

2000 FORUM FOR STATE COURT JUDGES
Saturday, July 29, 2000

**MATERIALS ON
SECRECY PRACTICES
IN THE COURTS**

**BIBLIOGRAPHY
TABLE OF CASES
STATE ANTI-SECRECY MEASURES**

1050 THIRTY-FIRST STREET, NW; WASHINGTON, DC 20007

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Note

These materials have been gathered to provide ready references to judges attending the 2000 Forum for State Court Judges. We would be grateful to anyone who can tell us of additional relevant materials on the subject of secrecy in litigation so that they may be included in any future publications.

**James E. Rooks, Jr.
Forum Reporter**

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under Sunshine in Litigation Act (Sunshine Law), trial court violated defendant's right to procedural due process in setting aside order almost in its entirety after jury returned verdict against defendant on underlying claim; both defendant and third parties had anticipated separate hearing solely on Sunshine Law issues, and defendant argued that evidence and arguments concerning sunshine law would not be encompassed in underlying suit.]

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Zenith Radio Corp. v. Matsushita Electric Industrial Co., 529 F.Supp. 866, 897 (E.D. Pa. 1981). [Common-law presumption of general right of public access to materials filed with the court clerk, unless under seal.]

State Anti-Secrecy Measures

The number of state statutes and court rules addressing the problem of secrecy has increased slowly over the last 10 years. The following are the measures discovered by the Reporter. It is possible that one or more additional states have adopted rules or statutes measures on the same topic. The Reporter would appreciate receiving word from any quarter about such measures.

Two 1999 bills from California and Illinois, which were passed by one house of their respective legislatures but have not been passed by the other, are included in this collection solely as samples, to illustrate the most recent approaches taken to the secrecy problem by legislators.

Arkansas

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Arkansas

Source: Westlaw

Arkansas Code of 1987

25-18-401 Disclosure required.

No public official or employee acting in behalf of a governmental agency or another agency wholly or partially supported by or expending public funds shall:

(1) Agree or authorize another to agree that all or part of a litigation settlement agreement to which the agency is a party shall be kept secret, sealed, or otherwise withheld from public disclosure; or

(2) Seek a court order denying public access to any court record or other document containing the terms of a settlement agreement resolving a claim by or against the agency.

25-18-402 Exemptions.

Sections 25-18-401 -- 25-18-403 do not prohibit the Director of the Department of Finance and Administration and his authorized agents from entering into agreements with taxpayers pursuant to § 26-18-705 which shall not be subject to public disclosure if the subject matter of the agreement is protected from public disclosure by the Freedom of Information Act, §§ 25- 19-101 -- 25-19-107, or § 26-18-303, or other state law.

25-18-403 Penalty.

Any person who violates §§ 25-18-401 -- 25-18-403 shall be deemed guilty of a misdemeanor punishable by a fine not exceeding five hundred dollars (\$500).

16-55-122 Contract provisions restricting disclosure of environmental hazards are void.

(a) Any provision of a contract or agreement entered into to settle a lawsuit which purports to restrict any person's right to disclose the existence or harmfulness of an environmental hazard is declared to be against the public policy of this state and therefore void.

(b) For purposes of this section, the term "environmental hazard" means a substance or condition that may affect land, air, or water in a way that may cause harm to the property or person of someone other than the contracting parties to a lawsuit settlement contract referred to in subsection (a) of this section.

(c) This section applies to settlement contracts or agreements entered into after March 12, 1991.

Arizona

Source: Westlaw

Rules of the Supreme Court of Arizona

(17A Arizona Revised Statutes)

Rule 123. Public Access to the Judicial Records of the State of Arizona

(a) Authority and Scope of Rule. Pursuant to the administrative powers vested in the supreme court by Article VI, Section 3, of the Arizona Constitution, and the court's inherent power to administer and supervise court operations, this rule adopted to govern public access to the records of all courts and administrative offices of the judicial department of the State of Arizona.

(b) Definitions.

(1) *Closed or Confidential (Records)*. "Closed" or "Confidential", when used in this rule in reference to records, means that members of the public may not inspect, obtain copies of, or otherwise have access to such records unless authorized by law.

(2) *Commercial Purpose*. As used in this rule "Commercial Purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from such public records for the purpose of solicitation or the sale of such names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of such public records. "Commercial Purpose" does not mean the use of a public record as evidence or as research for evidence in an action in a judicial or quasi-judicial body of this state or a political subdivision of this state.

(3) *Court*. "Court" means the Supreme Court, the Court of Appeals, Superior Court, Justice Courts, Municipal Courts and all judges of those courts.

(4) *Court Administrator or Clerk of the Court*. "Court Administrator" or "Clerk of the Court" means a person employed, appointed or elected for the purpose of administering the operations of any court or court system.

(5) *Criminal History Record Information (CHRI)*. "Criminal History Record Information" means only those records of arrests, convictions, sentences, dismissals and other dispositions of charges

against individuals that have been provided to the court by the National Crime Information Center (NCIC), Arizona Crime Information Center (ACIC), or any other criminal justice agency for use in juvenile and adult criminal justice cases, employment, licensing or other authorized investigations.

(6) *Custodian*. "Custodian" is the person responsible for the safekeeping of any records held by any court, administrative office, clerk of court's office or that person's designee who also shall be responsible for processing public requests for access to records.

(7) *Information*. "Information" is any recognizable alpha/numerical data which constitute a record or any part thereof.

(8) *Judge*. "Judge" means any justice, judge, judicial officer, referee, commissioner, court-appointed arbitrator or other person exercising adjudicatory powers in the judicial branch.

(9) *Law*. "Law" means statute, rule, administrative order, court order or case law.

(10) *Presiding Judge*. "Presiding Judge" means the presiding judge of the superior court for each county, or the chief judge for each division of the court of appeals or the chief justice of the supreme court. For municipal and justice courts "Presiding Judge" means the presiding judge of the superior court.

(11) *Public*. "Public" means those persons who are not judges, clerks, administrators, professionals or other staff employed by or working under the supervision of the court, or employees of other public agencies who are authorized by state or federal rule or law to inspect and copy closed court records.

(12) *Record*. "Record" means all existing documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of any official business by the court, and preserved or appropriate for preservation by the court as evidence of the organization, functions, policies, decision, procedures, operations or other governmental activities.

(A) Administrative Record. "Administrative record" means any record pertaining to the administration of the courts, court systems or any non- adjudicatory records.

(B) Case Record. "Case record" means any record pertaining to a particular case or controversy.

(c) General Provisions.

(1) *Open Records Policy*. Historically, this state has always favored open government and an informed citizenry. In the tradition, the records in all courts and administrative offices of the Judicial

Department of the State of Arizona are presumed to be open to any member of the public for inspection or to obtain copies at all times during regular office hours at the office having custody of the records. However, in view of the possible countervailing interests of confidentiality, privacy or the best interests of the state public access to some court records may be restricted or expanded in accordance with the provision of this rule, or other provisions of law.

(2) *Creation, Production and Management of Records.*

(A) Court personnel, who generate or receive paper or electronic records known or marked as containing confidential information, shall identify and segregate the confidential information from the public record whenever practicable.

(B) The custodian shall utilize reasonable records management practices and procedures to assure that all closed records are properly identified as "confidential" and maintained segregated or apart from records open to the public. Whenever possible, records containing both public and confidential information shall be identified as "containing both public and confidential information."

(C) Upon request, the custodian shall reproduce any record containing public information that would otherwise be closed, by redacting all confidential information from the record unless release of the entire record is prohibited by law. Records that are reproduced after redaction shall contain a disclosure that they were redacted, unless such disclosure would defeat the purpose of the redaction. Identification of redacted records shall include a description of the nature and length of the matters contained therein, unless the description, if given, constitutes a disclosure of confidential information. Upon request, the custodian shall identify the legal authority for the redaction.

(3) *Confidential and Personal Financial Records.* Documents containing social security, credit card, debit card, or financial account numbers or credit reports of an individual, when collected by the court for administrative purposes, are closed unless made public in a court proceeding or upon court order.

(4) *New Records.* The court is not required to index, compile, re-compile, re-format, program or otherwise reorganize existing information to create new records not maintained in the ordinary course of business. Removing, deleting or redacting confidential information from a record, or reproducing a record in non-original format, is not deemed to be creating a new record as defined herein.

(d) Access to Case Records.

All case records are open to the public except as may be closed by law, or as provided in this rule. Upon closing any record the court shall state the reason for the action, including a reference to any statute, case, rule or administrative order relied upon.

(1) Juvenile Delinquency Proceedings Records.

(A) Records of all juvenile delinquency and incorrigibility proceedings are open to the public to the extent provided for in the Rules of Procedure for the Juvenile Court or by law.

(B) Records of all juvenile adoption, dependency, severance and other related proceedings are closed to the public as provided by law unless opened by court order.

(C) All information and records obtained in the course of evaluation, examination or treatment of juveniles who have been referred to a treatment program funded by the juvenile probation fund (pursuant to ARS § 8-230.01, or renumbered as ARS § 8-321, effective June 30, 1998) or the family counseling fund (ARS § 8-261 et seq.) are confidential and shall not be released unless authorized by rule or court order. These records include, but are not limited to, clinical records, medical reports, laboratory statements and reports, or any report relating to diagnostic findings and treatment of juveniles, or any information by which the juvenile or his family may be identified, wherever such records are maintained by the court.

(2) Adult Criminal Records.

(A) Criminal History Records, diagnostic evaluations, psychiatric and psychological reports, medical reports, alcohol screening and treatment reports, social studies, probation supervision histories and any other records maintained as the work product of pretrial services staff, probation officers and other staff for use by the court are closed and shall be withheld from public inspection, including such records associated with the interstate compact pursuant to ARS § 31-461. However, the bail determination report, any related pretrial service records, the presentence report, and any related probation office records are open to the public when: (i) ordered by the court, (ii) filed with the clerk of court or attached to any filed document and not segregated and identified as being closed or confidential, or (iii) considered or used for any purpose in open court proceedings unless restricted by law or sealed by the court.

(B) In adult criminal cases the pretrial services unit, probation department, limited jurisdiction court, or other primary user shall separate and identify as "confidential" all records defined herein as "criminal history record information," and those records identified in paragraph (d)(2)(A). Such records shall be closed and placed in an envelope marked "confidential", or otherwise stored as a confidential record, and shall only be disclosed as authorized by ARS § 41-1750 et seq. or by court order.

(C) All other information in the adult criminal case files maintained by the clerk of the court is open to the public, unless prohibited by law or sealed by court order.

(3) Judicial Work Product and Drafts. Notes, memoranda or drafts thereof prepared by a judge

or other court personnel at the direction of a judge and used in the process of preparing a final decision or order are closed.

(e) Access to Administrative Records.

All administrative records are open to the public except as provided herein:

(1) *Employee Records.* Records maintained concerning individuals who are employees or who perform volunteer services are closed except for the following information:

(A) Full name of individual;

(B) Date of employment;

(C) Current and previous job titles and descriptions, and effective dates of employment;

(D) Name, location and phone number of court and/or office to which the individual has been assigned;

(E) Current and previous salaries and dates of each change;

(F) Name of current or last known supervisor; and

(G) Information authorized to be released by the individual to the public unless prohibited by law.

(2) *Applicant Records.* Unless otherwise provided by law, records concerning applicants for employment or volunteer services are open to the public, after the names, home addresses, telephone numbers, social security numbers, and all other personally identifying information have been redacted, except that the names of applicants who are final candidates shall be disclosed.

(3) *Judicial Case Assignments.* Records regarding the identity of any appellate judge or justice assigned to prepare a written decision or opinion until the same is filed are closed.

(4) *Security Records.* All security plans, codes and other records that provide for the security of information, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal releases, trespass, or physical abuse or violence, are closed.

(5) *Procurement Records.* Procurement and bid records are open to the public except as provided herein:

(A) Sealed Bids. Sealed bid records are closed to the public prior to opening the bids at the time specified in the bid request.

(B) Invitation for Bid. Bid records submitted under Rule 18 of the Judicial Branch Procurement Code or equivalent rules shall remain closed to the public after opening until a contract is signed, except that the amount of each bid and the name of each bidder shall be recorded and available for public inspection.

(C) Competitive Sealed Proposals and Requests for Qualifications. Records containing competitive sealed proposals and requests for qualification submissions under Rules 26 or 35 of the Judicial Branch Procurement Code or equivalent rules, shall remain closed to the public after opening until a contract is signed, except that the name of each bidder shall be publicly read and recorded.

(D) Trade Secrets. Bid records designated by the bidder as containing trade secrets or other proprietary data shall remain closed to the public only when the judicial branch unit concurs in the designation.

(6) *Preliminary and Draft Reports Concerning Court Operations; Pre-decisional Documents.* Final administrative documents and reports concerning the operation of the court system are open for public inspection and copying by the custodian on court premises. Preliminary drafts of such reports, and pre-decisional documents relating to court operations, shall be open once such draft reports and such pre-decisional documents are circulated to any court policy advisory committee or the public for comment.

(7) *Library Records.* Records maintained in any court law library which link a patron's name with materials requested or borrowed by the patron, or which link a patron's name with a specific subject about which the patron has requested information or materials are closed.

(8) *Attorney and Judicial Work Product.*

(A) The legal work product and other records of any attorney or law clerk employed by or representing the judicial branch, that are produced in the regular course of business or representation of the judicial branch are closed unless disclosed by the court.

(B) All notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the course of deliberations on rule or administrative matters are closed.

(9) *Juror Records.* The home and work telephone numbers and addresses of jurors, and all other information obtained by special screening questionnaires or in voir dire proceedings that personally

identifies jurors summoned for service, except the names of jurors on the master jury list, are confidential, unless disclosed in open court or otherwise opened by order of the court.

(10) *Proprietary and Licensed Material.* Computer programs or other records that are subject to proprietary rights or licensing agreements shall only be disclosed in accordance with the terms and conditions of the applicable agreements and licenses, or by court order. No records shall be closed to the public solely because access is provided by programs or applications subject to licensing agreements, or because they are subject to proprietary rights.

(11) *Copyrighted Documents and Materials.* Documents produced and copyrighted by the court are public records that may not be re-published without proper authorization from the court.

(f) Access to Records in Paper Medium.

(1) *Filing a Request.* A request to inspect or obtain copies of records that are open to the public shall be made orally or in a written format acceptable to the custodian. The request shall specify any commercial use intended for the records. All requests for copies must include sufficient information to reasonably identify what is being sought. The applicant shall not be required to have detailed knowledge of the court's filing system or procedures.

(2) *Timely Response.* Upon receiving a request to inspect or obtain copies of records, the custodian shall promptly respond orally or in writing concerning the availability of the records, and provide the records in a reasonable time based upon the following factors:

(A) Immediate availability of the requested records;

(B) Specificity of the request and need for clarification;

(C) Amount of equipment, materials, staff time and other resources required to satisfy the request; or

(D) Whether the requested records are located at the court or in off site storage.

(3) *Cost; Non-Commercial and Commercial Purposes.*

(A) Applicants who request records for non-commercial purposes shall not be charged any fee for the cost of searching for a record or redacting confidential information from a record, except as provided by statute, nor shall they be required to disclose the intended purpose or use of the records. If no fee is prescribed by statute, the custodian shall collect a per page fee based upon the reasonable cost of reproduction.

(B) An applicant requesting copies, printouts or photographs of records for a commercial purpose shall provide a verified or acknowledged statement to the custodian setting forth the commercial purpose and specific use intended for the records. If the custodian has reason to believe an applicant has failed to adequately disclose the commercial purpose or use of the requested records, the custodian may require additional information regarding the intended use of the records. The custodian shall collect a fee for the cost of:

- (i) obtaining the original or copies of the records and all redaction costs; and
- (ii) the time, equipment and staff used in producing such reproduction.

Notwithstanding the above provision, the Clerks of the Supreme Court and the Court of Appeals shall distribute copies of opinions to authorized publishers free of charge for publication pursuant to law and Ariz.Const. Art. 6, § 8.

(C) The custodian may make billing or payment arrangements with the applicant before satisfying the request, and is authorized to receive and hold deposits for estimated costs until costs are finally determined.

(4) Delay or Denial; Explanation.

(A) The custodian is required to comply with any request for records, except requests that are determined:

- (i) to create an undue financial burden on court operations because of the amount of equipment, materials, staff time and other resources required to satisfy the request;
- (ii) to substantially interfere with the constitutionally or statutorily mandated functions of the court or the office of the custodian;
- (iii) to be filed for the purpose of harassing or substantially interfering with the routine operations of the court; or
- (iv) to be submitted within one month following the date of a prior request, that is substantially identical to one received from the same source or applicant and previously denied, unless applicable rules, law or circumstances restricting access have changed.

(B)(i) If a request cannot be granted within a reasonable time or at all, the custodian shall inform the applicant in writing of the nature of any problem delaying or preventing access, and if applicable, the specific federal or state statute, law, court or administrative rule or order that is the basis of the delay or denial. If access to any record is denied for any reason, the custodian shall

explore in good faith with the applicant alternatives to allow access to the requested records, including redaction of confidential information.

(ii) If unsuccessful, the custodian shall meet with the judge having immediate, supervisory responsibility for the daily operations of the respective court, to determine if an alternative means of access to the records may be provided for the applicant. Thereafter, as soon as practicable, the judge shall inform the applicant if the denial is affirmed. Reviews of the foregoing denial and all other denials shall be conducted in accordance with the provisions of paragraph (f)(5) below.

(5) Review of Denials to Access Records.

(A) Any applicant who is denied the right to inspect, receive copies or access any record pursuant to the authority of this rule, shall be entitled to an administrative review of that decision by the presiding judge. The request for review must be filed in writing with the custodian who denied the request within 10 business days of a denial made under Paragraph (f)(4) above. The custodian shall forward the request for review, a statement of the reason for denial and all relevant documentation to the presiding judge or a designee within 3 business days of the request for review. The presiding judge shall issue a decision as soon as practicable considering the nature of the request and the needs of the applicant, but not more than 10 business days from the date the written request for review was received.

(B) Any party aggrieved by the decision of the presiding judge may seek review by filing a special action in the Court of Appeals pursuant to the Rules of Procedure for Special Actions.

(g) Access to Audiotape, Videotape, Microfilm, Computer or Electronic Based Records.

(1) *Scope.* This section applies to all requests to access or obtain copies of any audiotape, videotape, microfilm, computer or electronic based records maintained by the court, except for requests initiated by judges, court administrators, or clerks of the court for use in the administration or internal business of the court.

(2) Authority; Procedures.

(A) Except by court order, only the custodian or designee is authorized by this rule to provide access to or copies of computer or electronic based records.

(B) All the requirements set forth in paragraph (f), except subparagraph (3) thereof, are incorporated herein by reference and shall apply to requests for records submitted pursuant to this section.

(3) Cost to Obtain Copies.

(A) The custodian shall first meet with the applicant to understand the scope of the request so it can be defined as precisely as possible. The cost to obtain copies of information held electronically, which requires no programming or translation, shall be limited to the cost of materials. If a request requires programming or translation, the applicant shall bear the actual cost incurred by the court to comply with the request for copies of records. If no fee is prescribed by law, the custodian shall collect a fee covering the cost of producing the requested records, including staff time, computer time, programming costs, equipment, materials and supplies.

(B) Unless otherwise prescribed by law relating to the collection and deposit of fees by the custodian, the custodian may retain the fees collected pursuant to paragraph (g)(3)(A) to compensate for the expenses related to reproduction of electronic records.

(4) Databases, Operating Systems and Network Programs.

(A) Databases and electronic records containing case and administrative records are open to the public. However, databases and electronic records containing confidential information that may not be entirely redacted, may be closed in accordance with the provisions of paragraph (f)(4).

(B) Documentation and other records that describe the technical location, design, function, operation, or access control features of any court computer network, automated data processing or telecommunications systems, are closed to the public.

(C) Consistent with the court's obligation to provide public access to its records, and subject to resource limitations, the design and operation of all future automated record management systems shall incorporate processing features and procedures that maximize the availability of court records maintained in electronic medium. Automated systems development policy shall require the identification and segregation of confidential data elements from data base sections that are accessible to the public. Whenever feasible, any major enhancement or upgrade to existing systems shall include modifications that segregate confidential information from publicly accessed data bases.

(5) Remote Electronic Access to Records and Cost.

(A) Pursuant to the provisions of this paragraph, every presiding judge may authorize on-line, remote electronic access to both case and administrative records in their respective courts. Fees may be charged for the value-added and custom remote electronic access service as authorized by ARS §§ 12-119.02, 12-120.31, 22-281.01, 22-404.01 and 12-284.02. The fees shall be based on the recovery of costs incurred in the provision of remote electronic access, including the cost of providing a general public access information system, but shall not exceed the applicable statutory

limits. For the supreme court, court of appeals and superior court records, the fees shall be paid to the clerk of each respective court. For justice and municipal court records, the fees shall be paid to an appropriate official designated by the court. The presiding judge of the superior court will consult with the local funding authority before any municipal court fee is imposed.

(B) Prior to establishing value-added remote electronic access for which fees are charged, each court shall establish a remote electronic access information system that, subject to available funding, will be available to the general public without additional court fees. At a minimum, both the public remote electronic access system and the value-added remote electronic access shall permit access to information by case number, party name and counsel name, if maintained electronically. Both systems shall contain the same case data elements. Any difference between the two systems shall be limited to providing enhanced services in the value-added remote electronic access, such as guaranteed response times and service levels, search and reporting tools, help desk services, etc. Courts are encouraged to make data elements available to both systems at the same time. If a court chooses to make additional data elements available in the value-added remote electronic access system first, the same data elements must be made available in the public remote electronic access system within six months.

(C) Additional policies and procedures for remote electronic access to court records shall be adopted when necessary by the supreme court through subsequent rules or separate administrative orders after considering applicable comments and recommendations, including those of the court's Commission on Technology and the Arizona Judicial Council.

(D) Any on-line electronic access shall be conditioned upon the user's agreement to access the information only as instructed by the court, to not attempt any unauthorized access, and to consent to monitoring by the court of all use of the system. The court will also notify users that it will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the data. Such agreement and notices shall be provided to the users in any manner the court deems appropriate. The court may deny access to users for failure to comply with such requirements.

(E) For value-added or custom remote electronic access, each court will utilize a published standard fee schedule or written contracts with each subscriber. The fee schedule or contract shall set forth the services and service levels to be provided, the fee structure, manner of billing, payment requirements, and grounds for termination of the service. The state of Arizona, its county and municipal governments and agencies shall be exempt from such fees.

(F) The presiding judge of each court may establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.

(G) All courts and clerks of court shall employ appropriate security measures, procedures,

devices and software to protect assets and records and to prevent unauthorized access.

(H) Communication protocols shall be adopted that are consistent with standards adopted for the Arizona Judicial Information Network (AJIN) as reflected in Supreme Court Administrative Order 95-37. Free public remote electronic access shall, at a minimum, be available by means of standard telenet or an industry-standard hypertext mark-up language (HTML) browser. By December 31, 1999, a single non-proprietary, open systems communications protocol for value-added and custom remote electronic access shall be determined by the Commission on Technology. By January 30, 2004, all courts shall comply with and use the communication protocols and standards adopted for remote electronic access by the Commission on Technology.

(h) Inspection and Photocopying.

(1) *Access to Original Records.* During regular business hours a person shall be allowed to inspect or obtain copies of original versions of records that are open to the public in the office where such records are normally kept. If access to original records would result in disclosure of information which is not permitted, redacted copies of the closed records may be produced. If access to the original records would jeopardize the integrity of the records, or is otherwise impracticable, a copy of the complete records in other appropriate formats may be produced for inspection. Unless expressly authorized by the custodian or court order, records shall not be removed from the office where they are normally kept.

(2) *Access to Certain Evidence.* Documents and physical objects admitted into evidence shall be available for public inspection under such condition as the responsible custodian may deem appropriate to protect the security of the evidence.

Added Oct. 9, 1997, effective Dec. 1, 1997. Amended Sept. 24, 1999, effective Dec. 1, 1999.

Court Comments [1997]

Paragraph (c)(2). This provision mandates the producer and custodian of records to identifiably segregate from the public case records, all administrative documents containing confidential information to avoid inadvertent disclosures. After confidential documents have been removed or information has been redacted from a record, a description of the excised data shall be placed therein, unless the description itself constitutes a violation of confidentiality.

Paragraph (d)(1)(A). Following passage of the Stop Juvenile Crime Initiative (Proposition 102) in November 1996, the legislature made substantial revisions to juvenile delinquency proceedings that included opening juvenile court records to the public. See ARS § 8-208, amended effective July 21, 1997.

Paragraph (d)(2)(A). The intent of this subsection is to eliminate uncertainty among users regarding who has the primary responsibility to identify and segregate the criminal history record information (CHRI) under section (9) of Arizona Supreme Court Administrative Order No. 94-16 (Victims' Rights Implementation Procedures), or other mandates. The probation department or other units that initially obtain or produce the CHRI have the primary responsibility to identify and segregate the CHRI from the open portions of the records. The clerk's office has continuing responsibility to maintain the confidentiality of the CHRI that has been marked confidential by the primary user.

Paragraph (e)(2). This section does not apply to the records of applicants for judicial appointments or membership on appellate and trial court commissions. Disclosure of information relating to applicants for judicial and commission appointments are subject to the Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments.

Paragraph (e)(6). This section does not require that draft reports or pre- decisional documents on court operations be maintained or preserved as a public record except as required by applicable records retention policies.

Paragraph (e)(7). This section is intended to assure the confidentiality of the record of materials borrowed by any patron; however, the patron's name and address are public records.

Paragraph (e)(11). This section acknowledges the court's authority under federal copyright law, to control the copying or re-publication of public records that may be copyrighted by the court. Materials that may be copyrighted include all original writings (except judicial opinions), drawings, audio and video recordings, computer programs and applications, or other original publications, produced by a court employee within the scope of employment.

Paragraph (f)(4)(A). Public access to the records of court proceedings is an essential element of a democratic system. Court personnel have a duty to assist the public in obtaining information on their judicial system. That duty is no less a part of court operations than are the other primary duties of the judiciary. This paragraph (f)(4)(A) is intended to deal with situations in which a request jeopardizes the operations of the court, and not to justify refusal of public record requests because compliance will require effort on the part of court personnel.

[1999] Court Comment to Paragraph (C)(4)

The public is entitled to inspect and obtain copies of court records that are maintained on computer systems or in other non-paper medium as provided in this rule. Because of convenience and cost efficiency, the court is committed to maximizing the availability of records to the public through electronic systems. The production or reproduction of records in a non- standard form or format is encouraged as a service to the public. However, producing or reproducing any record in a form or

format not used in the court's ordinary business operations is at the discretion of the custodian.

[1999] Court Comment to Section (F)(3)

This section incorporates the common law exemption for newspapers from the fees charged applicants who seek records for commercial purposes. In *Star Publishing v. Parks*, 178 Ariz, 604, 875 P.2d 837 (1993), the Court of Appeals, Div. II, determined that newspapers were not engaged in "the direct economic exploitation of public records," and therefore were not subject to the commercial use fees charged by the state under ARS § 39- 121.03. For the same reason, those that are regularly engaged in gathering, reporting, writing, editing, publishing or broadcasting news to the public are not considered commercial users of court records.

California

Source: Westlaw

California Rules of Court Miscellaneous Rules

Rules for Publication of Appellate Opinions

Rule 976. Publication of appellate opinions

* * *

(c) [Publication procedure]

(1) [Courts of Appeal and appellate departments] An opinion of a Court of Appeal or an appellate department of the superior court shall be published if a majority of the court rendering the opinion certifies, prior to the decision's finality in that court, that it meets one or more of the standards of subdivision (b).

(2) [Supreme Court] An opinion certified for publication shall not be published, and an opinion not so certified shall be published, on an order of the Supreme Court to that effect.

Rule 977. Citation of opinions

(a) [Unpublished opinions] An opinion of a Court of Appeal or an appellate department of the superior court that is not certified for publication or ordered published shall not be cited or relied on by a court or a party in any other action or proceeding except as provided in subdivision (b).

* * *

(d) [Opinions ordered published by Supreme Court] An opinion of the Court of Appeal ordered published by the Supreme Court pursuant to rule 976 is citable.

Rule 978. Requesting publication of unpublished opinions

(a) [Request procedure; action by court rendering opinion] A request by any person for publication of an opinion not certified for publication may be made only to the court that rendered the opinion. The request shall be made promptly by a letter stating the nature of the person's interest and stating concisely why the opinion meets one or more of the publication standards. The request shall be accompanied by proof of its service on each party to the action or proceeding in the Court of Appeal. If the court does not, or by reason of the decision's finality as to that court cannot, grant the request, the court shall transmit the request and a copy of the opinion to the Supreme Court with its recommendation for disposition and a brief statement of its reasons. The transmitting court shall also send a copy of its recommendation and reasons to each party and to any person who has requested publication.

(b) [Action by Supreme Court] When a request for publication is received by the Supreme Court pursuant to subdivision (a), the court shall either order the opinion published or deny the request. The court shall send notice of its action to the transmitting court, each party, and any person who has requested publication.

(c) [Effect of Supreme Court order for publication] An order of the Supreme Court directing publication of an opinion in the Official Reports shall not be deemed an expression of opinion of the Supreme Court of the correctness of the result reached by the decision or of any of the law set forth in the opinion.

Rule 979. Requesting depublication of published opinions

(a) [Request procedure] A request by any person for the depublication of an opinion certified for publication shall be made by letter to the Supreme Court within 30 days after the decision becomes final as to the Court of Appeal. Any request for depublication shall be accompanied by proof of mailing to the Court of Appeal and proof of service to each party to the action or proceeding. The request shall state the nature of the person's interest and shall state concisely reasons why the opinion should not remain published. The request shall not exceed 10 pages.

(b) [Response] The Court of Appeal or any person may, within 10 days after receipt by the Supreme Court of a request for depublication, submit a response, either joining in the request or stating concisely reasons why the opinion should remain published. A response submitted by anyone other than the Court of Appeal shall state the nature of the person's interest. Any response shall not exceed 10 pages and shall be accompanied by proof of mailing to the Court of Appeal, and proof of service to each party to the action or proceeding, and person requesting depublication.

(c) [Action by Supreme Court] When a request for depublication is received by the Supreme Court pursuant to subdivision (a), the court shall either order the opinion depublished or deny the request. The

court shall send notice of its action to the Court of Appeal, each party, and any person who has requested depublication.

(d) [Limitation] Nothing in this rule limits the court's power, on its own motion, to order an opinion depublished.

(e) [Effect of Supreme Court order for depublication] An order of the Supreme Court directing depublication of an opinion in the Official Reports shall not be deemed an expression of opinion of the Supreme Court of the correctness of the result reached by the decision or of any of the law set forth in the opinion.

California Courts of Appeal

Local Rules of First Appellate District

Rule 8. Motions for stipulated reversal of judgment

A motion filed in this court for stipulated reversal of a judgment of a trial court must include a joint declaration of counsel that (1) describes the parties and the factual and legal issues presented at trial; (2) indicates whether the judgment involves important public rights or unfair, illegal or corrupt practices, or torts affecting a significant number of persons, or otherwise affects the public or a significant number of persons not parties to the litigation (if the judgment is against a state licensee, the declaration must also disclose whether it exposes such person to any possible disciplinary proceeding); and (3) discloses whether the judgment sought to be reversed may have collateral estoppel or other effects in potential future litigation and, if so, whether any third parties who might be prejudiced by stipulated reversal of the judgment have received notice of the motion therefor. A copy of the judgment must accompany the motion.

The parties must provide a sufficient showing to support the findings required by Code of Civil Procedure section 128, subdivision (a)(8), as amended effective Jan. 1, 2000.

California Code of Civil Procedure

§ 128. Powers of courts; contempt orders; execution of sentence; stay pending appeal; orders affecting county government.

(a) Every court shall have the power to do all of the following:

* * *

(8) To amend and control its process and orders so as to make them conform to law and justice. An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following:

- (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal.
- (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.

Los Angeles County Superior Court Rules

Rule 7.19. Confidentiality Agreements and Protective Orders.

It is the policy of this court that confidentiality agreements and protective orders are disfavored and should only be approved by the court when there is a genuine trade secret or privilege to be protected. Such agreements will not be recognized or approved by this court absent a particularized showing (document by document) that:

- (a) Secrecy is in the public interest; and
- (b) The proponent has a cognizable interest in the material, i.e. the material contains trade secrets, privileged information, or is otherwise protected by law from disclosure; and
- (c) That disclosure would cause serious harm.

Rule 12.20. Sealing Orders and Confidentiality Agreements.

Motions for sealing orders or approval of confidentiality agreements are subject to the requirements of Local Rule 7.19, and are to be made to the presiding judge or supervising judge, not to the temporary judge or referee.

Coordinated Rules of the Superior and Municipal Courts, San Diego County

Rule 11.6. Confidentiality Agreements, Protective Orders, Sealed Documents.

It is the policy of the courts that confidentiality agreements and protective orders are disfavored and should be recognized and approved by the court only when there is a genuine trade secret or privilege to be protected.

Such agreements will not be recognized or approved by the court absent a particularized showing (document by document) that secrecy is in the public interest, the proponent has a cognizable interest in the material; (e.g., the material contains trade secrets, privileged information, or is otherwise protected by law from disclosure), and that disclosure would cause serious harm.

Sealed records may be viewed only by parties and their attorneys of record, unless the order sealing the records states otherwise. Sealed records may not be copied by persons authorized to view them, absent a court order to the contrary.

Uniform Local Rules of Court for the San Francisco Superior Court

Rule 10.5. Confidentiality and Protective Orders.

A. It is the policy of this Court that:

1. orders sealing any or all documents filed in a proceeding, and
2. orders directing that parties or others comply with agreements to maintain the confidentiality of documents relating to a proceeding, are disfavored and should be entered only upon a showing that:
 - a. the subject matter of such document is privileged under a provision of the Evidence Code;
or
 - b. disclosures would violate a personal, financial, or other interest protected by law, and that such disclosure threatens to cause serious harm that outweighs the public interest in disclosure of such information.

B. Nothing herein shall preclude the entry of a protective order designed to facilitate the expeditious production of documents during discovery, provided that the order permits counsel to designate as confidential under the terms of such order only those documents as to which counsel entertains a good faith belief that such document is entitled to confidentiality pursuant to section 10.5.A.2.(a) or A.2.(b).

C. Any order sealing any documents filed in a proceeding shall direct the sealing of only those documents, pages, or, if reasonably practicable, those portions of documents or pages, which contain the information requiring confidentiality. All other portions of such document or page shall be included in the public file. For each document or page, or portion thereof, filed under seal there shall be included in the public file a document bearing a legend in substantially the following form: "By order dated, the complete (identify document), pages or portion thereof, has been filed under seal, and may not be examined without further order of the court."

1999 California Senate Bill 1254
1999-2000 Regular Session

Passed Senate June 2, 1999 and sent to Assembly.

[N.B.: This bill was passed by the California Senate, but has not been passed by the Assembly. It is included in this collection solely as a sample, to illustrate the most recent approaches taken to the secrecy problem by legislators.]

INTRODUCED BY Senator Schiff, FEBRUARY 26, 1999

VERSION: Amended July 8, 1999

An act to amend Section 3426.5 of the Civil Code, and to add Section 188 to the Code of Civil Procedure, relating to confidentiality.

Legislative Counsel's Digest:

SB 1254, as amended, Schiff. Confidentiality of writings.

Existing law provides for the confidentiality of trade secrets, government records, records maintained by financial and other institutions, privileged communications, and other writings.

This bill would enact the "Sunshine in the Courts Act." The act would provide, as a matter of public policy, that in any action based on financial fraud, as defined, or based on personal injury or wrongful death caused by a defined defective product or defined environmental hazard, the court shall not enter or enforce a part or all of any confidentiality agreement, settlement agreement, stipulated agreement, or protective order, except as specified, unless a protective order regarding that writing or information is entered by the court after a noticed motion, as specified. The bill would establish the bases for these protective orders and a procedure for contesting a court order, judgment, agreement, or contract that violates this provision, and would provide that a prevailing plaintiff is entitled to attorneys' fees and costs, as specified. The bill would entitle the party seeking protection to costs and attorney's fees if the action contesting the order, judgment, agreement, or contract is determined by the court to be frivolous, solely intended to cause unnecessary delay, or is brought by a vexatious litigant. The bill would prohibit the sale or offer for sale by an attorney of information obtained through discovery, as specified. The bill would also require the Attorney General to file a motion with the court to lift a protective order if the Attorney General determines that disclosure is required to protect the ~~environment~~, health, or safety of one or more persons. The bill would also make conforming changes in the law regarding trade secrets.

Text:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3426.5 of the Civil Code is amended to read:

3426.5. Subject to Section 188 of the Code of Civil Procedure, in an action under this title, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

SEC. 2. Section 188 is added to the Code of Civil Procedure, to read:

188. (a) This section may be cited as the "Sunshine in the Courts Act."
- (b) Notwithstanding any other provision of law, as a matter of public policy, in any action based on financial fraud, or based upon personal injury or wrongful death alleging damages caused by a defective product or an environmental hazard, the court shall not enter or enforce a part or all of any confidentiality agreement, settlement agreement, stipulated agreement, or protective order that may conceal from public disclosure any writings or information that ~~indicate allegations~~ is evidence of financial fraud, a defective product, or an environmental hazard, unless a protective order regarding that writing or information is entered by the court after a noticed motion. Subdivisions (c) to (n), inclusive, as follows, apply to actions described in this section.
- (c) In the court's review of the basis and scope of the proposed protective order:
- (1) The party or parties seeking the protective order shall identify for the court's review the writings or information that are proposed for nondisclosure, and shall bear the burden for its justification. Any writing or information that is not identified for review by the court shall not be subject to any protective order granted by the court. In order to streamline the process for review under this section, the court may require the requesting party to provide an identifying log or other document.
 - (2) The court shall independently examine the basis and scope of the proposed protective order and shall make findings pursuant to this section for each writing or item of information proposed for nondisclosure under the protective order.
 - (3) A protective order shall be entered only for good cause shown, pursuant to this section, in order to encourage the broadest availability of writings or information that ~~indicate~~

~~allegations~~ is evidence of financial fraud, a defective product, or an environmental hazard to the public.

(d) Any writing or information that ~~indicates allegations~~ is evidence of financial fraud, a defective product, or an environmental hazard shall not be subject to a protective order unless one of the following applies to that information:

(1) The subject matter is privileged pursuant to Section 1040 of the Evidence Code.
(2) Disclosure would violate an interest protected by the right to privacy guaranteed in the California Constitution.

(3) Disclosure would reveal trade secrets as defined by Section 3426.1 of the Civil Code ~~or confidential business information. The writing or information may only be granted confidentiality by the court if the material cannot be excised or redacted reasonably, confidentiality will not conceal information which may enable members of the public to protect themselves, and disclosure would cause~~ and the material cannot be excised or redacted reasonably.

(4) Disclosure would reveal confidential business information, the material cannot be excised or redacted reasonably, and disclosure would cause serious harm to the proponent requesting confidentiality in that disclosure of the information to competitors would have a clearly defined and serious competitive and economic harm to the proponent of nondisclosure.

~~(4)~~

(5) Disclosure would reveal confidential personal ~~information. The writing or information may only be granted confidentiality by the court if the material cannot be excised or redacted reasonably, and confidentiality will not conceal information which may enable members of the public to protect themselves.~~

~~(e) If the court finds a basis for a protective order pursuant to paragraph (1) or (2) of subdivision (d), but there are writings that indicate a public risk, hazard, or danger that would cause serious environmental damage, or indicate the posing of a serious threat to the health and safety of one or more persons or a serious threat of financial fraud on the public, the court either (1) shall not issue the protective order where the court finds the~~ information, the material cannot be excised or redacted reasonably, and the information is so inherently invasive of the privacy interests of the party involved as to outweigh any danger to the public from its nondissemination.

(e) If the court finds a basis for a protective order pursuant to subdivision (d), but finds that the

public risk, hazard, or danger indicated in the writings would cause serious and imminent danger to the public, ~~or (2) the court~~ shall issue the protective order and affirmatively immediately notify the Attorney General ~~of the state~~. Any notification shall also be subject to the protective order. The Attorney General shall comply with the order to maintain confidentiality. If the Attorney General determines that sufficient action cannot be taken to alleviate a serious and imminent danger to the public, and that disclosure is required to protect ~~the environment or~~ the health and safety of one or more persons, the Attorney General shall file a motion with the court that issued the protective order requesting that the court lift the order as to specified writings or information in order to allow for disclosure. If the court finds that sufficient action cannot be taken by the Attorney General to protect the public, and that disclosure is required as to specified writings or information in order to protect the health and safety of one or more persons, the court shall lift the order as to those specified writings or information.

- (f) (1) A person, other than a party to a contract or other agreement subject to this section, may contest an order, judgment, agreement, or contract that violates this section by motion in the court that entered the order or judgment, or by writ of mandate review pursuant to Section 1085, as appropriate. The motion or petition for the writ shall be filed within five years of the date on which the contract or other agreement subject to this section is executed, or within five years of the date of issuance of a protective order, whichever is later, and shall specify the basis upon which the violation is alleged, which may be upon information and belief. Upon such a motion or writ, the court may review the contested documents in camera. If the court finds there are writings or portions of writings of an agreement that are not properly confidential pursuant to this section, and it is reasonably feasible to excise or redact them, then the court shall make those portions not properly confidential subject to public disclosure.
- (2) Where a protective order has been issued in an action, the burden shall be on the petitioner to show cause for disclosure of the protected information. The inquiry on review shall be limited to the question of whether there was any abuse of discretion. An abuse of discretion is established if the reviewing court determines that the findings are not supported by substantial evidence in the light of the record.
- (3) Any person bringing an action under this subdivision who prevails in any part of his or her motion or writ shall be entitled to costs and reasonable attorney's fees from the party seeking protection.
- (4) If the court finds that the motion or writ contesting the order, judgment, agreement, or contract is frivolous or is brought solely to cause unnecessary delay under Section 128.5 or brought by a vexatious litigant as defined in Section 391, the court shall award costs and reasonable attorney's fees to the party seeking protection.

- (5) If more than one person files a motion or petitions for a writ pursuant to this subdivision, the court may consolidate the proceedings. If more than one motion or petition raises the same issue, the court shall consolidate the proceedings.
- (6) A motion or petition based on issues or facts asserted and decided in a prior motion or petition shall be dismissed unless the new motion or petition establishes to the satisfaction of the court newly discovered facts or circumstances supporting the new motion or petition.
- (g) Nothing in this section shall be deemed to limit a court's authority or discretion to prohibit the enforcement of a part or all of any confidentiality agreement, settlement agreement, stipulated agreement, or protective order in any other cases.
- (h) Nothing in this section shall be deemed to prohibit the entry or enforcement of that part of a confidentiality agreement, settlement agreement, or stipulated agreement between the parties which requires the nondisclosure of the amount of any money paid in settlement of a claim.
- (i) No attorney shall sell or offer for sale any information obtained through discovery to any member of the State Bar or to any other person in violation of the prohibitions on attorney solicitation, fee splitting, or financial arrangements among lawyers or nonlawyers included in Rules 1-320, 1-400, and 2-200 of the Rules of Professional Conduct adopted by the Supreme Court. Violation of this paragraph shall be a basis for professional discipline by the State Bar. This section does not alter or mitigate any existing rule or provision that may also be applicable to the conduct.
- (j) As used in this section:
- (1) "Environmental hazard" means a release or threatened release of a hazardous substance which poses a threat to public health or safety involving present or future danger of death, bodily injury, or health disability to human beings exposed to a hazardous substance release or threatened release.
- (2) "Financial fraud" means any fraudulent insurance practice or any fraudulent plan or scheme to sell an investment product to the general public without full disclosure of the risks associated with the purchase of the product, where the fraudulent plan or scheme would cause or has caused financial loss to a large class of persons or to the general public.
- ~~(3) "Defective product" includes, but is not limited to,~~

- (3) "Defective product" means a product that may be defective because of a defect in manufacturing, or design, or a failure to adequately warn the consumer of a hazard involved in the foreseeable use of the product, where the defect may result in personal injury to one or more persons.
- (k) Except for the fact of the settlement itself, and except for writings or information that ~~indicate allegations~~ is evidence of financial fraud, a defective product, or an environmental hazard, nothing in this section shall be construed to limit a court's discretion to issue a protective order for the nondisclosure of the terms and conditions of a confidentiality agreement, settlement agreement, or stipulated agreement.
- (l) Nothing in this section is intended to affect the confidentiality of communications, negotiations, or settlement discussions between mediation participants pursuant to Section 1153.5 or 1154 of, or pursuant to Chapter 2 (commencing with Section 1115) of Division 9 of, the Evidence Code.
- (m) Nothing in this section shall limit the adoption or enforcement of local rules which impose greater restrictions on the prohibition or limitations of confidentiality agreements or protective orders.
- (n) Nothing in this section is intended to affect the provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and its effect on settlement agreements entered into by public agencies, public officers or public employees.

Delaware

Source: Westlaw

Rules of the Supreme Court

Rule 9. The Record.

* * *

- (bb) Sealing of Court Records.** In any appeal except from Family Court, any document or other part of the record which has been sealed by order of the trial court shall remain sealed unless this Court, for good cause shown, shall authorize the unsealing of such document or record. In appeals originating in the Family Court, the record and documents filed with the Clerk of this Court and all proceedings shall remain confidential unless otherwise ordered by the Court, sua sponte, or for good cause shown upon application by a party. After the filing of any brief under seal, in any appeal except from Family Court, one original and one copy of a redacted brief should be filed with the Court within 15 days.

Chancery Court Rules

Rule 5. Service and Filing of Pleadings and Other Papers; Appearance and Withdrawal Thereof.

* * *

(g) Sealing of Court Records.

- (1) Except as otherwise provided in this Rule 5(g), all pleadings and other papers, including deposition transcripts and exhibits, answers to interrogatories and requests for admissions, and affidavits or certificates and exhibits thereto ("documents") filed with the Register in Chancery shall become a part of the public record of the proceedings before this Court.
- (2) Documents shall not be filed under seal unless and except to the extent that the person seeking such filing under seal shall have first obtained, for good cause shown, an order of this Court specifying those documents or categories of documents which should be filed under seal; provided, however, the Court may, in its discretion, receive and review any document in camera without public disclosure thereof and in connection with any such review, may determine whether good cause

exists for the filing of such document under seal.

- (3) The provisions of paragraph (2) of this Rule 5(g) notwithstanding, the Court may, in its discretion, by appropriate order, authorize the parties or other persons to designate documents to be filed under seal pending a judicial determination of the specific documents or categories of documents to which such restriction on public access shall continue to apply. In all such cases the Court shall require submission of the matter within ten days of such initial order and shall make such a determination as soon as practicable.
- (4) Whenever any brief or letter subject to Rule 171 is filed under seal with the Court because it would disclose information from a document which is otherwise required to be filed under seal pursuant to this Rule 5(g), the following procedures shall be followed:
 - (A) if the restricted documents had been designated by the party filing the brief or letter, the party shall also file a copy of the brief or letter for public inspection omitting only such restricted information which the party believes should continue to be sealed for good cause; or
 - (B) if the restricted document had been designated by another person, the party filing the brief or letter under seal shall give written notice to such person that a copy of the entire brief or letter will be filed for public inspection unless such person files, within 3 days of the filing of the brief or letter under seal, a copy of the brief or letter for public inspection omitting only such restricted information which such person believes should continue to be sealed for good cause; or
 - (C) if the brief or letter discloses information from a restricted document which had been designated by the party filing the brief or letter and also discloses information from a restricted document which had been designated by another person, the party filing the brief or letter under seal and such other person shall jointly prepare and file, within 3 days of the filing of the brief or letter under seal, a copy of the brief or letter for public inspection omitting only such restricted information as each of them believes should continue to be sealed for good cause.
- (5) Any person who seeks the continued sealing of any portion of a brief or letter pursuant to paragraph 4 of this Rule 5(g) shall also file a certification signed by such person's attorney of record (or, in the event such person is not represented by an attorney, signed by such person) that said attorney has personally reviewed the brief or letter filed under seal and that said attorney believes to the best of the attorney's knowledge, information and belief that the restricted information should continue to be sealed for good cause. Said certificate shall briefly set forth the reasons why said attorney believes that good cause exists for continued filing of the brief or letter under seal.

- (6) Any party who objects to the continued restriction on public access to any document filed under seal pursuant to paragraphs (2) or (3) of this Rule 5(g) or to any portion of a brief or letter filed under seal pursuant to paragraph (4) of this Rule 5(g) shall give written notice of such party's objection to the person who designated the document for filing under seal. To the extent that such person seeks to continue the restriction on public access to such document, said person shall serve and file an application within 7 days after receipt of such written notice setting forth the grounds for such continued restriction and requesting a judicial determination whether good cause exists therefor. In such circumstances, the Court shall promptly make such a determination.

- (7) The Register in Chancery shall promptly unseal any document or brief or letter in the absence of timely compliance with the provisions of this Rule 5(g). In addition, 30 days after final judgment has been entered without any appeal having been taken therefrom, the Register in Chancery shall send a notice to any person who designated a document to be filed under seal that such document shall be released from confidential treatment, unless that person makes application to the Court within 30 days for further confidential treatment for good cause shown.

[Amended effective March 31, 1999.]

Florida

Source: Westlaw

Florida Statutes

69.081. Sunshine in litigation; concealment of public hazards prohibited.

- (1) This section may be cited as the "Sunshine in Litigation Act."
- (2) As used in this section, "public hazard" means an instrumentality, including but not limited to any device, instrument, person, procedure, product, or a condition of a device, instrument, person, procedure or product, that has caused and is likely to cause injury.
- (3) Except pursuant to this section, no court shall enter an order or judgment which has the purpose or effect of concealing a public hazard or any information concerning a public hazard, nor shall the court enter an order or judgment which has the purpose or effect of concealing any information which may be useful to members of the public in protecting themselves from injury which may result from the public hazard.
- (4) Any portion of an agreement or contract which has the purpose or effect of concealing a public hazard, any information concerning a public hazard, or any information which may be useful to members of the public in protecting themselves from injury which may result from the public hazard, is void, contrary to public policy, and may not be enforced.
- (5) Trade secrets as defined in s. 688.002 which are not pertinent to public hazards shall be protected pursuant to chapter 688.
- (6) Any substantially affected person, including but not limited to representatives of news media, has standing to contest an order, judgment, agreement, or contract that violates this section. A person may contest an order, judgment, agreement, or contract that violates this section by motion in the court that entered the order or judgment, or by bringing a declaratory judgment action pursuant to chapter 86.
- (7) Upon motion and good cause shown by a party attempting to prevent disclosure of information or materials which have not previously been disclosed, including but not limited to alleged trade secrets, the court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions thereof consist of information concerning a public

hazard or information which may be useful to members of the public in protecting themselves from injury which may result from a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public regarding the public hazard.

- (8) (a) Any portion of an agreement or contract which has the purpose or effect of concealing information relating to the settlement or resolution of any claim or action against the state, its agencies, or subdivisions or against any municipality or constitutionally created body or commission is void, contrary to public policy, and may not be enforced. Any person has standing to contest an order, judgment, agreement, or contract that violates this section. A person may contest an order, judgment, agreement, or contract that violates this subsection by motion in the court that entered such order or judgment, or by bringing a declaratory judgment action pursuant to chapter 86.
- (b) Any person having custody of any document, record, contract, or agreement relating to any settlement as set forth in this section shall maintain said public records in compliance with chapter 119.
- (c) Failure of any custodian to disclose and provide any document, record, contract, or agreement as set forth in this section shall be subject to the sanctions as set forth in chapter 119.

This subsection does not apply to trade secrets protected pursuant to chapter 688, proprietary confidential business information, or other information that is confidential under state or federal law.

- (9) A governmental entity, except a municipality or county, that settles a claim in tort which requires the expenditure of public funds in excess of \$5,000, shall provide notice, in accordance with the provisions of chapter 50, of such settlement, in the county in which the claim arose, within 60 days of entering into such settlement; provided that no notice shall be required if the settlement has been approved by a court of competent jurisdiction.

Georgia

Source: Westlaw

Uniform Superior Court Rules

Rule 21. Limitation of Access to Court Files.

All court records are public and are to be available for public inspection unless public access is limited by law or by the procedure set forth below.

21.1 Motions and Orders. Upon motion by any party to any civil action, after hearing, the court may limit access to court files respecting that action. The order of limitation shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for limitation.

21.2 Finding of Harm. An order limiting access shall not be granted except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.

21.3 Ex Parte Orders. Under compelling circumstances, a motion for temporary limitation of access, not to exceed 30 days, may be granted, ex parte, upon motion accompanied by supporting affidavit.

21.4 Review. An order limiting access may be reviewed by interlocutory application to the Supreme Court. [Amended effective May 15, 1997.]

21.5 Amendments. Upon notice to all parties of record and after hearing, an order limiting access may be reviewed and amended by the court entering such order or by the Supreme Court at any time on its own motion or upon the motion of any person for good cause.

Idaho

Source: Westlaw

Court Administrative Rules

Rule 32. Records of the Judicial Department -- examination, Inspection and Copying -- exemption from and Limitations on Disclosure.

* * *

(f) Other Prohibitions or Limitations on Disclosure. Records subject to inspection, examination and copying under paragraph (c) of this Rule and not exempt from disclosure by statute or paragraph (d) of this Rule, may be prohibited or limited from disclosure by order of the court on a case-by-case basis. In ruling on whether specific records should be disclosed or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates. If, the court prohibits or limits a disclosure to protect predominating privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests. Before a court may enter an order denying disclosure or sealing documents or materials from disclosure under paragraph (l), it must also make one or more of the following determinations in writing:

- (1) That the documents or materials contain highly intimate or embarrassing facts or statements, the publication of which would be highly objectionable to a reasonable person, or
- (2) That the documents or materials contain facts or statements that the court finds might be libelous, or
- (3) That the documents or materials contain facts or statements, the dissemination or publication of which would reasonably result in economic or financial loss or harm to a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or
- (4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals.

In applying these rules, the court is referred to the traditional legal concepts in the law of invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for

shielding intimate or embarrassing material about persons.

* * *

(l) Motion Regarding the Sealing of Records. Any interested person or the court on its own motion may move to seal or unseal a part or all of the records in any judicial proceeding. The custodian judge shall hold a hearing on the motion after the moving party gives notice of the hearing to all parties to the judicial proceeding and any other interested party designated by the custodian judge. The custodian judge shall issue a written decision on the motion to seal or unseal records which may be reconsidered, altered or amended by the court at any time.

[Amended effective August 21, 1994; August 8, 1995; July 1, 1997; July 1, 1998; July 1, 1999.]

Illinois

Source: Westlaw

1999 Illinois House Bill 3239 Illinois 91st General Assembly 1999-2000 Regular Session

[N.B.: This bill was passed by the Illinois House of Representatives, but has not been passed by the Senate. It is included in this collection solely as a sample, to illustrate the most recent approaches taken to the secrecy problem by legislators.]

Introduced January 18, 2000 by Rep. Brosnahan.
Passed House on March 1, 2000 and sent to Senate.
Referred to Senate Committee on Rules on March 6, 2000.

An Act to amend the Code of Civil Procedure by adding Section 2-1306.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Code of Civil Procedure is amended by adding Section 2-1306 as follows:

Sec. 2-1306. Sunshine in litigation.

- (a) As used in this Section, "public hazard" means an instrumentality, including but not limited to a device, an instrument, a person, a procedure, a product, or a condition of a device, an instrument, a person, a procedure, or a product, that has caused and is likely to cause injury.
- (b) Except under this Section, no court shall enter an order or a judgment that has the purpose or effect of concealing a public hazard or any information concerning a public hazard, nor shall the court enter an order or a judgment that has the purpose or effect of concealing any information that may be useful to members of the public in protecting themselves from injury that may result from the public hazard.
- (c) Any portion of an agreement or a contract that has the purpose or effect of concealing a public hazard, any information concerning a public hazard, or any information that may be useful to members of the public in protecting themselves from injury that may result from the public hazard is void and contrary to public policy and may not be enforced.

- (d) Any substantially affected person, including but not limited to representatives of news media, has standing to contest an order, a judgment, an agreement, or a contract that violates this Section. A person may contest an order, a judgment, an agreement, or a contract that violates this Section by motion in the court that entered the order or judgment or by bringing an action for declaratory judgment.
- (e) Upon motion and good cause shown by a party attempting to prevent disclosure of information or materials that have not previously been disclosed, including but not limited to alleged trade secrets, the court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard or information that may be useful to members of the public in protecting themselves from injury that may result from a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public regarding the public hazard.
- (f) This Section applies to causes of action accruing on or after July 1, 2000.

Section 99. Effective date. This Act takes effect July 1, 2000.

Indiana

Source: Westlaw

Indiana Code

5-14-3-5.5 Sealing of certain records by court; hearing; notice.

Sec. 5.5. (a) This section applies to a judicial public record.

- (b) As used in this section, "judicial public record" does not include a record submitted to a court for the sole purpose of determining whether the record should be sealed.
- (c) Before a court may seal a public record not declared confidential under section 4(a) of this chapter, it must hold a hearing at a date and time established by the court. Notice of the hearing shall be posted at a place designated for posting notices in the courthouse.
- (d) At the hearing, parties or members of the general public must be permitted to testify and submit written briefs. A decision to seal all or part of a public record must be based on findings of fact and conclusions of law, showing that the remedial benefits to be gained by effectuating the public policy of the state declared in section 1 of this chapter are outweighed by proof by a preponderance of the evidence by the person seeking the sealing of the record that:
 - (1) a public interest will be secured by sealing the record;
 - (2) dissemination of the information contained in the record will create a serious and imminent danger to that public interest;
 - (3) any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record;
 - (4) there is a substantial probability that sealing the record will be effective in protecting the public interest against the perceived danger; and
 - (5) it is reasonably necessary for the record to remain sealed for a period of time.

Sealed records shall be unsealed at the earliest possible time after the circumstances necessitating the sealing of the records no longer exist.

Kentucky

Source: Westlaw

Kentucky Revised Statutes

§ 224.10-210 Records open to public inspection -- Confidential nature of certain data.

Any record or other information furnished to or obtained by the [Natural Resources Cabinet (an executive branch agency)] shall be open to reasonable public inspection except that any record or information, not relating to emission or effluent data, which constitutes a trade secret or confidential business information and is designated as such by the cabinet, upon a satisfactory showing by the owner or operator in accordance with the rules and regulations of the cabinet shall be confidential and for the use only of the cabinet and other departments, agencies, and officers of the Commonwealth in the performance of their duties. No record or information designated by the owner to be either a trade secret or confidential business information but not designated as such by the cabinet due to the failure of the owner to make a satisfactory showing of confidentiality shall be released to the public or to any other agency, department, or officer of the Commonwealth without providing the owner fifteen (15) days written notice. Nothing herein shall be construed to prevent the use of such records or information by any department, agency, or officer of the Commonwealth in compiling or publishing reports, analyses, or summaries relating to the general condition of the natural environment, nor shall anything herein prevent the disclosure of any record or other information to any agency or representative of the United States or to any subdivision of the Commonwealth for the purposes of administration or enforcement of any federal or local pollution control law. No such report, analysis, or summary shall, directly or indirectly, reveal information otherwise confidential under this section.

§ 224.10-440 Hearings -- Reports -- Rights of parties -- Records -- Hearings to be public.

- (1) All hearings under this chapter shall be held before a qualified hearing officer, who may be a full-time employee of the cabinet, serve by contract, or be paid on a per diem basis in the discretion of the cabinet. After the conclusion of the hearing, the hearing officer shall within thirty (30) days make to the secretary a report and recommended order which shall contain a finding of fact and a conclusion of law. If the secretary finds upon written request of the hearing officer that additional time is needed, the secretary may grant an extension. The hearing officer shall serve a copy of his report and recommended order upon all parties of record to the proceeding, and they shall be granted the right to file within fourteen (14) days of receipt exceptions thereto. The secretary shall consider the report, exceptions, and recommended order and decide the case. The decision shall

be served by mail upon all parties and shall be a final order of the cabinet.

- (2) Any party to a hearing under this subsection may be represented by counsel, may make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The record of the hearing shall be open to public inspection, and copies thereof shall be made available to any person upon payment of the actual cost of reproducing the original except as provided in KRS 224.10-210.
- (3) All hearings conducted pursuant to this chapter shall be open to the public except as provided in KRS 224.10-210.

Louisiana

Source: Westlaw

Louisiana Code of Civil Procedure

Art. 1426. Protective orders

- A. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
- (1) That the discovery not be had.
 - (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place.
 - (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery.
 - (4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters.
 - (5) That discovery be conducted with no one present except persons designated by the court.
 - (6) That a deposition after being sealed be opened only by order of the court.
 - (7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.
 - (8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the courts.
- B. If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Article 1469 apply to the award of expenses incurred in relation to the motion.
- C. No provision of this Article authorizes a court to issue a protective order preventing or limiting

discovery or ordering records sealed if the information or material sought to be protected relates to a public hazard or relates to information which may be useful to members of the public in protecting themselves from injury that might result from such public hazard, unless such information or material sought to be protected is a trade secret or other confidential research, development, or commercial information.

- D. Any portion of an agreement or contract which has the purpose or effect of concealing a public hazard, any information relating to a public hazard, or any information which may be useful to members of the public in protecting themselves from injury that might result from a public hazard is null and shall be void and unenforceable as contrary to public policy, unless such information is a trade secret or other confidential research, development, or commercial information.
- E. Any substantially affected person or any representative of the news media has standing to contest any order or judgment that violates the provisions of Paragraph C of this Article or any agreement or contract contrary to public policy pursuant to Paragraph D of this Article.

Massachusetts

Source: Westlaw

Massachusetts Rules of Court Trial Court Rules VIII. Uniform Rules on Impoundment Procedure

Rule 1. Scope And Applicability of Rules.

These rules govern impoundment in civil proceedings in every Department of the Trial Court.

As used herein, "impoundment" shall mean the act of keeping some or all of the papers, documents, or exhibits, or portions thereof, in a case separate and unavailable for public inspection. It shall also be deemed to include the act of keeping dockets, indices, and other records unavailable for public inspection. The term "clerk" shall mean Clerk-Magistrate, Register of Probate, Recorder of the Land Court, and their assistants.

Except as otherwise provided in Rule 11, these rules shall be inapplicable to court papers, documents, exhibits, dockets, indices, and other records which are required to be impounded by statute, court rule, or standing order.

Where impoundment is sought in connection with discovery, these rules shall be applied in a manner consistent with the provisions of Rule 26(c) of the Massachusetts Rules of Civil Procedure, Rule 26(c) of the District/Municipal Courts Rules of Civil Procedure, and Rule 26(c) of the Massachusetts Rules of Domestic Relations Procedure.

These rules shall not be construed to deprive a person of any rights or remedies regarding impoundment which are otherwise available under law.

Rule 2. Motion for Impoundment.

A request for impoundment shall be made by written motion which shall state the grounds therefor and shall include a written statement of reasons in support thereof. The motion shall describe with particularity the material sought to be impounded and the period of time for which impoundment is sought.

A motion for impoundment shall be accompanied by affidavit in support thereof. Unless otherwise provided herein, the rules governing motions and affidavits in civil proceedings generally shall apply to requests for impoundment.

An order of impoundment may be requested prior to the filing of the material sought to be impounded.

Rule 3. Ex Parte Impoundment.

An ex parte order of impoundment may be granted by the court without notice only upon written motion supported by affidavit in the manner provided in Rule 2 and only upon a showing that immediate and irreparable injury may result before a party or interested third person can be heard in opposition. An ex parte order of impoundment shall be endorsed with the date of issuance; shall be filed forthwith in the clerk's office and entered of record; and shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed, the court extends the order.

If an order of impoundment is granted without notice, the matter shall be set down for hearing at the earliest possible time, and in any event within ten days. On two days' notice to the party who obtained the order of impoundment without notice or on such shorter notice as the court may prescribe, a party or interested third person may move for modification or termination.

An ex parte order of impoundment may be requested prior to the filing of the material sought to be impounded.

Rule 4. Notice.

Service of the motion for impoundment and affidavit shall be made on all parties in accordance with Rule 5 of the Massachusetts Rules of Civil Procedure. In the event an order of impoundment is sought at the time of, or prior to, service of the original complaint, service shall be made in accordance with Rule 4 of the Massachusetts Rules of Civil Procedure. The time periods for hearing shall be as set forth in Rule 6 of the Massachusetts Rules of Civil Procedure.

The court may, prior to hearing, order notice to be given to interested third persons who may not be parties to the action, including persons named in the material sought to be impounded. Notice to such interested third persons shall be given in such manner as the court may direct.

Service shall be proved by affidavit containing a particular statement thereof, including the names and addresses of all parties and interested third persons who have been given notice.

Rule 5. Opposition to Request for Impoundment

Any party or interested third person who has been notified in accordance with Rule 4 of these rules may serve opposing affidavits not later than one day before the hearing, unless the court permits them to be served at some other time. Service of opposing affidavits shall be made in accordance with Rule 5 of the Massachusetts Rules of Civil Procedure.

Rule 6. Motion by Third Person to Be Heard.

A person who has not been notified in accordance with Rule 4 of these rules and who desires to be heard in order to request or oppose impoundment may serve on all parties a written motion supported by affidavit. If impoundment is desired, the provisions of Rule 2 of these rules concerning motions and affidavits and Rule 4 of these rules concerning notice shall be applicable. The time periods for service of the motion to be heard and for setting of a hearing date shall be as set forth in Rule 6 of the Massachusetts Rules of Civil Procedure.

Rule 7. Hearing.

An order of impoundment may be entered by the court, after hearing, for good cause shown and in accordance with applicable law. In determining good cause, the court shall consider all relevant factors, including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason(s) for the request. Agreement of all parties or interested third persons in favor of impoundment shall not, in itself, be sufficient to constitute good cause.

Interested third persons who are notified in accordance with Rule 4 of these rules and those third persons who have filed motions to be heard in accordance with Rule 6 of these rules may, in the court's discretion, be given an opportunity to be heard.

Where a public hearing may risk disclosure of the information sought to be impounded, the court may close the hearing to the public. If a hearing is closed to the public, a record of the proceedings shall be preserved stenographically or by a recording device. Appropriate steps shall be taken to preserve the confidentiality of the record.

Rule 8. Order of Impoundment.

An order of impoundment, whether ex parte or after notice, may be made only upon written findings. An order of impoundment shall specifically state what material is to be impounded, and, where appropriate, may specify how impoundment is to be implemented. An order of impoundment shall be endorsed with the date of issuance and shall specify the duration of the order.

In its order, the court may allow persons other than those described in Rule 9 of these rules to have access to impounded material, and may order that appropriate deletions or notations be made in the civil docket and indices kept by the clerk.

Rule 9. Clerk's Duties.

Upon entry of an order of impoundment, the clerk shall make a notation in the civil docket

indicating what material has been impounded. All impounded material shall be kept separate from other papers in the case and shall not be available for public inspection. Such impounded material shall be available to the court, the attorneys of record, the parties to the case, and the clerk, unless otherwise ordered by the court.

Upon expiration or other termination of the order of impoundment, the material shall be returned to the file, unless other arrangements have been made, and the docket marked accordingly.

Rule 10. Modification or Termination.

A party or any interested third person, whether or not notified under Rule 4 of these rules, may, by motion supported by affidavit, seek to modify or terminate an order of impoundment. Such motion shall be served in accordance with the provisions of Rule 5 of the Massachusetts Rules of Civil Procedure upon all parties, all interested third persons who were notified pursuant to Rule 4 of these rules, and any other person as ordered by the court.

No order of impoundment may be modified or terminated, except upon order of the court and upon written findings in support thereof.

Rule 11. Material Impounded by Statute or Rule.

This rule applies to requests for relief from impoundment in cases where material is required to be impounded by statute, court rule, or standing order, except where a different procedure is otherwise provided.

Relief from impoundment may be sought by motion supported by affidavit, and shall be granted by the court only upon written findings. The procedure otherwise set forth in these rules shall govern requests for relief from impoundment to the extent practicable.

Rule 12. Review.

An order impounding or refusing to impound material shall be subject to review by a single justice of an appellate court in accordance with provisions of law and consistent with the procedures established in Rule 1:15 of the Rules of the Supreme Judicial Court.

Michigan

Source: Westlaw

Michigan Court Rules of 1985

Rule 8.105. General Duties of Clerks.

- (A) Office Hours. The office of the clerk of every court of record must be open, and the clerk or deputy clerk must be in attendance, during business hours on all days except Saturdays, Sundays, and legal holidays, and at other times that the court is in session.
- (B) Filing of Papers. The clerk shall endorse on every paper the date on which it is filed. The clerk shall keep a file folder for each action, bearing the civil action number assigned to it, in which the clerk shall keep all pleadings, process, orders, and judgments filed in the action. The clerk may not permit any record or paper on file in the clerk's office to be taken from it without the order of the court.
- (C) Access to Files.
 - (1) Unless access to a file is restricted by statute, court rule, or an order entered pursuant to subrule (D), any person may inspect pleadings and other papers in the clerk's office and may obtain copies as provided in subrule (C)(2) and (C)(3).
 - (2) If a person wishes to obtain copies of papers in a file, the clerk shall provide copies upon receipt of the cost of reproduction. If the clerk prefers, he or she may permit the requesting person to make copies at his or her own expense under the direct supervision of the clerk.
 - (3) A court, by administrative order adopted pursuant to MCR 8.112(B), may make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions.
- (D) Sealed Records.
 - (1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals court records, in whole or in part, in any action or proceeding, unless
 - (a) a party has filed a written motion that identifies the specific interest to be protected,

- (b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and
 - (c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.
- (2) In determining whether good cause has been shown, the court must consider the interests of the public as well as of the parties.
 - (3) The court must provide any interested person the opportunity to be heard concerning the sealing of the record.
 - (4) For purposes of this rule, "court records" includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C).
 - (5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.
 - (6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.
 - (7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.
- (E) Notice of Judgments, Orders, and Opinions. Notice of a judgment, final order, written opinion or findings filed or entered in a civil action in a court of record must be given forthwith in writing by the court clerk to the attorneys of record in the case, in the manner provided in MCR 2.107.
- (F) Records Kept by the Clerk.
- (1) Suitable indexes of civil actions must be kept by the clerk under the court's direction. The clerk shall keep other records in the form and style the court prescribes.
 - (2) The clerk shall keep, in such form as may be prescribed by the court, the original of every final judgment, written opinion, finding, appealable order, or order affecting title to or lien on real or personal property, and any other order which the court may direct to be kept.

- (G) Filing of Assurance of Discontinuance Under MCL 445.870; MSA 19.416(120). The clerk of every judicial circuit shall, without charge, receive and file an assurance of discontinuance accepted by the Attorney General under MCL 445.870; MSA 19.416(120).
- (H) Reporting Duties.
- (1) The clerk of every court shall submit reports and records as required by statute, including but not limited to the duties prescribed by:
- (i) MCL 722.717; MSA 25.497 (paternity records);
 - (ii) MCL 769.16a; MSA 28.1086(1) and MCL 712A.18(16); MSA 27.3178(598.18)(16) (criminal and juvenile-offense dispositions and dismissals);
 - (iii) MCL 333.2864; MSA 14.15(2864) (divorce records);
 - (iv) MCL 333.16243(2); MSA 14.15(16243)(2) (medical malpractice judgments); and
 - (v) MCL 257.732; MSA 9.2432 and MCL 257.321a; MSA 9.2021(1) (traffic offenses).
- (2) The clerk of every court shall submit reports as required by the State Court Administrative Office.

Staff Comment to 1991 Amendment:

“The 1991 amendment added a subrule to govern the sealing of records. It was based on rules in effect in other jurisdictions, notably New York and Texas. The subrule recognizes the presumption that court records are to be open to the general public, and that the sealing of court records is a matter of public concern. The intent of the rule is to insure consistency and confidence in the way in which such matters are handled.”

Nevada

Source: Westlaw

Nevada Revised Statutes

41.0385 Claims made against state agencies and local governments for tortious conduct: Annual filing of summary of claims with secretary of state or clerk of local government; summaries of claims are public records.

1. On or before January 10 of each year, for the preceding calendar year, each agency represented by the attorney general shall submit to the attorney general a summary of all claims made against the agency for tortious conduct. On or before February 1 of each year, the attorney general shall compile the summaries submitted pursuant to this subsection and file the compilation with the secretary of state. The compilation is a public record open to inspection.
2. On or before February 1 of each year, for the preceding calendar year, the district attorney, city attorney or other attorney on behalf of each local government shall compile and file with the clerk of its governing body a summary of all claims made against the government for tortious conduct. The summary is a public record open to inspection.
3. The claims summarized pursuant to this section must be arranged by category of wrong alleged, such as battery, false arrest, negligent injury, wrongful death, and the like, and divided by status into:
 - (a) Claims paid;
 - (b) Judgments entered but unpaid; and
 - (c) Claims pending.

A total must be shown for each status in each category, and a total overall for each status and each category.

4. For each claim must be shown:
 - (a) The name of the claimant;
 - (b) The amount paid, reduced to judgment, or claimed, as the case may be, including fees and costs determined; and
 - (c) The type of wrong alleged.
5. A court order sealing the record of a proceeding does not prevent the disclosure of the information

required by this section, or excuse the attorney for the state or local government from providing that information.

New Jersey

Source: www.judiciary.state.nj.us/rules/

New Jersey Rules of Court

Rule 1:2. Conduct of Proceedings Generally

1:2-1. Proceedings in Open Court; Robes

All trials, hearings of motions and other applications, pretrial conferences, arraignments, sentencing conferences (except with members of the probation department) and appeals shall be conducted in open court unless otherwise provided by rule or statute. If a proceeding is required to be conducted in open court, no record of any portion thereof shall be sealed by order of the court except for good cause shown, which shall be set forth on the record. Settlement conferences may be heard at the bench or in chambers. Every judge shall wear judicial robes during proceedings in open court.

[Interpreted in *Hammock v. Hoffman-LaRoche, Inc.*, 662 A.2d 546 (N.J. 1995).]

RULE 4:10. PRETRIAL DISCOVERY

4:10-3. Protective Orders

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, but not limited to, one or more of the following:

- (a) That the discovery not be had;
- (b) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (c) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (d) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (e) That discovery be conducted with no one present except persons designated by the court;

- (f) That a deposition after being sealed be opened only by order of the court;
- (g) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (h) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of R. 4:23-1(c) apply to the award of expenses incurred in relation to the motion.

[Interpreted in *Hammock v. Hoffman-LaRoche, Inc.*, 662 A.2d 546 (N.J. 1995).]

New York

Source: Westlaw

Uniform Rules for the New York State Trial Courts

§ 216.1 Sealing of Court Records

- (a) Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and an opportunity to be heard.
- (b) For purposes of this rule, "court records" shall include all documents and records of any nature filed with the clerk in connection with the action. Documents obtained through disclosure and not filed with the clerk shall remain subject to protective orders as set forth in CPLR 3103(a).

Civil Practice Law and Rules

§ 3103. Protective orders

- (a) Prevention of abuse. The court may at any time on its own initiative, or on motion of any party or of any person from whom discovery is sought, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the courts.
- (b) Suspension of disclosure pending application for protective order. Service of a notice of motion for a protective order shall suspend disclosure of the particular matter in dispute.
- (c) Suppression of information improperly obtained. If any disclosure under this article has been improperly or irregularly obtained so that a substantial right of a party is prejudiced, the court, on motion may make an appropriate order, including an order that the information be suppressed.

North Carolina

Source: Westlaw

General Statutes of North Carolina

§ 132-1.3 Settlements made by or on behalf of public agencies, public officials, or public employees; public records.

- (a) Public records, as defined in G.S. 132-1, shall include all settlement documents in any suit, administrative proceeding or arbitration instituted against any agency of North Carolina government or its subdivisions, as defined in G.S. 132-1, in connection with or arising out of such agency's official actions, duties or responsibilities, except in an action for medical malpractice against a hospital facility. No agency of North Carolina government or its subdivisions, nor any counsel, insurance company or other representative acting on behalf of such agency, shall approve, accept or enter into any settlement of any such suit, arbitration or proceeding if the settlement provides that its terms and conditions shall be confidential, except in an action for medical malpractice against a hospital facility. No settlement document sealed under subsection (b) of this section shall be open for public inspection.
- (b) No judge, administrative judge or administrative hearing officer of this State, nor any board or commission, nor any arbitrator appointed pursuant to the laws of North Carolina, shall order or permit the sealing of any settlement document in any proceeding described herein except on the basis of a written order concluding that (1) the presumption of openness is overcome by an overriding interest and (2) that such overriding interest cannot be protected by any measure short of sealing the settlement. Such order shall articulate the overriding interest and shall include findings of fact that are sufficiently specific to permit a reviewing court to determine whether the order was proper.
- (c) Except for confidential communications as provided in G.S. 132-1.1, the term "settlement documents," as used herein, shall include all documents which reflect, or which are made or utilized in connection with, the terms and conditions upon which any proceedings described in this section are compromised, settled, terminated or dismissed, including but not limited to correspondence, settlement agreements, consent orders, checks, and bank drafts.

Oregon

Source: Westlaw

Oregon Revised Statutes

30.402. Prohibition of confidential settlements and compromises; exception.

- (1) No public body, or officer, employee or agent of a public body, who is a defendant in an action under ORS 30.260 to 30.300, or who is a defendant in an action under ORS 294.100, shall enter into any settlement or compromise of the action if the settlement or compromise requires that the terms of the settlement or compromise be confidential.
- (2) Notwithstanding subsection (1) of this section, the court may, after an expedited examination in chambers, order that terms and conditions of a settlement or compromise of an action be confidential if the court determines, by written findings, that specific privacy interests of a private individual outweigh the public's interest in the terms of the settlement or compromise.
- (3) Any public body, or officer, employee or agent of a public body, who is a defendant in an action under ORS 30.260 to 30.300, or who is a defendant in an action under ORS 294.100, shall file with the court a full and complete disclosure of the terms and conditions of any settlement or compromise of the claims against the public body, its officers, employees or agents. The disclosure shall be filed prior to the dismissal of the action.
- (4) For the purposes of this section:
 - (a) "Action" means a legal proceeding that has been commenced as provided in ORCP 3; and
 - (b) "Public body" has that meaning given in ORS 30.260.

Texas

Source: Westlaw

Texas Rules of Civil Procedure

Rule 76a. Sealing Court Records.

1. Standard for Sealing Court Records. Court records may not be removed from court files except as permitted by statute or rule. No court order or opinion issued in the adjudication of a case may be sealed. Other court records, as defined in this rule, are presumed to be open to the general public and may be sealed only upon a showing of all of the following:

- (a) a specific, serious and substantial interest which clearly outweighs:
 - (1) this presumption of openness;
 - (2) any probable adverse effect that sealing will have upon the general public health or safety;
- (b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

2. Court Records. For purposes of this rule, court records means:

- (a) all documents of any nature filed in connection with any matter before any civil court, except:
 - (1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;
 - (2) documents in court files to which access is otherwise restricted by law;
 - (3) documents filed in an action originally arising under the Family Code.
- (b) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government.
- (c) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of

government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.

- 3. Notice.** Court records may be sealed only upon a party's written motion, which shall be open to public inspection. The movant shall post a public notice at the place where notices for meetings of county governmental bodies are required to be posted, stating: that a hearing will be held in open court on a motion to seal court records in the specific case; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed; and the identity of the movant. Immediately after posting such notice, the movant shall file a verified copy of the posted notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.
- 4. Hearing.** A hearing, open to the public, on a motion to seal court records shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted. Any party may participate in the hearing. Non-parties may intervene as a matter of right for the limited purpose of participating in the proceedings, upon payment of the fee required for filing a plea in intervention. The court may inspect records in camera when necessary. The court may determine a motion relating to sealing or unsealing court records in accordance with the procedures prescribed by Rule 120a.
- 5. Temporary Sealing Order.** A temporary sealing order may issue upon motion and notice to any parties who have answered in the case pursuant to Rules 21 and 21a upon a showing of compelling need for specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant before notice can be posted and a hearing held as otherwise provided herein. The temporary order shall set the time for the hearing required by paragraph 4 and shall direct that the movant immediately give the public notice required by paragraph 3. The court may modify or withdraw any temporary order upon motion by any party or intervenor, notice to the parties, and hearing conducted as soon as practicable. Issuance of a temporary order shall not reduce in any way the burden of proof of a party requesting sealing at the hearing required by paragraph 4.
- 6. Order on Motion to Seal Court Records.** A motion relating to sealing or unsealing court records shall be decided by written order, open to the public, which shall state: the style and number of the case; the specific reasons for finding and concluding whether the showing required by paragraph 1 has been made; the specific portions of court records which are to be sealed; and the time period for which the sealed portions of the court records are to be sealed. The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.
- 7. Continuing Jurisdiction.** Any person may intervene as a matter of right at any time before or after

judgment to seal or unseal court records. A court that issues a sealing order retains continuing jurisdiction to enforce, alter, or vacate that order. An order sealing or unsealing court records shall not be reconsidered on motion of any party or intervenor who had actual notice of the hearing preceding issuance of the order, without first showing changed circumstances materially affecting the order. Such circumstances need not be related to the case in which the order was issued. However, the burden of making the showing required by paragraph 1 shall always be on the party seeking to seal records.

- 8. Appeal.** Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the case and a final judgment which may be appealed by any party or intervenor who participated in the hearing preceding issuance of such order. The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings.
- 9. Application.** Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to:
 - (a) all court records filed or exchanged after the effective date;
 - (b) any motion to alter or vacate an order restricting access to court records, issued before the effective date.

Texas Government Code

§ 22.010. Sealing of Court Records

The supreme court shall adopt rules establishing guidelines for the courts of this state to use in determining whether in the interest of justice the records in a civil case, including settlements, should be sealed.

Texas Rules of Judicial Administration

Rule 12. Public Access to Judicial Records

- 12.1 Policy.** The purpose of this rule is to provide public access to information in the judiciary consistent with the mandates of the Texas Constitution that the public interests are best served by open courts and by an independent judiciary. The rule should be liberally construed to

achieve its purpose.

12.2 Definitions. In this rule:

- (a) Judge means a regularly appointed or elected judge or justice.
- (b) Judicial agency means an office, board, commission, or other similar entity that is in the Judicial Department and that serves an administrative function for a court. A task force or committee created by a court or judge is a "judicial agency".
- (c) Judicial officer means a judge, former or retired visiting judge, referee, commissioner, special master, court-appointed arbitrator, or other person exercising adjudicatory powers in the judiciary. A mediator or other provider of non-binding dispute resolution services is not a "judicial officer".
- (d) Judicial record means a record made or maintained by or for a court or judicial agency in its regular course of business but not pertaining to its adjudicative function, regardless of whether that function relates to a specific case. A record of any nature created, produced, or filed in connection with any matter that is or has been before a court is not a judicial record. A record is a document, paper, letter, map, book, tape, photograph, film, recording, or other material, regardless of electronic or physical form, characteristics, or means of transmission.
- (e) Records custodian means the person with custody of a judicial record determined as follows:
 - (1) The judicial records of a court with only one judge, such as any trial court, are in the custody of that judge. Judicial records pertaining to the joint administration of a number of those courts, such as the district courts in a particular county or region, are in the custody of the judge who presides over the joint administration, such as the local or regional administrative judge.
 - (2) The judicial records of a court with more than one judge, such as any appellate court, are in the custody of the chief justice or presiding judge, who must act under this rule in accordance with the vote of a majority of the judges of the court. But the judicial records relating specifically to the service of one such judge or that judge's own staff are in the custody of that judge.
 - (3) The judicial records of a judicial officer not covered by subparagraphs (1) and (2) are in the custody of that officer.
 - (4) The judicial records of a judicial agency are in the custody of its presiding officer, who must act under this rule in accordance with agency policy or the vote of a majority of the

members of the agency.

12.3 Applicability. This rule does not apply to:

- (a) records or information to which access is controlled by:
 - (1) a state or federal court rule, including:
 - (A) a rule of civil or criminal procedure, including Rule 76a, Texas Rules of Civil Procedure;
 - (B) a rule of appellate procedure;
 - (C) a rule of evidence;
 - (D) a rule of administration;
 - (2) a state or federal court order not issued merely to thwart the purpose of this rule;
 - (3) the Code of Judicial Conduct;
 - (4) Chapter 552, Government Code, or another statute or provision of law;
- (b) records or information to which Chapter 552, Government Code, is made inapplicable by statute, rule, or other provision of law, other than Section 552.003(1)(B);
- (c) records or information relating to an arrest or search warrant or a supporting affidavit, access to which is controlled by:
 - (1) a state or federal court rule, including a rule of civil or criminal procedure, appellate procedure, or evidence; or
 - (2) common law, court order, judicial decision, or another provision of law
- (d) elected officials other than judges.

12.4 Access to Judicial Records.

- (a) Generally. Judicial records other than those covered by Rules 12.3 and 12.5 are open to the general public for inspection and copying during regular business hours. But this rule does not require a court, judicial agency, or records custodian to:

- (1) create a record, other than to print information stored in a computer;
 - (2) retain a judicial record for a specific period of time;
 - (3) allow the inspection of or provide a copy of information in a book or publication commercially available to the public; or
 - (4) respond to or comply with a request for a judicial record from or on behalf of an individual who is imprisoned or confined in a correctional facility as defined in Section 1.07(a), Penal Code, or in any other such facility in any state, federal, or foreign jurisdiction.
- (b) Voluntary Disclosure. A records custodian may voluntarily make part or all of the information in a judicial record available to the public, subject to Rules 12.2(e)(2) and 12.2(e)(4), unless the disclosure is expressly prohibited by law or exempt under this rule, or the information is confidential under law. Information voluntarily disclosed must be made available to any person who requests it.

12.5 Exemptions from Disclosure. The following records are exempt from disclosure under this rule:

- (a) Judicial Work Product and Drafts. Any record that relates to a judicial officer's adjudicative decision-making process prepared by that judicial officer, by another judicial officer, or by court staff, an intern, or any other person acting on behalf of or at the direction of the judicial officer.
- (b) Security Plans. Any record, including a security plan or code, the release of which would jeopardize the security of an individual against physical injury or jeopardize information or property against theft, tampering, improper use, illegal disclosure, trespass, unauthorized access, or physical injury.
- (c) Personnel Information. Any personnel record that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy.
- (d) Home Address and Family Information. Any record reflecting any person's home address, home or personal telephone number, social security number, or family members.
- (e) Applicants for Employment or Volunteer Services. Any records relating to an applicant for employment or volunteer services.
- (f) Internal Deliberations on Court or Judicial Administration Matters. Any record relating to internal deliberations of a court or judicial agency, or among judicial officers or members of

a judicial agency, on matters of court or judicial administration.

- (g) Court Law Library Information. Any record in a law library that links a patron's name with the materials requested or borrowed by that patron.
- (h) Judicial Calendar Information. Any record that reflects a judicial officer's appointments or engagements that are in the future or that constitute an invasion of personal privacy.
- (i) Information Confidential Under Other Law. Any record that is confidential or exempt from disclosure under a state or federal constitutional provision, statute or common law, including information that relates to:
 - (1) a complaint alleging misconduct against a judicial officer, if the complaint is exempt from disclosure under Chapter 33, Government Code, or other law;
 - (2) a complaint alleging misconduct against a person who is licensed or regulated by the courts, if the information is confidential under applicable law; or
 - (3) a trade secret or commercial or financial information made privileged or confidential by statute or judicial decision.
- (j) Litigation or Settlement Negotiations. Any judicial record relating to civil or criminal litigation or settlement negotiations:
 - (1) in which a court or judicial agency is or may be a party; or
 - (2) in which a judicial officer or member of a judicial agency is or may be a party as a consequence of the person's office or employment.
- (k) Investigations of Character or Conduct. Any record relating to an investigation of any person's character or conduct, unless:
 - (1) the record is requested by the person being investigated; and
 - (2) release of the record, in the judgment of the records custodian, would not impair the investigation.
- (l) Examinations. Any record relating to an examination administered to any person, unless requested by the person after the examination is concluded.

12.6 Procedures for Obtaining Access to Judicial Records.

- (a) Request. A request to inspect or copy a judicial record must be in writing and must include sufficient information to reasonably identify the record requested. The request must be sent to the records custodian and not to a court clerk or other agent for the records custodian. A requestor need not have detailed knowledge of the records custodian's filing system or procedures in order to obtain the information.
- (b) Time for Inspection and Delivery of Copies. As soon as practicable--and not more than 14 days--after actual receipt of a request to inspect or copy a judicial record, if the record is available, the records custodian must either:
 - (1) allow the requestor to inspect the record and provide a copy if one is requested; or
 - (2) send written notice to the requestor stating that the record cannot within the prescribed period be produced or a copy provided, as applicable, and setting a reasonable date and time when the document will be produced or a copy provided, as applicable.
- (c) Place for Inspection. A records custodian must produce a requested judicial record at a convenient, public area.
- (d) Part of Record Subject to Disclosure. If part of a requested record is subject to disclosure under this rule and part is not, the records custodian must redact the portion of the record that is not subject to disclosure, permit the remainder of the record to be inspected, and provide a copy if requested.
- (e) Copying; Mailing. The records custodian may deliver the record to a court clerk for copying. The records custodian may mail the copy to a requestor who has prepaid the postage.
- (f) Recipient of Request not Custodian of Record. A judicial officer or a presiding officer of a judicial agency who receives a request for a judicial record not in his or her custody as defined by this rule must promptly attempt to ascertain who the custodian of the record is. If the recipient of the request can ascertain who the custodian of the requested record is, the recipient must promptly refer the request to that person and notify the requestor in writing of the referral. The time for response prescribed in Rule 12.6(b) does not begin to run until the referral is actually received by the records custodian. If the recipient cannot ascertain who the custodian of the requested record is, the recipient must promptly notify the requestor in writing that the recipient is not the custodian of the record and cannot ascertain who the custodian of the record is.
- (g) Inquiry to Requestor. A person requesting a judicial record may not be asked to disclose the purpose of the request as a condition of obtaining the judicial record. But a records custodian may make inquiry to establish the proper identification of the requestor or to clarify the nature

or scope of a request.

- (h) **Uniform Treatment of Requests.** A records custodian must treat all requests for information uniformly without regard to the position or occupation of the requestor or the person on whose behalf a request is made, including whether the requestor or such person is a member of the media.

12.7 Costs for Copies of Judicial Records; Appeal of Assessment.

- (a) **Cost.** The cost for a copy of a judicial record is either:
 - (1) the cost prescribed by statute, or
 - (2) if no statute prescribes the cost, the actual cost, as defined in Section 111.62, Title 1, Texas Administrative Code, not to exceed 125 percent of the amount prescribed by the General Services Commission for providing public information under Title 1, Texas Administrative Code, Sections 111.63, 111.69, and 111.70.
- (b) **Waiver or Reduction of Cost Assessment by Records Custodian.** A records custodian may reduce or waive the charge for a copy of a judicial record if:
 - (1) doing so is in the public interest because providing the copy of the record primarily benefits the general public, or
 - (2) the cost of processing collection of a charge will exceed the amount of the charge.
- (c) **Appeal of Cost Assessment.** A person who believes that a charge for a copy of a judicial record is excessive may appeal the overcharge in the manner prescribed by Rule 12.9 for the appeal of the denial of access to a judicial record.
- (d) **Records Custodian not Personally Responsible for Cost.** A records custodian is not required to incur personal expense in furnishing a copy of a judicial record.

12.8 Denial of Access to a Judicial Record.

- (a) **When Request May be Denied.** A records custodian may deny a request for a judicial record under this rule only if the records custodian:
 - (1) reasonably determines that the requested judicial record is exempt from required disclosure under this rule; or

(2) makes specific, non-conclusory findings that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.

(b) Time to Deny. A records custodian who denies access to a judicial record must notify the person requesting the record of the denial within a reasonable time--not to exceed 14 days--after receipt of the request, or before the deadline for responding to the request extended under Rule 12.6 (b)(2).

(c) Contents of Notice of Denial. A notice of denial must be in writing and must:

(1) state the reason for the denial;

(2) inform the person of the right of appeal provided by Rule 12.9; and

(3) include the name and address of the Administrative Director of the Office of Court Administration.

12.9 Relief from Denial of Access to Judicial Records.

- (a) Appeal. A person who is denied access to a judicial record may appeal the denial by filing a petition for review with the Administrative Director of the Office of Court Administration.
- (b) Contents of Petition for Review. The petition for review:
 - (1) must include a copy of the request to the record custodian and the records custodian's notice of denial;
 - (2) may include any supporting facts, arguments, and authorities that the petitioner believes to be relevant; and
 - (3) may contain a request for expedited review, the grounds for which must be stated.
- (c) Time for Filing. The petition must be filed not later than 30 days after the date that the petitioner receives notice of a denial of access to the judicial record.
- (d) Notification of Records Custodian and Presiding Judges. Upon receipt of the petition for review, the Administrative Director must promptly notify the records custodian who denied access to the judicial record and the presiding judge of each administrative judicial region of the filing of the petition.
- (e) Response. A records custodian who denies access to a judicial record and against whom relief is sought under this section may--within 14 days of receipt of notice from the Administrative Director--submit a written response to the petition for review and include supporting facts and authorities in the response. The records custodian must mail a copy of the response to the petitioner. The records custodian may also submit for in camera inspection any record, or a sample of records, to which access has been denied.
- (f) Formation of Special Committee. Upon receiving notice under Rule 12.9(d), the presiding judges must refer the petition to a special committee of not less than five of the presiding judges for review. The presiding judges must notify the Administrative Director, the petitioner, and the records custodian of the names of the judges selected to serve on the committee.
- (g) Procedure for Review. The special committee must review the petition and the records custodian's response and determine whether the requested judicial record should be made available under this rule to the petitioner. The special committee may request the records custodian to submit for in camera inspection a record, or a sample of records, to which access has been denied. The records custodian may respond to the request in whole or in part but it not required to do so.

- (h) Considerations. When determining whether the requested judicial record should be made available under this rule to petition, the special committee must consider:
 - (1) the text and policy of this Rule;
 - (2) any supporting and controverting facts, arguments, and authorities in the petition and the response; and
 - (3) prior applications of this Rule by other special committees or by courts.
- (i) Expedited Review. On request of the petitioner, and for good cause shown, the special committee may schedule an expedited review of the petition.
- (j) Decision. The special committee's determination must be supported by a written decision that must:
 - (1) issue within 60 days of the date that the Administrative Director received the petition for review;
 - (2) either grant the petition in whole or in part or sustain the denial of access to the requested judicial record;
 - (3) state the reasons for the decision, including appropriate citations to this rule; and
 - (4) identify the record or portions of the record to which access is ordered or denied, but only if the description does not disclose confidential information.
- (k) Notice of Decision. The special committee must send the decision to the Administrative Director. On receipt of the decision from the special committee, the Administrative Director must:
 - (1) immediately notify the petitioner and the records custodian of the decision and include a copy of the decision with the notice; and
 - (2) maintain a copy of the special committee's decision in the Administrative Director's office for public inspection.
- (l) Publication of Decisions. The Administrative Director must publish periodically to the judiciary and the general public the special committees' decisions.
- (m) Final Decision. A decision of a special committee under this rule is not appealable but is

subject to review by mandamus.

- (n) Appeal to Special Committee Not Exclusive Remedy. The right of review provided under this subdivision is not exclusive and does not preclude relief by mandamus.

12.10 Sanctions. A records custodian who fails to comply with this rule, knowing that the failure to comply is in violation of the rule, is subject to sanctions under the Code of Judicial Conduct.

Virginia

Source: Westlaw

Virginia Rules of Court

§ 8.01-420.01. Limiting further disclosure of discoverable materials and information; protective order

- A. A protective order issued to prevent disclosure of materials or information related to a personal injury action or action for wrongful death produced in discovery in any cause shall not prohibit an attorney from voluntarily sharing such materials or information with an attorney involved in a similar or related matter, with the permission of the court, after notice and an opportunity to be heard to any party or person protected by the protective order, and provided the attorney who receives the material or information agrees, in writing, to be bound by the terms of the protective order.
- B. The provisions of this section shall apply only to protective orders issued on or after July 1, 1989.

Washington

Source: Westlaw

Revised Code of Washington

4.24.601. Hazards to the public—Information—Legislative findings, policy, intent.

The legislature finds that public health and safety is promoted when the public has knowledge that enables members of the public to make informed choices about risks to their health and safety. Therefore, the legislature declares as a matter of public policy that the public has a right to information necessary to protect members of the public from harm caused by alleged hazards to the public. The legislature also recognizes that protection of trade secrets, other confidential research, development, or commercial information concerning products or business methods promotes business activity and prevents unfair competition. Therefore, the legislature declares it a matter of public policy that the confidentiality of such information be protected and its unnecessary disclosure be prevented.

Historical and Statutory Notes:

Application--1994 c 42: "This act applies to all confidentiality provisions entered or executed with respect to product liability/hazardous substance claims on or after May 1, 1994." [1994 c 42 § 3.]

Effective date--1994 c 42: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect May 1, 1994." [1994 c 42 § 4.]

4.24.611. Product liability/hazardous substance claims -- Public right to information -- Confidentiality -- Damages, costs, attorneys' fees -- Repeal

As used in RCW 4.24.601 and this section:

- (1) (a) "Product liability/hazardous substance claim" means a claim for damages for personal injury, wrongful death, or property damage caused by a product or hazardous or toxic substances, that is an alleged hazard to the public and that presents an alleged risk of similar injury to other members of the public.
- (b) "Confidentiality provision" means any terms in a court order or a private agreement settling, concluding, or terminating a product liability/hazardous substance claim, that limit the

possession, disclosure, or dissemination of information about an alleged hazard to the public, whether those terms are integrated in the order or private agreement or written separately.

- (c) "Members of the public" includes any individual, group of individuals, partnership, corporation, or association.
- (2) Except as provided in subsection (4) of this section, members of the public have a right to information necessary for a lay member of the public to understand the nature, source, and extent of the risk from alleged hazards to the public.
- (3) Except as provided in subsection (4) of this section, members of the public have a right to the protection of trade secrets as defined in RCW 19.108.010, other confidential research, development, or commercial information concerning products or business methods.
- (4) (a) Nothing in this chapter shall limit the issuance of any protective or discovery orders during the course of litigation pursuant to court rules.
 - (b) Confidentiality provisions may be entered into or ordered or enforced by the court only if the court finds, based on the evidence, that the confidentiality provision is in the public interest. In determining the public interest, the court shall balance the right of the public to information regarding the alleged risk to the public from the product or substance as provided in subsection (2) of this section against the right of the public to protect the confidentiality of information as provided in subsection (3) of this section.
- (5) (a) Any confidentiality provisions that are not adopted consistent with the provisions of this section are voidable by the court.
 - (b) Any confidentiality provisions that are determined to be void are severable from the remainder of the order or agreement notwithstanding any provision to the contrary and the remainder of the order or agreement shall remain in force.
 - (c) Nothing in RCW 4.24.601 and this section prevents the court from denying the request for confidentiality provisions under other law nor limits the scope of discovery pursuant to applicable court rules.
- (6) In cases of third party actions challenging confidentiality provisions in orders or agreements, the court has discretion to award to the prevailing party actual damages, costs, reasonable attorneys' fees, and such other terms as the court deems just.
- (7) The following acts or parts of acts are each repealed on May 1, 1994:

- (a) RCW 4.24.600 and 1993 c 17 § 1;
- (b) RCW 4.24.610 and 1993 c 17 § 2;
- (c) RCW 4.24.620 and 1993 c 17 § 3;
- (d) RCW 4.16.380 and 1993 c 17 § 5; and
- (e) 1993 c 17 § 4 (uncodified).