

# Electronic Access to Court Records

## *A Virtual Tightrope in the Making*

by Daniel Morman and Sharon R. Bock

The ability to retrieve scanned records<sup>1</sup> such as pleadings and documents contained in court files by logging on to the Internet seems like an idea whose time has come. Attorneys can enjoy the convenience of having almost instant access to these records without having to make a trip to the courthouse. Clients can monitor the progress of their cases. Members of the public and news media can also have convenient access to records of interest. Many federal courts provide Internet access to images of court records for a fee via PACER.<sup>2</sup> Several courts in Florida also have displayed images of court records on the Internet. However, privacy-related concerns, for the most part, have led to a temporary moratorium on this practice.

This article will examine the role of the clerk as a record keeper vis-à-vis the display of court records electronically on the Internet along with the resulting impact of electronic access to court records. It will follow with a discussion of the competing issues of public access rights versus individual rights to privacy, and conclude with an overview of actions taken by the Florida Supreme Court and the Florida Legislature on these matters. Issues relating to the electronic filing of documents with the clerk, electronic display of court dockets, and the distinction between electronic or digital records as opposed to paper records are generally outside the scope of discussion.

### **Definitions—Public Records and Court Records**

At the outset, it is necessary to become familiar with two definitions relating to records. The term "public records" is defined in F.S. §§28.001(2) and 119.011(1) as

meaning "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." "Court records" are defined under Fla. R. Jud. Admin. 2.051(b)(1)(A) and 2.075(a)(1) as being "the contents of the court file, including the progress docket and other similar records generated to document activity in a case" and include transcripts, exhibits, electronic records, videotapes and stenographic deposition tapes, inter alia. The interplay between these two types of records, and whether court records are required to be accessible on the Internet as public records, has created a great deal of confusion along with much attention by Florida's Supreme Court and legislature. Toward that end, it is noted that while the term "public records" is defined by a statute created by the legislature, the term "court records" is defined by rules promulgated by the Supreme Court.<sup>3</sup> To date, this contributes to the debate at hand regarding public access versus individual privacy—a conflict that has not yet been resolved.

### **The Clerk's Role and Impact of Electronic Access to Court Records**

Prior to 1838, there was no legal authority for existence of a clerk of the courts in Florida. This changed with enactment of the Florida Constitution. The original Florida Constitution of 1838, in Article V, provided for the creation of Florida's court system. Section 13 provided that the clerk of the Supreme Court and clerks of the chancery courts were to be elected by the legisla-

## The competing interests of the public's right to access versus individual privacy rights presents a problem for the judiciary and clerks.

ture, while clerks of the circuit court were to be elected by "qualified electors." Once established by the constitution, the clerk of the circuit court became the public trustee for the county. The clerk of the circuit court has many duties including service as *ex officio* clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds. See Fla. Const. Art. VIII, §1(d). Art. V, §16 of the constitution provides that clerks shall be elected.<sup>4</sup>

F.S. Ch 28 is entitled "Clerks of the Circuit Courts" and governs various matters pertaining to the clerk's office. As a trustee of public records (and of particular interest, for purposes of this article, court records), the clerk is duty-bound to safeguard these records. F.S. §28.13 provides that the clerk "shall keep all papers filed in the clerk's office with the utmost care and security . . . and shall not permit any attorney or other person to take papers once filed out of the office of the clerk without leave of the court, except as is hereinafter provided by law." The Supreme Court adopted Fla. R. Jud. Admin. 2.072 in 1996. The rule provides that clerks may not permit the removal of court records from the clerk's office except upon order from the chief judge or justice and a showing of good cause. The commentary to this rule indicates it was adopted in response to problems encountered with the removal of files from clerks' offices. Therefore, it is likely that the statute and the rule were not intended to restrict public access to court records on the Internet since the original court files would remain with the clerk.

Florida Statutes and the Florida Administrative Code, for the most part, do not restrict the clerk's ability to retain electronic records. In

fact, F.S. §23.30(3) expressly authorizes the retention of any electronic record that the clerk may select. Fla. Admin. Code §1B-26.003 as amended in May 2003 provides detailed requirements for electronic record keeping by agencies. Subsection 6(a) requires the development and implementation of a program for management of electronic records kept by agencies. Subsection 6(g) requires that such electronic record keeping systems meet state requirements for public access to records. However, under subsection (8)(a)2, the record keeper is required to "provide an appropriate level of security to ensure the integrity of these records, in accordance with the requirements of Chapter 282, F.S. [relating to communications and data processing]."<sup>5</sup>

While the current body of law does not mandate the clerk to create and maintain a Web site that provides public access to the court records it keeps, as will be discussed in greater detail later in the article, several clerk's offices in Florida have displayed court records electronically on the Internet. *HeraldTribune.com*, an online publication for southwest Florida, aptly summarized the impact of this in a recent article. It notes that online court records have "been used by lawyers, bail bondsmen, bank employees, title search companies, the real estate community, journalists and apartment managers to work more efficiently and dodge a trip to the courthouse." More specifically, "With a few mouse clicks, users could search the clerk's database of criminal, civil and traffic records by name or file number, then look at a listing of documents, then look at electronic images of individual documents." Notwithstanding the position taken by advocates of public access, others have argued that by placing sensitive

court records online, the net result could backfire and lead state legislators to restrict public online access entirely. Currently, clerks are permitted to e-mail individual court records upon request on a case-by-case basis if such records have been manually inspected to ensure that confidential or sensitive information is not being transmitted.<sup>6</sup> However, this solution may not be feasible as it could pose a strain upon the human and financial resources of the clerk.<sup>7</sup>

The competing interests of the public's right to access versus individual privacy rights present a problem for the judiciary and clerks. On the one hand, clerks, as elected public officials, have a vested interest in providing their constituents with the broadest possible access to the court records they maintain. On the other hand, clerks are presented with a statutory, and for that matter, a moral duty, to use their best efforts to minimize any possible injury to individuals during the process of carrying out their duties. To the extent the clerk is acting as an arm of the court, the case law indicates that the judiciary (and not the legislature or the clerk's office itself) has final say on the issue. For better or worse, as will be shown later, the Supreme Court has provided direction on this matter. This leaves several unanswered questions: What rights does the public have to access? What individual privacy rights are affected? What action has the Supreme Court taken on this matter? The ensuing discussion will attempt to answer these questions.

### The Public's Right to Access

Fla. Const. Art. I, §24 grants persons broad rights to inspect or copy public records. The Public Records Act, F.S. §119.01 *et seq.*, delineates these rights. Under F.S. §119.07(1)(a) every person in possession of a public record "shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the

custodian's designee." Such language appears to limit the ability of the clerk to place images of court records on the Internet as it appears to require some sort of supervision or oversight on the part of the clerk with respect to the person examining court records. However, F.S. §119.01(2) provides:

The Legislature finds that, given advancements in technology, providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, then such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.

F.S. §119.01(3) continues by providing that "[a]s each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained." F.S. §119.011(2) defines the term "agency" under the Public Records Act as meaning

any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Fla. Admin. Code §1B-26.003 is cited in the Florida Association of Court Clerks official Web site at [www.flclerks.com](http://www.flclerks.com) as a rule that affects electronic record keeping requirements. The rule explicitly provides that it applies to "agencies." It would appear that the clerk views itself as an "agency" under F.S. §119.011(2) and Rule 1B-26.003. From a plain reading of the statutes and administrative code, it appears that the Public Records Act requires, or at least suggests, that clerks strive to provide public access to court records on the Internet since the clerk's office seems to be an "agency" covered under the act. Additional examination of the law, however, indicates that such a conclusion may be unwarranted.

In *Times Publishing Company v. Ake*, 645 So. 2d 1003, 1004-05 (Fla. 2d DCA 1994), the Second District, citing *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992) (a case that held the legislature was not an "agency" subject to the Public Records Act), ruled that the judiciary similarly is not an "agency" subject to the supervision or control by a coequal branch of the government. To the extent that the clerk is acting as an arm of the court as its record keeper, it is immune from the supervisory authority of the legislature. Accordingly, the provisions of Fla. R. Jud. Admin. 2.051—not Florida Statutes (and in particular, the Public Records Act)—govern access to judicial records.<sup>8</sup> Notwithstanding the fact that the judiciary may be deemed to be outside the reach of the legislature with respect to issues relating to access to court records, it nevertheless is bound by relevant provisions of the constitution, and in particular, Art. I, §24. Section 24(a) provides that the right of access to public records specifically includes records made or received in connection with the official business of the judiciary, unless otherwise specifically exempted.

The constitutional provision creating the right of access provides for essentially two sources of exemptions: those enacted by statute, and court rules in effect in 1992. Fla. Const. Art I, §24(c) and (d). Fla. R. Jud. Admin. 2.051 was adopted to conform to the addition of Art I, §24 to the Florida Constitution. Rule 2.051 governs public access to records of the judicial branch, and was adopted pursuant to the provisions of Fla. Const. Art. V, §2, which provides, inter alia, in subsection (a) that the Supreme Court shall adopt rules for the practice and procedure in all courts. The rule lists nine categories of records of the judicial branch in subsection (c) that are confidential and exempt from public access. Of particular interest are subsections (7), (8), and (9) exempting records made confidential under the Florida and U.S. constitutions and federal law, records deemed confidential under court rule, and certain situations requiring confiden-

tiality due to unique aspects of a particular case. In *State v. Buenoano*, 707 So. 2d 714, 718 (Fla. 1998), the Florida Supreme Court interpreted Rule 2.051(c)(8) to apply all statutory exemptions to records of the judicial branch. In other words, if records are exempt from public access under Ch. 119, they are also exempt under Rule 2.051.

At the forefront of the fight for access to public records is the news media. In an editorial, the *South Florida Sun-Sentinel* opined that "the sooner [court records] are put online, the better." The newspaper concluded its editorial by stating that "[c]ourt records and their users need the advantage of 'online sunshine.'" See *South Florida Sun-Sentinel*, February 21, 2003, at p. 24A. Similarly, the *Palm Beach Post* published an editorial suggesting that Florida should "protect open records," and that the "government tries to shut out the public." *Palm Beach Post*, March 16, 2003, at p. 2E. Litigation under the Public Records Act to compel the release of information is frequently initiated by members of the news media. See, e.g., *The Tribune Company v. Cannella et al.*, 458 So. 2d 1075 (Fla. 1984), where a newspaper company sought to compel the release of personnel files of certain police officers.

The previous discussion shows authority for those arguing in support of the public's right to access court records on the Internet. There is an equally compelling set of interests that opposes unfettered public access to court records on the Internet based upon the protection of privacy rights.

### Right to Privacy Considerations

On the flipside of issues relating to the right to access public records are constitutional and statutory protections of individual rights to privacy. Court records the clerk is required to maintain often contain personal or sensitive information about the parties to a lawsuit or personal family matters. F.S. §28.13 requires the clerk to safeguard court

files. Fla. Const. Art. I, §23 grants a right of privacy to individuals. However, it contains a caveat which provides that the right of privacy is not to be construed to limit the public's right of access to public records. This was expressly so stated by the court in *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So. 2d 373, 374 (Fla. 1984).

In *Winfield v. Division of Pari-Mutual Wagering*, 477 So. 2d 544, 547 (Fla. 1985), the court adopted a strict scrutiny standard of review of government behavior in privacy cases. The burden of proof is placed on the government, which must demonstrate a compelling state interest that accomplishes its goals through the least intrusive means. Here, the privacy interest at issue is an individual's interest in protection against the disclosure of private matters. See *Shevin v. Byron Harless*, 379 So. 2d 633, 637 (Fla. 1980).

Heading the list of parties objecting to full public access of court records on the Internet are family lawyers and their clients. In particular, Fla. Fam. L. R. P. 12.285 governing mandatory disclosures requires extensive disclosure of personal financial information such as tax returns, financial statements, bank statements, brokerage account statements, retirement account statements, and other documents. These documents in turn contain sensitive personal information such as Social Security numbers, account numbers, etc. In *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 119 (Fla. 1988), the Supreme Court reversed a lower court ruling that sealed a substantial portion of the record of a marital dissolution proceeding involving a state senator. It held that there was a strong presumption of openness that overrides the privacy rights of parents and children. Citing *Barron*, the Supreme Court, in *Amendments to Family Law Rules of Procedure*, 723 So. 2d 208, 209-10 (Fla. 1998), rejected a request by the Family Law Rules Committee to seal financial records filed with the court upon the request of a party.

Another compelling privacy-related issue is that of identity theft. In a report prepared for the Federal Trade Commission, it was estimated that the total annual cost of identity theft to individuals is approximately \$5 billion, not including the numerous hours expended by the victims resolving this problem. *FTC Identity Survey Report*, p.6 (Sept. 2003).<sup>9</sup> The Supreme Court in *Amendments to Family Law Rules of Procedure*, 853 So. 2d 303, 304-05 (Fla. 2003), revised Fla. Fam. L. R. P. 12.285(i) by adding a sentence stating that only the financial affidavit and the child support guidelines worksheet shall be filed with the court without a court order. It cited the problem of identity theft as a factor in its decision. Recognizing the problem of identity theft, the legislature enacted F.S. §501.0118. The statute restricts information contained on credit card receipts to prevent misuse of credit card information.

In an attempt to balance an individual's right to privacy with the public's right to know, the legislature has created over 450 statutory exemptions to its constitutional mandate of open public records. See *Privacy Issues White Paper*, Florida Association of Court Clerks Privacy Task Force, p. 3 (Oct. 2001).<sup>10</sup> These exemptions are contained in the Public Records Act and other statutes. The following are worthy of note: F.S. §119.0721(1) provides that all Social Security numbers held by the government and its contractors are confidential and exempt. Section 119.0721(5)(c) requires the county recorder to post notices providing that Social Security numbers are not permitted to be included in recorded documents, and that an individual has the right to demand the removal of a Social Security number that appears on a recorded document electronically available to the public. Section 119.07(3)(dd) provides that bank account numbers and debit, charge, and credit card numbers held by an agency are exempt. Section 119.07(3)(gg) exempts certain health records. F.S. §295.186 permits veterans to request that the

county recorder remove certain forms from official records. F.S. §28.2221(5)(a) expressly prohibits the county recorder or clerk of court from displaying electronic images on the Internet of "a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules." If, in fact, such images are displayed online publicly, F.S. §28.2221(5)(b) provides that if an affected party identifies the offending record and requests its removal, the clerk must comply with such request.

At the end of the day, however, it is unlikely that clerk has legal authority to redact public records posted on the Internet under the current state of Florida law.<sup>11</sup> In AGO 2002-69,<sup>12</sup> the Attorney General, in response to an inquiry by Rep. Brummer, states his opinion that F.S. §119.07(3)(ff)1 does not authorize the clerk of court to permanently remove or obliterate from an original court record Social Security numbers or financial statement numbers, even if requested to do so in writing.

This conflict between the public's right to access and individual privacy rights presents a problem that, to date, remains unresolved in Florida.

### **Moratorium on Internet Display of Images of Court Records**

As early as the late 1990s, the Supreme Court recognized the importance of the Internet as a means to grant the public access to court records. On December 3, 1998, Administrative Order Re: Uniform Case Numbering System was entered. The order states that "we do want our courts to develop a uniform means for greater public access to court records in this new age of technology." It continues by stating that "beginning January 1999, the new Uniform Case Numbering System must be used when a clerk's office disseminates over the Internet for general public access any informa-

tion regarding a past or present case within the clerk's responsibility." The legislature required clerks to provide electronic access to official records in F.S. §28.2221 when it mandated Internet access to the indexes of official records<sup>13</sup> by January 1, 2002, and images of recorded documents by January 1, 2006. Keeping up with the development of the Internet, Polk, Manatee, Charlotte, and Sarasota counties, at various times, upgraded their systems and displayed images of court records on their Web sites.

In the operational plan for years 2000-02 for the Florida judicial

branch of government,<sup>14</sup> an objective was set out to direct balancing the issues of access and privacy. Objective IV-D directs the Judicial Management Council (the "council") to make recommendations regarding the need to balance the public's right of access and the privacy interests of litigants. Three questions were posed to the council: 1) Does the Supreme Court have a role in formulating statewide policies on access to court records, or does responsibility for policy in this area rest elsewhere? 2) If the court does have a responsibility to develop statewide policies, what steps should be

taken to ensure that such policies are developed and implemented? 3) If statewide policies are to be developed, should there be a moratorium on electronic access until such policies are developed and implemented?

On November 15, 2001, the council released its 45-page report entitled "Privacy and Electronic Access to Court Records—Report and Recommendations."<sup>15</sup> It responded to the three questions posed by the Supreme Court as follows: First, under Fla. Const. Art. V, §2, the Florida Supreme Court has broad responsibility for the administrative supervision of all courts, in-

## *Attention Florida Attorneys*

Before you choose a malpractice carrier or renew your current policy, consider the benefits of insuring with Minnesota Lawyers Mutual Ins. Co.

- MLM has been a provider of legal malpractice insurance for over 20 years.
- "A" (excellent) rated by A. M. Best since 1992.
- Save 10% by applying online at [www.mlmins.com](http://www.mlmins.com).
- As owners of a mutual company, MLM policyholders have received annual dividend payments since 1988, totaling over \$23 million.
- MLM is a direct writer; you work directly with the company, not an agent.
- Outstanding customer service which is reflected in a renewal rate greater than 95%.
- Annual CLE seminars on malpractice prevention.
- Free legal technology advice.

Contact Keisha Robbins today for more information about insuring with MLM.



**MINNESOTA LAWYERS MUTUAL**  
INSURANCE COMPANY

800.422.1370  
[www.mlmins.com](http://www.mlmins.com)

FL License No. E098828

7-7

## The Florida Supreme Court should develop comprehensive policies that set guidelines regarding access to court records to prevent improper disclosures.

cluding setting policies regarding court records. Accordingly, it should develop comprehensive policies that set guidelines regarding access to court records to prevent improper disclosures. Second, the council should be directed to oversee development of policy recommendations, and should create a committee that includes a broad spectrum of representatives from both the public and private sector, including privacy advocates and media advocates. Following a policy development process, the council should advance recommendations to the Supreme Court, including proposed rules. Third, and most importantly, the council recommended a moratorium on electronic access to certain court records. *Id.* at 7-10.

In response to the foregoing report, the Florida Supreme Court issued AOSC02-659, reported as *In re Report and Recommendations of the Judicial Management Council of Florida on Privacy and Electronic Access to Court Records*, 832 So. 2d 712 (Fla. 2002). AOSC02-659 raises two areas of concern mentioned by the council in its report: 1) Even though information may be made confidential by statute or court rule, the clerks of court do not have in place reliable mechanisms to either identify such information or otherwise protect it from disclosure; and 2) there is some information contained in court records that, while not confidential or exempt, is nevertheless very sensitive or problematic in nature, and the long term access to such information could serve to undermine the administration of justice. Recognizing a parallel initiative by the legislature, which also formed and funded a committee to examine electronic access to

court records,<sup>16</sup> the Supreme Court, while indicating its agreement with the council's recommendations, deferred rendering a decision pending completion of a report by the Study Committee on Public Records (the "committee") created by the legislature during its 2002 session. *Id.* at 715.

The committee's final report is dated February 15, 2003, and entitled "Examination of the Effects of Advanced Technologies on Privacy and Public Access to Court Records and Official Records."<sup>17</sup> Considerably less comprehensive in terms of length than the report prepared by the council, the committee's final report consists of nine pages, including 13 specific recommendations. In making its recommendations, the committee acknowledges that time constraints and complexity of the issues presented limited its ability to address the issues in the detail requested by the legislature. Highlighting the committee's report are its recommendations that the Supreme Court adopt rules that set forth procedures to regulate electronic dissemination of information contained in court records, and that until such time that electronic dissemination can be properly regulated, court records should not be disseminated electronically, on the Internet or otherwise.

Following release of the committee's report, Chief Justice Anstead entered AOSC03-49 on November 25, 2003.<sup>18</sup> Justice Anstead found that the recommendations of the committee were largely consistent with those of the council in that both call for the development of comprehensive statewide policies and a limited moratorium until such policies

are in place. Based upon recommendations submitted to the Supreme Court, the chief justice established the Committee on Privacy and Court Records (the "privacy committee").<sup>19</sup> The privacy committee has been directed to undertake four tasks: 1) Recommend comprehensive policies to regulate the electronic release of court records, including court rules; 2) develop and initiate strategies to reduce the amount of personal and sensitive information that may unnecessarily become part of a court record, including a review of Fam. L. R. P. 12.285 and other court rules and practices; 3) recommend categories of information routinely included in court records so that the court may advance recommendations to the legislature for consideration of exemptions; 4) completion of its mission no later than July 1, 2005. *Id.* at 3-5. Most importantly, AOSC03-49 directs that "effective immediately and until further order of this Court, no court record as defined by R. Jud. Admin. 2.051(b)(1)(a) shall be released in any electronic form<sup>20</sup> by any Florida clerk of court except as provided herein." *Id.* at 8. Ten categories of court records are excepted from the moratorium.<sup>21</sup> AOSC03-49 was subsequently amended and superseded by AOSC04-4<sup>22</sup> nunc pro tunc to November 25, 2003. The provisions of AOSC04-4 are substantially the same as AOSC03-49, except for some stylistic changes and the addition of an effective date for compliance of March 1, 2004. AOSC04-4 at pp. 1, 9.

In response to the limited moratorium imposed by the Supreme Court, the clerks of Manatee, Charlotte, and Sarasota counties have ceased posting images of court records on their Web sites. To a large extent, many of these images are still available to government employees. However, there is no remote public access. Polk County remains a limited exception. Citing language on page 9 of AOSC03-49, which provides that court

records may be transmitted in electronic form to an "agent authorized by law, court, rule or court order," the chief judge of the circuit court for the 10th Judicial Circuit for Polk County entered AO No. 1-35.0.<sup>23</sup> The order finds that attorneys admitted to practice in the State of Florida are deemed officers and agents of the court. Based upon this premise, the court ordered that Florida attorneys may enter into an agreement with the Polk County Clerk's office and access images of court records via a secure access Web site. The Polk County Clerk, however, has pulled family court file dockets and court records from its remote access server.

On the legislative front, Senator Bennett introduced Senate Bill 3060 on March 2, 2004. This bill sought to usurp any authority to regulate public records exemptions from the Florida Supreme Court. Entitled the "Chips-Shore Memorial Act," it provided that any

declaration of such exemptions would require an affirmative vote of the legislature. The bill further provided that the judiciary would have no power to create any exemptions, except as set forth for in Fla. R. Jud. Admin. 2.051. It expressly stated that it implemented and clarified Fla. Const. Art. I, §24 and was to be applied retroactively to November 3, 1992. The bill ultimately died in committee on April 30, 2004. Whether future legislative initiatives will impact ongoing developments with respect to issues discussed here remains to be seen.

Finally, it is noted that the National Center for State Courts and The Justice Management Institute, on behalf of the Conference of Chief Justices and Conference of State Court Administrators, prepared a report (the "report") which is effectively a model policy governing public access to court records.<sup>24</sup> The report provides that court records are presumptively

subject to remote access by the public. Report, §4.20, p. 27. Information in a court record that is exempt under federal or state law is not to be accessible, however. Such information includes, inter alia, Social Security numbers, federal tax returns, and certain educational, health, and medical information. Report, §4.60, p.45-52. It leaves open to the court the option of charging a fee for electronic access. Report, §6.00, p. 60. The report is comprehensive and contains an appendix that references various state court rules and statutes from around the country pertaining to this topic. It is recommended reading for those with an interest in this area, and very well may assist the privacy committee in fulfilling its directives under AOSC04-4.

### Conclusion

The previous discussion illustrates how the multiple conflicts



## Large Firm Legal Research. Small Firm Prices.

UNLIMITED ACCESS TO THE FULL NATIONAL LAW LIBRARY

- Month-to-month & annual subscriptions
- Comprehensive 50-state & federal case law databases
- Federal district, bankruptcy & tax courts
- Federal and state statutes & regulations
- Web-based software access, anywhere, anytime
- Easy navigation
- Unlimited dual-column printing
- Authority Check for related authorities
- Responsive customer service
- 24-hour free trial

PREMIUM PLAN

**\$95.00** per month

Call for more information 1-866-77-FASTCASE or register online at [www.fastcase.com](http://www.fastcase.com)  
South Florida Sales 954-727-5186 • North Florida Sales 904-247-9314



presented by the display of images of court records on the Internet intertwine with challenges presented to the clerk. From a substantive legal perspective, the provisions of Florida law granting broad access to public records present certain conflicts with individual rights to privacy. Clerks are presented with judicial directives that may compete and conflict with legislative directives. For that matter, solely within the confines of Florida Statutes, there are conflicting directives. Different counties have interpreted these various directives in different ways. From a purely legal standpoint, this issue demonstrates the complexity presented by an ever increasing body of law coexisting with the Internet. From a practical standpoint, it demonstrates the need for the various branches of the government and the general public to cooperate toward development of a fair and open procedure that satisfies the public's right to access while protecting individual privacy rights. □

<sup>1</sup> Or in the future, electronically filed or digital documents.

<sup>2</sup> *Lawyers Weekly USA* reports that within the next few years, the government hopes to link all state and federal court documents on a PACER-type system, and allow users to search records in a single centralized database. See 2001 LWUSA 273. The problems discussed *infra* relating to privacy have already been considered, and to a large extent resolved, by the federal court system.

<sup>3</sup> All references to the "legislature" and the "Supreme Court" shall refer to the Florida Legislature and Florida Supreme Court unless stated otherwise.

<sup>4</sup> The section further provides that the duties of the clerk of the circuit court may be divided between two officers with one serving as clerk of the court, and the other holding the remaining enumerated duties.

<sup>5</sup> FLA. ADMIN. CODE §1B-26.003 is available on the Internet at <http://makeashorterlink.com/?D2A135A88>. All Internet links provided are valid as of the date of submission of this article for publication.

<sup>6</sup> See AOSC04-4 at pp. 7-8, n.3.

<sup>7</sup> See <http://makeashorterlink.com/?Z2BF61988>.

<sup>8</sup> The case failed to specifically address the right to access to court records, but the reasoning employed by the court

suggests that the same result would be reached. Records of the judicial branch are defined under Rule 2.051(b)(1) as being "all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity . . ." All court records are by definition deemed to be records of the judicial branch.

<sup>9</sup> Available on the Internet at [www.ftc.gov/os/2003/09/synovatoreport.pdf](http://www.ftc.gov/os/2003/09/synovatoreport.pdf).

<sup>10</sup> Available on the Internet at <http://makeashorterlink.com/?W30652548>.

<sup>11</sup> The federal government has taken another approach. In civil and bankruptcy files, personal identifiers such as date of birth, Social Security numbers, financial account numbers and names of children will be modified or partially redacted by the litigants. At the end of the day, however, the personal responsibility for informing clients that case files may be obtained electronically and to ensure private information is not included in the case files lies with the attorneys. See <http://pacer.psc.uscourts.gov/faq.html#PR64>. State courts face a greater burden with respect to this issue than do federal courts. Not counting bankruptcy filings, in 2003, federal district courts had total case filings of 328,520. See [www.uscourts.gov/cgi-bin/cmsd2003.pl](http://www.uscourts.gov/cgi-bin/cmsd2003.pl). During the period from June 2002 through June 2003, Florida courts had over 2,000,000 new case filings. The large majority of these filings originated in county courts and traffic courts making Florida's court system truly a "People's Court."

<sup>12</sup> Available on the Internet at <http://makeashorterlink.com/?T23C21CD7>.

<sup>13</sup> The term "official records" is defined in FLA. STAT. §28.001(1) as meaning "each instrument that the clerk of the circuit court is required or authorized to record in one general series called 'official records' as provided for in §28.222." By definition, official records are also deemed to be public records.

<sup>14</sup> Available on the Internet at <http://makeashorterlink.com/?T50852AD7>.

<sup>15</sup> Available on the Internet at [www.flcourts.org/sct/sctdocs/probin/sc02-659.pdf](http://www.flcourts.org/sct/sctdocs/probin/sc02-659.pdf). It is recommended reading for greater detail on the issues of access and privacy discussed in this article.

<sup>16</sup> See 2002 Fla. Laws ch. 302, which created a 21-member study committee on public records to address issues relating to electronic access to court records.

<sup>17</sup> The committee's report can be downloaded as a Microsoft Word document at <http://makeashorterlink.com/?H39C12AD7>.

<sup>18</sup> Available on the Internet at [www.flcourts.org/sct/clerk/adminorders/2003/sc03-49.pdf](http://www.flcourts.org/sct/clerk/adminorders/2003/sc03-49.pdf).

<sup>19</sup> The committee is chaired by Prof. Jon Mills of the Univ. of Florida Levin Col-

lege of Law. Other members are Kristin Adamson; Andrew Z. Adkins; Judge Edward H. Fine, chief judge, 15th Judicial Circuit; Prof. Michael Froomkin, Univ. of Miami School of Law; Lydia Gardner, Clerk of the Court of Orange Co.; Judge Jacqueline R. Griffin, Fifth DCA; Thomas D. Hall, Clerk of the Fla. Supreme Court; Jon Kaney, Jr.; Judge Judith L. Kreeger, 11th Judicial Circuit; Barbara T. Scott, Clerk of the Court of Charlotte Co.; Judge Kim A. Skievaski, chief judge, First Judicial Circuit; Judge Elijah Smiley, Bay Co.; Walt Smith, Court Administrator of the 12th Judicial Circuit; and Judge Larry Turner, Eighth Judicial Circuit.

<sup>20</sup> Specifically excluded from the definition of "electronic form" are transmissions via traditional fax that are received on paper and not captured as a digital file.

<sup>21</sup> Such categories are: a) an official record; b) a court record in a case may be transmitted to a party or an attorney of record in that case; c) a court record may be transmitted to a governmental agency or agent authorized to have access to that record; d) a court record solitarily and individually requested which has been inspected by the clerk and found not to have confidential or exempt information; e) a court record which the chief judge in a jurisdiction has designated to be of significant public interest which has been inspected by the clerk and found not to have confidential or exempt information; f) progress dockets which do not contain confidential or exempt information; g) schedules and court calendars; h) court records concerning traffic cases; i) appellate court briefs, orders and opinions; and j) court records inspected by the clerk and found not to have confidential or exempt information may be viewed via a public terminal within the office of the clerk. AOSC03-49 at pp. 9-10.

<sup>22</sup> Available on the Internet at <http://makeashorterlink.com/?H4BB62DD7>.

<sup>23</sup> Available on the Internet at <http://makeashorterlink.com/?P29B12DD7>.

<sup>24</sup> Available on the Internet at <http://makeashorterlink.com/?N2AB15DD7>.

*Daniel Morman is of counsel with Berman, Rennert, Vogel & Mandler, P.A. in Miami. His practice includes commercial litigation and bankruptcy law as well as outsourced document preparation, legal research, and writing. Mr. Morman extends his gratitude to Sharon R. Bock for her hard work, expertise, and direction without which this article would not have been possible.*

*Sharon R. Bock is the chief deputy clerk of the circuit court for Palm Beach County, an office that was recently awarded the Governor's Sterling Award for excellence in performance. A member of The Florida Bar, Ms. Bock received her B.S. from Slippery Rock University and her J.D. from South Texas College of Law.*