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JACK L. SCHWARTZ (1922-1995)

December 15, 2017

Via E-Mail Only ([lawcourt.clerk@courts.maine.gov](mailto:lawcourt.clerk@courts.maine.gov))

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

Re. Recommendations Presented to the Court in the Report of the Task Force on  
Transparency and Privacy in Court Records

Dear Mr. Pollack:

Pursuant to the Court's administrative order seeking comments regarding the above matter, I submit the following comments in favor of as broad a policy as possible for access to court records, both for the general public and especially for attorneys. .

Access to court records is critically important in a free, non-secretive society. That is especially so for attorneys who need information sometimes immediately in order to assist our clients.

For example, in the criminal law realm, pursuant to the *Hewey* analysis and its codification, we are asked to compare sentences for particular conduct, then individualize them. The first part of that analysis necessitates research to obtain information, sometimes from courts, regarding dispositions for similar charges. Having information available online would help to increase accuracy, and would take the burden off of court clerks, who have to look up matters on their computer and may have to go through files to obtain the information.

As another example, when defending a PFA matter, it became apparent that the alleged victim and her family had used and likely abused the PFA system as a sword in order to obtain orders against my client, his family, and other people. While I was able to obtain the information, my agent had to travel to a court in Machias, far from Cumberland County (and Sagadahoc County, wherein the case was held), to obtain the information. The information (docket sheets and complaints with supporting affidavits) was important, because after reviewing it, even opposing counsel recognized that perhaps the PFA court was not the most appropriate court in which to dispose of the particular matter, which

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involved post-divorce child custody and child support issues. The matter was dismissed by the plaintiff upon the advice of counsel after a review of the records.

Frequently, PFA hearings happen without much notice. Had my agent not been able to get to Washington County expeditiously, or my client had the resources with which to pursue the matter, we would have been without valuable information that resulted in a dismissal of the case, affording my client the ultimate due process and saving the court's resources by not having to conduct a hearing in a case that should never have been brought.

The task force has recommended a rule that allows attorneys to obtain information online only about cases for which they have entered their appearance. Respectfully, a rule limiting access to only those cases would be almost meaningless. It would do nothing to expedite obtaining other necessary information regarding other cases or parties, nor would it free up valuable time of clerks offices, which are frequently overworked and understaffed.

It is understandable that some files or parts thereof would be unavailable to the public and non-attorneys of record, such as sensitive information about alleged victims like their addresses, Social Security Numbers of defendants, and the like. Further, some parts of files are sealed.

Aside from that, however, the public and certainly attorneys should have unfettered access to court files from throughout the state, similar to the Pacer system that is so effective in the Federal system and the EZ file search system in probate courts throughout the state. Folks using those systems must register and there is a payment structure whereby records may be reviewed, but copies (from page one using EZ file and beyond a certain amount using Pacer) must be paid for. They are expedient, user-friendly systems. Indeed, anything less than full access to Superior, District and Unified Criminal court records from throughout the state seems contrary to the full and fair access to courts championed by the courts and guaranteed by the Constitution. Indeed, it is contrary to the stated goals in the report.

We are in an exciting age of information at this point in the 21<sup>st</sup> century. Information is readily available at our fingertips, with instantaneous results, to our great benefit. I respectfully request that the Court enact meaningful rules that will allow for full access to court records online, so that our judicial system will keep pace with the rest of the state, and indeed the world.

Thank you for your consideration.

Respectfully,



Stephen J. Schwartz