

IN THE SUPREME COURT OF FLORIDA

CASE NO: SC07-2050

IN RE: AMENDMENTS TO
FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.420

**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**

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 and would show:

- I. **Proposed Florida Rule of Judicial Administration 2.420(e)(2)(A) requires clarification in regard to whether the Motion itself is confidential and how the confidential documents are to be identified.**

Proposed subdivision Florida Rule of Judicial Administration 2.420(e)(2)(A) provides that: “Any motion made pursuant to this subdivision and all court records that are the subject of such a motion must be treated as confidential

by the clerk pending the court's ruling upon the motion." As written, it is unclear whether just the documents subject to the motion are confidential, or if the motion itself is also confidential. It appears the Motion is also confidential due to the fact the word "and" is used. Clarification is required so the clerks will know if the Motion itself is also confidential.

Additionally, there should be some language requiring the filer of the motion to indicate with specificity the document(s) that are allegedly confidential. The Clerk would respectfully request that the party provide the caption of the allegedly confidential document as well as the date the document was filed. Without this type of descriptive information it may be difficult for a clerk to know what document(s) the motion pertains to.

WHEREFORE the Clerk respectfully requests this Honorable Court to clarify the language of Rule 2.420(e)(2)(A) in regard to whether the motion is also confidential and to adopt language requiring the motion to indicate the caption and filing date of the documents that are allegedly confidential.

II. Proposed Florida Rule of Judicial Administration 2.420(e)(2)(A) is inefficient, labor-intensive, unreasonably burdensome 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(e)(2)(A) provides that: “Any motion made pursuant to this subdivision and *all court records that are subject of such a motion must be treated as confidential by the clerk* pending the court’s ruling upon the motion.” [italics and bold added for emphasis] Therefore, when a motion under this subdivision is filed, the Clerk would have to locate the allegedly confidential document(s) in the file, remove it, secure it and segregate it from the file. This would require the Clerk to create a separate filing system for those documents. Additionally, most Clerks’ offices scan the documents that are filed and have them available for online viewing by the judiciary and other authorized judicial agencies. “Treating a document as confidential” would require making the electronic document inaccessible via this forum as well.

Given the current budgetary demands and limited resources in the State of Florida it is clear that this proposed procedure is inefficient, labor intensive, unreasonably burdensome, and a poor use of the Clerks’ limited resources. To “treat a document as confidential” would require materials and the man-hours of deputy clerks and information technology employees to be in compliance with this Rule. Additionally, once a determination of confidentiality is made, the Clerk would have to follow one of three procedures:

- 1) if the motion is granted, keep the document secured and segregated in a separate filing system;
- 2) if the motion is granted in part, a copy of the original document would have to be made. The original document would be secured and segregated in the separate filing system and the copy would be redacted pursuant to the court's order. The redacted copy would be copied to prevent possible viewing by bleed through. This copy would be placed back in the file according to the filing date of the original.
- 3) if the motion is denied, the original document would be removed from the separate filing system and placed back into the file according to its filing date.

Additional procedures would also have to be performed by the information technology employees of the Clerk's office for the scanned documents. Clearly this rule as proposed, would require the Clerk's employees to maintain and update the file numerous times in regard to the same document(s), thereby creating an inefficient, labor-intensive procedure that squanders the limited resources of the Clerk. Given the budgetary demands

in the State of Florida at this present moment it does not make sense to utilize precious resources in such an inefficient manner.

The Clerk believes a more efficient model for determining confidentiality is found in Florida Rule of Civil Procedure 1.280(b)(5) and (c) which permits the *in camera* inspection 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 duplicate and triplicate work Rule 2.420(e)(2)(A), as currently proposed, would place on the Clerks' offices. Therefore, the determination of confidentiality would be made before the document was ever filed. This change is not burdensome upon the courts because a hearing under the proposed Rule is required unless otherwise stipulated to by the parties.

WHEREFORE the Clerk respectfully requests this Honorable Court to adopt a procedure that allows the court to make its confidentiality determination prior to the document being filed with the Clerk, as this is the most efficient way to preserve limited resources.

Respectfully Submitted,

/s/ Carol M. Touhy

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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 31st day of March, 2008:

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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 was prepared in MS Word using 14 point Times New Roman font.

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