

Maine - Open Courts Compendium

Notes to authors:

To make the chapter outline less complex, we have eliminated some of the subpoints under particular headings. The eliminated subheads still appear in this outline, so that you can see what text was under those headings, and use it in the section above those subpoints. As you edit, you can delete the notes and the grayed-out subheads.

Please avoid entries like "See III.D. above." There is no "above" when reading these online, especially if using the Comparison feature to read one outline point across many states. And the outline can change, making these confusing and unhelpful.

Feel free to use hyperlinks to web sites, especially for official code cites or state offices.

When you see the text "This section is blank," that is what currently appears in that section for your guide. You can leave that as is, or instead enter text there. Our web site requires text in all sections, which is why this appears.

Open Courts Compendium

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I. Introduction: Access rights in the jurisdiction

The Maine Supreme Judicial Court made clear that media access to courtrooms – and by extension court records – is the exclusive prerogative of the courts. “[M]edia access to courtrooms is within the judicial power committed to this Court by the Maine Constitution.” Supreme Judicial Court Direct Letter of Address, Me.Rptr., 490-509 A.2d CXXVI-CXXIX (April 25, 1986). “[T]he people of Maine conferred all of the judicial power upon the judicial department and left none to be exercised by the Legislature, except in cases of impeachment.” *Id.* “Thus within its power, the judiciary acts with exclusive authority, and any attempt by the Legislature to exercise judicial power constitutes an invasion of the province of the judiciary in violation of article III of the constitution.” *Id.*

The Court made these pronouncements in an extraordinary Direct Letter of Address issued in 1986 by the Justices of the Supreme Judicial Court to the Governor, the President of the Senate, and the Speaker of the House. The Court informed the Legislative and Executive Branches of government that a newly enacted statute requiring that the courts promulgate rules allowing cameras into the courtroom would be an unconstitutional violation of the separation of powers clause of the Maine constitution. *Id.*

Maine’s public records and public meetings law, the Freedom of Access Act, 1 M.R.S.A. § 401 *et seq.*, does not apply to court records or proceedings of the Judicial Branch (it may apply to judicial marshals or other court employees). *See Asselin v. Superior Ct.*, 2014 Me.Unpub. LEXIS 3 (Jan. 22, 2015).

Given the Court’s sweeping statement of its own authority in the Direct Letter of Address, the Legislature’s authority to regulate matters relating to access to courtrooms and court records is questionable. Nonetheless, the Supreme Judicial Court has referred to and been willing to follow state statutes purporting to restrict access to certain judicial proceedings, most notably juvenile court proceedings. *In re. Bailey M.*, 2002 ME 12, ¶ 15, 788 A.2d 590. It is less than clear why the Legislature has the right to close courtrooms when it comes to juvenile justice, but lacks the authority to open the courtroom when it comes to camera or electronic coverage. One explanation is that the parties did not raise a separation of powers argument. Another is that the Court took a dim view of the Legislature’s attempt to put cameras in the courtroom, but agreed with the policy of keeping juvenile proceedings confidential.

The Court has not often addressed public access to court records or court rooms. *See Sigmund D. Schutz*, Public Access to Judicial Proceedings and Records in Maine: Worth Protecting, 27 Me.B.J. 198, 202 (Fall 2012) (referring to Maine authority on access to judicial records and proceedings as “sparse,” and observing that there are “few Maine cases and statutes on point”). The Court has signaled that it will look to federal precedent when interpreting federal constitutional rights generally. *See Littlefield v. Dept. of Human Servs.*, 480 A.2d 731, 737 (Me. 1984) (court will generally follow First Circuit decisions on federal law “so far as reasonably possible” in the interests of “harmonious federal-state relationships”).

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A good place to start in understanding practical day-to-day access to court proceedings and records in Maine is to review the Court's administrative orders. Two such orders are most relevant. The Court adopted Administrative Order JB-05-20 "Public Information and Confidentiality," which governs the release of information. Effective September 19, 2011, the Court adopted Administrative Order JB-05-15, "Cameras and Audio Recording in the Courtroom."

A. The roots of access rights

The Maine Supreme Judicial Court observed that the U.S. Supreme Court has recognized that "members of the public have a First Amendment right to access certain criminal proceedings." *In re. Bailey M.*, 2002 ME 12, ¶ 11, 788 A.2d 590.

In Maine the right to free speech and to freedom of the press under the Maine Constitution are generally considered co-extensive with rights under parallel clauses contained in the U.S. constitution. See Me. Const. art. I, § 4 ("Every citizen may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press; . . ."); *Central Maine Power Co. v. Public Utilities Commission*, 734 A.2d 1120, 1999 ME 119, ¶ 8 ("With respect to free speech rights, 'the Maine Constitution is no less restrictive than the Federal Constitution.'"); *In re Letellier*, 578 A.2d 722, 727 (Me. 1990) ("the Maine Constitution does not make its protection of freedom of the press any more or less absolute or any more or less extensive than the constitutional protection accorded that freedom under the First Amendment"); and *Gelder v. Cote*, 2007 Me. Super. LEXIS 154, *7 (Me. Super. Ct. July 16, 2007) ("In the absence of any authority supporting a different conclusion, this Court holds that the free speech rights protected by the Maine Constitution are 'coextensive' with those under the United States Constitution."). The Supreme Judicial Court has not entirely foreclosed the possibility that state constitutional or common law rights to access to the courts may be more expansive than comparable rights under the federal constitution. See *City of Portland v. Jacobsky*, 1984 Me. Super. LEXIS 24 *19 (Me. Super. Ct. Feb. 7, 1984) ("The Law Court has explicitly refused to be as bound to Federal bill of rights precedent as the City suggests, even in cases where it has limited its consideration to the First Amendment or other Amendments in the Bill of Rights.").

The key administrative order in Maine governing access to court records is Administrative Order JB-05-20, "Public Information and Confidentiality."

The Maine Rules of Civil Procedure provide for open access to civil trial proceedings. The Maine Rules of Civil Procedure provide, "All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room." M. R. Civ. P. 77(b). However, "[a]ll other acts or proceedings may be done or conducted by a justice or judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the county or division where the action is pending." *Id.* The Maine Rules also provide that "[i]n every trial, the testimony of witnesses shall be taken in open court, unless a statute, these rules or the Rules of Evidence provide otherwise." M. R. Civ. P. 43(a). Criminal trials are also open to

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the public as required by the First and Sixth Amendments to the U.S. Constitution, even though there is no analogous rule of Maine criminal procedure.

A number of statutes govern particular types of proceedings, such as criminal proceedings involving juveniles (discussed below).

B. Overcoming a presumption of openness

“Although under appropriate circumstances a court may impound records when publication would impede the administration of justice, the power of impoundment should be exercised with extreme care and only upon the clearest showing of necessity.” *Maine Auto Dealers Assn. v. Tierney*, 425 A.2d 187, 189 n.3 (Me.1981) (citation omitted).

C. Procedural prerequisites to closure

In a case involving access to jury voir dire under the Sixth Amendment (not a spectator or media challenge under the First Amendment), the Court followed federal precedent requiring that a trial court must find that four criteria are met before it may exclude the public from proceedings in a criminal trial: (A) the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced; (B) the closure must be no broader than necessary to protect that interest; (C) the trial court must consider reasonable alternatives to closing the proceeding; and (D) it must make findings adequate to support the closure. *Roberts v. State*, 2014 ME 125, ¶ 24, 103 A. 3d 1031.

A Superior Court Justice had previously endorsed *Press-Enterprise II* in the context of a decision vacating an impoundment order. *In re Am. Journal*, 1986 Me. Super. LEXIS 347 *5 (Me. Super. Ct. Dec. 3, 1986) (“the guidelines [in *Press-Enterprise II*] should be used in all pretrial criminal hearings that meet the criteria established by the U. S. Supreme Court”).

II. Procedure for asserting right of access to proceedings and records

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A. Media standing to challenge closure

The Maine Supreme Judicial Court has implicitly recognized the media’s standing to challenge closure of criminal cases. See *State v. Strong (In re MaineToday Media)*, 2013 ME 12, 59 A.3d 499 (“*MaineToday*”). The Supreme Judicial Court also has ruled that a party to a child protection proceeding lacked standing to assert the *public’s* First Amendment rights to access such proceedings. *In re. Bailey M.*, 2002 ME 12, ¶ 11, 788 A.2d 590.

B. Procedure for requesting access in criminal cases

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The Maine Supreme Judicial Court has not definitively addressed the procedure by which the public may request access in criminal cases, but has allowed “[i]ntervention . . . for the limited purpose” of asserting rights to access in a criminal case. *See MaineToday*, 2013 ME 12 (“we reserve further analysis of the public’s right to intervene in criminal matters to future proceedings”). In a Superior Court case involving access to records of a bindover hearing to determine whether two juveniles arraigned in Juvenile Court would be bound over for trial as adults in Superior Court, the Court accepted and ruled in favor of a “petition in the nature of a mandamus” seeking equitable relief from the Court. *In re Am. Journal*, 1986 Me. Super. LEXIS 347 *4-*5 (Me. Super. Ct. Dec. 3, 1986). The Court may also allow intervention for the purposes of challenging closure of a proceeding or for gaining access to judicial records. *See State v. Dechaine*, slip op., Kno-89-126 (July 11, 1989) (McKusick, J.) (allowing intervention for the limited purposes of challenging a seal on a transcript of a pre-trial evidentiary hearing in a murder case).

As a result, there are two possible routes to challenge closure of a criminal case. A party may either move to intervene for the limited purpose of challenging a closure order or, alternatively, may initiate a new proceeding seeking injunctive relief against the presiding Justice or relevant clerk. The former is the more sensible approach, and has been endorsed as the preferred means of requesting access in criminal cases by federal courts.

It is useful to contact the presiding Judge’s clerk for guidance when an access issue arises. The clerk can promptly bring to the Judge’s attention a letter or other informal request or objection if there is inadequate time to make a written submission. The clerk can provide information on how the judge may wish to handle matters.

C. Procedure for requesting access in civil matters

The typical means of challenging an order impounding a civil proceeding is to move for intervention for the limited purpose of requesting access, although it may also be possible to file a petition for equitable relief in the nature of mandamus. *See M. R. Civ. P. 79(b)(2)* (“Requests for inspection or copying of materials designated as confidential, impounded, or sealed within a case file must be made by motion in accordance with Rule 7.”).

The Maine Supreme Judicial Court endorsed intervention as the proper means for a newspaper to challenge the propriety of a protective order sealing documents that would otherwise be public records under the state open records laws. *Bangor Publ. Co. v. Town of Bucksport*, 682 A.2d 227, 229 (Me. 1996) (“Bangor Publishing could have intervened in the protective order action to assert its interest.”). The Court ruled that the newspaper could not obtain access to sealed documents from the City under the state’s right-to-know law; the only way to obtain those documents was to seek relief from the protective order through the courts. *Id.* at 233.

Although a motion to intervene is the appropriate means of obtaining access, the interest in public access to civil proceedings is not necessarily a sufficient interest – standing alone – to allow intervention, at least intervention as of right to obtain access to sealed juvenile settlement

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records. In *Doe v. Roe*, 495 A.2d 1235 (Me. 1985), a newspaper moved to intervene in a medical malpractice action to obtain access to a sealed settlement agreement between a juvenile and a medical provider. The publisher asserted that it had two interests justifying intervention as of right. The newspaper claimed interests “as news gatherer and disseminator of information to the community, claiming the public has an interest in the quality of local medical care” and in “exposing to public scrutiny the proper functioning of the court in its judicial duties.” *Id.* at 1237-1238. With regard to that second interest, the publisher maintained “that by its intervention for the purpose of lifting the impoundment, the public may assure itself that the court’s approval of the settlement was not merely rubberstamped, but fair to both parties and protective of the minor’s interests.” *Id.* at 1238. The Superior Court agreed.

The Supreme Judicial Court vacated and reversed, rejecting both asserted interests as insufficient to warrant intervention as of right. With respect to the first interest, quality medical care, the Court reasoned:

While Bangor Publishing Company may be interested in discovering and publishing the identities of the parties and the terms of the settlement, neither it nor the public has a direct interest at stake in the underlying claim itself. The public will neither “gain nor lose by the direct legal operation and effect of the judgment.” Were it not for the participation of a minor in the settlement, the agreement would not have been brought before the court.

Id. at 1238. The Court summarily rejected the second asserted interest, the functioning of the judicial system, explaining that “[t]his claim of interest similarly lacks a nexus to the subject of the claim sufficient to warrant intervention in the case.” *Id.*

Although *Doe v. Roe* involved intervention as of right only, the Court signaled that permissive intervention likely would also have been improper. *Id.* at 1238 n.5.

Because *Doe v. Roe* is out of synch with prevailing case law in other state and federal courts it is ripe to be overturned and may no longer be good law.

As in criminal cases, it may be useful to contact the presiding Judge’s clerk for guidance when an access issue arises. The clerk can promptly bring to the Judge’s attention a letter or other informal request or objection if there is inadequate time to make a written submission. The clerk can provide information on how the judge may wish to handle matters.

D. Obtaining review of initial court decisions

All final judgments in Superior Court may be appealed as of right to the Maine Supreme Judicial Court sitting as the Law Court.

In the event an interlocutory appeal is necessary to make a claim for access before a final judgment has been entered in the underlying proceeding (i.e., before it is too late), the Law Court

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has held that such appeals are proper under the death knell exception to the final judgment rule. The death knell exception permits review “when failure to do so would preclude any effective review or would result in irreparable injury.” *Ouellet Assocs. v. Coastal Realty Group, LLC*, 983 A.2d 379, 2009 ME 114, ¶ 5. The Law Court has accepted interlocutory appeals in cases involving access to judicial proceedings at least three times. First, the Law Court held that a mother’s right to compel the District Court to open family related proceedings to the public “would be irreparably lost if the District Court’s decision to keep the proceedings closed was not rendered and her contentions were then decided to be meritorious.” *In re. Bailey M.*, 2002 ME 12, ¶ 8, 788 A.2d 590. The Court reasoned, “If we were to conclude after the proceedings were completed that the mother had a constitutional right to have the hearings opened, little could be done to correct the deprivation of that right.” *Id.* The Court rejected the notion that the release of transcripts of the proceedings to the public could be an adequate substitute for attendance at the hearings “at the time they are taking place.” *Id.* ¶ 8 n.4. Second, the Court accepted an interlocutory appeal from an order requiring disclosure of a pre-sentence investigation report. *See Halacy*, 670 A.2d at 1373 n.2. Most recently, the Court accepted an interlocutory appeal from an order closing jury voir dire in a criminal case under the death knell exception. *See MaineToday*, 2013 ME 12 ¶ 2.

In emergency situations, the appellant may also file a motion to stay, a motion for temporary restraining order, or for other relief to seek an order suspending proceedings that constitute a continuing violation of the public’s access rights. An appeal requiring prompt action should be brought to the attention of the Clerk of the Supreme Judicial Court.

III. Access to criminal proceedings

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A. In general

In general, criminal proceedings are open to the public in Maine. The Maine Supreme Judicial Court has recognized that “members of the public have a First Amendment right to access certain criminal proceedings.” *In re. Bailey M.*, 2002 ME 12, ¶ 11, 788 A.2d 590; *see also Roberts v. State*, 2014 ME 125, ¶ 18, 103 A. 3d 1031 (finding that “[d]ecisions whether to close court proceedings to the public frequently involve the balancing of . . . the First Amendment rights of the press and members of the public”). The Law Court has also followed *Press-Enterprise Co. v. Super. Ct. of Cal., Riverside Cnty.*, 464 U.S. 501 (1984) in holding that “[a]t the jury voir dire stage of a criminal trial, the public, including the press, has rights protected by the First Amendment to the United States Constitution.” *MaineToday*, 2013 ME 12, ¶ 3.

Although *Roberts v. State* involved a Sixth Amendment challenge (not a spectator or media challenge under the First Amendment), the Law Court quoted federal precedent for the proposition that a trial court must find that four criteria are met before it may exclude the public from proceedings in a criminal trial: (A) the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced; (B) the closure must be no broader than

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necessary to protect that interest; (C) the trial court must consider reasonable alternatives to closing the proceeding; and (D) it must make findings adequate to support the closure. 2014 ME 12 ¶ 24; see also *Stave v. Frisbee*, 2016 ME 83, ¶¶ 21-22, 140 A.3d 1230.

B. Pretrial proceedings

As noted, the Supreme Judicial Court has followed federal precedent governing the standard for closing criminal proceedings in Maine. See *Roberts*, 2014 ME 12 ¶ 24. The Maine Legislature has articulated a somewhat different statutory standard: all pre-trial criminal proceedings are open to the public unless the Court finds “a substantial likelihood” that (A) injury or damage to the accused's right to a fair trial will result from conducting the proceeding in public; (B) alternatives to closure will not protect the accused's right to a fair trial; and (C) closure will protect against the perceived injury or damage. 15 M.R.S.A. § 457.

The Law Court has also followed *Press-Enterprise Co. v. Super. Ct. of Cal., Riverside Cnty.*, 464 U.S. 501 (1984) in holding that “[a]t the jury voir dire stage of a criminal trial, the public, including the press, has rights protected by the First Amendment to the United States Constitution.” *MaineToday*, 2013 ME 12, ¶ 3. The Court has held that “generalized concern that juror candor might be reduced if voir dire is conducted in public is insufficient pursuant to *Press-Enterprise* to bar the public or media from the entirety of the process.” *Id.* ¶ 7. Juror voir dire must be conducted “in a presumptively public manner” subject to measures to “prevent dissemination of sensitive juror information.” *Id.* ¶ 9.

In a Sixth Amendment post-conviction challenge to individualized voir dire held in chambers, the Law Court held that defense counsel who affirmatively agreed to close juror voir dire had *not* provided ineffective assistance. See *Roberts*, 2014 ME 125, ¶¶ 27-28.

In a Maine case concerning public access to a bindover hearing (to determine whether two juveniles arraigned in Juvenile Court would be bound over for trial as adults), the court concluded that “a qualified First Amendment right of access applies to bindover hearings involving serious crimes” and that “it is difficult to imagine a fact situation where the media could ever be lawfully excluded from a bindover hearing.” See *In re Am. Journal*, 1986 Me. Super. LEXIS 347 *7 (Me. Super. Ct. Dec. 3, 1986).

C. Criminal trials

The Law Court has followed *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581 n. 18 (1980) in observing that the trial judge may “in the interest of the fair administration of justice impose reasonable limitations on access to a trial, and the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the opportunities for the communication of thought and discussion of public questions immemorally associated with resort to public places.” *Roberts*, 2014 ME 125 ¶ 30 (punctuation and brackets omitted). “Where there is an articulable risk of witness intimidation or courtroom disruption, or some other

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comparable reason, the imposition of conditions on entry to the courtroom is permissible so long as the conditions are ‘ no broader than needed to accomplish their purpose.’” *Id.*

The Supreme Judicial Court has held that the trial judge may prohibit members of the public from entering the courtroom during witness testimony where spectators had created an “ongoing problem” by engaging in distracting behavior; members of the public who had arrived on time were permitted to remain. *Roberts*, 2014 ME 125 ¶ 33. The trial court had raised with counsel concern over spectators’ behavior at least twice, and had addressed the spectators directly about their conduct. *Id.* Only when those measures proved ineffective did the court resort to restricting courtroom access. *Id.* Under the circumstances, the limitations on access imposed by the trial court “constituted a reasonable exercise of its power to control the proceedings and did not amount to a closure of constitutional dimensions.” *Id.* The Court has also suggested that it would have been proper to prohibit members of the public from entering the courtroom during the reading of jury instructions under similar conditions. *Id.* n. 5.

The Court reviewed trial judge’s finding of fact that courthouse doors were *not* locked when a jury returned its verdict for “clear error.” *Roberts*, 2014 ME 125 ¶ 34. The court affirmed that finding on the basis that ample evidence supported the trial court’s finding. *Id.* ¶ 35; *see also Stave v. Frisbee*, 2016 ME 83, 140 A.3d 1230.

D. Post-trial proceedings

No Maine address attempts to close post-trial proceedings.

E. Appellate proceedings

The Maine Supreme Judicial Court holds oral argument in a substantial portion of its cases and that argument is open to the public. M.R.App.P. 12B(e). The Court records oral argument and live streams argument on its website. After argument the Court hosts on its website links to the recorded argument for a period of time. Whether to grant oral argument is discretionary with the Court. M.R.App.P. 11(g). There are no reported Maine cases addressing attempts to seal oral argument on appeal.

IV. Access to criminal court records

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A. In general

In general criminal court records are public in Maine pursuant to Administrative Order JB-05-20 “Public Information and Confidentiality,” which provides: “Information and records relating to cases that are maintained in case files, dockets, indices, lists, or schedules by and at the District, Superior, or Supreme Judicial Courts are generally public and access will be provided to a person

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who requests to inspect them or have copies made by the clerk's office staff unless the information or a part of it is confidential . . .” *Id.* § III(A)(1).

In a Maine Superior Court case involving access to criminal court records, a Superior Court Justice considered whether to allow access to records of a bindover hearing to determine whether two juveniles arraigned in Juvenile Court on murder charges would be bound over for trial as adults in Superior Court. *In re Am. Journal*, 1986 Me. Super. LEXIS 347 (Me. Super. Ct. Dec. 3, 1986). The Court reversed an earlier order to impound the bindover hearing, the Court's findings related to the hearing, findings in a Superior Court bail hearing, and ordered that the complete files “be opened to the public and the media forthwith.” *Id.* at *9-*10.

B. Arrest records

In Maine, criminal history records containing both conviction and non-conviction data maintained by and at a clerk's office are open to public inspection and copying. Administrative Order JB-05-20 “Public Information and Confidentiality” § III(A)(3) (“Individual adult public criminal history information contained in public court records maintained by and at a clerk's office are open to public inspection and copying, and will be supplied if the records or indices are not located in a publicly accessible place.”).

Arrest records may also be available from the relevant law enforcement agency. Access to criminal records from law enforcement agencies is controlled by the Maine Criminal History Record Information Act, 16 M.R.S.A. §§ 701-710 In general, arrest records are public, and are contained in a police blotter (or the electronic equivalent), which is a public record. 16 M.R.S.A. § 708(2).

C. Dockets

Any criminal docket can be accessed by contacting the clerk of the court in which the case is pending. A directory of court contact information can be found on the Supreme Judicial Branch website at: http://www.courts.maine.gov/maine_courts/findacourt/index.shtml (last visited Feb. 21, 2017). The Court does not maintain an online or electronic system allowing public access to docket information, but the clerk's office has access to a computer terminals allowing docket searches in the courthouse.

The courts will entertain motions to seal or impound dockets. Administrative Order JB-05-20 “Public Information and Confidentiality” explains that “[i]n some limited circumstances, all information about a case may be impounded, specific information within a case, such as the identity of a party, or the fact that an impoundment motion was made and granted may be impounded or sealed.” *Id.* § II(H)(2) n. 3.

D. Warrants, wiretaps and related materials

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Administrative Order JB-05-20 “Public Information and Confidentiality,” states that the courts may keep confidential information contained in or relating to “a pending request for or an outstanding search warrant, arrest warrant, or other document that contains confidential law enforcement information.” *Id.* § II(H)(4). The Criminal Rules provide that “[t]he warrant and affidavit materials shall be treated as impounded until the return is filed.” M. R. Crim. P. 41(f)(2)(A). After the return is filed, the arrest warrant and supporting materials are a public record. However, “[t]he judge, upon motion or upon the judge’s own motion, may for good cause order the clerk to impound some or all of the warrant materials until a specified date or event.” M. R. Crim. P. 41(h). There are no reported cases interpreting the rule.

E. Discovery materials

There are no Maine cases involving access to discovery materials from the courts in criminal cases. In some instances discovery materials may be available directly from the relevant law enforcement agencies. Access to law enforcement records is controlled by the Criminal History Record Information Act, 16 M.R.S.A. §§ 701-710. In addition, autopsy reports of the Office of the Chief Medical Examiner are available to the general public to the same extent and subject to the same conditions as records of a criminal investigation. However, photographs of the Office, pathology slides and recorded communications expressing or evidencing suicidal intent in the possession of the Office of the Chief Medical Examiner are confidential. 22 M.R.S.A. §§ 2841(3), 3022(8)(9), and (11).

F. Pretrial motions and records

In an unreported Maine case, the Chief Justice of the Supreme Judicial Court ruled that a transcript of a chambers hearing to determine the admissibility of confidential records of a child abuse investigation by the Department of Human Services would remain sealed, available only to counsel of record. *State v. Dechaine*, slip op., Kno-89-126 (July 11, 1989) (McKusick, J.). However, there was no challenge to the constitutionality of the statute requiring that the records be kept confidential and the intervenor-newspapers only asked that any portions of the hearing that did not contain discussion of the confidential records be disclosed. *Id.* at 4. The Court determined that no part of the transcript could be released because every page contains the name of at least one of the individual’s involved in the Department’s child protective activities and that other personally identifying information could be gleaned from the discussion of the web of family relationships discussed in the transcript. *Id.*

G. Trial records

Admitted and proffered exhibits, including both documents and physical items, are part of the public record of a case, and while in the custody of the clerk’s office, are available for inspection and copying unless they are otherwise confidential. Administrative Order JB-05-20 “Public Information and Confidentiality” § III(A)(7). Exhibits submitted to the clerk, but never proffered or admitted, will be made available to the submitting party, but are subject to inspection or

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copying while in the custody of the clerk's office. *Id.* However, public copying or inspection may be limited by the terms of a protective order or by a judicial order or administrative order governing the handling of contraband or dangerous materials. *Id.*

H. Post-trial records

The Supreme Judicial Court established a high standard for disclosure of a pre-sentence report ("PSI") in *Halacy v. Steen*, 670 A.2d 1371, 1375 (Me.1996), a civil case for assault, battery, and other torts in which the plaintiff sought in discovery access to defendant's PSI on the grounds that it might "lead to the discovery of admissible evidence with respect to [defendant's] general mental processes and impressions of the incident." *Id.* at 1373. "The decision to release a PSI is committed to the sound discretion of the court. On motion of the party seeking discovery, the court should balance the desirability of publication against the need for confidentiality and should review the presentence report carefully *in camera* to determine whether the report contains crucial information the party seeking PSI cannot obtain elsewhere. Neither the fact that the report contains relevant information nor the fact that the report provides the most accessible means of obtaining the information is sufficient to warrant its disclosure" *Id.* at 1375. Even upon a showing of a "compelling and particularized need" for a PSI, the trial court must "insure that disclosure is not otherwise precluded by statute or judicial rule." *Id.* If the PSI contains information made confidential or privileged by operation of law or court rule, that portion of the PSI must remain confidential. *Id.*

Even when the court determines that disclosure of a PSI is warranted and that the materials sought are not otherwise protected, "the court in its order authorizing disclosure should specify appropriate procedures and conditions." *Id.* "The terms of release should limit access to the PSI to insure that the disclosed material is no more widely broadcast than is absolutely necessary." *Id.*

I. Appellate records

By amendments effective July 1, 2010, the Maine Supreme Judicial Court enacted a new Rule 12B of the Maine Rules of Appellate Procedure, entitled "Public Access to Proceedings and Records." The Rule governs access to the record on appeal, the file maintained by the clerk, briefs, appendices to the briefs, oral argument and decisions, as follows:

Record on Appeal. The record on appeal in each case, or any portion of the record on appeal, shall be available for inspection and copying by any person, to the same extent as that record was available for inspection and copying in the trial court.

Law Court File. The file maintained by the Clerk of the Law Court for each appeal, other than files for appeals from child protection proceedings, shall be available for public inspection and copying, except that any documents that were transmitted to the Law Court by the trial court and any documents identifying parties and witnesses shall be available for inspection and copying only to the same extent as in the trial court.

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Briefs. The briefs filed with the Law Court, other than briefs in appeals from child protection proceedings, shall be available for inspection and copying by any person.

Appendices. The appendix shall be available for public inspection and copying, except that the appendix shall not be available for public inspection and copying in the following matters: an appeal from a child protection proceeding; proceedings involving an adoption or guardianship or a petition for adoption or guardianship; juvenile proceedings in which the record is sealed in the trial court; any proceeding in which the care, custody and support of a minor child is an issue; or any proceeding in which a document that is confidential by statute is contained in the appendix.

No appendix shall be filed as “under seal” or “confidential” except on order of the Chief Justice or other Justice designated to act for the Chief Justice pursuant to Rule 10(a).

Oral Arguments. Oral arguments on the merits of appeals are public proceedings.

Decisions. Opinions of the Law Court on appeals and decisions of single justices of the Law Court are public documents.

See M.R.App.P. 12B

J. Other criminal court records issues

Maine has contracted to implement an electronic filing system. New rules are likely to address remote electronic access to criminal records.

V. Access to civil proceedings

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A. In general

In general civil proceedings are open to the public in Maine. There are no Maine cases discussing in detail constitutional or common law right to access ordinary civil proceedings in Maine.

B. Pre-trial proceedings

In Maine pre-trial proceedings, such as oral argument on motions, are typically open to the public. However, motions may be decided on the papers or after conferences in chambers, which are not open to the public.

C. Trials

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The Maine Rules of Civil Procedure provide for open access to civil trial proceedings. The Maine rules, which are modeled on the federal rules, provide, “All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room.” M. R. Civ. P. 77(b). However, “[a]ll other acts or proceedings may be done or conducted by a justice or judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the county or division where the action is pending.” *Id.* The Maine Rules also provide that “[i]n every trial, the testimony of witnesses shall be taken in open court, unless a statute, these rules or the Rules of Evidence provide otherwise.” M. R. Civ. P. 43(a). It is common to hold chambers conferences and bench conferences to resolve preliminary issues, such as jury instructions, motions in limine, and procedural matters during trial. In high profile matters, interested members of the public or the news media should make known to the presiding Judge or Justice their interest in attending all proceedings; otherwise for convenience only (and not for the purpose of excluding the public per se), some matters may take place in chambers.

D. Post-trial proceedings

In general post-trial civil proceedings are open to the public in Maine.

E. Appellate proceedings

The Maine Supreme Judicial Court hears oral argument on appeals in public. M.R.App.P. 12B(e). Not all appeals are scheduled for oral argument. M.R.App.P. 11(g). No Maine cases address attempts to seal oral argument on appeals.

VI. Access to civil records

[This section is blank]

A. In general

In general civil court records are also public per Administrative Order JB-05-20 “Public Information and Confidentiality,” which provides: “Information and records relating to cases that are maintained in case files, dockets, indices, lists, or schedules by and at the District, Superior, or Supreme Judicial Courts are generally public and access will be provided to a person who requests to inspect them or have copies made by the clerk’s office staff unless the information or a part of it is confidential . . .” *Id.* § III(A)(1).

“Although under appropriate circumstances a court may impound records when publication would impede the administration of justice, the power of impoundment should be exercised with extreme care and only upon the clearest showing of necessity.” *Maine Auto Dealers Assn. v. Tierney*, 425 A.2d 187, 189 n.3 (Me.1981) (citation omitted).

B. Dockets

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Any civil docket can be accessed by contacting the clerk of the court in which the case is pending. The clerk of each court is obligated to maintain the docket in every civil case. M. R. Civ. P. 79(a). The Courts do not maintain any public online or electronic system, but the clerk's office has access to a computer database.

In extraordinary circumstances, a docket may be sealed. Administrative Order JB-05-20 (A. 5-09) "Public Information and Confidentiality" explains, " In some limited circumstances, all information about a case may be impounded, specific information within a case, such as the identity of a party, or the fact that an impoundment motion was made and granted may be impounded or sealed." *Id.* § II(H)(2) n.3.

The Civil Rules provide for the filing of a motion to impound or seal documents or other materials. M. R. Civ. P. 79(b)(1). Upon the filing of a motion, the clerk is obligated to separate such materials from the publicly available file and keep them impounded or sealed pending the court's adjudication of the motion. *Id.* The Rule does not address the standard for determining whether to grant a request to impound or seal. There are no reported cases interpreting the rule.

C. Pretrial motions and records

Pretrial motions and records filed with the Court are open to the public.

In Maine, discovery materials need not be filed with the Court. Any discovery materials filed with the court (for example as support for motions for summary judgment) become a matter of public record, unless otherwise ordered by the Court.

The parties may move for a protective order regarding discovery to maintain as confidential discovery materials, including trade secrets, confidential research, and development and commercial information. M. R. Civ. P. 26(c). The available remedies include sealing a deposition, prohibiting or managing disclosure, and filing documents under seal. *Id.* The standard for treating discovery as confidential is substantially more lenient than the standard for treating evidence filed with the court for merits decisions as confidential. *See Bailey v. Sears, Roebuck & Co.*, 651 A.2d 840, 843-44 (Me.1994).

D. Trial records

Admitted and proffered exhibits, including both documents and physical items, are part of the public record of a case, and while in the custody of the clerk's office, are available for inspection and copying unless they are otherwise confidential. Administrative Order JB-05-20 "Public Information and Confidentiality" § III(A)(7). Exhibits submitted to the clerk, but never proffered or admitted, will be made available to the submitting party, but are subject to inspection or copying while in the custody of the clerk's office. *Id.* Public copying or inspection may be limited by the terms of a protective order or by a judicial order or administrative order governing the handling of contraband or dangerous materials. *Id.*

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The clerk's office will return to the parties trial exhibits admitted into evidence in civil cases after final judgment has been entered and the appeal period has lapsed.

In a case challenging a court order denying confidentiality to certain exhibits admitted in evidence at trial containing trade secrets, the Supreme Judicial Court distinguished the comparatively lenient standard for entry of a protective order governing *discovery* materials from the more rigorous standard that must be met before *trial* exhibits will be sealed. *Bailey v. Sears, Roebuck & Co.*, 651 A.2d 840, 843-44 (Me.1994). The Court quoted with approval the First Circuit's opinion in *Poliquin v. Garden Way*, 989 F.2d 527, 533 (1st Cir. 1993):

Material of many different kinds may enter the trial record in various ways and be considered by the judge or jury for various purposes It is neither wise nor needful for this court to fashion a rulebook to govern the range of possibilities. One generalization, however, is safe: the ordinary showing of good cause which is adequate to protect discovery material from disclosure cannot alone justify protecting such material after it has been introduced at trial. This dividing line may in some measure be an arbitrary one, but it accords with the long-settled practice in this country separating the presumptively private phase of litigation from the presumptively public.

Id. at 843-844. In *Poliquin* “[t]he court concluded that non-disclosure of judicial records could be justified only by the most compelling reasons.” *Id.* at 844.

The Supreme Judicial Court affirmed the trial court's denial of a request to seal trial exhibits despite an affidavit from the defendant that disclosure of the evidence sought to be protected would “result in a direct loss of revenue to Emerson Electric Co. and would spare our competitors the considerable burden of financing their own research and development.” *Id.* The Court explained, “On this record we cannot say the trial court abused its discretion by determining that the defendants had failed to satisfy the court that they had established good cause or that justice required the continued protection of the exhibits admitted in evidence as distinguished from the materials produced in the course of the discovery process.” *Id.*

E. Settlement records

In general, the fact of a settlement is usually a matter of public record in that the parties will either file a stipulation of dismissal or motion for dismissal reflecting the fact of settlement. The terms of settlement are typically confidential, unless a settlement agreement is filed with the Court. If a settlement involves a public entity, the settlement agreement may be obtained directly from the entity pursuant to Maine's Freedom of Access Act, 1 M.R.S.A. § 401 *et seq.*; settlement agreements with public entities are public records under Maine law. *Guy Gannett Pub. Co. v. Univ. of Maine*, 555 A.2d 470, 471-73 (Me. 1989).

The rule governing court approval of minor settlements does not itself provide for confidentiality of settlement records or related proceedings, but motions to seal such proceedings are sometimes filed and rarely challenged.

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F. Post-trial records

Post-trial motions and records filed with the Court are open to the public.

G. Appellate records

Appellate records, both civil and criminal, are public. See M.R.App.P. 12B.

H. Other civil court records issues

Maine has contracted to implement an electronic filing system, and the Court will be issuing new rules addressing remote access to civil and criminal case records.

VII. Jury and grand jury access

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A. Access to voir dire

Voir dire is open to the public. See *MaineToday Media*, 2013 ME 12. The Law Court has followed *Press-Enterprise Co. v. Super. Ct. of Cal., Riverside Cnty.*, 464 U.S. 501 (1984) in holding that “[a]t the jury voir dire stage of a criminal trial, the public, including the press, has rights protected by the First Amendment to the United States Constitution.” *MaineToday*, 2013 ME 12, ¶ 3.

In Maine, general voir dire is conducted in open court by the presiding officer. The attorneys typically submit written proposed voir dire question to the judge. Those proposed questions become part of the court file and are available to the same extent as other materials in court records. The Court may conduct individualized voir dire to question jurors who may have been exposed to information about the case or expressed a possible bias. See *Roberts v. State*, 2014 ME 125, ¶ 5, 103 A.3d 1031

B. Juror identities, questionnaires and other records

In Maine, during the period of service of jurors and prospective jurors, the names of the members of the jury pool are confidential and may not be disclosed, except to the attorneys and their agents and investigators and to pro se parties. 14 M.R.S.A. § 1254-A(7); see also Administrative Order JB-05-20 “Public Information and Confidentiality” § III(A)(8).

Once the period of juror service has expired, a person may file a written request for disclosure of the names of the jurors and an affidavit stating the basis of the request. 14 M.R.S.A. § 1254-B(7); see also Administrative Order JB-05-20 “Public Information and Confidentiality” § III(A)(9). The court may disclose the names of the jurors only if the court determines that the

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disclosure is in the interest of justice. *Id.* Requests for disclosure of juror names and addresses have been granted for various reasons, including to allow the state to gather information concerning the reasons for a hung jury in a criminal case and to allow attorneys to request that jurors complete a written questionnaire evaluating their performance at trial. There are no reported Maine cases on public access to juries.

In Maine, juror questionnaires, the records and information used in connection with the juror selection process, and the names drawn are confidential and may not be disclosed to any person, except by judicial order. Administrative Order JB-05-20 “Public Information and Confidentiality” § III(A)(7). During the period of service of jurors and prospective jurors, the names of the members of the jury pool are confidential and may not be disclosed, except to the attorneys and their agents and investigators and to pro se parties. *Id.*

There are no reported Maine cases addressing whether Maine’s anonymous jury system is constitutional.

C. Grand jury proceedings and records

Grand jury proceedings in Maine are closed to the public. M. R. Crim. P. 6(e) (general rule of grand jury secrecy). Grand jury records in Maine are confidential absent an order of the Court. M. R. Crim. P. 6(e). A transcript of grand jury proceedings may be made available upon motion of the defendant or the attorney for the state upon a “showing of particularized need” and “upon such terms as are just.” M. R. Crim. P. 6(g).

D. Interviewing jurors

Any contact with jurors by the parties before, during, or after trial is prohibited absent an order of the Court.

VIII. Proceedings involving minors

[This section is blank]

A. Delinquency

In Maine, whether a juvenile hearing is open to the public depends on the nature of the crime committed. Any proceeding on a juvenile crime that would constitute murder or a felony (Class A, Class B or Class C crimes if the juvenile were an adult) is open to the public. 15 M.R.S.A. § 3307(2). Any proceeding involving a misdemeanor is closed unless the proceeding would constitute a Class D crime if the juvenile were an adult and the juvenile is a repeat offender (i.e., if it is the second or subsequent Class D crime not arising from the same underlying transaction). *Id.* In the case of a juvenile hearing open to the general public, “the petition, the record of the hearing and the order of adjudication are open to public inspection, provided that any court

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subsequently sentencing the juvenile after the juvenile has become an adult may consider only murder and Class A, Class B and Class C offenses committed by the juvenile.” 15 M.R.S.A. § 3308. The petition, the record of the hearing and the order of adjudication are open to inspection by the victim regardless of whether the hearing is open to the general public. *Id.*

B. Dependency

All child protection proceedings are closed to the public, unless the court orders otherwise. 22 M.R.S.A. § 4007(1). “The statute clearly states that the presumption is that proceedings will be closed absent extraordinary circumstances.” *In re. Bailey M.*, 2002 ME 12, ¶ 15, 788 A.2d 590. In *Bailey M.*, the court identified other provisions in Maine and federal law that provide for confidentiality in child protection proceedings. *Id.* ¶ 16. (*citing* 22 M.R.S.A. § 4008(3), and 42 U.S.C. § 5106a(b)(4)).

In custody proceedings, referred to in Maine as proceedings to determine parental rights and responsibilities, “at the request of either party, personally or through that party's attorney, unless the other party who has entered an appearance objects personally or through the other party's attorney, the court shall exclude the public from the court proceedings.” 19-A M.R.S.A. § 1656. “If the court orders that the public is to be excluded, only the parties, their attorneys, court officers and witnesses may be present.” *Id.*

Psychiatric and child custody reports are impounded and may be released only to the parties, pursuant to court order, or if used in evidence. Administrative Order JB-05-20 “Public Information and Confidentiality” § II(H)(5).

C. Other proceedings involving minors

With regard to adoption, the results of background checks received by the court are generally confidential. 18-A M.R.S.A. § 9-304(a-1)(2)(vii). If the court determines that it is in the best interests of the child, the court may also order that the names of the child and of the petitioner be kept confidential. 18-A M.R.S.A. § 9-308(c). “Any medical or genetic information in the court records relating to an adoption must be made available to the adopted child upon reaching the age of 18 and to the adopted child's descendants, adoptive parents or legal guardian on petition of the court.” 18-A M.R.S.A. § 9-310. Finally, all Probate Court records relating to any adoption decreed on or after August 8, 1953 are confidential. *Id.* The Probate Court must keep records of those adoptions segregated from all other court records. If a judge of probate court determines that examination of records pertaining to a particular adoption is proper, the judge may authorize that examination by specified persons, authorize the register of probate to disclose to specified persons any information contained in the records by letter, certificate or copy of the record or authorize a combination of both examination and disclosure. However, “[a]n adopted person, the adopted person's attorney or, if the adopted person is deceased, the adopted person's descendants may obtain a copy of that person's original certificate of birth from the State Registrar of Vital Statistics. 22 M.R.S.A. § 2768.

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In a divorce action “at the request of either party, personally or through that party's attorney, unless the other party who has entered an appearance objects personally or through that other party's attorney, the court shall exclude the public from the court proceedings.” 19-A M.R.S.A. § 901(3). “If the court orders that the public is to be excluded, only the parties, their attorneys, court officers and witnesses may be present.” *Id.*

D. Prohibitions on photographing or identifying juveniles

There are no restrictions on photographing juveniles in civil proceedings generally (although restrictions apply in Family Division cases), but in criminal proceedings “[t]here shall be no coverage of any person who has not yet attained 18 years of age, except for a person bound over to the Superior Court for criminal proceedings as an adult.” Administrative Order JB-05-15, “Cameras and Audio Recording in the Courtroom,” § I(B)(g). The process for submitting a notification of coverage is contained in the Administrative Order. *Id.*

E. Minor testimony in non-juvenile courts

In general minor testimony in non-juvenile courts is public. See Administrative Order JB-05-15, “Cameras and Audio Recording in the Courtroom,” § I(A).

IX. Special Proceedings

There are various special and unusual proceedings in which public access to court records or proceedings may be limited, such the following: HIV testing (5 M.R.S.A. § 19203), proceedings related to the Maine Assistance Program for Lawyers (14 M.R.S.A. § 164-A); hearings related to the control of communicable diseases (22 M.R.S.A. § 811(6)); petitions for court orders consenting to a minor’s abortion (22 M.R.S.A. § 1597-A(6)); and sterilization (34-B M.R.S.A. § 7014(1)).

A. Tribal courts in the jurisdiction

No Maine cases.

B. Probate

Under Probate Rule 92.10(b), “Members of the general public and Registered Filers not affiliated with a matter *shall have remote access* to all Public Records in any matter, subject to the redaction of Private Information on Public Records pursuant to Rule 92.12.” (emphasis added). The Advisory Committee explained:

Everyone, including members of the general public and Registered Filers not affiliated with a matter, *will have remote access to all the Public Records*, subject to the redaction of Social Security numbers of living individuals and

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banking/brokerage account numbers on Public Records as outlined in Private Information in Rule 92.12.

M.R.Prob.P. 92.12 advisory committee's notes to 2011 amend., Nov. 2011. (emphasis added)

The Rules identify a few categories of non-public records and information. Rule 92.12(a) lists four types of "Private Records." "Private Records" means (1) all records and documents (electronic or nonelectronic) relating to an adoption proceeding; (2) Certificates of Value (Probate Form DE-401A); (3) Physicians' and Psychologists' Reports (Probate Form PP-505); and (4) any record or document designated as a Private Record by the Probate Court."

M.R.Prob.P. 92.12(a). The Probate Rules also make confidential a few categories of information, labeled "Private Information," (1) Social Security numbers of living individuals; (2) banking/brokerage account numbers; and (3) any other information designated as Private Information by the Probate Court. M.R.Prob.P. 92.12(c). The burden of redacting this information from court filings falls on those responsible for making filings with the Court.

The registers of probate must maintain a docket of all probate cases and to make that information public. "Registers of probate shall keep a docket of all probate cases and, under the appropriate heading of each case, make entries of each motion, order, decree and proceeding so that at all times the docket shows the exact condition of each case." 18-A M.R.S. § 1-503. The register is also empowered to audit accounts filed with the court when requested by a probate judge. "Any register may act as an auditor of accounts when requested to do so by the judge . . ." *Id.* All of these records are public. "The register shall maintain records and files and provides copies of documents . . ." 18-A M.R.S. § 1-305. The register of probate is charged with making copies of "records of the court" and charging a fee for doing so. 18-A M.R.S. § 1-602(3). The statute allows any member of the public to request copies.

Exceptions to this rule of public access include records of adoptions decreed on or after August 8, 1953 are generally confidential. 18-A M.R.S. § 9-310. Further, [t]he Probate Court shall keep records of those adoptions segregated from all other court records." *Id.* This segregation is necessary because other probate court records are public. Information obtained as part of a background check on prospective adoptive parents is also generally confidential. 18-A M.R.S. § 9-304(a-1)(vi). The court may seal the name of the petitioner and the adoptee in a decree containing the new name of the adoptee "[i]f the court determines that it is in the best interest of the child. . . ." 18-A M.R.S. § 9-308(c).

Certain wills filed with the court for safekeeping are also designated as confidential. 18-A M.R.S. § 2-901. A will deposited with the court in the office of the register of probate before September 19, 1997 "may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will." *Id.* Further, "[a] conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and left on deposit after the examination." *Id.*

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The probate court may also seal records of proceedings related to petitions for a name change. 18-A M.R.S. § 1-701. The court may only do so to protect the personal safety of the person petitioning for a name change. *Id.* at 1-701(b), (c). “[T]he judge may seal the records of the name change” where the judge has found by a preponderance of the evidence that (1) the person is a victim of abuse; and (2) the person is currently in reasonable fear of the person’s safety. *Id.*

C. Competency and commitment proceedings

Records disclosed in connection with a competency hearing may be confidential and may not be disseminated except upon order of the court or pursuant to a petition for release or pursuant to an involuntary commitment proceeding. 15 M.R.S.A. § 101-C(3).

With regard to involuntary commitment proceedings, “[t]he hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or the person's counsel and “[t]he record and all notes, exhibits and other evidence in are confidential.” 34-B M.R.S.A. § 3864(5)(G), (H); *see also* 34-B § 5476(6)(G), (H) (mental retardation judicial certification hearings). The relevant state agency must also keep confidential orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client. 34-B M.R.S.A. § 1207.

D. Attorney and judicial discipline

Attorney discipline is handled by Grievance Commissions appointed by the Board of Bar Overseers. Access to disciplinary information is governed by Me. Bar. R. 18.

Access to judicial disciplinary proceedings is governed by Rule 6 of the Rules of the Committee on Judicial Responsibility and Disability.

Attorney fee arbitration commission proceedings are confidential. See Me. Bar R. 7(h).

X. Restrictions on participants in litigation

[This section is blank]

A. Media standing to challenge third-party gag orders

No reported Maine cases.

B. Gag orders on the press

No reported Maine cases.

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C. Gag orders on participants

No reported Maine cases.

D. Interviewing judges

Judges are not available for interview with regard to active cases. With regard to matters of judicial administration more generally, the Chief Justice of the Maine Supreme Judicial Court or the Court's spokesperson will respond to media inquiries.

XI. Other issues

A. Interests often cited in opposing a presumption of access

In Maine personal privacy in one form or another is sometimes cited as cause to close public access to court records or proceedings, but little or no Maine authority supports the notion that what goes on in courtrooms is “private.” In jury selection, the Law Court held that “a generalized concern that juror candor might be reduced” was insufficient to close voir dire to the public. *MaineToday*, 2013 ME 12 ¶ 7. The Law Court rejected a trade secret assertion as sufficient to close access to trial exhibits. *See Bailey*, 651 A.2d at 843-44. No reported Maine authority addresses other interests often cited in other jurisdictions opposing the presumption of access (protection of confidential informants, national security or state secrets, or privacy of victims of crimes).

B. Cameras and other technology in the courtroom

In 1986 the Justices of the Supreme Judicial Court unanimously informed the Governor, the President of the Senate, and the Speaker of the House that a newly enacted statute requiring that the courts promulgate rules allowing camera into the courtroom would be an unconstitutional violation of the separation of powers and “that its mandate is ineffective.” *See* Supreme Judicial Court Direct Letter of Address, Me.Rptr., 490-509 A.2d CXXVI-CXXIX (April 25, 1986). Since that time, the Supreme Judicial Court has self-regulated cameras in the courtroom through a series of administrative orders.

Despite several requests by the broadcast media to open all phases of criminal trials to cameras, the Maine Supreme Judicial Court has resisted revisions to Administrative Order JB-04-15, “Cameras and Audio Recording in the Courtroom” that would do so. The policy has evolved over the years from a position in the early 1980s of prohibiting camera coverage, with minor exceptions, to the Court's current more favorable stance. At present, camera coverage is generally allowed in civil trials, in appeals, and for those portions of criminal proceedings that do not involve testimony by witnesses. The place to start when requesting or arranging for camera or electronic coverage of the courts is to review that Order.

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Cameras and audio recording equipment are allowed only if authorized. According the JB-04-15:

No cameras or audio recording equipment shall be allowed in the courtroom unless coverage of any events or proceeding has been authorized pursuant to this order. Justices of the Supreme Judicial Court, justices of the Superior Court, and judges of the District Court are authorized to consider camera and recording coverage, and to permit it in their sole discretion if the integrity of the court proceedings will not be adversely affected.

A request for camera coverage of court proceedings should be made by completing a required form, “Media Notification – Requested Coverage of Court Proceedings,” available on the Court’s website. See http://www.courts.maine.gov/news_reference/news/index.shtml

The Court’s Director of Court Information can facilitate requests and expedite responses.

The Supreme Judicial Court has in the past considered case-by-case special requests for access. In a notable instance the Court ruled in favor (5-2) of a request by CBS News to place television cameras in a jury room to videotape jury deliberations in a civil trial. Administrative Order, 1996 Me. LEXIS 32, Docket No. SJC-228 (Feb. 5, 1996). The order required approval of the parties and the jurors before cameras would be permitted. CBS made the request in connection with a television documentary on the jury system.

The circumstances where cameras are permitted depend on the nature and status of the case.

Civil Proceedings. In civil proceedings cameras are generally permitted with the following exceptions:

1. Family Division cases;
2. proceedings where the care, custody, protection, harm, or any other significant issue involving a minor child are at issue. These proceedings include, but are not limited to, child custody, child protection, adoption, determination of paternity, and parental rights;
3. proceedings for protection from abuse or harassment;
4. proceedings in which sexual assault or sexual misconduct is at issue;
5. proceedings that may involve disclosure of trade secrets; and
6. proceedings closed to the public by statute, court rule, or court order.

Administrative Order JB-04-15, “Cameras and Audio Recording in the Courtroom” § I(A)(1)(a)-(f)

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Criminal Proceedings. In criminal proceedings, the use of cameras and other technology is much more limited. Coverage is allowed with judicial approval in non-jury pre-trial and post-trial proceedings, such as arraignments, Harnish hearings or other bail hearings, pre-trial motions to suppress, to dismiss, and motions in limine, sentencing proceedings, post-trial motions, probation revocation proceedings, and petitions for post-conviction review. See Administrative Order JB-04-15, § I(B)(1)(a). Coverage is limited to non-testimonial portion of such matters, with the exception of witnesses acting in an official or representative capacity, law enforcement personnel, private investigators, public officials, federal, state, county or municipal employees, expert witnesses, emergency and medical personnel, counselors and treatment providers, and representatives of corporate or business entities. *Id.* § I(B)(1)(b). Coverage is prohibited during the testimonial portion of a trial, but allowed during opening statements, closing arguments, jury instructions, and the delivery of the verdict. *Id.* § I(B)(1)(c).

Appeals. Prior advance approval for video or audio recording or photographing public sessions held by the Maine Supreme Judicial Court is not necessary, but any person or organization intending to record or photograph such proceedings must file a notice of intent to do so with the Clerk of the Supreme Judicial Court in advance of such hearing. Administrative Order JB-04-15 § I(D). Only one video camera and one photo camera (with silent shutter) is allowed in the courtroom for any particular proceeding; all persons seeking to record or photograph must pool their resources. *Id.*

The applicable Administrative Order does not distinguish between still cameras and other cameras or recording equipment. The Order allows photography of case file documents at the courthouse so long as that is done in a nondisruptive manner. Administrative Order JB-04-15 § I(E).

The applicable Administrative Order does not address webcasting. Courthouses in Maine do not have public wifi.

The applicable Administrative Order does not prohibit note taking, by computer or otherwise, and quiet and non-disruptive blogging and twittering are allowed with permission of the presiding officer.

B. Tips for covering courts in the jurisdiction

The Court has published on its website a useful guides to the court system, including the Citizens Guide to the Courts, which is available on the Judicial Branch website. *See* http://www.courts.maine.gov/reports_pubs/pubs/index.html

The Guide explains that the Maine Judicial Branch consists of the Supreme Judicial Court, the trial courts and the Administrative Office of the Courts. Judges are nominated by the Governor to serve seven year terms and confirmed by the legislature. Probate judges are an exception. They are elected to four year terms by the voters of each county.

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The Supreme Judicial Court has general administrative and supervisory authority over the Judicial Branch. Its head, the Chief Justice, designates a Superior Court Chief Justice and District Court Chief Judge to oversee the day-to-day administrative operations of those courts, and also appoints the State Court Administrator, who runs the Administrative Office of the Courts. In addition, the Chief Justice takes an active hand in designing and administering procedures aimed at the speedy and just resolution of cases in the trial courts.

There are three classes of courts in Maine: (1) County Courts (i.e., probate court); (2) Trial Courts (i.e., the District Court and the Superior Court); and (3) The Supreme Judicial Court (i.e., the highest court of appeals in Maine). There is no intermediate court of appeals in Maine.

A contact directory for the Maine courts can be found on its website. For information on a particular case, contact the clerk of the court in which the case is pending.

In Maine hearings may be transcribed by a live court reporter or recorded and transcribed from a recording. A transcript is usually only prepared at the request of one of the parties for use on appeal, and when fees have been paid. The record on appeal will include those portions of the transcript relevant to the appeal and a copy may be obtained from the appellate file.

The courts may require a pool photographer or videographer in high-profile cases or where there are multiple requests for cameras or other recording equipment. There are no recent high profile cases known to the author in which special restrictions were imposed.

The courts will permit cell phones and computers in the courthouse, although cell phones and computers must be turned off during proceedings. Food and drink should not be consumed in the courtroom, although they are allowed in the courthouse. There is no prohibition on reading or writing during proceedings, absent leave of court.

The courts appreciate neat professional attire from spectators, meaning no shorts, jeans or t-shirts. Media representatives are well served by maintaining professional decorum and dress at all times and, per the Court, “shall wear appropriate and neat attire consistent with participation in matters of serious concern.”

The Judicial Branch maintains a very helpful website at <http://www.courts.state.me.us/index.shtml>. The state-wide legal newspaper (published bi-monthly) is the Maine Lawyers Review. *See* <http://www.mainerlawyersreview.com/>. The Maine State Bar Association publishes the Maine Bar Journal and offers information on the legal profession in the State. *See* <http://www.mainebar.org/>. The only accredited law school in the State of Maine is the University of Maine Law School in Portland. *See* <http://mainelaw.maine.edu/>. The Law School maintains a law library in Portland. The State also maintains a law library in Augusta, which is particularly for legislative matters (the Maine State Law and Legislative Reference Library). *See* <http://legislature.maine.gov/lawlibrary/>. The various County courthouses maintain law libraries of their own, often with limited collections. The Cleaves Law Library at the Cumberland County Courthouse is an exception; it is extensive

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and helpful. *See* <http://www.cleaves.org/> Cleaves maintains a list of Maine practice materials at <http://www.cleaves.org/mepracmat1.htm>.

The leading professional associations for the media in Maine are the Maine Press Association, the Maine Association of Broadcasters and the Maine Chapter of the Society of Professional Journalists. The Maine Freedom of Information Coalition, <http://www.mfoic.org/>, is the only state wide non-profit devoted to public access to government proceedings and records.

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