

Protecting the Public's Confidential Information in Civil Records

CHANGES TO RULE 2.420: PUBLIC ACCESS TO AND PROTECTION OF JUDICIAL BRANCH RECORDS



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Who Needs to Know About the Changes?

Self-Represented Litigants



Attorneys



Legal Professionals

...and anyone filing court documents for civil and small claims cases in Florida!



RULE 2.420 CHANGES

EFFECTIVE JULY 1, 2021

An Overview of the Rule Change

Supreme Court of Florida

No. SC20-1765

**IN RE: AMENDMENTS TO FLORIDA RULE OF JUDICIAL
ADMINISTRATION 2.420.**

(C) In civil cases, the clerk of the court shall not be required to designate and maintain information as confidential unless the filer follows the notice procedures set forth in subdivision (d)(2), the filer files a Motion to Determine Confidentiality of Court Records as set forth in subdivision (d)(3), the filing is deemed confidential by court order, or the case itself is confidential by law. “Civil cases” as used in this rule includes only civil case types in the circuit, county, or small claims courts (identified by the Court Type Designator CA, CC, and SC in the uniform case numbering system), except those case types listed as “Viewable on Request (VOR)” in the Standards for Access to Electronic Court Records and Access Security Matrix, as adopted by the supreme court in Administrative Order AOSC14-19 or the then-current standards for access.

ABOUT THE CHANGES:

- Effective July 1, 2021
- Based on a recent Florida Supreme Court amendment to Rule 2.420
- Clerks were previously responsible for identifying and redacting this confidential information

The 23 Listed Types of Confidential Information

THAT CLERKS MAY HAVE A ROLE IN PROTECTING UNDER RULE 2.420

TYPES OF CONFIDENTIAL INFORMATION THAT CAN BE PROTECTED BY FILING A NOTICE OF CONFIDENTIALITY:

- Dependency
- Adoption Files
- Social Security Numbers, Bank Accounts, Charge, Debit & Credit Card Numbers
- HIV
- Sexually Transmissible Diseases
- Birth and Death Records
- Pregnancy Termination by Minor
- Baker Act Records
- Substance Abuse Records
- Clinical Records
- Estate Inventories and Accountings
- Domestic Violence (Victim's Address)
- Child Abuse & Sexual Offenses
- Gestational Surrogacy
- Guardianship
- Grand Jury Records
- Family Services for Children
- Juvenile Delinquency
- Tuberculosis
- Presentence Investigation Reports
- Forensic Behavioral Health Evaluations
- Drug Court Reports
- Domestic Violence (Identifying Information)

THE DETAILED LIST CAN BE DOWNLOADED AT:
www.FLClerks.com/ConfidentialRuleChange

Where Do the Rule 2.420 Changes Apply?

WHERE DO THE RULE CHANGES ELIMINATE CLERKS' OBLIGATION TO IDENTIFY CONFIDENTIAL INFORMATION?

CHANGES APPLY TO:

- Small Claims Cases
- County Court Civil Cases
- Most Circuit Court Civil Cases

CHANGES DO NOT APPLY TO:

- Family Law Cases
- Domestic Violence Cases
- Cases Stemming from Sexual Abuse
- Risk Protection Orders
- Mental Health Cases
- Jimmy Ryce Civil Commitments
- Sexual Abuse and Medical Malpractice Cases

...because Clerks will continue to automatically identify and protect information in these cases.

What Exactly Does This Mean?



CLERKS OF COURT ARE NO LONGER REQUIRED to review and remove confidential information in small claims court filings, county court civil cases and most circuit cases unless notified by the filer



FILERS ARE NOW SOLELY RESPONSIBLE for identifying confidential information contained in these court records to ensure it is appropriately protected

Steps for Removing Confidential Information

IF FILERS WHO ARE DRAFTING A DOCUMENT BELIEVE IT CONTAINS CONFIDENTIAL INFORMATION, THEY SHOULD:

- Exclude or minimize the information if it isn't necessary
- Complete a Notice of Confidential Information Within Court Filing form before filing
(if the information is among the types of information listed in Rule 2.420(d)(1))
- Or Complete a Motion to Determine Confidentiality
(if the information is NOT among the types of information listed in Rule 2.420(d)(1))

Accessing the Right Forms

Plaintiff(s),
v. Case No. _____

Defendant(s).
_____ /

Notice of Confidential Information Within Court Filing

Pursuant to Florida Rule of Judicial Administration 2.420(d)(2), the filer of a court record at the time of filing shall indicate whether any confidential information is included within the document being filed; identify the confidentiality provision that applies to the identified information; and **identify the precise location of the confidential information within the document being filed.**

Title/Type of Document(s): _____

Indicate the applicable confidentiality provision(s) below from Rule 2.420(d)(1)(B), by specifying the location within the document on the space provided: If more space is needed, specify the location here: _____

ACCESSING THE FORM:

- Visit the local Clerk of Court website
- Download the “Notice of Confidential Information Within Court Filing” Form
 - Rule of Judicial Administration 2.420(d)(1)(b)
- Contact your local Clerk of Court

Complete the Forms Fully and Accurately

FILERS ARE REQUIRED TO IDENTIFY:

- THE LOCATION of all instances of confidential information within the document
 - Include location and page numbers for all instances
 - On many forms you are required to select whether the entire document is confidential or identify each instance of confidential information

NOTICE OF CONFIDENTIAL INFORMATION WITHIN COURT FILING
Pursuant to Florida Rule of Judicial Administration 2.420(d)(2), I hereby certify that:

1. I am filing herewith a document containing confidential information as described in Rule 2.420(d)(1)(B) and:

a. The title/type of document is: _____; **and**

b. The entire document is confidential, **OR** the confidential information within the document is precisely located at:

What If The Information Isn't One of the '23'?

IF A NOTICE IS FILED BUT THE INFORMATION IS NOT CONSIDERED ONE OF THE '23' CONFIDENTIAL ITEMS ACCORDING TO RULE 2.420:

- The Clerk will notify the filer within 5 business days, locking the document as confidential for up to 10 business days to allow the filer to file a **Motion to Determine Confidentiality of Court Records**.
- If no Motion is filed after 10 days, the information may become public.
- Once the Motion is filed, the Clerk will keep the specific information or the document in a locked status unavailable for public viewing until the court rules on the motion.



**WHY IS IT SO IMPORTANT FOR FILERS
TO FOLLOW THE RULE 2.420 CHANGES?**

IT AFFECTS REAL PEOPLE

The Importance of Following the Rule

- A Lawyer's obligation to protect all confidential information going into a Court filing continues **unchanged**.
- If the information is listed in the 23 identified types, it can be protected by filing a **Notice** with the Clerk.
- If the information to be protected is not on the list of 23, a **Motion to Determine Confidentiality** must be filed.

The Importance of Following the Rule

- Nothing has changed for lawyers...except **Clerks are no longer responsible for backing you up** on the “23.” Lawyers and other filers are now the first and only line of defense.
- A filer’s obligation to identify and protect confidential information extends beyond prepared filings **to all exhibits and appendices.**

The Importance of Following the Rule

FEBRUARY 2021 STUDY

- In February 2021, five Clerk of Court offices conducted a one-week study of case filings.
- **Results:** Among the filed documents subject to the rule change, **21% of documents contained confidential information that was not redacted or notified for redaction by the filer.**

The Importance of Following the Rule

TRACKING COMPLIANCE WITH THE RULE CHANGE IN TWO COUNTIES

- Several Clerks have tracked compliance with Rule 2.420 changes since July 1, 2021. Below are the combined results from Sarasota and Martin County.

Number of Notices			Number of Correspondence		Redaction with No Notice	
Number Filed	Compliant	Non-Compliant	Not Eligible	Missing Location	Number of Documents	Number of Pages
597	89	508	20	449	1,680	32,964

Repercussions for Not Complying

- Real reason to comply is **professional obligation to your clients and to the public.**
- If confidential information is not appropriately identified upon being filed, it will be **at risk of public release.**

Repercussions for Not Complying

- **Sanctions:** No known sanctions against lawyers for violating Rule 2.420...yet.
 - Prior to July 1, 2021, attorneys always had Clerks back us up.
 - The Supreme Court is ramping up sanction powers for Trial Courts.
- **Potential Lawsuits**

Resources

IF YOU HAVE QUESTIONS OR WANT TO LEARN MORE ABOUT THE RULE CHANGE:

- Visit www.FLClerks.com/ConfidentialRuleChange
- Review the **Rule 2.420 Video**
- Contact your Clerk of Court or visit their website

FOR MORE INFORMATION VISIT:
www.FLClerks.com/ConfidentialRuleChange



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