

**OREGON eCOURT -- LAW & POLICY WORK GROUP
JUVENILE “SOCIAL FILE” GROUP**

BEST PRACTICE RECOMMENDATIONS

(Updated July 22, 2011, LNL)

1. **“Legal File”:** “Legal file materials” include the summons/process, petition, pleadings, motions, memoranda, orders, judgments, CRB Findings and Recommendations, and other similar court filings, ORS 419A.255(1); legal file materials also may include some letters received, for letters treated as motions. Generally, court staff should *not* include materials listed on the Juvenile Social File Group’s “possible social file materials” list in a legal file, to the extent that such documents are submitted to the court.
 - Note re: Guardianship reports:
 - Previous recommendation included referral of ORS 419B.367 to the Oregon Law Commission, regarding the statement that post-placement guardianship reports “become part of the juvenile court file.”
 - Possible interim recommendation as to document processing:
 - ▶ Guardian submits both the full report and a summary sheet to the court
 - ▶ Summary sheet reflects date report filed, court receipt of report, and ensuing court action based on report (if any); summary sheet to be filed in “legal file.”
 - ▶ Full report to be maintained with “social file” materials (often contains history/prognosis information).
 - ***But note:*** The Law & Policy Juvenile Social File Group Members are divided as to whether that interim recommendation is appropriate, or whether ORS 419B.367 currently requires the complete report to be filed in the legal file, regardless of whether it happens to contain history or prognosis information. Issue for JCIP consideration.

2. **“Social File”:** “Social file materials” are reports and other material relating to the youth or youth offender’s history and prognosis, ORS 419A.255(2). By statute, access to “social file” materials is more restricted than “legal file” materials. Courts should maintain a file separate from the court legal file for the purpose of maintaining social file materials that are provided to the court, *i.e.*, a “court social file.”

- Social file materials may be provided/submitted to a court in many contexts, *e.g.*:
 - letters and miscellany mailed/faxed/emailed to court
 - materials submitted directly at the counter
 - materials electronically transmitted
 - note: “social file materials” as exhibits discussed separately below
- Note: Currently, social file materials currently may or may not be posted to OJIN (depends on the court and the materials in question); some courts retain an index of some sort for social file materials, but other courts do not and, instead, merely retain social file materials in chronological order based on the date of submission to the court.
 - The Law & Policy Juvenile Social File Group provides no recommendation as to a standard practice, but notes the following for JCIP consideration:
 - ▶ Possible difference of legal significance between “filed” documents (result = must file in legal file and record on case register) and “submitted” documents (result = may file in social file but need not record on case register). Issue for JCIP consideration.
 - ▶ Legal status of social file unclear, regarding any Judicial Department obligation to maintain an accessible index or a case register log of its contents.
 - ▶ Once the full eCourt system is in place, court processing of “social file” materials likely will change significantly -- for example, maintaining an electronic record will prompt a need to record, log, or at least “tag” the contents of “social file”; also, eFiling and/or data transfer will be available to agency partners, resulting in “social file” documents being submitted electronically on a regular basis (likely accompanied by a need to log such documents on the court’s end).

- Court staff must comply with the requirement in ORS 419A.255(2) to maintain the confidentiality of social file materials. (See Law & Policy Juvenile Group, Statutory Access charts, regarding external persons permitted to view “social file” materials.)
- Social file materials can become exhibits in the proceeding (more below).

3. Exhibits: “Exhibits” are evidentiary documents that are part of the court’s decision-making process.

- Exhibits may include:
 - Documents that the parties offer during court proceedings that the court receives, including documents previously submitted to the court and maintained in the court social file, and then affirmatively offered and received at a subsequent hearing;
 - Previously submitted “social file material” documents as to which, on request of a party, the court takes judicial notice;
 - Previously filed “social file material” documents as to which, on its own initiative, the court takes judicial notice under ORS 419A.253(1) or otherwise causes the material (or part thereof) to be marked and received as an exhibit, as part of the decision-making process. As to this type of “exhibit,” the court shall cause a list to be made that reasonably identifies such items, by reference to their sources; list may be included in order/judgment or may be set out in a separate document attached to order/judgment. *See generally* ORS 419A.253(1) (requiring information of this type to be identified in the record, more below). *Note:* “Judicial notice,” as that term is used in ORS 419A.253(1), is not necessarily intended to be a recognition of the irrefutability of the evidence in question, akin to “judicial notice” under the rules of evidence; rather, it serves as recognition that the court relied on a particular document to make a decision in the case.
- Each exhibit of any kind should be properly marked as an exhibit and clearly identified via a numbering scheme (separate number for each separate document) (compare, for example, UTCR 6.080). The Law & Policy Juvenile Social File Group does not, however, recommend a specific exhibit numbering system for statewide application.

- 4. Judicial Reliance on “Social File” Materials:** Reference to “social file materials” in the course of rendering a judicial decision: Courts may cite/refer to social file materials in the course of decision-making or may specifically incorporate social file materials into the terms of an order or judgment (in both instances, provided that the social file material in question was designated as an exhibit in the proceeding, either through offer/receipt or by judicial notice). Judicial direction dictates whether a social file document should be physically attached as part of an order or judgment.
- If a social file document is physically attached to (or, in an electronic environment, digitally made part of) an order or judgment at the judge’s direction, then the social file document takes on the character of a “legal file” document and should be filed with the order/judgment in the legal file and may be viewed by any external person who is permitted to view the legal file.
 - If a judge wishes to incorporate a social file document by reference as part of the terms/conditions of the order/judgment, then the judge should direct that the social file document physically be made part of the order/judgment document, as set out above. (This approach alleviates discretion on the part of court staff and clarifies that a copy of the designated social file document is now part of the legal file order/judgment document.)
 - A judge may quote from, cite, or refer to a social file document or documents as a basis for a decision memorialized in an order or judgment; however, mere quotation from, or citation or referral to, a social file document does not render the document part of the order/judgment, and, consequently, the document should remain in the social file and not be filed together with the order/judgment in the legal file.

5. Record on Appeal: When a party in a juvenile proceeding files a notice of appeal, the party is required to include in the notice of appeal a “designation of record” that identifies the juvenile court documents that the appellate court should consider in deciding the issue(s) on appeal.

- If designated in the notice of appeal as part of the record on appeal, the record on appeal should include:
 - As much of the court legal file as pertains to the judgment being appealed. (*Note:* If the complete legal file is included in the designation, then the complete legal file is part of the record on appeal.)
 - All exhibits offered and received, and any rejected exhibits if part of an offer of proof pertaining to the judgment being appealed. As noted above, this category may include materials from the court “social file,” but should include only those documents from the court social file qualifying as “exhibits” (see #4, above) in the proceedings. (Should not include any exhibit offered but not received, unless the exhibit was the subject of an offer of proof pertaining to the judgment being appealed.)
 - The exhibits as to which the court took judicial notice either at the request of a party or on its own initiative under ORS 419A.253(1) (*see* ORS 419A.253(2)).
- The entire court social file should be included as part of the record on appeal *only* if (1) its contents all qualify as “exhibits” in the proceedings below pertaining to the judgment being appealed (by way of offer/acceptance and/or judicial notice, in addition to offered exhibits subject to offers of proof); *and* (2) the designation of record includes those materials as part of the record on appeal.
- As to preparing exhibits that are part of the designation for delivery to the appellate court for purposes of appeal,
 - The trial court retrieves received exhibits from represented parties, to the extent returned post-hearing;
 - The trial court retains exhibits presented by self-represented parties post-hearing, UTCR 6.120.