



FIRST AMENDMENT FOUNDATION

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January 15, 2009

VIA E-Mail and Hand-Delivery

Mr. Thomas D. Hall
Clerk of Court
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1927

FILED
THOMAS D. HALL
2009 JAN 16 A 9:11
CLERK SUPREME COURT
BY [Signature]

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

Dear Mr. Hall:

In response to this Court's invitation to comment upon the Proposed Amendments to the Florida Rule of Judicial Administration 2.420, Case No. SC07-2050, we file this comment on behalf of the First Amendment Foundation (FAF), a Florida not-for-profit corporation. The FAF is a public interest organization formed for the purpose of helping preserve and advance freedom of speech and of the press as provided in the United States Constitution and the Florida Constitution, and acting as an advocate and defender of the public's right of access to the records and meetings of its government. The Foundation represents more than 200 members, including most of Florida's daily and weekly newspapers, other media organizations, First Amendment and media law attorneys, students, private citizens, and public interest organizations. See <http://www.floridafaf.org>.

Florida has a long, rich history guaranteeing the public's right of access to government records. In 1992, the Florida voters overwhelmingly – 87% of the voters, the largest margin of approval ever given to effect a constitutional change – passed a constitutional amendment, Article I, Section 24, guaranteeing the public's right of access to government records and meetings.

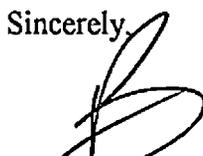
Efforts were also made by this Court to preserve the public right of access to records in order to advance the public's right of governmental oversight. For example, in response to press investigations uncovering the "supersealing" of hundreds of court records, the Florida Supreme Court recently ruled that state courts may not keep the existence of civil and divorce cases off public dockets. [In re Amendments to Florida Rule of Judicial Administration 2.420 – Sealing of Court Records and Dockets, Apr. 5, 2007]. The Court explicitly banned the practice of keeping a civil case completely off the public docket and asserted, "the public's constitutional right of access to court records must remain inviolate," in an effort to eliminate supersealing and to preserve the public's rights of access to court records.

The First Amendment Foundation believes it is critical that if a new version of Rule 2.420 is adopted by this Court, it should adopt the proposed rule amendments of the Committee on Access to Court Records (CACR). The CACR's proposed rule amendments reflect a more careful and thorough consideration of the public's constitutional rights to access to records as guaranteed by Article I, section 24, Florida Constitution.

On the other hand, the Rules of Judicial Administration Committee (RJAC) proposed rule amendments to Rule 2.420, we believe, stand in direct conflict with the Court's recent strides to enhance transparency in Florida courts. For example, while the CACR's proposed rule amendments provide for limited access and closure to only appellate criminal records in certain instances, the RJAC's proposed amendments require that motions to make court records confidential in both civil (subsection (d)(1) of the RJAC's proposed rule amendments) and criminal (subsection (e)(2)(A) of the RJAC's proposed rule amendments) cases be withheld from the public pending the Court's ruling on the motion. In other words, an entire category of records may be automatically exempt under the RJAC's proposed amendments. Additionally, the CACR's proposed rule provides for a "restricted" motion process and narrows the class of motions to those which specific exceptions apply (subsection 2.420(f)(2) of the CACR's proposed rule amendments). However, the RJAC's proposed amendments do not provide the same protections, allowing for closure of circuit and county records in criminal cases without affording opportunity for public oversight.

The First Amendment Foundation is grateful for the opportunity to comment on the Court's recommendations, Mr. Hall. We would greatly appreciate the Court's consideration of our concerns and suggestions. If we can answer any questions or provide additional information, please don't hesitate to contact us.

Sincerely,



Barbara A. Petersen, President
Florida Bar No. 914207



Adria E. Harper, Director
Florida Bar No. 0026198

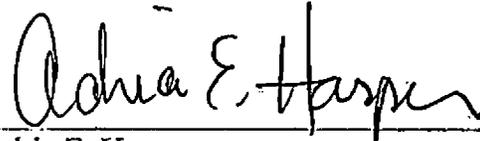
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Comment has been hand-delivered on this, the 15th day of January, 2009, to:

The Honorable Judith Kreeger, Chair
Commission on Access to Court Records
c/o Office of the State Court Administrator
Supreme Court Building
500 South Duval Street
Tallahassee, FL 32399-1900

Steve Henley
Office of the State Court Administrator
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