

**FLORIDA SUPREME COURT
COMMITTEE ON ACCESS TO COURT RECORDS**

FINAL REPORT AND RECOMMENDATIONS

September 2, 2008

FLORIDA SUPREME COURT
COMMITTEE ON ACCESS TO COURT RECORDS

FINAL REPORT AND RECOMMENDATIONS

September 2, 2008

CONTENT

- I. Overview, Charge and Membership of the Committee**
- II. Confidentiality and Rule 2.420**
- III. Minimization of Personal Information**
- IV. Manatee County Pilot Program**
- V. Interim Policy**
- VI. Educational Outreach**
- VII. Additional Implementation Recommendations**

APPENDICES

- A. ADMINISTRATIVE ORDER AOSC06-27: IN RE COMMITTEE ON ACCESS TO COURT RECORDS**
- B. LETTER DATED APRIL 30, 2007**
- C. RULE 2.420 PROPOSED REVISIONS**
- D. PROPOSED REVISIONS SET AGAINST PENDING COURT PROPOSAL**
- E. PROPOSED TERMS AND CONDITIONS FOR MANATEE COUNTY PILOT PROGRAM**
- F. ADMINISTRATIVE ORDER AOSC07-49: IN RE REVISED INTERIM POLICY ON ELECTRONIC RELEASE OF COURT RECORDS**

NOTE: THIS REPORT IS A COMPANION TO TWO SEPARATELY FILED PETITIONS FOR RULE AMENDMENTS, ENTITLED: “PETITION TO AMEND RULE OF JUDICIAL ADMINISTRATION 2.420” AND “PETITION TO AMEND VARIOUS RULES OF COURT.”

I. Overview, Charge and Membership of the Committee

The Committee on Access to Court Records (the Committee) was formed pursuant to Administrative Order AOSC06-27, *In Re: Committee on Access to Court Records*, issued by Chief Justice R. Fred Lewis on August 21, 2006. The Committee was created to advance the implementation of a number of recommendations of the predecessor Committee on Privacy and Court Records (the Privacy Committee). The Privacy Committee had concluded, and the Supreme Court had agreed, that the Florida judicial branch should have as a goal providing electronic access to non-confidential court records when appropriate conditions are met. Administrative Order AOSC06-20, *In Re: Implementation of the Report and Recommendations of the Committee on Privacy and Court Records*.

While it embraced the goal of online availability of court records, the Court also emphasized a cautious and thoughtful approach:

The same technology that offers substantial benefit can bring significant risk. The instantaneous and inexpensive dissemination of information contained in court records enhances accountability and supports efficiency but also poses a potential threat to the privacy interests of individuals and corporations. . . . The challenge for the judicial branch, as noted by the Committee, is “not merely to create an electronic access policy as a companion to an ‘over the counter’ records policy, but to create a blueprint for a comprehensive policy on court records that will serve the public and the courts as they move through the transition from a system of primarily paper records to one of primarily digital records.

Ibid at 4, 5.

Charge.

The charge to the committee included a number of tasks that flowed from recommendations made to the Privacy Committee related to creating the necessary

conditions for electronic public access to court records. Specifically, the Committee was directed to develop proposed rule changes described in recommendations two, eight, twelve, thirteen, sixteen and seventeen of the Privacy Committee report. In addition, the Committee was directed to advise the Florida Court Technology Commission and the Office of the State Courts Administrator regarding the terms and conditions the Committee finds advisable in implementation of a pilot program for access to court records in Manatee County. Finally, the Committee was directed to advise the chief justice regarding the advisability of altering the interim policy on electronic access to court records set out in Administrative Order AOSC06-21, *In Re: Interim Policy on Release of Court Records*.

In addition to the charges in Administrative Order AOSC06-27, the Court subsequently directed the Committee via letter from the Clerk of the Supreme Court, dated April 19, 2007, to review and make recommendations regarding a series of reports submitted by court rules of The Florida Bar committees as well as the Steering Committee on Families and Children in the Court. These reports were submitted to the Court in response to requests that the Court directed to these bodies in August, 2006, regarding implementation of recommendations six, seven, eight, nine and ten of the Privacy Committee report. These recommendations advocated a systematic review of court rules in order to minimize the unnecessary inclusion of personal information in court files.

The Court directed the Committee to submit an interim report that included its recommendations regarding the interim policy by June 1, 2007, a date which the Court subsequently extended to June 15, 2007. The Committee submitted that report.

The Committee consists of fifteen members:

The Honorable Judith L. Kreeger, Chair

Ms. Sharon Olsen Abrams

Ms. Kristin Adamson

Ms. Robin S. Berghorn

The Honorable David Ellspermann

The Honorable Mel Grossman

Mr. Jonathan D. Kaney, Jr.

The Honorable Melanie G. May

Mr. Timothy McLendon

Mr. Paul R. Regensdorf

Mr. Murray Bruce Silverstein

The Honorable Kim A. Skievaski

The Honorable Elijah Smiley

Mr. Walt Smith

The Honorable Charles E. Williams

In addition the Committee was assisted in its work by four non-members who aided the Committee on discrete aspects of its charge. The individuals were the Hon. Lisa Davidson, the Honorable Lydia Gardner, Mr. Larry Turner, and Ms. Judith Hodor. The Honorable Barbara J. Pariente, served as justice liaison.

II. Confidentiality and Rule 2.420

The major task assigned to the Committee was to propose revisions to Rule of Judicial Administration 2.420 (formerly 2.051) to effectuate several recommendations of the Supreme Court Committee on Privacy and Court Records (the Privacy Committee). Principal among these was a recommendation to address the effective scope of Rule 2.420 in terms of its relationship to statutory public records exemptions. (Privacy Report, Recommendation Two) This recommendation followed the conclusion of the Privacy Committee that a central obstacle to implementation of remote electronic access to court records in Florida is that in its present form, the rule is impracticable and inadvisable because it appears to indiscriminately incorporate all statutory exemptions, of which there are more than one thousand.

The Court also directed the Committee to address several other matters in its proposed revisions to Rule 2.420. First, as recommended by the Privacy Committee, the Court directed that Rule 2.420 be amended to clearly provide for the responsibilities of filers when submitting confidential information to the courts. Filing requirements included a certification to the clerk of court, notice to affected non-parties, and a good faith provision that subjects the attorney or party to sanctions. (Privacy Report at 64)

Second, the Privacy Committee noted that there appeared to be some confusion regarding the duty of both courts and clerks of court to protect confidential information:

Whatever the scope of confidentiality is, a necessary condition for the electronic publication of court records is that all confidential information be protected from unauthorized release. The responsibility for protecting confidential information is a constitutional mandate on the judicial branch. It is not a policy option.”

(Privacy Report at 36) The charge to the Committee therefore also directed the Committee to propose revisions to rule 2.420 to clarify that court records defined by the rule as confidential may not be released except as allowed by law.

Absorption and the Scope of Rule 2.420.

Regarding the effective scope of Rule 2.420, a central question, as posed by the Privacy Committee, is “whether the rule incorporates, or absorbs, state exemptions and federal confidentiality, thus making them confidentiality under court rule.” Privacy Report at 29. The rule was adopted in 1992 in anticipation of passage of the Sunshine Amendment of the Florida Constitution. It provides in pertinent part:

(c) Exemptions. The following records of the judicial branch shall be confidential:

...

(8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission.

Upon examination of these provisions, the history of the Sunshine Amendment, and other materials, the Privacy Committee concluded that subdivision 2.420(c)(8) was intended to embrace and does incorporate the statutory exemptions:

The Committee believes that on its face this rule incorporates state statutory exemptions, making exempt information confidential within judicial branch records. The Committee believes that this is the interpretation given to the rule by the Florida Supreme Court in *State v. Buenoano*, 707 So. 2d 714, 718 (Fla. 1998).

(Privacy Report at 30-31 (footnote omitted))

In reaching this conclusion, the Committee relied on *State v. Buenoano*, in which the Court interpreted subdivision 2.420(c)(8) as it relates to several specific statutory exemptions for criminal investigative records. The Court held that the records in question, which were exempt under the statutory exemption, “are likewise exempt under rule [2.420].” *State v. Buenoano* 707 So. 2d at 718.

While the Privacy Committee agreed with the legal conclusion that the rule absorbs all statutory exemptions, it emphasized that this outcome leads to two serious problems. First, the Committee agreed that this result is contrary to Florida’s open records tradition. It further observed that many statutory exemptions are either overbroad or inappropriate when applied to court records. Second, the Committee recognized the practical concern raised by clerks of court and others: the task of fully applying all statutory exemptions to all court records would be enormously burdensome and would present an insurmountable obstacle to the eventual implementation of public online access to court records. This problem is somewhat unique to electronic access because with traditional “over the counter” access practices, only records that are actually requested need be screened for confidential information. This leaves the vast bulk of court records protected by “practical obscurity,” stored in clerks’ vaults distant from public view. Instant electronic access, on the other hand, would require that all records that are to be made available be screened and redacted before being loaded onto the accessible system. A representative of the Florida Association of Clerks of Court informed the Privacy Committee that Florida courts receive some 19 million documents annually. This challenge came to be known as “the impossibility problem.” The Privacy

Committee therefore determined that revising the rule was a necessary precondition to electronic access and it made the following recommendation:

The Committee has concluded that implementation of a system that allows large volumes of court records to be released electronically cannot be responsibly achieved under the current [Rule 2.420]. The Committee therefore recommends that the Supreme Court direct a review of the effective scope of [Rule 2.420(c)(8)] and explore revision of the rule for the purpose of narrowing its application to a finite set of exemptions that are *appropriate in the court context* and are *readily identifiable*.

(Privacy Report at 47 (emphasis added) The Supreme Court concurred with this analysis, and subsequently charged the Access Committee with proposing rule revisions consistent with the recommendation of the Privacy Committee. Charge 1 to the Access Committee, therefore, is to:

Review and explore revisions of rule [2.420] to narrow its application to a finite set of exemptions that are appropriate in the court context and are identifiable.

AOSC0627 at 2.

The Court added a significant caveat to its charge: “The Committee should note that the Supreme Court has not made a decision as to whether the absorption doctrine applies.” *Id.* The Access Committee interpreted this to mean that the Court desires that the rule be applied to a limited set of circumstances where confidentiality is clearly appropriate to court records and the subject record or information is readily identifiable by staff of the clerk of court. The Court clearly indicated that it was reserving judgment about the question of whether the rule absorbs other statutory exemptions. This

interpretation is not inconsistent with *Buenoano*, where the Court ruled only that the specific criminal investigative records exemptions relevant to the subject records in that case remained exempt pursuant to the court rule. So, while the Court has not determined the scope of the absorption doctrine has, and the decided cases do not articulate a definitive construction of the scope and breadth of Rule 2.420(c)(8), the Court has indicated that absorption of applicable exemptions can be categorically applied in “a finite set of exemptions that are appropriate to the court context and are identifiable.” The Access Committee was asked to define that “finite set.” With respect to other, less clear exemptions outside of that set, the Court may later clarify the issue over time.

This view was reinforced in an opinion that the Court issued in April, 2007, in adopting rules amendments proposed by the Rules of Judicial Administration Committee to address the issue of sealed cases:

Rule 2.420 recognizes a narrow category of court records where public access is automatically restricted by operation of state or federal law or court rule. See Fla. R. Jud. Admin. 2.420(c)(7)-(8). For records in this category, the State itself, through law and court rule, has identified specific privacy or government interests that clearly outweigh the public’s right to know. These interests have been identified through the democratic process either in the Legislature or through the Court’s public rule-making process.

In re Amendments to Florida Rule of Judicial Admin. 2.420-Sealing of Court Records and Dockets, 954 So. 2d 16 (Fla. 2007). The Access Committee again interpreted this to mean the rule can be understood to incorporate some, but not all, statutory exemptions, a concept that may be referred to as “soft” absorption.

In addition to reinforcing the concept of limiting “automatic” or categorical absorption to a relatively small set of exemptions, the new amendments to Rule 2.420

also presented an opportunity to consider how those exemptions which are not categorically incorporated might otherwise be addressed. These amendments created a new motion process through which a party could request that circuit or county court records in a non-criminal case be made confidential under Rule of Judicial Administration 2.420(c)(9). This motion process, in new subdivision 2.420(d), provided formal procedures for filers to certify that a motion to make records confidential meets certain requirements. Such motions must be made in good faith subject to sanctions, be ~~for~~ publicly noticed, requires a hearing for a contested motion, and specify the content of an order granting a motion in whole or in part. While the new subdivision was directed to non-criminal cases in county or circuit courts and limited the bases for motions to the elements of the *Barron* test codified in subdivision 2.420(c)(9), the Committee concluded that this motion process could be expanded. Specifically, the process might accommodate assertions of confidentiality that rely on statutory exemptions beyond those that are categorically absorbed.

Analysis and Preliminary Proposal.

The Access Committee directed the Rule 2.420 Workgroup (the Workgroup) to develop recommendations concerning the rule for consideration by the full committee. After reviewing the history and legal background of this issue, the Workgroup created a framework to guide its work. First, for purposes of revising the rule, the Workgroup developed a model that would conceptually organize all information in court records into three categories in terms of confidential status:

Type I: information which is subject to a clearly applicable court rule or statutory exemption *and* is readily identifiable.

Type II: information which is subject to a clearly applicable court rule or statutory exemption but which is *not* readily identifiable, *or* information which is not clearly subject to a court rule or statutory exemption.

Type III: information which is not subject to a court rule or statutory exemption.

The Workgroup then developed proposed revisions to the rule that would accomplish the following:

Type I: The rule would itemize the court rules and statutory exemptions that comprise Type I, require that a filer of such information identify it as such, require the clerk to review for facial validity the identification of the information as confidential, and direct the clerk to independently identify and keep the information confidential whether the filer identified the information or not. These concepts are incorporated in new subdivision (d)(1) of the proposed rule. [Appendix A].

Type II: Building on the motion process adopted by the Court in 2007, a filer or other affected person may file a motion to determine whether information not included in the Type I list is confidential. This concept is incorporated in new subdivision (d)(2) of the proposed rule. [Appendix A].

Type III: Any information which is not categorically confidential under Type I or determined to be confidential through a Type II motion is

Type III information and is an open public record, consistent with the general policy stated in subdivision 2.420(a). (“The public shall have access to all records of the judicial branch of government, except as provided below.”)

Definition: Additionally, in response to the charge to clarify the status of confidential records, a definition of “confidential” would be developed consistent with existing law. This definition is contained in new subdivision (b)(4) of the proposed rule. [Appendix A].

In order to itemize those statutory exemptions that meet the criteria of being applicable in a court context, the Workgroup undertook a systematic review of all Florida statutory exemptions. At the request of the Committee, the Office of the State Courts Administrator contracted with the Center for Governmental Responsibility at the University of Florida School of Law (Center) to support this research. Under the direction of Professor Timothy McLendon, researchers at the Center compiled a database which included an inventory of all statutes that create a public records exemption. This inventory was then analyzed for operative language and statutory context that would indicate whether the exemption was expressly or impliedly applicable in a court context. The Workgroup directed that indicia of applicability include whether the statutory language, on its face, indicated legislative intent that the exemption apply to court records, and whether the underlying public policy strongly supported applying the exemption to court records. In addition, the Workgroup considered whether in practice

and by custom the exemption has been routinely and traditionally applied to court records.

With the inventory developed by the Center as a starting point, the Workgroup undertook a series of in-person and telephonic meetings to study, refine, and review the Type I list. Representatives of interested constituencies, including clerks of court, media interests, and the title insurance industry, participated in this review and refinement process, providing to the Workgroup invaluable insight and analysis.

Outreach.

By the fall of 2007, the Workgroup had refined the Type I list and developed a preliminary rule proposal. The full committee approved this preliminary proposal and Type I list on November 30, 2007. The preliminary proposal and Type I list were circulated for comment to all circuit and district court of appeal chief judges, all circuit and appellate clerks of court, and all other known interested parties. It was published in The Florida Bar News with an invitation to comment. The deadline for all comments was March 3, 2008.

Meanwhile, other activities related to Rule 2.420 impacted the Committee's work. On March 1, 2008, the Court published for comment two additional sets of proposed amendments to Rule 2.420 regarding the sealing of records, expanding on the 2007 amendments adopted in *In re Amendments to Florida Rule of Judicial Admin. 2.420-Sealing of Court Records and Dockets*, 954 So. 2d 16 (Fla. 2007). The first set included additional amendments filed on October 31, 2007 by the Rules of Judicial Administration Committee pursuant to the Court's opinion. These amendments included a new subdivision, 2.420(e), which addressed sealing county and circuit records in criminal

cases, and made several minor changes to other parts of the rule. The second set of amendments was the Court's own sua sponte alternative to this proposal, incorporating most of the Rules Committee's proposal but added subdivisions 2.420(f) and 2.420(g), which addressed appellate court records in non-criminal and criminal cases respectively.

As a result, by March 2008, the Workgroup was confronted with five different versions of Rule 2.420: 1) the rule as it existed in late 2006 when the Court charged the Committee with proposing revisions; 2) the rule after the amendments adopted in April, 2007, which is the rule presently in effect; 3) the pending proposed amended rule filed that the Rules of Judicial Administration Committee filed on October 31, 2007; 4) the Court's own alternative sua sponte proposal published on March 1, 2008; and 5) the Access Committee's preliminary proposal circulated for comment at the beginning of 2008.

During the summer of 2008 the Committee attempted to initiate discussions with relevant rules committees regarding issues that the proposed rule revision raised. At the request of the Appellate Court Rules Committee a special joint committee workgroup was formed in August 2008. However, at the time of the preparation of this report the report of the joint committee is not complete, and so this proposal does not reflect input expected from the joint committee.

Final Proposal.

In April 2008, the Workgroup began to reconcile its proposal with the other proposals now pending before the Court. The Workgroup elected to use the Court's alternative amendments to the Rules of Judicial Administration Committee's proposal as a starting point. Most of the new elements of the Court's proposal, (which includes most

new elements of the proposal of the Rules of Judicial Administration Committee), are retained. The Committee's proposal is attached in Appendix C, in legislative mark-up from the currently effective rule. In addition a table comparing the Courts proposed language overlaid with the Committee's proposals is attached in Appendix D. Key differences are:

2.420(d): The subdivision requires that the clerk of court identify information itemized in this provision and keep it confidential. Subdivision 2.420(d)(1)(A) incorporates the existing provisions of subdivision (c) that are unaffected by the rule change. Subdivision 2.420(d)(1)(B) lists the Type I exemptions to be categorically protected.

The provision also requires filers to identify any such information to the clerk at the time of filing, and to identify the applicable provision of the rule. The clerk of court is required to review this identification for facial validity. A procedure is provided for instances where the clerk determines that the identification is not facially valid. Subdivision 2.420(d)(2) applies to instances where a statutory exemption that is not categorically incorporated under 2.420(d)(1) may constitute the basis for confidentiality. This provision directs the filer, or any interested person, to file a motion to request a

determination of confidentiality under the applicable subdivision that follows in the rule.

2.420(e): The Workgroup expanded the scope of present subdivision (d), now subdivision (e), to expressly allow motions based on any subdivision of 2.420(c). This would thus permit motions based on statutory exemptions or federal confidentiality that are arguably incorporated through 2.420(c)(8), but not included as Type I exemptions. This concept is continued in new subdivisions (f) (criminal trial court records), (g) (non-criminal appellate court records), and (h) (criminal appellate court records).

The titles and text throughout are modified, replacing the verb “make” with “determine” to clarify that consistent with article I, section 24 of the Florida Constitution, the rule would not purport to give the court new authority to convey confidential status to a record, or to expand the reach of the 1992 rule. Rather this new amendment to the rule would only provide a procedural mechanism to determine whether confidential status attaches to the information by authority of legislative act or existing court rule.

2.420(f): The pending language regarding sensitive criminal case records in subdivision (f)(2), and similarly in (h)(2) for appellate criminal records, permits filing a restricted motion for “any request to make court records confidential that may jeopardize either the safety of a person or an active criminal investigation.” The Access Committee alternative describes the kinds of records subject to this subdivision and creates a higher and more specific threshold, using language that mirrors existing language of the *Barron* test that is codified in subdivisions 2.420(c)(9)(A).

2.420(g)-(h): The Workgroup modified the two subdivisions proposed in the Court’s alternative proposal directed to appellate records with respect to identification of confidential information transmitted from a trial court to an appellate court. The pending proposal assumes that any confidential information is covered by an active order of the lower court, and the pending rule requires the clerk of the circuit court to indicate the date and docket number of any such order. The Access Committee alternative contemplates that information may be categorically confidential under

subdivision (d)(1) or may be determined to be confidential in response to a motion.

2.420(i): Existing subdivision 2.420(d), renumbered 2.420(h) in the pending proposal and 2.420(i) in this proposal, is modified to clearly limit its application to administrative records of the judicial branch and to remove inappropriate reference to an appellate remedy.

Type I Exemptions.

The final list of statutory exemptions enumerated in subdivision 2.420(d)(1)(B) contains 19 items. Most of these are well established by law and practice and are routinely applied by the clerks of court. In all cases, however, it is necessary to go to the statutory language to understand the precise scope of the exemption in order to correctly apply it. Many of the statutes are difficult to interpret and could be misconstrued in their application. In several cases, the exemption expressly relates to the subject record while *in the custody of* a particular entity. For example, Fl. Stat. § 384.29 exempts records related to cases of sexually transmitted diseases “held by the department [of Health] or its authorized representatives.” The proposed amendment to the rule would apply this exemption in the event the department or its representative provides such a record to a court. Similar records in the custody of any other party would not, however, be subject to the categorical protection of subdivision (d)(1), although they might be determined to be confidential upon a motion filed under (d)(2). To facilitate correct and consistent

implementation of the rule in the event the Court approves this proposal, the Committee recommends that guidelines be formulated for the application of these exemptions, including guidance about controlling access to confidential records consistent with law and court rules. This recommendation is consistent with Recommendation Fifteen of the Privacy Committee.

There are several exemptions that merit special discussion. These are exemptions, such as the sexually transmitted disease exemption discussed above, which provide various degrees of protection to potentially sensitive records that are of a clinical or therapeutic nature, typically involving documentation of a person's medical or psychological wellbeing. The statutory exemptions for these records are frequently targeted to states agencies, such as the Department of Children and Families, or service providers. In most cases the statutes that create these exemptions do not expressly state that they are intended to apply to such records when included in a court file, and it appears unlikely that the Legislature ever considered the question of whether the exemption would or would not apply to court records. Following lengthy discussion and study of these statutes, the Committee ultimately elected to exercise caution and include these exemptions on the Type I list. In the event this rule is adopted and these exemptions are categorically applied to court records, the Legislature may wish to revisit these statutes and express its intent, one way or the other, as to the application of the exemption to court records.

In developing the proposal, a technical question arose regarding whether the list of Type I exemptions should be included in the body of the rule, or attached to the rule as a freestanding appendix that could be revised administratively. While there are

arguments to be made for itemizing the exemptions in an appendix that can be modified without the procedural requirements of a rules amendment, the Committee decided that the list must be included within the body of the rule. This conclusion relies on the Court's recent opinion in *In Re: Amendments to Florida Rule of Judicial Administration 2.420*, 973 So. 2d 437 (Fla. 2008), concerning records retention schedules. In this opinion, the Court made a firm distinction between the management of administrative records of the judicial branch and the management of court records. The Court explained that while policies controlling administrative records could be promulgated administratively, it expressed a clear preference, when dealing with a matter affecting the right of access to court records, for the "well-established procedure that provides for public scrutiny" of the rules amendment process.

RECOMMENDATION ONE: The Committee recommends that its proposed amendments, presented in a separate submission entitled "Amendments to Rule of Judicial Administration 2.420" be adopted.

III. Minimization of Personal Information

The Committee was charged with studying court rules to determine whether they should be amended to prohibit the filing of documents where the filing is not authorized by court rule or statute, or where no relief is sought, and whether the rules should strengthen sanctions to be imposed against those who are responsible for unauthorized filings.

In addition, in a letter from Thomas D. Hall dated April 30, 2007, the Committee was requested to review a series of reports being prepared by rules committees of The Florida Bar. The Court had directed the rules committees “to conduct a comprehensive review of court rules and approved forms for the purpose of modifying the rules and forms to discourage the unnecessary filing of personal information, in accordance with Recommendation Seven” of the Committee on Privacy and Court Records. The Court had also asked the rules committees “to study whether rules exist or rules should be adopted that would require attorneys to refrain from filing discovery information with the court until such time as it is filed for good cause.”

The Committee was directed to review the submissions of the rules committees and to provide to the Court a comprehensive report summarizing and evaluating each of those committees’ recommendations and its advice about what action the Court should take based upon those recommendations. This review was to be completed by December 1, 2007. The Committee completed its review of the committee reports that had been submitted, and has previously provided a summary report to the Court. The Committee was further directed to compile all of the proposals it supports into one submission petitioning for rules amendments.

The Committee provides its proposed rules amendments in a separately filed rules petition, and includes below a summary of its evaluation of the separate committee reports.

- A. The Court should adopt the recommended revisions submitted by the rules committees and Steering Committee on Families and Children in the Courts except as provided. Further, as progress is made in the coming years

regarding electronic filing and access to court records, and practical experience is gained, the separate rules committees should periodically revisit the issues of privacy, security and transparency as they relate to the rules within their purview and should consider whether additional revisions should be made within their regular rules cycles to minimize the unnecessary inclusion of personal information in public court records.

- B. The Rules of Civil Procedure Committee recommends a new provision within Rule of Civil Procedure 1.280, (GENERAL PROVISIONS CONCERNING DISCOVERY) entitled “Court Filing of Documents and Discovery.” The proposed rule provides that discovery information not be filed without good cause, that the existence of a mandatory filing requirement constitutes good cause, and it provides authority to sanction those who violate the rule. The workgroup supports this approach.
- C. The Civil Procedure Rules Committee reported that in most instances, complete social security numbers and tax account numbers are unnecessary. That Committee proposed revisions to several rules and one new rule that would require the filer to include only the last four numbers of a social security number or tax account number unless directed otherwise by the court. Further, most of the rules committees recommended either eliminating social security numbers from documents filed with the court or truncating them to the last four digits. The Family Law Rules Committee recommended truncating to the last three digits of account numbers and personal identifiers, which is generally consistent with the majority of recommendations in terms

of truncation but deviates from the others in that it does not recommend the use of the last four digits. The Committee on Access to Court Records recommends that where rule changes are made to truncate numbers that the changes be standardized to require the use of the last four digits.

D. As they were directed to do by the Court, several of the rules committees made recommendations that pertain not to the minimization of personal information in court files but to the issue of confidentiality of records that would continue to be filed with the court, particularly various types of mental health evaluations. The recommendations are for rules changes to make certain types of records confidential. Under Article I, section 24 of the Florida Constitution, however, the Court does not have authority to make records confidential that are not made confidential by general law or by rule existing prior to November of 1992. For this reason the Committee does not support the recommendations of the Criminal Law Rules Committee regarding Rules 3.211, 3.212, 3.216, 3.218, and 3.219. Access to the subject records should instead be controlled by the proposed revision of Florida Statutes and Rule of Judicial Administration 2.420.

E. Several rules committees recommended that no changes be made to their respective rules. These include the Juvenile Court Rules Committee, the Traffic Court Rules Committee and the Rules of Judicial Administration Committee. The Committee is of the view that it lacks the subject matter expertise to question the view of these committees about the central question of whether any particular rules require filing information that may not be

necessary for purposes of adjudication or case management. The Committee therefore refrains from expressing an opinion about whether the responses from these committees adequately address the concerns of the Court and the recommendations of the Privacy Committee that court rules respect the right of privacy created by Article I, section 23 of the Constitution of Florida. The Committee would point out, however, with reference to the report of the Juvenile Court Rules Committee and its observation that all delinquency and dependency records are confidential pursuant to Florida statutes, that regardless of whether information is held in a confidential status, the very collection of personal information which is not needed for the court to perform its function implicates the right of privacy created by the Florida Constitution. Furthermore, under Florida law certain confidential records, including delinquency and dependency records, can be lawfully accessed by specified persons and state agencies, including law enforcement agencies. In addition a clerk of court has advised the Committee that as a matter of course juvenile court records are routinely made available for such inspection by law enforcement officers.

RECOMMENDATION TWO: The Committee recommends that the proposed amendments to various rule of court intended to minimize personal information, presented in the separate submission entitled “Amendments to Various Rules of Court,” be adopted.

IV. Manatee County Pilot Program

During public meetings of the Florida Supreme Court in spring 2006 to consider the report and recommendations of the Privacy Committee, the Clerk of Court for Manatee County, the Honorable R. B. “Chips” Shore, offered to conduct a pilot program in Manatee County to provide public internet-based access to court records in that jurisdiction on such terms as the Court would require. The Court responded favorably to this proposal and authorized its implementation.

The chief justice subsequently assigned primary responsibility for oversight of the pilot project to the Florida Court Technology Commission in Administrative Order AOSC060-48, *In Re: Florida Court Technology Commission*, including specifying terms and conditions controlling the project, identifying project goals, criteria for evaluation, reporting requirements, and a timeframe to conclude the project and report results.

In addition, the chief justice also directed the Committee to provide input to the Florida Court Technology Commission and the Office of the State Courts Administrator regarding “terms and conditions the Committee finds advisable in the implementation of the pilot program.” To address this aspect of the Committee’s charge in an expedited manner, the Committee created a Manatee Pilot Project Workgroup to review the pilot proposal and to prepare its recommended terms and conditions. The workgroup presented its proposed initial terms and conditions to the full Committee in January, 2007. The full Committee approved these recommendations, and forwarded them to the Florida Courts Technology

Commission. The Committee's recommended terms and conditions are attached in APPENDIX E.

In July, 2007, the then existing Florida Courts Technology Commission recommended, and the Court approved, a two-phase pilot project. During Phase One, which was to conclude on January 1, 2008, remote electronic access to certain Manatee County digital court records was given to certain users. Phase Two, to begin upon completion of Phase One and the completion of a study of Phase One, would permit expanded remote electronic access to those records. As the contemplated end of Phase One neared, however, the term of the predecessor Florida Courts Technology Commission had expired, while the new and presently existing Florida Courts Technology Commission had not been organized. In addition, budget reductions had eliminated the funds that were allocated to support the project study. Under these circumstances, the Committee continued to monitor the operation of the project, and recommended to the chief justice that Phase One of the project be extended for a limited period of time to allow the newly created Florida Courts Technology Commission to assume responsibility for oversight of that project and to identify funding for the project study. The Court accepted that recommendation, extending phase one of the Manatee pilot project, and the Commission has since assumed responsibility for supervising the program.

On July 28, 2008, under the auspices of the Florida Courts Technology Commission, the Florida Association of Court Clerks and the National Center for State Courts reached an agreement to conduct a study of Phase One of the pilot

program. Under the agreement, the study is scheduled to be completed by November 30, 2008.

The Committee has no additional recommendations regarding the Manatee County Pilot Program.

V. Interim Policy on Electronic Access

The Committee was directed to advise the chief justice regarding the advisability of altering the interim policy on electronic access to court records set out in Administrative Order AOSC06-21, as well as to give the Court a progress report, by June 1, 2007. The Committee subsequently submitted a report entitled: *“Interim Progress Report and Recommendations on Modification to the Interim Policy on Access to Court Records.”*

The recommendations of the Committee were approved by the Chief Justice and are reflected in the current policy set out in Administrative Order AOSC07-49, *In Re Revised Interim Policy on Electronic Release of Court Records*. (APPENDIX F)

The Committee has no additional recommendations regarding the interim policy.

VI. Educational Outreach.

The courts have begun a transition from a system that relies on the physical delivery, storage and transmittal of paper documents to a system of electronic filing of digital documents, maintaining its records in digital form, and providing electronic access to those documents. This transition will be less disruptive if it is preceded and

accompanied by an aggressive and comprehensive education program to orient lawyers, judges, mediators, government agencies, court staff, other users of court records, and the public to how this transition will change how they interact with courts, the implications of electronic access to information contained in court records, how to protect information and records that are claimed to be confidential, and how to seek access to information and records that are withheld from view.

Organizations of professional users such as The Florida Bar, local and other voluntary bar associations, the Florida Association of Court Clerks, the Florida Prosecuting Attorneys Association, the Florida Public Defender Association, associations of mediators and paralegals, state agencies, etc., should organize and make available to their members educational programs presented in various modalities. These programs should describe the applicable rules of court that will affect how and under what conditions they may access digital records and the application of those rules to filers, participants to a case, and other persons mentioned or described in court records. The Committee recognizes that new policies and procedures concerning access to court records are a discrete subset of the new policies and procedures that will confront users of Florida's court system, and that other Supreme Court Committees have submitted and will likely submit in the future similar recommendations for education about other aspects of the transition to digital court records. Therefore the Committee recommends that the comprehensive educational plan should include various components, including but not limited to:

- A. Programs for lawyers and judges should include substantive law that establishes rights of privacy and the public's rights of access to court records, and court rules that prescribe procedural processes to exercise those rights.
- B. Application of Rule 2.420 to filing practices
- C. Forms that may be developed to implement Rule 2.420
- D. Identifying confidential information in court records and court document
- E. How to request a hearing concerning sealing or unsealing a court record or access to information in court records
- F. Best practices consistent with minimization principles
- G. Other ramifications of courts receiving, maintaining, and providing access to digital records that are recommended by other committees or commissions such as the Florida Court Technology Commission, the E-Filing Committee, the Task Force on Management of Cases Involving Complex Litigation, the Steering Committee on Children and Families in the Courts, etc.

The Committee recommends that the Florida Court Education Council (FCEC), in consultation with the Dean of the College of Advanced Judicial Studies, develop a comprehensive course on the substantive and procedural ramifications of filing, maintaining, and providing remote electronic access to court records. The Committee further recommends that in developing the program, the planners of judicial education collaborate with the Florida Association of Court Clerks, The Florida Bar, and the other above-mentioned professional organizations, so that maximum use can be made of all educational programs and materials that are developed. The Committee recommends an

initial two-day comprehensive statewide program with presentations designed for the various professional judicial branch users of the court's records. All aspects of that program should be recorded in digital format so that it can be made available thereafter on the internet for distance learning.

In addition, materials developed for the statewide conference educational programs should be woven into substantive and procedural continuing education courses presented in various formats by The Florida Bar in locales around the State, and by various modalities, such as at statewide and local conferences and continuing education programs, and web-based presentations. In addition, Florida's law schools should include in their substantive law, procedure, and clinical courses information and materials about public records and privacy laws and the ramifications of courts receiving, maintaining, and giving widespread remote electronic access to court records.

Similarly, mediators should be required to complete course material consistent with this recommendation, as a condition of their gaining and maintaining certification.

The clerks should have available in the public areas of their offices video or web-based presentations, brochures and visible signs that are readily visible to and available for filers and other persons who seek access to court records in the clerks' offices about the substantive and procedural ramifications of filing, maintaining, and providing remote electronic access to court records.

RECOMMENDATION THREE: The Committee recommends that the Court convene the State Courts System, the clerks of court, and The Florida Bar, to plan and present educational programs designed to educate lawyers, judges, mediators,

court administrators and staff, clerk staff, and the public regarding the transition to courts receiving, maintaining, and providing electronic access to digital court records.

VII. Additional Recommendations.

The Committee recognizes that in the event the rule is amended, a range of activities will be necessary in the coming months and years to implement it. Initially, the rule petition filed concurrent with this report must be advocated throughout the amendment process. Then, if the rule becomes effective in the foreseeable future, its initial implementation period will provide important experience in its application. It is foreseeable that within the first year it will be evident that some procedural or substantive aspects of the rule may require re-examination and modification. To carry out these tasks the Committee urges the creation of a smaller Committee on Access to Court Records as a subcommittee of the Florida Court Technology Commission, consisting of some members of the current Access Committee as well as members of the Florida Courts Technology Commission.

RECOMMENDATION FOUR: The Committee recommends that a smaller successor Committee on Access to Court Records be created under the auspices of the Florida Court Technology Commission and that this committee be tasked with advancing the rule petition through the rule amendment process.

RECOMMENDATION FIVE: The Committee recommends that the smaller successor Committee on Access to Court Records be tasked with monitoring

implementation of the rule and proposing, as appropriate and upon consultation with the Rules of Judicial Administration Committee, future amendments to the rule.

The predecessor Privacy Committee recognized that implementation of a new regime for identifying and protecting confidential information would require practical guidance for those most directly involved with administering the rule. The Committee therefore restates the Privacy Committee's recommendation that a practitioner group be charged with developing guidance on the application of the rule. In the course of its work the Committee has learned that current policies and practices regarding the release of confidential information, such as to law enforcement agencies, might not fully comply with Florida law. Clerks of court should be provided with clear guidance on the release of confidential information.

RECOMMENDATION SIX: The Committee recommends, consistent with Recommendation Fifteen of the Privacy Committee, that the successor committee convene a practitioner workgroup with representation from trial and appellate clerks of court, the judiciary, and the bar, and that this workgroup compile materials for guidance for clerks of court, attorneys, litigants, judges and court staff to assist in implementation of the revised rule.

The Committee was charged with recommending amendments to Rule 2.420 to allow for remote access to court records in electronic form where the necessary

conditions are met. Separately, the Florida Courts Technology Commission has been charged with advising the Court with respect to a number of policy issues regarding access to court records, including policies for distribution of records to commercial users, security, search technology, user fees, and the development of technical and substantive standards to govern electronic access to court records. Such standards “should assimilate recommendations that are to be provided by the Committee on Access to Court Records” and others (AOSC07-59). The Florida Courts Technology Commission is also charged with oversight of electronic filing programs, and with the development of a comprehensive governance framework for the implementation of technology in Florida’s courts.

The Committee views operational matters and policy issues related to implementation of electronic access to court records as inherently related to those of electronic filing specifically and the use of technology in the courts in general. In light of the central role of the Florida Courts Technology Commission in governance of technology in the Florida court system, and the presently unresolved status of many of the policy questions assigned to the technology commission regarding electronic access, this Committee does not propose specific rule changes at this time, but does urge the following recommendations:

RECOMMENDATION SEVEN: The Committee recommends that policy and operational guidance for electronic access programs, including technical standards, oversight requirements, and project approval procedures be developed in a

comprehensive manner under the governance of the Florida Courts Technology Commission.

RECOMMENDATION EIGHT: The Committee recommends that an approval process for authorization to allow remote electronic access to court records be coupled with the approval process for electronic filing presently assigned by Rule of Judicial Administration 2.525.

RECOMMENDATION NINE: The Committee recommends that user fees for electronic access to court records be structured to provide sufficient funding for all costs associated with the implementation and operation of digital court records systems, and that differentiated fees be considered for categories of users (self-represented litigants, attorneys of record, etc.) No fee should be charged for access to court records at the courthouse.

RECOMMENDATION TEN: The Committee recommends that electronic access systems be designed to prevent access by automated search programs.

APPENDIX A

**ADMINISTRATIVE ORDER AOSC06-27: IN RE COMMITTEE ON
ACCESS TO COURT RECORDS**

Supreme Court of Florida

No. AOSC06-27

INRE: COMMITTEE ON ACCESS TO COURT RECORDS

ADMINISTRATIVE ORDER

The Committee on Privacy and Court Records was established in November of 2003 and charged with providing recommendations regarding the electronic release of court records in Florida.' In August 2005 the committee submitted its report.' The committee's overall conclusion was that while remote electronic access to court records should be a goal of the Florida judicial branch, numerous obstacles exist that do not allow for responsible provision of such access at this time. The committee therefore made a number of recommendations directed to addressing those obstacles and developing the necessary conditions for responsible **electronic access to court records.**

'See **In re: Comm. on Privacy and Court Records**, Fla. Admin. Order No. AOSC03-49 (Nov. 25, 2003) and **In re: Comm. on Privacy and Court Records**, Fla. Admin. Order No. AOSC04-4 (Feb. 12, 2004).

'See **Committee on Privacy and Court Records, Privacy, Access and Court Records; the Report and Recommendations of the Committee on Privacy and Court Records** (2005) (hereinafter **Report**).

The Court supports the goal of remote electronic access to court records and agrees with the Committee on Privacy and Court Records that at present the necessary conditions do not exist to permit a general, unrestricted distribution of court records. To assist in developing the necessary policies for electronic access, the Committee on Access to Court Records (hereinafter the Committee) is hereby established for a term to expire on July 1, 2008.

The primary purpose of the Committee is to review Florida Rule of Judicial Administration 2.051 and develop proposed revisions to the rule with regard to the following matters:

1. Recommendation Two: Scope of Confidentiality. Review and explore revisions of rule 2.051 to narrow its application to a finite set of exemptions that are appropriate in the court context and are identifiable. The Committee should note that the Supreme Court has not made a decision as to whether the absorption doctrine³ applies.

³ These tasks refer to recommendations by the Committee on Privacy and Court Records as set forth in the Report and as modified in Implementation of Report and Recommendations of the Committee on Privacy and Court Records, Fla. Admin Order No. AOSC06-20 (June 30, 2006) (hereinafter AOSC06-20).

⁴ See Report, supra note 1, at 29 ("The question is whether the rule incorporates, or absorbs, state exemptions and federal confidentiality, thus making them confidentiality under court rule.").

2. Recommendation Eight: Unauthorized Filings. Study court rules to prohibit the filing of documents that are not authorized by court rule or statute, or seeking relief by the court. The responsibility for identifying unauthorized filings cannot be placed on the clerks of court. It is understood that the current rules already provide for sanctions against those who are responsible for unauthorized filings; accordingly, the rules should be studied to determine whether any sanctions need to be strengthened to further the goal of preventing gratuitous publication of extraneous and potentially damaging information.
3. Recommendation Twelve: Conditions for Electronic Access. Propose amendments to rule 2.051 to allow remote access to court records in electronic form to the general public in jurisdictions where **conditions are met.**
4. Recommendation Thirteen: Confidential Information. Propose revisions to rule 2.05 I to clarify that those records defined in the rule are confidential and may not be released except as provided. Because this requirement is already established in existing law, the Committee

is directed to propose a rule amendment or committee note that is consistent with the recognition of the current legal requirements.

5. Recommendation Sixteen: Unsealing of Records. Propose revisions to rule 2.051 to provide a clear and effective mechanism through which a preliminary determination that a record is exempt or confidential can be challenged and reviewed.
6. Recommendation Seventeen: Responsibility of Filer. Propose revisions to rule 2.051 to provide for certain responsibilities of the filer of court documents regarding confidential information.

In addition, the Committee is directed to advise the Florida Courts Technology Commission and the Office of the State Courts Administrator regarding the terms and conditions the Committee finds advisable in the implementation of the pilot program authorized in Administrative Order AOSC06-20. The Committee is also directed to advise the Chief Justice, by June 1, 2007, of the advisability of alteration to the interim policy on electronic release of court records set out in Administrative Order AOSC06-21. The Committee may make other recommendations it deems appropriate.

The following persons are hereby appointed to serve on the Committee for a term that expires on July 1, 2008:

The Honorable Judith L. Kreeger, Chair
Circuit Judge, Eleventh Judicial Circuit

Ms. Sharon Abrams
Court Technology Officer, Eleventh Judicial Circuit

Ms. Kristin Adamson
Attorney, Tallahassee

Ms. Robin Berghorn
General Counsel, Eleventh Judicial Circuit

The Honorable David Ellsperman
Clerk of Court, Marion County

The Honorable Mel Grossman
Circuit Court Judge, Seventeenth Judicial Circuit

Mr. Jonathan Kaney, Jr.
Attorney, Ormond Beach

The Honorable Melanie May
Appellate Court Judge, Fourth District Court of Appeal

Mr. Timothy McLendon
Attorney, Gainesville

Mr. Paul Regensdorf
Attorney, Ft. Lauderdale

Mr. Murray B. Silverstein
Attorney, St. Petersburg

The Honorable Kim A. Skievaski
Chief Judge, First Judicial Circuit

The Honorable Elijah Smiley
County Judge, Bay County

Mr. Walt Smith
Court Administrator, Twelfth Judicial Circuit

The Honorable Charles Williams
Circuit Judge, Twelfth Judicial Circuit

Judge Judith Kreeger shall serve as Chair and Justice Barbara J. Pariente shall serve as Supreme Court liaison to the Committee. Staff support for the Steering Committee shall be provided by the Office of the State Courts Administrator.

The Committee is directed to submit a progress report by June 1, 2007, and a final report by June 1, 2008. The Committee is authorized to propose amendments to rules of court procedure on issues addressed **in** this administrative order, for consideration by the Court. Recommended amendments to the rules of court procedure or forms shall be filed **in** petition form with the Clerk of the Florida Supreme Court. Mr. Paul Regensdorf shall serve as the liaison between the Committee and The Florida Bar Rules of Judicial Administration Committee.

Should the Committee make recommendations that require additional funding or resources to implement, the Committee is directed to establish the necessary liaison relationship with the District Court of Appeal Budget Commission or the Trial Court Budget Commission, as appropriate. At a

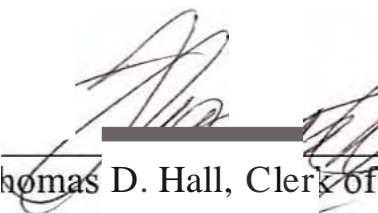
minimum, the Committee shall provide the chair of the respective budget commission with copies of Committee reports and recommendations that reference the need for additional court funding or resources.

DONE AND ORDERED at Tallahassee, Florida, on August 21 , 2006.




Chief Justice R. Fred Lewis

ATTEST:



Thomas D. Hall, Clerk of Court



APPENDIX B

LETTER DATED APRIL 30, 2007

Supreme Court of Florida

500 South Duval Street
Tallahassee, Florida 32399-1925

R. FRED
CHIEF JUSTICE
CHARLES T. WELLS
HARRY LEE ANSTEAD
BARBARA J. PARIENTE
PEGGY A. QUINCE
RAOUL G. CANTERO, III
KENNETH B. BELL
JUSTICES

THOMAS D. HALL
CLERK OF COURT

EDWARD DECOSTE
MARSHAL

April 30, 2007

The Honorable Judith L. Kreeger
Chair, Committee on Access to Court Records
Dade County Courthouse
175NW 1st Avenue, Suite 2114
Miami, Florida 33128-1845

Re: Implementation of Recommendations of the Committee on
Privacy and Court Records - Committee Reports

Dear Judge Kreeger:

Pursuant to instructions from the Court, I am writing you in your capacity as Chair of the Committee on Access to Court Records to ask your committee to review and advise the Court on a number of committee reports addressing several of the recommendations of the Committee on Privacy and Court Records (Privacy Committee).

In the enclosed administrative orders and follow-up letters, the Court referred several of the recommendations of the Privacy Committee to the Florida Bar rules committees and the Steering Committee on Families and Children in the Court. The Court asked those committees to review their bodies of rules and **form** and **reconunend any amendments** to implement the Privacy Conunittee's recommendations. The majority of the committees have submitted their reports, which I have enclosed.

The Honorable Judith L. Kreeger

April 30, 2007

Page: 2

Five of the committees have proposed amendments to their respective bodies of rules or forms. Three of the committees advise that no amendments to their rules are needed. The Criminal Procedure Rules Committee and Steering Committee on Families and Children in the Court have been granted extensions until August 1, 2007, in which to file their reports. I will forward those reports to **you as soon as I receive them.**

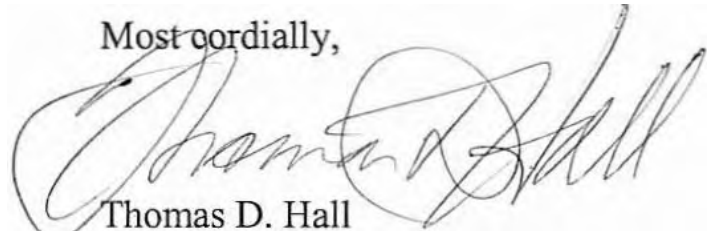
Specifically, the Court asks your Committee to immediately review the enclosed reports and committee recommendations and to review the two reports and recommendations that will be sent to you later immediately upon their receipt. If, after reviewing the various reports, your Committee determines that further study of any of the Privacy Committee's recommendations is warranted or that other amendments are in order, your Committee is authorized to request further action by the various committees, with a short turn-around time. The Court would like this phase to be a cooperative endeavor. Any request for further action should be directed to the committee chair, with copies to Justice Pariente, the Court's liaison to your Committee, the Court's director of central staff, and me. Any supplemental committee reports should be submitted directly to you, with copies as indicated above. The Court hopes this phase of your review of the reports already received can be completed no later than June 1, 2007, so that, if necessary, the committees can respond to your request no later than August 1, 2007.

Ultimately, the Court would like a comprehensive report from your committee summarizing and evaluating each of the committees' recommendations and advising the Court as to what action it should take on those recommendations. To the extent possible, prior to submitting your report, you should seek input from **the various committees on your committee's recommendations. As part of its** report, your Committee should compile all the proposals it supports into one submission that complies with the enclosed guidelines for rules submissions. Electronic versions of the committee reports and proposals, which can be used in developing your submission, are available through my office.

Your report should be filed with my office by December 1, 2007, with copies to Justice Pariente, the chairs of the various committees, and the director of central staff. If you should determine that more time is required to address matter, please file a motion for extension of time with my office.

The Honorable Judith L. Kreeger
April 30, 2007
Page: 3

Should you have any questions, please do not hesitate to contact Justice
Pariente or me.

Most cordially,

Thomas D. Hall

TDH/dm/sb

Enclosures

cc: Honorable Barbara J. Pariente, Liaison to Access Committee
Edward Maurice Mullins, Chair, Appellate Court Rules Committee
Keith H. Park, Chair, Civil Procedure Rules Committee
William C. Vose, Chair, Criminal Procedure Rules Committee
John Fraser Himes, Chair, Family Law Rules Committee
Mary Katherine Wimsett, Chair, Juvenile Court Rules Committee
Peter Alan Sachs, Chair, Probate Rules Committee
Gary Devenow Fox, Chair, Rules of Judicial Administration Committee
Honorable Pauline M. Drayton, Chair Small Claims Rules Committee
Peter Anthony Sartes II, Chair, Traffic Court Rules Committee
Honorable Nikki Clark, Chair, Steering Committee FCC
Steve Henley, OSCA Support Staff to Access Committee
Deborah J. Meyer, Supreme Court Central Staff Director

APPENDIX C

RULE 2.420 PROPOSED REVISIONS

RULE 2.420. PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

(a) [No change]

(b) (1)-(3) [No change]

(4) “Confidential,” as applied to information contained within a record of the judicial branch, means that such information is exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term “exempt” means that such information is confidential. Confidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule. Restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.

(c) Exemptions. The following records of the judicial branch shall be confidential:

(1)-(8) [No change]

(9) Any court record determined to be confidential in case decision or court rule on the grounds that

(A)-(B) [No change]

(C) no less restrictive measures are available to protect the interests set forth in subdivision (A).

(10) The names and any identifying information of judges mentioned in an advisory opinion of the ~~Committee on Standards of Conduct for Judges~~ Judicial Ethics Advisory Committee.

(d) Procedure for Filing Records.

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. A filer at the time of filing shall: indicate

whether any confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed; identify the provision of subdivision (d)(1)(B) of this rule that applies to the identified information; and identify the precise location of the confidential information within the document being filed. The clerk of court shall review filings identified by filers as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under the identified provision in subdivision (d)(1)(B). In the event the clerk determines that such information is not subject to confidentiality under the identified provision, the clerk shall notify the filer in writing within 5 days of filing and shall maintain the information as confidential for 7 days from the day such notice is served.

(A) information described by any of subdivisions (c)(1) through (c)(6) of this rule,

(B) information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution under any of the following statutes or as they may be amended or re-numbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat.

(ii) Adoption records. § 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit and credit card numbers in court records. § 119.0714(1)(i)–(j), (2)(a)–(e), Fla. Stat. (Unless redaction is requested pursuant to 119.0714(2), this information is exempt only as of January 1, 2011.)

(iv) HIV test results and patient identity within the HIV test results. § 381.004(3)(e), Fla. Stat.

(v) Sexually transmitted diseases - test results and identity within the test results. § 384.29, Fla. Stat.

(vi) Birth and death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), .025(1)(a), Fla. Stat.

(vii) Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(viii) Identifying information in clinical mental health records under the Baker Act. § 394.4615(7), Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individual clients of substance abuse service providers. § 397.501(7), Fla. Stat.

(x) Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(xi) Estate inventories. § 733.604(1), Fla. Stat.

(xii) Victim's address in domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), .0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(xv) Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, .3701, Fla. Stat.

(xvi) Grand jury records. Ch. 905, Fla. Stat.

(xvii) Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)-(4), Fla. Stat.

(xviii) Juvenile delinquency records. § 985.04(1), .045(2), Fla. Stat.

(xix) Information disclosing the identity of persons subject to tuberculosis proceedings and Records of the Department of Health in suspected tuberculosis cases. §§ 392.545, .65, Fla. Stat.

(2) Any person filing a document shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule. A person filing information that the filer believes to be confidential but that

is not described in subdivision (d)(1) of this rule may request that the information be maintained as confidential by submitting a “Motion to Determine the Confidentiality of Court Records” under the procedure provided in subdivision (e). Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivision (e).

(de) Request to Make Determine the Confidentiality of Circuit and County Court Records in Noncriminal Cases Confidential.

(1) A request to ~~make~~ determine the confidentiality of circuit and county court records in noncriminal cases ~~confidential~~ under subdivision (c)(9) must be made in the form of a written motion captioned “Motion to Make Determine the Confidentiality of Court Records Confidential.” A motion made under this subdivision must:

(A) identify the particular court records that the movant seeks to ~~make~~ have determined as confidential with as much specificity as possible without revealing the information to be ~~made~~ determined confidential; ~~and~~

(B) specify the bases for ~~making~~ determining such court records to be confidential; and

(C) set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential.

Any motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is ~~being~~ made in good faith and is supported by a sound factual and legal basis. The court records that are subject to such a motion ~~made under this subdivision~~ must be treated as confidential by the clerk pending the court’s ruling on the motion.

Notwithstanding any of the foregoing, the court may not make confidential the case number, docket number, or other number used by the clerk’s office to identify the case file.

(2) Except when a motion filed under subdivision (de)(1) represents that all parties agree to all of the relief requested, the court must, as soon as practicable but no later than 30 days after the filing of a motion under this subdivision, hold a hearing before ruling on the motion. Whether or not any motion filed

under subdivision ~~(d)~~(1) is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any party person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A). The moving party shall be responsible for ensuring that a complete record of any hearing held ~~pursuant to~~ under this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. The court may in its discretion require prior public notice of the hearing on such a motion in accordance with the procedure for providing public notice of court orders set forth in subdivision ~~(d)~~(4) or by providing such other public notice as the court deems appropriate.

(3) Any order granting in whole or in part a motion filed under subdivision ~~(d)(1)~~(e) must state the following with as much specificity as possible without revealing information ~~made~~ that may be confidential:

(A) The type of case in which the order is being entered;

(B) The particular grounds under subdivision ~~(e)(9)(A)~~ (c) for ~~making~~ determining the court records information to be confidential:

(C) Whether any party's name ~~is to be made~~ may be determined to be confidential and, if so, the particular pseudonym or other term to be substituted for the party's name;

(D) Whether the progress docket or similar records generated to document activity in the case are to be made confidential;

(E) The particular ~~court records~~ information that ~~are to be made~~ may be determined to be confidential;

(F) ~~The names~~ Identification of those persons who are permitted to view the confidential-~~court records~~ information;

(G) That the court finds that: (i) the degree, duration, and manner of confidentiality ordered by the court is no broader than necessary to protect the interests set forth in subdivision ~~(e)(9)(A)~~ (c); and; (ii) no less restrictive measures are available to protect the interests set forth in subdivision ~~(e)(9)(A)~~ (c); and

(H) That the clerk of the court is directed to publish the order in accordance with subdivision ~~(d)~~(4).

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision ~~(d)~~(1) as follows. Within 10 days following the entry of the order, the clerk of court must post a copy of the order on the clerk's website and in a prominent, public location in the courthouse. The order must remain posted in both locations for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision ~~(d)~~(3), the request must be made ~~in the form of~~ by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties in the action with a copy of the motion. In the event that the subject order specifies that the names or addresses of one or more parties are ~~to be made~~ confidential, the movant must state prominently in the caption of the motion “Confidential Party — Court Service Requested.” When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to the parties in such a way as ~~to not~~ to reveal the confidential information to the movant. Except when a motion filed under this subdivision represents that all parties agree to all of the relief requested, the court must hold a hearing ~~before ruling~~ on the motion. Whether ~~or not~~ any motion filed under this subdivision is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any ~~party~~ person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)~~(9)~~(A). The movant shall be responsible for ensuring that a complete record of any hearing held under this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court.

(6) If the court determines that a designation made under subdivision (d) or a motion made under subdivision ~~(d)~~(1) was not made in good faith and was not supported by a sound legal and or factual basis, the court may impose sanctions ~~upon~~ the movant after notice and an opportunity to respond.

(7) ~~Court records~~ Records of a lower tribunal made determined to be confidential under this rule by that tribunal must be treated as confidential

during any appellate review proceedings. In any case where ~~an order making court records~~ information is confidential under this rule ~~remains in effect as of the time of an appeal~~, the clerk's of the lower tribunal shall so indicate in the index transmitted to the appellate court ~~must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number.~~

(8) Upon the request of persons seeking access, any Motion to Determine the Confidentiality of Court Records or any Motion to Vacate under this rule shall be deemed a priority case under rule 2.215(g).

(ef) Request to Determine the Confidentiality of Circuit and County Court Records in Criminal Cases.

(1) Subdivision (e) shall apply to any request to determine the confidentiality of circuit or county court records under subdivision (c), except as provided in subdivision (f)(2).

(2) Any motion to determine whether a circuit or county court record is confidential pursuant to subdivision (c)(9)(A)(i) or (c)(9)(A)(v) of this rule that pertains to a plea agreement, substantial assistance agreement, or similar court record, and that constitutes a serious and imminent threat to either the safety of a person or an active criminal investigation, may be made in the form of a written motion captioned "Restricted Motion to Determine Whether a Court Record is Confidential." As to any motion made under this subdivision, the following procedure shall apply:

(A) The existence of the motion made under this subdivision shall not be indicated on a publicly accessible index or progress docket. All court records that are the subject of such a motion must be treated as confidential by the clerk pending the court's ruling on the motion.

(B) Except when the motion filed under this subdivision represents that both the movant and any other party subject to the motion agree to all of the relief requested, as evidenced by all such parties signing the motion, the court shall hold a hearing on a motion filed under this subdivision within 15 days of the filing of the motion, but such hearing shall be a closed session held in camera. The court shall issue a ruling on motions filed

under this subdivision within 10 days of the hearing on contested motions or within 10 days of the filing of agreed motions.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only on the filing of another motion in accordance with the procedures set forth under this subdivision. In the event of an appeal of a matter in which an order is entered under this subdivision, the lower tribunal shall retain jurisdiction to consider motions to extend orders issued hereunder during the course of the appeal.

(D) The provisions of subdivisions (e)(3)(A)-(G), (e)(6), and (e)(7) shall apply to motions made under this subdivision. The provisions of subdivisions (e)(1), (e)(2), (e)(3)(H), (e)(4), and (e)(5) shall not apply to motions made under this subdivision.

(E) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (e)(4) unless directed by the court.

(3) This subdivision does not apply to records of the judicial branch determined to be confidential under subdivisions (c)(1)-(c)(8) or (c)(10).

(4) Requests to seal or expunge criminal history records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

(g) Request to Determine the Confidentiality of Appellate Court Records in Noncriminal Cases.

(1) A request to determine the confidentiality of appellate court records in noncriminal cases under subdivision (c) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision (e)(1). Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not determined to be confidential by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(2) A response to a motion filed under subdivision (g)(1) may be served within 10 days of service of the motion.

(3) Any order granting in whole or in part a motion filed under subdivision (g)(1) must be in compliance with the guidelines set forth in subdivisions (e)(3)(A)-(G).

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision (g)(1) as follows. Within 10 days following the entry of the order, the clerk of court must post a copy of the order on the clerk's website. The order must remain posted for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (g)(3), the request must be made in the form of a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties in the action with a copy of the motion. In the event that the subject order specifies that the names or addresses of one or more parties are confidential, the movant must state prominently in the caption of the motion "Confidential Party—Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to the parties in such a way as not to reveal the confidential information to the movant. A response to a motion may be served within 10 days of service of the motion.

(6) If the court determines that a motion made under subdivision (g)(1) was not made in good faith and supported by a sound legal or factual basis, the court may impose sanctions on the movant after notice and an opportunity to respond.

(7) Records of a lower tribunal determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where information has been determined to be confidential under this rule, the clerk of the lower tribunal shall so indicate in the index transmitted to the appellate court.

(h) Request to Determine the Confidentiality of Appellate Court Records in Criminal Cases.

(1) Subdivision (g) shall apply to any request to determine the confidentiality of appellate court records under subdivision (c)(9), except as provided in subdivision (h)(2).

(2) Any motion to determine whether an appellate court record is confidential under subdivision (c)(9)(A)(i) or (c)(9)(A)(v) of this rule that pertains to a plea agreement, substantial assistance agreement, or similar court record, and that constitutes a serious and imminent threat to either the safety of a person or an active criminal investigation, may be made in the form of a written motion captioned "Restricted Motion to Determine Whether a Court Record is Confidential" and must be filed in the appellate court. The existence of the restricted motion shall not be indicated on a publicly accessible index. Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not determined to be confidential by the lower tribunal, or a record presented to an appellate court in an original proceeding. As to any motion made under this subdivision, the following procedure shall apply:

(A) Any motion made under this subdivision and all appellate court records that are the subject of such a motion must be treated as confidential by the clerk pending the court's ruling on the motion.

(B) A response to a motion filed under this subdivision may be served within 10 days of service of the motion. The court shall issue a ruling on motions filed under this subdivision within 10 days of the filing of a response on contested motions or within 10 days of the filing of uncontested motions.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision.

(D) The provisions of subdivisions (e)(3)(A)-(G), (e)(6), and (e)(7) shall apply to motions made under this subdivision. The provisions of subdivisions (e)(1), (e)(2), (e)(3)(H), (e)(4), and (e)(5) shall not apply to motions made under this subdivision.

(E) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (g)(4) unless directed by the court.

(3) This subdivision does not apply to records of the judicial branch determined to be confidential under subdivisions (c)(1)-(c)(8) or (c)(10).

(4) Requests to seal or expunge criminal history records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

(ei) ~~Judicial Review of Denial of Access Request for Administrative Records.~~ Expedited review of denials of access to administrative records of the judicial branch shall be provided through an action for mandamus, or other appropriate relief ~~appellate remedy~~, in the following manner:

(1)-(2) [No Change]

(fj) Procedure. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

(1)-(3) [No Change]

APPENDIX D

PROPOSED REVISIONS SET AGAINST PENDING COURT PROPOSAL

PROPOSED CHANGES

RULE 2.420. PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

(a) [No change]

(b) (1)-(3) [No change]

(4) “Confidential,” as applied to information contained within a record of the judicial branch, means that such information is exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term “exempt” means that such information is confidential. Confidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule. Restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.

(c) **Exemptions.** The following records of the judicial branch shall be confidential:

(1)-(8) [No change]

(9) Any court record determined to be confidential in case decision or court rule on the grounds that

(A)-(B) [No change]

(C) no less restrictive measures are available to protect the interests set forth in subdivision (A)-;

(10) The names and any identifying information of judges mentioned in an advisory opinion of the Judicial Ethics Advisory Committee.

(d) Procedure for Filing Records.

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. A filer at the time of filing shall: indicate whether any confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed; identify the provision of subdivision (d)(1)(B) of this rule that applies to the identified information; and identify the precise location of the confidential information within the document being filed. The clerk of court shall review filings identified by filers as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under the identified provision in subdivision (d)(1)(B). In the event the clerk determines that such information is not subject to confidentiality under the identified provision, the clerk shall notify the filer in writing within 5 days of filing and shall maintain the information as confidential for 7 days from the day such notice is served.

(A) information described by any of subdivisions (c)(1) through (c)(6) of this rule,

(B) information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution under any of the following statutes or as they may be amended or re-numbered:

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. § 39.0132(3), Fla. Stat.

(ii) Adoption records. § 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit and credit card numbers in court records.

§ 119.0714(1)(i)–(j), (2)(a)–(e), Fla. Stat. (Unless redaction is requested pursuant to 119.0714(2), this information is exempt only as of January 1, 2011.)

(iv) HIV test results and patient identity within the HIV test results. § 381.004(3)(e), Fla. Stat.

(v) Sexually transmitted diseases - test results and identity within the test results. § 384.29, Fla. Stat.

(vi) Birth & death certificates, including court-issued delayed birth certificates and fetal death certificates. §§ 382.008(6), .025(1)(a), Fla. Stat.

(vii) Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(viii) Identifying information in clinical mental health records under the Baker Act. § 394.4615(7), Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individual clients of substance abuse service providers. § 397.501(7), Fla. Stat.

(x) Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(xi) Estate inventories. § 733.604(1), Fla. Stat.

(xii) Victim's address in domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Information identifying victims of sexual offenses, including child sexual abuse. §§ 119.071(2)(h), .0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(xv) Guardianship reports and orders appointing court monitors in guardianship cases. §§ 744.1076, .3701, Fla. Stat.

(xvi) Grand jury records. Ch. 905, Fla. Stat.

(xvii) Information acquired by courts and law enforcement regarding family services for children. § 984.06(3)-(4), Fla. Stat.

(xviii) Juvenile delinquency records. § 985.04(1), .045(2), Fla. Stat.

(xix) Information disclosing the identity of persons subject to tuberculosis proceedings and Records of the Department of Health in suspected tuberculosis cases. §§ 392.545, .65, Fla. Stat.

(2) Any person filing a document shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule. A person filing information that the filer believes to be confidential but that is not described in subdivision (d)(1) of this rule may request that the information be maintained as confidential by submitting a “Motion to Determine the Confidentiality of Court Records” under the procedure provided in subdivision (e). Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivision (e).

(de) Request to Make Determine the Confidentiality of Circuit and County Court Records in Noncriminal Cases Confidential.

(1) A request to ~~make~~ determine the confidentiality of circuit and county court records in noncriminal cases ~~confidential~~ under subdivision (c)(9) must be made in the form of a written motion captioned “Motion to Make Determine the Confidentiality of Court Records Confidential.” A motion made under this subdivision must:

(A) identify the particular court records ~~that~~ the movant seeks to ~~make~~ have determined as confidential with as much specificity as possible without revealing the information to be ~~made~~ determined confidential; ~~and~~

(B) specify the bases for ~~making~~ determining such court records to be confidential; and

(C) set forth the specific legal authority and any applicable legal standards for making such court records confidential.

Any motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is being made in good faith and is supported by a sound factual and legal basis. Any motion made pursuant to this subdivision and all court records that are the subject of such a motion must be treated as confidential by the clerk pending the court’s ruling on the motion. Notwithstanding any of the foregoing, the court may not make confidential the case number, docket number, or other number used by the clerk’s office to identify the case file.

(2) Except when a motion filed under subdivision ~~(d)~~(1) represents that all parties agree to all of the relief requested, the court must, as soon as practicable but no later than 30 days after the filing of a motion under this subdivision, hold a hearing before ruling on the motion. Whether or not any motion filed under subdivision ~~(d)~~(1) is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any party person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A). The moving party shall be responsible for ensuring that a complete record of any hearing held ~~pursuant to~~ under this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. The court may in its discretion require prior public notice of the hearing on such a motion in accordance with the procedure for providing public notice of court orders set forth in subdivision ~~(d)~~(4) or by providing such other public notice as the court deems appropriate.

(3) Any order granting in whole or in part a motion filed under subdivision ~~(d)(1)~~(e) must state the following with as much specificity as possible without revealing information ~~made~~ that may be confidential:

(A) The type of case in which the order is entered;

(B) The particular grounds under subdivision ~~(e)(9)(A)~~ (c) for ~~making~~ determining the ~~court records~~ information to be confidential:

(C) Whether any party's name ~~is to be made~~ may be determined to be confidential and, if so, the particular pseudonym or other term to be substituted for the party's name;

(D) Whether the progress docket or similar records generated to document activity in the case are to be made confidential;

(E) The particular ~~court records~~ information that ~~are to be made~~ may be determined to be confidential;

(F) ~~The names~~ Identification of those persons who are permitted to view the confidential-~~court records~~ information;

(G) That the court finds that: (i) the degree, duration, and manner of confidentiality ordered by the court is no broader than necessary to protect the interests set forth in

subdivision ~~(e)(9)(A)~~ (c); and; (ii) no less restrictive measures are available to protect the interests set forth in subdivision ~~(e)(9)(A)~~ (c); and

(H) That the clerk of the court is directed to publish the order in accordance with subdivision ~~(de)~~(4).

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision ~~(de)~~(1) as follows. Within 10 days following the entry of the order, the clerk of court must post a copy of the order on the clerk's website and in a prominent, public location in the courthouse. The order must remain posted in both locations for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision ~~(de)~~(3), the request must be made ~~in the form of~~ by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties in the action with a copy of the motion. In the event that the subject order specifies that the names or addresses of one or more parties are ~~to be made~~ confidential, the movant must state prominently in the caption of the motion “Confidential Party — Court Service Requested.” When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to the parties in such a way as ~~to not~~ to reveal the confidential information to the movant. Except when a motion filed under this subdivision represents that all parties agree to all of the relief requested, the court must hold a hearing ~~before ruling~~ on the motion. Whether ~~or not~~ any motion filed under this subdivision is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any ~~party~~ person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A). The movant shall be responsible for ensuring that a complete record of any hearing held under this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court.

(6) If the court determines that a motion designation made under subdivision ~~(d)~~(4) or a motion made under subdivision ~~(de)~~(4) was not made in good faith and was not supported by a sound legal and or factual basis, the court may impose sanctions ~~upon~~ the movant after notice and an opportunity to respond.

(7) Records of a lower tribunal ~~made~~ determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where ~~an order making court records~~ information is confidential under this rule remains in effect as of the time of an appeal, the clerk's of the lower tribunal shall so indicate in the index transmitted to the appellate court ~~must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number~~.

(8) Upon the request of persons seeking access, any Motion to Determine the Confidentiality of Court Records or any Motion to Vacate under this rule shall be deemed a priority case under rule 2.215(g).

(ef) Request to Determine the Confidentiality of ~~Make~~ Circuit and County Court Records in Criminal Cases ~~Confidential~~.

(1) Subdivision ~~(de)~~ shall apply to any request by the state or a defendant to determine the confidentiality of ~~make~~ circuit or county court records ~~confidential pursuant to~~ under subdivision (c)(9), except as provided in subdivision (ef)(2).

(2) Any ~~request~~ motion to ~~make~~ determine whether a circuit or county court records is confidential pursuant to subdivision (c)(9)(A)(i) or (c)(9)(A)(v) of this rule that pertains to a plea agreement, substantial assistance agreement, or similar court record, and that may jeopardize either constitutes a serious and imminent threat to either the safety of a person or an active criminal investigation, may be made in the form of a written motion captioned “Restricted Motion to ~~Make Determine Whether a~~ Court Records is Confidential.” As to any motion made pursuant to this subdivision (e)(2), the following procedure shall apply:

(A) ~~Any~~ The existence of a motion made pursuant to under this subdivision shall not be indicated on a publicly accessible index or progress docket. ~~and a~~ All court records that are the subject of such a motion must be treated as confidential by the clerk pending the court's ruling upon the motion.

(B) Except when the motion filed under this subdivision represents that both the movant and any other party subject to the motion agree to all of the relief requested, as evidenced by all such parties signing the motion, the court shall hold a hearing on a motion filed under this subdivision within 15 days of the filing of the motion, but such hearing shall be a closed session held in camera. The court shall issue a ruling on motions filed under this subdivision within 10 days of the hearing on contested motions or within 10 days of the filing of agreed motions.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision. In the event of an appeal of a matter in which an order is entered under this subdivision, the lower tribunal shall retain jurisdiction to consider motions to extend orders issued hereunder during the course of the appeal.

(D) The provisions of subdivisions ~~(e)~~(3)(A)-(G), ~~(e)~~(6), and ~~(e)~~(7) shall apply to motions made pursuant to this subdivision. The provisions of subdivisions ~~(e)~~(1), ~~(e)~~(2), ~~(e)~~(3)(H), ~~(e)~~(4), and ~~(e)~~(5) shall not apply to motions made pursuant to this subdivision.

(E) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision ~~(e)~~(4) unless directed by the court.

(3) This subdivision (e) does not apply to records of the judicial branch deemed confidential under subdivisions (c)(1)-(c)(8) or (c)(10).

(4) Requests to seal or expunge criminal history records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

(fg) Request to Make Determine the Confidentiality of Appellate Court Records in Noncriminal Cases-~~Confidential~~.

(1) A request to ~~make~~ determine the confidentiality of appellate court records in noncriminal cases ~~confidential~~ under subdivision (c)(9) must be filed in the appellate court and must be in compliance with the guidelines set forth in subdivision ~~(e)~~(1). Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not ~~made~~ determined to be confidential by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(2) A response to a motion filed under subdivision (fg)(1) may be served within 10 days of service of the motion.

(3) Any order granting in whole or in part a motion filed under subdivision (fg)(1) must be in compliance with the guidelines set forth in subdivisions ~~(e)~~(3)(A)-(G).

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision (fg)(1) as follows. Within 10 days following the entry of the order, the clerk of court must post a copy of the order on the clerk's website. The order must remain posted for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (fg)(3), the request must be made in the form of a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the request. The movant must serve all parties in the action with a copy of the motion. In the event that the subject order specifies that the names or addresses of one or more parties are to be made confidential, the movant must state prominently in the caption of the motion "Confidential Party—Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to the parties in such a way as to not reveal the confidential information to the movant. A response to a motion may be served within 10 days of service of the motion.

(6) If the court determines that a motion made under subdivision (fg)(1) was not made in good faith and supported by a sound legal ~~and~~or factual basis, the court may impose sanctions upon the movant after notice and an opportunity to respond.

(7) Records of a lower tribunal ~~made~~ determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where ~~an order making court records~~ information has been determined to be confidential under this rule remains in effect as of the time of an appeal, the clerk's of the lower tribunal shall so indicate in the index ~~must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number~~ transmitted to the appellate court. This subdivision does not preclude review by an appellate court, or affect the standard of review by an appellate court, of an order by a lower tribunal making a record confidential.

(gh) Request to Make Determine the Confidentiality of Appellate Court Records in Criminal Cases Confidential.

(1) Subdivision (fg) shall apply to any request ~~by the state or a defendant to make to determine the confidentiality of appellate court records confidential pursuant to~~ under subdivision (c)(9), except as provided in subdivision (gh)(2).

(2) Any request to ~~make~~ determine whether an appellate court records is confidential that may jeopardize either pursuant to subdivision (c)(9)(A)(i) or (c)(9)(A)(v) of this rule that pertains to a plea agreement, substantial assistance agreement, or similar court record, and that constitutes a serious and imminent threat to either the safety of a person or an active criminal investigation, may be made in the form of a written motion captioned “Restricted Motion to Make Determine Whether a Court Records is Confidential” and must be filed in the appellate court. The existence of the restricted motion shall not be indicated on a publicly accessible index. Such a request may be made with respect to a record that was presented or presentable to a lower tribunal, but not ~~made~~ determined to be confidential by the lower tribunal, or a record presented to an appellate court in an original proceeding. As to any motion made pursuant to this subdivision (g)(2), the following procedure shall apply:

(A) Any motion made pursuant to this subdivision and all appellate court records that are the subject of such a motion must be treated as confidential by the clerk pending the court’s ruling upon the motion.

(B) A response to a motion filed under this subdivision may be served within 10 days of service of the motion. The court shall issue a ruling on motions filed under this subdivision within 10 days of the filing of a response on contested motions or within 10 days of the filing of uncontested motions.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision.

(D) The provisions of subdivisions ~~(de)~~(3)(A)-(G), ~~(de)~~(6), and ~~(de)~~(7) shall apply to motions made pursuant to this subdivision. The provisions of subdivisions ~~(de)~~(1), ~~(de)~~(2), ~~(de)~~(3)(H), ~~(de)~~(4), and ~~(de)~~(5) shall not apply to motions made pursuant to this subdivision.

(E) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (fg)(4) unless directed by the court.

(3) This subdivision (g) does not apply to records of the judicial branch deemed confidential under subdivisions (c)(1)-(c)(8) or (c)(10).

(4) Requests to seal or expunge criminal history records must be made in accordance with Florida Rule of Criminal Procedure 3.692.

~~(hi) Judicial Review of Denial of Access Request for Administrative Records.~~

Expedited review of denials of access to administrative records of the judicial branch shall be provided through an action for mandamus, or other appropriate ~~appellate remedy~~ relief, in the following manner:

(1)-(2) [No Change]

(ij) Procedure. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

(1)-(3) [No Change]

APPENDIX E

**PROPOSED TERMS AND CONDITIONS FOR
MANATEE COUNTY PILOT PROGRAM**

**FLORIDA SUPREME COURT
COMMITTEE ON ACCESS TO COURT RECORDS**

ELECTRONIC ACCESS TO COURT RECORDS

Manatee County Pilot Project

RECOMMENDED TERMS AND CONDITIONS

Background.

Chief Justices Pariente and Lewis , in Administrative Order AOSC06-20, IN RE: IMPLEMENTATION OF REPORT AND RECOMMENDATIONS OF THE COMMITTEE ON PRIVACY AND ACCESS TO COURT RECORDS, authorized a one-year pilot program in Manatee County to provide electronic access to court records. (the pilot, pilot project, or project). The Florida Courts Technology Commission (the Commission) was charged with oversight of the project, including specification of terms and conditions controlling the project, identification of project goals, criteria for evaluation, reporting requirements and timeframe for conclusion of the project and reporting of results.

Chief Justice Lewis , in Administrative Order AOSC06-27, IN RE: COMMITTEE ON ACCESS TO COURT RECORDS, directed the Committee on Access to Court Records (the Committee) to advise the Florida Courts Technology Commission regarding terms and conditions the committee finds advisable in implementation of the pilot.

On October 23 the committee designated a workgroup, chaired by the Honorable Elijah Smiley, to address this component of its charge (the workgroup). The workgroup met on November 30 and December 15, 2006. The Honorable R. B. “Chips” Shore, Clerk of Court for Manatee County, and his staff provided an overview of the proposed pilot project and supporting documentation.

The recommendations of the workgroup were presented to the full Committee on January 8, 2007. The Committee approved the recommendations with minor modifications.

Recommended Terms and Conditions.

1. The defined purpose of the pilot should be: to explore provision of electronic access to court records in a manner consistent with Florida law and judicial branch policies, procedures, and rules; to provide information that the judicial branch can use to later determine long range policies about electronic access to court records.
2. The project should be in effect for one year. At the conclusion of the one year period the project is to be suspended pending reauthorization by the chief justice or revised rules of court.
3. The project should comply with all Florida laws and rules of court. In agreeing to conduct the pilot the Clerk of Court for Manatee County acknowledges that authorization of the pilot project does not affect, increase or diminish the legal duties, powers and functions of his office.
4. The Commission should play an active, independent role in oversight and monitoring of the project, in collecting and analyzing data, and in providing an independent assessment of the project to the chief justice.
5. The Commission and the Clerk of Court for Manatee County should emphasize in communications with judges, attorneys, parties and the public that: the pilot project is experimental and temporary; that while Florida law provides a right of public access to records there is no right to remote electronic access; and that remote access to records under the terms of the project may be conditioned on providing information related to the research goals of the project.
6. The project should collect generic user and use information (need not include name), including: user status (judge, attorney, party to case, commercial interest, media outlet, private individual, etc.); user location (Manatee County, Twelfth Circuit, Florida, other state, other country); general purpose (attorney/party to case, media research, commercial purpose, personal, etc.); amount and type of documents accessed.
7. The Commission should retain explicit authority to suspend the project in part or in whole at any time in the interest of the orderly administration of justice.
8. The Commission should conduct independent public, attorney and judicial branch outreach at the close of the project to solicit the views and/or concerns of users and members of the public regarding remote electronic access to court records.

9. All electronic access to court records in Manatee County should be governed by the procedures authorized under the pilot project. No other distribution of court records in electronic form, through any medium, is authorized. Bulk release of images of court records is not authorized.
10. The project goals should be:
 - ONE: To produce information regarding the feasibility of providing differentiated levels of electronic access to court records for judges, attorneys, parties, government users, and the general public.
 - TWO: To produce information regarding the efficacy of human and automated systems to segregate and restrict access to confidential court records consistent with state law and rules of court.
 - THREE: To produce information regarding the costs and potential savings associated with electronic access to court records.
 - FOUR: To produce information regarding anticipated demand for electronic access to court records among judges, court staff, attorneys, parties, government entities, commercial interests, and private individuals.
 - FIVE: To produce information regarding the education of the public and justice system participants about inclusion of private information in court records.
 - SIX: To produce information sufficient to assess attitudes and concerns of the public and justice system participants regarding electronic access to court records.
11. The project criteria, reporting requirements and implementation time frame and plan described in the document “Draft Terms and Conditions of Manatee Clerk; Electronic Access Pilot” (December 21, 2006) are endorsed. The Committee understands that particular provisions of this document are subject to change and ongoing refinement before and during the life of the project. The Committee does not object to collapsing Phase Two into Phase One.

**DRAFT TERMS AND CONDITIONS OF MANATEE CLERK
ELECTRONIC ACCESS PILOT**

I. PROJECT GOALS: The pilot should achieve the following goals:

1. The pilot will establish a finite set of records that clerks would maintain confidential/private in court records and produce information and data relevant to the ability of clerks to identify these records.
2. The pilot will produce information and data regarding personnel training programs employed by the clerk regarding identification and protection of confidential/private court records.
3. The pilot will produce information and data documenting the human processes and technology systems employed by the clerk to identify and protect confidential/private court records.
4. The pilot will produce information and data regarding the use of redaction technology to identify and remove confidential/private information located in otherwise public court records.
5. The pilot will produce information and data to educate the public and court system participants regarding private information in court records.
6. The pilot will produce a model for establishing levels of electronic access for judges, attorneys, parties, government users, subscribers and the general public; through both secure and public web access.
7. The pilot will produce information and data regarding other aspects of electronic access such as geographic information about court records users, public comment on the benefits or problems encountered accessing court records electronically and the costs and savings associated with electronic access.

NOTE: The Pilot will not be a static project; it is meant to change with advances in technology and as new rules are promulgated by the Supreme Court or its Committees.

II. CRITERIA FOR MANATEE PILOT: Electronic access will be permitted during the pilot based on implementation of the following criteria

- 1 **Court Records required to be maintained confidential/private from public access by the clerk.**
 - a. The clerk will maintain the confidential/private essence of court records that fall within the list of records adopted by the committee and commission, draft of which is attached as Exhibit 1. The clerk will conduct compliance testing to ensure confidential court records are assigned the correct security.
 - b. Records made confidential by any other statutory provision not contained on the list would be made confidential by party motion and court order following the procedures set forth in the 12th Judicial Circuit Order 2006-

10.2, attached as Exhibit 2. The clerk will maintain a record of all motions and orders to seal court records not protected by the clerk in Exhibit 1.

2 Training.

- a. Clerk personnel who handle, file, store, retrieve court records or who facilitate the electronic access to court records will receive training on procedures to determine and protect confidential/private court records, proper records classification and docketing, redaction of personal information, levels of permitted access by different users of court records and assisting with educating the public on protecting private information.

3. Record Protection Processes.

- a. The clerk will document and employ human and technology processes to identify and protect confidential/private court records, including how staff examine, identify and protect confidential records and the technological process used to identify and assign security to confidential court records.

4. Redaction.

- a. The clerk will apply redaction software technology to court records accessed by the public. Redaction software will be used to identify and remove social security numbers, bank account numbers, debit, credit and charge card numbers from the record accessed by the public.
- b. The clerk will conduct quality assurance testing to determine the effectiveness of the software.
- c. The committee recommends that the Supreme Court enter and administrative order permitting the Chief Judge of the 12th Judicial Circuit to enter an administrative order similar to the one attached as Exhibit 3 that would require parties to examine the court records they intend to file with the clerk and redact and identify private information such as but not limited to social security numbers, bank account, debit, credit and charge card numbers, then place that information on a separate Personal Information Reference Sheet.

5. Public Education.

The clerk will establish and implement a public education program aimed at educating the public, parties, attorney, the courts and other system users about: 1. Which records are confidential/private or public in court records, including confidential case types, confidential documents and confidential/private information contained within otherwise public court records, 2. The responsibilities of the clerk and filers in identifying and protecting confidential court records, 3. The processes forms and procedures for identifying and protecting confidential court records.

6. Establishing Levels of Access for users of electronic court records.

The clerk's electronic access system will provide access to users based on levels of access as described below in accordance with the matrix of users and court records attached as Exhibit 4.

7. Progress dockets.

The clerk will provide progress docket and search capabilities from data existing within its case management system to include: case name, case number, party name, address, race, gender, date of birth, attorney names and addresses, judicial division, case status and disposition, lists of all documents filed, lists of all court events, clerk actions, and in criminal cases all charges arrest and offense dates and the arresting agency.

8. Accessibility.

The clerk will examine the different technologies available to design or modify electronic access systems to accommodate persons with disabilities.

9. Cost considerations.

The clerk will plan and implement a cost analysis of electronic access analyzing the personnel, software and hardware costs, including cost offsets for the reduction of personnel and other costs associated with having to access paper files.

10. Anecdotal information regarding the benefits and problems encountered with electronic access.

The clerk will solicit and document all commentary from various users regarding the benefits and problems encountered with electronic access including but not limited to information solicited through questionnaires and log on requirements on the internet site.

III. REPORTING REQUIREMENTS The Manatee Clerk will provide the committee with the following data and information during the pilot. All reports shall be bi-monthly.

1. Court Records required to be maintained confidential from public access by the clerk.

- a. The clerk will report the results of all compliance testing to ensure confidential court records are assigned the correct security. The report will contain the results of random sampling of records to determine whether court records contained in Exhibit 1 are protected from public access.
- b. The clerk will report all motions and orders to protect all other court records not listed in Exhibit 1.
- c. The clerk shall report all incidents of the inadvertent release of court records listed in Exhibit 1.

2. Processes to identify and protect confidential court records.

The clerk will document its training program; provide its training materials to the committee and a record of staff who received training.

3. Court Record Protection Processes.

- a. The clerk will provide documentation of the human processes of reviewing court records for confidential/private information, proper identification and processes for handling public access requests.
- b. The clerk will document technology systems and processes for all hardware and software providing electronic access, including security measures to prevent outside attacks, protection of original electronic

records, assignment of levels of access and methods to access electronic records.

4. Redaction.

- a. The clerk will document the redaction software processes, the number of records processed, the number of redactions performed.
- b. The clerk will report the results of quality assurance testing.
- c. The clerk will report the number of filings of the Personal Information Reference Sheet.

5. Public Education.

The clerk will document and provide the committee with all the methods used for public education, including all educational materials.

6. Establishing Levels of Access for users of electronic court records.

- a. The clerk will document each level of user, including documentation of the methods and processes for granting access and the numbers and identities of persons and entities subscribing to electronic access.
- b. The clerk will perform and document compliance testing regarding correct assignment of levels of access by users.
- c. The clerk will perform and document compliance testing regarding correct access to court records based on level of user.
- d. The clerk will also report all incidents of unauthorized access.
- e. The clerk will document the types of records accessed and the geographic locations of subscribers accessing records.
- f. During the Pilot the Clerk will request name, location and usage information each log-in from users who are not subscribers with the Clerk before allowing public access. (See public internet access under phase two below)

7. Progress Dockets.

The Clerk will report all public comment regarding search and display of progress docket information.

8. Accessibility.

The clerk will report the result of it examination of the different technologies available to design or modify electronic access systems to accommodate persons with disabilities and all changes made to its systems to utilize such technologies.

9. Cost Considerations.

The clerk will report the results of the cost analysis in terms of the above criteria.

10. Anecdotal information regarding the benefits and problems encountered with electronic access.

The clerk will report all commentary received from various users regarding the benefits and problems encountered with electronic access.

IV. PILOT IMPLEMENTATION TIME FRAME AND PLAN: Access for Phase One will begin May 1, 2007. Access for Phase Two will begin November 1, 2007 and

continue for six months. (**NOTE: both phases can be done as one if so desired**). Access will be based on the criteria set forth above, through levels of access set forth below.

1. PHASE ONE: Levels of Access: Electronic Access to court records will be provided through several levels of access. No fees will be charged for users, however, depending on the final structure and processes adopted by the Court for electronic access, fees may be assessed to the extent they offset the cost of providing services.

Level 1. Judges, Clerks and authorized governmental entities will be provided in-house system access. Government access use in this category provides direct access to limited aspects of the clerk's case management system. Government users include the judicial assistants, court counsel, court administrators, state attorney, public defender, probation department and sheriff's office.

Level 2. Attorney of Record access (as currently permitted by AOSC04-4) through password-protected secure login by subscription agreement, which will provide access to:

- a. Indexes and dockets for all cases not sealed or expunged where the attorney is of record in a case.
- b. Images to all court records, including confidential/private information not sealed or expunged, where the attorney is of record in a case. As to cases where the attorney is not of record, access would also be identical to public access granted through subscriber level access with the limitations set out for that category in Level 4 below.

Level 3. Party access (as currently permitted by AOSC04-4) based on a per-case basis through written notarized request or face-to-face request with identification. Access will be by password-protected secure login, which provides the party with access to:

- a. Indexes and dockets of all cases not sealed or expunged where the person or entity is a party and has been assigned an access password.
- b. Images to all court records, including confidential/private information not sealed or expunged, except court records that contain the identity of victims of sexual abuse and all confidential addresses which will be redacted prior to providing party access. During the initial phase, party access will not be provided to some case types such as mental health and criminal cases as set forth in Exhibit 5.

Level 4. Subscriber access through password-protected secure login by subscription agreement. This access is the public and government user access. The only difference regarding what can be accessed, as a public subscriber from attorney of record or party access, is that subscribers would not be provided access to confidential/private case-types, confidential documents or confidential information redacted from documents. Access is provided to:

- a. Indexes and dockets of all case types that are not confidential, sealed or expunged.
- b. Images to all court records that are not confidential, sealed or expunged, except documents categorized as available on request. Social Security and bank, debit and credit card numbers will be redacted from all images.
- c. Documents categorized as available on request will be provided based on individual requests for records and additional human inspection.
- d. Governmental entity subscribers will have additional access to records that are confidential to the public provided there is specific statutory authority for the entity to access the record.

Level 5. Public access in the clerk's office (as currently permitted by AOSC04-4) using clerk-supplied terminals will access:

- a. Indexes and dockets of all case types that are not confidential, sealed or expunged.
- b. Images to all court records that are not confidential, sealed or expunged, except documents categorized as available on request. Social Security and bank, debit and credit card numbers will be redacted from all images.
- c. Documents categorized as available on request will be provided based on individual requests for records and additional human inspection.

Level 6. Public Internet access (as currently permitted by AOSC04-4):

- a. Indexes and dockets of all case types that are not confidential/private, sealed or expunged.

2. PHASE TWO: Levels of Access: Electronic Access to court records will be provided through several levels of access.

Levels 1-5. Access as provided in Phase One.

Level 6. Public Internet access to:

- a. Indexes and dockets of all case types that are not confidential/private, sealed or expunged.
- b. Images to all court records that are not confidential, sealed or expunged, except documents categorized as available on request. Social Security and bank, debit and credit card numbers will be redacted from all images.
- c. Documents categorized as available on request will be provided based on individual requests for records and additional human inspection.
- d. Public Internet users will be able to view case indexes and dockets directly from the Internet. To view image of court records, public Internet users will have to respond to a brief survey providing limited identifying geographic, as well as, usage data. Software and hardware technology security measures will be deployed to prevent automated mass-downloading of court documents. Any user can also apply for subscriber access in accordance with level 4 above.

In compliance with F.S. Sec. 28.2221, Public Internet users will not access any images of cases governed by the Florida Rules of Family Law and Probate Rules. No access to any Juvenile actions or records will be provided.

- e. The clerk will block access to all images of court records where the court has seated a jury until such time as a verdict has been rendered.

DRAFT TERMS AND CONDITIONS OF MANATEE CLERK
ELECTRONIC ACCESS PILOT

I. PROJECT GOALS: The pilot should achieve the following goals:

1. **The pilot will establish a finite set of records that clerks would maintain confidential/private in court records and produce information and data relevant to the ability of clerks to identify these records.**
2. **The pilot will produce information and data regarding personnel training programs employed by the clerk regarding identification and protection of confidential/private court records.**
3. **The pilot will produce information and data documenting the human processes and technology systems employed by the clerk to identify and protect confidential/private court records.**
4. **The pilot will produce information and data regarding the use of redaction technology to identify and remove confidential/private information located in otherwise public court records.**
5. **The pilot will produce information and data to educate the public and court system participants regarding private information in court records.**
6. **The pilot will produce a model for establishing levels of electronic access for judges, attorneys, parties, government users, subscribers and the general public; through both secure and public web access.**
7. **The pilot will produce information and data regarding other aspects of electronic access such as geographic information about court records users, public comment on the benefits or problems encountered accessing court records electronically and the costs and savings associated with electronic access.**

NOTE: The Pilot will not be a static project; it is meant to change with advances in technology and as new rules are promulgated by the Supreme Court or its Committees.

II. CRITERIA FOR MANATEE PILOT: Electronic access will be permitted during the pilot based on implementation of the following criteria

- 1 **Court Records required to be maintained confidential/private from public access by the clerk.**
 - a. The clerk will maintain the confidential/private essence of court records that fall within the list of records adopted by the committee and commission, draft of which is attached as Exhibit 1. The clerk will conduct compliance testing to ensure confidential court records are assigned the correct security.
 - b. Records made confidential by any other statutory provision not contained on the list would be made confidential by party motion and court order following the procedures set forth in the 12th Judicial Circuit Order 2006-10.2, attached as Exhibit 2. The clerk will maintain a record of all motions and orders to seal court records not protected by the clerk in Exhibit 1.
- 2 **Training.**
 - a. Clerk personnel who handle, file, store, retrieve court records or who facilitate the electronic access to court records will receive training on procedures to determine and protect confidential/private court records, proper records classification and docketing, redaction of personal information, levels of permitted access by different users of court records and assisting with educating the public on protecting private information.

3. Record Protection Processes.

- a. The clerk will document and employ human and technology processes to identify and protect confidential/private court records, including how staff examine, identify and protect confidential records and the technological process used to identify and assign security to confidential court records.

4. Redaction.

- a. The clerk will apply redaction software technology to court records accessed by the public. Redaction software will be used to identify and remove social security numbers, bank account numbers, debit, credit and charge card numbers from the record accessed by the public.
- b. The clerk will conduct quality assurance testing to determine the effectiveness of the software.
- c. The committee recommends that the Supreme Court enter an administrative order permitting the Chief Judge of the 12th Judicial Circuit to enter an administrative order similar to the one attached as Exhibit3 that would require parties to examine the court records they intend to file with the clerk and redact and identify private information such as but not limited to social security numbers, bank account, debit, credit and charge card numbers, then place that information on a separate Personal Information Reference Sheet.

5. Public Education.

The clerk will establish and implement a public education program aimed at educating the public, parties, attorney, the courts and other system users about: 1. Which records are confidential/private or public in court records, including confidential case types, confidential documents and confidential/private information contained within otherwise public court records, 2. The responsibilities of the clerk and filers in identifying and protecting confidential court records, 3. The processes forms and procedures for identifying and protecting confidential court records.

6. Establishing Levels of Access for users of electronic court records.

The clerk's electronic access system will provide access to users based on levels of access as described below in accordance with the matrix of users and court records attached as Exhibit 4.

7. Progress dockets.

The clerk will provide progress docket and search capabilities from data existing within its case management system to include: case name, case number, party name, address, race, gender, date of birth, attorney names and addresses, judicial division, case status and disposition, lists of all documents filed, lists of all court events, clerk actions, and in criminal cases all charges arrest and offense dates and the arresting agency.

8. Accessibility.

The clerk will examine the different technologies available to design or modify electronic access systems to accommodate persons with disabilities.

9. Cost considerations.

The clerk will plan and implement a cost analysis of electronic access analyzing the personnel, software and hardware costs, including cost offsets for the reduction of personnel and other costs associated with having to access paper files.

10. Anecdotal information regarding the benefits and problems encountered with electronic access.

The clerk will solicit and document all commentary from various users regarding the benefits and problems encountered with electronic access including but not limited to information solicited through questionnaires and log on requirements on the internet site.

III. REPORTING REQUIREMENTS The Manatee Clerk will provide the committee with the following data and information during the pilot. All reports shall be bi-monthly.

1. Court Records required to be maintained confidential from public access by the clerk.

- a. The clerk will report the results of all compliance testing to ensure confidential court records are assigned the correct security. The report will contain the results of random sampling of records to determine whether court records contained in Exhibit 1 are protected from public access.
- b. The clerk will report all motions and orders to protect all other court records not listed in Exhibit 1.
- c. The clerk shall report all incidents of the inadvertent release of court records listed in Exhibit 1.

2. Processes to identify and protect confidential court records.

The clerk will document its training program; provide its training materials to the committee and a record of staff who received training.

3. Court Record Protection Processes.

- a. The clerk will provide documentation of the human processes of reviewing court records for confidential/private information, proper identification and processes for handling public access requests.
- b. The clerk will document technology systems and processes for all hardware and software providing electronic access, including security measures to prevent outside attacks, protection of original electronic records, assignment of levels of access and methods to access electronic records.

4. Redaction.

- a. The clerk will document the redaction software processes, the number of records processed, the number of redactions performed.
- b. The clerk will report the results of quality assurance testing.
- c. The clerk will report the number of filings of the Personal Information Reference Sheet.

5. Public Education.

The clerk will document and provide the committee with all the methods used for public education, including all educational materials.

6. Establishing Levels of Access for users of electronic court records.

- a. The clerk will document each level of user, including documentation of the methods and processes for granting access and the numbers and identities of persons and entities subscribing to electronic access.
- b. The clerk will perform and document compliance testing regarding correct assignment of levels of access by users.
- c. The clerk will perform and document compliance testing regarding correct access to court records based on level of user.
- d. The clerk will also report all incidents of unauthorized access.
- e. The clerk will document the types of records accessed and the geographic locations of subscribers accessing records.
- f. During the Pilot the Clerk will request name, location and usage information each log-in from users who are not subscribers with the Clerk before allowing public access. (See public internet access under phase two below)

7. Progress Dockets.

The Clerk will report all public comment regarding search and display of progress docket information.

8. Accessibility.

The clerk will report the result of its examination of the different technologies available to design or modify electronic access systems to accommodate persons with disabilities and all changes made to its systems to utilize such technologies.

9. Cost Considerations.

The clerk will report the results of the cost analysis in terms of the above criteria.

10. Anecdotal information regarding the benefits and problems encountered with electronic access.

The clerk will report all commentary received from various users regarding the benefits and problems encountered with electronic access.

IV. PILOT IMPLEMENTATION TIME FRAME AND PLAN: Access for Phase One will begin May 1, 2007. Access for Phase Two will begin November 1, 2007 and continue for six months. (**NOTE: both phases can be done as one if so desired**). Access will be based on the criteria set forth above, through levels of access set forth below.

1. PHASE ONE: Levels of Access: Electronic Access to court records will be provided through several levels of access. No fees will be charged for users, however, depending on the final structure and processes adopted by the Court for electronic access, fees may be assessed to the extent they offset the cost of providing services.

Level 1. Judges, Clerks and authorized governmental entities will be provided in-house system access. Government access use in this category provides direct access to limited aspects of the clerk's case management system. Government users include the judicial assistants, court counsel, court administrators, state attorney, public defender, probation department and sheriff's office.

Level 2. Attorney of Record access (as currently permitted by AOSC04-4) through password-protected secure login by subscription agreement, which will provide access to:

- a. Indexes and dockets for all cases not sealed or expunged where the attorney is of record in a case.
- b. Images to all court records, including confidential/private information not sealed or expunged, where the attorney is of record in a case. As to cases where the attorney is not of record, access would also be identical to public access granted through subscriber level access with the limitations set out for that category in Level 4 below.

Level 3. Party access (as currently permitted by AOSC04-4) based on a per-case basis through written notarized request or face-to-face request with identification. Access will be by password-protected secure login, which provides the party with access to:

- a. Indexes and dockets of all cases not sealed or expunged where the person or entity is a party and has been assigned an access password.
- b. Images to all court records, including confidential/private information not sealed or expunged, except court records that contain the identity of victims of sexual abuse and all confidential addresses which will be redacted prior to providing party access. During the initial phase, party access will not be provided to some case types such as mental health and criminal cases as set forth in Exhibit 5.

Level 4. Subscriber access through password-protected secure login by subscription agreement. This access is the public and government user access. The only difference regarding what can be accessed, as a public subscriber from attorney of record or party access, is that subscribers would not be provided access to confidential/private case-types, confidential documents or confidential information redacted from documents. Access is provided to:

- a. Indexes and dockets of all case types that are not confidential, sealed or expunged.
- b. Images to all court records that are not confidential, sealed or expunged, except documents categorized as available on request. Social Security and bank, debit and credit card numbers will be redacted from all images.
- c. Documents categorized as available on request will be provided based on individual requests for records and additional human inspection.
- d. Governmental entity subscribers will have additional access to records that are confidential to the public provided there is specific statutory authority for the entity to access the record.

Level 5. Public access in the clerk's office (as currently permitted by AOSC04-4) using clerk-supplied terminals will access:

- a. Indexes and dockets of all case types that are not confidential, sealed or expunged.
- b. Images to all court records that are not confidential, sealed or expunged, except documents categorized as available on request. Social Security and bank, debit and credit card numbers will be redacted from all images.
- c. Documents categorized as available on request will be provided based on individual requests for records and additional human inspection.

Level 6. Public Internet access (as currently permitted by AOSC04-4):

- a. Indexes and dockets of all case types that are not confidential/private, sealed or expunged.

2. PHASE TWO: Levels of Access: Electronic Access to court records will be provided through several levels of access.

Levels 1-5. Access as provided in Phase One.

Level 6. Public Internet access to:

- a. Indexes and dockets of all case types that are not confidential/private, sealed or expunged.
- b. Images to all court records that are not confidential, sealed or expunged, except documents categorized as available on request. Social Security and bank, debit and credit card numbers will be redacted from all images.
- c. Documents categorized as available on request will be provided based on individual requests for records and additional human inspection.
- d. Public Internet users will be able to view case indexes and dockets directly from the Internet. To view image of court records, public Internet users will have to respond to a brief survey providing limited identifying geographic, as well as, usage data. Software and hardware technology security measures will be deployed to prevent automated mass-downloading of court documents. Any user can also apply for subscriber access in accordance with level 4 above. In compliance with F.S. Sec. 28.2221, Public Internet users will not access any images of cases governed by the Florida Rules of Family Law and Probate Rules. No access to any Juvenile actions or records will be provided.
- e. The clerk will block access to all images of court records where the court has seated a jury until such time as a verdict has been rendered.

APPENDIX F

**ADMINISTRATIVE ORDER AOSC07-49: IN RE REVISED INTERIM
POLICY ON ELECTRONIC RELEASE OF COURT RECORDS**

Supreme Court of Florida

No. AOSC07-49

INRE: REVISED INTERIM POLICY ON ELECTRONIC RELEASE
OF COURT RECORDS

ADMINISTRATIVE ORDER

In June 2006, the interim policy on the electronic release of court records recommended by the Committee on Privacy and Court Records¹ was approved with modifications in In re: Interim Policy on Electronic Release of Court Records, Fla. Admin. Order No. AOSC06-21 (June 30, 2006) (on file with Clerk, Fla. Sup. Ct.). In August 2006, the Committee on Access to Court Records (Access Committee) was established and charged with, among other things, advising the Chief Justice "of the advisability of alterations to the interim policy."² The Access Committee submitted its recommended changes to the interim policy in June

1. See Committee on Privacy and Court Records, Privacy, Access and Court Records: Report and Recommendations of the Committee on Privacy and Court Records (2005).

2. See In re: Committee on Access to Court Records, Fla. Admin. Order No. AOSC06-27 (Aug. 21, 2006) (on file with Clerk, Fla. Sup. Ct.)

2007.³

This administrative order revises and supersedes the interim policy contained in Administrative Order AOSC06-21. After consultation with the Court, the revisions to the interim policy recommended by the Access Committee are approved. The revised interim policy continues to allow extensive docket information, as well as all final orders and judgments of the courts, to be made available electronically, such as on a publicly accessible internet website, as long as no confidential information is released. In addition, as originally provided, a chief judge of a jurisdiction can direct that all non-confidential records in a case of significant public interest may be made available electronically. To facilitate orderly access to records affecting real property, the revised interim policy continues to allow certain records affecting real property to be released. Further, any non-confidential Florida court record can be provided electronically in response to a request, provided the record has been manually inspected by the clerk of the court in order to ensure that no confidential information is released.

The revised policy clarifies that it does not apply to records under the control of court administration. It also limits the application of the provision that

3. See Committee on Access to Court Records, Interim Progress Report and Recommendations on Modification to Interim Policy on Electronic Access to Court Records (2007).

addressed "traffic court records" to civil traffic infraction case records and disallows the electronic release of images of traffic citations, which can contain personal identifying information. The revised interim policy allows for the electronic release of the full date of birth of defendants in criminal cases. It permits clerks of court to provide attorneys remote electronic access to records in cases in which the entire court file is not confidential.

Therefore, it is ordered that no court record, as defined by Rule of Judicial Administration 2.420(b)(1)(a), shall be released in any electronic form⁴ by any Florida clerk of court except as provided herein below:⁵

4. For purposes of this administrative order, "electronic form" is defined by Section 3.40 of the Guidelines for Public Access to Court Records developed by the Conference of Chief Justices and the Conference of State Courts Administrators:

Section 3.40 - Definition Of In Electronic Form. Information in a court record 'in electronic form' includes information that exists as:

- (a) electronic representations of text or graphic documents;
- (b) an electronic image, including a video image, of a document, exhibit or other thing;
- (c) data in the fields or files of an electronic database; or
- (d) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.

A document transmitted via a facsimile machine and not captured as a digital file is not contemplated to be within the meaning of "electronic form."

5. The requirements of the interim policy stated in this administrative order

1. This policy does not apply to digital recordings of judicial proceedings or other records in the custody or control of court administrators.
2. The following court records may be made available electronically by a Florida clerk of court provided that no information is released that is confidential pursuant to federal or state law, court rule, or court order:
 - a. progress dockets, limited to case numbers and case type; party name, race, gender and year of birth; names and addresses of counsel; lists or indices of any judgments, orders, pleadings, motions, notices or other documents in the court file; notations of court events, clerk actions and case dispositions; full date of birth of defendant in criminal cases; name and date of birth and death of deceased in probate cases, addresses of attorney of record or self-represented parties in probate cases;

govern any electronic release of court records, notwithstanding chapter 2007-251, Laws of Florida, amending section 119.071(5)(a)7.d., Florida Statutes (2006), and creating section 119.0714, Florida Statutes.

- b. court records that are Official Records as defined by section 28.001, Florida Statutes (2006);⁶
 - c. court schedules and calendars;
 - d. civil traffic infraction case records, but not images of traffic infraction citations; and
 - e. all appellate court filings, including motions, briefs, petitions, orders and opinions.
3. The following records may be made available electronically provided the clerk of court ensures that the described records are manually inspected and no confidential information is released:
- a. the chief judge of a jurisdiction may, sua sponte, direct the electronic release of a record or records in a case of significant public interest;
 - b. records may be transmitted to a party, an attorney of record in a case or an attorney expressly authorized by a party in a case to receive the

6. Certain official records are confidential by statute. Further, section 28.2221, Florida Statutes (2006), prohibits a clerk of court from publishing on an Internet website records in cases governed by the Florida Family Law Rules of Procedure, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. Nothing in this order should be construed to negate these or any other statutory or rule restrictions.

- record;
- c. a record that has been individually and specifically requested;
 - d. records may be transmitted to a governmental agency or agent;
 - e. civil cases in which a state agency, as defined by section 119.011 (2), Florida Statutes (2006), is a party, with the exception that court files that are sealed pursuant to statute, court rule or court order shall not be available absent a specific order from the court unsealing the file;
 - f. pleadings, proof of service, motions and orders in actions affecting title to real property or tenancies to real property, including foreclosure of mortgages, ejectments, actions to clear title, specific performance, residential and non-residential evictions, forcible entry and detainers, lien contest actions, partition actions and actions in which a lis pendens has been filed;


- g. pleadings, proof of service, motions and orders in actions for declaratory judgments to establish foreign decrees as Florida judgments;
- h. injunctions affecting real property, excluding domestic violence injunctions, and orders denying or dismissing an injunction affecting real property; and
 - 1. attorneys may be provided general remote electronic access to non-confidential records in cases in which the entire court file is not confidential.

While the records identified above may be made available electronically, this administrative order does not require that they must be nor does this administrative order create an obligation on any clerk of court to provide remote electronic access to court records. Article V of the Constitution of the State of Florida charges the chief judges of the district and circuit courts with the administrative supervision of the courts within their jurisdiction. Therefore, any

questions that may arise regarding implementation of this interim policy should be addressed to the chief judge of the jurisdiction.

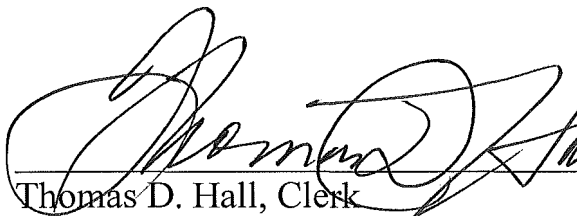
This order shall remain in effect until further order.

DONE AND ORDERED at Tallahassee, Florida, on September 7, 2007.



Chief Justice R. Fred Lewis

ATTEST:



Thomas D. Hall, Clerk

