


IN THE SUPREME COURT OF FLORIDA

CASE NO: SC07-2050

FILED
THOMAS D. HALL
2009 JAN 16 A 10: 57
CLERK, SUPREME COURT
BY 

IN RE: AMENDMENTS TO
FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.420
_____ /

**DIANE M. MATOUSEK, CLERK OF THE CIRCUIT COURT IN AND FOR
VOLUSIA COUNTY, FLORIDA'S, COMMENTS TO AMENDMENTS TO
FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.420**

COMES NOW, Diane M. Matousek, Clerk of the Circuit Court, in and for Volusia County, Florida (hereinafter "the Clerk"), by and through undersigned counsel, and submits these comments to the proposed amendments to Florida Rule of Judicial Administration 2.420:

In response to the Court's invitation to all interested persons to comment on the proposed amendments to Rule 2.420 submitted by the Committee on Access to Court Records, the Clerk offers the following observations and suggestions for the Court's consideration. The Clerk greatly appreciates this opportunity to contribute to the discussion on the Rule amendments, and hopes that the Court will find her comments useful for the development of an effective Rule.

I. Subsection (d) Procedure for Filing Records

The Clerk commends the Access Committee and this Court for crafting a viable list of public records exemptions that automatically apply in the court-record context. This list of readily-identifiable confidentiality exemptions will greatly aid Clerks of Court in protecting sensitive information in a workable manner. The process set forth in the amended Rule that allows filers to identify information facially subject to confidentiality is also appreciated.

However, in the current proposal, the last sentence of subsection (d)(1) provides that if the Clerk does not agree with a filer that information is subject to confidentiality, “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.” Though the Clerk understands that this procedure may be necessary in the event the Clerk disagrees with a claim of facial confidentiality, the Rule as currently proposed fails to specify what the filer should do within the seven days and how the Clerks should treat the information at the end of the seven day period.

In earlier drafts of the Rule, subsection (d)(1) ended with the statement that the record should not be held confidential at the end of the time period specified, *unless the filer has filed a motion pursuant to subdivision (e)*. This additional direction makes it clear to the filer and the Clerks what must occur in order for the filing to continue to be treated as confidential. The simple addition of this language also makes clear the Clerks’ authority to return the filing to non-

confidential public status upon the failure of the filer to motion the court for a confidentiality determination.

Accordingly, the Clerk requests that the Court add a simple, additional statement to the end of subsection (d)(1) indicating that the record shall not be maintained as confidential for more than seven days from the date of the written notice, unless the proponent motions the court to determine the confidentiality of the court record pursuant to subsection (e).

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

The Clerk understands that there has been some debate about this Court's authority to require that the motion itself be treated as confidential in criminal cases, despite the Court's concern regarding the sensitivity of such criminal motions. Apparently as a result of this discussion, subsection (f)(2)(A) of the proposed Rule now states that a motion for confidentiality in a criminal case shall not be indicated on a publicly accessible index or progress docket, and yet the Rule *does not* give the Clerks the authority to treat the motion itself as confidential.

From a practical standpoint this divergent treatment of the criminal confidentiality motion is somewhat problematic. In current practice, all documents filed with the court are indicated on the docket or index in order to preserve the chronology of the case file, even if the filing is confidential and is kept physically

sealed.¹ Also, in this Clerk's office, each item's assigned docket number is written on the document itself for ease of reference and tracking purposes. It would be difficult to maintain the docket or index accurately and sequentially without some indication of each filing's existence.

Further, refraining from indicating the existence of such motions on the docket appears to offer little protection when the Clerk could not deny a request to inspect the physical court file containing the motion. Since the proposed Rule does not afford such motions complete confidential treatment, the proponent will necessarily be required to write the motion without revealing any sensitive information. Perhaps the careful drafting of such motions would sufficiently prevent the spread of information that could pose an imminent threat to safety or justice. Accordingly, the Clerk urges the Court to consider what would be accomplished by prohibiting an indication on the docket of a filing that is otherwise unprotected and available for inspection in the physical court file.

III. Subsection (g) Request to Determine the Confidentiality of Appellate Court Records in Non-Criminal Cases

Subsection (g)(7) states that the Clerk must indicate in the appellate record index any records determined to be confidential in the lower tribunal. However,

¹ For items subject to confidentiality by way of motion or otherwise, the line item description for the docket number entry simply identifies the basic type of filing but reveals no further detail, such as "Settlement Agreement" or "Guardianship Inventory."

the proposed Rule does not specify a uniform method for doing so. The Clerk agrees with the recommendation of the Special Joint Committee's Comment of September 2, 2008, that additional language should be added directing the Clerk to include a statement in the index that a confidentiality order has been entered and identifying each order by date or docket number. This specific instruction would clarify what is required and ensure uniformity in the treatment of appellate records. Accordingly, the Clerk recommends that the Court adopt the Joint Committee's proposed revisions to subsection (g)(7).

In addition, the Joint Committee suggests an amendment requiring that an order sealing at the appellate level operates to make those same records confidential in the lower court. If adopted, the Clerk urges the Court to also accept the Joint Committee's proposed amendment to subsection (g)(4) directing the appellate clerk to provide a copy of the order to the trial court clerk identifying the records to be sealed. This simple additional procedure would give the Clerks notice and authority to protect such information in the trial court file and ensure uniformity in application among the various Clerks.

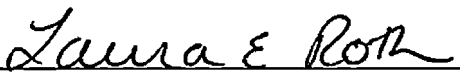
IV. Subsection (h) Request to Determine the Confidentiality of Appellate Court Records in Criminal Cases

As previously discussed concerning criminal trial court records, the proposed Rule currently states that a motion for confidentiality may not be indicated on a publicly accessible index, while the actual motion is not to be

treated as confidential. However, in this section addressing the criminal appellate record, language remains in subsection (h)(2)(A) that the *motion itself* and the records subject to the motion are to be treated as confidential by the Clerk while the motion is pending. The Clerk questions whether the Court intends that the motion may *not* be treated as confidential during the pendency of the motion at the trial court level, while a restricted motion *must* be treated as confidential at the appellate level.

The Clerk also agrees with several of the recommendations of the Special Joint Committee for clarity and simplification. For example, it should be made clear that the Rules governing confidentiality motions in appellate proceedings apply to all appeals, including appeals to circuit court. The Clerk also agrees with the observation that subsection (e)(7) is redundant, as direction pertaining to the treatment of the appellate record is best restricted to subsection (g).

Respectfully Submitted,



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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to the below listed parties on this 14th day of January, 2009:

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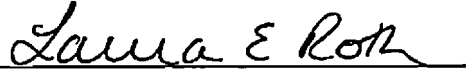
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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in Diane M. Matousek, Clerk of the Circuit Court in an for Volusia County's, Comments to Amendments to Florida Rule of Judicial Administration 2.420 was prepared in MS Word using 14-point Times New Roman font.


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