



COPY

Supreme Court of Florida

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October 13, 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 case. Please publish said Rules in the November 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 January 15, 2009. The committee must file a response on or before March 16, 2009, 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. Cheryle Dodd, Editor
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Thank you for your cooperation in this matter.

Most cordially,


By: Deputy Clerk

Thomas D. Hall

TDH/vm
Enclosure

cc: Honorable Judith Kreeger, Chair, Committee on Access to Court Records
Honorable Barbara J. Pariente, Supreme Court Justice Liaison
Honorable John G. White, III, President, The Florida Bar
Honorable Jesse H. Diner, President-elect, The Florida Bar
John F. Harkness, Jr., Executive Director, The Florida Bar
Steve Henley, Committee 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

As charged in In re Committee on Access to Court Records, Fla. Admin. Order No. AOSC06-27 (Aug. 21, 2006), the Committee on Access to Court Records (committee) has filed with the Florida Supreme Court a petition proposing amendments to rule 2.420, Public Access to Judicial Branch Records, relating to confidentiality and access to court records. The committee's proposed revisions are made to pending amendments to the rule suggested by the Court, which were published for comment in the March 1, 2008, edition of *The Florida Bar News*.

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>. The Court welcomes comments on the committee's proposals, as filed with the Court, from the Florida Bar's Rules of Judicial Administration Committee and Special Joint Committee on Changes to Rule 2.420. An original and nine paper copies of all comments must be filed with the Court on or before January 15, 2009, with a certificate of service verifying that a copy has been served on the Honorable Judith Kreeger, Chair, Committee on Access to Court Records, c/o Steve Henley, Office of the State Court Administrator, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1900, 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 March 16, 2009, 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

RULE 2.420. PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

(a) [No change]

(b)(1)-(3) [No change]

(4) "Confidential," as applied to information contained within a record of the judicial branch, means that such information is exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may

be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term "exempt" means that such information is confidential. Confidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule. Restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.

(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) Procedure for Filing Records.

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. A filer at the time of filing shall: indicate whether any confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed; identify the provision of subdivision (d)(1)(B) of this rule that applies to the identified information; and identify the precise location of the confidential information within the document being filed. The clerk of court shall review filings identified by filers as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under the identified provision in subdivision (d)(1)(B). In the event the clerk determines that such information is not subject to confidentiality under the identified provision, the clerk shall notify the filer in writing within 5 days of

filing and shall maintain the information as confidential for 7 days from the day such notice is served.

(A) information described by any of subdivisions (c)(1) through (c)(6) of this rule,

(B) information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution under any of the following statutes or as they may be amended or re-numbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat.

(ii) Adoption records. § 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit and credit card numbers in court records. § 119.0714(1)(i)-(j), (2)(a)-(e), Fla. Stat. (Unless redaction is requested pursuant to 119.0714(2), this information is exempt only as of January 1, 2011.)

(iv) HIV test results and patient identity within the HIV test results. § 381.004(3)(e), Fla. Stat.

(v) Sexually transmitted diseases - test results and identity within the test results. § 384.29, Fla. Stat.

(vi) Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), .025(1)(a), Fla. Stat.

(vii) Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(viii) Identifying information in clinical mental health records under the Baker Act. § 394.4615(7), Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individual clients of substance abuse service providers. § 397.501(7), Fla. Stat.

(x) Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(xi) Estate inventories. § 733.604(1), Fla. Stat.

(xii) Victim's address in domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), .0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(xv) Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, .3701, Fla. Stat.

(xvi) Grand jury records. Ch. 905, Fla. Stat.

(xvii) Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)-(4), Fla. Stat.

(xviii) Juvenile delinquency records. § 985.04(1), .045(2), Fla. Stat.

(xix) Information disclosing the identity of persons subject to tuberculosis proceedings and Records of the Department of Health in suspected tuberculosis cases. §§ 392.545, .65, Fla. Stat.

(2) Any person filing a document shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule. A person filing information that the filer believes to be confidential but that is not described in subdivision (d)(1) of this rule may request that the information be maintained as confidential by submitting a "Motion to Determine the Confidentiality of Court Records" under the procedure provided in subdivision (e).

Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivision (e).

(~~e~~) Request to ~~Make~~Determine the Confidentiality of Circuit and County Court Records in Noncriminal Cases-Confidential.

(1) A request to ~~make~~determine the confidentiality of 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~~Determine the Confidentiality of Court Records ~~Confidential.~~" A motion made under this subdivision must:

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

(B) specify the bases for ~~making~~determining such court records to be confidential; and

(C) set forth the specific legal authority and any applicable legal standards for determining such court records to be 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 court records that are subject to 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) Except when a motion filed under subdivision (~~e~~)(1) represents that all parties agree to all of the relief requested, the court must, as soon as practicable but no later than 30 days after the filing of a motion under this subdivision, hold a hearing before ruling on the motion. Whether or not any motion filed under subdivision (~~e~~)(1) 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~~ person 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 moving party shall be responsible for ensuring that a complete record of any hearing held ~~pursuant to~~ 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. The court may in its discretion require prior public notice of the hearing on such a motion in accordance with the procedure for providing public notice of court orders set forth in subdivision (~~de~~)(4) or by providing such other public notice as the court deems appropriate.

(3) Any order granting in whole or in part a motion filed under subdivision (~~d~~)(1)(e) must state the following with as much specificity as possible without revealing information ~~made~~ that may be confidential:

(A) The type of case in which the order is being entered;

(B) The particular grounds under subdivision (~~e~~)(9)(A) (c) for ~~making~~ determining the court records information to be confidential;

(C) Whether any party's name ~~is to be made~~ may be determined to be confidential and, if so, the particular pseudonym or other term to be substituted for the party's name;

(D) Whether the progress docket or similar records generated to document activity in the case are to be made confidential;

(E) The particular ~~court records information~~ that are to be made may be determined to be confidential;

(F) ~~The names~~ Identification of those persons who are permitted to view the confidential ~~court records information~~;

(G) That the court finds that: (i) the degree, duration, and manner of confidentiality ordered by the court is no broader than necessary to protect the interests set forth in subdivision (~~e~~)(9)(A)(c); and; (ii) no less restrictive measures are available to protect the interests set forth in subdivision (~~e~~)(9)(A)(c); and

(H) That the clerk of the court is directed to publish the order in accordance with subdivision (~~de~~)(4).

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision (~~de~~)(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 and in a prominent, public location in the courthouse. The order must remain posted in both locations for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision ~~(e)(3)~~, the request must be made ~~in the form of~~ by 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~~ to 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~~ person 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 designation made under subdivision (d) or a motion made under subdivision ~~(e)(1)~~ was not made in good faith and was not supported by a sound legal and/or factual basis, the court may impose sanctions ~~upon the movant~~ after notice and an opportunity to respond.

(7) ~~Court records~~ Records of a lower tribunal made determined to be 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~~ information is confidential under this rule ~~remains in effect as of the time of an appeal~~, the clerk's of the lower tribunal shall so indicate in the 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 transmitted to the appellate court.~~

(8) Upon the request of persons seeking access, any Motion to Determine the Confidentiality of Court Records or any Motion to Vacate under this rule shall be deemed a priority case under rule 2.215(g).

(f) Request to Determine the Confidentiality of Circuit and County Court Records in Criminal Cases.

(1) Subdivision (e) shall apply to any request to determine the confidentiality of circuit or county court records under subdivision (c), except as provided in subdivision (f)(2).

(2) Any motion to determine whether a circuit or county court record is confidential pursuant to subdivision (c)(9)(A)(i) or (c)(9)(A)(v) of this rule that pertains to a plea agreement, substantial assistance agreement, or similar court record, and that constitutes a serious and imminent threat to 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 Determine Whether a Court Record is Confidential." As to any motion made under this subdivision, the following procedure shall apply:

(A) The existence of the motion made under this subdivision shall not be indicated on a publicly accessible index or progress docket. All court records that are the subject of such a motion must be treated as confidential by the clerk pending the court's ruling on 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 on 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 (e)(3)(A)-(G), (e)(6), and (e)(7) shall apply to motions made under this subdivision. The provisions of subdivisions (e)(1), (e)(2), (e)(3)(H), (e)(4), and (e)(5) shall not apply to motions made under this subdivision.

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

(3) This subdivision does not apply to records of the judicial branch determined to be 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.

(g) Request to Determine the Confidentiality of Appellate Court Records in Noncriminal Cases.

(1) A request to determine the confidentiality of appellate court records in noncriminal cases under subdivision (c) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (e)(1). Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not determined to be 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 (g)(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 (g)(1) must be in compliance with the guidelines set forth in subdivisions (e)(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 (g)(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 (g)(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 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 not to 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 (g)(1) was not made in good faith and supported by a sound legal or factual basis, the court may impose sanctions on the movant after notice and an opportunity to respond.

(7) Records of a lower tribunal determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where information has been determined to be confidential under this rule, the clerk of the lower tribunal shall so indicate in the index transmitted to the appellate court.

(h) Request to Determine the Confidentiality of Appellate Court Records in Criminal Cases.

(1) Subdivision (g) shall apply to any request to determine the confidentiality of appellate court records under subdivision (c), except as provided in subdivision (h)(2).

(2) Any motion to determine whether an appellate court record is confidential under subdivision (c)(9)(A)(i) or (c)(9)(A)(v) of this rule that

pertains to a plea agreement, substantial assistance agreement, or similar court record, and that constitutes a serious and imminent threat to 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 Determine Whether a Court Record is Confidential" and must be filed in the appellate court. The existence of the restricted motion shall not be indicated on a publicly accessible index. Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not determined to be confidential by the lower tribunal, or a record presented to an appellate court in an original proceeding. As to any motion made under this subdivision, the following procedure shall apply:

(A) Any motion made under 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 on 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 (e)(3)(A)-(G), (e)(6), and (e)(7) shall apply to motions made under this subdivision. The provisions of subdivisions (e)(1), (e)(2), (e)(3)(H), (e)(4), and (e)(5) shall not apply to motions made under this subdivision.

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

(3) This subdivision does not apply to records of the judicial branch determined to be 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.

(ei) ~~Judicial Review of Denial of Access Request for Administrative~~ Records. Expedited review of denials of access to administrative records of the judicial branch shall be provided through an action for mandamus; or other appropriate relief ~~appellate remedy~~; in the following manner:

(1)-(2) [No Change]

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

(1)-(3) [No Change]