family Court records without application to the Court. 22 NYCRR 205.5

B. Sealed Records

Several New York statutes require the sealing of the record of a criminal case. Section 160.50 of the Criminal Procedure Law mandates that a record be sealed when the defendant is acquitted of all charges or the case is dismissed. Access by an individual other than the defendant is not authorized, except for certain law enforcement agencies (see the procedures set forth in CPL 160.50[1][d]). CPL 720.35(2) requires the sealing of a court record in a case when the defendant is adjudicated a youthful offender. In addition, if a criminal matter against a juvenile offender is removed to the Family Court pursuant to CPL Article 725, the record must be sealed. See CPL 725.15.

N.Y.2d 430 (1979); Matter of Gannett Co. v. De Pasquale, 43 N.Y.2d 370 (1977), aff'd 443 U.S. 368 (1979). Section 4 of the Judiciary Law provides that the "sittings of every court within the state shall be public, and every citizen may freely attend the same," except that the court has the discretion to exclude persons who are not directly interested in cases involving "divorce, seduction, abortion, rape, assault with the intent to commit rape, sodomy, bastardy or filiation."

The right of public access to trials is subject to the Court's inherent authority to close a courtroom to preserve order and decorum in the courtroom, to protect the parties and witnesses, and to further the administration of justice. See Matter of Gannet Co. v. De Pasquale, 43 N.Y.2d 370, 377; People v. Jelke, 308 N.Y. 56, 63 (1954). This discretion should be exercised only when "unusual circumstances necessitate it, and the court must conduct an inquiry to assure that the right to a public trial is not being sacrificed for less then 'compelling reasons.'" People v. Jones, 47 N.Y.2d 409, 413-15, cert. denied, 444 U.S. 946 (1979).

A. Criminal Actions

The constitutional provisions at issue in criminal actions involve the defendant's guarantees of a public trial under the Sixth and Fourteenth Amendments. Any restriction on public access depends upon the balancing of the First Amendment guarantees of public access with the defendant's guarantees to a public trial and the public interest in closure. Thus, although court proceedings are presumptively open, when it would jeopardize a defendant's right to a fair trial, the competing interests must be reconciled. Matter of Gannett Co. v. De Pasquale, 43 N.Y.2d 370, 380.

• Voir Dire: Jury selection is open to the public and closure is permitted only when there is an overriding interest essential to preserve a higher value and closure is narrowly tailored to serve that interest. Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 510 (1984) (setting forth procedures to follow prior to closing voir dire proceedings).

• Youthful Offender Proceedings: The sealing provisions of CPL 720.35 operate only upon a youthful offender adjudication and do not require that the proceedings be closed automatically. See Capital Newspapers Division of the Hearst Corp. v. Moynihan, 125 A.D.2d 34 (3d Dept. 1987), aff'd 71 N.Y.2d 263 (1988) (setting forth the procedures that must be followed prior to closure of youthful offender proceedings).

• Suppression Hearings: The same qualified right of access to a criminal trial applies to pre-trial suppression hearings in criminal cases. Associated Press v. Bell, 70 N.Y.2d 32, 38 (1987); Matter of Westchester Rockland Newspapers v. Leggett, 48 N.Y.2d 430, 440 (1979). However, the countervailing interest is the defendant's right to an impartial jury (one insulated from matters that may ultimately be ruled inadmissable) should the matter proceed to trial. As such, where publicity or openness during a pretrial hearing could threaten the impaneling of an impartial jury, the Court may conduct a preliminary inquiry and make findings to support whether closure is required. Matter of Gannett Co. v. De Pasquale, 43 N.Y.2d 370, 380; Capital Newspapers Division of the Hearst Corp. v. Moynihan, 125 A.D.2d 34, 37. In the event that closure is necessary to protect the rights of the accused, the closure must be no broader than necessary to protect those rights and the court must consider reasonable alternatives to closure. Waller v. Georgia, 467 U.S. 39 (1984); Associated Press v. Bell, 70 N.Y.2d 32, 38.

• Testimony During Trial: The circumstances under which a trial can be closed are limited, as the justification must be a weighty one, and the court must follow the principles and procedures provided in Gannett and Leggett. Closure during the testimony of a witness has been upheld in the following circumstances: to protect an undercover officer's safety and to protect the integrity of an open investigation (People v. Cuevas, 50 N.Y.2d 1022 [1980]); to protect the identity of a witness-informer

(People v. Hinton, 31 N.Y.2d 71 [1979], cert. denied 444 U.S. 946 [1977]); and to protect the life of a witness or shield the witness from embarrassment (People v. Hagen, 24 N.Y.2d 395, cert. denied 396 U.S. 886 [1969]; see also Globe Newspaper Co. v. Superior Court, 457 U.S. 596 [1982] [setting forth the factors to be considered prior to closure during the testimony of a minor witness in a prosecution for a sex offense]). These factors apply to pre-trial hearings as well.

B. Civil Actions

Like criminal proceedings, civil actions are presumptively open pursuant to the guarantees under the First Amendment. Unlike criminal actions that present constitutional considerations for criminal defendants, in civil actions the First Amendment guarantees must be measured against the public interest in requiring closure.

1. Family Court Proceedings

The declaration in Section 4 of the Judiciary Law of a presumption of public access to court proceedings does not differentiate among the courts, and therefore applies to the Family Court, subject to any other statute that gives special treatment to Family Court proceedings. As such, there is also a presumption of openness to all Family Court proceedings, and Section 205.4 of the Uniform Rules [22 NYCRR] expressly provides that the Family Court is open to the public, including the media. However the presumption can be overcome on a case-by-case basis by an overriding interest that closure is essential to preserve higher values. See e.g., Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 608; Matter of Ruben R., 219 A.D.2d 117 (1st Dept.), lv. to app. denied 88 N.Y.2d 806 (1996) (holding potential trauma to mental and physical well-being of children required closure of child protective proceeding to public and press); Matter of Katherine B., 189 A.D.2d 450 (2d Dept. 1993) (holding public properly excluded from child protective proceeding where compelling testimony established that child would be adversely affected).

Section 205.4 (b) of the Uniform Rules [22 NYCRR] provides specific factors that a judge may consider in determining whether to close the courtroom or to exclude specific individuals, such as preserving courtroom decorum, avoiding a disruption in the proceedings, and serving the orderly administration of justice, including privacy interests of individuals before the court and the need to protect litigants from harm.

2. Matrimonial Proceedings

Domestic Relations Law § 235(2) grants the court the discretion to exclude the public if "the public interest requires that the examinations of the witnesses should not be public." Because matrimonial proceedings include matters concerning child custody, visitation and maintenance, aside from potential embarrassment to the litigants in a public proceeding, the public interest standard may protect minors from public testimony. See CPLR 4019; Matter of Lincoln v. Lincoln, 24 N.Y.2d 270 (1969) (trial court had discretion to interview the child in a custody proceeding in private).

3. Adoption Proceedings

Given the nature of adoption proceedings, the proceedings are confidential and held in closed courts, and the records pertaining to adoptions are sealed pursuant to Domestic Relations Law § 114. See Matter of Walker, 64 N.Y.2d 354 (1985) (setting forth the considerations for deeming adoption records confidential).

4. Mental Competency Proceedings

The media has a qualified right of access to competency hearings, whether held pursuant to the Mental Hygiene Law or the Criminal Procedure Law. See Matter of New York News v. Ventura, 67 N.Y.2d

C. Matrimonial Actions

Section 235 of the Domestic Relations Law provides that neither an officer of the court with whom th proceedings in a matrimonial action or a written agreement of separation is filed or an action or proceeding for custody, visitation or maintenance of a child are filed, or before whom testimony is taken, or his clerk, either before or after termination of the suit shall not permit a copy of any pleadings affidavits, findings of fact, conclusions of law, judgment of dissolution, written agreement of separatio or memorandum thereof, or examination to be taken by any person other than a party, or the attorney o counsel of a party, except by order of the court.

D. Confidential Records

Records contained in a court file that are deemed confidential may not be disclosed absent a court orde including the following:

• A defendant's criminal history record (i.e., rapsheet or NYSIIS sheet). See 42 U. S. C. § 3789g(b); 28 CFR Part 20; "Use and Dissemination Agreement" between the Unified Court System and the State Division of Criminal Justice Services.

• Alcohol or drug treatment records. See 42 CFR Part 2.31 et seq.

• Court records in sex offense cases that might identify the victim. See Civil Rights Law § 50-b.
• Grand Jury minutes. See generally CPL 190.25(4), Penal Law § 215.70.

• Probation reports and pre-sentence memoranda. See CPL 390.50, 750.

• Records and questionnaires that disclose the names and addresses of jurors are not subject to disclosure, even upon argument that some of the same information may have been provided during voir dire. See generally Judiciary Law § 509(a); Matter of Newsday v. Sise, 71 N.Y.2d 146 (1987).

• Mental health records, including records of commitment, retention and discharge proceedings of the mentally ill and mentally retarded (see Articles 9 and 15 of the Mental Hygiene Law; CPL 330.20) and clinical records submitted in connection with the proceedings (see Mental Hygiene Law § 33.13[c]).

• Orders of commitment of mentally ill inmates. See Correction Law § 402.

• Records of adoption proceedings. See Judiciary Law § 90.10.

• Other records or documents that have been sealed or designated confidential by the court.

E. Court Transcripts

Transcripts of court proceedings are treated the same as any other records for purposes of court access. If the stenographic minutes of a court proceeding have not been transcribed and the file is not sealed, the court reporter may provide a transcript upon payment of the appropriate fees. See Judiciary Law § 300, 301.

ACCESS TO COURT PROCEEDINGS

All judicial proceedings, both civil and criminal, are presumptively open to the public. Matter of Hearst Corp. v. Clyne, 50 N.Y.2d 707, 715 (1980); Matter of Westchester Rockland Newspapers v. Leggett, 48

472 (1982); Matter of Westchester Rockland Newspapers v. Leggett, 48 N.Y.2d 430 (1979); see also People v. Ortega, 69 N.Y.2d 763 (1987). This right exists despite the fact that the court papers in some proceedings are sealed under Mental Hygiene Law § 9.31.

EXCEPTIONS TO THE GENERAL RULE

SEALED RECORDS - CPL §160.50

Upon the termination of a criminal action or proceeding against a person in favor of such person ... the record of such action or proceeding shall be sealed and the Clerk of the Court in which such criminal action or proceeding was terminated, shall immediately notify DCJS and all appropriate Police Departments that the action has been terminated in favor of the accused ... and that the record of such action or proceeding has been sealed. The statute further provides that all official records and papers including judgments and orders of the Court, but not including published Court Decisions, Opinions, or Records or Briefs on Appeal, relating to the arrest or prosecution, shall not be made available to any person or public or private agency. There are certain exceptions [see CPL §160.50(1)(c)].

CPL §160.55 governs cases reduced from a misdemeanor When a case is reduced from a misdemeanor to a violation, photographs and fingerprints received by DCJS, police departments and other law enforcement agencies must either be returned to the defendant or destroyed. This is in the discretion of the Agency. CPL §160.55.

CPL §160.60 governs the effect of termination of criminal actions in favor of an accused. Such arrests and prosecution shall be deemed a nullity and no person shall be required to divulge information pertaining to the arrest or prosecution.

CONFIDENTIAL INFORMATION
Youthful Offenders - CPL §720.15(1)

When an Accusatory Instrument charging an apparently eligible youth with a misdemeanor is filed with the Court, the Court must, with the Defendant's consent, order that it be filed as a *sealed* instrument though only with respect to the public. (It is obvious that the Defendant receives a copy as well as the District Attorney and the Public Agency involved with the prosecution of the defendant, i.e. the Probation Department in dealing with a probation violation.)

An apparently eligible youth is a person who, if convicted of the charge, could be adjudicated a Youthful Offender (see CPL §720.10).

NOTE: A PERSON CHARGED WITH A FELONY, EVEN IF AN APPARENTLY ELIGIBLE YOUTH, IS NOT ENTITLED TO THIS CONFIDENTIALITY [See CPL §720.15(3)].

YOUTHFUL OFFENDER AFTER ADJUDICATION [CPL §720.35(2)]

Once a Defendant is adjudicated a Youthful Offender in the local court, all official records and papers on file with the Court are ***confidential*** and may not be made available to any person or public or private agency except:

- The institution to which the youth has been committed.
- The Division of Parole.
- The Probation Department.

- In certain circumstances, the statewide automated Order of Protection and Warrant registry.

- Court must provide notification of youthful offender adjudication to the designated educational official of the school in which such youth is enrolled as a student. (CPL §720.35(3))

Unlike CPL 160.50, CPL 720.35 makes no provision for the adjudicated youthful offender to waive confidentiality of the court and records, except a new provision effective 2001, permits a youth adjudicated a youthful offender or the youth's designated agent to obtain court records anywhere that the official records and papers are on file with a particular court upon request to the Court or Court Clerk (CPL §720.35(2)).

JUVENILE OFFENDER PROCEEDINGS

CPL §725.15 states that once a Juvenile Offender Proceeding is removed to Family Court, all official records and papers, including the Order of Removal, are confidential and must not be made available to any person or public agency other than the Family Court.

A Juvenile Offender is a person between 13 and 15 years of age who is charged with certain violent felonies as defined in CPL §1.20(42). In all Juvenile Offender cases the charge must be a felony.

CASES INVOLVING SEX OFFENSES
Civil Rights Law, §50-b
Right of Privacy; Victims of Sex Offenses

The identity of any victim of a sex offense, as defined in Article 130 or §255.25 of the Penal Law, shall be confidential.

No report, paper, picture, photograph, court file or other document in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection. No such public officer or employee shall disclose any portion of any police report, court file or other document that tends to identify such a victim .... There is an exception. The statutory prohibition shall not be construed to prohibit public disclosure of information:

To the person charged.

To the counselor guardian of the person charged.

To public officers or employees charged with the duty of investigating, prosecuting or keeping records relating to the offense.

To a person who, upon application to the court having jurisdiction over the sex offense, establishes good cause for the disclosure; victim or person responsible for victim and the prosecutor must have notice of application.

Any person or agency upon written consent of the victim or other person legally responsible for victim's care.

The Court having jurisdiction may order any restrictions upon disclosure as it deems necessary to insure compliance with statutory requirements.

NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE COURT TO EXCLUDE THE PUBLIC FROM ANY STAGE OF THE CRIMINAL PROCEEDING (see Civil Rights Law §50-b(4) Law).

CONFIDENTIALITY OF PRE-SENTENCE REPORTS AND MEMORANDA
CPL §390.50

A Pre-Sentence Report or Memorandum submitted to the Court pursuant to a Pre-Sentence investigation and any medical, psychiatric or social agency report or other information gathered for the Court by a Probation Department or submitted directly to the Court in connection with the question of sentence is *confidential* and may not be made available to any person or public or private agency, except where specifically required or permitted by statute, or upon specific authorization of the Court.

Exceptions

Disclosure of Pre-Sentence report not less than one (1) court day prior to sentencing to:

- Defendant's attorney.
- Defendant himself or herself if the Defendant has no attorney.
- The Prosecutor.

The Court may except from disclosure a part or parts of the report, which are not relevant to a proper sentence. The Court may redact parts of the report, which are not relevant to a proper sentence, or a diagnostic opinion, which might seriously disrupt a program of rehabilitation, or sources of information, which have been obtained on a promise of confidentiality, or any other part, disclosure of which would not be in the interest of justice.

The victim impact statement shall be made available by the prosecutor to the victim or the victim's family prior to sentencing.

A probation report must be made available to any court or to the Probation Department of any court that subsequently has jurisdiction over the defendant.

CPL §390.60 - Copy of Reports to Accompany Defendant Sentenced To Imprisonment:

When a defendant is sentenced to a term of imprisonment of 90 days or more, a copy of any pre-sentence report together with any medical, psychiatric or social agency reports shall accompany the Defendant to the Correctional Facility.

THE FOLLOWING ARE ALSO NOT SUBJECT TO PUBLIC REVIEW:

- Personal comments or notes of the Judge in writing. In the Matter of Herald Companies, Inc. v. Town of Geddes, et. al., 122 Misc.2d 236 (1983) [See Appendix A].
- Clinical records pursuant to §33.13 of the Mental Hygiene Law.
- Search Warrant applications.
- Rap Sheets.

Criminal history records may be disclosed only to Criminal Justice Agencies and to the Defendant who is the subject of the record.

When there is an Attorney of Record noted in file or in UCMS

(shown by Notice of Appearance in file, actual appearance of attorney in court or UCMS listing as attorney of record.)

An Attorney who has appeared in court on behalf of Family Court client is entitled to records under Ct. Rules 205.5 for that case(docket number) only. **It is a best practice to have the attorney fill out a request form and sign it, acknowledging that they are the attorney on the case and indicating which party they represent.** Their representation should be able to be confirmed in UCMS or by checking in the court file.

When there is not formally an Attorney of Record noted in file or in UCMS

An Attorney who has not yet appeared on a case, but has been assigned by the court or has been retained to represent one of the parties, is entitled to records under Ct. Rules 205.5 for that case(docket number) only. **It is a best practice to confirm that the attorney has been retained or assigned by the court before releasing any records to them.** This can be done by the attorney showing the following: 1) Attorney provides and files a Notice of Appearance, or

2) Attorney provides the Retainer Agreement, or

3) Attorney provides the Assignment Order

If the attorney is unable to provide this proof, **it is a best practice to advise them to have their client sign and notarize an affidavit giving the attorney access to the file.** The client can clearly indicate which matters they want their attorney to have access to on the affidavit.

When an Attorney has not been retained

An Attorney who is not yet formally retained, but wants to review the file in considering whether or not to represent a party is not permitted under Ct. Rule 205.5 to review or copy these records. **It is a best practice to advise the attorney to have their client sign and notarize an affidavit giving the attorney access to the file.**

Can an Attorney obtain documents from Family Court Files, even if they are not representing the client on those specific files?

In the instance of an Attorney requesting access to records from Family Court cases (different docket number or court) than the one on which they are representing the client, (for example, they represent their client on a custody or divorce matter and want copies of the child support orders) they are not permitted under Ct. Rule 205.5 to review or copy these records. **It is a best practice to advise the attorney to have their client sign and notarize an affidavit giving the attorney authority to access to the other Family Court cases their client may have with the Family Court.**

More complicated scenarios or instances where the attorney has concerns/issues regarding the records release policy of the Family Court.

It is a best practice to refer the question regarding release of the records to the Judge/Magistrate/Referee who has/had the case or the Part 1 Judge(Monroe). If the Judge is not available, the question should be referred to the Chief Clerk, who may be able to assist or advise the attorney that they have to wait until the appropriate Judge can be consulted regarding the request.

Bibliography

1.) New York State Office of Court Administration - *Facilitating Access Training Program*

2) Pfau, Hon. Ann T. Chief Administrative Judge - *Attachment to Memoranda - Access to Civil and Criminal Court Records - 7/1/09*

3.) New York State Office of Court Administration - *Trial Court Operations Guide 12/08*

4.) Ibid - Pfau Memorandum

5.) Seventh Judicial District - *Records Access Committee/Records Access Guide 6/09*

6.) Plank, Peggy Lynn - *Records Access Guide - Surrogate's Courts of the Seventh Judicial District*

7.) Perreaud, Charles - *Records Access Guide - Jury System*

8.) New York State Office of Court Administration - *Access to Court Records - http://www.nycourts.gov/press/AccessToCourtRecords.pdf*

9.) Gideon, Hon. David S. - *PUBLIC ACCESS TO COURT RECORDS*

10.) Seventh Judicial District Advisory Board Subcommittee - *Best Practice Guide for Releasing Documents from Family Court Files to Attorneys*

SECTION II

3/18/16

AUDIO-VISUAL COVERAGE OF COURT PROCEEDINGS

The New York State Courts and Legislature have struggled with the issue of audio-video coverage of court proceedings for the past sixty years. The first legislative action was taken in 1952, when the Legislature enacted Civil Rights Law §52, which prohibited the televising, broadcasting or the taking of motion pictures of any proceedings in which witnesses may be subpoenaed to testify in New York State Courts. The Legislature revisited the issue in 1987 and passed Judiciary Law §218, which allowed for the televising of court proceedings under a specific set of criteria. The statute remained in force in various forms until 1997, when the Legislature chose not to renew it. Therefore, Civil Rights Law §52, initially passed in 1952 , once again became, and remains, the law of the State.

Within this legislative framework, the New York state courts have promulgated administrative rules and have issued numerous decisions concerning the audio-visual coverage of New York state courts. For example, in 2005 the constitutionality of Civil Rights Law § 52 was challenged by the Courtroom Television Network. Court TV was seeking to be allowed to televise a trial in a New York State courtroom. The matter reached New York's highest court, the Court of Appeals. In a unanimous decision, the Court ruled that Civil Rights Law §52 was constitutional under both the State and Federal constitutions and that "the decision whether or not to permit cameras in the courtroom is a legislative prerogative" *(Courtroom Television Network LLC v. State of New York* 5 N.Y.3d 222, 233 [2005]). The Court reasoned that "Civil Rights Law §52 does not prevent the press, including television journalists, from attending the trials and reporting on the proceedings. What they cannot do under the statute is bring cameras in the courtroom" (*Courtroom Television,* supra at p.233). The Appellate Division , Third Department, went a step further and held that a court has no discretion when dealing with cameras in the courtroom, stating that although a

court "has the right to control the proceedings before him and control his courtroom, that right is not absolute [*cits omitted*]", and that a court exceeds "his authority ...[by] implementing a ruling interpreting Civil Rights Law §52 in such a way as to violate the clear legislative mandate of the statute" (*Heckstall v. McGrath 15* A.D. 3d 824, 825 [3rd dept. 2005]).

As to the relevant regulations, the Rules of the Chief Judge (22 NYCRR Part 29) and the Rules of the Chief Administrative Judge (22 NYCRR Part 131) set out specific criteria for the use of any audio-visual devices in New York State courthouses and give trial courts guidance as to how to proceed in individual cases. These Rules were modified in 2016 to insure conformity with current law and court practices. NYCRR Parts 29 and 131 confirm the court system's policy of facilitating audio-visual coverage of court proceedings to the fullest extent permissible by law; reaffirm the statutory prohibition (set forth in Section 52 of the Civil Rights Law) against coverage of proceedings involving testimony of parties or witnesses; and confirm the discretion of the presiding trial judge to determine broadcast-related issues in the courtroom and the authority of administrative judges to address such issues elsewhere in the courthouse.

In recent years, with the advent of social media, new questions about the use of electronic devices in the courtroom have arisen . News reporters have requested that they be allowed to "tweet" and "post" live from a courtroom. Civil Rights Law § 52 , 22 NYCRR Part 29 and 22 NYCRR Part 131 do not address whether a device that has the ability to record both audio and visual (as most tablets, smart phones and laptops do), may be used in a courtroom if the devices are not being used to transmit radio or television signals from the courtroom. Judges have the responsibility to control their courtrooms, and they are mandated to follow the laws of the state; but in so doing, they should consider all court users and the needs of the public. The Seventh Judicial District has endeavored to formulate guidelines to assist courts in addressing the use of and/or presence of electronic devices in the courts.

ELECTRONIC DEVICES IN THE COURTS
SEVENTH JUDICIAL DISTRICT GUIDELINES

1. The following guidelines govern use of electronic devices in the Courts of the Seventh Judicial District. An electronic device is defined as: Any camera, cell phone, smart phone, tablet, computer, laptop, or other device which can access the internet and/or record and/or electronically store and transmit court proceedings (audio and/or visual). Excepted from this definition are body cameras worn by law enforcement personnel during the course of their lawful duties.

2. A member of the public (including the media) may not use an electronic or other device to record sound, video or photographs in the courthouse or courtroom **unless** it is with the prior approval of the presiding judge of a proceeding, or the Administrative Judge. Such approval must be requested no less than three (3) days prior to the commencement of the proceeding, unless, impossible or impractical. Upon receipt of the request, the Court may schedule a hearing to allow the applicant and litigants to set forth their positions under the applicable statutory provisions, case law, and 22 NYCRR Part 29 and 22 NYCRR Part 131 (A sample request form and a sample decision are attached hereto as Exhibits I and II, respectively.) **If the presiding judge grants approval, the presiding judge must then seek permission from the Administrative Judge, pursuant to 22 NYCRR 29.1.**

3. Provided that it does not interfere with order and decorum of the Court, a member of the public (including the media) may use an electronic device for purposes other than those referenced in Paragraph "2" above, at any time and during any proceeding provided that court security and/or the presiding judge have not suspended the use of said devices. If use of said devices has been suspended, individual requests should be directed to the presiding judge.

4. In the event that court security personnel believe that an electronic device is being used improperly, the State of New York, Unified Court System, Department of Public Safety Directive Number 2a-2014 (Effective Date: September 10, 2014), shall be followed. Said Directive Number 2a-2014 is attached hereto and made a part hereof. As soon as practicable thereafter, the judge presiding at the proceeding should be notified.

Attachments:

Exhibit I - Request Form

Exhibit II - Sample Decision

Exhibit III - State of New York, Unified Court System, Department of Public Safety Directive Number 2a-2014

EXHIBIT I

_____ Court, _____ (County)

In the matter of an Application to Conduct Audio-Visual Coverage of

_____

v.

_____x

Index no._____
Indictment no._____
Calendar no. _____
Judge assigned _____
(Complete as applicable, if known.)

TO THE COURT:

1. The undersigned hereby applies for permission to conduct audio-visual coverage of the above judicial proceedings as follows (check as appropriate):

____ televise live
____ videotape for later broadcast
____ film
____ tape record
____ audio (radio) broadcast live
____ audiotape for later broadcast
____ use still photography
____ other (specify):

2. The scope of coverage requested is (check as appropriate):

____ throughout the above proceeding

____ during only the following portion(s) of such proceeding (specify):

3. The undersigned hereby agrees, that if granted access to take still photographs or video of the above proceeding, he/she will immediately disseminate those photographs or that videotape to all accredited media outlets present at the time of the above proceeding.

_____
(Your name and signature)

_____
(Your media organization)

_____

_____
(Address)

Date:_____ Telephone no._____

http://www.nycourts.gov/press/index.shtml

EXHIBIT II

STATE OF NEW YORK
COUNTY COURT COUNTY

PEOPLE OF THE STATE OF NEW YORK,

RULES FOR STILL PHOTOGRAPHY

against

Indictment No.
Xx-xx-xxx

XXXXXXXXXXXXXXXXXX,

Defendant.

The Court has determined that it will permit the use of still photography during certain portions of the trial of the People of the State of New York versus XXXXXXX, Indictment No. xx-xx-xxx, after considering all the factors enumerated in 22 NYCRR 29.1 and Part 131.

Due to room constraints within the courtroom, and to minimize disruption within the proceeding, the Court is going to designate only one media source as the authorized still photographer. Applications to take still photographs were received from the following media sources: Messenger Post Newspapers; the Democrat and Chronicle; WHEC-TV Channel 10; WROC News 8/WUHF Fox Rochester.

Notwithstanding the foregoing, the still photography will not be permitted unless the foregoing media sources shall have entered into pooling arrangements for their respective groups, including the establishment of necessary procedures, cost sharing, access to material and selection of the pool representative who will be the still photographer. The Court may not be called upon to mediate or resolve any dispute as to such arrangements. **The Court shall be notified no later than XXXXXXXXXX, at 5:00 p.m., as to who the selected still photographer will be for the foregoing media sources.** The Court shall then meet with the still photographer at a time later to be determined.

The still photography is also only permitted under the following conditions:

1. There shall be only one still camera, with not more than two lenses, and related equipment for print purposes.

2. Notwithstanding the foregoing, the Court may increase or decrease within reasonable limits the amount of equipment that will be permitted into the court room on finding (I) that there is a need therefor because of special circumstances, and (ii) that it will not impair the dignity of the Court or the judicial process.

3. The still camera equipment shall not produce distracting sound or light and shall be approved prior to the proceedings by the Court.

4. Still camera equipment and the photographer shall be positioned in such locations as shall be designated by the Court. The area designated shall provide reasonable access to coverage with the least possible interference with Court proceedings.

5. The photography equipment shall not be placed in, moved about or removed from the court facility, and related personnel shall not move about the court room, except prior to commencement of proceedings or after adjournment of proceedings or during a recess. Lenses shall be changed only during a recess in the proceedings.

6. With the concurrence of the Court, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained at media expense and provided they are not distracting or otherwise offensive.

7. The Court reserves its right to terminate or modify the still photography coverage at any time. Termination or modification shall not be done, however, unless there is, in the Court's discretion, good reason for same.

8. **Still photography shall only be permitted during opening statements and closing statements. No prospective jurors or sworn jurors shall be photographed.**

_____ COURT, COUNTY

IN THE MATTER OF AN APPLICATION TO CONDUCT AUDIO-VISUAL COVERAGE OF

v

_____

ORDER DETERMINING APPLICATION FOR AUDIO-VISUAL COVERAGE

SCI / IND # _____

INDEX # _____

CALENDAR # _____

PRESENT: *Hon.* _____

An application having been made to this Court on _____, 20_____, pursuant to section 131.3 of the Rules of the Chief Administrator by _____ (news media applicant), requesting permission to (specify type of coverage) _____ _____ the above judicial proceeding; and

The Court having reviewed this application and the attached statements and affidavits presented to the Court concerning the proposed coverage; and

The Court have consulted with the news media applicant and counsel to all parties to the above-named proceeding (and with (specify others - e.g., victims, witnesses, etc. - as appropriate) _____ _____);

NOW, upon consideration of all relevant factors, including those specified in section 131.4 (c) of the Rules of the Chief Administrator, it is hereby

ORDERED, that the application is ☐ -approved ☐ -denied

☐ -approved with the following limitations: _____

_____

The basis for the determination is (to be completed unless the application is approved without special limitations and no party, victim or prospective witness objects to coverage):

_____

_____

_____

_____

Any violation of this Order is punishable by contempt pursuant to Article nineteen of the Judiciary Law.

Dated: _____

_____

Judge / Justice

EXHIBIT III

State of New York
Unified Court System
Department of Public Safety

DIRECTIVE

TO: All Uniformed Personnel	NUMBER: 2a - 2014
SUBJECT: Audio/Video Devices	EFFECTIVE DATE: Sept. 10, 2014

1. Effective immediately when a court officer has reason to believe that an individual is using or has just improperly used an audio recording device (including a cell phone used as a camera or recorder) in a court facility -- and unless the appropriate administrative judge, has established an approved alternative protocol -- the following procedures should be followed:

   a. The officer should approach the individual in possession of the device ("Operator") for questioning. (If at all possible, this interview should be conducted outside the courtroom.)

   b. The Operator should be informed that unauthorized use of an audio recording device in a court facility is improper and violates the clearly-posted rule and policy at all court facilities.

   c. The officer should advise the Operator that, if any images or recordings have been taken in violation of the court rule, they must be deleted to the satisfaction of the court officer or an appropriate supervisor and that the failure to delete such images/recordings will result in charging the Operator with disorderly conduct or, where appropriate, obstruction of governmental administration.

   d. Experience has shown that many incidents of alleged unauthorized recording are resolved in a cooperative fashion through this process of informal inquiry.

2. If the matter is not satisfactorily resolved with the Operator's voluntary assistance, and the officer has evidence that would cause a reasonable person to believe that the Operator has made improper photos or recordings, then – following discussion with and approval by a uniformed supervisor – the officer should:

   a. Move the Operator to a non-public area

   b. Charge the Operator appropriately

3. In courts within New York City, the Operator should be issued a summons (if charged with disorderly conduct) or processed as an arrest (if charged with obstruction of governmental administration).

DIRECTIVE

TO: All Uniformed Personnel	NUMBER: 2a - 2014
SUBJECT: Audio/Video Devices	EFFECTIVE DATE: Sept. 10, 2014

4. In courts outside of New York City, the Operator should be charged through issuance of a desk appearance ticket. (In areas where UCS officers do not process arrests nor issue appearance tickets, the Operator should be detained and local law enforcement should be summoned to handle this duty.)

5. The device should then be seized and vouchered as evidence until the conclusion of the criminal matter. If possible, the device's battery should be removed and the device should be stored in a "Faraday bag" or similar enclosure for safekeeping. A detailed unusual occurrence report must be filed describing the underlying facts. Unless a search warrant has first been obtained, at no time should photos or recordings be examined without the Operator's consent.

6. If an officer at any time has evidence that would cause a reasonable person to believe that the Operator has committed a more serious offense, for example, witness tampering or intimidation:

   a. The Operator should be detained

   b. The device should be seized immediately

   c. No photos or recordings should be deleted

   d. The judge presiding should be consulted for further instructions

   e. No photos should be examined without a search warrant

7. Members of the press are permitted to use electronic devices during court proceedings, subject to the discretion of the presiding judge. Express authorization of the presiding judge must be obtained prior to the taking of any photographs or the recording of audio or video in a courtroom by members of the press. In any case where a dispute arises over the use of electronic devices in a courtroom or courthouse by members of the press, the officer should inform the UCS Press Office (212-428-2510) immediately.

DIRECTIVE

TO: All Uniformed Personnel	NUMBER: 2a - 2014
SUBJECT:Audio/Video Devices	EFFECTIVE DATE: Sept. 10, 2014

8. At all times when implementing this directive, officers should be mindful of the broad authority of judges to oversee proceedings and maintain decorum in their courtrooms.

Jewel McCollin
Chief of Department