



March 16, 2018

Arkansas Judiciary Committee on Automation
The Honorable Lynn Williams, Chair
625 Marshall Street,
Little Rock, AR 72201

RE: Bentonville, AR District Court Refusal to Provide Records

Dear Judge Williams and Members of the Committee,

On behalf of the National Association of Professional Background Screeners (NAPBS), whose members include Arkansas residents and businesses, we write to you with urgent and a biding concern regarding the Bentonville District Court. As a nonprofit organization consisting of over 900 small and large companies engaged in the background screening profession, NAPBS has been dedicated to providing the public with safe places to live and work since 2003. NAPBS's member companies conduct millions of employment-related background checks each year, helping employers, staffing agencies, and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors and volunteers.

Recently, the Clerk of the District Court for Bentonville has begun denying record requests that would be used for background screening purposes. The Clerk's justification is what we believe to be a gross misinterpretation of Administrative Order 19 issued by the Supreme Court. Specifically, the Clerk has indicated that it is denying requests as being "compiled information" under Section VI of the order. We believe this misinterprets the order two ways. First, a request for access to records in a particular case is not a request for a compilation of records as defined in the order. Second, even if it were, Section VI provides no basis for a clerk to deny access, so long as the requester specifies the records being requested and is willing to pay for them. We therefore view the Clerk as violating Administrative Order 19 and the Arkansas Freedom of Information Act, both of which assure access to court records. If our understanding of the law is mistaken, we would appreciate your clarification.

The Clerk has suggested alternative sources for records in the state, including the Arkansas State Police Criminal Background Check; however this is both cost-prohibitive and does not include certain types of cases which are stored at the District Court, such as pending misdemeanor offenses. Bentonville District court does not currently share their records in the Arkansas Judiciary CourtConnect portal, so our members must access the records in person at the District Court to search and verify misdemeanor case information as they complete the screening process. To be cut off from access to this information not only drastically delays the hiring of applicants in Bentonville, but results in incomplete background screens that could be missing vital information that local employers need to act in the best interest of their businesses and customers.

Employers use background checks to protect their business interests, ensure the reliability of their workforce and to protect current employees, customers, members of the public, trade secrets, and property. The use of criminal records in employment screening serves a valid public safety interest to provide employers with awareness regarding their workforce. Sadly, we see reports about workplace violence and employee theft on an alarmingly regular basis in the media. This results not only in



potential harm to employees and customers, but to the very existence of a business. For example: if an employee injures a coworker or customer, and it is determined that a background check would or could have shown the employee had a history of or propensity for violence, the employer may be found liable for negligent hiring. Such liability could prove devastating to a small business.

In addition to an employer engaging in screening to protect their employees and property, a background check may be mandated by federal and/or state law for various industries. Examples of this include public utilities, transportation, government employment, financial institutions, schools, healthcare, law enforcement, public safety officers, hazardous waste, nuclear industry, child and elder care institutions and services:

- North American Electric Reliability Corporation (NERC) requirements mandate that individuals who have access to critical cyber assets and infrastructure must be screened to ensure the reliability of the bulk electric system.
- Nuclear Power Plants – NEI guidelines mandate strict national security protocols for Access Authorization Investigations to gain access to the protected areas of nuclear power plants.
- Transportation Industry -- truck drivers, rail workers, transit employees, airplane mechanics, pilots, airport ground personnel and air traffic controllers.
- Securities and Banking Industry – bank and credit union employees, mortgage loan officers.
- Healthcare industry – nursing, in-home workers, hospital personnel, lab personnel and those with direct patient care.
- Law enforcement – police officers, firefighters, public safety officers.

Clearly, background screening is an integral part of the economy, not just in Arkansas, but nationally. Our members take their work helping to protect the public very seriously and have a strong working relationship with courts across the country. It is in this spirit of cooperation that we ask you for your help with Bentonville and their misguided interpretation of court rules. By closing off court records, the Bentonville District Court is not only preventing our members from doing their jobs but preventing local Arkansas companies like Tyson Foods, JB Hunt, and Walmart from hiring the workforce they need to go about their business. Unfortunately, this is not the first time we have had to seek help from a Judicial Committee to address record access issues due to a misunderstanding of Administrative Orders. Therefore, we ask you today to step into this situation and clarify the proper interpretation of Administrative Order 19 to allow our members to again access the court records we need to complete our reports and help get people to work.

We thank you for taking the time to hear our concerns. NAPBS and its members are prepared to discuss any questions you may have and look forward to working with you further. Please feel free to contact me directly with any questions at 402-957-1179 or brent.smoyer@napbs.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Smoyer", written in a cursive style.

Brent Smoyer, JD
NAPBS State Government Relations &
Grassroots Director