



# First Amendment Foundation

Protecting Your Right to Know for 30 Years!

21 May 2014

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The Honorable Ricky Polston, Chief Justice  
Supreme Court of Florida  
500 South Duval Street  
Tallahassee, FL 32399-6556

## Re: Online Access to Electronic Court Records

Dear Chief Justice Polston:

On behalf of the First Amendment Foundation, I would like to thank you and the Court for lifting the moratorium on online access to electronic court records. We recognize the time and effort that went into creation of the security standards and matrix, and appreciate the work of the Florida Courts Technology Commission (FCTC). In addition, we would like to express our gratitude to Manatee County Clerk of Court Chips Shore and his staff for their work on the pilot project that guided the FCTC.

There is a major issue not addressed in the Order which continues to cause concern, however. Approximately one third of the 67 clerks of court provide attorneys with preferential access to online court records, a practice that we understand was sanctioned by an amendment to the moratorium in 2007.

Allowing attorneys of record a greater right of remote access in their own cases is certainly appropriate; however, a policy allowing all attorneys the same preferred level of access simply by virtue of a Bar membership is, we believe, both inappropriate and puzzling. For example, I'm an attorney and a member of The Florida Bar. I do public advocacy work and do not litigate. Yet I have a special right of access currently not afforded to the public, including pro se litigants with pending cases, and journalists covering court proceedings and conducting research for news articles.

Additionally, this practice raises fairness issues – as an attorney, I can download court records at no cost from the convenience of my home or office; in order to obtain those same records, a citizen is required to make a written request at the courthouse and pay \$1/page for the documents requested. The Order lifting the moratorium did not address the attorney preference.

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We understand that the clerks of court believe it will take some time to fully implement the security standards and matrix. We are aware that Fred Baggett, general counsel for the Florida Court Clerks and Comptrollers, has asked the Court to amend its Order to allow those clerks of court who currently allow attorneys preferential access to continue that practice. In her letter of April 30, Paula O'Neil, Clerk and Comptroller of Pasco County and president of the clerk's association, supported Mr. Baggett's request, stating "[t]he option of requiring termination of [attorney] access that has been provided throughout the last seven years only to reestablish a similar system for public access in a manner of a few months would be disruptive, costly, and regressive."

However, once the clerks have established a system of online access to electronic court records in compliance with the security standards and matrix, a non-party attorney such as myself will have the same level of access as the public and members of the media, whether as a subscriber or an anonymous internet user. In the interim, continuing the attorney preference is wrong.

Finally, timely access to electronic records has to again become a priority. The process of implementing the security standards and matrix to allow for online access to court records must not erode the right of access to those records as we wait for remote access. As with the attorney preference, the Foundation has received a number of complaints about sometimes lengthy delays in obtaining lawful access to court records.

In sum, Mr. Chief Justice, we believe that the attorney preference is unfair and that the practice is constitutionally questionable. Only about a third of the clerks of court currently allow attorney preference, and it is our position that any impact on those clerks is offset by the public interest in equal access to court records. We respectfully request the Court clarify its order, and instruct the clerks to abandon the practice of attorney preference and fully embrace the spirit and intent of the Order by implanting the security standards and matrix as expeditiously as possible. We also ask that the Court re-iterate that timely access to court records is crucial.

We appreciate your attention to our concerns. If you have any questions or would like additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B.A.P.', with a stylized flourish extending from the top left.

Barbara A. Petersen, President