

PUBLIC RECORDS & MEETINGS

Public Records & Meetings

Media General Convergence, Inc. v. Chief Judge of the Thirteenth Judicial Circuit, 840 So. 2d 1008 (Fla. 2003)

Records received by a chief judge, consisting of complaints and other documents regarding sexual misconduct by another judge, constitute public records under Article I, Section 24(a) of the Florida Constitution. However, these records are exempt from public disclosure under Florida Rule of Judicial Administration 2.051(c)(3)(A), until the Judicial Qualifications Committee establishes probable cause of misconduct.

FACTS AND PROCEDURAL HISTORY

Judge F. Dennis Alvarez, Chief Judge of Florida's Thirteenth Judicial Circuit, received records consisting of complaints and other documents alleging sexual misconduct by Judge Edward Ward. Media General Convergence, Inc., the owner of a television station, requested that Chief Judge Alvarez grant access to the records as public records. The request was denied. Subsequent to Media's request for the records, the Judicial Qualifications Committee (JQC) found probable cause that Judge Ward had engaged in sexual misconduct and filed formal charges against him. Media renewed its request for the records, but Chief Judge Alvarez again denied access.

After one more failed attempt to view the records, Media petitioned the Second District Court of Appeal for a writ of mandamus to compel Chief Judge Alvarez to disclose the records. The Second District denied Media's petition, but certified a question to the Florida Supreme Court: Are the records of a judge's sexual misconduct, held by a chief judge, public records subject to public disclosure?

The Florida Supreme Court ruled that the records received by the chief judge were public records, but were exempt from public disclosure until the JQC established probable cause. The Court concluded that, once the JQC established probable cause, the re-

cords were subject to public disclosure. The Court quashed the Second District's decision and remanded the case.

ANALYSIS

Public access to records of the judicial branch of government is addressed in both the Florida Constitution and the Florida Rules of Judicial Administration. Article I, Section 24(a) of the Florida Constitution provides public access to records that are made or received in connection with a public employee's official business. Florida Rule of Judicial Administration 2.051(c)(3)(A) exempts complaints alleging misconduct by a judge from public disclosure until probable cause has been established by the JQC. Article V, Section 12(a)(4) of the Florida Constitution provides that JQC proceedings are confidential until the committee has found probable cause and formal charges are filed. The issue before the Florida Supreme Court in *Media General* involved balancing competing mandates of Florida's Constitution, providing open access to government documents, with protecting the confidentiality of JQC proceedings until probable cause has been established.

The Court divided the Second District's certified question into two parts: (1) Did documents received by a chief judge regarding sexual misconduct of another judge constitute public records; and (2) if so, are they exempt from public disclosure after the JQC determines the existence of probable cause?

The Court held that the records Chief Judge Alvarez received regarding Judge Ward's sexual misconduct were public records based on its conclusion that the records were made or received by Chief Judge Alvarez in connection with his official business as chief judge. The Court relied on Florida Rule of Judicial Administration 2.050(b)(2), which makes a chief judge responsible for the administration of all courts within his or her circuit. Because Chief Judge Alvarez received the complaints and documents from other court employees in his capacity as the chief administrator of the circuit, the Court reasoned that they were made or received by him as part of his official duties as chief judge. Absent an exemption, therefore, these records qualified as public records.

The Court then addressed whether the records were exempt under Florida Rule of Judicial Administration 2.051(c)(3)(A), which exempts complaints of judicial misconduct from public disclosure until probable cause is established. *Media* contended that

this exemption did not apply to the records in this case, because no formal complaints had ever been filed by the victims of Judge Ward's alleged sexual misconduct. The Court ruled that the exemption did apply, because the rule does not differentiate between formal and informal complaints, and that to limit the rule to formal complaints would require the Court to add meaning to the rule that did not exist. Also, the Court determined that the exemption from disclosure applied whether the records were in the possession of the chief judge or the JQC.

In a concurring opinion, Justice Pariente considered the question of whether the same records in the hands of the chief judge would be exempt from disclosure if there was no pending JQC investigation. Pariente concluded that, if the chief judge did not refer the complaints to the JQC and also made no inquiry into the validity of the complaints, they would be public records subject to disclosure even without a JQC finding of probable cause. The majority opinion acknowledged that a chief judge has no guidance to follow in such a situation, and referred the question to the Conference of Circuit Judges to make recommendations for the establishment of procedures for chief judges to follow when presented with complaints of another judge's misconduct.

SIGNIFICANCE

Media General Convergence, Inc., is significant for two reasons. First, it addressed the issue of when complaints and records of judicial misconduct received by a chief judge become subject to public disclosure. In its ruling, the Florida Supreme Court clarified that records of judicial misconduct are public records when received by the chief judge, but are exempt from public disclosure until the JQC finds probable cause. Second, the case acknowledged the issue of whether the same records would be exempt from disclosure at any time if there were no pending JQC investigation.

RESEARCH REFERENCE

- 44 Fla. Jur. 2d *Records and Recording Acts* §§ 40-71 (1996).

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Public Records & Meetings: Exceptions

Henderson v. Perez,
835 So. 2d 390 (Fla. 2d Dist. App. 2003)

Public records that are exempt from disclosure are not discoverable when the party seeking the records fails to show exceptional necessity or extraordinary circumstances.

FACTS AND PROCEDURAL HISTORY

Officers of the Hillsborough County Sheriff's Department arrested Gustavo Perez for offenses he did not commit. Perez subsequently filed a complaint against Sheriff Cal Henderson, as Sheriff, alleging battery, false imprisonment, and malicious prosecution. During the course of discovery in the litigation, Perez requested the personnel files of all officers involved in his arrest. The Sheriff produced the requested files after redacting the officers' home addresses, social security numbers, and photographs.

Perez filed a motion to compel the Sheriff to produce the redacted information, and the Sheriff responded with a motion for protective order, alleging that the redacted information was exempt from public disclosure under Florida Statutes Section 119.07(3)(i)(1) (2001). After a hearing on the motion to compel, the circuit court ordered the Sheriff to produce the officers' home addresses and photographs. The Sheriff appealed, and the Second District Court of Appeal quashed the circuit court's order, holding that the officers' home addresses and photographs were exempt from disclosure and that Perez did not show any exceptional necessity or extraordinary circumstances that would warrant their disclosure.

ANALYSIS

Anyone who has custody of a public record must permit inspection of the record by anyone requesting to do so. Fla. Stat. § 119.07(1)(a). In addition, records specifically exempt from public disclosure may be deleted or redacted from records otherwise subject to disclosure. *Id.* at § 119.07(2)(a). Records specifically exempt from disclosure include the "home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel." *Id.* at § 119.07(3)(i)(1).

The courts have interpreted the statute to allow specifically exempt records to be discoverable where there is a showing of exceptional necessity or extraordinary circumstances by the party requesting the records. *Henderson*, 835 So. 2d at 392 (citing *Dept. of Hwy. Safety & Motor Veh. v. Krejci Co.*, 570 So. 2d 1322, 1324 (Fla. 2d Dist. App. 1990)).

In *Henderson*, Perez asserted that the home addresses and photographs of the law enforcement officers were essential to his case, without any showing that they were necessary. Following *Krejci*, the Second District Court of Appeal found that, because Perez had not shown exceptional necessity or extraordinary circumstances, the Sheriff was not required to disclose the exempt information.

SIGNIFICANCE

Henderson addresses whether records exempt from public disclosure are discoverable. This case reinforces the holding in *Krejci* that, for otherwise exempt records to be discoverable, the party requesting the records must show exceptional necessity or extraordinary circumstances.

RESEARCH REFERENCE

- 19A Fla. Jur. 2d *Discovery and Depositions* § 22 (1996).

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