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

Re: *Comments on the recommendations presented to the Court in the Report of the Task Force on Transparency and Privacy in Court Records.*

Dear Attorney Pollack:

I am writing to submit comments on the recommendations presented to the Court in the Report of the Task Force on Transparency and Privacy in Court Records. By way of introduction, I am a practicing attorney with 15 years of experience managing a company that provided online access to public land records. Thus, I am familiar with both the privacy concerns raised by Task Force members and many of the technical solutions available to address those concerns. My comments are as follows:

1. All Non-Confidential Court Records Should Be Publicly Available Online.

I agree with the points made by Task Force member Mal Leary in his dissent to the Task Force's recommendations. The new e-filing system will surely make litigation more efficient. However, with the proposed limits on access, the system will not meaningfully improve public access and transparency. The State Courts will remain a mysterious black box to most of the public and the system will achieve only a small fraction of the efficiencies and cost savings possible by providing full public access to court records via the Internet.

For the reasons outlined below, I believe it is both unnecessary and counter-productive to limit public access to court records as is currently proposed by the Task Force.

2. The Task Force Recommendations Overstate Privacy Concerns and Ignore the Important Benefits of Public Access.

Members of the Task Force expressed concern that making court records available online would deter people from using the courts to resolve disputes. I believe those concerns are overstated at best. As Task force member Mal Leary points out, the Federal Courts have not found it necessary to restrict online public access to court records in the ways proposed by the Task Force despite the fact that essentially the same privacy concerns exist in many federal cases. So why should Maine reinvent the wheel?

Thanks to popular TV shows like *The Peoples Court* and *Judge Judy*, most people already understand that private information will become public if they go to court. In addition, anyone who has used the Internet lately knows there are dozens of websites that specialize in making personal information like driving records, phone numbers, bankruptcy filings, mortgage information and criminal history available online. Online access to court records will undeniably make it easier for the public to learn about the private disputes of their neighbors, but the addition of one more source of public information seems unlikely to deter people with legitimate complaints from using the courts

In addition, there are some very good reasons for making the details of “private” disputes public. Consider, for example; a case where a business owner is sued for fraud. Making the details of such a case publicly accessible will encourage the business owner to change his ways and may prompt other people who were similarly defrauded to come forward. In other

situations, the fact that court records are public will encourage people to settle their disputes out of court, which frequently leads to a better result for all involved.

3. There Are Less Costly and Less Restrictive Ways to Protect Sensitive Court Records.

The Task Force recommends providing online access to only attorneys of record, prosecutors and parties and proposes requiring all other persons to come into the courthouse to view and print copies of court records as a method of deterring misuse of private or sensitive information in court documents. However, the same objective could be more effectively achieved at a lower cost without requiring the public to travel to the courthouse.

The court system could, for example, require online users to register and verify their identities before using the system. Verified registrations would allow system administrators to track who accessed certain specific documents in the system if problems occur. In addition, the court system could be configured to delay public access to potentially sensitive types of records for some period of time (48 hours, for example), which would give parties and their attorneys time to review newly filed and potentially sensitive records. The system could even be configured to allow parties and their attorney's to temporarily block public access to certain records pending review their concerns by a judge.

In a nutshell, to the extent that there are legitimate reasons to limit public access to certain court records, there are also narrowly tailored technological solutions available to protect information that should not be public. Implementing those solutions could address the Task Force's privacy concerns while making courts more accessible and transparent and also saving the courts, attorneys and the public substantial amounts of time and money.

4. Maine Attorneys Should Have Online Access to All Non-Confidential Court Records.

The Task Force proposes giving online access to only attorneys of record (rather than permitting all licensed Maine attorneys to access to all non-confidential cases). No reasons were given for limiting attorney access in this manner, so I presume this policy was also proposed because Task Force members were concerned about privacy.

In my opinion, the Task Force has overstated the risk of providing online access to documents that might contain sensitive private information, especially considering the court procedures and technological solutions available to selectively block access to specific documents. Further, as officers of the court, Maine attorneys are subject to discipline if they misuse information obtained from the court system. Thus, I can think of no reason to limit an attorney's ability to access court records online.

There are, however, at least a couple of very good reasons why attorneys should have unlimited online access to all non-confidential records. First, Attorney's are often hired, appointed, and replaced after a case has been in progress. Frequently, this happens at a critical point when time is of the essence and the attorney needs to access court records quickly. Thus, at a minimum, attorneys should be able to enter an appearance online and gain immediate access to case records.

In addition, much of the institutional knowledge of the legal system is contained within court files. New attorneys or attorneys working on a type of case that is new to them often find themselves not knowing how to draft the required pleadings or what actions to expect from the court in certain circumstances. The best way for attorneys to learn these things to review pleadings and orders in similar cases. Thus, granting Maine attorneys access to all non-

confidential case files should increase efficiency in court proceedings and enable lawyers to work more effectively.

5. Fees For Accessing Court Records and Making Copies Should Be Limited.

The Task Force did not make specific recommendations regarding what fees the courts should charge people to search for, view and print copies of court records. However, some state and local government agencies have attempted to generate revenue by charging fees to access and/or print public records from their systems. In theory, this may sound like a good idea. However, in practice, charging high fees deters system use and the revenue generated from charging small fees can be less than the costs incurred to collect the fees.

Clearly, the court should charge for copies printed in the courthouse to recover the cost of paper and printing equipment. However, I would encourage the Court to offer free online access to attorneys and the public. Taxpayers will pay for the cost of this system one way or another and the State will get more value for their money if more people use the system.

Many thanks to the Task Force members for all their hard work. I look forward to using the new court system!

Sincerely,



John P. Simpson, Esq.