

IN THE EIGHTH JUDICIAL CIRCUIT OF FLORIDA
ADMINISTRATIVE ORDER NO. 7.16

CONFIDENTIALITY OF BAKER ACT FILES

WHEREAS, Florida Rule of Judicial Administration 2.420(c)(7) provides that all records made confidential under the Constitutions and laws of Florida and of the United States are confidential; and

WHEREAS, section 394.4615(1), Florida Statutes, provides that clinical records of patients in proceedings under Chapter 394 (the Baker Act) are confidential and exempt from the provisions of section 119.07(1); and

WHEREAS, section 394.4615(7), Florida Statutes, provides that any person, agency or entity receiving information from clinical records in Baker Act cases shall maintain such information as confidential and exempt from section 119.07(1), Florida Statutes; and

WHEREAS, Florida Rule of Judicial Administration 2.420(d)(1)(B)(viii), for the purpose of determining confidentiality of court records, makes information from clinical records under the Baker Act, section 394.4615(7), automatically confidential; and

WHEREAS, the Florida Supreme Court Standards for Access to Electronic Court Records adopted by AOSC16-107 (December 30, 2016) provide that the general public and individuals registered for subscriber services may have access to all records except those automatically confidential under Fla. R. Jud. Admin. 2.420(d)(1); and

WHEREAS, in order to determine whether a person meets the criteria for services, placement or treatment under the Baker Act, the court or magistrate must consider all available information concerning the person subject to the proceeding which, to a large extent, includes information from clinical records; and

WHEREAS, the clinical record becomes an integral and central part of Baker Act proceedings, and information from clinical records is intertwined with and integrated into the papers filed in the court file; and

WHEREAS, it is impractical to permit access to only those portions of the court file that may not contain confidential information from clinical records without risking inadvertent disclosure of confidential information, thus necessitating that the entire file should be made confidential, Cf. Tribune Company v. D.M.L., 566 So. 2d 1333 (Fla. 2d DCA 1990) (holding that closure of entire Baker Act hearing from public attendance was in furtherance of clear public policy of confidentiality set forth by legislature in the Baker Act); and

WHEREAS, the efficient administration of the courts of the Eighth Judicial Circuit requires that administrative guidelines be adopted to clarify the confidential status of clinical records information contained in court files created in Baker Act cases; it is therefore

ORDERED that:

1. All documents, and the images of all documents, filed in Baker Act cases shall be treated as confidential. Such files will not be “sealed,” but the viewing of a file is restricted to those persons authorized by this order.

2. Parties’ names and the court docket lines in Baker Act cases are not confidential and will be accessible to the public and to subscribers. However, from the effective date of this order, any references to diagnosis, treatment or other information which reasonably appears to have come from a clinical record shall be omitted from all docket lines and replaced with an ellipsis (...) to indicate an omission. References to the specific nature of treatment received or to be received, such as in an order authorizing consent to electroconvulsive treatment, shall be omitted pursuant to this order, and the docket line for such an order, for example, should read: “Order Authorizing Guardian Advocate to Consent to ... Treatment”. Nonspecific terms, such as “treatment”, “extraordinary treatment”, “involuntary placement”, “involuntary treatment”, “involuntary commitment”, “assessment”, “examination” and the like are permitted and shall not be omitted from docket lines. Upon request regarding a specific case, the Clerk of Court

may modify docket lines in cases processed before the effective date of this order to eliminate references to diagnosis, treatment or other information which reasonably appears to have come from clinical records.

3. The following persons may view the documents, and electronic images of the documents, contained in a confidential Baker Act case file:

- a. The parties to the case;
- b. The parties' attorneys;
- c. Any governmental agency or its representative authorized by law to view clinical records in such cases;
- d. Any other person or entity authorized by law; and
- e. A person or entity authorized to view a record by written court order.

4. Notwithstanding the foregoing, the Clerk of Court upon request may permit viewing and copying of documents in Baker Act cases where no petition for involuntary services or treatment was made or which pre-date any such petition if the documents do not contain any information from a clinical record.

5. Documents treated as confidential under this order will continue to be imaged and the images will be made available to the court, court staff, and any person or entity entitled to view the documents in such cases.

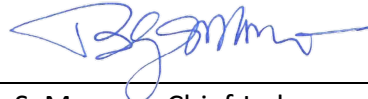
6. This administrative order is not intended to change any right of access to documents that are sealed by court order, nor to grant access to records that are confidential for other reasons.

7. In the event a request for information in a case is denied pursuant to this order, and the person or entity seeking said information disagrees with its characterization as confidential, said person or entity may seek access by appropriate motion addressed to the

circuit judge assigned to the case who may grant or deny the request after consideration.

8. In the event a party to a Baker Act case, filed either before or after the effective date of this order, seeks confidentiality with respect to information accessible to the public in said party's case file, nothing herein prevents said party from seeking relief pursuant to Fla. R. Jud. Admin. 2.420(e).

ORDERED ON this 29th day of August 2018.

A handwritten signature in blue ink, appearing to read 'Toby S. Monaco', is written above a horizontal line.

Toby S. Monaco, Chief Judge