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New England First Amendment Coalition

Phone 508.983.6006 Fax 617.860.2559 Web nefirstamendment.org
Twitter @FiveFreedoms Mailing Address 111 Milk Street, Westborough MA 01581

SUBMITTED VIA EMAIL
lawcourt.clerk@courts.maine.gov

Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, ME 04112-0368
c/o Matthew Pollack, Executive Clerk

January 25, 2017

Dear Mr. Pollack,

I'm writing on behalf of the New England First Amendment Coalition, a regional non-profit organization that advocates for government transparency. Our coalition includes members of the media, First Amendment attorneys, academics and other proponents of the public's right to know.

NEFAC is concerned about the proposed amendments to Maine Rule of Probate Procedure 92.12 and the effect they would have on the public's ability to monitor the state's probate courts. Common law and the First Amendment require transparency in the judicial system. Such transparency helps the public understand how courts work and allows the public to more easily monitor their operation. The breadth of these proposed amendments, however, severely limits that understanding and oversight. In addition, no compelling reason has been presented by the court to justify these changes. The Maine Freedom of Information Coalition earlier today submitted comments addressing these concerns in specificity. NEFAC fully supports those comments and we urge you to give them your utmost consideration.

We also encourage you to consider the broader principles of the First Amendment and the public's right to know. It's important for these fundamentals not to be lost in a conversation about finer policy points.

Put simply, a judicial system operating with secrecy diminishes democracy. Citizens must be informed about what their government is doing — or not doing — on their behalf. To facilitate this education, there is a presumptive right to court documents deeply rooted in this country's history and affirmed by our nation's highest court. In Maine specifically, courts recognize a common law right of access to civil court records. Even if there is potentially embarrassing information in those records, this right of access is protected.

And for good reason. Sunlight is the best disinfectant, as Justice Brandeis said, and in this case it would discourage misconduct within the probate courts. Transparency will deter

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guardians from impropriety and make its discovery possible if it occurs. Consider the public interest in learning about a prominent figure, for example, acting as a guardian and accused of misconduct. Or the danger of keeping secret the management of an incapacitated individual's estate. The probate courts are not immune to misconduct. The proposed amendments to Rule 92.12 will unnecessarily limit access to information and put the public's interest at risk.

Thank you for the opportunity to express NEFAC's opposition to the proposed amendments. If our organization can be of any further assistance as these rule changes are considered, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justin Silverman', with a long horizontal stroke extending to the right.

Justin Silverman, Esq.
Executive Director



New England
First Amendment Coalition