

Supreme Court of Florida

Request for Comments

Privacy and Court Records – Group Three Recommendations

In response to a request by the Florida Supreme Court, the Committee on Privacy and Court Records has submitted to the Court a report and recommendations. The report, entitled “*Privacy, Access and Court Records, Report and Recommendations of the Committee on Privacy and Court Records,*” contains twenty-four recommendations regarding court records policies. The recommendations are divided into three groups. Group One includes recommendations one through six, Group Two includes recommendations seven through ten, and Group Three includes recommendations eleven through twenty-four. The Court will consider the report and recommendations as an administrative matter, and seeks public comment on each group of recommendations in sequence.

The Court now invites all interested persons to comment on the recommendations contained in Group Three, which are reproduced below and are available along with the committee report on the Florida State Courts website at:

http://www.floridasupremecourt.org/pub_info/documents/privacy_2.pdf

Comments on the recommendations in Group Three must be submitted by May 1, 2006. Comments shall not exceed fifteen pages. Comments shall be provided electronically to e-file@fcourts.org. Paper copies are not required. All comments shall include the name, address, Bar number if a member of The Florida Bar, phone number and e-mail address of the person or entity submitting the comments.

All comments received are public records and will be posted to the Supreme Court website at:

http://www.floridasupremecourt.org/pub_info/index.shtml#Privacy

- a. Recommendations Two, Three, Six, Seven, Eight, Nine and Ten are implemented;
- b. screening and redaction processes are in place to ensure that confidential information is not released without authorization;
- c. access to court records remains in effect at the courthouse without costs other than those authorized by statute;
- d. court records within the jurisdiction remain fully accessible to judges and court staff for judicial purposes;
- e. adequate revenues are projected to ensure ongoing fiscal support for electronic records access; and,
- f. records arising under the rules of family, juvenile or probate law, other than Official Records, are not made available for remote electronic release.

Recommendation Thirteen: CONFIDENTIAL INFORMATION

Confidential Information Not to be Released

The Committee recommends that the Supreme Court direct revision of Rule 2.051 to clarify that those records of the judicial branch defined in Rule 2.051(c) are confidential and may not be released except as provided.

**Recommendation Fourteen: SCOPE OF RULE 2.051 AND
STATUTORY EXEMPTIONS**

Rule Absorption of Statutory Exemptions

Policies and actions regarding court records should be based on the understanding that subdivision 2.051(c)(8) generally absorbs Florida statutory exemptions and federal confidentiality.

Independent Authority of Statutory Exemptions

Policies and actions regarding court records should be based on the understanding that any statute in which the Legislature explicitly exempts the described information not merely from the reach of Chapter 119.07(1) but also from the right of access in Section 24(a) of the Florida Constitution applies to judicial branch records independent of Rule 2.051.

Rule-Making Distinct from Adjudication

Policies and actions regarding court records should be based on the understanding that in making policy the Supreme Court is acting in its administrative capacity and the Court reserves judgment on legal issues that may arise which challenge aspects of the policy.

**Recommendation Fifteen: GUIDANCE ON CONFIDENTIAL
INFORMATION**

Guidance on Definition of Confidential Information

The Committee recommends that the Supreme Court direct an initiative, under the oversight of the governance structure described in Recommendation Four, to provide specific guidance to clerks of court, attorneys, litigants, judges and court staff to assist in identifying and protecting confidential information in court files.

Recommendation Sixteen: UNSEALING OF RECORDS

Process for Unsealing Records

The Committee recommends that Rule 2.051 be amended to provide a clear and effective mechanism through which a preliminary determination that a record is exempt or confidential can be challenged and reviewed.

Recommendation Seventeen: RESPONSIBILITY OF FILER

The Committee has concluded that the task of protecting confidential information can be substantially aided by requiring filers to identify confidential information at the time of filing. Further, a mechanism to provide notice to non-parties that confidential information about them has been filed in a court case would allow the non-party to act to protect their privacy interests. These requirements should be imposed only after adequate guidance is available that gives filers fair notice regarding confidential information.

Duty of Filer to Identify Confidential Information

The Committee recommends that Rule 2.051 be amended to provide that:

- a. a filer shall indicate to the clerk of court at the time of filing whether information contained within the filing is confidential;
- b. if so, the filer shall submit a certification of confidentiality that describes the information and the grounds for the confidentiality;
- c. if the confidential information relates to a named non-party to provide notice to that individual, such notice to include a statement that the information is subject to unsealing, and certification of that notice;
- d. parties should avoid duplicate filings and indicate whether a courtesy documents is such, and;
- e. willful failure to comply may subject an attorney or party to sanctions by the court.

Recommendation Eighteen: AUTHORITY OF COURT

Authority of Court

The Committee recommends that policies and actions of the judicial branch be based on the recognition that: ultimate authority to protect confidential information in court records belongs to the court; that the Supreme Court, the chief justice and the chief judges of the district and circuit courts have authority to provide administrative oversight to the clerks and court staff of the respective courts to ensure that confidential information is protected; and that the courts should provide prompt judicial resolution when the confidential status of a record is challenged pursuant to Rule 2.051.

Recommendation Nineteen: RESPONSIBILITY OF CLERK OF COURT

Responsibility of Clerk of Court

The Committee recommends that policies and actions regarding court records be based on the understanding that: responsibility for protecting confidential information in court records is delegated to the clerks of court as the custodians of court records pursuant to Article V of the Florida constitution; a clerk of court has a duty to exercise due diligence in inspecting court records to determine whether a record is confidential in part or in whole and to protect the confidential information; and to facilitate judicial resolution when the confidential status of a record is challenged.

Recommendation Twenty: AUTOMATED SEARCH TECHNOLOGY

Automated Search Technology Not Prohibited

The Committee recommends that automated search technologies not be prohibited.

**Recommendation Twenty-One: REPLACEMENT OF COMMERCIAL
COURT RECORDS DATABASES**

Records Purges Encouraged

The Committee recommends that commercial users of court records be encouraged to enter into agreements to regularly replace records databases with data purged of erroneous, expunged and sealed records.

Recommendation Twenty-Two: USER ACCESS FEES

User Access Fees

The Committee recommends that costs of providing electronic access incurred by clerks of court, judges and judicial staff, local court administration and state court administration be funded through user fees. The user fee may be applied to all transactions, or waived for small volume transactions.

Recommendation Twenty-Three: USER IDENTIFICATION

No Identification Required

The Committee recommends that access control systems should not require that individuals and entities that access court records electronically identify themselves.

Recommendation Twenty-Four: RELEASE OF FAMILY, JUVENILE AND PROBATE RECORDS

Electronic Release of Family and Probate Records Prohibited

The Committee recommends, except as provided in Recommendation 5, that the Supreme Court prohibit the remote electronic release of court records that arise under the rules of family and probate procedure as well as any records under appellate review, except appellate briefs, orders and opinions. Official Records should be excepted from this restriction. Remote access should be permitted for a party, an attorney of record in a case, or an attorney expressly authorized by a party in a case to receive the record.