



March 27, 2019

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

Re: Comments of Disability Rights Maine to Proposed Maine Digital Court  
Records Access Rules

Dear Matt:

Disability Rights Maine (DRM) has a general comment to the Proposed Maine Digital Court Records Access Rules and one specific comment.

The general comment relates to the principle, expressed in the preamble to the proposed rule, that the public have access to court records created or maintained by the Judicial Branch. DRM endorses that principle. DRM also believes that public access should include access by people with disabilities. The Judicial Branch must comply with the Americans with Disabilities Act (ADA). That means that people with disabilities must be able to access digital records to the same extent as people without disabilities. I checked the websites of New Hampshire, the Rhode Island and South Dakota but did not see anything on those websites about digital access for people with disabilities. I then went to Tyler Technologies' website and found nothing about ADA compliance. DRM is asking how the Judicial Branch is going to address access for people with disabilities, including people who are blind. DRM believes that the Judicial Branch should convene a stakeholder meeting with civil legal service providers to address the issue of access, as well as other issues raised by those providers.

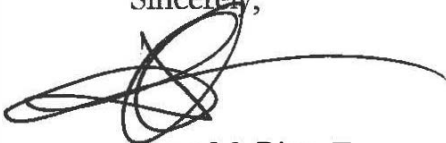
24 Stone Street, Suite 204, Augusta, ME 04330  
207.626.2774 • 1.800.452.1948 • Fax: 207.621.1419 • drme.org

MAINE'S PROTECTION AND ADVOCACY AGENCY FOR PEOPLE WITH DISABILITIES

Proposed Rule 6 excludes certain specific case types and proceedings from public access. For example, according to Proposed Rule 6(c) mental health civil commitment proceedings are excluded from public access. DRM supports this exclusion. DRM also believes that 80C appeals from clinical review panels (CRP) should be excluded for the same reasons that mental health civil commitment proceedings are excluded. The decision of a CRP allowing a patient to be involuntarily treated can be appealed to Superior Court pursuant to Rule 80C of the Maine Rules of Civil Procedure. 34-B M.R.S.A. §3861(F)(1) &(2). The information contained in those filings includes personal medical and psychiatric data that should not be public.

Thank you for the opportunity to comment on the proposed rules.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Peter M. Rice, Esq.  
Legal Director



**Free Legal Help for Maine's Seniors**

March 27, 2019

*Via electronic mail*

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

RE: Comments by Legal Services for the Elderly on Proposed Digital Court  
Records Access Rules

Dear Justices of the Maine Supreme Judicial Court,

Legal Services for the Elderly (LSE) respectfully submits the following brief comments with regard to the proposed Digital Court Records Access Rules and the anticipated implementation of a statewide digital court records system. LSE is a statewide nonprofit legal aid provider that offers free, high quality legal services to Maine's socially and economically needy elderly age 60 and over.

LSE previously submitted comments on January 17 and 25, 2019. As part of those comments, LSE requested additional information about the timing, scope, and practical details of the anticipated transition to e-filing and digital court records. Thereafter, LSE attended the March 6, 2019 meeting of the Advisory Committee on the Rules of Civil Procedure. At that meeting, we were happy to learn from court administrators that following implementation of the new rules, pro se parties will continue to be able to file pleadings and other materials in paper. As we discussed previously, continuing to permit paper filing provides a means of access for parties who do not have computer/internet access or the skills necessary to effectively interact digitally with the courts.

We anticipate that e-filing and digital access to court records could provide substantial practical benefits for LSE staff and attorneys. However, we continue to have concerns about the transition to a digital court records system because we have not seen how the Court intends to address issues involving access, security, and privacy.

LSE continues to be willing to work with the Court to address these concerns and would welcome the opportunity to discuss the anticipated digital court records system at a time and place convenient for the Court.

Respectfully submitted,



Ben Jenkins  
Litigation Director  
Legal Services for the Elderly  
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## **Memorandum Regarding the Maine Digital Court Records Access Rules**

### **PINE TREE LEGAL ASSISTANCE, INC.**

P.O. Box 547  
Portland, ME 04112-0547  
(207) 774-4753

March 27, 2019

Pine Tree Legal Assistance is a statewide nonprofit providing free legal assistance to low-income individuals in the civil justice system in Maine. It has been in operation since 1967 and currently maintains offices in six locations (Portland, Lewiston, Augusta, Bangor, Machias and Presque Isle.) It currently employs 39 lawyers, most of whom regularly appear in Maine District Courts throughout the state, and, less frequently, before the Superior Court, Supreme Judicial Court and Maine Probate Courts.

The Maine Supreme Judicial Court has invited comments on the proposed creation of the Maine Digital Court Records Access Rules and related amendments to the Maine Rules of Civil Procedure. Pine Tree Legal Assistance writes to provide feedback on how the proposed rules would affect access to justice, low-income litigants, and the ability of legal aid attorneys to effectively assist their clients throughout the state of Maine.

These comments are intended to supplement our comments regarding the previously proposed Digital Court Records Act. We support several important differences between the Digital Court Records Act and the proposed rules. Including Protection from Abuse cases on the list of confidential matters will provide significant protections for survivors of domestic violence, sexual assault and stalking. Not including recordings of hearings in the electronics records will ensure that testimony that includes sensitive and private information will not be made public.

Like the Digital Court Records Act, the proposed rules create a basic framework for the new electronic court records system to be implemented throughout the Maine court system. Due to the central role the technological structure of the system will play in allowing access and privacy, critical questions that will affect low-income litigants' access to justice remain unanswered.

#### **A. Confidentiality**

A transparent and public court system is essential to providing access to justice. We appreciate the extent to which the Digital Court Records Access Rules balance the need for transparency with individual privacy rights. However, we have several concerns regarding how the rules will affect the privacy of the low-income Mainers we serve.

The Digital Court Records Access Rules provide that documents will appear in the electronic system within three days of when they are filed. However, in many ways, the Internet is intractable. Once something is posted online, it is difficult to 'unring the bell.' The only meaningful way to protect a litigant's confidential information from being made public is to provide enough time for them to file a motion to redact documents after they are served but

before the document is posted for public reviewing. Allowing a certain number of days before a document is posted online after filing (we suggest fourteen days) would give litigants this opportunity.

Maine Rules of Civil Procedure Rule 4 allows plaintiffs to commence an action by either filing and then serving the defendants, or serving the defendants and then filing. If filings appear in the electronic records within three days of when documents are filed, this will mean that information about defendants is accessible to the public prior to the defendants having notice of the action in cases if filing happens before service. Instead, documents initiating an action should appear in the system only after proof of service has been filed.

The processes for sealing records in Rule 7 and correcting mistakes in Rule 12 will be essential in giving litigants the ability protect their own privacy. However, it is important that the system is accessible – especially for pro se litigants. Rule 7 should have an associated form that is easy-to-read and fill out. Anecdotally, our legal aid colleagues in other states have reported socioeconomic inequities in litigants’ access to the sealing process. Maine should avoid this pitfall by creating a system that ensures access for all.

We support Rule 9 which addresses the procedure when information is filed in documents that is confidential under the rules. We agree that it necessary for the courts to have the option to sanction parties who violate the rules. However, we are concerned that the specificity and technical nature of the rules means many pro se parties will fail to follow them. Sanctions should not be imposed against parties when information is inadvertently or mistakenly disclosed without malicious intent.

## **B. Searchability and Use of Information**

Many of the ways in which the electronic records system will affect the privacy of individuals will be dictated by the technological structure of the system. The proposed rules do not address what information will be required to search the database. As we discussed in our comments submitted on January 25, 2019, the setup of this basic function will dictate whether the public will be able to trawl for information in the court records or whether searches will require specific information known by people with interest in a specific case. The latter approach will better protect the privacy of individuals while still allowing the public and the press access to case information.

To the extent the Digital Court Records Act allowed the purchase of bulk data from the court records, we support the proposed rules not affirmatively allowing this and instead delaying the specifics of Rule 4 regarding bulk data until after the system is in place and functional. When the rules about bulk data are created, it is important to remember that allowing outside people or organizations to purchase bulk data will have a significant impact on low-income Mainers. It will allow individuals or organizations outside the court system to control the distribution and accuracy of court information by using court information to create their own databases. In turn, this will provide for greater instances in which low-income Mainers are denied housing and employment based on information that may not be complete or accurate when landlords and employers use the outside database instead of the official record. To preserve the integrity of

case information, the rules should prohibit the purchase of bulk data and also prohibit the further dissemination of information from the records for commercial purposes. This would allow an employer or landlord to do their own background check but would also ensure they are accessing accurate information under the control of the court system.

### **C. Fees**

The rules contemplate that fees will be charged for accessing files. While this could help to limit the access of people who are looking for bulk data or looking for ways to take advantage of the availability information, fees give greater access to the court system to people and law firms that can afford to pay them. Giving litigants and attorneys free access to their own cases is essential to ensure that all parties to a case have equal access to the case file; no party should be given an advantage in the case because they can better afford access to the file.

Allowing legal aid organizations, as defined in Maine Rules of Civil Procedure Rule 89(c), to have free access to records would also expand access to justice. Attorneys often need to access files in which they have not entered their appearance. This is true for legal aid attorneys in several situations: when they are not going to enter their appearance but are considering whether to do so, when they need documents from a case related to a case they are working on, or when they are giving pro se litigants advice. Pine Tree attorneys and other legal aid attorneys now go to courthouses to review files. If we are required to pay for this access to information, it will add new costs to our budgets and will result in less representation for low-income Mainers.

Fee waivers will be essential for litigants. However, the current fee waiver system is too onerous for use for simple tasks, like reviewing documents, given that applications must be reviewed by both a financial screener and a judge. Streamlining this process will be required to ensure necessary access to information by low-income litigants.

### **D. Family Law Rules**

#### Limitations on Interim Hearings

The addition of the last sentence of Rule 107(b)(2) and the last sentence of Rule 110A(b)(4)(C) attempts to limit interim hearings to one interim hearing “during any stage of the case.” Because the “stage of the case” is not defined, this language is confusing and subject to inconsistent interpretation. Additionally, the limitation on interim hearings might lead to Magistrates declining to hold interim hearings on issues such as child support as soon as possible in the case, which would disproportionately impact low-income litigants and victims of domestic violence. The court already has discretion to decline to schedule an interim hearing. If additional language is added to these sections of the statute, the language should be more clearly drafted. For example, rephrasing the sentence to read: “The court has the discretion to limit the number of interim hearings scheduled.”

Cellular and Electronic Devices in PFA court

Rule 127 prohibits recording protection from abuse proceedings and posting the official recording to the Internet. This broad prohibition is consistent with VAWA and the court's decision to keep PFA proceedings confidential. However, proposed subsection 127(d) prohibits possession or use of cell phones, smartphones, and a number of other recording devices in a courtroom during PFA proceedings. This prohibition would impact litigants' ability to present evidence in PFA cases, which often is contained on such devices, and would also restrict attorneys' use of these devices during court proceedings. Although prohibition of possession and use of these devices would support the court's prohibition on recording PFA proceedings, a less restrictive rule related to possession and use would support both litigants and attorneys who may need to access these devices for legitimate purposes during the PFA process.

Respectfully submitted,



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Nan Heald, Executive Director

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