

Carol Jean LoCicero  
Direct Dial: (813) 984-3061  
clocicero@tolawfirm.com

Reply To Tampa

March 27, 2008

**VIA E-MAIL and U.S. MAIL**

The Honorable Thomas D. Hall  
Clerk of the Court  
Florida Supreme Court  
500 South Duval Street  
Tallahassee, Florida 32399-1927

Re: Amended Triennial Cycle Report of the Appellate Court Rules  
Committee, Case No.: SC08-147  
Comment to Proposed Rule 9.050 of the Rules of Appellate Procedure

Dear Mr. Hall:

We write on behalf of Media General Operations, Inc., d/b/a *The Tampa Tribune*, WFLA-TV/News Channel 8 and WMBB-TV/News Channel 13, and NYT Management Services, Inc., publisher of the (Sarasota) *Herald-Tribune*, (Lakeland) *Ledger*, *Gainesville Sun* and (Ocala) *Star-Banner* (collectively the "Media"). We appreciate the Court's willingness to consider our comments concerning the recommendations of the Appellate Court Rules Committee. Specifically, we offer limited comment on proposed Rule 9.050 of the Florida Rules of Appellate Procedure.

As we have previously acknowledged, we believe that "minimization" efforts – which address inclusion of personal information not necessary to a court's determination of the matter before filing as opposed to denials of access to information contained in court files – can be undertaken consistent with the policies of open access pursuant to the First Amendment to the United States

Constitution and Article I, Section 24 of the Florida Constitution. We also understand that the Committee's intent is not to limit access to information contained in court files, but to limit the inclusion of certain unnecessary information in court files in the first instance.

We write primarily to provide a few suggested revisions to the proposed rule to ensure that the Court's charge, the Committee's intent and Florida's commitment to access are fully served. For the Court's convenience, a redlined version of the proposed rule containing our suggested revisions is attached to this comment.

### Redaction Terminology

First, while we appreciate the Committee's removal of the word "redaction" in much of the rule following the Media's initial comments to the Committee, the continued use of the term "redaction" in the last sentence of sub-division (a)(2) still creates some ambiguity. Specifically, the phrase "it shall be redacted" could be interpreted as a mandatory instruction to clerks of the appellate courts to redact "personal identifying data" included in appellate filings.

Under Chapter 119, Florida Statutes, which generally applies to executive branch records, the term "redact" is defined to mean "to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information." § 119.011(12), Fla. Stat. (2007). Pursuant to the Act, the custodian of a requested record has authority to "redact" that portion of a record which is exempt from disclosure. *See* § 119.07(1)(d), Fla. Stat. (2007). The Clerks of Court, of course, are familiar with this concept of redaction because exemptions requiring redaction apply directly to official records maintained by the clerks. In situations under our open records laws where redaction is permitted, the concept generally is equated with concealing something contained in the public record.

Here, however, the Committee intends to place the burden on the filer to excise material from certain appellate papers *before* filing them in the court file. But using the term "redact" suggests that the Clerks of Court have an obligation to review and remove personal identifying data from briefs. Such an interpretation would not be consistent with the Committee's purpose of limiting merely the parties' inclusion of extraneous information in court files in the first place and would create administrative and legal problems for clerks. Moreover, redaction of

court records is contrary to Florida law, which requires disclosure in the absence of an exemption. *E.g.*, *Barron v. Florida Freedom Newspapers*, 531 So. 2d 113, 116 (Fla. 1988) (recognizing Florida's commitment to the right of access to court proceedings and records); Art. I, § 24, Fla. Const. (expressing constitutional right of access to records of the judicial branch and permitting only the legislature to create closure provisions).

To avoid any confusion, we propose that the last sentence of subdivision (a)(2) be revised to accomplish the Committee's purpose without using the ambiguous term "redaction." We suggest that sentence read: "If personal identifying data must be referred to, only so much data as is necessary to the Court's consideration shall be included." This alternative language clarifies that the onus is on the filing party to include only partial digits, as appropriate, and not the clerks.

#### Personal Identifying Data

Second, we suggest that the definition of "personal identifying data" as currently drafted is overbroad and ambiguous. The rule defines the phrase to be "data used to identify a specific person for governmental or business purposes" and contains a *non-exclusive* list of the type of information intended to fall into that category. The rules do not provide guidance as to what "governmental and business purposes" are and what information (other than that specifically enumerated in the proposed rule) constitutes "data used to identify a specific person." Thus, litigants must necessarily guess as to what information about individuals might implicate the concerns that prompted the proposed rule. For example, parties' names could identify specific persons for governmental and business purposes. Does the proposed rule contemplate that names be excluded from appellate filings? We do not believe that this is the intent of the Committee or the rule and propose removal of the non-limiting language in the proposed rule to help alleviate the definitional issues. While parties could choose to exclude other information from their appellate filings consistent with the proposed rule, the rule would not suggest that there exist undefined categories of information expected to be identified by parties and excluded -- but for which no specific guidance is provided.

Moreover, the scope of the types of information included in the definition of "personal identifying data" exceeds that which is required to address any legitimate concerns. While policy reasons might support limiting the filing of full bank

account, credit card and brokerage account numbers, there is no expressed public policy in favor of restricting access to other information on the list. Indeed, it is hard to imagine why information like telephone numbers, email addresses, birthdays, and home addresses raise significant concerns. Much of this information is easily accessible in a number of ways -- both on and off the Internet. We fear that by discouraging litigants from including such information in appellate filings, the proposed rule in effect creates exceptions to the public's right of access not contemplated by the policies and laws of this State. Moreover, much of that information is vital to the Media and others in verifying the accuracy of information gathered about a particular individual. Elimination of this information from court files may lead to less accuracy in reporting by increasing the risk that the Media identify the wrong individual when reporting on matters from appellate proceedings.

Again, we are grateful to the Court for the time it has devoted to these issues and for the opportunity we have had to participate in this process. A redlined version of the Media's proposed changes to the proposed rule is attached to this comment. Please let us know if we can provide any further assistance to the Court as it considers these issues.

Very truly yours,

THOMAS & LOCICERO PL

---

Carol Jean LoCicero  
Deanna K. Shullman

cc: Janet Coats  
Mike Connelly  
Larche Hardy  
Richard Maas  
David E. McCraw, Esq.  
Don North

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded  
via U.S. Mail this 27<sup>th</sup> day of March, 2008, to:

Steven L. Brannock, Chair  
Appellate Rules Committee  
Holland & Knight LLP  
Post Office Box 1288  
Tampa, FL 33601-1288

Lawrence E. Sellers, Jr., Esq.  
Holland & Knight LLP  
Post Office Box 810  
Tallahassee, FL 32302-0810

John F. Harkness Jr., Exec. Director  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

Nancy S. Isenberg, Esq.  
Senior Trial Court Staff Attorney  
Room 342, Leon County Courthouse  
301 South Monroe Street  
Tallahassee, FL 32301

Joanna A. Mauer  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300

Louis K. Rosenbloum, Esq.  
Louis K. Rosenbloum, P.A.  
4300 Bayou Boulevard, Suite 36  
Pensacola, FL 32503-2671

Gregory S. Grossman, Esq.  
Astigarraga, Davis Mullins  
& Grossman  
701 Brickell Avenue, 16th Floor  
Miami, FL 33131

Harry Morrison, Jr., General Counsel  
Florida League of Cities, Inc.  
301 South Bronough Street, Suite 300  
Tallahassee, FL 32301

---

Carol Jean LoCicero  
Florida Bar No. 603030

## **RULE 9.050. MAINTAINING PRIVACY OF PERSONAL DATA**<sup>1</sup>

**(a) Application.** Unless otherwise required by another rule or permitted by leave of court, the following personal data shall not be included in briefs, petitions, replies, motions, notices, responses, and attachments filed with the court:

**(1) Names of Minor Children.** If a minor child must be referred to, either a generic reference or the initials of that child shall be used. For purposes of this rule, a minor child is any person under the age of 18 years, unless otherwise provided by statute or court order.

**(2) Personal Identifying Data.** Personal identifying data includes data used to identify a specific person for governmental or business purposes, including ~~but not limited to, dates of birth, home addresses, social security numbers, driver's license numbers, passport numbers, telephone numbers, email addresses, computer user names, passwords, and financial, bank, brokerage, and credit card numbers.~~ If personal identifying data must be referred to, ~~it shall be redacted to the extent possible to protect the privacy of the referenced person~~ only so much of the data as is necessary to the Court's consideration shall be included.

**(b) Limitation.** This rule does not require redaction of personal data from the record or appendices.

---

<sup>1</sup> The Media's suggested revisions to the proposed rule are underlined. Proposed redactions from the proposed rule are indicated in strikethrough text.