

New rules for filing online court records: Supreme Court outlines impacts to Clerks and filers alike

As agencies embrace technological advances and adopt the benefits of the electronic age, the process of how best to provide public access to records— while protecting confidential information—has been a tedious responsibility for the courts and Clerks.

But changes are coming. On March 18, 2010, the Florida Supreme Court defined new rules for electronic access to court records in a per curiam order in case no. SC07-2050, *In Re: Amendments to the Florida Rule of Judicial Administration 2.420 and the Florida Rules of Appellate Procedure*. A thorough understanding of these proposals is critical to ensure the integrity of court records as the courts move inevitably into the electronic age. A solution was reached in the formidable task of narrowing the scope of rule 2.420 in relation to the Clerk of Court's duty to screen confidential information from public view, and the transition to providing electronic access.

The new rule 2.420(d) regarding procedures for determining confidentiality in court records becomes effective October 1 at 12:01 a.m. The remainder of the amendments is effective immediately.

The goal of the change is to balance the public's constitutional right of access to records with the courts' responsibility to protect records that are confidential. No easy task, as Clerks statewide voiced concern for the enormous task at hand that would be required of their offices.

In a 50 page order, the Supreme Court adopts procedures impacting the Clerk's operations, such as:

- Identifying a narrow set of records to be kept confidential when documents are filed;
- Sealing and unsealing of records in criminal and civil cases;
- Avoiding "secret dockets" while protecting the identity of confidential informants in criminal cases and related appeals.

The new rule provides a mechanism to protect confidential information in court records from public view, maintaining an awareness of the potential for abuse if confidential information was available online. Recognizing that the task of applying all statutory exemptions to court records would be a practically impossible task for Clerks, the Supreme Court's Access Committee reviewed more than 1,000 statutory public records exemptions, and identified 19 exemptions named *type I information*,—information which the Clerk should automatically treat as confidential—such as Social Security numbers, adoption records, and information identifying victims of sexual offenses.

But the Clerk's responsibility is independent of the duties of the filer; the new orders impact filers as well. New responsibilities of the filer include completing a *Notice of Confidential Information Within Court Filing* form that identifies type I information, and the specific location of the confidential information within the document being filed.

Type II information—information that is not automatically confidential under the new rule—falls under the duty of the filer, who must determine whether this confidential information is contained in the document. Additional changes involve requests to determine confidentiality of trial court records in non criminal cases, and any motion to determine whether a court record pertaining to a plea agreement, substantial assistance agreement, or other record that reveals the identity of a confidential informant or active criminal investigative information is ruled confidential.

The Supreme Court opinion is available at www.floridasupremecourt.org. The new forms required by filers will be available at www.SarasotaClerk.com under *Forms.###*