

# Supreme Court of Florida

500 South Duval Street  
Tallahassee, Florida 32399-1925

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CLERK

April 29, 2003

WILSON E. BARNES  
MARSHAL

The Honorable Jacqueline R. Griffin  
Fifth District Court of Appeal  
300 South Beach Street  
Daytona Beach, Florida 32014

Re: Study Committee on Public Records

Dear Judge Griffin:

As you know, the legislatively created Study Committee on Public Records has completed its work and produced a number of recommendations, including several that are specifically directed to the judicial branch. These recommendations appear to be generally consistent with the previous recommendations of the Judicial Management Council in its November, 2001 report, but are somewhat different, and also address matters that the Judicial Management Council had not addressed.

The Court is well aware and appreciative of the commitment that you have made to this very challenging area, as it is with the continuing contributions of Judge Judith Kreeger and our Clerk, Tom Hall. I find now that we must call on the services of you and your colleagues once again to continue work on this subject. The management of judicial records is an administrative matter internal to the judicial branch, and as such is subject to the direction of the chief justice as the chief administrative officer of the judicial system and to rules adopted by the

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Supreme Court. To assist me in responding to the recommendations of these two bodies, I would like to ask you and the other members of the Judicial Management Council workgroup to provide further input as to how to proceed at this juncture.

Both the Study Committee on Public Records (Study Committee) and the Judicial Management Council (JMC) call for the initiation of a study process within the judicial branch for the purpose of creating statewide policies controlling the electronic release of court records, and each also recommends an interim moratorium. Beyond this general agreement, there are differences between the two sets of recommendations. The Study Committee provides more specific goals of a general electronic access policy, and also, specifically, recommends that the Court reexamine Family Law Rule of Procedure 12.285 regarding financial disclosure in dissolution cases. The Study Committee also recommends that the Supreme Court provide for a review of information that the courts need to collect, but which is not currently confidential or exempt, and provide recommendations to the Legislature regarding information that perhaps should be made exempt. The JMC recommendation regarding policy development is more general, emphasizing the need to protect information that is confidential or exempt from inadvertent release, and also suggesting that policy be developed in light of additional considerations, including public trust in the judicial process, citizens' privacy interests and consistency. Clearly the recommendations of either body represent a very substantial undertaking. Your guidance regarding the scope of study and the charge to be given to a policy committee would be greatly appreciated.

Regarding the proposed moratorium, there are differences between the recommendations of the two bodies as to both its scope and its duration. It is important that any order directed to the clerks of court be very clear so that its implementation can be consistent in all counties, but also carefully constructed so that it is not so overbroad as to cause unnecessary disruption in the operations and services of the courts and the clerks' offices. The Study Committee suggests that the moratorium apply to "certain court records" in one place, but does not specify what those certain records are, and "court records which are not official records" in another place, which on its face embraces all court records that are not designated as official records. The JMC recommends that the restriction should

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apply to images of court records only. Indexes of images as well as docket and case information can be made available. Official records are also excluded by the JMC. Neither body seems to contemplate restricting electronic dissemination of innocuous information such as schedules and dockets. There is no guidance from either body regarding application to the appellate courts. Please clarify the scope of what is intended in this regard. Also, the terms "Internet access," "electronic release," "bulk transmission" and others are used in different places in the two reports. My understanding is that these and other terms refer to different manners of electronically transmitting information. Please attempt to define the meaning of the terms used and make a recommendation as to precisely what is contemplated for restriction in terms of the manner of release.

Concerning the duration of a moratorium, the Study Committee suggests the policy study process be conducted over two years and that the moratorium be in effect for that period, but the recommendation also states that records not be disseminated electronically "until authorized pursuant to court rules." The JMC recommendation offers no time constraint, recommending only that the moratorium be in place "in the absence of statewide policy guidance," or "until further notice." Neither group made specific suggestions for input from the judicial circuits or the clerks of the circuit courts regarding the scope and implementation of a moratorium, or for requests for exceptions. I would like you to consider these possibilities and suggest a timeframe for the implementation and the ending of the proposed moratorium.

Finally, the JMC recommended that it be directed to oversee the policy development process, and made general suggestions regarding the composition of a policy committee that would include broad participation by a number of effected stakeholders and constituencies. The Study Committee offered no recommendations in this regard. Please provide the current thinking of the workgroup as to the makeup of a policy body and how sufficient input from effected interests can be assured.

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I would like you to confer with the members of the original JMC workgroup, serving as an ad hoc workgroup on electronic access to court records, and provide your recommendations back to me by the end of August, if possible. The following are among the questions to be addressed:

1. What should be the specific charge to a policy committee? Should any matters within this overall subject be referred to any existing court committees or to any external bodies, or should consultation occur with other court committees, such as the Family Court Steering Committee with respect to changes to Rule 12.285, or technical standards to Florida Court Technology Commission?
2. What should be the composition of a policy committee?
3. What types of records or categories of information should be restricted under the proposed moratorium? What records should be beyond the reach of a moratorium? Which manners of electronic release should be restricted and which permitted?
4. Should the judicial circuits, the appellate courts or the clerks of court be afforded an opportunity to provide input prior to the implementation of a moratorium? How should that opportunity be provided? Should a mechanism be created to allow the judicial circuits or the clerks of court to request exemptions or relief from aspects of the moratorium after it is put into effect? If so what should that mechanism be? When or under what conditions will the moratorium be lifted?

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As you are well aware this is a complex issue, and one that will have significant long-term implications for the manner in which citizens will interact with the courts. The knowledge that you and other members of the workgroup have developed is very valuable, and your guidance will be greatly appreciated. Justice Lewis is current Chair of the JMC and I am asking him to serve as the Supreme Court liaison. Please keep him informed of your efforts. The Office of the State Courts Administrator will continue to provide staff support to you.

I thank you for your efforts and leadership in this area, and look forward to receiving the suggestions of the workgroup.

Sincerely,

Harry Lee Anstead

HLA/SH/vbv

cc: Honorable R. Fred Lewis  
Honorable Catherine Brunson  
Honorable Judith Kreeger  
Honorable Sheri Chappel  
Honorable Christina Pereyra-Shuminer  
Honorable Elijah Smiley  
Honorable Thomas D. Hall  
Mr. Walt Smith  
Mr. Mark Weinberg  
Mr. Fred Dudley  
Mr. Rob Lubitz  
Ms. Barbara Peterson  
Mr. Steve Henley