



**COMMENTS ON PROPOSED RULES AND RULES OF PRACTICE
GOVERNING ELECTRONIC FILING OF COURT DOCUMENTS
April 2025**

These comments are submitted on behalf of ACCESS/RI, and its members, the American Civil Liberties Union of Rhode Island, Common Cause Rhode Island, the New England First Amendment Coalition, and the Rhode Island Press Association.

We appreciate the opportunity to offer comments on these proposed rules implementing the court's updated electronic filing system. Having raised numerous concerns about document accessibility for the public back in 2014, at the time of the court's initial implementation of an electronic filing system, we had high hopes when plans for a new system were announced. However, the new system, as envisioned by these proposed rules, is a major disappointment in a number of respects. We therefore hope that these comments will encourage the court to make revisions that will offer the public greater remote access to documents in the new electronic system.

Our major concerns are briefly summarized below:

Fees

Rule 5(c)(4) authorizes the courts to charge fees for the remote downloading or printing of documents. We strongly urge the deletion of this provision. The rule provides no clue as to the amounts that would be charged, but any cost is bound to

inhibit many individuals from taking advantage of the new system's remote access capabilities.

We recognize that the federal court's electronic system PACER charges fees for downloading most documents, but those fees have, rightly, been the subject of tremendous criticism over the years, and even litigation. Since there is no cost to the Court in allowing for the downloading and printing of documents once they have been filed and entered into the system, imposition of a fee for access is unnecessary and unwarranted, and a major barrier to the transparency that this new system of remote access should foster.

To the potential argument that the fee is designed to cover the costs of running the system, we would argue that such a fee amounts to a form of double-dipping. Both state law and court rules have for years specifically provided for the application of a technology fee with the filing of every case. See R.I.G.L. § 8-15-11 and RI Sup.Ct.Rules, Art. X, Electronic Filing, Rule 9.

In short, we urge the retention of current Rule 5(c)(4), which specifies that no fees should be charged for access to remote information.

Reduced Docket Access

While both the current and proposed rules make the filing of certain types of cases confidential, there is presently no blanket bar to gaining access to court dockets based on the court in which the case was filed. Thus, right now, members of the public have the ability to view the dockets of certain family court and workers compensation cases. Under the proposed rules, however, those dockets would no longer be remotely

accessible to the public. Proposed Rule 5(c)(2)(a). After having the current system provide remote access to those dockets for over a decade, we can think of no compelling reason for the rules to now make them confidential and prevent the public from obtaining even minimal access to information about cases pending in those two courts. We urge the deletion of this language making these dockets off-limits to remote viewing by the public.

Remote Access to Exhibits

In 2014, when an electronic case information system was initiated, ACCESS/RI submitted detailed testimony to the court raising concerns about a number of the limitations being imposed. While one of them – remote access by the public only to case dockets and none of the filed documents – is being partially cured in this revised system, some troubling limitations are being carried forward. We wish to highlight two of them.

The first is that the public will still not be able to obtain remote access to exhibits that are filed in any lawsuit. Rule 5(d)(2). As the court is aware, exhibits to a case can often provide essential information to understanding the details of a lawsuit and the evidence underpinning it.

In fact, in many instances, the exhibits will provide more substantive information about the basis for a lawsuit than the complaint itself. Exhibits are readily available remotely in the federal system, and they should be just as easily accessible in state cases as well.

Discretion to Seal Documents

Second, the rules would continue to give attorneys broad discretion to seal the entirety of some documents that they file even if only portions of the document might be legitimately deemed to contain confidential information. We believe the rules should be revised to ensure that redaction is the default for submitting documents that may have some confidential information in it, and that complete sealing is an option only when a document's legitimately confidential material cannot be reasonably segregated from the non-confidential information.

The federal PACER system has detailed rules governing redaction of information that are carefully and narrowly crafted. The protocols in place in PACER would seem to provide an excellent resource for examining and addressing issues surrounding confidentiality that remain problematic in the state electronic system.

Advance Input

Finally, we would be remiss in failing to address our disappointment in the court's decision not to accept our earlier offer of input on the functionality of the new system. As the court is aware, we sent a letter last October pointing out potential pitfalls in the implementation of the re:Search technology based on experiences we were aware of in other states, and we sought an opportunity to discuss those issues. We understand that the sort of structural questions we raised – such as the system's potential search function limitations – are not the type to be addressed in rulemaking, which is why we sought the opportunity to discuss them during the system

implementation process. We hope that once the new system is up and running, the court will be amenable to addressing functionality problems brought to its attention.

In conclusion, despite the technological capabilities available – and to be expected – in the implementation of a new electronic information system, the public and the media will, under these proposed rules, still have to physically go to the courthouse to view a wide array of records, such as case exhibits; will be denied remote access to certain docket information that is currently available remotely; and will be required to pay unspecified costs to view and download the documents that finally are being made available remotely. All of these limitations should be reversed.

We hope that, in light of the importance of the transparency issues we have raised, additional revisions will be made to better promote the public's right to know. Thank you for considering our views.

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