

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO RULE 2.420,
FLORIDA RULES OF JUDICIAL
ADMINISTRATION**

CASE NO. SC14-

**PETITION OF THE FLORIDA COURTS TECHNOLOGY COMMISSION
TO AMEND FLORIDA RULE OF JUDICIAL ADMINISTRATION 2.420**

The Florida Courts Technology Commission (Commission) by and through its Chair, the Honorable Lisa T. Munyon, Circuit Judge, Ninth Judicial Circuit, files this petition proposing amendments to Florida Rule of Judicial Administration 2.420, to conform the rule with the Court’s recent administrative order (AOSC14-19) allowing public access to electronic and other court records to be governed by the *Standards for Access to Electronic Court Records* and the *Access Security Matrix* adopted by the Florida Supreme Court.

JURISDICTIONAL STATEMENT

This proposal is submitted pursuant to the authority granted the Commission under Florida Rule of Judicial Administration 2.236(b)(13), to “recommend statutory and rule changes or additions relating to court technology and the receipt, maintenance, management, use, securing, and distribution of court records by electronic means.” The Commission, pursuant to its authority, petitions this Court to adopt the proposed amendments to Rule of Judicial Administration 2.420, pursuant to the Court’s rule amendment authority as provided in article V, section 2(a), of the Florida Constitution.

BACKGROUND

The Supreme Court imposed a limited moratorium on access to electronic court records due to concerns about public access to sensitive and confidential information contained in these records. The Court imposed the moratorium as a means to protect this information from inappropriate or improper disclosure until sufficient safeguards could be established. In re: Committee on Privacy and Court Records, Fla. Admin. Order No. AOSC04-4 (Feb. 12, 2004).

The proposed amendments to Rule 2.420 are intended to implement Recommendation Twelve of the 24 recommendations proposed to the Court by the Committee on Privacy and Court Records in its August 15, 2005, report, Privacy, Access, and Court Records, Report and Recommendations of the Committee on Privacy and Court Records. Most of these recommendations were adopted in In re: Implementation of Report and Recommendations of the Committee on Privacy and Court Records, Fla. Adm. Order No. AOSC06-20 (June 30, 2006), available at <http://www.flcourts.org/core/fileparse.php/255/urlt/sc06-20.pdf>.

Recommendation Twelve proposed a revision of Rule 2.420 to “allow remote access to court records in electronic form to the general public in jurisdictions where conditions are met.” One of the conditions included the development by the Commission, in cooperation with the clerks of court, of uniform technical and substantive standards governing the electronic release of court records, to be adopted by the Court.

In a series of subsequent orders, the Court revised its restrictions on release of electronic court records. In re: Implementation of Report and Recommendations of the Committee on Privacy and Court Records, Fla. Admin. Order No. AOSC06-20 (June 30, 2006); In re: Interim Policy on Electronic Release of Court Records, Fla. Admin. Order No. AOSC06-21 (June 30, 2006); In re: Revised Interim Policy on Electronic Release of Court Records, Fla. Admin. Order No. AOSC07-49 (Sept. 7, 2007).

In the nine years since restrictions on access to electronic records were first imposed, the Court has adopted new rules and amendments to Rule 2.420 to minimize the presence of sensitive and confidential information in court records, require filers to identify and protect confidential information in their pleadings, and narrow the scope of statutory exemptions applicable to court records to a standard list of 20 exemptions subject to automatic redaction by the clerks of court. In re: Amendments to Florida Rule of Judicial Administration 2.420 and the Florida Rules of Appellate Procedure, 31 So. 3d 756 (Fla. 2010); In re: Amendments to Florida Rule of Judicial Administration 2.420, 124 So. 3d 819, 2013 (Fla. 2013); In re: Implementation of Committee on Privacy and Court Records Recommendations – Amendments to the Florida Rules of Civil Procedure, the Florida Rules of Judicial Administration; 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 of Procedure, 78 So. 3d 1045 (Fla. 2011).

During this time period, the Court also adopted standards and rules to implement e-filing and e-service in the trial and appellate courts. In re: Statewide Standards for Electronic Access to the Courts, Fla. Admin. Order No. AOSC09-30 (July 1, 2009); In re: Amendments to the Florida Rules of Civil Procedure, the

Florida Rules of Judicial Administration, the Florida Rules of Criminal Procedure, the Florida Probate Rules, the Florida Small Claims Rules, the Florida Rules of Juvenile Procedure, the Florida Rules of Appellate Procedure, and the Florida Family Law Rules of Procedure – Electronic Filing, 102 So. 3d 451 (Fla. 2012); In re: Amendments to the Florida Rules of Judicial Administration, the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, the Florida Probate Rules, the Florida Rules of Traffic Court, the Florida Small Claims Rules, the Florida Rules of Juvenile Procedure, the Florida Rules of Appellate Procedure, and the Florida Family Law Rules of Procedure – E-mail Service Rules, 102 So.3d 505 (Fla. 2012); In re: Amendments to Florida Rule of Judicial Administration 2.516, 112 So. 3d 1173 (Fla. 2013).

With sufficient measures now in place to protect or exclude sensitive and confidential information from court records, the Commission in 2013 approved the *Standards for Access to Electronic Court Records* and the *Access Security Matrix* (hereinafter “standards” and “matrix”) to govern the release of electronic court records to the general public and specified user groups in accordance with applicable statutes, court rules and court orders. The court adopted the standards and matrix by administrative order on March 20, 2014.

The proposed standards and access security matrix are based upon a model developed by the Manatee County Clerk of Court for a pilot program implemented in 2007. The pilot program was among the recommendations of the Committee on Privacy and Court Records adopted by the Court in AOSC06-20. Under the program, the Manatee County Clerk provided remote electronic access to court records in accordance with carefully delineated access levels and user credentials, as authorized by statute, court rule or court order. Confidential information contained in court records was protected from disclosure by both automated redaction software and by clerk inspection, in accordance with statutory, court rule and court order requirements. In its fourth year of operation, the pilot program was evaluated by the National Center for State Courts (NCSC). The NCSC found the program to be successful, and recommended that it become a permanent court service and that remote electronic access to court records be provided statewide. The Commission in September 2011 voted to remove the “pilot” status from the Manatee County Clerk’s program so that it could operate as a standing court service.

At its August 2013 meeting, the Commission approved use of a statewide certification process, through an “*On-line Electronic Records Access Application*” to assess compliance with the standards and matrix by the clerks of court. Under the certification process, each clerk will participate in a 90-day pilot program to demonstrate compliance with the standards and matrix, requiring review and approval by the FCTC and the Court.

The proposed revisions to amend Rule 2.420 are in line with the Court’s recent administrative order adopting and approving the standards, matrix, and the clerk certification process.

EXPLANATION OF RULE PROPOSALS

The Commission, now offers proposed revisions to amend Rule of Judicial Administration 2.420. The Commission’s proposals are set forth in summary below and in full as appendices. The proposed rule amendments appear first in full-page legislative format in Appendix A, and in a two-column chart with explanations of new and changed text in Appendix B. The proposed revision to the form in the appendix to Rule 2.420 will appear in legislative format only pursuant to the court’s *Guidelines for Rules Submissions (AOSC06-14 Corrected)*, Part IV, (b)(2)(C). Notice of these proposed amendments have not been published.

Current Rule

Current Rule 2.420 governs public access to judicial branch records and describes which documents are considered confidential and exempt, as well as procedures for determining the confidentiality of such records. The rule is titled “Public Access to Judicial Branch Records”. Rule 2.420(a) is a brief description of the scope and purpose of the rule.

Proposed Amendments to Rule 2.420

1. Rule 2.420(a) – Scope and Purpose

The Commission requested the Rules of Judicial Administration Committee (“RJA Committee”) to review, and provide comments in response to the Commission’s proposed amendment to Rule 2.420. The Commission’s original proposal was as follows:

Access to electronic court records shall be governed by the Standards for Access to Electronic Court Records and Access Security Matrix adopted by the Supreme Court. Remote access to electronic court records shall be permitted in counties where the supreme court’s conditions for release of such records are met.

The committee referred the proposed amendment to a subcommittee (hereinafter “RJA subcommittee”) for consideration. The RJA subcommittee approved the proposed amendment with some modification:

(a) Scope and Purpose. Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern the protection of and public access to the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below. Access to all electronic and other court records shall be governed by the Standards for Access to Electronic Court Records and Access Security Matrix, as adopted by the supreme court in Administrative Order No. AOSC14-__ or the then-current Standards for Access. Remote access to electronic court records shall be permitted in counties where the supreme court’s conditions for release of such records are met.

One addition to the Commission’s proposed language by the RJA subcommittee was the phrase “and other court records.” This change applies the standards and matrix to paper as well as electronic court records. Another change by the RJA subcommittee is the specific reference to the administrative order adopting the standards and matrix. The Commission has incorporated these changes into its proposed rule amendments.

The proposed amendment would establish in the scope and purpose subdivision of the rule the public access requirements approved by the Court in its recent administrative order (AOSC14-19) approving the standards and matrix.

2. Rule 2.420 – Public Access to Judicial Branch Records- Title

The RJA subcommittee, in addition, proposed changing the title of Rule 2.420 from “Public Access to Judicial Branch Records” to “Protection of and Public Access to Judicial Branch Records”. The Commission has incorporated this change into its proposed rule amendments.

3. Rule 2.420(b)(3) – Definitions – “Custodian”

The RJA subcommittee proposed correction of a grammatical error contained in subdivision (b)(3), as follows:

(3) “Custodian.” The custodian of all administrative records of any court is the chief justice or chief judge of that court, except that each judge is the custodian of all records that are solely within the possession and control of that judge. As to all other records, the custodian is the official charged with the responsibility of ~~maintaining the office having for~~ the care, safekeeping, and supervision of such records. All references to “custodian” mean the custodian or the custodian’s designee.

The effect of the proposed amendment to Rule 2.420(b)(3), is to improve the clarity of the definition of “Custodian”. The Commission has incorporated this change into its proposed rule amendments.

4. Appendix to Rule 2.420 - Form

The appendix to Rule 2.420 is a form titled *Notice of Confidential Information Within Court Filing*. The RJA subcommittee proposed correcting a typographical error in the form. The word “hereby” is currently written in the rule as “herby” followed by [sic]. The amendment corrects this error. The Commission has incorporated this change into its proposed rule amendments.

RJA Committee and Florida Bar Board of Governors’ Vote

The RJA Committee at its September 26, 2013, meeting approved the RJA subcommittee’s proposed amendments by a vote of 18 in favor and two against. The Florida Bar Board of Governors (BOG) gave final approval to the proposed amendments at its December 13, 2013 meeting and voted 21-15 to recommend approval of the amendments. The notes of the BOG meeting on December 13, 2013, stated that several board members objected to the amendments because the amendments had blanks for the administrative order (AO) that would be proposed to the Court later by the FCTC. At this point that issue is moot because the AO has now been issued and the blanks have been filled in.

WHEREFORE, the Commission respectfully requests this Court to adopt the proposed amendments to Rule of Judicial Administration 2.420 to authorize public access to electronic and other court records in accordance with the standards and matrix adopted by the Court, along with the other amendments to the rule as described herein.

Respectfully submitted this 26th day of March, 2014.

/s/ Lisa T. Munyon
Honorable Lisa T. Munyon, Chair
Florida Courts Technology Commission
Ninth Judicial Circuit
425 N. Orange Ave.
Orlando, FL 32801

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that the foregoing Petition, along with Appendices A and B, have been e-filed through the Portal at www.myflcourtaccess.com for filing with the Clerk of the Florida Supreme Court; and that a true and correct copy of the foregoing has been furnished to those listed below, this 26th day of March 2014, by electronic service through the Portal:

Jon B. Morgan

Circuit Judge
Ninth Judicial Circuit
Chair, Rules of Judicial Administration Committee
2 Courthouse Square, Room 6420
Kissimmee, FL 34741-5487

/s/ Susan Dawson _____
Susan Dawson, Esq.
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CERTIFICATE OF COMPLIANCE

I certify that these rules were read against *West's Florida Rules of Court – State* (2013 Revised Edition).

I certify that this petition has been prepared to comply with the format and font requirements set forth in In Re: Guidelines for Rules Submissions, AOSC06-14 (*Corrected*).

/s/ Susan Dawson _____
Susan Dawson, Esq.

INDEX TO APPENDICES

- A. Proposed Amendments to Rule 2.420
Legislative format
- B. Proposed Amendments to Rule 2.420
Two-column chart