

ADMINISTRATIVE ORDER
NO. 2004-01-02

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

AMENDED ORDER GOVERNING PROBLEM SOLVING COURT FILES
IN THE CUSTODY OF THE CLERK OF COURT

WHEREAS, pursuant to Article V, section 2(d) of the Florida Constitution and section 43.26, Florida Statutes, the chief judge of each judicial circuit is charged with the authority and the power to do everything necessary to promote the prompt and efficient administration of justice; and

WHEREAS, pursuant to the chief judge's constitutional and statutory responsibility for administrative supervision of the courts within the circuit and to create and maintain an organization capable of effecting the efficient, prompt, and proper administration of justice for the citizens of this State, the chief judge is required to exercise direction, *see* Fla. R. Jud. Admin. 2.215(b)(2), (b)(3); and

WHEREAS, this Circuit has recognized that the creation of problem solving courts has enhanced the expediency, effectiveness and quality of judicial administration; and

WHEREAS, pursuant to section 948.16, Florida Statutes, 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 problem solving courts programs," the Florida Legislature intended to implement treatment-based problem solving courts 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), 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 problem solving courts programs receive federal assistance and therefore both the federal and Florida confidentiality statutes and regulations apply to records of persons participating in the problem solving courts programs in this Circuit;

NOW, THEREFORE, I, Frederick J. Lauten, in order to facilitate the efficient operation of the administration of justice, and pursuant to the authority vested in me as Chief Judge of the Ninth Judicial Circuit of Florida under Florida Rule of Judicial Administration 2.215, hereby order the following, **effective immediately**, to continue until further order and superseding any provisions in prior Administrative Orders which may be inconsistent:

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

2. Problem solving courts currently operational in the Ninth Judicial Circuit include Adult Drug Court, Juvenile Drug Court, Family Dependency Drug Court, Veterans Treatment Court and Mental Health Court.

3. The Clerk of Court for Orange County and the Clerk of Court for Osceola County shall not release problem solving courts 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 to anyone other than the defendant and/or attorney of record, the Office of the State Attorney, or the Office of Statewide Prosecution.

4. Administrative Order 2004-01-01 is vacated and set aside except to the extent that it has been incorporated and/or amended herein. Vacating an Administrative Order that vacates a prior Order does not revive the prior Order.

DONE AND ORDERED at Orlando, Florida, this 27th day of March, 2018.

_____/s/_____
Frederick J. Lauten
Chief Judge

Copies provided to:

Clerk of Courts, Orange County
Clerk of Courts, Osceola County
General E-Mail Distribution List
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