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December 15, 2006

Supreme Court of Florida
Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1925

Re: In Re: Amendments to Florida Rule of Judicial Administration 2.430
Case No. SC06-2040

Dear Mr. Hall:

Enclosed please find an original, nine copies and an electronic copy of the comments submitted on behalf of the Florida Association of Court Clerks and Comptrollers to the recommended amendments to Rule 2.430, Florida Rules of Judicial Administration as proposed by the Judicial Branch Records Management Workgroup.

Cordially,



Fred W. Baggett General Counsel
Florida Association of Court Clerks
and Comptrollers

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Case No. SC06-2040

Dear Mr. Hall:

Our firm represents the Florida Association of Court Clerks and Comptrollers, whose membership includes the 67 clerks of the circuit and county courts. Please consider this as the response and comments of the Clerks of Court to the Report and Recommendations of the Judicial Branch Records Management Workgroup submitted to the Florida Supreme Court which contains the recommendations of the workgroup for amendments to Rule 2.430, Florida Rules of Judicial Administration, Retention of Court Records. We commend the committee not only for its hard work but the substance of its report and resulting recommendations. We believe that the proposed amendments to Rule 2.430 are well thought out and helpful in giving needed clarity and will promote consistency in application throughout the state. We would submit the following as our comments to the proposal.

On July 26, 2006 the Clerks of Court submitted a draft proposal to the Court in an effort to offer suggestions to resolve issues dealing with "secret dockets" that have been recently reported to exist in some counties. A number of these suggestions relate to the amendments being proposed by the Committee to Rule 2.430 and contain the same or consistent language as the Committee's proposal. However in a limited number of instances, the Clerks would request the Court consider the following.

We suggest that Rule 2.430 (g)(1) regarding Exhibits be amended to include language that would require the clerk to provide notice of intent to destroy or dispose to the parties or their attorneys of record. If no response has been filed by the parties within 30 days, the clerk may petition the court for an order of destruction.

Further we would recommend that (j) Right to Expunge Records be struck in its entirety. That the new (j) be titled Sealed Records with new language inserted to provide that sealed records may be destroyed under the normal cycles of destruction noted in (d) above and the sentence beginning with "No record" be struck in its entirety. We find no basis to support maintaining a

sealed record longer than a public record.

Lastly, we suggest that a new (k) be added and titled Expunged Records: Expunged records shall be destroyed not less than 30 days after entry of the order of expunction.

The purpose of the new (k) language is to provide proof to any authorized party that a court record has been expunged and destroyed. The order would be maintained by the clerk as a confidential document not subject to inspection by the public.

A copy of the text of our proposal is attached for your consideration.

The Florida Association of Court Clerks and its Clerk of Court members appreciate the opportunity to comment on the proposed Amendments to Rule 2.430. If there is any question regarding the suggestions contained herein or any further information is desired, please do not hesitate to contact me.

Cordially,

Fred Baggett
General Counsel
Florida Association of Court Clerks
and Comptrollers

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 none 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 Division of Library and Information Services of the Department of State.

(b) **Required Consent.** Disposal of court records under this rule is subject to obtaining any consent required by law from the Division of Library and Information Services of the Department of State.

(c) **Permanently Recorded Records.** Court records, except exhibits, that have been permanently recorded in accordance with standards adopted by the Division of Library and Information Services of the Department of State, may be destroyed or otherwise disposed of by the clerk at any time after a judgment has become final.

(d) **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 - Misdemeanor actions, criminal traffic violations, 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 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 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.

(e) 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.

(f) 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.

(g) Exhibits.

(1) Exhibits in criminal proceedings shall be disposed of as provided by law. The clerk will provide notice of intent to destroy or dispose to the parties or their attorneys of record. If no response has been filed by the parties within 30 days, the clerk may petition the court for an order of destruction.

(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.

(h) 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 and the Division of Library and Information Services of the Department of State shall be given notice of the application by the applicant. The court shall dispose of that court record as appropriate.

(i) **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 records expunged.

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

~~(j) **Sealed Records.** Sealed records may be destroyed under the normal cycles of destruction noted in (d) above. 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) **Expunged Records.** Expunged records shall be destroyed not less than 30 days after entry of the order of expunction.