

IN THE SUPREME COURT OF FLORIDA

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

CASE NO.: SC07-2050

**COMMENT OF THE CRIMINAL PROCEDURE
RULES COMMITTEE**

On February 8, 2008, this Court issued a “Publication Notice” in the above-referenced matter, inviting comment on proposals from the Rules of Judicial Administration Committee to amend *Fla. R. Jud. Admin. 2.420* and proposals from this Court for additional amendments to that rule. Comments were to be filed by April 1, 2008.

The matter was assigned to a subcommittee, which met and made its recommendation to the full committee. On March 20, 2008, the committee voted unanimously to submit a comment to one of the proposals in the Notice, but did not have the opportunity to have the proposed comment approved by the Florida Bar Board of Governors by the April 1, 2008, deadline. Accordingly, the committee filed a Motion for Extension of Time to File Comments by the Criminal Procedure Rules Committee, which motion was granted. The Executive Committee of the Board of Governors voted 11-0 to approve the committee’s recommendation.

This comment concerns Rule 2.420(g) in the Court’s proposal, which concerns the procedure to be used in sealing appellate court records in criminal cases. The CPRC recommends that proposed Rule 2.420(g)(4) be deleted. The reason for this recommendation is the failure of the proposed rule to address situations in which an interlocutory appeal or writ proceeding results in a published opinion, after which a criminal trial court proceeding is subsequently dismissed or a *nolle prosequi* is announced. In such a case, a

criminal defendant could be eligible to seek sealing or expunction of his or her judicial and non-judicial (agency) criminal history records, pursuant to Florida Rule of Criminal Procedure 3.692. However, neither proposed Rule 2.420(g)(4) nor Rule 3.692 contemplates the fact that a published appellate court opinion in such a case would still have precedential value, beyond its effect in an individual defendant's case. Therefore, the Court and the rules committees should evaluate whether to authorize complete sealing or expunction in cases involving published opinions, and if so, how to accomplish sealing and expunction.

For the foregoing reasons, the Criminal Procedure Rules Committee respectfully requests that the Court delete proposed Rule 2.420(g)(4).

Respectfully submitted April 15, 2008.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to The Honorable Robert T. Benton II, Chair, Florida Rules of Judicial Administration Committee, 301 South Martin Luther King, Jr., Blvd., Tallahassee, FL 32399-6601 on April 15, 2008.

Jodi B. Jennings
Staff Liaison, Criminal Procedure Rules Committee