



**Judge Lisa Taylor Munyon, Chair
Florida Courts Technology Commission
c/o Office of the State Courts Administrator
500 S. Duval Street, Tallahassee, Florida 32399-1900**

May 28, 2015

The Honorable John Tomasino, Clerk
The Supreme Court of the State of Florida
500 South Duval Street
Tallahassee, Florida 32399-1925

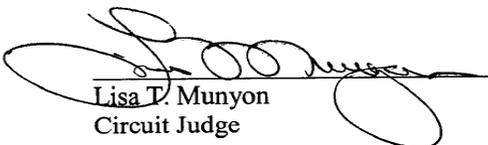
RE: Report in Response to Your Letter of December 18, 2014

Dear Mr. Tomasino:

In response to your letter dated December 18, 2014, the Florida Courts Technology Commission (FCTC) examined the issues presented in the comments submitted to the Supreme Court in case SC14-569 by Carol Jean LoCicero, on behalf of "Florida Media Organizations" and the comments submitted by Barbara Anne Petersen, on behalf of the First Amendment Foundation. After a thorough examination, the FCTC prepared the enclosed report. The report provides the FCTC's findings and conclusion on the issues raised by the referenced comments. The report does not contain any proposed rule amendment; therefore, it is not in the form of a petition.

If this matter requires any further action by the FCTC, please, do not hesitate to contact me.

Sincerely,


Lisa T. Munyon
Circuit Judge

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Enclosure

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cc: Ms. Patricia (PK) Jameson, State Courts Administrator
Mr. Alan Neubauer, State Courts Technology Officer
Ms. Carol Jean LoCicero
Ms. Barbara Anne Petersen

REPORT BY THE FLORIDA COURTS TECHNOLOGY COMMISSION

The Florida Courts Technology Commission (Commission) by and through its Chair, the Honorable Lisa T. Munyon, Circuit Judge, Ninth Judicial Circuit, files this report regarding the comments received to the petition proposing amendments to Florida Rule of Judicial Administration 2.420. Comments addressed herein were submitted by: The First Amendment Foundation; and a collection of broadcast and print media entities, collectively referred to as the “Media.”

Background

The Commission’s Petition in this matter was filed on March 26, 2014, to conform the rule to the Court’s administrative order (AOSC14-19), which allows public access to electronic court records to be governed by the *Standards for Access to Electronic Court Records* (Standards) and the *Access Security Matrix* (Matrix). The proposed amendments were published in the Florida Bar News on May 1, 2014. On June 20, 2014, the Commission filed its response to all comments that were filed regarding the proposed amendments. On December 18, 2014, the Court adopted amendments to Rule of Judicial Administration 2.420. In a letter dated December 18, 2014, to the Chair of the Commission, Supreme Court Clerk John Tomasino, at the Court’s direction, asked the Commission to consider, in particular, the comments filed on June 2, 2014, by Carol Jean LoCicero, on behalf of "Florida Media Organizations" (Media) and on June 2, 2014, by Barbara A. Petersen, on behalf of the First Amendment Foundation (FAF). This Report is in response to Mr. Tomasino’s letter.

Introduction

Both comments appear to address two broad issues: the current preferential online access for attorneys admitted to The Florida Bar, and the speed at which individual requests for these, mostly electronic, records are fulfilled. Both comments seem to intertwine this second point with concerns about the pace at which general online access is being implemented and facilitated. This Report will address both the Media’s and FAF’s comments in a unified format.

Online Access Implementation Schedule

With regard to the issue of the schedule for implementing general online access, the schedule is established by AOSC14-19. With the implementation process

underway, each clerk has a structured timeframe to begin providing full online access. Within 120 days of approval of his or her application a clerk must start a pilot program for online access under AOSC14-19. Sixty counties submitted Online Electronic Records Access applications, which were all approved, and will begin their pilot programs by July 1 or 2 (except Baker County, which will have until July 22). The pilot programs will last approximately 90 days. During the pilot program, to ensure compliance with the AOSC14-19 and the standards and matrix adopted therein, the clerks must submit monthly reports regarding among other information the number of images accessed, the number of registered users, number of documents viewed by user access levels. The Access Governance Board will review these reports and, at the end of the pilot program, will certify the clerks system to begin providing general online access to the public. Once a clerk's system has been certified, it will begin operating under AOSC14-19, and the standards and matrix attached thereto.

Attorney Preference

The Commission appreciates the concerns by the Media and the FAF about the continued existence of the attorney preference. However, as noted, implementation of clerks' systems under AO14-19 is imminent and will resolve this concern. A clerk may continue to provide an attorney preference only during the pilot program and only if the clerk was providing such a preference before AOSC14-19 was issued and the clerk applied within 60 days after AOSC14-19 was issued. After AOSC14-19 is fully implemented, no county will be allowed to provide an attorney preference. With the implementation process substantially underway, 61 of the 67 counties will likely have their systems certified by the end of October 2015, with AOSC14-19 fully implemented and any attorney preference discontinued. If the Supreme Court were to require clerks to shift their focus to alter their systems at this critical stage in order to cease the attorney preference practice, many clerks could experience delays in achieving the now-visible goal of full implementation of online access without a general attorney preference.

Hamilton, Levy, Monroe, Seminole, Suwannee and Taylor counties have not submitted applications. If a clerk has chosen not to submit an application, he or she cannot continue providing online access to anyone, Florida attorney or not.

Response Times to Individual Requests for Court Records

With regard to the issue of the speed and manner in which individual requests for records are fulfilled by the various clerks, this issue is a general administrative

issue and is not directly involved in the implementation or effects of online access under AOSC14-19. General access to judicial branch records is governed by Rule of Judicial Administration 2.420, specifically subsection (m) with regard to individual requests for records. The rule requires that “[r]equests and responses to requests for access to records under this rule shall be made in a reasonable manner.” The rule further requires that “[r]equests for access to judicial branch records shall be in writing and shall be directed to the custodian.” Requests submitted by mail, in person, or by email satisfy the “in writing” requirement for a request for access to judicial branch records. Once a request is properly submitted under the rule, there is no bright-line timeframe within which a clerk must respond. The clerks should simply respond within a reasonable amount of time. In such situations reasonableness is extremely fact intensive – how voluminous is a request, how much information must be redacted, and how much of the work must be done by individual clerk employees. This is not to say that the clerk has no deadline, but the reasonableness and timeliness of a response is not necessarily set by the level of importance the requester places on the request. A request must be viewed in the landscape in which it is submitted. A clerk’s office must diligently fulfill requests dedicating the resources available while continuing to perform the other functions of the office.

Conclusion

The amended title of Rule of Judicial Administration 2.420 is “Public Access to *and Protection of* Judicial Branch Records.” (Emphasis added). The emphasized language, which was added through the most recent amendment, demonstrates that any access, including online access, must balance the convenient provision of records with the security of those records in order to protect sensitive and statutorily exempt information. Implementing online access to court records pursuant to AOSC14-19 is progressing as expeditiously as contemplated by the order, and upon full implementation there will not be an attorney preference for online access to court records. Any issues that the public encounters with regard to individual clerks and online or upon request access to court records should be addressed under the provisions of Rule of Judicial Administration 2.420.

Because the landscape is shifting throughout the process of implementing general online access to court records, the Commission does not recommend the Court take any action at this time with regard to the issues presented.