

**IN THE SUPREME COURT OF FLORIDA**

CASE NO: SC06-2136

IN RE: AMENDMENTS TO  
FLORIDA RULE OF JUDICIAL  
ADMINISTRATION 2.420 –  
SEALING OF COURT RECORDS  
AND DOCKETS

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**DIANE M. MATOUSEK’S, CLERK OF THE CIRCUIT COURT IN  
AND FOR VOLUSIA COUNTY, FLORIDA, COMMENTS TO  
AMENDMENTS TO FLORIDA RULE OF JUDICIAL  
ADMINISTRATION 2.420 – SEALING OF COURT RECORDS AND  
DOCKETS**

COMES NOW, Diane M. Matousek, Clerk of the Circuit Court in and for Volusia County, Florida (hereinafter “the Clerk”), by and through undersigned counsel, and files her comments to the proposed amendments to Florida Rule of Judicial Administration 2.420 – Sealing of Court Records and Dockets, and would show:

- I. **Proposed subdivision Florida Rule of Judicial Administration 2.420(d)(1)(B) is unduly burdensome, inefficient, and a poor use of the limited resources of the Clerk of Court Offices within the State of Florida**

Proposed subdivision Florida Rule of Judicial Administration 2.420(d)(1)(B) provides that: “Any motion made under this subdivision must include a signed certification by the party making the request that the motion is being made in good faith. *The court records that are subject to a motion made under this subdivision must be treated as confidential by the clerk pending the court’s ruling on the motion....*”

[italics and bold added for emphasis] Therefore, based upon the filing of the motion the Clerk would have to locate the allegedly confidential document in the file, remove it, and prepare a sealed envelope in the file to put it in. Additionally, the Clerk would have to prepare an instrument to insert into the file indicating that document #\_\_\_\_\_ was removed from the file pending a confidentiality determination. It has been suggested that tabbing a document that is to be “treated as confidential” is appropriate – however, there is too much room for error in that tabs can be removed and/or fall off and then “confidential” information may be inadvertently leaked to outside sources. Additionally, most Clerks’ offices scan the documents that are filed and have them available for viewing in the Clerks’ offices on public terminals or by judicial agencies. “Treating a document as confidential” would require making that document inaccessible via this forum as well. Therefore, this proposed

procedure would be unduly burdensome, inefficient, and a poor use of the Clerks' limited resources because it would require man-hours and materials of deputy clerks and information technology employees to be in compliance with this Rule by "treating the document as confidential." Additionally, once a determination of confidentiality was made, the Clerk, based upon the Order of the court, would have to follow one of the following procedures: 1) leave the document sealed in the file; 2) place the original document back into the file in its numbered position; or 3) place a copy of the document, with the court ordered redactions, into the file into its numbered position and put the original back in the sealed envelope. The same procedures would have to be performed by the information technology employees of the Clerk's office as well for the scanned documents. This again is an unduly burdensome and completely inefficient method that unnecessarily wastes the Clerks' limited resources to maintain the confidentiality of an "allegedly" confidential document.

The Clerk proposes that a more efficient model for the court system would be that found under Florida Rule of Civil Procedure 1.280(b)(5) and (c) which permit *in camera* inspections of documents that are alleged to be confidential and/or privileged. Therefore, this properly puts the onus on the party seeking the confidential status of the document to seek

this confidential status prior to filing the document. This will prevent the unnecessary double and triple work Rule 2.420(d)(1), as currently proposed, would place on the Clerks' offices. Therefore, the determination of confidentiality would be made before the document was ever filed. The Clerk would respectfully propose that the following changes be adopted by this Honorable Court in regard to the amendment of Rule 2.420(d)(1):

(d) Request to Make ~~Circuit and County Court~~ Records/Records Confidential

(1) A request to make ~~circuit and county court~~ documents/records confidential under subdivision (c)(9) must be made in the form of a written motion captioned "Motion to Make Documents/Records Court Records Confidential." A motion made under this subdivision must:

- (A) describe the nature of the document(s), communications, or things ~~identify the particular court records~~ the movant seeks to make confidential with as much specificity as possible without revealing or filing the information to be made confidential; and
- "(B) specify the bases for making such ~~court~~ documents/records confidential. Any motion made under this subdivision must include a signed certification by the party making the request that the motion is being made in good faith. ~~The court records that are subject to a motion made under this subdivision must be treated as confidential by the clerk pending the court's ruling on the motion.~~ Notwithstanding any of the foregoing, the court may not make confidential the case number, docket number, or other number used by the clerk's office to identify the case file.

Subdivision (2) allows for in camera inspection upon request, so the confidentiality of the document may be maintained in that manner. This

change is not burdensome upon the courts because a hearing under the proposed Rule is required unless otherwise stipulated to by the parties. Therefore, the Clerk would respectfully request that this Honorable Court adopt the language cited above when it amends Rule 2.420(d)(1).

**II. Proposed subdivision Florida Rule of Judicial Administration 2.420(d)(4) is contrary to Florida Statute 50.011. Alternatively it would be unduly burdensome, inefficient, and a poor use of the limited resources of the Clerk of Court Offices within the State of Florida**

Proposed subdivision Florida Rule of Judicial Administration 2.420(d)(4) provides that: “Except as provided by law or rule of court, notice must be given of any order granting a motion made under subdivision (d)(1) as follows. Within 10 days following the entry of the order, *the clerk of court must post a copy of the order on the clerk’s website and in a prominent, public location in the courthouse.* The order must remain posted for no less than 15 days.” [bold and italics added for emphasis] However, Florida Statute 50.011 is clear in regard to “Where and in what language legal notices are to be published.” The Statute reads as follows:

**“50.011 -Where and in what language legal notices to be published**

Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such

legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and ***the rule of interpretation is and has been, a publication in a new spaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.*** [italics and bold added for emphasis]

Therefore, the Florida Statute requires newspaper publications for all legal notices. Therefore, a copy of the order on the Clerk's website and a public courthouse posting would not be sufficient under existing Florida law. Additionally, if a party seeks to make a document/record confidential that party should have the responsibility of publicizing said notice/order. The Clerk should not have to use her limited resources, including deputy clerk and information technology materials and time, to post and remove orders on her website or in prominent, public locations of the courthouse. The Clerk would respectfully propose that the following changes be adopted by this Honorable Court in regard to the amendment of Rule 2.420(d)(4):

“Except as provided by law or rule of court, notice must be given of any order granting a motion made under subdivision (d)(1) as follows. Within 10 days following the entry of the order, ~~the clerk of court must post a copy of the order on the clerk's website and in a prominent, public location in the courthouse. The order must remain posted for no less than 15 days.~~ the moving party shall publish a copy

of the order during each week for 4 consecutive weeks (four publications being sufficient) in some newspaper published in the county where the court is located. The newspaper shall meet such requirements as are prescribed by law for such purpose.” [the added language is a direct quote from Florida Statutes section 49.10 for Notice of Actions].

This language will keep the notice requirement in harmony with Florida Statute section 50.011 and will properly put the notice requirement on the moving party rather than on the Clerks’ offices. This two-fold benefit will assist in the efficient management of the limited resources and materials of the Clerk’s offices. Therefore, the Clerk would respectfully request that this Honorable Court adopt the language cited above when it amends Rule 2.420(d)(4).

WHEREFORE the Clerk respectfully requests this Honorable Court to adopt the Clerk’s proposed language when It amends Florida Rule of Judicial Administration 2.420 subdivisions (d)(1) and (d)(4).

Respectfully Submitted,

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to the below listed parties on this 12th day of January, 2007:

John F. Harkness, Jr.  
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## **CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the size and style of type used in Diane M. Matousek's, Clerk of the Circuit Court in and for Volusia County, Comments to Amendments to Florida Rule of Judicial Administration 2.420 – Sealing of Court Records and Dockets was prepared in MS Word using 14 point Times New Roman font.

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