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Reply to: Tampa

January 4, 2022

VIA ELECTRONIC and U.S. MAIL

(lhoshihara@ngnlaw.com)

Lynn Miyamoto Hoshihara
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Dear Lynn:

Our law firm represents Courthouse News Service, a national news service that reports on civil litigation across the country and in Florida. We write you in your capacity as legal counsel for the Florida Courts E-Filing Authority (the “Authority”) concerning public access to Florida civil court records.

As you know, the Authority is the mandatory vehicle for e-filing court records, including new Circuit Court civil complaints, on behalf of the 67 Florida clerks of court. Because of the size of Florida’s judicial system, Courthouse News publishes eight geographically focused Florida *New Litigation Reports*¹ that cover these new circuit civil complaints. In addition to university and government subscribers, more than 160 law firms subscribe to at least one Florida *Report*. Obtaining filed complaints is the only way for Courthouse News and its reporters to provide the public with consistent and reliable information about new circuit civil cases.

Public access to complaints, however, is routinely placed behind all clerk administrative processing activities and further delayed when filed complaints remain untouched, sometimes languishing in county in boxes at the Florida Courts E-Filing Portal (the “Portal”). The Portal itself provides no mechanism for public access to filings.

¹ More than 115 *New Litigation Reports* are published throughout the country. Courthouse News also publishes a freely-available website at www.courthousenews.com, which offers news reports and commentary read by roughly 30,000 people each weekday. *Entertainment Law Digest* is a monthly Courthouse News publication. Multiple geographically focused *Daily Briefs*, which report on state and federal appellate court opinions and significant trial court decisions, are also part of the Courthouse News portfolio.

The First Amendment to the United States Constitution recognizes the right of access to civil complaints attaches upon receipt and requires pre-processing access to imaged complaints upon their filing. We summarize the key First Amendment authority here:

Only weeks ago, in *Courthouse News Service v. Gabel*, No. 2:21-cv-000132, 2021 WL 5416650 at *13 (D. Vt. Nov. 19, 2021), the district judge found a “qualified First Amendment right of access attaches when a complaint is electronically filed.” The court permanently enjoined the Vermont Superior Courts Administrator and multiple clerks of court from “prohibiting public access to newly filed civil complaints which have not been designated confidential by the filer until the Vermont Superior Court has completed a pre-access review process.” *Id.* at *18. Earlier last year, the judge in *Courthouse News Service v. Planet*, on remand from the Ninth Circuit Court of Appeals, entered an Amended Judgment for Declaratory Relief & Permanent Injunction, similarly declaring a qualified First Amendment right of access to new civil complaints attaches upon their receipt by the clerk. *Courthouse News Service v. Planet*, No. CV 11-8083-DMG (FFMx), 2021 WL 1605216 at *2 (C.D. Cal. Jan. 26, 2021). Clerk Planet was enjoined from “refusing... to make such complaints and exhibits accessible to the public and press in a timely manner from the moment they are received by the court.” *Id.* at *3, ¶ 2. Last June, the Fourth Circuit Court of Appeals, in *Courthouse News Service v. Schaefer*, 2 F.4th 318, 328 (4th Cir. 2021), recognized “the press and public enjoy a First Amendment right of access to newly filed civil complaints.” Complaints must be made available “contemporaneous” with their filing, or – quoting the trial court -- on “the same day on which the complaint is filed, insofar as is practicable.” *Id.* District courts in New York and Texas have enjoined delays in access to civil complaints. *See Courthouse News Service v. Tingling*, No. 16 Civ. 8742 (ER), 2016 WL 8739010 at *17 (S.D. NY Dec. 16, 2016) (“The newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression. Each passing day may constitute a separate and cognizable infringement of the First Amendment.”); *Courthouse News Service v. Jackson*, No. H-09-1844, 2009 WL 2163609, at *5 (S.D. Tex. July 20, 2009) (ordering that news reporters “be given access on the same day the petitions are filed” in most cases). Policies and practices that violate these principles run afoul of the First Amendment.

Like the county-to-county public access problems that led to reform of the state’s redaction rule (Rule of General Application & Judicial Administration 2.420), the county-to-county public access problems caused by processing deserve and are amenable to a statewide solution. To satisfy the First Amendment mandates, Courthouse News requests the Authority implement a statewide solution which, much like the federal PACER and similar state court systems, provides a fully-automated electronic inbox or “public review queue” where replicated images of non-confidential civil complaints flow on receipt and are publicly available. Such a solution was recently reached in Arizona, which like Florida uses Granicus as its e-filing vendor. Arizona has now implemented a public access portal where new complaints flow on receipt. Another option would be for each county to have its own fully-automated review queue where, again, non-confidential filings flow on receipt at the Portal and are publicly accessible. We ask that the Authority take all steps necessary to permit county level efforts by Clerks to implement a

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pre-processing public review queue that grants public access to replicated images of non-confidential civil filings upon their receipt at the Portal.

As it did in Arizona and other jurisdictions, Courthouse News stands willing to assist with implementing on-receipt technological public access options.

Thank you for your time and attention to these matters. I am available to discuss them further at your convenience. Kindly provide a response by January 25, 2022.

Very truly yours,

THOMAS & LoCICERO PL

s/ Carol Jean LoCicero

Carol Jean LoCicero