



Lydia Gardner
Clerk of the Circuit and County Courts
Orange County • Florida

Redaction Attorney Agent Authorization Form

Dear Clerk,

_____ is designated as my agent to receive from
the Clerk case file No. _____

____ for the sole purpose of delivering it to a Judge

____ for the purposes of reviewing the file and/or receiving copies of original
un-redacted pleadings contained within the court file.

I understand that according to Florida Statute 119.0714 that un-redacted case files can
only be viewed by a party to the case or the party's agent.

Original Attorney Signature

Bar #

Address:

Attorney for _____

Date:



425 North Orange Avenue • Post Office Box 4994 • Orlando, Florida 32802-4994 • TEL 407-836-2000

Supreme Court of Florida

No. SC11-2466

IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.420.

[March 28, 2013]

PER CURIAM.

We have for consideration an out-of-cycle report filed by the Rules of Judicial Administration Committee (RJA Committee) proposing a number of amendments to Florida Rule of Judicial Administration 2.420 (Public Access to Judicial Branch Records) that are intended to clarify the rule and refine the procedures for determining the confidentiality of court records. See Fla. R. Jud. Admin. 2.140(e). We adopt the majority of the amendments as proposed, make minor modifications to several proposals, and decline to adopt only one proposed new subdivision.¹

BACKGROUND

1. We have jurisdiction. See art. V, § 2(a), Fla. Const.

Amendments Made in Case Nos. SC07-2050 and SC10-2242

In In re Amends. to Fla. Rule of Jud. Admin. 2.420 & Fla. Rules of App. Pro., 31 So. 3d 756 (Fla. 2010) (Case No. SC07-2050), the Court added new subdivision (d) (Procedures for Determining Confidentiality of Court Records) to rule 2.420, which governs public access to judicial branch records. Subdivision (d) provides a procedure that allows the clerks of court to readily identify and screen from the public confidential information filed with the court. Adopting a procedure that ensures the confidentiality of a narrow set of readily identifiable court records was a necessary prerequisite to this Court's ongoing effort to provide the public with electronic access to court records. Id. at 757. The new subdivision also provides a procedure to ensure that confidential information that is not automatically screened from public view by the clerk will be the subject of a determination of confidentiality by the court. Id. at 763. The procedures for sealing and unsealing court records also were refined. Id. at 757. The goal of these comprehensive amendments to rule 2.420 was to balance the public's constitutional right to access to court records with the courts' responsibility to protect from public access court records that are confidential. Id. at 758.

As relevant here, subdivision (d)(1) of rule 2.420 sets forth the procedure for the clerks of court to automatically designate and maintain certain court records as confidential. The records listed in subdivisions (c)(7) and (c)(8) that must be

automatically designated confidential by the clerk are limited to a “finite set” of statutory and rule exemptions listed in subdivision (d)(1)(B). Id. at 765. As originally adopted, subdivision (d)(1)(B) contained nineteen categories of automatically confidential information. Id. at 765. Subdivision (d)(2) currently requires a filer of confidential information to provide the clerk of court with a written notice that identifies the applicable category of automatically confidential information and the specific location of the confidential information within the document being filed. Subdivision (d)(3) requires a filer to seek a judicial determination of confidentiality as to court records the filer believes are confidential under the rule but are not designated as automatically confidential under subdivision (d)(1)(B).

In In re Amends. to Fla. Rule of Jud. Admin. 2.420, 68 So. 3d 228 (Fla. 2011) (Case No. SC10-2242), the Court amended subdivision (d)(1)(B) of rule 2.420 and its companion notice form to add presentence investigation reports and attached psychological and psychiatric evaluations as the twentieth category of automatically confidential information. Id. In that opinion, the Court emphasized that “[a] party seeking to maintain as confidential psychological or mental health evaluations not included in rule 2.420(d)(1)(B) must utilize the procedures set forth in rule 2.420(d)(3).” Id. The Court also specifically declined a request to add all

mental health evaluations and reports filed in criminal cases to the list of automatically confidential information. *Id.* at 230.

This Case

In this case, the RJA Committee reported various problems in implementation of the amendments to rule 2.420. The RJA Committee determined that some problems arose from the apparent failure on the part of filers and clerks of court to follow the rule as written. According to the Committee, most of the problems with compliance with the rule either have been resolved or should be resolved after filers and clerks become more accustomed to the operation of the rule and further education is made available. However, the RJA Committee determined that further amendments are warranted in order to clarify some of the provisions of the rule and to further refine the procedures for determining the confidentiality of court records. The committee vote on the majority of the proposed amendments was 20-4.² The Board of Governors of The Florida Bar unanimously approved all the proposals.

After the proposals were filed, the Court published them for comment. Comments were filed by Brevard County Clerk of Court Mitch Needelman and the

2. The committee vote was 19-4 on proposed new subdivision (h) (oral motions). The committee vote was 20-1-1 on the amendments to subdivision (d)(2) (filing notice of confidential information), the notice form, and new subdivision (k) (service) (proposed as subdivision (l)).

Florida Public Defender Association (FPDA). The RJA Committee filed a response to the comments. After the response was filed, the Florida Courts Technology Commission and its Subcommittee on Access to Court Records (collectively “Access Subcommittee”) filed an agreed to motion to intervene, file a comment, and appear at oral argument in this case. That motion was granted. The Access Subcommittee’s comment opposes FPDA’s request that the Court add all mental health evaluations and reports in criminal cases to the list of automatically confidential information under rule 2.420(d)(1)(B). The Court heard oral argument on the proposals and FPDA’s request.

After considering the filings in this case, as well as the matters discussed at oral argument, we adopt the majority of the amendments as proposed. We discuss below the more significant amendments as well as the modifications we make and the proposal we decline to adopt.

We thank the RJA Committee and the members of RJA Subcommittee B for providing proposals that will facilitate compliance with this important rule. We also thank the numerous non-committee members who assisted the subcommittee with this effort, as well as those who filed comments. As pointed out by the RJA Committee, we also acknowledge that because of the unavoidable complexity of the procedures for determining confidentiality of court records, future amendments to rule 2.420 likely will become necessary. However, we encourage attorneys,

clerks of court, and judges to take advantage of educational opportunities that are designed to help them understand their respective responsibilities under the rule.

AMENDMENTS

New subdivision (b)(6) (Definitions; “Filer”) is added to rule 2.420, as proposed. The new subdivision defines the term “filer,” as used in the rule, as “any person who files a document in court records,” and specifically excludes “the clerk of court or designee of the clerk, a judge, magistrate, hearing officer, or designee of a judge, magistrate, or hearing officer” from the definition. The term “filer” also is added to other subdivisions of the rule. New subdivision (d)(5), discussed below, now requires the court to put the clerk of court on “notice” of confidential information in a document filed by the court.

Several significant amendments are made to subdivision (d) (Procedures for Determining Confidentiality of Court Records). First, subdivision (d)(1)(B) is amended to clarify that the language of the controlling statute or rule, not the language used within the twenty listed categories of automatically confidential information, must be looked to when determining what information must be maintained confidential by the clerk of court. Subdivisions (d)(1)(B)(i)-(xx) are amended to make the language used to describe the twenty categories of automatically confidential information consistent with the referenced statutes or rule. For example, the amendment to subdivision (d)(1)(B)(xx), which currently

lists “[p]resentence investigation reports and attached psychological or psychiatric evaluations,” deletes the statutory references. The RJA Committee recommended deleting the statutory references because it determined the cited statutes do not specifically make the presentence investigation reports exempt. Only the reference to rule 3.712, which makes the presentence investigation report confidential, is retained. The reference to “attached psychological or psychiatric evaluations” also is deleted because the Committee determined that that reference could be misinterpreted to mean that such evaluations would keep their exempt status for other purposes. The word “complete” is added before “presentence investigation reports” to indicate that all attachments to the presentence investigation report, including psychological or psychiatric evaluations, are also confidential.³

The most significant change to subdivision (d)(2) is the deletion of the requirement that the filer identify the specific subdivision (d)(1)(B) category of confidential information that applies to the information identified in the notice of confidential information. The RJA Committee proposed this amendment because it determined the existing notice form was too explicit and could result in the filer disclosing the very information the filer is attempting to keep confidential. For

3. We agree with the comment filed by the Access Subcommittee and again decline FPDA’s request to add psychological or psychiatric evaluations and reports filed in criminal cases to the subdivision (d)(1)(B) list of automatically confidential information. See In re Amends. to Fla. Rule of Jud. Admin. 2.420, 68 So. 3d 228, 230 (Fla. 2011) (rejecting same request by FPDA and others).

instance, by filing a notice that specifies that a document contains HIV, tuberculosis, or sexually transmitted disease information, one has potentially revealed the information sought to be kept confidential. Consistent with amendments to subdivision (d)(2), we also amend the notice form, appended to the rule, to make it more generic and concise.

However, the filer still must identify the precise location of the confidential information within the document being filed. After consulting with a number of clerks of court, the RJA Committee determined this requirement was sufficient because the clerks of court are familiar with the subdivision (d)(1)(B) categories of confidential information. Subdivision (d)(2) also is amended to provide that if an entire document is confidential, the filer need only indicate that the entire document is confidential, and that the notice need not be filed if the entire court file is confidential.

New subdivision (d)(2)(A) allows for “after-the-fact” notification of confidential information in a court filing. The notice can be used by the filer, a party, or any affected non-party when confidential information or documents were not initially identified by the filer and are not being maintained as confidential by the clerk of court. The option to file the after-the-fact note also is added to the notice form.

Subdivision (d)(2)(B) addresses the clerk of court's duty in connection with filings identified as containing confidential information. The more significant amendments to this subdivision include: (1) providing for the new after-the-fact notice; (2) removing the reference to specific subdivision (d)(1)(B) categories of confidential information; and (3) clarifying the time frames for action by the clerk of court.

As noted above, the amended Notice of Confidential Information within Court Filing form, appended to the rule, is a more concise form that does not require the filer to specifically identify which of the twenty subdivision (d)(1)(B) categories applies to the information being filed. The new form is to be used with the initial filing of confidential documents and for after-the-fact notification of confidential information that is already in the court file. The certificate of service in the form is amended, as proposed, to accommodate service on affected non-parties and to include a reference to new subdivision (k) (Procedure for Service on Victims and Affected Non-parties and When Addresses Are Confidential), which is discussed below. We have revised the certificate of service form to provide for service consistent with new Rule of Judicial Administration 2.516 (Service of Pleadings and Documents).

Subdivision (d)(4), which addresses the giving of notice to affected non-parties, is amended to add references to subdivisions (g)(1) (motion to determine

confidentiality of appellate court records in noncriminal case) and (g)(5) (non-party request to vacate order sealing appellate court records). A reference to new subdivision (k), which will govern service on non-parties, also is added and the last sentence concerning service on a non-party is deleted.

New subdivision (d)(5) requires a judge, magistrate, or hearing officer (“court”) who files an order or other document containing confidential information to identify the confidential information as confidential and include in the title of the document the word “confidential.” The court also must provide the clerk with a copy of the order or other document with the confidential information redacted.

Several of the amendments to subdivision (e) (Request to Determine Confidentiality of Trial Court Records in Noncriminal Cases) warrant discussion. First, subdivisions (e)(1)(B)-(C) are amended to advise the filer of a motion to determine confidentiality of court records that, when specifying the bases for determining the records are confidential and setting forth the specific legal authority and legal standard for that determination, the confidential information should not be revealed. Next, the last paragraph of subdivision (e)(1) is amended to clarify that the subdivision applies to “written” motions, as opposed to oral motions, which are now authorized under new subdivision (h) discussed below. Finally, a procedure for filing a response to a written motion is also added.

Subdivision (f) (Request to Determine Confidentiality of Court Records in Criminal Cases) is amended to clarify that oral motions are permitted in criminal cases. The most significant amendment to this subdivision is the deletion of the requirement in subdivision (f)(1)(A) that all parties sign the motion to determine confidentiality in order to evidence agreement and avoid the scheduling of a hearing on the motion.

We amend subdivision (g) (Request to Determine Confidentiality of Appellate Court Records in Noncriminal Cases) as proposed. The most significant amendment is to subdivision (g)(2). That amendment requires an appellate court to issue a written ruling on a motion to determine confidentiality of appellate records in a noncriminal case within 30 days of the filing of a response on a contested motion or within 30 days of the filing of an uncontested written motion.

Subdivision (h) (Oral Motions to Determine Confidentiality of Trial Court Records) is new. The RJA Committee determined that authorizing oral motions will keep information confidential when the movant is unable to file a written motion. To ensure that oral motions are not used to avoid the requirements for written motions to determine confidentiality of trial court records, the new subdivision includes a number of safeguards. Most notably, oral motions generally must comply with the requirements of subdivision (e)(1); all parties or affected non-parties must be present or properly noticed; the movant must show good cause

for not filing a written motion; a written motion must be filed within 5 days; and the court may deny an oral motion if the court finds that written motion could have been filed or the movant failed to give adequate notice.

We decline to adopt proposed new subdivision (i) (Confidential Evidence). The RJA Committee proposed the new subdivision for “the purpose of handling confidential evidence in general.” The proposal is in response to the Court’s prior decision, in Case No. SC07-2050, not to apply subdivision (d)(2) to documents introduced into evidence during court proceedings. We rejected that suggestion because the proposal then before the Court did not give adequate guidance as to the procedures the presiding judge would follow. See In re Amends to Fla. Rule of Jud. Admin. 2.420 & Fla. Rules of App. Pro., 31 So. 3d at 765 n.22.

Here, proposed subdivision (i)(3) would require the court to “determine whether evidence or the confidential portions of any transcript of the proceedings shall be sealed.” However, the proposal fails to specify what triggers the determination by the court. It is also unclear to us why proposed subdivision (i) focuses on the closure of proceedings, especially in relation to the hearing of testimony or the asking of questions containing confidential information. Rule 2.420 governs public access to judicial branch records; the rule does not govern public access to court proceedings. Because of these concerns, we decline to adopt

this proposal. However, we encourage the RJA committee to reevaluate the proposal, in light of our concerns, and to offer another proposal at a future time.

New subdivision (i) (Sanctions), which was proposed as subdivision (j), consolidates the existing separate sanctions provisions, which are deleted. The RJA Committee determined that creating a separate sanctions subdivision cures inconsistencies in the existing sanctions provisions and makes the title and location of the new sanction provision more prominent and easier to find. The new subdivision is patterned after deleted subdivision (e)(6), and is expanded upon as appropriate. The new subdivision also recognizes that it does not limit the authority of the court to enforce any order entered pursuant to the rule.

We adopt new subdivision (j) (Procedure for Obtaining Access to Confidential Court Records), which was proposed as subdivision (k). New subdivision (j) provides a procedure for individuals who have a legal basis for obtaining access to confidential information in court records to gain access to that information by court order that does not alter the confidential status of those records. The filer of confidential information, the filer's attorney, and the filer's authorized agent also may obtain access to the information under this subdivision.

As proposed, subdivision (j)(1) also would have required the clerk of court to allow judges access to confidential court records. We removed this requirement

as unnecessary. Rule 2.420 governs public access to judicial branch records.⁴ The rule was never intended to govern or limit access to court records by judges, magistrates, hearing officers, the clerks of court, or court and clerk staff who must have access to those records in order to perform their official court-related duties.

Rule 2.420, originally numbered 2.051, was adopted to conform to article I, section 24 of the Florida Constitution (Access to Public Records and Meetings).

See In re Amends. Fla. Rules of Jud. Admin. — Public Access to Judicial Records, 608 So. 2d 472 (Fla. 1992). The rule recognizes that records that are confidential under the rule are exempt from the public's constitutional right of access. See Fla. R. Jud. Admin. 2.420(b)(4). As relevant here, judicial branch records include "court records" and are all records "made or received in connection with the transaction of official business by any judicial branch entity," including judges.

See Fla. R. Jud. Admin. 2.420(b)(1), (b)(2). Rule 2.420 was never intended to limit a judge's access to court records that are made or received in connection with the transaction of that judge's official business of deciding court cases, simply because those records are confidential under the rule and therefore closed to the public. Therefore, we see no reason for the rule to now specifically provide that the clerk of court must allow judges access to confidential court records. The same holds true for court or clerk's office staff who must have access to confidential

4. See Fla. R. Jud. Admin. 2.420(a).

records in order to assist the court or the clerk with the official business of processing court cases.

New subdivision (k) (Procedure for Service on Victims and Affected Non-parties and When Addresses Are Confidential), which was proposed as subdivision (l), consolidates and replaces the various separate provisions for service throughout the rule, which are deleted. Subdivision (k)(1) requires that service on victims of a crime be made by serving the state attorney. Subdivision (k)(2) provides for service on an affected non-party whose name or address is not confidential. Subdivision (k)(3) provides for service by the court when the name or address of the party or affected non-party being served is confidential. We added references to new Rule of Judicial Administration 2.516, which now governs service in general, where appropriate.

Existing subdivision (h) (Denial of Access Request for Administrative Record) is moved to new subdivision (l).

We move existing subdivision (i) (Procedure) to new subdivision (m) and retitle the subdivision “Procedure for Public Access to Judicial Branch Records.” However, we decline to amend the subdivision, as proposed, to limit it solely to requests for administrative records. As noted above, rule 2.420 governs public access to judicial branch records, which include both administrative records and court records. See Fla. R. Jud. Admin. 2.420(b)(1). Existing subdivision (i), as

will new subdivision (m), provides the procedures for “requests and responses to requests for access to records under [rule 2.420].” At the same time the subdivision (i) procedures were added to rule 2.420, the definitions of “records of the judicial branch,” “court records,” and “administrative records” were added to the rule. See In re Report of the Supreme Court Workgroup on Public Records, 825 So. 2d 889, 896 (Fla. 2002). If the intent were for those procedures to apply only to administrative judicial branch records that limitation would have been made clear at the time subdivision (i) was adopted. In fact, if we were to now limit this subdivision to requests for access to administrative records, there would be no formal procedure governing records requests for access to court records that are not confidential.

Accordingly, we amend Florida Rule of Judicial Administration 2.420 as reflected in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective May 1, 2013, at 12:01 a.m.

It is so ordered.

POLSTON, C.J., and PARIENTE, LEWIS, QUINCE, CANADY, LABARGA, and PERRY, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

Original Proceeding – Florida Rule of Judicial Administration

Alexandra V. Rieman, Chair, Rules of Judicial Administration Committee, Fort Lauderdale, Florida, Keith H. Park, Past Chair, Rules of Judicial Administration Committee, West Palm Beach, Florida, John F. Harkness, Jr., Executive Director, and Jodi Jennings, Bar Staff Liaison, The Florida Bar, Tallahassee, Florida,

for Petitioner

Nancy Ann Daniels, Public Defender, Second Judicial Circuit, Tallahassee, Florida and Robert Arthur Young, General Counsel, Public Defender's Office, Tenth Circuit, Bartow, Florida; Paul R. Regensdorf of Holland & Knight, LLP, Jacksonville, Florida and Judge Lisa T. Munyon, Circuit Judge, Ninth Judicial Circuit, Orlando, Florida,

Responding with comments

No person other than judges and authorized court employees shall remove court records as defined in rule 2.430 from the clerk's office except by order of the chief judge or chief justice upon a showing of good cause.

Court Commentary

1996 Adoption. This rule was written as a result of the problems being encountered in the removal of files from clerks' offices. While the purpose of the rule is to discourage the removal of court files, it is not intended to prohibit chief judges or the chief justice from issuing for good cause a general order providing that attorneys or authorized individuals may be allowed to check out files on a routine basis to assist in the administrative efficiency of a court. We note that section 28.13, Florida Statutes (1995), similarly prohibits the removal of files from clerks' offices.

RULE 2.420.

PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

(a) Scope and Purpose. Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below.

(b) Definitions.

(1) "Records of the judicial branch" are all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

(A) "court records," which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and

(B) "administrative records," which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

(2) "Judicial branch" means the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial

Qualifications Commission, and all other entities established by or operating under the authority of the supreme court or the chief justice.

(3) “Custodian.” The custodian of all administrative records of any court is the chief justice or chief judge of that court, except that each judge is the custodian of all records that are solely within the possession and control of that judge. As to all other records, the custodian is the official charged with the responsibility of maintaining the office having the care, keeping, and supervision of such records. All references to “custodian” mean the custodian or the custodian’s designee.

(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.

(6) “Filer” means any person who files a document in court records, except “filer” does not include the clerk of court or designee of the clerk, a judge, magistrate, hearing officer, or designee of a judge, magistrate or hearing officer.

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

(1) Trial and appellate court memoranda, drafts of opinions and orders, court conference records, notes, and other written materials of a similar nature prepared by judges or court staff acting on behalf of or at the direction of the court as part of the court’s judicial decision-making process utilized in disposing of cases and controversies before Florida courts unless filed as a part of the court record;

(2) Memoranda or advisory opinions that relate to the administration of the court and that require confidentiality to protect a compelling governmental interest, including, but not limited to, maintaining court security, facilitating a criminal investigation, or protecting public safety, which cannot be adequately protected by less restrictive measures. The degree, duration, and manner of confidentiality imposed shall be no broader than necessary to protect the compelling governmental interest involved, and a finding shall be made that no less restrictive measures are available to protect this interest. The decision that confidentiality is required with respect to such administrative memorandum or written advisory opinion shall be made by the chief judge;

(3) (A) Complaints alleging misconduct against judges until probable cause is established;

(B) Complaints alleging misconduct against other entities or individuals licensed or regulated by the courts, until a finding of probable cause or no probable cause is established, unless otherwise provided. Such finding should be made within the time limit set by law or rule. If no time limit is set, the finding should be made within a reasonable period of time;

(4) Periodic evaluations implemented solely to assist judges in improving their performance, all information gathered to form the bases for the evaluations, and the results generated therefrom;

(5) Only the names and qualifications of persons applying to serve or serving as unpaid volunteers to assist the court, at the court's request and direction, shall be accessible to the public. All other information contained in the applications by and evaluations of persons applying to serve or serving as unpaid volunteers shall be confidential unless made public by court order based upon a showing of materiality in a pending court proceeding or upon a showing of good cause;

(6) Copies of arrest and search warrants and supporting affidavits retained by judges, clerks, or other court personnel until execution of said warrants or until a determination is made by law enforcement authorities that execution cannot be made;

(7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;

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

(9) Any court record determined to be confidential in case decision or court rule on the grounds that

(A) confidentiality is required to

(i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;

(ii) protect trade secrets;

(iii) protect a compelling governmental interest;

(iv) obtain evidence to determine legal issues in a case;

(v) avoid substantial injury to innocent third parties;

(vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;

(vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law;

(B) the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (A); and

(C) no less restrictive measures are available to protect the interests set forth in subdivision (A).

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

(d) 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 as specifically stated in any of the following statutes or as they may be amended or renumbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. §§ 39.0132(3), 39.0132(4)(a), Fla. Stat.

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

(iii) Social Security, bank account, charge, debit, and credit card numbers. § 119.0714(1)(i)–(j), (2)(a)–(e), Fla. Stat. (Unless redaction is requested pursuant to § 119.0714(2), Fla. Stat., this information is exempt only as of January 1, 2012.)

(iv) HIV test results and the identity of any person upon whom an HIV test has been performed. § 381.004(3)(e), Fla. Stat.

(v) Records, including test results, held by the Department of Health or its authorized representatives relating to sexually transmissible diseases. § 384.29, Fla. Stat.

(vi) Birth records and portions of death and fetal death records. §§ 382.008(6), 382.025(1), Fla. Stat.

(vii) Information that can be used to identify a minor petitioning for a waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(viii) Clinical 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. § 397.501(7), Fla. Stat.

(x) Clinical records of 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) The victim's address in a domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Protected information regarding victims of child abuse or sexual offenses. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

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

(xv) Guardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

(xvi) Grand jury records. §§ 905.17, 905.28(1), Fla. Stat.

(xvii) Records 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) Records disclosing the identity of persons subject to tuberculosis proceedings and records held by the Department of Health or its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis. §§ 392.545, 392.65, Fla. Stat.

(xx) Complete presentence investigation reports. Fla. R. Crim. P. 3.712.

(2) The filer of any document containing confidential information described in subdivision (d)(1)(B) shall, at the time of filing, file with the clerk a

“Notice of Confidential Information within Court Filing” in order to indicate that confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed and also indicate that either the entire document is confidential or identify the precise location of the confidential information within the document being filed. If an entire court file is maintained as confidential, the filer of a document in such a file is not required to file the notice form. A form Notice of Confidential Information within Court Filing accompanies this rule.

(A) If any document in a court file contains confidential information as described in subdivision (d)(1)(B), the filer, a party, or any affected non-party may file the Notice of Confidential Information within Court Filing if the document was not initially filed with a Notice of Confidential Information within Court Filing and the confidential information is not maintained as confidential by the clerk. The Notice of Confidential Information within Court Filing filed pursuant to this subdivision must also state the title and type of document, date of filing (if known), date of document, docket entry number, indicate that either the entire document is confidential or identify the precise location of the confidential information within the document, and provide any other information the clerk may require to locate the confidential information.

(B) The clerk of court shall review filings identified as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under subdivision (d)(1)(B). If the clerk determines that filed information is not subject to confidentiality under subdivision (d)(1)(B), the clerk shall notify filer of the Notice of Confidential Information within Court Filing in writing within 5 days of filing the notice and thereafter shall maintain the information as confidential for 10 days from the date such notification by the clerk is served. The information shall not be held as confidential for more than that 10 day period, unless a motion has been filed pursuant to subdivision (d)(3).

(3) The filer of a document with the court 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. If the filer believes in good faith that information is confidential but is not described in subdivision (d)(1) of this rule, the filer 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 subdivision (e), (f), or (g), unless

(A) the filer is the only individual whose confidential information is included in the document to be filed or is the attorney representing all such individuals; and

(B) a knowing waiver of the confidential status of that information is intended by the filer. Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivision (e), (f), or (g).

(4) If a notice of confidential information is filed pursuant to subdivision (d)(2), or a motion is filed pursuant to subdivision (e)(1) or (g)(1) seeking to determine that information contained in court records is confidential, or pursuant to subdivision (e)(5) or (g)(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 the notice or 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 motion to determine confidentiality of court records, 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 pursuant to subdivision (k), if applicable, together with the motion that gave rise to the notice in accordance with subdivision (e)(5) or (g)(5).

(5) Except when the entire court file is maintained as confidential, if a judge, magistrate, or hearing officer files any document containing confidential information, the confidential information within the document must be identified as "confidential" and the title of the document must include the word "confidential." The clerk must maintain the confidentiality of the identified confidential information. A copy of the document edited to omit the confidential information shall be provided to the clerk for filing and recording purposes.

(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 without revealing confidential information; and

(C) set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential without revealing confidential information.

Any written 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. A response to a written motion filed under this subdivision may be served within 10 days of service of 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 movant shall be responsible for ensuring that a complete record of any hearing held pursuant to this subdivision is 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 confidential information:

- (A) The type of case in which the order is being entered;
- (B) The particular grounds under subdivision (c) for determining the information is confidential;
- (C) Whether any party's name 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 written order granting in whole or in part a motion made under subdivision (e)(1) as follows:

(A) 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; and

(B) 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 motion. The motion must set forth the specific legal authority and any applicable legal standards supporting the motion. The movant must serve all parties and all affected non-parties with a copy of the motion. Except when a motion filed under this subdivision represents that all parties and affected non-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 and affected non-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).

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

(1) Subdivisions (e) and (h) shall apply to any motion by the state, a defendant, or an affected non-party to determine the confidentiality of trial court records in criminal cases 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 the State, defendant(s), and all affected non-parties subject to the motion agree to all of the relief requested, the court must hold a hearing on the 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 "Motion to Determine Confidentiality of Court Records." Any

motion made pursuant to this subdivision must be treated as confidential and indicated on the docket by generic title only, 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. Filings containing the information must be indicated on the docket in a manner that does not reveal the confidential nature of the information.

(B) The provisions of subdivisions (e)(3)(A)–(G), (g)(7), (h), and (j), 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.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision. In the event of an appeal 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.

(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. The docket shall indicate only the entry of the order.

(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) Subdivision (e)(1) shall apply to any motion filed in the appellate court to determine the confidentiality of appellate court records in noncriminal cases under subdivision (c). 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. The court shall issue a written ruling on a written motion filed under this subdivision within 30 days of the filing of a response on a contested motion or within 30 days of the filing of an uncontested written 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 of the lower tribunal shall seal the records identified in the order. The order must remain posted by the clerk of the appellate court 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 motion. The movant must serve all parties and all affected non-parties with a copy of the motion. 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) 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 Florida 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 that a court record is confidential.

(h) Oral Motions to Determine Confidentiality of Trial Court Records.

(1) Notwithstanding the written notice requirements of subdivision (d)(2) and written motion requirements of subdivisions (d)(3), (e)(1), and (f), the movant may make an oral motion to determine the confidentiality of trial court records under subdivision (c), provided:

(A) except for oral motions under subdivision (f)(3), the oral motion otherwise complies with subdivision (e)(1);

(B) all parties and affected non-parties are present or properly noticed or the movant otherwise demonstrates reasonable efforts made to obtain the attendance or any absent party or affected non-party;

(C) the movant shows good cause why the movant was unable to timely comply with the written notice requirements as set forth in subdivision (d)(2) or the written motion requirement as set forth in subdivision (d)(3), (e)(1), or (f), as applicable;

(D) the oral motion is reduced to written form in compliance with subdivision (d), (e)(1), or (f), as applicable, and is filed within 5 days following the date of making the oral motion;

(E) except for oral motions under subdivisions (f)(3), the provisions of subdivision (e)(2) shall apply to the oral motion, procedure and hearing;

(F) the provisions of subdivision (f)(1)(A) and (B) and (f)(3) shall apply to any oral motion under subdivision (f)(3); and

(G) oral motions are not applicable to subdivision (f)(2) or (g) or extensions of orders under subdivision (f)(3)(C).

(2) The court may deny any oral motion made pursuant to subdivision (h)(1) if the court finds that that movant had the ability to timely comply with the written notice requirements in subdivision (d) or the written motion requirements of (d)(3), (e)(1), or (f), as applicable, or the movant failed to provide adequate notice to the parties and affected non-parties of the confidentiality issues to be presented to the court.

(3) Until the court renders a decision regarding the confidentiality issues raised in any oral motion, all references to purported confidential information as set forth in the oral motion shall occur in a manner that does not allow public access to such information.

(4) If the court grants in whole or in part any oral motion to determine confidentiality, the court shall issue a written order that does not reveal the confidential information and complies with the applicable subdivision of this rule as follows:

(A) For any oral motion under subdivision (e) or (f)(1), except subdivisions (f)(1)(A) and (B), the written order must be issued within 30 days of the hearing and must comply with subdivision (e)(3).

(B) For any oral motion under subdivision (f)(3), the written order must be issued within 10 days of the hearing on a contested motion or filing of an agreed motion and must comply with subdivision (f)(3).

(i) **Sanctions.** After notice and an opportunity to respond, and upon determining that a motion, filing, or other activity described below was not made in good faith and was not supported by a sound legal or factual basis, the court may impose sanctions against any party or non-party and/or their attorney, if that party or non-party and/or their attorney, in violation of the applicable provisions of this rule:

(1) seeks confidential status for non-confidential information by filing a notice under subdivision (d)(2);

(2) seeks confidential status for non-confidential information by making any oral or written motion under subdivision (d)(3), (e), (f), (g), or (h);

(3) seeks access to confidential information under subdivision (j) or otherwise;

(4) fails to file a Notice of Confidential Information within Court Filing in compliance with subdivision (d)(2);

(5) makes public or attempts to make public by motion or otherwise information that should be maintained as confidential under subdivision (c), (d), (e), (f), (g) or (h); or

(6) otherwise makes or attempts to make confidential information part of a non-confidential court record.

Nothing in this subdivision is intended to limit the authority of a court to enforce any court order entered pursuant to this rule.

(j) Procedure for Obtaining Access to Confidential Court Records.

(1) The clerk of the court must allow access to confidential court records to persons authorized by law, or any person authorized by court order.

(2) A court order allowing access to confidential court records may be obtained by filing a written motion which must:

(A) identify the particular court record(s) or a portion of the court record(s) to which the movant seeks to obtain access with as much specificity as possible without revealing the confidential information;

(B) specify the bases for obtaining access to such court records;

(C) set forth the specific legal authority for obtaining access to such court records; and

(D) contain a certification that the motion is made in good faith and is supported by a sound factual and legal basis.

(3) The movant must serve a copy of the written motion to obtain access to confidential court records on all parties and reasonably ascertainable affected non-parties and the court must hold a hearing on the written motion within a reasonable period of time.

(4) Any order granting access to confidential court records must:

- (A) 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 records;
 - (B) identify the persons who are permitted to view the confidential information in the court records;
 - (C) identify any person who is permitted to obtain copies of the confidential court records; and
 - (D) state the time limits imposed on such access, if any, and any other applicable terms or limitations to such access.
- (5) The filer of confidential court records, that filer's attorney of record, or that filer's agent as authorized by that filer in writing may obtain access to such confidential records pursuant to this subdivision.
- (6) Unless otherwise provided, an order granting access to confidential court records under this subdivision shall not alter the confidential status of the record.
- (k) Procedure for Service on Victims and Affected Non-parties and When Addresses Are Confidential.**
- (1) In criminal cases, when the defendant is required to serve any notice or motion described in this rule on an alleged victim of a crime, service shall be on the state attorney, who shall send or forward the notice or motion to the alleged victim.
 - (2) Except as set forth in subdivision (k)(1), when serving any notice or motion described in this rule on any affected non-party whose name or address is not confidential, the filer or movant shall use reasonable efforts to locate the affected non-party and may serve such affected non-party by any method set forth in Florida Rule of Judicial Administration 2.516.
 - (3) Except as set forth in subdivision (k)(1), when serving any notice or motion described in this rule and the name or address of any party or affected non-party is confidential, the filer or movant must state prominently in the caption of the notice or motion "Confidential Party or Confidential Affected Non-Party — Court Service Requested." When a notice or motion so designated is filed, the court shall be responsible for providing a copy of the notice or motion to the

party or affected non-party, by any method permitted in Florida Rule of Judicial Administration 2.516, in such a way as to not reveal the confidential information.

(l) 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) When a judge who has denied a request for access to records is the custodian, the action shall be filed in the court having appellate jurisdiction to review the decisions of the judge denying access. Upon order issued by the appellate court, the judge denying access to records shall file a sealed copy of the requested records with the appellate court.

(2) All other actions under this rule shall be filed in the circuit court of the circuit in which such denial of access occurs.

(m) Procedure for Public Access to Judicial Branch Records. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

(1) Requests for access to judicial branch records shall be in writing and shall be directed to the custodian. The request shall provide sufficient specificity to enable the custodian to identify the requested records. The reason for the request is not required to be disclosed.

(2) The custodian shall be solely responsible for providing access to the records of the custodian's entity. The custodian shall determine whether the requested record is subject to this rule and, if so, whether the record or portions of the record are exempt from disclosure. The custodian shall determine the form in which the record is provided. If the request is denied, the custodian shall state in writing the basis for the denial.

(3) Fees for copies of records in all entities in the judicial branch of government, except for copies of court records, shall be the same as those provided in section 119.07, Florida Statutes.

Committee Note

1995 Amendment. This rule was adopted to conform to the 1992 addition of article I, section 24, to the Florida Constitution. Amendments to this rule were adopted in response to the 1994 recommendations of the Study Committee on Confidentiality of Records of the Judicial Branch.

Subdivision (b) has been added by amendment and provides a definition of "judicial records" that is consistent with the definition of "court records" contained in rule 2.075(a)(1) [renumbered as 2.430(a)(1) in 2006] and the definition of "public records" contained in chapter 119, Florida Statutes. The word "exhibits" used in this definition of judicial records is intended to refer only to documentary evidence and does not refer to tangible items of evidence such as firearms, narcotics, etc. Judicial records within this definition include all judicial records and data regardless of the form in which they are kept. Reformatting of information may be necessary to protect copyrighted material. *Seigle v. Barry*, 422 So. 2d 63 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983).

The definition of "judicial records" also includes official business information transmitted via an electronic mail (e-mail) system. The judicial branch is presently experimenting with this new technology. For example, e-mail is currently being used by the judicial branch to transmit between judges and staff multiple matters in the courts including direct communications between judges and staff and other judges, proposed drafts of opinions and orders, memoranda concerning pending cases, proposed jury instructions, and even votes on proposed opinions. All of this type of information is exempt from public disclosure under rules 2.051(c)(1) and (c)(2) [renumbered as 2.420(c)(1) and (c)(2) in 2006]. With few exceptions, these examples of e-mail transmissions are sent and received between judicial officials and employees within a particular court's jurisdiction. This type of e-mail is by its very nature almost always exempt from public record disclosure pursuant to rule 2.051(c). In addition, official business e-mail transmissions sent to or received by judicial officials or employees using dial-in equipment, as well as the use of on-line outside research facilities such as Westlaw, would also be exempt e-mail under rule 2.051(c). On the other hand, we recognize that not all e-mail sent and received within a particular court's jurisdiction will fall into an exception under rule 2.051(c). The fact that a non-exempt e-mail message made or received in connection with official court business is transmitted intra-court does not relieve judicial officials or employees from the obligation of properly having a record made of such messages so they will be available to the public similar to any other written communications. It appears that official business e-mail that is sent or received by persons outside a particular court's jurisdiction is largely non-exempt and is subject to recording in some form as a public record. Each court should develop a means to properly make a record of non-exempt official business e-mail by either electronically storing the mail or by making a hard copy. It is important to note that, although official business communicated by e-mail transmissions is a matter of public record under the rule, the exemptions provided in rule 2.051(c) exempt many of these judge/staff transmissions from the public record. E-mail may also include transmissions that are clearly not official business and are, consequently, not required to be recorded as a public record. Each court should also publish an e-mail address for public access. The individual e-mail addresses of judicial officials and staff are exempt under rule 2.051(c)(2) to protect the compelling interests of maintaining the uninterrupted use of the computer for research, word-processing, preparation of opinions, and communication during trials, and to ensure computer security.

Subdivision (c)(3) was amended by creating subparts (a) and (b) to distinguish between the provisions governing the confidentiality of complaints against judges and complaints against other individuals or entities licensed or regulated by the Supreme Court.

Subdivision (c)(5) was amended to make public the qualifications of persons applying to serve or serving the court as unpaid volunteers such as guardians ad litem, mediators, and arbitrators and to make public the applications and evaluations of such persons upon a showing of materiality in a pending court proceeding or upon a showing of good cause.

Subdivision (c)(9) has also been amended. Subdivision (c)(9) was adopted to incorporate the holdings of judicial decisions establishing that confidentiality may be required to protect the rights of defendants, litigants, or third parties; to further the administration of justice; or to otherwise promote a compelling governmental interest. *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113 (Fla.1988); *Miami Herald Publishing Co. v. Lewis*, 426 So.2d 1 (Fla.1982). Such confidentiality may be implemented by court rule, as well as by judicial decision, where necessary for the effective administration of justice. See, e.g., Fla.R.Crim.P. 3.470, (Sealed Verdict); Fla.R.Crim.P. 3.712, (Presentence Investigation Reports); Fla.R.Civ.P. 1.280(c), (Protective Orders).

Subdivision (c)(9)(D) requires that, except where otherwise provided by law or rule of court, reasonable notice shall be given to the public of any order closing a court record. This subdivision is not applicable to court proceedings. Unlike the closure of court proceedings, which has been held to require notice and hearing prior to closure, see *Miami Herald Publishing Co. v. Lewis*, 426 So. 2d 1 (Fla.1982), the closure of court records has not

required prior notice. Requiring prior notice of closure of a court record may be impractical and burdensome in emergency circumstances or when closure of a court record requiring confidentiality is requested during a judicial proceeding. Providing reasonable notice to the public of the entry of a closure order and an opportunity to be heard on the closure issue adequately protects the competing interests of confidentiality and public access to judicial records. *See Florida Freedom Newspapers, Inc. v. Sirmons*, 508 So.2d 462 (Fla. 1st DCA 1987), approved, *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113 (Fla. 1988); *State ex rel. Tallahassee Democrat v. Cooksey*, 371 So.2d 207 (Fla. 1st DCA 1979). Subdivision (c)(9)(D), however, does not preclude the giving of prior notice of closure of a court record, and the court may elect to give prior notice in appropriate cases.

2002 Court Commentary

The custodian is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request. Op. Atty. Gen. Fla. 80-57 (1980); *Wootton v. Cook*, 590 So.2d 1039 (Fla. 1st DCA 1991); *Seigle v. Barry*, 422 So.2d 63 (Fla. 4th DCA 1982).

The writing requirement is not intended to disadvantage any person who may have difficulty writing a request; if any difficulty exists, the custodian should aid the requestor in reducing the request to writing.

It is anticipated that each judicial branch entity will have policies and procedures for responding to public records requests.

The 1995 commentary notes that the definition of "judicial records" added at that time is consistent with the definition of "court records" contained in rule 2.075(a)(1) [renumbered as 2.430(a)(1) in 2006] and the definition of "public records" contained in chapter 119, Florida Statutes. Despite the commentary, these definitions are not the same. The definitions added in 2002 are intended to clarify that records of the judicial branch include court records as defined in rule 2.075(a)(1) and administrative records. The definition of records of the judicial branch is consistent with the definition of "public records" in chapter 119, Florida Statutes.

2005 Court Commentary

Under courts' inherent authority, appellate courts may appoint a special magistrate to serve as commissioner for the court to make findings of fact and oversee discovery in review proceedings under subdivision (d) of this rule. Cf. *State ex rel. Davis v. City of Avon Park*, 158 So. 159 (Fla. 1934) (recognizing appellate courts' inherent authority to do all things reasonably necessary for administration of justice within the scope of courts' jurisdiction, including the appointment of a commissioner to make findings of fact); *Wessells v. State*, 737 So. 2d 1103 (Fla. 1st DCA 1998) (relinquishing jurisdiction to circuit court for appointment of a special master to serve as commissioner for court to make findings of fact).

2007 Court Commentary

New subdivision (d) applies only to motions that seek to make court records in noncriminal cases confidential in accordance with subdivision (c)(9).

2007 Committee Commentary

Subdivision (d)(2) is intended to permit a party to make use of any court-provided recording device or system that is available generally for litigants' use, but is not intended to require the court system to make such devices available where they are not already in use and is not intended to eliminate any cost for use of such system that is generally borne by a party requesting use of such system.

APPENDIX TO RULE 2.420

IN THE _____(NAME OF
COURT).....,
FLORIDA

CASE NO.: _____

Plaintiff/Petitioner,

v.

Defendant/Respondent.

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NOTICE OF CONFIDENTIAL INFORMATION WITHIN COURT FILING

Pursuant to Florida Rule of Judicial Administration 2.420(d)(2), I hereby certify:

()(1) I am filing herewith a document containing confidential information as described in Rule 2.420(d)(1)(B) and that:

- (a) The title/type of document is _____, and :
- (b)() the entire document is confidential, or
() the confidential information within the document is precisely located at :
_____.

OR

()(2) A document was previously filed in this case that contains confidential information as described in Rule 2.420(d)(1)(B), but a Notice of Confidential Information within Court Filing was not filed with the document and the confidential information was not maintained as confidential by the clerk of the court. I hereby notify the clerk that this confidential information is located as

follows:

- (a) Title/type of document: _____;
(b) Date of filing (if known): _____;
(c) Date of document: _____;
(d) Docket entry number: _____;
(e) Entire document is confidential, or
 Precise location of confidential information in document: _____

Filer's Signature

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by (e-mail) (delivery) (mail) (fax) on: (All parties and Affected Non-Parties. Note: If the name or address of a Party or Affected Non-Party is confidential DO NOT include such information in this Certificate of Service. Instead, serve the State Attorney or request Court Service. See Rule 2.420(k)) _____, on _____, 20____.

Name
Address
Phone
Florida Bar No. (if applicable).....
E-mail address

Note: The clerk of court shall review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality under subdivision (d)(1)(B). 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).

Confidentiality and Sealing in State Court

1. Rule 2.420. Public Access to Judicial Branch Records

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:

1. (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.](#)
2. (ii) Adoption records. [§ 63.162, Fla. Stat.](#)
3. (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.)
4. (iv) HIV test results and patient identity within those test results. [§ 381.004\(3\)\(e\), Fla. Stat.](#)
5. (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.](#)
6. (vi) Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. [§§ 382.008\(6\), 382.025\(1\)\(a\), Fla. Stat.](#)
7. (vii) Identifying information in a petition by a minor for waiver of parental notice when seeking to terminate pregnancy. [§ 390.01116, Fla. Stat.](#)
8. (viii) Identifying information in clinical mental health records under the Baker Act. [§ 394.4615\(7\), Fla. Stat.](#)
9. (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.](#)
10. (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.](#)
11. (xi) Estate inventories and accountings. [§ 733.604\(1\), Fla. Stat.](#)
12. (xii) The victim's address in a domestic violence action on petitioner's request. [§ 741.30\(3\)\(b\), Fla. Stat.](#)
13. (xiii) Information identifying victims of sexual offenses, including child sexual abuse. [§§ 119.071\(2\)\(h\), 119.0714\(1\)\(h\), Fla. Stat.](#)
14. (xiv) Gestational surrogacy records. [§ 742.16\(9\), Fla. Stat.](#)

15. (xv) Guardianship reports and orders appointing court monitors in guardianship cases. [§§ 744.1076, 744.3701, Fla. Stat.](#)
16. (xvi) Grand jury records. Ch. 905, Fla. Stat.
17. (xvii) Information acquired by courts and law enforcement regarding family services for children. [§ 984.06\(3\)-\(4\), Fla. Stat.](#)
18. (xviii) Juvenile delinquency records. [§§ 985.04\(1\), 985.045\(2\), Fla. Stat.](#)
19. (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.](#)
20. (xx) Presentence investigation reports and attached psychological or psychiatric evaluations. Fla. R. Crim. P. 3.712; [§§ 921.231\(1\)\(i\), 948.015\(9\), Fla. Stat.](#)

Request to Determine Confidentiality of Trial Court Records in Noncriminal Cases

A request to determine the confidentiality of trial court records in noncriminal cases 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..

Request to Determine Confidentiality of Court Records in Criminal Cases

- (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 within 15 days of the filing of the motion. Any hearing held 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.

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 this rule may be made in the form of a written motion captioned "Motion to Determine Confidentiality of Court Records." Any motion made pursuant to this subdivision must be treated as confidential and indicated on the docket by generic title only, 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:

Information that is the subject of such motion must be treated as confidential by the clerk pending the court's ruling on the motion. Filings containing the information must be indicated on the docket in a manner that does not reveal the confidential nature of the information.

2. Rule 2.425. Minimization of the Filing of Sensitive Information

- Limitations for Court Filings. --Unless authorized by subdivision (b), statute, another rule of court, or the court orders otherwise, designated sensitive information filed with the court must be limited to the following format:
 - (1) The initials of a person known to be a minor;
 - (2) The year of birth of a person's birth date;
 - (3) No portion of any
 - (A) debit account number,
 - (B) bank account number,
 - (C) credit card account number,
 - (D) charge account number, or
 - (E) social security number,
 - (4) The last four digits of any
 - (A) taxpayer identification number (TIN),
 - (B) employee identification number,
 - (C) driver's license number,
 - (D) passport number,
 - (E) telephone number,
 - (F) financial account number, except as set forth in subdivision (a)(3),
 - (G) brokerage account number,
 - (H) insurance policy account number,
 - (I) loan account number,
 - (J) customer account number, or
 - (K) patient or health care number;
 - (5) A truncated version of any

- (A) email address,
 - (B) computer user name,
 - (C) password, or
 - (D) personal identification number (PIN); and
- (6) A truncated version of any other sensitive information as provided by court order.
- (b) Exceptions. --Subdivision (a) does not apply to the following:
 - (1) An account number which identifies the property alleged to be the subject of a proceeding;
 - (2) The record of an administrative or agency proceeding;
 - (3) The record in appellate or review proceedings;
 - (4) The birth date of a minor whenever the birth date is necessary for the court to establish or maintain subject matter jurisdiction;
 - (5) The name of a minor in any order relating to parental responsibility, time-sharing, or child support;
 - (6) The name of a minor in any document or order affecting the minor's ownership of real property;
 - (7) The birth date of a party in a writ of attachment or notice to payor;
 - (8) In traffic and criminal proceedings;
 - (A) a pro se filing;
 - (B) a court filing that is related to a criminal matter or investigation and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;
 - (C) an arrest or search warrant or any information in support thereof;
 - (D) a charging document and an affidavit or other documents filed in support of any charging document, including any driving records;
 - (E) a statement of particulars;
 - (F) discovery material introduced into evidence or otherwise filed with the court; and
 - (G) all information necessary for the proper issuance and execution of a subpoena duces tecum;
 - (9) Information used by the clerk for case maintenance purposes or the courts for case management purposes; and
 - (10) Information which is relevant and material to an issue before the court.

Case Law:

- Barron v. Florida Freedom Newspapers, Inc., 531 So. 2d 113 (Fla. 1988).
- Sentinel Commc'n Co. v. Watson, 615 So. 2d 768 (Fla. 5th DCA 1993).
- State ex rel. Miami Herald Pub. Co. v. McIntosh, 340 So. 2d 904 (Fla. 1977).
- Rasmussen v. South Florida Blood Serv., 500 So. 2d 533 (Fla. 1987).

Confidential Materials in Federal Court

What Are the Some of the Rules Govern Privacy Protection in Federal Court Filings?

1. Federal Rule 5.2 governs redactions.
 - a. What must be redacted from electronic or paper filings?
 - i. Unless ordered otherwise, social security numbers, taxpayer ID numbers, birth dates, minors' names, or financial account numbers, can only include:
 1. Last four digits of SSN and Taxpayer ID
 2. Birth year
 3. Minor's initials
 4. Last four digits of financial account number
 - b. What are the exemptions?
 - i. Financial account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding
 - ii. The record of an administrative or agency proceeding;
 - iii. The official record of a state-court proceeding;
 - iv. The record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
 - v. A filing covered by Rule 5.2(c) [social security and immigration cases] or (d) [filings made under seal]; and
 - vi. A pro se filing in an action brought under 28 U.S.C. §§2241, 2254, or 2255 [habeas].
 - c. Can the rule's protections be extended?
 - i. Yes. Upon a showing of good cause, the court may:
 1. Require the redaction of additional material; or
 2. Limit or prohibit a nonparty's remote electronic access to a document filed with the court.
 - d. Can these protections be waived?

- i. Yes. A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.
 - e. What if you need the Court to see the redacted information?
 - i. Under Rule 5.2(f), "A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record."
 - f. How do the redaction requirements interact with filing under seal?
 - i. Rule 5.2(d) provides that the court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.
 - ii. The rule does not limit or expand the judicially developed rules that govern sealing. But, it does reflect the possibility that redaction may provide an alternative to sealing.
 - g. What about trial exhibits?
 - i. Trial exhibits are subject to the redaction requirements of Rule 5.2 to the extent they are filed with the court. Trial exhibits that are not initially filed with the court must be redacted in accordance with the rule if and when they are filed as part of an appeal or for other reasons.
2. Federal Rule of Civil Procedure 26(c) Governs Protective Orders.
- a. Briefly, upon a showing of good cause, the court may issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that tailors discovery, filings, and disclosures. These orders also protect against the disclosure—either through discovery or publicly through court filings—of confidential personal or proprietary information.
 - b. What is good cause for a protective order?
 - i. The movant must make a particular and specific demonstration of fact supporting the need for the protective order.
3. Local Rule 3.03 Governs Filing Discovery Materials
- a. In accordance with Local Rule 3.3(c) - (e), discovery materials, including written discovery, documents produced during discovery, and depositions, are not filed with the Court as a matter of course.
 - b. Discovery materials are filed only in limited circumstances, including:

- i. If ordered by the Court;
- ii. If necessary for the presentation or defense of a motion; or
- iii. If required by Rule 26(a)(3).

4. Local Rule 1.09 Governs Filing Under Seal

- a. As a general matter, does the ability to file under seal in federal court create any conflicts or pose any significant problems?
- b. What are the foundations of those conflicts or problems?
- c. What is the Constitutional Right of Access?
 - i. Criminal Cases
 1. The general public and the press have a First Amendment right of access to criminal trial proceedings.
 2. For a court to exclude the press and the public from a criminal proceeding, the exclusion must be necessitated by a compelling government interest and is narrowly tailored to serve that interest.
 - ii. Civil Cases
 1. The constitutional right of access is more limited in civil cases.
 2. Viewed through the First Amendment, the discovery process, as a “matter of legislative grace,” is a statutorily created forum not traditionally open to the public. Civil discovery is considered a private component of civil cases and access to that information is a secondary benefit of, and necessarily subservient to, the judicial system’s central concern of resolving disputes between litigants
 3. Public disclosure of discovery materials thus falls within the court’s discretion and Federal Rule of Civil Procedure 26(c) governs that discretion. The First Amendment does not trump Fed. R. Civ. P. 26(c). The discovery process, as a “matter of legislative grace,” is a statutorily created forum not traditionally open to the public.
 4. Thus, a party seeking to obtain a protective order to maintain the confidentiality of discovery materials, and third parties seeking access to those materials, must satisfy Rule 26(c)’s good cause standard.
 - d. What is the Common Law Right of Access?

- i. Under the common law, there is a general presumption that criminal and civil actions should be conducted publicly. This common law right includes the right to inspect and copy public records and documents.
- ii. A trial court may conceal the record of an entire civil case only if strict scrutiny is satisfied
- iii. Similar to the constitutional basis, the common law right of access does not extend to discovery. The reason is that the prospect of all discovery material being presumptively subject to the right of access would likely lead to an increased resistance to discovery requests and no court is interested in incentivizing that.
- iv. The general rule of thumb here is this: material filed with discovery motions is not subject to the common law right of access, but any material filed in connection with any substantive pretrial motions unrelated to discovery is subject to the right of access.
- v. What are some examples where this rule is applied?
 - 1. What about motions to compel?
 - 2. What about motions for summary judgment?
 - 3. What about motions in limine?
 - 4. What about motions concerning settlements such as those seeking approval or enforcement of a settlement agreement?
- vi. It's basically a continuum. At the one end are discovery motions and materials which are not subject to the right of access. At the other end are dispositive motions. Where your materials fall on the continuum can depend on the litigation's stage and how they are presented to the court. Decisions less central to merits resolutions implicate lesser right-to-access considerations.
- vii. Assuming that the materials are subject to the right of public access, the right can nevertheless be overcome by a showing of good cause, which requires a balancing of the right of access against the other party's interest in keeping the information confidential. In balancing these interests, courts consider the following factors:
 - 1. Whether allowing access would impair court functions or harm legitimate privacy interests.
 - 2. The degree of and likelihood of injury if made public

3. The reliability of the information
 4. Whether there will be an opportunity to respond to the information
 5. Whether the information concerns public officials or public concerns
 6. The availability of a less onerous alternative to sealing the documents.
5. So what is required to file a document under seal in the Middle District of Florida?
- a. Rule 1.09(a) - Unless authorized by statute, rule, or order, the party seeking to file something under seal must file and serve a motion, the title of which includes the words "Motion to Seal" and which includes:
 - i. An identification and description of each item proposed for sealing;
 - ii. The reason that filing each item is necessary;
 - iii. The reason that sealing each item is necessary;
 - iv. The reason that another means will fail to protect the movant's proprietary or privacy interests;
 - v. A statement of the proposed duration of the seal; and
 - vi. A memorandum of legal authority in support of the seal.
 - b. What should the practitioner do if the motion to seal is granted or filing materials under seal is otherwise authorized?
 - i. Local Rule 1.09(b) - The party filing under seal should file and serve a motion, the title of which includes the words, "Motion to Seal Pursuant to [Statute, Rule, or Order]."
 - ii. The motion must include:
 1. A citation to the statute, rule, or order authorizing the seal;
 2. An identification and description of each item submitted for sealing;
 3. A statement of the proposed duration of the seal;
 4. A statement establishing that the items submitted for sealing are within the identified statute, rule, or order previously cited as authorizing the seal.
 - iii. This motion and each item proposed for sealing must be submitted to the Clerk.
 - c. How long can materials stay sealed in the Middle District of Florida?

i. Unless there is good cause showing otherwise, no order sealing materials can extend beyond one year.

1. What would be good cause under these circumstances?

ii. How do you extend an order sealing materials?

1. File a motion that:

a. Complies rule Local Rule 1.09(b);

b. Identifies the expiration of the seal; and

c. Is filed before the expiration of the seal.

d. Can settlements be sealed?

i. Only under extraordinary circumstances such as the:

1. preservation of national security;

2. protection of trade secrets or other valuable proprietary information;

3. protection of especially vulnerable persons including minors or persons with disabilities; or

4. protection of non-parties without either the opportunity or ability to protect themselves.

e. Can the parties stipulate to have materials filed under seal?

i. No. The judge is the primary representative of the public interest in the judicial process and is duty-bound therefore to review any request to seal the record (or part of it). He may not rubber stamp a stipulation to seal the record. *Citizens First National Bank of Princeton v. Cincinnati Insurance Co.*, 178 F.3d 943, 944-45 (7th Cir.1999) (Posner, J.).

f. What about stipulated protective orders?

i. These are still encouraged and useful; however, they do not entitle parties to have the materials covered by the orders filed under seal.

ii. Also, a party should not seek to challenge material designated confidential by the stipulated order unless and until the party wants to utilize the material in a motion and file the material with the court.

State Court Topics

Yashica - The only thing I can think of when it relates to civil issues is when we file copies of lease agreements or contracts that include our clients social/ date of birth we have to redact that information. Otherwise it's very few documents that include personal information. So on the handout a question could be raised such as do you review lease agreements for clients' personal information before filing them with the court.

Michael

John