



COPY

Supreme Court of Florida

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February 8, 2008

Ms. Cheryle Dodd, Editor
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Re: In Re: Amendments to Florida Rule of Judicial Administration 2.420
Case No. SC07-2050

Dear Ms. Dodd:


I have provided you with a copy of the proposed Rules in the above cases. Please publish said Rules in the March 1, 2008, Bar News. Please publish a statement that the Court has placed the proposed Rules on the Internet at location:
<http://www.floridasupremecourt.org/decisions/proposed.shtml>.

Any comments should be filed with the Supreme Court on or before April 1, 2008. The committee must file a response on or before April 22, 2008, to all comments filed. All comments must be filed in paper format and an electronic copy provided to the Court in accordance with AOSC04-84. An original and nine copies must be filed.

Ms. Cheryl Dodd, Editor
February 6, 2008
Page Two

Thank you for your cooperation in this matter.

Most cordially,

By: 
Deputy Clerk
Thomas D. Hall

TDH/vm
Enclosure

cc: Honorable Robert T. Benton, II, Chair, Rules of Judicial Administration Committee
Honorable Kenneth B. Bell, Supreme Court Justice Liaison
Honorable Francisco R. Angones, President, The Florida Bar
Honorable John G. White, III, President-elect, The Florida Bar
John F. Harkness, Jr., Executive Director, The Florida Bar
J. Craig Shaw, Bar Staff Liaison
Chief Judges of the District Court of Appeal
Clerks of the District Court of Appeal
Chief Judges of the Judicial Circuits
Clerks of the Judicial Circuits
Deborah J. Meyer, Central Staff Director

Pursuant to the Court's request in In re Amendments to Florida Rule of Judicial Administration 2.420—Sealing of Court Records and Dockets, 954 So. 2d 16 (Fla. 2007), the Rules of Judicial Administration Committee has filed with the Florida Supreme Court a report and proposed amendments to rule 2.420, Public Access to Judicial Branch Records, addressing the sealing of circuit and county court records in criminal cases. The Committee proposes adoption of new rule 2.420(e), Request to Make Circuit and County Court Records in Criminal Cases Confidential, as well as several minor changes to subdivisions (c), Exemptions, and (d), Request to Make Circuit and County Court Records in Noncriminal cases Confidential. In addition to the Committee's proposals, the Court sua sponte has drafted proposed amendments to rule 2.420 addressing the sealing of appellate court records in both non-criminal and criminal cases and addressing several additional matters as well. The Court has incorporated some, but not all, of the Committee's proposals into its own proposals. The Committee's proposals are listed below under Part One: "The Rules of Judicial Administration Committee's Proposed Amendments." The Court's proposals are listed below under Part Two: "The Florida Supreme Court's Proposed Amendments."

The Court invites all interested persons to comment on the proposed amendments, which are reproduced in full below, as well as online at <http://www.floridasupremecourt.org/decisions/proposed.shtml>. An original and nine paper copies of all comments must be filed with the Court on or before April 1, 2008, with a certificate of service verifying that a copy has been served on the committee chair, Honorable Robert T. Benton II, First District Court of Appeal, 301 South Martin Luther King, Jr., Blvd., Tallahassee, FL 32399-6601, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The committee chair has until April 22, 2008, to file a response to any comments filed with the Court. Electronic copies of all comments also must be filed in accordance with the Court's administrative order In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.420, CASE NO. SC07-2050

PART ONE

*“The Rules of Judicial Administration Committee’s
Proposed Amendments.”*

RULE 2.420. PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

(a) [No change]

(b) [No change]

(c) **Exemptions.** The following records of the judicial branch shall be confidential:

(1)-(8) [No change]

(9) Any court record determined to be confidential in case decision or court rule on the grounds that

(A)-(B) [No change]

(C) no less restrictive measures are available to protect the interests set forth in subdivision (A);

(10) The names and any identifying information of judges mentioned in an advisory opinion of the ~~Committee on Standards of Conduct for Judges~~Judicial Ethics Advisory Committee.

(d) Request to Make Circuit and County Court Records in Noncriminal Cases Confidential.

(1)-(6) [No change]

(7) ~~Court records~~Records of a lower tribunal made confidential under this rule by that tribunal must be treated as confidential during any ~~appellate~~review proceedings. In any case where an order making court records confidential remains in effect as of the time of an appeal, the clerk’s index must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number.

(e) Request to Make Circuit and County Court Records in Criminal

Cases Confidential.

(1) Subdivision (d) shall apply to any request by the state or a defendant to make circuit or county court records confidential pursuant to subdivision (c)(9), except as provided in subdivision (e)(2).

(2) Any request to make court records confidential that may jeopardize either the safety of a person or an active criminal investigation may be made in the form of a written motion captioned "Restricted Motion to Make Court Records Confidential." As to any motion made pursuant to this subdivision (e)(2), the following procedure shall apply:

(A) Any motion made pursuant to this subdivision and all court records that are the subject of such a motion must be treated as confidential by the clerk pending the court's ruling upon the motion.

(B) Except when the motion filed under this subdivision represents that both the movant and any other party subject to the motion agree to all of the relief requested, as evidenced by all such parties signing the motion, the court shall hold a hearing on a motion filed under this subdivision within 15 days of the filing of the motion, but such hearing shall be a closed session held in camera. The court shall issue a ruling on motions filed under this subdivision within 10 days of the hearing on contested motions or within 10 days of the filing of agreed motions.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision. In the event of an appeal of a matter in which an order is entered under this subdivision, the lower tribunal shall retain jurisdiction to consider motions to extend orders issued hereunder during the course of the appeal.

(D) The provisions of subdivisions (d)(3)(A)-(G), (d)(6), and (d)(7) shall apply to motions made pursuant to this subdivision. The provisions of subdivisions (d)(1), (d)(2), (d)(3)(H), (d)(4), and (d)(5) shall not apply to motions made pursuant to this subdivision.

(E) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (d)(4) unless directed by the court.

(3) This subdivision (e) does not apply to records of the judicial branch deemed confidential under subdivisions (c)(1)-(c)(8) or (c)(10).

(4) Requests to seal or expunge criminal history records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

(ef) Judicial Review of Denial of Access Request. Expedited review of denials of access to records of the judicial branch shall be provided through an action for mandamus, or other appropriate appellate remedy, in the following manner:

(1)-(2) [No change]

(fg) Procedure. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

(1)-(3) [No change]

Committee Note
[No change]

2002 Court Commentary
[No change]

2005 Court Commentary
[No change]

2007 Court Commentary
[No change]

2007 Committee Commentary
[No change]

PART TWO

“The Florida Supreme Court’s Proposed

Amendments.”

RULE 2.420. PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

(a) [No change]

(b) [No change]

(c) **Exemptions.** The following records of the judicial branch shall be confidential:

(1)-(8) [No change]

(9) Any court record determined to be confidential in case decision or court rule on the grounds that

(A)-(B) [No change]

(C) no less restrictive measures are available to protect the interests set forth in subdivision (A);

(10) The names and any identifying information of judges mentioned in an advisory opinion of the ~~Committee on Standards of Conduct for Judges~~ Judicial Ethics Advisory Committee.

(d) Request to Make Circuit and County Court Records in Noncriminal Cases Confidential.

(1) A request to make circuit and county court records in noncriminal cases confidential under subdivision (c)(9) must be made in the form of a written motion captioned “Motion to Make Court Records Confidential.” A motion made under this subdivision must:

(A) identify the particular court records the movant seeks to make confidential with as much specificity as possible without revealing the information to be made confidential; and

(B) specify the bases for making such court records confidential; and

(C) set forth the specific legal authority and any applicable legal standards for making such court records confidential.

Any motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is being made in good faith and is supported by a sound factual and legal basis. The Any motion made pursuant to this subdivision and all court records that are the subject of such a motion ~~made under this subdivision~~ must be treated as confidential by the clerk pending the court's ruling on the motion. Notwithstanding any of the foregoing, the court may not make confidential the case number, docket number, or other number used by the clerk's office to identify the case file.

(2)-(4) [No change]

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (d)(3), the request must be made in the form of a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties in the action with a copy of the motion. In the event that the subject order specifies that the names or addresses of one or more parties are to be made confidential, the movant must state prominently in the caption of the motion "Confidential Party — Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to the parties in such a way as to not reveal the confidential information to the movant. Except when a motion filed under this subdivision represents that all parties agree to all of the relief requested, the court must hold a hearing before ruling on the motion. Whether or not any motion filed under this subdivision is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any party may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A). The movant shall be responsible for ensuring that a complete record of any hearing held under this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court.

(6) If the court determines that a motion made under subdivision (d)(1) was not made in good faith and supported by a sound legal and factual basis, the court may impose sanctions upon the movant after notice and an opportunity to respond.

(7) Court recordsRecords of a lower tribunal made confidential under this rule by that tribunal must be treated as confidential during any appellate review proceedings. In any case where an order making court records confidential remains in effect as of the time of an appeal, the clerk's index must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number. This subdivision does not preclude review by an appellate court, or affect the standard of review by an appellate court, of an order by a lower tribunal making a record confidential.

(e) Request to Make Circuit and County Court Records in Criminal Cases Confidential.

(1) Subdivision (d) shall apply to any request by the state or a defendant to make circuit or county court records confidential pursuant to subdivision (c)(9), except as provided in subdivision (e)(2).

(2) Any request to make court records confidential that may jeopardize either the safety of a person or an active criminal investigation may be made in the form of a written motion captioned "Restricted Motion to Make Court Records Confidential." As to any motion made pursuant to this subdivision (e)(2), the following procedure shall apply:

(A) Any motion made pursuant to this subdivision and all court records that are the subject of such a motion must be treated as confidential by the clerk pending the court's ruling upon the motion.

(B) Except when the motion filed under this subdivision represents that both the movant and any other party subject to the motion agree to all of the relief requested, as evidenced by all such parties signing the motion, the court shall hold a hearing on a motion filed under this subdivision within 15 days of the filing of the motion, but such hearing shall be a closed session held in camera. The court shall issue a ruling on motions filed under this subdivision within 10 days of the hearing on contested motions or within 10 days of the filing of agreed motions.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision. In the event of an appeal of a matter in

which an order is entered under this subdivision, the lower tribunal shall retain jurisdiction to consider motions to extend orders issued hereunder during the course of the appeal.

(D) The provisions of subdivisions (d)(3)(A)-(G), (d)(6), and (d)(7) shall apply to motions made pursuant to this subdivision. The provisions of subdivisions (d)(1), (d)(2), (d)(3)(H), (d)(4), and (d)(5) shall not apply to motions made pursuant to this subdivision.

(E) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (d)(4) unless directed by the court.

(3) This subdivision (e) does not apply to records of the judicial branch deemed confidential under subdivisions (c)(1)-(c)(8) or (c)(10).

(4) Requests to seal or expunge criminal history records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

(f) Request to Make Appellate Court Records in Noncriminal Cases Confidential.

(1) A request to make appellate court records in noncriminal cases confidential under subdivision (c)(9) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (d)(1). Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not made confidential by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(2) A response to a motion filed under subdivision (f)(1) may be served within 10 days of service of the motion.

(3) Any order granting in whole or in part a motion filed under subdivision (f)(1) must be in compliance with the guidelines set forth in subdivisions (d)(3)(A)-(G).

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision (f)(1) as follows. Within 10 days following the entry of the order, the clerk of court must post a copy of the order on the clerk's website. The order must remain posted for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (f)(3), the request must be made in the form of a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties in the action with a copy of the motion. In the event that the subject order specifies that the names or addresses of one or more parties are to be made confidential, the movant must state prominently in the caption of the motion "Confidential Party— Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to the parties in such a way as to not reveal the confidential information to the movant. A response to a motion may be served within 10 days of service of the motion.

(6) If the court determines that a motion made under subdivision (f)(1) was not made in good faith and supported by a sound legal and factual basis, the court may impose sanctions upon the movant after notice and an opportunity to respond.

(7) Records of a lower tribunal made confidential by that tribunal must be treated as confidential during any review proceedings. In any case where an order making court records confidential remains in effect as of the time of an appeal, the clerk's index must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number. This subdivision does not preclude review by an appellate court, or affect the standard of review by an appellate court, of an order by a lower tribunal making a record confidential.

(g) Request to Make Appellate Court Records in Criminal Cases Confidential.

(1) Subdivision (f) shall apply to any request by the state or a defendant to make appellate court records confidential pursuant to subdivision (c)(9), except as provided in subdivision (g)(2).

(2) Any request to make appellate court records confidential that may jeopardize either the safety of a person or an active criminal investigation may be made in the form of a written motion captioned "Restricted Motion to Make Court Records Confidential" and must be filed in the appellate court. Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not made confidential by the lower tribunal, or a record presented to

an appellate court in an original proceeding. As to any motion made pursuant to this subdivision (g)(2), the following procedure shall apply:

(A) Any motion made pursuant to this subdivision and all appellate court records that are the subject of such a motion must be treated as confidential by the clerk pending the court's ruling upon the motion.

(B) A response to a motion filed under this subdivision may be served within 10 days of service of the motion. The court shall issue a ruling on motions filed under this subdivision within 10 days of the filing of a response on contested motions or within 10 days of the filing of uncontested motions.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision.

(D) The provisions of subdivisions (d)(3)(A)-(G), (d)(6), and (d)(7) shall apply to motions made pursuant to this subdivision. The provisions of subdivisions (d)(1), (d)(2), (d)(3)(H), (d)(4), and (d)(5) shall not apply to motions made pursuant to this subdivision.

(E) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (f)(4) unless directed by the court.

(3) This subdivision (g) does not apply to records of the judicial branch deemed confidential under subdivisions (c)(1)-(c)(8) or (c)(10).

(4) Requests to seal or expunge criminal history records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

(eh) Judicial Review of Denial of Access Request. Expedited review of denials of access to records of the judicial branch shall be provided through an action for mandamus, or other appropriate appellate remedy, in the following manner:

(1)-(2) [No Change]

(fi) Procedure. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

(1)-(3) [No Change]

Committee Commentary

[No change]

1995 Amendment.

[No change]

2002 Court Commentary

[No Change]

2005 Court Commentary

[No Change]

2007 Court Commentary

[No Change]

2007 Committee Commentary

[No Change]