



2020 FORUM FOR STATE APPELLATE COURT JUDGES

Dangerous Secrets: Confronting Confidentiality in Our Public Courts

July 11, 2020

COMPENDIUM ON CONFIDENTIALITY IN LITIGATION

SELECTED BIBLIOGRAPHY

SELECTED COURT DECISIONS

FEDERAL AND STATE ANTI-SECRECY MEASURES

Note

These materials were gathered to provide references for judges attending the Pound Institute’s 2020 Forum for State Court Judges. We would welcome suggestions of additional relevant materials on the subject of secrecy in litigation so that they may be incorporated into any future revisions of the materials.

The Institute is grateful to Aryn Keyel, a rising third-year student at Rutgers Law School, for her diligent work in collecting and analyzing these materials.

James E. Rooks, Jr.
Forum Reporter

Table of Contents

| | |
|--|-----------|
| Selected Bibliography..... | 1 |
| Selected Court Decisions | 4 |
| Federal and State Anti-Secrecy Measures | 11 |
| Federal | |
| Federal Rules of Appellate Procedure | 11 |
| First Circuit..... | 12 |
| Second Circuit..... | 15 |
| Third Circuit | 18 |
| Fourth Circuit..... | 22 |
| Fifth Circuit | 25 |
| Sixth Circuit..... | 26 |
| Seventh Circuit | 27 |
| Eighth Circuit | 29 |
| Ninth Circuit..... | 30 |
| Tenth Circuit | 34 |
| Eleventh Circuit | 37 |
| D.C. Circuit | 39 |
| State | |
| Alabama..... | 41 |
| Alaska..... | 44 |
| Arizona..... | 48 |
| Arkansas | 52 |
| California..... | 56 |
| Colorado | 62 |
| Connecticut..... | 69 |
| Delaware..... | 73 |
| District of Columbia..... | 78 |
| Florida | 80 |
| Georgia..... | 83 |
| Hawai'i | 87 |
| Idaho | 90 |
| Illinois..... | 93 |
| Indiana | 95 |
| Iowa | 99 |
| Kansas | 101 |
| Kentucky | 103 |

| | |
|-----------------------------|-----|
| Louisiana | 106 |
| Maine | 109 |
| Maryland | 113 |
| Massachusetts | 117 |
| Michigan | 122 |
| Minnesota | 125 |
| Mississippi | 128 |
| Missouri | 129 |
| Montana | 130 |
| Nebraska | 131 |
| Nevada | 134 |
| New Hampshire | 139 |
| New Jersey | 140 |
| New Mexico | 143 |
| New York | 147 |
| North Carolina | 149 |
| North Dakota | 150 |
| Ohio | 153 |
| Oklahoma | 155 |
| Oregon | 157 |
| Pennsylvania | 158 |
| Rhode Island | 161 |
| South Carolina | 163 |
| South Dakota | 166 |
| Tennessee | 167 |
| Texas | 168 |
| Utah | 171 |
| Vermont | 173 |
| Virginia | 176 |
| Washington | 178 |
| West Virginia | 182 |
| Wisconsin | 184 |
| Wyoming | 188 |

Selected Bibliography

Books, Monographs, Reports, etc.

JOSEPH W. DOHERTY, ROBERT T. REVILLE & LAURA ZAKARAS, *INTRODUCTION TO CONFIDENTIALITY, TRANSPARENCY, AND THE U.S. CIVIL JUSTICE SYSTEM* (Joseph W. Doherty et al. eds., 2012).

FRANCIS H. HARE, JR., JAMES L. GILBERT, & STUART A. OLLANIK, *FULL DISCLOSURE: COMBATING STONEWALLING AND OTHER DISCOVERY ABUSES* (ATLA Press, 1994).

ALEXANDRA LAHAV, *IN PRAISE OF LITIGATION* (2017).

ROBERT TIMOTHY REAGAN, *SEALING COURT RECORDS AND PROCEEDINGS: A POCKET GUIDE* (Fed. Judicial Center, 2010).

The Sedona Conference, *The Sedona Guidelines: Best Practices Addressing Protective Orders, Confidentiality & Public Access in Civil Cases*, 8 SEDONA CONF. J. 141 (2007)
https://thesedonaconference.org/sites/default/files/publications/141-188%20WG2_0.pdf.

CHARLES ALAN WRIGHT ET AL., 13C FEDERAL PRACTICE & PROCEDURE § 3533.3.1 (3d ed. 2008).

Articles

Joseph F. Anderson, Jr., *Hidden from the Public By Order of the Court: The Case Against Government-Enforced Secrecy*, 55 S.C. L. REV. 711 (2003).

Ian Ayres, *Targeting Repeat Offender NDAs*, 71 STAN L. REV. ONLINE 76 (2018).

Loune-Djenia Askew, *Confidentiality Agreements: The Florida Sunshine in Litigation Act, the #metoo Movement, and Signing Away the Right to Speak*, 10 U. MIAMI RACE & SOC. JUST. L. REV. 61 (2019).

Jon Bauer, *Buying Witness Silence: Evidence-Suppressing Settlements and Lawyers' Ethics*, 87 OR. L. REV. 481 (2008).

Dustin B. Benham, *Dirty Secrets: The First Amendment in Protective-Order Litigation*, 35 CARDOZO L. REV. 1781 (2014).

Dustin B. Benham, *Proportionality, Pretrial Confidentiality, and Discovery Sharing*, 71 WASH. & LEE L. REV. 2181 (2014).

Dustin B. Benham, *Tangled Incentives: Proportionality and the Market for Reputation Harm*, 90 TEMP. L. REV. 427 (2018).

Elizabeth Chamblee Burch & Margaret S. Williams, *Repeat Players in Multidistrict Litigation: The Social Network*, 102 CORNELL L. REV. 1445 (2017).

Ross E. Cheit, *Tort Litigation, Transparency, and the Public Interest*, 13 ROGER WILLIAMS U. L. REV. 232 (2008) (Symposium by the same name).

Michelle Conlin, Dan Levine and Lisa Girion, *Why Big Business Can Count on Courts to Keep its Deadly Secrets*, REUTERS (Dec. 19, 2019, 12:00 PM), <https://www.reuters.com/investigates/special-report/usa-courts-secrecy-lobbyist/>.

Laurie Kratky Dore, *Public Courts Versus Private Justice: It's Time to Let Some Sun Shine in On Alternative Dispute Resolution*, 81 CHI.-KENT L. REV. 463 (2006) (Symposium: Secrecy in Litigation).

Jamie Dowdell and Benjamin Lesser, *These Lawyers Battle Corporate America – and Keep its Secrets*, REUTERS (Nov. 7, 2019, 2:00 PM), <https://www.reuters.com/investigates/special-report/usa-courts-secrecy-lawyers/>.

Christopher R. Drahozal & Laura J. Hines, *Secret Settlement Restrictions and Unintended Consequences*, 54 U. KAN. L. REV. 1457 (2006).

Dennis J. Drasco, *Public Access to Information in Civil Litigation vs. Litigant's Demand for Privacy: Is the Vanishing Trial an Avoidable Consequence?*, 2006 J. DISP. RESOL. 155 (2006).

Hon. T. S. Ellis, III, *Sealing, Judicial Transparency and Judicial Independence*, 53 VILL. L. REV. 939 (2008) (Symposium: The Future of Judicial Transparency, Panel: Systematic Justice).

Seth Katsuya Endo, *Contracting for Confidential Discovery*, 53 U.C. DAVIS L. REV. 1249 (2020).

Howard M. Erichson, *Court-Ordered Confidentiality in Discovery*, 81 CHI.-KENT L. REV. 357 (2006).

Alison Frankel, *In New Fraud Class Action v. Trump Organization, Plaintiffs Lobby Hard for Anonymity*, REUTERS (Oct. 30, 2018, 6:27 PM), <https://www.reuters.com/article/legal-us-otc-pseudo/in-new-fraud-class-action-v-trump-organization-plaintiffs-lobby-hard-for-anonymity-idUSKCN1N42W0>.

Blanca Fromm, *Bringing Settlement Out of the Shadows: Information About Settlement in an Age of Confidentiality*, 48 UCLA L. Rev. 663 (2001).

Judicial Conference of the United States, *Conference Approves Standards & Procedures for Sealing Civil Cases* (Sept. 13, 2011), <http://www.uscourts.gov/news/2011/09/13/conference-approves-standards-procedures-sealing-civil-cases-0>.

Susan P. Koniak, *Are Agreements to Keep Secret Information Learned in Discovery Legal, Illegal, or Something in Between?*, 30 HOFSTRA L. REV. 783 (2002).

Benjamin Lesser, Dan Levine, Lisa Girion, & Jaimi Dowdell, *How Judges Added to the Grim Toll of Opioids*, REUTERS (June 25, 2019, 1:00 PM), <https://www.reuters.com/investigates/special-report/usa-courts-secrecy-judges/>.

Dan Levine, *Court Let Merck Hide Secrets About a Popular Drug's Risks*, REUTERS (September 11, 2019, 1:00 PM), <https://www.reuters.com/investigates/special-report/usa-courts-secrecy-propecia/>.

Saul Levmore & Frank Fagan, *Semi-Confidential Settlements in Civil, Criminal, and Sexual Assault Cases*, 103 CORNELL L. REV. 311, 354 (2018).

Daniel Lombard, Note & Comment, *Top Secret: A Constitutional Look at the Procedural Problems Inherent in Sealing Civil Court Documents*, 55 DEPAUL L. REV. 1067 (2020).

Richard L. Marcus, *The Discovery Confidentiality Controversy*, 1991 U. ILL. L. REV. 457 (2006).

Richard L. Marcus, *A Modest Proposal: Recognizing (at Last) that the Federal Rules Do Not Declare that Discovery Is Presumptively Public*, 81 CHI.-KENT L. REV. 331 (2006).

Seymour Moskowitz, *Discovering Discovery: Non-Party Access to Pretrial Information in the Federal Courts 1938-2006*, 78 U. COLO. L. REV. 817 (2007).

Judith Resnik, *A2J/A2K: Access to Justice, Access to Knowledge, and Economic Inequalities in Open Courts and Arbitrations*, 96 N.C. L. REV. 605 (2018).

Judith Resnik, *The Contingency of Openness in Courts: Changing the Experiences and Logics of the Public's Role in Court-Based ADR*, 15 NEV. L.J. 1631 (2015).

Judith Resnik, *Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights*, 124 YALE L.J. 2804, 2842-50 (2015).

Judith Resnik, *Lawyers' Ethics Beyond the Vanishing Trial: Unrepresented Claimants, De Facto Aggregations, Arbitration Mandates, and Privatized Processes*, 85 FORDHAM L. REV. 1899 (2017).

Judith Resnik, *Renting Judges for Secret Rulings*, N.Y. TIMES (March 1, 2014), <https://www.nytimes.com/2014/03/01/opinion/renting-judges-for-secret-rulings.html>.

Richard C. Reuben, *Confidentiality in Arbitration: Beyond the Myth*, 54 U. KAN. L. REV. 1255 (2006).

Janet Roberts, ed., *Reuters Analysis of U.S. Court Secrecy: The Methodology*, REUTERS (June 25, 2019 9:07 AM), <https://www.reuters.com/article/us-usa-courts-secrecy-about/reuters-analysis-of-u-s-court-secrecy-the-methodology-idUSKCN1TQ1NM>.

James E. Rooks, Jr., *Settlements and Secrets: Is the Sunshine Chilly?*, 55 S.C. L. REV. 859 (2004).

David S. Sanson, *The Pervasive Problem of Court Sanctioned Secrecy and the Exigency of National Reform*, 53 DUKE L.J. 807 (2003).

Matthew A. Shapiro, *The Indignities of Civil Litigation*, 100 B.U.L. REV. 501 (2020).

Mike Spector, Jaimi Dowdell, & Benjamin Lesser, *How Secrecy in U.S. Courts Hobbles the Regulators Meant to Protect the Public*, REUTERS (Jan. 16. 2020, 12:00 PM), <https://www.reuters.com/investigates/special-report/usa-courts-secrecy-regulators/>

Selected Court Decisions

Al Jazeera America, LLC v. AT&T Servs., Inc., 2013 Del. Ch. LEXIS 248 (Oct. 14, 2013) (applying qualified right of access to court documents under Del. Chancery Ct. R. 5.1 and ordering parties to remove most redactions from public version of complaint).

Apple, Inc. v. Samsung Elec. Co., 727 F.3d 1214, 1221 (Fed. Cir. 2013).

Baxter Intern., Inc. v. Abbott Laboratories, 297 F.3d 544, 545, 548 (7th Cir. 2002) (criticizing motion to seal that “did not attempt to separate genuinely secret documents from others in the same box or folder that could be released without risk”) (First Amendment right of access applies to “materials that formed the basis of the parties’ dispute and the district court’s resolution”).

Bennett v. Smith Bundy Berman Britton, PS, 291 P.3d 886, 890 (Wash. 2013) (finding documents not materially relevant to a decision made by court not subject to First Amendment-based right of access).

Bernstein v. Bernstein Litowitz Berger & Grossmann LLP, 814 F.3d 132, 141-42 (2d Cir. 2016) (“the presumption of access to judicial records is secured by two independent sources: the First Amendment and the common law”) (“where documents directly affect an adjudication or are used to determine litigants’ substantive legal rights, the presumption of access is at its zenith, and thus can be overcome only by extraordinary circumstances”).

Brown v. Maxwell, 929 F.3d 41, 52 (2d Cir. 2019) “[P]leadings, complaints, and briefs—while supposedly based on underlying evidentiary material—can be misleading. Such documents sometimes draw dubious inferences from already questionable material or present ambiguous material as definitive.”).

Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1177 (6th Cir. 1983) (“the First Amendment and the common law do limit judicial discretion” “to seal court documents”).

Brunobuilt, Inc. v. Strata, Inc., 457 P.3d 860 (Idaho 2020) (“A settlement agreement stands on the same footing as any other contract and is governed by the same rules and principles as are applicable to contracts generally.”).

Clear Channel Commc’ns., Inc. v. United Servs. Auto. Ass’n, 195 S.W.3d 129 (Tex. App. 2006) (dissolving lower court’s protective order directing clerk to maintain under seal all filings designated by party as “Confidential” because order violated Tex. R. Civ. P. 76a).

Comes v. Microsoft Corp., 775 N.W.2d 302, 310–11 (Iowa 2009) (“When we add to the mix the time, money, and effort expended by counsel and support staff for the Iowa plaintiffs in organizing and analyzing the information after Microsoft produced it, the staggering cost of repeating the process in the Canadian litigation comes even more sharply into focus.”).

Constand v. Cosby, 833 F.3d 405, 410 (3d Cir. 2016) (“appeals seeking to restrain further dissemination of publicly disclosed information is moot” because “[p]ublic disclosure cannot be undone”) (internal quotation marks and citations omitted).

Ctr. for Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1099 (9th Cir. 2016) (focusing on whether the information for which sealing is sought is “more than tangentially related to the underlying cause of action”).

Dependable Sales & Serv., Inc. v. Truecar, Inc., 311 F. Supp. 3d 653, 665 (S.D.N.Y. 2018) (in deciding on motion to seal, court must weigh presumption of access “against ‘countervailing factors,’ including ‘the privacy interests of those resisting disclosure’ ” (quoting *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006))).

Diversified Grp., Inc. v. Daugerdas, 217 F.R.D. 152, 159 (S.D.N.Y. 2003) (noting that, in determining whether to unseal documents, such “countervailing factors” must be considered against “the presumption of access” of certain judicial documents).

Doe v. Public Citizen, 749 F.3d 246, 268, 272 (4th Cir. 2014) (“The ability of the public and press to inspect docket sheets is a critical component to providing meaningful access to civil proceedings”) (“the law in this Circuit requires a judicial officer to . . . provide public notice of the sealing request and a reasonable opportunity for the public to voice objections”).

Encyclopedia Brown Prods., Ltd. v. Home Box Office, Inc., 26 F. Supp. 2d 606, 612 (S.D.N.Y. 1998) (“There is a particularly strong presumption of public access to [judicial] decisions . . . The Court’s decisions are adjudications — direct exercises of judicial power the reasoning and substantive effect of which the public has an important interest in scrutinizing”).

Estate of Frankl v. Goodyear Tire & Rubber Co., 853 A.2d 880 (N.J. 2004) (holding that neither the common law nor the rules governing civil practice “create a right of public access to unfiled documents exchanged during discovery in civil litigation,” and referred the discovery issue to the state bar’s Civil Practice Committee so that it could determine whether changes in access rules to unfiled discovery are warranted.).

Fairfax Holdings Ltd. v. S.A.C. Capital Mgmt. LLC, No. MRS-L-2032-06 (N.J. Super. Nov. 15, 2013) (applying N.J. Ct. R. 1:38 to unseal deposition transcripts filed with court in support of summary judgment motions).

Fiorella v. Paxton Media Grp., LLC, 424 S.W.3d 433 (Ct. App. Ky. 2014) (concluding that “once filed with the courts, ‘the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public.’”).

Flynt v. Lombardi, 885 F.3d 508, 511 (8th Cir. 2018) (applying “compelling reasons” standard under common-law right of access).

Gambale v. Deutsche Bank AG, 377 F.3d 133, 144 n.11 (2d Cir. 2004). (“Secrecy is a one-way street: Once information is published, it cannot be made secret again.”) (“We simply do not have the power, even if we were of the mind to use it if we had, to make what has thus become public private again. The genie is out of the bottle, albeit because of what we consider to be the district court’s error. We have not the means to put the genie back.”) (citations omitted).

Gleba v. Daimler Chrysler Corp., 2001 Mass. Super. LEXIS 364, *8 (Mass. Sup. Aug. 6, 2001) (“The insistence upon confidentiality agreements is often quid pro quo for the payment of monetary damages in the settlement of a case. In this Court’s opinion, an impoundment practice, even with the assent of the parties, used for the purposes described above, is abusive to the Court and to the public. ...”).

Hartford Courant Co. v. Pellegrino, 380 F.3d 83, 85, 91 (2d Cir. 2004) (holding “state court practice of sealing certain docket sheets, as well as entire case files” violated the First Amendment) (noting that the public and press have a “qualified First Amendment right to attend judicial proceedings and to access certain documents”).

Hurd v. Espinoza, 34 A.3d 1084, 1086 (Del. 2011) (all documents filed with court are presumptively judicial records under Rule 5(g)).

IDT Corp. v. eBay, 709 F.3d 1220, 1224-25 (under the common law, remanding for district court to “evaluate whether redaction was a reasonable alternative to sealing the entire complaint”).

In re Amendment to 12 O.S. Ch. 2, 284 P.3d 466 (Okla. 2011) (amending court rules to allow filers to remove certain personally identifying information such as social security numbers); see also *id.* (Taylor, C.J. concurring) (noting amendment reaffirmed “the doctrine that (other than those sealed or closed by long-established law) every document filed with the Court Clerk is a public record”).

In re National Prescription Opiate Litigation, 927 F.3d 919, 939 (6th Cir. 2019) (reversing district court sealing order and requiring district court, before sealing documents, to “explain . . . why the seal itself is no broader than necessary”) (internal quotation marks and citations omitted).

In re Providence Journal Co., Inc., 293 F.3d 1, 12 (1st Cir. 2002) (“there is no need to discard the baby with the bath water”; “[w]here a particularized need for restricting public access to legal memoranda exists, that need can be addressed by the tailoring of appropriate relief”).

In re Requests for Investigation of Attorney E., 78 P.3d 300, 311–12 (Colo. 2003) (holding that “protective orders may be issued at any time during the discovery process”).

In re State-Record Co., Inc., 917 F.2d 124, 129 (4th Cir. 1990) (“we cannot understand how the docket entry sheet could be prejudicial . . . this information, harmless as it may be, has . . . been withheld from the public. Such overbreadth violates one of the cardinal rules that closure orders must be as narrowly tailored as possible”).

In re U.S. Dep’t of Justice Motion to Compel Facebook to Provide Technical Assistance in Sealed Case, Opinion and Order Issued in or About September 2018, No. 1:18-mc-000057 (E.D. Cal.) (ACLU, among others, seeking to unseal documents relating to the federal government’s efforts to coerce social media platforms to aid in governmental surveillance).

J.W. v. D.C., 318 F.R.D. 196, 202 (D.D.C. 2016) (“the Court finds that permitting Plaintiffs to proceed using only their initials is warranted in this case, and that the right of public access is outweighed by Plaintiffs’ ‘overriding interest’ in protecting J.W.’s identity and avoiding unnecessary publicity concerning his disability”).

Joseph v. Huntington Ingalls Inc., 2020 WL 499939, at *18 (La. 2020) (in a case involving the settlement of asbestos claims, stating that “[t]he law in its wisdom, and out of solicitude to end or avert threatened litigation, encourages settlement of disputes by compromise, and does not sanction the solemn acts of contending parties settling their disagreements being lightly brushed aside, unless there be present evidence of bad faith, error, fraud, etc.”).

Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006) (under the common law, “compelling reasons” required to seal judicial records).

Leucadia, Inc. v. Applied Extrusion Tech, Inc., 998 F.3d 157, 165 (3d Cir. 1993) (“there is a presumptive right of access to pretrial motions of a nondiscovery nature, whether preliminary

or dispositive, and the material filed in connection therewith”) (noting need “to protect the legitimate public interest in filed materials from overly broad and unjustifiable protective orders agreed to by the parties for their self-interests”).

Matter of Continental Illinois Securities Litigation, 732 F.3d 1302, 1308-09 (7th Cir. 1984) (the public has a First Amendment and common law right of access to judicial records in civil cases).

Matter of Krynicki, 983 F.2d 74, 75 (7th Cir. 1992) (“[i]nformation that is used at trial or otherwise becomes the basis of decision enters the public record”) (Easterbrook, J., in chambers).

Matter of New York Times Co., 828 F.2d 110, 116 (2d Cir. 1987) (in a criminal case, “wholesale sealing of motion papers was more extensive than necessary to protect defendants’ fair trial rights, their privacy interests, and the privacy interests of third persons”).

McCutcheon v. Fed. Elec. Comm’n, 572 U.S. 185, 203 (2014) (“[T]he First Amendment safeguards an individual’s right to participate in . . . public debate through political expression and political association.”).

Milton Hershey Sch. v. Penn. Hum. Relations Comm’n, 2020 WL 935217 *1, *1–*12 (Pa. Commw. Feb. 11, 2020).

Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978) (noting a “general right to inspect and copy public records and documents, including judicial records and documents”).

Nguyen v. Dallas Morning News, 2008 Tex. App. LEXIS 4606, at *13 (June 19, 2008) (Rule 76a(2) presumes that materials filed with the court are open to the public and may be sealed only when “a specific, serious and substantial interest which clearly outweighs” that presumption or “any probable adverse effect that sealing will have upon the general public health or safety”).

O’Keefe v. Schmitz, 2014 WL 2779091 *1, 1–*7 (E.D. Wisc. June 19, 2014).

Overstock.com, Inc. v. The Goldman Sachs Grp., Inc., 180 Cal. Rptr. 3d 234, 247 (Ct. App. 2014).

Parson v. Farley, 352 F. Supp. 3d 1141, 1153 (N.D. Okla. 2018) (if a document is “attached to a dispositive motion,” that “renders it highly relevant to the adjudicative process”).

Protectmarriage.com-Yes on 8 v. Bowen, 752 F.3d 827, 834-835 (“[n]o meaningful relief was available” where “[t]he information that Appellants [sought] to keep private ha[d] been publicly available on the Internet in hard copy for nearly five years” and “unidentified” people “may have retained copies or reproduced the disclosures”).

Republic of Philippines v. Westinghouse Elec. Corp., 949 F.2d 653, 659, 661 (3d Cir. 1991) (“the First Amendment, independent of the common law, protects the public’s right of access to the

records of civil proceedings”) (“the right of public access applies to the material filed in connection with a motion for summary judgment,” and collecting cases).

Romero v. Drummond Co., Inc., 48 F.3d 1234, 1246 (11th Cir. 2007) (focusing on whether information at issue “is related . . . to the merits of the underlying controversy” or to “the conduct of the court”) (“[a] motion that is presented to the court to invoke its powers or affect its decisions, whether or not characterized as dispositive, is subject to the public right of access”) (internal quotation marks and citations omitted).

Rosado v. Bridgeport Roman Catholic Diocesan Corp., 292 Conn. 1, 36 (2008).

Rushford v. New Yorker Magazine, Inc., 846 F.2d 249, 252 (4th Cir. 1988) (“once the documents are made part of a dispositive motion, such as a summary judgment motion, they lose their status of being raw fruits of discovery”) (internal quotation marks and citations omitted).

Saleeby v. Rocky Elson Const., Inc., 3 So.3d 1078, 1083 (S. Ct. Fla. 2009) (noting “Florida’s public policy favoring settlement”).

Seattle Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984) (the U.S. Supreme Court’s seminal protective-order case).

Shane Grp., Inc. v. Blue Cross Blue Shield of Mich., 825 F.3d 299, 307 (6th Cir. 2016) (“In sealing all these documents and exhibits, the parties and the district court plainly conflated the standards for entering a protective order under Rule 26 with the vastly more demanding standards for sealing off judicial records from public view.”).

SmithKline Beecham Corp. v. Pentech Pharms., Inc., 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003) (refusing to redact information that had previously been disclosed in a court opinion because “the cat is out of the bag”).

Sorenson v. Superior Ct., 161 Cal. Rptr. 3d 794, 816 (Ct. App. 2013) (presumption of openness does not apply to conservatorship trials conducted pursuant to the Lanterman-Petris-Short Act, Cal. Welf. & Inst. Code, § 5000 et seq.).

State Farm Fire & Cas. Co. v. Sosnowski, 830 So. 2d 886 (5th Dist. Ct. App. Fla. 2002) (concluding that protective order did not contain information concerning a “public hazard” to be subject to the Act).

Tafoya v. Martinez, 787 F.Appx. 501, 506 (10th Cir. 2019) (“Mr. Tafoya is correct that sensitive information about the victim should be protected, but his request for wholesale sealing of Volumes IV, V, and VI of the Appendix is overbroad”).

Union Oil Co. of Cal. v. Leavell, 220 F.3d 562, 568 (7th Cir. 2000) (“[I]t should go without saying that the judge’s opinions and orders belong in the public domain.”).

United States v. Amodeo, 71 F.3d 1044, 1049-50 (“the weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the courts”).

United States v. Corbitt, 879 F.2d 224, 228 (7th Cir. 1989) (in criminal case, “the public’s right to inspect judicial documents may not be evaded by the wholesale sealing of court papers”).

U.S. ex rel. Joshua Harman v. Trinity Indus., Inc., 622 Fed.Appx. 448 (Mem) (5th Cir. Nov. 9, 2015)

Virginia Dept. of State Police v. Washington Post, 386 F.3d 567, 575 (4th Cir. 2004) (“The right of public access to documents or materials filed in a district court derives from two independent sources: the common law and the First Amendment”).

Federal Anti-Secrecy Measures

Federal Rules of Appellate Procedure

Rule 26.1. Corporate Disclosure Statement

(a) Who Must File. Any nongovernmental corporate party to a proceeding in a court of appeals must file a statement that identifies any parent corporation and any publicly held corporation that owns 10% or more of its stock or states that there is no such corporation.

[(b)-(c) procedural provision omitted]

Rule 27. Motions

(m) Motions Containing Material Subject to a Protective Order.

(1) Confidentiality.

(A) Except as provided herein, no material in a motion, response, or reply shall be marked confidential, including references to information previously treated as confidential pursuant to a protective order. The exceptions are as follows: In cases other than those arising under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b), each motion, response, or reply may mark confidential up to fifteen (15) words (including numbers) if the information (1) was treated in the matter under review as confidential pursuant to a judicial or administrative protective order and (2) such marking is authorized by statute, administrative regulation, or court rule (such as Federal Rule of Civil Procedure 26(c)(1)). When words are marked confidential in a motion, response, or reply, repeating the marked words in the same motion, response, or reply shall not add to the count toward the United States Court of Appeals for the Federal Circuit, Rules of Practice, Revised: March 2016 84 fifteen-word allotment. A response need not count toward its allotment any words that were already marked confidential in the motion to which it responds; a reply need not count words that were marked confidential in the response but not in the motion. A party seeking to mark confidential more than fifteen words must file a motion with this court establishing that the additional confidentiality markings are appropriate and necessary pursuant to a statute, administrative regulation, or court rule. For example, a party may establish that an argument cannot be properly developed without additional disclosure of confidential information in the motion, response, or reply, and public disclosure will risk causing competitive injury. Such a motion shall be made contemporaneously with the filing of the underlying motion, response, or reply, and the marked material shall be treated as confidential until the court acts on the motion. If the motion to mark additional material confidential is denied in whole or in part, an amended motion, response or reply shall be filed within ten (10) days of the action on the motion. In cases arising under 19 U.S.C. § 1516a or 28 U.S.C. § 1491(b), each motion, response, or reply may mark confidential up to fifty (50) words (including numbers).

...

(4) Availability to the Public. The confidential motion documents will be made available only to authorized court personnel and must not be made available to the public. After five years following the end of all proceedings in the court, the parties may be directed to show cause why confidential motion papers (except those protected by statute) should not be made available to the public.

Rule 32.1. Citing Judicial Dispositions

(f) Public Records. All dispositions by the court in any form will be in writing and are public records.

FIRST CIRCUIT

First Circuit Local Rules

Rule 11.0. Transmission of the Record, Sealed Documents

c) Sealed Materials.

(1) Materials Sealed by District Court or Agency Order. The court of appeals expects that ordinarily motions to seal all or part of a district court or agency record will be presented to, and resolved by, the lower court or agency. Motions, briefs, transcripts, and other materials which were filed with the district court or agency under seal and which constitute part of the record transmitted to the court of appeals shall be clearly labeled as sealed when transmitted to the court of appeals and will remain under seal until further order of court.

[(2) procedural provisions omitted]

(3) Limiting Sealed Filings. Rather than automatically requesting the sealing of an entire brief, motion, or other filing, litigants should consider whether argument relating to sealed materials may be contained in separate supplemental brief, motion, or filing, which may then be sealed in accordance with the procedures in subsection (2).

(d) References to Sealed Materials.

[(1) recording provision omitted]

(2) In addressing material under seal in an unsealed brief or motion or oral argument counsel are expected not to disclose the substance of the sealed material and to apprise the court that the material in question is sealed. If the record contains sealed materials of a sensitive character, counsel would be well advised to alert the court to the existence of such materials and their location by a footnote appended to the “Statement of the Case” caption in the opening or answering brief.

Rule 25. Electronic Case Filing System and Facsimile

[(a) omitted]

(b) Scope of Electronic Filing.

(1) Paper Only Filings. The following documents must be filed only in paper form:

(A) motions to seal;

(B) sealed, ex parte, or otherwise non-public documents, including for example, presentence reports and statements of reasons in a judgment of criminal conviction;

[(c)-(g) omitted]

(h) Sealed Documents. As required by 1st Cir. R. 25.0(b)(1), sealed documents and motions for permission to file a document under seal should be filed only in paper form. Sealed documents must be filed in compliance with 1st Cir. R. 11.0(c) and 1st Cir. R. 30.0(g). If an entire case is sealed, all documents in the case are considered sealed unless the court orders otherwise or, in the case of a court order, opinion, or judgment, the court releases the order, opinion or judgment for public dissemination.

Rule 28.1. References in Briefs to Sealed Material

Briefs filed with the court of appeals are a matter of public record. In order to have a brief sealed, counsel must file a specific and timely motion in compliance with Local Rule 11.0(C)(2) and (3) asking the court to seal a brief or supplemental brief. Counsel must also comply with Local Rule 11.0(d), when applicable.

Rule 30.0. Appendix to the Briefs

[(a)-(e) omitted]

(g) Inclusion of Sealed Material in Appendices. Appendices filed with the court of appeals are a matter of public record. If counsel conclude that it is necessary to include sealed material in appendix form, then, in order to maintain the confidentiality of materials filed in the district court or agency under seal, counsel must designate the sealed material for inclusion in a supplemental appendix to be filed separately from the regular appendix and must file a specific and timely motion in compliance with Local Rules 11.0(c)(2), 11.0(c)(3), and 11.0(d) asking the court to seal the supplemental appendix.

Rule 33.0. Civil Appeals Management Plan

Pursuant to Rule 47 of the Federal Rules of Appellate Procedure, the United States Court of Appeals for the First Circuit adopts the following plan to establish a Civil Appeals Management Program, said Program to have the force and effect of a local rule.

[(a)-(b) omitted]

(c) Confidentiality. The Settlement Counsel shall not disclose the substance of the Pre-argument Conference, nor report on the same, to any person or persons whomsoever (including, but not limited to, any judge). The attorneys are likewise prohibited from disclosing any substantive information emanating from the conference to anyone other than their clients or co-counsel; and then only upon receiving due assurance that the recipients will honor the confidentiality of the information. *See In re Lake Utopia Paper Ltd.*, 608 F.2d 928 (2nd Cir. 1979). The fact of the conference having taken place, and the bare result thereof (e.g., “settled,” “not settled,” “continued”), including any resulting Conference Order, shall not be considered to be confidential.

[(d)-(f) omitted]

District Court of Maine Local Rules

Rule 7(A). Filing Sealed Documents and Pleadings.

A document or pleading may be filed under seal only upon order of the Court, in accordance with the following procedures:

[(a)-(c) procedural provision omitted]

(d) Public Notice

The docket entry noting the filing of the motion to seal, and of any objection and reply thereto, and of the filing of the Court's order thereon, and of the filing of 11 any sealed document(s) or pleading(s) shall be publicly available on ECF, but the document(s) or pleading(s) themselves shall only be available to the Court.

[(e) exception provisions omitted]

Rule 7.1 – Corporate Disclosure

To enable the Court to evaluate possible disqualification or recusal, counsel for all non-governmental parties shall file with their first appearance a Notice of Interested Parties, which shall list all persons, associations of persons, firms, partnerships, limited liability companies, joint ventures, corporations (including parent or affiliated corporations, clearly identified as such), or any similar entities, owning 10% or more of the named party. Counsel shall be under a continuing obligation to file an amended Notice if any material change occurs in the status of an Interested Party, such as through merger, acquisition, or new/additional membership.

Rule 157. 6 – Sealed Documents and Pleadings

A pleading or document listed in subsection (a) that is designated in the caption of the document or pleading as being filed pursuant to Local Rule 157.6(a) (Sealed Document) shall be accepted as filed under seal without prior approval from the Court. Otherwise, parties seeking to seal a pleading or document shall file a motion to seal in accordance with subsection (b).

(a) Automatic Sealing

The following pleadings and documents shall be sealed upon filing. They shall remain sealed until further order of the Court, unless otherwise provided below.

[(1)-(9) specific provisions omitted]

[(b)-(f) procedural provisions omitted]

District Court of New Hampshire Local Rules

Rule 11. Public Access and Confidentiality.

(a) Publicly Available Records. All filings, orders, and proceedings involving allegations of misconduct by an attorney shall be public, except:

(1) When the court, on its own initiative or in response to a motion for protective order, orders that such matters shall not be made public. While a motion for protective order is pending, the motion and any objection to the motion will be filed under seal at Level I in accordance with LR 83.12, and

(2) Any filing, proceeding, or order issued pursuant to DR-6 prior to the initiation of formal disciplinary proceedings under DR-6(c).

(b) Respondent's Request. The respondent attorney may request that the court make any matter public that would not otherwise be public under this rule.

SECOND CIRCUIT

District Court of Connecticut Local Rules

Rule 5. Serving and Filing Pleadings and Other Papers.

[(a)-(d) procedural provisions and the United States as a party omitted]

(e) Sealed Proceedings and Documents.

1. (a) The power to close a courtroom or to exclude the public from proceedings to which a First Amendment right to access attaches shall be used sparingly and only for clear and compelling reasons. Before excluding the public from such proceedings, the Court must make particularized findings on the record demonstrating the need for the exclusion, and any court closure order shall be narrowly tailored to serve the purpose of the closure. Those findings may be made in camera and under seal, provided that the requirements of paragraph 3, below, have been met with respect to the findings themselves.

(b) Except when justified by extraordinary circumstances, no order closing a courtroom or excluding the public from proceedings to which a First Amendment right to access attaches shall be entered except upon advance notice to the public. Any motion seeking such relief, whether made by a party or by the Court sua sponte, must be docketed immediately in the public docket files of the Court. When docketed under seal pursuant to an order of the Court, the docket entry for any motion seeking court closure shall reflect the fact that the motion was made, the fact that any supporting or opposing papers were filed under seal, the time and place of any hearing on the motion, the occurrence of such hearing, the disposition of the motion, and the fact and extent of courtroom closure. Any such motion shall be made as far in advance of the pertinent proceeding as possible in order to permit the public to intervene for the purpose of challenging the court closure.

2. Except as permitted or required by federal law, no civil case shall be sealed in its entirety. The existence of any case sealed in its entirety shall be reflected on public dockets by use of the notation: "Sealed Case."

3. Every document used by parties moving for or opposing an adjudication by the Court, other than trial or hearing exhibits, shall be filed with the Court. No judicial document shall be filed under seal, except upon entry of an order of the Court either acting sua sponte or specifically granting a request to seal that document. Any such order sealing a judicial document shall include particularized findings demonstrating that sealing is supported by clear and compelling reasons and is narrowly tailored to serve those reasons. A statute mandating or permitting the non-disclosure of a class of documents (e.g., personnel files, health care records, or records of administrative proceedings) provides sufficient authority to support an order sealing such documents. A judge may

seal a Court order, including an order to seal documents and the related findings, when sealing a Court order meets the standard for sealing a judicial document. No document shall be sealed merely by stipulation of the parties. A confidentiality order or protective order entered by the Court to govern discovery shall not qualify as an order to seal documents for purposes of this rule. Any document filed under seal in the absence of a Court order to seal it is subject to unsealing without prior notice to the parties.

[(4)-(7) procedural provisions omitted]

Rule 57. Rules by District Courts.

[(a) omitted]

(b) Sealed Proceedings and Documents.

1. (a) The power to close a courtroom or to exclude the public from proceedings to which a First Amendment right to access attaches shall be used sparingly and only for clear and compelling reasons (e.g., the defendant's right to a fair trial; privacy interests of the defendant, a victim, or others; the integrity of significant government activities entitled to confidentiality, such as ongoing undercover investigations; and danger to persons or property). Before excluding the public from such proceedings, the Court must make particularized findings on the record demonstrating the need for the exclusion, and any court closure order shall be narrowly tailored to serve the purpose of the closure. Those findings may be made in camera and under seal, provided that the requirements of paragraph 3, below, have been met with respect to the findings themselves.

(b) Except when justified by extraordinary circumstances, no order closing a courtroom or excluding the public from proceedings to which a First Amendment right to access attaches shall be entered except upon advance notice to the public. Any motion seeking such relief, whether made by a party or by the Court sua sponte, must be docketed immediately in the public docket files of the Court; provided, however, that in extraordinary situations where even the contemporaneous notation in the docket that courtroom closure has been sought or has occurred would create a substantial risk of harm to an individual, the defendant's right to a fair trial, the integrity of ongoing criminal investigations, or the secrecy of grand jury proceedings, the Court may order the docketing of closure proceedings be delayed for a reasonable time, but must place its particularized findings supporting that delay on the record, under seal if appropriate. When docketed under seal pursuant to an order of the Court, the docket entry for any motion seeking court closure shall reflect the fact that the motion was made, the fact that any supporting or opposing papers were filed under seal, the time and place of any hearing on the motion, the occurrence of such hearing, the disposition of the motion, and the fact and extent of courtroom closure. Any such motion shall be made as far in advance of the pertinent proceeding as possible in order to permit the public to intervene for the purpose of challenging the court closure.

[(2)-(8) omitted]

9. Any case or document ordered sealed by the Court shall remain sealed pending further order of this Court, or any Court sitting in review.

Northern District of New York Local Rules of Practice

83.7 Mandatory Mediation Plan.

[(a)-(l) omitted]

(m) Confidentiality. Assisted mediation is regarded as a settlement procedure and is confidential and private. No participant may disclose, without consent of the other parties, any confidential information acquired during assisted mediation. There shall be no stenographic or electronic record, e.g., audio or video, of the assisted mediation process.

1. All written and oral communications made in connection with or during the assisted mediation session are confidential.
2. No communication made in connection with or during any assisted mediation session may be disclosed or used for any purpose in any pending or future proceeding in the U.S. District Court for the Northern District of New York.
3. Privileged and confidential status is afforded all communications made in connection with the assisted mediation session, including matters emanating from parties and counsel as well as mediators' comments, assessments, and recommendations concerning case development, discovery, and motions. Except for communication between the assigned judge and the mediator regarding noncompliance with program procedures (as set forth in this Rule), there will be no communications between the Court and the mediator regarding a case that has been designated for assisted mediation. The parties will be asked to sign an agreement of confidentiality at the beginning of the assisted mediation session.

[(4)-(8) omitted]

[(n)-(q) omitted]

Rule 83.13. Sealed Matters

[Alternate Dispute Resolution and General Provisions]

(a) A party seeking to have a document, a portion of a document, a party or an entire case sealed bears the burden of filing an application setting forth the reason(s) that the referenced material should be sealed under the governing legal standard. See *Lugosch v. Pyramid Co. of Onondaga County*, 435 F.3d 110, 119-27 (2d Cir. 2006). (The provisions of Local Rule 83.13 shall not apply to actions for which sealing is required by statute, e.g., 31 U.S.C. § 3730(b)(2), or to personal identifiers that are required to be redacted under Local Rule 8.1.) [further procedural instructions omitted.]

(b) Upon the assigned judge's approval of the sealing order, the sealing order shall be filed on the public docket (unless the Court deems sealing all or a portion of it to be appropriate), and the redacted or sealed document shall be filed as directed by the Court. A complaint presented for filing with an application to seal and a proposed order shall be treated as a sealed case, pending approval of the proposed order. A document, a portion of a document, a party or an entire case may be sealed when the case is initiated, or at various stages of the proceeding. The Court may on its own motion enter an order directing that a document, a portion of a document, a party or an entire case be sealed.

- (c) Once the Court seals a document, a portion of a document, a party or an entire case, the material shall remain under seal for the duration of the sealing order or until a subsequent order is entered directing that the sealed material be unsealed. A party or third-party seeking unsealing must do so by motion on notice.
- (d) Should an application to seal be denied, the documents sought to be sealed will be treated as withdrawn and will not be considered by the Court. The documents will be returned to the party advancing the request. The requesting party shall retain all submitted documents for a period of not less than sixty days after all dates for appellate review have expired.

District Court of Vermont Local Rules

Rule 5.2. Sealed Documents; Procedure.

- (a) Order Required.** Cases or court documents cannot be sealed without a court order. Otherwise, all official files in the court's possession are public documents.
- [(b) procedural provision omitted]

THIRD CIRCUIT

Local Appellate Rules

Rule 106.1. Necessity; Grand Jury Matters; Previously Impounded Records; Unsealing

- (a) Generally. With the exception of matters relating to grand jury investigations, filing of documents under seal without prior court approval is discouraged. If a party believes a portion of a brief or other document merits treatment under seal, the party must file a motion setting forth with particularity the reasons why sealing is deemed necessary. Any other party may file objections, if any, within 7 days.

A motion to seal must explain the basis for sealing and specify the desired duration of the sealing order. If discussion of confidential material is necessary to support the motion to seal, the motion may be filed provisionally under seal. Rather than automatically requesting the sealing of an entire brief, motion, or other filing, litigants should consider whether argument relating to sealed materials may be contained in a separate sealed supplemental brief, motion or filings. Sealed documents must not be included in a regular appendix, but may be submitted in a separate, sealed volume of the appendix. In addressing material under seal (except for the presentencing report) in an unsealed brief or motion or oral argument counsel are expected not to disclose the nature of the sealed material and to apprise the court that the material is sealed. ("the party must file a motion setting forth with particularity the reasons why sealing is deemed necessary")

- [(b) grand jury provision omitted]
- (c) Records Impounded in the District Court.
- [(1) criminal provision omitted]

(2) Civil Cases. When the district court impounds part or all of the documents in a civil case, they will remain under seal in this court for 30 days after the filing of the notice of appeal to give counsel an opportunity to file a motion to continue the impoundment, setting forth the reasons therefor. A motion to continue impoundment must explain the basis for sealing and specify the desired duration of the sealing order. If the motion does not specify a date, the documents will be unsealed, without notice to the parties, five years after conclusion of the case. If discussion of confidential material is necessary to support the motion to seal, the motion may be filed provisionally under seal. If a motion to continue impoundment is filed, the documents will remain sealed until further order of this court.

District Court for the District of Maryland Local Rules

Rule 105.11. Sealing.

Any motion seeking the sealing of pleadings, motions, exhibits, or other documents to be filed in the Court record shall include (a) proposed reasons supported by specific factual representations to justify the sealing and (b) an explanation why alternatives to sealing would not provide sufficient protection. The Court will not rule upon the motion until at least fourteen (14) days after it is entered on the public docket to permit the filing of objections by interested parties. Materials that are the subject of the motion shall remain temporarily sealed pending a ruling by the Court. If the motion is denied, the party making the filing will be given an opportunity to withdraw the materials. Upon termination of the action, sealed materials will be disposed of in accordance with L.R. 113.

Local Civil and Criminal Rules of the District Court of for the District of New Jersey

Rule 5.3. Confidentiality Orders and Restricting Public Access Under CM/ECF.

(a) Scope of Rule

(1) This rule shall govern any request by a party or parties to seal, or otherwise restrict public access to, any materials filed with the Court or utilized in connection with judicial decision-making. This rule shall also govern any request by a party or parties to seal, or otherwise restrict public access to, any judicial proceedings.

(2) As used in this rule, "materials" includes all documents of any nature and in any medium. "Judicial proceedings" includes hearings and trials but does not include conferences in chambers.

(3) This rule shall not apply to any materials or judicial proceedings which must be sealed or redacted pursuant to statute or other law.

(b) Confidentiality Order

(1) Parties may enter into written agreements to keep materials produced in discovery confidential and to return or destroy such materials as agreed by parties and as allowed by law.

(2) Parties may submit to a district judge or magistrate judge an agreed-on form of order which embodies a written agreement as described above.

(3) No form of order submitted by parties shall supersede the provisions of this rule with regard to the filing of materials or judicial proceedings. The form of order may, however, provide for the return or destruction of discovery materials as agreed by parties. The form of order shall be subject to modification by a district judge or magistrate judge at any time.

(4) Any order under this section shall be filed electronically under the designation “confidentiality order.”

(5) Any dispute regarding the entry of an order, or the confidentiality of discovery materials under any order, under this section shall be brought before a magistrate judge pursuant to L.Civ.R. 37.1 (a)(1).

(6) Absent extraordinary circumstances, a party shall not file a motion or other materials with redacted information, absent a confidentiality order which expressly grants leave to file under seal or other appropriate leave of Court.

[(c) procedural provision omitted]

(d) Settlement Agreements

(1) No party or parties shall submit a proposed settlement agreement for approval by a district judge or magistrate judge unless required to do so by statute or other law or for the purpose of retaining jurisdiction.

(2) Any settlement agreement filed with the Court or incorporated into an order shall, absent an appropriate showing under federal law, be deemed a public record and available for public review.

[(e)-(f) omitted]

Eastern District of Pennsylvania Local Rules of Civil Procedure

Rule 5.1.5. Documents Filed Under Seal.

(a) A document in a civil action may be filed under seal only if:

- (1) the civil action is brought pursuant to a federal statute that prescribes the sealing of the record or of certain specific documents; or
- (2) the Court orders the document sealed.

(b) (1) Where a document is sealed pursuant to § 5.1.5(a) (1), the continued status of the document under seal shall be governed by the relevant federal statute. If no federal statute governs, §§ 5.1.5(b) (2) and (c) shall apply.

(2) When a document is sealed pursuant to § 5.1.5(a)(2), the document, if it remains in the custody of the Court, shall not be unsealed for two years after the conclusion of the civil action including all appeals, unless the Court orders otherwise.

(c) If a document is still sealed at the conclusion of the two- year period and the Court has not entered an order continuing its sealed status beyond that time, the Clerk of Court shall notify the attorney for the party having submitted the sealed document at the attorney's address on the docket that the document will be unsealed unless the attorney or the submitting party advises the Clerk within sixty (60) days that said attorney or submitting party objects. If the attorney or submitting party objects to the unsealing of the document or if the Clerk's notification is returned unclaimed, the Court will make a determination, on a case-by-case

basis, whether to maintain the document under seal, to unseal it, or to require further notification.

Middle District of Pennsylvania Court Rules

Rule 5.8. Filing of Documents under Seal.

Unless otherwise prescribed by federal statutes, the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure or other provisions of these Rules, including LR 5.2(e), no document shall be filed under seal unless authorized by an order of court. The filing of documents under seal shall be in accordance with LCrR 49.

Rule 49. Filing of Documents under Seal.

(a) Authorization required. Unless otherwise prescribed by federal statutes, the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure or other provisions of these Rules, including LR 5.2(e), no document shall be filed under seal unless authorized by an order of court.

[(b)-(c) definition and procedural provisions omitted]

(d) Exempt documents. The Clerk shall in all cases, without motion, seal the following documents:

[(1)-(4) criminal provisions omitted]

(e) Motion to unseal. It shall be the duty of the party who obtained an order to file under seal to move to unseal the document as soon as the basis for the sealing order has ended.

Western District of Pennsylvania Local Rules

Rule 5.2. Documents to be filed with the Clerk of the Courts.

[(A)-(C) omitted]

D. Redaction of Personal Identifiers. A filed document in a case (other than a social security case) shall not contain any of the personal data identifiers listed in this rule unless permitted by an order of the Court or unless redacted in conformity with this rule. The personal data identifiers covered by this rule and the required redactions are as follows:

[(1)-(5) omitted]

E. Personal Identifiers Under Seal. A party wishing to file a document containing the personal data identifiers listed above may file in addition to the required redacted document:

1. a sealed and otherwise identical document containing the unredacted personal data identifiers, or
2. a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

F. Unredacted Version Retained by Court. The sealed unredacted version of the document or the sealed reference list shall be retained by the Court as a part of the record.

G. Counsel and Parties Responsible. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk of Court will not review each document for compliance with this rule.

H. Leave of Court Required To File Under Seal. A party wishing to file any document under seal must obtain prior leave of Court for each document that is requested to be filed under seal. A party must file a motion seeking leave to file such documents under seal. Only after obtaining an order of Court granting such a motion will a party be permitted to file a document under seal.

FOURTH CIRCUIT

Rule 25(c). Confidential and Sealed Materials.

(1) Certificates of Confidentiality. At the time of filing any appendix, brief, motion, or other document containing or otherwise disclosing materials held under seal by another court or agency, counsel or a pro se party shall file a certificate of confidentiality.

(A) Record material held under seal by another court or agency remains subject to that seal on appeal unless modified or amended by the Court of Appeals.

(B) A certificate of confidentiality must accompany any filing which contains or would otherwise disclose sealed materials. The certificate of confidentiality shall:

- (i) identify the sealed material;
- (ii) list the dates of the orders sealing the material or, if there is no order, the lower court or agency's general authority to treat the material as sealed;
- (iii) specify the terms of the protective order governing the information; and
- (iv) identify the appellate document that contains the sealed information.

[(2)-(3) procedural provisions omitted]

Local Rules for the Eastern District of Virginia

Rule 5. Requests to File Documents Under Seal and the Handling of Documents Under Seal

(A) Unless otherwise provided by law, Court rule, or prior order of the Court, no document or portion of a document may be filed under seal unless the filer has complied with the procedures set forth herein.

(B) As Provided by Law: A party filing a document or a portion of a document under seal pursuant to

a governing statute, rule, or order shall note on the face of the document that it or a portion of it is being

filed under seal pursuant to a statute, rule, or order. Other than in cases filed under seal pursuant to the

False Claims Act, 31 U.S.C. § 3730(b), at the time of the filing, the filer shall also file a notice available

to the public stating that a filing has been made under seal and identifying the statute, rule, or order authorizing the filing under seal and describing what information is being filed under seal. If the Court

determines that the cited statute, rule, or order does not provide for the filing under seal, the Court may

order that the document or a portion of it be filed in the public record.

[(C)-(F) procedural provisions omitted]

(G) Nothing in this Local Civil Rule limits the ability of the parties, by agreement, to restrict access to

documents which are not filed with the Court.

(H) Trial exhibits, including documents previously filed under seal, and trial transcripts will not be filed

under seal except upon a showing of necessity demonstrated to the trial judge.

Southern District of Virginia Local Rules of Procedure

Rule 26.4. Clawback Orders, Protective Orders, and Sealed Documents.

(a) Clawback Orders.

At the court's request, or if the parties jointly agree to the entry of an order governing the clawback of privileged or protected materials that are inadvertently disclosed, the parties should complete and submit one of the following orders, which are preferred by the court: Order Governing the Inadvertent Disclosure of Documents and Materials under Rule 502(b), available on-line at www.wvsd.uscourts.gov, or Order Governing the Inadvertent Disclosure of Documents and Materials under Rule 502(d), also available on-line. Motions seeking to modify the provisions of the approved clawback orders should be made sparingly and only for good cause.

(b) Protective Orders.

To succeed on a motion for the entry of a protective order shielding information from dissemination, the movant or movants must demonstrate with specificity that

- (1) the information qualifies for protection under FR Civ P 26(c), and (2) good cause exists for restricting dissemination on the ground that harm would result from its disclosure. When filing a joint motion for the entry of a protective order, the movants shall complete and submit with the motion the court's on-line Protective Order found at www.wvsd.uscourts.gov. The court's on-line Protective Order is the preferred protective order in this district. Therefore, motions requesting modifications to the provisions of the court's Protective Order should be made sparingly and only for good cause.

(c) Sealed Documents.

- (1) General. The rule requiring public inspection of court documents is necessary to allow interested parties to judge the court's work product in the cases assigned to it. The rule may be abrogated only in exceptional circumstances.

Western District of Virginia Local Rules

Rule 9. Sealed Documents.

The following procedures govern documents under seal in criminal and civil cases in this Court.

(a) General. A “sealed document” is a document in the form of a pleading, exhibit or other paper to which access is restricted to the Court and authorized court personnel. A document may be sealed only by order of the Court, except where otherwise permitted by law or as set forth in paragraph (c) of this Rule. Portions of a document cannot be filed or placed under seal—only the entire document may be sealed. No sealed document may be disclosed except upon order of the Court

[(b) procedural provision omitted]

(c) Exceptions.

(1) No motion or order is required to file the following under seal:

[(a)-(j) enumerated exceptions provision omitted]

(2) No publicly filed motion and order under this rule is required for sealing the following:

[(a)-(b) criminal exceptions omitted]

(3) A publicly filed motion and order citing only the statutory authority for sealing is required for the following:

a. Applications and orders for pen/trap devices (18 U.S.C. §2703)

b. Applications and orders for wire, oral, or electronic communication interception (18 U.S.C. § 2516).

[(d) criminal provision omitted]

Eastern District of North Carolina Local Civil Rules of Practice and Procedure

Rule 79.2. Sealed Documents.

(a) Filing Sealed Documents.

No cases or documents may be sealed without an order from the court. A party desiring to file a document under seal must first file a motion seeking leave in accordance with Section V.G of the CM/ECF Policy Manual. All sealed and proposed documents shall be maintained electronically in CM/ECF unless otherwise ordered by the court. First-time filers are strongly encouraged to call the CM/ECF Help Desk at 866-855-8894.

[(b)-(c) further procedural provisions omitted]

Rules of Practice and Procedure of the Western District of North Carolina

Rule 6.1. Sealing Filing and Public Access.

(a) Scope of Rule. To further openness in civil case proceedings, there is a presumption under applicable common law and the First Amendment that materials filed in this Court will be filed unsealed. This Rule governs any party’s request to seal, or otherwise restrict public access to, any materials filed with the Court or used in connection with judicial decisionmaking. As used in this Rule, “materials” includes pleadings and documents of any nature and in any medium or format.

(b) Filing under Seal. No materials may be filed under seal except by Court order, pursuant to a statute, or in accordance with a previously entered Rule 26(e) protective order.

[(c)-(d) procedural provision omitted]

(e) Public Notice. No motion to seal or otherwise restrict public access shall be determined without reasonable public notice. Notice is deemed reasonable where a motion is filed in accordance with LCvR 6.1(c). Other parties, intervenors, and non-parties may file objections and briefs opposing or supporting the motion within the time provided by LCvR 7.1 and may move to intervene under Fed. R. Civ. P. 24. Where the Court acts before the response, any party or nonparty may move to unseal at any time.

[(f)-(h) procedural provisions omitted]

(i) Impact on Designation of Confidential Materials. Nothing in this Rule limits the parties' ability, by agreement, to restrict access to discovery or other materials not filed with the Court or to submit motions pursuant to Fed. R. Civ. P. 26(c) for a protective order governing such materials.

FIFTH CIRCUIT

Rules of Appellate Procedure

Rule 25.2.8. Sealed Documents. A Filing User may move to file documents under seal in electronic form if permitted by law, and as authorized in the court's electronic filing standards. The court's order authorizing or denying the electronic filing of documents under seal may be filed electronically. Documents ordered placed under seal may be filed traditionally in paper or electronically, as authorized by the court. If filed traditionally, a paper copy of the authorizing order must be attached to the documents under seal and delivered to the clerk.

Local Civil Rules of the Eastern District of Louisiana

Rule 5.6. Procedure for Filing Documents Under Seal.

(A) No document or other tangible item may be filed under seal without the filing of a separate motion and order to seal, unless authorized by law.

[(B)-(F) procedural provisions omitted]

(G) Nothing in this Rule restricts the parties from stipulating access to materials that are not filed with the court.

(H) Except as permitted by law, trial exhibits, including documents previously filed under seal, and trial transcripts will not be filed under seal.

Northern District of Texas Local Rules

Rule 5.2. Documents Filed Under Seal.

(a) In appropriate circumstances a party may need to submit a sealed document for consideration by the court. For purposes of this rule, the term "sealed document" may include any pleading, motion, paper, physical item, or other submission that the Federal Rules of Civil Procedure or these rules permit or require to be filed. If the sealed document is associated with

a pleading, motion or other submission requesting or opposing relief from the court, as in the case of an exhibit to such submission, the sealed document must not be filed with the submission. Instead, the sealed document must be separately filed as an exhibit to a motion requesting permission to keep the document under seal (a “sealing motion”). All documents intended to be kept under seal must be filed as an exhibit to a sealing motion.

[(b)-(e) procedural provisions omitted]

SIXTH CIRCUIT

Rule 25. Filing and Service; Electronic Case Filing.

[(a)-(g) omitted]

(h) Sealed Documents.

(1) Sealing or Limiting Access to Orders and Opinions. An order or opinion is generally part of the public record. A party that seeks to seal or restrict access to an order or opinion must do so by motion.

[(2)-(4) procedural provisions omitted]

(5) Sealed Documents From Lower Court or Agency. Documents sealed in the lower court or agency must continue to be filed under seal in this court. The filing must comply with the requirements of the court or agency that originally ordered or authorized the documents to be sealed.

Eastern District of Kentucky Joint Local Rules – Civil

Rule 5.6. Filing Documents Under Seal.

(a) Presumption of public access. Parties and counsel should presume that all documents filed in district court should be available for the public to access and that restricting public access can occur only in limited circumstances, as set forth in this Rule.

[(b)-(d) definition and procedural provisions omitted]

Eastern District of Michigan Local Rules

Rule 5.3. Civil Material Filed Under Seal.

(a) Sealing Items Authorized by Statute or Rule. When a statute or rule authorizes filing a document or other item under seal in a civil case, the item may be filed without a court order, according to the following procedure:

(1) A separate notice of filing under seal must be filed before filing an item under seal.

(2) The notice must include:

(A) a citation of the statute or rule authorizing the seal;

(B) an identification and description of each item submitted under seal; and

(C) a statement establishing that the items are within the statute or rule authorizing the sealing.

(b) Sealing Items Not Authorized by Statute or Rule.

(1) Except as allowed by statute or rule, documents (including settlement agreements) or other items may not be sealed except by court order. A party or other person may not file or tender to the clerk an item proposed for sealing under this subrule unless the Court enters an order permitting sealing.

[(2)-(3) procedural provisions omitted]

(c) Unsealing Documents. When the Court orders an item unsealed, the clerk will make it publicly available as any other public document.

Western District of Michigan Local Rules of Civil Practice and Procedure

Rule 10.6. Sealed documents.

(a) Policy. To preserve the qualified, common-law presumption of public access to judicial files in civil cases, the filing of documents under seal should be the exception. Sealing is to be limited to information that is truly proprietary or confidential. The court strongly resists the sealing of entire civil pleadings, motions or briefs, as it is rare that the entire document will merit confidential treatment. In lieu of seeking leave to file an entire document under seal, parties should incorporate the confidential material in a separate document and seek leave to file only that document under seal.

[(b) procedural provision omitted]

(c) Access to sealed documents. A document filed under seal may be accessed electronically only by authorized personnel of this court and the court of appeals and not by the public or any attorney or party, except as authorized under LCivR 10.7.

(d) Service of sealed documents - A party submitting a document under seal must serve it by non-electronic means of service on all other parties.

Southern District of Ohio Local Rules

Rules 5.2.1. Sealed Documents.

(a) Filing Under Seal. Unless permitted by statute, parties may not file documents under seal without obtaining leave of Court upon motion and for good cause shown. Upon obtaining leave of Court, litigants other than pro se litigants must file the documents electronically using the ECF system as provided in S.D. Ohio Civ. R. 5.1. Pro se litigants who have obtained leave must follow the procedures set forth in Rule 5.2.1(b). The Court may strike any document filed under seal if the filing party failed to obtain leave of Court.

[(b) procedural provision omitted]

SEVENTH CIRCUIT

Rule 10. Sealing Portions of the Record.

(a) Requirement of Judicial Approval. Except to the extent portions of the record are required to be sealed by statute (e.g., 18 U.S.C. §3509(d)) or a rule of procedure (e.g., Fed. R. Crim. P.

6(e), Circuit Rule 26.1(b)), every document filed in or by this court (whether or not the document was sealed in the district court) is in the public record unless a judge of this court orders it to be sealed.

(b) Delay in Disclosure. Documents sealed in the district court will be maintained under seal in this court for 14 days, to afford time to request the approval required by section (a) of this procedure.

(b) Delay in Disclosure. Documents sealed in the district court will be maintained under seal in this court for 14 days, to afford time to request the approval required by section (a) of this procedure.

Eastern District of Wisconsin Local Rules

Rule 79. Custody of Exhibits; Return of Exhibits and Depositions; Withdrawal of Materials in Court Files; Confidential Matters; Sealed Records.

[(a)-(c) general provisions omitted]

(d) Confidential Matters; Restricted Records; Sealed Records.

(1) The Court will consider any document or material filed with the Court to be public unless, at the time of filing, it is accompanied by a separate motion requesting that: access to the document be restricted to the Court and counsel for the parties; or that the document or material, or portions thereof, be sealed by the Court. No motion is necessary to seal or restrict a document or material otherwise protected from disclosure.

(2) The separate motion to restrict or seal must be publicly filed and must describe the general nature of the information withheld from the public record. To the extent possible, the movant should include with the public filing a version of the document or material that redacts only those portions of the document that are subject to the restriction/sealing request. If the motion is denied, the document or material subject to the restriction/sealing request will be publicly filed by the Clerk of Court, unless otherwise ordered by the Court. Parties should refer to ECF Policies and Procedures II.I.2 for additional procedures related to filing sealed or restricted documents.

(3) Any motion to restrict access or seal must be supported by sufficient facts demonstrating good cause for withholding the document or material from the public record. If the documents or materials sought to be restricted/sealed have been designated confidential by someone other than the filing party, the filing party may explain in the motion that the documents or materials are being filed under seal pursuant to a Court-approved protective order or otherwise, and that the filing party supports, objects to, or takes no position on the continued sealing of the documents or materials. In response, the person or party that originally designated the documents or materials as confidential may, if it chooses, provide sufficient facts demonstrating good cause to continue sealing the documents or materials. Absent a sufficient factual basis demonstrating good cause sufficient to seal the documents or materials, the motion must be denied and the documents or materials publicly filed by the Clerk of Court, unless otherwise ordered by the Court.

(4) Any party seeking to restrict access to documents or materials or to file confidential documents or materials under seal, whether pursuant to a Court-approved protective order or otherwise, must include in the motion a certification that the parties have conferred in a good

faith attempt to avoid the motion or to limit the scope of the documents or materials subject to sealing under the motion.

(5) The following documents or materials do not require a separate motion to be filed under seal: (a) an unredacted disclosure statement filed in accordance with Civil L. R. 10(c); (b) documents or materials filed in an action under the False Claims Act, in accordance with 31 U.S.C. § 3730(b), unless otherwise ordered by the Court; (c) documents or materials concerning or contesting ongoing grand jury proceedings; and (d) documents or materials concerning cooperation by criminal defendants, filed pursuant to 18 U.S.C. §3553, United States Sentencing Guideline § 5K1.1, and Fed. R. Crim. P. 35.

[(6)-(7) procedural provisions omitted]

Southern District of Indiana Local Rules

Rule 5-11. Filing Under Seal – Civil Cases.

(a) Filing Cases Under Seal. To seal a case, a party must file a motion requesting that the court seal the case with a proposed order at or before the time the party files its initial pleading. The clerk will seal the case until the court rules on the motion. If the court denies the motion, the clerk will unseal the case 21 days after service of the order, absent a Fed. R. Civ. P. 72(a) objection; motion to reconsider; or notice by a party of an intent to file an interlocutory appeal.

(b) Filing Documents Under Seal - General Rule. The clerk may not maintain under seal any document unless authorized to do so by statute, rule, or court order. Once a document is sealed, the clerk may not, without a court order, allow anyone to see it other than:

- (1) the court and its staff;
- (2) the clerk's staff; and
- (3) the attorneys who have appeared or been appointed on appeal, and any pro se party in the case in which the document has been filed.

(c) Redaction in Lieu of Filing Under Seal.

- (1) Documents redacted pursuant to Fed. R. Civ. P. 5.2(a) must not be filed under seal.
- (2) When any of the confidential information in a document is irrelevant or immaterial to resolution of the matter at issue, the filing party may redact, by blacking out, the confidential information in lieu of filing under seal. Any party who files such a redacted document must serve an unredacted and complete version of the document upon all counsel and pro se parties.

[(d)-(g) procedural provisions omitted]

EIGHTH CIRCUIT

Rule 25. Electronic (CM/ECF) and Facsimile Filing; Electronic Noticing and Service.

[(a)-(g) general provisions omitted]

(h) Sealed Documents: Sealed documents must only be filed in paper format. Motions for permission to file a document under seal must also be filed in paper format. The motion should state whether the filing party believes the motion to seal may be made publicly available on PACER or should remain sealed.

(i) Privacy: In compliance with the privacy policies of the Judicial Conference of the United States and in order to address the privacy concerns created by Internet access to court documents, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the court:

[(1)-(6) omitted]

[(j)-(m) omitted]

District Court of Minnesota Local Rules and Orders

Rule 5.6. Filing Documents Under Seal in Civil Cases.

(a) Application of Rule.

(1) A document may be filed under seal in a civil case only as provided by statute or rule, or with leave of court.

(2) This rule does not require a party to file any document under seal, but sets forth the procedures used when a party seeks to file a document under seal.

(3) This rule does not affect a party's obligation to redact personal identifiers under Federal Rule of Civil Procedure 5.2 or LR 5.5, or any statutory, contractual, or other obligation to keep information confidential.

(b) Electronic Filing Required. All documents filed in a civil case — whether sealed or not — must be filed in compliance with the CIVIL ECF PROCEDURES GUIDE.

(c) What May Be Temporarily Sealed. A party may file a document under temporary seal only if the document contains information that:

(1) the filing party contends is confidential or proprietary;

(2) has been designated as confidential or proprietary by another party, by a nonparty, or under a non disclosure agreement or protective order; or

(3) is otherwise entitled to protection from disclosure under a statute, rule, order, or other legal authority.

[(d)-(e) procedural provisions omitted]

NINTH CIRCUIT

Rule 27-13. Sealed Documents.

(a) Introduction

This Court has a strong presumption in favor of public access to documents. Therefore, except as provided in (d) below, the presumption is that every document filed in or by this Court (whether or not the document was sealed in the district court) is in the public record unless this Court orders it to be sealed.

Accordingly, unless a case or document falls within the scope of (d) below, this Court will permit it to be filed under seal only if justified by a motion to seal the document from public view. See (e), (f), (g), and (h) below. The Court will not seal a case or a document based solely on the stipulation of the parties.

When an entire case was sealed in district court, the case will be docketed provisionally under seal in this Court, and within 21 days of filing the notice of appeal, a party must file a motion to continue the seal or the seal may be lifted without notice. See (g) below.

When a document was sealed in the district court, the document will be filed provisionally under seal, and must be accompanied by a notice under subsection (d), a motion to seal under subsection (e), or a notice under subsection (f). The document will remain provisionally sealed until the Court rules on any motion to seal.

Documents in Social Security and Immigration cases, including administrative records, are not filed under seal in this Court. However, remote electronic access to documents is limited by rule to the parties to the case, though the documents will be available for public viewing in the Clerk's Office. See Fed. R. Civ. P. 5.2(c); Fed. R. App. P. 25(a)(5).

This same rule, however, presumes that the orders and dispositions will be publicly available.

[(b)-(j) procedural provisions omitted]

Western District of Washington Local Civil Rules

Rule 5. Serving and Filing Pleadings and Other Papers.

[(a)-(f) general provisions omitted]

(g) Sealing and Redacting of Court Records

There is a strong presumption of public access to the court's files. This rule applies in all instances where a party seeks to overcome the policy and the presumption by filing a document under seal.

(1) A party must explore all alternatives to filing a document under seal.

(A) If the party seeks to file the document under seal because another party has designated it as confidential during discovery, the filing party and the designating party must meet and confer to determine whether the designating party will withdraw the confidential designation or will agree to redact the document so that sealing is unnecessary.

(B) Parties must protect sensitive information by redacting sensitive information (including, but not limited to, the mandatory redactions of LCR 5.2) that the court does not need to consider. A party who cannot avoid filing a document under seal must comply with the remainder of this rule.

(2) A party may file a document under seal in only two circumstances:

(A) if a statute, rule, or prior court order expressly authorizes the party to file the document under seal; or

(B) if the party files a motion or stipulated motion to seal the document before or at the same time the party files the sealed document. Filing a motion or stipulated motion to seal permits the party to file the document under seal without prior court approval pending the court's ruling on the motion to seal. The document will be kept under seal until the court determines whether it should remain sealed.

[(3)-(4) procedural provision omitted]

(5) Only in rare circumstances should a party file a motion, opposition, or reply under seal. A party who cannot avoid including confidential information in a motion, opposition, or reply must follow this procedure:

[(A)-(B) procedural provisions omitted]

(6) When the court denies a motion to seal, the clerk will unseal the document unless (1) the court orders otherwise, or (2) the party who is relying on the sealed document requests in the motion to seal or response that, if the motion to seal is denied, the court withdraw the document from the record rather than unseal it. If a document is withdrawn on this basis, the parties shall not refer to it in any pleadings, motions or other filings, and the court will not consider it. For this reason, parties are encouraged to seek a ruling on motions to seal well in advance of filing underlying motions relying on those documents.

(7) When a court grants a motion to seal or otherwise permits a document to remain under seal, the document will remain under seal until further order of the court.

(8) Parties may file a motion or stipulated motion requesting that the court unseal a document. A non-party seeking access to a sealed document may intervene in a case for the purpose of filing a motion to unseal the document.

[(9) omitted]

Local Rules of Practice for the District Court of Hawai'i

Rule 83.12. Sealing of Information Filed With the Court.

(a) Any party may seek leave to file under seal any pleading, declaration, affidavit, document, picture, exhibit, or other matter if it contains confidential, restricted, or graphic information and/or images. These items shall not be filed under seal without leave of court. A stipulation or blanket protective order that allows a party to designate matters to be filed under seal will not suffice to allow the filing of the matter under seal.

[(b)-(e) procedural provisions omitted]

Central District of California Local Rules

Rule 79-5. Confidential Court Records – Under Seal.

79-5.2 Procedures. Unless otherwise indicated in this L.R. 79- 5.2, no case or document may be filed under seal without first obtaining approval by the Court.

[additional procedural information omitted]

79-5.2.2 Under-Seal Documents in Non-Sealed Civil Cases. In a non-sealed civil case, no document may be filed under seal without prior approval by the Court. A person seeking to file documents under seal must follow the procedures set forth below in subsection (a), unless someone else has designated these documents as confidential pursuant to a protective order, in which event those involved must follow the procedures set forth in subsection (b). Once the Court has granted leave to file under seal, documents to be filed under seal must be filed in accordance with subsection (c).

[(a)-(c) procedural provisions omitted]

Rule 79-6. Confidential Court Records – In Camera Review.

79-6.1. In Camera Review. A document accepted by the Court for review in camera will not, while under review, be made part of the Court's official case file, or be made available for inspection by the public or any party, and need not be served on any party when presented to the Court for review.

79-6.2. Prior Court Approval Required. No document may be presented for review in camera without prior approval of the Court. A person seeking in camera review of a document must describe its general nature and establish why it should be reviewed in camera, citing the applicable legal standard.

79-6.3. After Review. After reviewing a document in camera, the Court may order it to be filed publicly or under seal, with or without service, or otherwise disclosed to other parties. Unless the Court orders it to be filed, or unless otherwise ordered by the Court, a document reviewed in camera must afterward be retained by the counsel or party that presented it until final disposition of an appeal, entry of a stipulation waiving or abandoning the right to appeal, expiration of the time for appeal (where no appeal is taken), or order of the Court, whichever occurs first.

Rule 79-7. Confidential Court Records – Disclosure.

79-7.1. Non-Disclosure of Confidential Court Records. Except upon written order of the Court, or as otherwise provided in this L.R. 79-7.1, the Clerk shall not disclose to the public, including attorneys

and parties appearing in the case, a document that has been filed under seal or, for a case that has been sealed, the docket of that case. A document filed under seal in a civil case pending on or after the effective date of this L.R. 79-7.1 will, upon request, be open to inspection by the public and the parties to the case without further action by the Court 10 years from the date the case is closed.

However, the party that filed the document in question or a party that designated the document as confidential pursuant to a protective order may, upon showing good cause prior to that date, seek an order to extend non-disclosure to a specific date beyond the 10 years provided by this rule. Nothing in this rule is intended to affect the normal records disposition policy or schedule of the United States Courts.

District Court of Arizona Local Rules

Rule 5.6. Sealing of court records in unsealed civil actions.

(a) Order required. No document may be filed under seal in an unsealed civil action except pursuant to an order by the Court as set forth in subpart (b) of this Rule. For the purposes of this Rule, the term "document" means any exhibit, record, filing or other item to be filed under seal with the Court.

(b) Procedure for obtaining an order to file a document under seal. The Court may order the sealing of any document pursuant to a motion, stipulation, or the Court's own motion. The Court generally will not enter an order that gives advance authorization to file documents under seal that are designated for such treatment by parties under a protective order or

confidentiality agreement. Any motion or stipulation to file a document under seal must set forth a clear statement of the facts and legal authority justifying the filing of the document under seal and must append (as a separate attachment) a proposed order granting the motion. The document or documents that are the subject of any such motion or stipulation must not be appended to the motion or stipulation, and must be lodged with the Court separately consistent with subpart (c) of this Rule.

[(c) procedural provision omitted]

(d) Filing a document designated confidential by another party. Unless otherwise ordered by the Court, if a party wishes to file a document that has been designated as confidential by another party pursuant to a protective order or confidentiality agreement, or if a party wishes to refer in a memorandum or other filing to information so designated by another party, the submitting party must confer with the designating party about the need to file the document (or proposed filing) under seal and whether the parties can agree on a stipulation seeking to have the document (or proposed filing) filed under seal. If the parties are unable to agree on these issues, the submitting party must lodge the document (or proposed filing) under seal and file and serve a notice of lodging summarizing the parties' dispute and setting forth the submitting party's position, accompanied by a certification that the parties have conferred in good faith and were unable to agree about whether the document (or proposed filing) should be filed under seal. Within fourteen (14) days after service of the notice, the designating party must file and serve either a notice withdrawing the confidentiality designation or a motion to seal and a supporting memorandum that sets forth the facts and legal authority justifying the filing of the document (or proposed filing) under seal. If the designating party seeks to have the document (or proposed filing) filed under seal, the motion must append (as a separate attachment) a proposed order granting the motion to seal. No response to the motion may be filed. If the designating party does not file a motion or notice as required by this subsection, the Court may enter an order making the document (or proposed filing) part of the public record.

(e) Denial of request to file a document under seal. If a request to file under seal is denied in part or in full, the lodged document will not be filed. If the request is denied in full, the submitting party may, within five (5) days of the entry of the order denying the request, resubmit the document for filing in the public record. If the request is denied in part and granted in part, the party may resubmit the document in a manner that conforms to the Court's order and this Rule.

(f) Effect of sealing. If the Court orders the sealing of any document, the Clerk shall file the order to seal and secure the sealed document from public access.

TENTH CIRCUIT

Rule 25.6. Filing under seal.

Any party who seeks to file any document under seal in this court must overcome a presumption in favor of access to judicial records. *See Eugene S. v. Horizon Blue Cross Blue Shield of New Jersey*, 663 F.3d 1124, 1135 (10th Cir. 2011).

(A) Motions to seal. Except as provided in Rule 11.3(C) any document—motion, response, attachment, brief, appendix, or other paper—submitted under seal must be accompanied by a motion for leave to file the document under seal. The motion must

- (1) identify with particularity the specific document containing the sensitive information;
 - (2) explain why the sensitive information cannot reasonably be redacted in lieu of filing the entire document under seal;
 - (3) articulate a substantial interest that justifies depriving the public of access to the document;
 - (4) cite any applicable rule, statute, case law, and/or prior court order having a bearing on why the document should be sealed, keeping in mind that this court is not bound by a district court’s decision to seal a document below, see *Williams v. FedEx Corporate Services*, 849 F.3d 889, 905 (10th Cir. 2017); and
 - (5) comply with Tenth Circuit Rule 27.1.
- (6) In addition, the motion to seal need not be filed under seal unless required by the nature of the request or the need to protect sealed information.

(B) Redaction in lieu of sealing. Redaction is preferable to filing an entire document under seal. Thus, unless redaction is impracticable, the party seeking to protect sensitive information shall publicly file a redacted version of the document concurrently with the motion to seal.

District Court of Colorado Local Civil Rules

Rule 7.2. Public Access to Documents and Proceedings.

(a) Policy. Unless restricted by statute, rule of civil procedure, or court order, the public shall have access to all documents filed with the court and all court proceedings.

(b) Levels of Restriction. There are three levels of restriction. Level 1 limits access to the parties and the court. Level 2 limits access to the filing party and the court. Level 3 limits access to the court.

(c) Motion to Restrict. A motion to restrict public access shall be open to public inspection and shall:

- (1) identify the document or the proceeding for which restriction is sought;
- (2) address the interest to be protected and why such interest outweighs the presumption of public access (stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restriction);
- (3) identify a clearly defined and serious injury that would result if access is not restricted;
- (4) explain why no alternative to restriction is practicable or why only restriction will adequately protect the interest in question (e.g., redaction, summarization, restricted access to exhibits or portions of exhibits); and
- (5) identify the level of restriction sought.

(d) Public Notice of Motion to Restrict; Objection. Notice of the filing of such motion shall be posted on the court’s website on the court business day following the filing of the motion. Any person may file an objection to the motion to restrict no later than three court business days

after posting. Absent exigent circumstances, no ruling on a motion to restrict shall be made until the time for objection has passed. The absence of objection shall not alone result in the granting of the motion.

(e) Filing Restricted Documents. A document subject to a motion to restrict shall be filed as a restricted document and shall be subject to restriction until the motion is determined by the court. If a document is filed as a restricted document without an accompanying motion to restrict, it shall retain the restriction selected by the filer for 14 days. If no motion to restrict is filed within such time period, the restriction shall expire and the document shall be open to public inspection.

Northern District of Oklahoma Local Rules

Rule 79.1. Sealed Documents.

(a) Policy. It is the policy of this Court that sealed documents, confidentiality agreements, and protective orders are disfavored. Sealed documents and confidentiality agreements may be approved by the Court only upon a showing that a legally protected interest of a party, non-party or witness outweighs the compelling public interest in disclosure of records. All protective orders dealing with confidentiality must be approved by a magistrate judge and filed of record.

In civil cases in which confidential information covered by a protective order must be attached to a pleading, attorneys should file an unsealed pleading with nonconfidential exhibits and redacted confidential exhibits. At the same time, attorneys should file a supplemental sealed pleading which contains the unredacted exhibits covered by the protective order.

The Court strongly urges attorneys to present all arguments and all documents in unsealed pleadings. In an effort to do this, attorneys should use good judgment in generically referring to matters covered by a protective order without revealing confidential information. In those rare instances where specific confidential documents must be attached to a pleading, attorneys should file the supplemental sealed pleading referenced above.

(b) Caption of Sealed Documents. Underneath the case number, in the style of any document sought to be sealed, the document shall be marked in all caps, "SEALED."

(c) Sealed Documents in Public Cases. A person seeking to file a document under seal in a public case shall electronically file both a motion to seal and the sealed document separately. The motion seeking such an order must contain sufficient facts to overcome the presumption in favor of disclosure and may itself be filed under seal. The relief sought shall be narrowly tailored to serve the specific interest sought to be protected. A proposed order shall be submitted pursuant to the Administrative Guide. If the motion to seal is denied, the court will direct that the document either be stricken or be unsealed.

(d) Documents in Sealed Cases. Documents to be filed in sealed cases (nonpublic cases) must be filed in paper format.

District Court of Utah

Rule 5.3. Filing Documents Under Court Seal.

(a) General Rule.

(1) The records of the court are presumptively open to the public. The sealing of pleadings, motions, memoranda, exhibits, and other documents or portions thereof (hereinafter, "Documents") is highly discouraged. Unless restricted by statute or court order, the public shall have access to all Documents filed with the court and to all court proceedings. On motion of a party and a showing of good cause, a judge may order that a Document be sealed. A stipulation or a blanket protective order that allows a party to designate documents as sealable will not suffice to allow the filing of Documents under seal.

(2) To prevent the over designation of sealed Documents in the court record, counsel shall:

(A) refrain from filing motions or memoranda under seal merely because an attached exhibit contains protectable information;

(B) redact personal identifiers, as set forth in DUCivR 5.2-1, and publicly file the Document;

(C) redact the confidential portions of a Document when they are not directly pertinent to the issues before the court and publicly file the Document; and

(D) if the protectable information is pertinent to the legal issues before the court, redact the protectable information from the Document and publicly file the Document. Follow the procedure below to file a sealed version of the Document.

[(b) procedural provision omitted]

(c) Access to Sealed Documents.

Unless otherwise ordered by the court, the clerk will not provide access to or make copies of sealed documents.

ELEVENTH CIRCUIT

Court of Appeals Local Rules

Rule 11-3. Preparation and Transmission of Exhibits - Duties of District Court Clerk. The clerk of the district court is responsible for transmitting with the record to the clerk of this court a list of exhibits correspondingly numbered and identified with reasonable definiteness. The district court clerk must include in the electronic record on appeal electronic versions of all documentary exhibits admitted into evidence at trial or any evidentiary hearing. The district court clerk must ensure that no such documentary exhibits are returned to the parties before electronic versions of those exhibits have been entered into the electronic record on appeal.

If any documentary exhibits have been sealed or marked confidential by the district court or the district court clerk, the district court clerk must transmit any such sealed or confidential documentary exhibits to this court either in their original form or in electronic form provided the electronic access is appropriately restricted, unless otherwise directed by the clerk of this court.

If audio or video files were entered into evidence at trial or any evidentiary hearing, such files and any transcripts must be retained by the district court clerk during the period in which a notice of appeal may be timely filed and transmitted to this court as part of the record on

appeal. However, the district court clerk must not transmit to this court any exhibits containing child pornography unless requested to do so by the clerk of this court.
[further procedural information omitted]

Southern District of Alabama General Local Rules

Rule 5.2. Sealed documents.

The following procedures govern documents under seal in criminal and civil cases in this District.

(a) General. A "sealed document" is a document access to which, other than by the Court or its authorized personnel, is prohibited or restricted. Portions of a document cannot be filed or placed under seal - only the entire document may be sealed. No sealed document may be unsealed or disclosed except upon order of the Court or in compliance with this Rule.
[(b)-(d) procedural and exception provisions omitted]

Northern District of Florida

Rule 5.5. Sealing Case Files and Documents; Redacting Documents.

(A) General Rule. Each case file and each document filed in it is public unless one of these provides otherwise: a statute, court rule, administrative order, or order in the case. The Court may, by an order in the case, modify any sealing or redaction requirement set out in an administrative order or this rule.

(B) Documents That May Be Sealed Without an Order. When a statute, court rule, or administrative order requires the sealing of a category of documents, a party may submit a document in that category for filing under seal, without moving for leave to file the document under seal. The Clerk must maintain the document under seal unless the Court orders otherwise.

(C) Documents That May Be Sealed Only With an Order. A party who wishes to file any other document under seal must, if feasible, move in advance for leave to file the document under seal. The party may submit the document for filing under seal only if the Court authorizes it. If a party submits a document for filing under seal before the Court authorizes it—either because obtaining advance authorization was not feasible or in violation of this rule—the Clerk must promptly refer the sealing issue to the Court and must maintain the document under seal until otherwise ordered.

(D) Filing Redacted Versions of Sealed Documents. When feasible, a party who files a document under seal must file a redacted version that will become part of the public file. Filing a redacted version is feasible unless (1) a person could infer from the redacted version the substance or import of the information that called for sealing the original or (2) the redacted version would include so little information that publicly filing it would serve no purpose.

(E) Redacting Documents That Are Improperly Filed with Personal Identifiers. If a party violates Federal Rule of Civil Procedure 5.2 or Federal Rule of Criminal Procedure 49.1 by failing to redact a personal identifier, the party must promptly file a properly redacted substitute. When the substitute is filed, the Clerk must seal the unredacted original.

Southern District of Georgia Local Rules

Rule 79.7. Sealed Documents.

- (a) Except as required or allowed by statute or rule, no matter may be placed under seal without permission of the Court.
- (b) Any person desiring to have any matter placed under seal shall present a motion setting forth the grounds why the matter presented should not be available for public inspection. The Clerk shall: (i) docket the motion as a Motion to Seal; (ii) refrain from labeling the filing as "sealed" or identifying the person seeking the sealing order unless the person consents; (iii) designate any accompanying materials as "sealed matter"; and (iv) maintain the motion and accompanying materials in a secure file pending a ruling on the Motion to Seal.
- (c) If the Motion to Seal is denied, any materials which the person sought to have sealed, and which were submitted to the Clerk with the motion, shall be returned to the person, who shall then have the option of filing the materials in the normal course.
- (d) Motions to Seal may extend to three layers of information: (1) the name of the movant; (2) the title of the filing sought to be sealed; and (3) the contents of the filing itself. In most cases, only the contents of the filing itself (e.g., proprietary data embodied within an in limine motion) will warrant sealing, not the title of the filing (e.g., Motion in Limine) or the identity of the movant (e.g., XYZ Tire Company). Therefore, unless the Court specifies otherwise, the Clerk shall construe all sealing orders to extend only to the contents of the underlying filing. The burden rests upon the moving party to justify all three sealing levels. The party seeking to have any matter placed under seal must rebut the presumption of the openness derived from the First Amendment by showing that closure is essential to preserve some higher interest and is narrowly tailored to serve that interest.
- (e) A party who moves to seal any matter submitted to the Court shall indicate whether the matter should be sealed permanently or until: (1) the conclusion of the trial, (2) the entry of final judgment, (3) the conclusion of the direct appeal, or (4) some other specified time. The permanent sealing of a Court record is not preferred and should be sought only where temporary sealing is not adequate to protect the interest at stake. Upon the expiration of any temporary sealing period, the matter shall be unsealed and made a part of the public record.

D.C. CIRCUIT

D.C. Circuit Rules

Rule 47.1. Matters Under Seal.

(a) Case with Record Under Seal. Any portion of the record that was placed under seal in the district court or before an agency remains under seal in this court unless otherwise ordered. Parties and their counsel are responsible for assuring that materials under seal remain under seal and are not publicly disclosed.

(b) Agreement to Unseal. In any case in which the record in the district court or before an agency is under seal in whole or in part and a notice of appeal or petition for review has been filed, each party must promptly review the record to determine whether any portions of the

record under seal need to remain under seal on appeal. If a party determines that some portion should be unsealed, that party must seek an agreement on the unsealing. Such agreement must be presented promptly to the district court or agency for its consideration and issuance of an appropriate order.

(c) Motion to Unseal. A party or any other interested person may move at any time to unseal any portion of the record in this court, including confidential briefs or appendices filed under this rule. On appeals from the district court, the motion will ordinarily be referred to the district court, and, if necessary, the record remanded for that purpose, but the court may, when the interests of justice require, decide that motion, and, if unsealing is ordered, remand the record for unsealing. Unless otherwise ordered, the pendency of a motion under this rule will not delay the filing of any brief under any scheduling order.

[(d)-(e) omitted]

(f) Disposal of Sealed Records.

(1) In any case in which all or part of the record of this court (including briefs and appendices) has been maintained under seal, the clerk will, in conjunction with the issuance of the mandate (or the entry of the final order, in a case in which no mandate will issue), order the parties to show cause why the record (or sealed portions) should not be unsealed. If the parties agree to unsealing, the record will be unsealed by order of the court, issued by the clerk. No order to show cause will be issued in cases where the nature of the materials themselves (e.g., grand jury materials) makes it clear that unsealing would be impermissible. If the parties do not agree to unsealing, the order to show cause, and any responses thereto, will be referred to the court for disposition.

(2) Any record material not unsealed pursuant to this rule will be designated "Temporary Sealed Records," and transferred to the Federal Records Center under applicable regulations. The records will be returned to the court for reconsideration of unsealing after a period of 20 years.

(3) The court may, on its own motion, issue an order to show cause and consider the unsealing of any records in the court's custody, at any time.

(4) Counsel to an appeal involving sealed records must promptly notify the court when it is no longer necessary to maintain the record or portions of the record under seal.

Local Rules of the District Court of D.C.

Rule 5.1. Form and Filing of Documents.

[(a)-(g) general provisions omitted]

(h) Sealed or Confidential Documents.

(1) Absent statutory authority, no case or document may be sealed without an order from the Court. A document filed with the intention of it being sealed in an otherwise public case must be filed by electronic means in a manner authorized by the Clerk and shall be accompanied by a motion to seal. The document will be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the document being placed on the public record.

[(2)-(3) procedural provision omitted]

State Anti-Secrecy Measures

ALABAMA

Code

§ 36-12-40. Rights of citizens to inspect and copy public writings; exceptions.

Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute. . . . Notwithstanding the foregoing, records concerning security plans, procedures, assessments, measures, or systems, and any other records relating to, or having an impact upon, the security or safety of persons, structures, facilities, or other infrastructures, including without limitation information concerning critical infrastructure (as defined at 42 U.S.C.S. § 5195c(e) as amended) and critical energy infrastructure information (as defined at 18 C.F.R. § 388.113(c)(1) as amended), the public disclosure of which could reasonably be expected to be detrimental to the public safety or welfare, and records the disclosure of which would otherwise be detrimental to the best interests of the public shall be exempted from this section. Any public officer who receives a request for records that may appear to relate to critical infrastructure or critical energy infrastructure information, shall notify the owner of such infrastructure in writing of the request and provide the owner an opportunity to comment on the request and on the threats to public safety or welfare that could reasonably be expected from public disclosure on the records.

§ 36-12-41. Certified copies.

Every public officer having the custody of a public writing which a citizen has a right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor, and such copy is admissible as evidence in like cases and with like effect as the original writing.

Rules of Civil Procedure

Rule 26(6) Claims of privilege or protection of trial-preparation materials.

(A) When a party withholds information otherwise discoverable under these rules on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and, upon written request by any other party, shall be supported by a description of the nature of the documents, communications, or things not produced sufficient to enable the demanding party to contest the claim. This supporting description shall be served within twenty-one (21) days of the date a request is served, unless otherwise ordered.

(B) If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or

disclose the information until the claim is resolved. Either party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(C) Protective orders. 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 or production or inspection, the court in the circuit where the deposition or production or inspection is to be taken may make any order that 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 or the allocation of expenses for the discovery; (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 court. A motion for a protective order shall be accompanied by a statement of the attorney for the moving party stating that the attorney, before filing the motion, has endeavored to resolve the subject of the discovery motion through correspondence or discussions with opposing counsel or, if the opposing party is not represented by counsel, with the opposing party.

Rule 77(b). Trials and hearings; orders in chambers.

All trials upon the merits shall be conducted in open court, except as otherwise provided by statute, and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk of other court officials and at any place within the state either within or without the circuit; but no hearing, other than one ex parte, shall be conducted outside the circuit without the consent of all parties affected thereby.

Rules of Evidence

Rule 507. Trade secrets.

A person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. If disclosure is directed, the court shall take such protective measures as the interest of the holder of the privilege and of the parties and the interests of justice require.

Appellate Court Mediation Rules

Rule 8. Confidentiality.

...

All information disclosed in the course of screening for mediation, referral to mediation, and mediation, including oral, documentary, or electronic information, shall be deemed confidential and shall not be divulged by anyone involved in the mediation program or in attendance at the mediation except as permitted under this Rule, by statute, or by the Alabama Rules of Appellate Procedure.

There shall be no reference, whatsoever, in any appellate motions, briefs, or argument to the appellate mediation program or to the fact that the appeal was mediated or that mediation reached an impasse, except in those cases where mediation was partially successful and disclosure is necessary for a complete statement of the case. It is the responsibility of the counsel to bring this exception to the rules to the attention of the clerk's office or the mediation office. Failure to do so may result in a waiver of this exception.

The mediator and mediation program employees shall not be compelled in any adversary proceeding or judicial forum to divulge the contents of any documents revealed during mediation or the fact that such documents exist or to testify in regard to the mediation. The mediator's notes and the parties' Mediation Statements do not become part of the court's file.

The phrase, "information disclosed in the course of screening for mediation, referral to mediation, and mediation," as used in this Rule, shall include, but not be limited to: (1) views expressed or suggestions made by another party with respect to a possible settlement of the dispute; (2) admissions made by another party in the course of the mediation proceedings; (3) proposals made or views expressed by the mediator; (4) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by the mediator; and (5) all records, reports, or other documents received by a mediator while serving as mediator. . . .

Ala. Civ. Ct. Mediation Rule 11. Confidentiality.

(a) All information disclosed in the course of a mediation, including oral, documentary, or electronic information, shall be deemed confidential and shall not be divulged by anyone in attendance at the mediation except as permitted under this Rule or by statute. The term "information disclosed in the course of a mediation" shall include, but not be limited to:

[(1)-(5) omitted]

(b) The following are exceptions to the general rule stated in Rule 11 (a):

[(1)-(3) omitted]

(c) Except as provided in Rule 11 (b) above, a court shall neither inquire into nor receive information about the positions of the parties taken in mediation proceedings; the facts elicited or presented in mediation proceedings; or the cause or responsibility for termination or failure of the mediation process.

(d) A mediator shall not be compelled in any adversary proceeding or judicial forum, including, but not limited to, a hearing on sanctions brought by one party against another party, to divulge the contents of documents received, viewed, or drafted during mediation or the fact that such documents exist nor shall the mediator be otherwise compelled to testify in regard to statements made, actions taken, or positions stated by a party during the mediation.

Alabama Rules of Judicial Administration

Rule 33. Access to electronically stored data, electronic-document images, electronic datastreams, and electronic databases maintained by the administrative office of courts.

A. Authority of the ADC. The Administrative Director of Courts (“the ADC”), acting in accordance with this rule, shall have sole authority over access to and dissemination of all electronically stored data, document images, and datastreams and the databases maintained by the Administrative Office of Courts (“the AOC”) on which these data, images, and datastreams are stored.

...

D. Access to court records. This rule shall apply only to electronically stored data, electronic datastreams, electronic-document images, and electronic databases. The right of the public to inspect, view, and, upon payment of the prescribed copying cost, make printed copies of court records at the circuit clerks' offices pursuant to § 36-12-40, Ala. Code 1975, shall continue and shall not be affected by this rule.

ALASKA

Rules of Administration

Rule 37.5. Access to Court Records

(a) Scope and Purposes.

(1) Public access to court records is governed by Administrative Rules 37.5 through 37.8. These rules are adopted pursuant to the inherent authority of the Alaska Supreme Court and provide for access in a manner that:

- (A) maximizes accessibility to court records;
- (B) supports the role of the judiciary;
- (C) promotes government accountability;
- (D) contributes to public safety;
- (E) minimizes risk of injury to individuals;
- (F) protects individual privacy rights and interests;
- (G) protects proprietary business information;
- (H) minimizes reluctance to use the courts to resolve disputes;
- (I) makes most effective use of court personnel;
- (J) provides excellent customer service; and

(K) does not unduly burden the ongoing business of the judiciary.

(2) These rules apply to all court records; however, court personnel need not redact or restrict information that otherwise was public in case records and administrative records created before October 15, 2006.

(b) Who Has Access to Court Records.

(1) Every member of the public will have the same access to court records under these rules, except as provided in Administrative Rule 37.8 (b)(4) and 37.8 (c)(2).

(2) The following persons are not members of the public and may have greater access in accordance with their functions within the judicial system:

(A) court personnel for case processing purposes only;

(B) people or entities, private or governmental, who assist the court in providing court services;

(C) public agencies whose access to court records is defined by another statute, rule, order, or policy; and

(D) the parties to a case or their lawyers regarding access to records in their case.

[(c) Definitions. omitted]

(d) General Access Rule.

(1) Court records are accessible to the public, except as provided in paragraph (e) below.

(2) This rule applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.

(3) If a court record, or portion thereof, is excluded from public access, there must be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This subparagraph does not apply to case records or administrative records that are confidential pursuant to law.

(e) Court Records Excluded from Public Access.

(1) Case Records. -- The following case records and case-related documents are not accessible to the public:

[(A)-(D) omitted]

(2) Administrative Records. -- The following administrative records are not accessible to the public:

[(A)-(G) omitted]

(f) Obtaining Access to Public Court Records. -- Court records that are accessible to the public shall be open to inspection at all times during the regular office hours of the courts. The administrative director shall establish written guidelines to insure that all members of the public upon request will be given reasonable access and opportunity to inspect such public records and to insure the preservation and safekeeping of such public records for such period of time as they may be kept by the Alaska Court System.

Rule 37.6 Prohibiting Access to Public Case Records

(a) Limiting Access. Notwithstanding any other rule to the contrary, the court may, by order, limit access to public information in an individual case record by sealing or making confidential the case file, individual documents in the case file, log notes, the audio recording of

proceedings in the case, the transcript of proceedings, or portions thereof. A request to limit access may be made by any person affected by the release of the information or on the court's own motion.

(b) Standard. -- The court may limit public access as described above if the court finds that the public interest in disclosure is outweighed by a legitimate interest in confidentiality, including but not limited to

- (1) risk of injury to individuals;
- (2) individual privacy rights and interests;
- (3) proprietary business information;
- (4) the deliberative process; or
- (5) public safety.

(c) Least Restrictive Alternative. In limiting public access the court must use the least restrictive means that will achieve the purposes of these public access rules and the reasonable needs as set out as the basis for the request, without unduly burdening the court.

[(d) procedural provision omitted]

Rule 37.7. Obtaining Access to Non-public Court Records

(a) Allowing Access to Non-Public Records. The court may, by order, allow access to non-public information in a case or administrative record if the court finds that the requestor's interest in disclosure outweighs the potential harm to the person or interests being protected, including but not limited to:

- (1) risk of injury to individuals;
- (2) individual privacy rights and interests;
- (3) proprietary business information;
- (4) the deliberative process; or
- (5) public safety.

Non-public information includes information designated as confidential or sealed by statute or court rule and public information to which access has been limited under Administrative Rule 37.6. A request to allow access may be made by any person or on the court's own motion as provided in paragraph (b).

[(b) procedure provision omitted]

Rule 37.8. Electronic Case Information

(a) Availability. The following case-related information maintained in the court system's electronic case management systems will not be published on the court system's website or otherwise made available to the public in electronic form:

[(1)-(10) exceptions omitted]

[(b)-(d) electronic publishing and fees provisions omitted]

Rules of Appellate Procedure

Rule 222. Settlement Conferences in Civil Appeals.

[(a) Motion for Settlement Conference; (b) Settlement Officers omitted]

(c) Confidentiality. Settlement conferences will be held in private and are confidential. The settlement officer may report required attendance but shall not otherwise disclose or testify as to any aspect of the conference. The settlement officer shall not participate in subsequent judicial decisions related to the case, unless the parties have waived this disqualification. All conferences, submissions, and statements made in the course of the settlement proceedings required by this rule constitute offers to compromise and statements made in compromise negotiations and are inadmissible pursuant to Evidence Rule 408. This rule does not relieve any person of a duty imposed by statute.

[(d)-(f) procedural provisions omitted]

Rule 512.5. Public Documents; Sealed and Confidential Documents

(a) Records on Appeal. -- A record on appeal is open to public inspection except that (1) papers filed under seal in the trial court, recordings or transcripts of closed hearings held in the trial court, and exhibits submitted or introduced at closed hearings in the trial court, will be maintained under seal while they constitute part of a record on appeal; and (2) papers, recordings, transcripts, exhibits, and other items designated as confidential in the trial court will be maintained as confidential while they constitute part of a record on appeal.

(b) Other Papers.

(1) Papers, including excerpts of record filed under Rule 210 (c), filed in the appellate courts, other than records on appeal, shall be open to public inspection unless the appellate court in which the case is pending otherwise orders, or except as hereafter provided in this subparagraph. If the trial court has restricted disclosure of information, and it is necessary to refer to that information in an interlocutory petition or application to an appellate court, the petitioner or applicant must attach to the petition or application the trial court order that restricted the information. The information will be maintained as sealed or confidential during the pendency of the petition or application, unless the trial court or appellate court orders otherwise. In addition, the petition or application must be written in a manner that does not disclose non-public information.

[(2)-(4) identifying information and procedural provisions omitted]

(c) General Provisions.

(1) Papers that are confidential in the appellate courts may be examined or copied only by the parties to the case, counsel of record in the case, their agents or employees designated by them, those with a written court order authorizing access, and those personnel of the Alaska Court System having need to examine the papers in the performance of their duties, as provided by Administrative Rule 37.5 (c)(4). Access to papers filed under seal in the appellate courts is restricted to the justices or judges of the court in which the papers were filed, the law clerks and staff attorneys assisting them in deciding the case, and persons authorized by written court order, as provided by Administrative Rule 37.5 (c)(5).

(2) If further restrictions are ordered for good cause (for example, privileged material to which counsel for one party but not the other are entitled to access), the clerk of the appellate courts shall enforce those restrictions, including restrictions placed by the trial court upon materials filed with the trial court and included in the record on appeal.

(3) A paper shall not be withheld from public inspection because other papers included in the same case file or the same record on appeal have been filed under seal or are confidential and are not open to public inspection.

Rules of Evidence

Rule 508. Trade Secrets

A person has a privilege, which may be claimed by the person or the person's agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measures as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

Rules of Civil Procedure

Rule 100. Mediation and Other Forms of Alternative Dispute Resolution.

[(a)-(f) procedural provision omitted]

(g) Confidentiality. Mediation proceedings shall be held in private and are confidential. The mediator shall not testify as to any aspect of the mediation proceedings. Evidence of conduct or statements made in the course of court-ordered mediation is inadmissible to the same extent that conduct and statements are inadmissible under Alaska Rule of Evidence 408. This rule does not relieve any person of a duty imposed by statute.

[(h)-(i) procedural and definition provisions omitted]

ARIZONA

Revised Statute

§ 3-3121. Trade secrets; confidentiality

All information reported to or obtained by the department or its representatives in connection with any inspection or investigation under this article which contains or which might reveal a trade secret is considered confidential for the purpose of this article, except that the information may be disclosed to other representatives of the office or department concerned with carrying out this article or if it is relevant in any proceeding under this article. In any such proceeding, the department, assistant director, director, hearing officer or courts shall issue orders as may be appropriate to protect the confidentiality of trade secrets.

§ 12-107. Publication of opinions

The supreme court and, pursuant to section 12-120.07, the court of appeals shall publish their opinions as soon as practicable after they are announced. The opinions shall be published in

suitable volumes which shall contain appropriate headnotes, tables of cases reported, and tables of statutes cited and construed. Each volume shall also contain a digest of the law in the reported cases and the words and phrases construed. The volumes shall, with the approval of the court, be printed and bound.

Ariz. Rev. Stat. § 12-120.07(B).

The opinions of the court of appeals shall be published and distributed in the same manner as provided for the publication and distribution of opinions of the supreme court.

Ariz. Rev. Stat. § 39-101 Permanent public records; quality; storage; violation; classification.

A. Permanent public records of the state, a county, city or town, or other political subdivision of the state, shall be transcribed or kept on paper or other material which is of durable or permanent quality and which conforms to standards established by the director of the Arizona state library, archives and public records.

B. Permanent public records transcribed or kept as provided in subsection A shall be stored and maintained according to standards for the storage of permanent public records established by the director of the Arizona state library, archives and public records.

C. A public officer charged with transcribing or keeping such public records who violates this section is guilty of a class 2 misdemeanor.

Rules of Civil Procedure

Rule 5.4. Sealing and Unsealing Court Records.

(a) Generally. Unless authorized by statute, rule, or court order, no document may be filed under seal in an unsealed civil action.

[(b) Definitions. omitted]

(c) Order permitting a document to be filed under seal.

(1) Generally. On motion, stipulation or on its own, a court may order a document to be filed under seal if this rule's requirements are met. Unless the court determines that an entire category or type of document meets this rule's requirements, a court may not enter an order that gives advance authorization to file such documents under seal.

(2) Requirements. Unless a statute, rule, or prior court order authorizes a document to be filed under seal, a court may order that a document may be filed under seal only if it finds in a written order that:

(A) an overriding interest exists that supports filing the document under seal and overcomes the right of public access to it;

(B) a substantial probability exists that the person seeking to file the document under seal (or another person) would be prejudiced if it is not filed under seal;

(C) the proposed restriction on public access to the document is no greater than necessary to preserve the confidentiality of the information subject to the overriding interest; and

(D) no reasonable, less restrictive alternative exists to preserve the confidentiality of the information subject to the overriding interest.

[(3)-(4) procedural provision omitted]

(5) Record on Appeal.

(A) Generally. Unless the appellate court orders otherwise, a document that is filed under seal remains sealed when transmitted to an appellate court as part of the record on appeal.

(B) Denial of a Motion or Stipulation to Seal. If a request is made under Rule 5.4 (f)(2)(A) that the clerk retain a lodged document for the purpose of transmitting it to an appellate court in connection with a challenge to a complete denial of a motion or stipulation to file the document under seal, the clerk must transmit the document to the appellate court under seal. Upon transmittal, the appellate clerk must maintain the document under seal unless the appellate court orders otherwise.

(6) Sanctions. A court may issue monetary sanctions against any person who discloses any document, or any protected portion of a document, the person knows or should know is sealed or lodged under this rule. A court may also issue monetary sanctions against any person who knowingly violates any provision of this rule.

[(d)-(g) procedural provisions omitted]

(g) Documents produced by others that are governed by a protective order or confidentiality agreement.

(1) Scope. Unless the court orders otherwise, this rule governs the procedure a party should follow if it seeks to file (or disclose the contents of) a document produced by another person and if a protective order or confidentiality agreement requires the party to ask the court to file the document (or the portion of a brief or affidavit disclosing its contents) under seal.

(2) Good Faith Consultation. Before filing anything with the court, the party seeking to file the document or disclose its contents must first attempt to resolve the matter by good faith consultation, as provided in Rule 7.1 (h), with the person who produced the document. Among other things, they must confer about whether the document (or a proposed filing describing its contents) meets Rule 5.4 (c)(2)'s requirements.

[(3)-(5) procedural provisions omitted]

(h) Unsealing a Document. On motion by any person or on its own after providing reasonable notice to the parties, the court may order that a document be unsealed based on the standards of Rule 5.4 (c)(2). The court's order must state the reasons for unsealing the document or, if the order denies a motion to unseal the document, the reasons for denying it.

(i) Case-Initiating Documents.

(1) Publicly Accessible Version.

(A) Generally. Before a party may file a motion or stipulation to file a case-initiating document under seal, the party must first file a publicly accessible version of the document, which will permit the clerk to assign a case number to the civil action.

(B) Contents. The publicly accessible version of a case-initiating document must be a version of the document the party ultimately wants to file under seal with redactions covering the portions of the document that are subject to the motion or stipulation.

(C) No Advance Authorization. A court may not grant advance authorization to lodge or file a case-initiating document under seal.

(2) Later Motion or Stipulation to File Under Seal.

(A) Generally. After filing a publicly accessible version of a case-initiating document, any person may file a motion or join in a stipulation to file a non-public version of the document under seal.

(B) Procedure. -- The filing party or stipulating parties must comply with the requirements of (c), (d), and (e) of this rule. The motion or stipulation must be publicly accessible and may not be filed under seal, but the motion or stipulation may request the court to file under seal all or portions of supporting documents, such as an affidavit or declaration.

(C) If Denied. -- If the court completely or partially denies a motion or stipulation to file a case-initiating document under seal and the submitting party no longer wishes to prosecute the action due to the complete or partial denial by the court, the submitting party must promptly file a notice of, or stipulation or motion for, dismissal under Rule 41. A party also retains the options provided in (f)(1).

(D) If Partially Granted. -- If the court finds only certain pages or portions of the case-initiating document contain information that merits being placed under seal, the filing party must comply with (c)(3)(B)(i).

Supreme Court Rules

Rules 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 is 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 provision omitted]

(c) General Provisions.

(1) Open records policy. -- Historically, this state has always favored open government and an informed citizenry. In that 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 provisions of this rule, or other provisions of law.

[(2)-(7) procedural provisions omitted]

(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)-(4) exception provisions omitted]

(e) Access to Administrative Records.

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

[(1)-(14) provisions omitted]

[(f)-(j) access to alternative record mediums omitted]

ARKANSAS

Arkansas Code Title 16. Practice, Procedure, and Courts

§16-55-122. Contracts--Environmental hazards--Limitations

(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 the State of Arkansas 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.

Arkansas Code - Subchapter 4 - Settlement Agreements

§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.

This subchapter does not prohibit the Secretary of the Department of Finance and Administration and his or her 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 of 1967, § 25-19-101 et seq., or § 26-18-303, or other state law.

§ 25-18-403. Penalty

Any person who violates the provisions of this subchapter shall be guilty of a violation and punished by a fine not exceeding five hundred dollars (\$500).

Rules of the Supreme Court

Rule 6-3. Anonymity in Certain Appellate Proceedings, Opinions and Case Styles

(a) Scope. The record and accompanying briefs, motions, or other filings in all adoption appeals and all appeals originating in the juvenile division of circuit court shall be sealed. The Clerk shall ensure that the public docket use initials to identify juveniles in those appeals. Counsel and the Court shall preserve the juvenile's anonymity by using initials in all subsequent captions, opinions, motions, and briefs, as well as in oral argument, if any. The record and papers on appeal shall be open for inspection only to counsel and parties of record, or, only upon order of the Court after review of a written motion. In any other appeal in which counsel for either side believes that a person's identity should be protected by the Court, counsel may move the Court to do so.

(b) Appellant as Movant. If the movant is the appellant in the case, the motion shall be filed at the time the transcript is tendered for filing to the Clerk. The person whose identity is sought to be protected shall be referred to using the initials of the first and last names in the motion and on the cover of the transcript, if applicable. Upon filing the motion, the Clerk shall seal the record pending the Court's decision on the motion.

(c) Appellee as Movant. If the movant is the appellee in the case, the motion shall be filed within 5 days, excluding weekends and holidays, of the date the record is filed. The person whose identity is sought to be protected shall be referred to using the initials of the first and last names in the motion. Upon filing the motion, the Clerk shall seal the record pending the Court's decision on the motion.

[(d)-(f) procedural provisions omitted]

Arkansas Supreme Court Rules of Administrative Order Number 19 (VII)

[effective January 1, 2019]

A. Pursuant to Ark. Const. Amend. 80 §§ 1, 3, 4; Ark. Code Ann. §§ 16-10-101 (Repl. 1999), 25-19-105(b)(8) (Supp. 2003), and this Court's inherent rule-making authority, the Court adopts and publishes Administrative Order Number 19: Access to Court Records. This order governs access to, and confidentiality of, court records. Except as otherwise provided by this order, access to court records shall be governed by the Arkansas Freedom of Information Act (Ark. Code Ann. §§ 25-19-101 et seq.).

B. The purposes of this order are to:

- (1) promote accessibility to court records;
- (2) support the role of the judiciary;
- (3) promote governmental accountability;
- (4) contribute to public safety;
- (5) reduce the risk of injury to individuals;
- (6) protect individual privacy rights and interests;
- (7) protect proprietary business information;

- (8) minimize reluctance to use the court system;
- (9) encourage the most effective use of court and clerk-of-court staff;
- (10) provide excellent customer service; and
- (11) avoid unduly burdening the ongoing business of the judiciary.

C. This order applies only to court records as defined in this order and does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial governmental agency or other entity.

D. Disputes arising under this order shall be determined in accordance with this order and, to the extent not inconsistent with this order, by all other rules and orders adopted by this Court.

E. This order applies to all court records; however, clerks and courts may, but are not required to, redact or restrict information that was otherwise public in case records and administrative records created before January 1, 2009. However, confidential information shall be redacted from pre-January 1, 2009 case records and administrative records before remote access is available to such records.

Section II. Who Has Access Under This Order.

A. All persons have access to court records as provided in this order.

B. The following persons, in accordance with their functions within the judicial system, may have greater access than the public to court records:

- (1) employees of the court, court agency, or clerk of court;
- (2) private or governmental persons or entities who assist a court in providing court services;
- (3) public agencies whose access to court records is defined by other statutes, rules, orders or policies; and
- (4) the parties to a case or their lawyers with respect to their own case.

[C. provision applying to incarcerated individuals omitted]

[Section III. Definitions. Omitted]

Section IV. General Access Rule.

A. Public access shall be granted to court records subject to the limitations of sections V through X of this order.

B. This order applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the records are maintained.

C. If a court record, or part thereof, is rendered confidential by protective order, by this order, or otherwise by law, the confidential content shall be redacted, but there shall be a publicly accessible indication of the fact of redaction. This subsection (C) does not apply to court records that are rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record.

Section V. Remote Access.

A. Courts should endeavor to make at least the following information, when available in electronic form, remotely accessible to the public: [(1)-(5) list of documents omitted]

B. Remote access to information beyond this list is left to the discretion of the court as follows:

- (1) In the district courts, the district judges(s) shall decide whether to allow public remote access;
- (2) In the circuit courts, the Administrative Judge of the Judicial Circuit, with input from the Clerk, and, if applicable, the Ex Officio Circuit Clerk for the Probate Division, of the counties within the circuit, shall decide whether to allow public remote access;
- (3) In the appellate courts, the Supreme Court shall decide whether to allow public remote access.

C. Public remote access shall be permitted only upon compliance with sections (I)(E) and (VII), and the implementation of appropriate security measures to prevent indexing by Internet search engines.

[Section VI. Bulk Distribution and Compiled Information. omitted]

Section VII. Court Records Excluded From Public Access.

A. Case Records. The following information in case records is excluded from public access and is confidential absent a court order to the contrary; however, if the information is disclosed in open court and is part of a verbatim transcript of court proceedings or included in trial transcript source materials, the information is not excluded from public access:

[(1)-(8) exceptions omitted]

B. Administrative Records. The following information in administrative records is excluded from public access and is confidential absent a court order to the contrary:

[(1)-(4) exceptions omitted]

Section VIII. Obtaining Access to Information Excluded From Public Access.

A. Any requestor may make a verified written request to obtain access to information in a case or administrative record to which public access is prohibited under this order to the court having jurisdiction over the record. The request shall demonstrate that:

- (1) reasonable circumstances exist that require deviation from the general provisions of this order;
- (2) the public interest in disclosure outweighs the harm in disclosure; or
- (3) the information should not be excluded from public access under section (VII) of this order.

The person seeking access has the burden of providing notice to the parties and such other persons as the court may direct, providing proof of notice to the court or the reason why notice could not or should not be given, demonstrating to the court the requestor's reasons for prohibiting access to the information.

B. The court shall hold a hearing on the request, unless waived, within a reasonable time, not to exceed thirty (30) days of receipt of the request. The court shall grant a request to allow access following a hearing if the requestor demonstrates by a preponderance of the evidence that any one or more of the requirements of (VIII)(A)(1) through (VIII)(A)(3) have been satisfied.

C. A court shall consider the public access and the privacy interests served by this order and the grounds demonstrated by the requestor. In its order, the court shall state its reasons for granting or denying the request. When a request is made for access to information excluded

from public access, the information will remain confidential while the court rules on the request.

D. A court may place restrictions on the use or dissemination of the information to preserve confidentiality.

Section IX. When Court Records May Be Accessed.

A. Court records that are publicly accessible will be available for public access in the courthouse during regular business hours established by the court; however, public access to trial exhibits and trial transcript source materials shall be granted at the discretion of the court. Court records in electronic form to which the court allows remote access under this policy will be available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.

B. Upon receiving a request pursuant to section (VI) or (VIII) of this order, a court will respond within a reasonable period of time.

[Section X. omitted]

Section XI. Violation of Order Not Basis for Liability.

Violation of this order by the disclosure of confidential or erroneous court records by a court, court agency, or clerk of court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or clerk of court shall not be the basis for establishing civil or criminal liability for violation of this order. This does not preclude a court from using its inherent contempt powers to enforce this order.

CALIFORNIA

Cases

Sorenson v. Superior Ct., 161 Cal. Rptr. 3d 794 (Ct. App. 2013).

Articles

Supreme Court Eliminates Automatic Depublication, CAL. CTS. NEWSROOM (June 1, 2016), <https://newsroom.courts.ca.gov/news/supreme-court-eliminates-automatic-depublication>

California Codes

§ 1670.11.

Notwithstanding any other law, a provision in a contract or settlement agreement entered into on or after January 1, 2019, that waives a party's right to testify in an administrative, legislative, or judicial proceeding concerning alleged criminal conduct or alleged sexual harassment on the part of the other party to the contract or settlement agreement, or on the part of the agents or

employees of the other party, when the party has been required or requested to attend the proceeding pursuant to a court order, subpoena, or written request from an administrative agency or the Legislature, is void and unenforceable.

(Amended by Stats. 2019, Ch. 497, Sec. 25. (AB 991) Effective January 1, 2020.)

§ 1001

(a) Notwithstanding any other law, a provision within a settlement agreement that prevents the disclosure of factual information related to a claim filed in a civil action or a complaint filed in an administrative action, regarding any of the following, is prohibited:

[(1)-(4) specific provisions omitted]

(b) Notwithstanding any other law, in a civil matter described in paragraphs (1) to (4), inclusive, of subdivision (a), a court shall not enter, by stipulation or otherwise, an order that restricts the disclosure of information in a manner that conflicts with subdivision (a).

(c) Notwithstanding subdivision (a) and (b), a provision that shields the identity of the claimant and all facts that could lead to the discovery of his or her identity, including pleadings filed in court, may be included within a settlement agreement at the request of the claimant. This subdivision does not apply if a government agency or public official is a party to the settlement agreement.

(d) Except as authorized by subdivision (c), a provision within a settlement agreement that prevents the disclosure of factual information related to the claim described in subdivision (a) that is entered into on or after January 1, 2019, is void as a matter of law and against public policy.

(e) This section does not prohibit the entry or enforcement of a provision in any agreement that precludes the disclosure of the amount paid in settlement of a claim.

(f) In determining the factual foundation of a cause of action for civil damages under subdivision (a), a court may consider the pleadings and other papers in the record, or any other findings of the court.

(Added by Stats. 2018, Ch. 953, Sec. 1. (SB 820) Effective January 1, 2019.)

§ 3426.5. Methods for preserving secrecy of trade secret

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.

Trial Court Rules

Rule 2.550. Sealed records

(a) Application

(1) Rules 2.550-2.551 apply to records sealed or proposed to be sealed by court order.

(2) These rules do not apply to records that are required to be kept confidential by law.

(3) These rules do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings. However, the rules do apply to

discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings.

[(b) definitions provision omitted]

(c) Court records presumed to be open

Unless confidentiality is required by law, court records are presumed to be open.

(d) Express factual findings required to seal records The court may order that a record be filed under seal only if it expressly finds facts that establish:

(1) There exists an overriding interest that overcomes the right of public access to the record;

(2) The overriding interest supports sealing the record;

(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

(4) The proposed sealing is narrowly tailored; and

(5) No less restrictive means exist to achieve the overriding interest.

(e) Content and scope of the order

(1) An order sealing the record must:

(A) Specifically state the facts that support the findings; and

(B) Direct the sealing of only those documents and pages, or, if reasonably practicable,

portions of those documents and pages, that contain the material that needs to be

placed under seal. All other portions of each document or page must be included in the public file.

(2) Consistent with Code of Civil Procedure sections 639 and 645.1, if the records that a party is requesting be placed under seal are voluminous, the court may appoint a referee and fix and allocate the referee's fees among the parties.

Rule 2.551. Procedures for filing records under seal

(a) Court approval required

A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties.

[(b)-(e) procedural provisions omitted]

Rule 2.570. Filing False Claims Act records under seal

(a) Application

Rules 2.570-2.573 apply to records initially filed under seal pursuant to the False Claims Act, Government Code section 12650 et seq. As to these records, rules 2.550-2.551 on sealed records do not apply.

[(b) definitions provision omitted]

(c) Confidentiality of records filed under the False Claims Act

Records of actions filed by a qui tam plaintiff must initially be filed as confidential and under seal as required by Government Code section 12652(c). Until the seal is lifted, the records in the action must remain under seal, except to the extent otherwise provided in this rule.

(d) Persons permitted access to sealed records in a False Claims Act case

(1) Public access prohibited

As long as the records in a False Claims Act case are under seal, public access to the records in the case is prohibited. The prohibition on public access applies not only to filed documents but also to electronic records that would disclose information about the case, including the identity of any plaintiff or defendant.

(2) Information on register of actions

As long as the records in a False Claims Act case are under seal, only the information concerning filed records contained on the confidential cover sheet prescribed under rule 2.571(c) may be entered into the register of actions that is accessible to the public.

(3) Parties permitted access to the sealed court file

As long as the records in a False Claims Act case are under seal, the only parties permitted access to the court file are:

- (A) The Attorney General;
- (B) A prosecuting authority for the political subdivision on whose behalf the action is brought, unless the political subdivision is named as a defendant; and
- (C) A prosecuting authority for any other political subdivision interested in the matter whose identity has been provided to the court by the Attorney General.

(4) Parties not permitted access to the sealed court file

As long as records in a False Claims Act case are under seal, no defendant is permitted to have access to the court records or other information concerning the case.

Defendants not permitted access include any political subdivision that has been named as a defendant in a False Claims Act action.

(5) Qui tam plaintiff's limited access to sealed court file

The qui tam plaintiff in a False Claims Act case may have access to all documents filed by the qui tam plaintiff and to such other documents as the court may order.

Rule 2.580. Request for delayed public disclosure

In an action in which the prejudgment attachment remedy under Code of Civil Procedure section 483.010 et seq. is sought, if the plaintiff requests at the time a complaint is filed that the records in the action or the fact of the filing of the action be made temporarily unavailable to the public under Code of Civil Procedure section 482.050, the plaintiff must file a declaration stating one of the following:

[(1)-(2) procedural provision omitted]

Rule 2.585. Confidential in-camera proceedings

(a) Minutes of proceedings

If a confidential in-camera proceeding is held in which a party is excluded from being represented, the clerk must include in the minutes the nature of the hearing and only such references to writings or witnesses as will not disclose privileged information.

(b) Disposition of examined records

Records examined by the court in confidence under (a), or copies of them, must be filed with the clerk under seal and must not be disclosed without court order.

Appellate Court Rules

Rule 8.1105. Publication of appellate opinions

(a) Supreme Court.

All opinions of the Supreme Court are published in the Official Reports.

(b) Courts of Appeal and appellate divisions.

Except as provided in (e), an opinion of a Court of Appeal or a superior court appellate division is published in the Official Reports if a majority of the rendering court certifies the opinion for publication before the decision is final in that court.

(c) Standards for certification. An opinion of a Court of Appeal or a superior court appellate division-whether it affirms or reverses a trial court order or judgment-should be certified for publication in the

Official Reports if the opinion:

- (1) Establishes a new rule of law;
- (2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions;
- (3) Modifies, explains, or criticizes with reasons given, an existing rule of law;
- (4) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule;
- (5) Addresses or creates an apparent conflict in the law;
- (6) Involves a legal issue of continuing public interest;
- (7) Makes a significant contribution to legal literature by reviewing either the development of a common law rule or the legislative or judicial history of a provision of a constitution, statute, or other written law;
- (8) Invokes a previously overlooked rule of law, or reaffirms a principle of law not applied in a recently reported decision; or
- (9) Is accompanied by a separate opinion concurring or dissenting on a legal issue, and publication of the majority and separate opinions would make a significant contribution to the development of the law.

(d) Factors not to be considered

Factors such as the workload of the court, or the potential embarrassment of a litigant, lawyer, judge, or other person should not affect the determination of whether to publish an opinion.

(e) Changes in publication status

- (1) Unless otherwise ordered under (2):
 - (A) An opinion is no longer considered published if the rendering court grants rehearing.
 - (B) Grant of review by the Supreme Court of a decision by the Court of Appeal does not affect the appellate court's certification of the opinion for full or partial publication under rule 8.1105(b) or rule 8.1110, but any such Court of Appeal opinion, whether officially published in hard copy or electronically, must be

accompanied by a prominent notation advising that review by the Supreme Court has been granted.

(2) The Supreme Court may order that an opinion certified for publication is not to be published or that an opinion not certified is to be published. The Supreme Court may also order depublication of part of an opinion at any time after granting review.

[(f) procedural provision omitted]

Rule 8.45. General provisions

(a) Application

The rules in this article establish general requirements regarding sealed and confidential records in appeals and original proceedings in the Supreme Court and Courts of Appeal. Where other laws establish specific requirements for particular types of sealed or confidential records that differ from the requirements in this article, those specific requirements supersede the requirements in this article.

[(b)-(d) definitions and procedural provisions omitted]

Rule 8.46. Sealed records

(a) Application

This rule applies to sealed records and records proposed to be sealed on appeal and in original proceedings, but does not apply to confidential records.

(b) Record sealed by the trial court

If a record sealed by order of the trial court is part of the record on appeal or the supporting documents or other records accompanying a motion, petition for a writ of habeas corpus, other writ petition, or other filing in the reviewing court:

(1) The sealed record must remain sealed unless the reviewing court orders otherwise under (e). Rule 8.45 governs the form and transmission of and access to sealed records.

(2) The record on appeal or supporting documents filed in the reviewing court must also include:

[(A)-(C) procedural requirement provisions omitted]

(c) Record not sealed by the trial court

A record filed or lodged publicly in the trial court and not ordered sealed by that court must not be filed under seal in the reviewing court.

(d) Record not filed in the trial court; motion or application to file under seal

[(1)-(9) procedural provisions omitted]

[(e) Challenge to an order denying a motion or application to seal a record omitted]

(f) Unsealing a record in the reviewing court

(1) A sealed record must not be unsealed except on order of the reviewing court.

[(2)-(7) procedural provision omitted]

[(g) Disclosure of nonpublic material in public filings prohibited. omitted]

Rule 8.83. Public Access

(a) General right of access. All electronic records must be made reasonably available to the public in some form, whether in electronic or in paper form, except sealed or confidential records.

[(b)-(d) scope of electronic access provisions omitted]

(e) Access only on a case-by-case basis

With the exception of the records covered by (b)(1), electronic access to an electronic record may be granted only when the record is identified by the number of the case, the caption of the case, the name of a party, the name of the attorney, or the date of oral argument, and only on a case-by-case basis.

[(f) bulk distribution provision omitted]

(g) Records that become inaccessible

If an electronic record to which electronic access has been provided is made inaccessible to the public by court order or by operation of law, the court is not required to take action with respect to any copy of the record that was made by a member of the public before the record became inaccessible.

COLORADO

Cases

In re Requests for Investigation of Attorney E., 78 P.3d 300 (Colo. 2003).

Colorado Revised Statute - Colorado Open Records Act

COLO. REV. STAT. § 24-72-201

It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

COLO. REV. STAT. § 24-72-203. Public records open to inspection.

(1) (a) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.
[(2)-(4) omitted]

COLO. REV. STAT. § 24-72-204. Allowance or denial of inspection-grounds-procedure-appeal-definitions.

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(d) Such inspection would be contrary to the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices.

(2)(a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

[(l)-(ix); (b)-(e) omitted]

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

[(l)-(ix); (b)-(g) omitted]

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) (a) Except as provided in subsection (5.5) of this section, any person denied the right to inspect any record covered by this part 2 or who alleges a violation of section 24-72-203 (3.5) may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record; except that, at least fourteen days prior to filing an application with the district court, the person who has been denied the right to inspect the record shall file a written notice with the custodian who has denied the right to inspect the record informing the custodian that the person intends to file an application with the district court. During the fourteen-day period before the person may file an application with the district court under this subsection (5)(a), the custodian who has denied the right to inspect the record shall either meet in person or communicate on the telephone with the person who has been denied access to the record to determine if the dispute may be resolved without filing an application with the district court. The meeting may include recourse to any method of dispute resolution that is agreeable to both parties. Any common expense necessary to resolve the dispute must be apportioned equally between or among the parties unless the parties have agreed to a different method of allocating the costs between or among them. If the person who has been denied access to inspect a record states in the required written notice to the custodian that the person needs to pursue access to the record on an expedited basis, the person must provide such written notice, including a factual basis of the expedited need for the record, to the custodian at least three business days prior to the date on which the person files the application with the district court and, in such circumstances, no meeting to determine if the dispute may be resolved without filing an application with the district court is required.

[(b); (5.5) omitted]

(6) (a) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection or if the official custodian is

unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if disclosure of the public record is prohibited pursuant to this part 2, the official custodian may apply to the district court of the district in which such record is located for an order permitting him or her to restrict such disclosure or for the court to determine if disclosure is prohibited. Hearing on such application shall be held at the earliest practical time. In the case of a record that is otherwise available to public inspection pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure would cause substantial injury to the public interest, issue an order authorizing the official custodian to restrict disclosure. In the case of a record that may be prohibited from disclosure pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure of the record is prohibited, issue an order directing the official custodian not to disclose the record to the public. In an action brought pursuant to this paragraph (a), the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him or her in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard. The attorney fees provision of subsection (5) of this section shall not apply in cases brought pursuant to this paragraph (a) by an official custodian who is unable to determine if disclosure of a public record is prohibited under this part 2 if the official custodian proves and the court finds that the custodian, in good faith, after exercising reasonable diligence, and after making reasonable inquiry, was unable to determine if disclosure of the public record was prohibited without a ruling by the court.

[(7)-(8) omitted]

Colorado Rules of Civil Procedure

Rule 26. General Provisions Governing Discovery; Duty of Disclosure.

(a) Required Disclosures. Unless otherwise ordered by the court or stipulated by the parties, provisions of this Rule shall not apply to domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

[(1)-(5) omitted]

(b) Discovery Scope and Limits. Unless otherwise modified by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Subject to the limitations and considerations contained in subsection (b)(2) of this Rule, parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within the scope of discovery need not be admissible in evidence to be discoverable.

(2) Limitations. Except upon order for good cause shown and subject to the proportionality factors in subsection (b)(1) of this Rule, discovery shall be limited as follows:

[(A)-(F); (3)-(4) omitted]

(5)(A) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information required to be disclosed or provided in discovery by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

[(B) procedural provision omitted]

(c) Protective Orders. Upon motion by a party or by the person from whom disclosure is due or discovery is sought, accompanied by a certificate that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, 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 one or more of the following:

- (1) that the disclosure or discovery not be had;
- (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place or the allocation of expenses;
- (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 disclosure or 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 revealed or be revealed only in a designated way; and
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

[(d)-(g) omitted]

Supreme Court Rule on Public Access to Information and Records (P.A.I.R.R.)

(Amended by Chief Justice Directive 05-01 October 18, 2016)

Section 1.00 – Purpose of the Policy

(a) The purpose of this policy is to provide the Colorado Judicial Department (hereinafter referred to as “Department”) with a comprehensive framework for public access to court records. The policy provides for access in a manner that:

- (1) maximizes accessibility to court records;
- (2) supports the role of the judiciary;
- (3) promotes governmental accountability;
- (4) contributes to public safety;
- (5) minimizes risk of injury to individuals;
- (6) protects individual privacy rights and interests;
- (7) protects proprietary business information;

- (8) minimizes reluctance to use the court to resolve disputes;
- (9) makes effective use of court and clerk of court staff;
- (10) provides excellent customer service;
- (11) does not unduly burden the ongoing business of the judiciary;
- (12) protects individuals from the use of outdated or inaccurate information; and
- (13) contributes to the body of knowledge of effective practices of courts and criminal or juvenile justice agencies.

(b) This policy is intended to provide guidance to:

- (1) litigants;
- (2) those seeking access to court records; and
- (3) judges and other Judicial Department personnel responding to requests for access.

Section 2.00 – Who has Access Under this Policy

Every member of the public will have access to court records as provided in this policy.

[(a)-(b) omitted]

[Section 3.00 – General and definitions provisions omitted]

Section 4.00 – Applicability of Policy

This policy applies to all court records, regardless of the format or the method of storage. This policy also applies to Department data that is transferred electronically to other government or private entities.

Additionally, this policy applies to all electronically filed (e-filed) or served (e-service) documents in accordance with the rules of the Supreme Court (C.R.C.P. Rule 121 Section 1 – 26, C.R.C.P. Rule 305.5, Crim.P. 49.5, and C.A.R. Rule 30); to e-filed documents maintained at the respective courts; and to documents available through the public access terminals located at a Department facility or location.

Section 4.10 – General Access Policy

Information in the court record is accessible to the public except as prohibited by Section 4.60. Court records that are not publicly accessible pursuant to this policy, or federal or state statute, court rule, or court order shall not be released by any government or private entities with which the Department shares or transfers electronic court records.

[Section 4.20-4.50 electronic access and technical provisions omitted]

Section 4.60 – Court Records Excluded from Public Access

(a) Information in court records is not accessible to the public if federal or state statute, court rule, court order, or this policy prohibits disclosure of the information.

(b) Court records in the following case classes and case types are not accessible to the public, unless the court orders otherwise, or if permitted under Section 4.40(f) of this policy:

[(1)-(9) enumerated exceptions omitted]

(c) If the relevant court record has been expunged, sealed, suppressed, restricted, or protected, the record is not accessible to the public, unless the court orders otherwise, or until the Clerk of Court has reviewed the record for release in compliance with this policy.

(d) The following items are examples of commonly filed court records that are not accessible to the public, unless the court orders otherwise. However, if a pleading or filing refers to an item listed below, that pleading or filing shall be accessible to the public, unless the court orders otherwise.

[(1)-(26) enumerated exceptions omitted]

(e) Requests for access to pleadings or documents that contain the following information will be provided after appropriate redaction of the information. Requests for these protected court records shall be handled administratively and shall not require a court order unless otherwise required by Section 4.60(b), (c), or (d).

[(1)-(7) omitted]

[Section 5.00-7.00 omitted]

Section 8.00 – Information About Access to Court Records

Information in the court record is accessible to the public unless prohibited by this policy, or by federal or state statute, court rule, or court order.

Section 8.10 – Dissemination of Information to the Public About Accessing Court Records

The Department will develop and make available to the public information about how to obtain access to court records pursuant to this policy.

Section 8.20 – Education of Judges and Court Personnel About an Access Policy

The Courts, SCA, District Administrators, Chief Probation Officers, and Clerks of Court will ensure that all staff within their office or district are educated and trained to comply with this access policy so that their respective offices or districts respond to requests for access to information in the court record in a manner consistent with this policy.

The Chief Judges in each district shall ensure that all judges and magistrates in their district are informed about this access policy.

[Section 9.00 omitted]

Rule 2. Public Access to Administrative Records of the Judicial Branch

This rule governs public access to all records maintained for the purpose of managing the administrative business of the Judicial Branch of the State of Colorado. Using the Colorado Open Records Act (CORA), sections 24-72-200.1 to -206, C.R.S. (2015), as a guide, the Supreme Court published a proposed Rule governing access to administrative records of the Judicial Branch, and the Chief Justice signed Chief Justice Directive 15-01 to govern interim access to administrative records. The Colorado Supreme Court received comments and held a public hearing on the proposed rule. The Supreme Court revised the rule in response to the comments received. Although CORA served as a guide in drafting this rule, the rule and CORA are not

identical. Many of the rule's deviations from CORA reflect simple changes to language and streamlined organization of the rule for clarity and to better serve the public. Other, substantive deviations from CORA reflect the unique nature of the records and operations of the Judicial Branch. These changes are addressed in comments throughout the rule. This rule pertains only to administrative records and does not contemplate or control access to court records, which is governed by P.A.I.R.R. 1 and Chief Justice Directive 05-01. This rule is intended to be a rule of the Supreme Court within the meaning of CORA, including section 24-72-204(1)(c), C.R.S. (2015).

[Section 1 definitions omitted]

Section 2. Access to Administrative Records

(a) All Judicial Branch administrative records shall be available for inspection by any person at reasonable times, except as provided in this rule or as otherwise provided by federal statute or regulation, state statute, court rule, or court order. The custodian of any administrative record shall make policies governing the inspection of administrative records that are reasonably necessary to protect the records and prevent unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

(b) The custodian must take reasonable measures to locate any specific administrative record sought and to ensure public access to the administrative record without unreasonable delay or unreasonable cost.

(c) This rule does not preclude the Judicial Branch from obtaining and enforcing trademark or copyright protection for any administrative record. The Judicial Branch is specifically authorized to obtain and enforce such protection in accordance with applicable federal law. This authorization does not restrict public access to or fair use of copyrighted materials and does not apply to writings that are merely lists or other compilations.

Section 3. Exceptions and Limitations to Access to Records

(a) Exceptions and Limitations on Access to Records. The custodian of any administrative record shall allow any person to inspect a record or any portion thereof except based on the following grounds or as provided in subsection (b) or (c):

- (1) Such inspection would be contrary to any state statute;
- (2) Such inspection would be contrary to any federal statute or regulation;
- (3) Such inspection is prohibited by court order or court rule; or
- (4) Such inspection could compromise the safety or security of a Judicial Branch employee.

[Official Comment: Paragraph (4) of this subsection is not in CORA. This provision recognizes that the records of the Judicial Branch contain information that could jeopardize the safety or security of its employees, and the Judicial Branch has an obligation to its employees to not release such information.]

(b) May Deny Inspection. Unless otherwise provided by federal statute or regulation, state statute, court rule, or court order, the custodian may deny inspection of the following records on the ground that disclosure would be contrary to the public interest:

[(1)-(10) enumerated exceptions omitted]

[Official Comment: CORA contains a similar provision. § 24-72-204(2)(a)(VIII), C.R.S. (2015). This rule provides more specific detail on the types of security records maintained by the Judicial Branch.]

(c) Must Deny Inspection. Unless otherwise provided by federal statute or regulation, state statute, court rule, or court order, the custodian must deny inspection of the following records:

[(1)-(25) enumerated exceptions omitted]

(d) Petition for Order Permitting Restriction.

(1) In addition to any of the foregoing, if in the opinion of the custodian access to the contents of a record would do substantial injury to the public interest, notwithstanding the fact that the record might otherwise be available for inspection, or if the custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if this rule restricts access to the record, the custodian may petition the district court of the district in which the record or the custodian is located for an order permitting restriction of access to the record or for the court to determine if access to the record is restricted. A hearing on the petition shall be held at the earliest practical time. The person seeking access to the record must be served with notice of the hearing pursuant to the Colorado Rules of Civil Procedure and has the right to appear and be heard.

(2) In the case of a record otherwise available for inspection pursuant to this Rule, after a hearing the court may, upon a finding that access would cause substantial injury to the public interest, issue an order authorizing the custodian to restrict access. In the case of a record that may be restricted from access pursuant to this rule, after a hearing the court may, upon a finding that access to the record is restricted, issue an order restricting access. In an action brought pursuant to this subsection (d), the custodian has the burden of proof.

(3) The court costs and attorney fees provision of section 5 does not apply to petitions filed pursuant to this subsection (d) if the custodian proves and the court finds that the custodian, in good faith, after exercising reasonable diligence, and after making reasonable inquiry, was unable to determine if this rule restricts access to the record without a ruling by the court.

[Section 4-5 procedural provisions omitted]

CONNECTICUT

Cases

Rosado v. Bridgeport Roman Catholic Diocesan Corp., 292 Conn. 1, 36 (2008).

Rules of Appellate Procedure

§ 77-1. Petition for Review Seeking Expedited Review of an Order Concerning Court Closure, or an Order That Seals or Limits the Disclosure of Files, Affidavits, Documents or Other Material

[provided for reference – procedural provisions omitted]

§ 77-2. Sealing Orders; Treatment of Lodged Records

(a) When, by order of the trial court or by operation of statute, a trial court file is sealed or is subject to limited disclosure, all filings with the appellate clerk in that matter shall be treated similarly unless otherwise ordered by the court having appellate jurisdiction. Any sealing or limitation on disclosure ordered by the trial court or required by operation of statute as to any affidavit, document or other material filed in the trial court shall continue throughout the appellate process.

(b) If a claim is raised on appeal challenging the denial of a motion to seal or limit disclosure pursuant to Section 7-4B(d), a lodged record shall remain conditionally under seal in the court having appellate jurisdiction and shall be treated as an exhibit pursuant to the provisions of Section 68-1.

§ 77-3. Sealing Documents or Limiting Disclosure of Documents on Appeal

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the appellate clerk shall be available to the public.

(b) Except as otherwise provided in this section and except as otherwise provided by law, the court shall not order that any document filed or lodged with the appellate clerk be sealed or its disclosure limited.

(c) Upon written motion or upon its own motion, the court may order that any document filed or lodged with the appellate clerk be sealed or its disclosure limited only if the court concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such document. The court shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents filed or lodged with the appellate clerk shall not constitute a sufficient basis for the issuance of such an order.

(d) The court may, upon determination that the resolution of the motion requires findings of fact, refer the motion to the trial court to make such findings.

§ 77-4. Motion to Seal; Lodging of Documents with Appellate Clerk

[provided for reference – procedural provisions omitted]

Rules for the Superior Court

§§ 11-20. Closure of Courtroom in Civil Cases

(a) Except as otherwise provided by law, there shall be a presumption that courtroom proceedings shall be open to the public.

(b) Except as provided in this section and except as otherwise provided by law, the judicial authority shall not order that the public be excluded from any portion of a courtroom proceeding.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that the public be excluded from any portion of a courtroom proceeding only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in attending such proceeding. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to close the courtroom shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date and scope of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the Judicial Branch website and on a bulletin board adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

[(e)-(f) procedural provision omitted]

§§ 11-20A. Sealing Files or Limiting Disclosure of Documents in Civil Cases

(a) Except as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public.

(b) Except as provided in this section and except as otherwise provided by law, including Section 13-5, the judicial authority shall not order that any files, affidavits, documents, or other materials on file with the court or filed in connection with a court proceeding be sealed or their disclosure limited.

(c) Upon written motion of any party, or upon its own motion, the judicial authority may order that files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding be sealed or their disclosure limited only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in viewing such materials. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. An agreement of the parties to seal or limit the disclosure of documents on file with the court or filed in connection with a court proceeding shall not constitute a sufficient basis for the issuance of such an order.

(d) In connection with any order issued pursuant to subsection (c) of this section, the judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall be set forth in a writing signed by the judicial authority which upon issuance the court clerk shall immediately enter in the court file and publish by posting both on the Judicial Branch website and on a bulletin board

adjacent to the clerk's office and accessible to the public. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order.

[(e)-(g) procedural provision omitted]

(h)(1) Pseudonyms may be used in place of the name of a party or parties only with the prior approval of the judicial authority and only if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public's interest in knowing the name of the party or parties. The judicial authority shall first consider reasonable alternatives to any such order and any such order shall be no broader than necessary to protect such overriding interest. The judicial authority shall articulate the overriding interest being protected and shall specify its findings underlying such order and the duration of such order. If any findings would reveal information entitled to remain confidential, those findings may be set forth in a sealed portion of the record. The time, date, scope and duration of any such order shall forthwith be reduced to writing and be signed by the judicial authority and be entered by the court clerk in the court file. The judicial authority shall order that a transcript of its decision be included in the file or prepare a memorandum setting forth the reasons for its order. An agreement of the parties that pseudonyms be used shall not constitute a sufficient basis for the issuance of such an order. The authorization of pseudonyms pursuant to this section shall be in place of the names of the parties required by Section 7-4A.

[(2)-(4) omitted]

(i) The provisions of this section shall not apply to settlement conferences or negotiations or to documents submitted to the court in connection with such conferences or negotiations. The provisions of this section shall apply to settlement agreements which have been filed with the court or have been incorporated into a judgment of the court.

[(j) procedural provision omitted]

§§ 11-20B. Documents Containing Personal Identifying Information

(a) The requirements of Section 11-20A shall not apply to "personal identifying information," as defined in Section 4-7, that may be found in documents filed with the court. If a document containing personal identifying information is filed with the court, a party or a person identified by the personal identifying information may request that the document containing the personal identifying information be sealed. In response to such request, or on its own motion, the court shall order that the document be sealed and that the party who filed the document submit a redacted copy of the document within ten days of such order.

[(b) omitted]

§§ 13-5. Protective Order

Upon motion by a party from whom discovery is sought, and for good cause shown, the judicial authority may make any order which justice requires to protect a party 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 judicial authority; (6) that a deposition after being sealed be opened only by order of the judicial authority; (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 judicial authority; (9) specified terms and conditions relating to the discovery of electronically stored information including the allocation of expense of the discovery of electronically stored information, taking into account the amount in controversy, the resources of the parties, the importance of the issues, and the importance of the requested discovery in resolving the issues.

DELAWARE

Articles

Judith Resnik, *Renting Judges for Secret Rulings*, N.Y. TIMES (March 1, 2014), <https://www.nytimes.com/2014/03/01/opinion/renting-judges-for-secret-rulings.html>

Cases

Hurd v. Espinoza, 34 A.3d 1084 (Del. 2011).

Al Jazeera America, LLC v. AT&T Servs., Inc., 2013 Del. Ch. LEXIS 248 (Oct. 14, 2013).

Rules of the Supreme Court

Rule 9. The record.

[(a)-b) omitted]

(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 or submitted to the arbitrator as confidential 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.

[(c)-(f) omitted]

Delaware Rules of Civil Procedure for the Superior Court

Rule 5. Service and filing of pleadings and other papers

[(a)-(f) omitted]

(g) Sealing of Court records.

(1) Except as otherwise provided by statute or rule, including this Rule 5(g) and Rule 26(c), all pleadings and other papers of any nature filed with the Prothonotary, including briefs, appendices, letters, deposition transcripts and exhibits, answers to interrogatories and requests for admissions, responses to requests for production or certificates and exhibits thereto ("Court Records"), shall become a part of the public record of the proceedings before this Court.

(2) Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of this Court specifying those Court Records, categories of Court Records, or portions thereof which shall be placed 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 sealing of such documents; and provided further that, unless the Court orders otherwise, the parties shall file within 30 days redacted public versions of any Court Record where only a portion thereof is to be placed under seal.

(3) The provisions of paragraph (2) of this Rule 5(g) notwithstanding, the Court may, in its discretion, by appropriate order, authorize any person to designate Court Records to be placed under seal pending a judicial determination of the specific Court Records, categories, or portions thereof to which such restriction on public access shall continue to apply.

(4) Any person who objects to the continued restriction on public access to any Court Record placed under seal pursuant to paragraphs (2) or (3) of this Rule 5(g) shall give written notice of his or her objection to the person who designated the Court Record for filing under seal and shall file such written notice with the Court. To the extent that any person seeks to continue the restriction on public access to such Court Record, he or she 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.

(5) The Prothonotary shall promptly unseal any Court Record in the absence of timely compliance with the provisions of this Rule 5(g), if applicable. In addition, 30 days after final judgment has been entered without any appeal having been taken therefrom, the Prothonotary shall send a notice, return receipt requested, to any person who designated a Court Record to be placed under seal that such Court Record shall be released from confidential treatment if required to be kept by the Prothonotary or, if not required to be kept, returned to the person at the person's expense or destroyed, as such person may elect, unless that person makes application to the Court within 30 days after notice from the Prothonotary for further confidential treatment for good cause shown.

Rule 16. Pretrial conferences; scheduling; management.

[(a)-(b)(4)(b) omitted]

(b)(4)(c) The ADR Practitioner may not be called as a witness in any aspect of the litigation, or in any proceeding relating to the litigation in which the ADR Practitioner served, unless ordered by the Court. In addition, all ADR Practitioners, when serving as an arbitrator, mediator or neutral assessor, shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in ADR, unless an act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a wilful, wanton disregard of the rights, safety, or property of another. Each ADR Practitioner shall remain bound by any confidentiality agreement signed by the parties and the ADR Practitioner as part of the ADR.

(d) All memoranda, work products, and other materials contained in the case files of an ADR Practitioner or the Court related to the mediation are confidential. Any communication made in or in connection with the mediation which relates to the controversy being mediated, whether made to the ADR Practitioner or a party, or to any person made at a mediation conference, is confidential. The mediation agreement shall be confidential unless the parties otherwise agree in writing. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

- (i) Where all parties to the mediation agree in writing to waive the confidentiality;
- (ii) In any action between the ADR Practitioner and a party to the mediation for damages arising out of the mediation; or
- (iii) Statements, memoranda, materials, or other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation conference

[(b)(4)(e)-(c) omitted]

Rule 26. General provisions governing discovery

[(a)-(b) omitted]

(c) Protective orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the Court or alternatively, on matters relating to a deposition taken outside the State of Delaware, a court in the state 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 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 Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

[(d)-(g) omitted]

Rule 136. Mediation Conference.

[(a) omitted]

(b) Confidentiality. Mediation conferences are private proceedings such that only parties and their representatives may attend, unless all parties agree otherwise. A Mediator may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to service as a mediator. All memoranda and work product contained in the case files of a mediator are confidential. Any communication made in or in connection with the mediation that relates to the controversy being mediated, whether made to the mediator or a party, or to any person if made at a mediation conference, is confidential. Such confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding with the following exceptions:

- (1) Where all parties to the mediation agree in writing to waive the confidentiality, or
- (2) Where the confidential materials and communications consist of statements, memoranda, materials, and other tangible evidence otherwise subject to discovery, which were not prepared specifically for use in the mediation conference. A mediation agreement, however, shall not be confidential unless the parties otherwise agree in writing.

[(c)-(f) omitted]

Rule 139. Arbitration Hearing.

(b) Confidentiality. Arbitration hearings are private proceedings such that only parties and their representatives may attend, unless all parties agree otherwise. An Arbitrator may not be compelled to testify in any judicial or administrative proceeding concerning any matter relating to service as an Arbitrator. All memoranda and work product contained in the case files of an Arbitrator are confidential. Any communication made in or in connection with the arbitration that relates to the controversy being arbitrated, whether made to the Arbitrator or a party, or to any person if made at an arbitration hearing, is confidential.

- (1) Such confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding with the following exceptions:
 - (a) where all parties to the arbitration agree in writing to waive the confidentiality, or
 - (b) where the confidential materials and communications consist of statements, memoranda, materials, and other tangible evidence otherwise subject to discovery, which were not prepared specifically for use in the arbitration hearing.

[(c)-(g) omitted]

Rule 5.1. Public access to documents filed with the Court in civil actions.

(a) General principle of public access. Except as otherwise provided in this Rule, proceedings in a civil action are a matter of public record. All pleadings and other materials of any sort, including motions, briefs, letters, affidavits, exhibits, deposition transcripts, answers to interrogatories, answers to requests for admissions, and hearing transcripts, that are filed with the Register in Chancery, provided to the Court, or otherwise part of the record in a civil action ("Documents") shall be available for public access.

(b) Obtaining Confidential Treatment. -- After the commencement of an action pursuant to Rule 3(a), any person may request that the Court order the Register in Chancery to permit Documents to be filed confidentially and not available for public access ("Confidential Treatment").

(1) Except as otherwise provided in this Rule, a Document shall not receive Confidential Treatment unless the person seeking Confidential Treatment shall have first obtained an order of this Court specifying the information or categories of information for which good cause exists for Confidential Treatment ("Confidential Information"). A Document shall receive Confidential Treatment only if and to the extent that it contains Confidential Information.

(2) For purposes of this Rule, "good cause" for Confidential Treatment shall exist only if the public interest in access to Court proceedings is outweighed by the harm that public disclosure of sensitive, non-public information would cause. Examples of categories of information that may qualify as Confidential Information include trade secrets; sensitive proprietary information; sensitive financial, business, or personnel information; sensitive personal information such as medical records; and personally identifying information such as social security numbers, financial account numbers, and the names of minor children.

(3) The party or person seeking to obtain or maintain Confidential Treatment always bears the burden of establishing good cause for Confidential Treatment. The designation of material as Confidential Information constitutes a certification that the designating lawyer, party, or person has reviewed the Document and believes that good cause exists for Confidential Treatment.

(4) In connection with the entry of an order pursuant to this Rule, the Court may determine the manner and extent of Confidential Treatment for any Document, category of Documents, or type of Confidential Information, including limiting access to attorneys of record in the civil action. The Court may, in its discretion, review any Document in camera to determine whether good cause exists for Confidential Treatment.

[(c)-(h) procedural provisions omitted]

(g) Treatment of Confidential Filings three years after final disposition. -- The Confidential Treatment

VII. Media Coverage, Public Access and Records Management

[1. Media Coverage omitted]

2. Public Access to Court Administrative and Case Records:

Although the Judicial Branch, a separate, coequal Branch of government under our State Constitution, is exempt from the requirement of the Delaware Freedom of Information Act, 29 Del. C. Chapter 100, the Judicial Branch supports the presumption of open public access to Court records, a presumption that can be out-weighted by other public policy concerns including security or confidentiality. The Judicial Branch has adopted formal public access policies or procedures covering the release of administrative and case records based on the Template Policy on Public Access to Judicial Branch Administrative Records, attached as Appendix I. Judicial Branch policies are included and shall be posted online for the general public: [(a)-(h) omitted]

3. Online Judicial Opinions and Case Records:

- a. **Public Records:** Judicial opinions and case records posted on the Judicial Branch's website or available through Court Connect are public records. The Judicial Branch will not impede online search engines from indexing or publishing opinions, except in limited circumstances warranting such exceptions.
- b. **Exceptions:** In limited circumstances, including a serious threat to an individual's safety or significant negative implications relating to an individual's ability to transact business or obtain or retain employment or housing, an individual may request that access to an opinion or Court record be restricted.
 - i. An individual requesting restricted access to records shall send her application to the Court that published the opinion or maintains the record and shall include the following information:
[(1)-(4) omitted]
 - ii. The Court that published the opinion and maintains the record shall determine whether online access to the record or opinion should be restricted.
 - iii. The administrative or computer costs associated with implementing the actions may be assessed to the applicant. If costs will be assessed in a particular situation, the applicant will be provided an estimate, and must agree to pay the costs, in advance of the performance of the work.
 - iv. The Judicial Branch is not responsible if opinions or Court records continue to be available online from other websites through non-state search engines once the Judicial Branch has removed the information from its website.

DISTRICT OF COLUMBIA

Court of Appeals Rules

§ 11-743. Rules of court.

The District of Columbia Court of Appeals shall conduct its business according to the Federal Rules of Appellate Procedure unless the court prescribes or adopts modifications of those Rules.

Superior Court Rules of Civil Procedure

(a) Sealing.

(1) In General. Absent statutory authority, no case or document may be sealed without a written court order. Any document filed with the intention of being sealed must be accompanied by a motion to seal or an existing written order. The document will be treated as sealed, pending the ruling on the motion.

(2) Electronically-Filed Cases. For cases that are electronically filed, the motion to seal must be electronically filed and redacted as necessary for the public record. If the motion to seal is granted, an unredacted motion to seal with the materials sought to be placed under seal must be delivered in paper form to the clerk's office for filing. Any subsequent documents allowed to be filed under seal must be filed in paper with the clerk's office.

(3) Failure to Comply with This Rule.

(A) Failure to File Motion to Seal. Failure to file a motion to seal will result in the pleading or document being placed in the public record.

(B) Failure to Redact Electronically Filed Documents. Filing an unredacted document electronically before or after a motion to seal is granted will result in the document being placed in the public record.

[(b)-(d) procedural provisions omitted]

[Official Comment to 2017 Amendments: Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure. Provisions related to electronic filing were also added. Rule 5-III(a)(3) does not prohibit the court, in the appropriate exercise of its

discretion, from sealing documents already in the public record on motion of a party or on its own initiative.]

D.C. Code - Mediation; Uniform Act

§ 16-4203. Privilege against disclosure; admissibility; discovery.

(a) Except as otherwise provided in § 16-4205, a mediation communication is privileged as provided in subsection (b) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by § 16-4204.

(b) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) A mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

§ 16-4205. Exceptions to privilege.

(a) There is no privilege under § 16-4203 for a mediation communication that is:

[(1)-(7) enumerated exceptions omitted]

(b) There is no privilege under § 16-4203 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that:

[(1)-(3) enumerated exceptions omitted]

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(3)(B) of this section.

(d) If a mediation communication is not privileged under subsection (a) or (b) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

§ 16-4207. Confidentiality.

Unless subject to § 1-207.42, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of the District of Columbia.

FLORIDA

Florida Constitution

Art. I § 23. Right of privacy.

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Art. I, § 24. Access to public records and meetings.

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Sunshine in Litigation Act

Fla. Stat. §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.

Rules of Judicial Administration

Rule 2.420. Public Access to and Protection of Judicial Branch Records

(a) Scope and Purpose. Subject to the rulemaking power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to and the protection of the records of the judicial branch of government. The public shall have access to all records of the judicial branch of government, except as provided below. Access to all electronic and other court records shall be governed by the Standards for Access to Electronic Court Records and Access Security Matrix, as adopted by the supreme court in Administrative Order AOSC14-19 or the then-current Standards for Access. Remote access to electronic court records shall be permitted in counties where the supreme court's conditions for release of such records are met.

[(b) definitions provision omitted]

(c) Confidential and Exempt Records.

The following records of the judicial branch shall be confidential:

[(1)-(8) omitted]

(9) Any court record determined to be confidential in case decision or court rule on the grounds that:

(A) confidentiality is required to:

- (i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- (ii) protect trade secrets;
- (iii) protect a compelling governmental interest;
- (iv) obtain evidence to determine legal issues in a case;
- (v) avoid substantial injury to innocent third parties;
- (vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of proceeding sought to be closed;
- (vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law;

(B) the degree, duration, and manner of confidentiality ordered by the court shall be no broader than necessary to protect the interests set forth in subdivision (c)(9)(A); and

(C) no less restrictive measures are available to protect the interests set forth in subdivision (c)(9)(A).

[(10) omitted]

(d) Procedures for Determining Confidentiality of Court Records.

(1) The clerk of the court shall designate and maintain the confidentiality of any information contained within a court record that is described in subdivision (d)(1)(A) or (d)(1)(B) of this rule. The following information shall be maintained as confidential:

- (A) information described by any of subdivisions (c)(1) through (c)(6) of this rule; and
- (B) except as provided by court order, information subject to subdivision (c)(7) or (c)(8) of this rule that is currently confidential or exempt from section 119.07, Florida Statutes, and article I, section 24(a) of the Florida Constitution as specifically stated in any of the following statutes or as they may be amended or renumbered: . . .

Rule 2.425. Minimization of the Filing of Sensitive Information.

(a) Limitation for Court Filings. Unless authorized by subdivision (b), statute, another rule of court, or the court orders otherwise, designated sensitive information filed with the court must be limited to the following format:

[omitted]

(b) Exceptions. Subdivision (a) does not apply to the following:

[(1)-(9) exceptions omitted]

(c) Remedies. Upon motion by a party or interested person or sua sponte by the court, the court may order remedies, sanctions or both for a violation of subdivision (a). Following notice and an opportunity to respond, the court may impose sanctions if such filing was not made in good faith.

(d) Motions Not Restricted. This rule does not restrict a party's right to move for protective order, to move to file documents under seal, or to request a determination of the confidentiality of records.

(e) Application. This rule does not affect the application of constitutional provisions, statutes, or rules of court regarding confidential information or access to public information.

GEORGIA

Georgia Code

§ 9-11-7.1. Redacted information; exceptions and filings under seal; correction; protective orders; waivers

(a) Redacted filings. Except as provided in subsections (b) and (c) of this Code section or unless the court orders otherwise, a filing with the court that contains a social security number, taxpayer identification number, financial account number, or birth date shall include only:

[(1)-(4); (b) omitted]

(c) Exemptions from redaction requirement. Subsection (a) of this Code section shall not apply to the following:

[(1)-(5) exceptions omitted]

(d) Filings made under seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the filer to file a redacted version for the public record. A filer may petition the court to file an unredacted filing under seal. The court shall retain all filings made under seal as part of the record.

(e) Correction of unredacted information. An inadvertent failure to redact information which is required to be redacted shall be a curable defect and shall not preclude a document from being filed with the court. The court may order an unredacted filing be sealed and may also order that a redacted version of the same filing be filed for the public record.

(f) Protective orders. For good cause, the court may:

(1) Order a filing which contains additional personal or confidential information, other than the information required to be redacted pursuant to this Code section, be sealed and may also order that a redacted version of the same filing be filed for the public record; and

(2) Limit or prohibit a nonparty's remote electronic access to a document filed with the court.

[(g)-(h) omitted]

Georgia Open Records Act

§ 50-18-71. Right of access; timing; fees; denial of requests; impact of electronic records.

(a) All public records shall be open for personal inspection and copying, except those which by order of a court of this state or by law are specifically exempted from disclosure. Records shall be maintained by agencies to the extent and in the manner required by Article 5 of this chapter.

[(b)-(j) omitted]

§ 50-18-72. When public disclosure not required.

(a) Public disclosure shall not be required for records that are:

[(1)-(48) access exceptions omitted]

(b) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.

(c)(1) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case.

(2) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following:

[(A)-(D) omitted]

(3) The provisions of this article regarding fees for production of a record, including, but not limited to, subsections (c) and (d) of Code Section 50-18-71, shall apply to exhibits produced according to this subsection.

(d) Any physical evidence that is used as an exhibit in a criminal or civil trial to show or support an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16 shall not be open to public inspection except by court order. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the facility owned or operated by an agency of the state or local government where such physical evidence may be inspected. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years, a fine of not more than \$100,000.00, or both.

§ 50-18-77 - Inapplicable to public records.

The procedures and fees provided for in this article shall not apply to public records, including records that are exempt from disclosure pursuant to Code Section 50-18-72, which are requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. The lawful custodian shall provide copies of such records to the requesting agency unless such records are privileged or disclosure to such agencies is specifically restricted by law.

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.

Rule 21.1. Motions and Orders

Upon motion by any party to any civil or criminal action, or upon the court's own motion, 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.

Rule 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.

Rule 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.

Rule 21.4. Review

An order limiting access may be reviewed by interlocutory application to the appellate court that has jurisdiction to hear the appeal.

Rule 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 appropriate appellate court at any time

on its own motion or upon the motion of any person for good cause. Amended effective January 24, 2019.

Rule 21.6. Redaction of Protected Identifiers and Filings Under Seal

(A) Protected Identifiers. Protected identifiers are items of identifying information subject to protection from placement on the public record as described in OCGA § 9-11-7.1.

[(B) omitted]

(C) Sealing of Filings With Unredacted Protected Identifiers. Any party seeking to make a filing under seal without redaction shall first file a redacted version of the filing with the clerk of court

for the public record and then submit the request for filing under seal directly to the court, along

with a copy of the filing without redaction and a proposed order to file under seal.

(D) Sealing of Filings Containing Personal and Confidential Information. Any party seeking to make a filing under seal which contains additional personal or confidential information other than protected identifiers shall first file a redacted version with the clerk of court for the public record and then submit a request for filing under seal directly to the court, along with a copy of the filing without redaction and a proposed order to file under seal.

Georgia Alternative Dispute Resolution Rules

Rule VII. Confidentiality and Immunity.

A. The Extent of Confidentiality:

Any statement made during a court-annexed or court-referred mediation or case evaluation or early neutral evaluation conference or as part of intake by program staff in preparation for a mediation, case evaluation or early neutral evaluation is confidential, not subject to disclosure, may not be disclosed by the neutral or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. Unless a court's ADR rules provide otherwise, the confidentiality herein applies to non-binding arbitration conferences as well. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is not subject to the confidentiality described above.

Any document or other evidence generated in connection with court-annexed or court-referred mediation or case evaluation, early neutral evaluation or, unless otherwise provided by court ADR rules, a non-binding arbitration, is not subject to discovery. A written and executed agreement or memorandum of agreement resulting from a court-annexed or court-referred ADR process is discoverable unless the parties agree otherwise in writing. Otherwise

discoverable material is not rendered immune from discovery by use in a mediation, case evaluation or early neutral evaluation or a non-binding arbitration.

Neither the neutral nor any observer present with permission of the parties in a court-annexed or court-referred ADR process may be subpoenaed or otherwise required to testify concerning a mediation or case evaluation or early neutral evaluation conference or, unless otherwise provided by court ADR rules, a non-binding arbitration, in any subsequent administrative or judicial proceeding. A neutral's notes or records are not subject to discovery. Notes and records of a court ADR program are not subject to discovery to the extent that such notes or records pertain to cases and parties ordered or referred by a court to the program.

B. Exceptions to Confidentiality:

Confidentiality on the part of program staff or the neutral does not extend to the issue of appearance. Confidentiality does not extend to a situation in which

- a) there are threats of imminent violence to self or others; or
- b) the mediator believes that a child is abused or that the safety of any party or third person is in danger.

Confidentiality does not extend to documents or communications relevant to legal claims or disciplinary complaints brought against a neutral or an ADR program and arising out of an ADR process. Documents of communications relevant to such claims or complaints may be revealed only to the extent necessary to protect the neutral or ADR program. Nothing in the above rule negates any statutory duty of a neutral to report information. Parties should be informed of limitations on confidentiality at the beginning of the conference. Collection of information necessary to monitor the quality of a program is not considered a breach of confidentiality.

C. Immunity:

No neutral in a court program shall be held liable for civil damages for any statement, action, omission or decision made in the course of any ADR process unless that statement, action, omission or decision is 1) grossly negligent and made with malice or 2) is in willful disregard of the safety or property of any party to the ADR process.

HAWAII

Rules of Civil Procedure

Rule 26(c) Protective Orders.

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, or tangible things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General.

(A) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates

to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information or tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 26(b)(1)(B) and 26(b)(2)(i), (ii), and (iii).

(B) A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or expense. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or expense. If that showing is made, the Court may nonetheless order disclosure or discovery from such sources if the requesting party shows good cause considering the limitations of Rule 26(b)(2). The Court may specify conditions for the disclosure of discovery.

(2) Limitations. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or the length of depositions under Rule 30. By order, the court may also limit the number of requests under Rule 36. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

[(3)-(5) omitted]

(6) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, 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 circuit 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 disclosure or discovery not be had; (2) that the disclosure or 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 disclosure or 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 revealed or be revealed only in a designated way; and (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court. A party has standing to move for a protective order with respect to discovery directed at a non-party on the basis of annoyance, embarrassment, oppression, or undue burden or expense that the moving party will bear. A non-party from another state from whom discovery is sought may move for a protective order from a court in the state where the discovery is sought or, alternatively, from this Court provided the nonparty agrees to be bound by the decision of this Court as to the discovery in question.

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 Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

Rule 5. Docketing Confidential Documents, Exhibits, Or Evidence

A confidential document, exhibit, or other evidence shall be listed on the docket in the same manner as other documents, exhibits, or evidence. Access to confidential documents, exhibits, or other evidence is governed by Rule 10.4 of these rules.

Rule 10. Access to Court and ADLRO Records

10.1. Generally. Except as otherwise provided by statute, rule, or order, court and ADLRO records shall be accessible during regular business hours, subject to priority use by the court, court staff, ADLRO, and ADLRO staff. Closed and archived records shall be accessible within a reasonable time after a request is made, unless the records have been deleted, destroyed, or transferred to another custodian. If the requested record information or documents are available by remote access without fee, the requestor shall be directed to the access site, and no other action need be taken to comply with the request, provided that, when certified copies of documents are requested, the Clerk shall copy or print the documents from the paper or electronic record and shall physically or electronically certify the copies.

[10.2-10.3 electronic records provision omitted]

10.4. Confidential Records and Documents. Except as otherwise provided by statute or court rule or as ordered by (a) the court that has jurisdiction over a court case, (b) the Administrative Director or the hearing officer's designee having jurisdiction over an ADLRO case, (c) the court that has jurisdiction over an appeal from a court or ADLRO case, or (d) the supreme court, access to confidential records, documents, exhibits, and information shall be limited to the court and court personnel in the performance of their duties, the Administrative Director and the Administrative Director's subordinates in the performance of their duties, the hearing

officer, attorneys of record, parties to the court or ADLRO case, and duly authorized service providers. Unless authorized by a court, an attorney shall not use the JIMS/JEFS database to gain access to confidential information under seal in cases in which the attorney is not a party or an attorney of record.

[10.5-10.19 omitted]

Rule 11. Public Access to Electronic Case Files.

11.1 On-Site Access. The clerks of the respective courts shall provide public access to the dockets and documents of non-confidential cases maintained in JIMS through public computers in their respective locations. The clerks of the respective courts shall restrict access to dockets and documents in confidential, sealed, or restricted records maintained in JIMS to parties and attorneys entitled thereto.

11.2 Internet Access. The Administrative Director shall provide internet access to the dockets of non-confidential JIMS cases without cost. The Administrative Director may provide internet access to public documents in non-confidential cases by subscription at such rates as shall be determined from time to time by the supreme court. The Administrative Director may provide internet access through a secure network connection to confidential, sealed, or restricted records by subscription to parties and attorneys entitled thereto.

11.3 Personal Information. JEFS Users shall protect personal information in public records and documents in accordance with Rule 9 of the Hawai'i Court Records Rule.

Court Arbitration Rules

Rule 23. Procedures at trial de novo.

(A) The clerk shall seal any arbitration award if a trial de novo is requested. The jury will not be informed of the arbitration proceeding, the award, or about any other aspect of the arbitration proceeding. The sealed arbitration award shall not be opened until after the verdict is received and filed in a jury trial, or until after the judge has rendered a decision in a court trial.

(B) All discovery permitted during the course of the arbitration proceedings shall be admissible in the trial de novo subject to all applicable rules of civil procedure and evidence. The court in the trial de novo shall insure that any reference to the arbitration proceeding is omitted from any discovery taken therein and sought to be introduced at the trial de novo.

(C) No statements or testimony made in the course of the arbitration hearing shall be admissible in evidence for any purpose in the trial de novo.

IDAHO

Cases

Brunobuilt, Inc. v. Strata, Inc., 457 P.3d 860 (Idaho 2020).

§ 74-102. Public Records – Right to Examine.

(1) Every person has a right to examine and take a copy of any public record of this state and there is a presumption that all public records in Idaho are open at all reasonable times for inspection except as otherwise expressly provided by statute.

(2) The right to copy public records shall include the right to make photographs or photographic or other copies while the records are in the possession of the custodian of the records using equipment provided by the public agency or independent public body corporate and politic or using equipment designated by the custodian.

(3) Additionally, the custodian of any public record shall give the person, on demand, a certified copy of it if the record is of a nature permitting such copying or shall furnish reasonable opportunity to inspect or copy such record.

(4) A public agency or independent public body corporate and politic may require that a request for public records be submitted to it in a writing that provides the requester's name, mailing address, e-mail address and telephone number. A request for public records and delivery of the public records may be made by electronic mail.

(5) The custodian shall make no inquiry of any person who requests a public record, except:
[(5)(a)-(g) omitted]

§ 74-104. Records Exempt from Disclosure – Exemptions in Federal or State Law – Court Files of Judicial Proceedings.

The following records are exempt from disclosure:

(1) Any public record exempt from disclosure by federal or state law or federal regulations to the extent specifically provided for by such law or regulation.

(2) Records contained in court files of judicial proceedings, the disclosure of which is prohibited by or under rules adopted by the Idaho supreme court, but only to the extent that confidentiality is provided under such rules, and any drafts or other working memoranda related to judicial decision-making, provided the provisions of this subsection making records exempt from disclosure shall not apply to the extent that such records or information contained in those records are necessary for a background check on an individual that is required by federal law regulating the sale of firearms, guns or ammunition.

§ 74-107. Records exempt from disclosure -- Trade secrets, production records, appraisals, bids, proprietary information.

The following records are exempt from disclosure:

(1) Trade secrets including those contained in response to public agency or independent public body corporate and politic requests for proposal, requests for clarification, requests for information and similar requests. "Trade secrets" as used in this section means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in-progress research that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

[(2)-(31) omitted]

Court Administrative Rules (I.C.A.R.)

Rule 32. Records of the judicial department--Examination and copying--Exemption from and limitations on disclosure. [Effective: July 1, 2020]

(a) Statement of policy. This rule is adopted pursuant to the Supreme Court's authority to control access to court records, as recognized in the Idaho Public Records Act, I.C. § 74-104. The public has a right to access the judicial department's declarations of law and public policy, and to access the records of all proceedings open to the public. This rule provides for access in a manner that:

- (1) Promotes accessibility to court records;
- (2) Supports the role of the judiciary;
- (3) Promotes governmental accountability;
- (4) Contributes to public safety;
- (5) Minimizes the risk of injury to Individuals;
- (6) Protects individual privacy rights and Interests;
- (7) Protects proprietary business information;
- (8) Minimizes reluctance to use the court system;
- (9) Makes the most effective use of court and clerk of court staff;
- (10) Provides excellent customer service; and
- (11) Avoids unduly burdening the ongoing business of the judiciary.

In the event of any conflict this rule shall prevail over any other rule on the issue of access to judicial records.

[(b) definition provision omitted]

(c) Applications. This Rule shall apply to all court records existing on or after the date of adoption of this Rule. Provided, this Rule shall not prevent access to records, otherwise exempt from disclosure by the following persons in the following situations:

[(1)-(6) omitted]

(d) Access to Court Records, Examination and Copying. Except as provided in paragraphs (g) and (i), the following are subject to examination, inspection and copying. The Supreme Court may provide such access to these records through terminals at judicial branch facilities or on-line from any remote location over the Internet.

[(1)-(9) omitted]

[(e)-(f) omitted]

(g) Court records exempt from disclosure. Except as provided in paragraph (h) of this rule, court records specified below are exempt from disclosure. Any willful or intentional disclosure or accessing of a sealed or exempt court record, not otherwise authorized under this rule, may be treated as a contempt of court.

[(1)-(28) exceptions omitted]

(h) Permissive Release of Judicial Decision in Exempted Categories. Records of courts' determinations in proceedings exempt from disclosure under (g) of this rule may, by direction of the court issuing the determination, be subject to inspection, examination and copying in a manner that preserves the anonymity of the participants to the proceeding. In particular, the

Supreme Court and the Court of Appeals may provide copies of their rulings in appeals from proceedings exempt from disclosure under paragraph (g) by using "John Doe/Jane Doe" designations or other anonymous designations in documents made available for inspection, examination and copying. Further deletions from the decisions may be made if necessary to preserve anonymity.

(i) Other Prohibitions or Limitations on Disclosure and Motions Regarding the Sealing of Records. Physical and electronic records, may be disclosed, or temporarily or permanently sealed or redacted by order of the court on a case-by-case basis.

[(1)-(7) omitted]

[(j) procedural provision omitted]

ILLINOIS

Supreme Court Rules

Rule 138. Personal Identity Information

(a) Applicability.

(1) In civil cases, personal identity information shall not be included in documents or exhibits filed with the court except as provided in paragraph (c).

(2) This rule does not apply to cases filed confidentially and not available for public inspection.

[(b)-(g) omitted]

Electronic Access Policy for Circuit Court Records of the Illinois Courts.

(Updated 2004)

Section 1.00 – Purpose of Electronic Access Policy

(a) The purpose of this policy is to provide a comprehensive policy on electronic access to the court records held by the Clerk of the Circuit Court. The policy provides for access in a manner that:

- (1) Provides maximum accessibility to court records;
- (2) Supports the role of the judiciary;
- (3) Promotes governmental accountability;
- (4) Contributes to public safety;
- (5) Avoids risk of harm to individuals;
- (6) Makes most effective use of court and clerk of court staff;
- (7) Provides excellent customer service;
- (8) Protects individual privacy rights and interests;
- (9) Protects proprietary business information;
- (10) Minimizes reluctance to use the court to resolve disputes; and
- (11) Does not unduly burden the ongoing business of the judiciary.

- (b) The policy is intended to provide guidance to (1) litigants and the general public seeking electronic access to court records and (2) judges, and court and clerk of court personnel responding to requests for electronic access.
- (c) Each circuit court that wishes to provide electronic access to the court records maintained by any clerk of court within its jurisdiction must adopt a local rule or administrative order consistent with this policy. All courts and clerks shall employ appropriate security measures, procedures, devices and software to protect the court's records and to prevent unauthorized access.
- (d) This policy does not limit or expand access to the official court record maintained by the clerks of the circuit courts. Access to those records is governed by the Supreme Court's General Administrative Order on Recordkeeping in the Circuit Courts and applicable laws. The official court records held by the clerk of court are available for inspection during regular office hours for that office.
- (e) The right to access and disseminate any court record may not be subject to any exclusive contract with another person or entity as provided in Section 13 of the Clerks of Courts Act, 705 ILCS 105/13.
- (f) No clerk of court shall be required to provide electronic access to court records.

Section 4.20 – Limitations to Electronic Access

- (a) The General Administrative Order on Recordkeeping in the Circuit Courts provides for the destruction of court records. Any record approved to be destroyed pursuant to those provisions may no longer be available for inspection in electronic form.
- (b) A clerk of court may elect to continue to provide access to all or part of the electronic court record where approval has been received to destroy the basic record of the case.
- (c) A court's case management system may necessitate that portions of the electronic court record be removed from or not be made available by electronic access.

Section 4.30 – Electronic Court Records Excluded from Public Access

- (a) Information that is impounded, sealed, or expunged pursuant to law or by court rule, order of court, or pursuant to the Manual on Recordkeeping shall be excluded from public access in electronic form. Access and inspection of this information is governed by the existing court rules and laws for public access of the official court record. Requests for inspection must be made in person at the office of the clerk of court.
- (b) While there is no authority prohibiting public access to certain other categories of information, there is no need to disclose such information to the public in an electronic form. The following information is excluded from public access in electronic form, unless access is provided at the office of the clerk of court. Such access shall be through the use of a computer terminal which does not allow information to be downloaded or exported, and only if such access is not otherwise prohibited by this Policy.

[exceptions omitted]

- (c) Information not covered in subsections (a) and (b) may be excluded from public access in electronic form by local rule.

INDIANA

The Access to Public Records Act (“APRA”)

§ 5-14-3-1. Public policy; construction; burden of proof for nondisclosure

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.

§ 5-14-3-4. Records excepted from disclosure requirements; time limitations; destruction of records.

(a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

[(1)-(14) omitted]

However, records described in this subdivision may be disclosed to a law enforcement agency, a private university police department, the attorney general, the inspector general, the state examiner, or a prosecuting attorney.

Ind. Code Ann. § 5-14-5.5. Sealing of certain records by court; hearing; notice.

(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.

§ 5-14-6.5. Confidentiality of public record.

A public agency that receives a confidential public record from another public agency shall maintain the confidentiality of the public record.

Administrative Court Rules

Rule 4. Committees and Commissions

[(A)(1)-(7) other committees omitted]

(7) Records Access and Management Committee. The Records Access and Management Committee shall conduct a continuous study of the practices, procedures, and systems for the maintenance, management, and retention of court records employed by the courts and offices serving the courts of this State. Such study shall include the best practices and policies with respect to online access to electronic court records, with consideration to the purposes articulated in Rules on Access to Court Records. The Committee shall submit to the Supreme Court from time to time recommendations for the modernization, improvement and standardization of such practices, procedures and systems. The Committee shall encourage suggestions from all interested parties and the public for the improvement of the Records Access and Management system employed by the courts and court agencies, as well as concerns or considerations with respect to the online access to court records. These recommendations shall be submitted in writing to the Indiana Office of Judicial Administration (IOJA).

[(B)-(C) omitted]

Rule 9. Court Records and Fees.

[(A)-(B), (D) repealed; (C) definitions provision omitted]

(E) Remote Access to Court Records.

(1) The Indiana Supreme Court shall decide which Court Records will be available via Remote Access to the public. The Office of Court Services shall create and maintain a list available to judicial officers, attorneys, litigants, and the public.

(2) Trial courts may not provide Remote Access to additional records unless specifically authorized by the Indiana Supreme Court. However, trial courts shall make available, in an electronic or other format, daily calendars or dockets of court proceedings, including case numbers and captions, date, time, and location of hearings.

(3) Unless expressly provided by these Rules or state law, no fee shall be charged for Remote Access to Court Records.

Rules of Access to Court Records

Rule 1. Scope and Purposes

(A) Pursuant to the inherent authority of the Indiana Supreme Court and pursuant to the Indiana Access to Public Records Act, this rule governs public access to, and confidentiality of, Court Records. This rule applies to everyone who creates a Court Record as defined in Rule 3(A). Except as otherwise provided by this rule, access to Court Records shall be governed by the Indiana Access to Public Records Act.

(B) The purposes of this rule are to:

- (1) Contribute to public safety;
- (2) Protect individual Due Process rights and privacy interests;
- (3) Minimize the risk of injury to individuals;
- (4) Promote accessibility to Court Records;
- (5) Promote governmental accountability and transparency;
- (6) Protect proprietary business information; and
- (7) Make the most effective use of Court and Clerk of Court staff.

(C) This rule applies to Court Records and everyone who creates a Court Record as defined in Rule 3. This rule does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial governmental agency or other entity.

(D) Disputes arising under this rule shall be determined in accordance with this and, to the extent not inconsistent with this rule, by all other rules of procedure, evidence, and appeal.

(E) Clerks of Court and courts need not redact or restrict information that was otherwise public in Case Records and Court Administrative Records created before January 1, 2005.

Rule 2: Who Has Access Under This Rule.

(A) All persons have access to Court Records as provided in this rule, except as provided in subsection (B) of this rule.

(B) The following persons, in accordance with their functions within the judicial system, may have greater access to Court Records:

[(1)-(5) omitted]

[Rule 3 definitions omitted]

Rule 4. General Access Rule

(A) A Court Record is accessible to the public except as provided in Rule 5.

(B) This rule applies to all Court Records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.

(C) If a Court Record, or portion thereof, is excluded from public access, there shall be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This subsection (C) does not apply to court proceedings or Court Administrative Records which are confidential pursuant to law.

(D) A Court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)]. This

provision does not operate to deny to any person the right to access a Court Record under Rule 4(A).

Rule 5. Records Excluded From Public Access.

(A) Court Records That Shall Be Excluded From Public Access In Entirety. The following shall be excluded from Public Access and no notice of exclusion from Public Access is required:

[(1)-(6) omitted]

(B) Individual Case Records That Shall Be Excluded From Public Access. The following shall be excluded from Public Access by filing the document on green paper (if paper filing) or by filing the document as a confidential document (if e-filing), along with an ACR Form identifying the specific Rule 5 ground(s) upon which exclusion is based:

[(1)-(10) omitted]

(C) Personal Information of Litigants, Witnesses, and Children:

[(1)-(3) omitted]

(D) Court Administrative Records That Must Be Excluded From Public Access. The following Court Administrative Records are confidential and must be excluded from Public Access:

[(1)-(5) omitted]

(E) Court Records That Shall Be Temporarily Excluded From Public Access.

[(1)-(2) omitted]

Rule 6. Excluding Other Court Records From Public Access.

(A) In extraordinary circumstances, a Court Record that otherwise would be publicly accessible may be excluded from Public Access by a Court having jurisdiction over the record. A verified written request to prohibit Public Access to a Court Record may be made by any person affected by the release of the Court Record. The request shall demonstrate that:

- (1) The public interest will be substantially served by prohibiting access;
- (2) Access or dissemination of the Court Record will create a significant risk of substantial harm to the requestor, other persons or the general public; or
- (3) A substantial prejudicial effect to on-going proceedings cannot be avoided without prohibiting Public Access.

When this request is made, the request and the Court Record will be rendered confidential for a reasonable period of time until the Court rules on the request.

[(B)-(D) procedural provisions omitted]

Rule 9: Obtaining Access to Court Records Excluded from Public Access.

(A) A Court Record that is excluded from Public Access under this rule may be made accessible if:

- (1) Each person affected by the release of the Court Record waives confidentiality by intentionally releasing such Court Record for Public Access pursuant to 8(A); or
- (2) A Court with jurisdiction over the case declares:
 - (a) the Court Record should not have been excluded from Public Access;
 - (b) the Rule 6 order was improper or is no longer appropriate;
 - (c) the Court Record is essential to the resolution of litigation; or

(d) disclosure is appropriate to further the establishment of precedent or the development of the law.

(B) A Court Record that is excluded from Public Access under this rule also may be made accessible provided the following four conditions are met:

(1) Verified written request. The person seeking access to the Court Record shall file with the Court having jurisdiction over the record a verified written request demonstrating that:

(a) Extraordinary circumstances exist requiring deviation from the general provisions of this rule;

(b) The public interest will be served by allowing access;

(c) Access or dissemination of the Court Record creates no significant risk of substantial harm to any party, to third parties, or to the general public;

(d) The release of the Court Record creates no prejudicial effect to on-going proceedings; or

(e) The Court Record should not be excluded for Public Access under 5(A), (B), (C), (D), or (E).

When a request is made for access to Court Records excluded from Public Access, the Court Record will remain confidential until the Court rules on the request.

[(2)-(4) procedural provisions omitted]

(C) A Court may place restrictions on the use or dissemination of the Court Record to preserve confidentiality.

Trial Court Rules

Rule 5. Service and Filing of Pleading and Other Papers

[(A)-(F) omitted]

(G) Confidentiality of Court Records.

(1) Court Records are accessible to the public, except as provided in the Rules on Access to Court Records.

(2) Any Court Record excluded from Public Access pursuant to the Rules on Access to Court Records must be filed in accordance with Rule 7 of the Rules on Access to Court Records.

[(H) omitted]

IOWA

Cases

Comes v. Microsoft Corp., 775 N.W.2d 302 (Iowa 2009).

Open Records Act

§ 22.2 (2018). Right to examine public records—exceptions

[<See Executive Proclamation P20-44 (2019 IA EO P20-44), related to the COVID-19 State of Disaster Emergency, for suspension of certain provisions of this section to the extent they impose a requirement for the in-person examination or copying of public records, to the extent those records can be examined and copies provided by mail or electronic means. >]

1. Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record without charge while the public record is in the physical possession of the custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. All rights under this section are in addition to the right to obtain a certified copy of a public record under section 622.46.
2. A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.
3. However, notwithstanding subsections 1 and 2, a government body is not required to permit access to or use of the following:
 - a. A geographic computer database by any person except upon terms and conditions acceptable to the governing body. The governing body shall establish reasonable rates and procedures for the retrieval of specified records, which are not confidential records, stored in the database upon the request of any person.
 - b. Data processing software developed by the government body or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body, as provided in section 22.3A.

Iowa Code § 22.7. Confidential records

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

[(1)-(73) exceptions omitted]

Rules of Civil Procedure

Rule 1.422. Protected information.

It is the responsibility of counsel and the parties to ensure that protected information is omitted or redacted from documents or exhibits filed with the court. The clerk of court will not review filings to determine whether the required omissions or redactions have been made.

(1) Omission or redaction required. In all civil proceedings and special actions a party shall omit or redact protected information from documents and exhibits filed with the court unless the information is material to the proceedings or disclosure is otherwise required by law.

[(a)-(c) omitted]

(2) Omission or redaction allowed. A party may omit or redact any of the following information from documents and exhibits filed with the court unless the information is material to the proceedings or disclosure is otherwise required by law:

[(a)-(g) omitted]

KANSAS

Kansas Open Records Act (KORA)

§ 45-216. Public policy that records be open

(a) It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.

(b) Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record.

45-221. Certain records not required to be open; separation of open and closed information required; statistics and records over 70 years old open.

(a) Except to the extent disclosure is otherwise required by law, a public agency shall not be required to disclose:

(1) Records the disclosure of which is specifically prohibited or restricted by federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2012 Supp. 75-4315d, and amendments thereto, or the disclosure of which is prohibited or restricted pursuant to specific authorization of federal law, state statute or rule of the Kansas supreme court or rule of the senate committee on confirmation oversight relating to information submitted to the committee pursuant to K.S.A. 2012 Supp. 75-4315d, and amendments thereto, to restrict or prohibit disclosure.

[(2)-(52) omitted]

Rules of Civil Procedure

§ 60-2617. Sealing or redacting court records; closing a court proceeding; motion; notice; hearing; exceptions.

(a) In a civil or criminal case, the court, upon the court's own motion, may hold a hearing or any party may request a hearing to seal or redact the court records or to close a court proceeding. Reasonable notice of a hearing to seal or redact court records or to close a court proceeding shall be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact court records or to close a court proceeding shall also be given to the victim, if ascertainable.

(b) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted or the court proceeding closed. If the court grants such an order, before closing proceedings or granting leave to file under seal, the court shall make and enter a written finding of good cause.

(c) In granting the order, the court shall recognize that the public has a paramount interest in all that occurs in a case, whether at trial or during discovery and in understanding disputes that are presented to a public forum for resolution.

(d) Good cause to close a proceeding or seal or redact records, whether upon the motion of a party, or on the court's own motion, does not exist unless the court makes a finding on the

record that there exists an identified safety, property or privacy interest of a litigant or a public or private harm that predominates the case and such interest or harm outweighs the strong public interest in access to the court record and proceedings.

(e) Agreement of the parties shall be considered by the court but shall not constitute the sole basis for the sealing or redaction of court records or for closing the court proceeding.

(f) The provisions of this section shall not apply to proceedings under the revised Kansas code for care of children, K.S.A. 38-2201 et seq., and amendments thereto, the revised Kansas juvenile justice code, K.S.A. 38-2301 et seq., and amendments thereto, the Kansas adoption and relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto, to supreme court rules which allow motions, briefs, opinions and orders of the court to identify parties by initials or by familial relationship or to supreme court rules which require appellate court deliberations to be kept in strict confidence. Nothing in this section shall be construed to prohibit the issuance of a protective order pursuant to subsection (c) of K.S.A. 60-226, and amendments thereto.

(g) The provisions of this section shall not preclude a court from allowing a settlement which includes a confidentiality clause to be filed under seal where the interests of justice would be served by such settlement being filed under seal.

Supreme Court Rules

Rule 196. Public Access to District Court Electronic Case Records.

[(a) definitions omitted]

(b) Scope.

(1) This rule governs public access to and confidentiality of electronic case records in district courts. Except as otherwise provided by this rule, access to electronic court records is governed by the KORA, Kansas Supreme Court Rules and Administrative Orders, and relevant state and federal law.

(2) Non-case records or case records not available in electronic form--which are open records under the KORA, Supreme Court rule or order, or other state or federal law--will be made available in a format determined by the appropriate records officer.

(3) Information in district court electronic case records available for public access in electronic format will be available at each respective courthouse through the use of a public access terminal. Only information from the county in which the courthouse is located will be available. County information may be available through the Internet at the discretion of the chief judge and the judicial administrator.

(4) This rule applies only to electronic case records as defined in this rule and does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial branch governmental agency or other entity.

(c) Persons Who Have Access.

(1) All persons have the access to electronic case records provided in this rule.

(2) Judges, court employees, and others as determined by the Supreme Court may be granted greater access to electronic case records than the access provided in this rule.

(3) This rule does not give any person a right of access to any record to which the person is not otherwise entitled.

(d) Access Provisions and Restrictions.

(1) Public access to electronic case records or information contained in electronic case records must be available on a case-by-case basis only and may be conditioned on the user's agreement to access the records only as instructed by the court and the user's consent to monitoring of the user's access to electronic court records.

(2) A copy of a court record available electronically through a public access method does not constitute the official record of the court.

(3) Due to privacy concerns, some otherwise public information, as determined by the Supreme Court, may not be available through electronic access. Information generally not available electronically includes--but is not limited to--social security numbers, dates of birth, and street addresses. Except for electronically filed documents, to which adequate public access will be provided as determined by the records custodian, only information contained in the court's registers of action will be available electronically. A district court may seek authority to provide other information by making a written request to the judicial administrator, who will make a recommendation on the request and forward it to the Supreme Court.

(4) Electronic case records will be available for public access in the courthouse during regular business hours. Access may be disrupted due to unexpected technical failures or normal system maintenance.

(5) This rule applies to all electronic case records in the district courts; clerks and courts need not redact or restrict information that was otherwise public in court case records created before the effective date of this rule.

[(e)-(g) omitted]

(h) Immunity for Disclosure of Information. The judicial branch and its employees may not be held liable for monetary damages related to unintentional or unknowing disclosure of confidential or erroneous information.

KENTUCKY

Cases

Fiorella v. Paxton Media Grp., LLC, 424 S.W.3d 433 (Ct. App. Ky. 2014).

Open Records Act

§ 61.871. Policy of KRS 61.870 to 61.884; strict construction of exceptions of KRS 61.878

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

§ 61.872. Right to inspection; limitation

(1) All public records shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884, and suitable facilities shall be made available by each public agency for the exercise of this right. No person shall remove original copies of public records from the offices of any public agency without the written permission of the official custodian of the record.

(2) Any person shall have the right to inspect public records. The official custodian may require: [(a)-(c) procedural provisions omitted]

(3) A person may inspect the public records:

(a) During the regular office hours of the public agency; or

(b) By receiving copies of the public records from the public agency through the mail.

The public agency shall mail copies of the public records to a person whose residence or principal place of business is outside the county in which the public records are located after he precisely describes the public records which are readily available within the public agency. If the person requesting the public records requests that copies of the records be mailed, the official custodian shall mail the copies upon receipt of all fees and the cost of mailing.

(4) If the person to whom the application is directed does not have custody or control of the public record requested, that person shall notify the applicant and shall furnish the name and location of the official custodian of the agency's public records.

(5) If the public record is in active use, in storage or not otherwise available, the official custodian shall immediately notify the applicant and shall designate a place, time, and date for inspection of the public records, not to exceed three (3) days from receipt of the application, unless a detailed explanation of the cause is given for further delay and the place, time, and earliest date on which the public record will be available for inspection.

(6) If the application places an unreasonable burden in producing public records or if the custodian has reason to believe that repeated requests are intended to disrupt other essential functions of the public agency, the official custodian may refuse to permit inspection of the public records or mail copies thereof. However, refusal under this section shall be sustained by clear and convincing evidence.

§ 61.878. Certain public records exempted from inspection except on order of court; restriction of state employees to inspect personnel files prohibited.

[Kentucky H.B. No. 174, 2020 Regular Session, Proposed Amendment/Substitution February 2020 - to exclude from the Open Records Act gruesome photographs or videos of persons prepared, owned, used, possessed, or retained by public agencies.]

(1) The following public records are excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction, except that no court shall authorize the inspection by any party of any materials pertaining to civil litigation beyond that which is provided by the Rules of Civil Procedure governing pretrial discovery:

[(a)-(p) omitted]

(2) No exemption in this section shall be construed to prohibit disclosure of statistical information not descriptive of any readily identifiable person.

(3) No exemption in this section shall be construed to deny, abridge, or impede the right of a public agency employee, including university employees, an applicant for employment, or an eligible on a register to inspect and to copy any record including preliminary and other supporting documentation that relates to him. The records shall include, but not be limited to, work plans, job performance, demotions, evaluations, promotions, compensation, classification, reallocation, transfers, layoffs, disciplinary actions, examination scores, and preliminary and other supporting documentation. A public agency employee, including university employees, applicant, or eligible shall not have the right to inspect or to copy any examination or any documents relating to ongoing criminal or administrative investigations by an agency.

(4) If any public record contains material which is not excepted under this section, the public agency shall separate the excepted and make the nonexcepted material available for examination.

(5) The provisions of this section shall in no way prohibit or limit the exchange of public records or the sharing of information between public agencies when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function.

Other 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 cabinet 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.

Administrative Procedures of the Court of Justice

Section 1. Statement of Purpose.

This administrative procedure constitutes the Open Records Policy of the Administrative Office of the Courts (AOC) and governs access by the public to the administrative records of the AOC.

[Section 2-3 omitted]

Section 4. General Public Access to Administrative Records of the AOC.

(1) Administrative records. Administrative records of the AOC are open for public access except the following:

[(a)-(u) exceptions and (2)-(3) omitted]

Section 5. Denial of Public Access for Cause.

The custodian may deny access, in whole or in part, to administrative records:

(1) When the request to inspect places an unreasonable burden in producing administrative records or otherwise disrupts or compromises the business of the court, or when the custodian has reason to believe

that repeated requests are intended to disrupt other essential functions of the Court of Justice.

However, refusal under this paragraph must be sustained by clear and convincing evidence;

(2) When the request to inspect is advanced primarily for a commercial purpose of the requesting entity and the request does not advance primarily a public interest or a legitimate private interest; or

(3) To any individual who has previously been convicted of stealing, destroying, defacing, or tampering with records or has refused to comply with statutes or court rules, policies, or orders concerning records.

[Section 6-7 procedural provisions omitted]

LOUISIANA

Cases

Joseph v. Huntington Ingalls Inc., 2020 WL 499939 (La. 2020).

Independent Weekly, LLC v. Atkins, 241 So. 3d 1118 (La. Ct. App.), writ denied 252 So.3d 921, (La. 2018).

Constitution

La. Const. Art. 12, § 3. Right to Direct Participation

No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

La. Const. Art. 1, § 22. Access to Courts

All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights.

Public Records Act

§ 44:31. Right to examine records

A. Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees.

B. (1) Except as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person of the age of majority may inspect, copy, or reproduce any public record.

(2) Except as otherwise provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter, any person may obtain a copy or reproduction of any public record.

(3) The burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian.

Other Statutes

§ 13:5109.1. Settlement of claims; prohibited terms.

A. No settlement agreement of a claim against the state, a state agency, a political subdivision, or any employee or officer of the state, a state agency, or a political subdivision shall contain a provision prohibiting the disclosure by the claimant of the terms of or the facts associated with the underlying claim of the settlement agreement when the underlying claim is based on an allegation of sexual harassment or sexual assault of the claimant and public funds are paid, in whole or in part, as satisfaction of the terms of the settlement agreement.

§ 30:916. Confidentiality

Information submitted to the office of conservation pursuant to R.S. 30:912 as confidential concerning trade secrets or privileged commercial or financial information which relates to competitive rights shall not be available for public examination.

Code of Civil Procedure

Art. 251. Custodian of court records; certified copies; records public

A. The clerk of court is the legal custodian of all of its records and is responsible for their safekeeping and preservation. He may issue a copy of any of these records, certified by him under the seal of the court to be a correct copy of the original. Except as otherwise provided by law, he shall permit any person to examine, copy, photograph, or make a memorandum of any of these records at any time during which the clerk's office is required by law to be open. However, notwithstanding the provisions of this Paragraph or R.S. 44:31 et seq., the use,

placement, or installation of privately owned copying, reproducing, scanning, or any other such imaging equipment, whether hand-held, portable, fixed, or otherwise, within the offices of the clerk of court is prohibited unless ordered by a court of competent jurisdiction.

B. Notwithstanding the provisions of Paragraph A of this Article, a judge issuing a court order may certify a copy of that order for service of process, if the order is issued in an emergency situation and at a time when the clerk of court's office is not open. A determination of when an emergency situation exists shall be made by the judge issuing the order.

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)-(8) omitted]

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.

Rules of Evidence

Art. 513. Trade secrets

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose, and to prevent another person from disclosing, a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

MAINE

Freedom of Access Act

§ 401. Declaration of public policy; rules of construction.

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

§408-A. Public records available for inspection and copying

Except as otherwise provided by statute, a person has the right to inspect and copy any public record in accordance with this section within a reasonable time of making the request to inspect or copy the public record.

1. Inspect. A person may inspect any public record during reasonable office hours. An agency or official may not charge a fee for inspection unless the public record cannot be inspected without being converted or compiled, in which case the agency or official may charge a fee as provided in subsection 8.

[(2)-(3) omitted]

4. Refusals; denials. If a body or an agency or official having custody or control of any public record refuses permission to inspect or copy or abstract a public record, the body or agency or official shall provide, within 5 working days of the receipt of the request for inspection or copying, written notice of the denial, stating the reason for the denial or the expectation that the request will be denied in full or in part following a review. A request for inspection or copying may be denied, in whole or in part, on the basis that the request is unduly burdensome or oppressive if the procedures established in subsection 4-A are followed. Failure to comply with this subsection is considered failure to allow inspection or copying and is subject to appeal as provided in section 409.

4-A. Action for protection. A body, an agency or an official may seek protection from a request for inspection or copying that is unduly burdensome or oppressive by filing an action for an order of protection in the Superior Court for the county where the request for records was made within 30 days of receipt of the request.

A. The following information must be included in the complaint if available or provided to the parties and filed with the court no more than 14 days from the filing of the complaint or such other period as the court may order:

[(1)-(4) omitted]

B. Any appeal that may be filed by the requesting party under section 409 may be consolidated with an action under this subsection.

C. An action for protection may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require upon the request of any party.

D. If the court finds that the body, agency or official has demonstrated good cause to limit or deny the request, the court shall enter an order making such findings and establishing the terms upon which production, if any, must be made. If the court finds that the body, agency or official has not demonstrated good cause to limit or deny the request, the court shall establish a date by which the records must be provided to the requesting party.

[(5)-(11) procedural provisions omitted]

Supreme Judicial Court Administrative

Order JB-05-20 (A. 1-15). Public Information and Confidentiality

I. Scope and Purpose

This order governs the release of public information and the protection of confidential and other sensitive information within the Judicial Branch. It is the policy of the Judicial Branch to provide meaningful access to court dockets, case files, and related information to the public; to appropriately and consistently respond to nonroutine requests by the public for information; to protect information which is designated as confidential from inadvertent or inappropriate disclosure and to assure that sensitive information is only communicated to appropriate recipients outside of the Judicial Branch. This order applies to all case types, including civil and criminal cases.

[II. definitions omitted]

III. Records Maintained at or by Courts

A. In Person or Mail Requests

1. Information and records relating to cases that are maintained in case files, dockets, indices, lists, or schedules by and at the District, Superior, or Supreme Judicial Courts are generally public and access will be provided to a person who requests to inspect them or have copies made by clerk's office staff unless the information or a portion of it is confidential as provided in Part II, ¶ H.

[clerk timetable omitted]

2. Records that are confidential or that contain information designated as confidential court information, materials that have been impounded or sealed by a judge, materials that are subject to a pending motion or other request for impoundment or sealing; or judge's, magistrate's, and law clerk's notes and workpapers will be placed in a separate sealed envelope in the file, and the file or record must have a label conspicuously affixed to it indicating that the file or record contains confidential materials. If a request for access is made concerning the nonconfidential portion of a record, the clerk will remove

the confidential materials before making the record available for inspection. Requests for inspection of confidential materials or for review of materials that contain information designated as confidential that are contained within a public case file must be made by motion with notice to all parties of record as provided in the Maine Rules of Civil Procedure or Maine Rules of Criminal Procedure.

[(3)-(8); (B) omitted]

Rules of Civil Procedure

Rule 26. General Provisions Governing Discovery.

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Scope of Discovery. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

[(2)-(6) omitted]

(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, any justice or judge of the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including without limitation 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 court; (9) that the party taking the deposition pay the traveling expenses of the opposite party and of his attorney for attending the taking of the deposition; and (10) that a witness under the control of the party taking the deposition be required to be brought within the state for his deposition. The power of the court under this rule shall be exercised with liberality toward the accomplishment of its purpose to protect parties and witnesses.

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 Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. [(d)-(g) omitted]

Rule 79. Books and Records Kept By the Clerk and Entries Therein.

(a) Civil Docket. The clerk shall keep the civil docket, and shall enter therein each civil action to which these rules are applicable. Actions shall be assigned docket numbers. Upon the filing of a complaint with the court, the name of each party and each trustee, and the name and address of the plaintiff's attorney shall be entered upon the docket. Thereafter the name and address of the attorney appearing or answering for any defendant or trustee shall similarly be entered. All pleadings and motions addressed in Rule 7(a) and (b), and any opposition thereto and any returns showing execution of process filed with the clerk, and all appearances, fee payments, orders, verdicts, and judgments shall be noted chronologically upon the docket and shall be marked with the docket number. These notations shall briefly show the nature of each document filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. In the alternative the notation of an order or judgment may consist of an incorporation by reference of a designated order, judgment, opinion or other document filed with the clerk by the court, provided that the notation shows that it is made at the specific direction of the court. The notation of an order or judgment shall show the date the notation is made.

(b)(1) Motion to Impound. Upon the filing of a motion or other request to impound or seal documents or other materials, the clerk shall separate such materials from the publicly available file and keep them impounded or sealed pending the court's adjudication of the motion.

(2) Confidential Materials. Requests for inspection or copying of materials designated as confidential, impounded or sealed within a case file must be made by motion in accordance with Rule 7.

(c) Custody of Papers by Clerk. The clerk shall be answerable for all records and papers filed with the court, and they shall not be taken from the clerk's custody without special order of the court; but the parties may at all times have copies.

(d) Other Books and Records. The clerk shall keep such other books and records as may be required from time to time by the Chief Justice of the Superior Court, or the Chief Judge of the District Court, as the case may be.

Maine Rules of Appellate Procedure

Rule 12B. Public Access to Proceedings and Records

(a) Record on Appeal. The record on appeal in each case, or any portion of the record on appeal, shall be available for inspection and copying by any person to the same extent as that record was available for inspection and copying in the trial court.

(b) Law Court File. The file maintained by the Clerk of the Law Court for each appeal, other than files for appeals from child protection proceedings and other files made confidential by statute, shall be available for public inspection and copying, except that any documents or images that

were transmitted to the Law Court by the trial court under seal and any documents providing identifying information regarding parties, witnesses, or jurors shall be available for inspection and copying only to the same extent as in the trial court.

(c) Briefs. The briefs filed with the Law Court, other than briefs in appeals from child protection proceedings, shall be available for inspection and copying by any person.

(d) Appendices. The appendix shall be available for public inspection and copying, except that the appendix shall not be available for public inspection and copying in the following matters:

(1) an appeal from a child protection proceeding; (2) proceedings involving an adoption or guardianship or a petition for adoption or guardianship; (3) juvenile proceedings in which the record is sealed in the trial court; (4) any proceeding in which the care, custody, and support of a minor child is an issue; and (5) any proceeding in which a document that is confidential by statute or was filed under seal in the trial court is contained in the appendix.

No appendix shall be filed as “under seal” or “confidential” except on order of the Chief Justice or other Justice designated to act for the Chief Justice pursuant to Rule 10(a)(4).

(e) Oral Arguments. Oral arguments on the merits of appeals are public proceedings.

(f) Decisions. Opinions of the Law Court on appeals and decisions of single Justices of the Law Court are public documents.

MARYLAND

Court Rules - Access to Judicial Records

Rule 16-903. General Policy

(a) Purpose of Rules. The Rules in this Chapter are intended to provide public access to judicial records while protecting the legitimate security and privacy rights of litigants and others who are the subject of those records.

(b) Presumption of Openness. Judicial records are presumed to be open to the public for inspection. Except as otherwise provided by the Rules in this Chapter or by other applicable law, the custodian of a judicial record shall permit an individual appearing in person in the office of the custodian during normal business hours to inspect the record.

(c) Protection of Records. To protect judicial records and prevent unnecessary interference with the official business and duties of the custodian and other judicial personnel, a clerk is not required to permit in-person inspection of a case record filed with the clerk for docketing in a judicial action or a notice record filed for recording and indexing until the document has been docketed or recorded and indexed.

[(d)-(e) omitted]

(f) New Judicial Records.

(1) Except as expressly required by other law and subject to Rule 16-909, a custodian, court, or judicial agency is not required by the Rules in this Chapter to index, compile, re-format, program, or reorganize existing judicial records or other documents or information to create a new judicial record not necessary to be maintained in the ordinary course of business. The removal, deletion, or redaction from a judicial record of

information not subject to inspection under the Rules in this Chapter in order to make the judicial record subject to inspection does not create a new record within the meaning of this Rule.

(2) If a custodian, court, or judicial agency (A) indexes, compiles, re-formats, programs, or reorganizes existing judicial records or other documents or information to create a new judicial record, or (B) comes into possession of a new judicial record created by another from the indexing, compilation, re-formatting, programming, or reorganization of other judicial records, documents, or information, and there is no basis under the Rules in this Chapter to deny inspection of that new judicial record or some part of that judicial record, the new judicial record or a part for which there is no basis to deny inspection shall be subject to inspection.

Rule 16-905. Access to Notice, Special Judicial Unit, Administrative, and Business License Records.

(a) Notice Records. Except as otherwise provided by statute, a custodian may not deny inspection of a notice record that has been recorded and indexed by the clerk.

(b) Special Judicial Unit Records. Access to judicial records of special judicial units is governed by the confidentiality Rules applicable to those particular units.

[(c)-(f) omitted]

Rule 16-906. Case Records-Required Denial of Inspection-In General.

(a) When Inspection Would be Contrary to Federal Law, Certain Maryland Law, or Court Order. A custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to:

(1) The Constitution of the United States, a Federal statute, or a Federal regulation adopted under a Federal statute and having the force of law;

(2) The Maryland Constitution;

(3) A provision of Code, General Provisions Article, Title 4 (PIA) that is expressly adopted in the Rules in this Chapter;

(4) A rule adopted by the Court of Appeals; or

(5) An order entered by the court having custody of the case record or by any higher court having jurisdiction over

(A) the case record, or

(B) the person seeking inspection of the case record.

(b) When Inspection Would be Contrary to Other Maryland Statutes. Unless inspection is otherwise permitted by the Rules in this Chapter, a custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than Code, General Provisions Article, Title 4 (PIA), that expressly or by necessary implication applies to a judicial record.

Rule 16-907. Case Records-Required Denial of Inspection-Certain Categories.

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

[(a)-(k) omitted]

(l) A case record that:

- (1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or
- (2) in accordance with Rule 16-912 (b) is the subject of a motion to preclude or limit inspection.

Rule 16-908. Case Records – Required Denial of Inspection-Specific Information.

[personal information provisions omitted]

Rule 16-910. Access to Electronic Records.

(a) In General. Subject to the other Rules in this Title and in Title 20 and other applicable law, a judicial record that is kept in electronic form is open to inspection to the same extent that the record would be open to inspection in paper form.

(b) Denial of Access.

(1) Restricted Information. A custodian shall take reasonable steps to prevent access to restricted information, as defined in Rule 20-101 (t), that the custodian is on notice is included in an electronic judicial record.

(2) Certain Identifying Information.

[(A)-(C) omitted]

(c) Availability of Computer Terminals. Clerks shall make available at convenient places in the courthouses computer terminals or kiosks that the public may use free of charge in order to access judicial records and parts of judicial records that are open to inspection, including judicial records as to which remote access is otherwise prohibited. To the extent authorized by administrative order of the Chief Judge of the Court of Appeals, computer terminals or kiosks may be made available at other facilities for that purpose.

Rule 16-912. Case Records—Court Order Denying or Permitting Inspection

(a) Motion.

(1) A party to an action in which a case record is filed, including a person who has been permitted to intervene as a party, and a person who is the subject of or is specifically identified in a case record may file a motion:

(A) to seal or otherwise limit inspection of a case record filed in that action that is not otherwise shielded from inspection under the Rules in this Chapter or Title 20 or other applicable law; or

(B) to permit inspection of a case record filed in that action that is not otherwise subject to inspection under the Rules in this Chapter or Title 20 or other applicable law.

(2) Except as provided in subsection (a)(3) of this Rule, the motion shall be filed with the court in which the case record is filed and shall be served on:

(A) all parties to the action in which the case record is filed; and

(B) each identifiable person who is the subject of the case record.

(3) A petition to shield a judicial record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 shall be filed in the county where the judgment of conviction was

entered. Service shall be provided and proceedings shall be held as directed in that Subtitle.

(b) Shielding Upon Motion. This section does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3. Upon the filing of a motion to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue.

(c) Temporary Order Precluding or Limiting Inspection.

(1) The court shall consider a motion filed under this Rule on an expedited basis.

(2) In conformance with the provisions of Rule 15-504 (Temporary Restraining Order), the court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection, and (B) immediate, substantial, and irreparable harm will result to the person seeking the relief or on whose behalf the relief is sought if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

(3) A court may not enter a temporary order permitting inspection of a case record that is not otherwise subject to inspection under the Rules in this Chapter in the absence of an opportunity for a full adversary hearing.

(d) Final Order.

(1) After an opportunity for a full adversary hearing, the court shall enter a final order:

- (A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection under the Rules in this Chapter;
- (B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under the Rules in this Chapter; or
- (C) denying the motion.

(2) A final order shall include findings regarding the interest sought to be protected by the order.

(3) A final order that precludes or limits inspection of a case record shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order.

(4) A final order granting relief under Code, Criminal Procedure Article, Title 10, Subtitle 3 shall include the applicable provisions of the statute. If the order pertains to a judgment of conviction in (A) an appeal from a judgment of the District Court or (B) an action that was removed pursuant to Rule 4-254, the order shall apply to the records of each court in which there is a record of the action, and the clerk shall transmit a copy of the order to each such court.

(5) In determining whether to permit or deny inspection, the court shall consider:

- (A) if the motion seeks to preclude or limit inspection of a case record that is otherwise subject to inspection under the Rules in this Chapter, whether a

special and compelling reason exists to preclude or limit inspection of the particular case record;

(B) if the motion seeks to permit inspection of a case record that is otherwise not subject to inspection under the Rules in this Chapter, whether a special and compelling reason exists to permit inspection; and

(C) if the motion seeks to permit inspection of a case record that has been previously sealed by court order under subsection (d)(1)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections (d)(2), (3), and (5)(A) of this Rule.

(6) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.

(e) Filing of Order. A copy of any temporary or final order shall be filed in the action in which the case record in question was filed and, except as otherwise provided by law, shall be subject to public inspection.

(f) Non-Exclusive Remedy. This Rule does not preclude a court from exercising its authority at any time to enter an appropriate order that seals or limits inspection of a case record or that makes a case record subject to inspection.

(g) Request to Shield Certain Information.

(1) This subsection applies to a request, filed by an individual entitled to make it, (A) to shield information in a case record that is subject to shielding under Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence), or (B) in a criminal action, to shield the address or telephone number of a victim, victim's representative, or witness.

(2) The request shall be in writing and filed with the person having custody of the record.

(3) If the request is granted, the custodian shall deny inspection of the shielded information. The shield shall remain in effect until terminated or modified by order of court. Any person aggrieved by the custodian's decision may file a motion under section (a) of this Rule.

MASSACHUSETTS

Cases

Commonwealth v. George W. Prescott Pub. Co., LLC, 463 Mass. 258 (2012).

Gleba v. Daimler Chrysler Corp., 2001 Mass. Super. LEXIS 364 (Mass. Sup. Aug. 6, 2001).

New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76 (2012).

Rules of Civil Procedure

Rule 26. General Provisions Governing Discovery

(a) Discovery methods

Parties may obtain discovery by one or more of the following methods except as otherwise provided in Rule 30(a) and Rule 30A(a), (b): depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. Unless the court orders otherwise, or unless otherwise provided in these rules, the frequency of use of these methods is not limited.

(b) Scope of discovery

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General.

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

[(2)-(4) omitted]

(5) Claims of Privilege or Protection of Trial Preparation Materials

(A) Information Withheld.

When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must:

[(i)-(ii) omitted]

(B) Information mistakenly produced; claim of privilege.

If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party shall promptly return, sequester, or destroy the specified information and any copies it has; shall not use or disclose the information until the claim is resolved; shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under Trial Court Rule VIII, Uniform Rules on Impoundment Procedure, for a determination of the claim. The producing party shall preserve the information until the claim is resolved. In resolving any such claim, the court should determine whether:

[(i)-(iii) omitted]

(C) Effect of a ruling.

If the court, following such procedure, or pursuant to an order under Rule 26(f)(3), upholds the privilege or protection in a written order, the disclosure shall not be deemed a waiver in the matter before the court or in any other proceeding.

(c) Protective orders

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 county or judicial district, as the case may be, 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, place, or manner; or the sharing of costs; (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 court.

Factors bearing on the decision whether discovery imposes an undue burden or expense may include the following:

[(1)-(3) omitted]

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 Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

[(d)-(f) omitted]

Uniform Rules on Impoundment Procedure - Trial Court

Rule 1. Applicability

(a) Applicability. The Uniform Rules on Impoundment Procedure (URIP) govern impoundment of otherwise public case records that are filed in civil and criminal proceedings in each Department of the Trial Court. Case records are presumed to be open to the public, unless they are impounded or sealed as a matter of law, or impounded by a court order. These rules are inapplicable to case records that are required to be impounded by statute, court rule, standing order, or case law, except as otherwise provided in Rules 9, 11, and 13. These rules shall not be construed to deprive a person of any rights or remedies regarding impoundment that are otherwise available under law.

[(b) definitions provision omitted]

(c) Impoundment and Discovery.

(1) 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 Massachusetts Rules of Domestic Relations Procedure, or Rule 14(a)(6) of the Massachusetts Rules of Criminal Procedure.

(2) In civil and criminal proceedings, material received by the clerk directly from a third person or nonparty in response to a subpoena, summons, or court order for discovery purposes is not available for public inspection until either a party files the material as an attachment to a pleading or motion, introduces the material as evidence, or the court so orders. The clerk shall make a notation on the docket indicating that impounded materials were filed in response to court order or discovery request.

Rule 7. Hearing

(a) Hearing Required. The court may enter an order of impoundment for good cause shown and in accordance with applicable law only after a hearing, except as provided in URIP Rule 2(b)(3), URIP Rule 3(a), or URIP Rule 7(e). During the hearing, those present shall preserve the confidentiality of the material that is at issue. A record of the proceedings, including the record of any in camera hearing, shall be preserved stenographically or by a recording device.

(b) Good Cause. In determining good cause, the court shall consider all relevant factors, including, but not limited to, (i) the nature of the parties and the controversy, (ii) the type of information and the privacy interests involved, (iii) the extent of community interest, (iv) constitutional rights, and (v) the reason(s) for the request. Agreement of all parties, interested nonparties, or other persons in favor of impoundment shall not, in itself, be sufficient to constitute good cause.

(c) Interested Nonparties. The court may, in its discretion, permit an interested nonparty who files a notice of appearance limited to participation in the impoundment proceeding to be heard at any impoundment hearing.

(d) In Camera Hearing. Where a public hearing may risk disclosure of the information sought to be impounded, the court may, upon a written finding of good cause, conduct in camera only that portion of the hearing that would risk disclosure. The record of any in camera hearing shall be impounded until a court orders otherwise.

(e) Trade Secret Exception. The court may, upon a written finding of good cause under URIP Rule 7(b), allow a motion for impoundment without a hearing when (1) the reason for the impoundment is to protect trade secrets or other confidential research, development, or business information, (2) the motion is by agreement or the motion is unopposed, (3) no party or other person has requested a hearing, and (4) the information does not involve an alleged or potential public hazard or risk to public safety.

Rule 8: Order of impoundment.

(a) Good cause

An order of impoundment, whether ex parte or after notice, may be entered only upon a written finding of good cause.

(b) Specificity

An order of impoundment shall state specifically what material is to be impounded, and, where appropriate, may specify how impoundment is to be implemented. An order of impoundment shall include the date of issuance and shall specify the duration of the order with a date certain for expiration 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 redactions or notations be made in the docket and indices kept by the clerk.

(c) Narrow tailoring

The court shall tailor the scope of the impoundment order so that it does not exceed the need for impoundment. The court may order that the movant or the filer of any material submit a redacted copy of the impounded document to the clerk for public inspection.

(d) Public inspection

The order shall be entered on the docket, kept in the public file, and made available for public inspection. The order shall provide sufficient information for the public to identify the case caption, the case number, and to ascertain the grounds, duration, and scope of the impoundment. All information stating or disclosing the impounded material shall be omitted or redacted from the order prior to public inspection. A copy of the order shall be affixed to the envelope or other receptacle containing the court's copy of the impounded materials.

Rule 13. Maintaining Confidentiality of Impounded Material

[(a)-(b) omitted]

(c) Duty to protect confidentiality

All persons shall protect the confidentiality of the impounded material. During any hearing or trial in public sessions, a filer shall not disclose impounded material, provided that in cases where such disclosure is necessary, a filer shall notify the clerk in advance and shall, in appropriate cases, make such disclosures in a manner which protects the confidentiality of the impounded material.

[(d) omitted]

Uniform Practice I – Clerk's Handling of Impounded Material

To promote uniformity and consistency, the following practices are recommended for all clerks to follow

when handling impounded information or materials.

(A). Presumption of Openness

- (1). Case records are public unless access is restricted by statute, court rule, standing order, case law, or a court order.
- (2). Every person has the right to inspect a public record free of charge during normal working hours.
- (3). The clerk should not inquire of a person's motive in requesting to view a public record. The court may require that a request for a copy be made in writing.
- (4). The clerk may not permit any original case record to be taken from the court without an order of the court. If so ordered, the original case folder and a copy of the docket shall be maintained until the records are returned. Note: Transfer of the file for the purposes of a judge's rotation, interdepartmental transfer, consolidation, or for an appeal, does not constitute the taking or removal of the case record. An order of the court is not required for the case record, including confidential information, to be transferred or sent to another court.

(5). When an entire case record is impounded, its docket number and a case caption shall remain public. The case caption shall be revised to omit the parties' names.

MICHIGAN

Administrative Court Rules

Rule 2.412 Mediation Communications; Confidentiality and Disclosure.

(A) Scope. This rule applies to cases that the court refers to mediation as defined and conducted under MCR 2.411 and MCR 3.216.

[(B) definitions provision omitted]

(C) Confidentiality. Mediation communications are confidential. They are not subject to discovery, are not admissible in a proceeding, and may not be disclosed to anyone other than mediation participants except as provided in subrule (D).

(D) Exceptions to Confidentiality. Mediation communications may be disclosed under the following circumstances:

[(1)-(12) exceptions omitted]

(E) Scope of Disclosure When Permitted; Limitation on Confidentiality.

(1) If a mediation communication may be disclosed under subrule (D), only that portion of the communication necessary for the application of the exception may be disclosed.

(2) Disclosure of a mediation communication under subrule (D) does not render the mediation communication subject to disclosure for another purpose.

(3) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

Rule 3.229. Filing Confidential Materials.

(A) If a party or interested party files any of the following items with the court, the party shall identify the document as a confidential document and the items shall be served on the other parties in the case and maintained in a nonpublic file in accordance with subrule

[(B) omitted]

(B) Any item filed and identified under subrule (A) is nonpublic and must be maintained separately from the legal file. The filer waives any claim of confidentiality to any item filed under subrule (A) that is not identified by the filer as confidential. The nonpublic file must be made available for any appellate review.

Rule 3.925. Opening Proceedings; Judgements and Orders; Records Confidentiality; Destruction of Court Records; Setting Aside Adjudications.

(A) Open Proceedings.

(1) General. Except as provided in subrule (A)(2), juvenile proceedings on the formal calendar and preliminary hearings shall be open to the public.

(2) Closed Proceedings; Criteria. The court, on motion of a party or a victim, may close the proceedings to the public during the testimony of a child or during the testimony of the victim to protect the welfare of either. In making such a determination, the court shall consider the nature of the proceedings; the age, maturity, and preference of the witness; and, if the witness is a child, the preference of a parent, guardian, or legal custodian that the proceedings be open or closed. The court may not close the proceedings to the public during the testimony of the juvenile if jurisdiction is requested under MCL 712A.2(a)(1).

[(B)-(C) procedural provision omitted]

(D) Public Access to Case File Records; Confidential File.

(1) General. Except as otherwise required by MCR 3.903(A)(21), case file records maintained under Chapter XIIA of the Probate Code, MCL 712A.1 et seq., other than confidential files, must be open to the general public.

(2) Confidential Files. Confidential files are defined in MCR 3.903(A)(3) and include the social case file and those records in the legal case file made confidential by statute, court rule, or court order. Only persons who are found by the court to have a legitimate interest may be allowed access to the confidential files. In determining whether a person has a legitimate interest, the court shall consider the nature of the proceedings, the welfare and safety of the public, the interest of the minor, and any restriction imposed by state or federal law.

(E) Retention and Destruction of Court Records.

The court shall destroy its case files and other court records only as prescribed by the records retention and disposal schedule established under MCR 8.119(K). Destruction of a case record does not negate, rescind, or set aside an adjudication.

[(F)-(G) omitted]

Rule 6.007. Confidential Records.

Records are public except as otherwise indicated in court rule or statute.

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) Court Records and Reporting Duties. The clerk of every circuit court shall maintain court records and make reports as prescribed by MCR 8.119.

Rule 8.119. Court Records and Reports; Duties of Clerks.

(A) Applicability. This rule applies to all records in every trial court. For purposes of this rule, records are as defined in MCR 1.109, MCR 3.218, MCR 3.903, and MCR 8.119(D)-(G).

(B) Records Standards. Trial courts shall comply with the records standards in this rule, MCR 1.109, and as prescribed by the Michigan Supreme Court.

[(C)-(G) procedural provisions omitted]

(H) Access to Records. Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules. The clerk

shall not permit any case record to be taken from the court without the order of the court. A court may provide access to the public case history information through a publicly accessible website, and business court opinions may be made available as part of an indexed list as required under MCL 600.8039; however, all other public information in its case files may be provided through electronic means only upon request. The court may provide access to any case record that is not available in paper or digital image, as defined by MCR 1.109(B), if it can reasonably accommodate the request. Any materials filed with the court pursuant to MCR 1.109(D), in a medium for which the court does not have the means to readily access and reproduce those materials, may be made available for public inspection using court equipment only. The court is not required to provide the means to access or reproduce the contents of those materials if the means is not already available.

(1) Unless access to a case record or information contained in a record as defined in subrule (D) is restricted by statute, court rule, or an order entered pursuant to subrule (I), any person may inspect that record and may obtain copies as provided in subrule (J). In accordance with subrule (J), the court may collect a fee for the cost of providing copies.

(2) Every court shall adopt an administrative order pursuant to MCR 8.112(B) to

- (a) make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions;
- (b) establish a policy for whether to provide access for records defined in subrule (F) and if access is to be provided, outline the procedure for accessing those records;
- (c) specify the reasonable cost of reproduction of records provided under subrule (J); and
- (d) specify the process for determining costs under subrule (J).

(I) Sealed Records.

(1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts 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,

- (a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and
- (b) the interest of the public.

(3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records.

(4) Materials that are subject to a motion to seal a record in whole or in part must be made nonpublic temporarily pending the court's disposition of the motion.

(5) For purposes of this rule, “court records” includes all documents and records of any nature that are filed with or maintained by the clerk in connection with the action.

(6) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.

(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.

(8) Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C) without a motion to seal or require that a protective order issued under MCR 2.302(C) be filed with the Clerk of the Supreme Court and the State Court Administrative Office. A protective order issued under MCR 2.302(C) may authorize parties to file materials under seal in accordance with the provisions of the protective order without the necessity of filing a motion to seal under this rule.

(9) Any person may file a motion to set aside an order that disposes of a motion to seal the record, to unseal a document filed under seal pursuant to MCR 2.302(C), 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. See MCR 8.116(D).

MINNESOTA

Rules of Public Access to Records of the Judicial Branch

Rule 1. Scope of Rules.

Subd. 1. Application; Conflicts; Local Rules. These rules govern access to the records of all courts and court administrators of the judicial branch of the state of Minnesota. To the extent that there is any conflict between these rules and other court rules, these rules shall govern. Any court may recommend rules, whether denominated as a rule or standing order, governing access to its records that do not conflict with these rules or the General Rules of Practice for the District Courts, and those recommended rules or standing orders shall become effective as ordered by the Supreme Court.

Subd. 2. Exclusions. These rules do not govern access to records of the Tax Court, the Workers’ Compensation Court of Appeals, or the Office of Administrative Hearings, which are part of the executive branch of the state, except to the extent that such records are submitted in an appeal or proceeding in a judicial branch court. In addition, these rules do not govern access to the substantive and procedural records of the various Boards or Commissions of the Supreme Court as they are governed by independent rules promulgated or approved by the Supreme Court. A partial list of Boards and Commissions is set forth in Appendix A. Finally, except as provided in Rule 4, subd. 1(b), with respect to case records, these rules do not govern access to records of judicial branch court services departments or probation authorities. Access to these

records is governed by MINN. STAT. § 13.84 or any successor statute, and other applicable court rules and statutes.

[Subd. 3-4 omitted]

Rule 2. General Policy.

Records of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying at all times during the regular office hours of the custodian of the records. Some records, however, are not accessible to the public, at least in the absence of a court order, and these exceptions to the general policy are set out in Rules 4, 5, 6, and 8.

Rule 4. Accessibility to Case Records.

Subd. 1. Accessibility. Subject to subdivision 4 of this rule (Records Referring to Information in Non-Public Documents) and Rule 8, subd. 5 (Access to Certain Evidence), the following case records are not accessible to the public:

[(a)-(s) exceptions omitted]

Subd. 2. Restricting Access; Procedure. Procedures for restricting access to case records shall be as provided in the applicable court rules. A court may restrict access to public case records in a particular case only if it makes findings that are required by law, court rule, or case law precedent.

The factors that a court must consider before issuing a restrictive order in regard to criminal case records are discussed in MINN.R.CRIM.P. 25, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For a discussion of the factors to consider in civil cases, see MINN. R.CIV. P. 26.03 and *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For standards to consider in cases involving a child in need of protective services, see MINN. R. JUV. PROT. P. 8.07. For factors to consider in juvenile delinquency cases, see MINN. R. JUV. DEL. P. 10.06, subd. 5. For factors to consider for restricting public access to jury records, see MINN. GEN. R. PRAC. 814(a).

Subd. 3. Access to Recordings. This subdivision governs access to recordings of proceedings in the district court:

[(a)-(e) omitted]

Subd. 4. Records Referring to Information in Non-Public Documents. Generally, a rule or law precluding public access to an entire document such as a report or medical record shall not preclude the parties or the court from mentioning the contents of the document in open court or in otherwise publicly accessible pleadings or documents such as motions, affidavits, and memoranda of law where such discussion is necessary and relevant to the particular issues or legal argument being addressed in the proceeding. Except as otherwise authorized by the presiding judge in a particular case, this rule permitting mention of otherwise non-public information shall not apply to:

[(a)-(d) omitted]

Rule 5. Accessibility to Administrative Records.

All administrative records are accessible to the public except the following:

[Subd. 1-14 omitted]

Rule 8. Inspection, Copying, Bulk Distribution and Remote Access

Subd. 1. Access to Original Records. Upon request to a custodian, a person shall be allowed to inspect or to obtain copies of original versions of records that are accessible to the public in the place where such records are normally kept, during regular working hours. However, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection if access to the original records would: result in disclosure of information to which access is not permitted; provide remote or bulk access that is not permitted under this rule; jeopardize the security of the records; or prove otherwise impractical. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

Subd. 2. Remote Access to Electronic Records.

[(a)-(i); Subd. 3-6 omitted]

Rules of Civil Procedure

Rule 26.03. Protective Orders.

(a) In General. 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 location or the allocation of expenses, for the disclosure or discovery;
- (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; or
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(b) Ordering Discovery. 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.

(c) Awarding Expenses. Rule 37.01(d) applies to the award of expenses incurred in connection with the motion.

General Rules of Practice

Rule 11.06. When Documents May Be Filed as Confidential or Under Seal

A party may submit a document for filing as a “confidential document” or “sealed document” only if one of these circumstances exists:

- (a) The court has entered an order permitting the filing of the particular document or class of documents under seal or as confidential.
- (b) This rule or any applicable court rule, court order, or statute expressly authorizes or requires filing under seal or as confidential.
- (c) The party files a motion for leave to file under seal or as confidential not later than at the time of submission of the document.

The court may require a filing party to specify the authority for asserting that a filing is a “confidential document” or “sealed document.” For purposes of this rule, the terms “confidential document” and “sealed document” shall have the meanings set forth in Rule 14.01. Additional requirements for electronically submitting a document as confidential or sealed in the E-Filing System are set forth in Rule 14.06.

MISSISSIPPI

Supreme Court Statement of Policy Regarding Openness and Availability of Public Records (Administrative Order - August 2008)

1. Introduction

Access to public records in the judiciary is consistent with the Court’s policy that the public interest is best served by open courts and by an independent judiciary consistent with the mandates of the Mississippi Constitution. The State of Mississippi has established a policy concerning access to public records, as set forth in the Mississippi Public Records Act. Miss. Code Ann. § 25-61-1. The judiciary of the State of Mississippi, as a separate and equal branch of the government, is not subject to the Mississippi Public Records Act. While public records are made available as readily and conveniently as possible, not all records under the control of the Court are public records. This Statement of Policy is not intended to declare whether particular records are public, nor is it intended to include a comprehensive list of those records exempt from public access.

2. The Supreme Court and Court of Appeals

The Supreme Court and Court of Appeals speak through their rulings, orders, judgments and opinions which are routinely available to the public in the office of the Clerk of the Court, on-line at <http://www.courts.ms.gov>, and through commercially available publications. Such rulings, orders, judgments and opinions are based on the record from the trial court, briefs and other filings of the parties on matters before the Court which are maintained by the Clerk of the Court and available to the public as set out in paragraph 3, below. All information utilized in furtherance of the business of the Courts, including but not limited to, information used in the

development of orders, judgments and opinions, is nonpublic and is exempt and excepted from disclosure.

[(3)-(7) omitted]

8. Denial of Access and Appeal.

A records custodian may deny a record request that would substantially and unreasonably impede the routine operation of the court or judicial agency. By way of illustration, the records custodian may decline a request for “all judicial records” or other such requests that could substantially and unreasonably impede the operations of a court or judicial agency.

A records custodian may also deny a written request for a record if the custodian reasonably determines that the requested record is exempt from required disclosure under this policy. The records custodian may make specific, non-conclusory findings that compliance with the request would substantially and unreasonably impede the routine operation of the court or judicial agency.

Other records exempt from disclosure include, but are not limited to: records concerning security plans, procedures or locations of offices; personnel or any other information reflecting a person’s home address, home or personal telephone number, social security number or family members.

MISSOURI

Supreme Court Operating Rules

Rule 2. Public Access to Records of the Judicial Department

2.01. Scope of Rule.

Court Operating Rule 2 (COR 2) governs public access to the records of the judicial department of Missouri. Litigants or their lawyers who are involved in a case or persons authorized by the court shall have the same access to individual case records as the public under this COR 2 and may have additional access as authorized by law, court rule, or court order.

2.02. General Policy.

Records of all courts are presumed to be open to any member of the public for purposes of inspection or copying during the regular business hours of the court having custody of the records. This policy does not apply to records that are confidential pursuant to statute, court rules, or court order; judicial or judicial staff work product; internal electronic mail; memoranda or drafts; or appellate judicial case assignments.

Records, information and services shall be provided at a time and in a manner that does not interfere with the regular business of the courts.

The clerk of court is not required to review the case document to confirm that the party has omitted personal information and shall not refuse to accept or file the document on that basis.

The responsibility for redacting personal information rests solely with counsel, the parties or any other person preparing or filing the document. The clerk will not review each document for compliance with this policy.

Access to any Missouri judicial website, including but not limited to Case.net, by a site data scraper or any similar software intended to discover and extract data from a website through automated, repetitive querying for the purpose of collecting such data is expressly prohibited.

COR 2 imposes no obligation upon the judiciary to create a data element, make a data element available electronically, or produce non-standard reports.

[2.03 definitions provisions omitted]

2.04. Access to Case Records.

(a) Public records from which a person can be identified will be made available upon request only by inquiry of a single case or by accessing any public index. Electronic public indexes will be available on the Internet by:

[(1)-(5) omitted]

(b) Internet access to electronic records that are public and from which a person can be identified will include only the following data elements, if not confidential by statute or rule:

[provisions omitted]

(c) The following may be made remotely accessible to the public if available in an electronic format:

[provisions omitted]

[2.05 omitted]

2.06. Access to Administrative Records.

Administrative records are generally considered to be open to the public. Exceptions include personnel records and any other record considered confidential pursuant to chapter 610, RSMo.

MONTANA

Gus Barber Antisecrecy Act

§ 2-6-1020. Concealment of public hazards prohibited — concealment of information related to settlement or resolution of civil suits prohibited.

- (1) This section may be cited as the “Gus Barber Antisecrecy Act”.
- (2) As used in this section, “public hazard” means a device, instrument, or manufactured product or a condition of a device, instrument, or manufactured product that endangers public safety or health and has caused injury, as defined in 27-1-106.
- (3) Except as otherwise provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.
- (4) Any portion of a final order or judgment entered or a written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.
- (5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.
- (6) This section does not apply to:
 - (a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;
 - (b) other information that is confidential under state or federal law; or
 - (c) a health care provider, as defined in 27-6-103.
- (7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.
- (8) 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, 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 concerning the public hazard.
- (9) This section does not apply to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

NEBRASKA

The Nebraska Public Records Act

§ 84-712.05. Records which may be withheld from the public; enumerated.

The following records, unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties, may be withheld from the public by the lawful custodian of the records:

[(1)-(23) omitted]

Dispute Resolution Act

§ 25-2914. Confidentiality; exceptions.

- (1) Any verbal, written, or electronic communication made in or in connection with matters referred to mediation which relates to the controversy or dispute being mediated and agreements resulting from the mediation, whether made to the mediator, the staff of an approved center, a party, or any other person attending the mediation session, shall be confidential.
- (2) Mediation proceedings shall be regarded as settlement negotiations, and no admission, representation, or statement made in mediation, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery.
- (3) A mediator shall not be subject to process requiring the disclosure of any matter discussed during mediation proceedings unless all the parties consent to a waiver.
- (4) Confidential communications and materials are subject to disclosure when all parties agree in writing to waive confidentiality regarding specific verbal, written, or electronic communications relating to the mediation session or the agreement.
- (5) This section shall not apply if a party brings an action against the mediator or center, if the communication was made in furtherance of a crime or fraud, or if this section conflicts with other legal requirements.

Uniform Mediation Act

§ 25-2933. Privilege against disclosure; admissibility; discovery.

- (a) Except as otherwise provided in section 25-2935, a mediation communication is privileged as provided in subsection (b) of this section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 25-2934.
- (b) In a proceeding, the following privileges apply:
 - (1) A mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.
 - (2) A mediator may refuse to disclose a mediation communication and may prevent any other person from disclosing a mediation communication of the mediator.
 - (3) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.
- (c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

§ 25-2935. Exceptions to privilege.

- (a) There is no privilege under section 25-2933 for a mediation communication that is:
[(1)-(7) omitted]
- (b) There is no privilege under section 25-2933 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:
[(1)-(2) omitted]

(c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subdivision (a)(6) or (b)(2) of this section.

(d) If a mediation communication is not privileged under subsection (a) or (b) of this section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) of this section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

§ 25-2937. Confidentiality.

Unless subject to the Open Meetings Act or sections 84-712 to 84-712.09, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this state.

Supreme Court Rules

Chapter 1. Administrative Operations.

[Revised and adopted as permanent policy on May 15, 2013.]

§ 1-801. Purpose of policy.

The purpose of this policy is to set forth the method to access electronic court records and information, which shall be allowed only by means of Public Access through JUSTICE or SCCALES, Remote Access through the court-authorized provider, and Compiled Information Requests through the Administrative Office of the Courts, as set forth below.

§ 1-803. Public access to court records and information.

Every member of the public may access the same information from the same records except as otherwise specifically provided. Stated differently, every public user will see the same information.

§ 1-804. General access rule.

Information in an electronic court record is accessible to the public through remote access with the court-authorized service provider or through public access terminals at a courthouse unless prohibited by this policy or applicable laws.

§ 1-804 amended June 6, 2018.

§ 1-805. Public access to electronic court records and information.

The following information in a court Case Management System may be accessed electronically unless public access is restricted by law, court rule, or this policy.

[(A)-(E) omitted]

§ 1-808. Court records and information excluded from public access; duty not to disclose.

The following information in a court record may not be accessed by the public:

(A) Information enumerated in Neb. Rev. Stat. § 84-712.05.

(B) Information or records not accessible to the public pursuant to state law, court rule, or

case law, including, but not limited to, the following:

(1) Criminal History Information as set forth in the Security, Privacy, and Dissemination of Criminal History Information Act. See Neb. Rev. Stat. § 29-3501.

(2) Adoption case records. See Neb. Rev. Stat. § 43-113.

(3) Court records sealed pursuant to statute or by court order.

(C) If a public entity or person, as defined in § 1-802(D), obtains court record(s) via access with the court-authorized service provider and furnishes that record to third parties either for or not for profit, the public entity or person who obtained court record(s) via the court-authorized service provider has a duty to periodically update any court record(s) to determine if the court record(s) and any information therein have been sealed pursuant to statute and/or court order. If such court record(s) have been sealed, the public entity or person who obtained the record(s) shall not further disclose the sealed court record(s) for any purpose and shall remove such sealed record(s) from further access. Disclosure of sealed court records and information therein may result in civil or criminal penalties as provided for by law.

(D) A lawyer or party as defined under § 1-802(E)(4) who has possession of a sealed court record that was filed in a court case prior to the record being sealed does not violate this rule if the lawyer or party does not make new or further disclosures of the sealed record. Unlawful disclosure of sealed court records and information therein may result in civil or criminal penalties as provided for by law.

Trial Court Rules

The following privacy rules shall apply to all pleadings, documents, exhibits, court orders, judgments, and decrees filed in all civil actions in the county courts of Nebraska:

[(A)-(H) omitted]

NEVADA

Code

§ 10.195. Prohibition of provisions in settlement agreement prohibiting or restricting disclosure of certain information; exceptions.

Except as otherwise provided in NRS 233.190:

1. A settlement agreement must not contain a provision that prohibits or otherwise restricts a party from disclosing factual information relating to a claim in a civil or administrative action if the claim relates to any of the following:

[(a)-(c) omitted]

2. If a settlement agreement is entered into on or after July 1, 2019, any provision in such an agreement that prohibits or otherwise restricts a party from disclosing factual information pursuant to subsection 1 is void and unenforceable.

3. A court shall not enter an order that prohibits or otherwise restricts the disclosure of factual information in a manner that conflicts with subsection 1.

4. Except as otherwise provided in subsection 5, upon the request of the claimant, the settlement agreement must contain a provision that prohibits the disclosure of:
 - (a) The identity of the claimant; and
 - (b) Any facts relating to the action that could lead to the disclosure of the identity of the claimant.
5. If a governmental agency or a public officer is a party to the settlement agreement pursuant to subsection 1, a claimant shall not request and the settlement agreement must not contain a provision pursuant to subsection 4.
6. Nothing in this section shall be construed to prohibit:
 - (a) A court from considering any pleading or other record to determine the factual basis of a civil claim pursuant to subsection 1; or
 - (b) An entry or enforcement of a provision in a settlement agreement pursuant to subsection 1 that prohibits disclosure by a party of the settlement amount.
- [(7) definition provision omitted]

§ 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 that 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.
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.

Nevada Rules for Sealing and Redacting Court Records

Rule 1. Purpose, Policy, and Scope of Rules.

1. Title. These rules may be known and cited as Nevada Rules for Sealing and Redacting Court Records, or abbreviated SRCR.

2. Purpose. These rules provide a uniform procedure for the sealing and redacting of court records in civil actions.

3. Policy. All court records in civil actions are available to the public, except as otherwise provided in these rules or by statute.

4. Scope. These rules apply to all court records in civil actions, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record. These rules do not apply to the sealing or redacting of court records under specific statutes [specific statutes omitted]. These rules do not provide for the retention or destruction of court records or files.

Rule 3. Process and grounds for sealing or redacting court records.

1. Request to seal or redact court records; service. Any person may request that the court seal or redact court records for a case that is subject to these rules by filing a written motion, or the court may, upon its own motion, initiate proceedings to seal or redact a court record. A motion to seal or redact a court record must disclose, in its title and document code, that sealing or redaction is being sought. The motion must be served on all parties to the action in accordance with NRCP 5.

2. Access to court record while motion pending. When a motion to seal or redact a court record has been filed, the information to be sealed or redacted remains confidential for a reasonable period of time until the court rules on the motion.

3. Hearing; notice. The court may conduct a hearing on a motion to seal or redact a court record. If the court orders a hearing, the court may also require that the movant provide notice to the general public by posting information, including the time, date, and location of the hearing, at a place within the confines of the court that is accessible to the general public.

4. Grounds to seal or redact; written findings required. The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. The parties' agreement alone does not constitute a sufficient basis for the court to seal or redact court records. The public interest in privacy or safety interests that outweigh the public interest in open court records include findings that:

- (a) The sealing or redaction is permitted or required by federal or state law;
- (b) The sealing or redaction furthers an order entered under NRCP 12(f) or JCRCP 12(f) or a protective order entered under NRCP 26(c) or JCRCP 26(c);
- (c) The sealing or redaction furthers an order entered in accordance with federal or state laws that serve to protect the public health and safety;
- (d) The redaction includes only restricted personal information contained in the court record;

- (e) The sealing or redaction is of the confidential terms of a settlement agreement of the parties;
- (f) The sealing or redaction includes medical, mental health, or tax records;
- (g) The sealing or redaction is necessary to protect intellectual proprietary or property interests such as trade secrets as defined in NRS 600A.030(5); or
- (h) The sealing or redaction is justified or required by another identified compelling circumstance.

5. Limitations on sealing or redacting.

(a) Public hazard. In no event may the sealing or redaction have the purpose or effect of concealing a public hazard.

(b) Redaction preferred. A court record shall not be sealed under these rules when reasonable redaction will adequately resolve the issues before the court under subsection 4 above.

(c) Sealing of entire court file prohibited. Under no circumstances shall the court seal an entire court file. An order entered under these rules must, at a minimum, require that the following information is available for public viewing on court indices: (i) the case number(s) or docket code(s) or number(s); (ii) the date that the action was commenced; (iii) the names of the parties, counsel of record, and the assigned judge; (iv) the notation “case sealed”; (v) the case type and cause(s) of action, which may be obtained from the Civil Cover Sheet; (vi) the order to seal and written findings supporting the order; and (vii) the identity of the party or other person who filed the motion to seal.

6. Scope and duration of order. If the court enters an order sealing or redacting a court record, the court shall use the least restrictive means and duration.

7. Procedures for maintaining sealed court records.

- (a) When the clerk receives a court order to seal specified court records, the clerk shall:
 - (1) Preserve the docket code, document title, document and subdocument number, and date of the original court records on the court’s docket;
 - (2) Remove the specified court records, seal them, and return them to the file under seal or store them separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the sealed record exists in a microfilm, microfiche, or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and
 - (3) File the order and the written findings supporting the order to seal. Both shall be accessible to the public.
- (b) Sealed court records may be maintained in a medium other than paper.
- (c) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

8. Procedures for redacted court records. When a court record is redacted in accordance with a court order, the clerk shall replace the original court record in the public court file with the redacted copy. The person who filed the motion shall provide the redacted copy. The original unredacted court record shall be sealed following the procedures set forth in subsection 7 of this rule.

Rule 4. Process and grounds for unsealing court records.

1. Scope. Court records that are sealed, whether or not pursuant to this rule, may be examined by the public only after entry of a court order allowing access to the record in accordance with this rule.

2. Motion; service. A sealed court record in a civil case shall be unsealed only upon stipulation of all the parties, upon the court's own motion, or upon a motion filed by a named party or another person. A motion to unseal a court record must be served on all parties to the action in accordance with NRCP 5. If the movant cannot locate a party for service after making a good faith effort to do so, the movant may file an affidavit setting forth the efforts to locate the party and requesting that the court waive the service requirements of this rule. The court may waive the service requirement if it finds that further good faith efforts to locate the party are not likely to be successful.

3. Hearing. Any party opposing the motion shall appear and show cause why the motion should not be granted. The responding party must show that compelling circumstances continue to exist or that other grounds provide a sufficient legal or factual basis for keeping the record sealed.

4. Time limit. No motion may be made under this rule more than 5 years after a final judgment has been entered in an action or, if an appeal from a final judgment is taken, after issuance of the remittitur, whichever is later.

Rule 7. Use of sealed records on appeal. A civil court record or any portion of it that was sealed in the trial court shall be made available to the Nevada Supreme Court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the Nevada Supreme Court subject to further order of that court. [Added; effective January 1, 2008.]

Rule 8. Effect on other law. Nothing in these rules is intended to restrict or to expand the authority of court clerks or county clerks under existing statutes, nor is anything in these rules intended to restrict or expand the authority of any public auditor in the exercise of duties conferred by state law.

[Added; effective January 1, 2008.]

Nevada Electronic Filing and Conversion

Rule 14. Access to electronic documents; confidential information.

(a) Electronic Access. Except as provided in these rules, a court must provide registered users who are parties or attorneys on a case with access to electronic documents in the case to the same extent it provides access to paper documents. A court may provide electronic access to other registered users who are not parties or attorneys on that case.

(b) Confidential Records. The confidentiality of electronic records is the same as for paper records. An EFS must permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record may release the information to any other person unless provided by law.

(c) Identification of Confidential Documents. The filer must identify documents made confidential by statute, court rule, or court order. The EFS must make that document available only as provided by law.

(d) Protection of Personal Information.

[(1)-(5) omitted]

(e) Other Confidential Information; Temporary Sealing of Documents. A filer may seek to have other information or documents sealed under the SRCR by submitting documents under temporary seal pending court approval of the user's motion to seal, if an EFS permits such documents to be submitted electronically.

NEW HAMPSHIRE

Guidelines for Public Access to Court Records

I. Introduction. It is the express policy of the Judicial Branch of New Hampshire to allow public access to court records. This policy is intended to recognize and effectuate the public's rights to access proceedings under the New Hampshire Constitution.

The establishment of priorities among requests for action from the clerk's and register's staff must be set in order to guarantee the efficient provision of services, and in recognition that the primary function of the Office of Clerk of Court and the Register of Probate Court is to process pending cases so as to insure every citizen the right to speedy resolution of disputes. In further recognition of the diversity of caseload from court to court within the State, the establishment of priorities shall remain a matter of discretion to be determined by the Administrative Justice at each level of court, in consultation with the clerk of court or the register, hereinafter referred to as clerks.

II. Records Subject to Inspection. A presumption exists that all court records are subject to public inspection.

The public right of access to specific court records must be weighed and balanced against nondisclosure interests as established by the Federal and/or New Hampshire Constitution or by statutory provision granting or requiring confidentiality.

Unless otherwise ordered by the court, the following categories of cases shall not be open to public inspection: juvenile cases (delinquency, CHINS, abuse/neglect, termination of parental rights, adoption); pending or denied application for search or arrest warrants; grand jury records; applications for wire taps and orders thereon; and any other record to be kept confidential by statute, rule or order. Before a court record is ordered sealed, the court must determine if there is a reasonable alternative to sealing the record and must use the least restrictive means of accomplishing the purpose. Once a court record is sealed, it shall not be open to public inspection except by order of the court.

Any case records not subject to disclosure except upon order of the court shall be kept in a separate section of the court files, accessed only by the court and the clerk's staff.

III. Right To Copy. The right to public access shall generally include the right to make notes and to obtain copies at normal rates.

[IV procedural provisions omitted]

V. Supervision of Access. It is the duty of the clerk to insure the integrity of each file. At no time shall any file be given to any person to be examined outside the area allocated for file review. The file review area shall be within full view of court personnel whenever possible. Supervision over file use shall be direct whenever possible. At no time shall any person be allowed to leave the court facility until the file has been returned to be refiled and court personnel has examined the completeness of the file if that is part of the court's procedure.

Administrative regulations designed to insure the integrity of all files may be established by the clerks in conjunction with the Administrative Justice. Such regulations may include, but need not be limited to, requiring the individual seeking access to provide identification and sign for all records and allowing only one file at a time to be released to each individual seeking access.

[VI-VII procedural provisions omitted]

VIII. Denial of Access. The clerk, after consultation with the presiding justice and Administrative Justice, may, for good cause shown, deny access to court records to any individual. Good cause shall include, but not be limited to, previous theft, destruction, defacement or tampering of records and refusal to comply with administrative regulations established in accordance with these guidelines.

IX. Access by Litigants. Subject to paragraph II, and unless otherwise ordered by the Presiding Justice for good cause shown, parties to any litigation and their attorneys shall have complete access to their case records at all reasonable times and under the conditions set forth in these guidelines.

NEW JERSEY

Cases

Estate of Frankl v. Goodyear Tire & Rubber Co., 853 A.2d 880 (N.J. 2004).

Fairfax Holdings Ltd. v. S.A.C. Capital Mgmt. LLC, No. MRS-L-2032-06 (N.J. Super. Nov. 15, 2013).

Annotated Statute

§ 10:5-12.7. Certain waivers in employment contract deemed against public policy and unenforceable.

- a. A provision in any employment contract that waives any substantive or procedural right or remedy relating to a claim of discrimination, retaliation, or harassment shall be deemed against public policy and unenforceable.
- b. No right or remedy under the “Law Against Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.) or any other statute or case law shall be prospectively waived.
- c. This section shall not apply to the terms of any collective bargaining agreement between an employer and the collective bargaining representative of the employees.

§ 10:5-12.8. Certain provisions in employment contract, settlement agreement deemed against public policy and unenforceable.

- a. A provision in any employment contract or settlement agreement which has the purpose or effect of concealing the details relating to a claim of discrimination, retaliation, or harassment (hereinafter referred to as a “non-disclosure provision”) shall be deemed against public policy and unenforceable against a current or former employee (hereinafter referred to as an “employee”) who is a party to the contract or settlement. If the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable, then the non-disclosure provision shall also be unenforceable against the employer.
- b. Every settlement agreement resolving a discrimination, retaliation, or harassment claim by an employee against an employer shall include a bold, prominently placed notice that although the parties may have agreed to keep the settlement and underlying facts confidential, such a provision in an agreement is unenforceable against the employer if the employee publicly reveals sufficient details of the claim so that the employer is reasonably identifiable.
- c. Notwithstanding any other provision of law to the contrary, this section shall not be construed to prohibit an employer from requiring an employee to sign an agreement:
 - (1) in which the employee agrees not to enter into competition with the employer during or after employment; or
 - (2) in which the employee agrees not to disclose proprietary information, which includes only non-public trade secrets, business plan and customer information.

Rules Governing the Courts

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

All trials, hearings of motions and other applications, first appearances, 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, as defined by R. 1:38-11(b), 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.

Rule 1:36-2. Publication

(a) Appellate Opinions. All opinions of the Supreme Court shall be published except where otherwise directed by the Court. Opinions of the Appellate Division shall be published only upon the direction of the panel issuing the opinion.

(b) Committee on Opinions; Trial Court Opinions. The Chief Justice shall appoint a Committee on Opinions to review formal written opinions submitted for publication by a trial judge. Except in extraordinary circumstances, the Committee shall not review a trial court opinion until the time for appeal from the final judgment in the cause has expired. If an appeal has not been taken, the Committee shall determine whether to approve publication of the trial court opinion. If an appeal has been taken, the Appellate Division panel shall determine, when it decides the appeal, whether the trial court opinion shall be published. A trial judge submitting an opinion for review for publication shall file it with the Administrative Office of the Courts in triplicate with the notation on its face that it is being submitted for publication.

(c) Request for Publication. Any person may request publication of an opinion by letter to the Committee on Opinions explaining the basis of the request with specificity and with reference to the guidelines prescribed by paragraph (d). In the case of Appellate Division opinions, the Committee shall transmit the request to the presiding judge of the panel together with its recommendation, but the court shall retain the publication decision.

(d) Guidelines for Publication. An opinion in appropriate form, excluding letter opinions and transcripts of oral opinions, shall be published where the decision (1) involves a substantial question under the United States or New Jersey Constitution, or (2) determines a new and important question of law, or (3) changes, reverses, seriously questions or criticizes the soundness of an established principle of law, or (4) determines a substantial question on which the only case law in this State antedates September 15, 1948, or (5) is based upon a matter of practice and procedure not theretofore authoritatively determined, or (6) is of continuing public interest and importance, or (7) resolves an apparent conflict of authority, or (8) although not otherwise meriting publication, constitutes a significant and nonduplicative contribution to legal literature by providing an historical review of the law, or describing legislative history, or containing a collection of cases that should be of substantial aid to the bench and bar.

Rule 1:38-1. Policy. [Public Access to Court Records and Administrative Records]

Court records and administrative records as defined by R. 1:38-2 and R. 1:38-4 respectively and within the custody and control of the judiciary are open for public inspection and copying except as otherwise provided in this rule. Exceptions enumerated in this rule shall be narrowly construed in order to implement the policy of open access to records of the judiciary.

[1:38-2 definitions provision omitted]

1:38-3. Court Records Excluded from Public Access.

The following court records are excluded from public access:

(a) General. Records required to be kept confidential by statute, rule, or prior case law consistent with this rule, unless otherwise ordered by a court upon a finding of good cause. These records remain confidential even when attached to a nonconfidential document.

[(b)-(f) enumerated records omitted]

1:38-5. Administrative Records Excluded from Public Access.

The following administrative records are excluded from public access:

[(a)-(s) omitted]

1:38-11. Sealing of Court Records.

(a) Information in a court record may be sealed by court order for good cause as defined in paragraph (b) or subparagraph (e)(2) for the temporary sealing of a Complaint-Warrant (CDR-2). The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.

(b) Good cause to seal a record except as provided in subparagraph (e)(2) shall exist when:

(1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and

(2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.

(c) The provisions of this rule do not apply to actions required to be sealed pursuant to the New Jersey False Claims Act (N.J.S.A. 2A:32C-5(c) and 2A:32C-5(f)).

(d) Documents or other materials not exempt from public access under Rule 1:38 may not be filed under seal absent a prior court order mandating the sealing of such documents, and should not be submitted to the court with the motion, which may be filed on short notice, requesting an order to seal.

(e) Temporary Seal of Complaint-Warrant (CDR-2).

[(1)-(3) omitted]

(4) Confidentiality. The Complaint-Warrant (CDR-2) and the sealing order shall be kept confidential pursuant to R. 1:38-3(c)(13) until the expiration of the sealing period or the execution of the Complaint-Warrant, except that it shall not be kept confidential from law enforcement as needed to perform their official duties.

1:38-12. Unsealing of Court Records

A record that has been sealed by order of the court may be unsealed upon motion by any person or entity. The proponent for continued sealing shall bear the burden of proving by a preponderance of the evidence that good cause continues to exist for sealing the record.

NEW MEXICO

Inspection of Public Records Act

§ 14-3-7.1. Access to confidential records.

A. Notwithstanding any other provision of law, any public record deemed by law to be confidential and required by a records retention and disposition schedule to be maintained

longer than twenty-five years shall not, after twenty-five years from the date of creation, be confidential and shall be accessible to the public, except:

- (1) personal identification information deemed confidential by law, which shall remain confidential for one hundred years after the date of creation, unless a shorter duration is otherwise required by law;
- (2) records that are confidential pursuant to Section 2-3-13 NMSA 1978, which shall remain confidential for seventy-five years after the date of creation;
- (3) records that are confidential pursuant to Section 18-6-11.1 NMSA 1978; and
- (4) records whose disclosure is prohibited by court action or federal law.

B. Nothing in this section shall limit or remove the discretion of a records custodian to withhold a public record pursuant to Section 14-2-1 NMSA 1978.

§ 44-7B-4. Confidentiality.

Except as otherwise provided in the Mediation Procedures Act [44-7B-1 NMSA 1978] or by applicable judicial court rules, all mediation communications are confidential, and not subject to disclosure and shall not be used as evidence in any proceeding.

Appellate Court rules

Rule 12-314. Public inspection and sealing of court records.

A. Presumption of public access; scope of rule. Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule.

[(B) definition provision omitted]

C. Limitations on public access. In addition to court records protected pursuant to Paragraphs D and E of this rule, all court records in the following proceedings are confidential and shall be automatically sealed without motion or order of the Court:

[(1)-(14) exceptions provisions omitted]

[(D)-(F) provisional provision omitted]

G. Requirements for order to seal court records.

(1) The Court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The Court may order that a court record be filed under seal only if the Court by written order finds and states facts that establish the following:

[(a)-(e) omitted]

(2) The order shall require the sealing of only those documents, pages, or portions of a court record that contain the material that needs to be sealed. All other portions of each document or page shall be filed without limitation on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.

(3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.

(4) The order shall specify who is authorized to have access to the sealed court record.

(5) The order shall specify a date or event upon which it expires or shall explicitly state that the order remains in effect until further order of the court.

(6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

H. Sealed court records as part of record on appeal.

(1) Court records sealed in the district, magistrate, metropolitan, or municipal court that are filed in the appellate courts shall remain sealed in the appellate courts. The appellate court judges and staff may have access to the sealed court records unless otherwise ordered by the appellate court. Requests to unseal such records or modify a sealing order entered in the district, magistrate, metropolitan, or municipal court shall be filed in the appellate court pursuant to Paragraph I of this rule if the case is pending on appeal.

(2) Court records sealed under the provisions of this rule in the Court of Appeals that are filed in the Supreme Court shall remain sealed in the Supreme Court. The Supreme Court Justices and staff may have access to the sealed court records unless otherwise ordered by the Supreme Court.

[(I) procedural provision omitted]

J. Failure to comply with sealing order. Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged pursuant to this rule may be held in contempt or subject to other sanctions as the Court deems appropriate.

District Court Rules

Rule 1-079. Public inspection and sealing of court records.

A. Presumption of public access; scope of rule. Court records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule. This rule does not prescribe the manner in which the court shall provide public access to court records, electronically or otherwise. No person or entity shall knowingly file a court record that discloses material obtained from another court record that is sealed, conditionally under seal, or subject to a pending motion to seal under the provisions of this rule.

[(B) definition provisions omitted]

C. Limitations on public access. In addition to court records protected pursuant to Paragraphs D and E of this rule, all court records in the following proceedings are confidential and shall be automatically sealed without motion or order of the court:

[(1)-(10) exceptions provisions omitted]

The provisions of this paragraph notwithstanding, the docket number and case type for the categories of cases listed in this paragraph shall not be sealed without a court order.

[(D)-(F) provisional provision omitted]

G. Requirements for order to seal court records.

(1) The court shall not permit a court record to be filed under seal based solely on the agreement or stipulation of the parties. The court may order that a court record be filed

under seal only if the court by written order finds and states facts that establish the following:

- (a) the existence of an overriding interest that overcomes the right of public access to the court record;
 - (b) the overriding interest supports sealing the court record;
 - (c) a substantial probability exists that the overriding interest will be prejudiced if the court record is not sealed;
 - (d) the proposed sealing is narrowly tailored; and
 - (e) no less restrictive means exist to achieve the overriding interest.
- (2) The order shall require the sealing of only those documents, pages, or portions of a court record that contain the material that needs to be sealed. All other portions of each document or page shall be filed without limitation on public access. If necessary, the order may direct the movant to prepare a redacted version of the sealed court record that will be made available for public access.
- (3) The order shall state whether the order itself, the register of actions, or individual docket entries are to be sealed.
- (4) The order shall specify who is authorized to have access to the sealed court record.
- (5) The order shall specify a date or event upon which it expires or shall explicitly state that the order remains in effect until further order of the court.
- (6) The order shall specify any person or entity entitled to notice of any future motion to unseal the court record or modify the sealing order.

H. Sealed court records as part of record on appeal.

- (1) Court records sealed in the magistrate, metropolitan, or municipal court, or records sealed in an agency proceeding in accordance with the law, that are filed in an appeal to the district court shall remain sealed in the district court. The district court judges and staff may have access to the sealed court records unless otherwise ordered by the district court. Requests to unseal such records or modify a sealing order entered in the magistrate, metropolitan, or municipal court shall be filed in the district court pursuant to Paragraph I of this rule if the case is pending on appeal.
- (2) Court records sealed under the provisions of this rule that are filed in the appellate courts shall remain sealed in the appellate courts. The appellate court judges and staff may have access to the sealed court records unless otherwise ordered by the appellate court.

[(I) procedural provision omitted]

J. Failure to comply with sealing order. Any person or entity who knowingly discloses any material obtained from a court record sealed or lodged pursuant to this rule may be held in contempt of court or subject to other sanctions as the court deems appropriate.

NEW YORK

New York Codes, Rules, and Regulations

§ 104.5 Confidentiality.

Court records that are reproduced in an alternative format, retained for research purposes or designated for disposition remain subject to all statutory provisions pertaining to access and confidentiality that are applicable to the original records. Arrangements for the reproduction, retention or disposal of court records that are sealed or otherwise deemed confidential must preserve the level of protection and nonaccess required by law.

§ 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 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).

§ 500.5 Confidential and sensitive material: sealing and redaction.

(a) Documents under seal are not available for public viewing.

(b) Any cases or materials sealed by a court or otherwise required by statute to be sealed shall be sealed in the Court of Appeals. In cases that are sealed in their entirety, each document filed shall clearly indicate that it is filed under seal. In cases where some documents are sealed, such sealed documents shall be reproduced in a separate volume that shall clearly indicate that it is filed under seal.

(c) To the extent possible, confidential information subject to a statutory proscription against publication shall be omitted or redacted from public documents. Where such information must be included and cannot be redacted, the cover of the document filed shall clearly indicate that it contains confidential material.

(d) To the extent possible, sensitive material, even if it is not subject to a statutory proscription against publication, shall be omitted or redacted from public documents. Information of this type includes, but is not limited to: social security, taxpayer identification or financial account numbers; full dates of birth; exact street addresses; e-mail addresses; telephone numbers; names of minor children; names of children's schools; names of employers; or other information that would identify a person whose identity should not be revealed (e.g., a victim of a sex crime).

(e) Any party may request that papers not sealed below be sealed in this Court. Such requests shall be by an original and one copy of a motion pursuant to section 500.21 of this Part, with proof of service of one copy on each other party.

Consolidated Laws

§ 5-336. Nondisclosure agreements.

1. (a) Notwithstanding any other law to the contrary, no employer, its officers or employees shall have the authority to include or agree to include in any settlement, agreement or other resolution of any claim, the factual foundation for which involves discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law, any term or condition that would prevent the disclosure of the underlying facts and circumstances to the claim or action unless the condition of confidentiality is the complainant's preference.

(b) Any such term or condition must be provided in writing to all parties in plain English, and, if applicable, the primary language of the complainant, and the complainant shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the complainant's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the complainant may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

(c) Any such term or condition shall be void to the extent that it prohibits or otherwise restricts the complainant from: (i) initiating, testifying, assisting, complying with a subpoena from, or participating in any manner with an investigation conducted by the appropriate local, state, or federal agency; or (ii) filing or disclosing any facts necessary to receive unemployment insurance, Medicaid, or other public benefits to which the complainant is entitled.

2. Notwithstanding any provision of law to the contrary, any provision in a contract or other agreement between an employer or an agent of an employer and any employee or potential employee of that employer entered into on or after January first, two thousand twenty, that prevents the disclosure of factual information related to any future claim of discrimination is void and unenforceable unless such provision notifies the employee or potential employee that it does not prohibit him or her from speaking with law enforcement, the equal employment opportunity commission, the state division of human rights, a local commission on human rights, or an attorney retained by the employee or potential employee.

Civil Practice Rules

§ 5003-b. Nondisclosure agreements.

Notwithstanding any other law to the contrary, for any claim or cause of action, whether arising under common law, equity, or any provision of law, the factual foundation for which involves discrimination, in violation of laws prohibiting discrimination, including but not limited to, article fifteen of the executive law, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, no employer, its officer or employee shall have the authority to include or agree to include in such resolution any term or condition that would prevent the disclosure of the underlying facts and circumstances to the

claim or action unless the condition of confidentiality is the plaintiff's preference. Any such term or condition must be provided to all parties, and the plaintiff shall have twenty-one days to consider such term or condition. If after twenty-one days such term or condition is the plaintiff's preference, such preference shall be memorialized in an agreement signed by all parties. For a period of at least seven days following the execution of such agreement, the plaintiff may revoke the agreement, and the agreement shall not become effective or be enforceable until such revocation period has expired.

NORTH CAROLINA

Constitution

N.C. Const. Art. I, §18

All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Rules Civ. Proc., G.S. § 1A-1, Rule 26. General provisions governing discovery

(a) Discovery methods. – Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) Discovery scope and limits. – Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

Public Records Act

§ 132-1.2. Confidential Information.

Nothing in this Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information that:

(1) Meets all of the following conditions:

- a. Constitutes a "trade secret" as defined in G.S. 66-152(3) .
- b. Is the property of a private "person" as defined in G.S. 66-152(2) .
- c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the State.
- d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

- (2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1.
- (3) Reveals a document, file number, password, or any other information maintained by the Secretary of State pursuant to Article 21 of Chapter 130A of the General Statutes.
- (4) Reveals the electronically captured image of an individual's signature, date of birth, drivers license number, or a portion of an individual's social security number if the agency has those items because they are on a voter registration document.
- (5) Reveals the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes that has been submitted for project approval to (i) a municipality under Part 5 of Article 19 of Chapter 160A of the General Statutes or (ii) to a county under Part 4 of Article 18 of Chapter 153A of the General Statutes. Notwithstanding this exemption, a municipality or county that receives a request for a document submitted for project approval that contains the seal of a licensed design professional who is licensed under Chapter 83A or Chapter 89C of the General Statutes and that is otherwise a public record by G.S. 132-1 shall allow a copy of the document without the seal of the licensed design professional to be examined and copied, consistent with any rules adopted by the licensing board under Chapter 83A or Chapter 89C of the General Statutes regarding an unsealed document.
- (6) Reveals documents related to the federal government's process to determine closure or realignment of military installations until a final decision has been made by the federal government in that process.
- (7) Reveals name, address, qualifications, and other identifying information of any person or entity that manufactures, compounds, prepares, prescribes, dispenses, supplies, or administers the drugs or supplies obtained for any purpose authorized by Article 19 of Chapter 15 of the General Statutes.

NORTH DAKOTA

Supreme Court Administrative Rules

Section 1. Introduction.

The State of North Dakota has always favored open government and an informed citizenry. Consistent with this policy, this rule is intended to provide a comprehensive framework for public access to court records. This policy is based on two fundamental principles:

- (a) Court records are presumptively open to public access; and
- (b) Public access should not change depending on whether access is remote or at the courthouse.

Section 2. Purposes of the Policy.

- (a) Maximize accessibility of court records.
- (b) Protect users of the court from harm.
- (c) Make effective use of court resources.

Section 4. Who Has Public Access.

- (a) Every member of the public should have the same access to court records.
- (b) The public is defined to include:
 - (1) Any person, business, or non-profit entity;
 - (2) Any governmental agency for which there is no existing policy defining the agency's access to court records;
 - (3) Media organizations; and
 - (4) Entities that gather and disseminate information for whatever reason.
- (c) The public does not include:
 - (1) Court employees, including all direct and contract employees;
 - (2) Entities who assist the court in providing court services;
 - (3) Governmental agencies whose access to case records is defined by another statute, rule, order or policy; and
 - (4) Parties to an action and their attorneys examining the case records, unless restricted by order of the court, but parties and attorneys may not access judge and court personnel work material in the court file.
- (d) Public access is synonymous with anonymous access.

Section 5. General Access Rule.

- (a) Case Records
 - (1) Information in the case record is accessible to the public except as prohibited by Section 5 (e) or (f).
 - (2) There generally should be a public indication of the existence of case information in a record to which access has been prohibited, but that indication should not disclose the nature of the protected information.
 - (3) If harm may be done by indicating the existence of case information then no indication of that existing record should be open to the public.
 - (4) Access to case records filed before March 1, 2009. Case records filed before the adoption of N.D.R.Ct. 3.4 may contain protected information listed under N.D.R.Ct. 3.4(a). This rule does not require the review and redaction of protected information from a case record that was filed before the adoption of N.D.R.Ct. 3.4 on March 1, 2009.
- (b) Remote Access to Case Records.
 - (1) Public case records are presumptively accessible remotely.
 - (2) Access Regulation. The Supreme Court may adopt and implement other policies to regulate remote access to court records. These policies must be posted publicly on the Court's website.
- (e) Case Records Excluded from Public Access.
 - (1) Case records may not be made accessible to the public if barred by federal law, state law, court rule, or relevant case law.
 - (2) Case records may also be excluded from public access if the court determines that harm would ensue, per the objective in Section 2(b).
 - (3) The following information in a case record is not accessible to the public:
 - [(A)-(O) exceptions provision omitted]

(4) This rule does not preclude access to court records by federal, state, and local officials, or their agents, examining a court record in the exercise of their official duties and powers.

(5) A member of the public may request the court to allow access to information excluded under Section (5)(e) or prohibited under Section (5)(f)(1) as provided in Section 5(f)(2).

(f) Requests to Prohibit Public Access to Information in Case Records or to Obtain Access to Restricted Information.

(1) Request to Prohibit Access.

[(A)-(G) exceptions provision omitted]

(2) Request to Obtain Access.

(A) A request to obtain access to information in a case record to which access is prohibited may be made to the court by any member of the public or on the court's own motion on notice as provided in Section 5(f)(3).

(B) In deciding whether to allow access, the court must consider whether there are sufficient grounds to overcome the presumption of openness of case records and continue to prohibit access under applicable constitutional, statutory and case law. In deciding this the court must consider the standards outlined in Section 5(f)(1)(C) and Section 2.

(3) Form of Request.

(A) The request must be made by a written motion to the court.

(B) The requestor must give notice to all parties in the case.

(C) The court may require notice to be given by the requestor or another party to any individuals or entities identified in the information that is the subject of the request. When the request is for access to information to which access was previously prohibited under Section 5(f)(1), the court must provide notice to the individual or entity that requested that access be prohibited.

Section 7. Operational Requirements.

(a) Best practices should be used to protect case records not open to the public.

(b) Search capabilities for public case records should support reasonable flexibility.

(c) Search capabilities should not impose an undue operational burden on court systems.

(d) Persons or organizations granted access beyond what is available to the public should be managed by role and required to identify and authenticate using best practices.

Section 9. General Access Rule: Court Administrative Records.

Court administrative records are open to the public except as follows:

[(a)-(k) exceptions provision omitted]

OHIO

Rules of Superintendence for the Courts

Rule 45. Court Records – Public Access.

(A) Presumption of public access Court records are presumed open to public access.

(B) Direct access

[(1)-(4) procedural provision omitted]

(C) Remote access

(1) A court or clerk of court may offer remote access to a court record. If a court or clerk offers remote access to a court record and the record is also available by direct access, the version of the record available through remote access shall be identical to the version of the record available by direct access, provided the court or clerk may exclude an exhibit or attachment that is part of the record if the court or clerk includes notice that the exhibit or attachment exists and is available by direct access.

(2) Nothing in division (C)(1) of this rule shall be interpreted as requiring a court or clerk of court offering remote access to a case document in a case file to offer remote access to other case documents in that case file.

(3) Nothing in division (C)(1) of this rule shall be interpreted as prohibiting a court or clerk of court from making available on a website any court record that exists only in electronic form, including an on-line journal or register of actions.

(D) Omission of personal identifiers prior to submission or filing

[(1)-(3) omitted]

(E) Restricting public access to a case document

(1) Any party to a judicial action or proceeding or other person who is the subject of information in a case document may, by written motion to the court, request that the court restrict public access to the information or, if necessary, the entire document. Additionally, the court may restrict public access to the information in the case document or, if necessary, the entire document upon its own order. The court shall give notice of the motion or order to all parties in the case. The court may schedule a hearing on the motion.

(2) A court shall restrict public access to information in a case document or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following:

(a) Whether public policy is served by restricting public access;

(b) Whether any state, federal, or common law exempts the document or information from public access;

(c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

(3) When restricting public access to a case document or information in a case document pursuant to this division, the court shall use the least restrictive means available, including but not limited to the following:

[(a)-(e) omitted]

(4) If a court orders the redaction of information in a case document pursuant to this division, a redacted version of the document shall be filed in the case file along with a copy of the court's order. If a court orders that the entire case document be restricted from public access, a copy of the court's order shall be filed in the case file. A journal entry shall reflect the court's order. Case documents ordered restricted from public access or information in documents ordered redacted shall not be available for public access and shall be maintained separately in the case file.

(F) Obtaining access to a case document that has been granted restricted public access

(1) Any person, by written motion to the court, may request access to a case document or information in a case document that has been granted restricted public access pursuant to division (E) of this rule. The court shall give notice of the motion to all parties in the case and, where possible, to the non-party person who requested that public access be restricted. The court may schedule a hearing on the motion.

(2) A court may permit public access to a case document or information in a case document if it finds by clear and convincing evidence that the presumption of allowing public access is no longer outweighed by a higher interest. When making this determination, the court shall consider whether the original reason for the restriction of public access to the case document or information in the case document pursuant to division (E) of this rule no longer exists or is no longer applicable and whether any new circumstances, as set forth in that division, have arisen which would require the restriction of public access.

Rule 47. Court Records – Application, Remedies, and Liability.

(A) Application

(1) The provisions of Sup.R. 44 through 47 requiring redaction or omission of information in case documents or restricting public access to case documents shall apply only to case documents in actions commenced on or after July 1, 2009. Access to case documents in actions commenced prior to July 1, 2009, shall be governed by federal and state law.

(2) The provisions of Sup.R. 44 through 47 restricting public access to administrative documents shall apply to all documents regardless of when created.

(3) The provisions of Sup.R. 44(C)(2)(h) restricting public access to certain case documents of a court of common pleas or a division thereof with domestic relations or juvenile jurisdiction shall apply only to case documents in actions commenced on or after January 1, 2016.

(B) Denial of public access - remedy

A person aggrieved by the failure of a court or clerk of court to comply with the requirements of Sup. R. 44 through 47 may pursue an action in mandamus pursuant to Chapter 2731. of the Revised Code.

(C) Liability and immunity

Sup. R. 44 through 47 do not affect any immunity or defense to which a court, court agency, clerk of court, or their employees may be entitled under section 9.86 or Chapter 2744. Of the Revised Code.

(D) Review

Sup. R. 44 through 47 shall be subject to periodic review by the Commission on the Rules of Superintendence.

OKLAHOMA

Cases

In re Amendment to 12 O.S. Ch. 2, 284 P.3d 466 (Okla. 2011).

Oklahoma Open Records Act

§51-24A.28. Confidential information - Exceptions

[(A)-(D) exceptions omitted]

§51-24A.29. Protective orders for pleadings, other materials - Microfilm records - Procedures - Storing of protected materials – Confidentiality

A. Unless confidentiality is specifically required by law, any order directing the withholding or removal of pleadings or other material from a public record shall contain:

[(1)-(3) procedural provision omitted]

B. No protective order entered after the filing and microfilming of documents of any kind shall be construed to require the microfilm record of such filing to be amended in any fashion, and no other accounting entries may be affected by such order.

C. The party or counsel who has received the protective order shall be responsible for promptly presenting the order to appropriate supervisory court clerk personnel for action.

D. All documents produced or testimony given under a protective order shall be retained in the office of counsel until required by the court to be filed in the case.

[(E)-(H) procedural provision omitted]

§51-24A.30. Court records – Confidentiality – Sealed records – Order requirement

All court records, as defined by Section 32.1 of Title 12 of the Oklahoma Statutes, shall be considered public records and shall be subject to the provisions of the Oklahoma Open Records Act, unless otherwise identified by statute to be confidential. If confidentiality is not required by statute, the court may seal a record or portion of a record only if a compelling privacy interest exists which outweighs the public's interest in the record. In all cases where the court is sealing a record or portion of a record, the court shall enter an order which shall be public and shall:

1. Make findings of fact which identify the facts which the court relied upon in entering its order;
2. Make conclusions of law specific enough so that the public is aware of the legal basis for the sealing of the record;
3. Utilize the least restrictive means for achieving confidentiality; and

4. Be narrowly tailored so that only the portions of the record subject to confidentiality are sealed and the remainder of the record is kept open.

Rules of Civil Procedure

§ 12-3226. General provisions governing discovery.

[(A) omitted]

B. Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with the Oklahoma Discovery Code, the scope of discovery is as follows:

1. In General.

a. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any documents, electronically stored information or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

b. A party shall produce upon request pursuant to Section 3234 of this title, any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this section, an application for insurance shall not be treated as a part of an insurance agreement.

[(2)-(5) omitted]

C. Protective Orders.

1. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer, either in person or by telephone, with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or on matters relating to a deposition, the district court in the county where the deposition is to be taken may enter any order which justice requires to protect a party or person from annoyance, harassment, embarrassment, oppression or undue delay, burden or expense, including one or more of the following:

[(a)-(h) omitted]

2. 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 paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses incurred in relation to the motion. Any protective order of the court which has the effect of removing any material obtained by discovery from the public record shall contain the following:

[(a)-(c) omitted]

[(3)-(7) omitted]
[(D)-(G) omitted]

OREGON

Revised Statute

§ 659A.370. Employer prohibited from entering into agreements that prevent employee from discussing certain unlawful conduct; exceptions; remedies.

Employer prohibited from entering into agreements that prevent employee from discussing certain unlawful conduct; exceptions; remedies. (1) Except as provided in subsections (2) or (4) of this section, it is an unlawful employment practice for an employer to enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct:

[(a)-(c) enumerated provisions omitted]

[659A.370 becomes operative October 1, 2020. See section 11, chapter 343, Oregon Laws 2019.]

§ 17.095. Prohibition of confidential settlements and compromises – exceptions

(1) A public body, or officer, employee or agent of a public body, who is a defendant in an action under ORS 30.260 (Definitions for ORS 30.260 to 30.300) to 30.300 (ORS 30.260 to 30.300 exclusive), or who is a defendant in an action under ORS 294.100 (Public official expending money in excess of amount or for different purpose than provided by law unlawful), may not enter into any settlement or compromise of the action if the settlement or compromise requires that the terms or conditions of the settlement or compromise be confidential.

(2) Notwithstanding subsection (1) of this section:

(a) A public body, or officer, employee or agent of a public body, may enter into a settlement or compromise that requires the terms or conditions to be confidential if federal law requires terms or conditions of that settlement or compromise to be confidential. Only terms and conditions that are required to be confidential under federal law may be confidential in the settlement or compromise.

(b) A court may order that the terms or conditions of a settlement or compromise that reveal the identity of a person be confidential if:

(A) The person whose identity is revealed is a victim of sexual abuse or is under 18 years of age; and

(B) The court determines, by written findings, that the specific privacy interests of the person outweigh the public's interest in the terms or conditions.

[(3)-(4) omitted]

§ 192.314. Right to inspect public records

(1) Every person has a right to inspect any public record of a public body in this state, except as otherwise expressly provided by ORS 192.338 (Exempt and nonexempt public record to be separated), 192.345 (Public records conditionally exempt from disclosure) and 192.355 (Public records exempt from disclosure).

(2)(a) If a person who is a party to a civil judicial proceeding to which a public body is a party, or who has filed a notice under ORS 30.275 (Notice of claim) (5)(a), asks to inspect or to receive a copy of a public record that the person knows relates to the proceeding or notice, the person must submit the request in writing to the custodian and, at the same time, to the attorney for the public body.

(b) For purposes of this subsection:

(A) The attorney for a state agency is the Attorney General in Salem.

(B) "Person" includes a representative or agent of the person. [Formerly 192.420]

§ 192.345. Public records conditionally exempt from disclosure.

The following public records are exempt from disclosure under ORS 192.311 (Definitions for ORS 192.311 to 192.478) to 192.478 (Exemption for Judicial Department) unless the public interest requires disclosure in the particular instance:

[(1)-(41) omitted]

§ 192.355. Public records exempt from disclosure.

The following public records are exempt from disclosure under ORS 192.311 (Definitions for ORS 192.311 to 192.478) to 192.478 (Exemption for Judicial Department):

[(1)-(42) omitted]

PENNSYLVANIA

Codes

§ 213.81. Public Access Policy of the Unified Judicial System of Pennsylvania

Section 2.0. Statement of General Policy.

A. This policy shall govern access by the public to case records.

B. Security, possession, custody, and control of case records shall generally be the responsibility of the applicable custodian and designated staff.

C. Facilitating access by the public shall not substantially impede the orderly conduct of court business.

D. A court or custodian may not adopt more restrictive or expansive access protocols than provided for in this policy. Nothing in this policy requires a court or custodian to provide remote access to case records. However, if a court or custodian chooses to provide remote access to any of its case records, access shall be provided in accordance with Section 10.0.

Section 3.0. Access to Case Records.

All case records shall be open to the public in accordance with this policy.

Section 4.0. Requesting Access to Case Records.

- A. When desiring to inspect or copy case records, a member of the public shall make an oral request to the applicable custodian, unless otherwise provided by a local rule or an order issued by a court of record.
- B. When the information that is the subject of the request is complex or voluminous, the custodian may require a written request. If the requestor does not submit a written request when required, access may be delayed until the written request is submitted or a time when an individual designated by the custodian is available to monitor such access to ensure the integrity of the case records is maintained.
- C. Requests shall identify or describe the records sought with specificity to enable the custodian to ascertain which records are being requested.

Section 5.0. Responding to Requests for Access to Case Records.

- A. A custodian shall fulfill a request for access to case records as promptly as possible under the circumstances existing at the time of the request.
- B. If a custodian cannot fulfill the request promptly or at all, the custodian shall inform the requestor of the specific reason(s) why access to the information is being delayed or denied.
- C. If a custodian denies a written request for access, the denial shall be in writing.
- D. Except as provided in Subsection E, relief from a custodian's written denial may be sought by filing a motion or application with the court for which the custodian maintains the records.
- E. Relief from a magisterial district court may be sought by filing an appeal with the president judge of the judicial district or the president judge's designee. Relief from a written denial by the Philadelphia Municipal Court may be sought by filing a motion with the president judge of Philadelphia Municipal Court or the president judge's designee.

Section 7.0. Confidential Information.

- A. Unless required by applicable authority or as provided in Subsection C, the following information is confidential and shall be not included in any document filed with a court or custodian, except on a Confidential Information Form filed contemporaneously with the document:

[(1)-(6) omitted]

- B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Information Form.

[(C) procedural provision omitted]

- D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form: "I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents."

E. A court or custodian is not required to review or redact any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If a filed document fails to comply with the requirements of this section, a court of record may, upon motion or its own initiative, with or without a hearing order the filed document sealed, redacted, amended or any combination thereof. A court of record may impose sanctions, including costs necessary to prepare a compliant document for filing in accordance with applicable authority.

G. If a filed document fails to comply with the requirements of this section, a magisterial district court may, upon request or its own initiative, with or without a hearing order the filed document redacted, amended or both.

H. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

Section 8.0. Confidential Documents.

A. Unless required by applicable authority, the following documents are confidential and shall be filed with a court or custodian under a cover sheet designated "Confidential Document Form":

[(1)-(7) omitted]

B. The Administrative Office of Pennsylvania Courts shall design and publish the Confidential Document Form.

C. Confidential documents submitted with the Confidential Document Form shall not be accessible to the public, except as ordered by a court. However, the Confidential Document Form or a copy of it shall be accessible to the public.

D. Parties and their attorneys shall be solely responsible for complying with the provisions of this section and shall certify their compliance to the court. The certification that shall accompany each filing shall be substantially in the following form "I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents."

E. A court or custodian is not required to review any filed document for compliance with this section. A party's or attorney's failure to comply with this section shall not affect access to case records that are otherwise accessible.

F. If confidential documents are not submitted with the Confidential Document Form, a court of record may, upon motion or its own initiative, with or without a hearing, order that any such documents be sealed. A court of record may also impose appropriate sanctions for failing to comply with this section.

G. If a filed document fails to comply with the requirements of this section, a magisterial district court may, upon request or its own initiative, with or without a hearing order that any such documents be sealed.

H. This section shall apply to all documents for any case filed with a court or custodian on or after the effective date of this policy.

Section 9.0. Limits on Public Access to Case Records at a Court Facility.

The following information shall not be accessible by the public at a court facility:

- A. Case records in proceedings under 20 Pa.C.S. § 711(9), including but not limited to case records with regard to issues concerning recordation of birth and birth records, the alteration, amendment, or modification of such birth records, and the right to obtain a certified copy of the same, except for the docket and any court order or opinion;
- B. Case records concerning incapacity proceedings filed pursuant to 20 Pa.C.S. §§ 5501-5555, except for the docket and any final decree adjudicating a person as incapacitated;
- C. Any Confidential Information Form or any Unredacted Version of any document as set forth in Section 7.0;
- D. Any document filed with a Confidential Document Form as set forth in Section 8.0;
- E. Information sealed or protected pursuant to court order;
- F. Information to which access is otherwise restricted by federal law, state law, or state court rule; and
- G. Information presenting a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice, as determined by the Court Administrator of Pennsylvania with the approval of the Chief Justice. The Court Administrator shall publish notification of such determinations in the Pennsylvania Bulletin and on the Unified Judicial System's website.

Section 10.0. Limits on Remote Access to Case Records.

- A. The following information shall not be remotely accessible by the public:

[(1)-(7) omitted]

- B. With respect to Subsections A(5) and A(6), unless otherwise restricted pursuant to applicable authority, dockets available remotely shall contain only the following information:

[(1)-(8) omitted]

- C. Case records remotely accessible by the public prior to the effective date of this policy shall be exempt from this section.

RHODE ISLAND

Access to Public Records Act (APRA)

§ 38-2-14. Information relating to settlement of legal claims

Settlement agreements of any legal claims against a governmental entity shall be deemed public records.

Judiciary Rules of Practice Governing Public Access to Electronic Case Information

1. Purpose. These Rules of Practice Governing Public Access to Electronic Case Information (Public Access Rules) are intended to address access to electronic case information that is filed in the Rhode Island Judiciary's (Judiciary) Electronic Filing System. The Public Access Rules seek to harmonize the Judiciary's obligation to make

case information available and accessible while also protecting the privacy of personal and/or otherwise confidential information filed with the courts throughout the Judiciary.

2. Application. These Public Access Rules shall apply to all electronic documents filed in the Judiciary's Electronic Filing System. Access to electronic documents shall be in accordance with Section 5 herein.

[(3) definition provisions omitted]

4. Confidentiality.

a. Case Types. Certain case types that are required by federal or state law, court rule, court order, or case law to be kept confidential shall not be publicly accessible. These case types include, but are not limited to, the following:

[(1)-(11) omitted]

b. Documents. Certain documents that are designated as confidential by federal or state law, court rule, court order, or case law shall not be submitted to any court through the EFS as public documents. These documents shall be submitted as "confidential" in their entirety and need not be submitted in a public form in accordance with Article X, Rule 8 of the Supreme Court Rules Governing Electronic Filing.

[(1)-(6) omitted]

c. Information. Certain categories of information that are designated as confidential by federal or state law, court rule, court order, or case law shall not be submitted to any court through the EFS as part of a public document. It is the filing party's responsibility to ensure that personal or otherwise confidential information is redacted and/or submitted confidentially to the court in accordance with Article X, Rule 8 of the Supreme Court Rules Governing Electronic Filing.

[(1)-(5) omitted]

d. Protection of Confidential Information in Cases Filed Prior to Electronic Filing.

Cases filed with any court before the implementation of electronic filing may contain confidential documents or information in the public file. Any party or attorney may submit a motion to the hearing court seeking to designate portions of the public file as confidential in accordance with these Rules of Practice. Such motion shall be freely granted. An order denying any motion to designate portions of a file as confidential shall include the reasons serving as the basis for the denial.

5. Access to Case Information

a. Courthouse Access.

1. Policy. Each court shall make computer terminals available in the respective clerks' offices in each of the courthouses for use by anyone who wishes to review electronic documents filed in the Judiciary's EFS during regular business hours.

2. Content.

a. Public Access. Members of the Public shall have access to all public electronic case information. This access does not include access to sealed cases or

documents, or confidential case types, documents, or information as defined in these Public Access Rules.

[(b)-(d); (3) omitted]

b. Remote Public Access.

1. Policy. To allow limited Remote Access to the Database through the Public Access Portal.

[(2) omitted]

SOUTH CAROLINA

Freedom of Information Act

§ 30-4-15. Findings and purpose.

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

§ 30-4-30. Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; records to be available when requestor appears in person.

(A)(1) A person has a right to inspect, copy, or receive an electronic transmission of any public record of a public body, except as otherwise provided by Section 30-4-40, or other state and federal laws, in accordance with reasonable rules concerning time and place of access. This right does not extend to individuals serving a sentence of imprisonment in a state or county correctional facility in this State, in another state, or in a federal correctional facility; however, this may not be construed to prevent those individuals from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution under the South Carolina Rules of Criminal Procedure.

(2) A public body is not required to create an electronic version of a public record when one does not exist to fulfill a records request.

[(B)-(C) omitted]

(D) The following records of a public body must be made available for public inspection and copying during the hours of operations of the public body, unless the record is exempt pursuant to Section 30-4-40 or other state or federal laws, without the requestor being required to make a written request to inspect or copy the records when the requestor appears in person:

[(1)-(4) omitted]

(E) A public body that places the records in a form that is both convenient and practical for use on a publicly available Internet website is deemed to be in compliance with the provisions of subsection (D), provided that the public body also shall produce documents pursuant to this section upon request.

§ 30-4-40. Matters exempt from disclosure.

(a) A public body may but is not required to exempt from disclosure the following information:

(1) Trade secrets, which are defined as unpatented, secret, commercially valuable plans, appliances, formulas, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person and which are generally recognized as confidential and work products, in whole or in part collected or produced for sale or resale, and paid subscriber information. Trade secrets also include, for those public bodies who market services or products in competition with others, feasibility, planning, and marketing studies, marine terminal service and nontariff agreements, and evaluations and other materials which contain references to potential customers, competitive information, or evaluation.

[(2)-(19) omitted]

(b) If any public record contains material which is not exempt under subsection (a) of this section, the public body shall separate the exempt and nonexempt material and make the nonexempt material available in accordance with the requirements of this chapter.

(c) Information identified in accordance with the provisions of Section 30-4-45 is exempt from disclosure except as provided therein and pursuant to regulations promulgated in accordance with this chapter. Sections 30-4-30, 30-4-50, and 30-4-100 notwithstanding, no custodian of information subject to the provisions of Section 30-4-45 shall release the information except as provided therein and pursuant to regulations promulgated in accordance with this chapter.

(d) A public body may not disclose a "privileged communication", "protected information", or a "protected identity", as defined in Section 23-50-15 pursuant to a request under the South Carolina Freedom of Information Act. These matters may only be disclosed pursuant to the procedures set forth in Section 23-50-45.

§ 30-4-45. Information concerning safeguards and off-site consequence analyses; regulation of access; vulnerable zone defined.

(A) The director of each agency that is the custodian of information subject to the provisions of 42 U.S.C. 7412(r)(7)(H), 40 CFR 1400 "Distribution of Off-site Consequence Analysis Information", or 10 CFR 73.21 "Requirements for the protection of safeguards information", must establish procedures to ensure that the information is released only in accordance with the applicable federal provisions.

(B) The director of each agency that is the custodian of information, the unrestricted release of which could increase the risk of acts of terrorism, may identify the information or compilations of information by notifying the Attorney General in writing, and shall promulgate regulations in accordance with the Administrative Procedures Act, Sections 1-23-110 through 1-23-120(a) and

Section 1-23-130, to regulate access to the information in accordance with the provisions of this section.

(C) Regulations to govern access to information subject to subsections (A) and (B) must at a minimum provide for:

(1) disclosure of information to state, federal, and local authorities as required to carry out governmental functions; and

(2) disclosure of information to persons who live or work within a vulnerable zone.

For purposes of this section, "vulnerable zone" is defined as a circle, the center of which is within the boundaries of a facility possessing hazardous, toxic, flammable, radioactive, or infectious materials subject to this section, and the radius of which is that distance a hazardous, toxic, flammable, radioactive, or infectious cloud, overpressure, radiation, or radiant heat would travel before dissipating to the point it no longer threatens serious short-term harm to people or the environment.

Disclosure of information pursuant to this subsection must be by means that will prevent its removal or mechanical reproduction. Disclosure of information pursuant to this subsection must be made only after the custodian has ascertained the person's identity by viewing photo identification issued by a federal, state, or local government agency to the person and after the person has signed a register kept for the purpose.

§ 30-4-50. Certain matters declared public information; use of information for commercial solicitation prohibited.

(A) Without limiting the meaning of other sections of this chapter, the following categories of information are specifically made public information subject to the restrictions and limitations of Sections 30-4-20, 30-4-40, and 30-4-70 of this chapter:

[(1)-(10) omitted]

Other Statutes

§ 14-8-240.

The Court [of Appeals] shall be a court of record, and the records thereof shall at all times be subject to public inspection.

Rules of Civil Procedure

Rule 41.1. Sealing Documents and Settlement Agreements.

(a) Purpose. Because South Carolina has a long history of maintaining open court proceedings and records, this Rule is intended to establish guidelines for governing the filing under seal of settlements and other documents. Article I, § 9, of the South Carolina Constitution provides that all courts of this state shall be public and this Rule is intended to ensure that that Constitutional provision is fulfilled. However, the Court recognizes that as technology advances, court records will be more readily available and this Rule seeks to balance the right of public access to court records with the need for parties to protect truly private or proprietary information from public view and to insure that rules of court are fairly applied. This Rule does not apply to private settlement agreements and shall not be interpreted as approving

confidentiality provisions in private settlement agreements where the parties agree to have the matter voluntarily dismissed under Rule 41(a)(1), SCRCP, without court involvement. The enforceability of those provisions is governed by general legal principles, not by this Rule.

[(b) procedural provision omitted]

(c) Sealing Settlements. A proposed settlement agreement submitted for the court's approval shall not be conditioned upon its being filed under seal. Under no circumstances shall a court approve sealing a settlement agreement which involves a public body or institution. Simultaneously with the filing of a motion seeking court approval of a settlement, or after a settlement has been approved, any party to the litigation may file a motion seeking to have all or part of the settlement filed under seal.

If the agreement is approved, and a motion to seal has been filed, the procedure set forth in (b) above shall be followed with the exception that the factors for sealing a settlement set forth below shall be addressed.

In determining whether to approve the filing of the settlement documents, in whole or in part, under seal, the court shall consider:

[(1)-(4) omitted]

(d) Orders Sealing Documents. All orders sealing documents or all or parts of settlements shall set forth with specificity the reasons that require they be sealed.

SOUTH DAKOTA

Unified Judicial System Court Records Rule

§ 15-15A. Purpose of rule of access to court records.

The purpose of this rule is to provide a comprehensive policy on access to court records. The rule provides for access in a manner that:

- (1) Maximizes accessibility to court records,
- (2) Supports the role of the judiciary,
- (3) Promotes governmental accountability,
- (4) Contributes to public safety,
- (5) Minimizes risk of injury to individuals,
- (6) Protects individual privacy rights and interests,
- (7) Protects proprietary business information,
- (8) Minimizes reluctance to use the court to resolve disputes,
- (9) Makes most effective use of court and clerk of court staff,
- (10) Provides excellent customer service, and
- (11) Does not unduly burden the ongoing business of the judiciary.

The rule is intended to provide guidance to 1) litigants, 2) those seeking access to court records, and 3) judges, court and clerk of court personnel responding to requests for access.

§ 15-15A-4. Applicability of rule.

This rule applies to all court records, regardless of the physical form of the court record, the method of recording the information in the court record or the method of storage of the information in the court record.

§ 15-15A-5. General access rule.

- (1) Information in the court record is accessible to the public except and as prohibited by statute or rule and except as restricted by §§ 15-15A-7 through 15-15A-13.
- (2) There shall be a publicly accessible indication of the existence of information in a court record to which access has been restricted, which indication shall not disclose the nature of the information protected, i.e., "sealed document."
- (3) An individual circuit or a local court may not adopt a more restrictive access policy or otherwise restrict access beyond that provided by statute or in this rule, nor provide greater access than that provided for by statute or in this rule.

§ 15-15A-7 et seq. Court records excluded from public access.

The following information in a court record is not accessible to the public:

- (1) Information that is not to be accessible to the public pursuant to federal law;
- (2) Information that is not to be accessible to the public pursuant to state law, court rule or case law as follows;
- (3) Examples of such state laws, court rules, or case law follow. Note this may not be a complete listing and the public and court staff are directed to consult state law, court rules or case law. Note also that additional documents are listed below that may not be within court records but are related to the court system; the public and court staff should be aware of access rules relating to these documents.

[(a)-(bb) omitted]

TENNESSEE

Supreme Court Rules

Rule 34. Public Access to Court Records.

(1) Right to Inspect Public Records

The public has a statutory right to inspect public records maintained by government agencies. Accordingly, the public has the right to inspect public records maintained by the courts of this State unless the record is expressly excepted from inspection under the Public Records Act, see Tennessee Code Annotated section 10-7-504; or unless otherwise provided by state law, including this Rule and other rules of court, see Tennessee Code Annotated section 10-7-503(a)(2)(A). Requests to inspect public records maintained by the courts are, however, subject to reasonable requirements and restrictions intended to preserve the integrity of the record, the parties' right to the record for the purpose of preparing their papers, the courts'

deliberative process, and the efficient operation of the courts in accordance with Tennessee Code Annotated section 16-3-401.

(2) Court Records

(A) For the purposes of this Rule and the public records policies promulgated by the courts, a "record" includes any record defined as a "public record" in Tennessee Code Annotated section 10-7-503(a)(1)(A).

(B) Court Records include Case Records, Administrative Records, and Judicial Records.

(i) Case Record means any record created, collected, received, or maintained by the courts as a part of the official court file in connection with a particular case.

(ii) Administrative Record means any record created, collected, received, or maintained by the courts pertaining to the administration of the courts and not associated with a particular case.

(iii) Judicial Record means any record of the courts other than Case Records or Administrative Records.

(C) The following Court Records are not public records shall be treated as confidential and shall not be open for inspection by members of the public:

[(i)-(vii) omitted]

TEXAS

Cases

Clear Channel Commc'ns., Inc. v. United Servs. Auto. Ass'n, 195 S.W.3d 129 (Tex. App. 2006).

Nguyen v. Dallas Morning News, 2008 Tex. App. LEXIS 4606 (June 19, 2008).

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.

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)-(8) procedural provisions omitted]

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.

Rules of Appellate Procedure

Rule 9.9. Privacy Protection for Documents Filed in Civil Cases.

(a) Sensitive Data Defined. Sensitive data consists of:

[(1)-(3) omitted]

(b) Filing of Documents Containing Sensitive Data Prohibited. Unless the inclusion of sensitive data is specifically required by a statute, court rule, or administrative regulation, an electronic or paper document

containing sensitive data may not be filed with a court unless the sensitive data is redacted, except for the record in an appeal under Section Two.

(c) Redaction of Sensitive Data; Retention Requirement. Sensitive data must be redacted by using the letter "X" in place of each omitted digit or character or by removing the sensitive data in a manner indicating that the data has been redacted. The filing party must retain an unredacted version of the filed document during the pendency of the appeal and any related proceedings filed within six months of the date the judgment is signed.

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) definition provisions omitted]

12.3 Applicability. This rule does not apply to:

(a) records or information to which access is controlled by:

[(1)-(4) omitted]

(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)-(l) exceptions provision omitted]

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)-(h) further procedural provisions omitted]

UTAH

Government Records Access and Management Act

63G-2-102. Legislative intent.

(1) In enacting this act, the Legislature recognizes two constitutional rights:

(a) the public's right of access to information concerning the conduct of the public's business; and

(b) the right of privacy in relation to personal data gathered by governmental entities.

(2) The Legislature also recognizes a public policy interest in allowing a government to restrict access to certain records, as specified in this chapter, for the public good.

(3) It is the intent of the Legislature to:

(a) promote the public's right of easy and reasonable access to unrestricted public records;

(b) specify those conditions under which the public interest in allowing restrictions on access to records may outweigh the public's interest in access;

(c) prevent abuse of confidentiality by governmental entities by permitting confidential treatment of records only as provided in this chapter;

(d) provide guidelines for both disclosure and restrictions on access to government records, which are based on the equitable weighing of the pertinent interests and which are consistent with nationwide standards of information practices;

(e) favor public access when, in the application of this act, countervailing interests are of equal weight; and

(f) establish fair and reasonable records management practices.

63G-2-105. Confidentiality agreements.

If a governmental entity or political subdivision receives a request for a record that is subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the time the agreement was executed, including late judicial interpretations of the law, shall govern access

to the record, unless all parties to the confidentiality agreement agree in writing to be governed by the provisions of this chapter.

63G-2-201. Provisions relating to records -- Public records -- Private, controlled, protected, and other restricted records -- Disclosure and nondisclosure of records -- Certified copy of record -- Limits on obligation to respond to record request.

(1) (a) Except as provided in Subsection (1)(b), a person has the right to inspect a public record free of charge, and the right to take a copy of a public record during normal working hours, subject to Sections 63G-2-203 and 63G-2-204.

(b) A right under Subsection (1)(a) does not apply with respect to a record:

[(i)-(iii) omitted]

(2) A record is public unless otherwise expressly provided by statute.

(3) The following records are not public:

[(a)-(b) omitted]

(4) Only a record specified in Section 63G-2-302, 63G-2-303, 63G-2-304, or 63G-2-305 may be classified private, controlled, or protected.

(5) (a) A governmental entity may not disclose a record that is private, controlled, or protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section 63G-2-202, 63G-2-206, or 63G-2-303.

(b) A governmental entity may disclose a record that is private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if the head of a governmental entity, or a designee, determines that:

(i) there is no interest in restricting access to the record; or

(ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.

(c) In addition to the disclosure under Subsection (5)(b), a governmental entity may disclose a record that is protected under Subsection 63G-2-305(51) if:

[(i)-(ii) omitted]

(6) (a) The disclosure of a record to which access is governed or limited pursuant to court rule, another state statute, federal statute, or federal regulation, including a record for which access is governed or limited as a condition of participation in a state or federal program or for receiving state or federal funds, is governed by the specific provisions of that statute, rule, or regulation.

(b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter is not inconsistent with the statute, rule, or regulation.

[(7)-(14) omitted]

(15) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, local appeals board, or court shall consider and weigh:

(a) any personal privacy interests, including those in images, that would be affected by disclosure of the records in question; and

(b) any public interests served by disclosure.

Code of Judicial Administration

Rule 4-202.02. Records Classification.

(1) Presumption of Public Court Records. Court records are public unless otherwise classified by this rule.

(2) Public Court Records. Public court records include but are not limited to:

[(A)-(HH) omitted]

(3) Sealed Court Records. The following court records are sealed:

[(A)-(I) omitted]

(4) Private Court Records. The following court records are private:

[(A)-(AA) omitted]

(5) Protected Court Records. The following court records are protected:

[(A)-(V) omitted]

[(6)-(7) juvenile provisions omitted]

(8) Safeguarded Court Records. The following court records are safeguarded:

[(A)-(E) omitted]

VERMONT

Public Records Act

§ 315. Statement of policy; short title.

(a) It is the policy of this subchapter to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment. All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer. Consistent with these principles, the General Assembly hereby declares that certain public records shall be made available to any person as hereinafter provided. To that end, the provisions of this subchapter shall be liberally construed to implement this policy, and the burden of proof shall be on the public agency to sustain its action.

(b) The General Assembly finds that public records are essential to the administration of State and local government. Public records contain information that allows government programs to function, provides officials with a basis for making decisions, and ensures continuity with past operations. Public records document the legal responsibilities of government, help protect the rights of citizens, and provide citizens a means of monitoring government programs and measuring the performance of public officials. Public records provide documentation for the functioning of government and for the retrospective analysis of the development of Vermont government and the impact of programs on citizens.

(c) This subchapter may be known and cited as the Public Records Act or the PRA. (Added 1975, No. 231 (Adj. Sess.), § 1; amended 2011, No. 59, § 1; 2015, No. 29, § 1; 2017, No. 166 (Adj. Sess.), § 2.)

§ 316. Access to public records and documents.

(a) Any person may inspect or copy any public record of a public agency, as follows:

(1) For any agency, board, department, commission, committee, branch, instrumentality, or authority of the State, a person may inspect a public record on any day other than a Saturday, Sunday, or a legal holiday, between the hours of nine o'clock and 12 o'clock in the forenoon and between one o'clock and four o'clock in the afternoon.

(2) For any agency, board, committee, department, instrumentality, commission, or authority of a political subdivision of the State, a person may inspect a public record during customary business hours.

[(b)-(k) omitted]

Rules for Public Access to Records

Rule 1. Scope, Purpose, And Construction

These rules govern the release of case and administrative records held by the Vermont Judiciary, or any component, whether in electronic or physical form. These rules cover the complementary responsibilities to provide public access or special access to judicial-branch records and to protect the confidentiality of case information where such confidentiality is required by statute, rule, or court order. They must be liberally construed to implement these policies.

Rule 3. Access to Judiciary Records Generally; Records Custodian

(a) General Policy. Except as provided in these rules or in statute, the public may inspect or copy all judicial-branch case and administrative records.

(b) Access. The rules cover the complementary responsibilities to provide public and special access to case and administrative records and to protect the confidentiality of records where such confidentiality is required by statute, rule, or court order. For case records, the rules recognize that it is the responsibility of both filers of case records and the Judiciary to protect confidentiality and privacy where public access is restricted by such requirements. The Judiciary will take reasonable steps to comply with these rules.

(c) Custodians of Judicial Records. The Court Administrator is the custodian of judicial-branch paper and electronic administrative records and electronic case records. The Court Administrator is also the custodian of paper case records of adjudicatory bodies other than courts or the judicial bureau, such as hearing panels of the Professional Responsibility Board, the Judicial Conduct Board, and the Character and Fitness Committee. The Court Administrator may delegate responsibility as the record custodian in whole or in part to one or more persons in the Office of the Court Administrator. The superior court clerk in a unit or division is the custodian of the paper case records of that court or those courts, unless the record is in the Vermont State Archives. The Deputy Clerk of the Supreme Court is the custodian of the paper

records of the Supreme Court. The clerk of the judicial bureau is the custodian of the paper case records of the bureau. The custodian for paper records for the rules advisory committees appointed by the Supreme Court is the Deputy Clerk of the Supreme Court. For all other judiciary committees, the custodian of records is the Court Administrator or designee.

Rule 5. Specific Right of Access.

[enumerated in Appendix to Rule 5 omitted]

Rule 6. Case Records.

[enumerated in Appendix to Rule 6 omitted]

Rule 8. Administrative Records.

The public has access to all administrative records in accordance with the provisions of this rule. The procedures, policies, and exemptions in 1 V.S.A. §§ 316, 317(c), and 318 apply to requests for inspection or to obtain copies of administrative records. The Court Administrator is designated as the "head of the agency" for purpose of appeals from decisions of the administrative-record custodian. The decision is final and a person aggrieved by it may follow the procedures set forth in 1 V.S.A. § 319. The Court Administrator will inform all administrative-record custodians of the fee schedule authorized by 1 V.S.A. § 316(d).

Rule 9. Exceptions.

(a) Case Records; Motion to Grant Access, Seal, or Redact; Temporary Sealing; Procedure and Findings by Court.

(1) Power of Court to Grant Access, Seal, or Redact. Except as provided in this Rule, the presiding judge by order may grant public access to a nonpublic case record, may seal from public access a public record, or may redact information from a public record. All parties to the related case, and other interested persons as the court directs, have a right to notice and hearing before an order issues, except that the court may issue a temporary order to seal or redact information from a record without notice and hearing pending a hearing.

[(2)-(4) omitted]

(b) By Agreement. The parties cannot seal all or a portion of a case record by mere stipulation. A court order is required.

(c) Motion for Access to Records. A motion for access to all or part of sealed case records or records in closed proceedings may be filed by any party, or a person or entity not otherwise entitled to access. The motion must specify the case caption and docket number, and state with specificity the record or records to which access is sought. Following notice to parties and opportunity for hearing, the court may issue its order granting or denying the motion for access, in whole or in part, subject to the standards governing proceedings and sealing provided in this Rule.

(d) Applicability. If a statute governs the right of public access and does not provide for judicial discretion to allow or prevent public access to the record, this rule does not apply.

(e) Appeals. A party or person required to be served under subparagraph (a)(2)(E) may appeal to the Supreme Court from determinations under this rule.

VIRGINIA

Code

§ 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.

Rules of the Supreme Court

Rule 1:26. File Format Requirements for Pleadings, Motions, Notices, Briefs and Exhibits Sought to be Filed or Admitted in Electronic or Digital Form.

All digital or electronic pleadings, motions, notices, briefs, exhibits or other material made part of any court record are public records unless sealed by court order or otherwise provided by law, and must be readily accessible in either an unencrypted, non-proprietary, and open-source format or must be accompanied by computer software which decrypts any encrypted or proprietary file format.

Rule 3A:11. Discovery and Inspection.

[(a)-(e) omitted]

(f) Protective Order. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by the Commonwealth the court may permit the Commonwealth to make such showing, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court denies discovery or inspection following a showing in camera, the entire text of the Commonwealth's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal by the accused.

[(g) omitted]

Rule 4:1. General Provisions Governing Discovery.

[(a)-(b) omitted]

(c) Protective Orders.

Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, 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 county or city 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 court.

[(d)-(g) omitted]

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 Rule 4:12(a)(4) apply to the award of expenses incurred in relation to the motion.

Rule 11:1. Scope.

(a) Public access to records of the Virginia Judiciary, including records of judicial officers, is governed by this Part Eleven. The purpose of this Part Eleven is to provide the public with reasonable access to records of the judicial branch of government. At the same time, in order to protect privacy, confidentiality, the administration of justice, and the best interests of the Commonwealth, public access to some judicial records may be restricted in accordance with this Part Eleven or other provisions of law. In addition, this Part Eleven is intended to provide direction to judicial officers and court personnel in responding to public records requests.

(b) This Part shall apply to records of judicial officers and administrative records. This Part shall not apply to case records, including the records maintained by the clerks of the courts of record, as defined in Virginia Code § 1-212, and courts not of record, as defined in Virginia Code § 16.1-69.5. Such records are open to inspection as provided for in Titles 16.1 and 17.1 of the Code of Virginia, subject to any prohibitions or restrictions of any applicable law or court order.

(c) The provisions of this Part Eleven shall apply regardless of where and in what format the record is created or maintained.

Rule 11:3. Records of Judicial Officers.

(a) In order to protect the administration of justice, the deliberative process, and the privacy and safety interests of judicial officers, court personnel, jurors, and the public, records of judicial officers are not publicly accessible.

(b) Records of judicial officers include, but are not limited to [(i)-(x) omitted]

WASHINGTON

Cases

Bennett v. Smith Bundy Berman Britton, PS, 291 P.3d 886, 890 (Wash. 2013).

Constitution

Art. I, § 10. Administration of Justice

Justice in all cases shall be administered openly, and without unnecessary delay.

Art. I, § 7. Invasion of Private Affairs or Home Prohibited

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Code

§ 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.

§ 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)-(c) omitted]

(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) repealed provisions omitted]

State Court Rules

Rule 15. Destruction, Sealing, and Redaction of Court Records

(a) Purpose and Scope of the Rule. This rule sets forth a uniform procedure for the destruction, sealing, and redaction of court records. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.

[(b) definitions omitted]

(c) Sealing or Redacting Court Records.

- (1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceedings, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile. No such notice is required for motions to seal documents entered pursuant to CrR 3.1(f) or CrRLJ 3.1(f).
- (2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:

- (A) The sealing or redaction is permitted by statute; or

- (B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or
- (C) A conviction has been vacated; or
- (D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or
- (E) The redaction includes only restricted personal identifiers contained in the court record; or
- (F) Another identified compelling circumstance exists that requires the sealing or redaction.

(3) A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (2) above.

[(4)-(5) omitted]

(e) Grounds and Procedure for Requesting the Unsealing of Sealed Records.

(1) Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record.

[(2) omitted]

(3) Civil Cases. A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof that identified compelling circumstances for continued sealing no longer exist, or pursuant to RCW 4.24 or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

[further provisions omitted]

(f) Maintenance of Sealed Court Records. Sealed court records are subject to the provisions of RCW 36.23.065 and can be maintained in mediums other than paper.

(g) Use of Sealed Records on Appeal. A court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

[(h) omitted]

Rule 31. Access to Court Records

(a) Policy and Purpose. It is the policy of the courts to facilitate access to court records as provided by article I, section 10 of the Washington State Constitution. Access to court records is not absolute and shall be consistent with reasonable expectations of personal privacy as provided by article 1, section 7 of the Washington State Constitution and shall not unduly burden the business of the courts.

(b) Scope. This rule applies to all court records, regardless of the physical form of the court record, the method of recording the court record or the method of storage of the court record.

Administrative records are not within the scope of this rule. Court records are further governed by GR 22.

[(c) definition provision omitted]

(d) Access.

- (1) The public shall have access to all court records except as restricted by federal law, state law, court rule, court order, or case law.
- (2) Each court by action of a majority of the judges may from time to time make and amend local rules governing access to court records not inconsistent with this rule.
- (3) A fee may not be charged to view court records at the courthouse.

[(e) omitted]

(f) Distribution of Court Records Not Publicly Accessible

(1) A public purpose agency may request court records not publicly accessible for scholarly, governmental, or research purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. In order to grant such requests, the court or the Administrator for the Courts must:

- (A) Consider: (i) the extent to which access will result in efficiencies in the operation of the judiciary; (ii) the extent to which access will fulfill a legislative mandate; (iii) the extent to which access will result in efficiencies in other parts of the justice system; and (iv) the risks created by permitting the access.
- (B) Determine, in its discretion, that filling the request will not violate this rule.
- (C) Determine the minimum access to restricted court records necessary for the purpose is provided to the requestor.
- (D) Assure that prior to the release of court records under section (f) (1), the requestor has executed a dissemination contract that includes terms and conditions which: (i) require the requester to specify provisions for the secure protection of any data that is confidential; (ii) prohibit the disclosure of data in any form which identifies an individual; (iii) prohibit the copying, duplication, or dissemination of information or data provided other than for the stated purpose; and (iv) maintain a log of any distribution of court records which will be open and available for audit by the court or the Administrator of the Courts. Any audit should verify that the court records are being appropriately used and in a manner consistent with this rule.

(2) Courts, court employees, clerks and clerk employees, and the Commission on Judicial Conduct may access and use court records only for the purpose of conducting official court business.

[(g)-(i) procedural provisions omitted]

Rules of Civil Procedure

Rule 26. General Provisions Governing Discovery

[(a) omitted]

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) . . .

The frequency or extent of use of the discovery methods set forth in section (a) shall be limited by the court if it determines that: (A) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (B) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (C) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under section (c).

[(2)-(6) omitted]

(c) Protective Orders. 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 county 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 the contents of a deposition not be disclosed or be disclosed only in a designated way; (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 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 rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

[(d)-(j) omitted]

WEST VIRGINIA

Code

§ 51-4-2 – Inspection of records and papers; copies.

The records and papers of every court shall be open to the inspection of any person, and the clerk shall, when required, furnish copies thereof, except in cases where it is otherwise specially provided.

Rules of Appellate Procedure

Rule 40. Public access to case records and confidentiality.

(a) General rule. In all cases in which relief is sought in the Supreme Court, all pleadings, docket entries, and filings related thereto (hereafter "case records") shall be available for public access unless otherwise provided by law or by a rule of this Court, or unless otherwise ordered by the Court in accordance with this Rule.

(b) Means of public access. Case records that are available for public access may be reviewed in person at the Clerk's Office in the State Capitol or be reviewed electronically if the records are posted to the Court's website. Case records posted to the website may include, but are not limited to: the order of the lower tribunal that is subject to the appeal, certified question, or original action; the briefs filed by the parties in cases set for argument under Rule 20, even if the case is otherwise confidential; and the orders and decisions of this Court. Case records in pending cases may be reviewed at the Clerk's Office in the State Capitol during regular business hours. Case records in disposed cases may be reviewed at the Clerk's Office during regular business hours, provided that sufficient advance notice is provided. Written requests for copies of documents must be addressed to the Clerk, be specific, and provide sufficient advance notice. Charges for copies of documents in case records provided by the Clerk's Office are set forth in an administrative order that is posted to the Court's website. There is no charge for access to case records using the Court's website.

(c) Case records already determined to be confidential by a lower tribunal. Either in the notice of appeal or in the petitioner's brief, whichever is filed first, the appealing party shall indicate that the case record or a portion of the case record was determined to be confidential by the lower tribunal, and shall cite the authority for the confidentiality. Unless otherwise provided by order of this Court, upon filing, the portion of the case record determined to be confidential by the lower tribunal shall remain confidential. Whenever a party files a pleading or other document that is confidential in part or in its entirety, the party shall identify, by cover letter or otherwise, in a conspicuous manner, the portion of the filing that is confidential. Any party or other person with standing may file a motion to unseal the case record or portion of a case record in this Court, setting forth good cause why the case record should no longer be confidential. An opposing party may respond to the motion within ten days from the date of filing of the motion. Upon its consideration, the Court may, in its discretion, issue an order unsealing all or part of the case record, or issue an order denying the motion.

(d) Case records not previously determined to be confidential. Any party or other person with standing may file an original and the number of copies required by Rule 38 of a motion to seal the case record or portion of a case record in this Court. The motion must state the legal authority for confidentiality. Upon filing of the motion to seal, the case record or portion of the case record that is the subject of the motion shall be kept confidential pending a ruling on the motion. An opposing party may file a response to a motion to seal within ten days of the date of filing of the motion. Upon its consideration, the Court may, in its discretion, issue an order sealing all or part of the case record, or issue an order denying the motion.

Trial Court Rules

Rule 10. Filing and Removal of Papers; Limitation of Access to Court Files

Rule 10.03. Limitation of Access to Court Files

(a) Nature of Order. Upon motion by either party named in any civil action, the court may limit access to court files. The order of limitation shall specify the nature of the limitation, the duration of the limitation, and the reason for the limitation. Upon motion filed with the complaint, accompanied by a supporting affidavit, limitation of access may be granted ex parte.

(b) Review of Order. An order limiting access may be reviewed by the court at any time on its own motion or upon the motion of any person.

Rule 10.04. Access to Court Files and Other Court Records under the Freedom of Information Act

(a) All persons are, unless otherwise expressly provided by law or excepted by Rule 10.03, entitled to full and complete information regarding the operation and affairs of the judicial system. Any elected or appointed official or other court employee charged with administering the judicial system shall promptly respond to any request filed pursuant to the West Virginia Freedom of Information Act.

(b) Writings and documents relating to the conduct of the public's business, and which are prepared, owned or retained by a court, circuit clerk, or other court employee, are to be considered "public records." Requests for such writings must be directed to, and responded to by, the particular court, circuit clerk, or other court employee who retains custody of the particular public records sought.

(c) Writings relating to the conduct of the public's business, but which are prepared, owned and retained by individuals other than court officers or employees, such as private or independent contractors, are not considered "public records."

WISCONSIN

Wis. Stat. § 19.35. Access to records; fees.

(1) Right to inspection.

(a) Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.

[(am) personal identifying information provision omitted]

(b) Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record. If a requester appears personally to request a copy of a record that permits copying, the authority having custody of the record may,

at its option, permit the requester to copy the record or provide the requester with a copy substantially as readable as the original.

(c) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a comprehensible audio recording a copy of the recording substantially as audible as the original. The authority may instead provide a transcript of the recording to the requester if he or she requests.

(d) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a video recording a copy of the recording substantially as good as the original.

(e) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is not in a readily comprehensible form a copy of the information contained in the record assembled and reduced to written form on paper.

(em) If an authority receives a request to inspect or copy a record that is in handwritten form or a record that is in the form of a voice recording which the authority is required to withhold or from which the authority is required to delete information under s. 19.36 (8) (b) because the handwriting or the recorded voice would identify an informant, the authority shall provide to the requester, upon his or her request, a transcript of the record or the information contained in the record if the record or information is otherwise subject to public inspection and copying under this subsection.

(f) Notwithstanding par. (b) and except as otherwise provided by law, any requester has a right to inspect any record not specified in pars. (c) to (e) the form of which does not permit copying. If a requester requests permission to photograph the record, the authority having custody of the record may permit the requester to photograph the record. If a requester requests that a photograph of the record be provided, the authority shall provide a good quality photograph of the record.

(g) Paragraphs (a) to (c), (e) and (f) do not apply to a record which has been or will be promptly published with copies offered for sale or distribution.

(h) A request under pars. (a) to (f) is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under s. 19.37.

(i) Except as authorized under this paragraph, no request under pars. (a) and (b) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the request is received by mail, unless prepayment of a fee is required under sub. (3) (f). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(j) Notwithstanding pars. (a) to (f), a requester shall comply with any regulations or restrictions upon access to or use of information which are specifically prescribed by law.

(k) Notwithstanding pars. (a), (am), (b) and (f), a legal custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

(L) Except as necessary to comply with pars. (c) to (e) or s. 19.36 (6), this subsection does not require an authority to create a new record by extracting information from existing records and compiling the information in a new format.

[(3-4) omitted]

(5) Record destruction. No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record under sub. (1) until after the request is granted or until at least 60 days after the date that the request is denied or, if the requester is a committed or incarcerated person, until at least 90 days after the date that the request is denied. If an authority receives written notice that an action relating to a record has been commenced under s. 19.37, the record may not be destroyed until after the order of the court in relation to such record is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record and the order is not appealed, the record may not be destroyed until after the request for inspection or copying is granted.

[(6)-(7) omitted]

§ 801.19. Protected Information in Circuit Court Record

[Effective: July 1, 2016]

[(1) definition provisions omitted]

(2) Required omission or redaction of protected information.

(a) To retain privacy and prevent misuse of personal information, no party shall, on or after July 1, 2016, submit protected information in any document filed in any action or proceeding in circuit court except in the manner provided by this section.

(b) Except as provided in par. (c), the parties to the action are solely responsible for ensuring that protected information does not appear in any document filed with the court. The court will not review each document filed by a party for compliance with this section. Protected information that is not properly submitted is accessible to the public to the same extent as the rest of the court record.

(c) A party shall omit or redact protected information from documents filed with the court unless the protected information is required by law or is necessary to the action. When protected information is provided to the court, a party shall omit or redact it from any documents filed and shall provide it to the court subject to all of the following:

[(1)-(3) omitted]

(d) The protected information form and attachments are not accessible to the public, even if admitted as a trial or hearing exhibit, unless the court permits access. The clerk of circuit court or register in probate may certify the record as a true copy of an original record on file with the court by stating that information has been redacted or sealed in accordance with court rules or as ordered by the circuit court.

[(e) omitted]

(f) 1. A party waives the protection of this section as to the party's own protected information by filing it without the protected information form.

2. If a party fails to comply with the requirements of this section, the court may, upon motion or its own initiative, seal the improperly filed documents and order new redacted documents to be prepared.

3. If a party fails to comply with the requirements of this section in regard to another person's protected information, the court may impose reasonable expenses, including attorney fees and costs, or may sanction the conduct as contempt.

(g) The court shall not include protected information in publicly accessible documents generated by the court, including judgments, orders, decisions, and notices. If the protected information is required by law or is necessary to the action, it shall be maintained and disseminated in a confidential manner. Notwithstanding this section, protected information may be referred to in open court to the extent deemed necessary by the court and may be taken down by the court reporter as part of the record.

(h) 1. Protected information shall be accessible to the parties, their attorneys, guardians ad litem appointed to the case, judicial officers, and court staff as assigned, unless otherwise ordered by the court. Access to other persons and agencies shall be allowed as provided by law. The parties may stipulate in writing to allow access to protected information to any person.

2. Any person may file a motion for access to protected information for good cause. Written notice of the motion to all parties shall be required.

3. If the person seeking access cannot locate a party to provide the notice required under this section, an affidavit may be filed with the court setting forth reasonable efforts to locate the party and requesting waiver of the notice requirement. The court may waive the notice requirement if the court finds that further efforts to locate the party are not likely to be successful.

(i) On appeal, if the record assembled under s. 809.15 (1) (c) includes the redacted version of any document, it shall also contain the unredacted version if submitted under sub. (2) (c) 2. The unredacted version shall be marked as confidential. Confidential paper documents shall be submitted in a sealed envelope.

[(3)-(4) omitted]

§ 801.20. When documents may be filed as confidential.

(1) The director of state courts shall maintain a list of commonly-filed documents made confidential by statutes, court rules and case law, and shall make this list publicly available. Documents on the list may be submitted by a party without a motion or court order and will be automatically treated by the court as confidential.

(2) A filing party is responsible for properly identifying a document as confidential at the time it is filed. The court is not required to review documents to determine if the documents are confidential in nature.

WYOMING

Statute

§ 16-4-203. Right of inspection; grounds for denial; access of news media; order permitting or restricting disclosure; exceptions. [Effective until July 1, 2020]

(a) The custodian of any public records shall allow any person the right of inspection of the records or any portion thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:

- (i) The inspection would be contrary to any state statute;
- (ii) The inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or
- (iii) The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record.

Rules of Civil Procedure

Rule 5.2. Privacy protection for filings made with the court.

Privacy protection for filings made with the court. Unless otherwise ordered by the court, all documents filed with the court shall comply with the Rules Governing Redactions from Court Records and Rules Governing Access to Court Records.

Rules Governing Access to Court Records

Rule 1. Scope and purpose of rules.

These rules shall govern public access to court records as defined herein. The rules are designed and should be interpreted to (1) promote access to court records; (2) protect individual privacy rights and public interests; (3) prevent public access to information that is confidential as a matter of law, public policy, court rule, or court order; and (4) make effective use of court staff. The order in which these are listed does not reflect their importance; all are equally important.

Rule 3. General policy.

Court records are presumed to be open to public access during the regular business hours of the court, except as provided herein or otherwise provided by law. These rules are not intended to limit the access of parties and attorneys to case records of cases in which they are involved, but such access may be limited by court order. No custodian may restrict access or allow greater access to court records than as provided herein or otherwise provided by law.

Rule 8. Motions to Limit Public Access to Information in Case Record

A motion to limit public access to information in a case record, supported by affidavit showing good cause, may be filed by any party to the case, by any interested person, by an entity charged with maintaining the confidentiality of records, or by the court. The motion and affidavit shall be accompanied by a proposed order, request for setting, and a certificate showing service of the motion and affidavit upon the parties and any interested persons, or a

request for waiver of the notice requirements due to inability to locate any interested person after due diligence. The motion and affidavit of an interested person shall be titled as a motion for limited intervention and shall include a request for an order granting limited intervention. Any party or interested person may file a response within thirty days of service of the motion. When a motion to limit public access is filed, the Clerk shall keep the documents confidential and shall restrict public access until the judge has ruled on the motion. After the court has ruled on the motion, the clerk shall file the documents accordingly. Upon a finding that the information is confidential as a matter of law, or that disclosure of the information would do substantial injury to the public interest or to the privacy interest of an interested person, and the interest in non-disclosure resulting from such substantial injury outweighs the public right of access, notwithstanding the fact that the information might otherwise be available for public access, the court shall limit public access or the manner of public access, using the least restrictive means that achieves the purposes of the limitation. A record of the finding shall be kept, and the factual basis for the finding upon which closure is predicated shall be made apparent therein. There shall be a publicly accessible indication of the existence of information within a case record, to which access has been restricted, which indication shall include the title of the document with a notation that it is sealed.

Rule 9. Motions Requesting Access to Sealed Documents in Case Record

Any person may file a motion for limited intervention, supported by affidavit showing good cause, for access to sealed documents in a case record, which shall be accompanied by a proposed order, request for setting, and a certificate showing service of the motion and affidavit upon the parties and any interested persons, or a request for waiver of the notice requirement due to inability to locate any interested person after due diligence. The motion shall include a request for an order granting limited intervention. The court may waive the notice requirement if the court finds that good faith efforts to locate an interested person have been made, that further efforts are not likely to be successful, and that the need for access to the sealed documents outweighs any prejudice to any interested person, and is in the interest of justice. Any party or interested person may file a response within thirty days of service of the motion. In determining the motion, the court shall consider applicable law and the content and purpose of these rules, and shall, in particular, balance the presumption in favor of public access to court records against the need to protect individual privacy rights and the public interest. This rule applies to case records that have been sealed, but does not apply to court records that are confidential as a matter of law.