



NEW JERSEY STATE BAR ASSOCIATION

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Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Hughes Justice Complex
Box 037
Trenton, NJ 08625-0037

Re: Proposed Amendment to Rule 1:38 Regarding Access to Family Part Court Records

Dear Judge Grant:

On behalf of the New Jersey State Bar Association, I wish to renew a request to amend Rule 1:38 to limit distribution of Family Part records to litigants and their counsel absent a showing of good cause. The issue was first raised by the NJSBA in 2008 in response to the Report of the Special Committee on Public Access to Court Records. It is the NJSBA's understanding that the issue will be on the agenda for discussion at a meeting of the presiding judges of the Family Part next week.

The NJSBA urges a revisitation of the issue in light of the imminence of e-filing and internet access to the courts, which would make information filed in the Family Part more accessible to the public than ever before. The result of this easy access to sensitive information would allow wide dissemination that could potentially harm Family Part litigants and their children. Specifically, the NJSBA proposes the attached draft change to Rule 1:38 for the Court's consideration.

The primary reason the NJSBA is seeking confidentiality of Family Part records is the potential of immeasurable harm to children and the destruction of families in transition that could arise from the dissemination of the personal information contained in those records. While there are a number of carved-out exceptions under Rule 1:38, those cannot adequately address how personal issues in Family Part matters are a part of the fabric of almost every document filed in a matter. Matrimonial pleadings often recite allegations about a child's mental and physical health, special needs and personal preferences. They also typically include information about their parents' income, work history, mental and physical health, and personal and business associations. To enable a court to properly assess a matter, the pleadings must contain information about a litigant's earning capacity, financial contributions during a marriage, domestic violence history, inheritances and other personal issues. Employers, business associates, family members, child care providers, neighbors and teachers are all relevant to a Family Part action; however, they have no control over the information filed about them or their businesses with the courts.

With e-filing and access to records over the internet, children would be able to access documents from their parents' divorce. Neighbors, classmates and school personnel would be able to read about the most personal aspects of someone's life for purely prurient reasons. Prospective employers would be able to access past earnings, marital history, net worth and medical history. Mere allegations of spousal abuse, mental illness, drug addiction or infidelity could wreak havoc on a person's prospective employment and ability to move on with his/her life post-divorce.

In addition to concerns about technology, the NJSBA's family law practitioners have noted county-by-county inconsistencies in connection with allowing or prohibiting access to this information, notwithstanding Rule 1:38. For example, there are documented inconsistencies about whether the parties must include the marital settlement agreement in the court record, even if both attorneys request that it only be identified during an uncontested proceeding.

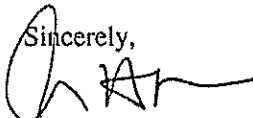
In 2005, in Smith v. Smith, 379 N.J. Super. 447 (Ch. Div. 2005), the court ruled against third parties to a matrimonial action who sought to seal the record of their daughter's matrimonial proceedings. Judge Jack Sabatino, then a trial court judge, found that the third party's personal interest did not suffice to overcome the strong presumption of open judicial proceedings. The court, however, stated,

The day may come, and perhaps it will be soon, when all courthouse filings are routinely harvested in data banks and instantly transmitted around the world via the internet. Electronic filing is rapidly becoming the norm in federal court, and our state courts are not far behind. The digital storage of such filings may well make them far easier to retrieve by outsiders. It is not hard to imagine that each scurrilous allegation contained in some court filing could eventually turn up in a "Google search." Such broadcasted diatribe has the capacity to defame not only celebrities and public officials, but also average citizens whose backgrounds could be researched on the World Wide Web by prospective employers, business associates, loan officers, government regulators, social clubs, and perhaps even would-be Saturday night dates. Those looming technological developments may warrant the judiciary to reconsider, prospectively, the current balance of interests in favor of open court proceedings. Id. at 458-59.

The NJSBA respectfully suggests that the time has come for the Court to revisit the issue and address access to Family Part records in a way that protects children, Family Part litigants and all of the third parties involved in their lives. We believe the changes proposed to Rule 1:38 do that.

Thank you in advance for your courtesies in considering this issue. Please feel free to contact me if you require any further information.

Sincerely,



Thomas H. Prol
President

/sab

cc: Robert B. Hille, NJSBA President-Elect
Timothy F. McGoughran, chair, NJSBA Family Law Section
Angela C. Scheck, NJSBA Executive Director

Proposed Changes to Rule 1:38

Submitted by the New Jersey State Bar Association

All Family Part pleadings, Affidavits, Certifications, Case Information Statements, Findings of Fact, Conclusions of Law, Judgments of Divorce, Orders, both *pendent lite* and final, written Agreements, Memoranda of Understanding, including any attachments thereto, shall not be distributed to any person except a party to the litigation or the attorney or counsel of a party, except by order of the court, upon a showing of good cause.

To demonstrate good cause, the disclosure must have a public purpose that outweighs the privacy interests of the parties, their minor children or other persons whose information appears of record.

Any person seeking disclosure must file a Motion pursuant to Rules 1:6-2 and 5:5-4 with notice to the parties and all persons whose information appears of record. The notice must specify the information and/or documentation being sought, the reason for seeking such information, and an explanation for why the information being sought cannot be obtained from a less intrusive means.

In granting the application for disclosure, the court must make findings and specify the good cause shown for such disclosure. If good cause is shown, the court shall order the release of only that information necessary to address the purpose for which the information is sought and shall have the power to limit the scope of the disclosure of the information being released to ensure that said information is only used for the purpose in which it is needed based on good cause shown.