

CHANGES COMING TO REDACTION OF CONFIDENTIAL INFORMATION

Beginning July 1, all filers of circuit civil, county civil and small claims court documents will be solely responsible for ensuring that confidential information is redacted or is identified for redaction.

In Opinion 20-1765, the Florida Supreme Court amended Rule 2.420 requiring the filer to be solely responsible for identifying confidential information in small claims, county civil and most circuit civil court documents.

Anyone filing documents in these types of cases must either:

- Redact the information themselves before filing the document; or,
- File a Notice of Confidential Information when records contain social security numbers, bank account numbers or other non-public information, as specified in Florida Rule of General Practice and Judicial Administration 2.420. The Notice of Confidential Information must identify the type of information to be redacted and all page numbers containing that information. This includes exhibits attached to court filings.

These changes do not apply to juvenile, family, guardianship, probate or criminal cases.

Frequently Asked Questions Regarding the July 1, 2021, Changes to Rule 2.420 and the Redaction of Confidential Information in Court Filings

Why are the Clerks no longer responsible for redacting all confidential information (social security numbers, bank account numbers, other protected numbers) in circuit civil, county civil and small claims cases?

On January 21, 2021, the Florida Supreme Court issued Opinion 20-1765, which amended Rule of General Practice and Judicial Administration 2.420 effective July 1, 2021. The opinion holds that 'in certain civil cases, the clerk of court does not have an independent responsibility to identify and designate information as confidential. Instead, that this the sole responsibility of the filer'. (emphasis added).

Thus, in Circuit Civil, County Civil and Small Claims cases (except those case types that are listed in the Viewable on Request in the Standards for Access to Electronic Court Records and Access Security Matrix), the Clerk will 'designate information or documents as confidential only when:

- the filer of the confidential information or document files a Notice of Confidential Information within Court Filing pursuant to Florida Rule of Judicial Administration 2.420(d)(2);
- the filer files a Motion to Determine Confidentiality of Court Records pursuant to Florida Rule of Judicial Administration 2.420(d)(3);
- the filing is deemed confidential by court order;
- or the case itself is confidential by law.' (emphasis added).

What do these changes mean to the filer of court documents?

Filers are now solely responsible for ensuring that documents filed with the Clerk in Circuit Civil, County Civil and Small Claims cases do not contain confidential information. It is best to not include the information in the court filing. If, however, you need to include this information, or if the information is included as part of an exhibit, the filer is responsible for redacting the confidential information.

Does this rule change affect cases other than circuit civil, county civil and small claims cases?

No. The rule change only affects circuit civil, county civil and small claims cases. The filer is still responsible to file the Notice or Motion in all other case types; however, the Clerk may still undertake its own redaction review. While computer software can pick up confidential numbers, it will NOT pick up victim names and other non-numeric confidential information. A signature of an attorney under Rule of General Practice and Judicial Administration 2.515(a)(4) constitutes a certificate by the attorney that the document contains no confidential or sensitive information, or that any such confidential or sensitive information has been properly protected by complying with the provisions of rules 2.420 and 2.425.

Where can I find a list of what information is considered to be confidential?

Rule of General Practice and Judicial Administration 2.420(c) and 2.420 (d)(1)(B)(i)-(xxiii).

Is confidential information the same as sensitive information?

No. Confidential information must be redacted from the filing and is governed by Rule of General Practice and Judicial Administration 2.420. Sensitive information must be minimized in a specific way and is governed by Rule of General Practice and Judicial Administration 2.425.

How do I redact the information?

It is best to simply not include the confidential information in the filing.

If, however, the information is included in exhibits, you can use redaction tools available online to redact the document. A common error in redacting information is to use the wrong method to redact the electronic file. Below is a partial list of misconceptions and methods NOT to use:

- Changing the text's font to white will make it look as though the words disappear, but they don't! The metadata that remains can be used by tech savvy individuals to reveal the hidden text you were attempting to redact.
- All word-processing programs (such as Microsoft Word, Corel WordPerfect, WordStar, etc.) retain a lot of hidden code (called "metadata") that can contain revision history and other information. This metadata can reveal anything that was contained in the file at any time, even text that was previously deleted or changed, and even if the file was re-saved. This is a useful tool for tracking revisions, but if this information is not purged from the document, anyone can view this information, even after it has been converted to PDF.
- Adobe Acrobat (the full version) has some graphic and "commenting" tools which can black-out, cover over or remove sections of text. The edits these tools make can still be removed by anyone to reveal

the text underneath.

- Ink-marking or using semi-translucent tape or paper to cover areas of a document to be scanned can still sometimes show enough information for someone to see what was assumed hidden, especially if that same data repeats a number of times across a document.

If I can't redact the information, what must I do?

If you have confidential information that must be listed in the court filing so that the judge is able to view it, you must file a Notice of Confidential Information Within Court Filing in the same e filing transaction as the confidential filing. You must list all the page number(s) where the information is located. You can also file a Motion to Determine Confidentiality.

Can I just include in my Notice that there is confidential information throughout so that the Clerk finds and redacts it?

No. The Clerk will only redact the information as described in the Notice. The rule requires that you list the precise location where the confidential information is located so the notice should include the page number – and preferably the location within the page – where the confidential information is located. This includes Exhibits.

What happens if I file a Notice that simply states there is confidential information in the document?

Your document will be pended back for failure of the Notice to comply with Rule of General Practice and Judicial Administration 2.420. All documents filed in the e filing batch will be pended back since the Clerk cannot separate out the noncompliant documents.

What happens if I don't list the information in a Notice, I don't file a Notice in the same e filing transaction as the document, or I simply don't file a Notice?

The confidential information will be immediately available for public viewing.

Can I file a Notice of Confidential Information after I file the document?

Yes. If you forget to include the Notice with the filing, you can file it at a later time. The later filed Notice of Confidential Information must include the title and type of document that you are now seeking to make confidential, date of filing (if known), date of document, docket entry number, an indication whether the entire document is confidential or the precise location of the confidential information, and any other information the clerk may need to locate the confidential information. See Rule of General Practice and Judicial Administration 2.420(d)(2)(A). Remember, until the Notice is filed, the information will be available for public viewing.

What if the information I want to hold confidential is not one of the 23 categories listed in Rule of General Practice and Judicial Administration 2.420? For instance, it is confidential under Florida Statute s. 119.071 but not a listed category in 2.420(d)(1)(B)?

You must file a Motion to Determine Confidentiality. If it is not one of the 23 categories of documents

listed in Rule of General Practice and Judicial Administration 2.420(d)(1)(B)(i)-(xxiii), then the Clerk cannot hold it confidential without a court order. Once a motion is filed, the Clerk will hold it confidential pending a court order.

What if I file a Notice of Confidential Information but the information I want to keep confidential is not one of the 23 categories?

The Clerk will send you a notification within 5 days of the filing of the document that it cannot hold the document confidential because it is not one of the 23 categories in Rule 2.420(d)(1)(B). The Clerk will hold the document confidential for 10 days in accordance with 2.420(d)(2)(B) so that the filer can file a Motion to Determine Confidentiality with the Court. If a motion is not filed within the 10 days, the document that includes the confidential information will become public. If a motion is filed, the Clerk will hold the document confidential pending a court order.

Where can I find forms for the notice or motion?

A form [Notice of Confidential Information Within Court Filing](#) and a form [Motion to Determine Confidentiality of Court Record](#) can be found as an appendix to Rule 2.420 and on the Clerk's website (<https://www.mypalmbeachclerk.com>) in the [Forms Library](#) and on the [Attorneys page](#) under 'Forms'. Forms may also be obtained from our Self-Service Center.