



11 Tips for Drafting Non-Disclosure Agreements

By Jack B. Harrison of Cors & Bassett. Reprinted with Permission*

Often businesses begin serious negotiations or discussions without a nondisclosure agreement in place, even while revealing confidential information in the context of the negotiations or discussions. This can be a dangerous practice, since confidential and proprietary information and data may be the most valuable asset a business owns. As with any contract, the nondisclosure agreement can provide vital protection, but should be drafted with care. Here are some tips to consider in drafting a nondisclosure agreement, as there really is no one size fits all agreement.

1. Nature of the Obligation.

At the core of any nondisclosure agreement is language that prohibits one party from wrongfully using or disclosing certain information received from the other. The agreement should require the recipient of the information to exercise the same degree of care that it would use to protect its own confidential information,

but, at a minimum, the recipient of the information should be required to exercise a reasonable degree of care.

2. Mutual v. Unilateral.

Because, in almost every case, each party will disclose some sensitive information, it almost always makes sense to include mutual confidentiality obligations.

3. Protected Material.

To protect "Confidential Information," the nondisclosure agreement should define exactly what information is included in that term. The nondisclosure agreement should provide some examples of what information or data is included, such as "technical, financial and business information" and make clear that the information or data may be in oral, written, physical or electronic form.

4. Marking Requirement.

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[www.http://www.hamilton-co.org/cinlawlib/](http://www.hamilton-co.org/cinlawlib/)

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Tech Tip: Have you ever looked for an older version of the Kentucky Administrative Regulations?

Look no further; here is a quick way to find them on Lexis tucked away in the Administrative Code archives. By: Julie Koehne, Systems Librarian

Step one:
Go to the Find A Source tab and search for "Kentucky regulations".

Sources View Tutorial | Help

Find A Source - Remove Subtab + Set as Default Subtab Search Selected

Option 1: Type in keyword, list, or phrase (e.g., law review or genfed;courts)

Kentucky regulations Find

Option 2: Browse Alphabetically

0-9 A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

Option 3: Search Directory of Online Sources

Step two:
A list of results will display, select the year for the Kentucky Administrative Code Archive you are searching for.

- KY - Kentucky Revised Statutes Annotated - 2010 i
- KY - Kentucky Revised Statutes Annotated - 2011 i
- KY - Kentucky Administrative Code Archive 2006 i
- KY - Kentucky Administrative Code Archive 2007 i
- KY - Kentucky Administrative Code Archive 2008 i
- KY - Kentucky Administrative Code Archive 2009 i
- KY - Kentucky Administrative Code Archive 2010 i
- KY - Kentucky Administrative Code Archive 2011 i
- KY - KY Administrative Code Archive i
- KY - Local Rules of U.S. District & Bankruptcy Courts in Kentu
- KY - Kentucky Board of Tax Appeals Orders and Judgments i

Step three:
Type in the code section you are searching for.

Find a Source > KY - Kentucky Administrative Code Archive 2009 i

Search

Select Search Type and Enter Search Terms

Terms & Connectors 201 KAR 17:027 Suggest terms for my search Search

Step four:
View your desired code.

Source: Find a Source > KY - Kentucky Administrative Code Archive 2009 i

Terms: 201 KAR 17:027 (Suggest Terms for My Search)

Select for FOCUS™ or Delivery

201 KAR 17:027

KENTUCKY ADMINISTRATIVE REGULATIONS

*** ARCHIVE DATA ***

*** ADMINISTRATIVE REGULATIONS AND EMERGENCY ADMINISTRATIVE ***
*** REGULATIONS CURRENTLY IN EFFECT AS OF DECEMBER 2009 ***

TITLE 201. GENERAL GOVERNMENT CABINET
CHAPTER 17. BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

201 KAR 17:027 (2009)

201 KAR 17:027. Caseload and supervision requirements.

Section 1. The supervision requirements specified in this administrative regulation shall be the minimum requirements.

Free CLE

Due to increased attendance, registration in advance is now required for all Law Library CLEs.

Free to subscribers; \$35 for non-subscribers

To register, call 513.946.5300 or via email reference@cms.hamilton-co.org

Lexis CLE: Forms, Rules and Treatises

Wednesday, October 10, 2012

1-2pm

1.0 hour of general CLE in Ohio

CLE in 2013

We take requests and suggestions! Do you have an idea for a CLE topic or speaker? Please contact [Laura Dixon-Caldwell](#) at 513.946.5300. We tend to offer an array of CLEs on legal research and legal topics. As we are putting together the calendar for 2013, we would appreciate your preferences for topics.

Lexis for Solo Attorneys

The Law Library continues to offer a Lexis package for attorneys in solo practice. This arrangement with Lexis gives off-site access to Ohio, Kentucky, and Indiana primary law, and to some federal legal materials. Rates are \$540 for the year or \$135 on a quarterly basis. For more information, including the application see here-

http://www.hamilton-co.org/cinlawlib/lexis_solos.html.

A current subscription to the Law Library is a prerequisite.

What a deal!

Our subscribers know about the resources that the Law Library offers but we really don't want to be the best-kept secret in Hamilton County. Please tell a friend in the legal profession about the benefits of joining. You probably know that we prorate the annual fee for first-time subscribers after March 1 and again after June 1 but here's the best part: For first time subscribers (whether individuals or firms) who pay the 2013 fee in full between October 15-December 31, 2012, we'll throw in use of the library for the rest of 2012 at no additional charge.

Furniture

You are probably well aware that the number of cases filed in Ohio has hit [a 10-year low](#), largely due to a significant decline in traffic filings. That impacts your law library since the bulk of our revenue comes from statutorily required court fines and penalties associated with traffic code violations. And what does that have to do with furniture? Well, you may have noticed that the Law Library's sofa and armchairs, thoughtfully donated years ago, are looking a little worse for wear but new furniture is not a priority purchase. If you are updating office lounge furniture and would like to donate a gently worn sofa or a few chairs, [I'd like to talk with you](#). Call 946-5300 and ask for Mary Jenkins.



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The nondisclosure agreement should include a mechanism for identifying protected information at or soon after the time of disclosure. As a compromise, the agreement may state that confidential information must be marked as such or identified as confidential in a subsequent writing.

5. Permitted Use.

The nondisclosure agreement should state that confidential information may be used only for a particular purpose, such as exploring the possibility of a business relationship between the two parties, and no other purpose. Of course, the terms of that business relationship will be laid out in a separate agreement.

6. Permitted Disclosure.

Nondisclosure agreements typically contain an exception, permitting disclosure by the recipient to its attorneys, accountants, or employees who have a legitimate need to know or in response to a court order, or the like. The agreement should be clear that the legitimate need to know requirement is explicit. The agreement may also require that prior notice be given before any disclosure and that any third-party recipients must agree to confidentiality obligations at least as strict as those stated in the nondisclosure agreement.

7. Duration of Obligation.

The nondisclosure agreement should state a term for the entire agreement, because a contract with no stated term is often found to be terminable at will. Then, the confidentiality obligation may be described as lasting, "For the Term of this Agreement and ___ years thereafter."

8. Remedy for Breach.

The nondisclosure agreement should state that, in the event of a breach, monetary damages would not be sufficient and that the parties agree injunctive relief is proper.

9. Mechanism for enforcement.

The nondisclosure agreement should set out a mechanism for its enforcement and for resolving any dispute over the damage caused by a breach of the agreement. This may be through a lawsuit filed in a court of competent jurisdiction or some type of alternative arbitration forum.

10. Jurisdiction and Choice of Law.

Tied to the mechanism for enforcement, the nondisclosure agreement should specifically state what state's law will be applied to the enforcement of the agreement and what court will have jurisdiction over an enforcement action. These clauses become particularly important when a business is involved in negotiations with an out of state or international business.

11. Indemnification.

The nondisclosure agreement should state that, in the event a breach is proven to have occurred, the breaching party agrees to indemnify the non-breaching party for any attorneys' fees or expenses that are necessary to enforce the terms of the agreement.

Before entering into any discussions or negotiations where confidential or proprietary information will be disclosed, a prudent business should meet with counsel, review the nature of the information that may be disclosed, and ensure that an appropriate nondisclosure agreement is in place before any

information is exchanged.

*This article is for general informational purposes only, is not for the purpose of providing legal advice, and does not establish an attorney-client relationship. You should consult with an attorney to obtain advice as to your particular issue or circumstances.

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Ebooks @ your library

The Law Library provides several collections of ebooks to our subscribers. We offer dozens of treatises from Aspen, including form books and checklists, in 16 substantive areas including bankruptcy, employment law, corporate law, real estate, and personal injury. HeinOnline includes collections of legal classics, the Pentagon papers, a U.S. presidential library, and bar journals. These ebooks are available 24/7 off-site for our solo attorney and full firm subscribers. EBSCO includes hundreds of law books, primarily from Nolo Press, and thousands of forms. [Contact a librarian](#) to discuss your level of access or any research questions.

Library Board Meeting

The next regularly scheduled meeting of the Hamilton County Law Library Resources Board will be held at 1:00 p.m. on October 4, 2012 in the Robert E. Kraft Board Room. Meetings of the board are open to the public. Minutes of past meetings are available at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>

True Crime

Is historical crime a reading passion of yours? The September 1, 2012 issue of *Library Journal* lists core titles in true crime. If you haven't read these, you might want to add them to your wish list for your next trip to your public library:

- Alther, Lisa. Blood feud : The Hatfields and the McCoys; the epic story of murder and vengeance
- Colquhoun, Kate. Murder in the first class carriage : The first Victorian Railway Killing
- Summerscale, Kate. The suspicions of Mr. Whicher : A shocking murder and the undoing of a great Victorian detective
- Collins, Paul. The murder of the century : The gilded age crime that scandalized a city & sparked the tabloid wars
- Geary, Rick. The Borden tragedy : A memoir of the infamous double murder at Fall River, Mass.
- Hagen, Carrie. We is got him. The kidnapping that changed America
- Larson, Erik. The Devil in the white city : Murder, magic, and madness at the fair
- Eig, Jonathan. Get Capone. The secret plot that captured America's most wanted gangster
- King, David. Death in the city of light : The serial killer of Nazi-occupied Paris

Conference Rooms

Subscribers may reserve the library's conference rooms, located in the main room. Each room includes a table, some chairs, and a speaker phone. To reserve a room for an hour or two, please call 513.946.5300.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepards', CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

Polycom videoconferencing

5 meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters

You and the Legal System: Consumer Credit Law of Ohio

David Gebhart Esq. is our next speaker in the *You and the Legal System* Series for the public. Mr. Gebhart will address Ohio Consumer Credit Law on Friday, October 19, 2012 at 12:00 noon at the Law Library. The agenda includes:

- A confidential guide to being a consumer in Ohio
- Put it in writing – words are birds!
- Your best friend if something goes wrong
- The Ohio Consumer Sales Practices Act
- Secured transactions
- The only two reasons to file for bankruptcy protection

The program is free to the public. To register, call 513.946.5300.

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may want to pass along the program announcement to clients, staff and community organizations. If you would like more information, please contact Laura Dixon-Caldwell at 513.946.5300.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

You and the Legal System will take a hiatus during November and December. Check with us in December for a list of 2013 topics.



Library Resources on Consumer Credit

Many of the books listed are publications of the National Consumer Law Center. We offer online access to them in the Law Library. For more information on any of these resources call us at 513.946.5300.

Books

Anderson's Ohio Consumer Law
KFO230.A29 A53 2012-

Baldwin's Ohio Consumer Law
KFO230 .O35 2011-2012-

Collection Actions: Defending consumers and their assets/ Jonathan Sheldon, Carolyn J. Carter, Chi Chi Wu: contributing authors, Dwain Alexander..(et al.)
KF1040.Z9 S543 2011-

Consumer arbitration agreements: enforceability and other topics/F. Paul Bland Jr. ...(et al.)
KF1040.Z9 B53 2011-

Consumer banking and payments law: credit, debit & stored value cards; checks; money orders; e-sign; electronic banking and benefit payments/ Mark Budnitz, Lauren K. Saunders, Margot Saunders
KF1040.Z9 B83 2009

Consumer bankruptcy law and practice/
Henry J. Somner; John Rao
KF 1040.Z9 R65 2019-

Consumer class actions/ Stuart T. Rossman, Charles Deldaum, Arielle Cohen
KF1040.Z9 R65 2010

Consumer credit regulation: credit cards, payday loans, auto finance, and other non-mortgage credit/
Carolyn L. carter, Andrew J. Pizor, Jonathan Sheldon
KF1040.Z9 C37 2012

Consumer law institute
KF230 .C66 2011

Consumer law pleadings: pleadings from all NCLC manuals
KF1040.Z9 C66 2010-

Credit discrimination/Alys Cohen
KF1040.Z9 C74 2009-

Dodd-Frank Wall Street Reform and Consumer Protection Act: law, explanation and analysis
KF974 .D63 2010

Fair Credit Reporting/Chi ChiWu, Elizabeth De Armond
KF1040.Z9 W83 2010-

Fair Debt Collection/Robert J. Hobbs
KF1040.Z9 .H63 2011

Foreclosures: mortgage servicing, mortgage modifications, and foreclosure defense/
John Rao
KF1040.Z9 S542 2012

Reposessions/Carolyn L. Carter
KF1040.Z9 S541 2010-

Student loan law/Deanne Loonin
KF1040.Z9 L66 2010

Truth in lending/Diane E. Thompson, Elizabeth Renuart
KF1040.Z9 T7 2010-

Online Resources-These resources may be accessed remotely through the Law Library website

Aspen/Loislaw

Bankruptcy Law Library

EBSCO NOLO Guides

Credit Repair

How to Repair Your Credit Score Now

Solve Your Money Troubles

Upcoming Events

October 4: Law Library Board Meeting

October 10: Lexis CLE

October 19: You and the Legal System



October 2012 Law Library Newsletter

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