Electronic Access to Court Records and Redaction: AOSC 14-19 and AOSC 15-18

New Clerk Training

November 2015

Background – public records law

* Florida public records law – very broad
* Found in Florida constitution Article I, §24
* Chapter 119, F.S. – controls access to executive & legislative branch records
* R. 2.420 – controls access to court records
* "Access to all electronic and other court records shall be governed by the Standards for Access to Electronic Court Records and Access Security Matrix, as adopted by the supreme court in Administrative Order AOSC14-19 or the then-current Standards for Access." (R. 2.420)

Differences in access

* Two critical differences between access to court records and non-court records
* PROCEDURE:
  * Court records – request must be in writing, may be required to prove identity (*see also* Standards for Access)
  * Non-court records – request does not have to be in writing, cannot require identity of requester
* COST:
  * Court records - $1/page, $2 for certified copy
  * Non-court records - $0.15/page, $1 for certified copy

Differences in access - liability

* Two critical differences in distinguishing Clerk liability regarding R. 2.420 and Chapter 119, F.S.
* REDACTION:
  * Court records –Until January 1, 2012, Clerk has no liability for the inadvertent release of filed confidential social security, bank account , debit, charge or credit card numbers, if unknown. Thereafter, the Clerk must redact this filing information without any person requesting redaction.
  * The Clerk is liable for inadvertent release

Differences in access – liability
continued

* REDACTION:
  * Official Records –January 1, 2011, and thereafter, the county recorder must use his or her best effort to keep social security, bank account , debit, charge or credit card numbers confidential without any person requesting redaction.
  * The county recorder is not liable for the inadvertent release.

List of 22

* R. 2.420(d)(1)(B) contains a list of 22 categories of documents or information that must be kept confidential by the Clerk:
* Chapter 39 records (dependency, TPRs, etc)
* Adoption records
* SSN, bank account, charge, debit & credit card numbers
* HIV test results and identity of patient
* STD records held by Dept of Health or authorized reps

List of 22 continued

* Birth records, portions of death & fetal death records
* Identification information of minor seeking abortion
* Baker Act clinical records
* Substance abuse service provider records
* Clinical records of criminal defendants found incompetent or acquitted due to insanity
* Estate inventories and accountings
* DV victim's address upon request
* Identification information of victims of child abuse and sexual offenses

List of 22 continued

* Gestational surrogacy records
* Guardianship reports and other specified records
* Grand jury records
* Records acquired by courts and LEA re: family services for children
* Juvenile delinquency records
* Identification records of tuberculosis patients
* PSIs
* Forensic behavioral evaluations
* Certain drug court program records

Notice of Confidential Information within Court Filing

* Prepared and filed by filer
* Alerts clerk personnel to confidential information
* Upon receipt of notice, information is made confidential
* If, after a facial review, the clerk determines that the information is not in the list of 22, then the clerk notifies the filer, who has 10 days to file a motion
* If no motion is filed, information becomes public

R. 2.420 Motions

* **Who can file a motion:** A party or non-party may file a motion asking the court to determine the confidentiality of a document or information within a document
* **How:** Different procedures and time frames for different types of cases, and procedure for oral motions

R. 2.420 motions - procedures

* Motion is filed requesting court to determine confidentiality
  * Identify what is to be kept confidential;
  * Specify basis for confidentiality without revealing the confidential information; and
  * Provide legal authority to support position
  * Must include a certification that the motion is made in good faith
* Clerk immediately makes the information/document confidential pending a ruling by the court

R. 2.420 motions – procedures
continued

* The court holds a hearing within 15 days (criminal) or 30 days (non-criminal) of the filing of the motion

* Orders:
  * Criminal cases: the Clerk shall not publish the order unless directed by the court
  * Non-criminal cases: with some exception, if the court grants the motion, the order must be published by the Clerk pursuant to R. 2.420(e)(4)

Orders and Other Judicial Filings R. 2.420(d)(5)

* Unless the entire court file is confidential, the court must take certain steps:
  * The title of the document must include the word "confidential"
  * The confidential information must be identified
  * A copy of the document with the confidential information redacted shall be provided to the Clerk

AOSC 14-19 and AOSC 15-18

* Components: (1) Order; (2) Standards for Access to Electronic Court Records; and (3) Access Security Matrix
* Application Process
* Statewide Pilot Program & Approval Process

AOSC 14-19 and AOSC 15-18 continued

* Task Force: Policy, Legal, and Technology Subcommittees
* Implementation of AOSC 14-19
* Uniformity & Consistency
* Electronic Viewing and Release of Court Records Best Practice
* Standard User Agreements

Electronic Viewing and Release of Court Records Best Practice

* Overarching ideas behind Best Practice
  * This is about viewing records online, not "access," which has "access to court" implications and resultant problems
  * The term subscriber necessarily implies payment for services—the term "registered user" is the term to use
  * Reference Guide is reorganized security matrix
  * Clerks must also reference the Confidential Records Best Practice

Electronic Viewing and Release of Court Records Best Practice continued

* **Components of the Best Practice:**
* The Best Practice Itself
* The Best Practice Reference Guide for FCTC Security Matrix
  * The Criminal Charges Protected Tab
  * The Security Roles Tab
  * The Documents to Protect Tab

Electronic Viewing and Release of Court Records Best Practice continued

* Requirements for Remote Electronic Viewing of Court Records
* Identification & Protection of Confidential Cases, Documents, and Information
  * Refer to Confidential Records BP
  * Consider how to allow viewing by some parties and not others—e.g., when a party's parental rights are terminated
  * Protecting redacted information

Electronic Viewing and Release of Court Records Best Practice continued

* User Roles and User Role Definitions
* Other Definitions
* Exceptions
* Legal References/Application
* Communication

Electronic Viewing and Release of Court Records Best Practice continued

* **POLICY ISSUES**
  * Scope of Clerks' Duty to Maintain Confidential Information – Potential Proposal for Certain Non-2.420 Records
  * Viewing Abilities of Attorneys of Record and Parties When Case Terminates
  * Protection of Sexual Victim Identification

Electronic Viewing and Release of Court Records Best Practice continued

* **POLICY ISSUES** continued
  * State Attorney's Security Role
  * Electronic Authorization Process
  * Attorneys Having More Viewing Rights Than Their Clients
  * Mental Health Cases – What Can or Cannot Be Viewed in Baker Act and Substance Abuse Cases
  * Local AOs that are Inconsistent with Standards or Matrix
  * Potential Revisions to Standards or Matrix

Standard User Agreements

* Registration Agreement to View Records Online
* Agency Registration Agreement to View Records Online (with Agency Supplemental Request Form and Gatekeeper Management Request Form)

Standard User Agreements continued

* Authentication—manual signature and notarization required
* User set up can be either completely automated for gatekeeper or clerk can control setups on request by gatekeeper
* Law firms— gatekeeper agreements

Questions