

ADMINISTRATIVE ORDER
NO. 2004-01

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE AND OSCEOLA
COUNTIES, FLORIDA

ADMINISTRATIVE ORDER GOVERNING DRUG COURT FILES
IN THE CUSTODY OF THE CLERK OF COURT

WHEREAS, pursuant to section 948.16, Florida Statutes (2001), which established a pre-trial intervention program for persons charged with offenses involving controlled substances, and pursuant to section 397.334, Florida Statutes which provides for “Treatment-based drug court programs,” the Florida Legislature intended to implement treatment-based drug court programs in each judicial circuit in an effort to reduce crime and recidivism, abuse and neglect cases, and family dysfunction by breaking the cycle of addiction which is the most predominant cause of cases entering the justice system; and

WHEREAS, the United States Congress originally passed 42 U.S.C. § 290dd-2., “Confidentiality of records,” in 1970, and passed the most recent amendments in 1998. This statute and its implementing regulations, codified at 42 C.F.R. § 2.1, et seq., were designed to restrict the disclosure of confidential information, or “records,” about patients of drug abuse treatment centers including information such as patient identities, diagnoses, treatment plans, and progress reports. In passing this confidentiality law, Congress intended “to shield the drug addict from public scrutiny while the addict seeks treatment.” *U.S. v. Johnston*, 810 F.2d 841, 842 (8th Cir. 1987); and

WHEREAS, the purpose of these laws was to encourage persons to get help for addictions. Specifically, Congress wanted to avoid placing people who seek treatment in a worse

position, privacy-wise, than people with substance abuse problems whose privacy remains intact simply because they do not seek help. *See Mosier v. American Home Patient, Inc.*, 170 F. Supp. 2d 1211 (N.D. Fla. 2001). In *Mosier*, the Court stated that this privilege of confidentiality “is a strong one, not to be lightly set aside.” *Id.* at 1214; and

WHEREAS, 42 C.F.R. § 2.1 et seq. and its regulations apply to any treatment-based intervention program that receives federal assistance; and

WHEREAS, the state of Florida has a specific statute concerning confidentiality of records pertaining to substance abuse treatment, section 397.501(7)(a) of the Florida Statutes, which states that the records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual client are confidential in accordance with this chapter and with applicable federal confidentiality regulations and are exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; and

WHEREAS, the Ninth Judicial Circuit’s drug court programs receive federal assistance and therefore both the federal and Florida confidentiality statutes and regulations apply to records of persons participating in the drug court programs in this Circuit; and

NOW, THEREFORE, I, Belvin Perry, Jr., pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.050 order the following effective immediately:

1. Pursuant to the federal confidentiality statutes and regulations, including 42 C.F.R. § 2.1 et seq. and section 397.501(7)(a) of the Florida Statutes, drug court files in the custody of the Clerk of Court are deemed to be non-public records.
2. The Clerk of Court for Orange County and the Clerk of Court for Osceola County

shall not release drug court records without approval from the Court and pursuant to the limited exceptions as provided under the applicable federal confidentiality statutes and regulations including 42 C.F.R. § 2.1 et seq. and applicable laws of Florida.

DONE AND ORDERED at Orlando, Florida, this 27th day of January, 2004.

/s/ Belvin Perry, Jr.
Belvin Perry, Jr.
Chief Judge

Copies to:

All Circuit & County Judges, Ninth Judicial Circuit
State Attorney's Office, Ninth Judicial Circuit
Public Defender's Office, Ninth Judicial Circuit
General Counsel, Orange County Sheriff's Office
Police Legal Advisor, Orlando Police Department
Orange County Attorney's Office
Osceola County Attorney
Orange County Corrections
Orange County Bar Association
Bar Briefs, Orange County Bar Association
Paul C. Perkins Bar Association
Hispanic Bar of Central Florida
Central Florida Association for Women Lawyers
Clerk of Courts, Orange County
Orange County Law Library
Clerk of Courts, Osceola County
The Osceola County Bar Association
The Osceola County Law Library
The Osceola County Sheriff's Office
Director, The Osceola County Dept. of Corrections
Office of the Statewide Prosecutor
Central Florida Criminal Defense Attorneys Association
Executive Director of The Florida Bar
Official Records, Orange County Comptroller

Administrative Order No. 2004-01