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BY

IN THE SUPREME COURT OF FLORIDA

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

CONSOLIDATED COMMENTS OF COURT RULES COMMITTEES RE: SUPREME COURT'S PROPOSED CHANGES TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.420 AND FLORIDA RULE OF APPELLATE PROCEDURE 9.100

On September 9, 2009, this Court issued a Publication Notice in the above-referenced matter, inviting comment on the Court's revisions to proposed amendments to Rule of Judicial Administration 2.420, provided in the appendix to that Notice. Also included in the appendix were amended Florida Rules of Appellate Procedure 9.040, 9.100, and 9.110.

The Honorable Lisa Davidson, Chair, Rules of Judicial Administration Committee; Fleur J. Lobree, Chair, Criminal Procedure Rules Committee; John G. Crabtree, Chair, Appellate Court Rules Committee; and John F. Harkness, Jr., Executive Director, The Florida Bar, submit these consolidated comments on behalf of the committees listed above (hereinafter sometimes referred to as the "consolidated committee"). The consolidated comments were approved by the Rules of Judicial Administration Committee by a vote of 22-1, and by the Appellate Court Rules Committee by a vote of 18-1. The comments with respect to subdivision (f)(3) were also separately approved by the Criminal Procedure Rules Committee by a vote of 32-0.

The Executive Committee of the Board of Governors voted 9-1 to approve the comments.

The rules that were contained in the Court's appendix to the September 9, 2009, Publication Notice are set forth in Appendix A to this report. Those rules appear exactly as the Court issued them (with struck-through and underlined language, and with the Court's bold-face additions and the Court's strike-throughs). The consolidated committee's proposed changes to the text are shown either as underlined text or as struck-through text, as the context requires, and are also shaded (in a lighter shade on the

paper version and in blue on the electronic version of this report) to distinguish those amendments from prior amendments to the text. In addition, to further clarify the consolidated committee's changes, the same proposal is presented in Appendix B. That appendix strips out all prior struck-through language and deletes underlining (but retains the Court's bolded text), and then overlays only the consolidated committee changes for ease of reference.

Representatives from each of the committees listed above convened as a consolidated committee by conference call on six separate occasions to review the Court's proposed amendments to *Fla. R. Jud. Admin.* 2.420 and *Fla. R. App. P.* 9.100. (No discussions were deemed necessary regarding changes to Rules 9.040 and 9.110.) Input was also received by the consolidated committee from representatives of the Committee on Access to Court Records, the Circuit Court Clerk's Offices for the 7th and 13th Judicial Circuits, and from representatives of various media organizations.

As a threshold matter, the consolidated committee wishes to direct the Court's attention to the fact that this proposal contains certain revisions beyond the specific areas designated for comment by this Court. These additional revisions are included because during the course of lengthy and detailed calls the committee members concluded that the committee's failure to bring such matters to the attention of the court could undermine the entire regime for treatment of confidential materials constructed in Rule 2.420. These revisions are being suggested either because this Court's proposed language prompted additional revisions elsewhere in the rule or because the committee members came to realize the significance of certain matters that had not previously been considered. Because the committee members felt that it was important to create an overall rule that was as comprehensive, clear, and consistent as possible, all revisions that the committee believes to be appropriate are included herein.

Revisions to 2.420(b)

The consolidated committee felt that it would be helpful to define the term "affected non-party" so that references within the rule to non-parties who are entitled to receive notice of certain filings would be clear and consistent. That term has been defined and inserted as subdivision (b)(5) to make clear that non-parties who are entitled to receive notice of such filings are only those persons who are identified by name in a court record that

contains confidential information pertaining to the named individual to avoid any inherently subjective consideration of who might or might not be "affected" by a filing. The defined term is then used throughout the rule where appropriate.

Revisions to 2.420(d)(2)

First, the committee revised the language in (d)(2) to address the use of these rules in connection with evidence introduced during a court hearing or at trial in addition to materials filed with the court, based on the committee's view that materials submitted as evidence were as deserving of protection as other court records. Therefore variations on the term "introduce" appear in this subdivision (d)(2), in (d)(3), and in (e)(6). Second, the committee incorporated a reference to the new form created for the purpose of identifying confidential information being filed with the clerk or submitted to the court. (That form appears at the end of revised rule 2.420 in Appendix A to this report.) Finally, the committee changed the word "records" to "information" in the last sentence of the subdivision to clarify that, to the extent practicable, it is only the confidential information that should be treated as confidential rather than the entire court record containing such information.

Revisions to 2.420(d)(3)

The consolidated committee believes that the entire confidentiality regime incorporated into rule 2.420 would be strengthened considerably by requiring persons who have a good faith belief that they are filing or submitting confidential information to the court to move to designate such materials as confidential in accordance with subdivision (e), (f), or (g). The rule does not impose any new obligation to ascertain confidentiality, which was previously a feature of the Court's proposed rule (d)(3). Rather, the proposed revisions merely obligate filers to takes steps to protect information if the filer already holds the belief that the materials should be deemed confidential. Specifically excluded from the obligation is a person or counsel for a person filing their own confidential information and intending to waive any claim of confidentiality.

Revisions to 2.420(d)(4)

The Court's proposed rule (in bold type) raised several issues that the consolidated committee sought to address by proposed new language. The

committee sought to restructure the proposed rule in three ways by rewriting the subdivision.

First, the proposed committee language specifies the types of motions that create a third-party notice obligation. The committee felt that there were three types of motions under rule 2.420 that could *disclose* a non-party's confidential information, and each of those is specified in the first sentence of this rule.

Second, the committee specified with greater detail and with language consistent with other parts of the rule the type of information that such affected non-parties would consider significant. The committee also sought to clarify the precise type of warning that should accompany notice of different types of events to ensure that the third party would be notified of the specific potential harm attendant to each such possible event. The committee did not feel that it was necessary to advise third parties of the possibility of a later effort to unseal confidential information because pursuant to this provision any such motion would require its own notice to such affected non-parties.

Third, the committee expanded upon the service requirements for such a notice, as non-party service is not otherwise provided under these rules. That language appears in the last two sentences of the subdivision.

Revisions to 2.420(e)(5) and (g)(5)

The consolidated committee proposes minor revisions intended to clarify that all parties (*i.e.,* not merely "affected" parties) must receive notice and that notice must also be given to "affected non parties" as that term has been defined in 2.420(b)(5).

Revisions to 2.420(e)(6)

The consolidated committee believed that including an obligation for a filer to seek protection for information that a filer believed in good faith to be confidential (as set forth in subdivisions (d)(2) and (3)) without a concomitant authority for the court to sanction filers who failed to comply with that obligation would undermine the purpose of subdivision (d)(3). Further, because other aspects of this rule had previously embraced the concept of sanctions in the event of noncompliance, the committee felt that it

would be appropriate to broaden the sanctions language consistent with the prior sanctions provisions. Therefore, the committee re-wrote this subdivision.

Revisions to 2.420(f)(3)

A review of the revisions made by the Court to proposed rule 2.420 that were indicated in bold type was also performed independently by the Florida Criminal Procedure Rules Committee (CPRC). This matter was assigned to a subcommittee, which met and made its recommendation to the full committee. Thereafter, the full committee voted unanimously, 32-0, to propose further revisions to subdivision (f)(3).

It was the intention of the CPRC, through its prior proposals and comments concerning this rule, that the procedure set forth in subdivision (f)(3) for a "Restricted Motion to Determine Whether a Court Record Is Confidential" be utilized only in situations in which the filing of such a motion would reveal either the identity of a confidential informant or active criminal investigative information. As such, subdivision (f)(1) provides that all other motions concerning confidentiality of court records in criminal cases are governed by the procedures of subdivision (e). Therefore, the CPRC recommends deletion of the second sentence of the Court's bold-type proposal in subdivision (f)(3), as it considers this provision to be redundant.

Moreover, the CPRC unanimously adheres to its prior position that not only the content of documents sought to be protected by restricted motions, but also the existence of the motions themselves, must remain confidential pending a ruling on the motion or further order of the court. As explained in *State v. Burgos*, 985 So. 2d 642, 644 (Fla. 2d DCA 2008):

> The State has a limited privilege to withhold the identity of persons who provide law enforcement officers with information about criminal activity. *See Roviaro v. United States*, 353 U.S. 53, 60-61, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957). Because the State has the privilege of nondisclosure, the burden is on the defendant claiming an exception to the rule to show why he is entitled to disclosure. *Treverrow v. State*, 194 So. 2d 250, 252 (Fla.1967).

See also §§ 119.071(2)(c) and (f), 119.0714(1)(f), and 914.28, Fla. Stat.

(2009). The policy reasons for not disclosing as public record the identity of confidential informants or active criminal investigative information are obvious. Once the existence of a motion concerning the identity of a confidential informant or an active criminal investigation is revealed for all to see in the public record, that person and the law enforcement officers with whom the person is cooperating could be at risk of physical harm, and future or ongoing criminal investigations could be compromised.[1]

(The consolidated committee was in unanimous agreement with the following proposed change proffered by the CPRC.)

For the foregoing reasons, the CPRC respectfully requests that the Court revise the initial paragraph of subdivision (f)(3) as follows (the CPRC's suggested addition is in italics below):

> **(3) Any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court record that reveals the identity of a confidential informant or active criminal investigative information is confidential under subdivision (c)(9)(A)(i), (c)(9)(A)(iii), (c)(9)(A)(v), or (c)(9)(A)(vii) of this rule may be made in the form of a written motion captioned "Restricted Motion to Determine Whether a Court Record is Confidential."** ~~**If the motion reveals the identity of a confidential informant or active criminal investigative information, the movant may request that the motion also be determined to be confidential.**~~*Any motion made pursuant to this subdivision and all court records that are the subject of such a motion must be treated as confidential and not indicated on the docket by the clerk pending a ruling on the motion or further order of the court.*

[1]Additionally, in the event this Court does not adopt all of the proposed revisions recommended in this report regarding subdivision (d)(4) concerning confidential information involving a named non-party, the CPRC respectfully submits that subdivision (d)(4) should include language to clarify the word "involves" and to specify that criminal cases are not included in this subdivision.

Revisions to Fla. R. App. P.9.100(d)

The Court's revisions to Rule 9.100(d) eliminated the language permitting expedited review of oral orders. Only expedited review of written orders is permitted under the revised rule. The consolidated committee, however, is of the opinion that language encompassing oral orders should remain in the rule.

Rule 9.100(d) concerns the expedited review of not just court records closures, but also court proceedings closures. Rule 2.420 certainly contemplates the timely entry of an actual written order involving court records closures. However, Rule 2.420 has nothing to do with issues involving the closure of court proceedings. In addition, there will be times in the heat of trial or a major hearing, for example, when an oral order is entered sealing court records — but a written order will not follow for some time. In the meantime, the closed record could be central to a newsworthy proceeding. The delay in access and seeking review itself could become a significant problem if review of the oral order cannot be sought on an expedited basis.

This review problem could also affect a party seeking closure. If an oral order denying closure is entered, can the party seeking closure not seek expedited review of an oral order opening a proceeding or record?

To remedy these concerns, the oral order language has been returned to the revised rule. It is shown as struck-through by the Court, and as underlined and shaded by the consolidated committee.

Respectfully submitted on November 9, 2009.

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CERTIFICATION OF FONT COMPLIANCE

I certify that this report was prepared in 14-point Times New Roman font.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to The Honorable Judith Kreeger, Chair, Committee on Access to Court Records, 175 N.W. 1st Ave., Suite 2114, Miami, FL 33128-1845; Steve Henley, Office of State Courts Administrator, 500 S. Duval St., Tallahassee, FL 32399-1900; Carol M. Touhy, 1714 Lime Tree Dr., Edgewater, FL 32132-3200; Laura E. Roth, 101 N. Alabama Ave., DeLand, FL 32724-4316; Barbara A. Petersen and Adria E. Harper, 336 E. College Ave., Suite 101, Tallahassee, FL 32301; Carol Jean LoCicero, 400 N. Ashley Dr., Tampa, FL 33602; Deanna K. Shullman, 101 N.E. 3rd Ave., Suite 1500, Fort Lauderdale, FL 33301-1181; Irene Plank, P.O. Box 3079, Sarasota, FL 34230-3079; Lucy A. Dalglish, Gregg P. Leslie, and Matthew B. Pollack, 1101 Wilson Blvd., Suite 1100, Arlington, VA 22209; Robert Dewitt Trammell, P.O. Box 1799, Tallahassee, FL 32302; Arthur I. Jacobs, 961687 Gateway Blvd, Suite 201I, Fernandina Beach, FL 32034-9159; John E. Morrison, 1320 N.W. 14th St., Miami, FL 33125-1609; Penny H. Brill, 1350 N.W. 12th Ave., Miami, FL 33136; and Jodi B. Jennings and Krys Godwin, 651 East Jefferson St., Tallahassee, FL 32399-2300 on November 9, 2009.

J. Craig Shaw

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Staff Liaison to Committees
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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. **To the extent reasonably practicable,** restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.

(5) "Affected non-party" means any non-party identified by name in a court record that contains confidential information pertaining to that non-party.

(c) ~~Exemptions.~~Confidential and Exempt Records. The following records of the judicial branch shall be confidential:

(1)-(9) [No change]

(10) The names and any identifying information of judges mentioned in an advisory opinion of the ~~Committee on Standards of Conduct for Judges~~Judicial Ethics Advisory Committee.

(d) Procedures for Determining Confidentiality of Court Records.

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. The following information shall be maintained as confidential:

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

(B) except as provided by court order, information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07,

Florida Statutes, and article I, section 24(a) of the Florida Constitution under any of the following statutes or as they may be amended or re-numbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat.

(ii) Adoption records. § 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit, and credit card numbers in court records. § 119.0714(1)(i)–(j), (2)(a)-(e), Fla. Stat. *(Unless redaction is requested pursuant to 119.0714(2), this information is exempt only as of January 1, 2011.)*

(iv) HIV test results and patient identity within those test results. § 381.004(3)(e), Fla. Stat.

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

(vi) Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), 382.025(1)(a), Fla. Stat.

(vii) Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(viii) Identifying information in clinical mental health records under the Baker Act. § 394.4615(7), Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. § 397.501(7), Fla. Stat.

(x) Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(xi) Estate inventories and accountings. § 733.604(1), Fla. Stat.

(xii) Victim's address in domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(xv) Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

(xvi) Grand jury records. Ch. 905, Fla. Stat.

(xvii) Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)-(4), Fla. Stat.

(xviii) Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat.

(xix) Information disclosing the identity of persons subject to tuberculosis proceedings and Records of the Department of Health in suspected tuberculosis cases. §§ 392.545, 392.65, Fla. Stat.

(2) Any person filing or introducing into evidence any document containing confidential information shall, at the time of filing file with the clerk, or at the time of introduction submit to the court, a "Notice of Confidential Information within Court Filing" in order to: (A) indicate ~~whether any~~ that confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed or introduced; (B) identify the provision of subdivision (d)(1)(B) of this rule that applies to the identified information, and (C) identify the precise location of the confidential information within the document being filed or introduced. A form Notice of Confidential Information within Court Filing accompanies this rule. The clerk of court in the case of filings, or the court in the case of introduction of evidence, shall review filings identified by filers as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under the identified provision in subdivision (d)(1)(B). If the clerk determines that ~~such~~ filed information is not subject to confidentiality under the identified provision, the clerk shall notify the person who filed the document in writing within 5 days of the filing and thereafter shall maintain the information as confidential for 10 days from the day such notice is served. **The ~~records~~ information shall not be held as confidential for more than 10 days, unless the filer has filed a motion pursuant to subdivision (d)(3).**

(3) Any person filing a document with the court or introducing a document into evidence shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule notwithstanding that such information is not itemized at subdivision (d)(1) of this rule. A person filing or introducing information that he or she believes in good faith to be confidential but that is not described in subdivision (d)(1) of this rule ~~may~~shall request that the

information be maintained as confidential by filing a "Motion to Determine Confidentiality of Court Records" under the procedures set forth in subdivisions (e), (f), or (g), unless (A) the person filing or introducing the information is the only individual whose confidential information is included in the document to be filed or introduced or is the attorney representing all such individuals; and (B) a knowing waiver of the confidential status of that information is intended by the person filing or introducing the information. Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivisions (e), (f), or (g).

(4) ~~If confidential information that involves a named non-party is filed, the person filing the information shall give notice to the non-party of the filing of the confidential information. The notice must be filed with the court and must identify the case by docket number, describe the information, identify the precise location of the information within the document being filed, and include a statement that if determined to be confidential the information could be subject to unsealing. If a motion is filed seeking to vacate an order determining the information to be confidential or seeking to unseal the information if designated as confidential by the clerk of court, the named non-party must be served with the motion in accordance with subdivisions (e)(5) or (g)(5).~~If a motion is filed pursuant to subdivision (e)(1) seeking to determine that information contained in court records is confidential, pursuant to subdivision (e)(5) seeking to vacate an order that has determined that information in a court record is confidential, or seeking to unseal information designated as confidential by the clerk of court, then the person filing any such motion shall give notice of such filing to any affected non-party. Notice pursuant to this provision must:

(A) be filed with the court;

(B) identify the case by docket number;

(C) describe the confidential information with as much specificity as possible without revealing the confidential information, including specifying the precise location of the information within the court record; and

(D) include:

(i) in the case of a request to deem materials confidential, a statement that if the motion is denied then the subject material will not be treated as confidential by the clerk; and

(ii) in the case of a motion to unseal confidential records or a motion to vacate an order deeming records confidential, a statement that if the motion is granted, the subject material will no longer be treated as confidential by the clerk.

Any notice described herein must be served together with the motion that gave rise to the notice in accordance with subdivision (e)(5) or (g)(5). When serving the notice and motion described in this subdivision on a non-party, the server shall use reasonable efforts to locate the non-party and may serve such non-party by any method set forth in Florida Rule of Civil Procedure 1.080(b).

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

(1) A request to ~~make~~determine the confidentiality of ~~circuit and county~~trial court records in noncriminal cases ~~confidential~~ under subdivision (c)~~(9)~~ must be made in the form of a written motion captioned "Motion to ~~Make~~Determine Confidentiality of Court Records ~~Confidential~~." A motion made under this subdivision must:

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

(B) specify the bases for ~~making~~determining that such court records are confidential~~.~~; and

(C) set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential.

Any motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is ~~being~~ made in good faith and is supported by a sound factual and legal basis. ~~The court records that are~~Information that is subject to such a motion ~~made under this subdivision~~ must be treated as confidential by the clerk pending the court's ruling on the motion. Notwithstanding any of the foregoing, the court may not ~~make confidential~~determine that the case number, docket number, or other number used by the clerk's office to identify the case file is confidential.

(2) Except when a motion filed under subdivision (~~d~~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)~~. **Any person may request expedited consideration of and ruling on the motion.** The moving party shall be responsible for ensuring that a complete record of any hearing held pursuant to this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. The court may in its discretion require prior public notice of the hearing on such a motion in accordance with the procedure for providing public notice of court orders set forth in subdivision (~~d~~e)(4) or by providing such other public notice as the court deems appropriate. **The court must issue a ruling on the motion within 30 days of the hearing.**

(3) Any order granting in whole or in part a motion filed under subdivision ~~(d)(1)~~(e) must state the following with as much specificity as possible without revealing the information ~~made confidential~~subject to the confidentiality determination:

(A) The type of case in which the order is being entered;

(B) The particular grounds under subdivision ~~(c)(9)(A)~~(c) for ~~making~~determining the ~~court records~~information to be confidential;

(C) Whether any party's name is ~~to be made~~determined to be confidential and, if so, the particular pseudonym or other term to be substituted for the party's name;

(D) Whether the progress docket or similar records generated to document activity in the case are determined to be ~~made~~confidential;

(E) The particular ~~court records~~information that ~~are to be made~~is determined to be confidential;

(F) ~~The names~~Identification of ~~those~~ persons who are permitted to view the confidential ~~court records~~information;

(G) That the court finds that: (i) the degree, duration, and manner of confidentiality ordered by the court ~~is~~are no broader than necessary to protect the

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

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

(4) Except as provided by law or court rule, notice must be given of any order granting in whole or in part a motion made under subdivision (~~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. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (~~d~~e)~~(3),~~ **or requests that the court order the unsealing of records designated as confidential under subdivision (d),** the request must be made ~~in the form of~~by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all ~~affected~~ parties ~~in the action, including named~~ and all affected **non-parties** ~~given notice of the filing of the information under subdivision (d)(4),~~ with a copy of the motion. ~~In the event that~~If the subject order ~~specifies~~determines that the names or addresses of one or more parties are ~~to be made~~ confidential, the movant must state prominently in the caption of the motion "Confidential Party — Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to ~~the~~**all** ~~affected~~ parties~~, including named~~ and all affected **non-parties** ~~given notice of the filing of the information under subdivision (d)(4),~~ in such a way as ~~to~~not to reveal the confidential information to the movant. Except when a motion filed under this subdivision represents that all parties agree to all of the relief requested, the court must**, as soon as practicable but no later than 30 days after the filing of a motion under this subdivision,** hold a hearing ~~before ruling~~ on the motion. Regardless of w~~W~~hether ~~or not~~ any motion filed under this subdivision is agreed to by the parties, the court may in its discretion hold a hearing on such motion. **Any person may request expedited consideration of and ruling on the motion.** Any hearing held under this subdivision must be an open proceeding, except that any ~~party~~person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)~~(9)(A)~~. **The court must issue a ruling on the motion within 30 days of the hearing.** The movant shall be responsible for ensuring that a complete record of any hearing held under this

subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

~~(6) If the court determines that a designation made under subdivision (d) or a motion made under subdivision (de)(1) was not made in good faith and was not supported by a sound legal and~~or ~~factual basis, the court may impose sanctions upon the movant after notice and an opportunity to respond.~~

(6) After notice and an opportunity to respond, the court may impose sanctions against any party or non-party and/or their attorney, if:

(A) the court determines that a designation made under subdivision (d) or a motion made under subdivision (d)(3) or (e) was not made in good faith and was not supported by a sound legal or factual basis, or

(B) a document is filed or introduced into evidence in violation of subdivision (d)(2) or (d)(3.

~~(7) Court records made confidential under this rule must be treated as confidential during any appellate proceedings. In any case where an order making court records confidential remains in effect as of the time of an appeal, the clerk's index must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number.~~

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

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

(A) Unless the motion represents that both the movant and any other party subject to the motion agree to all of the relief requested, as evidenced by all such parties signing the motion, the court shall hold a hearing on a motion filed under this subdivision within 15 days of the filing of the motion. **Any hearing held under this subdivision must be an open proceeding, except that any person**

may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A).

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

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

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

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

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

(3) **Any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court record that reveals the identity of a confidential informant or active criminal investigative information is confidential under subdivision (c)(9)(A)(i), (c)(9)(A)(iii), (c)(9)(A)(v), or (c)(9)(A)(vii) of this rule may be made in the form of a written motion captioned "Restricted Motion to Determine Whether a Court Record is Confidential."** ~~**If the motion reveals the identity of a confidential informant or active criminal investigative information, the movant may request that the motion also be determined to be confidential.**~~Any motion made pursuant to this subdivision and all court records that are the subject of such a motion must be treated as confidential and not indicated on the docket by the clerk pending a ruling on the motion or further order of the court. As to any motion made under this subdivision, the following procedure shall apply:

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

(B) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision. In the event of an appeal or review of a matter in which an order is entered under this subdivision, the lower tribunal shall retain jurisdiction to consider motions to extend orders issued hereunder during the course of the appeal or review proceeding.

(C) The provisions of subdivisions (e)(3)(A)–(G), (e)(6), and (g)(7) shall apply to motions made under this subdivision. The provisions of subdivisions (e)(1), (e)(2), (e)(3)(H), (e)(4), and (e)(5) shall not apply to motions made under this subdivision.

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

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

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

(1) A motion to determine the confidentiality of appellate court records in noncriminal cases under subdivision (c) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (e)(1). Such a motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(2) A response to a motion filed under subdivision (g)(1) may be served within 10 days of service of the motion.

(3) Any order granting in whole or in part a motion filed under subdivision (g)(1) must be in compliance with the guidelines set forth in subdivisions (e)(3)(A)-(H). Any order requiring the sealing of an appellate court record operates to also make those same records confidential in the lower tribunal during the pendency of the appellate proceeding.

(4) Except as provided by law, within 10 days following the entry of an order granting a motion under subdivision (g)(1), the clerk of the appellate court must post a copy of the order on the clerk's website and must provide a copy of the order to the clerk of the lower tribunal, with directions that the clerk is to seal the records identified in the order. The order must remain posted for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (g)(3), **or requests that the court order the unsealing of records designated as confidential under subdivision (d),** the request must be made by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all ~~affected~~ parties~~, including named~~ and all affected **non-parties** ~~given notice under subdivision (d)(4),~~ with a copy of the motion. If the subject order determines that the names or addresses of one or more parties are confidential, the movant must state prominently in the caption of the motion "Confidential Party—Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to **all** ~~affected~~ parties~~, including named~~ and all affected **non-parties** ~~given notice under subdivision (d)(4),~~ in such a way as not to reveal the confidential information to the movant. A response to a motion may be served within 10 days of service of the motion.

(6) The party seeking to have an appellate record sealed under this subdivision has the responsibility to ensure that the clerk of the lower tribunal is alerted to the issuance of the order sealing the records and to ensure that the clerk takes appropriate steps to seal the records in the lower tribunal.

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

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

(9) Records of a lower tribunal determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where information has been determined to be confidential under this rule, the clerk of the

lower tribunal shall so indicate in the index transmitted to the appellate court. If the information was determined to be confidential in an order, the clerk's index must identify such order by date or docket number. This subdivision does not preclude review by an appellate court, **under Rule of Appellate Procedure 9.100(d),** or affect the standard of review by an appellate court, of an order by a lower tribunal determining a record to be confidential.

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

(1)-(3) [No Change]

Committee Commentary

[No Change]

1995 Amendment.

[No Change]

2002 Court Commentary

[No Change]

2005 Court Commentary

[No Change]

2007 Court Commentary

[No Change]

2007 Committee Commentary

[No Change]

IN THE _____ COURT, _____

JUDICIAL CIRCUIT, IN AND FOR

_____ COUNTY, FLORIDA

CASE NO.: _____

_____

Plaintiff/Petitioner,

v.

_____

Defendant/Respondent.

_____/

NOTICE OF CONFIDENTIAL INFORMATION WITHIN COURT FILING

Pursuant to Florida Rule of Judicial Administration 2.420(d)(2), the filer of a court record at the time of filing shall indicate whether any confidential information is included within the document being filed; identify the confidentiality provision that applies to the identified information; and identify the precise location of the confidential information within the document being filed.

Title/Type of Document(s): _____

Indicate the applicable confidentiality provision(s) below from Rule 2.420(d)(1)(B), by specifying the location within the document on the space provided:

_____ Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat. (If the document is filed within a Chapter 39 case, this form is not required.)

_____ Adoption records. § 63.162, Fla. Stat. (If the document is filed within a Chapter 63 adoption case, this form is not required.)

_____ 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.)

_____ HIV test results and patient identity within the HIV test results. § 381.004(3)(e), Fla. Stat.

_____ Sexually transmitted diseases — test results and identity within the test results. § 384.29, Fla. Stat.

_____ Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), 382.025(1)(a), Fla. Stat.

_____ Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat. (If the document is filed within a Ch. 390 waiver of parental notice case, this form is not required.)

_____ Identifying information in clinical mental health records under the Baker Act. §394.4615(7), Fla. Stat.

_____ Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. § 397.501(7), Fla. Stat.

_____ Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

_____ Estate inventories and accountings. § 733.604, Fla. Stat.

_____ Victim's address in domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

_____ Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

_____ Gestational surrogacy records. § 742.16(9), Fla. Stat.

_____ Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

_____ Grand jury records. Ch. 905, Fla. Stat. (If the document is filed in a Ch. 905 grand jury proceeding, this form is not required.)

_____ Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)–(4), Fla. Stat. (If the document is filed in a Ch. 984 family services for children case, this form is not required.)

_____ Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat. (If the document is filed in a Ch. 985 juvenile delinquency case, this form is not required.)

_____ Information disclosing the identity of persons subject to tuberculosis proceedings and Records of the Department of Health in suspected tuberculosis cases. §§ 392.545, 392.65, Fla. Stat.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. mail / personal service to: _____, on _____, 20_____.

_____

Attorney Name .....

Address .....

Phone .....

Florida Bar No. .....

Note: The clerk of court shall review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality under the identified provision. The clerk shall notify the filer in writing within 5 days if the clerk determines that the information is NOT subject to confidentiality, and the records shall not be held as confidential for more than 10 days, unless a motion is filed pursuant to subdivision (d)(3) of the Rule. Fla. R. Jud. Admin. 2.420(d)(2).

RULE 9.040. GENERAL PROVISIONS.

(a) – (h)

(i) Requests to Determine Confidentiality of Appellate Court Records. Requests to determine the confidentiality of appellate records are governed by Florida Rule of Judicial Administration 2.420.

Committee Notes

[No Change]

RULE 9.100 ORIGINAL PROCEEDINGS

(a) – (c) **[No Change]**

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

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

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

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

(e) – (l) [No Change]

Committee Notes

1977 Amendment – 1999 Amendment [No Change]

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

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

Court Commentary

[No Change]

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

(a) – (n) [No Change]

Committee Notes

1977 Amendment – 2006 Amendment. [No Change]

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

Court Commentary

[No Change]

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. **To the extent reasonably practicable,** restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.

(5) "Affected non-party" means any non-party identified by name in a court record that contains confidential information pertaining to that non-party.

(c) Confidential and Exempt Records. The following records of the judicial branch shall be confidential:

(1)-(9) [No change]

(10) The names and any identifying information of judges mentioned in an advisory opinion of the Judicial Ethics Advisory Committee.

(d) Procedures for Determining Confidentiality of Court Records.

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. The following information shall be maintained as confidential:

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

(B) except as provided by court order, information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07,

Florida Statutes, and article I, section 24(a) of the Florida Constitution under any of the following statutes or as they may be amended or re-numbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat.

(ii) Adoption records. § 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit, and credit card numbers in court records. § 119.0714(1)(i)–(j), (2)(a)-(e), Fla. Stat. *(Unless redaction is requested pursuant to 119.0714(2), this information is exempt only as of January 1, 2011.)*

(iv) HIV test results and patient identity within those test results. § 381.004(3)(e), Fla. Stat.

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

(vi) Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), 382.025(1)(a), Fla. Stat.

(vii) Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(viii) Identifying information in clinical mental health records under the Baker Act. § 394.4615(7), Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. § 397.501(7), Fla. Stat.

(x) Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(xi) Estate inventories and accountings. § 733.604(1), Fla. Stat.

(xii) Victim's address in domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(xv) Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

(xvi) Grand jury records. Ch. 905, Fla. Stat.

(xvii) Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)-(4), Fla. Stat.

(xviii) Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat.

(xix) Information disclosing the identity of persons subject to tuberculosis proceedings and Records of the Department of Health in suspected tuberculosis cases. §§ 392.545, 392.65, Fla. Stat.

(2) Any person filing or introducing into evidence any document containing confidential information shall, at the time of filing file with the clerk, or at the time of introduction submit to the court, a "Notice of Confidential Information within Court Filing" in order to: (A) indicate ~~whether any~~ that confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed or introduced; (B) identify the provision of subdivision (d)(1)(B) of this rule that applies to the identified information, and (C) identify the precise location of the confidential information within the document being filed or introduced. A form Notice of Confidential Information within Court Filing accompanies this rule. The clerk of court in the case of filings, or the court in the case of introduction of evidence, shall review filings identified by filers as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under the identified provision in subdivision (d)(1)(B). If the clerk determines that ~~such~~ filed information is not subject to confidentiality under the identified provision, the clerk shall notify the person who filed the document in writing within 5 days of the filing and thereafter shall maintain the information as confidential for 10 days from the day such notice is served. **The ~~records~~ information shall not be held as confidential for more than 10 days, unless the filer has filed a motion pursuant to subdivision (d)(3).**

(3) Any person filing a document with the court or introducing a document into evidence shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule notwithstanding that such information is not itemized at subdivision (d)(1) of this rule. A person filing or introducing information that he or she believes in good faith to be confidential but that is not described in subdivision (d)(1) of this rule ~~may~~shall request that the

information be maintained as confidential by filing a "Motion to Determine Confidentiality of Court Records" under the procedures set forth in subdivisions (e), (f), or (g), unless (A) the person filing or introducing the information is the only individual whose confidential information is included in the document to be filed or introduced or is the attorney representing all such individuals; and (B) a knowing waiver of the confidential status of that information is intended by the person filing or introducing the information. Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivisions (e), (f), or (g).

(4) ~~If confidential information that involves a named non-party is filed, the person filing the information shall give notice to the non-party of the filing of the confidential information. The notice must be filed with the court and must identify the case by docket number, describe the information, identify the precise location of the information within the document being filed, and include a statement that if determined to be confidential the information could be subject to unsealing. If a motion is filed seeking to vacate an order determining the information to be confidential or seeking to unseal the information if designated as confidential by the clerk of court, the named non-party must be served with the motion in accordance with subdivisions (e)(5) or (g)(5).~~If a motion is filed pursuant to subdivision (e)(1) seeking to determine that information contained in court records is confidential, pursuant to subdivision (e)(5) seeking to vacate an order that has determined that information in a court record is confidential, or seeking to unseal information designated as confidential by the clerk of court, then the person filing any such motion shall give notice of such filing to any affected non-party. Notice pursuant to this provision must:

(A) be filed with the court;

(B) identify the case by docket number;

(C) describe the confidential information with as much specificity as possible without revealing the confidential information, including specifying the precise location of the information within the court record; and

(D) include:

(i) in the case of a request to deem materials confidential, a statement that if the motion is denied then the subject material will not be treated as confidential by the clerk; and

(ii) in the case of a motion to unseal confidential records or a motion to vacate an order deeming records confidential, a statement that if the motion is granted, the subject material will no longer be treated as confidential by the clerk.

Any notice described herein must be served together with the motion that gave rise to the notice in accordance with subdivision (e)(5) or (g)(5). When serving the notice and motion described in this subdivision on a non-party, the server shall use reasonable efforts to locate the non-party and may serve such non-party by any method set forth in Florida Rule of Civil Procedure 1.080(b).

(e) Request to Determine Confidentiality of Trial Court Records in Noncriminal Cases.

(1) A request to determine the confidentiality of trial court records in noncriminal cases under subdivision (c) must be made in the form of a written motion captioned "Motion to Determine Confidentiality of Court Records." A motion made under this subdivision must:

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

(B) specify the bases for determining that such court records are confidential; and

(C) set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential.

Any motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is made in good faith and is supported by a sound factual and legal basis. Information that is subject to 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 determine that the case number, docket number, or other number used by the clerk's office to identify the case file is confidential.

(2) Except when a motion filed under subdivision (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 (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 person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c). **Any person may request expedited consideration of and ruling on the motion.** The moving party shall be responsible for ensuring that a complete record of any hearing held pursuant to this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. The court may in its discretion require prior public notice of the hearing on such a motion in accordance with the procedure for providing public notice of court orders set forth in subdivision (e)(4) or by providing such other public notice as the court deems appropriate. **The court must issue a ruling on the motion within 30 days of the hearing.**

(3) Any order granting in whole or in part a motion filed under subdivision (e) must state the following with as much specificity as possible without revealing the information subject to the confidentiality determination:

(A) The type of case in which the order is being entered;

(B) The particular grounds under subdivision (c) for determining the information to be confidential;

(C) Whether any party's name is determined to be confidential and, if so, the particular pseudonym or other term to be substituted for the party's name;

(D) Whether the progress docket or similar records generated to document activity in the case are determined to be confidential;

(E) The particular information that is determined to be confidential;

(F) Identification of persons who are permitted to view the confidential information;

(G) That the court finds that: (i) the degree, duration, and manner of confidentiality ordered by the court are no broader than necessary to protect the interests set forth in subdivision (c); and (ii) no less restrictive measures are available to protect the interests set forth in subdivision (c); and

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

(4) Except as provided by law or court rule, notice must be given of any order granting in whole or in part a motion made under subdivision (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. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (e) **or requests that the court order the unsealing of records designated as confidential under subdivision (d),** the request must be made by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all ~~affected~~ parties~~, including named~~ and all affected **non-parties** ~~given notice of the filing of the information under subdivision (d)(4),~~ with a copy of the motion. If the subject order determines that the names or addresses of one or more parties are confidential, the movant must state prominently in the caption of the motion "Confidential Party — Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to **all** ~~affected~~ parties~~, including named~~ and all affected **non-parties** ~~given notice of the filing of the information under subdivision (d)(4),~~ in such a way as not to reveal the confidential information to the movant. Except when a motion filed under this subdivision represents that all parties agree to all of the relief requested, the court must, **as soon as practicable but no later than 30 days after the filing of a motion under this subdivision,** hold a hearing on the motion. Regardless of whether any motion filed under this subdivision is agreed to by the parties, the court may in its discretion hold a hearing on such motion. **Any person may request expedited consideration of and ruling on the motion.** Any hearing held under this subdivision must be an open proceeding, except that any person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c). **The court must issue a ruling on the motion within 30 days of the hearing.** The movant shall be responsible for ensuring that a complete record of any hearing held under this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

~~(6) If the court determines that a designation made under subdivision (d) or a motion made under subdivision (e) was not made in good faith and was not~~

~~supported by a sound legal or factual basis, the court may impose sanctions on the movant after notice and an opportunity to respond.~~

(6) After notice and an opportunity to respond, the court may impose sanctions against any party or non-party and/or their attorney, if:

(A) the court determines that a designation made under subdivision (d) or a motion made under subdivision (d)(3) or (e) was not made in good faith and was not supported by a sound legal or factual basis, or

(B) a document is filed or introduced into evidence in violation of subdivision (d)(2) or (d)(3.

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

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

(A) Unless the motion represents that both the movant and any other party subject to the motion agree to all of the relief requested, as evidenced by all such parties signing the motion, the court shall hold a hearing on a motion filed under this subdivision within 15 days of the filing of the motion. **Any hearing held under this subdivision must be an open proceeding, except that any person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A).**

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

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

(A) The motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality

was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

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

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

(3) **Any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court record that reveals the identity of a confidential informant or active criminal investigative information is confidential under subdivision (c)(9)(A)(i), (c)(9)(A)(iii), (c)(9)(A)(v), or (c)(9)(A)(vii) of this rule may be made in the form of a written motion captioned "Restricted Motion to Determine Whether a Court Record is Confidential."** ~~If the motion reveals the identity of a confidential informant or active criminal investigative information, the movant may request that the motion also be determined to be confidential.~~Any motion made pursuant to this subdivision and all court records that are the subject of such a motion must be treated as confidential and not indicated on the docket by the clerk pending a ruling on the motion or further order of the court. As to any motion made under this subdivision, the following procedure shall apply:

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

(B) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision. In the event of an appeal or review of a matter in which an order is entered under this subdivision, the lower tribunal shall retain jurisdiction to consider motions to extend orders issued hereunder during the course of the appeal or review proceeding.

(C) The provisions of subdivisions (e)(3)(A)–(G), (e)(6), and (g)(7) shall apply to motions made under this subdivision. The provisions of subdivisions (e)(1), (e)(2), (e)(3)(H), (e)(4), and (e)(5) shall not apply to motions made under this subdivision.

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

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

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

(1) A motion to determine the confidentiality of appellate court records in noncriminal cases under subdivision (c) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (e)(1). Such a motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(2) A response to a motion filed under subdivision (g)(1) may be served within 10 days of service of the motion.

(3) Any order granting in whole or in part a motion filed under subdivision (g)(1) must be in compliance with the guidelines set forth in subdivisions (e)(3)(A)-(H). Any order requiring the sealing of an appellate court record operates to also make those same records confidential in the lower tribunal during the pendency of the appellate proceeding.

(4) Except as provided by law, within 10 days following the entry of an order granting a motion under subdivision (g)(1), the clerk of the appellate court must post a copy of the order on the clerk's website and must provide a copy of the order to the clerk of the lower tribunal, with directions that the clerk is to seal the records identified in the order. The order must remain posted for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (g)(3), **or requests that the court order the unsealing of records designated as confidential under subdivision (d),** the request must be made by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all ~~affected~~ parties~~, including named~~ and all affected **non-parties** ~~given notice under subdivision (d)(4),~~ with a copy of the motion. If the subject

order determines that the names or addresses of one or more parties are confidential, the movant must state prominently in the caption of the motion "Confidential Party—Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to **all** ~~affected~~ parties~~, including named~~ and all affected **non-parties** ~~given notice under subdivision (d)(4),~~ in such a way as not to reveal the confidential information to the movant. A response to a motion may be served within 10 days of service of the motion.

(6) The party seeking to have an appellate record sealed under this subdivision has the responsibility to ensure that the clerk of the lower tribunal is alerted to the issuance of the order sealing the records and to ensure that the clerk takes appropriate steps to seal the records in the lower tribunal.

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

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

(9) Records of a lower tribunal determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where information has been determined to be confidential under this rule, the clerk of the lower tribunal shall so indicate in the index transmitted to the appellate court. If the information was determined to be confidential in an order, the clerk's index must identify such order by date or docket number. This subdivision does not preclude review by an appellate court, **under Rule of Appellate Procedure 9.100(d),** or affect the standard of review by an appellate court, of an order by a lower tribunal determining a record to be confidential.

(h) 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 in the following manner:

(1)-(2) [No Change]

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

(1)-(3) [No Change]

Committee Commentary

[No Change]

1995 Amendment.

[No Change]

2002 Court Commentary

[No Change]

2005 Court Commentary

[No Change]

2007 Court Commentary

[No Change]

2007 Committee Commentary

[No Change]

IN THE _____ COURT, _____

JUDICIAL CIRCUIT, IN AND FOR

_____ COUNTY, FLORIDA

CASE NO.: _____

_____

Plaintiff/Petitioner,

v.

_____

Defendant/Respondent.

_____/

NOTICE OF CONFIDENTIAL INFORMATION WITHIN COURT FILING

Pursuant to Florida Rule of Judicial Administration 2.420(d)(2), the filer of a court record at the time of filing shall indicate whether any confidential information is included within the document being filed; identify the confidentiality provision that applies to the identified information; and identify the precise location of the confidential information within the document being filed.

Title/Type of Document(s): _____

Indicate the applicable confidentiality provision(s) below from Rule 2.420(d)(1)(B), by specifying the location within the document on the space provided:

_____ Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat. (If the document is filed within a Chapter 39 case, this form is not required.)

_____ Adoption records. § 63.162, Fla. Stat. (If the document is filed within a Chapter 63 adoption case, this form is not required.)

_____ 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.)

_____ HIV test results and patient identity within the HIV test results. § 381.004(3)(e), Fla. Stat.

_____ Sexually transmitted diseases — test results and identity within the test results. § 384.29, Fla. Stat.

_____ Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), 382.025(1)(a), Fla. Stat.

_____ Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat. (If the document is filed within a Ch. 390 waiver of parental notice case, this form is not required.)

_____ Identifying information in clinical mental health records under the Baker Act. §394.4615(7), Fla. Stat.

_____ Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. § 397.501(7), Fla. Stat.

_____ Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

_____ Estate inventories and accountings. § 733.604, Fla. Stat.

_____ Victim's address in domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

_____ Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

_____ Gestational surrogacy records. § 742.16(9), Fla. Stat.

_____ Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

_____ Grand jury records. Ch. 905, Fla. Stat. (If the document is filed in a Ch. 905 grand jury proceeding, this form is not required.)

_____ Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)–(4), Fla. Stat. (If the document is filed in a Ch. 984 family services for children case, this form is not required.)

_____ Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat. (If the document is filed in a Ch. 985 juvenile delinquency case, this form is not required.)

_____ Information disclosing the identity of persons subject to tuberculosis proceedings and Records of the Department of Health in suspected tuberculosis cases. §§ 392.545, 392.65, Fla. Stat.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. mail / personal service to: _____, on _____, 20_____.

_____

Attorney Name .....

Address .....

Phone .....

Florida Bar No. .....

Note: The clerk of court shall review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality under the identified provision. The clerk shall notify the filer in writing within 5 days if the clerk determines that the information is NOT subject to confidentiality, and the records shall not be held as confidential for more than 10 days, unless a motion is filed pursuant to subdivision (d)(3) of the Rule. Fla. R. Jud. Admin. 2.420(d)(2).

RULE 9.040. GENERAL PROVISIONS.

(a) – (h)

(i) Requests to Determine Confidentiality of Appellate Court Records. Requests to determine the confidentiality of appellate records are governed by Florida Rule of Judicial Administration 2.420.

Committee Notes

[No Change]

RULE 9.100 ORIGINAL PROCEEDINGS

(a) – (c) **[No Change]**

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

(1) A petition to review an order excluding ~~or granting access to~~ the press or public from, or granting the press or public access to, any proceeding, any part of a proceeding, or any records of the judicial branch, shall be filed in the court as soon as practicable following rendition of the order to be reviewed, if written, or announcement of the order to be reviewed, if oral, but no later than 30 days after rendition of the order. A copy of the petition shall be furnished to the person (or chairperson of the collegial administrative agency) issuing the order the parties to the proceeding, and any affected non-parties.

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

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

(e) – (l) [No Change]

Committee Notes

1977 Amendment – 1999 Amendment [No Change]

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

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

Court Commentary

[No Change]

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

(a) – (n) [No Change]

Committee Notes

1977 Amendment – 2006 Amendment. [No Change]

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

Court Commentary

[No Change]