

IN THE SUPREME COURT OF FLORIDA

**IN RE: IMPLEMENTATION OF
COMMITTEE ON PRIVACY AND COURT
RECORDS RECOMMENDATIONS -
AMENDMENTS TO THE FLORIDA
RULES OF CIVIL PROCEDURE; THE
FLORIDA RULES OF CRIMINAL
PROCEDURE; THE FLORIDA PROBATE
RULES; THE FLORIDA SMALL CLAIMS
RULES; THE FLORIDA RULES OF
APPELLATE PROCEDURE; AND THE
FLORIDA FAMILY LAW RULES**

CASE No. SC08-2443

**COMMENTS OF FLORIDA CRIMINAL JUSTICE ORGANIZATIONS
RELATING TO PROPOSED RULE 2.425**

The Criminal Procedure Rules Committee (the CPRC), by and through its Chair, Robert T. Strain, and John F. Harkness, Jr., Executive Director of The Florida Bar, file this composite of comments relating to proposed Florida Rule of Judicial Administration 2.425.

As noted in the “All Rules Committees” Corrected Response to Court’s May 19, 2010 Order, filed on October 19, 2010, the proposed exemption for traffic and criminal proceedings presented in subdivision (b)(7) of proposed rule 2.425 “was requested by the Fast Track Subcommittee for the Criminal Procedure Rules Committee. The Criminal Procedure Rules Committee voted 24-0 in favor of this rule at its September 24, 2010, meeting. This subdivision also has been widely supported by both prosecutors and defense attorneys, and The Fast Track

Subcommittee is in the process of attempting to obtain additional input from other interested groups.”

The interested groups, comprised of Florida organizations involved in the criminal justice system, have responded individually to the CPRC regarding the proposed subdivision (b)(7) exemption as follows:

1. Comment of the Florida Association of Criminal Defense Lawyers; dated August 26, 2010.
2. Resolution of the Miami-Dade County Association of Chiefs of Police; dated September 1, 2010.
3. Comment of the Florida Prosecuting Attorneys Association; dated October 11, 2010.
4. Comment of the Florida Public Defender Association, Inc.; dated October 20, 2010.
5. Comment of the Florida Bar Criminal Law Section; dated October 28, 2010.

The comments and resolution are attached. In recognition of the composition and diversity of the referenced groups and their individual efforts, the CPRC, on their behalf, respectfully requests that this composite filing be accepted as timely and as formal comments to the October 19, 2010, “All Rules Committees” final report on proposed Florida Rule of Judicial Administration 2.425.

Respectfully submitted on _____.

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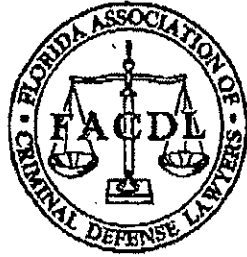
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August 26, 2010

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Re: Proposed Rule 2.425

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Dear Mr. Duncan:

The Florida Association of Criminal Defense Lawyers ("FACDL") submits the following comments in support of the August 23, 2010, revision of proposed Florida Rule of Judicial Administration 2.425. Subsection (b)(7) of the August 23, 2010, revision exempts traffic, criminal, juvenile, and dependency proceedings from the redaction requirements of the proposed rule. FACDL supports this exemption in all traffic, criminal, and juvenile cases because inclusion of these cases within the redaction requirements of the rule will substantially prejudice the ability of defense counsel to properly investigate and defend their clients. Specifically, identifying and locating witnesses is generally one of the most important duties of defense counsel. *See, e.g., Light v. State*, 796 So. 2d 610, 616 (Fla. 2d DCA 2001) ("We cannot agree with the trial court's conclusion that Mr. Light's trial counsel was not ineffective for failing to make any efforts to locate potential witnesses. Counsel has a duty to make reasonable investigations or to make a reasonable decision that particular investigations are unnecessary. Mr. Light's counsel admittedly conducted no independent investigation of this case to uncover potential witnesses. By placing this nine-time convicted felon on the stand under these circumstances, without other available evidence to buttress his defense, counsel was acting 'outside the wide range of professionally competent assistance.'" (citations omitted) (footnote omitted). If the redaction requirements set forth in subsection (a)

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are applied in traffic, criminal, and juvenile cases, it will make it extremely difficult – if not impossible – for counsel to identify and locate witnesses. For example, if a witness has a common name and resides in a city with a large population, locating the witness without a specific date of birth would be impossible.

Based on the foregoing, FACDL supports the August 23, 2010, revision of proposed rule 2.425.

Sincerely,

/s/ Brian L. Tannebaum

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FEC Railway Police
Federal Reserve Bank
Florida City Police
Florida Dept. of Law Enforcement
Florida Highway Patrol
Florida Wild Life Commission
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Hialeah Police
Homestead Police
Indian Creek Public Safety
Key Biscayne Police
LEO Foundation
MDCC School of Justice
Medley Police
Miami Beach Police
Miami-Dade Schools Police
Miami Shores Police
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Miami-Dade Police
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North Miami Police
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Pinecrest Police
South Florida Money Laundering
Strike Force
South Miami Police
Sunny Isles Police
Surfside Police
Sweetwater Police
U.S. Customs Service
U.S. Bureau of Alcohol,
Tobacco and Firearms
U.S. Department of State
U.S. Marshals Service
U.S. Secret Service
Village of El Portal Police
Virginia Gardens Police
West Miami Police

September 29, 2010

Mr. Douglas Duncan, Esq.
Chair, Fast Track Subcommittee
Criminal Procedure Rules Committee
Roth and Duncan, P.A.
515 N. Flagler Drive, Suite 325
West Palm Beach, FL 33401

Dear Mr. Duncan:

Recently, members of the Miami-Dade County Association of Chiefs of Police were made aware of a proposal to amend a rule of the Florida Rules of Judicial Administration that would have the effect of requiring the removal of information critical to the operations of law enforcement from the criminal court record. In support of the need for the exemption of criminal and traffic proceedings from the operation of this proposed rule the Dade Chiefs have unanimously passed the attached resolution. We would trust that by our vote it may assist in your efforts. Should there be any additional assistance that I or the Dade Chiefs Association can provide, please do not hesitate to contact me. Thank you.

Respectfully,

Clarke P. Maher
President (MDCACP)

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Douglas Duncan



Miami-Dade County Association of Chiefs of Police

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Indian Creek Village, FL 33154

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Chief Rafael Hernandez
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Chief Matthew Boyd
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Ret. Chief Irving Heller
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Florida Wild Life Commission
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LEO Foundation
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Miami Shores Police
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Pinecrest Police
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U.S. Bureau of Alcohol,
Tobacco and Firearms
U.S. Department of State
U.S. Marshals Service
U.S. Secret Service
Village of El Portal Police
Virginia Gardens Police
West Miami Police

WHEREAS, the Miami-Dade County Association of Chiefs of Police is committed to improving law enforcement throughout Miami-Dade County, Florida, and

WHEREAS, the Miami-Dade County Association of Chiefs of Police recognizes and supports the efforts of agencies working together in a cooperative effort to enhance public safety in Miami-Dade County, and

WHEREAS, the Miami-Dade County Association of Chiefs of Police recognizes the importance to the safety of the community of ensuring that records maintained by law enforcement, prosecutors and the courts accurately identify the subjects of criminal investigations and prosecutions, and

WHEREAS, the Miami-Dade County Association of Chiefs of Police recognize that the Procedural Rules Committees of the Florida Bar are considering proposals for limitations upon filing of sensitive information in court files, specifically, proposed rule 2.425, and

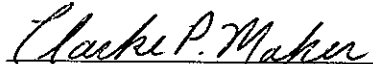
WHEREAS, many forms of personal identifying information needed by law enforcement, and routinely included within arrest affidavits, uniform traffic citations, arrest or search warrants, investigative subpoenas, charging documents, and other law enforcement reports, may be included in these limitations, and

WHEREAS, the Miami-Dade County Association of Chiefs of Police supports the efforts of the Criminal Procedure Rules Committee for exempting criminal and traffic proceedings from the operation of proposed rule 2.425, Florida Rules of Judicial Administration, and

WHEREAS, the Miami-Dade County Association of Chiefs of Police encourages the members of the Florida Bar Rules Committees and the Supreme Court of Florida to exempt criminal and traffic proceedings from the operation of proposed rule 2.425, Florida Rules of Judicial Administration and

NOW THEREFORE, BE IT RESOLVED THAT THE MIAMI-DADE COUNTY CHIEFS OF POLICE IMPLORE THE SUPREME COURT OF FLORIDA TO EXEMPT CRIMINAL AND TRAFFIC PROCEEDINGS FROM THE OPERATION OF PROPOSED RULE 2.425, AND ENCOURAGES ALL MEMBER AGENCIES TO SEND COMMENTS TO THE CRIMINAL PROCEDURE RULES COMMITTEE IN SUPPORT OF THIS RESOLUTION.

Passed and adopted unanimously on this 1st day of September, 2010.


Clarke P. Maher, President

**FLORIDA PROSECUTING ATTORNEYS
ASSOCIATION**



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Douglas Duncan

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October 11, 2010

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STEPHEN B RUSSELL
Twentieth Circuit

West Palm Beach, FL 33402

TREASURER
GLENN HESS
Fourteenth Circuit

Dear Mr. Duncan,

STATE ATTORNEYS

On behalf of the Florida Prosecuting Attorneys Association (FPAA) and Florida's 20 State Attorneys, I write to support the revision of proposed Florida Rule of Judicial Administration 2.425 that would include as Subdivision (b)(7) the exemption of all "traffic and criminal proceedings."

William N. Meggs
Second Circuit

While Florida's prosecutors are keenly aware of the concern that exists regarding the potential dissemination of private information and are supportive of reasonable efforts to maintain the confidentiality of the material addressed in the proposed Rule, the FPAA also believes that doing so must balance the unique needs of the criminal justice community. Documents and pleadings filed in traffic and criminal proceedings serve not only the purpose of initiating and maintaining the court's jurisdiction and processing of a case but also become the basis for actions including arrest, extradition, bond, and other proceedings that implicate other law enforcement and criminal justice agencies, often on a nationwide basis. As such and in order to avoid mistakes in identification that could result from incomplete or mis-leading information, it is vitally important that complete and detailed identifiers such as social security numbers, driver's license numbers, and other material be readily available to those who need to act upon them.

Robert L. Jarvis, Jr.
Third Circuit

Angela Corey
Fourth Circuit

Brad King
Fifth Circuit

Bernie McCabe
Sixth Circuit

R.J. Larizza
Seventh Circuit

Lawson Lamar
Ninth Circuit

Jerry Hill
Tenth Circuit

Of additional concern is the discovery obligation Florida Rules of Criminal Procedure impose on prosecutors. The State is required to provide complete information to the defense and may not withhold anything. The State also may not make assumptions concerning what the defense will consider more or less important or choose to do with the information provided. Redaction of identifying information is at odds with this mandate.

Katherine Fernandez Rundle
Eleventh Circuit

Earl Moreland
Twelfth Circuit

Finally, it is likely that the volume of pleadings filed in the State's criminal and traffic courts and the number of prosecutors handling them result in significantly higher case per attorney ratios than exist in other divisions of the courts. The burden of redaction that would be created without the exemption is considerable. Especially in light of staff shortages that exist now because of budgetary constraints, this is a consideration of importance to the State Attorneys.

Mark Ober
Thirteenth Circuit

Michael McAuliffe
Fifteenth Circuit

Dennis Ward
Sixteenth Circuit

The Florida Prosecuting Attorneys Association therefore supports the blanket exemption unanimously approved by the Fast Track Subcommittee.

Michael Satz
Seventeenth Circuit

Sincerely,

Norman Wolfinger
Eighteenth Circuit

William P. Cervone
State Attorney, 8th Judicial Circuit
President, Florida Prosecuting Attorneys Association

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WPC/am

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P.O. Box 11057 • 103 North Gadsden Street • Tallahassee, Florida 32302

October 20, 2010

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Chair, Fast Track Subcommittee
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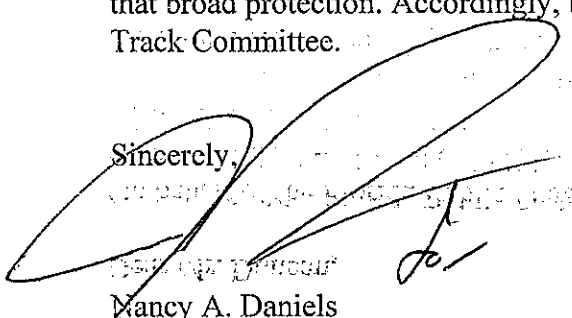
Re: Proposed Florida Rule of Judicial Administration 2.425

Dear Mr. Duncan,

On behalf of the Florida Public Defender Association, I'm writing to express our support for proposed rule 2.425 - but only if it includes subdivision (b)(7) exempting "all traffic and criminal proceedings." We feel strongly that criminal court and traffic court cases must be exempted from the rule's blanket protection of private information in order to avoid mistakes in identification that could greatly prejudice criminal defendants. In addition, requiring the truncation of identifying information in all criminal and traffic case documents would create a large workload burden on our offices because of the tremendous volume of cases we handle.

We do support the proposed rule's effort to protect the private information of court litigants. For the reasons noted, however, we feel that it is critical to exempt criminal and traffic cases from that broad protection. Accordingly, the FPDA supports the exemption approved by the Fast Track Committee.

Sincerely,



Nancy A. Daniels
President, FPDA

NAD/aw

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October 28, 2010

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Roth & Duncan
P.O. Box 770
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Re: Proposed Rule 2.425

Dear Mr. Duncan:

The Criminal Law Section of The Florida Bar has reviewed and considered the August 23, 2010 revision of proposed Florida Rule of Judicial Administration 2.425. We submit the following comments in support of the revision:

Subsection (b)(7) of the August 23, 2010 revision exempts traffic and criminal proceedings from the redaction requirements of the proposed rule. The Criminal Law Section of The Florida Bar joins the Florida Prosecuting Attorneys Association, the Miami-Dade County Association of Chiefs of Police, the Florida Public Defender Association, Inc., and the Florida Association of Criminal Defense Lawyers in supporting the exemption with respect to criminal and traffic cases. The Criminal Law Section supports the exemption because imposing redaction requirements in such cases will prejudice the ability of prosecutors and defense lawyers to perform their functions in the criminal justice system effectively.

The Criminal Law Section agrees with the Florida Association of Criminal Defense Lawyers that identifying and locating witnesses is one of the most important duties of defense counsel. If the redaction requirements are applied in traffic and criminal it will be difficult if not impossible for counsel to identify and locate witnesses.

The Criminal Law Section agrees with the Florida Prosecuting Attorneys Association that it is critical to the prosecutorial function to avoid errors in identification that could result from incomplete or misleading information in court files. Complete and detailed identifying information should be readily available to those who need to act upon such information. Further, given the volume of pleadings handled in criminal and traffic cases, it would place an undue burden on prosecutors to require redaction.

Criminal Law Section

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Mr. Douglas Duncan
Subcommittee Chair
October 28, 2010
Page Two

The Criminal Law Section agrees with the Florida Public Defender Association, Inc., that criminal and traffic cases must be exempted from the rule's blanket protection of private information in order to avoid mistakes in identification that could greatly prejudice criminal defendants; and that requiring redaction of identifying information in all criminal and traffic case documents would create a large workload burden on public defender offices due the tremendous volume of cases they handle.

For all of the foregoing reasons, while the Criminal Law Section fully recognizes the need to protect the private information of persons litigating in courts, we are of the opinion that it is critical to exempt criminal and traffic cases from that broad protection. The Criminal Law Section of The Florida Bar supports the exemption approved by the Fast Track Committee.

Very truly yours,

Sheryl J. Lowenthal
Chair, Criminal Law Section
Of The Florida Bar

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