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Rule 5.4. Sealing and Unsealing Court Records
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Arizona Revised Statutes Annotated
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II. Commencing an Action; Service of Process, Pleadings, Motions and Orders; Duties of Counsel

16 A.R.S. Rules of Civil Procedure, Rule 5.4

Rule 5.4. Sealing and Unsealing Court Records

Currentness

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

(b) **Definitions.** For this rule's purposes:

- (1) "document" means any filing, exhibit, record, or other documentary material to be filed or lodged with the court;
- (2) "lodged document" means a document that is temporarily deposited with the court but is not filed or made available for public access;
- (3) "public access" means the inspection or copying of a document by a member of the public; and
- (4) "sealed document" means a document filed or lodged with the court for which public access is prohibited by statute, rule, or court order.

(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) *Order's Contents.*

(A) *If All of a Document Is Protected.* If the court finds that the requirements for filing a document under seal are met and the entire document meets those requirements, it must order the clerk to file the document under seal.

(B) *If Only Part of a Document Is Protected.* If the court finds only certain pages or portions of pages of a document contain information that merit being placed under seal, it must order:

- (i) the submitting person, if he or she has not already done so, to file a publicly accessible version of the document that redacts only those portions of the document; and
- (ii) the clerk to file under seal the unredacted version of the document lodged under Rule 5.4(e).

(C) *Advance Authorization.* If the court determines that an entire category or type of document meets this rule's requirements, it may enter an order:

- (i) authorizing one or more designated parties or persons to file under seal any document that falls within a designated document category or type; and
- (ii) directing the clerk to file under seal any document submitted by a designated party or person if the clerk is presented with a copy of the court's order.

(4) *The Clerk's Duties.* If the court orders the sealing of a document, the clerk must file the order to seal, file the document under seal as directed in the court's order, and secure the sealed document from public access. Unless the court orders otherwise, the date of the sealed document's filing is the date the document was lodged with the clerk. The clerk must maintain the document under seal until further order of the court. Nothing in this rule is intended to affect the clerk's normal records disposition policy.

(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) *Motion or Stipulation to File a Document Under Seal.*

(1) *Generally.* Any person may file a motion or join in a stipulation to file a document under seal.

(2) *Contents.* 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, including, if applicable, why the request satisfies the requirements of Rule 5.4(c)(2). It also must state whether any party opposes the request, and, if no party opposes it, the submitting person also must insert the phrase "Not Opposed" below the title of the motion or stipulation.

(3) *Good Faith Consultation.* If the request is made by a motion or by a stipulation joined by fewer than all the parties, the motion or stipulation must be accompanied by a Rule 7.1(h) good faith consultation certificate.

(4) *Proposed Order.* A proposed order complying with Rule 5.1(d) must accompany a motion or stipulation to file a document under seal.

(5) *Public Version.* Unless the motion or stipulation seeks to file under seal all of a document's contents, the submitting person must file a publicly accessible version of the document that redacts the portions of the document subject to the motion or stipulation. If a person files a document under seal under an order providing advance authorization to do so and if only part of the document falls within the category or type protected from disclosure under the order, the submitting person must file a publicly accessible version of the document that redacts only the protected portions of the document.

(e) *Lodging and Serving a Document to Be Filed Under Seal.*

(1) *Generally.* Unless the court orders otherwise or the motion or stipulation seeks advance authorization to file under seal a specific category or type of documents, the submitting person must:

(A) separately lodge with the court the entire document subject to the motion or stipulation; and

(B) serve a copy of the entire document on all parties to the action and provide a courtesy copy to the assigned judge.

(2) *Submission.* Unless the clerk has a procedure allowing such documents to be lodged electronically, the person filing the motion or stipulation must submit the document or documents to the clerk in paper form in a secured envelope. A cover sheet must be affixed to the envelope prominently displaying the notation "DOCUMENT(S) PROPOSED FOR FILING UNDER SEAL" and clearly identifying:

(A) the case number and title of the action in which the document or documents are to be filed;

(B) the motion or stipulation seeking to have the document or documents filed under seal;

(C) the underlying motion to which the document or documents pertain; and

(D) each document contained in the envelope with sufficient detail so the court can readily identify it, and the number of pages in each document.

(3) *The Clerk's Duties.*

(A) *Retention.* If a document is lodged with the court under this rule, the clerk must retain but not file the document unless the court orders it filed. The clerk may scan the document and retain it electronically. If it does so, it may destroy the paper copy of the document or return it to the submitting person.

(B) **Public Access.** Until the court decides whether to permit the document to be filed under seal, the clerk must not allow public access to the document. If the court denies the motion or stipulation to file the document under seal, the clerk must continue to restrict public access to the document until it may destroy, delete, or return it as provided in Rule 5.4(f) or as the court orders otherwise.

(C) **Documents Already in the Public File.** If a copy of a lodged document is already in the public file when the motion or stipulation is filed and if the person files a separate written request specifically directed to the clerk asking for such relief (entitled "Request to Clerk to Disallow Public Access to a Document Pending Judicial Review"), the clerk must discontinue allowing public access to the document pending the court's decision whether to permit the document to be filed under seal.

(f) Procedures if a Request to File a Document Under Seal Is Completely or Partly Denied.

(1) **The Submitting Person's Duties.** If the court completely or partially denies a motion or stipulation to file a document under seal, the submitting person must file within 7 days of the order's entry:

- (A) a publicly accessible version of the entire document that conforms to the court's order;
- (B) a notice stating that the person no longer wants to file the document; or
- (C) an unredacted copy of the document.

(2) **The Clerk's Duties.**

(A) **If Completely Denied.** If the court denies in full a motion or stipulation to file a document under seal, the clerk must retain the lodged document for at least 7 days after the entry of the order. After that period of time, the clerk may destroy or delete the lodged document or return it to the submitting person unless the submitting person files a written request specifically directed to the clerk (and entitled "Request to Clerk to Retain Lodged Document for Appellate Review") asking the clerk to retain the lodged document to allow the person to seek appellate review of the denial. If such a request is made, the clerk must maintain the lodged document under seal until the person withdraws the request, the superior court or the appellate court orders otherwise, or the time for appeal expires, at which time the clerk may destroy or delete the lodged document or return it to the submitting person.

(B) **If Partly Denied.** If the court partly denies a motion or stipulation to file a document under seal and the submitting person files a notice stating that the person no longer wants to file the document, the clerk may destroy or delete the lodged document or return it to the submitting person.

(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) **Notice of Lodging.** If the issue is not resolved, the party seeking to file the document or disclose its contents must lodge and serve the document (or the proposed filing) under seal under Rule 5.4(e) and file and serve a notice of lodging on all other parties, and, if applicable, on any nonparty who produced the document at issue. The notice must summarize the dispute and set forth the submitting party's position. It also must be accompanied by a Rule 7.1(h) good faith consultation certificate.

(4) **Response to Notice.** Within 14 days after the notice is served, the person who produced the document must file and serve either:

- (A) a notice withdrawing its confidentiality designation or waiving any other right to require a party to ask the court to file the document (or the portion of a filing quoting its contents) under seal; or
- (B) a motion to seal and a supporting memorandum meeting the requirements of Rule 5.4(d). No response to the motion may be filed unless the court authorizes it.

(5) **If the Producing Person Does Not Respond.** If the producing person does not file a notice or a motion as required by Rule 5.4(g)(4), the court may enter an order making the document (or the portion of a filing quoting its contents) part of the public record.

(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.

Credits

Added Aug. 31, 2017, effective Jan. 1, 2018.

16 A. R. S. Rules Civ. Proc., Rule 5.4, AZ ST RCP Rule 5.4
Current with amendments received through 02/1/19

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Rule 2.19. Sealing or Redacting Court Records
Arizona Revised Statutes Annotated
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Arizona Revised Statutes Annotated
Local Rules of Practice Superior Court (Refs & Annos)
Maricopa County (Refs & Annos)
Rule 2. General Procedure

17C A.R.S. Super.Ct.Local Prac.Rules, Maricopa County, Rule 2.19

Rule 2.19. Sealing or Redacting Court Records

Currentness

a. Request to Seal or Redact Court Records; Service. Any person may request that the court seal or allow the filing of a redacted court record 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 allow the filing of a redacted court record. A motion to seal or allow the filing of a redacted court record must disclose in its title that sealing or redaction is being sought. The motion must be served on all parties in accordance with the applicable rules of service for the case type.

b. Hearing. The court may conduct a hearing on a motion to seal or allow the filing of a redacted court record.

c. Grounds to Seal or Redact; Written Findings Required. The court may order the court files and records, or any part thereof, to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling interests that outweigh the public interest in access to the court record. The findings should include the following:

- (1) there exists a compelling interest that overcomes the right of public access to the record;
- (2) the compelling interest supports sealing or redacting the record;
- (3) a substantial probability exists that the compelling interest will be prejudiced if the record is not sealed or redacted;
- (4) the proposed sealing or redaction is narrowly tailored; and
- (5) no less restrictive means exist to achieve the compelling interest.

Credits

Added June 12, 2013, effective July 1, 2013.

Editors' Notes

HISTORICAL NOTES

Former Rule 2.19 was renumbered as Rule 2.18.

17C A. R. S. Super. Ct. Local Prac. Rules, Maricopa County, Rule 2.19, AZ ST MARICOPA SUPER CT Rule 2.19
Current with amendments received through 02/1/19

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CALIFORNIA



2019 California Rules Of Court

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.

(Subd (a) amended effective January 1, 2007.)

(b) Definitions

As used in this chapter:

- (1) "Record." Unless the context indicates otherwise, "record" means all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court, by electronic means or otherwise.
- (2) "Sealed." A "sealed" record is a record that by court order is not open to inspection by the public.
- (3) "Lodged." A "lodged" record is a record that is temporarily placed or deposited with the court, but not filed.

(Subd (b) amended effective January 1, 2016; previously amended effective January 1, 2007.)

(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.

(Subd (d) amended effective January 1, 2004.)

(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.

(Subd (e) amended effective January 1, 2007; previously amended effective January 1, 2004.)

Rule 2.550 amended effective January 1, 2016; adopted as rule 243.1 effective January 1, 2001; previously amended effective January 1, 2004; previously amended and renumbered as rule 2.550 effective January 1, 2007.

This rule and rule 2.551 provide a standard and procedures for courts to use when a request is made to seal a record. The standard is based on *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178. These rules apply to civil and criminal cases. They recognize the First Amendment right of access to documents used at trial or as a basis of adjudication. The rules do not apply to records that courts must keep confidential by law. Examples of confidential records to which public access is restricted by law are records of the family conciliation court (Family Code, § 1818(b)), in forma pauperis applications (Cal. Rules of Court, rules 3.54 and 8.26), and search warrant affidavits sealed under *People v. Hobbs* (1994) 7 Cal.4th 948. The sealed records rules also do not apply to discovery proceedings, motions, and materials that are not used at trial or submitted to the court as a basis for adjudication. (See *NBC Subsidiary, supra*, 20 Cal.4th at pp. 1208-1209, fn. 25.)

Rule 2.550(d)-(e) is derived from *NBC Subsidiary*. That decision contains the requirements that the court, before closing a hearing or sealing a transcript, must find an "overriding interest" that supports the closure or sealing, and must make certain express findings. (*Id.* at pp. 1217-1218.) The decision notes that the First Amendment right of access applies to records filed in both civil and criminal cases as a basis for adjudication. (*Id.* at pp. 1208-1209, fn. 25.) Thus, the *NBC Subsidiary* test applies to the sealing of records.

NBC Subsidiary provides examples of various interests that courts have acknowledged may constitute "overriding interests." (See *id.* at p. 1222, fn. 46.) Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute "overriding interests." The rules do not attempt to define what may constitute an "overriding interest," but leave this to case law.

FLORIDA

Florida Rule of Judicial Administration 2.420

Public Access to Judicial Branch Records

(a) Scope and Purpose. Subject to the rule making power of the Florida Supreme Court provided by article V, section 2, Florida Constitution, the following rule shall govern public access to 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.

(b) Definitions.

(1) "Records of the judicial branch" are all records, regardless of physical form, characteristics, or means of transmission, made or received in connection with the transaction of official business by any judicial branch entity and consist of:

(A) "court records," which are the contents of the court file, including the progress docket and other similar records generated to document activity in a case, transcripts filed with the clerk, documentary exhibits in the custody of the clerk, and electronic records, videotapes, or stenographic tapes of depositions or other proceedings filed with the clerk, and electronic records, videotapes, or stenographic tapes of court proceedings; and

(B) "administrative records," which are all other records made or received pursuant to court rule, law, or ordinance, or in connection with the transaction of official business by any judicial branch entity.

(2) "Judicial branch" means the judicial branch of government, which includes the state courts system, the clerk of court when acting as an arm of the court, The Florida Bar, the Florida Board of Bar Examiners, the Judicial Qualifications Commission, and all other entities established by or operating under the authority of the supreme court or the chief justice.

(3) "Custodian." The custodian of all administrative records of any court is the chief justice or chief judge of that court, except that each judge is the custodian of all records that are solely within the possession and control of that judge. As to all other records, the custodian is the official charged with the responsibility of maintaining the office having the care, keeping, and supervision of such records. All references to "custodian" mean the custodian or the custodian's designee.

(c) Exemptions. The following records of the judicial branch shall be confidential:

(1) Trial and appellate court memoranda, drafts of opinions and orders, court conference records, notes, and other written materials of a similar nature prepared by judges or court staff acting on behalf of or at the direction of the court as part of the court's judicial decision-making process utilized in disposing of cases and controversies before Florida courts unless filed as a part of the court record;

(2) Memoranda or advisory opinions that relate to the administration of the court and that require confidentiality to protect a compelling governmental interest, including, but not limited to, maintaining court security, facilitating a criminal investigation, or protecting public safety, which cannot be adequately protected by less restrictive measures. The degree, duration, and manner of confidentiality imposed shall be no broader than necessary to protect the compelling governmental interest involved, and a finding shall be made that no less restrictive measures are available to protect this interest. The decision that confidentiality is required with respect to such administrative memorandum or written advisory opinion shall be made by the chief judge;

(3)(A) Complaints alleging misconduct against judges until probable cause is established;

(B) Complaints alleging misconduct against other entities or individuals licensed or regulated by the courts, until a finding of probable cause or no probable cause is established, unless otherwise provided. Such finding should be

made within the time limit set by law or rule. If no time limit is set, the finding should be made within a reasonable period of time;

(4) Periodic evaluations implemented solely to assist judges in improving their performance, all information gathered to form the bases for the evaluations, and the results generated therefrom;

(5) Only the names and qualifications of persons applying to serve or serving as unpaid volunteers to assist the court, at the court's request and direction, shall be accessible to the public. All other information contained in the applications by and evaluations of persons applying to serve or serving as unpaid volunteers shall be confidential unless made public by court order based upon a showing of materiality in a pending court proceeding or upon a showing of good cause;

(6) Copies of arrest and search warrants and supporting affidavits retained by judges, clerks, or other court personnel until execution of said warrants or until a determination is made by law enforcement authorities that execution cannot be made;

(7) All records made confidential under the Florida and United States Constitutions and Florida and federal law;

(8) All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission;

(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 (A); and

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

(10) The names and any identifying information of judges mentioned in an advisory opinion of the Committee on Standards of Conduct for Judges.

(d) Request to Make Circuit and County Court Records in Noncriminal Cases Confidential.

(1) A request to make circuit and county court records in noncriminal cases confidential under subdivision (c)(9) must be made in the form of a written motion captioned "Motion to Make Court Records Confidential." A motion made under this subdivision must:

(A) identify the particular court records the movant seeks to make confidential with as much specificity as possible without revealing the information to be made confidential; and

(B) specify the bases for making such court records confidential.

Any motion made under this subdivision must include a signed certification by the party making the request that the motion is being made in good faith and is supported by a sound factual and legal basis. The court records that are subject to a motion made under this subdivision must be treated as confidential by the clerk pending the court's ruling on the motion. Notwithstanding any of the foregoing, the court may not make confidential the case number, docket number, or other number used by the clerk's office to identify the case file.

(2) Except when a motion filed under subdivision (d)(1) represents that all parties agree to all of the relief requested, the court must, as soon as practicable but no later than 30 days after the filing of a motion under this subdivision, hold a hearing before ruling on the motion. Whether or not any motion filed under subdivision (d)(1) is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any party may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A). The moving party shall be responsible for ensuring that a complete record of any hearing held pursuant to this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court. The court may in its discretion require prior public notice of the hearing on such a motion in accordance with the procedure for providing public notice of court orders set forth in subdivision (d)(4) or by providing such other public notice as the court deems appropriate.

(3) Any order granting in whole or in part a motion filed under subdivision (d)(1) must state the following with as much specificity as possible without revealing information made confidential:

(A) The type of case in which the order is being entered;

(B) The particular grounds under subdivision (c)(9)(A) for making the court records confidential;

(C) Whether any party's name is to be made confidential and, if so, the particular pseudonym or other term to be substituted for the party's name;

(D) Whether the progress docket or similar records generated to document activity in the case are to be made confidential;

(E) The particular court records that are to be made confidential;

(F) The names of those persons who are permitted to view the confidential court records;

(G) That the court finds that: (i) the degree, duration, and manner of confidentiality ordered by the court is no broader than necessary to protect the interests set forth in subdivision (c)(9)(A); and (ii) no less restrictive measures are available to protect the interests set forth in subdivision (c)(9)(A); and

(H) That the clerk of the court is directed to publish the order in accordance with subdivision (d)(4).

(4) Except as provided by law or court rule, notice must be given of any order granting a motion made under subdivision (d)(1) as follows. Within 10 days following the entry of the order, the clerk of court must post a copy of the order on the clerk's website and in a prominent, public location in the courthouse. The order must remain posted in both locations for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (d)(3), the request must be made in the form of a written motion that states with as much specificity as possible the bases for the request. The movant must serve all parties in the action with a copy of the motion. In the event that the subject order specifies that the names or addresses of one or more parties are to be made confidential, the movant must state prominently in the caption of the motion "Confidential Party -- Court Service Requested." When a motion so designated is filed, the court shall be responsible for providing a copy of the motion to the parties in such a way as to

not reveal the confidential information to the movant. Except when a motion filed under this subdivision represents that all parties agree to all of the relief requested, the court must hold a hearing before ruling on the motion. Whether or not any motion filed under this subdivision is agreed to by the parties, the court may in its discretion hold a hearing on such motion. Any hearing held under this subdivision must be an open proceeding, except that any party may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c)(9)(A). The movant shall be responsible for ensuring that a complete record of any hearing held under this subdivision be created, either by use of a court reporter or by any recording device that is provided as a matter of right by the court.

(6) If the court determines that a motion made under subdivision (d)(1) was not made in good faith and supported by a sound legal and factual basis, the court may impose sanctions upon the movant.

(7) Court records made confidential under this rule must be treated as confidential during any appellate proceedings. In any case where an order making court records confidential remains in effect as of the time of an appeal, the clerk's index must include a statement that an order making court records confidential has been entered in the matter and must identify such order by date or docket number.

(e) Judicial Review of Denial of Access Request. Expedited review of denials of access to records of the judicial branch shall be provided through an action for mandamus, or other appropriate appellate remedy, in the following manner:

(1) Where a judge who has denied a request for access to records is the custodian, the action shall be filed in the court having appellate jurisdiction to review the decisions of the judge denying access. Upon order issued by the appellate court, the judge denying access to records shall file a sealed copy of the requested records with the appellate court.

(2) All other actions under this rule shall be filed in the circuit court of the circuit in which such denial of access occurs.

(f) Procedure. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

(1) Requests for access to records shall be in writing and shall be directed to the custodian. The request shall provide sufficient specificity to enable the custodian to identify the requested records. The reason for the request is not required to be disclosed.

(2) The custodian shall be solely responsible for providing access to records of the custodian's entity. The custodian shall determine whether the requested record is subject to this rule and, if so, whether the record or portions of the record are exempt from disclosure. The custodian shall determine the form in which the record is provided. If the request is denied, the custodian shall state in writing the basis for the denial.

(3) Fees for copies of records in all entities in the judicial branch of government, except for copies of court records, shall be the same as those provided in section 119.07, Florida Statutes (2001).

MICHIGAN

MICHIGAN

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. Trials courts shall comply with the records standards in this rule, MCR 1.109, and as prescribed by the Michigan Supreme Court.

(C) Filing of Documents and Other Materials. The clerk of the court shall process and maintain documents filed with the court as prescribed by Michigan Court Rules and the Michigan Trial Court Records Management Standards and all filed documents must be file stamped in accordance with these standards. The clerk of the court may only reject documents that do not comply with MCR 1.109(D)(1) and (2), are not signed in accordance with MCR 1.109(E), or are not accompanied by a required filing fee or a request for fee waiver, unless already waived or suspended by court order.

(D) Records Kept by the Clerk of the Court. The clerk of the court shall maintain the following case records in accordance with the Michigan Trial Court Records Management Standards. Documents and other materials made nonpublic or confidential by court rule, statute, or order of the court pursuant to subrule (I) must be designated accordingly and maintained to allow only authorized access. In the event of transfer or appeal of a case, every rule, statute, or order of the court under subrule (I) that makes a document or other materials in that case nonpublic or confidential applies uniformly to every court in Michigan, irrespective of the court in which the document or other materials were originally filed.

(1) Case History and Case Files. The clerk shall maintain records of each case consisting of case history (known as a register of actions) and, except for civil infractions, a case file in such form and style as may be prescribed by the State Court Administrative Office. Each case shall be assigned a case number on receipt of a case initiating document. The case number shall comply with MCR 1.109(D)(1)(b)(iii). In addition to the case number, a separate petition number shall be assigned to each petition filed under the juvenile code, MCL 712A.1 *et seq.*, as required under MCR 1.109(D)(1)(d). The case number (and petition number if applicable) shall be recorded in the court's automated case management system and on the case file. The records shall include the following characteristics:

(a) Case History. The clerk shall create and maintain a case history of each case, known as a register of actions, in the court's automated case management system. The automated case management system shall be capable of chronologically displaying the case history for each case and shall also be capable of searching a case by number or party name (previously known as numerical and alphabetical indices) and displaying the case number, date of filing, names of parties, and names of any attorneys of record. The case history shall contain both pre- and post-judgment information and shall, at a minimum, consist of the data elements prescribed in the Michigan Trial Court Records Management Standards. Each entry shall be brief, but shall show the nature of each item filed, each order or

judgment of the court, and the returns showing execution. Each entry shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action.

(b) Case File. The clerk of the court shall maintain a file of each action, bearing the case number assigned to it, for all pleadings, process, written opinions and findings, orders, and judgments filed in the action, and any other materials prescribed by court rule, statute, or court order to be filed with the clerk of the court. If case file records are maintained separately from the case files, the clerk shall maintain them as prescribed by the Michigan Trial Court Records Management Standards.

(2) Calendars. The clerk may maintain calendars of actions. A calendar is a schedule of cases ready for court action that identifies times and places of activity.

(3) Abolished Records.

(a) Journals. Except for recording marriages, journals shall not be maintained.

(b) Dockets. Case history replaces a docket. Wherever these rules or applicable statutes require entries on a docket, those entries shall be entered in the court's automated case management system.

(4) Official Court Record. There is only one official court record, regardless whether original or suitable-duplicate and regardless of the medium. Suitable-duplicate is defined in the Michigan Trial Court Records Management Standards. Documents electronically filed with the court or generated electronically by the court are original records and are the official court record. A paper printout of any electronically filed or generated document is a copy and is a nonrecord for purposes of records retention and disposal.

(E) Other Case Records. The clerk or other persons designated by the chief judge of the court shall maintain in the manner prescribed by these rules, other materials filed with or handled by the court for purposes of case processing, including but not limited to wills filed for safekeeping, case evaluations, exhibit logs, presentence reports, probation files, problem-solving court treatment files, financial statements for collections, and friend of the court records.

(F) Court Recordings, Log Notes, Jury Seating Charts, and Media. Court recordings, log notes, jury seating charts, and all other records such as tapes, backup tapes, discs, and any other medium used or created in the making of a record of proceedings and kept pursuant to MCR 8.108 are court records and are subject to access in accordance with subrule (H)(2)(b).

(G) Other Court Records. All court records not included in subrules (D), (E), and (F) are considered administrative and fiscal records or nonrecord materials and are not subject to public access under subrule (H). These records are defined in the approved records retention and disposal schedule for trial courts.

(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 shall be held under seal 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).

(J) Access and Reproduction Fees.

- (1) A court may not charge a fee to access public case history information or to retrieve or inspect a case document irrespective of the medium in which the case record is retained, the manner in which access to the case record is provided (including whether a record is retained onsite or offsite), and the technology used to create, store, retrieve, reproduce, and maintain the case record.
- (2) A court may charge a reproduction fee for a document pursuant to MCL600.1988, except when required by law or court rule to provide a copy without charge to a person or other entity.

(3) The court may provide access to its public case records in any medium authorized by the records reproduction act, 1992 PA 116; MCL 24.401 to 24.403.

(4) Reproduction of a case document means the act of producing a copy of that document through any medium authorized by the records reproduction act, 1992 PA 116; MCL 24.401 to 24.403.

(a) A court may charge only for the actual cost of labor and supplies and the actual use of the system, including printing from a public terminal, to reproduce a case document and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce the document.

(b) If a person wishes to obtain copies of documents in a file, the clerk shall provide copies upon receipt of the actual cost of reproduction.

(c) Except as otherwise directed by statute or court rule, a standard fee may be established, pursuant to (H)(2), for providing copies of documents on file.

(5) A court is not required to create a new record out of its existing records. A new record means the compilation of information into a format that does not currently exist or that cannot be generated electronically using predefined formats available through a court's case management system. Providing access to documents or furnishing copies of documents in an existing file does not constitute creation of a new record, even when the output appears in a format different than the format of the original record or document because the output is the result of predefined formats.

(a) A court may create a new record or compilation of records pertaining to case files or case-related information on request, provided that the record created or compiled does not disclose information that would otherwise be confidential or restricted by statute, court rule, or an order entered pursuant to subrule (I).

(b) A court may charge only for the actual cost of labor and supplies and the actual use of the system to develop, generate, and validate the accuracy of a new record and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce the information or documents for creating a new record.

(c) If a court creates a new record, the clerk shall provide access to the new record upon receipt of the actual cost of creating the record.

(K) Retention Periods and Disposal of Court Records.

For purposes of retention, the records of the trial courts include: (1) administrative and fiscal records, (2) case file and other case records, (3) court recordings, log notes, jury seating charts, and recording media, and (4) nonrecord material. The records of the trial courts shall be retained in the medium prescribed by MCR 1.109. The records of a trial court may not be disposed of except as authorized by the records retention and disposal schedule and upon order by the chief judge of that court. Before disposing of records subject to the order, the court shall first transfer to the Archives of Michigan any records

specified as such in the Michigan trial courts approved records retention and disposal schedule. An order disposing of court records shall comply with the retention periods established by the State Court Administrative Office and approved by the state court administrator, Attorney General, State Administrative Board, Archives of Michigan, and Records Management Services of the Department of Management and Budget, in accordance with MCL 399.811.

(L) Reporting Duties.

(1) The clerk of every court shall submit reports and records as required by statute and court rule.

(2) The clerk of every court shall submit reports or provide records as required by the State Court Administrative Office, without costs.

NORTH CAROLINA

(procedure for access
to civil judicial records; not
sealing standard)

§ 1-72.1. Procedure to assert right of access.

(a) Any person asserting a right of access to a civil judicial proceeding or to a judicial record in that proceeding may file a motion in the proceeding for the limited purpose of determining the person's right of access. The motion shall not constitute a request to intervene under the provisions of Rule 24 of the Rules of Civil Procedure and shall instead be governed by the procedure set forth in this statute. The movant shall not be considered a party to the action solely by virtue of filing a motion under this section or participating in proceedings on the motion. An order of the court granting a motion for access made pursuant to this section shall not make the movant a party to the action for any purpose.

(b) The movant shall serve a copy of its motion on all parties to the proceeding in any manner provided in Rule 5 of the Rules of Civil Procedure. Upon receipt of a motion filed pursuant to this section, the court shall establish the date and location of the hearing on the motion that shall be set at a time before conducting any further proceedings relative to the matter for which access is sought under the motion. The court shall cause notice of the hearing date and location to be posted at the courthouse where the hearing is scheduled. The movant shall serve a copy of the notice of the date, time, and location of the hearing on all parties to the proceeding in any manner provided in Rule 5 of the Rules of Civil Procedure.

(c) The court shall rule on the motion after consideration of such facts, legal authority, and argument as the movant and any other party to the action desire to present. The court shall issue a written ruling on the motion that shall contain a statement of reasons for the ruling sufficiently specific to permit appellate review. The order may also specify any conditions or limitations on the movant's right of access that the court determines to be warranted under the facts and applicable law. ✓

(d) A party seeking to seal a document or testimony to be used in a court proceeding may submit the document or testimony to the court to be reviewed in camera. This subsection also applies to (i) any document or testimony that is the subject of a motion made under this section and that is submitted for review for the purposes of the court's consideration of the motion to seal, and (ii) to any document or testimony that is the subject of a motion made under this section and that was submitted under seal or offered in closed session prior to the filing of a motion under this section. Submission of the document or proffer of testimony to the court pursuant to this section shall not in itself result in the document or testimony thereby becoming a judicial record subject to constitutional, common law, or statutory rights of access unless the document or testimony is thereafter introduced into evidence after a motion to seal or to restrict access is denied.

(e) A ruling on a motion made pursuant to this section may be the subject of an immediate interlocutory appeal by the movant or any party to the proceeding. Notice of appeal must be given in writing, filed with the court, and served on all parties no later than 10 days after entry of the court's ruling. If notice of appeal is timely given and given before further proceedings are held in the court that might be affected by appellate review of the matter, the court, on its own motion or on the motion of the movant or any party, shall consider whether to stay any proceedings that could be affected by appellate review of the court's ruling on the motion. If notice of appeal is timely given but is given only after further proceedings in the trial court that could be affected by appellate review of the ruling on a motion made pursuant to this section, or if a request for stay of proceedings is made and is denied, then the sole relief that shall be available on any appeal in the event the appellate court determines that the ruling of the trial court was erroneous shall be reversal of the trial court's ruling on the motion and remand for rehearing or retrial. On appeal the court may determine that a ruling of the trial court sealing a document or restricting access to proceedings or refusing to unseal documents or open proceedings was erroneously entered, but it may not retroactively order the unsealing of documents or the opening of testimony that was sealed or closed by the trial court's order.

(f) This section is intended to establish a civil procedure for hearing and determining claims of access to documents and to testimony in civil judicial proceedings and shall not be deemed or

construed to limit, expand, change, or otherwise preempt any provisions of substantive law that define or declare the rights and restrictions with respect to claims of access. Without in any way limiting the generality of the foregoing provision, this section shall not apply to juvenile proceedings or court records of juvenile proceedings conducted pursuant to Chapters 7A, 7B, 90, or any other Chapter of the General Statutes dealing with juvenile proceedings.

(g) Nothing in this section diminishes the rights of a movant or any party to seek appropriate relief at any time from the Supreme Court or Court of Appeals through the use of the prerogative writs of mandamus or supersedeas. (2001-516, s. 1.)

OHIO

Rules of Superintendence for the Courts of Ohio

RULE 45. Court Records – Public Access.

(A) Presumption of public access

Court records are presumed open to public access.

(B) Direct access

(1) A court or clerk of court shall make a court record available by direct access, promptly acknowledge any person's request for direct access, and respond to the request within a reasonable amount of time.

(2) Except for a request for bulk distribution pursuant to Sup. R. 46, a court or clerk of court shall permit a requestor to have a court record duplicated upon paper, upon the same medium upon which the court or clerk keeps it, or upon any other medium the court or clerk determines it can be reasonably duplicated as an integral part of its normal operations.

(3) A court or clerk of court shall mail, transmit, or deliver copies of a requested court record to the requestor within a reasonable time from the request, provided the court or clerk may adopt a policy allowing it to limit the number of court records it will mail, transmit, or deliver per month, unless the requestor certifies in writing that the requestor does not intend to use or forward the records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include news reporting, the gathering of information to assist citizens in the understanding of court activities, or nonprofit educational research.

(4) A court or clerk of court may charge its actual costs incurred in responding to a request for direct access to a court record. The court or clerk may require a deposit of the estimated actual costs.

(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) When submitting a case document to a court or filing a case document with a clerk of court, a party to a judicial action or proceeding shall omit personal identifiers from the document.

(2) When personal identifiers are omitted from a case document submitted to a court or filed with a clerk of court pursuant to division (D)(1) of this rule, the party shall submit or file that information on a separate form. The court or clerk may provide a standard form for parties to use. Redacted or omitted personal identifiers shall be provided to the court or clerk upon request or a party to the judicial action or proceeding upon motion.

(3) The responsibility for omitting personal identifiers from a case document submitted to a court or filed with a clerk of court pursuant to division (D)(1) of this rule shall rest solely with the party. The court or clerk is not required to review the case document to confirm that the party has omitted personal identifiers, and shall not refuse to accept or file the document on that basis.

(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) Redacting the information rather than limiting public access to the entire document;
- (b) Restricting remote access to either the document or the information while maintaining its direct access;
- (c) Restricting public access to either the document or the information for a specific period of time;
- (d) Using a generic title or description for the document or the information in a case management system or register of actions;
- (e) Using initials or other identifier for the parties' proper names.

(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.

SOUTH CAROLINA

SOUTH CAROLINA

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) Filing Documents under seal. Should Rule 26(b)(5), SCRCP, be inapplicable, and absent another governing rule, statute, or order, any party seeking to file documents under seal shall file and serve a "Motion to Seal." The motion shall identify, with specificity, the documents or portions of documents for which sealing is considered necessary, shall contain a non-confidential description of the documents, and shall be accompanied by a separately sealed attachment labeled "Confidential Information to be submitted to Court in Connection with the Motion to Seal." The attachment shall contain the documents for the court to review in camera. The motion shall state the reasons why sealing is necessary, explain why less drastic alternatives to sealing will not afford adequate protection, and address the following factors:

- (1) the need to ensure a fair trial;
- (2) the need for witness cooperation;
- (3) the reliance of the parties upon expectations of confidentiality;
- (4) the public or professional significance of the lawsuit;
- (5) the perceived harm to the parties from disclosure;
- (6) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and
- (7) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

The burden is on the party seeking to seal documents to satisfy the court that the balance of public and private interests favors sealing the documents. In family court matters, the judge shall also consider whether documents: 1) contain material which may expose private financial matters which could adversely affect the parties; and/or 2) relate to sensitive custody issues, and shall specifically balance the special interests of the child or children involved in the family court matter.

Unless otherwise ordered by the court, the clerk of court shall treat the motion to seal in a manner similar to all other motions filed with the court. The motion shall be entered in the Clerk's File Book and on the Motion Calendar and a hearing on the motion shall be held.

(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) the public or professional significance of the lawsuit;
- (2) the perceived harm to the parties from disclosure;
- (3) why alternatives other than sealing the documents are not available to protect legitimate private interests as identified by this Rule; and,
- (4) why the public interest, including, but not limited to, the public health and safety, is best served by sealing the documents.

In family court matters, the judge shall also consider whether the settlement: 1) contains material which may expose private financial matters which could adversely affect the parties; and/or 2) relates to sensitive custody issues, and shall specifically balance the special interests of the child or children involved in the family court matter.

(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.

Note:

Rule 41.1 was enacted to set forth with clarity the fact that the courts of this State are presumed to be open and to set forth with particularity when documents and settlement agreements, submitted to a court for approval, may be sealed.

Last amended by Order dated May 5, 2003.

TEXAS

TEXAS

Rule 76a. Sealing Court Records (1990)

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 out weighs:

(1) this presumption of openness;

(2) any probable adverse effect that sealing will have upon the general public health or safety;

(b) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted.

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

(a) all documents of any nature filed in connection with any matter before any civil court, except:

(1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents;

(2) documents in court files to which access is otherwise restricted by law;

(3) documents filed in an action originally arising under the Family Code.

(b) settlement agreements not filed of record, excluding all reference to any monetary consideration, that seek to restrict disclosure of information concerning matters that have a probable adverse effect upon the general public health or safety, or the, administration of public office, or the operation of government.

(c) discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.

3. Notice. Court records may be sealed only upon a party's written motion, which shall be open to public inspection. The movant shall post a public notice at the place where notices for meetings of county governmental bodies are required to be posted, stating: that a hearing will be held in open court on a motion to seal court records in the specific case; that any person may intervene and be heard concerning the sealing of court records; the specific time and place of the hearing; the style and number of the case; a brief but specific description of both the nature of the case and the records which are sought to be sealed; and the identity of the movant. Immediately after posting such notice, the movant shall file a verified copy of the posted

notice with the clerk of the court in which the case is pending and with the Clerk of the Supreme Court of Texas.

4. Hearing. A hearing, open to the public, on a motion to seal court records shall be held in open court as soon as practicable, but not less than fourteen days after the motion is filed and notice is posted. Any party may participate in the hearing. Non-parties may intervene as a matter of right for the limited purpose of participating in the proceedings, upon payment of the fee required for filing a plea in intervention. The court may inspect records in camera when necessary. The court may determine a motion relating to sealing or unsealing court records in accordance with the procedures prescribed by Rule 120a.

5. Temporary Sealing Order. A temporary sealing order may issue upon motion and notice to any parties who have answered in the case pursuant to Rules 21 and 21a upon a showing of compelling need from specific facts shown by affidavit or by verified petition that immediate and irreparable injury will result to a specific interest of the applicant before notice can be posted and a hearing held as otherwise provided herein. The temporary order shall set the time for the hearing required by paragraph 4 and shall direct that the movant immediately give the public notice required by paragraph 3. The court may modify or withdraw any temporary order upon motion by any party or intervenor, notice to the parties, and hearing conducted as soon as practicable. Issuance of a temporary order shall not reduce in any way the burden of proof of a party requesting sealing at the hearing required by paragraph 4.

6. Order on Motion to Seal Court Records. A motion relating to sealing or unsealing court records shall be decided by written order, open to the public, which shall state: the style and number of the case; the specific reasons for finding and concluding whether the showing required by paragraph 1, has been made; the specific portions of court records which are to be sealed; and the time period for which the sealed portions of the court records are to be sealed. The order shall not be included in any judgment or other order but shall be a separate document in the case; however, the failure to comply with this requirement shall not affect its appealability.

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

8. Appeal. Any order (or portion of an order or judgment) relating to sealing or unsealing court records shall be deemed to be severed from the case and a final judgment which may be appealed by any party or intervenor who participated in the hearing preceding issuance of such order. The appellate court may abate the appeal and order the trial court to direct that further public notice be given, or to hold further hearings, or to make additional findings.

9. Application. Access to documents in court files not defined as court records by this rule remains governed by existing law. This rule does not apply to any court records sealed in an action in which a final judgment has been entered before its effective date. This rule applies to cases already pending on its effective date only with regard to:

- (a) all court records filed or exchanged after the effective date;

(b) any motion to alter or vacate an order restricting access to court records, issued before the effective date.

April 24, 1990, eff. Sept. 1, 1990: New rule to establish guidelines for sealing certain court records in compliance with Government Code § 22.010.