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CLERK, SUPREME COURT
BY

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO RULE OF JUDICIAL ADMINISTRATION 2.420 - PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

CASE NO. SC07-2050

PETITION OF THE COMMITTEE ON ACCESS TO COURT RECORDS TO AMEND RULE OF JUDICIAL ADMINISTRATION 2.420

The Committee on Access to Court Records (the Access Committee), by and through its undersigned Chair, the Honorable Judith L. Kreeger, Circuit Judge, Eleventh Judicial Circuit, files this petition pursuant to Florida Supreme Court Administrative Order AOSC06-27, *In Re: Committee on Access to Court Records*, dated August 21, 2006, (Appendix D) directing the Access Committee to review and propose revisions to Florida Rule of Judicial Administration 2.051, now rule 2.420, relating to confidentiality and access to court records.

The Access Committee proposal is provided in legislative format in Appendix A. A two-column table comparing the Access Committee proposal to the existing rule is provided in Appendix B. For reference, the Access Committee proposal is provided in legislative format set against the pending proposal of the Supreme Court released on February 28, 2008. This document is Appendix C.

The Access Committee was formed pursuant to Administrative Order AOSC06-27, *In Re: Committee on Access to Court Records*, issued on August 21, 2006. The Access Committee was created to advance the implementation of a number of recommendations of the predecessor Committee on Privacy and Court Records (the Privacy Committee). The Privacy Committee had concluded, and the Supreme Court had agreed, that the Florida judicial branch should have as a goal providing electronic access to non-confidential court records when appropriate conditions are met. Administrative Order AOSC06-20, *In Re: Implementation of the Report and Recommendations of the Committee on Privacy and Court Records*. The purpose of the Access Committee has been to assist in establishing those necessary conditions.

This Petition is directed solely to amendments to rule 2.420. The Access Committee is also submitting a separate petition that addresses changes to other rules of court for purposes of minimizing personal information in court records, and a committee report that addresses other matters that do not implicate rules of court. The proposed amendments were approved by the Access Committee on July 14, 2008, by a vote of 12-0. The Committee conducted 12 meetings from November 30, 2006 to July 14, 2008.

The major task assigned to the Access Committee was to propose revisions to Rule of Judicial Administration 2.420 (formerly 2.051) to address the effective scope and operation of the rule in terms of its relationship to statutory public records exemptions. This followed on the conclusion of the Privacy Committee that a central obstacle to implementation of remote electronic access to court records in Florida is that in its present form, rule 2.420 is administratively impracticable and inadvisable as a matter of policy because it appears to indiscriminately incorporate all statutory categories of confidential records, of which there are more than one thousand.

The Court also directed the Access Committee to address several other matters in its proposed revisions to rule 2.420. The Court directed that the rule be amended to clearly provide for the responsibilities of filers when submitting confidential information to the courts. Filing requirements should include a certification to the clerk of court when confidential information is filed, notice to parties and affected non-parties, and a good faith provision that subjects the attorney or party to sanctions. (Privacy Report at 64) The Court also directed the Access Committee to propose revisions to rule 2.420 to clarify that court records defined by the rule as confidential may not be released except as allowed by law.

Charge.

The charge to the Access Committee with regard to rule 2.420 provides:

The primary purpose of the Committee is to review Florida Rule of Judicial Administration 2.051 and develop proposed revisions to the rule with regard to the following matters:

1. Recommendation Two: Scope of Confidentiality. Review and explore revisions of rule 2.051 to narrow its application to a finite set of exemptions that are appropriate in the court context and are

identifiable. The Committee should note that the Supreme Court has not made a decision as to whether the absorption doctrine applies.

. . . .

4. Recommendation Thirteen: Confidential Information. Propose revisions to rule 2.051 to clarify that those records defined in the rule are confidential and may not be released except as provided. Because this requirement is already established in existing law, the Committee is directed to propose a rule amendment or committee note that is consistent with the recognition of the current legal requirements.

5. Recommendation Sixteen: Unsealing of Records. Propose revisions to rule 2.051 to provide a clear and effective mechanism through which a preliminary determination that a record is exempt or confidential can be challenged and reviewed.

6. Recommendation Seventeen: Responsibility of Filer. Propose revisions to rule 2.051 to provide for certain responsibilities of the filer of court documents regarding confidential information.

[Footnotes deleted]

Absorption and the Scope of Rule 2.420.

The central question regarding rule 2.420, as posed by the Privacy Committee, is "whether the rule incorporates, or absorbs, state exemptions and federal confidentialities, thus making them confidentialities under court rule." (Privacy Report at 29) The rule was adopted in 1992 in anticipation of passage of the Sunshine Amendment of the Florida Constitution. It provides in pertinent part:

> (c) Exemptions. The following records of the judicial branch shall be confidential:
>
> . . . .

> (8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission.

Upon examination of these provisions, the history of the Sunshine Amendment, and other materials, the Privacy Committee concluded that subdivision 2.420(c)(8) was intended to embrace and does incorporate the statutory exemptions:

> The Committee believes that on its face this rule incorporates state statutory exemptions, making exempt information confidential within judicial branch records. The Committee believes that this is the interpretation given to the rule by the Florida Supreme Court in *State v. Buenoano*, 707 So. 2d 714, 718 (Fla. 1998).

(Privacy Report at 30-31 (footnote omitted))

In reaching this conclusion, the Privacy Committee relied on *State v. Buenoano*, in which the Court interpreted subdivision 2.420(c)(8) as it relates to several specific statutory exemptions for criminal investigative records. The Court held that the records in question, which were exempt under the statutory exemption, "are likewise exempt under rule [2.420]." *State v. Buenoano*, 707 So. 2d at 718.

While the Privacy Committee agreed with the legal conclusion that the rule absorbs all statutory exemptions, it emphasized that this outcome leads to two serious problems. First, the committee agreed that this result is contrary to Florida's open records tradition and policy. It observed that many statutory exemptions are either overbroad or inappropriate when applied to court records. Second, the committee recognized the practical concern raised by clerks of court and others: the task of fully applying all statutory exemptions to all court records would be enormously burdensome and would present an insurmountable obstacle to the eventual implementation of public online access to court records. This problem is somewhat unique to electronic access because with traditional "over the counter" access to paper records only records that are actually requested need be screened for confidential information. This leaves the vast bulk of court records unexamined, protected by "practical obscurity," distant from public view.

Implementation of instant electronic access, on the other hand, would require that all records that are to be made available be screened and redacted before being stored on a publicly accessible system. A representative of the Florida Association of Clerks of Court informed the Privacy Committee that Florida courts receive some 19 million documents annually. The Privacy Committee therefore determined that revising the rule was a necessary precondition to electronic access and it made the following recommendation:

> The Committee has concluded that implementation of a system that allows large volumes of court records to be released electronically cannot be responsibly achieved under the current [Rule 2.420]. The Committee therefore recommends that the Supreme Court direct a review of the effective scope of [Rule 2.420(c)(8)] and explore revision of the rule for the purpose of narrowing its application to a finite set of exemptions that are *appropriate in the court context* and are *readily identifiable.*

(Privacy Report at 47 (emphasis added))

The Supreme Court concurred with this analysis and subsequently charged the Access Committee with proposing rule revisions consistent with the recommendation of the Privacy Committee.

The Court added a significant caveat to its charge: "The Committee should note that the Supreme Court has not made a decision as to whether the absorption doctrine applies." Administrative Order AOSC06-27. The Access Committee interpreted this to mean that the Court desires that the rule be applied to a limited set of circumstances where confidentiality is clearly appropriate to court records and the subject record or information is readily identifiable by staff of the clerk of court. The Court clearly indicated that it was reserving judgment about the question of whether the rule absorbs other statutory exemptions. This interpretation is not inconsistent with *Buenoano*, where the Court ruled only that the specific criminal investigative records exemptions relevant to the subject records in that case remained exempt pursuant to the court rule. So, while the Court has not determined the scope of the absorption doctrine, and the decided cases do not articulate a definitive construction of the scope and breadth of rule 2.420(c)(8), the Court has indicated that absorption of applicable exemptions can be categorically applied in "a finite set of exemptions that are appropriate to the court context and are identifiable." The Access Committee was asked to define

that "finite set." With respect to other, less clear exemptions outside of that set, the Court may later clarify the issue over time.

This view was reinforced in an opinion that the Court issued in April 2007, in adopting rules amendments proposed by the Rules of Judicial Administration Committee to address the issue of sealed cases:

> Rule 2.420 recognizes a narrow category of court records where public access is automatically restricted by operation of state or federal law or court rule. See Fla. R. Jud. Admin. 2.420(c)(7)-(8). For records in this category, the State itself, through law and court rule, has identified specific privacy or government interests that clearly outweigh the public's right to know. These interests have been identified through the democratic process either in the Legislature or through the Court's public rule-making process.

In re Amendments to Florida Rule of Judicial Admin. 2.420-Sealing of Court Records and Dockets, 954 So. 2d 16 (Fla. 2007). The Access Committee again interpreted this to mean the rule can be understood to incorporate some, but not all, statutory exemptions, a concept that may be referred to as "soft" absorption.

In addition to reinforcing the concept of limiting "automatic" or categorical absorption to a relatively small set of exemptions, the 2007 amendments to rule 2.420 also presented an opportunity to consider how those exemptions which are not categorically incorporated might otherwise be addressed. The amended rule now includes a motion process through which a party may request that circuit or county court records in a non-criminal case be made confidential under rule 2.420(c)(9). This motion process, in new subdivision 2.420(d), provides a formal procedure for filers to certify that a motion to make records confidential meets certain requirements. Such motions must be made in good faith subject to sanction. Motions must be publicly noticed. The proposed amendment requires a hearing for a contested motion, and specifies the content of an order granting a motion in whole or in part. While the new subdivision was directed to non-criminal cases in county or circuit courts and limited the bases for motions to the elements subdivision 2.420(c)(9), the Access Committee concluded that this motion process could be expanded and used within the rule to accomplish much of

what the committee had been charged with accomplishing. Specifically, the process might accommodate assertions of confidentiality that rely on statutory exemptions beyond those that are categorically absorbed.

Analysis and Preliminary Proposal.

The Access Committee directed the Rule 2.420 Workgroup (the Workgroup) to develop recommendations for consideration by the full committee. After reviewing the history and legal background of this issue, the Workgroup created a framework to guide its work. First, the Workgroup developed a model that would conceptually organize all information in court records into three categories in terms of confidential status:

Type I: Information that is subject to a clearly applicable court rule or statutory exemption *and* is readily identifiable.

Type II: Information that is subject to a clearly applicable court rule or statutory exemption but which is *not* readily identifiable, *or* information which is not clearly subject to a court rule or statutory exemption.

Type III: Information that is not subject to a court rule or statutory exemption.

The Workgroup then developed proposed revisions to the rule that would accomplish the following:

Type I: The rule would itemize the court rules and statutory exemptions that comprise Type I, require that a filer of such information identify it as such, require the clerk to review for facial validity the identification of the information as confidential, and direct the clerk to independently identify and keep the information confidential whether the filer identified the information or not. These concepts are incorporated in new subdivision (d)(1) of the proposed rule.

Type II: Building on the motion process proposed by the Rules of Judicial Administration Committee and adopted by the Court in 2007, a filer or other affected person may file a motion to

determine whether information not included in the Type I list is confidential. This concept is incorporated in new subdivision (d)(2) of the proposed rule.

Type III: Any information which is not categorically confidential under Type I or is not determined to be confidential through a Type II motion is Type III information and is an open public record, consistent with the general policy stated in subdivision 2.420(a). ("The public shall have access to all records of the judicial branch of government, except as provided below.")

Definition: Additionally, in response to the charge to clarify the status of confidential records, a definition of "confidential" would be developed consistent with existing law. This definition is contained in new subdivision (b)(4) of the proposed rule.

In order to itemize those statutory exemptions that meet the criteria of being applicable in a court context, the Workgroup undertook a systematic review of all Florida statutory exemptions. A database was developed which included an inventory of all statutes that create public records exemptions. This inventory was then analyzed for operative language and statutory context that would indicate whether the exemption was expressly or impliedly applicable in a court context. Indicia of applicability included whether the statutory language, on its face, indicated legislative intent that the exemption apply to court records, whether the underlying public policy strongly supported applying the exemption to court records, and whether in practice and by custom the exemption has been routinely and traditionally applied to court records. With the inventory as a starting point, the Type I list was developed and finalized.

Other Proposed Changes to Rule 2.420.

While the Access Committee was working, other activities took place that impacted rule 2.420. The April 2007 amendments to the rule are discussed above. On October 31, 2007, the Rules of Judicial Administration Committee filed proposed amendments which included a new subdivision, 2.420(e). This new subdivision addressed sealing of county and circuit records in criminal cases, which had been excluded in the April 2007 amendments. The rules committee also proposed several minor changes to other parts of the rule. On February 28, 2008, the Court released for publication the rules committee proposal for comment along with the Court's own sua sponte alternative to this proposal. The Court's proposal

incorporates most of the rules committee's proposal but adds subdivisions 2.420(f) and 2.420(g), which address appellate court records in non-criminal and criminal cases, respectively.

As a result, by March 2008, the Workgroup was confronted with five different versions of rule 2.420: 1) the rule as it existed in 2006 when the Court charged the Access Committee with proposing revisions; 2) the rule after the amendments adopted in April 2007, which is the rule presently in effect; 3) the pending proposal filed by the Rules of Judicial Administration Committee on October 31, 2007; 4) the Court's proposal published on February 28, 2008; and 5) the Access Committee's preliminary proposal.

Final Proposal.

In developing its final proposal, the Access Committee elected to use the Court's proposal as a starting point. Most of the new elements of the Court's proposal, which includes most new elements of the proposal of the Rules of Judicial Administration Committee, are retained. Key elements of the Access Committee proposal are:

2.420(d): This is a new subdivision. It requires that the clerk identify information itemized in this subdivision and directs the clerk to keep it confidential as an administrative matter. Subdivision 2.420(d)(1)(A) incorporates the existing provisions of subdivision (c) that are unaffected by the rule change. Subdivision 2.420(d)(1)(B) lists the Type I exemptions to be categorically protected.

The subdivision also requires filers to identify any such information to the clerk at the time of filing, and to identify the applicable provision of the rule. The clerk is required to review this identification for facial validity. A procedure is provided for instances where the clerk determines that the identification is not facially valid.

Subdivision 2.420(d)(2) applies to instances where a statutory exemption that is not categorically incorporated under 2.420(d)(1) may constitute the basis for confidentiality. This provision directs the filer, or any

interested person, to file a motion to request a determination of confidentiality under the applicable subdivision that follows in the rule.

2.420(e): The scope of present subdivision (d), now designated as subdivision (e), is expanded to expressly allow motions based on any subdivision of 2.420(c). This would thus permit motions based on statutory exemptions or federal confidentialities that are arguably incorporated through 2.420(c)(8), but not administratively absorbed by inclusion as Type I exemptions in subdivision 2.420(d)(1)(B). This concept is continued in new subdivisions (f) (criminal trial court records), (g) (non-criminal appellate court records), and (h) (criminal appellate court records).

The titles and text throughout are modified, replacing the construction to "make confidential" with "determine the confidentiality of" to clarify that, consistent with constraints within article I, section 24 of the Florida Constitution, the rule would not purport to give the court expanded authority to confer confidential status on a record, or to expand the reach of the 1992 rule. Rather the amendment to the rule would only provide a procedural mechanism to determine whether confidential status attaches to the information by authority of legislative act or existing court rule.

2.420(f): The pending language regarding sensitive criminal case records in subdivision (f)(2), and similarly in (h)(2) for appellate criminal records, permits filing a restricted motion for "*any request* to make court records confidential *that may jeopardize* either the safety of a person or an active criminal investigation." (Emphasis added.) The Access Committee alternative describes the kinds of records subject to this subdivision and creates a higher and more specific threshold using language that mirrors existing language in subdivision 2.420(c)(9)(A).

2.420(g)-(h): The two subdivisions directed to appellate court records proposed in the Court's proposal are retained. The Court's proposal, however, assumes that any confidential information submitted by a lower tribunal is covered by an active order, and so the Court's proposed rule requires the clerk of the circuit court to indicate within the index the date and docket number of any such order. The Access Committee's proposal contemplates that information might also be administratively determined to be confidential under subdivision (d)(1) as well as being determined to be confidential in response to a motion. The lower tribunal clerk is still required to identify the confidential information but the manner of identification is less constrained.

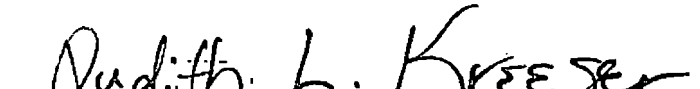
2.420(i): Existing subdivision 2.420(d), renumbered 2.420(h) in the pending proposal and 2.420(i) in this proposal, is modified to clearly limit its application to administrative records of the judicial branch and to remove inappropriate reference to an appellate remedy.

Type I Exemptions.

The final list of statutory exemptions enumerated in subdivision 2.420(d)(1)(B) contains 19 items. Most of these are well established by law and practice and are routinely applied by the clerks of court. In all cases, however, it is necessary to go to the statutory language to understand the precise scope of the exemption in order to correctly apply it. Many of the statutes are difficult to interpret and could be misconstrued in their application. In several cases, the exemption expressly relates to the subject record while *in the custody of* a particular entity. For example, section 384.29, Florida Statutes, exempts records related to cases of sexually transmitted diseases "held by the department [of Health] or its authorized representatives." The proposed amendment to the rule would apply this exemption in the event the department or its representative provides such a record to a court. Similar records in the custody of any other party would not, however, be subject to the categorical protection of subdivision (d)(1), although they might be determined to be confidential upon a motion filed under (d)(2).

There are several exemptions that merit special discussion. These are exemptions, such as the sexually transmitted disease exemption discussed above, which provide various degrees of protection to potentially sensitive records that are of a clinical or therapeutic nature, typically involving documentation of a person's medical or psychological well-being. The statutory exemptions for these records are frequently targeted to states agencies, such as the Department of Children and Families, or service providers. In most cases the statutes that create these exemptions do not expressly state that they are intended to apply to such records when included in a court file, and it appears unlikely that the Legislature ever considered the question of whether the exemption would or would not apply to court records. Following lengthy discussion and study of these statutes, the Access Committee elected to exercise caution and include these exemptions on the Type I list. In the event this rule is adopted and these exemptions are categorically applied to court records, the Legislature may wish to revisit these statutes and express its intent regarding their application to court records.

Respectfully submitted this 26th day of September 2008.



THE HONORABLE JUDITH L. KREEGER
Circuit Judge, Eleventh Judicial Circuit
Chair, Committee on Access to Court Records
175 N.W. First Avenue, Room 2114
Miami, Florida 33128
Florida Bar Number # 98600

CERTIFICATE OF SERVICE

I HEREBY CERTFY that a copy of the foregoing has been furnished by United States mail to the following persons on September 2, 2008:

Scott Michael Dimond, Chair
Rules of Judicial Administration Committee
Dimond Kaplan & Rothstein, P.A.
2665 S. Bayshore Dr. #PH-2B
Miami , FL 33133-5448

J. Craig Shaw
Bar Staff Liaison
The Florida Bar
651 East Jefferson Street
Tallahassee, FL 32399

CERTIFICATE OF FONT COMPLIANCE

I certify this petition has been prepared in MS Word using 14-point Times New Roman font.

Judith L. Kreeger

THE HONORABLE JUDITH L. KREEGER
Chair, Committee on Access to Court Records
Florida Bar Number # 98600

READ-AGAINST CERTIFICATION

I certify these proposed rules were read against West's *Florida Rules of Court – State* (2008).

/S/ Stephan P. Henley

STEPHAN P. HENLEY
Senior Courts Operations Consultant
Office of the State Courts Administrator

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).

(~~d~~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 (~~d~~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 (~~d~~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 (~~d~~e)(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 ~~(c)(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 ~~(c)(9)(A)~~ (c); and; (ii) no less restrictive measures are available to protect the interests set forth in subdivision ~~(c)(9)(A)~~ (c); and

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

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision (~~d~~e)(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 (~~d~~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 (~~d~~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 ~~up~~on 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 transmitted to the appellate court ~~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~~.

(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).

(~~e~~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)~~(9)~~, 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]

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

(1)-(3) [No Change]

PROPOSED RULE AMENDMENTS

RULE 2.420, FLORIDA RULES OF JUDICIAL ADMINISTRATION
PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

Proposed Rule	Reason for Change
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]	New subdivision (b)(4) defines the term "confidential" and clarifies status of confidential information in judicial branch records. Further clarifies that, as specifically applied to court records, records that are "exempt" under statute are confidential under court rule. Clarifies that restrictions on access to confidential information must be implemented in a manner that does not restrict access to portions of the record that are not confidential.

(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.	Conforms to RJAC and Court's proposed amendment.
(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.	New subdivision (d)(1) directs clerks of courts to maintain as confidential information described in existing subdivisions (c)(1) through (c)(6) of this rule, as well as statutes identified in new subdivision (d)(1)(B). This responsibility is independent of responsibility of filer. The statutory exemptions identified in subdivision (d)(1)(B) are those that are, in the judgment of the committee, clearly applicable in the context of court records and readily identifiable by clerks of court. Requires a filer to indicate whether information that is confidentia under subdivision (d)(1)(B) is contained within the filing, and identify the applicable provision and the specific location of the confidential information. Requires the clerk of court to review the filer's identification of confidential information for facial validity. If clerk determines identification is not valid clerk is required to notify filer and maintain the record as confidential for 7 days.

(A) information described by any of subdivisions (c)(1) through (c)(6) of this rule,	Subdivision (d)(1)(A) incorporates information indentified in (c)(1) through (c)(6) of this rule as information which the clerk of court shall maintain as confidential.
(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:	Subdivision (d)(1)(B) incorporates by reference information indentified in statutory exemptions enumerated as (d)(1)(B)(i)-(xix) as information which the clerk of court shall maintain this information as confidential.
(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.	The enumerated exemptions in (d)(1)(B)(i)-(xix) are those that are the judgment of the committee clearly applicable in the context of court records and readily identifiable by clerks of court.
(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.)*	Under § 119.0714(2), Fla. Stat. a clerk of court may make social security numbers and specified financial account numbers publically available until January 1, 2011, unless the holder of the number has requested redaction.
(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 & 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).	Subdivision (d)(2) provides for implementation of all potential confidentialities not provided for in subdivision (d)(1). A filer or any interested person may request that information believed to be confidential be maintained without disclosure pending a determination in response to a motion filed under the procedure described in subdivision (e), (f), (g) or (h), as applicable.

(~~d~~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:	Language throughout subdivisions (e) through(h) substitutes "determines" for "make" to clarify that, consistent with article I, sections 24 of the Florida Constitution, the rule does not purport to give the court authority to convey confidential status on a record, but to provide a procedure to determine whether confidential status is achieved by authority of legislative act or existing court rule.
(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~~	Reference to all of subdivision (c) rather than only subdivision (c)~~(9)~~ allows motion procedure to be used for any basis available under the rule, including statutory exemptions under (c)(8).
(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.	Subdivision (d)(1)(C) comports with language proposed in Court's alternative to RJAC proposal.
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 the 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.	Allows attorney to sign certification of good faith.

(2) Except when a motion filed under subdivision (~~d~~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 (~~d~~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 (~~d~~e)(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 being order is entered; (B) The particular grounds under subdivision ~~(c)(9)(A)~~ (c) for ~~making~~ determining the ~~court records~~ information to be confidential;	The term "person" is substituted for "party" to make clear that a person who is not a party to the underlying action may request closure.

(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 ~~(c)(9)(A)~~ (c); and; (ii) no less restrictive measures are available to protect the interests set forth in subdivision ~~(c)(9)(A)~~ (c); and (H) That the clerk of the court is directed to publish the order in accordance with subdivision (~~d~~e)(4). (4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision (~~d~~e)(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.	The term "information" is substituted for "courts records" to more accurately reflect the law. Certain information may be confidential even when included in an otherwise non-confidential record.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (~~d~~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 (~~d~~e)~~(1)~~	Clarification of procedure. Conforms with this language included in the Court's sua sponte amendments.

was not made in good faith and was not supported by a sound legal ~~and~~ or factual basis, the court may impose sanctions ~~u~~pon the movant after notice and an opportunity to respond.	Clarified to provide for notice and opportunity before sanction can be imposed.
(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.	Clarifies that records that are confidential in lower court are to be treated as confidential in appellate court.
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 transmitted to the appellate court ~~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~~.	Clarifies the duty of clerk to inform appellate court of the inclusion in a record of any information that has been determined to be confidential, whether under an order or under ministerial duty of clerk under subdivision 2.420(d)(1).
(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).	Consistent with public policy in favor of open records a person seeking access may request that a relevant motion be deemed a high priority by the court.
(~~e~~f) Request to Determine the Confidentiality of Circuit and County Court Records in Criminal Cases.	Except as noted subdivisions (f) through (h) substantially conform with language included in "The Florida Supreme Court's Proposed Amendments" issued February 8, 2008.
(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	Proposed language differs from Court proposal in that it would limit the use of the procedure that permits restricted motions to those cases that could be ordered confidential under existing subdivisions (c)(9)(A)(i) or (c)(9)(A)(v), and where the subject records relate to a plea agreement, substantial assistance

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	agreement of similar record is to be filed with the court, and where general knowledge of the existence of such a record would constitute a serious or imminent threat to a person of an active criminal investigation. This language tracks existing language in subdivision 2.420(c)(9). Proposed language differs from Court proposal to reflect that while the Court does not have authority to make such a motion confidential it does have authority to direct that the fact of the existence the motion not be indicated on a publicly accessible index or progress docket.

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	Except as noted subdivisions (f) through (h) substantially conform with language included in "The Florida Supreme Court's Proposed Amendments" issued February 8, 2008.

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 (d)(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.	Proposed language differs from Court proposal to reflect that information might be determined to be confidential either under administratively subdivision 2.420(d) or by order.
(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)~~(9)~~, except as provided in subdivision (h)(2).	Except as noted subdivisions (f) through (h) substantially conform with language included in "The Florida Supreme Court's Proposed Amendments" issued February 8, 2008.
(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	Proposed language differs from Court proposal in that it would limit the use of the procedure that permits restricted motions to those cases that could be ordered confidential under existing subdivisions (c)(9)(A)(i) or (c)(9)(A)(v), and where the subject records relate to a plea agreement, substantial assistance agreement of similar record is to be filed with the court, and where general knowledge of the existence of such a record would constitute a serious or imminent threat to a person of an active criminal investigation. This language tracks existing language in subdivision 2.420(c)(9).

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), (d)(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	Proposed language differs from Court proposal to reflect that while the Court does not have authority to make such a motion confidential it does have authority to direct that the fact of the existence the motion not be indicated on a publicly accessible index or progress docket.

the court issued hereunder in accordance with subdivision (g)(4) unless directed by the court. (3) This subdivision (g) 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] **(~~f~~j) Procedure.** Requests and responses to requests for access to records under this rule shall be made in a reasonable manner. (1)-(3) [No Change]	Clarifies that this subdivision applies only to administrative records of the judicial branch.

PROPOSED CHANGES

COMMITTEE ON ACCESS TO COURT RECORDS PROPOSED CHANGES TO FLORIDA SUPREME COURT PROPOSED RULE 2.420 RELEASED FEBRUARY 28, 2008

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 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 & 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).

(~~d~~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 making such court records 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. Any motion made pursuant to this subdivision and 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. 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 (~~d~~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 (~~d~~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 (~~d~~e)(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 entered;

(B) The particular grounds under subdivision ~~(c)(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 ~~(c)(9)(A)~~ (c); and; (ii) no less restrictive measures are available to protect the interests set forth in subdivision ~~(c)(9)(A)~~ (c); and

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

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision (~~d~~e)(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 (~~d~~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 ~~motion~~ designation made under subdivision (d)~~(1)~~ or a motion made under subdivision (~~d~~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 ~~u~~pon the movant after notice and an opportunity to respond.

(7) Records of a lower tribunal ~~made~~ determined to be confidential by that tribunal must be treated as confidential during any 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 transmitted to the appellate court ~~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~~.

(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).

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

(1) Subdivision (~~d~~e) shall apply to any request by the state or a defendant to determine the confidentiality of ~~make~~ circuit or county court records ~~confidential pursuant to~~ under subdivision (c)~~(9)~~, except as provided in subdivision (e~~d~~f)(2).

(2) Any ~~request~~ motion to ~~make~~ determine whether a circuit or county court records ~~is~~ 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 ~~may jeopardize either~~ 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 ~~Make~~ Determine Whether a Court Records ~~is~~ is Confidential." As to any motion made pursuant to this subdivision (e)(2), the following procedure shall apply:

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

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

(3) This subdivision (e) does not apply to records of the judicial branch deemed 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.

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

(1) A request to ~~make~~ determine the confidentiality of appellate court records in noncriminal cases ~~confidential~~ under subdivision (c)(~~9~~) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (~~d~~e)(1). Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not ~~made~~ 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 (~~f~~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 (~~f~~g)(1) must be in compliance with the guidelines set forth in subdivisions (~~d~~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 (~~f~~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 (~~f~~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 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 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 (~~f~~g)(1) was not made in good faith and 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) Records of a lower tribunal ~~made~~ determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where ~~an order making court records~~ information has been determined to be 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. ~~This subdivision does not preclude review by an appellate court, or affect the standard of review by an appellate court, of an order by a lower tribunal making a record confidential.~~

(~~f~~g) Request to ~~Make~~ Determine the Confidentiality of Appellate Court Records in Criminal Cases ~~Confidential~~.

(1) Subdivision (~~f~~g) shall apply to any request ~~by the state or a defendant to make~~ to determine the confidentiality of appellate court records ~~confidential pursuant to~~ under subdivision (c)(~~9~~), except as provided in subdivision (~~f~~g)(2).

(2) Any request to ~~make~~ determine whether an appellate court records is confidential ~~that may jeopardize either~~ 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 ~~Make~~ Determine Whether a Court Records 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 ~~made~~ 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 pursuant to this subdivision (g)(2), the following procedure shall apply:

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

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

(3) This subdivision (g) does not apply to records of the judicial branch deemed 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.

(~~h~~i) ~~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 ~~appellate remedy~~ relief, in the following manner:

(1)-(2) [No Change]

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

(1)-(3) [No Change]

PROPOSED CHANGES

COMMITTEE ON ACCESS TO COURT RECORDS PROPOSED CHANGES TO FLORIDA SUPREME COURT PROPOSED RULE 2.420 RELEASED FEBRUARY 28, 2008

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 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 & 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).

(~~d~~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 making such court records 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. Any motion made pursuant to this subdivision and 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. 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 (~~d~~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 (~~d~~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 (~~d~~e)(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 entered;

(B) The particular grounds under subdivision ~~(c)(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 ~~(c)(9)(A)~~ (c); and; (ii) no less restrictive measures are available to protect the interests set forth in subdivision ~~(c)(9)(A)~~ (c); and

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

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision (~~d~~e)(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 (~~d~~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 ~~motion~~ designation made under subdivision (d)~~(1)~~ or a motion made under subdivision (~~d~~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 ~~u~~pon the movant after notice and an opportunity to respond.

(7) Records of a lower tribunal ~~made~~ determined to be confidential by that tribunal must be treated as confidential during any 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 transmitted to the appellate court ~~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~~.

(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).

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

(1) Subdivision (~~d~~e) shall apply to any request by the state or a defendant to determine the confidentiality of ~~make~~ circuit or county court records ~~confidential pursuant to~~ under subdivision (c)~~(9)~~, except as provided in subdivision (e~~d~~f)(2).

(2) Any ~~request~~ motion to ~~make~~ determine whether a circuit or county court record~~s~~ 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 ~~may jeopardize either~~ 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 ~~Make~~ Determine Whether a Court Record~~s~~ is Confidential." As to any motion made pursuant to this subdivision (e)(2), the following procedure shall apply:

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

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

(3) This subdivision (e) does not apply to records of the judicial branch deemed 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.

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

(1) A request to ~~make~~ determine the confidentiality of appellate court records in noncriminal cases ~~confidential~~ under subdivision (c)~~(9)~~ must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (~~d~~e)(1). Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not ~~made~~ 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 (~~f~~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 (~~f~~g)(1) must be in compliance with the guidelines set forth in subdivisions (~~d~~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 (~~f~~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 (~~f~~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 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 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 (~~f~~g)(1) was not made in good faith and 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) Records of a lower tribunal ~~made~~ determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where ~~an order making court records~~ information has been determined to be 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. ~~This subdivision does not preclude review by an appellate court, or affect the standard of review by an appellate court, of an order by a lower tribunal making a record confidential.~~

(~~f~~g) Request to ~~Make~~ Determine the Confidentiality of Appellate Court Records in Criminal Cases ~~Confidential~~.

(1) Subdivision (~~f~~g) shall apply to any request ~~by the state or a defendant to make~~ to determine the confidentiality of appellate court records ~~confidential pursuant to~~ under subdivision (c)(~~9~~), except as provided in subdivision (~~f~~g)(2).

(2) Any request to ~~make~~ determine whether an appellate court records is confidential ~~that may jeopardize either~~ 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 ~~Make~~ Determine Whether a Court Records 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 ~~made~~ 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 pursuant to this subdivision (g)(2), the following procedure shall apply:

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

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

(3) This subdivision (g) does not apply to records of the judicial branch deemed 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.

(~~h~~i) ~~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 ~~appellate remedy~~ relief, in the following manner:

(1)-(2) [No Change]

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

(1)-(3) [No Change]

Supreme Court of Florida

No. AOSC06-27

IN RE: COMMITTEE ON ACCESS TO COURT RECORDS

ADMINISTRATIVE ORDER

The Committee on Privacy and Court Records was established in November of 2003 and charged with providing recommendations regarding the electronic release of court records in Florida.[1] In August 2005 the committee submitted its report.[2] The committee's overall conclusion was that while remote electronic access to court records should be a goal of the Florida judicial branch, numerous obstacles exist that do not allow for responsible provision of such access at this time. The committee therefore made a number of recommendations directed to addressing those obstacles and developing the necessary conditions for responsible electronic access to court records.

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[1]See In re: Comm. on Privacy and Court Records, Fla. Admin. Order No. AOSC03-49 (Nov. 25, 2003) and In re: Comm. on Privacy and Court Records, Fla. Admin. Order No. AOSC04-4 (Feb. 12, 2004).

[2]See Committee on Privacy and Court Records, Privacy, Access and Court Records; the Report and Recommendations of the Committee on Privacy and Court Records (2005) (hereinafter Report).

The Court supports the goal of remote electronic access to court records and agrees with the Committee on Privacy and Court Records that at present the necessary conditions do not exist to permit a general, unrestricted distribution of court records. To assist in developing the necessary policies for electronic access, the Committee on Access to Court Records (hereinafter the Committee) is hereby established for a term to expire on July 1, 2008.

The primary purpose of the Committee is to review Florida Rule of Judicial Administration 2.051 and develop proposed revisions to the rule with regard to the following matters:[3]

1. Recommendation Two: Scope of Confidentiality. Review and explore revisions of rule 2.051 to narrow its application to a finite set of exemptions that are appropriate in the court context and are identifiable. The Committee should note that the Supreme Court has not made a decision as to whether the absorption doctrine[4] applies.

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[3] These tasks refer to recommendations by the Committee on Privacy and Court Records as set forth in the Report and as modified in Implementation of Report and Recommendations of the Committee on Privacy and Court Records, Fla. Admin Order No. AOSC06-20 (June 30, 2006) (hereinafter AOSC06-20).

[4] See Report, supra note 1, at 29 ("The question is whether the rule incorporates, or absorbs, state exemptions and federal confidentialities, thus making them confidentialities under court rule.").

2. Recommendation Eight: Unauthorized Filings. Study court rules to prohibit the filing of documents that are not authorized by court rule or statute, or seeking relief by the court. The responsibility for identifying unauthorized filings cannot be placed on the clerks of court. It is understood that the current rules already provide for sanctions against those who are responsible for unauthorized filings; accordingly, the rules should be studied to determine whether any sanctions need to be strengthened to further the goal of preventing gratuitous publication of extraneous and potentially damaging information.

3. Recommendation Twelve: Conditions for Electronic Access. Propose amendments to rule 2.051 to allow remote access to court records in electronic form to the general public in jurisdictions where conditions are met.

4. Recommendation Thirteen: Confidential Information. Propose revisions to rule 2.051 to clarify that those records defined in the rule are confidential and may not be released except as provided. Because this requirement is already established in existing law, the Committee

is directed to propose a rule amendment or committee note that is consistent with the recognition of the current legal requirements.

5. Recommendation Sixteen: Unsealing of Records. Propose revisions to rule 2.051 to provide a clear and effective mechanism through which a preliminary determination that a record is exempt or confidential can be challenged and reviewed.

6. Recommendation Seventeen: Responsibility of Filer. Propose revisions to rule 2.051 to provide for certain responsibilities of the filer of court documents regarding confidential information.

In addition, the Committee is directed to advise the Florida Courts Technology Commission and the Office of the State Courts Administrator regarding the terms and conditions the Committee finds advisable in the implementation of the pilot program authorized in Administrative Order AOSC06-20. The Committee is also directed to advise the Chief Justice, by June 1, 2007, of the advisability of alteration to the interim policy on electronic release of court records set out in Administrative Order AOSC06-21. The Committee may make other recommendations it deems appropriate.

The following persons are hereby appointed to serve on the Committee for a term that expires on July 1, 2008:

The Honorable Judith L. Kreeger, Chair
Circuit Judge, Eleventh Judicial Circuit

Ms. Sharon Abrams
Court Technology Officer, Eleventh Judicial Circuit

Ms. Kristin Adamson
Attorney, Tallahassee

Ms. Robin Berghorn
General Counsel, Ninth Judicial Circuit

The Honorable David Ellsperman
Clerk of Court, Marion County

The Honorable Mel Grossman
Circuit Court Judge, Seventeenth Judicial Circuit

Mr. Jonathan Kaney, Jr.
Attorney, Ormond Beach

The Honorable Melanie May
Appellate Court Judge, Fourth District Court of Appeal

Mr. Timothy McLendon
Attorney, Gainesville

Mr. Paul Regensdorf
Attorney, Ft. Lauderdale

Mr. Murray B. Silverstein
Attorney, St. Petersburg

The Honorable Kim A. Skievaski
Chief Judge, First Judicial Circuit

The Honorable Elijah Smiley
County Judge, Bay County

Mr. Walt Smith
Court Administrator, Twelfth Judicial Circuit

The Honorable Charles Williams
Circuit Judge, Twelfth Judicial Circuit

Judge Judith Kreeger shall serve as Chair and Justice Barbara J. Pariente shall serve as Supreme Court liaison to the Committee. Staff support for the Steering Committee shall be provided by the Office of the State Courts Administrator.

The Committee is directed to submit a progress report by June 1, 2007, and a final report by June 1, 2008. The Committee is authorized to propose amendments to rules of court procedure on issues addressed in this administrative order, for consideration by the Court. Recommended amendments to the rules of court procedure or forms shall be filed in petition form with the Clerk of the Florida Supreme Court. Mr. Paul Regensdorf shall serve as the liaison between the Committee and The Florida Bar Rules of Judicial Administration Committee.

Should the Committee make recommendations that require additional funding or resources to implement, the Committee is directed to establish the necessary liaison relationship with the District Court of Appeal Budget Commission or the Trial Court Budget Commission, as appropriate. At a

minimum, the Committee shall provide the chair of the respective budget commission with copies of Committee reports and recommendations that reference the need for additional court funding or resources.

DONE AND ORDERED at Tallahassee, Florida, on August 21, 2006.

Chief Justice R. Fred Lewis

ATTEST:

Thomas D. Hall, Clerk of Court