

IN THE FIRST JUDICIAL CIRCUIT IN AND FOR ESCAMBIA COUNTY, FLORIDA

KEVIN EARL WOOD,
Petitioner,

v

CASE NO.: 2013-CA-000877
DIVISION: "J"

PAM CHILDERS, CLERK OF
COURT, ESCAMBIA COUNTY, FL
Defendant.

_____ /

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

Petitioner seeks the list of the current members of the Escambia County Grand Jury. He argues that, pursuant to Section 119.07, Fla. Stat., the list is a public record maintained by the Clerk. While he acknowledges that grand jury proceedings are not subject to public disclosure, Section 905.24, Fla. Stat., he argues that the list of grand jurors is simply an administrative record of the Clerk and not covered by Chapter 905. Petitioner makes a compelling argument based upon a logical interpretation of the Florida Statutes. However, the case law and other authorities do not agree.

In Times Publishing Co. v. Ake, 660 So. 2d 255 (Fla. 1995), the Florida Supreme Court responded to the certified question: "Are the Court records maintained by the Clerk...subject to the inspection and copying requirements of Chapter 119..." The Court answered in the negative, stating "the clerks of the circuit courts, when acting under the authority of their Article V powers concerning judicial records and other matters relating to the administrative operation of the courts, are an arm of the judicial branch..." Thus, the courts are not considered an "agency" under Chapter 119, and the court records maintained by the clerk, by virtue of the fact that they are maintained by the clerk, do not become subject to Chapter 119.

In recognition that Chapter 119 does not apply to the Courts, the Florida Supreme Court has promulgated Rule 2.420, Fla.R.Jud.Admin, titled "Public Access to Judicial Branch Records." The

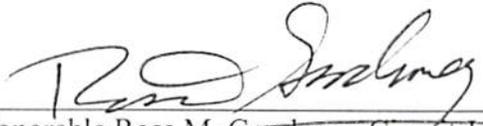
Rule separates “court records” and “administrative records.” Id., Rule 2.420(b)(1)(A) and (B). Under sub-section 2.420(b)(5)(C)(7)(xvi), Grand Jury Records are confidential. Further indication that the list of grand jurors, specifically, is confidential, comes from the Court’s Judicial Branch Records Retention Schedule For Administrative Records, which specifically provides a two-year retention period for “GRAND JURY RECORDS...lists of jurors...”

Petitioner was allowed to view the Grand Jury selection. This, however, was error. Palm Beach Newspapers, Inc. V. Doe, 460 So. 2d 406 (Fla. 4th DCA, 1985). Here, the newspaper sought the transcript of a hearing closed to the press and the public. The subject matter of the hearing was the grand jury. In ruling that the Court properly excluded the press and public, the Court found “all grand jury proceedings are also judicial proceedings, the grand jury being an arm of the court.” Thus, not only is the list of grand jurors to be kept secret, but also ALL proceedings of the grand jury, which would include the selection of the grand jurors. Moreover, this makes sense because, if the list is confidential, but the selection is an open proceeding, then there would be no way to keep the list secret. “A review of the...statutes satisfies us that the term ‘grand jury proceedings’ includes matters ancillary to the grand jury session, and that Section 905.24 requires the secrecy of such proceedings to remain inviolate.” (emphasis added) See also, Florida Attorney General Advisory Letter to The Hon. Steve Alexander, State Attorney, Seventh Judicial Circuit, September 8, 1995: “the names and addresses of grand jurors are privileged as part of the record of the grand jury proceedings.”¹

¹ The one, limited, exception to this rule is where the foreperson signs an indictment that then becomes a part of the record in a particular case. However, the *only* name that is disclosed is that of the foreperson. Fla. AGO 99-09 (March 25, 1999). This makes sense, in that, once the indictment is handed down by the grand jury, it becomes the charging instrument in that particular criminal case, and thereby ceases to be a grand jury record.

Hence, the Clerk of the Court acted appropriately in denying the request of Petitioner, and therefore, the WRIT IS HEREBY DISMISSED.

IT IS SO ORDERED this 16th day of April, 2013.


Honorable Ross M. Goodman, Circuit Judge

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