

IN THE SUPREME COURT OF FLORIDA

MEDIA GENERAL)
CONVERGENCE, INC., and)
MEDIA GENERAL)
OPERATIONS, INC.,)

Petitioners,)

v.)

CHIEF JUDGE OF THE)
THIRTEENTH JUDICIAL)
CIRCUIT,)

Respondent.)

Case No. SC01-1396

ANSWER BRIEF OF RESPONDENT
CHIEF JUDGE OF THE THIRTEENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

This case involves the exclusion of specific judicial materials from public disclosure so to allow for the investigation of alleged sexual misconduct and to protect the alleged victims, accused and witnesses from unsubstantiated scrutiny and abuse. The protection of these individuals' rights to privacy is paramount.

Petitioners, MEDIA GENERAL CONVERGENCE, INC. and MEDIA GENERAL OPERATIONS, INC., ("MEDIA GENERAL"), as members of the media, have sought access to materials pertaining to alleged sexual misconduct by a former judge, Edward Ward, and materials concerning, much more generally, "fraternization, romantic relationships or sexual conduct between any Hillsborough County judge and courthouse personnel."

Petitioners, MEDIA GENERAL, first sought access to these materials from Respondent, CHIEF JUDGE OF THE THIRTEENTH JUDICIAL CIRCUIT, in October of 1999. See Petitioners' App. at Tab B, pt. 6. Petitioners' first request sought access to complaints of sexual harassment against Edward Ward and "a detailed account of any and all verbal and written communications" between Respondent and Edward Ward regarding his alleged misconduct. *Id.* Respondent denied Petitioners' request on the basis that no formal complaints were made against the former judge at that time and "even

if there existed a judicial record concerning a complaint alleging sexual harassment against a judge, such record would be confidential” under Rule 2.051(c)(3) of the Florida Rules of Judicial Administration. See Petitioners’ App. at Tab B, pt. 7.

Petitioners revised their request in February of 2000 to include “any records” referring to e-mail messages about Edward Ward that Respondent, his staff, the Clerk of Court, the Office of the Court Administrator, and personnel in the area of communications and technology services possessed. See Petitioners’ App. at Tab B, pt. 8. Because of its overwhelming breadth and ambiguity, Respondent denied Petitioners’ revised request and cited the exception to disclosure found at Rule 2.051(c)(3). See Petitioners’ App. at Tab B, pt. 9.

On March 1, 2000, Petitioners renewed their request for “any and all documents and materials relating to complaints and/or allegations of inappropriate conduct by Hillsborough Circuit Judge Edward Ward.” See Petitioners’ App. at Tab B, pt. 10. This request became noticeably more broad than those made previously by Petitioners and sought materials reflecting allegations of not just “sexual harassment” but any “inappropriate conduct.” *Id.* Respondent denied this request, yet noted that Florida’s Judicial Qualifications Commission, (“JQC”), had begun to investigate the alleged misconduct of Edward Ward. See Petitioners’ App. at Tab B, pt. 12. It was

Respondent's understanding that the JQC assured confidentiality to persons and materials involved in their investigative proceedings. *Id.*

Petitioners' request had become noticeably more broad, but it was also without information that likely would have prevented part of the dispute that now persists before this Court. On March 1, 2000, the JQC's investigative panel determined that probable cause existed for formal proceedings against Edward Ward and all prior confidentiality was thereby eliminated. None of the Petitioners' requests to Respondent, whether drafted by their news reporters or legal counsel, ever mentioned this important fact.

On March 8, 2000, Carol Jean LoCicero, as counsel to Petitioners, wrote to Respondent and requested access to "any records . . . you, your staff, the Court Administrator, his staff, or Court Communications & Technology Service personnel obtained, received or reviewed and that contain or refer to the text of any e-mail messages among Judge Edward Ward" and select judges and personnel. See Petitioners' App. at Tab B, pt. 14. Messages or records "concerning" Judge Ward and exchanged between Respondent and his staff, any judge or court personnel were also requested. *Id.* Petitioners' counsel never informed Respondent that the JQC had determined that probable cause existed for disciplinary action against Edward Ward.

Similarly, Gregg D. Thomas, as counsel to Petitioners, wrote to Respondent on the

same day and requested access to materials which far exceeded the breadth of even Petitioners' prior requests for materials merely "concerning" Edward Ward. Petitioners' counsel sought:

any correspondence, electronic correspondence, documents or other records made or received by the Chief Judge's Office or the Court Administrator's Office concerning fraternization, romantic relationships or sexual contact between any Hillsborough County Circuit Court or County Court Judge, and any personnel assigned to any courthouse located in Hillsborough County, whether such personnel are employed by the [S]tate of Florida, Hillsborough County, the Hillsborough County Sheriff's Office, or some other private or governmental entity.

See Petitioners' App. at Tab A, pt. I. Although this request greatly exceeded the subject of sexual misconduct by Edward Ward, Petitioner's counsel again never mentioned the JQC's determination of probable cause on March 1, 2000. *Id.*

Petitioners reacted to Respondent's denials of access by seeking a writ of mandamus before Respondent's own court, the Thirteenth Judicial Circuit, on March 16, 2000. See Petitioners' App. at Tab B, pt. 1. Respondent immediately moved to dismiss the petition for mandamus on the basis that the trial court had no jurisdiction under Rule 2.051(d)(1). See Petitioners' App. at Tab A, pt. H. Rule 2.051(d)(1) expressly provides jurisdiction in such matters to the court with appellate authority over the judge who denied access to records. Nonetheless, Petitioners disregarded the clear statement of jurisdiction, refused to voluntarily dismiss the case and actually amended their petition for

continued proceedings. The amended petition was finally dismissed for lack of jurisdiction on August 8, 2000.

All the while, the materials sought by Petitioners concerning Edward Ward and his alleged misconduct had been made public by the JQC on April 12, 2000. See Petitioners' App. at Tab B, pt. 17. The JQC disclosed "each written document (including emails) . . . which discussed, describes, or bears on any of the facts, issues or claims raised by the Notice of Formal Charges" against Edward Ward. *Id.*, interrog. n. 10. Petitioners' prior requests to Respondent were effectively rendered moot in that Petitioners received these materials. Petitioners even published a news article entitled, "Court Makes E-Mails Public in Judge Case," on April 14, 2000. See Petitioners' App. at Tab B, pt. 18.

On April 18, 2000, Petitioners continued their efforts against Respondent's office and sought a writ of mandamus before the Second District Court of Appeal. See Petitioners' App. at Tab A. It remained their desire to obtain the materials concerning Edward Ward though such materials were produced or available directly from the JQC. Petitioners sought to impose a duty of disclosure upon Respondent that was above and beyond his role as a court administrator. It was also Petitioners' desire to obtain the records generally described as concerning "fraternization, romance or sex" at the Hillsborough County Courthouse.

Petitioners, MEDIA GENERAL, cast their petition before the district court as being only about “the public’s right to know.” See Pet. for Writ of Mandamus. Petitioners attempted to depose Respondent in contravention of the rules of appellate procedure. See Notice of Taking Deposition of Aug. 31, 2000. Petitioners implicitly accused Respondent of criminal intentions by filing an emergency motion to prevent the unlikely destruction of records. See Pets.’ Emergency Mot. to Prevent Destruction of Records. In the meantime, Petitioners routinely ran stories publicizing Respondent’s involvement in the appellate proceedings as if such acts betrayed the community’s interests.

In none of these efforts does it appear that Petitioners ever considered the interests of the alleged victims, the accused or the witnesses of sexual misconduct when pursuing access to the materials which concerned Edward Ward and, more generally, “fraternization, romance or sex.”

On May 25, 2001, the Second District Court considered the interests of these individuals and denied the petition for a writ of mandamus against Respondent. *Media General Convergence, Inc. v. Chief Judge of the 13th Jud. Cir.*, 2001 WL 557896 (Fla. 2nd 2001).

The district court’s analysis was based primarily upon Petitioners’ prior request for materials pertaining to the former judge, Edward Ward, and his alleged harassment of

court employees. Significantly, the court first noted that it was almost exclusively the duty of the JQC to investigate such misconduct by judges. *Id.* at p.*1. The district court added, however, that Respondent, in his ordinary service as a judge, could possibly receive complaints about another judge and these complaints would merit reporting to the JQC for further investigation. *Id.* at p.*2. The court deemed such information confidential under Rule 2.051(c)(3) until the JQC determined probable cause existed for further disciplinary action. *Id.* The district court also found the materials to be excepted from disclosure under Rule 2.051(c)(8) to the extent that Respondent received any as part of his own investigation of sexual misconduct. *Id.* at p.*3. A chief judge's investigation and conciliatory efforts in such instances were held to be prescribed under the rules of the Florida Supreme Court and the local circuit. *Id.* at p.* 2. Confidentiality during the chief judge's investigation was said to "serve the important purpose of encouraging victims of sexual harassment and those who witness it to come forward, and [it protects] the subjects of such complaints from injury attendant to mistaken or false accusations." *Id.* at p.*3. These interests were so compelling to the district court that it did not matter if Respondent failed to expressly invoke the provisions of confidentiality when responding to inquires. *Id.* at p.*4 (citing *Times Publishing Co. v. A.J.*, 626 So.2d 1314 (Fla. 1993)).

Regarding Petitioners' request for materials generally concerning "fraternization,

romance or sex,” the district court again denied the petition for mandamus. The court concluded its majority opinion by certifying the question of what circumstances, if any, would necessitate the disclosure of such “documents reflecting social, romantic or sexual relationships of judges.” *Id.* at p.*4.

The Office of the Attorney General has since intervened in the present matter contending that Rule 2.051, as amended by this Court in 1995, is unconstitutional. See Initial Brief of Att’y Gen. Petitioners, MEDIA GENERAL, and Respondent have invoked this Court’s discretionary jurisdiction for different reasons. Petitioners seek to reverse all parts of the district court’s prior decision. See Not. to Invoke Discretionary Jurisdiction of June 19, 2001. Respondent hopes to preserve the privacy rights of those who work on behalf of the state’s courts and the interests of persons who are victims, witnesses or accused of sexual harassment. See Agreement of Respondent to Invoke Discretionary Jurisdiction of June 20, 2001.

APPLICABLE STANDARD OF REVIEW

The standard of review for a question of law is de novo. *Armstrong v. Harris*, 773 So.2d 7, 11 (Fla. 2000).

SUMMARY OF THE ARGUMENT

The public has neither a right to know nor a need to know about allegations of sexual misconduct not substantiated by fact. It makes no difference whether disclosure is to be made through the government's production of public records or the media's publication of news. Allegations of sexual misconduct are rife with individual issues, personal rights of privacy, and the constant jeopardy or destruction of a life's work in terms of reputation, character and standing in the community. The identity, personal protection and interests of the alleged victim, accused and witnesses should not be threatened until the allegations are corroborated, at least preliminarily, by the truth. Confidentiality is mandatory for a universe of compelling reasons during these critical times.

Rule 2.051 of the Florida Rules of Judicial Administration and various other acts of this Court recognize the requirement of confidentiality when allegations of sexual misconduct arise. Subsection (c)(3) of Rule 2.051 grants confidentiality to court records pertaining to complaints of misconduct against judges and other court employees until probable cause is established. Subsection (c)(8) grants confidentiality to court records pertaining to the alleged misconduct of a judge when Florida's Judicial Qualifications Commission conducts an investigation of the allegations and probable cause has not been

found to exist. Finally, subsection (c)(9)(A) and the administrative acts of this Court in the area of sexual misconduct grant confidentiality to court records when such confidentiality is required to avoid substantial injury to innocent third parties.

Each of these grants of confidentiality applies to Petitioners' request for materials pertaining to the alleged sexual misconduct of Edward Ward and concerning, more generally, "fraternization, romantic relationships and sexual contact." The materials pertaining to the alleged sexual misconduct of Edward Ward were, at all material times, excepted from public disclosure under Rule 2.051(c)(8) and the rules governing Florida's Judicial Qualifications Commission. The general materials concerning "fraternization, romance and sex" are excepted from public disclosure under Rule 2.051(c)(3), Rule 2.051(c)(9)(A) and the administrative acts of this Court on the issue of sexual misconduct.

Rule 2.051 and all other public-record laws allow Petitioners, as members of the media, to monitor the operations of government for cause and not curiosity, sensationalism or the sale of newspapers. The rights, interests and integrity of persons who allegedly experienced, committed or witnessed sexual misconduct would otherwise be impermissibly violated.

The prior decision of the district court should be upheld because it, like the rules

and orders of this Court, recognize these compelling interests of personal privacy, the public's "right to know," and the absolutely essential operation of a judiciary unfettered in the discharge of its functions by an overzealous media.

ARGUMENT

The public has neither a right to know nor a need to know about false or unsubstantiated allegations of sexual misconduct. It makes no difference whether disclosure is to be made through the government's production of public records or the media's publication of news. It makes no difference if the purported misconduct involves judges, justices, court employees or members of the community. Allegations of sexual misconduct are rife with individual issues, personal rights of privacy, and the constant jeopardy or destruction of a life's work in terms of reputation, character and standing in the community. The identity, personal protection and interests of the alleged victim, accused and witnesses should not be threatened unless the allegations are corroborated, at least initially, by the truth. Confidentiality is mandated for a multitude of compelling reasons until such substantiation occurs.

The Second District Court of Appeal recognized these compelling interests when it denied the petition for writ of mandamus against Respondent, CHIEF JUDGE OF THE THIRTEENTH JUDICIAL CIRCUIT. See *Media General Convergence, Inc. v. Chief*

Judge of the 13th Jud. Cir., 2001 WL 557896 (Fla. 2nd 2001).

**RULE 2.051 OF THE FLORIDA RULES OF JUDICIAL
ADMINISTRATION AND VARIOUS OTHER ACTS OF
THIS COURT RECOGNIZE THE IMPORTANCE OF
CONFIDENTIALITY WHEN ALLEGATIONS OF SEXUAL
MISCONDUCT ARISE.**

Article V, section 2(a) of the Florida Constitution provides this Court with the exclusive authority to adopt rules for the operation of the state's courts at all levels. *TGI Friday's, Inc. v. Dvorak*, 663 So.2d 606, 611 (Fla. 1995).

Accordingly, it is the judiciary – and no other branch of government – that has exclusive power and responsibility over court records. *State v. D.H.W.*, 686 So.2d 1331, 1335 (Fla. 1996); *In re Amendments to Rule 2.090*, 681 So.2d 698, 699 (Fla. 1996).

The Florida Supreme Court exercised its exclusive rulemaking authority when establishing Rule 2.051 to “govern public access to the records of the judicial branch of government and its agencies.” Fla. R. Jud. Admin. 2.051(a)(1995) (“Subject to the rulemaking power of the Florida Supreme Court . . .”). Its exclusive authority has been exercised in related areas of administration as well. In 1993, this Court entered an administrative order incorporating a Policy Statement, the Supreme Court Civil Rights Complaint Procedure and a Personnel Regulations Manual as part of the rules governing the state's court system. See Admin. Ord. of

Sept. 23, 1993, Respondent's App. at Tab A.

The Court's administrative acts in 1993 and Rule 2.051 of the Florida Rules of Judicial Administration recognize the importance of confidentiality when allegations of sexual misconduct arise.

Rule 2.051 grants confidentiality to court records in specific instances of alleged misconduct. Under the rule, "[t]he public shall have access to all records of the judicial branch of government and its agencies, except":

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(c)(3)(A) Complaints alleging misconduct against judges, until probable cause is established;

(c)(3)(B) Complaints alleging misconduct against other entities or individuals licensed or regulated by the courts, until a finding of probable cause or no probable cause is established, unless otherwise provided. Such finding should be made within the time limit set by law or rule. If no time limit is set, the finding should be made with a reasonable period of time;

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(c)(8) All court records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission; [or]

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(c)(9)(A) Any court record determined to be confidential in case

decision or court rule on the grounds that confidentiality is required to . . . (v) avoid substantial injury to innocent third parties; [or] . . . (vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law.

Fla. R. Jud. Admin. 2.051(a)-(c)(9)(1995).

This Court's administrative order of 1993 and the documents incorporated therein grant confidentiality to all written materials developed during the investigation of allegations of sexual misconduct, discrimination and harassment. See Admin. Ord. of Sept. 23, 1993, "S.Ct. Civil Rights Complaint Procedure" at ¶ C. It is the policy of the Florida Supreme Court to "make the workplace free of sexual harassment." See Id., "Policy Statement" at p. 2. "[A]ll complaints of discrimination [are to] be treated seriously and acted upon promptly in accordance with procedures approved and adopted by the Supreme Court or by local procedures approved and adopted by the Chief Judge of the district or circuit court." Id. (emphasis added). This Court adopted a Supreme Court Civil Rights Complaint Procedure for its officers and employees. See Admin. Ord. of Sept. 23, 1993, "S.Ct. Civil Rights Complaint Procedure." The Thirteenth Judicial Circuit, in accordance with the authority delegated to it, adopted an almost identical procedure for complaints of sexual misconduct by its own personnel. See Section III, Thirteenth Jud. Cir. Employee Handbook, Respondent's App. at Tab C. As a

result, confidentiality is granted to all investigations conducted in the state's court system. See Admin. Ord. of Sept. 23, 1993, "S.Ct. Civil Rights Complaint Procedure" at ¶ C; see also Handbook on Sexual Harassment of Office of the State Courts Administrator, Respondent's App. at Tab D, ¶ 13.

II. RULE 2.051, THIS COURT'S ADMINISTRATIVE ACTS IN 1993 AND THE COMPLAINT PROCEDURE OF THE THIRTEENTH CIRCUIT EXCEPT THE MATERIALS SOUGHT BY PETITIONERS FROM DISCLOSURE.

Each grant of confidentiality under Rule 2.051, this Court's administrative acts of 1993, and the complaint procedure of the Thirteenth Circuit applies to the materials pertaining to alleged sexual misconduct by Edward Ward and "fraternization, romance or sex." Confidentiality applied in that Respondent or the Judicial Qualifications Commission, ("JQC"), was charged with the responsibility to investigate the very misconduct to which the materials sought by Petitioners are directed. Those involved in such misconduct were thereby entitled to have their rights and interests in privacy preserved, in the least, until substantiation or a determination of probable cause was made.

Moreover, the alleged victims, accused and witnesses must not lose their rights if Respondent or another participant in the investigation did not expressly

invoke the specific grant of confidentiality when responding to Petitioners' requests. As correctly noted by the district court in its prior decision, "[a] holding to the contrary would betray victims and witnesses who previously have been induced to come forward by promises of confidentiality and it would undermine the policy against discrimination in the workplace by rendering such promises unreliable in the eyes of the people they are intended to protect." *Media General Convergence, Inc. v. Chief Judge of the 13th Jud. Cir.*, 2001 WL 557896, p*4 (Fla. 2nd DCA 2001).

This Court saw matters similarly when deciding the case of *Times Publishing Co. v. A.J.*, 626 So.2d 1314 (Fla. 1993). In *Times Publishing Co.*, a newspaper submitted a public-records request for all records possessed by the Pinellas County Sheriff Department regarding allegations of child abuse against a private school. *Id.* at 1315. The allegations were not substantiated by fact and probable cause was not found by the investigating agency. *Id.* However, the sheriff considered the records subject to public access and invoked none of the exceptions to disclosure. *Id.* The minor children, who were allegedly abused, thereafter moved for injunctive relief in the form of confidentiality. *Id.* The children's emergency motion was based on the statutory exemptions to disclosure

regarding allegations of child neglect and abuse. *Id.*(citing Fla. Stat., §§ 39.411(4), 119.07(3)(a) and 415.51(1)(a)). The Second District Court of Appeal ruled that third parties in interest, like the minor children, had standing to invoke the exemptions to disclosure although the custodian of the records did not. *Id.* This Court agreed in *Times Publishing Co.* and reasoned:

Because of the severe harm that child abuse causes to society and the ease with which it is concealed, the state has a pressing and overriding need to investigate alleged child abuse even in cases like this one that later may prove to be unfounded. Yet, because even anonymous or baseless allegations can trigger such an investigation, the state has sought to accommodate the privacy rights of those involved. It has done so by providing that the supposed victims, their families, and the accused should not be subjected to public scrutiny at least during the initial stages of an investigation, before probable cause has been found.

Id. This Court concluded that “[s]uch confidentiality is consistent with Florida’s strong protection of privacy rights.” *Times Publishing Co.*, 626 So.2d at 1315.

A. THE GRANT OF CONFIDENTIALITY AT SUBSECTION (c)(8) OF RULE 2.051 EXCEPTED THE MATERIALS PERTAINING TO SEXUAL MISCONDUCT BY EDWARD WARD AT ALL MATERIAL TIMES.

Rule 2.051, beginning with subsection (c)(8) and its exception for records deemed confidential by the rules of the JQC, accommodates the privacy rights of those involved in allegations of sexual misconduct against judges. Allegations of

sexual misconduct by judges are almost exclusively within the province of Florida's JQC. See Fla. Const. Art. V, § 12(a)(1). The JQC was vested with jurisdiction to investigate the allegations of sexual misconduct against Edward Ward through any source and with "access to all information from all executive, legislative and judicial agencies[.]" See Fla. Const. Art. V, § 12(a)(5); see also *Forbes v. Earle*, 298 So.2d 1, 7 (Fla. 1974). Thus, once the JQC commenced its investigation, any relevant materials made and received by Respondent were properly forwarded to the JQC.

It has never been Respondent's position that the mere transfer of materials to the JQC deemed them inaccessible to Petitioners. Instead, it is quite clear under the Florida Constitution that these materials and any independent knowledge possessed by Respondent were to remain confidential until a finding of probable cause was made by the JQC's investigative panel. See Fla. Const. Art. V, § 12(a)(4). Confidentiality during investigative proceedings "protect[s] both the complainant from possible recriminations and the judicial officer from unsubstantiated charges." *Forbes*, 298 So.2d at 7; see also *Inquiry Concerning a Judge, No. 96-141, re: Graziano*, 696 So.2d 744, 751 (Fla. 1997). "Eliminating the confidentiality of these proceedings would also eliminate many sources of information and complaints

received by the Commission not only from lay citizens and litigants but also from lawyers and judges within the system.” *Forbes*, 298 So.2d at 7-8. Confidentiality gives confidence to all involved. See *Inquiry Concerning a Judge, No. 96-30, re: Frank*, 753 So.2d 1228 (Fla. 2000).

Under the exception found at Rule 2.051(c)(8), Respondent’s denial of access to the materials pertaining to sexual misconduct by Edward Ward was appropriate until the JQC determined probable cause existed. The denials that followed the JQC’s determination of probable cause were technically inappropriate, however, at no time did Petitioners or their legal counsel inform Respondent of the finding of probable cause in their subsequent requests. Petitioners also failed to simply request the desired materials directly from the JQC itself. They attempted to circumvent this obvious source and, perhaps to torment Respondent, pursued a writ of mandamus against his office. Petitioners maintained this course even after the JQC effectively rendered the matter moot by releasing all materials pertaining to Edward Ward to the public. One of Petitioners’ companies, *The Tampa Tribune*, actually went so far as to publish an article entitled, “Court Makes Emails Public in Judge Case.” See *The Tampa Tribune*, “Court Makes Emails Public in Judge Case,” Respondent’s App. at Tab B.

Petitioners' request for materials pertaining to the alleged sexual misconduct of Edward Ward is admittedly moot.

B. THE GRANTS OF CONFIDENTIALITY AT SUBSECTIONS (c)(3) and (c)(9)(A) OF RULE 2.051, TOGETHER WITH THIS COURT'S ADMINISTRATIVE ACTS IN 1993 AND THE COMPLAINT PROCEDURE OF THE THIRTEENTH CIRCUIT, EXCEPT THE MATERIALS CONCERNING "FRATERNIZATION, ROMANCE OR SEX."

Like the statutory exceptions for records of child abuse in *Times Publishing Co. v. A.J.*, subsection (c)(3) and (c)(9)(A) of Rule 2.051, together with this Court's administrative acts in 1993 and the Thirteenth Circuit's complaint procedure, accommodate the privacy rights of those involved in allegations of sexual misconduct. Thus, any materials generally concerning "fraternization, romantic relationships or sexual contact between any Hillsborough County judge and courthouse personnel" are confidential and excepted from disclosure.

Rule 2.051(c)(3) excepts complaints alleging misconduct against judges and other court personnel until probable cause is established. See Fla. R. Jud. Admin. 2.051(c)(3)(1995). This exception serves the same purposes as the assurance of confidentiality to participants in proceedings before the JQC. Materials alleging sex between courthouse personnel or between courthouse personnel and judges must

be given full consideration and scrutiny by the primary administrator, namely the chief judge in each circuit. The chief judge must determine whether probable cause exists, like the investigative panel of the JQC, through all sources available to him or her. If the possibility of harassment, discrimination or intimidation cannot be corroborated, probable cause cannot be determined to exist and the materials are not subject to disclosure. The integrity, rights, interests and identity of the purported victim, accused and all witnesses must be preserved in this instance.

In the same manner, Rule 2.051(c)(9)(A) excepts from disclosure any court record determined to be confidential under court rule so to avoid substantial injury to innocent third parties or to comply with established public policy. See Fla. R. Jud. Admin. 2.051(c)(9)(A)(v) and (vii)(1995). Confidentiality is assured to alleged victims of sexual misconduct under many court rules, including this Court's administrative acts in 1993 and the procedures developed for investigating allegations of sexual misconduct in the state's court system. See Admin. Ord. of Sept. 23, 1993, Respondent's App. at Tab A; see also Section III, Thirteenth Jud. Cir. Employee Handbook, Respondent's App. at Tab C.

It is unmistakable that the policies of the Florida Supreme Court and the entire state court system are designed to make the workplace free of sexual

harassment and to treat all complaints of sexual misconduct seriously, promptly and fairly. See Admin. Ord. of Sept. 23, 1993, “Policy Statement” at p. 2. The procedure for investigating sexual misconduct, whether under this Court’s own complaint procedure or that of the Thirteenth Circuit, allows the primary administrator to resolve the complaint informally through mutual conciliation, to appoint an investigative officer, or to refer the complaint to the appropriate investigatory body. See Id., “S.Ct. Civil Rights Complaint Procedure” at ¶¶ A-B; accord. Handbook on Sexual Harassment of Office of the State Courts Administrator, Respondent’s App. at Tab D, ¶ 10.

Respondent, as the primary administrator of the Thirteenth Circuit, routinely complied with these policies on sexual misconduct. His investigative activities regarding Edward Ward, before and independent of any formal investigation conducted by the JQC, reflect his efforts to resolve the complaints of misconduct through conciliation while retaining the option to refer the complaints elsewhere. In early 1998, Respondent learned of allegations by Michelle Boylan, a judicial assistant to Judge Dick Greco, Jr., that Edward Ward had sent a series of unwelcomed messages of a sexual nature. See “Affidavit of Michelle Boylan,” Petitioners’ App. at Tab B, pt. 17, p. J-00059. Respondent met with Ms. Boylan

and Judge Greco and offered to speak to Edward Ward about his conduct. *Id.* Ms. Boylan declined Respondent's offer. *Id.* In August of 1999, Respondent learned of additional allegations against Edward Ward. D.D. Agostini, a judicial assistant to Judge Vivian Maye, alleged that Edward Ward invited her into his office on several occasions to enjoy a beer. See "Affidavit of D.D. Agostini," Petitioners' App. at Tab B, pt. 17, p. J-00062-63. Respondent met with Ms. Agostini and Judge Maye and explained that he was concerned about Edward Ward's conduct due to the prior complaints of Michelle Boylan. *Id.* Respondent pledged to support any action that Ms. Agostini wished to take, including filing a formal complaint with the JQC. *Id.* at p. J-00062-63. Ms. Agostini declined the filing of a formal complaint against Edward Ward, but wished that he obtain counseling. *Id.* Respondent instructed Edward Ward to obtain counseling. *Id.* at p. J-00063.

Respondent refrained from a thorough investigation of these complaints at the requests of the alleged victims. He at no time found that probable cause existed. Accordingly, the materials pertaining to the allegations against Edward Ward, if not for the independent investigation and findings of the JQC that followed, would be confidential.

In the same regard, any materials concerning “fraternization, romance or sex,” if not resulting in a determination of probable cause or an independent investigation by the JQC, remain confidential under subsection (c)(3), subsection (c)(9)(A), and the administrative acts of this Court. Otherwise, the Office of the Chief Judge and the hundreds of individuals who work within the Court Administrator’s Office would be mired in the constant receipt, retention and disclosure of every greeting card, “post-it” note, telephone message and invitation to lunch in their possession and reflecting, at the least, “fraternization.” The applicable exceptions to public disclosure at Rule 2.051 and in this Court’s other administrative acts eliminate this administrative burden. Most importantly, these exceptions protect all persons involved in such allegations of “fraternization, romance or sex” from needless scrutiny until the truth is established and probable cause is found.

This Court’s enforcement of these exceptions should also preclude the dissemination or publication of false allegations of sexual misconduct. While the integrity of the media might be expected to prevent such harm and unsubstantiated damage, it is not guaranteed. For example, one of Petitioners’ companies, *The Tampa Tribune*, recently published a news article about an unmarried judge’s

supposed relationship with an unnamed employee of the court. See *The Tampa Tribune*, “Unsigned Letter Accuses Judge of Affair,” Respondent’s App. at Tab E. The entire news article was based on an unsigned letter submitted by an anonymous writer. *Id.* *The Tampa Tribune* disseminated these allegations of sexual misconduct without any substantiation, discretion or regard for the possible victim and accused.

**RULE 2.051 AND THE OTHER ADMINISTRATIVE ACTS
OF THIS COURT EMPOWER THE MEDIA AND
PUBLIC TO MONITOR THE JUDICIARY FOR CAUSE
AND NOT CURIOSITY.**

As noted previously, the judiciary and the primary administrators at each level have a pressing and overriding need to investigate alleged sexual misconduct even in cases that prove to be unfounded. Such anonymous or baseless allegations, like those of merit, result in investigation. Therefore, this Court and its rules seek to accommodate the privacy rights of those involved through confidentiality, in the least, until probable cause has been found.

Rule 2.051 and all other public-record laws allow Petitioners, as members of the media, to monitor the operations of government for cause and not curiosity. The rights, interests and integrity of persons who allegedly experienced, committed or witnessed sexual misconduct would otherwise be violated needlessly.

Petitioners, MEDIA GENERAL, agree – just not in this case or in their initial brief. Petitioners have agreed that monitoring should be for cause in the only place at which their collective opinions may be heard. On August 23, 2001, the editors of *The Tampa Tribune* shared their thoughts in a column entitled, “OUR OPINION – Limit Bureaucratic Monitoring of Judiciary’s Computer Use.” See Respondent’s App. at Tab I. The editors considered the fact that officials in Washington have been spying on some thirty-thousand employees of the federal judiciary and the employees’ use of their computers. *Id.* The editors opined as follows:

We wonder if, in determining whether employees use their computers to view pornography or gamble, it is necessary for the monitors to see everything else the employees do. How discomfoting to think that every Web site visited, document read or word written would be judged and reported. We can imagine instances where employees would have to prove their innocence. . . . It seems to us the most reasonable policy as it pertains to computer use is to insist that employees not use computers for unlawful or illicit purposes. Monitor for cause, not curiosity.

Id.(emphasis added). The editors of *The Tampa Tribune* decided that, “[t]o go further would be to place an uncomfortable level of intrusiveness into the hands of busybody bureaucrats.” *Id.*

It is this very uncomfortable level of intrusiveness at which Petitioners’ requests for all materials concerning “fraternization, romance and sexual contact”

were served upon Respondent. It is at this very uncomfortable level which the privacy rights and interests of those who labor on behalf of the state's courts are infringed.

CONCLUSION

For these reasons, the prior decision of the district court should be upheld. The lower court's decision, much like the governing rules and administrative acts of this Court, recognizes the compelling interests of persons who were the subject of false or unsubstantiated allegations of sexual misconduct.

Respectfully submitted,

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CERTIFICATE OF SERVICE

RESPONDENT'S COUNSEL HEREBY CERTIFIES that on the 19th day of September, 2001, a true and correct copy of the foregoing was provided by regular mail to: Gregg Thomas, Carol Jean LoCicero, and James McGuire, *Counsel to Media General*, Holland & Knight, L.L.P., P.O. Box 1288, Tampa, Florida 33601; and Thomas E. Warner, *Solicitor General*, The Capitol – Suite PL-01, Tallahassee, Florida 32399.

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CERTIFICATE OF COMPLIANCE

RESPONDENT'S COUNSEL HEREBY CERTIFIES that this answer brief was prepared in Times New Roman 14-point font in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

Case No. SC01-1398

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