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## Clerks ask state Supreme Court to keep judges from sealing cases

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Florida's court clerks association has recommended new rules to restrict a judge's ability to seal court records without the public's knowledge.

The rules still need approval by the state Supreme Court, but that may just be a formality. The proposed changes came at the request of Chief Justice Fred Lewis, who said he and his colleagues were astounded to read reports of secret dockets in a number of counties, including Sarasota.

"Their chins hit the table," Lewis said. "After another article this month, one justice said to me, 'Did you see that? What are we doing about it?'"

Judges are only supposed to seal a case from public view when there is a legal justification, such as the need to protect the identity of a stalking victim or a child who has been abused.

But news reports surfaced this summer -- first in the Miami Herald and later in other papers, including the Herald-Tribune -- that Florida judges had sealed cases simply because one of the parties wanted it done.

The Herald-Tribune is involved in litigation over a case sealed by Circuit Judge Nancy Donnellan, who has refused to unseal a 2000 lawsuit involving Republican congressional nominee Vern Buchanan.

At a hearing last Friday, Donnellan acknowledged that she sealed Buchanan's case without receiving a legal justification, but she declined to immediately open it.

Donnellan did agree to unseal a small portion of the file, including her seal order, which stated Buchanan wanted the case hidden because it "contains private and business proprietary information and other confidential information concerning Buchanan that could be prejudicial to him."

Adria Harper, the director of the Florida First Amendment Foundation, said she was pleased to hear that the court justices had been disturbed by the recent stories about sealed cases.

"Judicial integrity is in question here, so of course they're going to address this," Harper said. "Having secret records is unacceptable."

Among the recommendations by the Florida Association of Court Clerks and Comptrollers is the requirement that judges hold a hearing and give advance public notice before sealing a Florida court case from public scrutiny.

The proposal mirrors an administrative order issued by 12th Circuit Chief Judge Robert Bennett last month. Bennett's order followed a Herald-Tribune investigation that found a dozen civil cases had been sealed and stripped from the public docket, making it appear as if they never existed.

The clerks association rules, and Bennett's order, also require judges to have a written order that is specific about what documents should be sealed.

The Herald-Tribune investigation showed that in half of the sealed cases in the 12th Circuit, which includes Sarasota, Manatee and DeSoto counties, only some of the documents should have been sealed. Court Clerk Karen Rushing, the vice president of the state clerks association, blamed vague seal orders for the miscommunication.

The review also found that Judge Rick DeFuria had sealed a lawsuit without legal justification. DeFuria quickly acknowledged the mistake and agreed to open the file.

Buchanan has fought the paper's attempt to gain access to his suit, which he filed against the developers of the Sarasota Ritz-Carlton hotel. Buchanan claimed he had been cut out of the deal, and the developers countered that Buchanan had lied about his finances. The parties settled in 2001.

After the Herald-Tribune scheduled last week's emergency hearing to see the file, Buchanan's attorney offered to give the newspaper the case on Sept. 6 -- the day after the Republican primary -- if it backed out of the hearing. The newspaper refused and will continue to seek access to the file at an evidentiary hearing scheduled for Sept. 18.

Buchanan faces Democrat Christine Jennings in November's general election for the District 13 U.S. House seat.

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Information from The Associated Press was used in this report.

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