

IN THE SUPREME COURT OF FLORIDA

NO. SC07-2050

IN RE: AMENDMENT TO FLORIDA RULE OF JUDICIAL  
ADMINISTRATION 2.420 – SEALING OF COURT RECORDS AND  
DOCKETS

FILED  
THOMAS D. HALL  
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CLERK, SUPREME COURT  
BY *[Signature]*

**COMMENTS OF THE TWENTY STATE ATTORNEYS ACTING  
TOGETHER THROUGH THE FLORIDA PROSECUTING ATTORNEYS  
ASSOCIATION IN RESPONSE TO SEPTEMBER 9, 2009 ORDER  
REVISING RULE 2.420**

COMES NOW, THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION, INC. [FPAA], representing the elected State Attorneys for the twenty judicial circuits of Florida, and files this Comment in response to this Court's Order dated September 9, 2009, highlighting bold-type revisions to Florida Rule of Judicial Administration 2.420 – Sealing of Court Records and Dockets, and states as follows:

1. A new subdivision (f) has been added to rule 2.420 of the Rules of Judicial Administration, entitled Request to Determine-Confidentiality of Court Records in Criminal Cases. Subdivision (f)(1) states that “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),” where a different procedure applies.

2. First, as to the procedure in subdivision (e), the FPAA having seen the comments and proposals of the Consolidated Comments of the Court Rules Committees<sup>1</sup> and supports those proposals.

3. Second, as to the procedure for motions filed under subdivision (f)(3), the FPAA endorses the change in (f)(1)(A) proposed by this Court to add the portion that “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).” The FPAA believes that this appropriately balances the needs for confidentiality with the right to have judicial proceedings open.

4. Third, as to subdivision (f)(3), the FPAA endorses the changes that this Court has made to the prior proposed subdivision (f)(3). These changes alleviate the concerns that the FPAA had that the rule should not be limited to confidential informants but apply to all active criminal investigations. The FPAA further supports the recommendations of the Criminal Procedure Rules Committee [“CPRC”] in particular the additional language of “Any motion made pursuant to this subdivision and all court records that are the subject of such a motion must be treated as confidential and not indicated on the docket by the clerk pending a ruling

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<sup>1</sup> Undersigned counsel has been privy to the e-mails from the Rules Committees that contain the proposed changes.

on the motion or further order of the court.” It would not serve the purpose of a confidentiality motion, especially where the purpose of the motion is to protect a plea agreement, substantial assistance agreement or other court record that reveals the identity of a confidential informant or active criminal investigation, if the clerk was required to indicate that there is such a motion pending before the court.

5. Fourth, this Court has added subdivision (f)(4) which states that “**This subdivision does not authorize the falsification of court records or progress dockets.**” The FPAA does not endorse the falsification of court records or progress dockets, but believes that if subdivision (f)(3) is clarified as suggested by the CPRC, then the clerk not indicating on the docket that such a motion is pending or granted during the applicable times under the rule, should not be considered a falsification of the court records or progress dockets. Thus, the FPAA suggests the following amendment:

(4) This subdivision does not authorize the falsification of court records or progress dockets. When a motion is made pursuant to subdivision (f)(3), the clerk’s non indication on the docket that such a motion is pending or granted during the applicable time periods under this rule, is not a falsification of the court records or progress docket.

6. Next, although, not part of the highlighted bold-type revisions, the FPAA is concerned with the wording of subdivision (f)(3)(B) which provides that “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.” The FPAA is concerned that the way the subdivision is worded that it may appear that the parties could not have the court record sealed for more than 120 days, and that the 60-day periods are applicable to the time period within those 120 days, e.g., an initial order was for 60 days and it could be extended only for another 60 days. Unfortunately, many active criminal investigations that involve confidential informants, which may be the subject of a motion under this rule, often last longer than 120 days.

It is the FPAA’s understanding that it was the intent of this subdivision that 120 days was not the outer limit on the sealing of court records, just that it would be necessary to file a new motion after 120 days had passed. In order to clarify that intent, the FPAA would suggest that the following language be added to this subdivision:


(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 beyond the initial 120 days 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.

7. Finally, in prior comments, the Florida Public Defenders Association ["FPDA"] has expressed concerns that criminal convictions should never be sealed from defendants in other cases who have a right to investigate the case against them, emphasizing the need for accurate criminal history records for witnesses, intimating that prosecutors will not disclose that information. The FPAA does not know if the FPDA will be reiterating those concerns in any comments filed by them, but if they do, the FPAA submits that the prosecutors are aware of their discovery obligations under Fla. R. Crim. P. 3.220, as well their duty to provide favorable evidence under *Brady v. Maryland*, 373 U.S. 83 (1963). Disclosure of impeachment information is related to the fairness of a trial. *United States v. Ruiz*, 536 U.S. 622, 628 (2002). It should be assumed that prosecutors will disclose the criminal convictions of the witnesses as required by the rules and law. Thus, this Court should not consider exempting criminal convictions from this rule.

Wherefore, the State Attorneys of the Twenty Judicial Circuits of Florida, by and through the Florida Prosecuting Attorneys Association, respectfully request that this Court consider the Comments set forth herein.

Respectfully submitted,

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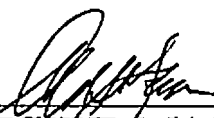
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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this Comment complies with the font requirements  
of Fla. R. App. P. 9.210(c)(2).

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