

**IN THE SUPREME COURT OF FLORIDA**

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

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**Case No. SC07-2050**

**SUPPLEMENTAL REPORT OF THE  
APPELLATE COURT RULES COMMITTEE**

The Florida Appellate Court Rules Committee (the “ACRC”) files this Supplemental Report to highlight and to clarify the amendment to Florida Rule of Appellate Procedure 9.100(d) that the ACRC submitted for the Court’s consideration in connection with and through the 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 filed on September 2, 2008 (the “Joint Comment”). The proposed amendment would govern appellate review of orders denying or granting access to records or proceedings of lower tribunals.

The proposed amendment to Rule 9.100(d) was referenced in the Joint Comment on pages 6 to 8 and at footnote 4, and was presented in full-page format as Appendix F to the Joint Comment. The proposed amendment to Rule 9.100(d) (and an accompanying Committee Note) is attached to this supplemental report in legislative format (Appendix A) and in dual-column format (Appendix B). The ACRC’s consideration of this matter in the form of a memorandum was previously filed with this Court as pages E-16 through E-28 in Appendix E of the September

2, 2008 Comment referred to above. As part of this Supplemental Report and to provide additional background, minutes of the June 20, 2008 ACRC meeting are included as Appendix C to reflect the debate and the 30-8 vote in favor of the proposed amendment. The proposed rule was not published due to time constraints, but it was approved by a 10-0 vote of the Executive Committee of The Florida Bar Board of Governors.

By filing this Supplemental Report, the ACRC hopes to direct the Court's attention to the importance of providing and preserving within the Florida Rules of Appellate Procedure the comprehensive review of orders granting or denying public access to court records under Rule 2.420. The work of the ACRC on this issue was consistent with the recommendations of the Committee on Access to Court Records (the "Access Committee") and was performed in conjunction with the Access Committee.

The proposed amendment recommends several important changes to Rule 9.100(d) (as detailed in the ACRC's proposed Committee Note and the memorandum referred to above). Consistent with the Court's dual commitment to public access and privacy, the most important change recommended by the ACRC is the adoption of a new construct that would explicitly recognize the right to review of both orders granting confidentiality as well as orders upholding public access.

In addition, the proposed amendment to Rule 9.100(d) requires the clerk and the lower tribunal to treat the subject records as confidential until any stay request is determined. This procedure is consistent with the approach to confidentiality contained in the main revisions proposed to Rule 2.420.

Because of the sensitivity of these issues, the proposed amendment preserves the “good faith” filing requirement for a stay request, but adds a sanction provision.

Finally, the proposed amendment clarifies three aspects of the general procedure for seeking review under Rule 9.100(d). First, it adds a 30-day filing requirement present in other writ petitions. Second, it eliminates (as unnecessary because of Rule 9.320) any statement regarding oral argument. Third, it reinforces the constitutional importance of these review proceedings by requiring that the review of all such orders — both those upholding public access as well as those preserving confidentiality — be expedited.

Respectfully submitted on July 8, 2009 by

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## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was furnished by United States mail on July 8, 2009, to

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## **CERTIFICATION OF COMPLIANCE**

I certify that these rules were read against *West's Florida Rules of Court – State* (2009).

I certify that this report was prepared in compliance with the font requirements of *Fla. R. App. P. 9.210(a)(2)*.

/s/ Krys Godwin

Krys Godwin, Staff Liaison

Florida Appellate Court Rules Committee

The Florida Bar

Florida Bar No. 2305