

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO: FLORIDA CASE NO.
RULES OF CIVIL PROCEDURE;
FLORIDA RULES OF CRIMINAL
PROCEDURE; FLORIDA PROBATE
RULES; FLORIDA SMALL CLAIMS
RULES; FLORIDA RULES OF
APPELLATE PROCEDURE; FLORIDA
FAMILY RULES

PETITION OF THE COMMITTEE ON
ACCESS TO COURT RECORDS

The Committee on Access to Court Records by and through its undersigned Chair, the Honorable Judith L. Kreeger, Circuit Judge, Eleventh Judicial Circuit, files this petition under Rule of Judicial Administration 2.104(f) as requested by the Court by letter from Thomas D. Hall, Clerk, Supreme Court of Florida, to Judge Judith L. Kreeger, Chair of the Committee on Access to Court Records, dated April 30, 2007, (Appendix F) and under the general authority conveyed in to the Access Committee in Administrative Order AOSC06-27, *In Re: Committee on Access to Court Records*, dated August 21, 2006. (Appendix F)

The purpose of the proposed amendments is to implement several recommendations of the Committee on Privacy and Court Records that shared the general objective of minimizing the introduction of personal information into court records when the information is not necessary for purposes of adjudication or case management. *See* Report and Recommendations of the Committee on Privacy and Court Records, August, 2005. (Appendix G)

Procedural History

In August 2005, the Committee on Privacy and Court Records (the “Privacy Committee”) submitted its report and recommendations to the Florida Supreme Court (the “Court”), setting out its recommendations regarding electronic access to Florida court records. The Privacy Committee recommended that the Florida courts adopt a goal of providing electronic access to court records, but not until a number of conditions were met. Among the twenty-four recommendations, four were grouped under the heading of “minimization.” The intent of the minimization recommendations is to systematically decrease the introduction of personal information into court records that is unnecessary for purposes of adjudication or case management.

The Court responded globally to the report of the Privacy Committee in Administrative Order AOSC06-20, *In Re: Implementation of the Report and Recommendations of the Committee on Privacy and Court Records*, entered June 30, 2006. (Appendix F) In AOSC06-20 the Court indicated that it would direct the various rules committees of The Florida Bar as well as the Steering Committee on Families and Children in the Court to study whether changes to the rules were needed to implement Recommendations Seven and Ten of the Report and Recommendations of the Privacy Committee. In July and August 2006, referral letters were sent to the rules committees. (All referral letters and related correspondence referenced in this petition are included in Appendix F.)

The Court sent letters on July 27, 2006 to the chairs of eight Florida Bar rules committees, not including the Family Law Rules of Procedure Committee, directing the committees to conduct a comprehensive review of court rules and approved forms for the purpose of modifying the rules and forms to discourage the unnecessary filing of personal information in accordance with Recommendation Seven of the Privacy Committee report. The Court requested the rules committees

to propose amendments where necessary, and to file out-of-cycle reports by April 1, 2007.

The Court sent a second letter on the same day to the same eight rules committees, directing their attention to Recommendation Ten, asking them to study the filing of information which is acquired through the discovery process. The letter noted that in responding to the report of the Privacy Committee, the Court had indicated a desire that the rules committees “study whether rules exist or rules should be adopted that would require attorneys to refrain from filing discovery information with the court until such time as it is filed for good cause.” The letter requested the rules committees to work together to study this issue and make out-of-cycle recommendations by April 1, 2007.

The Court sent a third letter on July 27, 2006 addressed to the chair of the Family Law Rules Committee. This letter directed the Family Law Rules Committee to propose amendments, consistent with Recommendation Nine of the Privacy Committee, to Family Law Rule of Procedure 12.285, which requires disclosure of financial information in dissolution cases. In addition, the letter also directed the chair to study Recommendation Seven and requested the committee conduct the same minimization review it had requested of the other eight rules committees. The Family Law Rules Committee was asked to provide an out-of-cycle report by April 1, 2007.

Finally, Administrative Order AOSC06-30, *In Re: Steering Committee on Families and Children in the Court*, dated August 30, 2006, directed the Steering Committee on Families and Children in the Court (the Steering Committee) to make recommendations, consistent with Recommendation Six of the Privacy Committee Report, about sealing certain professional evaluations, and to review Supreme Court approved family law forms consistent with Recommendation Seven of the Privacy Committee. On September 7, 2006, the Court also informed

the chair of the Steering Committee about the letter it sent to the Family Law Rules Committee concerning Recommendation Seven, and directed that the committees work together on the review of rules and forms. The Steering Committee was directed to file its report by April 1, 2007.

By April 1, 2007, most of the requested reports were filed with the Supreme Court, and requests for extension of time were filed by the Criminal Procedure Rules Committee and the Steering Committee. These committees were granted extensions until August 1, 2007.

On April 30, 2007, the Court requested the Access Committee to review the reports that had been submitted or were pending. The Court requested that the Access Committee provide a comprehensive report advising the Court about what action it should take on those recommendations. The Access Committee was asked to complete its review and to compile all of its proposals into one submission by December 1, 2007.

To address this task, the Access Committee Chair created a Minimization Workgroup (the “Workgroup”), co-chaired by Mr. Murray Silverstein, Esq. and the Honorable Melanie G. May, and consisting of the following members: Ms. Kristin Adamson, Esq., the Honorable Lisa Davidson, the Honorable David Ellspermann, the Honorable Kim A. Skievaski, Mr. Walt Smith, and Mr. Larry Turner. In June, 2007, the Workgroup requested the various submitting committees to designate liaisons to the workgroup. The following persons acted in that capacity: Mr. David Silverstein (Juvenile Court Rules Committee), Mr. William Vose (Criminal Procedure Rules Committee), Mr. Scott Danner (Small Claims Rules Committee), the Honorable Lisa Davidson (Rules of Judicial Administration Committee), the Honorable Nikki Clark (Steering Committee on Families and Children in the Court), Mr. Ronald Bornstein (Family Law Rules Committee), Mr. Edward Mullins (Appellate Court Rules Committee), Mr. Robert Mansbach (Civil

Procedure Rules Committee), Mr. Peter Sartes (Traffic Court Rules Committee), and the Honorable Mel Grossman (Probate Rules Committee).

The Workgroup first met with representatives of the rules committees in Orlando on June 28, 2007 to begin reviewing the reports that had been submitted to date. The reports of the following committees were reviewed on that date: Civil Procedure Rules Committee, Probate Rules Committee, Juvenile Court Rules Committee, Small Claims Rules Committee, Traffic Court Rules Committee, Rules of Judicial Administration Committee, and the Appellate Court Rules Committee. The report of the Family Law Rules Committee was deferred until the next meeting, to be held in August after receipt of the pending reports from the Criminal Procedure Rules Committee and the Steering Committee. The Workgroup met a second time on August 24, 2007 in Tampa to review the remaining reports.

In addition to the anticipated reports, the Workgroup received a report communicated to the Honorable Dee Dee Costello, chair of the Code and Rules of Evidence Committee, generated by that committee's Technology Subcommittee. That report raised issues concerning the Evidence Code and the interplay of the Evidence Code with the various rules of procedure that could, potentially, create circumstances where personal and potentially sensitive information might be included. Upon consideration of these issues it became apparent that the various rules committees had not been asked to review the Evidence Code as it applied to their areas of practice to determine whether any provisions of the code would require disclosure of confidential or privileged information. Subsequently the Access Committee asked those committees, by letter sent September 7, 2007, to review the Evidence Code as it related to their substantive areas of expertise and to consider whether any additional recommendations would be appropriate. Those responses were requested by November 1, 2007.

On November 2, 2007, the Workgroup met by conference call to review the responses to the September 7th letter and to discuss its recommendations to the Access Committee. The Workgroup concurred with most of the recommended amendments proposed by the various committees. It did not support some amendments, and recommended alternative language to other amendments to conform with other proposals or to clarify intention. In addition, the Workgroup agreed that in light of the substantive expertise of the various committees regarding the implications of the changes under consideration, as well as the expertise offered by the staff of The Florida Bar in drafting an omnibus petition for rule changes, the Access Committee should refrain from filing a rules petition. Rather, the submissions of the rules committees could move forward with comments by the Access Committee.

On November 9th, the workgroup received a copy of an analysis of the court-approved family law forms conducted for the Steering Committee. These forms are not the companion forms to the Family Law Rules, and need not go through the rules process to be modified.

The full Access Committee met in Tampa on November 30, 2007, and reviewed and approved the recommendations of the Workgroup. The subsequent interim report to the Court included the recommendation that, except as provided in its report, the Court consider for adoption the recommended revisions of the rules committees and Steering Committee, following public comment. The committee decided that in order to facilitate the orderly consideration of the proposed changes, it would respectfully suggest that the separate rules revisions should be compiled into a single omnibus petition to be filed by The Florida Bar.

The Access Committee also expressed the view that as progress is made in the coming years regarding electronic filing and access to court records, and practical experience is gained, the rules committees should periodically revisit the

issues of privacy, security and transparency as they relate to the rules within their purview. The rules committees should examine the rules within their regular rules cycle and consider whether additional revisions should be made to minimize personal information included in public court records.

In June, 2008, the Supreme Court Liaison Justice to the Access Committee communicated to the Chair that, while the Court understood the desire of the committee to defer to The Florida Bar in preparing and presenting an omnibus petition, the Court nonetheless desired that the committee itself submit final petition. This petition is filed in response to that direction.

As described below, the Access Committee concurs with most of the amendments proposed by the various committees, does not support some proposed amendments, and recommends alternative language to conform these with other proposals or to clarify intention.

Proposed Amendments

The final proposals of the Access Committee are presented in legislative format and in two-column format in Appendices B and C, respectively. To clarify the recommendations of the Access Committee as contrasted with the original proposed amendments of the rules committees, the original language of the rules committee proposals is presented in plain font in the right-hand column of Appendix C; the comments of the Access Committee are presented in italicized font. In addition, for reference the original proposed amendments of the rules committees are compiled and presented in both legislative format and in two-column format in Appendices D and E, respectively.

Rules of Civil Procedure

Rule 1.191

The Civil Procedure Rules Committee reported that its subcommittee assigned to address Recommendation Ten considered a rule that “would require redaction on all documents filed with the court,” presumably including documents gained through discovery, but that the subcommittee was divided about whether to endorse such an idea. As described by the Civil Procedure Rules Committee in its report:

Generally, those against a redaction rule thought it too onerous a burden to place on lawyers in terms of both time and money, especially when many documents are submitted with large filings, such as depositions in support of summary judgment motions. They also favored instead a rule that would prohibit filing any documents without good cause, with a sanctions provision; argument in favor of such a rule cited ethics rules prohibiting disclosure of any more client information than is necessary to assist the client. On the other hand, arguments in favor of a redaction rule include a general preference for rules with affirmative duties rather than prohibitions with threats of sanctions. There are also concerns that enforcement of a prohibition might be subject to inconsistent enforcement and hesitancy by judges to sanction attorneys. Furthermore, a general prohibition on filing that provides for sanctions has the potential to vastly increase legal sparring, via motion practice for sanctions on whether documents filed in support of motions were necessary, with needless, costly, and time-wasting litigation occurring over procedural matters before the merits are dealt with. Those in favor of a redaction rule also believe that today’s lawyer already needs to be redacting client information, whether

required to by rule or not. It certainly is not in the client's best interests to have personal identifying information filed in the public record, whether or not it is accessible electronically. As for redaction of opposing parties' private information, most federal courts have local rules requiring redaction, many parties are already entering into confidentiality agreements that require redaction, and the personal experience of many lawyers shows that it is easily manageable.

Report of Civil Procedure Rules Committee (Appendix G).

The Civil Procedure Rules Committee ultimately decided to propose new Rule 1.191, which would require that unless otherwise ordered by the court, filings containing certain sensitive information "may include only" truncated forms of that information. (i.e.: last four digits, initials)

The Access Committee agrees with this analysis and proposal, and recommends its adoption with two changes. First, the term "redaction," used in the title and subdivision heading, has specific meaning, and would not apply where the creator of a document refrains from including the information in question in the original. The Access Committee therefore suggests broader terminology. Second, the proposal of the Civil Procedure Rules Committee provides that the proscribed information "may" not be included. The Access Committee recommends the term "shall" to make clear that the restriction is not permissive.

Rule 1.280(f)

On the issue of filing information acquired through discovery, the Civil Procedure Rules Committee recommended a new subdivision (f) to rule 1.280, limiting the filing of discovery information except with good cause, subject to sanctions. The subcommittee that developed the new subdivision recommended

that the misuse of litigant personal information be addressed at the filing stage. The subcommittee concurred that in certain segments of Florida legal practice, there exists a culture of discovery misuse that features the filing of discovery materials unnecessary to the resolution of matters pending before the court, for the purpose of embarrassment, intimidation, or mere perceived tactical advantage. Based on these considerations, the committee proposed a new rule 1.280(f).

The Access Committee concurs with this new rule.

Rule 1.310(f)

To harmonize rule 1.310(f), regarding filing copies of depositions, with the proposed changes to rule 1.280, a reference is added to filing a deposition in compliance with new proposed rule 1.280(f).

The Access Committee concurs.

Rule 1.340(e)

To harmonize rule 1.340(e) regarding service and filing of interrogatories to parties with the proposed changes to rule 1.280, a reference is added to filing a deposition in compliance with new proposed rule 1.280(f).

The Access Committee concurs.

Rule 1.350(d)

To harmonize rule 1.350(d) regarding filing of documents with the proposed changes to rule 1.280, a reference is added to filing a deposition in compliance with new proposed rule 1.280(f).

The Access Committee concurs.

Rule 1.988

A change is made to require only the last four digits of the judgment debtor's social security number, if known, rather than the entire number.

The Access Committee concurs.

Rule 1.990

A change is made to require only the last four digits of the judgment debtor's social security number, if known, rather than the entire number.

The Access Committee concurs.

Rule 1.991

A change is made to require only the last four digits of the judgment debtor's social security number, if known, rather than the entire number.

The Access Committee concurs.

Rule 1.993

A change is made to require only the last four digits of the judgment debtor's social security number, if known, rather than the entire number.

Also, a typographical error in the original opinion adopting the note (see *Amendments to the Florida Rules of Civil Procedure*, 773 So. 2d 1098 (Fla. 2000)) is corrected by changing "Florida statutes" to "Florida Statutes," to conform to the Supreme Court style guidelines and the other judgment forms.

The Access Committee concurs.

Rule 1.994

A change is made to require only the last four digits of the judgment debtor's social security number, if known, rather than the entire number. Also, a

typographical error in the original opinion adopting the note (see *Amendments to the Florida Rules of Civil Procedure*, 773 So. 2d 1098 (Fla. 2000)) is corrected by changing “Florida statutes” to “Florida Statutes,” to conform to the Supreme Court style guidelines and the other judgment forms.

The Access Committee concurs

Rule 1.995

A change is made to require only the last four digits of the judgment debtor’s social security number, if known, rather than the entire number.

The Access Committee concurs.

Rule 1.996

A change is made to require only the last four digits of the judgment debtor’s social security number, if known, rather than the entire number. Paragraph 4 of the form is amended to correct a typographical error that was not in the original adopting opinion (see *In re Rules of Civil Procedure*, 253 So. 2d 404 (Fla. 1971)). The correction changes “with interest and cost accruing....” to “with interest and costs accruing....”

The Access Committee concurs.

Forms.

The Civil Procedure Rules Committee also proposed amending judgment forms to require only the last four digits of the judgment debtor’s social security number. This change affects forms 1.988, 1.990, 1.991, 1.993, 1.994, 1.995, and 1.996. This allows compliance with section 55.10, Florida Statutes, but the judgment debtor’s entire social security number is not in the public record. The Civil Procedure Rules Committee reports that, in regard to sanctions for including

information on forms, some “committee members who voted against these proposed changes were uncomfortable endorsing procedural rules that might expose litigants to sanctions or penalties when there is clear statutory authorization to include the defendant’s full social security number in the final judgment.”

The Access Committee concurs with the proposed revisions.

Rules of Judicial Administration

The Rules of Judicial Administration Committee reported that it reviewed the rules within its purview with regard to Recommendations Seven and Ten. The committee concluded that with respect to Recommendation Seven, no rules require the filing of personal information, and thus no amendments are necessary. With respect to Recommendation Ten, the committee reported that while it does not disagree with the concept of limiting the filing of information gained through discovery without good cause, it does not favor a general rule, but rather would recommend that each committee draft a rule for its respective practice area.

The Access Committee defers to the substantive knowledge of the Rules of Judicial Administration Committee in reaching this conclusion with respect to Recommendation Seven, and has no response to the opinion expressed with respect to the issue of discovery information.

Criminal Procedure Rules

Rule 3.125

The Criminal Procedure Rules Committee reported that a subcommittee considered whether rule 3.125 was brought into question by the directive to minimize unnecessary personal information. Rule 3.125, Notice to Appear, includes a notice form which calls for highly specific identifying personal information about an accused. Upon consideration, the subcommittee concluded

that the required personal data, including date of birth, driver's license number, and social security number, are necessary to clearly identify the defendant as the person given the notice to appear, particularly in situations such as an in-court appearance or when a notice is served by law enforcement. The committee therefore concluded that no change should be made to rule 3.125 and the notice to appear contained in the rule.

The Access Committee lacks the subject matter expertise to stand in the place of the Criminal Procedure Rules Committee regarding the necessity of this information.

Rule 3.140

The Criminal Procedure Rules Committee recommends a change to rule 3.140(c)(4), to delete the social security number from charging documents. The committee viewed this rule as different from rule 3.125 because the social security number in an information or indictment is surplusage and is rarely used in practice despite the rule requiring it. In addition, it considered the social security number unnecessary because on arrest for, or conviction of, the crime charged in the information or indictment, fingerprints are taken, and they clearly identify the individual. The committee added that it understands the Court's preference for consistency between rules and would have no objection to leaving the social security number intact in both rules or to using only the last four digits in both rules.

The Access Committee concurs.

Rules 3.200, 3.201, 3.202, and 3.216

The Criminal Procedure Rules Committee reported that a series of amendments were proposed to rules which require notice of intent to call

witnesses, such notices including names and addresses of witnesses. A subcommittee unanimously recommended amending each of those rules to require filing of the notice only, with simultaneous service of the witness list. With this change, personal identifying information regarding witnesses would not be filed. The rules that would have been affected are rules 3.200, 3.201(b), 3.202(c), and 3.216(c) and (e).

The full Criminal Procedure Rules Committee rejected these recommendations because it concluded that there are no privacy interests to be protected by such amendment. The committee felt the notices and pleadings filed under these rules were not of such a sensitive nature that addresses and other pertinent information could not be included in the court file. The sole committee member who supported the changes argued that many clerks scan pleadings into databases from which anyone with Internet access may retrieve court files and view the information, and therefore removal of addresses from these pleadings may help to cut down on identity theft cases.

The Access Committee defers to the substantive knowledge of the Criminal Procedure Rules Committee in reaching this conclusion, and points out only that the directive of Recommendation Seven is to minimize unnecessary personal information in court records, not only such information in which there may be a privacy interest.

Rules 3.211, 3.212, 3.216, 3.218, and 3.219

The Criminal Procedure Rules Committee proposed a series of rule changes that relate to mental health evaluations and reports. The amended rules would require that because these are confidential documents, they be filed and maintained under seal. Affected rules would be rules 3.211(d), 3.212(d), 3.216(g), 3.218(a), and 3.219(a).

The Access Committee does not disagree with the intention of these proposed amendments. However, it does not support the amendments as proposed for two reasons. First, the directives of Recommendations Seven and Ten are components of an overall goal of minimizing personal information in court records. The proposed amendments do not go to the issue of minimizing unnecessary information, but to the confidentiality of necessary information after it is filed. The recommendations may be beyond the scope of the charge in that regard. Second, the Access Committee has proposed a major restructuring of Florida Rule of Judicial Administration 2.420, the general rule governing confidentiality and access to court records. The Access Committee is of the view that it would be advisable within court rules, to the extent possible, to direct that issues related to determinations of confidentiality be determined according to the general rule. For these reasons the Access Committee proposes alternative language to these proposals, providing a cross-reference to rule 2.420.

Probate Rules

Rules 5.200, 5.210, and 5.260

The Florida Probate Rules Committee reported that it concluded that three of the Florida Probate Rules either require or permit a decedent's social security number to be set forth in petitions or caveats that are filed with the court. The petitions are recorded by the clerk in the official records of the county in which they are filed. The Florida Probate Rules Committee apparently concluded that the last four digits of the social security number are sufficient to identify a decedent, and therefore recommended that rules 5.200(b), 5.210(b), and 5.260(b) be amended to require that the decedent's social security number be truncated to include only the last four digits.

The Access Committee concurs.

The Florida Probate Rules Committee considered the issue of whether a rule change is necessary to meet the purpose of Recommendation Ten of the Privacy Committee. The committee concluded that no rule change is necessary inasmuch as the Probate Rules incorporate the Florida Rules of Civil Procedure as to adversarial matters.

The Access Committee concurs.

Rules of Traffic Court

The Traffic Court Rules Committee recommended that no changes be made to Traffic Court Rules. The committee reported by letter to the Court that the traffic rules “reveal only limited personal information necessary for administrative and adjudication purposes.” The committee observed, however, that forms in use in various clerks’ offices throughout the state may in some instances provide public access to more intimate personal information. The committee stated that it was its intention to review clerk forms and to report its recommendations.

The Access Committee lacks the subject matter expertise to stand in the place of the Traffic Court Rules Committee to recommend whether any particular rules require filing information that may not be necessary for purposes of adjudication or case management.

Small Claims Rules

The Small Claims Rules Committee prefaced its recommendations with comments expressing its concern that placement of court records in the internet “has dramatically altered the potential for the abuse and misuse of information provided to the courts by the public.” The committee concluded with expressions of general concern regarding education and cautionary warnings to self-represented litigants regarding exposure of personal information in court records.

Rule 7.140

The Small Claims Rules Committee proposed an amendment to rule 7.140. This rule, entitled “Trial,” includes subdivision (e) regarding the assistance the court may and may not provide to parties who are not represented by an attorney. The rule directs that assistance be provided on courtroom decorum and the order of presentation of material evidence. The Committee suggests adding a provision that the court assist unrepresented parties regarding “handling private information.” A Committee Note would expand on this, providing that its purpose is to instruct that “a judge can assist an unrepresented party in the handling of private information that might otherwise inadvertently become public by placement in the court file.” The committee reports that a member expressed that this change would not be effective because judges are too busy to watch the file to ensure that unnecessary, private information is not filed. In addition, while self represented litigants file documents with the judge at trial, they also file them with the clerk through the mail and at the clerk’s office, and judges cannot screen those documents.

The Access Committee concurs.

Rule 7.300

The Small Claims Rules Committee proposed amendment to the general rule on small claims forms and revision of the forms. The committee recommended adding language to this rule that would alert litigants to not include personal information on documents except when necessary. The committee reported that although only the Final Judgment form (form 7.340) and the Fact Information Sheet (form 7.343) ask for specific personal information such as social security numbers, small claims litigants frequently include such information on other documents. In addition, companies often include credit card numbers and driver license numbers in collection and garnishment documents.

The committee indicated that it was aware that section 55.01, Florida Statutes, requires in part: “(2) Each final judgment shall contain thereon the address and the social security number, if known to the prevailing party, of each person against whom judgment is rendered.” The committee does not believe that this requirement can be deleted from the forms, but suggests only the last four digits of the defendant’s social security number be included.

The committee recommended adding the following sentence to rule 7.300: “Unless specifically required by a particular form, by the court, or by law, a party shall not include personal information such as a social security number, driver’s license number, or bank account number on any form filed with the clerk of the court.” The committee acknowledged that a party has a right to obtain personal information regarding an individual or business when appropriate; however, the committee feels that action must be taken to attempt to limit the unnecessary inclusion of personal information on pleadings or documents filed with the clerks’ offices.

The Access Committee concurs.

Form 7.340

The Small Claims Rules Committee proposed an amendment to Form 7.340, the final judgment form, which requires the defendant’s social security number if known. The committee recommends modifying the form to specify that only the last four digits of the defendant’s social security number should be provided. The committee expressed concern that including the defendant’s entire social security number in the final judgment, which is recorded as an official record, may increase the potential for misuse. The committee indicated that it is aware that section 55.10, Florida Statutes, requires that the defendant’s social security number, if known, be listed on the final judgment. However, the statute also specifies that the

failure to include the defendant's social security number does not affect the validity or finality of the final judgment. The committee also recommends that a notice be added to the optional enforcement paragraph that the Fact Information Sheet (form 7.343) should not be filed with the court.

The Access Committee concurs with these recommendations.

Form 7.343

The Small Claims Rules Committee reported that in its view, divulging personal information in Fact Information Sheets does not present a problem if the forms are not filed in the clerk's office. Present form 7.343, however, instructs the defendant to file the completed fact information sheet with the court. The committee recommends an addition to the form eliminating this instruction and altering it to indicate that the defendant is not to file it with the court. The procedure for what to do with form 7.343 is spelled out in detail to assist the self-represented litigant.

The committee reports that it discussed adding instructive language, similar to *Fla. R. Civ. P. Form 1.977*, to alert the defendant of the need to file a certificate of compliance reflecting delivery of the fact information sheet, which would have been a new proposed form 7.351. The Committee ultimately decided not to add a certificate of compliance to simplify and streamline the procedure.

The Access Committee concurs with these recommendations.

Rules of Juvenile Procedure

The Juvenile Court Rules Committee did not propose any amendments. The committee reported that extensive personal information filed in delinquency and dependency cases is mandated by several Florida statutes. Further, the committee concluded that any personal information is necessary for case management. The

committee also observed that juvenile records are confidential pursuant to Florida statutes and not subject to public disclosure.

The Access Committee lacks the subject matter expertise to stand in the place of the Juvenile Court Rules Committee on the question of whether the rules require the filing of information that may not be necessary for purposes of adjudication or case management. The Access Committee observes, however, that regardless of whether information is held in a confidential status, the very collection of personal information which is not needed by the court to perform its function implicates the right of privacy created by the state constitution. Furthermore, under Florida law, certain confidential records, including delinquency and dependency records, can be lawfully accessed by certain persons and state agencies. The Access Committee has been advised that as a matter of practice in many counties juvenile court records are routinely made available for such inspection by law enforcement officers even without clear statutory authorization.

Rules of Appellate Procedure

Rule 9.050

The Appellate Court Rules Committee (the ACRC) reported that its Record on Appeal Subcommittee, which was assigned the task of developing a proposal, conducted a rigorous process of outreach and deliberation regarding the issues referred to it by the Court. This included outreach to the other rules committees and discussions regarding the types of privacy data that potentially may be contained in records on appeal and in designated transcripts. The subcommittee explored the range of issues related to electronic access to court records as they relate to the interplay and exchange of records between trial and appellate courts.

Ultimately, the subcommittee limited its consideration to maintaining privacy of personal data contained in briefs, petitions, replies, motions, and responses.

Rule 9.050

The subcommittee proposed, and the committee approved, recommendation of a new appellate rule, Rule 9.050, Maintaining Privacy of Personal Data. The committee report includes an overview of the development of the proposed rule:

Proposed Rule 9.050 can trace its genesis back to a rule previously proposed to the ACRC by the Family Law Subcommittee of the ACRC in 2004-2005. That rule, in turn, was based on the then-equivalent Eleventh Circuit Rule, 11th Cir. R. 31-6 (2004) (which was later renumbered as 11th Cir. R. 25-5 (2006)), and the underlying federal statute, the E-Government Act of 2002, 44 U.S.C. §3601-06. . . . The new appellate rule was proposed at the ACRC's January 17, 2007, meeting. Preliminarily to the ACRC's discussion, Subcommittee Chair Biasotti noted that the Subcommittee included the term "including but not limited to" in the definition of "Personal Identifying Numbers" in case the drafter of an appellate document thinks other information should be redacted for privacy reasons. The Subcommittee had decided not to attempt to define the extent of a redaction (for example, how many digits of a social security number or a driver's license number should be redacted). Biasotti also reported that, with regard to the introduction and the inclusion of the language "unless otherwise required by another rule or permitted by leave of court," the Subcommittee wanted to account for the possibility that other Florida rules committees may adopt additional,

and possibly more specific, rules regarding privacy concerns, and to avoid any conflicts with those rules.

Report of Appellate Court Rules Committee (Appendix G).

The committee reported that there was extensive discussion as to whether appendices should be included in the coverage of the rule. The view of the majority of the committee was to follow the recommendation of the subcommittee not to include appendices. The committee also considered whether attachments should be included. The majority of the committee felt that attachments should be included as this material was in the control of the appellate practitioner who could be expected to redact the personal identifying data just as the practitioner could be expected to do with respect to a brief or motion. The committee approved an amendment to the proposed rule to clarify that appendices are not included in the rule, but attachments are.

The Appellate Court Rules Committee description of the proposed rule set forth in its report is provided here:

The proposed rule mandates that, unless otherwise required by another rule of court, or permitted by leave of court, certain personal data must be excluded from, or redacted in, all briefs, petitions, motions, notices, responses, and any attachments to these documents, before filing them in the appellate court. Thus, the application of the proposed rule is limited specifically to the documents described in the rule. Subdivision (b) explains that the rule's reach does not extend to require redaction of personal identifying data from the record, or appendices.

The rule describes “personal identifying data” to include the names of minor children and data used to identify a person for governmental or business purposes. Implicit in the rule is the understanding that the data that must be redacted is the type of information that is unnecessary for adjudication or case management purposes.

The rule provides a nonexclusive list of what is considered personal identifying data. If a practitioner must refer to personal identifying data, the rule mandates that, to the extent possible, the practitioner redact the information in a manner that protects the privacy of the referred-to person.

The Access Committee concurs with this new rule.

Family Court Rules

Rule 12.100

The Family Law Rules Committee reports that it considered development of a recommendation regarding rule 12.100, Pleadings and Motions, which adopts by reference Florida Rule of Civil Procedure 1.100, and so requires that an application for a motion “state with particularity the grounds therefor.” The committee was concerned that some motions, particularly those referring to children, might contain sensitive details in a document that would become a public record. The committee expressed countervailing concerns regarding notice to the other party and the need for detailed information. The committee concluded that the issue was too complex to be resolved in the time available and it has been placed on the agenda for the next meeting for further discussion.

The Access Committee recognizes the difficulty raised by the requirements of rule 1.100 in this and other contexts, and would urge that additional efforts be directed to this matter.

Rule 12.105

The Family Law Rules Committee proposed several amendments to rule 12.105, Simplified Dissolution Procedure. One amendment would add to subdivision (a)(1) a requirement that to qualify for a simplified dissolution of marriage the wife not have any minor or dependent children born during the marriage. The committee provided the following analysis:

If a child was born to the wife during the marriage, the husband is the legal father, even if he is not the biological father. A husband and wife in that situation cannot use the simplified dissolution of marriage procedure. However, the current wording in the rule suggests that the parties can use the simplified dissolution procedure if they do not have minor or dependent children “together.” The presumption of parenthood and the child’s right to legitimacy create a legal relationship that results in the husband and wife having a child “together.” In a sense this is a privacy issue. The parties should not be able to keep the existence of a nonmarital minor child private.

Report of the Family Law Rules Committee (Appendix G).

While the Access Committee does not dispute this analysis or question the purpose of this amendment, it does not appear to be germane to the issue of minimization of personal information.

A second amendment to rule 12.105 would delete subdivision (c), removing the requirement that the parties file a financial affidavit and marital settlement agreement. The Family Law Rules Committee analysis of this amendment states that:

[i]n practice, some judges do not require parties to file these documents. Many times, the agreement is not in writing because it is fully executed or because the parties trust each other to comply. The court does not need these documents to decide the case. Not having this information in the court file could make it more difficult for a former spouse to prosecute a postjudgment proceeding to enforce or set aside the agreement, but adults who qualify for the simplified dissolution procedure should have the right to agree to keep their personal information private.

Report of the Family Law Rules Committee (Appendix G).

Conforming changes are proposed to Form 12.901(a), Petition for Simplified Dissolution of Marriage, and its instructions.

The Access Committee concurs with this amendment and conforming revisions to the forms.

Family Law Rules Committee proposed an amendment inserting the 1995 Commentary to rule 12.105 because it was missing from *West's Florida Rules of Court – State* (2006), the most recent published version of the rule at the time the committee was conducting its review. This commentary has since been restored.

Rule 12.130

The Family Law Rules Committee proposes elimination of a cross reference in rule 12.130, Documents Supporting Action or Defense, with Florida Rule of Civil Procedure 1.130, and replacing it with a new rule. Subdivisions (a) and (b) would track the language of Rule 1.130(a) and (b). A new subdivision (c) would add to the rule a requirement that any documents filed in the court file comply with the requirements of rule 12.280(a), discussed below.

The Access Committee concurs with this recommendation.

Rule 12.280

The Family Law Rules Committee proposes amendment to Rule 12.280, General Provisions Governing Discovery, providing a new subdivision (a) which requires that for any account or personal identification numbers in documents filed with the court, only the last three digits of the number be provided, preceded by an “*”. The committee expressed the view that this would provide protection for cases in which numbers are on documents that are filed in violation of the rules, and for documents such as financial affidavits and child support guidelines that are required to be filed. Cross references to this requirement are proposed for other rules and forms to direct attention to this requirement.

This proposal is similar to the proposed amendment to Rule of Civil Procedure 1.191 offered by the Civil Procedure Rules Committee, which would require that social security numbers and account numbers be truncated to the last four digits.

With respect to Recommendation Ten and the intent to direct attorneys and litigants to refrain from unnecessarily filing documents and providing sanctions for violations, the Family Law Rules Committee proposes to insert a cross reference to *proposed* Florida Rule of Civil Procedure 1.280. The Family Law Rules

Committee is of the view that the general civil rule amendment would be sufficient for purposes of Recommendation Ten, and no additional amendments to the Family Law Rule would be required.

The Access Committee generally concurs with this solution, but points out that should the civil rule not be adopted, the family rule would then be a nullity. The Access Committee also recommends that the amended rules be consistent as to truncated social security and account numbers, using the last four digits of each number.

Rule 12.285

Rule 12.285, is the subject of a specific recommendation of the Privacy Committee, Recommendation Nine, referred by the Court to the Family Law Rules Committee with direction to amend the rule to reduce the unnecessary filing of financial disclosure affidavits with the court. The Family Law Rules Committee proposes amendment of the rule by creating a new subdivision (a)(3), and moving the sentence from subdivision (i) into it. That sentence provides that, except for financial affidavits and child support guidelines worksheets, documents produced under this rule shall not be filed with the court. The purpose of moving this sentence to the beginning of the rule would be to give it greater prominence and to emphasize the requirement. In addition, the amendment to subdivision (a)(3)(B) makes a cross-reference to the requirement to redact account numbers and personal identification numbers which will be required by rule 12.280(a) if adopted as proposed. Subdivision (a)(3)(C) states that sanctions are governed by Florida Rule of Civil Procedure 1.280(f), which if adopted would restrict unnecessary filing of discovery information, in this instance including disclosure forms.

In addition, a new subdivision (c) is proposed to provide an exemption from the requirement to file and serve a financial affidavit if (1) the parties have no

minor children, have no support issues, and have filed a written settlement agreement disposing of all financial issues or (2) the court lacks jurisdiction to determine any financial issue. An exception is also proposed to correspond to proposed amendments to rule 12.105 eliminating the requirement to file a financial affidavit in a simplified dissolution of marriage.

The Access Committee concurs with these recommendations.

Rule 12.287

Family Law Rules Committee proposes amendment to rule 12.287, Financial Affidavits in Enforcement and Contempt Proceedings, to delete the requirement that the financial affidavit be filed with the court and add a requirement that a notice of compliance with the service requirement be filed instead. The Committee felt that the financial affidavit may be entered into evidence if necessary at the hearing and that only at that point is it necessary to include in court records for the administration of justice.

The Access Committee concurs with these recommendations.

Rule 12.340

The Family Law Rules Committee proposes amendment to rule 12.340, Interrogatories to Parties. A new subdivision (c) would be added, requiring that responses to interrogatories be served on the requesting party, but not filed with the court unless admitted into evidence, and that a Notice of Service of Answers to Standard Family Law Interrogatories, Form 12.930(d), be filed. In addition, this subdivision requires that answers comply with rule 12.280(a). Related changes have been made in the interrogatory forms and instructions, Forms 12.930(b) and (c).

The Access Committee concurs with these recommendations.

Rule 12.363

The Family Law Rules Committee proposes amendment to rule 12.363, Evaluations of Minor Child. The committee observes that information contained in such a report by an expert who has evaluated a minor child is particularly sensitive. Unlike financial information, it is not amenable to redaction. The proposed amendments in subdivisions (b) and (e) are intended to prevent filing the report unless it is being admitted into evidence. A second amendment to the rule would direct the court to consider sealing the report under Florida Rule of Judicial Administration 2.420 to prevent unnecessary embarrassment to the parties and especially the children.

The Access Committee concurs with these recommendations.

Rule 12.370

The Family Law Rules Committee proposes amendment to rule 12.370, Requests for Admissions. Two new subdivisions would be added to this rule. Subdivision (a) would require that the request and response meet the redaction requirements of rule 12.280(a). Subdivision (b) would provide that documents attached to a request be served on the other party, but not filed with the court.

The Access Committee concurs with these recommendations.

Rule 12.410

The Family Law Rules Committee proposes amendment to rule 12.410, Subpoena. Three new subdivisions would be added to this rule requiring that subpoenas, notices of issuance of subpoena, and notices to produce comply with the redaction requirements of rule 12.280(a).

The Access Committee concurs with these recommendations.

Rule 12.440

The Family Law Rules Committee proposes amendment to rule 12.440, Setting Action for Trial. Subdivision (a) would be amended to add a new sentence requiring that any court filings conform to rule 12.280(a), which requires redaction of any account or personal identification numbers.

The Access Committee concurs with this recommendation.

Rule 12.540

The Family Law Rules Committee proposes amendment to rule 12.540, Relief from Judgment, Decrees, or Orders, to add a new requirement that any motion for relief from judgment and any attachment or exhibit to it comply with the redaction requirements of rule 12.280(a).

The Access Committee concurs with this amendment.

Rule 12.560

The Family Law Rules Committee proposes amendment to rule 12.560, Discovery in Aid of Execution. Subdivision (e) would be amended to state that Florida Rule of Civil Procedure Form 1.977 shall not be filed except by order of court after notice and a hearing and that if filing is permitted, the form must meet the requirements of rule 12.280(a).

The Access Committee concurs with this recommendation.

In addition, the Family Law Rules Committee proposed amendment to Committee Note is underlined because it does not appear in *West's Florida Rules of Court – State* (2006) and should be included. See *In re Amendments to Florida Family Law Rules of Procedure*, 783 So. 2d 937, 940 (Fla. 2000).

This commentary has since been restored.

Rule 12.620

The Family Law Rules Committee proposes amending Rule 12.620, Receivers. The amendment would add the requirement that any inventory filed with the court comply with the redaction requirements of rule 12.280(a).

The Access Committee concurs with this recommendation.

Forms

The Family Law Rules Committee recommends amendments to the family law forms, set out below, to conform with the proposed amendments to the rules.

The Access Committee concurs with these recommendations.

Form 12.901(a), Petition for Simplified Dissolution of Marriage: The instructions and the form have been amended to conform to proposed amendments to Rule 12.105. Specifically, the requirement regarding dependent or minor children has been reworded, the requirement to file a financial affidavit, notice of social security number, and marital settlement agreement has been deleted, and language regarding waiver has been added.

“Deputy” is underlined in the signature blocks for the notary public or deputy clerk. It is missing from *West’s Florida Rules of Court – State* (2006) and should be included. *See In re Approval of Application for Determination of Indigent Status Forms For Use by Clerks; Amendment to Florida Rule of Criminal Procedure 3.984*, 910 So. 2d 194, 212 (Fla. 2005).

Form 12.902(b), Family Law Financial Affidavit (Short Form): The instructions have been amended to incorporate proposed *Rule 12.285(c)* and proposed amendments to Rule 12.105, limiting the circumstances under which a

financial affidavit must be filed. This conforms to the Privacy Committee's Recommendations Seven and Nine.

The paragraph in the instructions regarding address confidentiality has also been amended to conform it to section 119.071(2)(j)1, Florida Statutes. The same amendments have been made in Forms 12.902(c) and (e) and an amended Form 12.980(h) has also been proposed. Section 119.071(2)(j)1 was enacted to protect the confidentiality of victims of domestic violence, sexual battery, aggravated child abuse, aggravated stalking, and aggravated battery. Section 741.30(3)(b) allows a domestic violence victim to file a request to keep his or her address confidential when filing a petition for an injunction for protection. Section 784.046(4)(b) also permits a sexual violence victim to keep his or her address confidential when filing a petition for an injunction for protection. The instructions currently in the form do not provide protection to all persons entitled to it by section 119.071(2)(j)1. The instructions have been amended to include all of those provided protection by section 119.071(2)(j)1. *See* further discussion under Form 12.980(h).

The form has been amended in item II.F. to add "List only last 4 digits of account numbers," in accordance with Rule 12.280(a). Similar amendments have been made in Sections III.A. and III.B.

Form 12.902(c), Family Law Financial Affidavit: The instructions have been amended to incorporate new Rule 12.285(c) and proposed amendments to Rule 12.105, limiting the circumstances under which a financial affidavit must be filed. This conforms to the Privacy Committee's Recommendations Seven and Nine.

As in Form 12.902(c), the instructions have been amended to conform the address confidentiality paragraph to section 119.071(2)(j)1, Florida Statutes.

The form has been amended in item 1. to change “Date of birth” to “My age is” because a birth date is a frequently misused piece of personal information. In the instructions above item 91, “List only last 4 digits of account numbers” has been added to conform to amendment of Rule 12.280(a). Similar changes have been made in the instructions before sections III.A. and III.B. This conforms to the Privacy Committee’s Recommendation Seven.

The words “deputy clerk” have been added in the second full paragraph of the instructions. They are missing in *West’s Florida Rules of Court – State* (2006), but should be in the form. The form number for Petitioner’s Confidential Filing of Address has also been corrected. Blank lines in Section I., items 18.a. and 18.b., Section II, items 20–24, and 34 have been added (indicated by double underlines). These are missing in *West’s Florida Rules of Court – State* (2006) but should be in the form. See *In re Amendments to the Florida Family Law Rules of Procedure (Out of Cycle)*, 940 So. 2d 409, 415 (Fla. 2006).

Form 12.902(e), Child Support Guidelines Worksheet: As with Forms 12.902(b) and (c), in the instruction sheet, the paragraph about confidential filing of address has been amended to conform to section 119.071(2)(j)1, Florida Statutes. Symbols in the instructions and form have been deleted.

Form 12.930(b), Interrogatories for Original or Enforcement Proceedings:

The instructions have been amended to remind parties that the answers to interrogatories should not be filed with the court unless admitted into evidence and

in compliance with Rule 12.280(a). This conforms to proposed Rule 12.340(c). This addresses the Privacy Committee's Recommendation Seven.

The instructions have also been amended to require that an original and one-copy of the interrogatories rather than two copies be served on the party. See *Fla. R. Civ. P.* 1.340(e).

At the beginning of the form, a paragraph has been added stating that interrogatory responses should not be filed with the court. The answers should be served on the other party and Form 12.902(d), Notice of Service of Answers to Standard Family Law Interrogatories, should be filed with the court. This conforms to proposed Rule 12.340(c). This addresses Recommendation Seven.

In items 4.c., 4.e., 5.a, 5.b., and 5.c. a statement has been added to advise parties that documents produced instead of responses to interrogatories should not be filed in the court file. This is in conformance with the Privacy Committee's Recommendation Seven.

Symbols have been deleted in the instructions and form.

Form 12.930(c), Interrogatories for Modification Proceedings: The instructions have been amended in two places to remind parties that the answers to the interrogatories should not be filed with the clerk unless admitted into evidence and in compliance with Rule 12.280(a). This conforms to the Privacy Committee's Recommendation Seven.

The instructions have also been amended to require that an original and one copy of the interrogatories rather than two copies be served on the party. See *Fla. R. Civ. P.* 1.340(e).

At the beginning of the form, a paragraph has been added stating that interrogatory responses should not be filed with the court. The answers should be served on the other party and Form 12.902(d), Notice of Service of Answers to Standard Family Law Interrogatories, should be filed with the court. This conforms to proposed Rule 12.340(c). This addresses Recommendation Seven.

Items 4.c., 4.e., 5.a., 5.b., and 5.c. have been amended to state that documents produced instead of answers to questions should not be filed with the court. This conforms to the Privacy Committee's Recommendation Seven.

Symbols in the instructions and form have been deleted.

Form 12.930(d), Notice of Service of Standard Family Law Interrogatories: A new form has been created to conform to proposed Rule 12.340(c) and amendments to the instructions to Forms 12.930(b) and (c). It is to be used to notify the court that answers to interrogatories have been served, without filing the answers to the interrogatories. This addresses Recommendation Seven.

Form 12.932, Certificate of Compliance with Mandatory Disclosure: The second paragraph of the instructions has been amended to conform to proposed Rule 12.285 regarding filing financial affidavits.

In items 1.a. and 2.a. of the form, “Filing of a Financial Affidavit cannot be waived” has been deleted. Rules 12.105, 12.285, and 12.287 create exceptions to the mandatory filing of financial affidavits.

Amendments have been made to correct errors in *West’s Florida Rules of Court – State* (2006) and in the last opinion amending the form. *See In re Amendments to the Florida Family Law Rules of Procedure (Two-Year Cycle) and the Florida Supreme Court Approved Family Law Forms*, 913 So. 2d 545 (Fla. 2005). In item 2.o., the initial “I” is missing in the sentence. In the certificate of service, the blank line following “date” is missing. These should be part of the form. *See Amendments to the Florida Family Law Rules of Procedure*, 853 So. 2d 303, 370 (Fla. 2003).

Form 12.980(h), Petitioner’s Request for Confidential Filing of Address:

Amendments have been proposed to this form in conformance with amendments to the instructions to Forms 12.902(b), (c), and (e). The change in language makes the use of the address confidentiality provision less restrictive and conforms it to section 119.071(2)(j)1, Florida Statutes. The amendments also remove the restriction on use of this form to the petitioner.

The current Form 12.980(h) and instructions limit its use to a petitioner who is seeking an injunction for protection against domestic violence or sexual violence. This appears to be incorrect because aggravated stalking and harassment are repeated offenses that may support entry of a repeat violence injunction. A person who is seeking a repeat violence injunction based on aggravated stalking or harassment should be entitled to keep his or her address out of the public records as provided in section 119.071(2)(j)1, Florida Statutes.

The current form also limits its use to the “petitioner.” In domestic violence cases, an abuser may seek an injunction against the victim. The victim who is a respondent should be able to keep his or her address confidential. In addition, a person who is entitled to protection under section 119.071(2)(j)1, Florida Statutes, may be involved in other litigation, such as a dissolution of marriage, in which that person may not be the petitioner. Address confidentiality should also be available in that circumstance. A person who is the victim of sexual violence perpetrated by a third party may also need to keep his or her address confidential in a proceeding not involving the third party.

The instructions to the form have been amended to delete “Petitioner’s” in the title, expanding the persons who may use the form. The instructions have also been amended to delete the current language regarding who may use the form and substitute language from section 119.071(2)(j)1, Florida Statutes. Corresponding changes have been made to the form.

The majority of the family law forms currently require that the party filing the form provide an address. To conform to section 119.071(2)(j)1, Florida Statutes, all forms and instructions should clearly state that victims identified in section 119.071(2)(j)1, Florida Statutes, have the right to confidential filing of address, telephone number, and facsimile number with the court in any litigation, whether the person is the petitioner or respondent, and regardless of the type of litigation. It is suggested that an order granting confidential filing of an address should require the party to accept service of court documents at the sheriff’s office

or the courthouse or to provide an address where he or she can receive service. The Committee recognizes that implementation of these changes may require amendment of other forms, most of which are not within the purview of this Committee, and asks for direction from the Court on how to proceed further.

The Committee on Access to Court Records requests that the Court amend the Rules of Court as outlined in this report.

Respectfully submitted this 19th day of December, 2008.

/S/

THE HONORABLE JUDITH L. KREEGER
Circuit Judge, Eleventh Judicial Circuit
Chair, Committee on Access to Court Records
175 N.W. First Avenue, Room 2114
Miami, Florida 33128
Florida Bar Number # 98600

CERTIFICATIONS

CERTIFICATE OF FONT COMPLIANCE

I certify this petition has been prepared in MS Word using 14-point Times New Roman font.

READ-AGAINST CERTIFICATION

I certify these proposed rules were read against West's *Florida Rules of Court – State* (2008).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by United States mail to the following persons on December 19, 2008 :

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