

APPENDIX A - RULE RECOMMENDATIONS

RULE 2.030 THE SUPREME COURT

(b) Clerk.

(2) Custody of Records, Files and Seal. All ~~papers, records, files~~ court records and the seal of the court shall be kept in the office and the custody of the clerk. The clerk shall not allow any court record ~~paper, record, or file~~ to be taken from the clerk's office or the courtroom, except by a justice of the court or upon the order of the court.

(e) State Courts Administrator.

(1) Appointment. The supreme court shall appoint a state courts administrator who shall serve at the pleasure of the court and perform such duties as the court directs. The state courts administrator's compensation shall be fixed by law.

(2) Duties. The state courts administrator shall supervise the administrative office of the Florida courts, which shall be maintained at such place as directed by the supreme court; shall employ such other personnel as the court deems necessary to aid in the administration of the state courts system; shall represent the state courts system before the legislature and other bodies with respect to matters affecting the state courts system and functions related to and serving the system; shall supervise the preparation and submission to the supreme court, for review and approval, of a tentative budget request for the state courts system and shall appear before the legislature in accordance with the court's directions in support of the final budget request on behalf of the system; shall assist in the preparation of educational and training materials for the state courts system and related personnel, and shall coordinate or assist in the conduct of educational and training sessions for such personnel; shall assist all courts in the development of improvements in the system, and submit to the chief justice and the court appropriate recommendations to improve the state courts system; and shall collect and compile uniform financial and other statistical data or information reflective of the cost, workloads, business, and other functions related to the state courts system. The state courts administrator is the custodian of all records in the administrator's office.

RULE 2.040 DISTRICT COURTS OF APPEAL

(b) Clerk.

(1) Appointment. The court shall appoint a clerk who shall hold office at the pleasure of the court and perform such duties as the court directs. The clerk's compensation shall be fixed by law. The clerk's office shall be in the headquarters of the court. The clerk's time shall be devoted to the duties of the office and the clerk shall not engage in the private practice of law while serving as clerk. All ~~books, papers, records, file court records~~ and the seal of the court shall be kept in the office and the custody of the clerk. The clerk shall not allow any ~~paper, record, or file court record~~ to be taken from the clerk's office or the courtroom, except by a justice of the court or upon the order of the court.

RULE 2.051 PUBLIC ACCESS TO JUDICIAL BRANCH RECORDS

(a) **Generally.** Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to the records of the judicial branch of government ~~and its agencies~~. The public shall have access to all records of the judicial branch of government ~~and its agencies~~, except as provided below.

(b) Definitions.

(1) “Records of the judicial branch.” Records of the judicial branch means all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consists of:

(A) “court records” which means the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, video tapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, video tapes or stenographic tapes of court proceedings; and

(B) “administrative records” which means all other records made or received pursuant to court rule, law or ordinance, or in connection with the transaction of official business by any judicial branch entity.

~~Judicial records for this rule refer to documents, exhibits in the custody of the clerk, papers, letters, maps, books, tapes, photographs, films, recordings, data processing software of other material created by any entity within the judicial branch, regardless of physical form, characteristics, or means of transmission, that are made or received pursuant to court rule, law or ordinance, or in connection with the transaction of official business by any court or court agency.~~

(2) “Judicial branch.” Judicial branch means the judicial branch of government which includes the State Courts System, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all other entities established by or operating under the authority of the Florida Supreme Court or the Chief Justice.

(3) “Custodian.” The custodian of all administrative records of any court is the chief justice or chief judge of that court, except that each judge is the custodian of all records which are solely within the possession and control of that judge. As to all other records, the custodian is the official charged with the responsibility of maintaining the office having the care, keeping and supervision of such records. All references to “custodian” mean the custodian or the custodian’s designee.

(c) **Exemptions.** The following records of the judicial branch ~~and its agencies~~ shall be confidential:

(1) Trial and appellate court memoranda, drafts of opinions and orders, court conference records, notes, and other written materials of a similar nature prepared by judges or court staff acting on behalf of or at the direction of the court as part of the court’s judicial decision-making process utilized in disposing of cases and controversies before Florida courts unless filed as a part of the court record;

(2) Memoranda or advisory opinions that relate to the administration of the court and that require confidentiality to protect a compelling government interest, including, but not limited to, maintaining court security, facilitating a criminal investigation, or protecting public safety, which cannot be adequately protected by less restrictive measures. The degree duration, and manner of confidentiality imposed shall be no broader than necessary to protect the compelling governmental interest involved, and a finding shall be made that no less restrictive measures are available to protect this interest. The decision that confidentiality is required with

respect to such administrative memorandum or written advisory opinion shall be made by the chief judge of the court involved, with the concurrence of either the chief judge of the next highest appellate court or the Chief Justice;

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

(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 within a reasonable period of time;

(4) Periodic evaluations implemented solely to assist judges in improving their performance, all information gathered to form the bases for the evaluations, and the results generated therefrom;

(5) Only the names and qualifications of persons applying to serve or serving as unpaid volunteers to assist the court, at the court's request and direction, shall be accessible to the public. All other information contained in the applications by and evaluations of persons applying to serve or serving as unpaid volunteers shall be confidential unless made public by court order based upon a showing of materiality in a pending court proceeding or upon a showing of good cause;

(6) Copies of arrest and search warrants and supporting affidavits retained by judges, clerks, or other court personnel until execution of said warrants or until a determination is made by law enforcement authorities that execution cannot be made;

(7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;

(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;

(9) Any court record determined to be confidential in case decision or court rule on the grounds that

- (A) 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;
 - (vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law;
- (B) the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (A);
- (C) no less restrictive measures are available to protect the interests set forth in subdivision (A); and
- (D) except as provided by law or rule of court, reasonable notice shall be given to the public of any order closing any court record.

(10) The names and any identifying information of judges mentioned in an advisory opinion of the Committee on Standards of Conduct for Judges.

(d) **Review of Denial of Access Request.** Expedited review of denials of access to ~~judicial records of the judicial branch or to the records of judicial agencies~~ shall be provided through an action for mandamus, or other appropriate appellate remedy, in the following manner:

(1) Where a judge who has denied a request for access to records is the custodian in the judge's possession or custody, the action shall be filed in the court having appellate jurisdiction to review the decisions of the judge denying access.

(2) All other actions under this rule shall be filed in the circuit court of the circuit in which such denial of access occurs.

(e) Procedure. Requests and responses to requests for access to ~~public~~ records under this rule shall be made in a reasonable manner.

(1) Requests for access to records shall be in writing and shall be directed to the custodian. The request shall provide sufficient specificity to enable the custodian

to identify the requested records. The reason for the request is not required to be disclosed.

(2) The custodian shall be solely responsible for providing access to records of the custodian's entity. The custodian shall determine whether the requested record is subject to this rule and, if so, whether the record or portions of the record are exempt from disclosure. The custodian shall determine the form in which the record is provided.

(3) Fees for copies of records in all entities in the judicial branch of government, except for copies of court records, shall be the same as those provided for in s. 119.07.

2001 Commentary

The custodian is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request. AGO 80-57; Wootton v. Cook, 590 So.2d 1039 (Fla. 1st DCA 1991); Seigle v. Barry, 422 So.2d 63 (Fla. 4th DCA 1982) rev. denied, 431 So. 2d 988 (Fla. 1983).

It is anticipated that each judicial branch entity will have policies and procedures for responding to public records requests.

The 1995 commentary notes that the definition of "judicial records" added at that time is consistent with the definition of "court records" contained in Rule 2.075(a)(1) and the definition of "public records" contained in chapter 119, Florida Statutes. Despite the commentary, these definitions are not the same. The definitions added in 2001 are intended to clarify that records of the judicial branch includes court records as defined in rule 2.075(a)(1) and administrative records. The definition of records of the judicial branch is consistent with the definition of "public records" in chapter 119.

RULE 2.075 RETENTION OF COURT RECORDS

(a) Definitions. The following definitions apply to this rule:

(1) "Court records" mean the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, depositions filed with the clerk, transcripts, documentary exhibits in the custody of the clerk, and electronic records, video tapes, or and stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, video tapes or stenographic tapes of court proceedings.

(2) "After a judgment has become final" means:

(A) when a final order, final judgment, final docket entry, final dismissal, or nolle prosequi has been entered as to all parties, no appeal has been taken, and the time for appeal has expired; or

(B) when a final order, final judgment, or final docket entry has been entered, an appeal has been taken, the appeal has been disposed of, and the time for any further appellate proceedings has expired.

(3) "Permanently recorded" means that a document has been microfilmed, optically imaged, or recorded onto an electronic record keeping system in accordance with standards adopted by the Division of Library and Information Services of the Department of State.

(b) Required Consent. Disposal of court records under this rule is subject to obtaining any consent required by law from the Division of Library and Information Services of the Department of State.

(c) Permanently Recorded Records. Court records, except exhibits, that have been permanently recorded in accordance with standards adopted by the Division of Library and Information Services of the Department of State, may be destroyed or otherwise disposed of by the clerk at any time after a judgment has become final.

(d) Records Not Permanently Recorded. No court records under this subdivision shall be destroyed or disposed of until the final order, final docket entry, or final judgment is permanently recorded for, or recorded in, the public records. The time periods shall not apply to any action in which the court orders the court records to be kept until the court orders otherwise. When an order is entered to that effect, the progress docket and the court file shall be marked by the clerk with a legend showing that the court records are not to be destroyed or

disposed of without a further order of court. Any person may apply for an order suspending or prohibiting destruction or disposition of court records in any proceeding. Court records, except exhibits, that are not permanently recorded may be destroyed or disposed of by the clerk ~~at the times prescribed below~~ after a judgment has become final in accordance with the following schedule:

(1) For trial courts

(a) ~~(1)~~ Sixty days--Parking tickets and noncriminal traffic infractions after required audits have been completed.

(b) ~~(2)~~ Two years--Proceedings under the Small Claims Rules, Medical Mediation Proceedings.

(c) ~~(3)~~ Five years--Misdemeanor actions, criminal traffic violations, ordinance violations, civil litigation proceedings in county court other than those under the Small Claims Rules, and civil proceedings in circuit court except marriage dissolutions and adoptions.

(d) ~~(4)~~ Ten years--Probate, guardianship, and mental health proceedings.

(e) ~~(5)~~ Ten years--Felony cases in which no information or indictment was filed or in which all charges were dismissed, or in which the state announced a nolle prosequi, or in which the defendant was adjudicated not guilty.

(f) ~~(6)~~ Seventy-five years--Juvenile proceedings containing an order permanently depriving a parent of custody of a child, and adoptions, and all felony cases not previously destroyed.

(7) ~~Kept permanently~~--Progress dockets and their indices.

(g) ~~(8)~~ Juvenile proceedings not otherwise provided for in this subdivision shall be kept for 5 years after the last entry or until the child reaches the age of majority, whichever is later.

(h) ~~(9)~~ Marriage dissolutions--Ten years from the last record activity. The court may authorize destruction of court records not involving alimony, support, or custody of children 5 years from the last record activity.

(2) For District Courts of Appeal

(a) Two years – Non-criminal court records.

(b) Five years – Criminal court records.

(3) For the Supreme Court

(a) Five years – All cases disposed of by order not otherwise provided for in this rule.

(b) Ten years – Cases disposed of by order involving individuals licensed or regulated by the Court and non-criminal court records involving the unauthorized practice of law.

(e) Records to be retained permanently. The following court records shall be permanently recorded or permanently retained:

(1) progress dockets, and other similar records generated to document activity in a case, and

(2) court records of the Florida Supreme Court in which the case was disposed of by opinion.

(f) (e) Court Reporters' Notes. Court reporters or persons acting as court reporters for judicial or discovery proceedings shall retain the original notes or electronic records of the proceedings or depositions until the times specified below:

(1) Two years from the date of preparing the transcript--Judicial proceedings, arbitration hearings, and discovery proceedings when an original transcript has been prepared.

(2) Ten years--Judicial proceedings in felony cases when a transcript has not been prepared.

(3) Five years--All other judicial proceedings, arbitration hearings, and discovery proceedings when a transcript has not been prepared.

When an agreement has been made between the reporter and any other person and the person has paid the reasonable charges for storage and retention of the notes, the notes or records shall be kept for any longer time agreed on. All reporters' notes shall be retained in a secure place in Florida.

(g) (f) Exhibits.

(1) Exhibits in criminal proceedings shall be disposed of as provided by law.

(2) All other exhibits shall be retained by the clerk until 90 days after a judgment has become final. If an exhibit is not withdrawn pursuant to subdivision (h) within 90 days, the clerk may destroy or dispose of the exhibits after giving the parties or their attorneys of record 30 days' notice of the clerk's intention to do so. Exhibits shall be delivered to any party or attorney of record calling for them during the 30-day time period.

(h) (g) Disposition Other Than Destruction. Before destruction or disposition of court records under this rule, any person may apply to the court for an order requiring the clerk to deliver the court records that are to be destroyed or disposed of to the applicant. All parties and the Division of Library and Information Services of the Department of State shall be given notice of the application by the applicant. The court shall dispose of that court record as appropriate.

(i) (h) Release of Court Records. This rule does not limit the power of the court to release exhibits or other parts of court records that are the property of the person or party placing the items in the court records initially. The court may require copies to be substituted as a condition to releasing the court records under this subdivision.

(j) (i) Right to Expunge Records. Nothing in this rule shall affect the power of the court to order records expunged.

(k) (j) Sealed Records. No record which has been sealed from public examination by order of court shall be destroyed without hearing after such notice as the court shall require.

RULE 2.076 RETENTION OF JUDICIAL BRANCH ADMINISTRATIVE RECORDS

(a) Definitions.

(1) “Judicial branch.” Judicial branch means the judicial branch of government which includes the State Courts System, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all other entities established by or operating under the authority of the Florida Supreme Court or the Chief Justice.

(2) “Records of the judicial branch.” Records of the judicial branch means all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consists of:

(A) “court records” which means the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, video tapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, video tapes or stenographic tapes of court proceedings; and

(B) “administrative records” which means all other records made or received pursuant to court rule, law or ordinance, or in connection with the transaction of official business by any judicial branch entity.

(b) Retention requirements.

Administrative records in the judicial branch shall be retained in accordance with the Judicial Branch Records Retention Schedule approved by the Supreme Court.

2001 Commentary

This rule does not apply to court records and files which are governed by Rule of Judicial Administration 2.075. This rule applies to administrative records.

In order to provide a consistent schedule for retention of administrative records in the judicial branch the Supreme Court Workgroup on Public Records recommended that the Court adopt the Judicial Branch Records Retention Schedule. This schedule utilizes the legislatively authorized Department of State retention schedules, as appropriate, and includes a schedule for other records which are unique to the judicial branch.