



April 12, 2021

*Via electronic mail: [rules@dcappeals.gov](mailto:rules@dcappeals.gov)*

The Honorable Chief Judge Blackburne-Rigsby; Associate Judges Glickman, Thompson, Beckwith, Easterly, McLeese, and Deahl  
District of Columbia Court of Appeals  
430 E Street, N.W.  
Washington, D.C. 20001

**Re: Public Comments on Potential Rules and Procedures Concerning Public Access to Documents Filed in the Court**

Dear Honorable Judges of the Court:

The Legal Aid Society of the District of Columbia (Legal Aid) commends the Court on its efforts to expand public access to Court documents. We respectfully submit the following comments for the Court's consideration when drafting rules and procedures regarding public accessibility to court records that may include confidential or sensitive personal information.

**I. Making Litigation Documents Publicly Accessible Expands Access to Justice.**

Rules and procedures regarding public accessibility of Court documents would further access to justice in at least three ways.

First, allowing the public to access documents filed with this Court would make it easier for unrepresented individuals to fully litigate their cases. For many unrepresented litigants, the most significant barrier to successful appellate self-advocacy is the need to draft a brief without formal training with respect to either its form or its substance. Access to this Court's opinions is helpful, but the most direct and impactful way to assist an unrepresented party is to provide access to briefs that are as close as possible – both factually and legally – to that party's situation. Making all briefs accessible to everyone would allow unrepresented parties to find good examples to follow. Moreover, access to a complete electronic docket would allow unrepresented litigants to better understand the chronology and timeline of cases. This would also assist the Court, as it would result in better, more timely, and more specific briefing, even in cases without legal representation.

Second, expanding public access would directly assist Legal Aid, and other legal service providers, in our client outreach initiatives. Legal Aid's Barbara McDowell Appellate Advocacy

Project, founded in 2004, has represented parties or *amici* in more than 100 cases before this Court. One way in which Legal Aid works to achieve its goal of offering representation to those in need of assistance is by reviewing this Court’s online docket, finding potentially important cases, and requesting further information about those cases from this Court’s file room. While the file room clerks have gone above and beyond to make documents promptly available to Legal Aid, having such documents readily available on the e-access website would expedite our organization’s review process and make it easier for us to prioritize cases. Such access would also facilitate Legal Aid’s consideration of requests from the Court to participate in particular matters.

Third, expanding public access to documents would promote transparency. Transparency is especially important to Legal Aid and its client population, which has historically been discriminated against and underrepresented in the legal system. Many applicants and clients express frustration with the opaqueness of the legal system and are often concerned that they will lose their cases simply because they are unable to navigate the litigation process on their own. Posting litigation materials, as well as other documents filed with this Court, would help to alleviate those concerns and increase knowledge of and trust in the legal system. It would also allow Legal Aid, as an institution, to understand better how the Court operates by easily obtaining detailed information that is not always included in the Court’s opinions and by comparing how issues were briefed to how the Court addressed them.

**II. As a General Rule, All Litigation Documents – Including Orders or Notices from This Court – Should Be Made Accessible to the Public.**

With regard to the type of documentation that will potentially be made publicly accessible, the Court’s Notice Requesting Comments specifically refers to, “briefs, appendices, transcripts, and record materials from trial-court and agency proceedings.” Legal Aid agrees that as a general rule, these documents should be made readily accessible for the reasons mentioned in Section I of this comment.

In addition to these documents, Legal Aid strongly recommends that this Court provide public access to orders and notices issued by this Court. Court orders and notices are an integral part of the litigation stage, as they contain valuable instructions regarding the sufficiency of filings and provide litigants – especially unrepresented litigants – with greater insight regarding the Court’s expectations and what it will or will not accept in terms of party submissions and behavior.

**III. Public Accessibility Must Not Result in Public Disclosure of Confidential or Sensitive Personal Information.**

The Court’s Notice Requesting Comments states that “[t]he court intends to require that [documents made electronically available] be subject to appropriate redactions and other procedures to protect confidential and other sensitive information and to comply with any laws limiting or prohibiting the dissemination of such information.” Legal Aid agrees with the Court that redaction is necessary to ensure privacy and prevent inappropriate data mining, and we urge the Court to ensure that adequate redaction safeguards are fully implemented *before* documents are made available online (or otherwise).

The problem of Court records containing confidential or sensitive personal information is particularly acute in petitions for review of agency action. Many agencies have no redaction rules and transmit to this Court administrative records including confidential and sensitive personal information. In contrast, the D.C. Superior Court has redaction rules in place that should largely prevent such information from being included in the judicial record. Legal Aid has, during the course of client representation and other review of agency records, encountered records transmitted from D.C. Government Agencies to this Court that did not (or did not fully) omit or redact sensitive private information. For example, in a recent unemployment insurance decision of the Office of Administrative Hearings reviewed by this Court, the records transmitted to this Court (which Legal Aid typically obtains from the File Room) included sensitive information such as unredacted copies of the petitioner's social security card (displaying the full social security number), driver's license (displaying the full license number) and Permanent Resident Card (commonly known as a "Green Card" and providing residence status and other sensitive information).

Given the sensitivity of such information (as well as the risk of malevolent misuse of this information by a bad actor or data mining bot), this Court should structure the rules regarding public access in such a way that affirmatively requires District agencies and/or Court personnel to ensure that records are appropriately redacted. The preferable approach is for redactions to take place *before* records are sent to this Court so that no unnecessary sensitive information is in this Court's records, to be found by electronic or more traditional means of access.

Although the risk of disclosure of confidential or sensitive information in documents submitted by the parties to the Court may be lower, similar redaction requirements should apply to such documents before they become public. And, for consistency, a similar limitation on the revelation of such information should apply to oral argument as well.

As an additional measure to prevent data mining, Legal Aid also recommends that similar to the D.C. Superior Court's electronic docket, all documents made available on D.C. Court of Appeal's electronic docket be placed behind a CAPTCHA barrier (i.e., some sort of challenge-response test that ensures that the entity seeking information is human). These types of challenge-response tests would not prevent the most sophisticated commercial data miners. However, they would, at a minimum, establish a barrier between a litigant's private financial information and a bad actor.

#### **IV. Certain Documents Should Be Categorically Excluded from Public Access Or, in the Alternative, Subject to More Stringent Accessibility Thresholds.**

Legal Aid believes that as a general rule, documents submitted before the Court should be made publicly available. However, certain documents, such as Applications to Proceed Without Prepayment of Costs, Fees, or Security should not be made available to the public. These types of applications, by necessity, include sensitive personal and financial information about monthly income, dependents, assets, and expenses. Providing public and electronic access to this information, increases the risk that a litigant will be exposed to hacking, identity theft, fraud schemes, harassment, or other malevolent actions.

If the Court does choose to make fee waiver motions accessible to anyone other than the applicant, persons authorized by the applicant, and Court personnel, the Court should additionally

establish a rule that requires individuals attempting to access these documents to submit a motion to the Court for good cause. Further, to ensure that these documents are used for the proper purposes, this Court should establish a rule that forbids further dissemination of these documents.

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Legal Aid appreciates the Court's consideration of these comments and recommendations. We invite further discussion of and collaboration with the Court on its efforts to make its records more accessible to the public while implementing appropriate safeguards.

Respectfully Submitted,

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