

## ALABAMA RULES OF JUDICIAL ADMINISTRATION

### Rule 33.

#### **Access to electronically stored data, electronic-document images, electronic datastreams, and electronic databases maintained by the Administrative Office of Courts.**

A. *Authority of the ADC.* The Administrative Director of Courts ("the ADC"), acting in accordance with this rule, shall have sole authority over access to and dissemination of all electronically stored data, document images, and datastreams and the databases maintained by the Administrative Office of Courts ("the AOC") on which these data, images, and datastreams are stored.

B. *Definitions.* The following terms shall have the following meanings when used in this rule:

(1) Electronically stored data is the whole or the partial informational content of court records or documents, which content has been electronically recorded separately from the images of these records or documents and stored in an electronic database maintained by the AOC.

(2) Electronic-document images are graphic reproductions or likenesses of documents electronically encoded and stored on an AOC database that have the capability to be reconstituted from the electronic datastreams in which they are encoded and displayed electronically or printed on paper.

(3) Electronic datastreams are a series of on-and-off electrical switches or impulses that are used to encode, transmit, and store electronic data and electronic-document images on AOC databases.

(4) Electronic databases are the repositories of the datastreams that comprise the electronic data or images that are stored in computer hard drives or other similar electronic-storage devices maintained by the AOC.

C. *Access to electronic data.* The exclusive means of access by any person or entity to (a) electronic-document images stored in AOC's databases, (b) electronic datastreams stored in AOC's databases, and (c) AOC's databases shall be through registration and subscription to programs created by or for the AOC, such programs currently consisting of AlaCourt, AlaFile, AlaPay and AlaVault, subject to the rules and regulations for those programs and the schedule of charges, access fees, copying fees, or such other charges or fees as the ADC, in his or her sole discretion, may prescribe for such programs, or through such other and different means as the ADC, acting in his or her sole discretion, may prescribe.

D. *Access to court records.* This rule shall apply only to electronically stored data, electronic datastreams, electronic-document images, and electronic databases. The right of the public to inspect, view, and, upon payment of the prescribed copying cost, make printed copies of court records at the circuit clerks' offices pursuant to § 36-12-40, Ala. Code 1975, shall continue and shall not be affected by this rule.

E. *Exclusive rights of AOC in electronic data.* The AOC's electronically stored data, electronic datastreams, electronic-document images, and electronic databases were compiled by and are maintained by the AOC and are assets of considerable value. No other persons, legal entities, or state governmental departments or agencies shall have any rights in or to them.

F. *Prohibition on resale of electronic data.* No person, legal entity, or state governmental department or agency that obtains any data, datastreams, or images of court documents stored in an AOC database, directly from the AOC or its agents, or indirectly from another, shall sell, barter, trade, or, in exchange for money, credit, goods, services or anything of value, transfer, convey, or provide access to or copies of such data, datastreams, or images stored on AOC's databases except with the express written approval of the ADC.

G. *Authorized agreements.* The ADC and the AOC may enter into such agreements with other persons or entities to assist the AOC in the sale of subscriptions or other means of access to electronically stored data, electronic datastreams, and electronic-document images created from AOC's databases and may with regard to such subscriptions or other means of access charge such sums or fees as the ADC, in the exercise of his or her discretion, may prescribe.

H. *Requests for compilation and release of electronic data or information derived from electronic databases.* The discretion to authorize the compilation and release of electronic data or information that may be derived from AOC's databases shall be exclusively vested in and exercised by the ADC under this subsection of the rule.

(1) This subsection does not apply to requests for electronic-document images or printed copies of the same, requests for the electronic datastreams from which images or copies of documents stored on AOC's databases may be reproduced or printed, or requests for the electronic databases themselves. Access to these items is provided for in subsection C, above.

(2) Requests for compilations and release of information made pursuant to this subsection must be submitted in writing to the Administrative Director of Courts, 300 Dexter Avenue, Montgomery, AL 36104-3741, on an application form approved and provided by the ADC. The ADC may require the disclosure by the requesting party on applications of such information as the ADC shall deem necessary to evaluate and exercise discretion in determining whether to grant the

request made in the application. All information requested on the application form must be completed in full for the application to be considered. Completed application forms shall be considered public records and the property of the AOC upon their submission to the AOC by the requesting party.

(3) The ADC may require any person requesting the compilation and release of data or information pursuant to this rule to enter into a contract with the AOC in which the requesting party shall agree (a) to pay the estimated cost incurred in compiling the requested information before any work is performed by the AOC to compile the information; (b) not to sell any information or data received pursuant to the request; and (c) to release the ADC, the AOC, and all officers and employees of the Unified Judicial System from any errors in compiling and providing the information supplied.

(4) The requesting party shall bear the cost of compiling the data requested and produced, and the ADC shall not provide such information until payment of all costs incurred in compiling the information is received. Such costs shall include, but not be limited to, a reasonable per hour charge for the work of computer programmers required to write the code or other software or programs necessary to compile, capture, and display the data compilation requested.

(5) The requesting party shall not use any data or information obtained pursuant to this rule for any purpose from which the requesting party or others will profit or that will otherwise generate revenue. The ADC may waive this provision upon written request from the requesting party if the information obtained is used for scholarly, journalistic, and/or research publications.

[Amended 9-28-87, eff. 10-1-87; Amended eff. 10-24-2008.]

### **Comment**

This rule, pertaining to the disclosure of computer-based information, was adopted pursuant to the authority granted the Supreme Court by Ala.Code 1975, Section 12-2-19(b), and was patterned after Rule 15 of the Judicial Information System Committee Rules (JISCR) of the State of Washington.

### **Committee Comments to Amendment to Rule 33 Effective October 24, 2008**

The Judicial Article and § 12-19-180, Code of Alabama 1975, authorize the Supreme Court, acting through the Administrative Director of Courts and by the adoption of court rules, to control access to electronically stored court data, court document images, and databases.

For the past three decades, the Administrative Office of Courts ("the AOC") and the Unified Judicial System ("the UJS"), at a cost of many millions of dollars, have compiled, maintained, and stored court-case information in an electronic database. During the past decade the AOC and UJS have converted and continue to convert court records filed in the circuit clerks' offices of the State into electronic datastreams that are stored in the AOC database, where they may be accessed, retrieved, and transmitted electronically and thereafter received and reconstructed into downloadable, printable images.

The right of the public under the provisions of § 36-12-40, Code of Alabama 1975, to inspect and, at a reasonable cost, to make copies of all public records and documents maintained or stored by the State, including the physical court documents filed and stored in the circuit clerks' offices through the State, subject to the exceptions contained within that statute, should and does remain extant; nothing contained in this rule is intended to restrict or abridge the right of the public to inspect and obtain printed copies of the court records filed and stored in the offices of the circuit clerks of this State, under and pursuant to the terms and conditions specified in existing law and court rules.

There are substantial, qualitative differences between (a) the physical pieces of paper constituting court records that are filed and stored in the circuit clerks' offices and that are available to the public for inspection and copying under § 36-12-40, Code of Alabama 1975, and (b) the electronic datastreams that, at great cost to the AOC and the UJS, have been created from these court records.

These electronic datastreams and the AOC database in which they are stored have, through a system of paid subscriptions that allow access to the AOC database, funded or financed much of the cost of creating, maintaining, and providing access to this database, thereby saving the State millions of dollars.

The amendment to this rule is intended to clarify the differences between the records stored in the circuit clerks' offices and the electronic data and document images stored in the AOC electronic database and to protect the public interest in the valuable asset this database represents by regulating and governing access to it and by allowing the AOC to recoup a portion of the costs of compiling and maintaining its electronic database.

**Note from the reporter of decisions:** The order amending Rule 33 and Rule 40, effective October 24, 2008, and adopting the Committee Comments to Amendment to Rule 33 Effective October 24, 2008, is published in that volume of *Alabama Reporter* that contains Alabama cases from 994 So. 2d.