

# **COMMENTS TO PROPOSED TRIAL COURT RULE XIV UNIFORM RULES ON ACCESS TO COURT RECORDS**

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Access to Justice Commission . . . . .	2
Massachusetts Bar Association . . . . .	5
Office of the Attorney General . . . . .	17

## **Access to Justice Commission**

May 24, 2016

### **BY HAND DELIVERY**

Honorable Peter M. Lauriat, Chair  
Massachusetts Trial Court Public  
Access to Court Records Committee  
Superior Court Administrative Office  
Three Pemberton Square, 13<sup>th</sup> Floor  
Boston, MA 02108

Dear Judge Lauriat:

The Access to Justice Commission submits these comments with respect to the Proposed Uniform Rules on Public Access to Court Records.

The Commission was created by order of the Supreme Judicial Court with a mission of achieving equal justice for all persons in the Commonwealth. Our focus involves working to improve access to justice for those unable to afford counsel. The Commission discussed the Proposed Rules on May 19, 2016. We hope you will be able to use our comments to improve the final rule on several access to justice issues.

We appreciate the careful balance that the Committee has sought between insuring that litigants and the public have open access to court records while at the same time protecting vulnerable litigants and innocent third parties from the harm that might result if exploitable details of litigation were made too easily accessible to the public. Our focus on vulnerable litigants leads us to request that the Rules provide additional protections for litigants in housing, family and criminal matters. Since we are aware that other commentators have submitted more extensive comments, we add that our decision to focus on these three areas is not intended to undercut these additional points raised by others.

The Commission has learned from judges and advocates that when, in housing cases, incorrect data about a case becomes available online, the availability of the court record has been used to threaten tenants. When the actual party to a proceeding is erroneously identified, the harm can be worse. Landlords have collected data about such litigation and blacklisted tenants from future rentals, regardless of the underlying merits of the case. These reports are consistent with reports from other states that have moved toward online records and have experience with how they have been used. We have also learned of reports of the difficulties that occur in trying to correct errors in the system, particularly where the records incorrectly reflect the identities of parties to a litigation.

Because we fear it will be difficult to unring the bell once records are made widely and readily available to the public, we urge the Committee to add housing matters to the list of areas of particular concern, with consideration being given to making sure that tenant names are not available in the online data base available to the general public (parties and attorneys would still have access to case information online with docket numbers).

In family law matters, the proposed rules have certain carve-outs designed to provide protection in some areas of family law. However, other cases remain without protection, and sensitive material will be made available to the general public in a manner that could cause significant harm to litigants and their children. We urge that these other family law cases receive similar carve-out treatment.

The Commission also is concerned that public online access to criminal records will result in a plethora of unintended consequences, and therefore requests that proposed changes not permit public online access to individual criminal cases. Although the Committee restricted such access to searches only by docket numbers, software can easily be designed by criminal-record search companies to scan through all docket numbers in the Trial Court database and compile those involving an individual defendant. This would essentially provide users of the software with a person's criminal record in Massachusetts, thereby thwarting the intent of our CORI laws. Such information will undoubtedly be used to deny defendants benefits, housing, employment, and credit. Moreover, errors due to misspellings of names of defendants and outdated information that does not include acquittals or subsequent vacatur of convictions will remain in perpetuity on the internet for continual redistribution. The Commission further urges the Committee to carefully consider the additional comments on this issue submitted by numerous individuals and organizations that work with predominantly indigent and minority criminal defendants.

To the extent that protections along these lines are not adopted, we urge that data be collected over the first few years of operation to monitor how the online information is being used, so that the rules may be modified if it becomes apparent that avoidable harm is resulting from the move toward greater access. The monitoring could also assess the efficacy of the mechanism in the rules to achieve the correction of errors in the records.

We note that additional concerns cut across these three areas. The files to which the public would gain access are the product of integration of data from the separate departments into the MassCourts system. With all the difficulties such an effort has undoubtedly entailed, it is inevitable that the resulting database will be replete with errors despite the hard work and best efforts of all involved. This reality underscores the need to proceed slowly and cautiously, at least in the three areas of housing, family and criminal cases. The concern is compounded in criminal area where individual defendants may appear in the system with multiple identities, creating further challenges to the accuracy of a system attempting to integrate all its information into a single, accurate system.

Finally, as a Commission whose mission includes helping to lower barriers to access to those without counsel, we are concerned about a system that includes an attorney portal and a public portal, but no portal for litigants who are unrepresented by counsel. This would appear to elevate

lawyers over unrepresented litigants in the court system, a dynamic that the courts have been working hard to overcome in an effort to level the playing field.

Thank you.

A handwritten signature in blue ink that reads "Geraldine S. Hines". The signature is written in a cursive, flowing style.

Honorable Geraldine S. Hines  
Co-Chair

A handwritten signature in blue ink that reads "Susan M. Finegan". The signature is written in a cursive, flowing style.

Susan M. Finegan  
Co-Chair

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VIA ELECTRONIC AND US MAIL

May 23, 2016

Hon. Peter Lauriat  
Chair  
Public Access to Court Records Committee  
Superior Court Administrator Office  
Three Pemberton Square, 13<sup>th</sup> Floor  
Boston, MA 02108

Re: Comment on Proposed Trial Court Rule XIV Access to Court Records

Dear Judge Lauriat:

On behalf of the Massachusetts Bar Association (MBA), I write to provide comments of our Criminal Justice and Probate Law Section Councils regarding the proposed Trial Court Rule XIV Access to Court Records.

The MBA believes that criminal case data should *not* be available to the public on the trial court's website. Publication of criminal case data would eviscerate sealing laws that intend sealing to be available after a 5 year or 10 year period of time depending on the disposition of the case. It would also contradict the specific legislative intent of Criminal Offender Record Information Reform enacted in 2010 to expand opportunities for sealing records.

Additionally, Family Law Cases, except what is currently available, and financial information from these cases; should *not* be available to the public on the trial court website. Online access to records could subject litigants and victims of abuse to retaliation. Children and/or their classmates would be able to access divorce records creating potential embarrassment and the release of devastating information about the case. Further, we believe online access to documents in domestic violence would violate the federal Violence Against Women Act if certain data is released from harassment prevention orders or domestic relations protective orders.

Understanding that Housing Court records are currently available online. A number of practitioners have heard of cases where landlords are refusing tenancy to



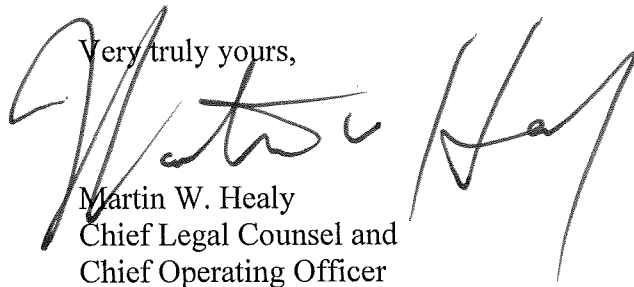
applicants who had a previous landlord-tenant case based on their searches of the Housing Court database.

Additionally, errors in court docket entries is a fact of life and do occur frequently. The review of actual court files at the courthouse offers better protection against errors because the file usually contains all the relevant information which then makes it easier to identify a clerical or entry error.

We are concerned about the increased cost to the public and to attorneys' clients by limiting access to public records at the Probate Court. We support increased Attorney Internet Portal access beyond estate cases to include Equity-Partitions, Equity Complaint, and Equity Petitions, Guardianship Managed; Probate Abuse/Conservator Managed; Probate Other as proposed. All attorneys, regardless of whether they have entered an appearance should have access to the portal. The Proposed Rule, however, does not go far enough in allowing public access to documents as opposed to mere access to the docket. The Public should have access to an Order of Informal Probate of Will and/or Appointment of Personal Representative, Decree and Order on Petition for Formal Adjudication, Bonds and Appointment of Special Representatives and allowed wills.

Thank you for taking our views into consideration. I have enclosed, for your convenience, a copy of the detailed Section comments to our House of Delegates held last Thursday, May 19, 2016.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Martin W. Healy', is written over the typed name and title.

Martin W. Healy  
Chief Legal Counsel and  
Chief Operating Officer

## Summary Sheet For All Matters To Be Brought Before The MBA House of Delegates For Action

To be Appended to Report and Recommendations of Submitting Group

Submitting Group: Criminal Justice Section

Submitted By: Peter Eilikann

Dated Submitted: April 22, 2016

Date of House Meeting at which action is requested: May 19, 2016

Has this matter been before the House previously: No

If so, When:

What action, if any was taken:

[illegible]

1) Summary of recommendation(s), including text of any motion(s) requested:

That the MBA submit comments on a proposed rule to the effect that:

- criminal cases data should not be available to the public on the trial court website;
- family law cases (except estate cases as now available) and financial information from these cases should not be available to the public on the trial court website;
- the problem of errors in records and of landlords using the online Housing Court database to reject any housing applicants who had prior landlord-tenant cases needs to be addressed before records are put online for the general public.

2) **Brief background and need for immediate action.** The Trial Court Committee on Public Access to Court Records invited comments on proposed Trial Court Rule XIV, Uniform Rules on Public Access to Court Records. A copy of the proposed Trial Court Rule XIV appears at the link below. Comments are due by email to [rules.comments@jud.state.ma.us](mailto:rules.comments@jud.state.ma.us) or regular mail directed to Hon. Peter M. Lauriat, Chair, Public Access to Court Records Committee, Superior Court Admin. Office, 13th Floor, Three Pemberton Square, Boston, MA 02108, by May 4, 2016. A copy of the rule is available at: <http://www.mass.gov/courts/case-legal-res/rules-of-court/rule-changes-invitations-comment/proposed-trial-court-rule-xiv-access-to-court-records.html>

See attached narrative as to why putting certain records online will put many people in harm's way.

- 2) Status of legislation (when applicable): N/A
- 3) Cost to MBA: None
- 4) Groups which have reviewed and approved recommendation(s) prior to submittal: Criminal Justice Section, Access to Justice Section,
- 5) Additional referrals (to groups both within and outside the MBA):



## **Request for Action on Proposed Rule on Internet Access to Trial Court Records**

The Trial Court Public Access to Court Records Committee held a public hearing in June 2015 to elicit feedback on whether various divisions of trial court should put court records online.<sup>1</sup> The Committee issued a proposed rule that would put most records online for the public and comments are due on or before May 4, 2016. Online record access offers convenience to people with internet access at home or work, but the negative effects of online access to court records by the general public would be profound. At present, Probate and Family Court records (except for estate cases) and criminal records are not available to the public online. Housing Court docket entries were put online a few years ago and landlords have used them to blacklist tenants.

1. Internet Posting of Court Case Information Will Have a Disparate Adverse Impact on the Privacy of the Poor and Further Erode Confidence in the Justice System.

Providing case information on the internet to the general public is especially unfair to the poor because they do not have lawyers to protect their privacy rights. The right to counsel does not extend to litigating collateral consequences or privacy issues. Individuals with appointed counsel are often not informed of the impact of their criminal cases on future employment or housing. In civil cases, many past and present litigants were or are pro se. They are not likely to be aware of a possibility that their case information might be available on the internet in the absence of an allowed motion to impound records. Future internet access would affect access to justice because people with meritorious claims would have to choose between filing a court case and avoiding disclosure of personal information related to the case on the internet.

In a post-Ferguson world where the fairness of the legal system is more frequently called into question, there is increased awareness that people of color are disproportionately involved in the criminal justice system and are often poor. Piling on of further adverse consequences through online access to court records would further erode confidence in our justice system.

2. The Ease of Internet Access and the Court's Inability to Retrieve Data Once Information Goes Online Means that Parties in Court Cases Can More Easily be Harmed Irreparably.

Review of court records at a courthouse is far different from internet access. Once data is online, the audience is virtually without limit. Internet release of court case information opens an entirely new dimension of communication that operates 24 hours per day and has the potential to ruin reputations and repeatedly put people in harm's way. People who would not bother to go to court would be able to access records in seconds and inflict much harm with just a laptop if records are online.

<sup>1</sup> The committee has posted a transcript of the hearing and copies of written testimony received in response to its invitation for public comments. The materials are available at: <http://www.mass.gov/courts/court-info/commissions-and-committees/tc-access-records.html>

Cyberbullying, malicious tweets, identity theft, cyberstalking, harassment, and commercial exploitation of personal information by data mining companies, are

just a few examples of daily abuses of personal data. Thus, rules that treat access to paper records at the courthouse the same as electronic court records should not apply, or the balancing of interests will shift too far away from individual privacy and produce little benefit on the side of judicial accountability. Peter A. Winn, Online Court Records: Balancing Judicial Accountability and Privacy in an Age of Electronic Information, 79 Wash. L. Rev. 307, 315 (2004).

You cannot un-ring the bell after information is released onto the worldwide web. Both criminal and civil records can inflict a scarlet letter and create barriers to jobs, housing, and many other opportunities. Objections to online access to docket entries voiced at the public hearing or through written testimony included the following:

- Once information is released online, it can live on forever;
- Online housing court records are being used to blacklist tenants by landlords;
- Online access would too easily subject litigants, including former spouses, victims of abuse, and others to vindictiveness and retaliation in family law matters;
- Children and/or their classmates would be able to access embarrassing and devastating information related to their parents or their classmates' parents;
- Online access would let domestic abusers send links to records so as to harass victims who are the subject of bogus criminal cases filed by the abusers;
- Release of certain data from abuse or harassment prevention orders, or domestic relations protective orders violate the Violence Against Women Act;
- Online criminal record data will hurt many unemployed people already suffering because of a past criminal record;
- There is very little point to criminal sealing laws if the data is on the internet forever;
- Online access eviscerates sealing laws that intend sealing to be available after a 5 or 10 wait, and permit sealing of non-convictions without waiting periods.
- Online access runs contrary to the legislative intent of the CORI Reform Law of 2010 which expanded opportunities for sealing records and included a "ban the box" provision which gives people opportunities to be interviewed for potential employment BEFORE the employer obtains criminal record information.
- Access to online data will fuel a large industry of criminal background checking companies that are under-regulated, and produce reports that are out of date, contain errors and/or fail to comply with FTC and consumer protections;

- Internet access to criminal records will deepen poverty in communities of color due to the racial disparities in the criminal justice system; and
  - Launching of court dockets online is a mistake because court records often have errors or can be misinterpreted by those who are not trained to read them.
3. Providing Access to Cases Online Would Fuel Commercial Exploitation of Personal Data by Background Checking and Data Mining Companies.

The Internet has spawned scores of online background screening and data mining companies that troll the web and sell data they aggregate for a fee. In 2012, the National Consumer Law Center (NCLC) issued a report on this phenomena and concluded that the Fair Credit Reporting Act (FCRA) as interpreted and enforced does not adequately protect job applicants. Background checking companies are required to update and ensure the accuracy of information they report, but sloppy data collection practices as well as errors and stale data in their reports, are very common. This has grave consequences for job seekers. NCLC submitted a letter opposing online access to criminal records. The NCLC report (Broken Records—How Errors by Criminal Background Checking Companies Harm Workers and Businesses) is available on web at: <http://www.nclc.org/issues/broken-records.html>.

The notes to Proposed Rule 5(a) (2) state that "as a matter of policy, the committee has determined criminal case searches will be limited to case number." However, limiting criminal case searches to docket number (or date) rather than by name is not sufficient protection because software could be developed to search all docket numbers.<sup>1</sup>

#### 4. Errors in Court Records Are Too Common to Put Docket Entries on the Web.

If case information is available on the internet, the harm related to dissemination of erroneous information will become greater because the audience is without limit. Unfortunately, errors in docket entries sometimes occur in all of the trial courts. Review of actual files at the courthouse offers better protection against errors because the file usually contains all of the relevant information which then

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<sup>1</sup> The text of the notes below the proposed rule explain why criminal records need special protection. "If the Trial Court were to provide the public with the ability to remotely search criminal cases by a defendant's last name, which could essentially reveal a defendant's entire criminal history, it could thwart the careful balance between access and privacy struck by the Legislature in enacting the CORI statute." The notes caution "that access to criminal records negatively affects a defendant's future employment prospects, which, in turn, makes rehabilitation more difficult." The notes indicate that the Proposed Rule reflects the committee's "concern that permitting a broad criminal record search through the Internet Portal would frustrate the privacy and rehabilitation concerns identified and protected by the Legislature and Supreme Judicial Court."

makes it easier to identify a clerical error. Impounded information or sealed cases are sometimes inadvertently made available. The lives and safety of parties and witnesses who cooperated with the prosecution can be put in jeopardy by release of impounded information. Parties may lose their jobs and families may suffer needless harm due to online release of erroneous data. Internet access exacerbates the effects of data entry errors due to wider and easier access to the court files. Masscourts records in Housing Court often have errors stating that judgment was for a landlord when the tenant prevailed, or the case may have settled without a prevailing party, and minor children's names may be listed as parties if they live in an apartment.

### Conclusion

We ask that the MBA submit comments to the effect that:

- criminal cases data should not be available to the public on the trial court website;
- family law cases (except estate cases as now available) and financial information from these cases should not be available to the public on the trial court website;
- the problem of errors in records and of landlords using the online Housing Court database to reject any housing applicants who had prior landlord-tenant cases needs to be addressed before records are put online for the general public.

Respectfully submitted,

Peter Elikann, Chair  
MBA Criminal Justice Section  
617- 742-9462  
[peter@elikann.com](mailto:peter@elikann.com)

Lee Gartenberg, Vice-Chair  
MBA Criminal Justice Section  
978-932-3190  
[Lgartenberg@sdm.state.ma.us](mailto:Lgartenberg@sdm.state.ma.us)

Pauline Quirion, Member  
MBA Criminal Justice Section  
617-603-1534  
[pquirion@gbls.org](mailto:pquirion@gbls.org)



SUMMARY SHEET FOR ALL MATTERS TO BE BROUGHT BEFORE THE MBA  
HOUSE OF DELEGATES FOR ACTION

Submitting Group: Probate Council

Submitted by: Timothy Sullivan and Maureen Curran

Date Submitted: May 9, 2016

Date of House Meeting at which action is requested: May 19, 2016

Has this matter been before the House previously: No.

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1) Summary of recommendation(s) including text of any motion(s) requested:

That the MBA submit comments on Proposed Trial Court Rule XIV Uniform Rules on Access to Court Records to the effect that in the Probate Court:

The public have internet access to the following documents: Order of Informal Probate of Will and/or Appointment of Personal Representative, Decree and Order on Petition for Formal Adjudication, Bonds, and Appointment of Special Representatives and allowed wills.

Attorneys Internet Portal allows access to imaging of all documents unless otherwise impounded.

Rule 5(b) Attorney Portal, 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 cases, ***regardless of whether they have entered an appearance.*** (Change from proposed rule).

The public website should include calendar of scheduled case events by court departments and divisions.

- 2) Brief background and need for immediate action. The trial Court Committee on Public Access to Court Records invited comments on proposed Trial Court Rule XIV, Uniform Rules on public Access to Court Records. A copy of the proposed Trial Court Rule XIV appears at the link below. Comments are due by email to [rules.comments@jud.state.ma.us](mailto:rules.comments@jud.state.ma.us) or regular mail directed to Hon. Peter M. Lauriat, Chair, Public Access to Court Records Committee, Superior Court Admin Office, 13<sup>th</sup> Floor, Three Pemberton Square, Boston, MA 02108, by May 4, 2016. A Copy of the

rule is available at: <http://www.mass.gov/courts/case-legal-res/rules-of-court/rule-changes-invitations-comment/proposed-trial-court-rule-xiv-access-to-court-records.html>.

- 3) See attached narrative as to why the Probate Council believes the above request is necessary.



## Request for Action on Proposed Rule on Internet Access to Trial Court Records

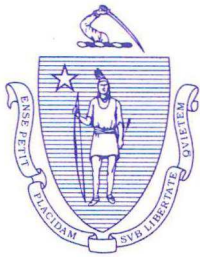
The Probate Council is concerned about the increased cost to the public and to attorneys' clients by limiting access to public records at the Probate Court. The Probate Council supports increasing Attorney Internet Portal Access beyond just estate cases to include Equity-Partitions, Equity Complaint, and Equity Petitions, Guardianship Managed; Probate Abuse/Conservator Managed; Probate Other as proposed. The Proposed Rule, however, does not go far enough, in allowing public access to documents as opposed to mere access to dockets.

Public access to Orders of Informal Probate of Will and/or Appointment of Personal Representative, Decrees and Orders on Petition for Formal Adjudication, Bonds, and Appointment of Special Representatives and allowed wills will save time and money for both parties and the public. The allowed wills and determination of heirs is information necessary for the public to access. For *pro se* persons, to have to take a day off of work to go to a particular county courthouse to access documents places an additional burden which in this day and age is not necessary. Title Examiners should be able to access this information online in order to determine clear title. The concerns raised regarding limiting access by the public have been addressed by the Federal Court system which has been working well for some time.

In addition, the attorney portal should provide access to all documents related to the above listed cases. Most practitioners have cases in several different counties. Trips to these different counties increase the cost of the administration of an estate, guardianship or equity matter dramatically. It is also important that attorneys have access to cases even if they do not have an appearance. Often times, especially in the probate/guardianship realm, cases are interrelated. The cost of having to go to court to access documents increases the cost to the client who can often ill afford it.

The Federal Court system provides a process that both safeguards private information yet dramatically reduces the costs of filing and accessing documents. The Pilot Program beginning in Essex Probate and Family Court is a start towards adopting that Federal Court System. Access to court dockets and documents should be more available not less available.

The Probate Council takes no position relative to criminal matters or divorce and/or child custody matters.



MAURA HEALEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

TEL: (617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

May 20, 2016

**Via U.S. Mail and e-mail**  
**([rules.comments@jud.state.ma.us](mailto:rules.comments@jud.state.ma.us))**

Hon. Peter M. Lauriat  
Chair, Public Access to Court Records Committee  
Superior Court Administrative Office, 13th Floor  
Three Pemberton Square  
Boston, MA 02108

Re: Proposed Rule XIV, Uniform Rules on Public Access to Court Records

Dear Judge Lauriat and Members of the Trial Court Public Access to Court Records Committee:

We appreciate this opportunity to comment on the Trial Court's Proposed Rule XIV, Uniform Rules on Public Access to Court Records and, in particular, Proposed Rule 5 (Remote Access to Electronic Court Records). This Office has long advocated for increased transparency of and access to government records. At the same time, because important decisions about housing, employment and critical services are now made on the basis of personal information disseminated online, consumers' data privacy and data security are strategic priorities of our Office as well. We therefore applaud the Committee's efforts to increase access to court records while balancing privacy interests of litigants in the judicial system.

In accordance with these shared priorities, we write to urge the Committee to address legitimate privacy concerns regarding remote access to Housing Court or Summary Process matters. Advocates for low-income tenants have raised with our Office the concern that unfettered online access to Housing Court matters may result in the improper screening – and potential “blacklisting” – of otherwise qualified applicants for rental housing who have previously and appropriately sought to vindicate their legal rights in a Housing Court or Summary Process matter. Given the scarce availability of rental housing for low- and moderate-income families in Massachusetts,<sup>1</sup> the unjustified denial of such an application represents a substantial hardship. We believe that a nuanced amendment to Proposed Rule 5 can maintain the appropriate transparency of court records, while taking into account the compelling privacy interest of certain renters.

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<sup>1</sup> Tim Logan, *Study Finds Rents Soaring as Apartment Supply Lags*, BOSTON GLOBE, Dec. 9, 2016, available at <https://www.bostonglobe.com/business/2015/12/09/renting-grows-and-rents-are-surging-takeaways-from-harvard-housing-report/5CoErYq9XyTZof6GyIKKpM/story.html>.

The MassCourts database (currently available via [www.masscourts.org](http://www.masscourts.org), “MassCourts”) has been touted by members of the landlord community as a “powerful new and free tool for tenant screening.”<sup>2</sup> Especially when compared to traditional private tenant screening services - which charge fees and which may require landlords to undergo onsite inspections to comply with the federal Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*, the “FCRA”) - it is not surprising that landlords would eschew such formalities (and the protections they ensure for tenants) in favor of a quick check of MassCourts.

While there are wholly proper reasons for a landlord to be interested in the eviction history of a prospective tenant, it is also unfair and unlawful<sup>3</sup> to discriminate against an applicant for rental housing based on his or her prior meritorious assertion of claims or defenses in a legal proceeding. As the comments submitted by Greater Boston Legal Services and the Harvard Legal Aid Bureau suggest, there is mounting evidence that tenants who actually prevail in summary process or other Housing Court proceedings face discrimination and blacklisting in future applications for housing. However, it is frequently difficult to determine whether any particular tenant’s application has been denied for improper reasons. The need to restrict the opportunities for such discrimination is accordingly all the more compelling.

To allow tenants to protect themselves from these risks and to ensure uniformity across the Commonwealth, we propose that the Committee consider including a limited safeguard in Proposed Rule 5(a)(1)(iii), as follows:

- (iii) Exemption of certain civil case types. Abuse prevention and harassment orders and proceedings, and sexually dangerous person proceedings, shall not be available by remote access. On motion made before the appropriate court with jurisdiction, parties in Housing Court matters or Summary Process matters (wherever they may be adjudicated) may seek to make the name of a party unavailable by remote access. Grounds for allowing such motion shall include the party’s prevailing on a claim or defense in the matter, the stipulation of all parties, or other good cause shown. Each Department of the Trial Court may request permission from the Chief Justice of the Trial Court to exempt certain additional civil case types or categories of information from remote access. A list of the approved exemptions shall be available on the Trial Court’s website.

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<sup>2</sup> See Rich Vetstein, *Massachusetts Housing Court and Tenant Eviction History Now Online*, THE MASSACHUSETTS REAL ESTATE LAW BLOG (Apr. 24, 2013), <http://massrealestatelawblog.com/2013/04/24/massachusetts-housing-court-and-tenant-eviction-history-now-online> (“After years of lobbying from rental housing groups, the [Housing Court] has finally announced a powerful new and free tool for tenant screening: public internet access to all Summary Process, Small Claims, Civil and Supplementary Process case types. ... This new system will enable landlords to research whether a potential or current tenant has been a party to a previous eviction, small claims or related housing case...”).

<sup>3</sup> Section 3.17(6)(b) of title 940 of the Code of Massachusetts Regulations renders unlawful any “[r]etaliat[i]on or threat[] to retaliate in any manner against a tenant for exercising or attempting to exercise any legal rights as set forth in M.G.L. c. 186, § 18.”



We submit that this limited procedure appropriately balances the public's right to open courts with the need to ensure that tenants can assert their legal rights without fear of future harm, and would pose an appropriately limited administrative burden on court personnel.

Moreover, this approach is consistent with and, in some respects, more modest than measures adopted by other states. California, for instance, has restricted all access to landlord-tenant matters by default for a period of time after disposition,<sup>4</sup> while Minnesota provides tenants with the right to seek complete expungement – not merely limited access – of the records of a landlord-tenant matter.<sup>5</sup>

Thank you for the opportunity to share our concerns, and please let us know if we can be of further assistance in your continued efforts.

Sincerely,



Max Weinstein  
Chief, Consumer Protection Division

Sara Cable  
Assistant Attorney General

Office of Attorney General Maura Healey  
Commonwealth of Massachusetts  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

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<sup>4</sup> CAL. CIV. CODE § 1161.2 (West 2013).

<sup>5</sup> MINN. STAT. § 484.014 (2010).