

January 17, 2019

Via electronic mail

Matthew Pollack, Executive Clerk
Maine Supreme Judicial Clerk
205 Newbury Street, Room 139
Portland, ME 04112-0368

RE: Initial Comments by Maine Legal Aid Providers on Proposed Digital Court Records Access Act

Dear Justices of the Maine Supreme Judicial Court,

The Cumberland Legal Aid Clinic, Disability Rights Maine, Immigrant Legal Advocacy Project, Legal Services for the Elderly, Maine Equal Justice Partners, Maine Volunteer Lawyers Project, and Pine Tree Legal Assistance (“Legal Aid Providers”) respectfully submit the following initial comments with regard to the proposed Digital Court Records Act and, more generally, the anticipated implementation of a statewide digital court records system. The Legal Aid Providers work with thousands of Mainers every year including providing assistance in accessing the State’s judicial system. The potential enactment of e-filing and digital access to court records will present a number of difficulties for our clients. Moreover, we anticipate that unrepresented parties and nonparties will face even steeper challenges. At the same time, we also see great potential benefits from these changes if implemented in a way that accommodates the concerns discussed below.

At this point, we are uncertain how the anticipated digital court records system will affect access to records and participation in litigation. For example, we have not seen or received any information regarding how individuals without computer access will interact with the courts. We also cannot assess the potential impact on people who do not speak English proficiently, or the consequences for individuals living in rural Maine who do not have reliable internet access or transportation to the nearest courthouse. We are uncertain how Maine residents with disabilities will be able to access court records or participate in litigation. Likewise, it is unclear what costs/fees might be associated with e-filing and access and how individuals living in poverty might be accommodated including those without access to electronic payment options. The proposed legislation does not address many of these access-to-justice issues, and without knowing the answers to these and other related questions, it is difficult to provide useful feedback with regard to the proposed legislation which appears primarily designed to create a general framework for addressing privacy and transparency issues.

Similarly, we are concerned about the ways in which personal information contained in court records may be used to negatively impact or exploit vulnerable populations, and we need more information about how the Court plans to implement the legislation. For example, while some case types are to be protected, publicly available documents often contain sufficient data to establish personal information that is private, confidential, or otherwise harmful to an individual. It is unclear how the public will be notified about the extent of publicly available information, how they will become educated about the right to ask for sealing such materials, whether litigants and nonparties will have a chance to request protection before documents are put online, and what resources the court system will dedicate to help people with this new process. On a broader level, it is important for us to know how the court system will enforce redaction and other requirements and how it will secure and protect the data it receives. It is also important for us to understand what remedies will be available to address the possible harms to individuals that may result from misuse or unauthorized disclosure of personal information.

The Legal Aid Providers would very much welcome an opportunity to discuss our hopes and concerns with the Court before the proposed legislation is submitted to the Legislature, with subsequent decisions thereby falling outside the Court's control. To that end, we request a stakeholder meeting scheduled at a time and place convenient for the Court.¹

Respectfully submitted,



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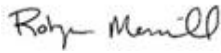
¹The Legal Aid Providers continue to gather information and insight from other states that transitioned to digital court records/e-filing. Other jurisdictions have addressed many of the concerns identified above, and we believe the process in Maine would benefit greatly from considering the positive and negative experiences encountered elsewhere, so we would gladly share the information gathered to date with the Court as part of a stakeholder meeting.



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