

Judicial Relations Committee

Changes Come to Confidentiality of Court Filings

Lawrence H. Kolin



As the judicial branch transitions toward acquiring, maintaining, and distributing court records electronically, the Supreme Court of Florida has viewed the confidentiality of a narrow set of records as a "necessary prerequisite" to giving the public electronic access to court records.¹ Effective October 1, 2010, Florida Rule of Judicial Administration 2.420 defined a number of critical responsibilities that all lawyers now have to be familiar with and follow.

Rule 2.420, as amended, applies to all documents filed in all state courts in Florida by all parties, from small claims to appellate cases. The goal of the amendments is to balance the public's constitutional

right to access to court records with the courts' responsibility to protect from public access those court records that are truly confidential.² The rule is also designed to bring the court system closer to providing the public with electronic access to records.³

Rule 2.420 provides comprehensive procedures for identifying and segregating confidential information in court records, for sealing and unsealing court records, and for reviewing orders issued under the rule. Any person filing any document containing confidential information must simultaneously file with the clerk a form titled Notice of Confidential Information within Court Filings.⁴ On the form, the person filing

may select from 19 specific categories of information that should always be confidential.⁵ The clerk then reviews the filing identified as containing confidential information to determine whether it is facially subject to confidentiality under the identified provision in subdivision (d)(1)(B) of Rule 2.420. The clerk has a period of five days to disagree with a claim of confidentiality, but will hold the document in confidence for 10 more days to permit the filing of a motion to maintain confidentiality.⁶ If a filing contains confidential information that does not fit into one of the 19 categories on the form, a Motion for Determination of Confidentiality must be filed with the court.⁷ Motions for Determination of Confidentiality must be styled

as such to be heard in a timely manner.

Be aware that sanctions may be imposed for violating Rule 2.420.⁸

Lawyers have the principal duty to protect court files in Florida, and they can be held accountable if they do not.⁹ Although the Clerks of Court retain certain responsibilities with respect to receiving, maintaining and giving access to court records, that is not expected to reduce or change the lawyer's separate and independent obligations to be mindful of the areas of law that provide for the confidentiality of some documents and information, and of the public's right to

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access to the rest. Because lawyers need to be versed in this new rule, The Florida Bar has provided members with a free online Legalspan CLE, which may be accessed at www.flabar.org.¹⁰

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¹In re *Amendments to Florida Rule of Judicial Administration 2.420 and The Florida Rules of Appellate Procedure*, 31 So. 3d 756 (Fla. 2010).

²See Gary Blankenship, *Lawyers will be responsible for redacting confidential information in court filings*, THE FLORIDA BAR NEWS, Sep. 1, 2010, <http://www.floridabar.org/DIVCOM/JN/JNNNews01.nsf/Articles/BA025DA1E12A138A852577850063C692>.

³*Id.*

⁴Fla. R. Jud. Admin. 2.420(d)(2).

⁵See Blankenship, *supra*.

⁶Fla. R. Jud. Admin. 2.420(d)(2).


⁷Fla. R. Jud. Admin. 2.420(d)(3).

⁸Blankenship, *supra*.

⁹See *id.*

¹⁰*Id.*

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