

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

DIVISION

NATIONAL ASSOCIATION OF PROFESSIONAL
BACKGROUND SCREENERS

PLAINTIFF

v. CASE NO. _____

JENNIFER JONES, in her official capacity
as Clerk of the District Court of Benton County,
Arkansas, Bentonville Division

DEFENDANT

COMPLAINT

Plaintiff National Association of Professional Background Screeners (NAPBS) files this Complaint against Defendant Jennifer Jones, in her official capacity as Clerk of the First Judicial District Court, District Court of Benton County, Arkansas Bentonville Division¹ stating as follows:

INTRODUCTORY STATEMENT

NAPBS is a non-profit trade association that represents the interests of companies offering employment, tenant, and volunteer background screening services. NAPBS currently represents over 880 member companies, including at least one Arkansas company, engaged in employment, tenant, and volunteer background screening across the United States. Member companies range from Fortune 100 companies to small, local businesses conducting millions of employment-related, tenant, and volunteer background checks each year as part of the hiring, leasing, and volunteering process.

¹ NAPBS refers to Defendant Jennifer Jones as Ms. Jones. It refers to the clerk's office of the District Court of Benton County, Arkansas, Bentonville Division as the Bentonville Division.

A background check is, in very basic terms, information on an individual that may be considered when determining eligibility for a job, housing, or volunteer position. An employer, property manager, or volunteer agency decides what components to include in the background check based on the type of duties to be performed, housing unit to be leased, or volunteer responsibilities to be completed. The components often include: criminal history information, civil records, driver records, employment records, educational information, license verification, credit information, and reference checks.

Professional background screeners exist to provide the public with safety in their places to live and work. Professional background screeners are regulated by both the Federal Trade Commission and the Consumer Financial Protection Bureau at the federal level, and are subject to state attorney general enforcement actions. Screeners must comply with the Fair Credit Reporting Act as well as state privacy and consumer protection laws. The profession employs thousands of people and invests countless dollars dedicated to ensuring that employers, landlords, and volunteer groups have a full picture of those that enter workplaces, lease their apartments, and care for vulnerable populations.

The efficacy of background checks depends on comprehensiveness. A family hiring an at-home employee or a school board reviewing applications of elementary school teachers must depend on a background check to ensure that prospective employees' criminal history does not reveal risks that are unacceptable for employees placed in important positions of trust. Without comprehensive background checks, vulnerable populations are put at risk. Because of the ease of travel afforded to citizens of the United States, a functioning background screening network requires access to comprehensive data from every court in the country. One county's failure or

refusal to provide data results in compromised background checks for all employers, landlords, and volunteer groups, nationwide.

Ms. Jones is using her official position to frustrate and threaten the background check process relied on by thousands of organizations each day. Relying on a gross misinterpretation of Administrative Order 19 issued by the Arkansas Supreme Court, Ms. Jones is refusing to provide all background screening companies, including NAPBS members, access to records from her court as required by the U.S. Constitution and state law.

Instead, Ms. Jones is apparently requiring any person seeking individual court records to pay \$5,000, complete a "Compiled Records License Agreement" and obtain a compiled records license from the Arkansas Administrative Office of the Courts (AOC). However, because Administrative Order 19 and compiled records licenses are only to be used for obtaining bulk, electronic data extracts for a large number of individuals at once, it is impossible for background screening companies seeking individual case records to truthfully comply with the requirements for obtaining a license. In fact, the license agreement itself specifically states that it should not be used to obtain a certified record check and, instead, states that "[a] certified report of a criminal records search of a person's record in a particular county may be obtained from the clerk of court of that county, upon payment of a statutory search and/or certification fee." It is this exact certified report that Ms. Jones is refusing to provide.

Ms. Jones's actions are unconstitutional and in violation of state law. Each day that she continues to refuse to provide public records from her court, employers, landlords and volunteer groups across the country are exposed to unnecessary risks that could easily be avoided. NAPBS has tried to resolve this matter without court intervention, to no avail. NAPBS now asks this

Court for declaratory and injunctive relief to compel Ms. Jones to allow access to her court's records.

PARTIES

1. NAPBS is a non-profit trade association that represents the interests of companies who offer employment, tenant, and volunteer background screening services. Its mission is to advance excellence in the screening profession, and its vision is to be the trusted global authority for the screening profession.

2. NAPBS currently represents over 850 member companies nationally, including at least one member company who is a citizen of Arkansas. In that capacity, NAPBS has previously represented its members' interests by participating in litigation as *amicus curiae*.

3. NAPBS members commonly rely on records of judicial proceedings to provide employment, tenant, and volunteer background screening services. As a result, maintaining access to those records is of vital importance to NAPBS and its members.

4. Ms. Jones is the Clerk of the Bentonville Division.

5. In her official capacity, Ms. Jones has authority to set certain policies of the Bentonville Division. Thus, within her official capacity, Ms. Jones has a duty to accurately interpret the Arkansas Supreme Court's "Administrative Order Number 19: Access to Court Records" (Order 19) and faithfully determine how the Bentonville Division will apply Order 19 to those who request court records.

6. Ms. Jones is a resident of Benton County, Arkansas and a citizen of Arkansas.²

² This allegation is made on counsel's best knowledge, information, and belief after a reasonable inquiry, and it will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over NAPBS's claims. *See* Ark. Code Ann. §§ 16-13-201(a), 25-19-107(a).

8. This Court has general personal jurisdiction over Ms. Jones in her official capacity because she performs her official duties within the State of Arkansas.

9. This Court has general personal jurisdiction over Ms. Jones in her official capacity because she is a citizen of the State of Arkansas.

10. This Court has specific personal jurisdiction over Ms. Jones because all of her conduct in relation to NAPBS's claim occurred within the State of Arkansas.

11. Venue is proper in this Court because the District Court of Benton County is a department, agency, or institution of the State of Arkansas. *See* Ark. Code Ann. § 25-19-107(a).

FACTUAL ALLEGATIONS

A. NAPBS Member Requests for Court Records

12. Some NAPBS members, including at least one that is an Arkansas citizen, perform criminal background checks, which are used as part of determining employment and/or tenant background screening.

13. The information the members obtain as part of their criminal background checks is sometimes provided directly to the end user, which is often an employer, landlord or volunteer group. At other times, the information is provided to other companies who compile the information with additional information obtained from other sources.

14. To perform criminal background checks in Arkansas, NAPBS members must request court records from various courts, including district courts.

15. The process by which NAPBS members request that information varies from district to district.

16. In some districts, the court personnel require that NAPBS members provide customized information requests.

17. In other districts, including at one time the Bentonville Division, NAPBS members could request court records and criminal background information using form Arkansas Freedom of Information Act requests.

18. The information NAPBS members receive in response to those requests also varies from district to district.

19. Some districts, including at one time the Bentonville division, respond to NAPBS members' requests by returning docket sheets from cases that are relevant to the requests.

20. Other districts respond to NAPBS members' requests by returning Defendant Indexes for each individual subject to the request for whom relevant records are available and by returning nothing for each individual subject to the request for whom no relevant records are available.

21. A Defendant Index lists, for the given individual, information for each adjudicated case, including: (1) the case number; (2) the charging document; (3) the date of the violation; (4) a description of the charge; (5) the date of disposition; (6) the manner of disposition; (7) amounts payable and paid; and (8) the name of the relevant law enforcement officer.

B. Order 19 and Refusals to Provide Records

22. In 2008, the Arkansas Supreme Court promulgated Order 19. A true and correct copy is attached as **Exhibit A**.

23. Order 19 provides: "Except as otherwise provided by this order, access to court records shall be governed by the Arkansas Freedom of Information Act (Ark. Code Ann. §§ 25-19-101, et seq.)."

24. Among its stated purposes, Order 19 is designed to “promote accessibility to court records” and “contribute to public safety.”

25. Order 19 states that “[a]ll persons have access to court records as provided in this order”

26. Order 19 states that “[p]ublic access shall be granted to court records subject to the limitations of sections V through X of this order.”

27. Order 19 states that “This order applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the records are maintained.”

28. Order 19 states that courts should endeavor to make “litigant/party/attorney indexes to cases filed with the court” and “listings of case filings, including the names of the parties” remotely accessible to the public—available without the need to visit the courthouse.

29. Order 19 states: “Court records that are publicly accessible will be available for public access in the courthouse during regular business hours”

30. Order 19 does, however, limit access to “Bulk Distribution” or “Compiled Information” if that information is “stored on computers maintained by the Administrative Officer of the Courts (AOC).”

31. Order 19 defines Bulk Distribution as “the distribution of all, or a significant subset of, the information in court records, as is, and without modification or compilation.”

32. The requests for court records NAPBS members make to district courts, including the Bentonville Division, to perform background checks are not requests for Bulk Distribution because they do not request “all, or a significant subset of, the information in court records”

33. Order 19 defines Compiled Information as “information that is derived from the selection, aggregation or reformulation of information from more than one court record.”

34. The requests for court records NAPBS members make to district courts, including the Bentonville Division, to perform background checks are not requests for Compiled Information because they do not require court personnel to derive information from a selection, aggregation or reformulation of multiple court records.

35. A Defendant Index does not require court personnel to derive information.

36. Returning docket sheets (as some district courts do) does not require court personnel to derive information from a selection, aggregation or reformulation of multiple court records.

37. Providing remote access “litigant/party/attorney indexes to cases filed with the court” and “listings of case filings, including the names of the parties” as contemplated in Order 19 does not require court personnel to derive information from a selection, aggregation or reformulation of multiple court records.

38. Providing a terminal at the courthouse that would permit public access to search court records would not require court personnel to derive information from a selection, aggregation or reformulation of multiple court records.

39. Among the limitations associated with Compiled Information: “When the identification of specific individuals is essential to the purpose of the request, then the request must include an executed copy of the Compiled Records License Agreement”

40. As detailed below, a review of the Compiled Records License Agreement (the License Agreement) demonstrates that the requests for court records NAPBS members make to district courts, including the Bentonville Division, to perform background checks are not

requests for Compiled Information. A true and correct copy of the License Agreement is attached as Exhibit B.

41. In addition, a person requesting Compiled Information “must declare under penalty of perjury that the request is made for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose, and that the identification of specific individuals is essential to the purpose of the inquiry.”

42. Order 19 includes no definition of what constitutes a “research” or “evaluation” purpose. Thus, NAPBS members cannot make the required certification.

43. As a result, if the requests for court records NAPBS members make to district courts, including the Bentonville Division, to perform background checks were requests for Compiled Information, NAPBS members would be entirely unable to comply with Order 19. In that instance, Order 19 would preclude the NAPBS members from meaningfully accessing court records.

44. On February 21, 2018, Ms. Jones (on behalf of the Bentonville Division) informed an Arkansas NAPBS member that it had determined that Order 19, not the Arkansas Freedom of Information Act, governed requests for court records to be used for criminal background checks.

45. Since that time, NAPBS member attempts to obtain court records from the Bentonville Division to perform criminal background checks have been rejected by the Bentonville Division, and those members have been told to use the procedure in Order 19.

46. Ms. Jones has reiterated as recently as July 10, 2018, that it remains the position of the Bentonville Division that the requests for court records NAPBS members make to district courts, including the Bentonville Division, to perform background checks are requests for

Compiled Information under Order 19. Ms. Jones's statement came in the context of denying a records request. The request is attached as Exhibit C. Ms. Jones's response denying the request is attached as Exhibit D.

47. Because the requests for court records NAPBS members make to district courts, including the Bentonville Division, to perform background checks are requests for neither a Bulk Distribution nor Compiled Information, and because Order 19 otherwise fails to regulate the manner in which NAPBS members should make those requests or the manner in which district courts, including the Bentonville Division, should respond to those requests, the requests are governed by the Arkansas Freedom of Information Act.

48. On information and belief, of the dozens of Arkansas district courts, the Bentonville Division is one of only three that continue to deny NAPBS members access to court records to perform criminal background checks based on a misinterpretation of Order 19.

C. Committee on Automation

49. In May 2018, in response to a denial of access to court records by another district court, an NAPBS member sought relief from the Arkansas Supreme Court Committee on Automation (Committee on Automation).

50. That NAPBS member contended that the denial of access was improper because the request was not one for Compiled Information.

51. The Committee on Automation denied that NAPBS member any relief.

52. The Committee on Automation premised that denial on the limited nature of its power of review—the power to review denials of all or parts of a request for Compiled Information.

D. License Agreement

53. Ms. Jones is apparently requiring that any NAPBS member seeking records from her Court pay \$5,000 and obtain a License Agreement.

54. A review of the License Agreement demonstrates that the requests for court records NAPBS members make to district courts, including the Bentonville Division, to perform background checks are not requests for Compiled Information.

55. The License Agreement expressly provides that criminal record searches fall outside of the type of data extracts that comprise Compiled Information. It provides: "Use of the data contained in a data extract may not be classified as a certified record check. A certified report of a criminal record search of a person's record in a particularly county may be obtained from the clerk of the court of that county, upon payment of a statutory search and/or certification fee." The records requests NAPBS members make, including those they make or would make to the Bentonville Division, are consistent with the "certified report of a criminal record search" the License Agreement distinguishes from the subject of the Agreement.

56. The License Agreement exclusively contemplates provision of information in terms of "data extracts," "compiled data extracts," and "selected extracts," none of which are consistent with the types of records NAPBS members request to perform criminal background checks.

57. The License Agreement appears to contemplate a licensee obtaining extracts from the Arkansas AOC, which would obtain them from a system called Contexte. Indeed, the first page of the License Agreement states: "This Agreement . . . is for the purpose of establishing the terms and conditions under which AOC agrees to provide LICENSEE one or more extracts of court data from AOC's databases" That is inconsistent with NAPBS members requesting a limited number of records directly from Ms. Jones.

58. The License Agreement makes clear that the court clerks, not the AOC, are the official custodians of court records and that the court clerks are the only parties capable of verifying the accuracy of court records.

59. In addition, the License Agreement would have the effect of restricting NAPBS members from engaging in speech about the court records obtained.

60. Most problematic for NAPBS members, the License Agreement would preclude them from providing “personal identifying information to customers, subscribers, or other persons without the express written permission of AOC or a court order.”

61. Because providing criminal background information on a specifically identified individual necessarily requires providing the customer or subscriber with at least some of the subject’s personal identifying information, that limitation would have the effect of preventing NAPBS members from performing criminal background search services entirely absent government permission.

62. Further, for court records covered by Section VII of Order 19, the License Agreement would preclude NAPBS members from:

- a. Providing case information or personal information to its customers without government permission; or
- b. Using case information or personal information for commercial purposes, such as selling services to individuals, groups of individuals, or the general public.

63. Moreover, the License Agreement would have a chilling effect on NAPBS members’ speech because the Agreement would require the NAPBS member to both reveal the identity of the audience for that speech—the members’ customers—and to impose the License Agreement’s limitation on those customers.

64. Thus, the License Agreement is inconsistent with including the types of requests for court records NAPBS members make to district courts, including the Bentonville Division.

65. Further, if the types of requests for court records NAPBS members make to district courts, including the Bentonville Division are requests for Compiled Information, then the License Agreement imposes severe and unconstitutional restrictions on NAPBS members' federally protected rights.

COUNT ONE — 42 U.S.C. § 1983

66. As described in the preceding paragraphs, Ms. Jones has interpreted and applied Order 19 to NAPBS members who request court records to perform background checks in a manner that, as applied, violates NAPBS members' right to access court records under the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, and other federal law.

- a. The interests served by NAPBS' members' right of access outweighs any governmental interest in restricting access to the court records; and
- b. These records have been historically accessible to the public; public access to criminal records plays an important positive role in the functioning of criminal proceedings; criminal background checks have significant and important social value; the government has no overriding interest in imposing these restrictions on access to the records; the means chosen is too broadly tailored; and less restrictive means exist to further the same interests.

67. As described in the preceding paragraphs, Ms. Jones has interpreted and applied Order 19 to NAPBS members who request court records to perform background checks in a manner that, as applied, violates NAPBS members' right to free speech under the First

Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, and other federal law.

- a. The government's interest in imposing the restrictions on access is neither substantial nor compelling.
- b. The means chosen is too broadly tailored and less restrictive means exist to further the same interests.

68. Ms. Jones's interpretation and application of Order 19 to NAPBS members who request court records to perform background checks is the official policy or the custom and practice of the Bentonville Division.

69. Ms. Jones's interpretation and application of Order 19 to NAPBS members who request court records to perform background checks (as an official policy or custom and practice of the Bentonville Division) is deliberately indifferent to the federally protected rights of NAPBS members.

70. Ms. Jones has informed NAPBS that she and the Bentonville Division intend to continue to interpret and apply Order 19 to NAPBS members in a manner that violates their federally protected rights.

71. NAPBS members who request court records in the Bentonville Division to perform background checks will continue to be deprived of their federally protected rights.

72. NAPBS members who request court records in the Bentonville Division to perform background checks have no adequate remedy at law to remedy the ongoing and prospective constitutional violations described above.

73. NAPBS members who request court records in the Bentonville Division to perform background checks have suffered and will continue to suffer imminent, serious, and irreparable injuries.

74. Because the Bentonville Division's unconstitutional application of Order 19 precludes NAPBS members from performing background checks in the Bentonville Division, the balance of hardships favors injunctive relief and a permanent injunction will serve the public interest.

75. THEREFORE, NAPBS requests the following relief.

- A preliminary and permanent injunction prohibiting Ms. Jones from continuing to apply Order 19 in a manner that violates NAPBS members' rights and requiring Ms. Jones to provide NAPBS members with access to court records to perform background checks in a manner consistent with those rights.
- A declaratory judgment as follows:
 - Other than subjecting those requests to the Arkansas Freedom of Information Act, Order 19 has no application to NAPBS members' requests for court records to perform background checks;
 - As applied, Order 19 and the License Agreement violates NAPBS members' rights to access court records under the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, and other federal law; and
 - As applied, Order 19 and the License Agreement violates NAPBS members' rights to free speech under the First Amendment to the United States

Constitution, as incorporated through the Fourteenth Amendment, and other federal law.

- Costs and attorney's fees.
- All other relief the court deems just and proper.

COUNT TWO — Arkansas Freedom of Information Act

76. Under Order 19: “Except as otherwise provided by this order, access to court records shall be governed by the Arkansas Freedom of Information Act.”

77. As described in the preceding paragraphs, under Order 19's plain text, and as corroborated by the plain text of the License Agreement, Order 19 is otherwise inapplicable to NAPBS member requests for court records to perform background checks.

78. Thus, requests by NAPBS members for access to court records are governed by the Arkansas Freedom of Information Act. *See* Ark. Code Ann. § 25-19-101, *et seq.*

79. Under the Arkansas Freedom of Information Act, public records, such as court records (subject to inapplicable exceptions), “shall be open to inspection and copying by any citizen of the State of Arkansas.” *Id.* § 25-19-105(a)(1)(A); *see also id.* § 25-19-103(7)(A).

80. A corporation doing business in Arkansas is a “citizen of the State of Arkansas” for purposes of the Arkansas Freedom of Information Act.

81. Citizens who are denied their rights under the Arkansas Freedom of Information Act may seek judicial intervention to vindicate those rights. *See id.* § 25-19-107.

82. As described in the preceding paragraphs, Ms. Jones has interpreted and applied Order 19 to NAPBS members who request court records to perform background checks in a manner that denies them the ability to access, inspect, and copy public records within the meaning of the Arkansas Freedom of Information Act.

83. Ms. Jones has informed NAPBS that she and the Bentonville Division intend to continue to interpret and apply Order 19 to NAPBS members in a manner that violates their rights under the Arkansas Freedom of Information Act.

84. NAPBS members who request court records in the Bentonville Division to perform background checks will continue to be deprived of their rights under the Arkansas Freedom of Information Act.

85. NAPBS members who request court records in the Bentonville Division to perform background checks have no adequate remedy at law to remedy the ongoing and prospective violations described above.

86. NAPBS members who request court records in the Bentonville Division to perform background checks have suffered and will continue to suffer imminent, serious, and irreparable injuries.

87. Because the Bentonville Division's unlawful application of Order 19 precludes NAPBS members from performing background checks in the Bentonville Division, the balance of hardships favors injunctive relief and a permanent injunction will serve the public interest.

88. THEREFORE, NAPBS requests the following relief.

- A preliminary and permanent injunction prohibiting Ms. Jones from continuing to apply Order 19 in a manner that violates NAPBS members' rights under the Arkansas Freedom of Information Act and requiring Ms. Jones to provide NAPBS members with access to court records to perform background checks in a manner consistent with those rights.
- A declaratory judgment as follows:

- Other than subjecting those requests to the Arkansas Freedom of Information Act, Order 19 has no application to NAPBS members' requests for court records to perform background checks; and
 - By applying Order 19 and the License Agreement in a manner that prevents NAPBS members from accessing court records to perform criminal background checks, Ms. Jones and the Bentonville Division have violated NAPBS members' rights under the Arkansas Freedom of Information Act.
- Costs and attorney's fees.
 - All other relief the court deems just and proper.

COUNT THREE — Declaratory Judgment

89. As described in the preceding paragraphs, Ms. Jones's interpretation of Order 19 and application of Order 19 to NAPBS members who request court records to perform background checks is inconsistent with Order 19's plain text.

90. As described in the preceding paragraphs, Ms. Jones's interpretation of Order 19 and application of Order 19 to NAPBS members who request court records to perform background checks is inconsistent with the License Agreement.

91. As described in the preceding paragraphs, Ms. Jones's interpretation of Order 19 and application of Order 19 to NAPBS members who request court records to perform background checks, as applied, violates NAPBS members' rights under the Arkansas Freedom of Information Act.

92. As described in the preceding paragraphs, Ms. Jones's interpretation of Order 19 and application of Order 19 to NAPBS members who request court records to perform background checks, as applied, violates NAPBS members' right to access court records under

the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, and other federal law.

- a. The interests the right of access serves outweigh any governmental interest in restricting access to the court records; and
- b. These records have been historically accessible to the public; public access to criminal records plays an important positive role in the functioning of criminal proceedings; criminal background checks have significant and important social value; the government has no overriding interest in imposing these restrictions on access to the records; the means chosen is too broadly tailored; and less restrictive means exist to further the same interests.

93. As described in the preceding paragraphs, Ms. Jones's interpretation of Order 19 and application of Order 19 to NAPBS members who request court records to perform background checks, as applied, violates NAPBS members' right to free speech under the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, and other federal law.

- a. The government's interest in imposing the restrictions on access to the records and speech about the records is neither substantial nor compelling.
- b. The means the government has chosen are too broadly tailored, and less restrictive means exist to further the same interests.

94. Ms. Jones contends that Order 19 governs NAPBS members' requests for court records to perform background checks and that her application of Order 19 to NAPBS members is valid.

95. Ms. Jones has informed NAPBS that she and the Bentonville Division intend to continue to interpret and apply Order 19 to NAPBS members in a manner that violates their federally protected and Arkansas statutory rights.

96. NAPBS members who request court records in the Bentonville Division to perform background checks will continue to be deprived of their federally protected and Arkansas statutory rights.

97. NAPBS members who request court records in the Bentonville Division to perform background checks have suffered and will continue to suffer imminent, serious, and irreparable injuries.

98. There exists an actual, justiciable controversy between NAPBS and Ms. Jones about which NAPBS is entitled to receive a declaration of its members' rights and status.

99. NAPBS desires a declaration of whether Order 19 applies to NAPBS members who request court records to perform background checks and whether Ms. Jones's application of Order 19 violates NAPBS members' rights.

100. This Court has authority to enter a declaratory judgment declaring NAPBS members' rights and status in regards to their access to court records, Order 19, and the License Agreement. *See Ark. Code Ann. § 16-111-101, et seq.*

101. A judicial declaration is necessary and appropriate at this time to ascertain NAPBS members' rights and status.

102. THEREFORE, NAPBS requests a declaratory judgment as follows:

- Other than subjecting those requests to the Arkansas Freedom of Information Act, Order 19 has no application to NAPBS members' requests for court records to perform background checks;

- As applied, Order 19 and the License Agreement unduly burden NAPBS members' right to access court records in violation of the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, and other federal law;
- As applied, Order 19 and the License Agreement unduly burden on NAPBS members' right to free speech in violation of the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment, and other federal law;
- By applying Order 19 and the License Agreement in a manner that prevents NAPBS members' from accessing court records to perform criminal background checks, Ms. Jones and the Bentonville Division have violated NAPBS members' rights under the Arkansas Freedom of Information Act;
- Awarding costs incurred and attorney's fees; and
- Granting all other relief the court deems just and proper.

PRAYER FOR RELIEF

NAPBS requests that the Court enter judgment against Ms. Jones on all counts; grant NAPBS injunctive and declaratory relief as requested above; and award NAPBS its costs, attorney's fees, and all other relief this Court deems just and appropriate.

Dated: July 23, 2018.

/s/ Justin Parkey

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Order 19. Access to Court Records

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Section I. Authority, Scope, and Purpose.

A. Pursuant to Ark. Const. Amend. 80 §§ 1, 3, 4; Ark. Code Ann. §§ 16-10-101 (Repl. 1999), 25-19-105(b)(8) (Supp. 2003), and this Court's inherent rule-making authority, the Court adopts and publishes Administrative Order Number 19: Access to Court Records. This order governs access to, and confidentiality of, court records. Except as otherwise provided by this order, access to court records shall be governed by the Arkansas Freedom of Information Act (Ark. Code Ann. §§ 25-19-101, et seq.).

B. The purposes of this order are to:

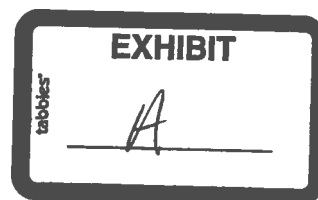
- (1) promote accessibility to court records;
- (2) support the role of the judiciary;
- (3) promote governmental accountability;
- (4) contribute to public safety;
- (5) reduce the risk of injury to individuals;
- (6) protect individual privacy rights and interests;
- (7) protect proprietary business information;
- (8) minimize reluctance to use the court system;
- (9) encourage the most effective use of court and clerk of court staff;
- (10) provide excellent customer service; and
- (11) avoid unduly burdening the ongoing business of the judiciary.

C. This order applies only to court records as defined in this order and does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial governmental agency or other entity.

D. Disputes arising under this order shall be determined in accordance with this order and, to the extent not inconsistent with this order, by all other rules and orders adopted by this Court.

E. This order applies to all court records; however clerks and courts may, but are not required to, redact or restrict information that was otherwise public in case records and administrative records created before January 1, 2009. However, confidential information shall be redacted from pre-January 2009 case records and administrative records before remote access is available to such records.

Section II. Who Has Access Under This Order.



Rules text

A. All persons have access to court records as provided in this order, except as provided in section II(B) of this order.

B. The following persons, in accordance with their functions within the judicial system, may have greater access to court records:

- (1) employees of the court, court agency, or clerk of court;
- (2) private or governmental persons or entities who assist a court in providing court services;
- (3) public agencies whose access to court records is defined by other statutes, rules, orders or policies; and
- (4) the parties to a case or their lawyers with respect to their own case.

Section III. Definitions.

A. For purpose of this order:

- (1) "Court Record" means both case records and administrative records, but does not include information gathered, maintained or stored by a non-court agency or other entity even though the court may have access to the information, unless it is adopted by the court as part of the court record.
- (2) "Case Record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a judicial proceeding.
- (3) "Administrative Record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government.
- (4) "Court" means the Arkansas Supreme Court, Arkansas Court of Appeals, and all Circuit, District, or City Courts.
- (5) "Clerk of Court" means the Clerk of the Arkansas Supreme Court, the Arkansas Court of Appeals, and the Clerk of a Circuit, District, or City Court including staff. "Clerk of Court" also means the County Clerk, when acting as the Ex-Officio Circuit Clerk for the Probate Division of Circuit Court.
- (6) "Public access" means that any person may inspect and obtain a copy of the information.
- (7) "Remote access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.
- (8) "In electronic form" means information that exists as electronic representations of text or graphic documents; an electronic image, including a video image of a document, exhibit or other thing; data in the fields or files of an electronic database; or an audio or video recording (analog or digital) of an event or notes in an electronic file from which a transcript of an event can be prepared.
- (9) "Bulk Distribution" means the distribution of all, or a significant subset of, the information in court records, as is, and without modification or compilation.
- (10) "Compiled Information" means information that is derived from the selection, aggregation or reformulation of information from more than one court record.
- (11) "Confidential" means that the contents of a court record may not be disclosed unless otherwise permitted by this order, or by law. When and to the extent provided by this order or by law, "confidential" shall mean also that the existence of a court record may not be disclosed.
- (12) "Sealed" means that the contents of a court record may not be disclosed unless otherwise permitted by this order, or by law. When and to the extent provided by this order or by law, "sealed" shall mean also that the existence of a court record may not be disclosed.
- (13) "Protective order" means that as defined by the Arkansas Rules of Civil Procedure.
- (14) "Expunged" means that the record or records in question shall be sequestered, sealed, and treated as confidential, and neither the contents, nor the existence of, the court record may be disclosed unless otherwise permitted by this order, or by law. Unless otherwise provided by this order or by law, "expunged" shall not mean the physical destruction of any records.
- (15) "Court Agency" means the Administrative Office of the Courts, the Office of Professional Programs, the Office of the Arkansas Supreme Court Committee on Professional Conduct, the Judicial Discipline and Disability Commission, and any other office or agency now in existence or hereinafter created, which is under the authority and control of the Arkansas Supreme Court.
- (16) "Custodian" with respect to any court record, means the person having administrative control of that record and does not mean a person who holds court records solely for the purposes of storage,

safekeeping, or data processing for others.

Section IV. General Access Rule.

Rules text

A. Public access shall be granted to court records subject to the limitations of sections V through X of this order.

B. This order applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the records are maintained.

C. If a court record, or part thereof, is rendered confidential by protective order, by this order, or otherwise by law, the confidential content shall be redacted, but there shall be a publicly accessible indication of the fact of redaction. This subsection (C) does not apply to court records that are rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record.

Section V. Remote Access.

A. Courts should endeavor to make at least the following information, when available in electronic form, remotely accessible to the public:

- (1) litigant/party/attorney indexes to cases filed with the court;
- (2) listings of case filings, including the names of the parties;
- (3) the register of actions or docket sheets;
- (4) calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;
- (5) judgments, orders, or decrees.

B. Remote access to information beyond this list is left to the discretion of the court as follows:

- (1) In the district courts, the district judges(s) shall decide whether to allow public remote access;
- (2) In the circuit courts, the Administrative Judge of the Judicial Circuit, with input from the Clerk, and, if applicable, the Ex Officio Circuit Clerk for the Probate Division, of the counties within the circuit, shall decide whether to allow public remote access;
- (3) In the appellate courts, the Supreme Court shall decide whether to allow public remote access.

C. Public remote access shall be permitted only upon compliance with sections (I)(E) and (VII), and the implementation of appropriate security measures to prevent indexing by Internet search engines.

Section VI. Bulk Distribution and Compiled Information.

A. Requests for bulk distribution or compiled information stored on computers maintained by the Administrative Office of the Courts (AOC) shall be made in writing on the form provided to the Director of the AOC or other designee of the Arkansas Supreme Court. Requests for bulk distribution or compiled information that is not stored on computers maintained by the AOC shall be made in writing on the form provided to the court or court agency having jurisdiction over the records. The AOC shall maintain on the Arkansas Judiciary website a current description of the records available on AOC computers. Requests will be acted upon or responded to within a reasonable period of time.

B. Compiled information shall be provided according to the terms of this section (VI)(B).

(1) Requests for compiled records shall identify the requested information and the desired format of the compilation.

(2) The grant of a request under this section (VI)(B) may be made contingent upon the

requester paying the actual costs of reproduction, including personnel time, the costs of the of the medium reproduction, supplies, equipment, and maintenance, and including the actual costs of mailing or transmitting the records by facsimile or other electronic means.

(a) The requester may be charged for personnel time exceeding one (1) hour associated with the tasks, in addition to the actual costs of reproduction.

(b) If the estimated costs exceed twenty-five dollars (\$25.00), an estimate will be required and the requester may be required to pay that fee in advance.

(c) Information may be furnished without charge or at a reduced charge if it is determined that a waiver or reduction of the fee is in the public interest.

(d) The requester is entitled to an itemized breakdown of charges under this section (VI)(B)(2).

(e) Costs for compiled records requested from a court or court agency having jurisdiction over the records shall be as otherwise permitted by state law or county or city ordinance.

(3) When the request includes cases or information excluded from public access under section (VII), or the identification of specific individuals is not essential to the purpose of the inquiry, then the requested records may be provided; however, names, addresses (except zip code), month and day of birth shall be redacted from the information.

(4) When the request includes release of social security numbers, driver's license or equivalent state identification card numbers, the information provided shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers. Account numbers and personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released.

(5) When the identification of specific individuals is essential to the purpose of the request, then the request must include an executed copy of the Compiled Records License Agreement and the requester must declare under penalty of perjury that the request is made for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose, and that the identification of specific individuals is essential to the purpose of the inquiry. This license agreement requirement may be waived for information furnished to an agency of the State of Arkansas. Denial of all or part of a compiled records request shall be reviewable by the Supreme Court Committee on Automation by the requestor filing a written request for review within 20 days of the denial. At its next regularly scheduled meeting the Committee shall review the request and make a determination whether the request should be granted. The determination shall be made by a majority of those members of the Committee present and voting. The Chair of the Committee shall communicate its decision to the Director of the Administrative Office of the courts or the court or court agency having jurisdiction over the records. The Committee's decision shall be final.

C. Bulk distribution shall be provided according to the terms of this section (VI)(C).

(1) The Administrative Office of the Courts is authorized to develop a license agreement for bulk records consistent with this rule.

(a) The license agreement shall provide the terms and conditions for receipt and update of the bulk data.

(b) The license agreement shall provide for a startup fee not to exceed \$1,000 and a monthly subscription fee not to exceed \$200 for access to the bulk data.

(c) The license agreement shall provide that recipients of the bulk data shall purge from their databases any records that become confidential or sealed within 24 hours of notice of the records being expunged or sealed.

(d) The license agreement shall provide that recipients of the bulk data shall replace their data within 24 hours of the availability of a monthly extract or transactional update of the databases.

(e) Costs for bulk records requested from a court or court agency having jurisdiction over the records shall be as otherwise permitted by state law or county or city ordinance.

(f) The license agreement requirement may be waived for information provided to an agency of the State of Arkansas. However, agencies of the State of Arkansas shall not be required to post a surety bond.

(2) The Administrative Office of the Courts shall establish a secure server from which the databases of case information may be downloaded by licensed users.

(a) The secure server shall include a monthly extract of all public case data.

(b) The secure server shall include transactional updates that will be periodically extracted from the case management databases no less frequently than once every 24 hours.

(3) The request for bulk distribution must:

(a) include an executed copy of the Bulk Records License Agreement or a request for waiver of the Bulk Records License Agreement if the requester is an agency of the State of Arkansas;

(b) include a cashier's check or money order as indicated in the license agreement to set up a bulk distribution account.

(4) The monthly extract and transactional updates shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers. Account numbers and personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released.

(5) The bulk data will not include cases or records excluded from public access under section (VII).

[Go here for bulk and compiled data forms \[2\]](#)

Section VII. Court Records Excluded From Public Access.

A. Case records. The following information in case records is excluded from public access and is confidential absent a court order to the contrary; however, if the information is disclosed in open court and is part of a verbatim transcript of court proceedings or included in trial transcript source materials, the information is not excluded from public access:

- (1) information that is excluded from public access pursuant to federal law;
- (2) information that is excluded from public access pursuant to the Arkansas Code Annotated;
- (3) information that is excluded from public access by order or rule of court;
- (4) Social Security numbers;
- (5) account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINs);
- (6) information about cases expunged or sealed pursuant to Ark. Code Ann. §§ 16-90-901, et seq. (repealed 2013), and Ark. Code Ann. §§ 16-90-1401 et seq.;
- (7) notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff,

and judicial agencies;

(8) all home and business addresses of petitioners who request anonymity when seeking a domestic order of protection.

B. Administrative Records. The following information in administrative records is excluded from public access and is confidential absent a court order to the contrary:

(1) information that is excluded from public access pursuant to Arkansas Code Annotated or other court rule;

(2) information protected from disclosure by order or rule of court;

(3) security and emergency preparedness plans. Security and emergency preparedness plans shall not be open to the public under this order or the Arkansas Freedom of Information Act, Ark. Code Ann. §§ 25-19-101 et seq., to the extent they contain information that if disclosed might jeopardize or compromise efforts to secure and protect individuals, the courthouse, or court facility. This exclusion from public access shall include: (A) Risk and vulnerability assessments; (B) Plans and proposals for preventing and mitigating security risks; (C) Emergency response and recovery records; (D) Security plans and procedures; and (E) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect individuals, the courthouse, or court facility.

(4) notes, communications, and deliberative materials of judges regarding court administration matters arising under Administrative Orders Numbers 14 and 18.

Explanatory Note: Before the amendment, this part of the Administrative Order made the address and phone number of all litigants confidential. That rule would have been both too broad and unworkable. Litigants' addresses are needed for, among other things, summonses and judgments. The revised provision is limited to the situation where current substantive law makes a litigant's addresses confidential for an obvious and compelling reason. Ark. Code Ann. § 9-15-203 (Repl. 2008).

Section VIII. Obtaining Access to Information Excluded from Public Access.

A. Any requestor may make a verified written request to obtain access to information in a case or administrative record to which public access is prohibited under this order to the court having jurisdiction over the record. The request shall demonstrate that:

(1) reasonable circumstances exist that require deviation from the general provisions of this order;

(2) the public interest in disclosure outweighs the harm in disclosure; or

(3) the information should not be excluded from public access under section (VII) of this order.

The person seeking access has the burden of providing notice to the parties and such other persons as the court may direct, providing proof of notice to the court or the reason why notice could not or should not be given, demonstrating to the court the requestor's reasons for prohibiting access to the information.

B. The court shall hold a hearing on the request, unless waived, within a reasonable time, not to exceed thirty (30) days of receipt of the request. The court shall grant a request to allow access following a hearing if the requestor demonstrates by a preponderance of the evidence that any one or more of the requirements of (VIII)(A)(1) through (VIII)(A)(3) have been satisfied.

C. A court shall consider the public access and the privacy interests served by this order and the grounds demonstrated by the requestor. In its order, the court shall state its reasons for granting or denying the request. When a request is made for access to information excluded from public access, the information will remain confidential while the court rules on the request.

D. A court may place restrictions on the use or dissemination of the information to preserve confidentiality.

Section IX. When Court Records May Be Accessed.

A. Court records that are publicly accessible will be available for public access in the courthouse during regular business hours established by the court; however, public access to trial exhibits and trial transcript source materials shall be granted at the discretion of the court. Court records in electronic form to which the court allows remote access under this policy will be available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.

B. Upon receiving a request pursuant to section (VI) or (VIII) of this order, a court will respond within a reasonable period of time.

Section X. Contracts With Vendors Providing Information Technology Services Regarding Court Records.

A. If a court, court agency, or other private or governmental entity contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, the term 'vendor' also includes a non-judicial branch state, county or local governmental agency that provides information technology services to a court.

B. Each contract shall require the vendor to assist the court in its role of educating litigants and the public about this order. The vendor shall also be responsible for training its employees and subcontractors about the provisions of this order.

C. Each contract shall prohibit vendors from disseminating bulk or compiled information, without first obtaining approval as required by this order.

D. Each contract shall require the vendor to acknowledge that court records remain the property of the court and are subject to the directions and orders of the court with respect to the handling and access to the court records, as well as the provisions of this order.

E. These requirements are in addition to those otherwise imposed by law.

Section XI. Violation of Order Not Basis for Liability.

Violation of this order by the disclosure of confidential or erroneous court records by a court, court agency, or clerk of court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or clerk of court shall not be the basis for establishing civil or criminal liability for violation of this order. This does not preclude a court from using its inherent contempt powers to enforce this order.

History Text:

History: Sections (VI), (VII), and (VIII) and the corresponding commentary amended and effective by per curiam order May 24, 2012 [3].

History. Amended October 23, 2008, effective January 1, 2009; sections (I) and (V) amended by per curiam order June 20, 2013, and effective September 1, 2013; section VII amended and effective January 15, 2015.

Associated Court Rules:
Administrative Orders

Source URL: <https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/order-19-access-court-records>

Links:

[1] <https://courts.arkansas.gov/forms-and-publications/court-forms/data-requests>

[2] <https://courts.arkansas.gov/forms-and-publications/court-forms/administrative-order-19>

[3] <http://opinions.aoc.arkansas.gov/WebLink8/0/doc/301778/Electronic.aspx>

COMPILED RECORDS LICENSE AGREEMENT - DATA EXTRACTS

This License Agreement (hereinafter, "Agreement") is entered into on the date set forth below between the Arkansas Administrative Office of the Courts (AOC) and

_____ (LICENSEE).

LICENSEE'S address is

_____.

LICENSEE'S federal tax identification number is _____.

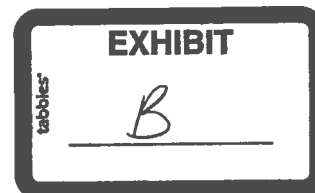
This Agreement, entered into pursuant to Arkansas Supreme Court Administrative Order 19 (VI), is for the purpose of establishing the terms and conditions under which AOC agrees to provide LICENSEE one or more extracts of court data from AOC's databases of civil, probate, domestic relations, criminal, and traffic cases in district, circuit and appellate courts . These extracts are further defined in Article I.

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ATTACHMENTS

- A. Extract Fees
- B. Websites, Subsidiaries, Entities, "Doing Business As" Names, and Other Aliases of Licensee
- C. Licensee Contact Information



I. **DEFINITIONS**

- A. Contexte - Arkansas case management database of court filings in Arkansas, as provided and maintained for the clerks of court by AOC.
- B. CMS - Legacy case management system used by AOC to collect filing and disposition information from circuit courts.
- C. Monthly Extract - monthly extract of all cases in the Contexte and CMS databases.
- D. Transactional Update - Periodic extract of transactional updates to the last monthly extract.
- E. Case - a record or group of records constituting a single, independently-filed action.
- F. Case number - a reference number used to indicate all records common to a single case, consisting of the court indicator, case type, year of filing, and sequence number unique to the court of filing for the case type within the year of filing.
- G. Contact persons - the contact persons named in Attachment C of this Agreement and their successors.
- H. Customer - a person who directly or indirectly purchases or acquires from a LICENSEE any data provided pursuant to this Agreement, whether repackaged, reformulated, reformatted, or copied, whether for his or her own use or to provide search services to his or her own customers or subscribers, if said data are transmitted in a format that contains data elements from more than one case.
- I. Data extract - a compilation of criminal or civil case data, extracted from the Contexte or CMS database(s) and formatted for electronic transmission to LICENSEE.
- J. Compiled Data Extract - a one-time custom compilation of criminal or civil case data, extracted from the Contexte or CMS database(s) and formatted for electronic transmission to LICENSEE.
- K. Disaster recovery mode - any incident or state of operations during which processing or data storage for any AOC information system is transferred from the system's regular operating environment to a "backup" or "hot site" for continued operation, as the result of a disaster, including, but not limited to, damage to, destruction of, or threat to AOC information technology or facilities by natural disaster, civil disorder, acts of war, terrorist acts, compromise of facility or network security, or acts of God.
- L. File number - see Case number.
- M. Inaccurate data - any data reported about a case by LICENSEE to a subscriber, customer, or other person which data does not match exactly the data for that case as reflected in the compiled extract file.
- N. Person - an individual or an entity, including, but not limited to, corporations, whether for profit or not for profit, partnerships, limited liability companies, joint venturers, and units and agencies of local, State, and Federal government.
- O. Priority users - officials, officers, employees, agents, and contractors of the Judicial Branch, and of other State and local government agencies, including, but not limited to, law enforcement agencies that access Contexte or CMS in order to perform their official duties.
- P. Proprietary information - all user identifiers, passwords, computer software, documentation, and user manuals, if any, supplied by AOC to LICENSEE pursuant to this Agreement.
- Q. Recurring data extract - any data extract file produced on a regularly scheduled basis.
- R. Subscriber - any person who acquires from LICENSEE the results of LICENSEE'S search of any records provided to LICENSEE pursuant to this Agreement, or a subset of those records, or the right to conduct his or her own searches of those records.
- S. Performance Bond - a surety bond issued by insurance company or an irrevocable letter of credit from a federally insured financial institution issued to guarantee performance under this license agreement.

II. AOC'S DUTIES

- A. Selected Extracts. AOC will provide, based upon acceptance of LICENSEE'S request, the Contexte and CMS extracts, as defined in Article I of this Agreement.
- B. Exclusions. Unless LICENSEE is eligible for data pursuant to Administrative Order VI (B) (3) and/or VI (B) (5), each compiled data extract will exclude the following: all records that are not public records under the Administrative Order 19; all records exempt from disclosure by other statute; all records sealed by order of the court for which they are maintained, and full social security numbers, driver's license or equivalent state identification card numbers, account numbers and PINs of specific assets, liabilities, accounts, and credit cards.
- C. User Manual. AOC will provide an inquiry user manual to LICENSEE as applicable for the data extracts provided.
- D. Documentation. AOC will provide file layout and documentation for each data extract provided.
- E. Offense Codes. AOC will provide its most current list of offense codes to any LICENSEE provided with any data extract.
- F. Implementation Dates. AOC will provide a list of dates of implementation of Contexte and CMS for each court, as applicable for the data extracts provided.
- G. Limited Technical Support. AOC will provide limited support to LICENSEE for the purpose of resolving technical support problems with downloading the data extract files from AOC's file servers.
- H. Support Limitations. Support for use and interpretation of any data received is limited to the documentation provided pursuant to this Article.

III. LIMITS ON AOC'S DUTIES

- A. Data Limits. The data in each data extract provided pursuant to this Agreement are subject to the following limitations:
 - 1. Data availability is based on the dates Contexte and CMS were implemented in a particular court; those dates are provided pursuant to Article II of this Agreement. In some courts, the clerk of court has chosen to enter into Contexte or CMS case data from dates prior to that court's implementation of Contexte or CMS; for those counties that data will be included in the relevant extracts.
 - 2. The official custodian of all official court records for each court is the clerk of court. AOC is not the official custodian of any record provided in any Contexte data extract where the court is indicated as a full Contexte user. Each data extract may contain data entered by AOC into the Contexte or CMS databases as reported to AOC by the court. AOC warrants that the records in each data extract are accurate reflections of the databases from which they were extracted, but does not warrant the accuracy of the databases themselves.
 - 3. Use of the data contained in a data extract may not be classified as a certified record check. A certified report of a criminal record search of a person's record in a particular county may be obtained from the clerk of court of that county, upon payment of a statutory search and/or certification fee.
 - 4. AOC is not liable for any damages incurred by LICENSEE resulting from the inaccuracy or incompleteness of any information in any official court record, provided the extract of any data matched the relevant database at the time of extraction. It is expressly understood by the parties that it is LICENSEE'S responsibility to verify information or data obtained in any data extract with official information reposing at the court of record.
 - 5. AOC is not liable for any demand or claim, regardless of form of action, for any damages arising from causes beyond the control and without the fault or negligence of AOC.
 - 6. AOC is not liable for any demand or claim, regardless of form of action, for any

damages resulting from the use by LICENSEE of any computer programs or other materials provided under this Agreement. AOC has no obligation to maintain or upgrade any such computer programs provided under this Agreement, except as AOC deems necessary.

7. If AOC is in disaster recovery mode, AOC is not liable for any demand or claim, regardless of form of action, for any damages arising from denial of access or inability to access data from the AOC system.
 8. AOC is not liable to LICENSEE for any damages resulting from LICENSEE'S alteration or modification of data supplied pursuant to this Agreement, unless AOC made, directed, or required such modification or alteration.
 9. AOC is not liable to LICENSEE or any other party for any loss, including revenue; profits; time; goodwill; computer time; destruction, damage, or loss of data; or any other indirect, special, or consequential damage that may arise from the use, operation, or modification of AOC data extracts.
- B. Access Limits. LICENSEE'S access to all data extracts provided pursuant to this Agreement is subject to the following limits:
1. AOC may at any time delay, limit, or deny LICENSEE'S access to the data in the event the demand on the system resources for LICENSEE'S access would significantly impair the ability of priority users to perform their normal business functions.
 2. Whenever AOC enters disaster recovery mode for any AOC information system, LICENSEE will not have access to data extracts from any AOC information system while AOC is operating any information system in disaster recovery mode.
 3. LICENSEE'S access to extract files may be suspended temporarily in the event of system maintenance, system outages, or interruptions of service that does not require activation of disaster recovery mode.
 4. AOC shall make reasonable efforts to provide LICENSEE with prompt written notice of any delay, limitation, or denial of access and of its anticipated duration, and will promptly notify LICENSEE when full access is again available.
 5. AOC is not liable for any damages incurred by LICENSEE resulting from any delay, limitation or denial of access, or inability to access, referred to in this Article.
- C. No Warranty. Except as expressly provided elsewhere in this Agreement, AOC makes no warranty whatsoever, of any kind or nature, express or implied, to LICENSEE. Without limitation on the generality of the foregoing, AOC specifically disclaims any warranty of merchantability or of fitness for a particular purpose with respect to any data extract provided pursuant to this Agreement, or with respect to the data in any such extract. The AOC also specifically disclaims any warranties, express or implied, for any computer programs and associated materials provided hereunder, or that the information or data accessed are accurate, correct, or complete.
- D. Limitation of Liability. LICENSEE agrees that any remedy available to LICENSEE will be limited to a refund of the purchase price of the license.
- E. No Assistance to LICENSEE'S Customers. AOC will not provide any support or assistance of any kind to LICENSEE'S subscribers or customers.

IV. LICENSEE'S PAYMENT DUTIES

- A. Fees and Fee Changes. LICENSEE agrees to pay all amounts due under this Agreement, as described in "Attachment A - Extract Fees," appended to this Agreement.
- B. Payment of Compiled Extract Fees. Fees for compiled data extracts from Contexte or CMS are non-refundable and will be billed on a one-time basis; payment must be

Compiled Records License Agreement

received before the extract program is executed. Payment for any compiled extract must be made to the "Arkansas Administrative Office of the Courts" at the following address:

Arkansas Administrative Office of the Courts
625 Marshall Street, Justice Building
Little Rock, AR 72201

- C. Performance Bond. LICENSEE agrees to execute a performance bond, as described in Article V, Section B, and as provided on form AOC-A-204 (Performance Bond for License Agreement), and to be bound by the terms and conditions thereof. Agencies of the State of Arkansas are exempt from this performance bond requirement.
- D. Late Fee. If payment is not received within thirty (30) days of the date of the invoice, a late fee, as specified in Attachment A, will be assessed and is due and payable immediately upon notice from the AOC.

V. LICENSEE'S DUTIES

- A. Duties. The following are LICENSEE'S duties.
 - 1. LICENSEE shall NOT provide case information or personal information excluded from public access by Section VII of Administrative Order 19 to its customers, subscribers, or other persons without the express written permission of AOC or a court order.
 - 2. LICENSEE shall NOT provide personal identifying information to customers, subscribers, or other persons without the express written permission of AOC or a court order.
 - 3. LICENSEE shall only use case information and personal information excluded from public access by section VII of Administrative Order 19 for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose and will not directly or indirectly use that information to sell an individual service to any individual, group of individuals, or the general public.
 - 4. LICENSEE shall notify AOC in writing when returning or destroying the compiled data extract. The date of receipt by AOC of said written notice shall be the date of termination of the Agreement for purposes of termination of the performance bond pursuant to (B) (6) below.
- B. Liquidated Damages and Performance Bond
 - 1. LICENSEE acknowledges that any breach of its duties may
 - a) Cause it to provide its subscribers and customers with inaccurate data, creating the potential for substantial harm to persons whose records are affected and to others who rely on those records.
 - b) Cause AOC to incur personnel, technology, and other costs in receiving, investigating, and responding to complaints; verifying inaccuracies and identifying their source; and enforcing LICENSEE'S compliance with its duties under this Agreement.
 - c) Cause AOC to incur further expense in dealing with claims arising from LICENSEE'S breach.
 - 2. The parties agree that any damages incurred by AOC as a result of any such breach are to some extent speculative and difficult to determine after the breach.
 - 3. Therefore, in order to avoid litigation concerning the nature and extent of the damages resulting from each such breach, to provide AOC with reasonable compensation for those damages, to limit LICENSEE'S exposure to an agreed amount, and to provide an incentive to LICENSEE to provide only accurate data, for each verified breach of LICENSEE'S duties, LICENSEE will pay to AOC, immediately upon AOC's verification of the breach, liquidated damages in the amount set out in Attachment A.

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4. To secure the payment of liquidated damages, as provided in Subsection 3 above, LICENSEE, upon the execution of this Agreement, must submit to AOC a completed Form AOC-A-204 (Performance Bond for License Agreement).[See Section IV C exempting agencies of the State of Arkansas.] The performance bond in following form must be deposited with AOC at the same time:

A performance bond in the amount specified in Attachment A under "Performance Bond", in the form of a Corporate Surety Bond secured by at least one corporate surety, or an irrevocable letter of credit from a federally insured financial institution.

Upon notification to LICENSEE that the AOC has verified a breach of LICENSEE'S duties, as described in Section A of this Article, LICENSEE shall immediately pay to the AOC the liquidated damages amount indicated in Attachment A to this Agreement. If the AOC has not received payment of the liquidated damages within thirty (30) days of notice and demand to the LICENSEE, the AOC shall pursue forfeiture of LICENSEE'S bond posted pursuant to this Section, of which the enforcement costs, including, but not limited to, court costs and attorney fees, shall be borne by LICENSEE.

In the event of initiation of forfeiture proceedings against LICENSEE'S bond due to breach of its duty to pay liquidated damages upon AOC's verification of breach, LICENSEE will be required to deposit with AOC a new performance bond, in the amount specified in Attachment A, in order to continue access to AOC's extract files.

5. If LICENSEE again breaches one or more of its duties under Section V (A) within two years of a previous breach, LICENSEE'S bond will be forfeited and this Agreement will terminate.
 6. Thirty (30) days after termination of the Agreement under conditions that do not require the forfeiture of the bond, the bond will terminate.
- C. Response to Complaints - Investigation, Suspension, and Termination. LICENSEE acknowledges and agrees that reports of errors in data provided by LICENSEE to its subscribers or customers or any other failure to comply with LICENSEE'S duties will be subject to investigation and response by the AOC, as described in this Section.
1. Upon any report or complaint that data provided directly or indirectly by LICENSEE to any person are inaccurate, AOC will first investigate to verify the following:
 - a) LICENSEE'S data referenced by the complainant are, in fact, inaccurate;
 - b) The data were obtained from AOC; and
 - c) The data were accurate in the data extract files provided by AOC.
 2. Upon such verification, AOC will notify one of LICENSEE'S contact persons of the inaccuracy, as well as LICENSEE'S duty to pay liquidated damages in the amount set out in Attachment A, pursuant to Section B.3 of this Article. These liquidated damages are due and payable independent of LICENSEE'S corrective action, as explained in Section C.3 below.
 3. Upon such notification, LICENSEE will have a reasonable time to correct the inaccuracy. Correction may require, in the sole discretion of AOC's Chief Information Officer, reapplication of extract files, including, but not limited to, a complete erasure of LICENSEE'S records from AOC and restoration of those records from any compiled data extracts provided to LICENSEE under this Agreement or purchase of a new compiled data extract.
 4. When AOC is satisfied that LICENSEE'S records are accurate and the data that were the source of the complaint have been corrected, AOC will so notify LICENSEE'S contact person and the complainant of the correction. Pursuant to Sections B.4 and B.5 of this Article, LICENSEE, to continue its access to AOC's extract files, will be required to provide a new performance bond if it forfeited its initial performance bond due to breach of its duty to pay liquidated damages.

Compiled Records License Agreement

5. Upon a subsequent report or complaint that data provided by LICENSEE to any person are inaccurate, AOC will investigate and verify the inaccuracy as provided above.
6. If LICENSEE provides inaccurate data within two years of a previous verified inaccuracy, and the subsequent inaccuracy is verified as provided in Subsection 1, above, this Agreement will immediately terminate and may not be reinstated.
7. In order to allow AOC to conduct the investigation and verification provided for in this Article, as well as random security checks, LICENSEE shall provide to AOC complete records from LICENSEE'S database(s), upon receipt from AOC of a list of names or case numbers, as part of AOC's investigations or security checks.
8. AOC is under no obligation to notify LICENSEE of any complaint during the course of AOC's investigation or after its conclusion, should AOC determine that LICENSEE'S data are accurate, or that the source of the data was an entity other than AOC.
9. AOC is under no obligation to identify the specific data that are the source of a complaint, and may, in fact, be prohibited by law from doing so.
10. Any failure by LICENSEE to comply with an instruction given by AOC pursuant to this Article will result in immediate termination of this Agreement.
11. By investigating, verifying, and confirming a correction as provided in this Article, AOC assumes no obligation to LICENSEE with regard to LICENSEE'S potential liability to a complainant or any other person as a result of the dissemination of inaccurate data under investigation.

VI. LICENSEE'S OTHER DUTIES

- A. Required Disclaimer. LICENSEE shall prominently display a disclaimer in each report of a record search provided to a subscriber, with each transfer of data to a customer or other person, and at each search access portal made available to a subscriber. The disclaimer shall read:

"The official custodian of all official court records for each court in Arkansas is the clerk of court. The Arkansas Administrative Office of the Courts (AOC) is not the official custodian of any case record and provides only copies of data entered or provided by the clerks. Data provided through this service may not reflect pending or post-disposition activity on a case. The AOC does not warrant the accuracy of the data. To verify a record's accuracy, contact the clerk of the court of record."
- B. Source of Data. LICENSEE shall not enter into any agreement with a customer that bars the customer from revealing to AOC the name of LICENSEE as the source of its data, or that penalizes the customer for so doing.
- C. Duties of LICENSEE'S Customers. LICENSEE shall impose upon each of its customers all of the duties specified in Article V, Section A of this Agreement, as well as the duty specified in Section B of this Article.
- D. Proprietary Information. All proprietary information supplied by AOC to LICENSEE is the confidential property of AOC, subject to the proprietary rights of AOC, and is provided for the sole internal use of LICENSEE in making use of the data extracts provided pursuant to this Agreement. LICENSEE shall hold all proprietary information in the strictest confidence. LICENSEE shall exercise at all times the same care with respect to all proprietary information that LICENSEE would exercise in the protection of LICENSEE'S own proprietary information. LICENSEE shall not release or disclose any proprietary information to any other person without the express prior written consent of AOC.
- E. LICENSEE'S Subsidiaries. As part of this Agreement (see Attachment B), LICENSEE shall provide AOC with a list of all of LICENSEE'S websites, subsidiaries that use or distribute information obtained from AOC, and all other names by which LICENSEE does business. LICENSEE will update this list and send it to AOC within thirty (30) days of any change.

Compiled Records License Agreement

- F. User Name and Password. LICENSEE shall provide to AOC a non-expiring username and password for access to any service, application, or database that will include, incorporate, or process data received from AOC as part of providing data to any subscriber or customer. This username and password shall be provided without cost or condition.
- G. Termination for Failure to Comply. Any failure of LICENSEE to comply with the requirements of this Article is grounds for termination for cause, pursuant to Article VIII, Section B of this Agreement.
- H. Return or destruction. At the termination of this Agreement LICENSEE shall return to AOC or destroy any information or data provided by AOC under this Agreement in any form, held by the Licensee or any officer, employee or agent of Licensee.
- I. Resale of Data. The LICENSEE shall not reproduce or distribute or disseminate the transferred database files in bulk but only (1) in response to an individual record inquiry and (2) in accordance with Article V 1 thru 3. "In bulk" shall include, but is not limited to, via multiple records or on CD-ROM or other electronic or optical media.
- J. Subcontracting. The LICENSEE shall not enter into subcontracts relating to this Agreement.

VII. CONTACT PERSONS AND NOTICES.

- A. Contact Information. LICENSEE shall provide all contact information requested in Attachment C to this Agreement.
- B. Contact Persons. LICENSEE shall designate up to two (2) contact persons in Attachment C. At no time shall there be more than two contact persons for LICENSEE.
- C. Contacts Limited to Contact Persons. The two contact persons are the only individuals, in addition to the signatory(ies) to this Agreement (if different), permitted to contact the AOC on LICENSEE'S behalf for any reason other than reset of a password for the user ID of a password administrator, as provided in Section E below. At least one of these contact people shall be available to the AOC on weekdays from 8:00 a.m. until 5:00 p.m., Central Time, with the exception of legal holidays on which Arkansas state government offices are not open. LICENSEE expressly represents that any person designated as a contact person is its legal agent with full authority to act individually on LICENSEE'S behalf for performance and fulfillment of LICENSEE'S obligations under this Agreement, including, but not limited to, notifying the AOC of changes to LICENSEE'S contact information, contact persons, and password administrators; receiving any and all notices from the AOC under this Agreement; and responding to the AOC's requests for information or action from LICENSEE.
- D. Password Administrators. LICENSEE shall designate up to two (2) password administrators in Attachment C. At no time shall there be more than two password administrators for LICENSEE.
- E. Contacts Limited to Password Administrators. LICENSEE'S password administrators are responsible for resetting revoked or expired passwords for all user IDs provided to LICENSEE pursuant to this Agreement. The AOC Help Desk will reset passwords for no user ID provided to LICENSEE pursuant to this Agreement, except for the two user IDs assigned to the individual password administrators, and then only upon confirmation satisfactory to the AOC that the individual requesting the reset of a password for a specific user ID is the password administrator to whom that user ID was assigned by the AOC. LICENSEE acknowledges and agrees that it is within the sole discretion of the AOC to delay the reset of the password for a password administrator's user ID for a reasonable time until AOC Help Desk staff or the Remote Public Access Coordinator is satisfied that a request for such reset has originated with the individual password

Compiled Records License Agreement

administrator to whom the user ID in question was assigned by the AOC. This verification process may include a demand for a written request from a contact person or signatory to this Agreement for reset of the password in question.

- F. Dual Roles. An individual may be both a contact person and a password administrator for LICENSEE, but such individual must be designated separately as both in Attachment C, and LICENSEE must provide all information requested for that individual in both roles.
- G. Change in Information. Any change to LICENSEE'S contact information, contact person information, or password administrator information shall be communicated to the AOC by any means of communication listed in Section I of this Article.
- H. Notices to LICENSEE. Any notice or other communication from the AOC to LICENSEE shall be deemed sufficient if sent to either contact person or to any signatory to this Agreement using the contact information provided in Attachment C, and via any means of communication listed in Section I of this Article.
- I. Notices to AOC. Any notice or other communication from LICENSEE to AOC shall be deemed sufficient if sent by mail, facsimile, or email to AOC using the contact information listed below.
Mail: The Arkansas Administrative Office of the Courts
Court Information Systems Division
625 Marshall Street, Justice Building
Little Rock, AR 72201
Fax: (501)682-9410
Email: aoc.cis.mgr@arkansas.gov
- J. Notices in Writing. Unless stated otherwise in this Agreement, all notices between the parties shall be in writing and shall be sent by mail, facsimile, or electronic transmission.

VIII. TERM AND TERMINATION

- A. Effective Date. The term of this Agreement shall begin on the date of its execution and shall continue until terminated by either party.
- B. Termination for Cause. If LICENSEE fails to perform its duties, as specified in the Agreement, or violates any of the agreements or stipulations of the Agreement, AOC may terminate this Agreement for cause, without prior notice, as provided elsewhere in this Agreement.
- C. Termination without Cause. Either party may terminate this Agreement without cause upon giving the other party thirty (30) days' notice.
- D. Termination for Convenience of the State. AOC may terminate this Agreement at any time without notice, for the convenience of the State.
- E. Termination for Insolvency. The filing of bankruptcy, whether voluntary or involuntary, or the commencement of any other action or proceeding alleging the insolvency of LICENSEE, shall immediately terminate this Agreement. LICENSEE shall notify AOC immediately upon the filing or commencement of any action alleging insolvency of LICENSEE.

IX. MISCELLANEOUS

- A. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous discussions and agreements. Understandings, representations, or warranties not contained in this Agreement or a written amendment hereto are not binding on either party.
- B. Assignment. This non-exclusive Agreement and the LICENSEE'S rights under this license are personal to it and may not be transferred, assigned, delegated, or sold for any purpose whatsoever without the prior written consent of the AOC.
- C. Modification. No modification, amendment, deletion, or alteration of any of the terms and

Compiled Records License Agreement

conditions of this Agreement shall be effective unless it is in writing and signed by both parties, with the exception of changes in contact persons as detailed in Article VII and Attachment C of this Agreement and periodic fee changes set out in Attachment A.

- D. Counterparts. This Agreement is to be executed in duplicate originals, and each duplicate shall be deemed an original copy of the Agreement for all purposes.
- E. Headings. The table of contents and headings used herein are for reference and convenience only and shall not enter into the interpretation hereof unless otherwise specified herein.
- F. Severability. If any court of competent jurisdiction shall for any reason hold any section or provision of this Agreement invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions of this Agreement.
- G. Governing Law and Situs. This Agreement shall be governed in all respects by the law of the State of Arkansas, and venue for any action hereunder shall be in Pulaski County, Arkansas.
- H. Conflict of Authority. If any provision of this Agreement shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to conform to said statute or rule of law.
- I. Other Laws. To the extent the data obtained under this Agreement are subject to other laws, statutes, court rules, administrative rules, or regulations, either federal or state, that govern the use of the data, the provisions of those other laws, statutes, court rules, administrative rules, or regulations, either federal or state, shall apply to the data.
- J. Indemnification. LICENSEE shall defend, indemnify, and hold harmless the State of Arkansas, AOC, and officials, officers, employees, and agents of either of them, from all loss, risk of loss, and damages (including expenses, costs, and attorney fees) sustained or incurred by them or any of them as the result of the assertion of any claim, demand, suit, action, judgment, or execution for damages of any kind and by whomever and whenever made or obtained, that result directly or indirectly from LICENSEE'S performance under this Agreement.
- K. Status of Parties. The parties hereto, in the performance of this Agreement, will be acting in their individual capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- L. Non-Exclusive Agreement. This Agreement is non-exclusive. During the term of this Agreement, the AOC reserves the right to enter into agreements with other parties as it deems fit.
- M. Waiver. The failure of either party to enforce any term of this Agreement on one or more occasions will not constitute a waiver of the rights or remedies of either party to enforce such term or any other term of this Agreement on any other occasion. No term or condition of this Agreement shall be held to be waived, and no breach excused, except by a written instrument signed by the parties hereto. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach.
- N. Survival. The provisions of Sections III.A.4 thru III.A.6, III.A.8, III.A. 9, III.B.5, III.C thru III.D, IV.A, V.A.1 thru V.A.3, V.B.3, V.B.4, V.B.6, V.C.7, V.C.9, V.C.11, VI.A, VI.B, VI.D, VI.I, IX.F, IX.G, and IX.M of this Agreement shall survive the termination of this Agreement.
- O. Availability of State Funds. All payments made to AOC by LICENSEE are deposited by AOC in the Fine Collection Enhancement Fund. The performance of AOC's duties under this Agreement is subject to the availability of the moneys in that Fund or of other State funds to enable it to perform those duties.
- P. Legal Authority. If at any time for any reason AOC concludes, or it is determined by a court of competent jurisdiction, that AOC was without authority to enter into this Agreement, this Agreement will terminate, without further obligation or liability to LICENSEE by the State of Arkansas, AOC, or any official, officer, employee, or agent of either.

Compiled Records License Agreement

X. SIGNATURES

By signing below, the parties acknowledge that they are authorized to sign this Agreement and bind themselves or their respective agencies and companies.

For LICENSEE:	
COMPANY NAME (Type or Print)	
NAME of President (Type or Print)	
SIGNATURE of President	
Attest:	
NAME of Secretary (Type or Print)	
SIGNATURE of Secretary	
Affix corporate seal:	

For THE ARKANSAS ADMINISTRATIVE OFFICE OF THE COURTS:	
Date	

Compiled Records License Agreement

Attachment A

Extract Fees Effective JULY 1, 2012

Extract Type: COMPILED DATA EXTRACT	
Fees	Current Total Costs Each Licensee
One-time Custom Compiled Extract	Per Quote
Account Setup Fee	\$1,000
Monthly Transactional Update Fee	\$200/month
Late Payment Fee (for bill due 30 days or more)	\$75/late payment
Reinstatement upon Termination	\$500
Performance Bond	
Liquidated Damages	\$5,000
Corporate Surety Bond or Irrevocable Letter of Credit	\$5,000 *

*The Performance Bond requirement shall be waived for an agency of the State of Arkansas.

Compiled Records License Agreement

Attachment C

Licensee Contact Information

Instructions: Use this form to provide or update LICENSEE's contact information and to designate administrators. All fields are required. If you need assistance with this form, contact the AOC Remote Public Access Coordinator at (501)682-9400.

Licensee Contact Information: (See Article VII Section A of License Agreement)

Licensee Name:			
Mailing Address:			
Phone #:		Email:	
Fax#:		Website URL:	
Federal Tax ID#:			

Contact Person Information: (See Article VII Sections B and C of License Agreement)

	Contact Person #1	Contact Person #2
Contact Name:		
Mailing Address:		
Phone #:		
Fax#:		
Email Address:		
Signature:		

Password Administrator Information:
(See Article VII, Sections D and E of License Agreement.)

	Password Admin #1	Password Admin #2
Admin Name:		
Secret word:		
4 Digit PIN Number:		
Phone #:		
Fax#:		
Email Address:		

Signature: This Attachment will be honored only if signed by a signatory to LICENSEE'S "License Agreement - Data Extracts" or by a person currently designated pursuant to Article II of that Agreement as a contact person for LICENSEE.

Name (Type or Print)		Date:	
Signature			

For AOC Internal Use Only:

Password Admin #1 ID:	
Password Admin #2 ID:	
AOC Security Administrator Signature	
Date Request Completed	



07/10/2018

4250 N. Venetian Lane
Fayetteville, AR 72704

Bentonville District Court (Email: Jennifer Jones / Clerk - JenniferJ@bentonvillear.com)

To Whom It May Concern:

Please allow this correspondence to serve as my request, pursuant to the Arkansas Freedom of Information Act (Arkansas Code Annotated §29-19-101, et al) for a copy of any and all court records which relate to the following individual:

[REDACTED]

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemptions upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

You may notify me of any charges for the cost of all copies and/or to perform the search and I will immediately forward payment.

Sincerely,

Meredith Fulnecek



DISTRICT COURT OF BENTON COUNTY, ARKANSAS
BENTONVILLE DIVISION

2706 SOUTH WALTON BLVD.
BENTONVILLE, AR 72712

Ray Bunch
District Court Judge

Court Clerk (479) 271-3120
Fax: (479) 271-3134

July 10, 2018

Courthouse Concepts
4250 N Venetian Lane
Fayetteville, AR 72704

Attn: Meredith Fulnecheck

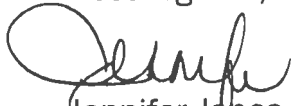
We are in receipt of your request for court records dated July 10, 2018 and received in our office on the same date. Access to court records is governed by Supreme Court Administrative Order Number 19, a copy of which is attached. Please review section VI and the corresponding commentary. Our court is not a participant in the AOC's case management system.

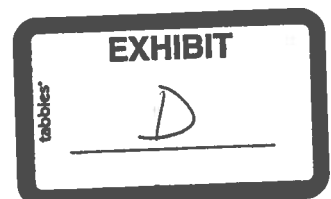
I have also attached a Compiled Records License Agreement, Request for Compiled Information Affidavit and a Request for Compilation of Court Information. If you believe that your request falls within the guidelines of Administrative Order 19, then please complete the enclosed agreement, request and affidavit. Once these forms are completed, please return the same to our office.

The Judge will review your request and determine if it falls within the guidelines of Administrative Order 19. We will notify you of this determination in writing. If your request is denied you have 20 days to file a written request with the AOC for review of this decision by the Supreme Court Committee on Automation.

Please feel free to contact me should you have further comments or questions.

Best regards,


Jennifer Jones
Chief Court Clerk



AR Sup. Ct. Adm. Order No. 19 § 1

Rules current through January 30, 2018 by the Arkansas Supreme Court and Arkansas Court of Appeals

Arkansas Court Rules > ADMINISTRATIVE ORDERS OF THE SUPREME COURT > ADMINISTRATIVE ORDER NUMBER 19 -- ACCESS TO COURT RECORDS

Section I. Authority, Scope, and Purpose.

- A. Pursuant to Ark. Const. Amend. 80 §§ 1, 3, 4; *Ark. Code Ann. §§ 16-10-101* (Repl. 1999), 25-19-105(b)(8) (Supp. 2003), and this Court's inherent rule-making authority, the Court adopts and publishes Administrative Order Number 19: Access to Court Records. This order governs access to, and confidentiality of, court records. Except as otherwise provided by this order, access to court records shall be governed by the Arkansas Freedom of Information Act (*Ark. Code Ann. §§ 25-19-101*, et seq.).
- B. The purposes of this order are to:
- (1) promote accessibility to court records;
 - (2) support the role of the judiciary;
 - (3) promote governmental accountability;
 - (4) contribute to public safety;
 - (5) reduce the risk of injury to individuals;
 - (6) protect individual privacy rights and interests;
 - (7) protect proprietary business information;
 - (8) minimize reluctance to use the court system;
 - (9) encourage the most effective use of court and clerk of court staff;
 - (10) provide excellent customer service; and
 - (11) avoid unduly burdening the ongoing business of the judiciary.
- C. This order applies only to court records as defined in this order and does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial governmental agency or other entity.
- D. Disputes arising under this order shall be determined in accordance with this order and, to the extent not inconsistent with this order, by all other rules and orders adopted by this Court.
- E. This order applies to all court records; however clerks and courts may, but are not required to, redact or restrict information that was otherwise public in case records and administrative records created before January 1, 2009. However, confidential information shall be redacted from pre-January 1, 2009 case records and administrative records before remote access is available to such records.

History

Amended June 20, 2013, effective September 1, 2013

End of Document



AR Sup. Ct. Adm. Order No. 19 § 2

Rules current through January 30, 2018 by the Arkansas Supreme Court and Arkansas Court of Appeals

**Arkansas Court Rules > ADMINISTRATIVE ORDERS OF THE SUPREME COURT >
ADMINISTRATIVE ORDER NUMBER 19 -- ACCESS TO COURT RECORDS**

Section II. Who Has Access Under This Order.

- A. All persons have access to court records as provided in this order, except as provided in section II(B) of this order.
- B. The following persons, in accordance with their functions within the judicial system, may have greater access to court records:
 - (1) employees of the court, court agency, or clerk of court;
 - (2) private or governmental persons or entities who assist a court in providing court services;
 - (3) public agencies whose access to court records is defined by other statutes, rules, orders or policies; and
 - (4) the parties to a case or their lawyers with respect to their own case.

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AR Sup. Ct. Adm. Order No. 19 § 3

Rules current through January 30, 2018 by the Arkansas Supreme Court and Arkansas Court of Appeals

Arkansas Court Rules > ADMINISTRATIVE ORDERS OF THE SUPREME COURT > ADMINISTRATIVE ORDER NUMBER 19 -- ACCESS TO COURT RECORDS

Section III. Definitions.

A. For purpose of this order:

- (1) "Court Record" means both case records and administrative records, but does not include information gathered, maintained or stored by a non-court agency or other entity even though the court may have access to the information, unless it is adopted by the court as part of the court record.
- (2) "Case Record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a judicial proceeding.
- (3) "Administrative Record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government.
- (4) "Court" means the Arkansas Supreme Court, Arkansas Court of Appeals, and all Circuit, District, or City Courts.
- (5) "Clerk of Court" means the Clerk of the Arkansas Supreme Court, the Arkansas Court of Appeals, and the Clerk of a Circuit, District, or City Court including staff. "Clerk of Court" also means the County Clerk, when acting as the Ex-Officio Circuit Clerk for the Probate Division of Circuit Court.
- (6) "Public access" means that any person may inspect and obtain a copy of the information.
- (7) "Remote access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.
- (8) "In electronic form" means information that exists as electronic representations of text or graphic documents; an electronic image, including a video image of a document, exhibit or other thing; data in the fields or files of an electronic database; or an audio or video recording (analog or digital) of an event or notes in an electronic file from which a transcript of an event can be prepared.
- (9) "Bulk Distribution" means the distribution of all, or a significant subset of, the information in court records, as is, and without modification or compilation.
- (10) "Compiled Information" means information that is derived from the selection, aggregation or reformulation of information from more than one court record.
- (11) "Confidential" means that the contents of a court record may not be disclosed unless otherwise permitted by this order, or by law. When and to the extent provided by this order or by law, "confidential" shall mean also that the existence of a court record may not be disclosed.
- (12) "Sealed" means that the contents of a court record may not be disclosed unless otherwise permitted by this order, or by law. When and to the extent provided by this order or by law, "sealed" shall mean also that the existence of a court record may not be disclosed.
- (13) "Protective order" means that as defined by the Arkansas Rules of Civil Procedure.
- (14) "Expunged" means that the record or records in question shall be sequestered, sealed, and treated as confidential, and neither the contents, nor the existence of, the court record may be disclosed unless

AR Sup. Ct. Adm. Order No. 19 § 3

otherwise permitted by this order, or by law. Unless otherwise provided by this order or by law, "expunged" shall not mean the physical destruction of any records.

- (15) "Court Agency" means the Administrative Office of the Courts, the Office of Professional Programs, the Office of the Arkansas Supreme Court Committee on Professional Conduct, the Judicial Discipline and Disability Commission, and any other office or agency now in existence or hereinafter created, which is under the authority and control of the Arkansas Supreme Court.
- (16) "Custodian" with respect to any court record, means the person having administrative control of that record and does not mean a person who holds court records solely for the purposes of storage, safekeeping, or data processing for others.



AR Sup. Ct. Adm. Order No. 19 § 4

Rules current through January 30, 2018 by the Arkansas Supreme Court and Arkansas Court of Appeals

**Arkansas Court Rules > ADMINISTRATIVE ORDERS OF THE SUPREME COURT >
ADMINISTRATIVE ORDER NUMBER 19 -- ACCESS TO COURT RECORDS**

Section IV. General Access Rule.

- A. Public access shall be granted to court records subject to the limitations of sections V through X of this order.
- B. This order applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the records are maintained.
- C. If a court record, or part thereof, is rendered confidential by protective order, by this order, or otherwise by law, the confidential content shall be redacted, but there shall be a publicly accessible indication of the fact of redaction. This subsection (C) does not apply to court records that are rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record.

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AR Sup. Ct. Adm. Order No. 19 § 5

Rules current through January 30, 2018 by the Arkansas Supreme Court and Arkansas Court of Appeals

Arkansas Court Rules > ADMINISTRATIVE ORDERS OF THE SUPREME COURT > ADMINISTRATIVE ORDER NUMBER 19 -- ACCESS TO COURT RECORDS

Section V. Remote Access.

- A. Courts should endeavor to make at least the following information, when available in electronic form, remotely accessible to the public:
- (1) litigant/party/attorney indexes to cases filed with the court;
 - (2) listings of case filings, including the names of the parties;
 - (3) the register of actions or docket sheets;
 - (4) calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;
 - (5) judgments, orders, or decrees.
- B. Remote access to information beyond this list is left to the discretion of the court as follows:
- (1) In the district courts, the district judge(s) shall decide whether to allow public remote access;
 - (2) In the circuit courts, the Administrative Judge of the Judicial Circuit, with input from the Clerk, and, if applicable, the Ex Officio Circuit Clerk for the Probate Division, of the counties within the circuit, shall decide whether to allow public remote access;
 - (3) In the appellate courts, the Supreme Court shall decide whether to allow public remote access.
- C. Public remote access shall be permitted only upon compliance with sections (I)(E) and (VII), and the implementation of appropriate security measures to prevent indexing by Internet search engines.

History

Amended June 20, 2013, effective September 1, 2013

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AR Sup. Ct. Adm. Order No. 19 § 6

Rules current through January 30, 2018 by the Arkansas Supreme Court and Arkansas Court of Appeals

Arkansas Court Rules > ADMINISTRATIVE ORDERS OF THE SUPREME COURT > ADMINISTRATIVE ORDER NUMBER 19 -- ACCESS TO COURT RECORDS

Section VI. Bulk Distribution and Compiled Information.

- A.** Requests for bulk distribution or compiled information stored on computers maintained by the Administrative Office of the Courts (AOC) shall be made in writing on the form provided to the Director of the AOC or other designee of the Arkansas Supreme Court. Requests for bulk distribution or compiled information that is not stored on computers maintained by the AOC shall be made in writing on the form provided to the court or court agency having jurisdiction over the records. The AOC shall maintain on the Arkansas Judiciary website a current description of the records available on AOC computers. Requests will be acted upon or responded to within a reasonable period of time.
- B.** Compiled information shall be provided according to the terms of this section (VI)(B).
- (1) Requests for compiled records shall identify the requested information and the desired format of the compilation.
 - (2) The grant of a request under this section (VI)(B) may be made contingent upon the requester paying the actual costs of reproduction, including personnel time, the costs of the of the medium reproduction, supplies, equipment, and maintenance, and including the actual costs of mailing or transmitting the records by facsimile or other electronic means.
 - (a) The requester may be charged for personnel time exceeding one (1) hour associated with the tasks, in addition to the actual costs of reproduction.
 - (b) If the estimated costs exceed twenty-five dollars (\$ 25.00), an estimate will be required and the requester may be required to pay that fee in advance.
 - (c) Information may be furnished without charge or at a reduced charge if it is determined that a waiver or reduction of the fee is in the public interest.
 - (d) The requester is entitled to an itemized breakdown of charges under this section (VI)(B)(2).
 - (e) Costs for compiled records requested from a court or court agency having jurisdiction over the records shall be as otherwise permitted by state law or county or city ordinance.
 - (3) When the request includes cases or information excluded from public access under section (VII), or the identification of specific individuals is not essential to the purpose of the inquiry, then the requested records may be provided; however, names, addresses (except zip code), month and day of birth shall be redacted from the information.
 - (4) When the request includes release of social security numbers, driver's license or equivalent state identification card numbers, the information provided shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers. Account numbers and personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released.
 - (5) When the identification of specific individuals is essential to the purpose of the request, then the request must include an executed copy of the Compiled Records License Agreement and the requester must declare under penalty of perjury that the request is made for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose, and that the identification of specific

individuals is essential to the purpose of the inquiry. This license agreement requirement may be waived for information furnished to an agency of the State of Arkansas. Denial of all or part of a compiled records request shall be reviewable by the Supreme Court Committee on Automation by the requestor filing a written request for review within 20 days of the denial. At its next regularly scheduled meeting the Committee shall review the request and make a determination whether the request should be granted. The determination shall be made by a majority of those members of the Committee present and voting. The Chair of the Committee shall communicate its decision to the Director of the Administrative Office of the courts or the court or court agency having jurisdiction over the records. The Committee's decision shall be final.

C. Bulk distribution shall be provided according to the terms of this section (VI)(C).

- (1)** The Administrative Office of the Courts is authorized to develop a license agreement for bulk records consistent with this rule.
 - (a)** The license agreement shall provide the terms and conditions for receipt and update of the bulk data.
 - (b)** The license agreement shall provide for a startup fee not to exceed \$ 1,000 and a monthly subscription fee not to exceed \$ 200 for access to the bulk data.
 - (c)** The license agreement shall provide that recipients of the bulk data shall purge from their databases any records that become confidential or sealed within 24 hours of notice of the records being expunged or sealed.
 - (d)** The license agreement shall provide that recipients of the bulk data shall replace their data within 24 hours of the availability of a monthly extract or transactional update of the databases.
 - (e)** Costs for bulk records requested from a court or court agency having jurisdiction over the records shall be as otherwise permitted by state law or county or city ordinance.
 - (f)** The license agreement requirement may be waived for information provided to an agency of the State of Arkansas. However, agencies of the State of Arkansas shall not be required to post a surety bond.
- (2)** The Administrative Office of the Courts shall establish a secure server from which the databases of case information may be downloaded by licensed users.
 - (a)** The secure server shall include a monthly extract of all public case data.
 - (b)** The secure server shall include transactional updates that will be periodically extracted from the case management databases no less frequently than once every 24 hours.
- (3)** The request for bulk distribution must:
 - (a)** include an executed copy of the Bulk Records License Agreement or a request for waiver of the Bulk Records License Agreement if the requester is an agency of the State of Arkansas;
 - (b)** include a cashier's check or money order as indicated in the license agreement to set up a bulk distribution account.
- (4)** The monthly extract and transactional updates shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers. Account numbers and personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released.
- (5)** The bulk data will not include cases or records excluded from public access under section (VII).

History

Amended May 24, 2012



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AR Sup. Ct. Adm. Order No. 19 § 7

Rules current through January 30, 2018 by the Arkansas Supreme Court and Arkansas Court of Appeals

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Section VII. Court Records Excluded From Public Access.

- A. Case records.** -- The following information in case records is excluded from public access and is confidential absent a court order to the contrary; however, if the information is disclosed in open court and is part of a verbatim transcript of court proceedings or included in trial transcript source materials, the information is not excluded from public access:
- (1) information that is excluded from public access pursuant to federal law;
 - (2) information that is excluded from public access pursuant to the Arkansas Code Annotated;
 - (3) information that is excluded from public access by order or rule of court;
 - (4) Social Security numbers;
 - (5) account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINs);
 - (6) information about cases expunged or sealed pursuant to *Ark. Code Ann. §§ 16-90-901, et seq.* (repealed 2013), and *Ark. Code Ann. §§ 16-90-1401 et seq.*;
 - (7) notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff, and judicial agencies;
 - (8) all home and business addresses of petitioners who request anonymity when seeking a domestic order of protection.
- B. Administrative Records.** -- The following information in administrative records is excluded from public access and is confidential absent a court order to the contrary:
- (1) information that is excluded from public access pursuant to Arkansas Code Annotated or other court rule;
 - (2) information protected from disclosure by order or rule of court;
 - (3) security and emergency preparedness plans. Security and emergency preparedness plans shall not be open to the public under this order or the Arkansas Freedom of Information Act, *Ark. Code Ann. §§ 25-19-101 et seq.*, to the extent they contain information that if disclosed might jeopardize or compromise efforts to secure and protect individuals, the courthouse, or court facility. This exclusion from public access shall include: (A) Risk and vulnerability assessments; (B) Plans and proposals for preventing and mitigating security risks; (C) Emergency response and recovery records; (D) Security plans and procedures; and (E) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect individuals, the courthouse, or court facility.
 - (4) notes, communications, and deliberative materials of judges regarding court administration matters arising under Administrative Orders Number 14 and 18.

History



Amended October 23, 2008, effective January 1, 2009; amended May 24, 2012; amended January 15, 2015

Annotations

Notes

EXPLANATORY NOTE:

Before the amendment, this part of the Administrative Order made the address and phone number of all litigants confidential. That rule would have been both too broad and unworkable. Litigants' addresses are needed for, among other things, summonses and judgments. The revised provision is limited to the situation where current substantive law makes a litigant's addresses confidential for an obvious and compelling reason. *Ark. Code Ann. § 9-15-203* (Repl. 2008).

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AR Sup. Ct. Adm. Order No. 19 § 9

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Section IX. When Court Records May Be Accessed.

- A. Court records that are publicly accessible will be available for public access in the courthouse during regular business hours established by the court; however, public access to trial exhibits and trial transcript source materials shall be granted at the discretion of the court. Court records in electronic form to which the court allows remote access under this policy will be available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.
- B. Upon receiving a request pursuant to sections (VI) or (VIII) of this order, a court will respond within a reasonable period of time.

History

Amended May 24, 2012

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AR Sup. Ct. Adm. Order No. 19 § 8

Rules current through January 30, 2018 by the Arkansas Supreme Court and Arkansas Court of Appeals

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Section VIII. Obtaining Access to Information Excluded from Public Access.

A. Any requestor may make a verified written request to obtain access to information in a case or administrative record to which public access is prohibited under this order to the court having jurisdiction over the record. The request shall demonstrate that:

- (1) reasonable circumstances exist that require deviation from the general provisions of this order;
- (2) the public interest in disclosure outweighs the harm in disclosure; or
- (3) the information should not be excluded from public access under section (VII) of this order.

The person seeking access has the burden of providing notice to the parties and such other persons as the court may direct, providing proof of notice to the court or the reason why notice could not or should not be given, demonstrating to the court the requestor's reasons for prohibiting access to the information.

B. The court shall hold a hearing on the request, unless waived, within a reasonable time, not to exceed thirty (30) days of receipt of the request. The court shall grant a request to allow access following a hearing if the requestor demonstrates by a preponderance of the evidence that any one or more of the requirements of (VIII)(A)(1) through (VIII)(A)(3) have been satisfied.

C. A court shall consider the public access and the privacy interests served by this order and the grounds demonstrated by the requestor. In its order, the court shall state its reasons for granting or denying the request. When a request is made for access to information excluded from public access, the information will remain confidential while the court rules on the request.

D. A court may place restrictions on the use or dissemination of the information to preserve confidentiality.

History

Amended May 24, 2012

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AR Sup. Ct. Adm. Order No. 19 § 10

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Section X. Contracts With Vendors Providing Information Technology Services Regarding Court Records.

- A. If a court, court agency, or other private or governmental entity contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, the term "vendor" also includes a non-judicial branch state, county or local governmental agency that provides information technology services to a court.
- B. Each contract shall require the vendor to assist the court in its role of educating litigants and the public about this order. The vendor shall also be responsible for training its employees and subcontractors about the provisions of this order.
- C. Each contract shall prohibit vendors from disseminating bulk or compiled information, without first obtaining approval as required by this order.
- D. Each contract shall require the vendor to acknowledge that court records remain the property of the court and are subject to the directions and orders of the court with respect to the handling and access to the court records, as well as the provisions of this order.
- E. These requirements are in addition to those otherwise imposed by law.

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AR Sup. Ct. Adm. Order No. 19 § 11

Rules current through January 30, 2018 by the Arkansas Supreme Court and Arkansas Court of Appeals

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Section XI. Violation of Order Not Basis for Liability.

Violation of this order by the disclosure of confidential or erroneous court records by a court, court agency, or clerk of court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or clerk of court shall not be the basis for establishing civil or criminal liability for violation of this order. This does not preclude a court from using its inherent contempt powers to enforce this order.

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REQUEST FOR COMPILED INFORMATION AFFIDAVIT
Pursuant to Section VI(B)(5) of Arkansas Supreme Court Administrative Order 19

To support my request for a compiled extract of court data, I hereby provide the following information and declare, under penalty of perjury:

I am requesting information on cases excluded from public access under Section VII of Administrative Order 19. Explain in detail why case information excluded from public access is needed and how the information will be used:

I am requesting the identification of specific individuals; the identification of specific individuals is essential to the purpose of the inquiry; and the request is made for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose. Explain in detail why the identification of specific individuals is essential to the purpose of the inquiry and how the information will be used:

Case or person specific information will be provided to others. Please explain:

The information will be linked to other databases. Please explain how and for what purpose:

Please describe the methods by which the confidential information or individual identifying information will be protected from unauthorized disclosure:

Signature

Printed Name

Company Name and Address

STATE OF _____

COUNTY OF _____

Subscribed and sworn before me this _____ day of _____, 20_____.

Notary Public

My commission expires: _____

COMPILED RECORDS LICENSE AGREEMENT - DATA EXTRACTS

This License Agreement (hereinafter, "Agreement") is entered into on the date set forth below
between the Bentonville District Court (BDC) and

_____ (LICENSEE).

LICENSEE'S address is

_____.

LICENSEE'S federal tax identification number is _____.

This Agreement, entered into pursuant to Arkansas Supreme Court Administrative Order 19 (VI), is for the purpose of establishing the terms and conditions under which BDC agrees to provide LICENSEE one or more extracts of court data from BDC's databases of civil, criminal, and traffic cases in district court . These extracts are further defined in Article I.

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- I. Definitions
- II. BDC'S Duties
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- VII. Contact Persons and Notices
- VIII. Term and Termination
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ATTACHMENTS

- A. Extract Fees
- B. Websites, Subsidiaries, Entities, "Doing Business As" Names, and Other Aliases of Licensee
- C. Licensee Contact Information

Compiled Records License Agreement

I. DEFINITIONS

- A. Justware - case management database of court filings in Bentonville District Court, as provided and maintained by BDC.
- B. PTS - Legacy case management database of court filings in Bentonville District Court, as provided and maintained by BDC.
- C. Periodic Extract - monthly extract of all cases in the Justware and PTS databases.
- D. Transactional Update - Periodic extract of transactional updates to the last prior extract.
- E. Case - a record or group of records constituting a single, independently-filed action.
- F. Case number - a reference number used to indicate all records common to a single case, consisting of the case type, year of filing, and sequence number unique for the case type within the year of filing.
- G. Contact persons - the contact persons named in Attachment C of this Agreement and their successors.
- H. Customer - a person who directly or indirectly purchases or acquires from a LICENSEE any data provided pursuant to this Agreement, whether repackaged, reformulated, reformatted, or copied, whether for his or her own use or to provide search services to his or her own customers or subscribers, if said data are transmitted in a format that contains data elements from more than one case.
- I. Data extract - a compilation of criminal or civil case data, extracted from the Justware or PTS database(s) and formatted for electronic transmission to LICENSEE.
- J. Compiled Data Extract - a one-time custom compilation of criminal or civil case data, extracted from the Justware or PTS database(s) for transmission to LICENSEE.
- K. Disaster recovery mode - any incident or state of operations during which processing or data storage for any BDC information system is transferred from the system's regular operating environment to a "backup" or "hot site" for continued operation, as the result of a disaster, including, but not limited to, damage to, destruction of, or threat to BDC information technology or facilities by natural disaster, civil disorder, acts of war, terrorist acts, compromise of facility or network security, or acts of God.
- L. File number - see Case number.
- M. Inaccurate data - any data reported about a case by LICENSEE to a subscriber, customer, or other person which data does not match exactly the data for that case as reflected in the compiled extract file.
- N. Person - an individual or an entity, including, but not limited to, corporations, whether for profit or not for profit, partnerships, limited liability companies, joint venturers, and units and agencies of local, State, and Federal government.
- O. Priority users - officials, officers, employees, agents, and contractors of the Judicial Branch, and of other State and local government agencies, including, but not limited to, law enforcement agencies that access Justware or PTS in order to perform their official duties.
- P. Proprietary information - all user identifiers, passwords, computer software, documentation, and user manuals, if any, supplied by BDC to LICENSEE pursuant to this Agreement.
- Q. Recurring data extract - any data extract file produced on a regularly scheduled basis.
- R. Subscriber - any person who acquires from LICENSEE the results of LICENSEE'S search of any records provided to LICENSEE pursuant to this Agreement, or a subset of those records, or the right to conduct his or her own searches of those records.

II. BDC'S DUTIES

- A. Selected Extracts. BDC will provide, based upon acceptance of LICENSEE'S request, the Justware and/or PTS extracts, as defined in Article I of this Agreement.
- B. Exclusions. Unless LICENSEE is eligible for data pursuant to Administrative Order VI (B) (3) and/or VI (B) (5), each compiled data extract will exclude the following: all records that are not public records under the Administrative Order 19; all records exempt from disclosure by other statute; all records sealed by order of the court for which they are maintained, and full social security numbers, driver's license or equivalent state identification card numbers, account numbers and PINs of specific assets, liabilities, accounts, and credit cards.
- C. User Manual. BDC will provide an inquiry user manual to LICENSEE as applicable for the data extracts provided.
- D. Documentation. BDC will provide file layout and documentation for each data extract provided.
- E. Implementation Dates. BDC will provide a list of dates of implementation of Justware and PTS, as applicable for the data extracts provided.
- F. Limited Technical Support. BDC will provide limited support to LICENSEE for the purpose of resolving technical support problems with downloading the data extract files from BDC's on-line service, JusticeWeb.
- G. Support Limitations. Support for use and interpretation of any data received is limited to the documentation provided pursuant to this Article.

III. LIMITS ON BDC'S DUTIES

- A. Data Limits. The data in each data extract provided pursuant to this Agreement are subject to the following limitations:
 - 1. Data availability is based on the dates Justware and PTS were implemented; those dates are provided pursuant to Article II of this Agreement.
 - 2. Use of the data contained in a data extract may not be classified as a certified record check. A certified report of a criminal record search of a person's record in a particular county may be obtained from the clerk of court of that county, upon payment of a statutory search and/or certification fee.
 - 3. BDC is not liable for any damages incurred by LICENSEE resulting from the inaccuracy or incompleteness of any information in any official court record, provided the extract of any data matched the relevant database at the time of extraction.
 - 4. BDC is not liable for any demand or claim, regardless of form of action, for any damages arising from causes beyond the control and without the fault or negligence of BDC.
 - 5. BDC is not liable for any demand or claim, regardless of form of action, for any damages resulting from the use by LICENSEE of any computer programs or other materials provided under this Agreement. BDC has no obligation to maintain or upgrade any such computer programs provided under this Agreement, except as BDC deems necessary.
 - 6. If BDC is in disaster recovery mode, BDC is not liable for any demand or claim, regardless of form of action, for any damages arising from denial of access or inability to access data from the BDC system.
 - 7. BDC is not liable to LICENSEE for any damages resulting from LICENSEE'S alteration or modification of data supplied pursuant to this Agreement, unless BDC made, directed, or required such modification or alteration.
 - 8. BDC is not liable to LICENSEE or any other party for any loss, including revenue; profits; time; goodwill; computer time; destruction, damage, or loss of data; or any other indirect, special, or consequential damage that may arise from the use, operation, or modification of BDC data extracts.

Compiled Records License Agreement

- B. Access Limits. LICENSEE'S access to all data extracts provided pursuant to this Agreement is subject to the following limits:
1. BDC may at any time delay, limit, or deny LICENSEE'S access to the data in the event the demand on the system resources for LICENSEE'S access would significantly impair the ability of priority users to perform their normal business functions.
 2. Whenever BDC enters disaster recovery mode for any BDC information system, LICENSEE will not have access to data extracts from any BDC information system while BDC is operating any information system in disaster recovery mode.
 3. LICENSEE'S access to extract files may be suspended temporarily in the event of system maintenance, system outages, or interruptions of service that does not require activation of disaster recovery mode.
 4. BDC shall make reasonable efforts to provide LICENSEE with prompt written notice of any delay, limitation, or denial of access and of its anticipated duration, and will promptly notify LICENSEE when full access is again available.
 5. BDC is not liable for any damages incurred by LICENSEE resulting from any delay, limitation or denial of access, or inability to access, referred to in this Article.
- C. No Warranty. Except as expressly provided elsewhere in this Agreement, BDC makes no warranty whatsoever, of any kind or nature, express or implied, to LICENSEE. Without limitation on the generality of the foregoing, BDC specifically disclaims any warranty of merchantability or of fitness for a particular purpose with respect to any data extract provided pursuant to this Agreement, or with respect to the data in any such extract. The BDC also specifically disclaims any warranties, express or implied, for any computer programs and associated materials provided hereunder, or that the information or data accessed are accurate, correct, or complete.
- D. Limitation of Liability. LICENSEE agrees that any remedy available to LICENSEE will be limited to a refund of the purchase price of the license.
- E. No Assistance to LICENSEE'S Customers. BDC will not provide any support or assistance of any kind to LICENSEE'S subscribers or customers.

IV. LICENSEE'S PAYMENT DUTIES

- A. Fees and Fee Changes. LICENSEE agrees to pay all amounts due under this Agreement, as described in "Attachment A - Extract Fees," appended to this Agreement.
- B. Payment of Compiled Extract Fees. Fees for compiled data extracts from Justware or PTS are non-refundable and will be billed on a one-time basis; payment must be received before the extract is released. Payment for any compiled extract must be made to the "Bentonville District Court" at the following address:
- Bentonville District Court
2706 S Walton Blvd
Bentonville, AR 72712

V. LICENSEE'S DUTIES

- A. Duties. The following are LICENSEE'S duties.
1. LICENSEE shall NOT provide case information or personal information excluded from public access by Section VII of Administrative Order 19 to its customers, subscribers, or other persons without the express written permission of BDC or a court order.
 2. LICENSEE shall NOT provide personal identifying information to customers, subscribers, or other persons without the express written permission of BDC or a court order.

Compiled Records License Agreement

3. LICENSEE shall only use case information and personal information excluded from public access by section VII of Administrative Order 19 for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose and will not directly or indirectly use that information to sell an individual service to any individual, group of individuals, or the general public.
 4. LICENSEE shall notify BDC in writing when returning or destroying the compiled data extract. The date of receipt by BDC of said written notice shall be the date of termination of the Agreement for purposes of termination of the performance bond pursuant to (B) (6) below.
- B. Liquidated Damages and Performance Bond
1. LICENSEE acknowledges that any breach of its duties may
 - a) Cause it to provide its subscribers and customers with inaccurate data, creating the potential for substantial harm to persons whose records are affected and to others who rely on those records.
 - b) Cause BDC to incur personnel, technology, and other costs in receiving, investigating, and responding to complaints; verifying inaccuracies and identifying their source; and enforcing LICENSEE'S compliance with its duties under this Agreement.
 - c) Cause BDC to incur further expense in dealing with claims arising from LICENSEE'S breach.
 2. The parties agree that any damages incurred by BDC as a result of any such breach are to some extent speculative and difficult to determine after the breach.
 3. Therefore, in order to avoid litigation concerning the nature and extent of the damages resulting from each such breach, to provide BDC with reasonable compensation for those damages, to limit LICENSEE'S exposure to an agreed amount, and to provide an incentive to LICENSEE to provide only accurate data, for each verified breach of LICENSEE'S duties, LICENSEE will pay to BDC, immediately upon BDC's verification of the breach, liquidated damages in the amount set out in Attachment A.
- C. Response to Complaints - Investigation, Suspension, and Termination. LICENSEE acknowledges and agrees that reports of errors in data provided by LICENSEE to its subscribers or customers or any other failure to comply with LICENSEE'S duties will be subject to investigation and response by the BDC, as described in this Section.
1. Upon any report or complaint that data provided directly or indirectly by LICENSEE to any person are inaccurate, BDC will first investigate to verify the following:
 - a) LICENSEE'S data referenced by the complainant are, in fact, inaccurate;
 - b) The data were obtained from BDC; and
 - c) The data were accurate in the data extract files provided by BDC.
 2. Upon such verification, BDC will notify one of LICENSEE'S contact persons of the inaccuracy, as well as LICENSEE'S duty to pay liquidated damages in the amount set out in Attachment A, pursuant to Section B.3 of this Article. These liquidated damages are due and payable independent of LICENSEE'S corrective action, as explained in Section C.3 below.
 3. Upon such notification, LICENSEE will have a reasonable time to correct the inaccuracy. Correction may require, in the sole discretion of BDC's Presiding Judge, reapplication of extract files, including, but not limited to, a complete erasure of LICENSEE'S records from BDC and restoration of those records from any compiled data extracts provided to LICENSEE under this Agreement or purchase of a new compiled data extract.
 4. When BDC is satisfied that LICENSEE'S records are accurate and the data that were the source of the complaint have been corrected, BDC will so notify LICENSEE'S contact person and the complainant of the correction.
 5. Upon a subsequent report or complaint that data provided by LICENSEE to any person are

- inaccurate, BDC will investigate and verify the inaccuracy as provided above.
6. If LICENSEE provides inaccurate data within two years of a previous verified inaccuracy, and the subsequent inaccuracy is verified as provided in Subsection 1, above, this Agreement will immediately terminate and may not be reinstated.
 7. In order to allow BDC to conduct the investigation and verification provided for in this Article, as well as random security checks, LICENSEE shall provide to BDC complete records from LICENSEE'S database(s), upon receipt from BDC of a list of names or case numbers, as part of BDC's investigations or security checks.
 8. BDC is under no obligation to notify LICENSEE of any complaint during the course of BDC's investigation or after its conclusion, should BDC determine that LICENSEE'S data are accurate, or that the source of the data was an entity other than BDC.
 9. BDC is under no obligation to identify the specific data that are the source of a complaint, and may, in fact, be prohibited by law from doing so.
 10. Any failure by LICENSEE to comply with an instruction given by BDC pursuant to this Article will result in immediate termination of this Agreement.
 11. By investigating, verifying, and confirming a correction as provided in this Article, BDC assumes no obligation to LICENSEE with regard to LICENSEE'S potential liability to a complainant or any other person as a result of the dissemination of inaccurate data under investigation.

VI. LICENSEE'S OTHER DUTIES

- A. Required Disclaimer. LICENSEE shall prominently display a disclaimer in each report of a record search provided to a subscriber, with each transfer of data to a customer or other person, and at each search access portal made available to a subscriber. The disclaimer shall read:

"Data provided through this service may not reflect pending or post-disposition activity on a case. The BDC does not warrant the accuracy of the data beyond the actual date it was obtained. Additionally, data provided does not reflect a County-wide search as the records provided are only that of the BDC and do not encompass records that may be found at any one of the other thirteen (13) District Courts operating within Benton County"
- B. Source of Data. LICENSEE shall not enter into any agreement with a customer that bars the customer from revealing to BDC the name of LICENSEE as the source of its data, or that penalizes the customer for so doing.
- C. Duties of LICENSEE'S Customers. LICENSEE shall impose upon each of its customers all of the duties specified in Article V, Section A of this Agreement, as well as the duty specified in Section B of this Article.
- D. Proprietary Information. All proprietary information supplied by BDC to LICENSEE is the confidential property of BDC, subject to the proprietary rights of BDC, and is provided for the sole internal use of LICENSEE in making use of the data extracts provided pursuant to this Agreement. LICENSEE shall hold all proprietary information in the strictest confidence. LICENSEE shall exercise at all times the same care with respect to all proprietary information that LICENSEE would exercise in the protection of LICENSEE'S own proprietary information. LICENSEE shall not release or disclose any proprietary information to any other person without the express prior written consent of BDC.
- E. LICENSEE'S Subsidiaries. As part of this Agreement (see Attachment B), LICENSEE shall provide BDC with a list of all of LICENSEE'S websites, subsidiaries that use or distribute information obtained from BDC, and all other names by which LICENSEE does business. LICENSEE will update this list and send it to BDC within thirty (30) days of any change.
- F. User Name and Password. LICENSEE shall provide to BDC a non-expiring username

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and password for access to any service, application, or database that will include, incorporate, or process data received from BDC as part of providing data to any subscriber or customer. This username and password shall be provided without cost or condition.

- G. Termination for Failure to Comply. Any failure of LICENSEE to comply with the requirements of this Article is grounds for termination for cause, pursuant to Article VIII, Section B of this Agreement.
- H. Return or destruction. At the termination of this Agreement LICENSEE shall return to BDC or destroy any information or data provided by BDC under this Agreement in any form, held by the Licensee or any officer, employee or agent of Licensee.
- I. Resale of Data. The LICENSEE shall not reproduce or distribute or disseminate the transferred database files in bulk but only (1) in response to an individual record inquiry and (2) in accordance with Article V 1 thru 3. "In bulk" shall include, but is not limited to, via multiple records or on CD-ROM or other electronic or optical media.
- J. Subcontracting. The LICENSEE shall not enter into subcontracts relating to this Agreement.

VII. CONTACT PERSONS AND NOTICES.

- A. Contact Information. LICENSEE shall provide all contact information requested in Attachment C to this Agreement.
- B. Contact Persons. LICENSEE shall designate up to two (2) contact persons in Attachment C. At no time shall there be more than two contact persons for LICENSEE.
- C. Contacts Limited to Contact Persons. The two contact persons are the only individuals, in addition to the signatory(ies) to this Agreement (if different), permitted to contact the BDC on LICENSEE'S behalf for any reason other than reset of a password for the user ID of a password administrator, as provided in Section E below. At least one of these contact people shall be available to the BDC on weekdays from 8:00 a.m. until 4:30 p.m., Central Time, with the exception of legal holidays on which Arkansas state government offices are not open. LICENSEE expressly represents that any person designated as a contact person is its legal agent with full authority to act individually on LICENSEE'S behalf for performance and fulfillment of LICENSEE'S obligations under this Agreement, including, but not limited to, notifying the BDC of changes to LICENSEE'S contact information, contact persons, and password administrators; receiving any and all notices from the BDC under this Agreement; and responding to the BDC's requests for information or action from LICENSEE.
- D. Change in Information. Any change to LICENSEE'S contact information or contact person information shall be communicated to the BDC by any means of communication listed in Section I of this Article.
- E. Notices to LICENSEE. Any notice or other communication from the BDC to LICENSEE shall be deemed sufficient if sent to either contact person or to any signatory to this Agreement using the contact information provided in Attachment C, and via any means of communication listed in Section I of this Article.
- F. Notices to BDC. Any notice or other communication from LICENSEE to BDC shall be deemed sufficient if sent by mail, facsimile, or email to BDC using the contact information listed below.
 - Mail:** Bentonville District Court
2706 S Walton Blvd
Bentonville, AR 72712
 - Fax:** (479) 271-3134
- J. Notices in Writing. Unless stated otherwise in this Agreement, all notices between the

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parties shall be in writing and shall be sent by mail, facsimile, or electronic transmission.

VIII. TERM AND TERMINATION

- A. Effective Date. The term of this Agreement shall begin on the date of its execution and shall continue until terminated by either party.
- B. Termination for Cause. If LICENSEE fails to perform its duties, as specified in the Agreement, or violates any of the agreements or stipulations of the Agreement, BDC may terminate this Agreement for cause, without prior notice, as provided elsewhere in this Agreement.
- C. Termination without Cause. Either party may terminate this Agreement without cause upon giving the other party thirty (30) days' notice.
- D. Termination for Convenience of the State. BDC may terminate this Agreement at any time without notice, for the convenience of the Court.
- E. Termination for Insolvency. The filing of bankruptcy, whether voluntary or involuntary, or the commencement of any other action or proceeding alleging the insolvency of LICENSEE, shall immediately terminate this Agreement. LICENSEE shall notify BDC immediately upon the filing or commencement of any action alleging insolvency of LICENSEE.

IX. MISCELLANEOUS

- A. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all previous discussions and agreements. Understandings, representations, or warranties not contained in this Agreement or a written amendment hereto are not binding on either party.
- B. Assignment. This non-exclusive Agreement and the LICENSEE'S rights under this license are personal to it and may not be transferred, assigned, delegated, or sold for any purpose whatsoever without the prior written consent of the BDC.
- C. Modification. No modification, amendment, deletion, or alteration of any of the terms and conditions of this Agreement shall be effective unless it is in writing and signed by both parties, with the exception of changes in contact persons as detailed in Article VII and Attachment C of this Agreement and periodic fee changes set out in Attachment A.
- D. Counterparts. This Agreement is to be executed in duplicate originals, and each duplicate shall be deemed an original copy of the Agreement for all purposes.
- E. Headings. The table of contents and headings used herein are for reference and convenience only and shall not enter into the interpretation hereof unless otherwise specified herein.
- F. Severability. If any court of competent jurisdiction shall for any reason hold any section or provision of this Agreement invalid or unconstitutional, such portion shall be deemed a separate, distinct, and independent provision and shall not affect the validity of the remaining portions of this Agreement.
- G. Governing Law and Situs. This Agreement shall be governed in all respects by the law of the State of Arkansas, and venue for any action hereunder shall be in Benton County, Arkansas.
- H. Conflict of Authority. If any provision of this Agreement shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to conform to said statute or rule of law.
- I. Other Laws. To the extent the data obtained under this Agreement are subject to other laws, statutes, court rules, administrative rules, or regulations, either federal or state, that govern the use of the data, the provisions of those other laws, statutes, court rules, administrative rules, or regulations, either federal or state, shall apply to the data.
- J. Indemnification. LICENSEE shall defend, indemnify, and hold harmless the City of Bentonville, BDC, and officials, officers, employees, and agents of either of them, from all loss, risk of loss, and damages (including expenses, costs, and attorney fees) sustained or incurred by them or any

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- of them as the result of the assertion of any claim, demand, suit, action, judgment, or execution for damages of any kind and by whomever and whenever made or obtained, that result directly or indirectly from LICENSEE'S performance under this Agreement.
- K. Status of Parties. The parties hereto, in the performance of this Agreement, will be acting in their individual capacities and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- L. Non-Exclusive Agreement. This Agreement is non-exclusive. During the term of this Agreement, the BDC reserves the right to enter into agreements with other parties as it deems fit.
- M. Waiver. The failure of either party to enforce any term of this Agreement on one or more occasions will not constitute a waiver of the rights or remedies of either party to enforce such term or any other term of this Agreement on any other occasion. No term or condition of this Agreement shall be held to be waived, and no breach excused, except by a written instrument signed by the parties hereto. Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach.
- N. Survival. The provisions of Sections III.A.4 thru III.A.6, III.A.8, III.B.5, III.C thru III.D, IV.A, V.A.1 thru V.A.3, V.B.3, V.C.7, V.C.9, V.C.11, VI.A, VI.B, VI.D, VI.I, IX.F, IX.G, and IX.M of this Agreement shall survive the termination of this Agreement.
- O. Legal Authority. If at any time for any reason BDC concludes, or it is determined by a court of competent jurisdiction, that BDC was without authority to enter into this Agreement, this Agreement will terminate, without further obligation or liability to LICENSEE by City of Bentonville, BDC, or any official, officer, employee, or agent of either.

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X. SIGNATURES

By signing below, the parties acknowledge that they are authorized to sign this Agreement and bind themselves or their respective agencies and companies.

For LICENSEE:	
COMPANY NAME (Type or Print)	
NAME of President (Type or Print)	
SIGNATURE of President	
Attest:	
NAME of Secretary (Type or Print)	
SIGNATURE of Secretary	
Affix corporate seal:	

For THE BENTONVILLE DISTRICT COURT:	
Date	

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Attachment A

Extract Fees Effective March 5, 2018

Extract Type: COMPILED DATA EXTRACT	
Fees	Current Total Costs Each Licensee
One-time Custom Compiled Extract	Per Quote
Hourly charge (above 1 hours time)	\$35/hr
Docket report charge (includes cost of medium reproduction, supplies, equipment, maintenance, mailing and/or transmission by fax or other means)	\$ dependent on number of pages involved

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Attachment C

Licensee Contact Information

Instructions: Use this form to provide or update LICENSEE's contact information and to designate administrators. All fields are required. If you need assistance with this form, contact the BDC Chief Court Clerk at (479)271-3120.

Licensee Contact Information: (See Article VII Section A of License Agreement)

Licensee Name:			
Mailing Address:			
Phone #:		Email:	
Fax#:		Website URL:	
Federal Tax ID#:			

Contact Person Information: (See Article VII Sections B and C of License Agreement)

	Contact Person #1	Contact Person #2
Contact Name:		
Mailing Address:		
Phone #:		
Fax#:		
Email Address:		
Signature:		

Signature: This Attachment will be honored only if signed by a signatory to LICENSEE'S "License Agreement - Data Extracts" or by a person currently designated pursuant to Article II of that Agreement as a contact person for LICENSEE.

Name (Type or Print)		Date:	
Signature			

For BDC Internal Use Only:

Password Admin #1 ID:	
Password Admin #2 ID:	
Date Request Completed	