State Must Make All Files in Family Law Matters Confidential

By Fred Silberberg

Each and every year, hundreds of thousands of California citizens petition the courts to dissolve their marriages. They file documents with the courts of their counties, and, with the exception of paternity cases, those documents are a matter of public record.

Such documents cover any number of very personal matters, the dissemination of which would normally be kept to a limited number of people. The documents filed in the courts contain information regarding many aspects of the litigants' lives, including finances, spousal abuse, child abuse, drug abuse, extramarital affairs, compulsive gambling, tax issues, information regarding children's disabilities and special needs, parties' sexual practices, problems with in-laws, siblings, incest and molestation.

Most of these problems normally would be regarded by the parties as private matters. Once they are in the court file, however, they are available for display to the public. In many states, all family law files are confidential and not available for public disclosure; in ours, the most populous state in the nation, they are not.

Family law litigants come to the court to seek help with problems they cannot solve on their own. In order to get that help, they have to provide factual information. Because most family law matters are decided on written declarations, the facts are laid out not only for the judge to see but also for anyone else who has even a modicum of interest and the tenacity to go pull a court file.

Each courthouse provides copying facilities, so once a file is pulled, the documents can be copied, and the information can be disseminated anywhere and everywhere.

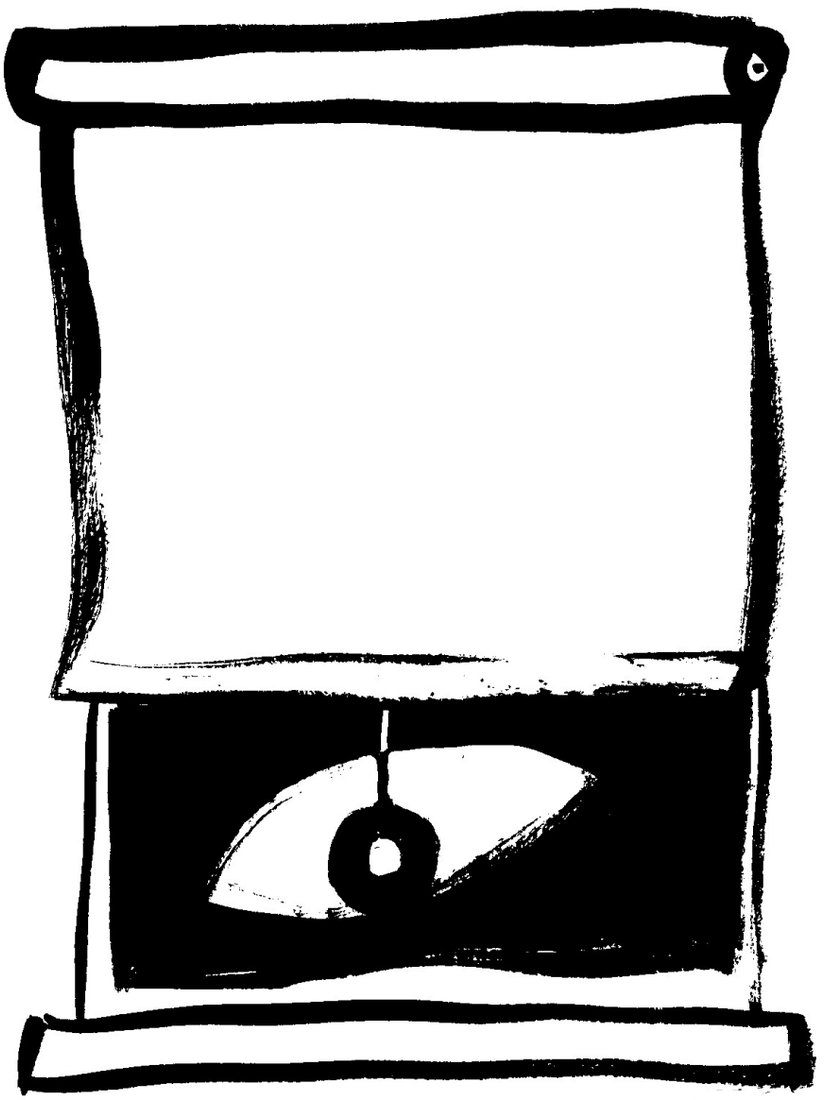
Family law cases are ugly. People are vindictive. Sometimes, the information contained in these files is true, and other times, it is false. Often, it is exaggerated. And many times, it is proferred solely to try to gain advantage over the other spouse or to try to sway the judge. Although the court is the arbiter who will decide whether the information is believable or should be acted on, that information remains in the court file, whether it is truthful or not.

Because no one enforces perjury laws in family law matters, there is little fear in lying.

These files should not be public. There is no reason for the information to be publicly available. Allowing it to be publicly available does not discourage people from testifying falsely. If anything, in some cases it creates an incentive for someone to make claims in a bid for publicity. After all, the news media routinely station personnel at state courthouses whose sole function is to watch all new filings and alert their bureaus to items worth reporting. While our family court system is supposed to be protecting people, the public nature of it is, in many cases, doing exactly the opposite.

Once a document lands in a file, there is no way to unring the proverbial bell. The information stays there into eternity or Armageddon — whichever should occur first — sitting in the file rooms and warehouses of our many court facilities, where it has the potential to, one day, do great harm. Children who were involved in divorces and are now adults become curious as to what all the fighting was about. By checking the file, they may learn things about their parents or siblings that they neither knew nor needed to know.

Prospective employers pull files to find that their job candidate was accused of spousal abuse or alleged to have a drug problem. Although the allegations may be false, questions are raised. The court file also may make the outcome of a case seem uncertain or unclear. Although Candidate A had to defend himself against a completely meritless claim of spousal abuse, Candidate B did not. It should be obvious which of the two the employer is more likely to select.



Other than the court itself, no one needs this information. Many other states limit the disclosure of such information beyond the court. Although California is considered to be one of the most progressive states in the nation, on this issue, we remain in the Stone Age.

Last year, the Legislature enacted Family Code Section 2024.6, which is intended to address this issue with regard to financial assets. The section, a response to the problem of identity theft, allows a party to a divorce to make an ex parte application to the court to seal documents listing information regarding assets and liabilities.

It's a step in the right direction, albeit a weak one. Rather than simply declaring all family law files confidential, the Legislature has chosen to protect only financial information. That protection is not automatic. To get it, a party has to fill out a Judicial Council form, pay an ex parte fee and present that form with the relevant documents to the court.

The form and documents also have to be served on opposing counsel. If the court agrees, then the documents are ordered sealed. The court may deny the request outright or order only certain documents sealed.

That is not, however, the end of the story. Once the documents have been designated sealed through the use of Form FL-316, a party may try to have them unsealed, using the virtually identical procedure but filing Form FL-317.

The procedure is ridiculously cumbersome. More important, it assumes the court will carry out its orders, without error. Because lost files in the courthouse are commonplace and most courthouses do not have enough personnel to keep up with filed papers because of budgetary constraints, it is a gigantic and misplaced leap of faith to think that the documents that are supposed to be sealed will be maintained in that manner and retrievable only by the parties and the court.

Even if the procedure were to work flawlessly, it does nothing to protect against dissemination of various personal matters. In many ways, that personal information should be held more sacrosanct than the financial information.

The system, even with the new procedure, does not offer equal protection. A party engaged in a dispute arising from the birth of a child out of wedlock need not be concerned about privacy; those files are all designated confidential. A party who married and then got involved in a similar dispute has no confidentiality. So much for public policy promoting marriage.

It is time for the state to stop equivocating. All of the information contained in these files should be kept private. Creating ex parte procedures to limit access to some financial information only creates more bureaucracy, and the courts have more than enough of that.

The only people who need to know this information are the judges and commissioners who make decisions for the parties. Information in those files is no one else's business, and the Legislature should recognize that.

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