

District Court TAP Comments.

The E-CMS will significantly increase public access to information about the court and court cases even if all the TAP recommendations are implemented. First, it will be possible for anyone with access to the internet to search for all cases involving a particular individual or entity and to view the docket record of any case. Second, the non-confidential portions of a file may be viewed at the courthouse closest to the person who wishes to review the information. This is a significant increase in access, since an interested person may choose the most convenient courthouse and need not travel to the courthouse where the action has been filed to view the documents. This small barrier will help to preserve the “practical obscurity” that has protected litigants for decades, without unduly limiting the public’s access to information.

I wholeheartedly support the recommendation of the TAP concerning access to electronic files. In the District Court it is often necessary for a party to disclose intensely personal and painful details about his or her family life. The information presented in Family Matters and Protection from Abuse cases involves not only the adults in a family, but also the children. In an effort to advocate for their position, parents often file documents disclosing not only their own sensitive and private information, but information about their children as well. It is possible to imagine a situation in which that child’s private information could be used to hurt the child when applying for college, for jobs or in other areas of the child’s life if a malicious peer gathers and then disseminates information about the child years after the case has concluded.

Any system that requires the litigants to follow precise procedures to obtain protection for sensitive information will fail. Too many of the litigants in District Court are unrepresented. Many do not read or write at a high enough level to understand and follow instructions, no matter how simply stated.

The public may have the right to know their neighbor is getting divorced. They may have a legitimate interest in seeing how long it takes the court to process a particular case, or particular case types. This information can be gleaned from the docket record. It is hard to see how a strong public interest is served by allowing everyone, from the privacy and anonymity of their living room, to see that the grounds for divorce are: ‘She cheated on me with my best friend for years and I’m not even sure Lucy is my daughter.’ While a person

represented by counsel may list adultery as grounds for divorce, unrepresented parties seldom use the legal phrase, they describe the offence. This is just one example of the kind of sensitive information routinely disclosed by unrepresented litigants in these sensitive cases.

If the SJC is not inclined to adopt the TAP recommendations for all case types I strongly suggest the SJC consider adopting the recommendations for the case types most likely to contain this sensitive information.

1. "Financial Statements" for child support should specifically include child support affidavits and attachments.
2. Disclosure of even the last four digits of social security number should be prohibited. Anybody that has accessed online accounts and other I data is probably aware that, for security purposes, the last four of the social is all that is required.
3. More detail on court issued documents that contain private information (summary of medical/mental health/substance abuse records). This information permeates all pleadings in many family cases. People should not be chilled from pursuing or protecting rights to children because of the fear that sensitive information will be disclosed.
4. GAL Report is now addressed by rule/form but same concern.

The report may have addressed the concerns above and I may have missed it or I felt the detail was insufficient.

.....but here's why I think the files should be generally confidential.

Mistakes happen ALL the time. Pro se parties file documents with full bank account numbers, full social security numbers, etc. Attorneys who only dabble

in family law also do this. Clerks also, at least with paper files, routinely overlook confidential documents and put them on the public side of the file. Any bad actor who figures this out will be able to troll through files until he/she gets a hit. This could happen now but will be so much easier I believe with electronic files.

Also, pleadings regularly go far beyond providing "notice" of the issues. I routinely see long, detailed accounts alleging terrible behavior, allegations which may or may not be true. Sometimes pleadings comment on the behavior of the parties' children. Judicial decisions often have to analyze family dynamics and assign blame. I worry that children will be able to access these files and read these horrible things.

Finally, in general, I believe that the average, non-famous family who is falling apart because of addiction issues, or mental health issues, or debt issues, etc. deserves some privacy. A relative, a neighbor, a reporter looking for a human interest scoop, or anyone else should not be able to access that file and read about that family's personal misery.