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Matthew Pollack, Executive Clerk  
Maine Supreme Judicial Court  
205 Newbury Street, Room 139  
Portland, Maine 04101

REGD ME SUPREME JUD CT  
DEC 15 '17 PM2:13

Re: Judicial Branch Task Force on Transparency and Privacy in Court Records  
Comments on Report of September 30, 2017

Dear Matt:

I am writing to provide comments on the above referenced report.

In the summary of the task force report, it indicates that

"..the Task Force recommends allowing everyone to obtain court-generated information in non-confidential case-types (other than juvenile) at anytime from anywhere. Moreover, parties (except juveniles) and counsel of record would have online access to court-generated information and filings, including pleadings, at anytime from anywhere. Anyone desiring party-generated information, such as case pleadings, who is not a party or counsel in a case could visit a local courthouse, where non-confidential case information from any court could be viewed electronically."

As a general matter, I agree with the task force's recommendations. It allows the public to observe the workings of the public forum, the court. It limits the exposure of pleadings filed to the parties involved in the case. In my opinion, this strikes a fair balance between the competing and important values of transparency and privacy.

I believe there are additional documents that should be considered confidential and therefore not available for public review. One such category includes reports of a Guardian *ad litem*. While the proposed rules protect "child custody" reports from DHHS, for example, it does not specify GAL reports. It is the nature of Guardian *ad litem* reports to

detail personal information about children and their parents. They should be automatically sealed, subject to review only on a showing of a particular legitimate need.

I also believe that parties should easily be able to shield pleadings from public review based on the sensitive nature of the proceedings, in particular but not exclusively proceedings involving minor children. I do not believe there should be a high bar for redacting or sealing records with sensitive information. An affidavit filed by a party in a family matters case, which may describe a spouse's substance abuse or a child's disability, for example, should be protected upon request.

In family cases, every filing must include a family matters summary sheet, a document that provides personally identifying information to the court, including addresses, phone numbers, dates of birth, etc. The entire form should be automatically protected and not available for public review, to protect the public from identity theft as well as targeted solicitations.

In his comments to the report, journalist Mal Leary argues that "public is public", and all records should be remotely available. In support, he cites the experience of the federal courts. I think the parallel to the federal system is not apt. State courts have an exponentially higher volume of cases, and the nature of the cases are, by definition, more personal and sensitive: family matters, protection from abuse, evictions, debt collections, child abuse cases. People only go to state court for these matters when something in their personal lives has gone terribly wrong. In the past people could turn to their houses of worship or other social structures for a remedy. For many people, turning to the court for a remedy for personal tragedies is the only option available. Making that sensitive

personal information public creates a disincentive for the domestic violence victim, the observer of child abuse, the tenant in substandard housing, to seek relief from the court.

Protracted court conflicts in family matters often include unproven, if not baseless, allegations of bad behavior. Highly contested family matters frequently involve one or two parties who suffer from some form of mental illness, propensity for violence, or substance use disorder. Making the allegations available to a casual browser can cause substantial and enduring harm to the subject of the allegation. The vast majority of litigated cases reach a settlement, and a formal rejection of the allegations is not part of the record. If the target of the accusations must have a judicial vindication to clear his or her name, the already crowded trial docket will slow down even further, as incentives to settle compete with the public record of allegations.

I agree with the comments of the representatives of Pine Tree Legal Assistance regarding evictions and debt collection cases. I believe those comments apply equally to other types of cases. They point out that the filing of an eviction proceeding, even if unjustly done, will negatively impact the tenant who has done nothing wrong. The same may be true of a protection from abuse filing. The observable demographics of the people in eviction and PFA court suggest that the most vulnerable among us are over represented as litigants. The consequences of the allegations may have a disproportionately negative impact on modest means or poor Mainers who can't afford counsel to correct or protect the record. At the same time, landlords and members of the public should have access to information about who may be an irresponsible tenant or a domestic violence abuser. I do not have a solution to correct the legitimate concerns on both sides of this issue, and failing that, my inclination would be in favor of disclosure of the court generated records.

One final comment: Maine is a notice pleading state. There is no need, in many cases, to include detailed, unsworn, unproved allegations of misconduct. The pleading is a request to the court to take action. If specifics are needed, they should be accompanied by a sworn affidavit. Especially if the pleadings are to be available for public review, litigants should be informed of what they need to do to put the other party on notice of the parameters of the matter at hand, without extraneous, inflammatory and unsworn allegations.

Thank you for your time and attention to this important matter, and for the opportunity to comment.

Very truly yours,



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