
**FLORIDA RULES OF JUDICIAL ADMINISTRATION
PART IV: JUDICIAL PROCEEDINGS AND RECORDS [ALL-IN-ONE]**

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RULES OF JUDICIAL ADMINISTRATION | FLORIDA | PART IV

TITLE: IV JUDICIAL PROCEEDINGS AND RECORDS

RULES: 2.410 through 2.451

RULE 2.410. POSSESSION OF COURT RECORDS

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 AND PROTECTION OF 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 and the protection of 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. Access to all electronic and other court records shall be governed by the Standards for Access to Electronic Court Records and Access Security Matrix, as adopted by the supreme court in Administrative Order AOSC14-19 or the then-current Standards for Access. Remote access to electronic court records shall be permitted in counties where the supreme court's conditions for release of such records are met.

(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 for the care, safekeeping, 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 (c) (9) (A); and

(C) no less restrictive measures are available to protect the interests set forth in subdivision (c) (9) (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(2)(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., and all petitions, court orders, and related records for involuntary assessment and stabilization of an individual, § 397.6760, 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.

(xxi) Forensic behavioral health evaluations under Chapter 916. § 916.1065, Fla. Stat.

(xxii) Eligibility screening, substance abuse screening, behavioral health evaluations, and treatment status reports for defendants referred to or considered for referral to a drug court program. § 397.334(10)(a), Fla. Stat.

(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 the 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)-(e)(3)(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 (f)(1)(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 (f)(1)(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.

(1) 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

Plaintiff/Petitioner,

IN THE (NAME OF COURT),
FLORIDA
CASE NO.: _____

v.

Defendant/Respondent.

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).

RULE 2.425. MINIMIZATION OF THE FILING OF SENSITIVE INFORMATION

(a) Limitation 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) social security number,
 - (B) bank account number,
 - (C) credit card account number,
 - (D) charge account number, or
 - (E) debit account 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;

(G) all information necessary for the proper issuance and execution of a subpoena duces tecum;

(H) information needed to contact witnesses who will support the defendant's claim of newly discovered evidence under Florida Rule of Criminal Procedure 3.851; and

(I) information needed to complete a sentencing scoresheet;

(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.

(c) Remedies. Upon motion by a party or interested person or sua sponte by the court, the court may order remedies, sanctions or both for a violation of subdivision (a). Following notice and an opportunity to respond, the court may impose sanctions if such filing was not made in good faith.

(d) Motions Not Restricted. This rule does not restrict a party's right to move for protective order, to move to file documents under seal, or to request a determination of the confidentiality of records.

(e) Application. This rule does not affect the application of constitutional provisions, statutes, or rules of court regarding confidential information or access to public information.

RULE 2.430. RETENTION OF COURT RECORDS

(a) Definitions. The following definitions apply to this rule:

(1) "Court records" mean 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, video tapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes or stenographic tapes of court proceedings.

(2) "After a judgment has become final" means:

(A) when a final order, final judgment, final docket entry, final dismissal, or nolle prosequi has been entered as to all parties, no appeal has been taken, and the time for appeal has expired; or

(B) when a final order, final judgment, or final docket entry has been entered, an appeal has been taken, the appeal has been disposed of, and the time for any further appellate proceedings has expired.

(3) "Permanently recorded" means that a document has been microfilmed, optically imaged, or recorded onto an electronic record keeping system in accordance with standards adopted by the Supreme Court of Florida.

(b) Permanently Recorded Records.

(1) Court records, except exhibits, that have been permanently recorded may be destroyed or otherwise disposed of by the clerk at any time after a judgment has become final.

(2) Any physical media submitted to the clerk for the purpose of filing information contained in the media may be destroyed, retained, or otherwise disposed of by the clerk once the contents of the media have been made a part of the court record.

(c) Records Not Permanently Recorded. No court records under this subdivision shall be destroyed or disposed of until the final order, final docket entry, or final judgment is permanently recorded for, or recorded in, the public records. The time periods

shall not apply to any action in which the court orders the court records to be kept until the court orders otherwise. When an order is entered to that effect, the progress docket and the court file shall be marked by the clerk with a legend showing that the court records are not to be destroyed or disposed of without a further order of court. Any person may apply for an order suspending or prohibiting destruction or disposition of court records in any proceeding. Court records, except exhibits, that are not permanently recorded may be destroyed or disposed of by the clerk after a judgment has become final in accordance with the following schedule:

(1) For trial courts

(A) 60 days –Parking tickets and noncriminal traffic infractions after required audits have been completed.

(B) 2 years –Proceedings under the Small Claims Rules, Medical Mediation Proceedings.

(C) 5 years –Noncriminal ordinance violations, civil litigation proceedings in county court other than those under the Small Claims Rules, and civil proceedings in circuit court except marriage dissolutions and adoptions.

(D) 10 years –Probate, guardianship, and mental health proceedings.

(E) 10 years –Felony and misdemeanor cases in which no information or indictment was filed or in which all charges were dismissed, or in which the state announced a nolle prosequi, or in which the defendant was adjudicated not guilty.

(F) 75 years –Juvenile proceedings containing an order permanently depriving a parent of custody of a child, and adoptions, and all felony and misdemeanor cases not previously destroyed.

(G) Juvenile proceedings not otherwise provided for in this subdivision shall be kept for 5 years after the last entry or until the child reaches the age of majority, whichever is later.

(H) Marriage dissolutions –10 years from the last record activity. The court may authorize

destruction of court records not involving alimony, support, or custody of children 5 years from the last record activity.

(2) For district courts of appeal

(A) 2 years –noncriminal court records.

(B) 5 years –Criminal court records.

(3) For the Supreme Court

(A) 5 years –All cases disposed of by order not otherwise provided for in this rule.

(B) 10 years –Cases disposed of by order involving individuals licensed or regulated by the court and noncriminal court records involving the unauthorized practice of law.

(d) Records to Be Retained Permanently. The following court records shall be permanently recorded or permanently retained:

(1) progress dockets, and other similar records generated to document activity in a case, and

(2) court records of the supreme court in which the case was disposed of by opinion.

(e) Court Reporters' Notes. Court reporters or persons acting as court reporters for judicial or discovery proceedings shall retain the original notes or electronic records of the proceedings or depositions until the times specified below:

(1) 2 years from the date of preparing the transcript – Judicial proceedings, arbitration hearings, and discovery proceedings when an original transcript has been prepared.

(2) 10 years –Judicial proceedings in felony cases when a transcript has not been prepared.

(3) 5 years –All other judicial proceedings, arbitration hearings, and discovery proceedings when a transcript has not been prepared.

When an agreement has been made between the reporter and any other person and the person has paid the reasonable charges for storage and retention of the notes, the notes or records shall be kept for any longer time agreed on. All reporters' notes shall be retained in a secure place in Florida.

(f) Exhibits.

(1) Exhibits in criminal proceedings shall be disposed of as provided by law.

(2) All other exhibits shall be retained by the clerk until 90 days after a judgment has become final. If an exhibit is not withdrawn pursuant to subdivision (i) within 90 days, the clerk may destroy or dispose of the exhibits after giving the parties or their attorneys of record 30 days' notice of the clerk's intention to do so. Exhibits shall be delivered to any party or attorney of record calling for them during the 30-day time period.

(g) Disposition Other Than Destruction. Before destruction or disposition of court records under this rule, any person may apply to the court for an order requiring the clerk to deliver to the applicant the court records that are to be destroyed or disposed of. All parties shall be given notice of the application. The court shall dispose of that court record as appropriate.

(h) Release of Court Records. This rule does not limit the power of the court to release exhibits or other parts of court records that are the property of the person or party initially placing the items in the court records. The court may require copies to be substituted as a condition to releasing the court records under this subdivision.

(i) Right to Expunge Records. Nothing in this rule shall affect the power of the court to order records expunged.

(j) Sealed Records. No record which has been sealed from public examination by order of court shall be destroyed without hearing after such notice as the court shall require.

(k) Destruction of Jury Notes. At the conclusion of the trial and promptly following discharge of the jury, the court shall collect all juror notes and immediately destroy the juror notes.

RULE 2.440. RETENTION OF JUDICIAL BRANCH ADMINISTRATIVE RECORDS

(a) Definitions.

(1) "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.

(2) "Records of the judicial branch" means 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 consists of:

(A) "court records," which means 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 means 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.

(b) Retention Requirements. Administrative records in the judicial branch shall be retained in accordance with the Judicial Branch Records Retention Schedule approved by the supreme court.

2002 Commentary

This rule does not apply to court records and files that are governed by rule 2.075 [renumbered as 2.430 in 2006]. This rule applies to administrative records.

To provide a consistent schedule for retention of administrative records in the judicial branch, the Supreme Court Workgroup on Public Records recommended that the Court adopt the Judicial Branch Records Retention Schedule. This schedule uses the legislatively authorized Department of State retention schedules, as appropriate, and includes a schedule for other records that are unique to the judicial branch. [This schedule is set forth at the end of these rules.]

RULE 2.450. TECHNOLOGICAL COVERAGE OF JUDICIAL PROCEEDINGS

(a) Electronic and Still Photography Allowed. Subject at all times to the authority of the presiding judge to: (i) control the conduct of proceedings before the court; (ii) ensure decorum and prevent distractions; and (iii) ensure the fair administration of justice in the pending cause, electronic media and still photography coverage of public judicial proceedings in the appellate and trial courts of this state shall be allowed in accordance with the following standards of conduct and technology promulgated by the Supreme Court of Florida.

(b) Equipment and Personnel.

(1) At least 1 portable television camera, operated by not more than 1 camera person, shall be permitted in any trial or appellate court proceeding. The number of permitted cameras shall be within the sound discretion and authority of the presiding judge.

(2) Not more than 1 still photographer, using not more than 2 still cameras, shall be permitted in any proceeding in a trial or appellate court.

(3) Not more than 1 audio system for radio broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup for all media purposes shall be accomplished from existing audio systems present in the court facility. If no technically suitable audio system exists in the court facility, microphones and related wiring essential for media purposes shall be unobtrusive and shall be located in places designated in advance of any proceeding by the chief judge of the judicial circuit or district in which the court facility is located.

(4) Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from a proceeding.

(c) Sound and Light Criteria.

(1) Only television photographic and audio equipment that does not produce distracting sound or light shall be used to cover judicial proceedings. No artificial lighting device of any kind shall be used in connection with the television camera.

(2) Only still camera equipment that does not produce distracting sound or light shall be used to cover judicial proceedings. No artificial lighting device of any kind shall be used in connection with a still camera.

(3) It shall be the affirmative duty of media personnel to demonstrate to the presiding judge adequately in advance of any proceeding that the equipment sought to be used meets the sound and light criteria enunciated in this rule. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceeding.

(d) Location of Equipment Personnel.

(1) Television camera equipment shall be positioned in such location in the court facility as shall be designated by the chief judge of the judicial circuit or district in which such facility is situated. The area designated shall provide reasonable access to coverage. If and when areas remote from the court facility that permit reasonable access to coverage are provided, all television camera and audio equipment shall be positioned only in such area. Videotape recording equipment that is not a component part of a television camera shall be located in an area remote from the court facility.

(2) A still camera photographer shall position himself or herself in such location in the court facility as shall be designated by the chief judge of the judicial circuit or district in which such facility is situated. The area designated shall provide reasonable access to coverage. Still camera photographers shall assume a fixed position within the designated area and, once established in a shooting position, shall act so as not to call attention to themselves through further movement. Still camera photographers shall not be permitted to move about in order to obtain photographs of court proceedings.

(3) Broadcast media representatives shall not move about the court facility while proceedings are in session, and microphones or taping equipment once positioned as required by subdivision (b)(3) shall not be moved during the pendency of the proceeding.

(e) Movement During Proceedings. News media photographic or audio equipment shall not be placed in or removed from the court facility except before commencement or after adjournment of proceedings each day, or during a recess. Neither television film magazines nor still camera film or lenses shall be changed within a court facility except during a recess in the proceeding.

(f) Courtroom Light Sources. With the concurrence of the chief judge of a judicial circuit or district in which a court facility is situated, modifications and additions may be made in light sources existing in the facility, provided such modifications or additions are installed and maintained without public expense.

(g) Conferences of Counsel. To protect the attorney-client privilege and the effective right to counsel, there shall be no audio pickup or broadcast of conferences that occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge held at the bench.

(h) Impermissible Use of Media Material. None of the film, videotape, still photographs, or audio reproductions developed during or by virtue of coverage of a judicial proceeding shall be admissible as evidence in the proceeding out of which it arose, in any proceeding subsequent or collateral thereto, or upon retrial or appeal of such proceedings.

(i) Appellate Review. Review of an order excluding the electronic media from access to any proceeding, excluding coverage of a particular participant, or upon any other matters arising under these standards shall be pursuant to Florida Rule of Appellate Procedure 9.100(d).

Court Commentary

1994 Amendment. This rule was copied from Canon 3A(7) of the Code of Judicial Conduct. Canon 3A(7) represented a departure from former Canon 3A(7) [ABA Canon 35]. The former canon generally proscribed electronic media and still photography coverage of judicial proceedings from within and in areas immediately adjacent to the courtroom, with three categories of exceptions —(a) use for judicial administration, (b) coverage of investitive, ceremonial, and naturalization proceedings, and (c) use for instructional purposes in educational institutions. Subject to the limitations and promulgation of standards as mentioned therein, the revised canon constituted a general authorization for electronic media and still photography coverage for all purposes, including the purposes expressed as exceptions in the former canon. Limited only by the authority of the presiding judge in the exercise of sound discretion to prohibit filming or photographing of particular participants, consent of participants to coverage is not required. The text of the rule refers to public judicial proceedings. This is in recognition of the authority reposing in the presiding judge, upon the exercise of sound discretion, to hold certain judicial proceedings or portions thereof in camera, and in recognition of the fact that certain proceedings or portions thereof are made confidential by statute. The term “presiding judge” includes the chief judge of an appellate tribunal.

RULE 2.451. USE OF ELECTRONIC DEVICES

(a) Electronic Devices Defined. An electronic device is any device capable of making or transmitting still or moving photographs, video recordings, or images of any kind; any device capable of creating, transmitting, or receiving text or data; and any device capable of receiving, transmitting, or recording sound. Electronic devices include, without limitation, film cameras, digital cameras, video cameras, any other type of camera, cellular telephones, tape recorders, digital voice recorders, any other type of audio recorders, laptop computers, personal digital assistants, or other similar technological devices with the ability to make or transmit video recordings, audio recordings, images, text, or data.

(b) Use of Electronic Devices by Jurors.

(1) Electronic devices, as that term is defined in subdivision (a), may be removed as directed by the presiding judge from all members of a jury panel at any time before deliberations, but such electronic devices must be removed from all members of a jury panel before jury deliberations begin. The electronic devices will be removed and appropriately secured by the bailiff or other person designated by the chief judge.

(2) Any electronic devices removed from members of a jury panel may be returned to the members of the jury panel during recesses in the trial. When jurors are sequestered, the presiding judge may determine whether the electronic devices will be removed from jurors during the entire period of sequestration.

(3) From the time a person reports for jury service until the person is discharged from jury service, that person is prohibited from using electronic devices for any of the following purposes:

(A) making or transmitting still or moving photographs, audio recordings, video recordings, or images of any kind of the court proceedings;

(B) transmitting or accessing text or data during the court proceedings;

(C) transmitting or accessing text or data about the case on which the juror is serving;

(D) researching, transmitting, or accessing information about the case on which the juror is serving;

(E) otherwise communicating about the case on which the juror is serving; or

(F) otherwise communicating about the jury deliberations.

(4) Nothing in this rule is to be construed to limit or impair the authority of a chief judge or presiding judge to grant permission to a juror to retain his or her electronic device during trial proceedings.

(5) The jury summons mailed to prospective jurors should contain a notice that electronic devices will be removed from all members of a jury panel before jury deliberations begin and as directed by the presiding judge, may be removed at other stages of a trial. At the beginning of the trial, the presiding judge should advise the jury panel about the removal of electronic devices.

(c) Use of Electronic Devices by Others.

(1) The use of electronic devices in a courtroom is subject at all times to the authority of the presiding judge or quasi-judicial officer to

(A) control the conduct of proceedings before the court;

(B) ensure decorum and prevent distractions; and

(C) ensure the fair administration of justice in the pending cause.

(2) The use of electronic devices in a courthouse or court facility is subject at all times to the authority of the chief judge to

(A) ensure decorum and prevent distractions;

(B) ensure the fair administration of justice; and

(C) preserve court security.

Committee Note

2013 Adoption. Subdivision (c), Use of Electronic Devices by Others, parallels Florida Rule of Judicial Administration 2.450(a) regarding the use of electronic devices by the media.

APPENDIX

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