

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO.: SC08-2443**

**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**

**RESPONSE OF SUBCOMMITTEE ON ACCESS TO COURT RECORDS TO JOINT COMMENT OF FLORIDA BAR RULES COMMITTEES**

The Florida Court Technology Commission Subcommittee on Access to Court Records (the Access Subcommittee), by and through its undersigned Chair, the Honorable Judith L. Kreeger, Senior Judge in the Eleventh Judicial Circuit, acting pursuant to this Court's orders of May 19 and June 14, 2010, submits this response to comments filed jointly by various of the rules committees of The Florida Bar on October 15, then augmented by a corrected filing on October 19, 2010. The Access Subcommittee is authorized by Administrative Order AOSC09-3, In Re: Florida Courts Technology Commission, Subcommittee on Access to Court Records (Jan. 27, 2009), to act as successor to the Committee on Access to Court Records for purposes of responding to comments filed in this and other related rules petitions.

The comments of the Bar rules committees uniformly support creation of a general rule under the Rules of Judicial Administration as necessary to prevent needless filing of personal identifying information with the courts. The rules committees are similarly in agreement with respect to many, though not all, matters which might properly be excluded from or redacted in documents filed with the courts. Notwithstanding essential agreement, there are differences among the various bar committee responses regarding both substantive matters and format.

Though submitting a joint filing, each of the Bar rules committees speaks separately to its own proposals. As a result, the Bar rules committees' response does not always indicate consensus with respect to numerous overlapping concerns. Still, the Access Subcommittee is grateful for the comments of each of the rules committees and, in numerous instances, agrees the suggested changes would be an improvement over its initially proposed text.

The Access Subcommittee recommends the Court adopt proposed Rule 2.425 as submitted with revisions by the Rules of Judicial Administration Committee, and unanimously approved by the Executive Committee of the Florida Bar Board of Governors. See proposed rule text at Appendix B of the Bar rules committees' Corrected Response to Court's May 19, 2010 Order.

Most rules committees agreed to creation of a single rule within the Rules of Judicial Administration and did not recommend substantial changes. The Civil Procedure Rules Committee, however, submitted a number of recommendations for changes to proposed Rule 2.425. The changes recommended by the Civil Procedure Rules Committee can be found on pages 7-13 of the Bar rules committees' Corrected Response. The justification for these changes can be found on pages 9-11. To summarize, the Civil Procedure Rules Committee's recommendations fall into the following categories:

- (1) delete subdivision (a)(3), which defines five categories of information not to be filed without authorization under subdivision (b), statute, rule of court, or court order;
- (2) remove telephone numbers from those categories of information to be truncated;
- (3) collapse enumerated account numbers into more general categories;
- (4) add patient and health care numbers;
- (5) remove subdivision (a)(5) concerning email addresses, user names, passwords, and personal identification numbers (PIN);
- (6) remove subdivision (a)(6), a catch-all for other sensitive information;

- (7) remove the exceptions for “traffic and criminal proceedings” and “information which is relevant and material to an issue before the court”; and
- (8) reorganize the rule.

The Access Subcommittee appreciates the thoughtful input by the Civil Procedure Rules Committee, but believes the proposed Rule 2.425, as it appears in Appendix B of the Bar rules committees’ Corrected Response, is the better approach for the following reasons. First, the proposed Rule has been vetted by the Rules of Judicial Administration Committee, which has representatives from each of the various rules committees. The committee vote was 25-0-2. Second, the Executive Committee of the Florida Bar Board of Governors has unanimously approved the proposed rule. Third, any re-write of Rule 2.425 at this stage will require a re-vetting of the new proposal, which is sure to engender reargument of suggested additions, deletions, and wordsmithing, and further delay this Court’s consideration of the rule. Fourth, many of the recommendations are form over substance. Fifth, deleting the exemption for “traffic and criminal proceedings” directly conflicts with the recommendations of both of those committees. Finally, acknowledging all differences may not be susceptible to resolution in the absence of a determination by the Court, the Access Subcommittee believes the text

proposed by the Rules of Judicial Administration Committee affords all parties an opportunity to succinctly clarify their respective positions at oral argument.

For all of these reasons, the Access Subcommittee recommends the adoption of proposed Rule 2.425 as proposed by the Rules of Judicial Administration Committee.

Respectfully submitted this \_\_\_\_ day of November 2010.

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THE HONORABLE JUDITH L. KREEGER  
Senior Judge, Eleventh Judicial Circuit  
Chair of the Subcommittee on Access to Court Records  
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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail to the following persons this \_\_\_\_ day of November 2010:

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### **CERTIFICATE OF TYPEFACE COMPLIANCE**

I further certify this response has been prepared in MS Word using Times New Roman 14-point font which complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2).

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The Honorable Judith L. Kreeger