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Florida Supreme Court approves emergency rules on secret records

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TALLAHASSEE, Fla. (AP) -- The Florida Supreme Court issued emergency rules Thursday designed to stop the improper sealing of court records and dockets in civil cases, but delayed a decision on whether they also should cover criminal cases.

The unsigned, unanimous opinion requires court clerks to post notices on their Web sites and courthouses after a record is sealed, and allows citizens to then challenge those decisions. Courts are also prohibited from making case, docket and other identifying numbers confidential.

"Most significant for our purposes here ... the removal from public view of all information acknowledging the existence of a case is expressly not allowed," the justices wrote.

That's exactly what happened in Broward County with divorces and other civil cases involving more than 100 prominent people, including television personalities, judges and elected officials.

The Miami Herald last year disclosed the hidden docket after obtaining case numbers and names, but not sealed documents, through a lawsuit.

Chief Justice R. Fred Lewis then ordered an inquiry, including reports from chief judges in each of the state's 20 judicial circuits. That turned up more secret files, but Lewis said the problem was not pervasive, appeared isolated and usually resulted from unintentional mistakes.

The high court observed it never would have learned about the secret records without the news media.

"In this instance, the free press has shown its value to the people of Florida by helping the judiciary identify and quickly correct unintended practices that tended to undermine public trust and confidence in our courts," the justices wrote.

The high court, though, rejected an argument from media lawyer Carol Jean LoCicero that parties who seek closure, rather than challengers, should have the burden of proof. The justices found it reasonable to give judges' orders "a presumption of correctness" and require challengers to show they are unsound.

"I'm cautiously hopeful," LoCicero said. "You don't know how these things are going to work out until you see it in practice."

She represents The Tampa Tribune, Tampa television station WFLA-TV, the Sarasota Herald-Tribune, The Ledger of Lakeland, The Gainesville Sun, the Ocala Star-Banner, the Orlando Sentinel and the South Florida Sun-Sentinel.

The justices closely followed recommendations from the Judicial Administration Rules Committee.

"They were on top of this issue from the get-go," said committee chairman Scott Dimond, a Miami lawyer. "They heard everyone and they moved us fast."

The high court, though, directed committees dealing with criminal law to conduct further study on whether similar rules are needed for requests to seal records in those cases. Prosecutors and defense lawyers are worried mainly about compromising identities of confidential informants.

LoCicero said she didn't think that should be a big issue because confidential informants have been around for a long time and have testified in open court without causing any outcry.

The justices wrote the emergency civil rules are not their last word on that aspect, either, but Dimond predicted the final version would be very similar.


Circuit Judge Judith L. Kreeger, chairwoman of a Supreme Court committee conducting a broader study of public access to court records, last month urged the justices to delay action at least until after her panel issues a preliminary report in June. Kreeger, though, said she was not disappointed the justices acted so soon.

"The good news is they created a defined mechanism to process a certain portion of these requests," Kreeger said.

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