

Rule 12.281. Inadvertent Disclosure of Privileged Materials

(a) Assertion of Privilege as to Inadvertently Disclosed Materials. Any party, person, or entity, after inadvertent disclosure of any materials under these rules, may thereafter assert any privilege recognized by law as to those materials. This right exists without regard to whether the disclosure was made under formal demand or informal request. To assert the privilege, the party, person, or entity must, within 10 days of actually discovering the inadvertent disclosure, serve written notice of the assertion of privilege on the party to whom the materials were disclosed. The notice must specify with particularity the materials as to which the privilege is asserted, the nature of the privilege asserted, and the date on which the inadvertent disclosure was actually discovered.

(b) Duty of the Party Receiving Notice of an Assertion of Privilege. A party receiving notice of an assertion of privilege under subdivision (a) must promptly return, sequester, or destroy the materials specified in the notice, as well as any copies of the material. The party receiving the notice must also promptly notify any other party, person, or entity to whom it has disclosed the materials of the fact that the notice has been served and of the effect of this rule. That party must also take reasonable steps to retrieve the materials disclosed. Nothing herein affects any obligation under Rules Regulating the Florida Bar 4-4.4(b).

(c) Right to Challenge Assertion of Privilege. Any party receiving a notice made under subdivision (a) has the right to challenge the assertion of privilege. The grounds for the challenge may include, but are not limited to, the following:

- (1)** The materials in question are not privileged.
- (2)** The disclosing party, person, or entity lacks standing to assert the privilege.
- (3)** The disclosing party, person, or entity has failed to serve timely notice under this rule.
- (4)** The circumstances surrounding the production or disclosure of the materials warrant a finding that the disclosing party, person, or entity has waived its assertion that the material is protected by a privilege.

Any party seeking to challenge the assertion of privilege must do so by serving notice of its challenge on the party, person, or entity asserting the privilege. Notice of the challenge must be served within 20 days of service of the original notice given by the disclosing party, person, or entity. The notice of the recipient's challenge must specify the grounds for the challenge.

Failure to serve timely notice of challenge is a waiver of the right to challenge.

(d) Effect of Determination that Privilege Applies. When an order is entered determining that materials are privileged or that the right to challenge the privilege has been waived, the court must direct what is to be done with the materials and any copies so as to preserve all rights of appellate review. The recipient of the materials must also give prompt notice of the court's determination to any other party, person, or entity to whom it had disclosed the materials.