



SOUTHERN EXPOSURE: NAVIGATING FLORIDA'S PUBLIC RECORDS LAW TO SHIELD CLIENT INFORMATION

Imagine a client asks for your representation on a sensitive matter. It could be a family law matter, a probate issue, a criminal case, or just a civil case that involves sensitive medical information.

Would you know what information is confidential under Florida Law? Would you know what documents will be publicly available online after you file them with the court? Would you know how confidentiality varies among different case types? And would you know the steps to ensure your client's confidential information is protected?

A simple form can resolve much of that uncertainty. It's called the Notice of Confidential Information. And to truly understand its importance, you have to go all the way back to the beginning.

Florida's Public Records Law was first enacted in 1909¹, well before anyone ever contemplated the internet. For decades, obtaining copies of court filings required some communication with the clerk, whether it was coming to the courthouse or corresponding via mail. Florida's rules ensure that, with few exceptions, the information that governmental agencies possess is visible to the public.

As the ease of access to records has evolved, both the legislature and judiciary have enacted numerous exceptions to the broad public disclosure mandates. This approach, which involves two separate branches of government carving out insular exceptions to a presumption of disclosure, has resulted in a set of rules

that some lawyers may find confusing².

However, there are some measures lawyers can undertake to ensure their client's confidential information consistently receives the maximum amount of protection permitted by Florida Law.

The first step is found in Florida Rule of Judicial Administration 2.425, which directs lawyers to minimize the filing of confidential information. This is within the sole control of the attorney filing the document.

Social Security numbers, bank account numbers and credit card account numbers can all be fully redacted. Other sensitive information can be held back before the document is placed into the control of the judicial system. The best way to avoid information being accidentally disclosed in the public record is to make sure it never leaves your office.

The second line of defense is to use a Notice of Confidential Information, the form provided with Fla. R. Jud. Admin. 2.420. This allows the attorney filing it to indicate to the Clerk of Court that certain information contained within a filing is confidential and exempt from public disclosure. All you need to do is explain which information is confidential and note the location of that information within the document.

The judiciary is not obligated to accept that the information is indeed confidential, but you're entitled to

² For a detailed explanation of the different levels of online access that exist for lawyers and non-lawyers for different case types, see the Florida Supreme Court's Access Security Matrix.

¹ Fla. Stat. Ch. 119.

receive notice if anyone challenges your classification of the information as confidential. You'll also be entitled to a hearing, and you will be able to argue to the court why the information should be exempt from public disclosure.

Without the Notice of Confidential Information, you're relying on the clerk to act on their own to redact information that they may or may not know is confidential. The clerk's office trains its employees well, but some confidential information is contextual.

A clerk may not know that a name contained in a transcript is the name of a minor or that an address contained in a filing is the address of a law enforcement officer. The clerk is left to infer what is confidential and what isn't. The Lee County Clerk of the Court receives over 2 million pages of documents for filing each year, and the clerks rely upon the Notices of Confidential Information to save time and prevent inadvertent disclosure.

The responsibility to protect confidential and exempt information lies with the clerks of court, by Florida Supreme Court mandate³. This protection is a duty that

the clerk's office takes very seriously.

We use automatic redaction software to flag account numbers and Social Security numbers, and we train our employees on the myriad disclosure exemptions that exist in the Florida Rules of Judicial Administration and Florida Statutes. The Lee County Clerk of Court errs on the side of redaction in all instances where a judgment call is required.

However, there are some challenges that prevent our clerks from being able to identify and redact all confidential information with 100 percent accuracy. That is why clerks rely upon attorneys to file the Notice of Confidential Information⁴ to minimize what is contained within filings⁵ and ensure there is no inadvertent public disclosure. [↗](#)

4 Fla. R. Jud. Admin. 2.420

5 Fla. R. Jud. Admin. 2.425



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3 Fla. R. Jud. Admin. 2.051, Fla. Stat. 119.021, 119.07.

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