





*Presented by
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Importance of Documentation and Recordkeeping

*“Documents create a paper
reality we call proof.”
~ Mason Cooley*

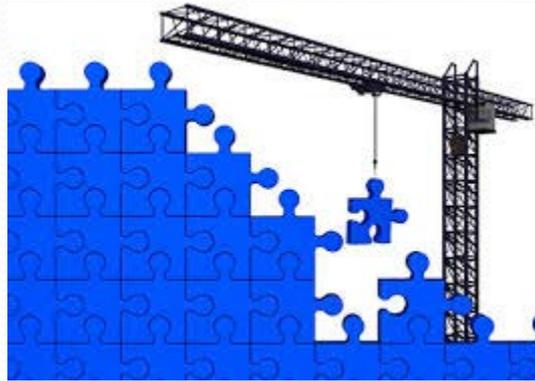


In the context of risk management, and in the event of litigation, the existence of contemporaneous accurate documentation is critical to evaluating and defending claims.

- Who
- What
- When
- Where
- Why
- How



With the passage of time, memories fade; and people move, retire, and die... information is lost.



Reliable records are the building blocks upon which defenses are built.

Employment Discrimination Cases

- Termination
- Discipline
- Failure to hire/Failure to promote
- Pay disparity



Employment Discrimination Cases

Establish proof of legitimate non-discriminatory/
non-retaliatory basis for employment decisions:

- Job Descriptions
- Applications/ Resume's
- Performance Evaluations
- Disciplinary Actions



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Performance Evaluations

Do:

- Should always be written
- Be detailed
 - List success and failures
 - Identify ways to improve
 - Set goals
- Be consistent with timing/content
- Discuss with employee and have them sign
- Include reason(s) for raises/promotions

Performance Evaluations

Don't:

- Rush through the discussion
- Be afraid to provide constructive criticism
- Provide only annual reviews of disciplinary issues
- Be too broad or vague
- Give raises that do not match evaluations

The Law

- Federal Law: 42 U.S.C. § 2000e, commonly known as Title VII
 - Unlawful from an employer “to fail or refuse to hire or to discharge any individual, or otherwise discrimination against any individual with respect to his compensation, terms, condition, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”
 - Amended by the Pregnancy Discrimination Act in 1978 to include “pregnancy, childbirth, or related medical conditions” as part of sex discrimination.
- State Law equivalent: Florida Statute 760.10(1)
 - Contains an identical prohibition on sex, pregnancy, and race discrimination.

Case Examples: Evaluations

- Police officer sued the city for race discrimination, Davis v. Town of Lake Park, Fla., 245 F.3d 1232 (11th Cir. 2001)
- Former employee sued former employer for discrimination based on disability and retaliation, Lucas v. W.W. Grainger, Inc., 257 F.3d 1249 (11th Cir. 2001),
- Police Chief sued the city for age discrimination, Woolsey v. Town of Hillsboro Beach, 541 Fed.Appx.917 (11th Cir. 2013).
- Veteran's Affairs physician sued her employer for retaliation, Baroudi v. Shinseki, 2015 Fair Empl. Pac. CA's. (BNA) 345340 (M.D. Fla. 2015).
- Chief Veterinary Assistant sued the State of Florida alleging discriminatory discharge based on sex, hostile work environment, and retaliation, Rojas v. Florida, 285 F.3d 1339 (11th Cir. 2002).
- University employee sued her employer for sexual harassment and retaliation, O'Hara v. University of West Florida, 750 F.Supp.2d 1287 (N.D. Fla. 2010).

Road and Bridge/Public Works Cases

- Inspection Reports
- Citizen Complaints
- Maintenance Work
- Repairs
- Upgrade activities



Documentation should include - Date, Labor & Materials, Personnel, Location, Photographs.

Premises Liability Cases

- Incident Reports
 - Location
 - Date and Time
 - Personnel
 - Witnesses,
 - Nature of Condition
- Witness statements
- Photos
- Security video
- Remedial measures



Remember...

Florida has a broad Public Records law: potentially any document created concerning your work is likely subject to retention requirements and ultimately inspection and copying via a Public Records request.



Florida Statutes Chapter 119

119.01 General state policy on public records.—(1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.

(2)(a) Automation of public records must not erode the right of access to those records. As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.

(b) When designing or acquiring an electronic recordkeeping system, an agency must consider whether such system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(c) An agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of the agency, including public records that are online or stored in an electronic recordkeeping system used by the agency.

(d) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.

(e) Providing access to public records by remote electronic means is an additional method of access that agencies should strive to provide to the extent feasible. If an agency provides access to public records by remote electronic means, such access should be provided in the most cost-effective and efficient manner available to the agency providing the information.

(f) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(4).

(3) If public funds are expended by an agency in payment of dues or membership contributions for any person, corporation, foundation, trust, association, group, or other organization, all the financial, business, and membership records of that person, corporation, foundation, trust, association, group, or other organization which pertain to the public agency are public records and subject to the provisions of s. 119.07.

119.10 Violation of chapter; penalties.—(1) Any public officer who:

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who willfully and knowingly violates:

(a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Section 119.105 commits a felony of the third degree, punishable as provided in s. 775.082, or s. 775.084.

119.12 Attorney fees.—(1) If a civil action is filed against an agency to enforce the provisions of this chapter, the court shall assess and award the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines that:

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) The complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

(2) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in paragraph (1)(b) if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested and on the agency's website, if the agency has a website.



(3) The court shall determine whether the complainant requested to inspect or copy a public record or participated in the civil action for an improper purpose. If the court determines there was an improper purpose, the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, and shall assess and award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action. For purposes of this subsection, the term “improper purpose” means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of this chapter or for a frivolous purpose.

(4) This section does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of this chapter. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of this chapter.

Documents are double-edged swords...

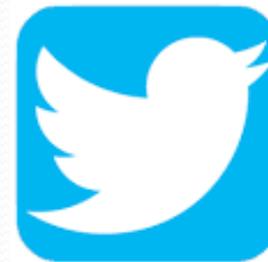
Be mindful of this when preparing documents, and be especially careful when composing electronic communications (emails and texts). These are frequently hastily composed and not well thought out, and may be subject to misinterpretation.



Social Media

- Facebook
- Twitter

Public Records implications



Confidential Information

Remember some documents by their very nature may be subject to confidentiality constraints, such as **medical records**. Others may not in themselves be entirely confidential, but may contain confidential information that requires redaction, such as addresses and phone numbers of **law enforcement officers**.



Privileged Information

Some documents may contain information that is protected by an evidentiary privilege, such as certain Attorney-Client communications during the pendency of litigation.



Records Management

“Records management is knowing what you have, where you have it and how long you have to keep it.”

Spoliation of Evidence

“When a party fails to preserve evidence and impairs the opposing party’s ability to prevail on its claim or defense, the opposing party may seek sanctions in the form of an adverse inference, a presumption or something more severe. The loss or destruction of evidence can result in what has come to be called spoliation. In order for a judicial remedy to be imposed for spoliation it must usually be demonstrated that the evidence existed, that there was a duty to preserve the evidence, and the evidence was crucial to an opposing party’s claim or defense.”

§401.1 Gerhardt's Florida Evidence, p. 164 (2016 edition)

Informative photo (depth of hole where cave-in occurred)





Questions?