

**CARLTON  
FIELDS**



National  
Association of  
Environmental  
Professionals

Be Connected

# **ETHICS AND TECHNOLOGY FOR ENVIRONMENTAL PROFESSIONALS ON THE GO**

F. Joseph Ullo, Jr., P.E., Esq.

- Confidentiality of Information under certain scenarios, Rules 4-1.6 and 4-1.18;
- Presenting the best you;
- Supreme Court Amends various Rules of Procedure and Practice;
- Protecting yourself and your client data;
- Disaster Preparedness; and
- Right to Inventory, Rule 1-3.8.

# WORKING IN A NEW ENVIRONMENT



- Rule 4-1.6, Confidentiality of Information is always a concern.
- Factors to consider –
  - Sensitivity of information
  - Protection under agreements
  - “Special circumstances may warrant special precautions.”

- Rule 4-1.18, Duties to Prospective Client
  - This rule provides in part – Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client may not use or reveal that information, except as rule 4-1.9 would permit with respect to information of a former client.
- Florida Bar Ethics Opinion 07-03, January 2009 provides --
  - *Not all persons who communicate information to a lawyer are entitled to protection under this rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a “prospective client” within the meaning of [this rule.]*



- Match the format for the subject matter.
- Cure your technology deficiencies.
- Be aware of professional courtesy.
- The bar has been lifted --

**You are the producer and the performer!**

Source: *Professional Etiquette in the Zoom Era*, **Legal Fuel**

- Workgroup on the Continuity of Court Operations and Proceedings During and after COVID 19
- Rule 2.530, Fla. R. Gen. Practice & Jud. Admin.
  - Adjusts definitions
  - Distinguishes audio and video communications.

## Supreme Court of Florida

\_\_\_\_\_  
No. SC21-990  
\_\_\_\_\_

IN RE: AMENDMENTS TO FLORIDA RULES OF CIVIL PROCEDURE, FLORIDA RULES OF GENERAL PRACTICE AND JUDICIAL ADMINISTRATION, FLORIDA RULES OF CRIMINAL PROCEDURE, FLORIDA PROBATE RULES, FLORIDA RULES OF TRAFFIC COURT, FLORIDA SMALL CLAIMS RULES, AND FLORIDA RULES OF APPELLATE PROCEDURE.

July 14, 2022

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to the Florida Rules of Civil Procedure, the Florida Rules of General Practice and Judicial Administration, the Florida Rules of Criminal Procedure, the Florida Probate Rules, the Florida Rules of Traffic Court, the Florida Small Claims Rules, and the Florida Rules of Appellate Procedure. The proposed amendments, which we adopt with modifications, provide permanent and broader authorization for the remote conduct of certain court proceedings.<sup>1</sup>

# COMMON CYBER ATTACKS





- **Phishing:**

- Phishing is a cybercrime in which a target or targets are contacted by email, telephone or text message by someone posing as a legitimate institution to lure individuals into providing sensitive data such as personally identifiable information, banking and credit card details, and passwords.
- The information is then used to access important account accounts or files and can result in **identity theft, financial loss and unauthorized disclosure.**





- **Ransomware:**

- Ransomware is a type of virus that encrypts the data on your computer. It prevents you from accessing it until you **pay a ransom** for a code to unlock your data.



- Ransomware is often spread through phishing emails that contain malicious attachments or through drive-by downloading. Drive-by downloading occurs when a user *unknowingly* visits an infected website and then malware is downloaded and installed without the user's knowledge.

- In 2021 the average Ransomware demand was:
  - A. \$53,000
  - B. \$530,000
  - C. \$5.3 million
- Source: *How to Stop Hackers with Honey and Sand*, **Legal Fuel**

# BE ON GUARD!! ScamMERS are seizing the moment

- Along with client confidences, we must maintain file security.
- Overall
  - Generally do not click anything;
  - Make sure your antivirus is up to date.
  - **Make sure that all programs and operating systems are up to date!**

## Hackers breached Florida health care system, potentially exposing data on 1.3 million people

By Sean Lyngaas, CNN  
Updated 2:07 PM ET, Tue January 4, 2022



(CNN) — Hackers breached the computer networks of a southeast Florida health care system in October and may have accessed sensitive personal and financial information on over 1.3 million people, the health care system announced this week.

### MORE FROM CNN

Conway predicts again. Hear who beat him

A West Virginia 1 from two-year cr identified her bo

Bolla Wines 1,342 followers



News & Buzz

The intruders accessed Broward Health's computer networks via a **"third-party medical provider,"** according to the breach notice, an incident that highlights the exposure that hospitals and other organizations have to hackers via their supply chains.

# Protect yourself (and your clients)

- **Concerns:**

- Confidentiality Breach
- Loss of data/client files
- Loss of work product

- **Backup and Recovery:**

- Maintain 3 copies of your data on two media and one offsite.
- Automate your backup.

- **Fortify your security:**

- Use password managers to auto generate and store passwords.

LastPass... | by LogMeIn



## Consideration of public records

- “Public records” are all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. § 119.011(12), F.S.
- When are these likely generated?
  - Bids in response to solicitations;
  - Permit applications and reporting.

- **Exemptions:**

- Sealed bids until notice of decision unless reject all. § 119.071(1)(b)2 & 3; and
- An unsolicited proposal pursuant to Section 255.065, F.S. until notice of decision.

- **Trade Secrets:**

- Section 119.071(1)(f), F.S. allows for exemption of trade secrets. See §§ 688.002(4) and 812.081(1)(c), F.S.
- § 403.111, F.S. also exempts secret processes or secret methods of manufacture or production that relate to costs of production, profits, or other financial information which is otherwise not public record.

- ***Cubic Transp. Systems, Inc. v. Miami-Dade County***, 899 So.2d 453 (Fla. 3d DCA 2005) (“Cubic failed to mark the documents now in question as “confidential,” and continued to supply them, without asserting even a (legally ineffectual) post-delivery claim to confidentiality for some thirty days after it had once attempted to do so by so informing County staff.”).
- ***James, Hoyer, Newcomer, Smiljanich, & Yanchunis, P.A. v. Office of Att’y General***, 41 So.3d 386 (Fla. 1st DCA 2010) (Customer lists provided to AG as part of investigation were properly marked and held to be trade secrets and exempt.)

- ***Sepro Corp. v. Fla. Dep't of Env'tl. Prot.***, 839 So.2d 781 (Fla. 1st DCA 2003) (“Upon learning of [the P.R.] request, Sepro wrote DEP designating [various parts of its submittals] as trade secrets....”) (“As a practical — and therefore as a legal — matter, a conversation with a state employee is not enough to prevent the information's being made available to anybody who makes a public records request.”).



- ***Surterra Fla. v. Fla. Dep't of Health***, 223 So.3d 376 (Fla. 1st DCA 2017)  
("Consultants in the low-THC cannabis and medical cannabis industry can supply organizations with valuable information about how to cultivate, process, transport, and dispense cannabis. A list of such consultants might qualify as a list of suppliers considered to be: secret; of value; for use or in use by the business; and of advantage to the business....")
- Take away – evaluate your information ahead of any public presentation and redact or label as necessary.

- **We need to be prepared to provide continuous service in the face of --**
- **All types of disasters:**
  - Hurricane
  - Computer Viruses
  - Burst pipes/flooding
  - Pandemic

- **Elements of the Continuous Operations Plan:**
  - Who and What?
    - Staff
    - Human Capital
    - Clients
    - Data/files
  - On the Recovery Team? E.D., Marketing, Litigation, IT, Partners
  - When?
    - Activation and deactivation
  - Where?

<https://www.legalfuel.com/disaster-planning-business-continuity/>

- **Rule 1-3.8:**

- Each member of the bar who practices law in Florida shall designate another member of The Florida Bar who has agreed to serve as inventory attorney under this rule.
- Purpose is to avoid prejudice to clients of the subject attorney and, as a secondary result, prevent or reduce claims against the subject attorney for such prejudice as may otherwise occur.

## Additional Links

[CLE Status](#)

[Certification Status](#)

[Certificate of Good Standing](#)

[Lawyers Advising Lawyers Advisor](#)

[Lawyers Advising Lawyers Requestor](#)

[Update Photograph](#)

[Inventory Attorney](#)

[Become a Speaker](#)



- **Inventory Attorney:**

- Does not have to be part of the Attorney-Client Relationship;
- Does not apply to:
  - Government attorneys;
  - In-house counsel;
- They have to perform a matching function when conditions apply:
  - Attorney is suspended, disbarred, becomes a delinquent member, abandons a practice, disappears, dies, or suffers an involuntary leave of absence due to military service, catastrophic illness, or injury, and no partner, personal representative, or other responsible party capable of conducting the attorney's affairs is known to exist....
  - Rule 1-3.8, Florida Bar Rules;
- Not to be confused with Coverage Attorney.

*Use your resources:*



*Take the time to update your profile.*

**F. Joseph Ullo, Jr., P.E., Esq.  
Carlton Fields, P.A.**

**[jullo@carltonfields.com](mailto:jullo@carltonfields.com)**

**850.513.3611**

***Thank you.***