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High court prohibits lawsuit secrecy

By DAN CHRISTENSEN AND PATRICK DANNER

The Florida Supreme Court ruled unanimously Thursday that judges and clerks can no longer hide divorces or other civil lawsuits from the public, saying the practice threatens to "undermine public trust in our courts."

The court also unanimously adopted new rules that will make it harder for litigants to close off the records they file.

The sweeping decision strikes at a secrecy that has long plagued the court system, yet was virtually unknown even to some courthouse insiders, including the state's chief justice. The Miami Herald reported last year that hundreds of cases in at least half a dozen counties across the state, mostly in Broward, have been concealed on secret dockets since the 1980s. Many of the cases involved the divorces of judges, lawyers, politicians and businessmen.

Miami First Amendment lawyer Tom Julin labeled the court's decision "a landmark ruling."

"It will help the public immensely that judges are not closing files to protect their cronies or themselves, or the politically powerful," Julin said.

"This may well be the strongest ruling of its kind in the country. I think this is going to stand not only to improve the process here, but as a beacon to others on the value of open government."

The hiding practice, known as "super-sealing," removes every trace of a case, including its case number, from the public record. In Thursday's opinion, the high court called it "clearly offensive."

"The removal from public view of all information acknowledging the existence of a case is expressly not allowed," said the 23-page order.

Chief Justice R. Fred Lewis opened an inquiry into the controversial practice of super-sealing last summer.

'SWALLOWED TONGUE'

"I almost swallowed my tongue when I read about this," he said of The Miami Herald's articles in a September interview.

Various lawyer and media groups made recommendations for rule changes. A public hearing was held last month.

Judges and clerks have pointed the finger at one another for super-sealing. Thursday's opinion did not affix blame but pointedly noted that the new rules "were only as good as the manner in which they are applied and enforced."

"We are confident that trial judges and clerks of court will remain ever vigilant of the courts' longstanding presumption in favor of open records," the justices wrote.

Broward Chief Judge Dale Ross, who has denied a secret docket existed in Broward, did not return telephone

messages to his home and office seeking comment. Broward Court Clerk Howard Forman said, "I think the changes are good, and I'm proud that Broward County was in the forefront of it. There's a new age of openness upon us."

Broward has since moved all its formerly super-sealed cases onto the public docket. However, the documents in nearly all the cases still remain closed to the public.

While super-sealing challenges basic notions of openness and fairness, secrecy sometimes has a place in the court. In limited cases, litigants are entitled to shield information related to trade secrets or compelling governmental interest.

Under the new rules, requests to make such records confidential must be written. A public hearing must be held when those requests are opposed, and any judge who grants secrecy must publicly explain why.

To 'eliminate confusion in clerks' offices," judges must be specific about what documents are to be sealed, the ruling said. Judges will no longer be able to seal a case merely because both sides ask for it -- a long-standing practice.

The court also gave judges new power to impose sanctions on anyone who files a sealing motion in a civil case "without a good-faith basis," the justices said. However, the court spurned a request by media lawyers to require advance public notice of motions to seal.

"That gives the new rules real teeth," said attorney Julin.

The justices indicated they will rule later on the hiding of records in criminal courts, and the related issue of falsification of records by judges and prosecutors. The Miami Herald reported in November that officials in Miami-Dade have altered records and kept secret dockets to disguise what was actually happening in some criminal court cases.

State Attorney Katherine Fernandez Rundle's office has said it employed the practice quietly for at least two decades to protect informants. Rundle wrote to Lewis in December that her office will no longer "affirmatively" falsify docket entries.

RULING `A MODEL'

The statewide rules on civil cases replace local rules put in place last autumn by chief judges around the state at Lewis' request. Lucy Dalglish, executive director of The Reporters Committee for Freedom of the Press in Arlington, Va., called the decision "a model" for other states.

"It's fantastic. You could not get a better ruling," she said.