

THE FLORIDA BAR FAMILY LAW RULES COMMITTEE
COMMENTS ON SUPREME COURT COMMITTEE REPORT
ON PRIVACY AND COURT RECORDS
GROUP ONE, RECOMMENDATIONS ONE THROUGH SIX

The Family Law Rules Committee, Hon. John Alexander, Chair, and John F. Harkness, Jr., Executive Director, The Florida Bar, submit the following comments on Recommendations One through Six of the above-referenced report. The comments were developed at the committee's meeting on January 20, 2006 and in a conference call on January 26, 2006. The comments were reviewed and approved by the Executive Committee of The Board of Governors of The Florida Bar by a vote of 9-0.

Recommendation One:

Agree; no comment.

Recommendation Two:

The committee agrees that it is within the rule-making power of the Supreme Court, and not contrary to the Florida Constitution, to expand or limit public access to Court records by reducing or expanding the scope of confidentiality under *Fla. R. Jud. Admin. 2.051(c)(8)*.

In matters governed by the Family Law Rules, the Family Law Rules Committee feels that further limitation is in order, and respectfully suggests a blanket exemption from public access, as in adoption cases and matters governed by the Juvenile Rules, or in the alternative, exemption of certain filings (including, but not limited to, custody evaluations, psychological evaluations, social investigations, medical reports and records, guardian ad litem reports, financial affidavits, financial records and data, answers to interrogatories, responses to requests for production of documents, deposition transcripts, hearing and trial exhibits) from public access, as in probate and guardianship cases, due to their highly sensitive and deeply private subject matter and nature, the risk of identity theft and financial fraud, the potential for harm to parties and their children, and the potential for abuse by errant litigation participants or third parties.

Recommendation Three:

Agree; no comment.

Recommendation Four:

Agree; no comment.

Recommendation Five:

The Committee agrees that an interim policy is absolutely necessary. The Family Law Rules Committee offers the following additional comments regarding allowing electronic access, on an interim basis, to the following itemized court records, as itemized by the Supreme Court Committee:

a. Agree; no comment.

b. The Family Law Rules Committee is split on the appropriate treatment of Court Records which are Official Records. There are “Official Records” already in the public domain, which ought not to be in the public domain, and it is unclear how such records are to be treated. These are typically older records, such as orders and final judgments in family law matters which were entered years ago and ultimately recorded in the public record by the Clerk of Court; or were recorded by title companies or parties to assure clear title to a real property transfer incident to a dissolution of marriage.

Though mindful of footnote 2 to the published Recommendation Five (b), the Family Law Rules Committee is nonetheless concerned about the discrepancy between the ban on internet access to cases governed by the Family Law Rules under section 28.2221, Florida Statutes, and the reality that many Final Judgments and Final Orders in family law matters are already recorded and are viewable online in some areas of the State, notwithstanding the statute and ban. Treatment of both older Official Records, and more current judgments and orders in matters governed by the Family Law Rules, must be uniform throughout all counties and circuits in the State of Florida.

c. Agree; No comment.

d. The Family Law Rules Committee disagrees with interim access to traffic court records because it is unclear how “traffic court records” is to be defined. The concern arises from the possibility that this may include traffic citations, accident reports and other records which may typically include all or some of the following information: name, address, date of birth, driver license number, car tag number, telephone number, insurance company name and policy number, some of which is

precisely the type of information sought to be protected.

e. The Family Law Rules Committee agrees as to appellate orders and opinions. However, the committee disagrees as to appellate briefs, which in matters governed by the Family Law Rules frequently contain references to and/or direct quotations from psychological evaluations, custody evaluations, social investigations, medical and mental health evaluations and records, guardian ad litem reports, financial affidavits and financial records. This type of information is also frequently attached in full as part of an appendix to the brief when not already part of the record on appeal, which is precisely the type of information sought to be protected.

With regard to items f through j, the Family Law Rules Committee feels that the Clerks of Court are being asked to undertake an enormous task and tremendous additional responsibility, particularly manual inspection, which may well be unrealistic in our post-Article V, Revision 7, world, due to insufficient resources, insufficient personnel, and liability, among other reasons. Nonetheless, the Family Law Rules Committee's comments with respect thereto are reflected below.

f. Agree, because the Chief Judge of a Circuit already has the authority to direct the release of a record or records in a case of significant public interest.

g. The Family Law Rules Committee was divided on Recommendation Five (g). Some committee members feel that a party or their attorney should have access to all records in a case. However, some committee members feel that the potential for abuse by an errant or negatively driven party (such as copying and posting the psychological evaluation of the opposing party on every street light and corner in their neighborhood) was significant enough to warrant limiting a party's access to such records to reviewing same in their own attorney's office, or if *pro se*, in the office of an attorney or psychologist they designate.

h. Disagree; The Family Law Rules Committee feels that on an interim basis, this recommendation is too vague and overbroad, because there are insufficient safeguards against a request made in a matter governed by the Family Law Rules for disclosure of a document or pleading that should be protected from public access, such as psychological evaluations, custody evaluations, social investigations, medical and mental health evaluations and records, guardian ad litem reports, financial affidavits, and financial records, which may be specifically requested, and even if reviewed by the Clerk's office prior to disclosure, the risk

and consequences of inadvertent or unintentional disclosure of highly sensitive and deeply personal material and information outweighs the benefit of allowing such public access.

- i. Agree; no comment.
- j. Agree; no comment.

Recommendation Six:

Agree; no comment.

The Family Law Rules Committee respectfully suggests that as a long term solution in cases governed by the Family Law Rules, a statutory exemption from public access be sought with respect to all matters governed by the Family Law Rules. Juvenile case files are not available for public inspection, and may only be seen by the clerk, the court, counsel and parties of record, and applicable interested persons (*e.g.*, guardians ad litem, Department of Children and Family Services); the same is true of adoption files.

A narrower alternative would be to look to the Florida Probate Rules, and the probate and guardianship statutes, to achieve a similar sealing of sensitive court filings in matters governed by the Family Law Rules. In probate and guardianship files, specific records are sealed and not available for public inspection, except to the clerk, the court, counsel, parties, and interested persons. See, *e.g.*, section 733.604(1), Florida Statutes, which provides, in pertinent part, “Unless otherwise ordered by the Court for good cause shown, the inventory . . . is subject to inspection only by the clerk of the court, the clerk’s representative, the personal representative, the personal representatives attorney, and other interested persons.”

The Family Law Rules Committee, therefore ,respectfully suggests that as to Recommendation Five, on an interim basis, pending the construction and implementation of a long term policy and related court rules and statutes, the following court records should be available electronically:

- a. Progress dockets; names and addresses of parties and their counsel; lists or indices of any judgments, orders, pleadings, motions, notices or other documents in the court file; notations of court events, clerk actions, and case dispositions; name and date of death of deceased in probate cases,

- address of attorney of record or pro se party in probate case;
- b. Court schedules and calendars; judges' and local rules;
 - c. Appellate court orders and opinions;
 - d. The chief judge of a jurisdiction may, *sua sponte*, direct the electronic release of a record or records in a case of significant public interest;
 - e. Records may be transmitted to a party, an attorney of record in a case, or an attorney or other licensed professional designated by a party in a case to receive the record;
 - f. Records may be transmitted to a governmental agency or agent;
 - g. Records in civil cases in which an agency, as defined in subsection 119.011(2), Florida Statutes, is a party.

Respectfully submitted electronically on February 6, 2006.

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