

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 FLORIDA SUPREME COURT AND 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 this response of the RJA Committee to proposals relating to Rule of Judicial Administration 2.420. This response has been approved by members of the Rules of Judicial Administration Committee by a vote of 15-2 with 1 abstention, and approved by the Executive Committee of The Florida Bar Board of Governors by a vote of 10-0.

I. BACKGROUND

This response addresses two proposals:

- (1) The “Invitation to Comment” issued by the Supreme Court Committee on Access to Court Records (“Access Committee”), which contains proposed revisions to Rule of Judicial Administration 2.420 (*see* Appendix A). The text of the proposed rule contained in that Invitation has since been amended; the most recent version of the Access Committee’s proposed revision to the rule supplied by the Access Committee to members of the RJA Committee is set forth in Appendix B.
- (2) The “Publication Notice” issued by this Court on February 8, 2008, that contains the RJA Committee’s proposed amendments to Rule 2.420 and this Court’s alternative proposed amendments to Rule 2.420. That Notice is set forth in Appendix C. The Notice generated comments from several interested parties. Those comments are set forth in Appendix D and are addressed herein beginning on page 12. In particular, the Notice led to the filing of a

Comment from the Appellate Court Rules Committee (*see* Appendix E) in which the Committee raised numerous questions about the Court's proposed amendments to the rule and requested additional time to study the issue within the framework of a special workgroup (the "Joint Committee") consisting of members of various rules committees (including the RJA Committee) and members of the Access Committee. That Joint Committee met several times over the past month and examined both the Court's February 2008 proposed version of Rule 2.420 and the Access Committee's successive versions of the rule, and is filing a separate report on these issues. Participation by some members of the RJA Committee in the Joint Committee's discussions has resulted in a number of the proposed edits by the RJA Committee to the Access Committee's original version also being incorporated into the Access Committee's latest version that are discussed at length below. However, the Access Committee's latest version had some changes proposed by the Access Committee that the RJA Committee has *not* had the opportunity to review. (As is restated at the conclusion of this Report, the RJA Committee is hopeful that when the Access Committee files its final work product in the near future, the Court will publish that work product for comment.) Those changes by the Access Committee made to date but not yet addressed by the full RJA Committee include, but are not necessarily limited to, the following:

- In subdivision (e)(1), the current Access Committee proposal provides that the motion itself as well as the information subject to the motion must be treated as confidential pending the court's ruling on the motion. The RJA Committee's rule proposal and the Access Committee's original proposal reviewed earlier by the RJA Committee required that only the information subject to the motion, and not the motion itself, be maintained as confidential in a civil matter pending a ruling on the motion. The RJA Committee has consistently concluded that, barring special circumstances, the motion itself should not be maintained as confidential in a civil matter as now suggested by the Access Committee.
- In subdivisions (e)(2) and (e)(5), the RJA Committee's rule proposal and the Access Committee's original proposal allowed

any party to request that the court conduct all or part of a hearing on the respective motions in camera. The current Access Committee proposal changes the term “party” to “person.”

- In subdivision (e)(8), the Access Committee’s current version created a new provision that was neither in its original proposal nor in the RJA Committee’s rule proposal. It 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).”

II. RESPONSE TO INVITATION TO COMMENT

Turning now to the “Invitation to Comment” issued by the Access Committee (Item (1), page 1, *supra*), the RJA Committee proposes various amendments to the Access Committee’s proposal. The amendments are discussed immediately below, with the RJA Committee’s suggested changes to the Access Committee’s suggested changes (as of late July 2008) to the rule noted in *bold italics*.

- In subdivision (b)(4), the RJA Committee proposes the following changes:
 - (4) “Confidential,” as applied to information contained within a record of the judicial branch, means that such information is *either: (i) exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order; or (ii) exempt from disclosure under the Florida Public Records Act but subject to no statutory prohibition against the showing of such information.* As applied to information contained within a court record, ~~the term~~ “exempt” means that such information is confidential. Confidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule. Restriction of access to confidential information shall be implemented in a manner that does not

restrict access to any portion of the record that is not confidential.

The subcommittee felt that “Confidential” should be defined to incorporate both the concept of materials that are confidential pursuant to Florida’s Constitution and those that are subject to similar restrictions under the Florida Public Records Act.

- In subdivision (c), the RJA Committee proposes the following changes:

(c) [~~Exemptions~~Confidential and Exempt Records. Court records recognized as being confidential by law or court rule under subdivision (c)(7) or (c)(8), or deemed confidential by court order pursuant to subdivision (c)(9), shall not be released to any person except as permitted by law, court rule, or order of the court. To the extent reasonably practicable, restriction of court access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential. The following records of the judicial branch shall be confidential: [no change to rest of subdivision]

The RJA Committee sought to clarify that confidentiality restrictions apply both to records that are confidential by operation of law or statute as provided under subdivision (c)(7) or (c)(8), as well as to records determined to be confidential by a court pursuant to subdivision (c)(9). The Committee further sought to clarify that confidentiality restrictions should be tailored narrowly so as to avoid, to the extent practicable, affecting any information in a particular record that is not confidential.

- In subdivision (d), the RJA Committee proposes the following changes to the title:

(d) [~~Procedure for Filing Records~~Procedures for Determining Confidentiality of Court Records.

The RJA Committee felt that the proposed new title is more descriptive of the purpose of the subdivision.

- In subdivision (d)(1), the RJA Committee proposes the following changes:

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. [A filer at the time of filing shall: indicate whether any confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed; identify the provision of subdivision (d)(1)(B) of this rule that applies to the identified information; and identify the precise location of the confidential information within the document being filed. The clerk of court shall review filings identified by filers as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under the identified provision in subdivision (d)(1)(B). In the event the clerk determines that such information is not subject to confidentiality under the identified provision, the clerk shall notify the filer in writing within 5 days of filing and shall maintain the information as confidential for 7 days from the day such notice is served.] ***The following information shall be maintained as confidential:***

(A) information described by any of subdivisions (c)(1) through (c)(6) of this rule,

(B) information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution under any of the following statutes or as they may be amended or re-numbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat.

(ii) Adoption records. § 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit, and credit card numbers in court records. § 119.0714(1)(i)–(j), (2)(a)–(e), Fla. Stat. (Unless redaction is requested pursuant to 119.0714(2), this information is exempt only as of January 1, 2011.)

(iv) HIV test results and patient identity within ~~the HIV~~ those test results. § 381.004(3)(e), Fla. Stat.

(v) Sexually transmitted diseases — test results and identity within ~~the~~those test results. § 384.29, Fla. Stat.

(vi) Birth ~~&and~~ death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), 382.025(1)(a), Fla. Stat.

(vii) Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(viii) Identifying information in clinical mental health records under the Baker Act. § 394.4615(7), Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individual clients of substance abuse service providers. § 397.501(7), Fla. Stat.

(x) Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(xi) Estate inventories. § 733.604(1), Fla. Stat.

(xii) Victim's address in domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(xv) Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

(xvi) Grand jury records. Ch. 905, Fla. Stat.

(xvii) Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)–(4), Fla. Stat.

(xviii) Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat.

(xix) Information disclosing the identity of persons subject to tuberculosis proceedings and records of the Department of Health in suspected tuberculosis cases. §§ 392.545, 392.65, Fla. Stat.

The RJA Committee felt that, structurally, a portion of (d)(1) should be included in (d)(2), such that (d)(1) dealt with the obligations of the clerk to recognize confidentiality of the enumerated materials while (d)(2) dealt with the obligation of a litigant filing a document containing any of the enumerated confidential materials. The Committee also is proposing editorial changes to the list of items enumerated in subdivision (d)(1)(B).

- In subdivision (d)(2), the RJA Committee proposes the following rewrite of the material transferred from the Access Committee's version of (d)(1):

(2) Any person filing any document shall, at the time of filing, indicate whether any confidential information described in subdivision (d)(1)(B) of this rule is included

within the document being filed, identify the provision of subdivision (d)(1)(B) of this rule that applies to the identified information, and identify the precise location of the confidential information within the document being filed. The clerk of court shall review filings identified by filers as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under the identified provision in subdivision (d)(1)(B). If the clerk determines that such information is not subject to confidentiality under the identified provision, the clerk shall notify the person who filed the document in writing within 5 days of the filing and thereafter shall maintain the information as confidential for 10 days from the day such notice is served.

The RJA Committee felt that 10 days, rather than 7 days, was a more appropriate notice period in conjunction with a clerk's decision that materials need not be treated with confidentiality. The remainder of the revisions are editorial; for example, the Committee felt that "filer" was inelegant and that the language "person who filed the document" was more proper.

- In subdivision (d)(3) (renumbered from (d)(2) in the Access Committee's version), the RJA Committee proposes the following changes:

~~(2)~~(3) Any person filing a document *with the court* shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule *notwithstanding that such information is not itemized at subdivision (d)(1) of this rule.* A person filing information that ~~[the filer]~~*he or she* believes to be confidential but that is not described in subdivision (d)(1) of this rule may request that the information be maintained as confidential by ~~[submitting]~~*filing* a "Motion to Determine the Confidentiality of Court Records" under the procedure ~~[provided]~~*set forth* in subdivision (e). Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivision (e).

These revisions are editorial.

- In subdivisions (e)(1) through (e)(3), the RJA Committee proposes the following changes:

(de) Request to Make Determine [the] Confidentiality of Circuit and County Court Records in Noncriminal Cases Confidential.

(1) A request to ~~make~~determine the confidentiality of circuit and county court records in noncriminal cases ~~confidential~~ under subdivision (c)(9) must be made in the form of a written motion captioned “Motion to Make Determine [the] Confidentiality of Court Records ~~Confidential.~~” A motion made under this subdivision must:

(A) identify the particular court records or portion of a record that the movant seeks to ~~make~~have determined as confidential with as much specificity as possible without revealing the information [~~to be made determined confidential~~]subject to the confidentiality determination; and

(B) specify the bases for ~~making~~determining *that* such court records [~~to be~~]are confidential; and

(C) set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential.

Any motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is ~~being~~ made in good faith and is supported by a sound factual and legal basis. [~~Any motion made pursuant to this subdivision and all eCourt records that are~~]Information that is the subject of such a motion ~~made under this subdivision~~ must be treated as confidential by the clerk pending the court’s ruling on the motion. Notwithstanding any of the foregoing, the court may not [~~make confidential~~]determine that the case number, docket number, or other

number used by the clerk's office to identify the case file is confidential.

(2) Except when a motion filed under subdivision ~~(d)~~(1) represents that all parties agree to all of the relief requested, the court must, as soon as practicable but no later than 30 days after the filing of a motion under this subdivision, hold a hearing before ruling on the motion. Whether or not any motion filed under subdivision ~~(d)~~(1) is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any ~~party~~person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)~~[(9)(A)]~~. The moving party shall be responsible for ensuring that a complete record of any hearing held ~~pursuant to~~pursuant to this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. The court may in its discretion require prior public notice of the hearing on such a motion in accordance with the procedure for providing public notice of court orders set forth in subdivision ~~(d)~~(4) or by providing such other public notice as the court deems appropriate.

(3) Any order granting in whole or in part a motion filed under subdivision ~~(d)~~(1)(e) must state the following with as much specificity as possible without revealing the information made~~[that may be confidential]~~subject to the confidentiality determination:

(A) The type of case in which the order is entered;

(B) The particular grounds under subdivision ~~(e)~~(9)(A)(c) for ~~making~~determining the court recordsinformation to be confidential:

(C) Whether any party's name ~~is to be made~~ [may be] is determined to be confidential and, if so, the particular pseudonym or other term to be substituted for the party's name;

(D) Whether the progress docket or similar records generated to document activity in the case are determined to be [made] confidential;

(E) The particular ~~court records information~~ that ~~are to be made~~ may be is determined to be confidential;

(F) ~~The names~~ Identification of those persons who are permitted to view the confidential ~~court records information~~;

(G) That the court finds that: (i) the degree, duration, and manner of confidentiality ordered by the court [is] are no broader than necessary to protect the interests set forth in subdivision ~~(e)(9)(A)(c)~~; and; (ii) no less restrictive measures are available to protect the interests set forth in subdivision ~~(e)(9)(A)(c)~~; and

(H) That the clerk of the court is directed to publish the order in accordance with subdivision ~~(d)~~(4).

The RJA Committee wishes to clarify that, at times, only a portion of a court record would be subject to confidentiality rather than the entire record. The balance of the subcommittee's revisions are editorial or for purposes of clarification.

- In subdivisions (e)(4) and (e)(5), the RJA Committee proposes the following changes:

(4) Except as provided by law or court rule, notice must be given of any order granting *in whole or in part* a motion made under subdivision ~~(d)~~(1) as follows. Within 10 days following the entry of the order, the clerk of court must post a copy of the order on the clerk's website and in a prominent, public location in the courthouse. The order must remain posted in both locations for no less than 30 days. *This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).*

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision ~~(d)~~(3), the request must be made ~~in the form of~~ by a written motion, filed in that court, that

states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties in the action with a copy of the motion. [~~In the event that~~ ***If*** the subject order [~~specifies~~ ***determines*** that the names or addresses of one or more parties are ~~to be made~~ confidential, the movant must state prominently in the caption of the motion “Confidential Party — Court Service Requested.” When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to the parties in such a way as ~~to not~~ to reveal the confidential information to the movant. Except when a motion filed under this subdivision represents that all parties agree to all of the relief requested, the court must hold a hearing ~~before ruling~~ on the motion. ***Regardless of whether or not*** any motion filed under this subdivision is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any ~~party~~ person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A). The movant shall be responsible for ensuring that a complete record of any hearing held under this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. ***This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).***

The RJA Committee wishes to clarify that the clerk’s obligations in connection with posting orders apply only when a judicial determination of confidentiality is at issue. The balance of the proposed revisions are editorial.

III. RESPONSES TO COMMENTS TO FEBRUARY 2008 PUBLICATION NOTICE

Turning next to the Comments filed by various interested persons (Item (2), page 1, *supra*), the RJA Committee has the following responses:

1. Comments filed April 2, 2008, by Diane Matousek, Clerk, 7th Judicial Circuit (see Appx D, pp. D-1—D-7).

- a. Clarify Whether Rule Applies to the Motion Itself. The comment suggests that the current phrasing of the rule creates an ambiguity as to whether the motion itself is subject to confidential treatment by the clerk. The RJA Committee disagrees, and believes that the rule as drafted makes very clear that both the motion itself and any documents referenced in the motion are subject to confidentiality.
- b. Require the Filer to Identify Subject Documents with Greater Specificity. The RJA Committee was amenable to the comment's suggestion that the filer of a motion pursuant to Rule 2.420(e) should be required to identify subject documents with reasonable specificity. And while the Committee felt that it was not necessary to dictate exactly what information need be identified, which might vary depending upon what materials were at issue, the Committee would not oppose some indication in the rule that identification of documents must be made "with sufficient specificity as is necessary for the clerk to identify the subject materials."
- c. Reject the Rule as Unnecessarily Burdensome to Court Clerks. The comment suggests that it is simply too time-consuming and expensive for court clerks to treat existing court records as confidential in response to a motion filed pursuant to proposed Rule 2.420(e). While the RJA Committee is sympathetic to the burden that the rule imposes, the Committee nonetheless believes that it would be impossible to achieve the goals of the proposed rule without requiring that materials subject to a motion filed under this rule be treated as even in the civil context. In short, the Committee does not believe that the concerns expressed in the Clerk's comments outweigh the concerns that prompted the proposed Rule 2.420(e), and does not believe that the Clerk's proposal should be adopted.

2. Comments filed April 1, 2008, on behalf of various Florida Media Organizations (see Appx D, pp. D-8–D-20).

- a. Reject the proposal to treat as confidential the Rule 2.420(e) motion itself. As an initial matter, it should be noted that the RJA Committee's original proposal in connection with Rule 2.420 dealt with both civil and criminal matters, and that in that first proposal the motion itself was not to be treated as a confidential document by the clerk. But that proposal was rejected by this Court to the extent that it was intended to apply to the criminal arena, and the Court requested that the rule be revised to reflect the particular requirements of criminal practice. As such, the RJA Committee understood its mandate from the Court to be to craft a rule that required that certain types of information in the criminal context be treated differently, *i.e.*, potentially treated with a heightened degree of confidentiality.

During its consideration of the proposed criminal sealing revisions, the Committee has heard from two very distinct camps on this issue. Proponents of public access, of which the Florida Media Organizations are one, together with the Florida Public Defenders Association (as well as criminal defense attorneys generally), represent one camp. The Florida criminal prosecutors represent the other. Generally speaking, the media organizations and the defense attorneys reject the notion that the Rule 2.420(e) motion itself be treated as a confidential document, either because it interferes with constitutionally protected public access to court records (in the case of the media organizations) or because it unfairly (and perhaps unconstitutionally) limits defense counsel's ability to fully defend an accused client (in the case of the defense counsel). The RJA Committee believes that both of those concerns are valid.

On the other hand, the prosecutors have identified a circumstance where the physical safety — and possibly the very lives — of confidential police informants may be jeopardized if certain types of information is not protected from public disclosure. Plainly the Committee — and the Court — consider that concern to be valid as well.

Notwithstanding that both camps raise valid concerns, the RJA Committee believes that the concerns of the two groups are, simply, incompatible.

But in light of the Court's original mandate, the RJA Committee drafted a proposed Rule 2.420(e) that primarily addresses the concerns of the prosecutors, albeit tempered with procedural safeguards that the Committee believes mitigates against the harm to the public access concerns raised by the media organizations and defense counsel. Which is to say, the Committee understood that it had been instructed by the Court to address those circumstances where the mere filing of a motion to determine the confidentiality of court records (e.g., in the case of a motion dealing with a confidential informant) would be enough to alert those who seek to do physical harm to an informant to the existence of the informant. Simply, in such circumstances, if the new rule were intended to protect the well-being of such informants, the motion itself would need to be made confidential subject to the Court's consideration of the issue.

Because the RJA Committee recognizes that, for this limited category of information, the public's access to court records would be compromised, the Committee's proposal includes additional procedural safeguards to ensure that the confidentiality regime is as narrow as is reasonably necessary to protect the safety of the persons whose identity is the subject of the motion. Accordingly, the proposal requires the motion be exempt from public access only for a short period of time until the judge rules on the motion. The proposal also provides the judge with discretion to hold a hearing as necessary, as well as to limit the amount of time criminal court records remain exempt from public access. And the court record would be exempt only for 120 days, unlike civil cases which may be permanently exempt from public access, although that time limit can be periodically extended by the court.

Thus, in proposing the procedure for sealing criminal court records, the RJA Committee sought to balance, as much as possible, those competing and incompatible concerns, *i.e.*,

balance the public’s right to access records against the safety concerns that would necessitate a request to exempt criminal records from public access. In doing so, it should be noted that the RJA Committee had assistance from the Rules of Criminal Procedure in crafting a procedure to meet the unique needs of criminal proceedings, and the rule as proposed was approved by the Rules of Criminal Procedures Committee. The RJA Committee believes that — subject to the initial value judgment discussed herein — proposed Rule 2.240(e) addresses the concerns raised by the Court in a fair and balanced fashion.

- b. Revise the construction of proposed rule to avoid reference to existing civil rule. In drafting proposed Rule 2.420(e) , the RJA Committee considered the choice of either restating those portions of the civil court records procedures (found in 2.420(e)) that would also apply to criminal court records, or simply referring to the civil procedure. The Committee determined that for the purpose of streamlining the rules and avoiding unnecessary verbiage, it was appropriate simply to refer to the civil procedure to the extent that it was the same as the procedure to be followed in the criminal context, and then specify those portions of the procedure that would be different in the criminal context.
3. Comments filed April 1, 2008, by The First Amendment Foundation (see Appx D, pp. D-21–D-25). See the response by the RJA Committee to Item 2.a. above.
4. Comments filed April 7, 2008, by The Reporters Committee for Freedom of the Press (see Appx D, pp. D-26–D-29). See the response by the RJA Committee to Item 2.a. above.
5. Comments filed March 28, 2008, by the Florida Public Defender Association (see Appx D, pp. D-30–D-39). The Florida Public Defender Association, Inc (“FPDA”) was concerned that the rule did not address the alteration of court records and that the failure to do so could be read as implicit permission for some to continue such a practice. The FPDA suggested that the Court incorporate language into the rule similar to the language in section 839.13 of

the Florida Statutes, which expressly prohibits the alteration of court records.

While the RJA Committee agrees the unlawful alteration of court records should be prohibited, the purpose of the amendment to Rule 2.420 proposed by the Committee was the creation of an appropriate process for making certain court records confidential in criminal cases. The Committee was not requested to, and did not undertake to, address the issue of the unlawful alteration of court records and believes the amendment suggested by the FPDA to be beyond the scope of its current efforts and the proposed amendment.

6. Comments filed April 15, 2008, by the Florida Criminal Procedure Rules Committee (see Appx D, pp. D-40–D-42). The Criminal Procedure Rules Committee filed a comment recommending that proposed Rule 2.420(g)(4) (in the Court’s version of 2.420) be deleted. The RJA Committee concurs with this comment.
7. Comments filed April 15, 2008, by the Florida Prosecuting Attorneys Association (see Appx D, pp. D-43–D-57). The Florida Prosecuting Attorneys Association filed a comment recommending adoption of the proposed amendments to Rule 2.420 filed by the RJA Committee as published on February 28, 2008. The RJA Committee concurs with this comment.

WHEREFORE, the RJA Committee requests that the Court consider the response of the Committee to the Access Committee’s latest version of Rule 2.420 and to Comments filed to the Court’s February 2008 proposal, and amend Rule 2.420 as outlined in this report. However, in view of the fact that the Committee has not had the opportunity to fully review some of the substantive changes made by the Access Committee (as described on pages 2 and 3 of this Report), and because it is the understanding of the RJA Committee that the Access Committee may further amend its proposal before that proposal is finally filed with the Court, the RJA Committee urges the Court to publish the version of the rule as finally submitted by the Access Committee and allow interested parties to comment further on the proposal.

Respectfully submitted on September 2, 2008.

/s/ Scott M. Dimond

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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

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