

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO
FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.425(b)(8)**

CASE NO.: 15-

**OUT-OF-CYCLE 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 out-of-cycle report, under Florida Rule of Judicial Administration 2.140(f), in response to the Court’s September 15, 2014, letter. (Appendix C.) Pursuant to the direction of the Court, the Florida Rules of Judicial Administration Committee (Committee) considered, in conjunction with the Criminal Procedure Rules Committee (Criminal Rules Committee) and the Traffic Court Rules Committee (Traffic Rules Committee), “whether the rule 2.425(b)(8) exceptions for filings in criminal and traffic cases can be further narrowed to limit the number of exempted documents.” (Appendix C, p. 2.) As a result of this coordinated work, rule amendments were created and approved by a vote of 28-4 by the full Committee and, as required by Rule 2.140(b)(2), by a vote of 11-0 by The Florida Bar Board of Governors Executive Committee. The rule amendments are attached in full-page format (Appendix A) and two-column format (Appendix B), for the Court’s consideration.

The Committee readily acknowledges the desirability by the Court of limiting the filings which are exceptions to the minimization requirements in subdivision (a) of Rule 2.425. Though the Court asked the Committee to consider if subdivision (b)(8) can be “further narrowed,” after thoughtful consideration, the Committee concurs with the Criminal Rules and Traffic Rules committees that none of the existing exceptions in Rule 2.425(b)(8) can be removed. To remove any of the current exceptions would adversely affect the Florida courts’ handling of criminal and traffic proceedings as the required information ensures correct identification of defendants.

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Rule 3.851(e)(2)(C)(i) (Collateral Relief After Death Sentence has Been Imposed and Affirmed on Direct Appeal; Contents of Motion; Successive Motion) requires a successive motion, based on newly discovered evidence, to include the witness's name, address, and telephone number. Rule 2.425(a)(4)(E) limits the inclusion of a telephone number to the last four digits which is not of benefit in these successive motions.

Rules 3.990 (Sentencing Guidelines Scoresheet), 3.991 (Sentencing Guidelines Scoresheets), and 3.992 (Criminal Punishment Code Scoresheets) require the date of birth of the defendant be included in the form. Rule 2.425(a)(2) requires in filed documents the minimization of dates of birth to the "year of birth." This specific information is necessary for correct criminal sentencing.

Because of these concerns, the Committee recommends two new subdivisions be added to the rule:

RULE 2.425. MINIMIZATION OF THE FILING OF SENSITIVE INFORMATION

(a) [No change]

(b) **Exceptions.** Subdivision (a) does not apply to the following:

(1)–(7) [No change]

(8) In traffic and criminal proceedings

(A)–(G) [No change]

(H) information needed to contact witnesses who will support the defendant's claim of newly discovered evidence under Florida Rule of Criminal Procedure 3.851;

(I) information needed to complete a sentencing scoresheet;

At the suggestion of the Criminal Procedure Committee, the Committee also considered the suggestion that a provision similar to Rule 49.1(f) of the Federal Rules of Criminal Procedure could be added to Rule 2.425, either in addition to or in lieu of the two new exceptions. Rule 49.1(f), *Fed. R. Crim. P.*, allows a party to file under seal with the clerk, without leave of court, an unredacted copy of any document for which a redacted filing has been made.

Federal Criminal Rule 49.1(f) effectively allows any party to undertake over-zealous redaction of a document merely by simultaneously filing an unredacted copy with the clerk. The Committee reviewed this option but determined it would directly contravene the open access mandate of Rule 2.420(a). If such a provision were added, parties would seemingly have an enhanced ability, that these rules do not currently afford them, to withdraw portions of a document from public scrutiny. Moreover, it appears that a provision similar to Federal Criminal Rule 49.1(f) would not be practicable for implementation by the clerks of court in Florida. The typical Florida clerk's office handles a much higher volume of documents, particularly in criminal matters, than do the clerks of the federal district courts. Additionally, the procedures and technological capabilities of the various clerks' offices throughout Florida are not uniform. The Committee also questions whether clerks should be expected to separately maintain what could be a significantly increased number of sealed documents. Thus, though the Committee believes a provision similar to Rule 49.1(f) could be worthy of consideration at some point in the future, it does not see it as a viable option now.

For these reasons, the Committee requests this Court to approve and adopt subdivisions 2.425(b)(8)(H) and (b)(8)(I).

Respectfully submitted on May 15, 2015.

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CERTIFICATION OF COMPLIANCE

I certify that this rule was read against West's *Florida Rules of Court – State* (2015 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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