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Comments of the American Civil Liberties Union of Rhode Island
Concerning Proposed Amendments to Multiple
Court Rules of the RI Supreme Court
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Introduction.

The American Civil Liberties Union of Rhode Island submits these supplementary comments to those we submitted last April, in response to the latest version of the Proposed Amendments to Multiple Court Rules announced on March 31 by the Rhode Island Supreme Court. As explained in the Court's Order, the amendments are, in large part, in response to the impending migration from the Tyler Technologies "Public Portal" electronic case information system to the Tyler "Re:search" system.

As we detailed in our comments last year, "the ACLU of RI approaches the [issue]… from the perspective that public access to court proceedings, including the dockets and nonconfidential documents, has a constitutional dimension that should be taken into consideration" and "[t]he default should be that all public records in the courts' dockets are presumptively accessible, including electronic records, unless it is technologically infeasible." This demand for transparency and public access informs these comments.

There Should be No Imposition of Fees.

A major way that the proposed amendments continue to raise concerns about public access is in proposed Rule 5(c)(4), which provides there "may be fees associated with downloading or printing documents remotely." No indication is given as to the amount of charging fees that are being contemplated.

In contrast, under the current Rule 5(c)(4), there is no fee for remote access, where available, of court dockets, records or proceedings. The person accessing the records can print or download them, at their own time and expense. For the past decade, such

access – whether it was the dockets available to the public or court documents available to attorneys – has been without charge.

The ACLU of RI strongly opposes this new proposed language, which establishes the option for the Court, or its technical partner, to charge fees as the price of remote public access. Remote access always entails "opening" documents, which by definition is a "download," even if temporary.

This provision indicates that the Court, without any guardrails, may elect to charge a fee every time someone seeks to look at a record in a public docket. It provides no guidance as to the standards that would be used for imposing a fee, nor does it provide any justification for charging fees. Once a document has been uploaded to the portal, it is difficult to imagine what specific costs are incurred in allowing it to be downloaded and printed. After all, any printing costs are those of the person accessing the document, not the court. As a practical matter, any charging of fees is not only unwarranted, but it would undoubtedly be a strong deterrent to access.

Nor can any fees be justified as necessary to fund the electronic case information system generally. Every civil complaint that currently gets filed *already* includes a "Civil Case Processing Fee to Tyler Technologies" of $17.50, as well as an additional "Technology Surcharge" of $3.25. Both state law and court rules have authorized those fees for over a decade for the very purpose of supporting the court's "technology infrastructure and case management system." R.I.G.L. § 8-15-11; RI Sup.Ct.Rules, Art. X, Electronic Filing, Rule 9.

The inappropriateness of charging fees is heightened if the new system's docket disclosure is as uninformative as the current docket. Docket entries in the current system are typically limited to a few words. Sometimes those words are "letter," or "objection" or "motion." In an intensely litigated matter, there may be many such entries, and the only way to identify the one or more that a non-party member of the public or bar may wish to review is to click on many or all of them to determine their contents. But if each click has a cost, it can and will be a strong deterrent.[1]

[1] At least in the federal PACER system, where there is a cost, the docket entries are robust, with a complete description of the nature of the document and attachment. However, we do not wish to suggest that the PACER cost model should be used here. It has rightly been the source of dispute in the legal and open government community.

The Court should not give itself or Tyler Technologies the option to turn the laudable plan to expand remote public access into a profit center. No fees should be imposed at this time, particularly where the court is already imposing two technology-related charges on the filings of civil cases.

Exhibits Designated as Public Should be Remotely Accessible.

Under current Rule 5(d)(1) and (2), trial exhibits are designated as Public at the courthouse and thus accessible to the public, and are remotely available to parties, their attorneys, and other governmental entities. Under the proposed amendments, however, trial exhibits will not be accessible remotely to anyone, apparently "due to the construct of re:SearchRI."

Remote access has been technologically feasible for years. The contents of trial exhibits are often critical to an understanding of court proceedings and outcomes. When it comes to regular paper or electronically-preserved exhibits, we do not understand why they could not be uploaded to the system in the same way that any other paper filing can be, and is, uploaded. The Rule should be expanded to afford full remote party and public access to those trial exhibits.

Overuse of "Non-Public" Filing Designation Should be Addressed.

We continue to be concerned that under both the current system and the proposed amendments, there is no mechanism for review by neutral court personnel of an attorney's designation of a document as "non-public," and therefore unavailable for any review by the public or attorneys not involved in the case. Expansive or overuse of the non-public designation by counsel or unrepresented parties can unfairly deny public access to important documents and can impair counsel who have been asked to review a matter, either as successor counsel or on behalf of a potential intervenor, from evaluating a time-sensitive matter without engaging in potentially expensive and time-consuming motion practice in order to gain access to documents which should not be designated "non-public." This concern is not hypothetical, as highlighted by an event we described in our written comments last year.[2]

[2] In 2024, the ACLU of RI received an inquiry regarding a potentially noteworthy social media/privacy issue raised in *Why Unified Corp. v. John Doe*, PC-2024-03344, in which plaintiff corporation sought (and obtained) the issuance of

Increase the Transparency of the Process.

In March 2025, the Court first invited "public comment" on the proposed amendments to these rules. We are aware that the Court received submissions from individual attorneys and from the Rhode Island Bar Association, as well as our own submission. However, the Court declined to make the "public comments" accessible to the public.

When the *Providence Journal* wrote about the issue earlier this year,[3] the explanation was that the Court had not advised that the submissions in response to a request for public comment would be made public. This is hardly persuasive. We suspect that the Court, if considering such a justification for confidentiality in a court case, would reject it out of hand. None of the submissions that our colleagues shared with us contained anything remotely confidential or a request for confidentiality. Nor should there be any expectation of privacy in such a submission.[4]

Indeed, a full year has passed since submissions of the comments made last year. It would be easy enough for the court to send a form notice to each individual or organization that submitted a comment to advise them that their submission would be made public within a set period of time unless they identify the basis for an objection. And for any testimony submitted this cycle, the court can advise all submitters that their commentary will be made public.

On an issue focusing on expanding the public's access to records of the judiciary, a decision to cloak public comments in secrecy sends precisely the wrong message.

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subpoenas compelling a number of social media platforms to provide a broad swath of information about the defendant Doe's identity and social media account. However, the complaint had been filed as "non-public," making the initiating pleading invisible and inaccessible. Outreach to counsel of record was unsuccessful in obtaining the filing. It was only after formal request to the Clerk, after the case had been concluded, that the filing attorney acknowledged error in the designation and the complaint became "visible" to the public.

[3] "RI's Judiciary Promised Online Public Access to Court Records. Where are They?" Katherine Gregg, *Providence Journal*, March 25, 2026. https://www.providencejournal.com/story/news/politics/courts/2026/03/25/public-online-access-for-ri-court-records-delayed-indefinitely/89305621007/

[4] The ACLU of RI posted its comments on its website shortly after submission: https://www.riaclu.org/publications/testimony-re-proposed-amendments-ri-court-rules/

Limit Access by Federal, State and Local Agencies and Employees.

In contrast to the limits on access being imposed on attorneys and the public, under the Proposed Amendment adding Rule 5(c)(2)(f), municipal agencies and employees would now join state and federal agencies in being granted access to sealed or non-public case documents and information "in specific circumstances as authorized by the Judiciary." This new authorization, as well as the current ones for other government agencies and employees, should be removed from the rules, or at the least include a reference that "when authorized" must be measured by appropriate guardrails and not simply the discretion of the court or based upon a standing administrative order.

This broad and undefined special authorization for access to non-public records should be removed or defined with particularity for another reason. In light of the actions currently being taken by agents of the U.S. Immigration and Customs Enforcement (ICE) in arresting immigrants in and around courthouses – both in Rhode Island and throughout the country – a rule like this can be seen as an opportunity for that agency to seek confidential immigrant-related information from the courts to further their immigration enforcement activities.

Even the possibility of such automatic access can have a chilling effect on immigrants wishing to make use of the courts as parties or witnesses. The Chief Justice has spoken forcefully in the past about the need for the courts to be open to all, including undocumented immigrants. Because the special exception the current Rule gives to federal law enforcement agencies to obtain confidential records defeats that goal – as does the expansion of the Rule to municipal agencies, including their police departments – these provisions should not be allowed to stand in their current form.

Retain Public Access to Worker's Compensation and Family Court Dockets.

We wish to express our strong support for one particular revision made to these proposed rules from what was proposed last year. Specifically, we acknowledge and support the Court's decision, as advocated by the ACLU of RI and others, to reject a wholesale "carve-out" of access to the dockets of the Worker's Compensation and Family Courts. Instead, as the current version of the proposed amendments recognizes, confidential or sensitive records are always subject to non-public designation and seal, but court dockets should not be off-limits.

We thank you for your consideration of these comments, and trust they will be given the Court's careful consideration.

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