

CONFIDENTIALITY CONSIDERATIONS

Background & Analysis

Fla. R. Jud. Admin. 12.271(a) states that “(w)hen related family cases are coordinated or joint hearings ordered, any hearings or proceedings involving more than one related family case are subject to the applicable state and federal confidentiality statutes pertaining to each case as if heard separately.” Fla. R. Jud. Admin. 12.271(b) adds that “(t)he confidentiality of a case or issue is not waived by coordination or a joint hearing. “ Most records in juvenile matters are confidential. Pursuant to §§39.0132(3-4), Florida Statutes, all official records in dependency court are confidential. Furthermore, §39.0132(6), Florida Statutes, indicates that court records under Chapter 39 are not admissible in evidence in other civil or criminal proceedings with few, limited exceptions. Likewise §985.04(1), Florida Statutes, provides that juvenile delinquency records are confidential. Both Chapters 39 and 985 allow for inspection of court records by authorized court personnel, law enforcement, treatment personnel, attorneys representing parties, and others with a special relationship to the juvenile or the court proceeding, or a person authorized to inspect the records pursuant to court order.

Adoption records and hearings are also confidential pursuant to §63.162(1-2), Florida Statutes.

In domestic violence matters, §741.30(3)(b)a, Florida Statutes, authorizes the petitioner of a domestic violence injunction to file a confidential address with the court. The provisions for the Address Confidentiality Program operated through the Office of the Attorney General are delineated in §741.401 through §741.409, Florida Statutes.

Under §90.503(4)(b), Florida Statutes, the psychotherapist-patient privilege does not apply to communications made in a court-ordered examination of the mental or emotional condition of the patient. The findings from such an evaluation would be made available to the court and the parties. However, federal law governing treatment programs authorized or funded by federal agencies makes all records and communications between the treatment provider and the patient confidential. Thus, unless the patient (or in the case of a child patient, the parent or guardian) has waived confidentiality and signed a form consistent with the federal act, the court can only access the records after a hearing with notice to the patient, or parent or guardian, and treatment provider, and a showing of good cause for the waiver of confidentiality. This is true even though the court ordered the treatment. In most cases, this will be easily shown, but the process can delay the court proceedings. A written waiver obtained at the time treatment is ordered would effectively resolve this issue and prevent unnecessary delay.

Fla. R. Jud. Admin. 2.545(d)(4), also requires parties to file a Notice of Confidential Information Within Court Filing with the Notice of Related Cases if any related case is confidential and exempt from public access.