

May 26, 2000

Via Facsimile (850-488-2100) and U.S. Mail

Mr. Thomas D. Hall  
Clerk, Supreme Court of Florida  
500 S. Duval Street  
Tallahassee, Florida 32399

Dear Mr. Hall:

We are writing regarding the Court's order dated May 17, 2000, wherein a comment is solicited relating to Rule 3.852. We appreciate the opportunity to provide comment from the perspective of the Clerk of the Circuit Court. Our comments are as follows:

(1) Rule 3.852(f)(1) provides for delivery of exempt or confidential records to the Clerk of the Circuit Court. It further provides that such records are to be in a separate container and that container should display a statement that the seal shall not be broken; however, the rule does not identify whose responsibility it is to "seal" this record. (i.e., Does it come to the Clerk already sealed? How is it to be sealed so the Clerk knows it is secure?) Who is responsible for certifying the fact that the container was sealed?

We have included below language which we propose may adequately address some of the concerns raised:

**(f) Exempt or Confidential Public Records.**

(1) Records Delivered to Clerk of Court. Any public records ~~delivered to the records repository pursuant~~ subject to these rules that are confidential or exempt from the requirements of section 119.07(1), Florida Statutes, or article I, section 24(a), Florida Constitution, must be separately contained, without being redacted, and sealed. The container must be delivered to the clerk of court in the county in which the capital case was tried whose duties shall be limited to storage and delivery as set forth below or as further ordered by the trial court. The outside of the container must clearly identify that the public record is confidential or exempt and that the seal may not be broken without an order of the trial court. The outside of the container must identify the nature of the public records and the legal basis for the exemption. Records that are exempt from public records production under section 119.07(3)(b) or (3)(1), Florida Statutes, must be delivered to the clerk of court in a separate container securely sealed by the delivering entity, the outside of which must specifically identify the section(s) under which the records are exempt and bear the name and signature of the agency representative attesting to the date the container was sealed and certifying the contents of such sealed container.

(2) Rule 3.852(f)(3) provides: “After Mandate Issues on Direct Appeal. Within 30 days after the filing of the notice of mandate on direct appeal by the attorney general, the trial court shall issue an order unsealing all records that were identified as being exempt from public records production under sections 119.07(3)(b) or (3)(1), Florida Statutes, and the clerk of court shall forward the records to the records repository.”

Who shall bear the cost of delivery? The delivering entity bears the cost of delivery to the Clerk; shall they also bear cost of delivery by the Clerk to the repository?

Thank you for your consideration.

Respectfully submitted,

Helene E. Marks, Esq.  
Legal Counsel to the Clerk