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June 17, 2015

Mr. Joseph Stanton
Clerk, Massachusetts Appeals Court
Reporter, Public Access to Court Records Committee
One Pemberton Square, Room 1200
Boston, MA 02108-1705

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APPEALS COURT

Dear Mr. Stanton:

We wish to thank the Public Access to Court Records Committee for soliciting input from the public and interested organizations on the important question of public access to court records before issuing proposed rules. We understand that the Committee is interested in whether and how legitimate privacy and CORI concerns can be met while affording broad public access.

The mission of Common Cause is to promote open and accountable government. We believe that public access to court records is essential to public oversight of the judiciary and to ensuring the fair administration of justice. To that end, we believe the public's constitutional and common law rights of access to court records should not be fettered by unnecessary hurdles and expense and that electronic access should be available to the public at large, and not limited to members of the press and attorneys.

The federal ECF (Electronic Case Files)/PACER (Public Access to Court Electronic Records) system is a workable model for the state to follow. PACER is a national system with currently over one million users. It has proven that the goal of broad public access can be achieved without compromising legitimate privacy concerns. Federal litigants are required to redact specific confidential information (such as financial information and addresses) before filing a document electronically. The party must certify to the court prior to filing that all required redactions have been made. Some documents, like presentence reports, are required to be filed under seal, either in hard copy or with limited electronic distribution. The court must grant leave before a document may be filed under seal, and notice of a sealed filing is indicated on the public electronic record. Policing of redactions is generally left to the opposing party, although there may be some oversight by the clerk's office.

Documents filed electronically are immediately available for viewing and downloading from PACER by account holders at a modest cost, currently \$.10 per page. The fees are waived for indigent defendants and in cases where the total billings for a billing quarter do not exceed \$15. Non-account holders may access court files from public terminals in the clerk's office; copies cost \$.10 per page.

Privacy concerns can readily be accommodated in this system by adopting limited, clearly stated redaction and sealing rules that give appropriate weight to the public's right of timely

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access to court records. The system can be made responsive to changes in status: documents that are initially public but which are later sealed can be removed from the public access system. Parties can also move to challenge redactions or to seal documents which were publicly filed. Non-parties, with public notice of sealed filings, should be afforded the opportunity to challenge sealing designations.

If filers are required to certify that all necessary redactions have been made before a document is filed electronically, then clerk's office personnel need not preview every filing and there would be no need for lag time before a document is made available to the public. Systematic lag time would in our view unreasonably infringe on the right of access.

Common Cause, while respecting the compelling interests of both society and ex-convicts to put criminal convictions to rest after punishment is complete, is concerned that the current CORI system may overly restrict public access to records of a core governmental function. We are very concerned by recent news reports of public officials who inappropriately use CORI to deny or impede access to what should be public records, thereby shielding police and other officials from appropriate public scrutiny. That said, we believe it is feasible to design the public access system to meet CORI's limitations on public access to criminal case records. Again, PACER can serve as a model: it permits access to certain electronically filed records to certain categories of users while denying access to others.

We hope that the Committee will complete its work quickly. We look forward to responding in more detail to specific proposals that are circulated for public comment.

Very truly yours,



Jeanne M. Kempthorne
Vice Chair
Common Cause Massachusetts

cc: Ms. Pamela Wilmot
Executive Director, CCMA