

3601 N. Lincoln Blvd.
Oklahoma City, OK
73105-5499

Tel: (405) 499-0020
Toll Free in Oklahoma:
888-815-2672
Fax: (405) 499-0048
www.OkPress.com



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Michael D. Evans
Administrative Director of the Courts
2100 N. Lincoln Boulevard, Ste. 3
Oklahoma City, OK 73105

RE: Proposed Order Creating District Court Rule 31

Dear Mr. Evans:

You have requested written comments, due on or before November 4, 2011, regarding an effort to protect personal identifier information in court documents. In your letter of September 20, 2011, you indicate the courts will continue to gather personal identifier information for the business needs of the court. But no reference or reason is given on why the business needs of the court are superior to the needs of the citizenry to have full faith and confidence in the Judiciary, its independence, and its transparent administration of justice in the State of Oklahoma.

Perhaps the court is concerned about privacy. Yet the public policy of the State of Oklahoma, as defined in Oklahoma Statutes 51 OS 24A.2 states: *...the people are vested with the inherent right to know and be fully informed about their government. The Oklahoma Open Records Act shall not create, directly or indirectly, any rights of privacy or any remedies for violation of any rights of privacy; nor shall the Oklahoma Open Records Act, except as specifically set forth in the Oklahoma Open Records Act, establish any procedures for protecting any person from release of information contained in public records.....The privacy interests of individuals are adequately protected in the specific exceptions to the Oklahoma Open Records Act or in the statutes which authorize, create or require the records. Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by a confidential privilege.*

The proposed order creating District Court Rule 31 is attempting to do, by court rule, what the legislature has specifically stated shall not be done, directly or indirectly. Concerns about privacy, identity theft, and other issues of the day generally gestate in the electorate and their representatives in the Legislative and Executive branches of government, not from within the Judiciary. The Judiciary should not be subject to populist pressures or adopt rules that give the appearance of bending to the desires of the electorate. The Judiciary must first and foremost be concerned with the integrity and independence of the Judiciary, and the administration of justice.

When private citizens cannot settle their affairs in private they proceed to the publicly-funded court system. When that occurs, private citizens should expect - and taxpayers should demand - those citizens necessarily give up certain rights of privacy in order to use the court system to resolve disputes. If privacy is desired, private mediators and other methods of maintaining privacy are available to all. The only personal identifier privacy exception that should be under consideration would be found in proposed rule A.3; the names of minor children and use of their initials as personal identifiers. Even so, the alternatives proffered to completely obscure the identity of the minor child (Child A, Child B, Doe 1, Doe 2 or by status) should be rejected.

The wording in section **C. Filing of Documents under Seal** is a completely abhorrent section that allows any party to request that any pleading, paper or exhibit or other document be sealed. A redacted version will be filed for the public record. Why does the Judiciary need two sets of books to administer justice?

If there is some reason or supportable cause for Justices to see personal identifiers in their entirety to render a fair and impartial verdict those full personal identifiers should also be a part of the public record. To set up a system allowing only Judges and Officers of the Court to see the true and complete records necessary to administer justice will cause irrevocable damage to the invaluable and unquestioned integrity of the Judiciary.

Some have suggested the press ask for a special exemption or access to view sealed documents in order to satisfy their need to know if the court is operating in a fair, impartial and untainted manner. We have discussed this option and wholly reject the concept. Absent the proposed Court rule, there is no need to vest special access in special groups or observers in order for the public to verify the integrity of the court and the judicial system as a whole.

The wording in section **B. Responsibility of Filer** becomes moot if the court decides they should not be running parallel systems, one for the Judges and Officers of the Court and another for the public. The filer does have a responsibility, under the Preamble to the Oklahoma Rules of Professional Conduct - Appendix 5, to use the law only for legitimate purposes and not to harass or intimidate others. If an Officer of the Court is introducing unnecessary personal identifiers into the public record without cause that officer should be questioned and appropriately disciplined under those rules of professional conduct.

The Judiciary and legal profession are self-governing. It is a unique branch of government, dissimilar to the Executive and Legislative branches. Those partisan political branches are swayed by the passions of the people and respond to political party platforms and positions. The Judiciary does neither. To do so now and in a way currently proposed by the court, or to enact a rule that creates two sets of records, would forever alter the unique place of honor and trust citizens must have in their Judiciary and its crucial role in our governance.

Some renderings of the ancient symbol, Themis, depict her foot on the head of a snake. It is a reminder to tread lightly. This proposed rule should not be made final as currently drafted. To do so will inevitably allow the venom of distrust and favoritism to be carried into the veins of our judicial system.

Very sincerely,



Mark Thomas
Executive Vice President