

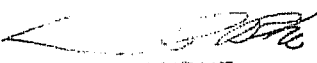
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IN THE SIXTH JUDICIAL CIRCUIT COURT OF THE STATE OF FLORIDA  
IN AND FOR PINELLAS COUNTY  
CIVIL DIVISION

IN RE:

No. 07-5606-CI-77

UCN: 522007CA005606XXCICI

  
KEN BURKE  
CLERK OF CIRCUIT COURT

INQUIRY OF CLERK  
REGARDING COURT FILES

**ORDER ON REVIEW OF COURT FILES *NUNC PRO TUNC***

THIS MATTER is before the court upon an inquiry from the Pinellas County Clerk of the Circuit Court on whether various sealed files should be restored to public access. Initially, an order was issued on June 14, 2007, but that order contained a typographical error that listed Case No. 90-5283-CI-22 incorrectly as Case No. 90-5238-CI-22. Accordingly, this order corrects the clerical error *nunc pro tunc* June 14, 2007.

**FINDINGS OF FACT**

1. The Pinellas County Clerk of the Circuit Court forwarded 79 cases that were sealed by the court between 1980 and 2000. These cases are currently sealed and public access to the docket has not been provided.
2. The Clerk has asked whether the public is entitled to access to these files and also whether the public is entitled to access to the progress dockets.
3. The Court unsealed these files for the limited purpose of review.
4. Based upon this review, the Court has placed each case into one of four categories:

TYPE I(A): Case concerns adoption.

TYPE I(B): Case contains an order directing the sealing of the court record or records.

TYPE II: Case contains an order directing the sealing of the court file and reflects a concern for the safety of a party or minor connected to the case.

TYPE III: Case contains an order directing the sealing of the court file but reflects no safety concerns.

5. The following 3 cases fall under Type I(A):

████████████████████  
████████████████████  
████████████████████

6. The following 2 cases fall under Type I(B):

No. 87-12513-CI-14  
No. 91-16444-CI-11

7. The following 6 cases fall under Type II:

No. 86-1340-CI-13  
No. 88-18940-CI-17  
No. 89-5458-CI-20  
No. 90-5283-CI-22  
No. 94-1932-FD-23  
No. 99-6141-FD-23

8. The following 68 cases fall under Type III:

**CIVIL:**

No. 80-10030-CI-11	No. 86-1277-CI-08	No. 88-15331-CI-13
No. 81-7584-CI-25	No. 86-6454-CI-22	No. 89-1527-CI-17
No. 81-8131-CI-24	No. 86-10042-CI-17	No. 89-1590-CI-11
No. 81-10089-CI-17	No. 86-12093-CI-20	No. 89-6986-CI-12
No. 82-1365-CI-18	No. 86-12987-CI-21	No. 89-16705-CI-14
No. 82-7884-CI-14	No. 86-15522-CI-14	No. 89-19408-CI-17
No. 82-10716-CI-13	No. 86-16528-CI-17	No. 90-5542-CI-12
No. 83-4146-CI-22	No. 88-2724-CI-21	No. 90-12553-CI-11
No. 85-3876-CI-11	No. 88-4926-CI-09	No. 90-17701-CI-12
No. 85-5317-CI-09	No. 88-5149-CI-11	No. 90-19711-CI-12
No. 85-13816-CI-25	No. 88-5313-CI-12	No. 90-20081-CI-24

No. 91-0423-CI-09	No. 91-8475-CI-19	No. 91-20256-CI-14
No. 91-1738-CI-15	No. 91-13974-CI-24	No. 91-21012-CI-25
No. 91-2081-CI-14	No. 91-15007-CI-23	No. 93-1357-CI-19
No. 91-3332-CI-22	No. 91-15711-CI-14	No. 95-0781-CI-21
No. 91-3580-CI-08	No. 91-16246-CI-16	No. 98-1816-CI-20
	No. 00-07471-CI-11	

**FAMILY:**

No. 92-0039-FD-09	No. 92-8997-FD-24	No. 93-12089-FD-09
No. 92-1461-FD-22	No. 93-0278-FD-23	No. 94-1553-FD-14
No. 92-2706-FD-22	No. 93-4062-FD-23	No. 94-2112-FD-22
No. 92-6293-FD-25	No. 93-4521-FD-23	No. 94-5805-FD-22
No. 92-8698-FD-17	No. 93-5051-FD-17	No. 94-13104-FD-23
No. 92-8941-FD-23	No. 93-9987-FD-24	No. 98-8668-FD-22
	No. 00-3355-FD-22	

**CONCLUSIONS OF LAW**

1. Access to court records is governed by Article I, section 24, Florida Constitution and Rule of Judicial Administration 2.420. Rule of Judicial Administration 2.420(a) provides:

(a) 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 records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below.

2. Rule of Judicial Administration 2.420(c) contains numerous provisions that exempt records from public disclosure. Florida Rules of Judicial Administration 2.420(c)(7) and (8) provide that all records of the judicial branch that are made confidential under the Florida or United States Constitutions; Florida or federal law; Florida court rule; Florida Statutes; Florida case law; or the Rules of the Judicial

Qualifications Commission are also confidential. Also, in State v. Buenoano, 707 So.2d 714, 718 (Fla. 1998), the Florida Supreme Court found that Rule 2.420(c)(8) (former Rule 2.051(c)(8)) specifically adopts statutory public record exemptions.

3. Regarding the Type I(A) cases, all records pertaining to adoption are made confidential by section 63.162(2), Florida Statutes. Hence, these files are required to be sealed in their entirety pursuant to Florida Rules of Judicial Administration 2.420(c)(7) and (8). This sealing includes the sealing of the case number.

4. Further, Rule of Judicial Administration 2.420(c)(9) provides that court records can be sealed:

- a. to prevent a serious and imminent threat to a fair, impartial and orderly administration of justice;
- b. to protect a trade secret;
- c. to protect a compelling government interest;
- d. to obtain evidence to determine legal issues in a case;
- e. to avoid substantial injury to innocent third parties;
- f. to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right where such matters are not generally inherent in the specific type of proceeding in which the sealing is sought; or
- g. to comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law.

5. However, Rule of Judicial Administration 2.420(d)(1) provides that when court records are sealed pursuant to subsection (c)(9), the court may not make confidential the case number, docket number, or other number used by the clerk's office to identify the case file.

6. The term "court records" is defined in Rule of Judicial Administration 2.420(b)(1)(a) as "the contents of the court file, including the progress docket and other similar records generated to document activity in a case ...."

7. Regarding the Type I(B) cases, since the orders direct the Clerk to seal the "record" and the definition of court records includes the progress docket, the judge may have also intended to seal the progress docket.

8. Regarding the Type II cases, the sealing orders do not use the term "court record." However, the file reflects a concern for the safety of a party or a minor connected with the case and the judge may have intended to remove the case from the public docket.

9. Regarding the Type III cases, the sealing orders use the term court "file" rather than "record," and they do not reflect any concern for safety. Therefore, these cases contain no indication that the judge intended to seal any portion of the docket.

10. When an order has been entered by a trial judge, modification, if any, should be considered by the trial judge and not considered administratively by the Chief Judge. See Hewlett v. State, 661 So.2d 112 (Fla. 4th DCA 1995).

Therefore, it is hereby

**ORDERED** that, as to the Type I(A) cases, the Pinellas County Clerk of the Circuit Court shall continue to maintain a sealed case number, docket, and file.

As this Order maintains the current status of these cases, no notice is required to be provided to the parties.

It is further

**ORDERED** that, as to the Type I(B) cases, the Pinellas County Clerk of the Circuit Court shall:

1. continue to maintain a sealed docket and file unless a proper motion is filed pursuant to Rule of Judicial Administration 2.420(d)(5) and Administrative Order No. 2007-042 PA/PI-CIR. The motion shall be heard by the judge who entered the order sealing the court record. If that judge is unavailable, the motion may be heard by the currently assigned section judge. Only if the Court modifies its current order after hearing will any portion of the file or docket be unsealed;

2. assure that the final judgment is recorded in a manner that does not reveal the identity of the parties; and

3. provide public access to the case number in accordance with Rule of Judicial Administration 2.420(d)(1).

The Court finds that this is the least restrictive means to protect the parties' interests; that the manner of restricting information is no broader than necessary; and that no less restrictive measures are available to protect the parties' interests.

Since the docket entries and files in these cases will remain sealed, no notice is required to be given to the parties.

It is further

**ORDERED** that, as to the Type II cases, the Pinellas County Clerk of the Circuit Court shall:

1. continue to maintain a sealed file unless a proper motion is filed pursuant to Rule of Judicial Administration 2.420(d)(5) and Administrative Order No. 2007-042 PA/PI-CIR. The motion shall be heard by the judge who entered the order sealing the court file. If that judge is unavailable, the motion may be heard by the currently assigned section judge. Only if the Court modifies its current order after hearing will any portion of the court file be unsealed;

2. provide public access to the court's docket. However, prior to providing such access, the Clerk shall redact the names of any parties, their parents, or children from the docket entries and substitute a pseudonym. Further, the Clerk shall take all reasonable steps necessary to ensure that the docket of the court proceedings on the Type II cases is available to the public on CJIS and any other electronic access to the court's docket, including but not limited to the Pinellas Clerk of the Circuit Court's website of myfloridacounty.com, in a manner that does not disclose the identity of the protected parties; and

3. ensure that the final judgment is recorded in a manner that does not reveal the identity of the protected parties.

The Court finds that this is the least restrictive means to protect the parties' safety and ensure public access. The manner of restricting information is no broader than necessary and no less restrictive measures are available to protect the interests pursuant to Rule 2.420(c)(9).

Since the names of the parties and minors will remain confidential for reasons of safety, no notice is required to be given to the parties.

It is further

**ORDERED** that, as to the Type III cases, the Pinellas County Clerk of the Circuit Court shall:

1. continue to maintain a sealed file unless a proper motion is filed pursuant to Rule of Judicial Administration 2.420(d)(5) and Administrative Order No. 2007-042 PA/PI-CIR. The motion shall be heard by the judge who entered the order sealing the court file. If that judge is unavailable, the motion may be heard by the currently assigned

section judge. Only if the Court modifies its current order after hearing will any portion of the court file be unsealed;

2. provide notice of the pending restoration of the docket to public access to the parties and the judge entering the sealing order; or, if that judge is unavailable, to the currently assigned section judge. For purposes of notice, the last address contained in the file shall be sufficient, subject to any forwarding information the Clerk subsequently receives. Because of the staleness of many of these files and the likelihood that some parties are now deceased or have relocated, the Clerk's notice shall give the parties 60 days from the date of the notice to respond if they wish to be heard on the pending restoration of the public docket; and,

3. if no party files an objection within the 60-day notice period, provide public access to the court's docket through the CJIS system and any other electronic access to the court's docket, including but not limited to the Pinellas Clerk of Court's website and myfloridacounty.com.

The Court finds that this is the least restrictive means to protect the parties' interests pursuant to Rule 2.420(c)(9) and ensure public access. The manner of restricting information is no broader than necessary and no less restrictive measures are available to protect the interests pursuant to Rule 2.420(c)(9).

It is further

**ORDERED** that the Pinellas County Clerk of the Circuit Court shall:

1. post a copy of this Order, with the Type I(A) case numbers redacted, on the Clerk's website for a period of 60 days *nunc pro tunc* June 14, 2007; and
2. allow public access to this Order after redacting the Type I(A) case numbers.

**DONE AND ORDERED** this 25<sup>th</sup> day of June, 2007, *nunc pro tunc* June 14, 2007.

  
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DAVID A. DEMERS, Chief Judge