



Claims Investigations & the Importance of Documentation

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“Documents create a paper reality we call proof.”

-Mason Cooley



In the absence of written records, gaps in history are created.

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, people move, retire, and die. Ultimately, 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
- Complainant's report
- Witness statements
- Physical evidence



Road and Bridge/Public Works Cases

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



Date & time, Labor & Materials, Personnel, Location, Photographs/ Video

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.

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

What are the Public Records implications?



WhatsApp?



Twitter



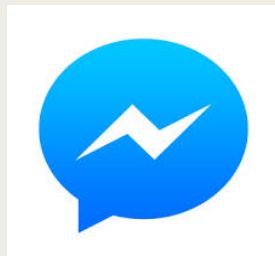
LinkedIn



Instagram



Facebook



Facebook
Messenger



Slack



GMail

Confidential Information

Some documents by their very nature may be subject to confidentiality constraints, such as **medical records**. Others may not, on their own, be *entirely* confidential, but may *contain* confidential information that requires redaction, such as addresses, phone numbers, and birthdates of **law enforcement officers** (§119.071(4)(d)(2)(a)).



Privileged Information

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



Records Management

Regardless of how well prepared a document may be, if it cannot be retrieved, it might as well not exist. This is significant because legal claims are often brought years after an event has occurred, when it is not unusual for there to have been changes in personnel who had personal knowledge or were responsible for maintaining records.



- “They’re in a box somewhere in storage”.
- “We moved and no one can remember where those files are.”
- “Our server was struck by lightning”.
- “Well, the files were in Sally’s office but she left and we don’t know where she kept them.”

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 Ehrhardt's Florida Evidence, p. 164 (2016 edition)

Questions?