

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
FLORIDA RULES OF JUDICIAL
ADMINISTRATION**

Case No. SC10-2242

COMMENTS OF THE FLORIDA PUBLIC DEFENDER ASSOCIATION

The Florida Public Defender Association, Inc. (“FPDA”) respectfully offers the following comments on the proposed amendments to Florida Rule of Judicial Administration 2.420.

The FPDA consists of the twenty elected public defenders, hundreds of assistant public defenders, and support staff. As appointed counsel for indigent criminal defendants, FPDA members are deeply interested in the rules of procedure designed to ensure the efficiency of the criminal justice system.

The FPDA supports the proposed amendment to include presentence investigation reports and any attached psychological or psychiatric evaluations in the list of documents that clerks will automatically designate and maintain as confidential. The FPDA believe that the Subcommittee on Access to Court Records should have gone further and included all pretrial mental health evaluations. The FPDA believes that Judge May’s minority report and the comments filed by the Task Force on Substance Abuse and Mental Health Issues (“Task Force”) correctly set forth why these evaluations are, and have always

been, treated as confidential by the clerks. The FPDA endorses and adopt those comments.

The only thing the FPDA would add to those thoughtful comments is to emphasize to this Court the practical importance of this issue. Although the exact numbers are hard to estimate, on a statewide basis trial courts order probably tens of thousands of mental health evaluations each year, the vast majority of for competence to proceed pursuant to Florida Rule of Criminal Procedure 3.210(b). The mental health professionals merely file their reports with the court.

Additionally, state attorneys and public defenders also order psychological evaluations. These attorneys often disclose and file those reports with the court. While the FPDA has no way of estimating the number, the experience of our members is that those numbers would be significant.

Heretofore, the clerks' offices would automatically maintain and handle all those evaluations as confidential for all the reasons in Judge May's minority report and the Task Force's comments. Under Rule 2.420, court-appointed mental health professionals should technically file a "Motion to Determine Confidentiality of Court Records" under subsection (f). *See Fla. R. Jud. Admin. 2.420(d)(3)*. Subsection (f), however, incorporates subsection (e), which requires that such a motion include "a signed certification by the party or the attorney for the party making the request that the motion is made in good faith and is supported by a

sound factual and legal basis.” Fla. R. Jud. Admin. 2.420(e)(1). Mental health professionals are not lawyers, however, and cannot make such certifications.

Therefore, they are unlikely to do anything other than file their reports and defense counsel will have to file the motions (assuming defense counsel receives a copy of the report). Additionally, assistant public defenders (and assistant state attorneys and all other attorneys working in the criminal justice system) will also have to file these motions for every evaluation they order and file.

Even if the defense and state agree that the reports should be confidential (thereby obviating the need for a hearing, *see* Rule 2.420(f)(1)(A)), the motion still has to be calendared, and the court has to issue a written ruling within 10 days. *See* Fla. R. Jud. Admin. 2.420(f)(1)(B).

All of this effort—filing a motion, service of that motion, calendaring that motion, hearing that motion, and rendering a written order on that motion—will be necessary to accomplish what is right now efficiently and automatically done by the clerks without the need to expend any additional time and effort by either the attorneys or the court. In effect, by not including all pretrial mental health evaluations, the Subcommittee on Access to Court Records recommends that this Court make the administration of the criminal justice system less effective and efficient. Judge May’s minority report and the Task Force’s comments explain the legal basis for including all pretrial mental health evaluations in Rule

2.420(d)(1)(B), and this Court should do so. It is never a good time to make the criminal justice system less efficient, but to do so in a time a fiscal austerity is especially imprudent.

Respectfully submitted,

Florida Public Defender Association, Inc.
By: Nancy Daniels, President
Public Defender
Second Judicial Circuit of Florida

CERTIFICATES OF SERVICE AND FONT SIZE

I hereby certify that a copy of these comments were served by mail on the Honorable Judith L. Kreeger, Committee Chair, 2301 North Bay Road, Miami Beach 33140 on this ____ day of January 2011.

I hereby certify that these comments were printed in 14-point Times New Roman.

NANCY DANIELS