

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.420(d)(1)(B)**

CASE NO.: 14-

**FAST TRACK REPORT OF THE RULES OF JUDICIAL
ADMINISTRATION COMMITTEE**

Murray B. Silverstein, Chair, Rules of Judicial Administration Committee (“Committee”), and John F. Harkness, Jr., Executive Director, The Florida Bar, file this fast track report, under Florida Rule of Judicial Administration 2.140, in response to the Clerk of Court’s May 23, 2014 letter to The Florida Bar regarding 2014 Legislation Potentially Affecting Court Rules and Jury Instructions. (Appendix D.) The Committee reviewed three of the bills marked as possibly impacting public records and recommends the addition of two new subdivisions in Rule 2.420(d)(1)(B), Public Access to Judicial Branch Records, due to these legislative actions. The rule amendments were approved by the full Committee and, as required by Rule 2.140(b)(2), by Executive Committee of The Florida Bar Board of Governors; the approvals for the two parts were not done simultaneously, so the votes for each amendment are detailed in Appendix A.

As these proposed amendments are the result of legislation that is in effect and to ensure these proposals are submitted to the court as soon as possible, the proposed amendments were not published for comment prior to this filing. The proposed amendments are included in full-page format (Appendix B) and two-column format (Appendix C).

The two laws that came into effect and that the Committee recommends be included in the exception list in the Rule 2.420(d)(1)(B) are Chapters 2014–67 (Appendix E) and 2014–174 (Appendix F), Laws of Florida. The Committee also

reviewed Chapter 2014–172, Laws of Florida, but determined that no rule amendment was necessary; this decision was previously shared with the Clerk of Court.

Chapter 2014–67, Laws of Florida, became effective July 1, 2014, and created section 916.1065, Florida Statutes, which provides that forensic behavioral health evaluations filed with the court are confidential and exempt from both section 119.07(1), Florida Statutes, and section 24(a), Article I of the Florida Constitution. To ensure compliance with this amendment, the Committee proposes adding forensic behavioral health evaluations to the list of confidential court records itemized in Rule 2.420(d)(1)(B); this addition would create subdivision (d)(1)(B)(xxi).

Chapter 2014–174, Laws of Florida, became effective on June 20, 2014, and created section 397.334(10)(a), Florida Statutes, which details the specific documents that contain information relating to a participant or a person considered for participation in a treatment-based drug court program that is to be confidential and exempt from section 119.07(1), Florida Statutes, and section 24(a), Article I of the Florida Constitution. Specifically, the documents that are to remain confidential are: records created or compiled during screening for participation in a program; records created or compiled during substance abuse screenings; behavioral health evaluations; and, subsequent treatment status reports. The new legislation also details the exemptions that allow disclosure of such records, and sets the repeal date of the law at October 2, 2019, in accordance with the Open Government Sunset Review Act. Given the Sunset date and the manner in which this legislation was initially interpreted, the subcommittee first recommended that no rule amendment be created. However, the Committee was asked to review this decision, which it did in the October meeting, and even though there is a Sunset date, the Committee felt it wise and necessary for practitioners to propose an amendment to Rule 2.420(d)(1)(B) to include the reference to this law; this addition would create subdivision (d)(1)(B)(xxii).

The amendment proposed for Rule 2.420(d)(1)(B)(iv) is merely editorial as the statute referenced in the current rule is incorrect.

For the Court's ease of reference, Rule 2.420 is currently before the Court in *In Re: Amendments to Florida Rule of Judicial Administration 2.420*, case number SC14-569. In that case, the Florida Court Technology Commission has proposed amendments to Rule 2.420(a)–(b) to implement public access to electronic records and other court records. The proposed amendments filed in SC14-569 do not conflict with the amendments suggested in this case.

Respectfully submitted on December 8, 2014.

/s/ Murray B. Silverstein

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CERTIFICATION OF COMPLIANCE

I certify that this rule was read against West's *Florida Rules of Court – State* (2014 Rev. Ed.).

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

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