



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS
CHIEF ADMINISTRATIVE JUDGE

JOHN W. McCONNELL
COUNSEL

MEMORANDUM

October 6, 2016

To: All Interested Persons
From: John W. McConnell
Re: Request for Public Comment on Proposed Amendment of 22 NYCRR §205.5
(Privacy of Family Court Records)

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Public comment is requested by the Office of Court Administration on the proposed amendment of 22 NYCRR § 205.5 of the Uniform Rules for the Family Court, to add a “department of corrections and community supervision or a local department of probation” as entities authorized to access Family Court records when such department is supervising the parent of a child who is the subject of an Article 10 proceeding in Family Court (Exh. A). This amendment has been proposed by the New York City Administration for Children’s Services (ACS), and has been endorsed by the court system’s Family Court Advisory and Rules Committee.

The goal of the amendment is to promote a safer environment for children through enhanced information sharing between child welfare and parole/probation systems. Under the current rule, ACS and local departments of social services can only share information concerning their involvement with a family with parole and probation agencies in the context of a pre-sentencing investigation. It is believed that providing the New York State Department of Corrections and Community Supervision and local probation departments direct access to additional court records under this rule will beneficially inform decisions about continued supervision of the child.

Persons wishing to comment on the proposed rule should e-mail their submissions to rulecomments@nycourts.gov or write to: John W. McConnell, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 11th Fl., New York, New York 10004. **Comments must be received no later than December 5, 2016.**

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Administrative Board of the Courts or the Office of Court Administration.

EXHIBIT A

Proposed Amendment of 22 NYCRR §205.5
For Public Comment
October 6, 2016

(Proposed text in **bold and underlined.**)

Section 205.5 Privacy of Family Court records.

Subject to limitations and procedures set by statute and case law, the following shall be permitted access to the pleadings, legal papers formally filed in a proceeding, findings, decisions and orders and, subject to the provisions of CPLR 8002, transcribed minutes of any hearing held in the proceeding:

(a) the petitioner, presentment agency and adult respondent in the Family Court proceeding and their attorneys;

(b) when a child is either a party to, or the child's custody may be affected by, the proceeding:

(1) the parents or persons legally responsible for the care of that child and their attorneys;

(2) the guardian, guardian ad litem and attorney for that child;

(3) an authorized representative of the child protective agency involved in the proceeding or the probation service;

(4) an agency to which custody has been granted by an order of the Family Court and its attorney;

(5) an authorized employee or volunteer of a Court Appointed Special Advocate program appointed by the Family Court to assist in the child's case in accordance with Part 44 of the Rules of the Chief Judge.

(c) a representative of the State Commission on Judicial Conduct, upon application to the appropriate Deputy Chief Administrator, or his or her designee, containing an affirmation that the commission is inquiring into a complaint under article 2-A of the Judiciary Law, and that the inquiry is subject to the confidentiality provisions of said article;

(d) in proceedings under articles 4, 5, 6 and 8 of the Family Court Act in which temporary or final orders of protection have been issued:

(1) where a related criminal action may, but has not yet been commenced, a prosecutor upon affirmation that such records are necessary to conduct an investigation of prosecution; and

(2) where a related criminal action has been commenced, a prosecutor or defense attorney in accordance with procedures set forth in the Criminal Procedure Law provided, however, that prosecutors may request transcripts of Family Court proceedings in accordance with section 815 of the Family Court Act, and provided further that any records or information disclosed pursuant to this subdivision must be retained as confidential and may not be redisclosed except as necessary for such investigation or use in the criminal action; and

(e) another court when necessary for a pending proceeding involving one or more parties or children who are or were the parties in, or subjects of, a proceeding in the Family Court pursuant to article 4, 5, 6, 8 or 10 of the Family Court Act. Only certified copies of pleadings and orders in, as well as information regarding the status of, such Family Court proceeding may be transmitted without court order pursuant to this section. Any information or records disclosed pursuant to this subdivision may not be redisclosed except as necessary to the pending proceeding.

(f) the department of corrections and community supervision or a local department of probation when the department is supervising the parent or other person legally responsible for the care of a child who is the subject of a proceeding under article ten or ten-a of the family court act; provided, however, that access under this subdivision shall be limited to temporary and final orders in effect that relate to such parent or other person legally responsible and provided further that court orders disclosed pursuant to this subdivision must be retained as confidential and may not be redisclosed except as necessary for such supervision.

Where the Family Court has authorized that the address of a party or child be kept confidential in accordance with Family Court Act, section 154-b(2), any record or document disclosed pursuant to this section shall have such address redacted or otherwise safeguarded.