

Cite as 2011 Ark. 251

**SUPREME COURT OF ARKANSAS**

No.

IN RE PROPOSED RULES FOR  
SEALING AND REDACTING COURT  
RECORDS**Opinion Delivered** June 2, 2011

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**PER CURIAM**

We asked our Committee on Civil Practice to examine the need for rules related to the sealing of court documents. In examining this issue, the committee's conclusion is that rules to seal must coordinate with the requirements of Administrative Order No. 19 and the rules that were promulgated to implement it, especially the rules for redacting court documents.

The committee presents to the court a proposal that includes a revision to Administrative Order No. 19 and the creation of two additional rules—one to appear in the Rules of Civil Procedure and the other in the Rules of the Supreme Court and Court of Appeals. The committee believes that after several years of working with the redaction procedures, clarification of the process will be beneficial to the attorneys and clerks of the state. The committee's approach, borrowed from Federal Rule of Civil Procedure 5.2, is to provide more specific guidelines for redaction.

We thank the committee for its work on this project and publish its proposal for comment. We note that if we ultimately accept the committee's approach, additional rules may require attention, but it is premature to address that issue now.

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Comments should be submitted in writing by August 1, 2011, and addressed to: Clerk of the Arkansas Supreme Court, Attention: Civil Practice Committee, Justice Building, 625 Marshall Street, Little Rock, AR 72201.

**Administrative Order Number 19 –  
Access to Court Records**

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**Section IV. General Access Rule.**

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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 or sealed, but there shall be a publicly accessible indication of the ~~fact of~~ redaction or sealing. 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 VII. Court Records Excluded From Public Access.**

~~A. Case records.~~ The following information in court case records is ~~excluded from public access and is generally~~ confidential, absent a court order to the contrary, and shall be redacted or filed under seal pursuant to rules of court, including, Ark. R. Civ. P. 5.1, Ark. R. Crim. P. 1.9, and Ark. Sup. Ct. R. 1-8:

A. Social security or taxpayer-identification numbers;

B. A person's birth date;

C. The name of a person known to be a minor;

D. Account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINS);

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E. All home and business addresses of petitioners who request anonymity when seeking a domestic order of protection pursuant to Ark. Code Ann. § 9-15-202;

F. Information in adoption records pursuant to Ark. Code Ann. § 9-9-217;

G. Information in juvenile records pursuant to Ark. Code Ann. § 9-27-309; and

H. Information that has been expunged, sealed, or otherwise excluded from public access by court order or rule of court.

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) information that is excluded from public access pursuant to federal law;~~
- ~~(2) information that is excluded from public access pursuant to the Arkansas Code Annotated;~~
- ~~(3) information that is excluded from public access by order or rule of court;~~
- ~~(4) Social Security numbers;~~
- ~~(5) account numbers of specific assets, liabilities, accounts, credit cards, and personal identification numbers (PINs);~~
- ~~(6) information about cases expunged or sealed pursuant to Ark. Code Ann. §§ 16-90-901, et seq.;~~
- ~~(7) notes, communications, and deliberative materials regarding decisions of judges, jurors, court staff, and judicial agencies;~~
- ~~(8) all home and business addresses of petitioners who request anonymity when seeking a domestic order of protection.~~

~~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) information that is excluded from public access pursuant to Arkansas Code Annotated or other court rule;~~
- ~~(2) information protected from disclosure by order or rule of court.~~

### Arkansas Rules of Civil Procedure

[new rule]

#### **Rule 5.1. Redacting and Sealing Court Records.**

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(a) *Purpose.* This rule governs procedural issues related to the redacting and sealing of filings made in court records arising under (1) Administrative Order Number 19, (2) rules or statutes restricting public access to court records, and (3) a court's inherent power to seal court records.

(b) *Redacted Filings.* Unless the court orders otherwise, in an electronic or paper filing with the court that contains a person's social-security number, taxpayer-identification number or birth date, the name of a person known to be a minor, a financial-account number, or the addresses of a person requesting anonymity when seeking an order of protection pursuant to Ark. Code Ann. § 9-15-203, a party or nonparty making the filing shall:

- (1) include only the last four digits of the social-security number or taxpayer-identification number;
- (2) include only the year of the individual's birth;
- (3) include only the minor's initials;
- (4) include only the last four digits of the financial-account number; and
- (5) redact any address of the person requesting anonymity when seeking an order of protection.

When redacting information, the point in the filing at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting some explanatory notation in brackets, such as: [Information Redacted], [I.R.], [Confidential], or [Subject To Protective Order]. The requirement that the redaction be indicated in case records shall not apply to court records made confidential by expungement or other legal authority that expressly prohibits disclosure of a record's existence. If ordered by the court, a person making a redacted filing may be required to file an unredacted copy under seal, and the court must retain the unredacted copy as part of the record.

(c) *Other Confidential Information.* Information in adoption records governed by Ark. Code Ann. § 9-9-217 and juvenile records governed by Ark. Code Ann. § 9-27-309 contained in a filing with the court may be redacted, as described above, either at the filer's initiative or by court order, or be filed under seal by court order pursuant to subsection (d) of this rule.

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(d) *Filings Made Under Seal.* A filing may be sealed only by court order when required by law or for other good cause. A court should not seal those parts of a filing that may be reasonably redacted.

(1) *Motion to seal court record.* A party, or a person affected by the information sought to be sealed, may move the court to seal a document or other item in a case by filing a written motion. The request to seal must specify the document or item to be sealed, the legal basis on which the request is made, an explanation why redaction is not reasonable, and how long the material should be sealed. The parties' agreement alone will not be a sufficient reason for the court to seal a document or other item.

(2) *Access to court record while motion pending.* After a motion to seal has been filed, the information sought to be sealed shall remain confidential until the court rules on the motion.

(3) *Hearing and order.* The court may conduct a hearing on a motion to seal if requested by a party, an affected person, or on its own initiative. The court may order a document or other item in a case sealed if the court makes and enters written findings that the sealing is justified by identified compelling privacy or safety interests that outweigh the public access to the court record. Sealing may be permitted or required by:

- (A) Administrative Order Number 19;
- (B) federal or state law or rule of court; or
- (C) an identified compelling circumstance.

In an order sealing a document or other item in a case, the court shall use the least restrictive means and duration. The material sealed by the court shall be sealed only as the court order directs. A sealed court record may be unsealed upon a showing of good cause.

(4) *Procedures for maintaining sealed court records.* When a document or other item in a case is filed under seal, the clerk shall restrict access to the sealed material. If the sealed record exists in a storage medium form other than paper, the clerk shall restrict access to the alternate storage medium to prevent unauthorized viewing of the sealed material. An entire case file should not be sealed. Unless otherwise

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prohibited, the following information shall be available for public viewing on court indices:

- (A) the case number(s) or docket number(s);
- (B) the date that the case was filed;
- (C) the name of the document;
- (D) the names of the parties and counsel of record;
- (E) the notation “case sealed”; and
- (F) the order to seal.

(e) *Protective Orders*. For good cause, the court may by order in a case:

- (1) require redaction or sealing of information;
- (2) permit access to information to which public access has been prohibited (see Administrative Order Number 19, Section (VIII)); or
- (3) limit or prohibit a nonparty’s remote electronic access to information filed with the court.

(f) *Waiver*. A party or other person waives the protection of this rule as to his or her own information by filing it without redaction and not under seal unless relief is subsequently granted by the court.

**Rule 5. Service and filing of pleadings and other papers.**

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(c) *Filing*.

.....

~~—(2) Confidential information as defined and described in Sections III(A)(11) and VII(A) of Administrative Order 19 shall not be included as part of a case record unless the confidential information is necessary and relevant to the case. Section III(A)(2) of the~~

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~~Administrative Order defines a case record as any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a judicial proceeding. If including confidential information in a case record is necessary and relevant to the case:~~

~~—(A) The confidential information shall be redacted from the case record to which public access is granted pursuant to Section IV(A) of Administrative Order 19. The point in the case record at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting some explanatory notation in brackets, such as: [Information Redacted], [I.R.], [Confidential], or [Subject To Protective Order]. If an entire document is redacted, then the name of the document (with the number of pages redacted specified) should be noted in the publicly available court file and the entire document should be filed under seal. The requirement that the redaction be indicated in case records shall not apply to court records rendered confidential by expungement or other legal authority that expressly prohibits disclosure of the existence of a record; and~~

~~—(B) An un-redacted copy of the case record with the confidential information included shall be filed with the court under seal. The un-redacted copy of the case record shall be retained by the court as part of the court record of the case. It is the responsibility of the attorney for a party represented by counsel and the responsibility of a party unrepresented by counsel to ensure that confidential information is omitted or redacted from all case records that they submit to a court. It is the responsibility of the court, court agency, or clerk of court to ensure that confidential information is omitted or redacted from all case records, including orders, judgments, and decrees, that they create.~~

### **Rules of the Supreme Court and Court of Appeals**

[new rule]

#### **Rule 1-8. Redacting and sealing court records.**

(a) *Purpose.* This rule governs procedural issues related to the redacting and sealing of court records arising under (1) Administrative Order Number 19, (2) rules or statutes restricting public access to court records, and (3) a court's inherent power to seal court records. This rule applies to matters sealed by a trial court that are sought to be filed and sealed in the Supreme Court or Court of Appeals and to matters that are sought to be sealed in the first instance in the appellate court.

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(b) *Redacted filings.* Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number or birth date, the name of an individual known to be a minor, a financial-account number, or the addresses of a person requesting anonymity when seeking an order of protection pursuant to Ark. Code Ann. § 9-15-203, a party or nonparty making the filing shall:

- (1) include only the last four digits of the social-security number or taxpayer-identification number;
- (2) include only the year of the individual's birth;
- (3) include only the minor's initials (subject to Rule 6-3);
- (4) include only the last four digits of the financial-account number; and
- (5) redact any address of the person requesting anonymity when seeking an order of protection.

When redacting information, the point in the filing at which the redaction is made shall be indicated by striking through the redacted material with an opaque black mark or by inserting some explanatory notation in brackets, such as: [Information Redacted], [I.R.], [Confidential], or [Subject To Protective Order]. The requirement that the redaction be indicated in case records shall not apply to court records made confidential by expungement or other legal authority that expressly prohibits disclosure of a record's existence. If ordered by the court, a person making a redacted filing may be required to file an unredacted copy under seal, and the court must retain the unredacted copy as part of the record.

(c) *Other confidential information.* See Supreme Court Rules 4-3 (f) (child pornography) and Rule 6-3 (anonymity, including adoption and juvenile records).

(d) *Court record sealed in the trial court.* A document or other item in a case that has been sealed by a trial court shall only be filed under seal in the Court of Appeals or the Supreme Court if a copy of the trial court order to seal is provided to the Clerk of the Supreme Court and Court of Appeals. The material sealed by the trial court shall be sealed in the appellate court only to the extent of the trial court's order to seal and subject to further order of the appellate court. The clerk's acceptance of material under seal shall not obviate the requirement to comply with the provisions of this rule for proceedings in the Court of Appeals or the Supreme Court.



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(e) *Request to seal in the appellate court.* Upon motion, the appellate court may order that a filing be made under seal when required by law or for other good cause. A court should not seal the part of a filing when a redaction is reasonable under the circumstances.

(1) *Motion to seal court record.* A party, or a person affected by the information sought to be sealed, may move the Supreme Court or Court of Appeals to seal a document or other item that was not sealed by the trial court, or which was sealed by the trial court but the duration of the seal has expired, by filing a written motion pursuant to Rule 2-1 of these rules. The request to seal must specify the document or item to be sealed, the legal basis on which the request is made, an explanation why redaction is not reasonable, and how long the material should be sealed. The parties' agreement alone does not constitute a sufficient basis for the court to seal a document or other item. [See Rules 4-3 (f) (child pornography) and 6-3 (anonymity) of these rules for requirements for these specific circumstances.]

(2) *Access to court record while motion pending.* After a motion to seal has been filed, the information sought to be sealed shall remain confidential until the court rules on the motion. The motion may be treated on an expedited basis pursuant to Rule 6-1 (b).

(3) *Scope and duration of order.* In an order sealing a document or other item in a case, the Supreme Court and Court of Appeals shall use the least restrictive means and duration. A sealed court record may be unsealed upon a showing of good cause.

(4) *Procedures for maintaining sealed court records.* When a document or other item in a case is filed under seal in the Supreme Court or Court of Appeals, the clerk shall restrict access to the sealed material. If the sealed record exists in a storage medium form other than paper, the clerk shall restrict access to the alternate storage medium to prevent unauthorized viewing of the sealed material. An entire case file should not be sealed. Unless otherwise prohibited, the following information shall be available for public viewing on court indices:

(A) the case number(s) or docket number(s);

(B) the date that the case was filed;

(C) the name of the document;

(D) names of the parties and counsel of record (except for cases sealed pursuant to Rule 6-3);

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(E) the notation “case sealed”; and

(F) the order to seal.

(f) *Protective Orders*. For good cause, the court may by order in a case:

(1) require redaction or sealing of information;

(2) permit access to information to which public access is prohibited (see Administrative Order Number 19, Section (VIII)); or

(3) limit or prohibit a nonparty’s remote electronic access to information filed with the court.

(g) *Waiver*. A party or other person waives the protection of this rule as to his or her own information by filing it without redaction and not under seal unless relief is subsequently granted by the court.