

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA**

KAREN E. RUSHING, in her official capacity  
as CLERK OF THE CIRCUIT COURT FOR  
SARASOTA COUNTY,

Plaintiff,

v.

Case No.: 2011-CA-5864-NC

MICHAEL BARFIELD,

Defendant.

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**FINAL JUDGMENT**

THIS CAUSE came before the Court on August 2-3, 2011, for a bench trial on Plaintiff's Complaint for Declaratory Relief, and on Defendant's Motion for Immediate Hearing pursuant to § 119.11(1), Florida Statutes. The Court, having received evidence, heard argument and otherwise being duly advised in the premises, finds as follows:

**PROCEDURAL HISTORY**

1. The Parties stipulated to the Court's bench trial on Plaintiff's Complaint for Declaratory Relief and Defendant's Motion for Immediate Hearing being held simultaneously in this matter and therefore, by the Parties' consent, both matters came before the Court for an expedited hearing and trial on August 2-3, 2011.

2. The Court received Plaintiff's Exhibits 1 and 2, and Defendant's Exhibits A through F, and Exhibits H through K, into evidence.

3. The Court heard the expert testimony of Mark Simmons, the Director of the Internal Audit Department for the Clerk of the Circuit Court for Sarasota County, and the testimony of Karen E. Rushing, the Clerk of the Circuit Court for Sarasota County (the "Clerk").

### FINDINGS OF FACT

1. The Clerk has asserted that the redacted portions of Plaintiff's Exhibit 2 are confidential and exempt pursuant to § 119.0713(2), Fla. Stat., which states that audit workpapers and notes related to the audit are confidential and exempt until the audit is completed and the audit report becomes final.

2. There are a number of subjects under investigative audit in the Clerk's internal audit numbered 2011-301.

3. The Clerk conducted investigations relating to the P-Card issue and relating to Solicitations.

4. Both the P-Card audit and the Solicitations audit became final on July 12, 2011.

5. The Clerk has additional items and materials under audit investigation that have not been finalized.

6. Mr. Simmons indicated that the audit report to which the redacted portions of Exhibit 2 are related, would be final in thirty to sixty days.

7. The Court finds no support in the cases for applying a clear and convincing standard to Plaintiff's burden in this matter, rather than the greater weight of the evidence standard.

8. The Court finds that under either a clear and convincing standard, or a greater weight of the evidence standard, Plaintiff has met its burden in this matter.

9. There is clear and convincing evidence that the Clerk's claimed exemption is legitimate, and that there is both a factual and legal reason for protecting the redacted portions of Plaintiff's Exhibit 2 until the Clerk's audit in that matter is concluded, which has not yet occurred.

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10. The Court finds the testimony of Mr. Simmons to be strongly and highly persuasive and that none of the evidence presented by the Defendant challenges the legitimacy of the Clerk's claimed exemption.

11. The Court finds no indication that the statute is unconstitutional with respect to the Clerk's claimed exemption.

### CONCLUSIONS

The Court has received testimony, reviewed evidence and has heard argument in this matter. Upon consideration it is hereby,

**ORDERED** and **ADJUDGED** as follows:

1. The Court finds that the redacted portions of Plaintiff's Exhibit 2 constitute documentation that is part of the workpapers and notes related to an audit that has not been concluded, and until that audit report becomes final the redacted portions of that one page of the handwritten notes are confidential and exempt from of § 119.07(1), Fla. Stat. and s. 24(a), Art. I of the State Constitution, and as provided by § 119.0713(2), Fla. Stat.

2. Because these handwritten notes are confidential, the Clerk is hereby ordered not to release the redacted portions of Plaintiff's Exhibit 2 until the audit report to which they are related is completed and final.

3. The court retains jurisdiction for the limited purpose of entering further orders that may become necessary to enforce this judgment.

**DONE AND ORDERED** in Chambers in Sarasota County, Florida, this 4 day of August, 2011.



**LEE E. HAWORTH**  
Circuit Judge

Copies furnished to:

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## Florida Second District Court of Appeal Docket

## Case Docket

Case Number: 2D11-3836

Final Civil Other Notice from Sarasota County

MICHAEL A. BARFIELD vs. KAREN E. RUSHING, CLERK

Lower Tribunal Case(s): 2011-CA-5864-NC

Printer Friendly View

Date Docketed	Description	Date Due	Filed By	Notes
08/08/2011	Notice of Appeal Filed		Andrea Flynn Mogensen, Esq. 0549681	
08/08/2011	Motion To Expedite		Andrea Flynn Mogensen, Esq. 0549681	
08/08/2011	generic response order - fax ok	08/09/2011		resp. due by 10 a.m. fax o.k.
08/09/2011	Case Filing Fee			
08/09/2011	Notice of Appeal Filed		Andrea Flynn Mogensen, Esq. 0549681	certified
08/09/2011	RESPONSE		Robert Lincoln, Esq. 6122	"AND OBJECTION TO AA'S MOTION TO EXPEDITE BRIEFING SCHEDULE" (FAX) Original filed 8-10-11.
08/10/2011	Deny Miscellaneous Motion-79a			expedite briefing schedule
09/08/2011	Motion Extension of Time Court Rptg Trans-Cr Req		Diana A. Demby, Ct. Rptr. CT RP	
09/12/2011	ORD-TO FILE RESPONSE	09/22/2011		Tie Cab/CM
09/12/2011	Motion To File Amicus Cril. Brief		M. Hope Keating, Esq. 0981915	
09/13/2011	RESPONSE		Andrea Flynn Mogensen, Esq. 0549681	Letter in response to correspondence of the court reporter...
09/16/2011	Motion To Relinquish Jurisdiction		Robert Lincoln, Esq. 6122	
09/22/2011	RESPONSE		Andrea Flynn Mogensen, Esq. 0549681	AA's response to court reporter's request for extension.
09/23/2011	ORDER GRANTING RELINQUISH JURISDICTION	10/23/2011		AE stat rpt due
09/23/2011	Deny TOE Court Reporter TRANS-CR			wall/CMc-denied as moot
09/23/2011	ORD-PERMITTING AMICUS C. BRIEF			

Printer Friendly View



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**NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that MICHAEL A. BARFIELD, through counsel, appeals the Final Judgment entered August 4, 2011, on Plaintiff's Complaint for Declaratory Relief, to the Second District Court of Appeal. A copy of the Final Judgment is attached as Exhibit A.

/s/ Andrea Flynn Mogensen

ANDREA FLYNN MOGENSEN, Esquire  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served by regular U.S. Mail and via facsimile (941) 366-6384, to ROBERT LINCOLN, WILLIAM MERRILL, and STACY DILLIARD-SPAHN, at 2033 Main Street, Suite 600, Sarasota, FL 34237, this 4th day of August, 2011.

/s/ Andrea Flynn Mogensen

ANDREA FLYNN MOGENSEN, Esquire