

VIEW FROM THE BENCH & FROM INSIDE THE FILE

The Honorable Janeice T. Martin and Jill M. Lennon, Director of Courts

With this month's View from the Bench column, Judge Hayes (our Administrative Judge) asked me to work with the Clerk of Courts to address some matters of joint concern to the Clerk and to the Judiciary. In working with Jill Lennon, the Clerk's Director of Courts, we decided to focus on two main areas of concern: confidential/sensitive information in court filings and civil cover/disposition sheets.

There are two main rules of judicial administration that address the filing of confidential and/or sensitive information in court files. One was largely developed last year, and the other just became effective in October of this year. We'll look first at the older rule: Fla. R. Jud. Admin. 2.420(d), added effective October 1, 2010, and entitled, "Procedures for Determining Confidentiality of Court Records." Specifically, Subsection (d)(2) is the provision that is giving clerks and judges headaches.

Rule 2.420(d)(2) essentially directs that anyone filing a document containing "confidential information" (as defined in 2.420(d)(1)) "shall, at the time of filing, file with the clerk a "Notice of Confidential Information within Court Filing." The purpose of the Notice is three-fold: to notify the clerk and all parties that the filing contains confidential information, to identify the type of information (under (d)(1)) contained therein, and to identify the precise location of each piece of confidential information. The Rule then directs the clerk to redact the confidential information from each site listed within the Notice.

Even when executed perfectly, the headache should be obvious: a correctly-filed and complete Notice will require the clerk to run down each piece of confidential information and redact it from public view. However, an incorrectly filed and incomplete Notice will send the clerk on an absolute goose chase.

Hence the purpose of this article: to remind everyone of the Rule and to urge everyone to follow it strictly. The Rule includes a handy sample Notice, which allows the filing party to simply check off each type of confidential information that is included in a particular filing. However, the form lacks any good mechanism for listing the precise page and line numbers of each piece of information when there are multiple instances, and an attachment would need to be included for this information.

Some common mistakes are: filing a document containing confidential information with no Notice, filing a Notice with nothing checked off, and filing a Notice with the correct provision checked off, but no citation to the location of the information. The clerks have neither the resources nor the expertise to divine this information from the filing party. The filing party is clearly in the best position to notify the clerk as to confidential information, and thus the Rule makes it that party's obligation, not the clerk's. While there's no direct sanction located in this Rule for failure to follow it strictly, being responsible for revealing confidential information to the public could bear its own liability, which should be sufficient deterrent for anyone reading this publication.

This year, Rule 2.425 was made as a follow-up rule to deal with the related issue of "sensitive information" in court filings. While "sensitive" is not defined by the Rule, it appears to include essentially any information that could be used to steal one's identity: social security numbers, bank account numbers, driver's

license numbers, passwords, email addresses, PINs, and the like. Under this Rule, sensitive information must be truncated (e.g., use initials for a minor's name, the year only for a date of birth, the last four digits of an account number), or must be omitted entirely (social security number or the number for a bank, credit, debit or charge account). This last type of information, the type that must be omitted entirely, is also included in Rule 2.420(d)(1)(B)(iii) as "confidential information." This appears to be the only direct overlap between the two rules.

Unlike Rule 2.420, Rule 2.425 does include a provision for sanctions for failure to follow the Rule. In fact, it's a fairly broad and powerful provision: "Upon motion by a party or interested person or sua sponte by the court, the court may order remedies, sanctions or both for a violation of [this Rule]. Following notice and an opportunity to respond, the court may impose sanctions if such filing was not made in good faith." Fla. R. Jud. Admin. 2.425(c) (emphasis added).

The inclusion of a provision for sanctions, especially one that empowers non-parties to move for sanctions, sends a signal from the Supreme Court of Florida that carelessness with this information is not to be tolerated. This should be of particular interest to the debt collection practitioners, whose numbers have swelled in this economy. Filing complaints, motions and even judgments with people's social security and credit card account numbers could land you in hot water, no matter how meritorious your claim. Please follow these Rules strictly.

The other issue we want to highlight in this article is the issue of civil cover sheets and final disposition forms, as required by Fla. R. Civ. P. 1.100(c)(2) & (3), respectively. These are absolutely required in all cases, except civil cover sheets are not required in "small claims cases or other county court cases, probate, or family cases." Fla. R. Civ. P. Form 1.997, Instructions for Attorneys Completing a Civil Cover Sheet.

Taken together, the purpose of the forms is fairly simple and clear: tell us what kind of case you are filing, and tell us how it ended. To further simplify matters, both forms are fully included in the Rules of Civil Procedure (Form 1.997 & Form 1.998, respectively), and both forms come complete with detailed instructions that define each option in order to ensure that the most precise and accurate selection is made on each form prior to filing.

By way of example, if you're filing a mortgage foreclosure action, you will need to know whether it is commercial or residential, homestead or not, and the amount in controversy, and then check the appropriate boxes. Merely checking the "foreclosure" box at the top of those subcategories will not suffice. Likewise, checking category "other" will not suffice, unless you also check the correct subcategory for "other."

Additionally, it should be noted that the clerks are not permitted to complete these forms for you, unless you are filing pro se. Again, the clerks behind the counters who are processing these filings have neither the resources nor the expertise to read your complaint and determine what type of lawsuit you intended to file.

How the case ends is of equal importance: was it dismissed after a hearing, or by settlement? Was the settlement the result of mediation or not? Again, each term describing the outcome is defined in the Instructions at the end of the Form. By way of example, "Disposed by Judge" has a narrow meaning, even though most cases could be said to have been disposed by a judge. These cases include "stipulations . . . conditional judgments, summary judgment after hearing . . ." and do not include defaults. Accuracy in the completion of this form is important, but it's also made easy by the clear instructions.

In crafting these rules and these forms, the Supreme Court of Florida has made its intention for strict compliance clear: “Failure to file a civil cover sheet in any civil case other than those excepted above may result in sanctions.” Fla. R. Civ. P. Form 1.997, Instructions for Attorneys Completing a Civil Cover Sheet. Even if sanctions are not imposed, in all cases wherein the plaintiff fails to file a civil cover sheet, “all proceedings in the action shall be abated until a properly executed cover sheet is completed and filed.” Fla. R. Civ. P. 1.100(c)(2) (emphasis added).

While sanctions are not specifically threatened with regard to the final disposition form, its importance is precisely the same as the civil cover sheet: these forms are intended to track court workloads with respect to the allocation of resources. Stated another way: these forms generate workload data, which data is intended to assist the Supreme Court in determining whether our judiciary and judicial system is sufficiently staffed to meet our community’s legal needs. If you’re frustrated with how long it takes to get a civil matter to hearing or trial, and wish we had more judges to help move these cases along, you would need reliable data from these forms in order to make your case. In these times of increased litigation and slashed court budgets, these matters are of critical importance. Your clerks and your judges urge you to be precise and thorough in filing these forms promptly and consistently.

In conclusion, let us state that we are ever mindful that these types of cautionary articles in the Adverse Witness almost always amount to “preaching to the choir.” Our local Bar is generally outstanding in addressing matters of professionalism such as these. Just the same, we thank you for the opportunity to emphasize these important points, as we all benefit from an efficient judicial system.