

IN THE SUPREME COURT OF FLORIDA

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

**COMMENTS OF
RULES OF JUDICIAL ADMINISTRATION COMMITTEE
REGARDING CHANGES TO RULE 2.420
PROPOSED BY THE COMMITTEE ON ACCESS
TO COURT RECORDS**

Scott M. Dimond, Chair, Rules of Judicial Administration Committee (RJA Committee), and John F. Harkness, Jr., Executive Director, The Florida Bar, submit these comments of the RJA Committee to a petition filed by the Supreme Court Committee on Access to Court Records (“Access Committee”), which contains proposed revisions to Rule of Judicial Administration 2.420. These comments have been approved by members of the RJA Committee by a vote of 39 to 0 and by the Executive Committee of The Florida Bar Board of Governors by a vote of 10 to 0.

The Access Committee filed the above-referenced petition on September 2, 2008. On October 13, 2008, this Court issued a Publication Notice soliciting comments on the Access Committee’s petition. The following comments address the Access Committee’s proposed amendments to Rule 2.420 contained in that petition. Many of the RJA Committee’s suggested amendments to the Access Committee’s proposed version of the rule (set forth in Appendix A attached to these comments¹) previously were addressed by the RJA Committee in comments on this matter that also were filed on September 2, 2008, which should be read in conjunction with these comments (the RJA Committee’s September 2nd comments were addressed to an earlier draft of the Access Committee’s proposal, which differs in a few respects from the proposal in the Access Committee’s September 2nd filing). These suggested amendments are replicated in Appendix A, together with one additional proposed change to subdivision (e)(8) that is discussed below.

¹The version of Rule 2.420 set forth in Appendix A is in legislative format and shows the RJA Committee’s proposed changes to the Access Committee’s September 2nd proposed rule. To illustrate clearly what the proposed changes are, the comparison contains a “clean” version of the Access Committee’s proposal (as if it were the current text of the rule) and shows the changes to that version proposed by the RJA Committee.

When examining the proposal submitted by the Access Committee, the RJA Committee revisited three areas of concern that also were discussed in the RJA Committee's comments filed on September 2, 2008. In those comments, the RJA Committee noted it had not yet had an opportunity to fully consider those concerns. In subsequent discussions, the RJA Committee has come to the following conclusions:

- In subdivision (e)(1), the Access Committee proposal provides that only the information subject to the motion, not the motion itself, must be treated as confidential pending the court's ruling on the motion, which represents a change from a prior version of the Access Committee's proposal. The RJA Committee has discussed this matter at several meetings and has consistently concluded that, barring special circumstances, only the information subject to the motion should be maintained as confidential in a civil matter pending a ruling on the motion. Because the Access Committee's latest proposal is consistent with the RJA Committee's previously stated position on this issue, no further amendments are suggested.
- In subdivisions (e)(2) and (e)(5), the Access Committee's proposal allows "any person" (as opposed to the more restrictive term "any party") to request that the court conduct all or part of a hearing on the respective motions in camera. The RJA Committee has concluded that expanding the ability to request an in camera inspection from the parties to also include nonparties does not appear to have any foreseeable disadvantages. Indeed, such broader access could be appropriate and beneficial where a third party's records are the materials under consideration. Therefore, the RJA Committee agrees with the Access Committee's proposal in this regard.
- In subdivision (e)(8), the Access Committee's version of the rule provides: "Upon the request of persons seeking access, any Motion to Determine the Confidentiality of Court Records or any Motion to Vacate under this rule shall be deemed a priority case under rule 2.215(g)." The RJA Committee recommends that this subdivision be deleted in its entirety. The Committee believes the number of cases in which priority case status is to be granted under Rule 2.215(g) is already too expansive and

that Rule 2.420 already contains time requirements specifically designed to address any potential concerns regarding the timeliness of the process.

WHEREFORE, the RJA Committee requests that the Court consider the comments of the RJA Committee to the Access Committee's petition, and amend Rule 2.420 as outlined in Appendix A attached hereto.

Respectfully submitted on January 12, 2009.

/s/ Scott M. Dimond

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

/s/ John F. Harkness, Jr.

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

CERTIFICATION OF FONT COMPLIANCE

I certify that these comments were 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 January 12, 2009.

/s/ J. Craig Shaw

J. Craig Shaw

Staff Liaison to Rules of Judicial Administration Committee

The Florida Bar

Florida Bar No. 253235