

Amendments to Florida Rule of Judicial Administration on Public Access to Judicial Branch Records

April 02, 2013

On March 28, the Florida Supreme Court issued a decision adopting several proposed amendments to Florida Rule of Judicial Administration 2.420, Public Access to Judicial Branch Records. The amendments, which become effective May 1, 2013, are intended to clarify the rule and refine the procedures for determining the confidentiality of court records. The following summarizes the significant amendments to Rule 2.420.

Several amendments were made to subdivision (d) Procedures for Determining Confidentiality of Court Records. First, subdivision (d)(1)(B) was amended to clarify that the language of the controlling statute or rule, not the language used within the 20 listed categories of automatically confidential information, must be considered when determining what information must be maintained confidential by the clerk of court. Subdivisions (d)(1)(B)(i)-(xx) were amended to make the language used to describe the 20 categories of automatically confidential information consistent with the referenced statutes or rule.

The most significant change to subdivision (d)(2) is the deletion of the requirement that the filer identify the specific subdivision (d)(1)(B) category of confidential information that applies to the information identified in the notice of confidential information. Consistent with amendments to subdivision (d)(2), the court amended the notice form to make it more generic and concise. However, the filer still must identify the precise location of the confidential information within the document being filed. Subdivision (d)(2) was also amended to provide that, if an entire document is confidential, the filer need only indicate that the entire document is confidential.

New subdivision (d)(2)(A) allows for “after-the-fact” notification of confidential information in a court

filing. The notice can be used when confidential information or documents were not initially identified by the filer and are not being maintained as confidential by the clerk of court. The option to file the after-the-fact notice was also added to the notice form.

The certificate of service in the form was amended to accommodate service on affected non-parties and to include a reference to new subdivision (k), Procedure for Service on Victims and Affected Non-parties and When Addresses Are Confidential. The court revised the certificate of service form to provide for service consistent with new Rule of Judicial Administration 2.516.

New subdivision (d)(5) requires a judge, magistrate, or hearing officer (“court”) who files an order or other document containing confidential information to identify the confidential information as confidential and include in the title of the document the word “confidential.” The court also must provide the clerk with a copy of the order or other document with the confidential information redacted.

Subdivisions (e)(1)(B)-(C) were amended to advise the filer that, when specifying the bases for determining the records are confidential and setting forth the specific legal authority and legal standard for that determination, the confidential information should not be revealed. The last paragraph of subdivision (e)(1) was amended to clarify that the subdivision applies to “written” motions, as opposed to oral motions, which are now authorized under new subdivision (h). Finally, a procedure for filing a response to a written motion is also added.

Subdivision (f), Request to Determine Confidentiality of Court Records in Criminal Cases, was amended to clarify that oral motions are permitted in criminal cases. Of significance is the deletion of the requirement that all parties sign the motion to determine confidentiality in order to evidence agreement and avoid scheduling a hearing on the motion.

Subdivision (g)(2), Request to Determine Confidentiality of Appellate Court Records in Noncriminal Cases, was amended to require an appellate court to issue a written ruling on a motion to determine confidentiality of appellate records in a noncriminal case within 30 days of the filing of a response on a contested motion, or within 30 days of the filing of an uncontested written motion.

Subdivision (h), Oral Motions to Determine Confidentiality of Trial Court Records, is new. It authorizes oral motions to keep information confidential when the movant is unable to file a written motion. However, oral motions generally must comply with the requirements of subdivision (e)(1); all parties or affected non-parties must be present or properly noticed; the movant must show good cause for not filing a written motion; a written motion must be filed within five days; and the court may deny an oral motion if it finds that written motion could have been filed or that the movant failed to give adequate notice.

New subdivision (i), Sanctions, cures inconsistencies in the existing sanctions provisions. The new subdivision is patterned after deleted subdivision (e)(6).

New subdivision (j), Procedure for Obtaining Access to Confidential Court Records, provides a procedure for individuals who have a legal basis for obtaining access to confidential information in court records to gain access to that information by court order without altering the confidential status of those records.

New subdivision (k), Procedure for Service on Victims and Affected Non-parties and When Addresses Are Confidential, consolidates and replaces the various separate provisions for service throughout the rule, which were deleted. Subdivision (k)(1) requires that service on victims of a crime be made by serving the state attorney. Subdivision (k)(2) provides for service on an affected non-party whose name or address is not confidential. Subdivision (k)(3) provides for service by the court when the name or address of the party or affected non-party being served is confidential.

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