IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.420 **CASE NO.: SC07-2050**

COMMENT OF SPECIAL JOINT COMMITTEE REGARDING CHANGES TO RULE 2.420 PROPOSED BY THE FLORIDA SUPREME COURT AND THE COMMITTEE ON ACCESS TO COURT RECORDS

Scott M. Dimond, Chair, Rules of Judicial Administration Committee, John S. Mills, Chair, Appellate Court Rules Committee, and John F. Harkness, Jr., Executive Director, The Florida Bar, submit this response by a special joint committee (the "Joint Committee") comprising members of the Rules of Judicial Administration Committee (the "RJAC") and the Appellate Court Rules Committee (the "ACRC"), assisted by representatives from the Criminal Procedure Rules Committee and from the Supreme Court's Committee on Access to Court Records (the "Access Committee"). This response has been approved by members of the RJAC by a vote of 15-1 with 1 abstention, approved by members of the ACRC by a vote of 26-7 with 1 abstention,[1] and approved by the Executive Committee of The Florida Bar Board of Governors by a vote of 10-0.

This response addresses two proposals:

(1) The "Invitation to Comment" issued by the Access Committee, which presents proposed revisions to Rule of Judicial Administration 2.420 (*see* Appendix A). (The text of the proposed rule set forth in that Invitation to Comment has been revised by the Access Committee. The most current version of the Access Committee's proposed revision to the rule that has been furnished to the Joint Committee is set forth in Appendix B and is the version to which the Joint Committee's Comments are directed.)

[1]Several members of the ACRC expressed concerns that they had insufficient time to fully review the work of the Joint Committee. Thus, many of the "no" votes are not necessarily reflective of substantive disagreement with this response. The matter is being placed on the ACRC's agenda for the September 2008 General Meeting, and if that meeting generates substantive comments likely to assist the Court, the ACRC will seek leave to file a supplemental response.

(2) The "Publication Notice" issued by the Court on February 8, 2008, that reflects the RJAC's proposed amendments to Rule 2.420 and the Court's alternative proposed amendments to Rule 2.420. (*See* Appendix C for the Publication Notice).

When this Court issued the February 8, 2008 Publication Notice, various entities, including the ACRC and the Criminal Procedure Rules Committee, either filed or were planning to file Comments on the proposals presented. The Criminal Procedure Rules Committee filed a Comment recommending deletion of proposed subdivision (g)(4) in the Court's proposal (*see* Appendix D). The ACRC analyzed the Court's proposed amendments and, being advised of the Access Committee's plan to propose additional amendments to Rule 2.420, filed a Comment requesting additional time to study the Court's proposed new subdivisions (f) and (g), and proposing the creation of a Joint Committee to analyze and address 11 separate areas of concern that appeared to warrant further examination by the Joint Committee (*see* Appendix E). The Court granted the ACRC's request and extended the time to respond until September 1, 2008. (The RJAC also requested an extension of time to respond to the issues raised by the ACRC, both through the Joint Committee and separately. This request was also granted and the RJAC is filing a separate report that addresses other aspects of the Access Committee's proposals and that responds to comments filed by interested parties.)

The Joint Committee met several times to study the Court's proposed amendments that presented for comment new subdivisions (f) and (g). Concurrently, the Joint Committee requested that the Access Committee furnish to the Joint Committee the latest version of the Access Committee's proposed changes to Rule 2.420, so that the Joint Committee could address both proposals simultaneously. The Access Committee's most recent version of Rule 2.420 (Appendix B), when overlaid on the Court's proposed version of Rule 2.420 (Appendix A), reveals that the Access Committee's version has redesignated the Court's new subdivisions (f) and (g) as subdivisions (g) and (h), to accommodate a new proposed subdivision (d) relating to the procedure for filing records. This report adopts the latter numbering scheme, so that all references hereinafter will be to subdivisions (g) and (h), rather than to subdivisions (f) and (g), respectively.

Issue 1: Whether Rule 2.420 should authorize motions requesting confidentiality of appellate court records or files when such a request could have been, but was not, made in a lower tribunal. Lower tribunals are better equipped to handle necessary hearings and should be the venue of first resort.

As a general matter, Florida law provides that the public shall have access to all records of the judicial branch of government. Rule 2.420(c), however, sets forth several exemptions to this rule.

In certain circumstances, a court will need to take evidence and make factual findings to determine whether records should be made confidential based on the above grounds.

The proposed additions of subdivisions (g) and (h) to Rule 2.420 would afford litigants the right to file with an appellate court motions to determine the confidentiality of a record that was (1) presented or presentable to a lower tribunal without a determination of confidentiality being made by the lower tribunal, or (2) presented to an appellate court in an original proceeding. Because appellate courts typically do not take evidence or make factual findings, the Joint Committee expressed concern that it might be inappropriate for an appellate court to make the initial determination as to the confidentiality of court records; rather, it might be more appropriate for a lower tribunal to address such motions in the first instance. This would be similar to the procedure adopted for motions to stay under Florida Rule of Appellate Procedure 9.310, whereby the lower tribunal is normally the first tribunal to consider the motion to stay and there is a procedure in place for the appellate court, upon the grant or denial of that motion, to review the lower tribunal's ruling on the motion for stay.

The Joint Committee concluded that, similar to the procedure for addressing a motion for stay, appellate courts should have the authority to grant or deny motions to determine confidentiality in the first instance. Although the Joint Committee recognized that appellate courts may refuse, or be unable, to conduct evidentiary hearings, the appellate court could relinquish jurisdiction to allow a lower tribunal to conduct an evidentiary hearing and resolve the factual issues. In original proceedings, the appellate court would be the only, and certainly the most appropriate, court to address the legal issues regarding the request for confidentiality of court records.[2]

[2]Following the submission of this Comment to the members of the RJA and the ACRC for approval, the Joint Committee questioned its own statement that "the appellate court would be the only, and certainly the most appropriate, court to address the legal issues regarding the request for confidentiality of court records" in original proceedings. The Joint Committee also

The Joint Committee also recommends that subdivision (g)(1) be revised to read as follows:

(1) A ~~request~~motion to determine the confidentiality of appellate court records in noncriminal cases under subdivision (c) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (e)(1). Such a ~~request~~motion may be made with respect to a record that was presented or presentable to a lower tribunal, but ~~not determined to be confidential~~no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.[3]

Issue 2: Whether, when the motion to make records confidential is made for the first time in the appellate court, an order making appellate records confidential under proposed subdivision (g) should also operate to make records in the lower tribunal confidential.

The Joint Committee concluded that the order making appellate records confidential under proposed subdivision (g) should also operate to automatically

---

identified two concerns that may not have been fully vetted regarding subdivision (g)(1).

First, in its current form, proposed subdivision (g)(1) unintentionally treats appeals and original proceedings dissimilarly by permitting a party in original proceedings to file a motion with the appellate court to determine the confidentiality of a record even if the lower tribunal had previously determined that the same record was not confidential; however, the option of mounting a renewed effort to seek the determination of a record's confidentiality at the appellate level is not made available in appeals. The Joint Committee was not able to articulate a justifiable basis for making a distinction of that nature between original proceedings and appeals.

Second, the proposed subdivision (g)(1) does not address those situations in which there is no lower tribunal to which the confidentiality concerns could be presented or the lower tribunal is not of a nature to render it qualified to make a determination of a record's confidentiality (*e.g.*, code enforcement boards). These situations could be presented to the appellate court either as appeals or as original proceedings and parties should be afforded an opportunity to seek consideration by the appellate court of confidentiality concerns whether the case is an appeal or an original proceeding.

The Joint Committee recommends that these concerns can be remedied by striking "in an original proceeding," the last four words of subdivision (g)(1).

[3]As to the last four words of this subdivision ("in an original proceeding"), see footnote 2, *supra*.

make records confidential in the lower tribunal — with one caveat: either court should have, upon the filing of an appropriate motion, the authority to revisit whether continued sealing of the records is appropriate when a change of circumstances occurs (of course, this recognizes the legal doctrine that lower tribunals are constrained from doing so to the extent that the lower tribunal's decision to do so would interfere with the appellate court's jurisdiction). For example, upon completion of a case, some public records exemptions expire. Thus, even if it is the appellate court that makes the determination that a record be sealed, the trial court — at the close of the case on remand — should have the authority to open the files if warranted by the change in circumstances.

The Joint Committee also expressed concern regarding the type of review proceeding in which the records were sealed. If an appellate court sealed records during the course of a non-final appeal or original proceeding, those records would remain open in the lower court and the movant should be required to address the sealing in both forums. As a practical matter, this could be accomplished through the filing of a motion in the appellate court asking that court to issue an order directing that the records be sealed in both courts.

To accommodate these concerns, the Joint Committee recommends that subdivision (g) be modified as follows:

(g) Request to Determine the Confidentiality of Appellate Court Records in Noncriminal Cases.

(1) …

(2) …

(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)–(G). 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, ~~or court rule, notice must be given of any order granting a motion made under subdivision (g)(1) as follows.~~ w~~W~~ithin 10 days following the entry of ~~the~~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 is to seal the records identified in the order. The order must remain posted for no less than 30 days.

(5) …

(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) …[former subdivision 6]

(9) …[former subdivision 7]

Issue 3: ***Whether the interplay between proposed Rule of Judicial Administration 2.420(g) and Florida Rule of Appellate Procedure 9.100 should be clarified. Proposed Rule 2.420(g)(1) appears to suggest that its provisions apply both to motions in the first instance and to review of a lower tribunal's denial of a motion to make records confidential. Review of orders granting or denying confidentiality will almost always be under Rule 9.100, whether through certiorari or under Rule 9.100(d), so the provisions of proposed Rule 2.420(g) should not conflict with any provision of Rule 9.100. Moreover, as written, proposed Rule 2.420(g) conflicts with and renders moot amendments to Rule 9.100(d) approved by the ACRC in June 2008.***[4]

[4]The ACRC has approved proposed amendments to Rule 9.100(d) (*see* Appendix F) designed to balance the competing constitutional interests in privacy and public access and to provide meaningful appellate review to parties aggrieved by orders denying a request to make records confidential or granting a request to open records. Based on Rule 2.420(e)(1)(B) (which makes records subject to the motion confidential pending the lower tribunal's ruling), and Rule 2.420(e)(7) (which continues the lower tribunal's confidentiality through appellate proceedings), the ACRC's proposed amendment to Rule 9.100(d) would provide for a short automatic stay to maintain confidentiality long enough for the aggrieved party to seek review under Rule 9.100 and to file a motion to continue the brief automatic stay.

Rule 9.100 outlines the requirements that apply to the extraordinary remedies of mandamus, prohibition, quo warranto, certiorari, habeas corpus, and all writs necessary to the complete exercise of appellate jurisdiction. These are original proceedings initiated by filing a petition directly in the appellate court, not by filing a notice in the lower tribunal.

There are, however, several other types of legal remedies that are also classified as original proceedings. Petitions for review of orders regarding the exclusion of the press or public from access to judicial proceedings or judicial records are treated as original proceedings, and are therefore within the scope of Rule 9.100. Rule 9.130(a)(1), applicable to proceedings for review of nonfinal orders, states that review of nonfinal administrative action "shall be by the method prescribed by Rule 9.100." Rule 9.100 governs original proceedings such as mandamus, prohibition, and certiorari.

A petition for an extraordinary writ in the circuit court to review judicial or quasi-judicial action is subject to the general provisions of Rule 9.100 and the additional requirements of Rule 9.100(f). Likewise, nonfinal administrative orders are reviewed under the procedures established in Rule 9.100. A petition for writ of mandamus to review any other action by a public official is generally governed by Florida Rule of Civil Procedure 1.630.

Rule 9.100 was designed primarily for appellate courts, and it applies to original proceedings in appellate courts. Extraordinary writ proceedings in the circuit courts are governed either by Rule 1.630 or by Rule 9.100, or both, which set additional requirements for original appellate proceedings in circuit courts. *See Hogan v. State*, 983 So. 2d 656 (Fla. 2d DCA 2008), demonstrating the interplay between Rule 1.630 and Rule 2.420, which confirms that a mandamus petition under Rule 1.630 is an appropriate vehicle for challenging the denial of access to judicial records, and concludes that those rules are better left as they are, rather than being amended.

Issue 4: ***Whether the interplay between proposed subdivision (g)(5), proposed subdivision (g) (current subdivision (e)), and Fla. R. App P. 9.100(d) should be clarified. For example, if the press wants access to a record an appellate court has made confidential, is the press supposed to file a motion in the appeal under Rule 2.420(g)(5) (and how does a non-party do that), petition for mandamus or "other***

applicable remedy" under proposed subdivision (g), or seek appellate review through Rule 9.100(d)?

The concerns of the ACRC expressed in paragraph 4 of its comments to the Court arose primarily from confusion created by subdivision (i). As originally drafted, subdivision (i) seemed to include a broad authorization for judicial review of orders concerning confidential records. Subdivision (i) has since been rewritten and narrowed considerably so that it now applies only to denials of requests for access to *administrative* records and not to case records. Because a request for administrative records does not generally involve a pending proceeding, the procedures set forth in subdivision (i) now relate only to that distinct set of requests for administrative records.

The Joint Committee believes that, when the confidentiality issue relates to case-related records, subdivision (g)(5) is adequate and appropriate to allow nonparties to understand how and where to address their confidentiality concerns. If a nonparty has not had an opportunity to litigate the issue with respect to the confidentiality of a document, then the nonparty (such as the press) would file a motion under subdivision (e)(5) or subdivision (g)(5), seeking to vacate all or a portion of the court order determining confidentiality. If the nonparty (such as the press) is successful, the matter will become public. If that nonparty is unsuccessful, then upon receipt of an order from the trial court or appellate court denying the nonparty's request, the nonparty could seek review of that order by utilizing the procedures set forth in Rule 9.100(d). The review procedures specified in Rule 9.100(d) are utilized only by a party who has participated in the lower court and been unsuccessful in achieving the desired ruling from the lower tribunal. If the interested entity has not appeared in a court proceeding, that entity must proceed under subdivision (e)(5) or subdivision (g)(5). Accordingly, the Joint Committee believes that no further clarification is necessary to address the interplay between proposed subdivision (g)(5) and Rule 9.100(d).

Issue 5: ***Whether proposed subdivision (g)(7), which speaks to records of a lower tribunal made confidential by that tribunal, is duplicative of subdivision (e)(7), which provides that court records made confidential by a lower tribunal shall remain confidential during appellate proceedings. The language of proposed subdivision (g)(7) implies that a motion must be filed in the appellate court even when the lower tribunal has granted the records confidential status. To***

that extent, is proposed subdivision (g)(7) inconsistent with the plain language of subdivision (e)(7)?

The Court's proposed subdivision (g)(7) is duplicative of subdivision (e)(7), insofar as both provide that records deemed confidential below be treated as such on appeal. Although (g)(7) may not "imply" that a new motion must be filed in the appellate court, the problem of redundancy remains.

The Joint Committee recommends that the Court eliminate in its entirety one of these two provisions. As to which provision should be eliminated, the Joint Committee recommends that the Court delete subdivision (e)(7) because the inclusion of the entirely new subdivision (g), specifically addressing appellate issues, is the most appropriate home for the provision.

Issue 6: Whether, to the extent proposed subdivision (g)(7) may be necessary in the context of second appeals, such as appeals to the supreme court, the proposed subdivision should be modified to read as follows:

> (g)(7) Records of ~~a lower tribunal~~an appellate court determined to be confidential by that ~~tribunal~~court must be treated as confidential during any review proceedings. In any case where an order making court records confidential remains in effect as of the time of an appeal, the clerk's index must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number, This subdivision does not preclude review ~~by an appellate court,~~ or affect the standard of review ~~by an appellate court,~~ of an order by ~~a lower tribunal~~an appellate court making a record confidential.

The Joint Committee was unable to discern any special disparate applications that would require or justify the inclusion of both proposed subdivision (e)(7) and proposed subdivision (g)(7). Therefore, the Joint Committee recommends that proposed subdivision (e)(7) should be deleted as duplicative of the provisions of proposed subdivision (g)(7).

In light of this recommendation for deletion of proposed subdivision (e)(7), the Joint Committee believes that subdivision (g)(7) refer to the "lower tribunal"

rather than to the "appellate court." Accordingly, the Joint Committee recommends that subdivision (g)(7) read as follows:

> Records of a lower tribunal ~~made~~determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In a~~ny~~ case where an order ~~making~~determining court records to be confidential remains in effect as of the time of an appeal, the clerk ~~of the lower tribunal shall so indicate in the index~~ must include a statement in the index that an order making court records confidential has been entered ~~in the matter~~ and must identify such order by date or docket number ~~transmitted to the appellate court~~. This subdivision does not preclude review by an appellate court, or affect the standard of review by an appellate court, of an order by a lower tribunal ~~making~~determining a record to be confidential.

Issue 7: Whether the existence of proposed subdivisions (g) and (f) should be generally cross-referenced within the Florida Rules of Appellate Procedure as an aid to practitioners.

The Joint Committee agreed that practitioners should be alerted to the requirements of Rule 2.420 regarding requests to determine the confidentiality of appellate court records. The Joint Committee recommends that this cross-referencing be accomplished by adding a specific provision to Fla. R. App. P. 9.040 and providing a Court Comment to the appellate rules under which appellate proceedings are initiated (Rules 9.100 and 9.110).

Proposed drafts for amendment of Rule 9.040 and for creation of Court Comments to Rules 9.100 and 9.110 are as follows:

Proposed Addition to Rule 9.040:

Rule 9.040. General Provisions.

(i) **Requests to Determine Confidentiality of Appellate Court Records.** Requests to determine the confidentiality of appellate court records are governed by Florida Rule of Judicial Administration 2.420.

Proposed Court Comment for Rule 9.100 and Rule 9.110:

2008 Committee Note. As provided in Rule 9.040, requests to determine the confidentiality of appellate court records are governed by Florida Rule of Judicial Administration 2.420.

(Note that specific subdivisions of Rules 9.040 and 2.420 are purposely omitted so that future changes to and renumbering of those rules will not alter the cross-references.)

Issue 8: ***Whether, to the extent proposed subdivisions (g) and (h) apply to original proceedings that have no corresponding case in a lower tribunal, their provisions should specifically cross-reference and work in tandem with Fla. R. App. P. 9.100.***

The Joint Committee does not share the concern identified by the ACRC's Criminal Law Subcommittee. The Joint Committee believes that subdivisions (g) and (h) of Rule 2.420 do not overlap and recommends that the Court not cross-reference the provisions.

Issue 9: ***Whether the cross-references in proposed subdivision (h) should be simplified and streamlined. For example, the limitation language of proposed subdivisions (h)(1) and (h)(3) should be combined. Alternatively, can proposed subdivision (h)(2) be incorporated into proposed subdivision (g) under a new provision labeled "Exceptions," and proposed subdivisions (g)(1), (g)(3), and (g)(4) be eliminated?***

See discussion under Issue 11 *infra*.

Issue 10: ***Whether proposed subdivision (g)(4) is misleading and should be deleted.***

See discussion under Issue 11 *infra*.

Issue 11: ***Whether a new subdivision should be added to clarify that Rule 2.420 does not authorize a request to seal or expunge criminal history records. Such a subdivision might read:***

> ~~**Applicability.** This rule does not apply to criminal history records maintained by any executive branch entity.~~ Requests to the lower tribunal to seal or expunge criminal history records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

The ACRC's Comments regarding issues 9, 10, and 11 reflect concerns expressed by its Criminal Law Subcommittee and by the Criminal Procedure Rules Committee, about references in proposed subdivision (h) to the sealing of criminal history records.

The Joint Committee notes that "criminal history records" are not records of the judicial branch. Sealing and expunction of these records are governed by sections 943.0585 and 943.059, Florida Statutes (2008), which are mirrored procedurally by Florida Rules of Criminal Procedure 3.692 and 3.989. As such, there is no need for a provision pertaining to these non-judicial, criminal justice agency records in the appellate subdivision of Rule 2.420.

Moreover, the Joint Committee is concerned that the presence of such a provision in a subdivision of Rule 2.420 may cause confusion or mistakenly encourage filing of additional motions to seal appellate records in cases where a party has obtained an order authorizing sealing and/or expunction in the trial court. Although this may not be a common problem, such a motion was filed recently in a pretrial criminal appellate case where a written opinion of the court was published years before the motion to seal or expunge was filed.

Therefore, the Joint Committee recommends that proposed Rule 2.420(h)(4), which cross-references Rule 3.692, be deleted as unnecessary and confusing.

Alternatively, both subdivision (f)(4) and subdivision (h)(4) could be deleted in favor of adding a new subdivision (k), which could provide:

> **Applicability.** This rule does not apply to criminal history records maintained by any ~~executive branch entity~~criminal justice agency. Requests to seal or expunge criminal history

records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

On a more sweeping basis, the Joint Committee believes that proposed subdivisions (f) and (h), as presently drafted, will create confusion and divert limited judicial resources to collateral issues. To address this concern, the Joint Committee recommends that the Court delete in its entirety proposed subdivision (h) and rewrite subdivision (f) to read as follows:

(f) Motion to Determine the Confidentiality of Court Records in Criminal Cases.

(1) Subdivision (e) shall apply to any motion by the state or a defendant to determine the confidentiality of trial court records under subdivision (c), except as provided in subdivision (f). As to any motion filed in the trial court under this subdivision, the procedure set forth in subdivision (f)(3) and the following shall apply:

(A) Unless the motion represents that both the movant and any other party subject to the motion agree to all of the relief requested, as evidenced by all such parties signing the motion, the court shall hold a hearing on a motion filed under this subdivision within 15 days of the filing of the motion, but such hearing shall be a closed session held in camera.

(B) The court shall issue a 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.

(C) 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.

(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). As to any motion filed in the appellate court under this subdivision, the procedure set forth in subdivision (f)(3) and the following shall apply:

(A) The motion may be made with respect to a record that was presented or presentable to a lower tribunal, but not determined to be confidential

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 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 in a criminal case is confidential pursuant to subdivision (c)(9)(A)(i) or (c)(9)(A)(v) of this rule that pertains to a plea agreement, substantial assistance agreement, or similar court record, and that constitutes a serious and imminent threat to either the safety of a person or an active criminal investigation, may be made in the form of a written motion captioned "Restricted Motion to Determine Whether a Court Record Is Confidential." As to any motion made under this subdivision, the following procedure shall apply:

(A) The existence of the restricted motion made under this subdivision shall not be indicated on a publicly accessible index or progress docket. All court records that are the subject of such a motion must be treated as confidential by the clerk pending the court's ruling upon the motion.

(B) 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.

(C) The provisions of subdivisions (e)(3)(A)–(G), (e)(6), and (e)(7) 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.

(D) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (e)(4) unless directed by the court.

(4) This subdivision (f) does not apply to records of the judicial branch deemed confidential under subdivisions (c)(1)–(c)(8) or (c)(10).

(5) Requests to seal or expunge criminal history records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

In order to eliminate unnecessary cross-referencing within the subdivisions of Rule 2.420, the Joint Committee (based on substantial input from the Criminal Procedure Rules Committee) believes that consideration should be given to re-consolidating the provisions applicable to criminal cases with the general civil and appellate subdivisions. The limited concern addressed in subdivision (f) is crucial and must be included in some fashion within Rule 2.420; however, this provision should be an exception to the general procedure applicable to all cases (both civil and criminal), rather than adopting two separate subdivisions pertaining only to criminal proceedings.

Issue 12: ***(New consideration) Whether proposed subdivision (g) is intended to apply to all appellate proceedings (including appellate proceedings in circuit court) and, if so, whether the title of subdivisions (e) and (f) should be changed.***

The Joint Committee believes that proposed subdivision (g) should govern all appellate proceedings in all courts, including appellate proceedings in circuit court (such as administrative reviews and county-to-circuit appeals). Therefore, the Joint Committee recommends that the title of subdivisions (e) and (f) be changed to refer to “Trial Court Records.”

Respectfully submitted on September 2, 2008.

/s/ Scott M. Dimond
Scott M. Dimond
Chair, Rules of Judicial
Administration Committee
2665 S. Bayshore Drive, #PH-2B
Miami, Florida 33133-5448
Tel: 305/374-1920
Florida Bar No.: 995762

/s/ John F. Harkness, Jr.
John F. Harkness, Jr.
Executive Director
The Florida Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300
Tel: 850/561-5600
Florida Bar No.: 123390

/s/ John S. Mills
John S. Mills
Chair, Appellate Court Rules Committee
865 May Street
Jacksonville, Florida 32204-3310
Tel: (904)350-0075
Florida Bar No.: 107719

CERTIFICATION OF FONT COMPLIANCE

I certify that this report was prepared in 14-point Times New Roman font.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was furnished by United States mail to The Honorable Judith Kreeger, Chair, Commission on Access to Court Records, c/o Office of the State Court Administrator, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1900; Steve Henley, Office of the State Court Administrator, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399-1900; Carol M. Touhy, Volusia County Courthouse, 101 N. Alabama Ave., DeLand, FL 32724; Barbara A. Petersen and Adria E. Harper, 336 E. College Ave., Tallahassee, FL 32301; Carol Jean LoCicero and Deanna K. Shullman, 400 N. Ashley Dr., Tampa, FL 33602; Lucy A. Dalglish, Gregg P. Leslie, and Matthew B. Pollack, 1101 Wilson Blvd., Suite 1100, Arlington, VA 22209; Robert Dewitt Trammell, P.O. Box 1799, Tallahassee, FL 32302; Arthur I. Jacobs, P.O. Box 1110, Fernandina Beach, FL 32035-1110; and Penny H. Brill, 1350 N.W. 12th Ave., Miami, FL 33136, on September 2, 2008.

/s/ J. Craig Shaw
J. Craig Shaw
Staff Liaison to Rules of Judicial Administration Committee
The Florida Bar
Florida Bar No. 253235