

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

ADMINISTRATIVE ORDER 2.059/21-1
AMENDED

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IN RE:

SEALING COURT RECORDS

Filed and Recorded in Official Records of
MONROE COUNTY KEVIN MADOK, CPA

_____:

WHEREAS, pursuant to Administrative Order 2.059, entered November 16, 2006, this court established the procedures and criteria for sealing court records;

WHEREAS, subsequent to the issuance of Administrative Order 2.059, the Florida Supreme Court renumbered the Florida Rules of Judicial Administration. *In re: Amendments to Fla. R. of Jud. Admin.—Reorganization of the Rules*, 939 So. 2d 966 (Fla. 2006); and

WHEREAS, Rule 2.050 of the Florida Rules of Judicial Administration has been renumbered as Rule 2.215; and

WHEREAS, Rule 2.051 of the Florida Rules of Judicial Administration has been renumbered as Rule 2.420; and

WHEREAS, subsequent to the issuance of Administrative Order 2.059, the Florida Supreme Court amended Rule 2.420, Florida Rules of Judicial Administration. *In re: Amendments to Fla. R. of Jud. Admin. 2.420 and the Fla. R. of App. P.* 31 So. 3d 756 (Fla 2010).

NOW, THEREFORE, pursuant to the authority vested in me as Chief Judge of the Sixteenth Judicial Circuit, under Rule 2.215 of the Florida Rules of Judicial Administration, in order to provide a uniform method for insuring the confidentiality of court records when confidentiality is required by law or found warranted by court order and to insure that materials are not unintentionally designated as confidential and to provide a procedure whereby the public can request review of orders to seal, it is hereby ORDERED:

1. All requests and orders regarding confidential trial court records shall strictly comply with Rule 2.420 of the Florida Rules of Judicial Administration and the attached sample pleadings. If this Administrative Order and Rule 2.420 appear to be inconsistent in any way, Rule 2.420 shall take precedence and serve as the legal binding authority.
2. The Clerk of Court for Monroe County and the Sixteenth Judicial Circuit of Florida (“Clerk”) shall designate and maintain the confidentiality of any information within a

court record that is described in subdivision (d)(1)(A) and (d)(1)(B) of Rule 2.420 of the Florida Rules of Judicial Administration.

- A. Subdivision (d)(1)(A) of Rule 2.420. The following information shall be maintained as confidential:
- i. 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 directions 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.
 - ii. 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.
 - iii. (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;
 - iv. Periodic evaluations implemented solely to assist judges for improving their performance, all information gathered to form the bases for the evaluations and the results generated therefrom.
 - v. Only the names and qualifications of persons applying to serve or serving as unpaid volunteers to assist the court, as 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 pending court proceedings or upon a showing of good cause;
 - vi. 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.

- B. Subdivision (d)(1)(B)(i)-(xxiii) of Rule 2.420. Except as provided by court order, information subject to Florida Rule of Judicial Administration subsection c(7) and c(8) 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 shall be maintained as confidential:
- i. Chapter 39 records relating to dependency matters, termination of parental rights, guardian ad litem, child abuse, neglect and abandonment. §39.0132(3), 39.0132(4)(a), 39.202, Fla.Stat.
 - ii. Adoption records § 63.162, Fla. Stat.
 - iii. Social security, bank account, charge, debit and credit card numbers § 119.071(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 or guardian notice or consent when seeking to terminate pregnancy. §390.01116, 390.01118, Fla. Stat.
 - viii. Clinical records under the Baker Act, § 394.4615(7), Fla. Stat., and all petitions, court orders and related records under the Baker Act, including all personal identifying information of a person subject to the Act. § 394.464, 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), 119.071(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. § 397.224(10)(a), Fla. Stat.
- xxiii. Information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking and any affidavits, notice of hearing and temporary injunction until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing and temporary injunction. § 119.0714(1)(k)(3), Fla. Stat.

3. Notice of Confidential Information within Court Filing

- A. The filer of any document containing confidential information described in Section 2(B) of this order shall at the time of filing, file with the Clerk of Court a “Notice of Confidential Information within Court Filing”, hereto attached as Attachment A. This notice indicates that confidential information is included with the document being filed, and also indicates that either the entire document is confidential or identifies 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 file is not required to file the notice form.
- 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 this order and Rule 2.420, Florida Rules of Judicial Administration. If the Clerk determines that filed information is not subject to confidentiality under this order or the Rule 2.420, Florida Rules of Judicial Administration, the Clerk shall notify the filer of the Notice of Confidential Information within Court Filing 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 Rule 2.420(d)(3), Florida Rules of Judicial Administration.
- C. If a filer of a document believes in good faith that information is confidential, but is not described in this order or Rule 2.420(d)(1), Florida Rules of Judicial

Administration, 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 Rule 2.420(e), (f) or (g), unless:

- i. 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
- ii. 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 Rule 2.420(e), (f) or (g), Florida Rules of Judicial Administration.

4. Posting Public Notice of Court Order to Seal

A. Upon the filing of any court order authorizing the sealing of the court record, the Clerk is hereby authorized and directed as follows, in accordance with Rule 2.420, Florida Rules of Judicial Administration:

- i. Civil and Appellate Cases—The Clerk must post a copy of the order on the Clerk’s website and in a prominent public location in each county courthouse within 10 days of the order, for no less than 30 days, per Rule 2.420(e)(4).
- ii. Criminal Cases—Pursuant to Rule 2.420(f)(3)(D), the Clerk shall not post any orders unless directed by the Court. The docket shall indicate only the entry of the order.

5. Procedures for Obtaining Access to Confidential Court Records

A. The Clerk must allow access to confidential court records to persons authorized by law, or any person authorized by court order.

B. A court order allowing access to confidential court records may be obtained by filing a written motion which must:

- i. identify the particular court record(s) or a portion the court record(s) to which the movant seeks to obtain access with as much specificity as possible without revealing the confidential information;
- ii. specify the bases for obtaining access to such court records;
- iii. set forth the specific legal authority for obtaining access to such court records;
- iv. contain a certification that the motion is made in good faith and is supported by a sound factual and legal basis.

C. 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.

D. Any order granting access to confidential information must:

- i. describe the confidential information with as much specificity as possible without revealing the confidential information, including specifying the precise location within the court records;
- ii. identify the persons who as permitted to view the confidential information in the court records;
- iii. identify any person who is permitted to obtain copies of the confidential court records;
- iv. state the time limits imposed on such access, if any, and any other applicable terms or limitations to such access.

E. 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 Florida Rules of Judicial Administration 2.420(j)

F. Unless otherwise provided by court order, an order granting access to confidential court records shall not alter the confidential status of the record.

6. Unsealing by the Clerk of Court for Limited Purposes of Filing

A. The Clerk is hereby authorized to open any court file sealed by operation of law or court order for the purpose of filing documents pertinent to the particular file, as well as for microfilming or imaging files.

B. The Clerk is hereby authorized to open any file or document sealed by operation of law or court order for the purpose of making a copy of the file or document for transmission to any appellate court for the purposes of appellate review. When transmitting such copies in the record on appeal, the Clerk shall clearly indicate to the appellate court which documents are under seal in the trial court.

C. The Clerk shall re-seal such files or documents immediately upon completion of either instance referenced above and shall annotate the date of the unsealing and re-sealing with the deputy clerk's full name who completed the task.

7. Administrative Order 2.059, *Sealing of Court Records*, previously entered on November 16, 2006, is hereby vacated and amended in its entirety.

DONE AND ORDERED in Chambers at Key West, Monroe County, Florida this 26th of January, 2021.



Mark H. Jones
Chief Judge

ATTACHMENT A

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA IN AND FOR MONROE COUNTY

CASE NO. _____

v.

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 as not filed with the document and the confidential information was not maintained as confidential by the Clerk of 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 furnish by (email) (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):

Email Address: