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COMMENTS ON LOCAL RULES OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

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The ACLU of Rhode Island appreciates the opportunity to comment on the proposed amendments to the U.S. District Court's current Local Rules. We wish to raise concerns about one of the amendments, and express strong support for two others.

1. LR Gen 102 DOCUMENTS CONTAINING CONFIDENTIAL INFORMATION

The Court proposes to amend subsection (a), dealing with "Privacy Protections," in a way that we believe could have a significant, if unintended, adverse impact on public access to court records.

The current rule and the proposed revision both appropriately place the responsibility on the filing parties to make sure that certain discrete personal identifying information, as set out in other rules, is redacted. Presently, the parties are also responsible for filing a motion to redact, along with a redacted version of any document, when a document has been submitted with such personal information unredacted. Under the proposed revision, however, if the Court finds that a public document inappropriately contains personal identifiers, "the Clerk's Office will limit non-parties' remote electronic access *to the document* containing the personal identifiers." (emphasis added)

Although it may be unintentional, this revision amounts to a subtle but significant change. The current rule requires a redacted version of the offending document to be filed so that the public can still have access to the document in that redacted form. Under the proposed amendment, though, if a document is inappropriately filed with personal information, it appears that the public will be prevented from reviewing the entire document. That is, the revision eliminates any obligation on either the party or the Clerk to instead redact the information so that the rest of the document can still be available for public review.

In concrete terms, it appears that a member of the public could be denied electronic access to, for example, an entire civil complaint or a 20-page memorandum of law if the document inadvertently contains one piece of confidential personal information.

The ACLU urges that the current rule regarding the redaction process be retained, or that another process be instituted that will ensure that the public maintains the right to gain electronic access to redacted copies of these documents. We believe such a change is essential in recognition of the presumptively public nature of court proceedings and records *See In re Providence Journal Company*, 293 F.3d 1 (1st Cir. 2002).

2. LR Gen 111 PHOTOGRAPHING; RECORDING; BROADCASTING

The ACLU strongly supports the proposed amendment to LR Gen 111(b) to allow individuals to take notes in a non-disruptive manner without the need to seek prior judicial approval.

Last year's general order authorizing media use of electronic equipment in the courtroom was a very important step in promoting public knowledge of court activities. We believe this proposed revision commendably supplements that goal for public attendees.

The ACLU has long considered it problematic, on a number of grounds, to require members of the public to obtain advance judicial approval to take notes: we do not believe people should be required to identify themselves in order to take notes; in many instances, a person will not be aware of an approval requirement until they appear at the hearing or trial itself, when it is too late to seek approval; some spectators are bound to be intimidated by any approval procedure; and there are no standards in place as to when approval should be granted. There are many reasons that members of the public, just like members of the news media, might want to take (non-electronic) notes of a court proceeding. The only compelling justification for limiting this is to prevent disruption, something that note-taking normally will not create. We applaud the Court for proposing to implement such a standard.

3. LR Gen 215 REINSTATEMENT OF MEMBERSHIP

The ACLU supports the proposed amendment to LR Gen 215(a)(4) to clarify that attorneys seeking reinstatement, after an inactive status based on incapacity, need only waive their medical confidentiality rights for *relevant* treatment information. This minor clarifying amendment will better protect the confidentiality of an attorney's medical records to the extent they are not germane to the incapacity that is the subject of review.

Once again, the ACLU appreciates the opportunity to offer these comments. We hope the Court finds them useful, and that they will be given careful consideration.