



MENTAL HEALTH LEGAL ADVISORS COMMITTEE

The Commonwealth of Massachusetts

Supreme Judicial Court

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June 17, 2015

Joseph Stanton, Clerk
Massachusetts Appeals Court, Room 1200
One Pemberton Square
Boston, MA 02108-1705

Re: Criminal Cases and Internet Access to Docket Entries and Court Files

To the Trial Court Public Access to Court Records Committee:

We are writing on behalf of the Mental Health Legal Advisors Committee to urge that the Records Committee not recommend a uniform Trial Court rule permitting on line public access to court case records. MHLAC is an independent state agency that works to enhance and protect the rights of persons with mental health concerns, prioritizing issue areas most closely related to their ability to live full and independent lives free of discrimination. We believe that facilitating immediate access to even otherwise public documents will undermine these ends.

It is well established that the criminal justice system affects persons with mental illness disproportionately. MHLAC clients are often punished for acting out behaviors related to their illness. Middlesex County Sheriff Koutoujian recently stated in a letter to the Boston Globe (not originally), that jails are the largest mental health facilities in the country; half of those sent to the jail he oversees self-identify as mentally ill. Concomitantly, persons with mental illness are also released from jails and prisons disproportionately. They face the challenges of re-entry all former prisoners face, exacerbated by the impact of mental illness.

Department of Mental Health treatment objectives typically prioritize housing and employment in promoting productive and independent lives. Easy access to criminal records would undermine these objectives.

Permitting on line criminal records access will likely increase the incidence of homelessness among persons with mental illness, who already predominate in this population. If supportive housing vendors that contract with the DMH only need to go on line to determine a potential renter's criminal history, many needy non-violent people will remain homeless and unable to resurrect their lives.

On line access could also diminish already scarce housing for MHLAC clients. Many of our clients live in group homes located in residential communities. We have seen group home/community residence permits denied by town officials due to inaccurate residents' beliefs that persons with mental health disorders are necessarily dangerous. Placing criminal records within easy reach of the community at large will only exacerbate this problem.

On line posting will also make it harder for our clients to obtain and maintain employment. They face barriers already due to perceptions generated by apparent mental illness, but any employer that knows how to use an internet search engine will be able to find additional justification to hire someone else.

Internet criminal records posting would also effectively prevent our clients from availing themselves of a route for escape from these disabilities. Some are currently able to benefit and improve their potential for living independently by having criminal records sealed. Records posted on line, however, live eternally in one form or another, undercutting the sealing laws at a time of emerging consciousness around inequities in criminal justice enforcement, remedies for which Chief Justice Gants has vigorously and publically supported (e.g. in recent testimony on legislation addressing mandatory minimum sentencing).

It does not follow, merely because a record is ostensibly "public," that enabling dissemination of the record is necessarily appropriate. Lawyers do not have *carte blanche* to further reveal facts that are contained in public court documents. Rather, the duty to protect confidences includes matters of public record unless the information is "widely available or generally known." See Comment 5A to Mass. R. Prof. C. 1.6. See also *Lawyer Disciplinary Board v. McGraw*, 461 S.E.2d 850 (1995) (lawyer reprimanded and ordered to pay costs due to disclosure of information contained in a memorandum attached to a document filed in court) and ethical opinions cited in Kenneth W. Luke (Assistant Bar Counsel; Massachusetts Board of Bar Overseers), *Client secrets: going public with 'public' information*; Mass. Bar Assoc. Lawyer's Journal (May, 2002).

When it comes to facilitating disclosure, the public nature of court records should not be any more dispositive for the Courts than it is for attorneys. The fact that no statute or rule prohibits disclosure does not mean that it is wise to facilitate it, particularly when there are good reasons grounded in sound, even powerful, public policy considerations militating against it, and when the vehicle for disclosure is as uncontrollable as the internet. Please do not recommend a change of rule accomplishing this result.

Thank you in advance for your consideration. Please let us know if there is anything further we can provide.

Sincerely,



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