

IN THE SUPREME COURT OF FLORIDA

**IN RE: FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.423**

SC20–

**REPORT OF THE
AD HOC JOINT RULES COMMITTEE**

Michael J. Korn, Chair of the Rules of Judicial Administration Committee, Michael W. Schmid, Chair of the Ad Hoc Joint Rules Subcommittee, and Joshua E. Doyle, Executive Director of The Florida Bar, file this report pursuant to Florida Rule of Judicial Administration 2.140(f)(1).

I. Source of Referral

On August 19, 2019, the Clerk of Court, at the direction of the Court, sent a letter to the Rules of Judicial Administration Committee (“RJA Committee”) asking it to “coordinate the submission of a joint out-of-cycle rules report” after the “rules committees . . . review their respective bodies of rules and propose any rule amendments that may be required in response to the recent victims’ rights constitutional amendment known as Marsy’s Law.” *See* Appendix A–1. Pursuant to Rule 2.140(a)(7), an Ad Hoc Joint Rules Subcommittee (“Ad Hoc Subcommittee”) was created, consisting of members from the RJA Committee, the Appellate Court Rules Committee, the Criminal Procedure Rules Committee, the Juvenile Court Rules Committee, and the Traffic Court Rules Committee. This Ad Hoc Subcommittee worked together to propose a new rule of judicial administration addressing the confidentiality of victim information.

II. Procedural History of Proposed Rule

Upon receipt of the Court’s assignment letter, the RJA Committee scheduled an open “town” meeting on October 18, 2019, and invited state attorneys, public defenders, defense lawyers, law enforcement officials, clerks of court, legislators, and Marsy’s Law specialists to attend and make presentations. *See* Appendix B - Invitation. The October 18, 2019, meeting was an open, structured discussion between RJA Committee members and attendees about the impact of Marsy’s Law on the rules of court, particularly because of the dearth of statutory guidance. After this informative meeting, the joint Ad Hoc Subcommittee was created and regular meetings were conducted. *See* Appendix C – Minutes.

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The Ad Hoc Subcommittee proposed new Florida Rule of Judicial Administration 2.423 (“Marsy’s Law” Crime Victim Information within Court Filing), which was approved by a vote of 13–0. That proposed rule was thereafter published for comment in the April 1, 2020, edition of *The Florida Bar News*. See Appendix D – Publication. The publication resulted in one comment submitted by the News Media Coalition; after careful review of the comment, the Ad Hoc Subcommittee determined that no amendments should be made. See Appendix E – Comment.

The proposed rule was then submitted to the Florida Bar Board of Governors, which voted 30–0 to recommend acceptance. The proposed rule may be seen in full-page format (Appendix F) and two-column format (Appendix G).

The Marsy’s Law amendment to the Florida Constitution, as approved by the voters of Florida, and a proposed publication chart are included for the Court’s convenience. See Appendices H and I, respectively.

III. Rule Proposal—Rule 9.143 (Crime Victims)

As explained in the Court’s referral letter, “the Marsy’s Law amendment, which went into effect on January 8, 2019, revised and established various crime victims’ rights under the Florida Constitution.” The rights listed in this amendment include the right to due process and to be treated with fairness and respect; to be free from intimidation, harassment, and abuse; to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim’s family; and to be noticed of court proceedings involving the criminal conduct. See Art. I, § 16(b)(1)–(6), Fla. Const. Marsy’s Law also includes the right for victims “to be heard in any public proceeding involving pretrial or other release from any form of legal constraint, plea, sentencing, adjudication, or parole, and any proceeding during which a right of the victim is implicated” as well as the “right to be informed of all postconviction processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.” Art. I, § 16(b)(6)(b), (g) Fla. Const.

In response to the Court’s request that the rules committees consider whether any amendments or additional rules are needed to implement the new constitutional mandates of Marsy’s Law, the Ad Hoc Subcommittee created rule 2.423, entitled “Marsy’s Law” Crime Victim Information within Court Filing. This rule is divided into five subdivisions and includes a sample form for practitioners.

Subdivision (a), Scope and Purpose, establishes the procedural authority for the confidentiality of crime victim information in “the records of the judicial branch of government in criminal and juvenile justice cases.” This section also cross references rule 2.420, Public Access to and Protection of Judicial Branch Records. Subdivision (b), Definitions, provides specific definitions for the terms “confidential crime victim information,” “crime,” and “victim.” Subdivision (c), Confidential and Exempt Records, clarifies for practitioners that, in accordance with rule 2.420(c)(9), “confidential crime victim information is determined to be confidential” consistent with the Florida Constitution.

Subdivision (d), Procedure for Identifying Confidential Crime Victim Information in Criminal and Juvenile Court Records, is the substance of the rule, which provides a procedure for identification of the documents and information subject to protection, and is divided into six parts. Subdivision (d)(1) requires the filer of an initial charging document to identify confidential crime victim information within and, if identified, requires the clerk to maintain that confidentiality. Subdivision (d)(2) establishes the requirement for filing a Notice of Confidential Crime Victim Information within Court Filing when a filed document is not an initial document falling within subdivision (d)(1). Subdivision (d)(3) gives authority for a crime victim, a filer, a party, or any affected nonparty to file a Notice at any time. Subdivision (d)(4) requires filers to either limit the crime victim information within the filing or to file a Notice with each filing after the initiating document that contains confidential crime victim information. Subdivision (d)(5) contains four subdivisions specifying that the Notice of Confidential Crime Victim Information within Court Filing: identify the precise location of confidential information within a filed document; be maintained as confidential to the extent it contains crime victim information; is unnecessary when an entire case is maintained as confidential; and establishes the publication of the form within the rule. Subdivision (d)(6) requires that upon a party’s filing of a Notice, the clerk of court must review the document to determine whether it is facially subject to confidentiality under the constitution. If so, the document will remain confidential under subdivision (d)(6)(A); however, if not, the clerk will then notify the filer within 5 days and hold the document confidential for only a 10-day period, unless a motion is filed to clarify the eligibility for confidentiality.

Subdivision (e), Duration of Confidentiality, specifies that documents within the case file will remain confidential under this rule only until the court makes a final determination that the information need no longer be maintained as confidential.

Appendix A, Notice of Confidential Crime Victim Information within Court Filing, is a sample form that can be used to identify confidential information within an attached document or a document that has already been filed without such a form.

The Ad Hoc Subcommittee received one comment from the News Media Coalition following publication of the rule. That comment raised concerns about information sharing to protect citizens—particularly those living or working close to the location of a crime. The comment stated that the “public’s ability to observe court proceedings extends to records, with courts recognizing a First Amendment-based right of access.” *See* Appendix E–3. The News Media Coalition is also concerned that the “Proposed Rule was drafted assuming the constitutionality of Marsy’s Law and prior to the resolution of any legal issues to its interpretation.” *See* Appendix E–4. The Coalition argued that the “responsibility [to redact victim information] rightfully falls squarely and solely, on the filer” and that court clerks should not have “the impossible burden of undertaking this process every time a new filing is made in a criminal proceeding.” *See* Appendix E–4. The Coalition believed subdivision (d)(5)(B) to be unnecessary and argued that it should not be adopted. *See* Appendix E–5. The Coalition also made two suggestions: to rewrite subdivision (d)(5)(B) and direct filers not to include “information claimed to be subject to confidentiality” in a filing; and to add a sentence declaring that the Notice itself is not confidential. The last suggestion by the New Media Coalition was for the filer to accept the responsibility of redacting confidential information from documents before filing.

The Ad Hoc Committee appreciated this detailed comment, which was thoroughly discussed during its March 6, 2020, meeting. However, no rule amendments were proposed in reaction to the comment received. *See* Appendix C–40.

WHEREFORE, the Rules of Judicial Administration Committee respectfully requests that the Court adopt Florida Rule of Judicial Administration 2.423 as proposed.

Respectfully submitted on July 31, 2020.

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CERTIFICATE OF SERVICE

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CERTIFICATE OF COMPLIANCE

I certify that this rule is unable to be read against *Thomson Reuters' Florida Rules of Court—State* (2020 Edition). I certify that this report was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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