

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT OF THE STATE OF
FLORIDA, IN AND FOR MONROE COUNTY

ADMINISTRATIVE ORDER: 2.059

IN RE:

SEALING OF COURT RECORDS

WHEREAS, the Florida Rules of Judicial Administration 2.051(c) (7) and (8) provide that all records of the judicial branch that are made confidential under the Florida or United States Constitutions; Florida or federal law; Florida court rule; Florida Statutes; Florida case law; or the Rules of the Judicial Qualifications Commission are to remain confidential, in addition, the Florida Supreme Court in State v. Buenoano (Fla. 1998) 707 So. 2d 714, 718, has declared that Rule 2.051 (c) (8) specifically adopts statutory public record exemptions.

Further, Rule 2.051(c) (9) provides that any other court record may be deemed confidential and sealed if the court, after first giving public notice, determines that confidentiality is required to (i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice; (ii) protect trade secrets; (iii) protect a compelling governmental interest; (iv) obtain evidence to determine legal issues in a case; (v) avoid substantial injury to innocent third parties; (vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed; or (vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law. Except as may be provided by law or rule of court, reasonable notice shall be given to the public of any order closing any court record.

Additionally, Rule 2.051(b) (1) (A) defines "court records" as "the contents of the court file, including the progress

docket and other similar records generated to document activity in a case"

WHEREAS, given these authorities and recent inquiries by the Clerks of the Circuit Courts in the State concerning the propriety of sealing certain court records, the Court finds it necessary to establish sealing procedures for progress dockets, court files, and particular documents within court files. However, the Court does not intend at this time to address the sealing of particular information within a document. Nor does the Court intend to affect or modify the statutory process for sealing or expunging criminal history records as the same is provided for and authorized by Chapter 943 or other law.

Further, this Administrative Order is not intended to address the confidentiality of records admitted into evidence. See Sarasota Herald-Tribune v. State, 924 So.2d 8 (Fla. 2d DCA 2006).

Pursuant to the Chief Judge's authority under Rule of Judicial Administration 2.050 to exercise administrative supervision over the courts within the circuit and to control dockets; and in order to provide a uniform method for insuring the confidentiality of court records when such confidentiality is required by law or found warranted by court order, insure that materials are not unintentionally designated as confidential, and provide a procedure whereby the public can request review of orders to seal, now therefore

It is hereby

ORDERED AND ADJUDGED that

I. Definitions and Application

A. Definitions. For purposes of this Administrative Order:

1. "Court file" means all of the materials within a court file *but not* the progress docket.
2. "Document" means a particular item within a court file.
3. In accordance with Florida Rule of Judicial Administration 2.051 (b) (1) (A), "court record" or "records" includes the court file and the progress docket.

4. "Sealing" has the following meanings:
- i. When used in connection with a court file, "sealing" means to either (1) maintain the file separately from publicly-available files in such a way as to insure that the sealed file is not accidentally made available to the public; or (2) physically seal the file by use of a seal.
 - ii. When used in connection with a particular document, "sealing" means to place the document within an envelope or other type of container and to physically seal the container by use of a seal.
 - iii. When used in connection with the progress docket, "sealing" means to remove the docket from any public access information system.
 - iv. When used in connection with a party's identity, "sealing" means to maintain the public docket in a manner that does not disclose the identity of the protected party.

B. Application.

Sealing or expunging of criminal history records. This Administrative Order does not apply to or affect the procedures in Chapter 943, Florida Statutes, for sealing or expunging criminal history records.

II. Sealing Court Materials Under Rules 2.051(e) (7) or (8) by Operation of Law Pursuant to a Specific Statute, Rule or Other Legal Authority

The Clerk of the Circuit Court of Monroe County, (hereafter, the "Clerk"), shall seal court records under rules 2.051(e) (7) or (8) by operation of law pursuant to a specific statute, rule or other legal authority as follows:

A. Sealing a Court File and Progress Docket

When both the court file and the progress docket are sealed by operation of law pursuant to a specific statute, rule, or other legal authority, the Clerk is hereby authorized and directed to seal both the court file and the progress docket. No order of court or public notice shall be required before such sealing may be undertaken. Legal authorities that authorize and

require the sealing of both the court file and the progress docket include, but are not limited to:

1. Dependency, sections 39.0132(3)-(4), Florida Statutes.
2. Termination of Parental Rights, sections 39.814(3)-(4), Florida Statutes.
3. Adoption, section 63.162(2), Florida Statutes.
4. Surrogacy, section 742.16(9), Florida Statutes.
5. Children and Families in Need of Services, sections 984.06(3)-(4), Florida Statutes.
6. Delinquency, section 985.05(2), Florida Statutes.

B. Sealing a Court File

When a court file is sealed by operation of law pursuant to a specific statute, rule, or other legal authority, the Clerk is hereby authorized and directed to seal such file according to the scope and terms of the authority. No order of court or public notice shall be required before such sealing may be undertaken. Legal authorities that authorize and require the sealing of court files include, but are not limited to the following:

1. Petitions Regarding Individuals Suspected of Being Infected With or Exposed to a Sexually Transmissible Disease (including petitions for writs of habeas corpus or immediate release), Chapter 384, Florida Statutes.
2. Petitions Regarding Individuals Suspected of Having Tuberculosis (including petitions for immediate release), Chapter 392, Florida Statutes.
3. Waiver of Parental Notification of Termination of Pregnancy, sections 390.01114-.01116 and Florida Juvenile Procedure Rule 8.835.
4. Baker Act (including petitions for writs of habeas corpus filed by individuals held under the act), section 394.4615(1), Florida Statutes.
5. Marchman Act (including petitions for writs of habeas corpus filed by individuals held under the act), section 397.501(7), Florida Statutes.
6. Petitions for Enforcement of an Order of the Department of Health Regarding a Nurse's Fitness to Practice, section 464.018(1)(j), Florida Statutes.

7. Sexual Violence Injunctions, sections 92.56, 119.071(2)(h)(2) and (j)(1), and 784.046, Florida Statutes.
8. Application for Authorization of Attorney Fee Contract When Filed as a Separate Proceeding Before Suit, Rules Regulating the Florida Bar Rule 4-1.5(f)(4)(B)(ii).

If the Clerk receives a request for public access to court records governed by this subsection, the Clerk shall respond as follows:

1) The Clerk shall not release any of the following materials absent an order of the court authorizing such release in accordance with applicable statutory provisions:

- i. clinical records under the Baker Act; or
- ii. client records under the Marchman Act.

2) Any other materials shall be released only after the Clerk carefully reviews the materials to ensure that any information that reveals the identity of the patient, client, minor or abuse victim, including the names of any family members of such persons, is redacted from the record prior to release.

C. Sealing a Document Within a Court File

When a document within a court file is sealed by operation of law pursuant specific statute, rule, or other legal authority, the Clerk is hereby authorized and directed to seal such document according to the scope and terms of the authority. No order of court or public notice shall be required before such sealing may be undertaken. Legal authorities which authorize and require the sealing of particular documents include but are not limited to the following:

1. Domestic Violence Petitioner's Request for Confidential Filing of Address, sections 119.071(2)(j)(1) and 741.30, Florida Statutes, and Florida Family Law Form 12.980(h).
2. Inventory of Personal Representative, section 733.604(1), Florida Statutes.
3. Guardianship Reports, section 744.3701(1), Florida Statutes.
4. Birth Records, section 382.025, Florida Statutes.

5. Clinical Records of Detained Criminal Defendants Found Incompetent to Proceed or Acquitted by Reason of insanity, section 916.107(8), Florida Statutes.
6. Medical Records, section 456.057(10), Florida Statutes.
7. Psychological and Psychiatric Evaluations, sections 456.057 and .059, Florida Statutes.
8. Presentence Reports, Florida Rule of Criminal Procedure 3.712.
9. Notice of Social Security Number, Florida Family Law Form 12.902(j).
10. Application for Authorization of Attorney Fee Contract When Filed Simultaneously with Complaint, Rules Regulating the Florida Bar Rule 4-1.5(f)(4)(B)(ii).
11. Protected Health Information Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-101, 110 Stat. 1936 (codified as amended in scattered sections of 18, 26, 29 and 42 U.S.C.).

D. Removing a Party's Name From the Progress Docket

When the removal of a party's name from the progress docket is dictated under operation of law by a specific statute, rule or other legal authority, the Clerk is hereby authorized and directed to remove the name and substitute terminology as follows:

1. For petitions to examine, detain, or compel treatment of individuals suspected of being infected with sexually transmissible diseases or tuberculosis pursuant to Chapters 384 or 392, Florida Statutes, including petitions for habeas corpus or immediate release, by substituting "subject" for the name of the individual in petitions to examine, detain, or compel treatment; and "petitioner" for the name of the individual in habeas corpus or immediate release cases.
2. For petitions to waive parental notification of termination of pregnancy filed pursuant to section 390.01116, Florida Statutes, by substituting the initials of the minor or, if a

sworn statement of true name and pseudonym is filed, the pseudonym.

3. For petitions alleging a nurse's unfitness to practice filed pursuant to section 464.018(1)(j), Florida Statutes, by substituting "Respondent" for the nurse's name.
4. For petitions seeking a sexual violence injunction pursuant to section 784.046, Florida Statutes, by substituting "Petitioner" for the name of the alleged victim of sexual violence or the parents or legal guardians of a minor who is the alleged victim of sexual violence.
5. For petitions filed under the Baker or Marchman Acts, including petitions for writs of habeas corpus filed by persons held under these acts, by substituting "subject" for the name of the patient or client in Baker or Marchman Act cases; and "petitioner" for the name of the patient or client in habeas corpus cases.

The Clerk shall take all reasonable steps necessary to ensure that the docket of the court proceedings on the above-listed cases is available to the public in a manner that does not disclose the identity of the protected party.

E. Other Circumstances

1. Paternity

If the Clerk receives written notice, accompanied by a copy of a marriage license, that the biological mother in a paternity action has subsequently married the purported father, the Clerk is hereby authorized and directed to seal both the court file and the progress docket in the paternity action pursuant to section 742.091, Florida Statutes. No order of court or public notice shall be required before such sealing may be undertaken.

2. Criminal Investigative Records

The Clerk is hereby authorized and directed to seal the following criminal investigative documents, which may be in the possession of the Clerk. No order of court or public notice shall be required before such sealing may be undertaken.

- a. Grand jury notes, stenographers' records, and transcripts, section 905.17, Florida Statutes.
- b. Unexecuted search warrants or search warrants and their returns that are part of an ongoing criminal investigation, section 119.071(2)(c)(1), Florida Statutes, Rule of Judicial Administration 2.051(c)(6).
- c. Investigative subpoenas, section 119.071(2)(c)(1), Florida Statutes.
- d. Records and warrants pertaining to indictments or informations until the defendant is in custody or a period of one year has elapsed, Florida Rule of Criminal Procedure 3.140(1).
- e. Applications for or orders authorizing a wiretap, pen register or trap and trace device, or mobile tracking device, sections 119.071(2)(c)(1), 934.09(8)(c), 934.33, and 934.42, Florida Statutes.
- f. Arrest warrants and supporting affidavits that are unexecuted or a determination is made that execution cannot be made, Rule of Judicial Administration 2.051(c)(6).

III. Sealing Court Records Under a Court Order Issued Pursuant to Rule 2.051(c)(9)

The Clerk shall seal court records under a court order issued pursuant to rule 2.051(c)(9) as follows:

A. Grounds for Entry of a Court Order

Pursuant to Florida Rule of Judicial Administration 2.051(c)(9), court records may be designated as confidential by a court order if it is determined that confidentiality is required for one or more of the following reasons:

1. To prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice.
2. To protect trade secrets.
3. To protect a compelling governmental interest.
4. To obtain evidence to determine legal issues in a case.

5. To avoid substantial injury to innocent third parties.
6. To avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed.
7. To comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law.
8. Grounds specified by Rule 2.051 (c) (9) Rules of Judicial Administration.

B. Requirements for Court Orders Sealing Court Records

Any order of the Sixteenth Judicial Circuit declaring that any court record is to be sealed shall specifically state whether the Court is ordering the sealing of the court file and the progress docket, the court file, a particular document within the file, or the removal of a party's name from the progress docket. Further, any order directing that a party's name be removed from the progress docket shall specify the term to be substituted for the party's name (e.g., a pseudonym such as John Doe; a generic title such as "Petitioner; or the use of the party's initials). In preparing orders pursuant to Rule 2.051(c) (9), judges may use the form Order Granting/Denying Motion to Seal Pursuant to Florida Rule of Judicial Administration 2.051(c) (9), Attachments A and B.

The Clerk is hereby authorized and directed to seal materials in accordance with these designations as follows:

1. If the Order Directs Sealing a Court Record.

The Clerk shall seal both the court file and the progress docket. The docket will not be available on any public access system.

2. If the Order Directs Sealing a Court File and Also Directs That a Party's Identity Not be Revealed.

The Clerk shall seal the court file and remove the party's name from the progress docket, substituting for the party's name a term as directed by the Court; or, if no direction is

given, a pseudonym, a general term such as "Petitioner," or the party's initials if the party is not generally identified by initials. The progress docket shall otherwise remain public; however, the Clerk shall take all reasonable steps necessary to ensure that the docket of the court proceedings on the above-listed cases is available to the public in a manner that does not disclose the identity of the protected party.

3. If the Order Directs Sealing a Court File and is Silent Regarding the Progress Docket.

The Clerk shall seal the court file but maintain a public docket with no alternation of the parties' names.

C. Posting of Notice of Entry of Order Authorizing Sealing

Upon the filing of any court order authorizing the sealing of any court record, the Clerk is hereby authorized and directed to seal the designated records immediately. They are further directed to post a copy of the Notice of Entry of Order Authorizing Sealing, attached hereto as Attachment C, on the bulletin board of the court facility where the order was issued and on the Clerk's website for a period of fifteen (15) days.

IV. Administrative Responsibilities of Clerk

A. Unsealing for Purposes of Filing

The Clerk is hereby authorized to open any court file sealed by operation of law or court order for the purpose of filing documents pertinent to the particular file, as well as for microfilming or imaging files. The Clerk shall reseal said files immediately upon completion of the task, with the responsible employee annotating the date and time of the unsealing and initialing the annotation.

B. Unsealing for Purposes of Transmitting Record for Appellate Review

The Clerk is hereby authorized to open any file or document sealed by operation of law or court order for the purpose of

making a copy of the file or document for transmitting to any appellate tribunal for the purposes of appellate review. When transmitting such copies in the record on appeal, the Clerk shall indicate to the appellate tribunal that documents are under seal in the trial court. The Clerk shall reseal said files or documents immediately upon completion of copying, with the responsible employee annotating the date and time of the unsealing and initialing the annotation.

C. Access by Parties and Attorneys

In all matters except adoption and surrogacy cases, notwithstanding the sealing of any court file or portion thereof by operation of law or court order, the Clerk is hereby authorized to make all contents of a court file available to adult parties and their attorneys of record.

The contents of adoption and surrogacy files shall not be made available to any person absent a court order.

D. Requests for Access by the Public

If a member of the public or an entity requests, by party name, a court file in which the file and progress docket have been sealed or a party's identity has been sealed, the Clerk is hereby authorized and directed to inform the requesting person or entity that they are unable to confirm or deny the existence of such a file.

E. Requests to Seal a Court File

When a motion is filed pursuant to Rule of Judicial Administration 2.051 (c)(9) to seal a court file, the Clerk may assess fees in accordance with section 28.24(25), Florida Statutes, or other statutory authority.

V. Procedure for Contesting an Order to Seal

A. Responsibilities of Moving Party

When a member of the press or the public seeks access to a particular sealed court file or to the court's docket in an individual case, the motion shall be filed with the Clerk and a copy provided to the judge who entered the order sealing the file or removing a party's name from the progress docket. If the judge who entered the order is no longer a judge of the

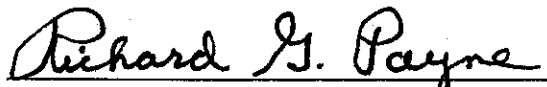
Sixteenth Judicial Circuit, then a copy of the motion should be provided to the Chief Judge.

If the movant is unable to ascertain the name and address at which to provide notice to the parties, the motion shall reference this Administrative Order and state in prominent or boldface type that the movant requests that the judicial assistant of the relevant judge provide notice of the hearing to the affected parties pursuant to this Administrative Order.

B. Responsibilities of Judicial Assistant

If a movant requests that a judicial assistant provide notice to the affected parties in accordance with this Administrative Order, the judicial assistant is responsible for providing such notice. The judicial assistant shall provide such notice so as not to inadvertently reveal the identity of the parties to the movant.

DONE AND ORDERED in chambers at Key West, Monroe County, Florida, on this 16TH day of November, 2006.


Richard G. Payne, Chief Judge

THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

(Name(s)),

(Party Designation),

v.

(Name(s)),

(Party Designation),
_____ /

CIVIL DIVISION

Case No.: _____

ORDER GRANTING MOTION TO SEAL

THIS MATTER came before the Court to hear the motion of (Party Designation, Name), (hereafter, the "Movant"), for an order sealing the court records and/or information in this cause next specified pursuant to Rule 2.051(c)(9), Fla. R. Jud. Admin., as implemented in this Circuit by Administrative Order No. 2.058. After considering the motion and the evidence presented in the light of the record and the applicable law, hearing argument of counsel, and being otherwise fully informed in the premises, the Court finds that

The Movant seeks to have the following record(s) sealed and/or information protected in the court file for this cause:

_____ One or more of the parties' names on the progress docket: _____

_____ The following documents in the court file: _____

_____ The entire court file, but not the progress docket.

_____ The entire court file including the progress docket.

This Movant alleges that an order sealing the court file in whole or in part and/or protecting certain information is necessary in order to protect the following interests:

_____ Prevention of a serious and imminent threat to the fair, impartial, and orderly administration of justice.

_____ A trade secret.

_____ A compelling government interest (specified below).

_____ Obtaining evidence to determine the legal issues in a case.

_____ Avoiding substantial injury to innocent third parties (specified below).

_____ Avoiding substantial injury to a party by the disclosure of matters protected by a common law or privacy right not generally inherent in this type of proceeding (specified below).

_____ Complying with established public policy set forth in the Florida and/or United States Constitutions or statutes or Florida court or administrative rules or case law (specified below).

The Movant alleges that the specific interests to be protected are the following:

The Movant further alleges that there are no less restrictive measures available to protect the interest or interests specified and that the degree, duration, and manner of confidentiality sought to ordered are no broader than necessary.

Wherefore, it is

ORDERED AND ADJUDGED that

1. The Movant's motion to seal or protect information is granted to the degree set out below.
2. The Clerk of the Circuit Court is hereby directed immediately to seal the following record(s) and/or information in the court file for this cause:
 - a. This order. _____
 - b. _____ The following name(s) on the progress docket, substituting the following for the name(s): _____

Further, the Clerk shall ensure that the names are redacted from all public materials in the file and that the final judgment is recorded in a manner that does not reveal the name of the protected parties. However, the progress docket as modified according to the terms of this order shall remain available to the public.

c. _____ The following documents in the court file: _____

However, the file and progress docket shall otherwise remain available to the public subject to any substitution a party's name as set out above.

d. _____ The entire court file except the progress docket which shall remain available to the public subject to any substitution a party's name as set out above.

e. _____ The entire court file including the progress docket. The progress docket shall not be available on any public information system.

f. Removal of the progress docket from public access notwithstanding, the case number shall remain a public record.

3. Any material(s) and/or information sealed pursuant to this order may be disclosed to the following person(s) or under the following circumstances:

- a. Any judge of this Circuit for case-related reasons.
- b. The Chief Judge or his designee.
- c. Adult parties or their attorney's of record.
- d. Further order of the judge then assigned to the case.

4. The Clerk is directed immediately to post a copy of a "Notice Of Entry Of An Order Authorizing the Sealing of Court Record(s) and/or Information" for this case on the bulletin board of the (Key) Courthouse and to post a copy of the Notice on the Clerk's website for a period of 15 days.

5. The Clerk is authorized to unseal any material(s) for the purpose of filing papers, microfilming or imaging this file, or transmitting the record to an appellate tribunal. Any microfilm or other images of sealed portions of this file and/or protected information shall be kept separate from those which are available to the public and shall themselves be sealed to the same extent as was the original. Sealed material(s) shall be resealed again immediately after completion of the task.

6. All parties and their attorneys are ordered to respect the confidentiality of the information ordered sealed in this order and are further ordered not to reveal that information to any unauthorized persons.

7. All parties and their attorneys are further ordered to make it known to the Clerk hereafter when papers are being filed in this case so that the Clerk's office may employ its procedures for filing papers in sealed files and/or for maintaining the confidentiality of protected information.

DONE AND ORDERED in chambers in (Key), Monroe County, Florida, on this

_____ day of _____ 20 _____.

(Name), Circuit Judge

Copies furnished:

THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

(Name(s)),

(Party Designation),

v.

CIVIL DIVISION

Case No.: _____

(Name(s)),

(Party Designation),
_____ /

ORDER DENYING MOTION TO SEAL

THIS MATTER came before the Court to hear the motion of (Party Designation, Name), (hereafter, the "Movant"), for an order sealing the court records and/or information in this cause next specified pursuant to Rule 2.051(c)(9), Fla. R. Jud. Admin., as implemented in this Circuit by Administrative Order No. 2.058. After considering the Motion and the evidence presented in the light of the record and the applicable law, hearing argument of counsel, and being otherwise fully informed in the premises, the Court finds that

The Movant seeks to have the following record(s) and/or information in the court file sealed:

_____ One or more of the parties' names on the progress docket: _____

_____ The following documents in the court file: _____

_____ The entire court file, but not the progress docket.

_____ The entire court file including the progress docket.

The Court further finds that that the moving party has failed to establish that the confidentiality of the information sought to be sealed is necessary to protect any interest set out in Rule 2.051(c)(9), Fla. R. Jud. Admin.

Wherefore, it is

ORDERED AND ADJUDGED that the Movant's motion to seal all or part of the court record in this cause is denied.

DONE AND ORDERED in chambers in (Key), Monroe County, Florida, on this _____ day of _____ 20 _____.

(Name), Circuit Judge

Copies furnished:

THE CIRCUIT COURT OF THE 16TH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

(Name(s)),

(Party Designation),

v.

CIVIL DIVISION

(Name(s)),

Case No.: _____

(Party Designation),
_____ /

**NOTICE OF ENTRY OF AN ORDER
AUTHORIZING THE SEALING OF COURT RECORD(S) AND/OR INFORMATION**

BE ADVISED that on the _____ day of _____, 20 _____, the Court entered an order in the above-referenced matter authorizing the sealing of a portion or all of the court file pursuant to Rule 2.051(c)(9), Fla. R. Jud. Admin. as implemented in this Circuit by Administrative Order No. 2.058. Any person wishing to contest the order sealing the record(s) shall file a motion with the Clerk of the Circuit Court within fifteen days of the date of this notice in accordance with the Administrative Order.

Date: _____

Danny L. Kolhage, Clerk of the Circuit Court

By: _____
Deputy Clerk