

# Supreme Court of Florida

## Request for Comments

### Privacy and Court Records – Group Two 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 will seek public comment on each group of recommendations in sequence.

The Court now invites all interested persons to comment on the recommendations contained in Group Two, which are reproduced in full below and are available along with the committee report on the Florida State Courts website at: [http://www.flcourts.org/gen\\_public/stratplan/privacy.shtml](http://www.flcourts.org/gen_public/stratplan/privacy.shtml).

Comments on the recommendations in Group Two must be submitted by March 1, 2006. Comments shall not exceed fifteen pages. Comments shall be provided electronically to [e-file@flcourts.org](mailto:e-file@flcourts.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](http://www.floridasupremecourt.org/pub_info/index.shtml), and at: [http://www.flcourts.org/gen\\_public/stratplan/privacy.shtml](http://www.flcourts.org/gen_public/stratplan/privacy.shtml).

**Privacy, Access and Court Records**  
**Report and Recommendations**  
**of the Committee on Privacy and Court Records**

GROUP TWO

MINIMIZATION

The Committee has concluded that Florida court files commonly contain information which is not required by law or rule and which is not needed by the court for purposes of adjudication or case management. Once entered into a court file this information becomes a matter of public record. Much of this information is personal or sensitive in nature. The Committee perceives that there is not a clear understanding on the part of attorneys and the general public of the negative effects on personal privacy of placing unnecessary information in a court record. The Committee makes a series of recommendations intended to minimize the inclusion of extraneous personal information in court records.

**Recommendation Seven:       REVISION OF RULES AND FORMS LEADING TO  
EXTRANEOUS PERSONAL INFORMATION**

The Committee has determined that a systematic review of court rules and approved forms would reveal that a number of rules and forms are written in ways that lead to routine filing of personal information which is not needed by the court for purposes of adjudication or case management.

**Review of Rules and Forms**

The Committee recommends that the Supreme Court direct a comprehensive judicial branch initiative to review and revise rules of court and approved court forms across all case types for the purpose of modifying rules and forms to avoid the filing of personal information which is not necessary for adjudication or case management.

**Recommendation Eight:           UNAUTHORIZED FILINGS**

The Committee has found that a court file is primarily a conduit and repository of information exchanged among parties and the court. As such, the court file is not an open forum available for the gratuitous publication of extraneous and potentially damaging personal information. The Committee has therefore considered recommending a policy that prohibits filings that are not authorized by court rule or statute.

**Unauthorized Filings Prohibited**

The Committee recommends that the Supreme Court consider study of a court rule to prohibit the filing of documents that are not authorized by court rule or statute, or seeking relief by the court. The rule should clearly define improper filings, set out a method through which clerks of court can effectively identify filings which are not proper, and authorized clerks to make improper filings unavailable for inspection pending judicial determination of whether the filing will be accepted. The rule should provide that filings that are not accepted be returned to the filer with an explanation of why the filing is being returned.

**Recommendation Nine:           RULE OF FAMILY LAW PROCEDURE 12.285**

The Committee has found that portions of Florida Rule of Family Law Procedure 12.285 are commonly overlooked or ignored. The rule provides for mandatory disclosure of financial information and requires service of affidavits and financial information on the other party and submission of certification of such service. It require submission of the information to the court only in some circumstances. The Committee has learned that parties, particularly parties proceeding *pro se*, commonly file the financial information with the court at the time of disclosure to the opposing party even when not required by the rule. The Committee has found that this rule should be clarified to achieve the goal of substantial reduction in the unnecessary filing of financial information in family law cases.

**Revision of Rule 12.285**

The Committee recommends that Family Law Rule 12.285 be amended as follows:

that parties should not be required to file financial affidavits if (a) they have no minor children and no support issues, and they have filed a written settlement agreement at the commencement of their case; or (b) the court lacks jurisdiction to determine any financial issues;

*and*

the rule should state at the beginning of the mandatory disclosure requirement, rather than the end, that the parties shall not file the documents that constitute their mandatory disclosure, but that they shall serve and file a certificate of compliance that specifically describes the documents that they have served on the other party.

## **Recommendation Ten: DUTY TO PROTECT DISCOVERY INFORMATION**

The Committee has considered the problem of the routine and sometimes gratuitous filing of information that has been disclosed pursuant to a discovery order. The Committee notes that compelled discovery is an exercise of state power subject to restraint by the right of privacy provided in Section 23 of Article I of the Florida Constitution, which has been held to protect citizens from intrusion any greater than necessary to achieve the state interest. The Committee urges that parties who gain possession of information pursuant to compelled discovery should protect the fruits of discovery, and should be constrained from publishing discovery material into a court file unless and until such time as the information may be properly filed for good cause.

### **Protection of Discovery Materials**

The Committee recommends that the Supreme Court direct the creation of a rule of procedure that would require attorneys and litigants to refrain from filing discovery information with the court until such time as it is filed for good cause. The court shall have authority to sanction an attorney or party for violation of this rule.