

Faulk, Camilla

From: Samuel G. Mahaffy [samuelmahaffy@gmail.com]
Sent: Wednesday, September 07, 2011 3:02 PM
To: Faulk, Camilla
Subject: Public Comment on Proposed New Rule GR 31A

To: Clerk of the Supreme Court
ATT: Camilla Faulk

From: Samuel Mahaffy, Executive Director GRE Consulting Associates

As a non-profit consulting firm that supports individuals and agencies serving indigent individuals and communities that do not share equal access to public resources, we express grave concern regarding components of the proposed General Court Rule 31A, *Access to Administrative Records*. We do support components of the Proposed Rule to protect individual privacy and safety, whether it is that of court personnel or members of the public. We similarly support exemptions requested by the Office of Public Defense. However, we express concern about the scope of exemptions proposed in Section (e) (1)(B). In an apparent effort to guard against the danger of misuse of Access to Administrative Records, the Proposed Rule errs in overly restricting the public's right to access that is so critical to maintaining public trust in the judiciary. Exemption of chamber records is overly broad and ill-defined. The Proposed Rule comments that "access to chambers records...would effectively make the judicial officer a de facto public records officer..." The issue needs further reflection and discussion. In a judicial culture where there are an increasing number of *pro se* clients without the economic means or the education to obtain effective legal representation, or where a defendant is inadequately represented by an under-resourced Public Defender's Office, it is apparent that there are many instances where decisions are contemplated and made outside of the presence of a defendant and in chambers that may exclude both defendant(s) and the public on matters of material concern to both. It is an apparent danger noted in the comments on the proposed rule that "...records that are otherwise subject to disclosure should not be allowed to be moved into chambers control as a means of avoiding disclosure" yet there is no safeguard in the Proposed Rule against precisely this happening. We are further concerned that Limitations on Inmate Requests (Section (3)(A)(7) does not serve the cause of justice. Language allowing such limitations is overly sweeping and in instances vague. Arguably, the determination that the disclosure of the requested records "would likely harm..vital government interest" may infringe on the system of checks and balances so critical to our freedom. What is the basis for an Administrative Officer of the court to determine that an administrative disclosure request "may assist criminal activity"? Considering "other requests by the requestor" (Section 7)(iv)) as a cause for enjoining a records request precludes a records request from being considered on it's own merits. The comments on the Proposed Rule give inadequate basis for evaluating on merit the suggestion that identification of writing assignment judges in the appellate courts ((e)(1)(B)(2), and evaluations and recommendations for candidates seeking appointment or employment within a court or judicial agency (e)(1)(B)(5) constitute legitimate and appropriate exemptions to Right of Access. In regard to Charging of Fees (g) we urge that fee waivers be addressed within the Proposed Rule, rather than being assigned to the "best-practices group for consideration" as suggested in the comments. In summary, it is our comment that the Proposed Rule does not give adequate weight to the value of openness, possibly infringes on First Amendment rights through unreasonable limitations on public access, and may tend to diminish trust in the integrity of judicial decision-making. Respectfully Submitted by Samuel Mahaffy, Executive Director of GRE Consulting Associates.