



THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF THE TRIAL COURT  
John Adams Courthouse  
One Pemberton Square, Floor 1M  
Boston, Massachusetts 02108  
617-878-0203

Paul Carey  
Chief Justice of the Trial Court

March 21, 2018

Honorable Frank Gaziano  
Justice of the Supreme Judicial Court  
John Adams Courthouse  
One Pemberton Square, Suite 2500  
Boston, MA 02108

RE Proposed Amendments to Rule 5(b) of Trial Court Rule XIV

Dear Justice Gaziano,

Attached please find for your review and approval proposed amendments to Rule 5(b) of Trial Court Rule XIV: Public Access to Court Records, and accompanying Terms of Use.

Trial Court Rule XIV was approved by the Supreme Judicial Court effective November 1, 2016. In approving the Rule, the SJC provided provisional approval of Rule 5(b), Remote Access to Information in Electronic Form through the Attorney Portal, stating that the rule would be reconsidered upon further recommendations from the Chief Justice of the Trial Court.

Since that time we have heard from attorneys regarding the "hardships" created by our withdrawal of the general search function in this portal. These concerns were raised by criminal justice and public sector attorneys such as District Attorneys, Counsel for Public Counsel Services and the Attorney General's office as well as the private bar and others.

In addition to the needs of criminal justice attorneys, I heard from attorneys who take pro bono cases, offer Limited Assistance Representation, serve as volunteer lawyers for victims of domestic violence and/or Probate and Family Court matters like Guardianship of minor cases, and from legal service attorneys generally. These groups in particular have credibly argued that their ability to assist low-income litigants has been impacted.

The Trial Court now proposes to amend Rule 5(b) to re-introduce name searches in the Attorney Portal with additional safeguards to address some of the concerns that prompted us to withdraw the functionality prior to the approval of the Rules, including the requirement that an attorney agree to abide by a Terms of Use. The proposed amendments and Terms of Use were published for public comment in November, 2017. Comments to both the proposed amendments and the Terms of Use were received and considered.

I am happy to provide you with more details or answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "PC", written over the typed name.

Paula M. Carey  
Chief Justice of the Trial Court

Enclosure

cc: Jonathan Williams, Court Administrator  
Christine Burak, Legal Counsel, Supreme Judicial Court —

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

\_\_\_\_\_  
Chief Justice

1. Court Submitting Rules for Approval:

Trial Court

2. Date Rules Submitted for Approval:

March 21, 2018

3. Date Approved & Promulgated by the Supreme Judicial Court:

June 7, 2018

4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:

Amendments to Trial Court Rule XIV, Uniform Rules on Public Access to Court Records and Terms of Use, as attached hereto.

5. Effective Date:

July 1, 2018

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

## **RULE 5. REMOTE ACCESS TO ELECTRONIC COURT RECORDS.**

(b) Remote Accessibility to Information in Electronic Form through the Attorney Portal. Attorneys who are licensed to practice in Massachusetts and have registered with the Massachusetts Trial Court shall have access to a portal providing remote access to all non-exempt cases, and a calendar of scheduled events in the cases in which they have entered an appearance. Civil and criminal cases may be searched by party name or other criteria as set by the Chief Justice of the Trial Court. Access is subject to terms and conditions set by the Chief Justice of the Trial Court, and an attorney's access may be suspended or revoked for violation of those terms. The portable document format (PDF) version of certain publicly available court records, if so maintained by the court, may be made available on the Attorney Portal. Each appropriate Department of the Trial Court may request permission from the Chief Justice of the Trial Court to exempt certain criminal or civil case types or categories of information from remote access.

### **NOTES**

#### Notes

Rule 5(b), Access through the Attorney Portal. -The Attorney Portal is intended as a convenience for attorneys to easily access their cases and other cases in which they have a legitimate interest. Attorneys may register to use the Attorney Portal by providing their business email address on file with the Board of Bar Overseers. Registered attorneys may log in to the portal upon certifying the attorney has read and agreed to comply with the Trial Court's "terms of use" agreement posted on the portal. Registered attorneys will have access to their calendar and cases and the ability to search other non-exempt cases throughout the portal by party name or other criteria as set by the Chief Justice of the Trial Court. The "terms of use" are intended to prevent misuse, tampering, and criminal behavior, including any activity that would seek to violate the intent of the CORI law.

Access to the Attorney Portal should be available to both attorneys licensed in Massachusetts and attorneys licensed in other jurisdictions who enter an appearance pro hac vice and have complied with S.J.C. Rule 3:15.

Exempted Case Types. When feasible, otherwise exempted cases should be available for attorneys who have entered an appearance in that case to view through the Attorney Portal. However, impounded cases will not be available through the Attorney Portal. Each appropriate Department of the Trial Court may request permission from the Chief Justice of the Trial Court to exempt certain criminal or civil case types or categories of information from remote access.

Remote Accessibility of Case Documents through the Attorney Portal. Electronic access to portable electronic documents (PDFs) stored in the court's document management system may be through the Attorney Portal. The Chief Justice of the Trial Court may determine which documents and case types will be available through the Attorney Portal. Otherwise accessible documents may be restricted by the court if they include personal identifying information not redacted pursuant to S.J.C. Rule 1:24.

## Terms of Use

Users of the Attorney Portal agree to the following:

- You may use the Attorney Portal to access information in civil cases and criminal cases, and to access calendar events. You may access information in criminal cases only in connection to your representation of a client in a criminal or disciplinary matter. However, you may not use your access to criminal cases to obtain criminal offender record information (CORI) for purposes that violate the CORI law, G. L. c. 6, § 167 *et seq.*, to provide CORI to individuals who are not your clients in a criminal matter, or otherwise to provide CORI in violation of the CORI law.
- You may not use the Attorney Portal to access information in a manner that knowingly risks the integrity or security of the Trial Court's case management system; or for any purpose prohibited by law or court rule. Nor may you engage in "data scraping". For purposes of these Terms of Use, "data scraping" refers to the use of a computer program or other automated process or technique to extract or collect data from the Trial Court's case management system".
- You may not sell information obtained from these records, directly or indirectly, to third parties and shall not use or allow others to use information obtained from these records for non-litigation purposes such as in connection with hiring or tenant screening.
- You must keep your user name and password (login credentials) confidential. You may allow persons under your supervision and direction to use your login credentials, but you will be fully responsible for all activity that occurs under your login credentials.
- Use of the Attorney Portal is subject to monitoring and auditing by the Trial Court at any time. If you (or persons who use your login credentials) use the Attorney Portal in any way that is prohibited by these Terms of Use, you may be denied future access to the Attorney Portal and will be subject to sanctions as provided by law or court rule. Any violation of the Terms of Use may be referred to the Board of Bar Overseers.
- The Trial Court reserves the right to amend, or discontinue any feature of the Attorney Portal, or amend the conditions of its use at any time. Absent unforeseen circumstances, any such changes will be announced in advance on the Attorney Portal.
- The Trial Court shall not be liable for any damages associated with use of the Attorney Portal.

I affirm that I have read and understand these Terms and Conditions, that I accept them, and that I agree to comply with them.