

# Supreme Court of Florida

WEDNESDAY, SEPTEMBER 9, 2009

CASE NO.: SC07-2050

IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL  
ADMINISTRATION 2.420

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After considering the proposals from the various committees, the comments filed, as well as the issues addressed at oral argument, the Court has revised the proposed amendments to Rule of Judicial Administration 2.420, as reflected in the appendix to this order, which is attached. The Court seeks comments on its revisions from the committees and those who filed comments in this case. The comments should be limited only to the revisions made by the Court that are indicated in bold type. It is not the intent of the Court to revisit prior comments or to entertain additional comments to the amendments proposed by the committees.

The Access Subcommittee's comment should include a recommended effective date for new subdivision (d). The Rules of Judicial Administration Committee's comment should include a proposed form to be used with new subdivision (d). In developing the new form, the Committee should seek input from the Access Subcommittee and clerks of court.

The comments and proposed form must be filed on or before November 9, 2009. Where possible the Court would welcome joint submissions. An original and nine copies of all comments must be filed.

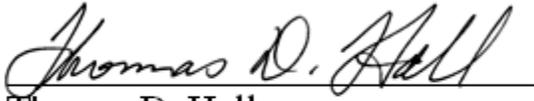
Per this Court's Administrative Order In Re: Mandatory Submission of Electronic Copies of Documents, AOSC04-84, dated September 13, 2004, parties are directed to transmit a copy of all comments in an electronic format as required by the provisions of that order.

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A True Copy

Test:



Thomas D. Hall  
Clerk, Supreme Court



vm

Served:

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

**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, “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. **To the extent reasonably practicable, 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, Confidential and Exempt Records.** The following records of the judicial branch shall be confidential:

(1)-(9) [No change]

(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) **Procedures for Determining Confidentiality of Court 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. The following information shall be maintained as confidential:

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

(B) except as provided by court order, 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 those test results. § 381.004(3)(e), Fla. Stat.

(v) Sexually transmitted diseases - test results and identity within the test results **when provided by the Department of Health or the department's authorized representative.** § 384.29, Fla. Stat.

(vi) Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), 382.025(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 individuals who have received services from 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 and accountings. § 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), 119.0714(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, 744.3701, 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), 985.045(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, 392.65, Fla. Stat.

(2) Any person filing any document shall, at the time of filing, 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). If the clerk determines that such information is not subject to confidentiality under the identified provision, the clerk shall notify the person who filed the document in writing within 5 days of the filing and thereafter shall maintain the information as confidential for 10 days from the day such notice is served. **The records shall not be held as confidential for more than 10 days, unless the filer has filed a motion pursuant to subdivision (d)(3).**

(3) Any person filing a document with the court shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule notwithstanding that such information is not itemized in subdivision (d)(1) of this rule. A person filing information that he or she 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 filing a “Motion to Determine Confidentiality of Court Records” under the procedures set forth in subdivisions (e), (f), or (g). Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivisions (e), (f), or (g).

**(4) If confidential information that involves a named non-party is filed, the person filing the information shall give notice to the non-party of the filing of the confidential information. The notice must be filed with the court and must identify the case by docket number, describe the information, identify the precise location of the information within the document being filed, and include a statement that if determined to be confidential the information could be subject to unsealing. If a motion is filed seeking to vacate an order determining the information to be confidential or seeking to unseal the information if designated as confidential by the clerk of court, the named non-party must be served with the motion in accordance with subdivisions (e)(5) or (g)(5).**

**(de) Request to ~~Make~~Determine Confidentiality of ~~Circuit and County~~Trial Court Records in Noncriminal Cases ~~Confidential~~.**

(1) A request to ~~make~~determine the confidentiality of circuit and county trial 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 Confidentiality of Court Records ~~Confidential~~.” A motion made under this subdivision must:

(A) identify the particular court records or a portion of a record that the movant seeks to ~~make~~have determined as confidential with as much specificity as possible without revealing the information to be ~~made confidential~~subject to the confidentiality determination; and

(B) specify the bases for ~~making~~determining that such court records are 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~~Information that is 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~~determine that the case number, docket number, or other number used by the clerk's office to identify the case file is confidential.

(2) Except when a motion filed under subdivision ~~(d)~~(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 ~~(d)~~(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)~~. **Any person may request expedited consideration of and ruling on the motion.** The moving party shall be responsible for ensuring that a complete record of any hearing held pursuant to 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 ~~(d)~~(4) or by providing such other public notice as the court deems appropriate. **The court must issue a ruling on the motion within 30 days of the hearing.**

(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 the information made confidential subject to the confidentiality determination:

(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~~ 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 determined to be ~~made~~ confidential;

(E) The particular ~~court records~~ information that are to be ~~made~~ is 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 ~~are~~ no broader than necessary to protect the interests set forth in subdivision (c)(9)(A); and (ii) no less restrictive measures are available to protect the interests set forth in subdivision (c)(9)(A); 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 in whole or in part 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. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (~~de~~)(3), **or requests that the court order the unsealing of records designated as confidential under subdivision (d)**, 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 **affected parties in the action, including named non-parties given notice of the filing of the information under subdivision (d)(4)**, with a copy of the motion. ~~In the event that~~ If the subject order ~~specifies~~ determines 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~~ **all affected parties, including named non-parties given notice of the filing of the information under subdivision (d)(4)**, 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, **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. ~~Regardless of 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 person may request expedited consideration of and ruling on the 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 court must issue a ruling on the motion within 30 days of the hearing.** 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. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

(6) If the court determines that a designation made under subdivision (d) or a motion made under subdivision (de)(4) 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 made confidential under this rule must be treated as confidential during any appellate 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.~~

**(f) Request to Determine Confidentiality of Court Records in Criminal Cases.**

(1) Subdivision (e) shall apply to any motion by the state or a defendant to determine the confidentiality of trial court records under subdivision (c), except as provided in subdivision (f)(3). As to any motion filed in the trial court under subdivision (f)(3), the following procedure shall apply:

(A) Unless the motion 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. Any hearing held under this subdivision must be an open proceeding, except that any

**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).**

(B) The court shall issue a written ruling on a motion filed under this subdivision within 10 days of the hearing on a contested motion or within 10 days of the filing of an agreed motion.

(2) Subdivision (g) shall apply to any motion to determine the confidentiality of appellate court records under subdivision (c), except as provided in subdivision (f)(3). As to any motion filed in the appellate court under subdivision (f)(3), the following procedure shall apply:

(A) The motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

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

(C) The court shall issue a written ruling on a motion filed under this subdivision within 10 days of the filing of a response on a contested motion or within 10 days of the filing of an uncontested motion.

**(3) Any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court record that reveals the identity of a confidential informant or active criminal investigative information is confidential under subdivision (c)(9)(A)(i), (c)(9)(A)(iii), (c)(9)(A)(v), or (c)(9)(A)(vii) of this rule may be made in the form of a written motion captioned “Restricted Motion to Determine Whether a Court Record is Confidential.” If the motion reveals the identity of a confidential informant or active criminal investigative information, the movant may request that the motion also be determined to be confidential. As to any motion made under this subdivision, the following procedure shall apply:**

(A) Information that is the subject of such motion must be treated as confidential by the clerk pending the court’s ruling on the motion.

(B) 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 or review 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 or review proceeding.

(C) The provisions of subdivisions (e)(3)(A)–(G), (e)(6), and (g)(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.

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

**(4) This subdivision does not authorize the falsification of court records or progress dockets.**

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

(1) A motion 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 motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made 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)–(H). Any order requiring the sealing of an appellate court record operates to also make those same records confidential in the lower tribunal during the pendency of the appellate proceeding.

(4) Except as provided by law, within 10 days following the entry of an order granting a motion under subdivision (g)(1), the clerk of the appellate court must

post a copy of the order on the clerk's website and must provide a copy of the order to the clerk of the lower tribunal, with directions that the clerk is to seal the records identified in the order. 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), **or requests that the court order the unsealing of records designated as confidential under subdivision (d)**, the request must be made 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 **affected parties, including named non-parties given notice under subdivision (d)(4)**, with a copy of the motion. If the subject order determines 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 **all affected parties, including named non-parties given notice under subdivision (d)(4)**, 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) The party seeking to have an appellate record sealed under this subdivision has the responsibility to ensure that the clerk of the lower tribunal is alerted to the issuance of the order sealing the records and to ensure that the clerk takes appropriate steps to seal the records in the lower tribunal.

(7) Upon conclusion of the appellate proceeding, the lower tribunal may, upon appropriate motion showing changed circumstances, revisit the appellate court’s order directing that the records be sealed.

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

(9) 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. If the information was determined to be confidential in an order, the clerk’s index

must identify such order by date or docket number. This subdivision does not preclude review by an appellate court, **under Rule of Appellate Procedure 9.100(d)**, or affect the standard of review by an appellate court, of an order by a lower tribunal determining a record to be confidential.

**(eh) ~~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]

**(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]

**RULE 9.040. GENERAL PROVISIONS.**

(a) – (h)

**(i) Requests to Determine Confidentiality of Appellate Court Records.**

Requests to determine the confidentiality of appellate court records are governed by Florida Rule of Judicial Administration 2.420.

**Committee Notes**

**[No Change]**

**RULE 9.100. ORIGINAL PROCEEDINGS**

(a) – (c) [No Change]

**(d) Exception; Orders Excluding or Granting Access to Press or Public.**

(1) A petition to review an order excluding or granting access to the press or public from ~~access or~~ to any proceeding, any part of a proceeding, or any ~~judicial records of the judicial branch, if the proceedings or records are not required by law to be confidential,~~ shall be filed in the court as soon as practicable following rendition of the order to be reviewed, ~~if written, or announcement of the order to be reviewed, if oral~~ but no later than 30 days after rendition of the order. A copy of the petition shall be furnished to the person (or chairperson of the collegial administrative agency) issuing the order; and to the parties to the proceeding.

(2) The court shall immediately consider the petition to determine whether a stay of proceedings in the lower tribunal or the order under review is appropriate; and, on its own motion or that of any party, the court may order a stay on such conditions as may be appropriate. Any motion to stay an order granting access to a proceeding, any part of a proceeding, or any records of the judicial branch made under this subdivision must include a signed certification by the movant that the motion is made in good faith and is supported by a sound factual and legal basis. Pending the court's ruling on the motion to stay, the clerk of the court and the lower tribunal shall treat as confidential those proceedings or those records of the judicial branch that are the subject of the motion to stay.

(3) If requested by the petitioner or any party, or on its own motion, the court may allow oral argument. Review of orders under this subdivision shall be expedited.

(e) – (l) [No Change]

### Committee Notes

**1977 Amendment – 1999 Amendment** [No Change]

**2009 Amendment.** Subdivision (d) is revised to allow review of orders that not only deny access to records of the judicial branch or judicial proceedings, but also those orders that deny motions to seal or otherwise grant access to such records or proceedings claimed to be confidential. This revision is intended to recognize and balance the equal importance of the constitutional right of privacy, which includes confidentiality, and the constitutional right of access to judicial records and proceedings. The previous rule allowed review of orders denying access only “if the proceedings or records are not required by law to be confidential.” This provision is eliminated because it is unworkable in that such a determination of what is required by law to be confidential usually concerns the merits of whether the proceedings or records should be confidential in the first instance. Outer time limits for seeking review are added. The provision for allowing review of oral rulings denying access is eliminated to conform to the general requirement of a written order for an appellate court to review and in light of the factual findings required by Florida Rule of Judicial Administration 2.420 to be included in an order granting a motion to make court records confidential. Subdivision (d)(2) is revised to provide continued confidentiality of judicial proceedings and records to which the order under review has granted access upon the filing of a motion to stay that order until the court rules on the motion to stay. The former subdivision (d)(3) concerning oral argument is deleted as unnecessary in light of Rule 9.320. New subdivision (d)(3) is a recognition of the public policy that favors expedited review of orders denying access and the provision for expedited review in Florida Rule of Judicial Administration 2.420.

**2009 Note.** As provided in Rule 9.040, requests to determine the confidentiality of appellate court records are governed by Florida Rule of Judicial Administration 2.420.

**Court Commentary**

[No Change]

**RULE 9.110. APPEAL PROCEEDINGS TO REVIEW FINAL ORDERS OF LOWER TRIBUNALS AND ORDERS GRANTING NEW TRIAL IN JURY AND NON-JURY CASES**

**(a) – (n) [No Change]**

**Committee Notes**

**1977 Amendment – 2006 Amendment.** [No Change]

**2009 Note.** As provided in Rule 9.040, requests to determine the confidentiality of appellate court records are governed by Florida Rule of Judicial Administration 2.420.

**Court Commentary**

[No Change]