

IN THE SUPREME COURT OF FLORIDA

**IN RE: IMPLEMENTATION OF COMMITTEE
ON PRIVACY AND COURT RECORDS
RECOMMENDATIONS -- AMENDMENTS TO:
THE FLORIDA RULES OF CIVIL PROCEDURE;
THE FLORIDA RULES OF CRIMINAL PROCEDURE;
THE FLORIDA PROBATE RULES; THE FLORIDA
SMALL CLAIMS RULES; THE FLORIDA RULES
OF APPELLATE PROCEDURE; AND
THE FLORIDA FAMILY LAW RULES CASE NO.: SC08-2443**

**FAMILY LAW RULES COMMITTEE’S RESPONSE TO MEDIA
ORGANIZATIONS’ COMMENT TO CHANGES TO
FLA. FAM. L. R. P. 12.363**

Robyn L. Vines, Chair, Family Law Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, file this Response of the Family Law Rules Committee to the Media Organizations’ Comments to recommendations of the Committee on Access to Court Records to amend *Fla. Fam. L. R. P. 12.363*.

On December 22, 2008, the Committee on Access to Court Records (“Access Committee”) filed with this Court recommendations for amendments to various rules of procedure. This report was in response to filings by the various rules committees in response to a July 27, 2006, request from the Court to the committees asking them to respond to recommendations of the Committee on Privacy and Court Records (“Privacy Committee”). In general, the Privacy Committee’s charge was to “minimize the introduction of personal information into court records when the information is not necessary for purposes of adjudication or case management.” The Access Committee’s proposed amendments were published for comment in the March 15, 2009, *Florida Bar News*, with a

comment deadline of April 15, 2009. The Orlando Sentinel Communications Company and the Sun-Sentinel Publishing Company (Media Organizations) filed a Comment on April 16, 2009 in which they addressed the proposed changes to *Rule* 12.363. The Family Law Rules Committee reviewed the Media Organizations' comments and this response was approved by the Committee by a vote of 29-0-1.

The Family Law Rules Committee opposes the request from the Media Organizations to change the proposed amendment to *Rule* 12.363(e). The Media Organizations suggest that it is improper for the court to consider whether the evaluation of a minor child should be sealed unless it first receives a motion from a proponent seeking closure. This suggestion ignores the realities of domestic relations litigation, in which the majority of parents represent themselves and in which children are rarely represented by someone with authority to file a motion seeking closure.

The court has an inherent responsibility to protect the interests of children whose parents are involved in litigation. *Simms v. State, Dept. of Health & Rehabilitative Services*, 641 So. 2d 957, 961 (Fla. 3d DCA 1994). The court also has inherent responsibility to control access to its records. *Times Publishing Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So.2d 255 (Fla. 1995). The amendment to *Rule* 12.363 proposed by the Access Committee allows the court to fulfill both of these responsibilities while preserving the safeguards incorporated in *Fla. R. Jud. Admin.* 2.040.

The amendment to *Rule* 12.363 is also consistent with existing case law which requires the court to consider whether to appoint an attorney ad litem to assert a child's confidentiality in communications with a psychotherapist. *Attorney Ad Litem for D.K. v. Parents of D.K.*, 780 So. 2d

301, 307 (Fla. 4th DCA 2001). *See also S.C. v. Guardian Ad Litem*, 845 So. 2d 953 (Fla. 4th DCA 2003) (child, age 14, was entitled to notice and opportunity to be heard before granting child's guardian ad litem access to child's psychological reports). The judge is not required to wait on a motion before taking steps to resolve a minor's confidentiality issues. Similarly, the judge in a domestic relations case should not have to wait on a motion before taking steps to resolve a minor's interest in sealing documents governed by *Rule* 12.363. However, because *Rule* 2.040(d) requires a written motion, we can expect the court to appoint an attorney ad litem to assert the child's interest in sealing these documents. The public's right to know is protected by following the steps in *Rule* 2.040. *In re Amendments to Florida Rule of Judicial Admin. 2.420-Sealing*, 954 So. 2d 16 (Fla. 2007).

For these reasons, the Family Law Rules Committee urges the court to adopt *Rule* 12.363(e) as proposed by the Access Committee.

Respectfully submitted _____.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to the following persons on _____.

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