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Comments of the American Civil Liberties Union of Rhode Island and the R.I. Center for Justice 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 and the R.I. Center for Justice submit these comments in response to the Proposed Amendments to Multiple Court Rules announced by the Rhode Island Supreme Court. As explained in the Court's Order accompanying the proposed amendments, 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.

In the Order accompanying the proposed amendments, the Court has laudably stated that the new system will provide greater public access and transparency to public dockets and records and that the proposed amendments are designed to expand public access. This is a commendable, necessary, and important goal. Unfortunately, some of the proposed amendments explicitly accomplish the opposite and should not be adopted.

Public's Right of Access to the Courts and Its Constitutional Underpinnings

It is a bedrock principle that, with limited exception (such as proceedings involving juveniles), the courts of this country are open to the public. Long before the advent of electronic filings, court filings docketed in the court records were presumptively reviewable by members of the public and the media at the courthouse. Further, an individual need not identify themselves or produce specific justification to review a docket or its contents, unless the contents are restricted by court order or under seal.

> Although "the First Amendment does not explicitly mention a right of access to court proceedings and documents, 'the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.'" Brown, 908 F.3d at 1068–69 (quoting Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978)). The First Amendment right of access to court documents can be traced back to Richmond Newspapers, Inc. v. Virginia, in which the Supreme Court held that the First Amendment protects access to criminal trials. 448 U.S. 555, 576–78, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) (plurality opinion). Thereafter, a full majority of the Supreme Court affirmed the First Amendment right of access to criminal trials in Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 603–04, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982).
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> The Supreme Court has explained that "public inclusion" in the judicial system, especially through the press's reporting, "affords citizens a form of legal education and hopefully promotes confidence in the fair administration of justice." Richmond Newspapers, Inc., 448 U.S. at 572, 572, 100 S.Ct. 2814 (1980) (plurality opinion) (quoting State v. Schmit, 273 Minn. 78, 139 N.W.2d 800, 807 (1966)). Access to the judicial system also allows the public to "participate in and serve as a check upon the judicial process—an essential component in our structure of self-government." Globe Newspaper Co., 457 U.S. at 606, 102 S.Ct. 2613. However, "[i]t would be impossible for the public to perform this role adequately without access to nonconfidential civil complaints." Schaefer, 2 F.4th at 327.

Courthouse News Serv. v. New Mexico Admin. Off. of Cts., 53 F.4th 1245, 1263, 1265 (10th Cir. 2022)

With the advent of electronic filings, remote access became possible, delivering far greater meaning to public access to court proceedings. For example, in the federal court system, any person may register in the "PACER" system to access public records of every federal court.[1]

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[1] The federal courts charge non-parties an access fee, required to be based on actual cost, generally $0.10 per page, but no more than $3.00 per document,

As state courts adopted electronic systems, delays and limitations in access have generated litigation challenging restrictions on access to public filings by non-parties, and particularly the media.

In cases throughout the country, the federal circuit courts of appeals have recognized that "the press and public enjoy a First Amendment right of access to newly filed civil complaints." *Courthouse News Serv. v. New Mexico Admin. Off. of Cts*., *supra* (internal quotations, other citations omitted). *See also, e.g.*, *Courthouse News Serv. v. Schaefer*, 2 F.4th 318, 327 (4th Cir. 2021) ("Because they allow the public to understand the parties involved in a case, the facts alleged, the issues for trial, and the relief sought, access to complaints, like access to docket sheets, is crucial to not only the public's interest in monitoring the functioning of the courts but also the integrity of the judiciary")(internal quotations, citations omitted); *Courthouse News Serv. v. Planet*, 947 F.3d 581, 590 (9th Cir. 2020) ("The Supreme Court has yet to explicitly rule on whether the First Amendment right of access to information reaches civil judicial proceedings and records, but the federal courts of appeals widely agree that it does." Other citations omitted.)

In these cases, restrictions on electronic access to court records is measured by constitutional standards, starting from the presumption that court records that are not designated as confidential or non-public shall be accessible to the public,

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regardless of its length; however, the fee is waived if the monthly total is less than $30.00. https://pacer.uscourts.gov/pacer-pricing-how-fees-work (accessed 4/6/2025).

In Rhode Island, to date, there is no charge associated with remote access. Any person with remote access can download or print court records without a fee. In contrast, any person utilizing the courthouse kiosks has but one option if they want a copy of a public document: to pay a $.10 per page fee for printing the document, as downloading is not an option. Where a document is lengthy, the alternative of occupying the kiosk to read every word or paying the per-page fee may be a strong disincentive for meaningful public access, where remote access is not an option.

For a review of the history of PACER and its fee structure, including the class action settlement awarding over $100 million for reimbursement of charges in excess of cost to PACER users, *see generally Nat'l Veterans Legal Servs. Program v. United States*, 724 F. Supp. 3d 1 (D.D.C. 2024).

including the media, in a timely manner and that restrictions on access must be measured by demanding (although not "strict") scrutiny.[2]

> Once we have determined that a qualified First Amendment right of access exists, "a presumption of access arises under Press-Enterprise II that may be restricted only if 'closure is essential to preserve higher values and is narrowly tailored to serve those interests.' " Planet III, 947 F.3d at 594–95 (quoting Press-Enter. Co. v. Superior Ct., 464 U.S. 501, 510, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984)).

Courthouse News Serv. v. New Mexico Admin. Off. of Cts., supra at 1270.

In many of those cases, a media outlet challenged delays in electronic access to newly-filed complaints as a violation of First Amendment right of access, with the courts considering how much delay caused by the electronic filing system was constitutionally permissible.

In addition to the constitutional and common law rights of the general public to access court proceedings, restricting public access to court records to the physical location of the courthouse can present significant obstacles to access for persons with disabilities, such as mobility impairments. Where remote electronic access is available to others and is technologically feasible, refusal to provide it to members of the public with disabilities, limiting their access to court records, undermines the goals of state and federal laws designed to require reasonable accommodations to persons with disabilities.[3] See generally 42 U.S.C. § 12101, et seq. (Americans with

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[2] In *Courthouse News Service v. Smith,* 126 F.4th 899 (4th Cir. 2025), a divided court, applying "time, place, or manner" constitutional analysis, rejected a challenge by news media to the judiciary's provision of remote access to court proceedings to registered attorneys but not to news media and the public. The dissenting opinion concluded that "strict scrutiny" analysis should be applied.

[3] The Rhode Island Judiciary has expressed the courts' commitment to providing such access:

> "Court Access for Individuals with Disabilities
> The Rhode Island Judiciary (Judiciary) is committed to providing equal access to all services, programs, and proceedings of the courts in a manner that includes individuals with disabilities as much as possible,

Disabilities Act); R.I. Gen. Laws chapter 42-87 (Civil Rights of People with Disabilities).

Thus, the ACLU of RI approaches the discussion which follows from the perspective that public access to court proceedings, including the dockets and non-confidential documents, has a constitutional dimension that should be taken into consideration. The default should be that all public records in the courts' dockets are presumptively accessible, including electronic records, unless it is technologically infeasible.

Since the records to which these comments are addressed—the dockets, case exhibits, and public documents of the courts, including Family Court and Workers' Compensation Court—have been made remotely accessible to non-party attorneys for the past decade and will remain electronically accessible at their physical court location under the Proposed Amendments, there appears to be no argument that it is technologically infeasible to continue that remote access for non-party attorneys and to expand it to the public.

Access of the Public and Registered Attorneys to Public Court Records Under the Current System and Under the Proposed Amendments

The current Public Portal is governed by the Rhode Island Judiciary Rules of Practice Governing Public Access to Electronic Case Information. Under Rule 1, the "Purpose" of the Rules is "to harmonize the Judiciary's obligation to make case information available and accessible while also protecting the privacy of personal and/or otherwise non-public information filed with the courts throughout the Judiciary."

> consistent with the Americans with Disabilities Act of 1990 (ADA), and other applicable laws.
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> "The Judiciary provides reasonable accommodations upon request for qualified individuals with disabilities to ensure equal access to the services, programs, and proceedings of the courts. This policy is for all court users including litigants, jurors, attorneys, and other individuals who interact with our state courts."

https://www.courts.ri.gov/programs-services/Pages/ADA.aspx#:~:text=The%20Rhode%20Island%20Judiciary%20(Judiciary,)%2C%20and%20other%20applicable%20laws. (accessed 4/9/25).

Rule 3(e) defines Electronic Case Information as "[a]ny document, information, data, or other item created, collected, received, or maintained by a court in connection with a particular case that is readable through the use of an electronic device." Data maintained by or for a judicial officer or information "to which the court has access but which is not entered into the Docket of the case" are excluded from the definition.[4]

Thus, Electronic Case Information encompasses the entirety of the electronic documents maintained as part of a court docket in a particular case.

Rule 3(j) defines the "Public" broadly as "[a]n individual, group, agency, business, or non-profit entity, organization or association. The term also incorporates print or electronic media organizations."[5]

Rule 3(k) defines a "Public Document" as "[a]n Electronic Document filed in the EFS [Electronic Filing System] that is not designated as non-public in its entirety but may contain non-public information that has been redacted."[6]

Rule 4 addresses "Non-Public Filings." Subsection (a) identifies categories of cases deemed non-public, including juvenile case files and child custody case files. Notably, in light of the discussion that follows, this list does not include divorce proceedings or workers' compensation cases.

Subsection (b) identifies those types of documents that should be designated as "confidential" in their entirety by the filing party. This is notable, for reasons discussed below, because it identifies as confidential specific discrete documents associated with Family Court and Workers' Compensation Court, being Statement of Assets, Liabilities, Income and Expenses.

Subsection (c) identifies specific personal identifying information that should be redacted by the filing party.

Rule 4 remains unchanged in the Proposed Amendments.

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4 This definition is unchanged by the Proposed Amendments.

5 This definition is unchanged by the Proposed Amendments.

6 This definition is substantively unchanged by the Proposed Amendments, which changes "its" to "the document's".

Rule 5 governs "Access to Case Information" and is the focal point of the Comments here presented.

Under the current Rule 5(b)(2), members of the Public, including attorneys who have not entered an appearance in the case, have access to all Public Electronic Case Information *at the courthouse*. The Proposed Amendments do not change this level of access.

Under the current Rule 5(c)(2)(a) governing remote access, members of the Public have been able to access the "docket" but not the linked electronic documents in the docket. In contrast, under current Rule 5(c)(2)(b), all registered attorneys have remote access to Public Electronic Case Information.

Under the Proposed Amendments to Rule 5(c) governing remote access, members of the Public will now have access to Public Electronic Case Information previously inaccessible to anyone but attorneys and state or federal agencies authorized by the judiciary.

However, Proposed Amendment to Rule 5(c)(2)(a) carves out a wholesale exception applicable to public records of the Family Court and Workers' Compensation Court. The Proposed Amendment appears to entirely remove Remote Access to *any* record of those courts, including the register of actions or Docket which have been available for public viewing. Indeed, the current reference to "register of actions or Docket" is stricken from the Proposed Amendments.

In addition, under Proposed Amendment to Rule 5(c)(2)(b), attorneys who have not entered an appearance in a matter will have no greater access than members of the Public. Thus, under the Proposed Amendments, attorneys who previously had remote access to Family Court and Workers' Compensation Court dockets and linked documents will be stripped of all such access.

The Proposed Amendment to Rule 5(c)(2)(a) effectively removes the public records of the Family Court and Workers' Compensation Court from electronic public or attorney access, even though it is technologically feasible to provide such remote access. It thus reduces the present level of remote access for the public—which currently can review the court dockets and the references to specific filings—and reduces the access of non-party attorneys—who currently can review both the dockets and the public filings. No justification for masking these records from the public is provided and none is apparent: records which are non-public or sealed are always confidential. Public court records should not be rendered invisible.

As to these two vital courts, then, the Proposed Amendment to Rule 5(c)(2) conflicts with the stated goal of increasing public access to court records and should be rejected.

This removal of electronic access disserves the bar, the courts, and the public generally. It increases the cost of legal representation and potential delay in accessing information that attorneys are often required to obtain in order to evaluate a request for legal assistance either as potential successor or appellate counsel, or in a later or related matter.

We join the comments of the Sinapi Law Associates describing some of the adverse practical impact for members of the bar in removing remote access to this vital information. Other attorneys advise that they routinely search all of the courts' databases (including Family and Workers' Compensation Courts) when seeing new clients or in order to respond to discovery specifically demanding the identification of all cases in which a client has been a party. Attorneys will no longer be able to do so expeditiously and cost-effectively.

Attorneys reviewing court decisions of importance to a client or an area of the law will often review the underlying complaint, answer, legal memoranda, or exhibits to gain a better understanding of the decision and its relationship to arguments that they may present on behalf of their own client. For Family and Workers' Compensation Court matters, the ability to do so will be significantly burdened and delayed, necessitating either the cooperation of counsel in the matter or a trip to the courthouse to review the documents.[7]

Access by Federal and State Agencies and Law Enforcement Agencies

In contrast to the limits on access being imposed on attorneys and the public, under the Proposed Amendment adding Rule 5(c)(2)(f), law enforcement agencies will automatically be granted Remote Access to all Public Electronic Case Information. And state and federal agencies, and any and all law enforcement agencies would now also be able to access non-public records "when authorized by

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[7] As discussed below, this often-necessary review of myriad documents will be further hindered in these two courts and all other courts by the proposed imposition of fees for reviewing or downloading public documents.

the Judiciary." This authorization should be removed from the rules, or at the least it should 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 in the past about the need for the courts to be open to all, including undocumented immigrants. Because the special exception these Proposed Amendments give to federal law enforcement agencies to obtain confidential records defeats that goal, these provisions should not be allowed to stand.

Exhibits Designated as Public Should be Remotely Accessible

Under current Rule 5(d)(1), case 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. This provision remains unchanged in the Proposed Amendments.

Under current Rule 5(d)(2), exhibits are designated as "non-public" for the purpose of Remote Access "due to the construct of the Public Portal." The Proposed Amendments appear to continue the restriction on access to case exhibits, but no longer contain a justification based on technology, and it is unclear why such documents, deemed public at the courthouse, are treated as "non-public" for remote access.

Remote access has been technologically feasible for years. The contents of exhibits are often critical to an understanding of court proceedings and outcomes. The Rule should be expanded to afford full remote public access.

The Proposed Amendments Should Address the Treatment of "Non-Public Records" to Ensure Access of the Public to Records that Have Been, But Should Not Be, Designated as "Non-Public"

Under the current and Proposed Amendments, the designation of "non-public" documents appears to be left completely to the decision of the party filing the document. In addition, under the current and Proposed Amendments, there is no obligation on the part of the filer to redact only the confidential portions, so that the bulk of the document may be visible to the public.

Leaving these decisions to the filing party and the adverse party to police is insufficient to protect the interest of the public in transparency and access to court proceedings. See, e.g., *Doe v. Public Citizen*, 749 F.2d 246 (4th Cir. 2014) (vacating the orders of the trial court which kept all documents, including its decision and docket, under seal, only after challenge by non-party media and public interest groups on appeal).

As an example, in September 2024, the ACLU of RI received an inquiry regarding a potential 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 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, leaving the public, including the ACLU of RI, unable to determine if this was a matter of concern. 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.

While there does not appear to be a basis for characterizing an initiating Superior Court complaint "non-public" in its entirety (without some formal motion to seal) and thereby only available to parties who have appeared, the filing system permits the filer to designate a document as "non-public" without any further review.

The Court rules should clarify the current Rules and provide a review process to ensure that only those documents which must remain confidential in their entirety are designated "non-public."

No Fees Should Be Charged for Accessing Court Records

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.

Under the Proposed Amendment to Rule 5(c)(4), 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.

This Proposed Amendment should not be adopted. It is a deterrent to public access to documents. Remote access always entails "opening" documents, which by definition is a "download," even if temporary. 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. It should not be imposed at this time, particularly where, as here, there is no indication that a charge would be limited to the actual cost, if any, of the access.

We thank you for your consideration of these comments. In light of the significance of the concerns presented by these Rules as they are currently proposed, we also respectfully request that the Court, in considering revisions proposed by us and other commentators, schedule a public hearing before the Rules are finalized.

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