

IN THE SUPREME COURT OF FLORIDA

ROBERT A. BUTTERWORTH, )  
ATTORNEY GENERAL, )  
 )  
Petitioner, )  
 )  
v. ) **Case No. SC01-1398**  
 )  
CHIEF JUDGE OF THE THIRTEENTH )  
JUDICIAL CIRCUIT, )  
 )  
Respondent. )  
\_\_\_\_\_ /

---

INITIAL BRIEF OF PETITIONER  
ROBERT A. BUTTERWORTH, ATTORNEY GENERAL

---

THOMAS E. WARNER  
Solicitor General

T. KENT WETHERELL, II  
Deputy Solicitor General  
RICHARD A. HIXSON  
Deputy Solicitor General  
OFFICE OF THE SOLICITOR GENERAL  
The Capitol - Suite PL-01  
Tallahassee, FL 32399  
(850) 414-3681  
(850) 410-2672 (fax)

*and*

PATRICIA R. GLEASON  
General Counsel  
OFFICE OF THE ATTORNEY GENERAL  
The Capitol - Suite PL-01  
Tallahassee, FL 32399  
(850) 245-0157  
(850) 414-2641 (fax)

On behalf of Petitioner Robert A.  
Butterworth, Attorney General

TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . . ii

STATEMENT OF THE CASE AND FACTS . . . . . 1

STANDARD OF REVIEW . . . . . 1

INTRODUCTION AND SUMMARY OF THE ARGUMENT . . . . . 2

ARGUMENT

I. THE PUBLIC’S RIGHT TO INSPECT OR COPY  
“PUBLIC RECORDS,” INCLUDING THOSE OF THE  
JUDICIAL BRANCH, IS A SELF-EXECUTING RIGHT  
GUARANTEED BY ARTICLE I, SECTION 24, OF THE  
FLORIDA CONSTITUTION, NOT THE RULES OF  
JUDICIAL ADMINISTRATION . . . . . 6

II. THE “PUBLIC NATURE” OF THE RECORDS SOUGHT BY  
THE MEDIA PETITIONERS DOES NOT DEPEND ON ANY  
SPECIFIC DUTY OR AUTHORITY OF THE CHIEF  
JUDGE TO INVESTIGATE JUDICIAL MISCONDUCT OR  
SUPERVISE OTHER JUDGES, OR ANYONE ELSE.” . . . . 9

III. THE RECORDS SOUGHT BY THE MEDIA  
PETITIONERS ARE NOT EXEMPT FROM  
PUBLIC DISCLOSURE UNDER RULE 2.051  
OR ANY OTHER PROVISION OF LAW. . . . . 15

CONCLUSION . . . . . 20

CERTIFICATE OF SERVICE

CERTIFICATE OF COMPLIANCE

**TABLE OF AUTHORITIES**

**CASES**

Amendments to Florida Rules of Judicial Admin.  
Public Access to Judicial Records,  
608 So. 2d 472 (Fla. 1992) . . . . . 7,9,18

Amendments to Rule of Judicial Administration 2.051  
Public Access to Judicial Records,  
651 So. 2d 1185 (Fla. 1995) . . . . . 8

Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000) . . . . . 1

Florida Board of Bar Examiners Re: Amendments to the  
Rules of the Supreme Court Relating to Admissions to the Bar,  
676 So. 2d 372 (Fla. 1996) . . . . . 8

Forrester v. White, 484 U.S. 219 (1988) . . . . . 14

In re Certificate of Judicial Manpower,  
503 So. 2d 323 (Fla. 1987) . . . . . 13

In re Removal of A Chief Judge, 592 So. 2d 671 (Fla. 1992) . 13

In re Schwartz, 755 So. 2d 110 (Fla. 2000) . . . . . 13

**FLORIDA STATUTES:**

Section 26.012 . . . . . 12

Section 26.20 . . . . . 12

Section 26.57 . . . . . 12

Section 34.181 . . . . . 12

Section 39.702 . . . . . 12

Section 44.201 . . . . . 12

Section 101.141 . . . . . 12

Section 766.207 . . . . . 12

Section 985.304 . . . . . 12

**FLORIDA CONSTITUTION:**

Article I, section 24 . . . . . *passim*

Article II, section 3 . . . . . 19

Article V, section 2 . . . . . 11

**COURT RULES:**

Fla. R. Jud. Admin. 2.050 . . . . . *passim*

Fla. R. Jud. Admin. 2.051 . . . . . *passim*

Fla. R. Jud. Admin. 2.130 . . . . . 16

Fla. R. Jud. Admin. 2.020 . . . . . 16

**OTHER AUTHORITIES:**

In re Personnel Rules and Regulations, Admin, Ord.  
Sept. 23, 1993 . . . . . 15

**STATEMENT OF THE CASE AND FACTS**

The Attorney General adopts the Statement of the Case and Facts presented in the initial brief of the Petitioners in Case No. SC01-1396 (hereafter "Media Petitioners") which the Court indicated will be considered together with this case.

**STANDARD OF REVIEW**

The certified question presents a pure issue of law regarding the proper construction of Fla. R. Jud. Admin. 2.050 and 2.051 and article I, section 24, Fla. Const. Therefore, the standard of review is *de novo*. See Armstrong v. Harris, 773 So. 2d 7, 11 (Fla. 2000).

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

The question presented in this case is whether certain written materials, made or received by the chief judge of the circuit in connection with the official business of the court, are public records of the judicial branch, subject to disclosure under article I, section 24, of the Florida Constitution. The materials concern allegations of misconduct by a judge and courthouse personnel. The materials were made or received by the chief judge in connection with his investigation of possible misconduct involving judges and courthouse personnel. The materials were requested from the chief judge as public records by Media Petitioners, the owners of the Tampa Tribune and WFLA-TV.

The chief judge denied the Media Petitioners' public records requests and that denial was upheld in a split decision by a panel of the Second District Court of Appeal which held that:

- 1) the "public nature" of the materials sought depended on the definition and meaning of "judicial records" within Rule 2.051 of the Rules of Judicial Administration;

- 2) the materials sought were not "judicial records" subject to disclosure because the chief judge had no duty or authority to investigate judicial misconduct or supervise other judges, or "anyone else" and, thus, the chief judge could not have "made or

received" the materials in any official capacity;

3) even if the materials were "judicial records," they were confidential and exempt from disclosure by court rule covering the procedures for "civil rights complaints," as set forth in the Florida State Courts System Personnel Regulations Manual.

The district court was wrong on all three counts. First, the public's right to inspect or copy "public records", including those of the judicial branch, is guaranteed by article I, section 24, of the Florida Constitution, not the Rules of Judicial Administration. The Florida Constitution defines "public records" as those records "made or received in connection with the official business of any public body . . .", and further provides that the public's right of access to public records is "self-executing". Art. I, § 24(a), (c), Fla. Const. The Florida Constitution also provides that rules of court which were in effect on the date of the adoption of article I, section 24 and which limit access to records, shall remain in effect until repealed; after that date, only the Legislature, by general law, may provide exemptions from disclosure. Art. I, § 24(c), (d), Fla. Const. Thus, the definition of "judicial records" in the Rules of Judicial Administration, which was not adopted until three years after article I, section 24 was adopted, does not "implement" and cannot be used to limit the

public's right to access public records of the judicial branch.

Second, the "public nature" of the materials sought does not depend on any specific duty or authority of the chief judge to investigate judicial misconduct or supervise other judges, or "anyone else." Clearly, the chief judge, here, did not make or receive the materials in question in some kind of personal or private capacity. The chief judge received these materials, and created others, because the materials concerned judges and personnel of the court system, and he was the chief judge. The "administrative duties" of the chief judge of a circuit should not be construed so narrowly as to preclude authority or responsibility for the effective administration of the business of the circuit court, including matters which adversely affect court personnel, civil liability for misconduct, and public confidence in the effective administration of justice.

Third, and last, the written materials sought by Media Petitioners are not exempt from public disclosure by court rule, notwithstanding provisions regarding "civil rights complaints" in the Personnel Manual, or any other provision of Florida law. There is nothing in the Rules of Judicial Administration, which were in effect at the time article I, section 24 was adopted, that makes these materials confidential and exempt from disclosure. Even if the requested materials could be considered

in the nature of a "civil rights complaint" (which they are not, and no one involved on either side of this controversy ever claimed), the Personnel Manual is not a court rule; it was not adopted until after article I, section 24 was adopted; and it is not "narrowly tailored" to be "no broader than necessary."

Thus, the Attorney General respectfully submits that the decision below should be reversed and remanded with instructions that the written materials sought by Media Petitioners are public records subject to disclosure under article I, section 24, of the Florida Constitution.

## ARGUMENT

**I. THE PUBLIC'S RIGHT TO INSPECT OR COPY "PUBLIC RECORDS," INCLUDING THOSE OF THE JUDICIAL BRANCH, IS A SELF-EXECUTING RIGHT GUARANTEED BY ARTICLE I, SECTION 24, OF THE FLORIDA CONSTITUTION, NOT THE RULES OF JUDICIAL ADMINISTRATION.**

The district court erred when it stated that the "public nature" of the written materials depended on the definition and meaning of "judicial records" within Rule 2.051 of the Rules of Judicial Administration, and, that the rule was adopted to "implement[] the public's right of access to records [of the judicial branch]." Slip op. at 2. These statements reveal a disturbing lack of understanding that the "public nature" of the materials sought by Media Petitioners depends solely on the definition and meaning of public records as set forth in article I, section 24, of the Florida Constitution; not the Rules of Judicial Administration. The "public nature" of the materials sought by Media Petitioners depends on whether they were "made or received in connection with the official business of any public body, officer, or employee of the State . . .", including the judicial branch. Art. I, § 24(a), Fla. Const. Article I, section 24 does not separately define "judicial records" nor treat the records of the judicial branch any differently from the records of the legislative or executive branch. Neither the Court nor any other branch of government is authorized to create

a separate definition of public records or "judicial records."

The majority's statements also reveal a failure to recognize that the public's right to "inspect or copy" public records, including those of the judicial branch, is a self-executing constitutional right. See art. I, § 24(c), Fla. Const. No legislation or court rule is required to "implement" the public's right of access to public records.

In fact, Rule 2.051 was not adopted to "implement" the public's right of access to public records of the judicial branch. Rule 2.051 was adopted to take advantage of the "grandfathering" provisions of article I, section 24(d), which allowed the court to establish exemptions for records of the judicial branch, if provided by court rule prior to the adoption of the constitutional provision. See Amendments to Florida Rules of Judicial Admin.- Public Access to Judicial Records, 608 So. 2d 472, 473 (Fla. 1992). After the adoption of article I, section 24, only the Legislature is authorized to further restrict access to records in any manner.

This Court acknowledged its constitutional inability to "close" or make confidential additional judicial records by court rule in Amendments to Florida Rules of Judicial Admin, supra. Specifically, the Court explained that it chose not to open additional judicial records as part of the original

adoption of Rule 2.051 “[b]ecause the proposed amendment [art. I, § 24] **prohibits the Court from later enacting a rule which would close any other records[.]**” Id. at 473 (emphasis supplied). Thus, while the Court retained flexibility to open additional judicial records in the future, the Court has acknowledged that the Florida Constitution precludes it from closing additional records after the date article I, section 24 was adopted. Id. Accord Florida Board of Bar Examiners Re: Amendments to the Rules of the Supreme Court Relating to Admissions to the Bar, 676 So. 2d 372, 374 (Fla. 1996).

In sum, article I, section 24, not Rule 2.051, determines whether the requested records are “public records”, subject to disclosure. Rule 2.051 (in its form as it existed prior to the adoption of the constitutional provision in 1992) only comes into play to determine whether there is an exemption to preclude disclosure of an otherwise public record. The definition of “judicial records” which was added to Rule 2.051 in 1995<sup>1</sup> cannot define or limit the public’s right to “inspect or copy” records made or received by members of the judicial branch in connection with official business. Accordingly, the Court should expressly

---

<sup>1</sup> See Amendments to Rule of Judicial Administration 2.051-Public Access to Judicial Records, 651 So. 2d 1185 (Fla. 1995). And cf. Case No. SC01-897 (report and recommendation from the Supreme Court Workgroup on Public Records which proposes new definitions in lieu of “judicial records”).

reject the district court's errors in reasoning as well as the result reached below.

**II. THE "PUBLIC NATURE" OF THE RECORDS SOUGHT BY THE MEDIA PETITIONERS DOES NOT DEPEND ON ANY SPECIFIC DUTY OR AUTHORITY OF THE CHIEF JUDGE TO INVESTIGATE JUDICIAL MISCONDUCT OR SUPERVISE OTHER JUDGES, OR "ANYONE ELSE."**

The Court has expressly recognized that public access to the administrative records generated by the judicial branch "should be subject to the same standards that govern similar records of other branches of government" because, when performing its administrative functions, the judiciary is like any other governmental branch expending public funds and employing government personnel. Amendments to Florida Rules of Judicial Admin, 608 So. 2d at 472-73. The standard that is applied to every other branch of government is contained in the Florida Constitution; that is:

Every person has a right to inspect or copy any public record made or received in connection with the official business of any public body, officer . . . except with respect to records exempted pursuant to this section or specifically made confidential by this constitution.

Art. I, § 24(a), Fla. Const.

As Attorney General Shevin explained, the statutory (now

constitutional) phrase "or in connection with official business" significantly broadened the records that are subject to public disclosure. See Atty. Gen. Op. 77-141. Previously, public records were limited to documents which were "required by law to be kept or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial or evidence of something written, said or done." Id. Now, the only relevant concern in deciding whether a document is a public record is "whether the document in question is in the legal possession of a public official." Id. (quoting Atty. Gen. Op. 74-215). In this case, the fact that the chief judge made or received the documents relating to these matters, as chief judge, is determinative.

The materials sought by Media Petitioners in this case were records made or received by the chief judge in connection with or involving allegations of judicial misconduct.<sup>2</sup> The allegations related to activities taking place at the court involving a circuit judge as well as other court personnel.

---

<sup>2</sup> Beginning October 11, 1999 the Media Petitioners made repeated requests for information made or received by the chief judge relating to "sexual harassment and/or sexually inappropriate comments or behavior" relating to Judge Ward. Pet. for Writ of Mandamus, at App. B, D, F. On March 8, 2000, the Media Petitioners specifically requested "correspondence, documents or other records" made or received by the chief judge relating to "fraternization, romantic relationships or sexual contact" between judges and court personnel. Id. at App. I.

Unlike the characterization implied by the majority below, these materials were not generated by a chief judge who, on his own initiative, decided to undertake the supervision of the private romantic activities of other judges. Much to the contrary, the chief judge here was responding to matters that were at the core of the integrity of the court system and the public's confidence in the judiciary. The requested materials relate to judicial activities affecting the operation of the circuit court and the proper use of judicial time. The majority, however, adopted the view that even if the materials related to alleged improper judicial activities, the chief judge had no specifically delegated administrative responsibility under the constitution or Rule 2.050 to investigate a judge's behavior occurring at the court and involving other court personnel. This position is not supported by Florida law.

The responsibilities of a chief judge of a circuit are derived from article V, section 2(d) of the Florida Constitution which provides:

A chief judge in each circuit shall be chosen from among the circuit judges as provided by supreme court rule. The chief judge shall be responsible for the administrative supervision of the circuit courts and county courts in his circuit.

Additionally, the Court has adopted Rule 2.050, fixing the administrative responsibilities of the chief judge of a circuit.

The rule provides in pertinent part:

(2) The chief judge shall exercise administrative supervision over all courts within the judicial circuit in the exercise of judicial powers and over the judges and officers of the courts. The chief judge shall be responsible to the chief justice of the supreme court. The chief judge may enter and sign administrative orders, except as otherwise provided by this rule.

(3) The chief judge shall be the chief judicial officer of the circuit, shall maintain liaison in all judicial administrative matters with the chief justice of the supreme court, and shall develop an administrative plan for the efficient and proper administration of all courts within that circuit. The plan shall include an administrative organization capable of effecting the prompt disposition of cases; assignment of judges, other court officers, and executive assistants; control of dockets; regulation and use of courtrooms; and mandatory periodic review of the status of the inmates of the county jail. The plan shall be compatible with the development of the capabilities of the judges in such a manner that each judge will be qualified to serve in any division, thereby creating a judicial pool from which judges may be assigned to various courts throughout the state. The administrative plan shall include a consideration of the statistical data developed by the case reporting system. Questions concerning the administration or management of the courts of the circuit shall be directed to the chief justice of the supreme court through the state courts administrator.

Fla. R. Jud. Admin. 2.050(b)(2)-(3).<sup>3</sup>

---

<sup>3</sup> In addition to their constitutional authority and their authority under Rule 2.050, chief judges have a broad range of statutory duties and responsibilities including, assignment of judges, §§ 26.012, 26.20, 26.57, Fla. Stat., authorization of branch courts, § 34.181, Fla. Stat., establishment of Citizen Review Panels, § 39.702, Fla. Stat., serving as chair of Citizen Dispute Settlement Centers, § 44.201, Fla. Stat., appointing canvassing board member, § 102.141, Fla. Stat., establishing

While providing for specific duties and administrative responsibilities of the chief judge, which include maintaining the effective and efficient operation of the court system, Rule 2.050 should not be construed to mean that the designation of these specific duties is a strict limitation on the overall administrative responsibility of the chief judge. Contrary to the majority's characterization of the chief judge's function as "purely administrative" (slip op. at 3), this Court has stated that the position of chief judge is also the position of chief judicial officer of the circuit:

The position of Chief Judge is especially important, for the Chief Judge serves as both the chief administrative officer and chief judicial officer within the circuit. See Fla.R.Jud.Admin. 2.050(b).

In this capacity, he or she must work effectively with the judiciary, court employees, and the community at large. In his or her dealings with the public in particular, the Chief Judge is perceived as a prime representative of not only the judiciary but the entire system of justice. The position thus is a highly responsible one, requiring the utmost in sensitivity and discretion in the conduct of those who hold it. The actions of the Chief Judge, both professional and personal, must be consistent with the highest ideals embodied by our law.

In re Removal of A Chief Judge, 592 So. 2d 671, 672 (Fla. 1992).

Clearly, the responsibility of the chief judge is not limited to merely assignment of cases and courtrooms. As

---

arbitrator's fees, § 766.207, Fla. Stat., and maintaining lists of qualified community arbitrators, § 985.304, Fla. Stat.

recognized by the Court, the chief judge has a duty to maintain the integrity of the court system and ensure confidence in the judiciary. A judge in the position of chief judge “. . . performs in a position which demands the very highest in trust and confidence from the people who are served by our court system.” In re Schwartz, 755 So. 2d 110, 115 (Fla. 2000). Indeed, the Court has stated that it is a preeminent responsibility of the chief judge to maintain the effective operation of the court system:

This Court recognizes that it is imperative that the court system be managed efficiently and that available judicial time be well utilized. The primary responsibility for this lies in the hands of the respective chief judges.

In re Certificate of Judicial Manpower, 503 So. 2d 323, 325 (Fla. 1987). Accounting for judicial time and reviewing the effectiveness of the interaction of court personnel with the circuit judges directly relates to managing and promoting the efficiency of the court system. Moreover, as the Court recognized above, ensuring the community's confidence in the court system is a singular function of the chief judge as the chief judicial officer of the circuit.

Under these circumstances, the materials generated by the chief judge's review of allegations directed toward the conduct of a judge with other court personnel while at the courthouse

and during office hours certainly falls within the official administrative functions of the chief judge, and clearly qualify as records of the judicial branch subject to disclosure under article I, section 24. Moreover, to adopt the position of the majority below that the chief judge has no role in reviewing these allegations and treat such managerial acts of the chief judge as outside his or her official duties would potentially subject the chief judge to unforeseen liabilities. See Forrester v. White, 484 U.S. 219, 225-30 (1988) (judge acting in his adjudicatory capacity is entitled to absolute immunity; judge acting in his administrative capacity is entitled to qualified immunity; judge acting in neither capacity has no immunity). Accordingly, the Court should hold that the materials sought by the Media Petitioners are subject to public disclosure.

**III. THE RECORDS SOUGHT BY THE MEDIA PETITIONERS ARE NOT EXEMPT FROM PUBLIC DISCLOSURE UNDER RULE 2.051 OR ANY OTHER PROVISION OF LAW.**

The district court determined that an "exemption applies to all judicial records that might be included in petitioners'

request." Slip op. at 5 (emphasis in original).<sup>4</sup> The exemption referenced by the majority was Rule 2.051(c)(8) (originally Rule 2.051(a)(8)) which exempts from public disclosure those records "deemed to be confidential by court rule." Id. at 6 (quoting rule). The "court rule" relied upon by the majority is the civil rights complaint procedure incorporated into the State Courts System Personnel Rules and Regulations in September, 1993. Id.

Aside from the fact that neither party to this case has ever asserted that the civil rights complaint procedures were ever invoked, the majority's reliance on Rule 2.051(c)(8) and the Personnel Manual is wrong on at least four points. First, the Manual is not a "court rule;" it was adopted through an administrative order.<sup>5</sup> Second, the Manual was not adopted until September, 1993, and Rule 2.051(c)(8) exempts only those "court records presently [i.e., as of October 29, 1992] deemed to be confidential by court rule . . . ." Third, the exemption provided in the Manual is inconsistent with Rule 2.051(c)(9)(B)

---

<sup>4</sup> The majority correctly rejected Respondent's continued reliance on the exemption in Rule 2.051(c)(3)(A) because the JQC has found probable cause against Judge Ward and has filed formal charges against him in Case No. SC00-425. See Slip op. at 5.

<sup>5</sup> In re Personnel Rules and Regulations, Admin. Ord., Sept. 23, 1993 (copy included in Respondent's Supplemental Appendix at Tab 19).

which requires judicial exemptions to be "no broader than necessary" to protect the underlying public interests. Fourth, to the extent that Rule 2.051(c)(8) and/or (c)(9) is construed to include a reservation of authority to the Court to create new public records exemptions by rule, it is inconsistent with article I, section 24(c) which provides that only the Legislature can create new public records exemptions or expand existing exemptions.

The Personnel Manual relied upon by the majority is not a court rule; it was adopted by administrative order. The Rules of Judicial Administration expressly distinguish between court rules and administrative orders. Compare Fla. R. Jud. Admin. 2.020(a) (defining "court rule") with Fla. R. Jud. Admin. 2.020(c) (defining "administrative order"). This distinction is important because court rules, unlike an administrative orders, are generally adopted only after notice and an opportunity for public comment. See generally Fla. R. Jud. Admin. 2.130. In this instance, there does not appear to have been any opportunity for public comment on the Manual or the broad confidentiality provision included therein.

Even if the Personnel Manual were considered a "court rule" for purposes of Rule 2.051(c), the provisions of subdivision (c)(8) would not exempt the requested records. That subdivision

exempts only those court records which are "presently" deemed to be confidential by court rule. The word "presently" was included in the original version of the rule adopted in 1992 and, in light of the Court's lack of authority to expand the exemptions in the original Rule (see Point I, supra), the use of the word "presently" refers to the date Rule 2.051 was originally adopted, October 29, 1992. In this regard, Rule 2.051(c)(8) only exempts those records deemed confidential by court rule as of that date. Because the Manual was not adopted until September, 1993, the records deemed confidential in the Manual do not fall within the provisions of Rule 2.051(c)(8).

Subdivision (c)(9) of the rule is also inapplicable. That subdivision purports to reserve to the courts the authority to exempt additional court records by case decision or court rule. Although the constitutional basis of this reservation of authority is suspect, that rule cannot be relied upon to exempt the records at issue in this case because the exemption provided in the Manual does not comply with subdivision (c)(9)(B). Specifically, the exemption in the Manual is unlimited in its scope and duration even though subdivision (c)(9)(B) provides that "the degree and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (A)." The majority described

the interests protected by the confidentiality provided in the Manual as follows:

[C]onfidentiality provisions serve the important purpose of encouraging victims of sexual harassment and those who witness it to come forward, and they protect the subjects of such complaints from injury attendant to mistaken or false accusations.

Slip op. at 6. While these are certainly valid public interests, the "degree and manner" of confidentiality (i.e., permanent and complete) is broader than necessary to protect the interests. Indeed, the statutes cited by the majority as being "consistent" with the policy set forth in the Manual maintain confidentiality of complaints only until a finding of probable cause. Slip op. at 7 (citing §§ 119.07(3)(p), 119.07(3)(u), Fla. Stat.). And see Fla. R. Jud. Admin. 2.051(a)(3) (complaints alleging misconduct by judges are confidential until probable cause is found); Amendments to Rules of Judicial Admin., 608 So. 2d at 472-73 ("[R]ecords generated while courts are acting in an administrative capacity should be subject to the same standards that govern similar records of other branches of government.").

Finally, even if the exemption set forth in the Personnel Manual were more narrowly tailored, it could not serve as a basis for denying access to the records at issue in this proceeding because the exemption was adopted by the Court after

the date that article I, section 24 was adopted. While that constitutional provision "grandfathered" the existing public records exemptions for court records, it did not provide the Court any authority to enact new public records exemptions or expand existing exemptions. See Amendments to Rules of Judicial Admin., 608 So. 2d at 473 (art. I, §24 "prohibits the Court from later enacting a rule which would close any other records"). And see Point I, supra. Indeed, the Constitution authorizes only the Legislature to adopt/expand public records exemptions.<sup>6</sup> See art. I, § 24(c), Fla. Const. Thus, to the extent that the district court's decision is construed to recognize a new exemption for written materials developed through work-related civil rights violations and sexual harassment complaints, it is contrary to the Constitution. Alternatively, to the extent that Rule 2.051(c)(9) purports to reserve to the Court the authority to adopt additional exemptions, the rule is contrary to the Constitution.

---

<sup>6</sup> Because the constitution (art. I, § 24) authorizes the Legislature to create new public records exemptions, separation of powers would not be implicated by a determination that the only Legislature (and not the Court) can establish exemptions for judicial records. See art. II, § 3, Fla. Const. (one branch of government cannot perform the functions of another branch "unless expressly provided [in the constitution]" as is the case with article I, section 24).

**CONCLUSION**

For the foregoing reasons of law and policy, the Court should reverse the decision below and direct that the requested records be disclosed.

Respectfully submitted,

---

THOMAS E. WARNER  
Solicitor General  
Fla. Bar No. 176725

T. KENT WETHERELL, II  
Deputy Solicitor General  
Fla. Bar. No. 0060208  
RICHARD A. HIXSON  
Deputy Solicitor General  
Fla. Bar. No. 187972

Office of the Solicitor General  
The Capitol - Suite PL-01  
Tallahassee, FL 32399  
(850) 414-3681  
(850) 410-2672 (fax)

and

PATRICIA R. GLEASON  
General Counsel  
Fla. Bar No. 218758  
Office of the Attorney General  
The Capitol - Suite PL-01  
Tallahassee, FL 32399  
(850) 245-0157  
(850) 414-2641 (fax)

**On behalf of Attorney General Robert A.  
Butterworth**

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of August, 2001, a true and correct copy of the foregoing was provided by U.S. Mail, postage prepaid, to the following:

C. Steven Yerrid  
Richard C. Alvarez  
The Yerrid Law Firm  
101 East Kennedy Blvd. - Suite 2160  
Tampa, FL 33602-5187  
**Counsel for Respondent**

Gregg D. Thomas  
James J. McGuire  
Holland & Knight  
P.O. Box 1288  
Tampa, FL 33601-1288  
**Counsel for Petitioner in Case No. SC01-1396**

---

Thomas E. Warner

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief was prepared with 12-point Courier New font in compliance with Fla. R. App. P. 9.210(a)(2).

---

Thomas E. Warner