

EXHIBIT 1

Code of Alabama

Title 36. Public Officers and Employees. (Refs & Annos)

Chapter 12. Maintenance, Use, Etc., of Public Property, Records, Etc.

Article 3. . Inspection and Copying of Records. (Refs & Annos)

Ala.Code 1975 § 36-12-40

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

Currentness

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

Credits

(Code 1923, § 2695; Code 1940, T. 41, § 145; Acts 1983, No. 83-565, p. 866, § 3; Act 2004-487, p. 906, § 1.)

Notes of Decisions (29)

Ala. Code 1975 § 36-12-40, AL ST § 36-12-40

Current through Act 2014-457 of the 2014 Regular Session.

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 2

West's Alaska Statutes Annotated
Alaska Court Rules
Rules Governing the Administration of All Courts

Rules Governing the Administration of All Courts, Rule 37.5

Rule 37.5. Access to Court Records

Currentness

(a) Scope and Purposes.

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

- (A) maximizes accessibility to court records;
- (B) supports the role of the judiciary;
- (C) promotes government accountability;
- (D) contributes to public safety;
- (E) minimizes risk of injury to individuals;
- (F) protects individual privacy rights and interests;
- (G) protects proprietary business information;
- (H) minimizes reluctance to use the courts to resolve disputes;
- (I) makes most effective use of court personnel;
- (J) provides excellent customer service; and
- (K) does not unduly burden the ongoing business of the judiciary.

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

(b) Who Has Access to Court Records.

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

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

(A) court personnel for case processing purposes only;

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

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

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

(c) Definitions. For purposes of these rules:

(1) "Court record" means both case records and administrative records, but does not include records that may be in the court's possession that do not relate to the conduct of the court's business.

(2) "Case record" means any document, information, data, or other item created, collected, received, or maintained by the court system in connection with a particular case.

(3) "Administrative record" means any document, information, data, or other item created, collected, received, or maintained by the court system pertaining to the administration of the judicial branch of government and not associated with any particular case.

(4) "Confidential" means access to the record is restricted to:

(A) the parties to the case;

(B) counsel of record;

(C) individuals with a written order from the court authorizing access; and

(D) court personnel for case processing purposes only.

(5) "Sealed" means access to the record is restricted to the judge and persons authorized by written order of the court.

(6) "Remote access" means the ability of a person to inspect and copy information in a court record in electronic form through an electronic means.

(7) "In electronic form" means any information in a court record in a form that is readable through an electronic device.

(d) General Access Rule.

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

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

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

(e) Court Records Excluded from Public Access.

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

(A) memoranda, notes, or preliminary drafts prepared by or under the direction of any judicial officer of the Alaska Court System that relate to the adjudication, resolution, or disposition of any past, present, or future case, controversy, or legal issue;

(B) legal research and analysis prepared or circulated by judges or law clerks regardless of whether it relates to a particular case and written discussions relating to procedural, administrative, or legal issues that are or may be before the court; and

(C) documents, information, data, or other items sealed or confidential pursuant to statute, court rule, case law, or court order.

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

(A) personal information, performance evaluations, and disciplinary matters relating to any past or present employee of the Alaska Court System or any other person who has applied for employment with the Alaska Court System, and personnel records that are confidential under Alaska Court System Personnel Rules C1.07 and PX1.08;

(B) the work product of any attorney or law clerk employed by or representing the Alaska Court System if the work product is produced in the regular course of business or representation of the Alaska Court System;

(C) individual direct work access telephone numbers and email addresses of judges and law clerks;

(D) documents or information that could compromise the safety of judges, court staff, jurors, or the public, or jeopardize the integrity of the court's facilities or the court's information technology or recordkeeping systems;

(E) records or information collected and notes, drafts, and work product generated during the process of developing policy relating to the court's administration of justice and its operations;

(F) email messages that are created primarily for the informal communication of information and that do not set policy, establish guidelines or procedures, memorialize transactions, or establish receipts; and

(G) records that are confidential, privileged, or otherwise protected by law, rule, or order from disclosure.

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

Credits

[Amended effective January 15, 1989; January 15, 1990. Rescinded and readopted by Order No. 1622 dated August 28, 2006, effective October 15, 2006.]

Editors' Notes

NOTE

Chapter 64, SLA 2010 (SB 60), effective September 7, 2010, enacted changes relating to the Uniform Probate Code. According to section 12(e) of the Act, AS 13.12.585, as enacted by section 8 of the Act, has the effect of amending Administrative Rule 37.5 by requiring that certain information contained in court records relating to a petition under AS 13.12. 530 or 13.12.535, enacted by section 8 of the Act, be kept confidential and only released as indicated in AS 13.12.585.

Administrative Rule 37.5, AK R ADMIN Rule 37.5

Current with amendments received through 3/15/14

EXHIBIT 3

Arizona Revised Statutes Annotated
Rules of the Supreme Court of Arizona (Refs & Annos)
XII. Miscellaneous Provisions

17A A.R.S. Sup.Ct.Rules, Rule 123

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

Currentness

<Text of rule effective until Jan. 1, 2014. See, also, rule effective Jan. 1, 2014.>

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

(b) Definitions.

(1) *Bulk Data.* As used in this rule "Bulk Data" means all, or a significant subset, of the non-confidential case data maintained in a court case management system, either with or without modification or customized compilation.

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

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

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

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

(6) *Criminal History Record Information (CHRI).* "Criminal History Record Information" means only those records of arrests, convictions, sentences, dismissals and other dispositions of charges against individuals that have been provided to the court by the National Crime Information Center (NCIC), Arizona Crime Information Center (ACIC), or any other criminal justice agency for use in juvenile and adult criminal justice cases, employment, licensing or other authorized investigations.

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

(8) *Custodian of Bulk Data*. In a superior court or appellate court, "Custodian of Bulk Data" means, depending on local practice, either the clerk of court or the presiding judge. In a justice of the peace or municipal court, the custodian is the sitting justice of the peace and the presiding judge of the municipal court, respectively.

(9) *Dissemination Contract and Disclaimer*. "Dissemination Contract and Disclaimer" means a contract between a custodian of court records and a person or entity requesting bulk data.

(10) *Information*. "Information" is any recognizable alpha/numerical data that constitutes a record or any part thereof.

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

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

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

(14) *Private Organization Serving a Public Purpose*. "Private Organization Serving a Public Purpose" means a private organization, the objective of which is to serve a public purpose, such as criminal justice, child welfare, licensing, mental health treatment, or research for scholarly or governmental purposes.

(15) *Public*. "Public" means all users of court records, including Arizona judicial officers and employees, employees of government agencies and private organizations.

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

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

(B) *Case Record*. "Case Record" means:

(1) any record that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;

(2) any order, judgment, or minute entry that is related to a judicial proceeding; and

(3) any index, calendar, docket, or register of actions associated with a case or in connection with a judicial proceeding.

(17) *Remote Electronic Access*. "Remote Electronic Access" means access by electronic means that permits the viewer to search, inspect, or copy a record without the need to physically visit a court facility.

(18) *Sensitive Data*. "Sensitive Data" means social security number, bank account number, credit card number, and any other financial account number.

(c) General Provisions.

(1) *Open Records Policy*. Historically, this state has always favored open government and an informed citizenry. In the tradition, the records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open to any member of the public for inspection or to obtain copies at all times during regular office hours at the office having custody of the records. However, in view of the possible countervailing interests of confidentiality, privacy or the best interests of the state public access to some court records may be restricted or expanded in accordance with the provision of this rule, or other provisions of law.

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

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

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

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

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

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

(5) *Judicial Officers and Employees.* Arizona judicial officers, clerks, administrators, professionals or other staff employed by or working under the supervision of the court shall have such access as needed to carry out their assigned duties and as directed by their supervisor.

(6) *Employees of Government Agencies and Private Organizations Serving a Public Purpose.* Employees of federal, state, tribal, and local government agencies and political subdivisions, and private organizations serving a public purpose may be granted such access to court records as required to serve that purpose according to this rule or as provided by any supplemental supreme court policies or court order.

(7) *Access To Bulk Data.* Persons who execute a dissemination contract and disclaimer containing provisions specified by the supreme court may have such access as permitted by paragraph (j) of this rule.

(d) Access to Case Records.

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

(1) Juvenile Delinquency Proceedings Records.

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

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

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

(2) Adult Criminal Records.

(A) Criminal History Records, diagnostic evaluations, psychiatric and psychological reports, medical reports, alcohol screening and treatment reports, social studies, probation supervision histories and any other records maintained as the work

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

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

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

(3) *Protective Orders.* For as long as a plaintiff has the ability by law to have a protective order served or unless otherwise ordered by the court, the custodian shall not make publicly available any information regarding the filing of or contents of a petition for or issuance of a protective order until proof of service of the protective order has been filed with the court. The custodian may permit law enforcement agencies to access these records when necessary to carry out their official responsibilities.

(4) *Judicial Work Product and Drafts.* Notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the process of preparing a final decision or order are closed.

(5) *Unofficial Verbatim Recordings of Proceedings.* Electronic verbatim recordings made by a courtroom clerk or at the direction of the clerk and used in preparing minute entries are closed.

(e) Access to Administrative Records.

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

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

(A) Full name of individual;

(B) Date of employment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) *Patron Records.* Records maintained in any court law library, clerk's office or court that link a patron's name with materials requested or borrowed by the patron, or that link a patron's name with a specific subject about which the patron has requested

information or materials are closed. This provision shall not preclude a library, clerk's office or court from requiring that the request specify any commercial use intended for the records as provided in paragraph (f) of this rule.

(8) *Remote Electronic Access User Records.* Data or information that would disclose that a user of a remote electronic access system has accessed a particular court record is closed. Record access information shall be accessible by the public only on a showing of good cause pursuant to the process set forth in paragraph (f) of this rule.

(9) *Attorney and Judicial Work Product.*

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

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

(10) *Juror Records.* The home and work telephone numbers and addresses of jurors, and all other information obtained by special screening questionnaires or in voir dire proceedings that personally identifies jurors summoned for service, except the names of jurors on the master jury list, are confidential, unless disclosed in open court or otherwise opened by order of the court.

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

(12) *Copyrighted Documents and Materials.* Documents and materials produced and copyrighted by the court are open to public inspection but may not be re-published without proper authorization from the court.

(13) *Judicial Branch Training Materials and Records.* Evaluation materials and records generated by participants in judicial education programs such as test scores, educational assessments, practical exercise worksheets, and similar materials are closed.

(14) *Certification Records.* Proprietary materials required to be submitted to the Supreme Court by applicants for certification or licensing are closed. Applicants for certification or licensure shall be responsible for clearly identifying any material they consider to be proprietary at the time the material is submitted.

(15) *Employee Discipline Records.* All records concerning employee misconduct or discipline are closed except on a showing of good cause for release of a record as determined in the process provided in paragraph (f)(5) of this rule. These records may be accessed by court personnel for official purposes and by an employee who is the subject of the discipline, to the extent such access is permitted or required by applicable personnel policies.

(f) Access to Records in Paper Medium.

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

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

- (A) Immediate availability of the requested records;
- (B) Specificity of the request and need for clarification;
- (C) Amount of equipment, materials, staff time and other resources required to satisfy the request; or
- (D) Whether the requested records are located at the court or in off-site storage.

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

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

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

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

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

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

(4) Delay or Denial; Explanation.

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

(i) to create an undue financial burden on court operations because of the amount of equipment, materials, staff time and other resources required to satisfy the request;

(ii) to substantially interfere with the constitutionally or statutorily mandated functions of the court or the office of the custodian;

(iii) to be filed for the purpose of harassing or substantially interfering with the routine operations of the court; or

(iv) to be submitted within one month following the date of a prior request, that is substantially identical to one received from the same source or applicant and previously denied, unless applicable rules, law or circumstances restricting access have changed.

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

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

(5) Review of Denials to Access Records.

(A) Any applicant who is denied access to or copies of any record, bulk data, or compiled data pursuant to this rule, shall be entitled to an administrative review of that decision by the presiding judge. The request for review must be filed in writing with the custodian who denied the request within 10 business days of a denial made under paragraph (f)(4) above. The custodian shall forward the request for review, a statement of the reason for denial, and all relevant documentation to the presiding judge or a designee within 5 business days of receipt of the request for review. The presiding judge or designee shall issue a decision as soon as practicable considering the nature of the request and the needs of the applicant, but not more than 10 business days from the date the written request for review was received.

(B) Any party aggrieved by the decision of the presiding judge or designee may seek review by filing a special action pursuant to the Rules of Procedure for Special Actions. If the decision challenged by the special action was issued by a judge of the superior court or court of appeals, the special action shall be filed in the court of appeals. If the decision was issued by a supreme court justice, the special action shall be filed in the supreme court.

(g) Remote Electronic Access to Case Records.

(1) A court may provide remote electronic access to case records as follows:

(A) *Parties, Attorneys, and Arbitrators.* Parties, attorneys, and arbitrators may be provided remote electronic access, upon registering, to case records which are not sealed in all case types in which the person is an attorney of record, arbitrator, or named party, including an individual, partnership, corporation, association, or public or private organization. An attorney of record on the staff of a public or private law firm may extend access to any other attorney or person working for or on behalf of that public or private law firm, upon the other attorney's or person's registration.

(B) *Governmental Entities and Private Organizations Serving a Public Purpose.* Any federal, state, tribal or local governmental entity or private organization serving a public purpose may be provided remote electronic access to any case records necessary to carry out a particular governmental or public purpose responsibility. The terms of such access shall be set forth in a memorandum of understanding between the entity or organization and the custodian that includes provisions for safeguarding the confidentiality of any closed records.

(C) *General Public, Registered Users.*

(i) Members of the public who hold an Arizona driver license or nonoperating identification license may be provided remote electronic access, upon registering and paying any established fee, to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:

(a) Civil case records in any action brought to enforce, redress, or protect a private or civil right but not:

- Juvenile dependency and delinquency or other matters brought under ARS Title 8;
- Family law, paternity, or other matters arising out of ARS Title 25;
- Orders of protection, injunctions against harassment and all proceedings, judgments or decrees related to the establishment, modification or enforcement of such orders, including contempt; or
- Probate proceedings brought under ARS Titles 14 and 36.

(b) Civil traffic case records in any action brought as such under ARS Titles 28 or 41 or a matter expressly designated as a civil traffic violation by a traffic ordinance of a city or town, and any boating violation punishable by a civil sanction under ARS Title 5, chapter 3, articles 1 through 11, or a non-traffic ordinance expressly designated a civil violation or a boating ordinance by a city or town.

(c) Criminal case records in any action instituted by the government to punish offenses classified as a misdemeanor or felony brought pursuant to ARS Titles 4, 13, 28, or local ordinance and case records in any action instituted to punish petty offenses classified by ARS § 13-601.

(d) Case records in any action instituted by a county to enforce an ordinance that provides for criminal and civil penalties pursuant to ARS §§ 11-251 and 11-808.

(ii) The following documents shall not be accessible by remote electronic access to users registered under paragraph (g) (1)(C) due to the inability to protect sensitive data that is likely to be contained within these documents:

(a) booking-related documents;

(b) warrants, including search warrants, confidential wiretaps, pen registers, handwriting exemplars, trap and trace, and bench warrants;

(c) charging documents, including criminal and civil traffic charging documents;

(d) pre-sentence reports;

(e) defendant's financial statement;

(f) disposition report;

(g) transcripts; and

(h) all documents in criminal cases in which a defendant is charged with any offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1 or in which the victim was a juvenile at the time of the offense. The prosecuting agency, upon filing a charging document described in this paragraph, shall advise the clerk that the case is subject to this provision.

Upon motion by a party, by any person, or upon the court's own motion, and for good cause shown, the court in which such action is pending may issue an order to allow remote electronic access to members of the public, as provided in paragraph (g)(1)(C), to any case in which a defendant is charged with an offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1 or in which the victim was a juvenile at the time of the offense as provided in paragraph (g)(1)(C)(ii)(h). The order may include any appropriate provision required to protect the juvenile or other victim from embarrassment or oppression. The burden of showing good cause for an order shall remain with the person seeking remote electronic access to the case record. Irrespective of an order limiting electronic access under this paragraph, the clerk shall provide non-registered users remote electronic access as set forth in paragraph (D)(ii) herein when the court generally provides such non-registered user access in other cases.

(D) *General Public, Non-Registered Users.* Unless otherwise provided by rule or law, members of the public may be provided remote electronic access, without registering, to:

(i) the following data elements in closed cases, including juvenile delinquency, mental health, probate, and criminal cases in which a defendant is charged with an offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1 or in which the victim was a juvenile at the time of the offense as provided in paragraph (g)(1)(C)(ii)(h) above:

- party names,
- case number,
- judicial assignment, and
- attorney names

(ii) except as provided in paragraph (g)(1)(C)(ii)(h) above, individual case information extracted from a case management system in all civil, criminal, and civil traffic cases identified in paragraphs (g)(1)(C)(i)(a) through (d), and family law cases, including a list of documents filed, events, dates, calendars, party names, month and year of birth, residential city, state and zip code, case number, judicial assignment, attorneys, charges filed or claims made, interim rulings, and case outcomes, including sentence, fines, payment history, minute entries, and notices.

(iii) court of appeals and supreme court opinions and decisions in all case types, except that any appendix in criminal cases in which a defendant is charged with any offense listed in A.R.S. Title 13, chapters 14, 32, 35 or 35.1 or in which the victim was a juvenile at the time of the offense as provided in paragraph (g)(1)(C)(ii)(h) above, shall not be provided by remote electronic access.

(2) *Registration and fees.* The registration process and fees for remote electronic access to case records shall be established by the Supreme Court upon the recommendation of the Arizona Judicial Council, and shall be an amount as reasonable as possible to develop, implement, maintain, and enhance the remote electronic access to case records system. All information provided by a potential user for registration purposes shall be closed. Remote access provided pursuant to paragraph (g)(1)(B) shall not require registration or payment of any fees.

(3) Courts and clerks of court shall not display case records online except:

A. minute entries, as provided by ARS §§ 12-283(I) and (J);

B. case records, as ordered by the court in a particular high profile case that creates great public or media interest to which the court can more timely and efficiently respond by displaying records of the case online;

C. audio or video of any case, as authorized by the presiding judge of the court, the chief judge of the court of appeals, or the chief justice of the supreme court; or

D. as otherwise provided in this rule.

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

access to case records may also establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.

(4) Courts and clerks of court must clearly and prominently display current charge dispositions for any case that the court or clerk of court makes publicly available online.

(5) Removing case records from online access.

(A) Courts or clerks of court may remove case management system data and case records from online display once the applicable records retention schedule period is met.

(B) For cases scheduled to be retained more than 25 years, courts or clerks of court may remove case management system data and case records from online display after 25 years, provided the data and records are then retained through an electronically preserved method. In place of the records, the court or clerk of court shall display a notice online which directs the viewer to contact the court or clerk for access to the case record.

(6) The clerk of the court, court, court agency, or their employees shall be immune from suit for any conduct relating to the electronic posting of case documents in accordance with this rule.

(7) Data or information that would disclose that a user of a remote electronic access system has accessed a particular court record is closed. Record access information shall be accessible by the public only on a showing of good cause pursuant to the process set forth in paragraph (f) of this rule.

(8) This paragraph (g) shall not limit the public's right of access to records, whether in paper or electronic format, at a court-designated facility.

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

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

(2) *Authority; Procedures.*

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

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

(3) Cost to Obtain Copies.

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

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

(4) Databases, Operating Systems and Network Programs.

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

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

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

(5) Correcting Data Errors; Administrative Review.

(A) Data entry inaccuracies in court calendars, case indexes, or case dockets in a court's case management system may be corrected at any time by the custodian of the record on the custodian's own initiative or on request of an individual as provided in paragraph (h)(5). Clerical errors in judgments, orders, or other parts of the record may be corrected as provided by the applicable rules of procedure.

(B) An individual seeking to correct a data error or omission in an electronic case record shall be entitled to apply for relief with the court in which the original record was filed. The individual shall submit the request to correct the error to the clerk of the court, if any, or to the justice of the peace or municipal court judge. If the custodian to whom the request was submitted determines that the data entry is inaccurate, the custodian shall correct the error as soon as practicable.

(C) If the request is denied by the clerk of an appellate court, the individual may apply for administrative review of the denial by the designated appellate judge or justice. If the request is denied by the clerk of a superior court or by a justice of the peace or municipal court judge, the individual may apply for administrative review of the denial by the presiding superior court judge. The request for administrative review must be filed in writing with the custodian who denied the request within 10 business days of issuance of a denial. The custodian shall forward the request for review, a statement of the reason for denial and all relevant documentation to the presiding or designated judge or justice within 5 business days of the request for review. The presiding or designated judge or justice shall issue a decision as soon as practicable considering the nature of the request and the needs of the applicant, but not later than 10 business days from the date the written request for review was received by the custodian. If the decision of the presiding or designated judge or justice is that the data entry is inaccurate, the custodian shall correct the error as soon as practicable.

(D) Any party aggrieved by the decision of the judge or justice may seek review by filing a special action pursuant to the Rules of Procedure for Special Actions. If the decision challenged by the special action was issued by a judge of the superior court or court of appeals, the special action shall be filed in the court of appeals. If the decision was issued by a supreme court justice, the special action shall be filed in the supreme court.

(i) Inspection and Photocopying.

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

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

(j) Bulk or Compiled Data Dissemination in Bulk.

(1) *Requests for bulk or compiled court data.*

(A) A custodian may release bulk data to an individual, a private company, or a public organization under this policy. Before releasing bulk data, a custodian shall require the recipient to execute a dissemination contract and disclaimer containing provisions specified by the supreme court.

(B) A custodian may contract with a private company or public organization to provide specialized reports to those requesting them.

(2) *Denying requests for bulk data.* The custodian may deny a request for bulk data in compliance with paragraphs (c), (f)(4), and (h)(4)(A).

(3) *Personal identifiers available in bulk court data.* The custodian of bulk data may release data that contains the following personal identifying information about a petitioner, plaintiff, respondent, or defendant other than a petitioner seeking an order of protection:

(A) name,

(B) address,

(C) date of birth, and

(D) last four digits of the social security or driver license number.

(4) Dissemination of bulk or compiled data is not permitted except as provided in this rule or as permitted by court order.

Credits

Added Oct. 9, 1997, effective Dec. 1, 1997. Amended Sept. 24, 1999, effective Dec. 1, 1999; Sept. 18, 2006, effective Jan. 1, 2007; Sept. 3, 2009, effective Jan. 1, 2010; Nov. 10, 2009, effective Jan. 1, 2010; Aug. 30, 2012, effective Jan. 1, 2013; Dec. 10, 2012, effective Sept. 1, 2013.

<Formerly Part XI. Redesignated as Part XII January 15, 2003, effective July 1, 2003.>

Editors' Notes

COURT COMMENTS [1997]

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

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

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

Paragraph (e)(2). This section does not apply to the records of applicants for judicial appointments or membership on appellate and trial court commissions. Disclosure of information relating to applicants for judicial and commission

appointments are subject to the Uniform Rules of Procedure for Commissions on Appellate and Trial Court Appointments.

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

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

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

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

[1999] COURT COMMENT TO PARAGRAPH (C)(4)

The public is entitled to inspect and obtain copies of court records that are maintained on computer systems or in other non-paper medium as provided in this rule. Because of convenience and cost efficiency, the court is committed to maximizing the availability of records to the public through electronic systems. The production or reproduction of records in a non-standard form or format is encouraged as a service to the public. However, producing or reproducing any record in a form or format not used in the court's ordinary business operations is at the discretion of the custodian.

[1999] COURT COMMENT TO SECTION (F)(3)

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

[2009] COURT COMMENT TO PARAGRAPH (H)(5)

This provision is intended to allow individuals to seek correction of data entry errors appearing in case management system data likely to be displayed online or disseminated in bulk or compiled fashion. The process for correcting errors appearing in judgments, orders, and other parts of the record is governed by current rules, including Rule 60, Rules of Civil Procedure, Rule 24.4, Rules of Criminal Procedure, and Rule 85, Rules of Family Law Procedure.

Notes of Decisions (15)

17A A. R. S. Sup. Ct. Rules, Rule 123, AZ ST S CT Rule 123
Current with amendments received through 1/1/14

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 4

West's Arkansas Code Annotated
Administrative Orders of the Supreme Court of Arkansas

Sup. Ct. Admin. Order 19

ADMINISTRATIVE ORDER 19. ACCESS TO COURT RECORDS

Currentness

Section I. Authority, Scope, and Purpose

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

B. The purposes of this order are to:

- (1) promote accessibility to court records;
- (2) support the role of the judiciary;
- (3) promote governmental accountability;
- (4) contribute to public safety;
- (5) reduce the risk of injury to individuals;
- (6) protect individual privacy rights and interests;
- (7) protect proprietary business information;
- (8) minimize reluctance to use the court system;
- (9) encourage the most effective use of court and clerk-of-court staff;
- (10) provide excellent customer service; and
- (11) avoid unduly burdening the ongoing business of the judiciary.

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

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

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

Section II. Who Has Access Under This Order

A. All persons have access to court records as provided in this order, except as provided in section II(B) of this order.

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

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

Section III. Definitions

A. For purpose of this order:

- (1) "Court Record" means both case records and administrative records, but does not include information gathered, maintained or stored by a non-court agency or other entity even though the court may have access to the information, unless it is adopted by the court as part of the court record.
- (2) "Case Record" means 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.

- (3) "Administrative Record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government.
- (4) "Court" means the Arkansas Supreme Court, Arkansas Court of Appeals, and all Circuit, District, or City Courts.
- (5) "Clerk of Court" means the Clerk of the Arkansas Supreme Court, the Arkansas Court of Appeals, and the Clerk of a Circuit, District, or City Court including staff. "Clerk of Court" also means the County Clerk, when acting as the Ex-Officio Circuit Clerk for the Probate Division of Circuit Court.
- (6) "Public access" means that any person may inspect and obtain a copy of the information.
- (7) "Remote access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.
- (8) "In electronic form" means information that exists as electronic representations of text or graphic documents; an electronic image, including a video image of a document, exhibit or other thing; data in the fields or files of an electronic database; or an audio or video recording (analog or digital) of an event or notes in an electronic file from which a transcript of an event can be prepared.
- (9) "Bulk Distribution" means the distribution of all, or a significant subset of, the information in court records, as is, and without modification or compilation.
- (10) "Compiled Information" means information that is derived from the selection, aggregation or reformulation of information from more than one court record.
- (11) "Confidential" means that the contents of a court record may not be disclosed unless otherwise permitted by this order, or by law. When and to the extent provided by this order or by law, "confidential" shall mean also that the existence of a court record may not be disclosed.
- (12) "Sealed" means that the contents of a court record may not be disclosed unless otherwise permitted by this order, or by law. When and to the extent provided by this order or by law, "sealed" shall mean also that the existence of a court record may not be disclosed.
- (13) "Protective order" means that as defined by the Arkansas Rules of Civil Procedure.
- (14) "Expunged" means that the record or records in question shall be sequestered, sealed, and treated as confidential, and neither the contents, nor the existence of, the court record may be disclosed unless otherwise permitted by this order, or by law. Unless otherwise provided by this order or by law, "expunged" shall not mean the physical destruction of any records.

(15) "Court Agency" means the Administrative Office of the Courts, the Office of Professional Programs, the Office of the Arkansas Supreme Court Committee on Professional Conduct, the Judicial Discipline and Disability Commission, and any other office or agency now in existence or hereinafter created, which is under the authority and control of the Arkansas Supreme Court.

(16) "Custodian" with respect to any court record, means the person having administrative control of that record and does not mean a person who holds court records solely for the purposes of storage, safekeeping, or data processing for others.

Section IV. General Access Rule

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

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

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

Section V. Remote Access

A. Courts should endeavor to make at least the following information, when available in electronic form, remotely accessible to the public:

- (1) litigant/party/attorney indexes to cases filed with the court;
- (2) listings of case filings, including the names of the parties;
- (3) the register of actions or docket sheets;
- (4) calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;
- (5) judgments, orders, or decrees.

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

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

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

Section VI. Bulk Distribution and Compiled Information.

A. Requests for bulk distribution or compiled information stored on computers maintained by the Administrative Office of the Courts (AOC) shall be made in writing on the form provided to the Director of the AOC or other designee of the Arkansas Supreme Court. Requests for bulk distribution or compiled information that is not stored on computers maintained by the AOC shall be made in writing on the form provided to the court or court agency having jurisdiction over the records. The AOC shall maintain on the Arkansas Judiciary website a current description of the records available on AOC computers. Requests will be acted upon or responded to within a reasonable period of time.

B. Compiled information shall be provided according to the terms of this section (VI)(B).

- (1) Requests for compiled records shall identify the requested information and the desired format of the compilation.
- (2) The grant of a request under this section (VI)(B) may be made contingent upon the requester paying the actual costs of reproduction, including personnel time, the costs of the of the medium reproduction, supplies, equipment, and maintenance, and including the actual costs of mailing or transmitting the records by facsimile or other electronic means.
 - (a) The requester may be charged for personnel time exceeding one (1) hour associated with the tasks, in addition to the actual costs of reproduction.
 - (b) If the estimated costs exceed twenty-five dollars (\$25.00), an estimate will be required and the requester may be required to pay that fee in advance.
 - (c) Information may be furnished without charge or at a reduced charge if it is determined that a waiver or reduction of the fee is in the public interest.
 - (d) The requester is entitled to an itemized breakdown of charges under this section (VI)(B)(2).

(e) Costs for compiled records requested from a court or court agency having jurisdiction over the records shall be as otherwise permitted by state law or county or city ordinance.

(3) When the request includes cases or information excluded from public access under section (VII), or the identification of specific individuals is not essential to the purpose of the inquiry, then the requested records may be provided; however, names, addresses (except zip code), month and day of birth shall be redacted from the information.

(4) When the request includes release of social security numbers, driver's license or equivalent state identification card numbers, the information provided shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers. Account numbers and personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released.

(5) When the identification of specific individuals is essential to the purpose of the request, then the request must include an executed copy of the Compiled Records License Agreement and the requester must declare under penalty of perjury that the request is made for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose, and that the identification of specific individuals is essential to the purpose of the inquiry. This license agreement requirement may be waived for information furnished to an agency of the State of Arkansas. Denial of all or part of a compiled records request shall be reviewable by the Supreme Court Committee on Automation by the requestor filing a written request for review within 20 days of the denial. At its next regularly scheduled meeting the Committee shall review the request and make a determination whether the request should be granted. The determination shall be made by a majority of those members of the Committee present and voting. The Chair of the Committee shall communicate its decision to the Director of the Administrative Office of the courts or the court or court agency having jurisdiction over the records. The Committee's decision shall be final.

C. Bulk distribution shall be provided according to the terms of this section (VI)(C).

(1) The Administrative Office of the Courts is authorized to develop a license agreement for bulk records consistent with this rule.

(a) The license agreement shall provide the terms and conditions for receipt and update of the bulk data.

(b) The license agreement shall provide for a startup fee not to exceed \$1,000 and a monthly subscription fee not to exceed \$200 for access to the bulk data.

(c) The license agreement shall provide that recipients of the bulk data shall purge from their databases any records that become confidential or sealed within 24 hours of notice of the records being expunged or sealed.

(d) The license agreement shall provide that recipients of the bulk data shall replace their data within 24 hours of the availability of a monthly extract or transactional update of the databases.

(e) Costs for bulk records requested from a court or court agency having jurisdiction over the records shall be as otherwise permitted by state law or county or city ordinance.

- (f) The license agreement requirement may be waived for information provided to an agency of the State of Arkansas. However, agencies of the State of Arkansas shall not be required to post a surety bond.

- (2) The Administrative Office of the Courts shall establish a secure server from which the databases of case information may be downloaded by licensed users.
 - (a) The secure server shall include a monthly extract of all public case data.

 - (b) The secure server shall include transactional updates that will be periodically extracted from the case management databases no less frequently than once every 24 hours.

- (3) The request for bulk distribution must:
 - (a) include an executed copy of the Bulk Records License Agreement or a request for waiver of the Bulk Records License Agreement if the requester is an agency of the State of Arkansas;

 - (b) Include a cashier's check or money order as indicated in the license agreement to set up a bulk distribution account.

- (4) The monthly extract and transactional updates shall include only the last four digits of social security numbers, only the last four digits of driver's license or equivalent state identification card numbers. Account numbers and personal identification numbers (PINs) of specific assets, liabilities, accounts, and credit cards may not be released.

- (5) The bulk data will not include cases or records excluded from public access under section (VII).

Section VII. Court Records Excluded From Public Access.

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

- (1) 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;
- (3) security and emergency preparedness plans. Security and emergency preparedness plans shall not be open to the public under this order or the Arkansas Freedom of Information Act, Ark. Code Ann. §§ 25-19-101 et seq., to the extent they contain information that if disclosed might jeopardize or compromise efforts to secure and protect individuals, the courthouse, or court facility. This exclusion from public access shall include: (A) Risk and vulnerability assessments; (B) Plans and proposals for preventing and mitigating security risks; (C) Emergency response and recovery records; (D) Security plans and procedures; and (E) Any other records containing information that if disclosed might jeopardize or compromise efforts to secure and protect individuals, the courthouse, or court facility.

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

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

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

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

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

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

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

Section IX. When Court Records May Be Accessed.

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

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

Section X. Contracts With Vendors Providing Information Technology Services Regarding Court Records

A. If a court, court agency, or other private or governmental entity contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, the term "vendor" also includes a non-judicial branch state, county or local governmental agency that provides information technology services to a court.

B. Each contract shall require the vendor to assist the court in its role of educating litigants and the public about this order. The vendor shall also be responsible for training its employees and subcontractors about the provisions of this order.

C. Each contract shall prohibit vendors from disseminating bulk or compiled information, without first obtaining approval as required by this order.

D. Each contract shall require the vendor to acknowledge that court records remain the property of the court and are subject to the directions and orders of the court with respect to the handling and access to the court records, as well as the provisions of this order.

E. These requirements are in addition to those otherwise imposed by law.

Section XI. Violation of Order Not Basis for Liability

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

Credits

[Adopted effective July 1, 2007, with exceptions effective January 1, 2009; amended October 23, 2008, effective January 1, 2009; amended May 24, 2012, effective May 24, 2012; amended June 20, 2013, effective September 1, 2013.]

Editors' Notes

EXPLANATORY NOTE:

Before the amendment, this part of the Administrative Order made the address and phone number of all litigants confidential. That rule would have been both too broad and unworkable. Litigants' addresses are needed for, among other things, summonses and judgments. The revised provision is limited to the situation where current substantive law makes a litigant's addresses confidential for an obvious and compelling reason. Ark. Code Ann. § 9-15-203 (Repl. 2008).

APPENDIX I COMMENTARY

Section I. Commentary

The objective of this order is to promote public accessibility to court records, taking into account public policy interests that are not always fully compatible with unrestricted access. The public policy interests listed above are in no particular order. This order attempts to balance competing interests and recognizes that unrestricted access to certain information in court records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. This order recognizes there are strong societal reasons for allowing public access to court records, and denial of access could compromise the judiciary's role in society, inhibit accountability, and endanger public safety. Open access allows the public to monitor the performance of the judiciary, furthers the goal of providing public education about the results in cases, and, if properly implemented, reduces court staff time needed to provide public access.

This order starts from the presumption of open public access to court records. In some circumstances; however, there may be sound reasons for restricting access to these records. This order recognizes that there are times when access to information may lead to, or increase the risk of, harm to individuals. However, given the societal interests in access to court records, this order also reflects the view that any restriction to access must be implemented in a manner tailored to serve the interests in open access. It is also important to remember that, generally, at least some of the parties in a court case are not in court voluntarily, but rather have been brought into court by plaintiffs or by the government. A person who is not a party to the action may also be mentioned in the court record. Care should be taken that the privacy rights and interests of such involuntary parties or 'third' persons are not unduly compromised.

Subsection (C) is intended to assure that public access provided under this order does not apply to information gathered, maintained, or stored by other agencies or entities that is not necessary to, or is not part of the basis of, a court's decision or the judicial process. Access to this information is governed by the law and the access policy of the agency collecting and maintaining such information. The ability of a computer in a court or clerk's office to access the information, because the computer uses shared software and databases, does not, by itself, make the information subject to this order.

Existing laws, rules and policies regarding court records have been carefully reviewed during the development of this access policy.

The Administrative Office of the Courts may provide advisory information to individuals or entities about the provisions, restrictions, and limitations of this order.

Section II. Commentary

Section II(A) provides the general rule that all persons, including members of the general public, the media, and commercial and noncommercial entities, are entitled to the same basic level of access to court records. Generally, access to court records is not determined by who is seeking access or the purpose for seeking access; however, some users, such as court employees or the parties to a particular case, may have greater access to those particular records than is afforded the general public.

Section II(B) provides the exception to the general rule and specifies the entities and persons for whom courts may provide greater access. This greater level of access is a result of the need for effective management of the judicial system and the protection of the right to a fair trial.

Sections II(B)(1) through (4) identify groups whose authority to access court records is different from that of the public.

Subsection (1): Employees of the court, court agency, and clerk of court need greater access than the public in order to do their work and therefore work under different access rules.

Subsection (2): Employees and subcontractors of entities who provide services to the court or clerk of court or court agency, that is, court services that have been "outsourced," may also need greater access to information to do their jobs and therefore operate under a different access policy. Section X provides the requirements under this order for contracts with vendors concerning court records.

Subsection (3): This subsection is intended to cover personnel in other governmental agencies who have a need for information in court records in order to do their work. An example of this would be an integrated justice system operated on behalf of several justice system agencies where access is governed by internal policies or statutes or rules applicable to all users of the integrated system.

Subsection (4): This subsection continues nearly unrestricted access by litigants and their lawyers to information in their own cases but no higher level of access to information in other cases. As to cases in which they are not the attorney of record, attorneys would have the same access as any other member of the public.

Section III. Commentary

Sections III(A)(1)-(3) explain which records in a court are covered by this order.

Section III(A)(1) excludes from the definition of "court record" information gathered, maintained, or stored by other agencies or entities that is not necessary to, or is not part of the basis of a court's decision or the judicial process. Access to this information is governed by the laws and access policy of the agency collecting and maintaining such information. The ability of a computer in a court or clerk's office to access the information, because the computer uses shared software and databases, does not, by itself, make the court records access policy applicable to the information. An example of this is information stored in an integrated criminal justice information system where all data is shared by law enforcement, the prosecutor, the court, defense counsel, and probation and corrections departments. The use of a shared system can blur the distinctions between agency records and court records. Under this section, if the information is provided to the court as part of a case or judicial proceeding, the court's access rules then apply, regardless of where the information came from or the access rules of that

agency. Conversely, if the information is not made part of the court record, the access policy applicable to the agency collecting the data still applies even if the information is stored in a shared database.

Section III(A)(2), "Case Record," is meant to be all inclusive of information that is provided to, or made available to, the court that relates to a judicial proceeding. The term "judicial proceeding" is used because there may not be a court case in every situation. The definition is not limited to information "filed" with the court or "made part of the court record" because some types of information the court needs to make a fully informed decision might not be "filed" or technically part of the court record. The language is, therefore, written to include information delivered to, or "lodged" with, the court, even if it is not "filed." An example is a complaint accompanying a motion to waive the filing fee based on indigence. The definition is also intended to include exhibits offered in hearings or trials, even if not admitted into evidence.

The definition includes all information used by a court to make its decision, even if an appellate court subsequently rules that the information should not have been considered or was not relevant to the judicial decision made.

The language is intended to include within its scope materials that are submitted to the court, but upon which a court did not act because the matter was withdrawn or the case was resolved. Once relevant material has been submitted to the court, it does not become inaccessible because the court did not, in the end, act on the information in the materials because the parties resolved the issue without a court decision.

The definition is written to cover any information that relates to a judicial proceeding generated by the court itself, whether through the court administrator's personnel or the clerk's office personnel. This definition applies to proceedings conducted by temporary judges or referees hearing cases in an official capacity. This includes two categories of information. One category includes documents, such as notices, minutes, orders, and judgments, which become part of the court record. The second category includes information that is gathered, generated, or kept for the purpose of managing the court's cases. This information might never be in a document; it might only exist as information in a field of a database such as a case management system, an automated register of actions, or an index of cases or parties.

Another set of items included within the definition is the official record of the proceedings, whether it is notes and transcripts generated by a court reporter of what transpired at a hearing, or an audio or video recording (analog or digital) of the proceeding. Public Access to these materials shall be granted at the court's discretion under Section IX(A), and information that would otherwise be confidential, but is included within these materials because it was disclosed in open court, is not required to be redacted under Section VII. Pursuant to Ark. Code Ann. §§ 16-13-501 et seq., court reporters are required to create transcripts only at the request of either party or the judge. The fees for creation of the transcript are set out in Ark. Code Ann. § 16-13-506. This order attempts to retain the common-law framework for access to court reporters' materials, but recognizes that technological changes such as automated electronic transcription and audio and video streaming over the internet may result in increased availability of these materials without unduly burdening the ongoing business of the judiciary. Administrative Order Number 6 governs broadcasting, recording or photographing in the courtroom.

Section III(A)(3) defines "Administrative Record." The definition of "court record" includes some information and records maintained by the court and clerk of court that is related to the management and administration of the court or the clerk's office. Examples of this category of information include: internal court policies, memoranda and correspondence, court budget and fiscal records, and other routinely produced administrative records, memos and reports, and meeting minutes.

This subsection makes it clear that the order applies only to information related to the judicial branch. Some information maintained by clerks of court is not a court record, nor is the court responsible for its collection, maintenance, or accessibility. Land records and voter records are examples of information that do not pertain to the administration of the judicial branch of government.

An administrative record might or might not be related to a particular case. That is to say, an administrative record may relate to a particular case and therefore be a case record also. For example, the application of a judicial official for reimbursement for expenses incurred in the course of administering justice in a particular case is both an administrative record and a case record. A record with such dual character may be subject to public disclosure in either capacity; inversely, the record is excluded from public access only if it qualifies for exclusion in both capacities. For this reason, a judicial official who creates administrative records should take care to avoid including the sort of information that may be excluded from public access to case records and that is not essential to the administrative purpose of the record.

Section III(A)(6) defines "public access" very broadly. The language implies that access is not conditioned on the reason access is requested or on prior permission being granted by the court. Access is defined to include the ability to obtain a copy of the information, not just inspect it. The section does not address the form of the copy, as there are numerous forms the copy could take, and more will probably become possible as technology continues to evolve.

A minimum inspection of the court record can be done at the courthouse where the record is maintained. It can also be done in any other manner determined by the court that serves the principles and interests specified in section I of this order. The inspection can be of the physical record or an electronic version of the court record. Access may be over the counter, by fax, by regular mail, by e-mail or by courier. The section does not preclude the court from making inspection possible via electronic means at other sites, or remotely. It also permits a court to satisfy the request to inspect by providing a printed report, computer disk, tape or other storage medium containing the information requested from the court record.

The section implies an equality of the ability to "inspect and obtain a copy" across the public. Implementing this equality will require the court to address several sources of inequality of access. Some people have physical impairments that prevent them from using the form of access available to most of the public. Another problem has to do with the existence of a 'digital divide' regarding access to information in electronic form. The court should provide equivalent access to those who do not have the necessary electronic equipment to obtain access. Finally, there is the issue of the format of electronic information and whether it is equally accessible to all computer platforms and operating systems. The court should make electronic information equally available, regardless of the computer used to access the information (in other words, in a manner that is hardware and software independent).

Another aspect of access is the need to redact restricted information in documents before allowing access to the balance of the document. In some circumstances this may be a quite costly. Lack of, or insufficient, resources may present the court with an awkward choice of deciding between funding normal operations and funding activities related to access to court records. As technology improves it is becoming easier to develop software that allows redaction of places of information in documents in electronic form based on "tags" (such as XML tags) accompanying the information. When software to include such tags in documents becomes available, and court systems acquire the capability to use the tags, redaction will become more feasible, allowing the balance of a document to be accessible with little effort on the part of the court.

The objective of section III(A)(7) defining "remote access" is to describe a means of access that is technology neutral that is used to distinguish means of access for different types of information. The term is used in section V regarding information that should be remotely accessible. The key elements are that: 1) the access is electronic, 2) the electronic form of the access allows searching of records, as well as viewing and making an electronic copy of the information, 3) a person is not required to visit the courthouse to access the record, and 4) no assistance of court or clerk of court staff is needed to gain access (other than staff maintaining the information technology systems).

This definition is independent of any particular technology or means of access. Remote access may be accomplished electronically by any one or more of a number of existing technologies, including dedicated terminal, kiosk, dial-in service, or internet site. Attaching electronic copies of information to e-mails, and mailing or faxing copies of documents in response to a letter or phone request for information would not constitute remote access under this definition.

In section III(A)(8), the breadth of the definition of "in electronic form" makes clear that this order applies to information that is available in any type of electronic form. The point of this section is to define what "in electronic form" means, not to define whether electronic information can be accessed or how it is accessed. This subsection refers to electronic versions of textual documents (for example documents produced on a word processor, or stored in some other text format such as PDF format), and pictures, charts, or other graphical representations of information (for example, graphics files, spreadsheet files, etc.).

A document might be electronically available as an image of a paper document produced by scanning, or another imaging technique (but not filming or microfilming). This document can be viewed on a screen and it appears as a readable document, but it is not searchable without the aid of OCR (optical character recognition) applications that translate the image into a searchable text format.

An electronic image may also be one produced of a document or other object through the use of a digital camera, for example in a courtroom as part of an evidence presentation system.

Courts are increasingly using case management systems, data warehouses or similar tools to maintain data about cases and court activities. This order applies equally to this information even though it is not produced or available in paper format unless a report containing the information is generated. This section also covers files created for, and transmitted through, an electronic filing system for court documents.

Evidence can be in the form of audio or videotapes of testimony or events. In addition audio and video recording (ER—electronic recording) and computer-aided transcription systems (CAT) using court reporters are increasingly being used to capture the verbatim record of court hearings and trials. In the future real-time video streaming of trials or other proceedings is a possibility. Because this information is in electronic form, it would fall within this definition.

Section III(A)(10) recognizes that compiled information is different from case-by-case access because it involves information from more than one case. Compiled information is different from bulk access in that it involves only some of the information from some cases and the information has been reformulated or aggregated; it is not just a copy of all the information in the court's records. Compiled information involves the creation of a new court record. In order to provide compiled information, a court generally must write a computer program to select the specific cases or information sought in the request, or otherwise use court resources to identify, gather, and copy the information.

Generating compiled data may require court resources and generating the compiled information may compete with the normal operations of the court for resources, which may be a reason for the court not to compile the information. It may be less costly for the court and less of an impact on the court to, instead, provide bulk distribution of the requested information, and let the requestor, rather than the court, compile the information.

The interchangeable definitions of "confidential" and "sealed" in section III(A)(11)-(14) recognize that in some circumstances the court is prohibited from disclosing the contents of a court record, and in some circumstances the court is prohibited from disclosing the very existence of a court record. For purposes of this order, the definition of "protective order" has the same meaning as found in the Arkansas Rules of Civil Procedure, i.e., the usual means by which a court designates a court record or parts of a record as confidential or sealed, for example, to protect a trade secret that includes information necessary to adjudication, but which would be harmful to the litigant if disclosed to the public. Also, this order itself provides that certain information in court records is "confidential," such as a litigant's personal bank account number, section VII(A)(5). The definitions of "confidential" and "sealed" recognize, however, that this order and other laws may provide limited access to confidential information. For example, consistently with section II, attorneys typically may access un-redacted records in cases on which they are attorneys of record.

Redactions from a publicly disclosed court record to protect sealed content are ordinarily indicated in the disclosure. However, the definitions of "confidential" and "sealed" recognize that in some instances, as provided by court order or by law, the court

is prohibited from disclosing even the existence of a court record. For example, when a court record is "expunged," as defined in section III(A)(14) and pursuant to Ark. Code Ann. §§ 16-90-901, et seq. neither the existence of nor the contents of the records may be disclosed. In some cases, expunge also means the physical destruction of court records in juvenile cases pursuant to Ark. Code Ann. § 9-27-309. In such cases, because physical destruction of the records in electronic form would be impractical, such records should be redacted to eliminate the ability to identify the juvenile while preserving sufficient information regarding the court's actions for statistical and historic purposes.

The Court recognizes that for public policy reasons, such as to assist first-time offenders to remain productive members of society, it is sometimes necessary to conceal not only the contents of court records, but also the very existence of them from the general public. Expungement is not the only means by which a record may be sealed and made confidential as against disclosure of its very existence; for example, such confidentiality is afforded to adoption records by Ark. Code Ann. §§ 9-9-201, et seq. However, this order should not be construed to authorize the suppression of court records absent authorization by duly promulgated judicial rule or by duly enacted legislation. Cf. section IV(C).

The definition of "custodian" in section III(A)(16) recognizes that technology decreases the relevance of the physical location of records in electronic form. Court records might be stored remotely from the court in order to increase access, to provide greater security, to prevent loss in case of disaster, or to share resources with other agencies. However, that the records in electronic form are not physically located within a structure housing the court neither reduces the responsibility of the court and clerk for the content of the records, nor gives to the person holding the records for the purposes of storage, safekeeping, or data processing for the court the authority to disseminate the records.

Section IV. Commentary

The objective of this section is to make clear that this order applies to information in the court record regardless of the manner in which the information was created, collected or submitted to the court. Application of this order is not affected by the means of storage, manner of presentation or the form in which information is maintained. To support the general principle of open access, the application of the rule is independent of the technology or the format of the information.

Subsection (A) states the general premise that information in the court record will be publicly accessible unless access is specifically prohibited. The provision does not require any particular level of access, nor does it require a court to provide access in any particular form, for example, publishing court records in electronic form on a web site or dial-in database.

Subsection (C) provides a way for the public to know that information exists even though public access to the information itself is prohibited. This allows a member of the public to request access to the restricted record under section IX, which they would not know to do if the existence of the restricted information was not known.

However, the Court recognizes that for public policy reasons, such as to assist first-time offenders to remain productive members of society, it is sometimes necessary to conceal not only the contents of court records, but also the very existence of them from the general public. For example, Ark. Code Ann. § 16-90-903 limits the disclosure of the existence of certain expunged records. Section IV(C) accommodates this necessity, but should not be construed to authorize the suppression of court records absent authorization by duly promulgated judicial rule or by duly enacted legislation.

Section V. Commentary

This order does not impose an affirmative obligation to preserve information or data, or to transform information or data received into a format or medium that is not otherwise routinely maintained by the court. While this section encourages courts to make the designated information available to the public through remote access, this is not required, even if the information already exists in an electronic format.

Several types of information in court records have traditionally been given wider public distribution than merely making them publicly accessible at the courthouse. Typical examples are listed in this section. Often this information is regularly published in newspapers, particularly legal papers. Many of the first automated case management systems included a capability to make this information available electronically, at least on computer terminals in the courthouse, or through dial-up connections. Similarly, courts have long prepared registers of actions that indicate for each case what documents or other materials have been filed in the case. Again, early case management systems often automated this function. The summary or general nature of the information is such that there is little risk of harm to an individual through unwarranted invasion of privacy or proprietary business interests. This section acknowledges and encourages this public distribution practice by making these records presumptively accessible remotely, particularly if they are in electronic form. When a court begins to make information available remotely, they are encouraged to start with the categories of information identified in this list.

While not every court, or every automated system, is capable of providing this type of access, courts are encouraged to develop the capability to do so. The listing of information that should be made remotely available in no way is intended to imply that other information should not be made remotely available. Some court automated systems may also make more information available remotely to litigants and their lawyers than is available to the public.

Making certain types of information remotely accessible allows the court to make cost effective use of public resources provided for its operation. If the information is not available, someone requesting the information will have to call the court or come down to the courthouse and request the information. Public resources will be consumed with court staff locating case files containing the record or information, providing it to the requestor, and returning the case file to the shelf. If the requestor can obtain the information remotely, without involvement of court staff, there will be less use of court resources.

In implementing this section a court should be mindful about what specific pieces of information are appropriately remotely accessible. Care should be taken that the release of information is consistent with all provisions of the access policy, especially regarding personal identification information. For example, the information remotely accessible should not include information presumptively excluded from public access pursuant to section VII, or prohibited from public access by court order. An example of calendar information that may not be accessible by law is that relating to juvenile cases, adoptions, and mental health cases.

Subsection (5): One role of the judiciary, in resolving disputes, is to state the respective rights, obligations and interests of the parties to the dispute. This declaration of rights, obligations and interests usually is in the form of a judgment or other type of final order. Judgments or final orders have often had greater public accessibility by court rule or statutory requirement that they be recorded in a "judgment book." One reason this is done is to simplify public access by placing all such information in one place, rather than making someone step through numerous individual case files to find them. Recognizing such practices, this order specifically encourages this information to be remotely accessible if in electronic form.

There are circumstances where information about charges and convictions in criminal cases can change over time, which could mean copies of such listings derived from court records can become inaccurate unless updated. For example, a defendant may be charged with a felony, but the charge may be dismissed, or modified or reduced to a misdemeanor when the case is concluded. In other circumstances a felony conviction may be reduced to a misdemeanor conviction if the defendant successfully completes probation. These types of circumstances suggest that there be a disclaimer associated with such information, and that education about these possibilities be provided to litigants and the public.

Section VI. Commentary

In the past, court information other than that required to be reported to the Administrative Office of the Courts, was available only directly from the courts. In 2001, the Arkansas Court Automation Project began, with its long-term goal to provide a centralized case management system for all courts in the State of Arkansas. This project is the foundation to provide statewide electronic filing and document imaging for the courts. As courts go online with the new system, the public will have a more convenient central location from which to request court records.

Subsection (A) of this rule requires that requests for bulk distribution or compiled information stored on AOC computers be submitted to the Director of the Administrative Office of the Courts or other designee of the Court. Otherwise requests should be submitted to the court or court agency having jurisdiction over the records. The AOC is required to maintain a description of court records in order to assist requesters in determining where to send their requests.

Prior to the 2012 amendment, section (VI) provided a two-track system for requesting bulk and compiled records. The system proved to be unworkable in practice, so the 2012 amendment separated and simplified the process for requesting bulk and compiled data.

Section (VI)(B) provides the process for filling compiled records requests. The process recognizes the increased likelihood that requested data is stored on computers, and that to fulfill the requests it is more likely that a computer programmer is required to isolate, analyze and compile the requested information into a desired format. Although section (VI)(B)(2)(a) permits charging a fee for personnel time exceeding one hour, and section (VI)(B)(2)(b) may require paying the fee in advance, section (VI)(B)(2)(c) permits waiver of fees for personnel time if it is in the public interest to provide the compilation at no cost.

Section (VI)(B)(3) recognizes that requesters may require information about cases that are confidential but do not require the confidential information in the cases. For example, researchers considering the efficacy of the juvenile justice system may be interested in age, race, geographic area, and gender of participants in the system relative to the outcomes in those cases. Fulfilling these requests can be completed without disclosing the identification of the individuals.

Section (VI)(B)(4) provides that account numbers, and credit card numbers, full social security numbers and driver license numbers will never be provided in compiled records requests; however, the last four digits of SSN and driver license numbers may be provided in compilations.

Section (VI)(B)(5) provides the limited circumstances under which compiled records will be provided where the request includes information about specific individuals. Names, addresses, and dates of birth will only be provided in compiled form when the requester declares under penalty of perjury that identification of individuals is essential to the inquiry and that the request is for a scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose. Because of the sensitive nature of such compilations, a license agreement governing acceptable use of the records must be provided with the request. Nevertheless the license agreement may be waived when the information is provided to a state agency. Such exchanges of information, especially between criminal justice agencies, are typically managed by a separate interagency agreement and exchanges between state and local agencies are managed by intergovernmental agreement.

Section (VI)(C) contemplates that most bulk records requests will be filled by licensed subscription to bulk databases of otherwise public information. To protect the privacy of individuals while simultaneously promoting access to public information the license agreement will provide the terms for receipt and update of the bulk data. Recipients of bulk data are required to purge records that become confidential within 24 hours of receiving notice that the records have become confidential. By requiring that the recipients maintain the currency of the bulk data, the risk of downstream disclosure of information which became confidential subsequent to its initial disclosure is significantly reduced. The 2012 amendment to section (VI) eliminates the inquiry into the purpose of the request for bulk records and instead uses the licensing agreement and the cost of participation to balance the privacy and public access provisions of Administrative Order No. 19.

Section VII. Commentary

Subsection (A)(1) Federal Law: There are several types of information that are commonly but possibly incorrectly, considered to be protected from public disclosure by federal law. Although there may be restrictions on federal agencies disclosing Social Security numbers, they may not apply to state or local agencies such as courts or clerks of courts. While federal law prohibits disclosure of tax returns by federal agencies or employees, this prohibition may not extend to disclosure by others. The Health

ADMINISTRATIVE ORDER 19. ACCESS TO COURT..., AR R S CT ADMIN...

Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations adopted pursuant to it limit disclosure of certain health related information. Whether the limitation extends to state court records is not clear. There are also federal restrictions regarding information in alcohol and drug abuse patient records and requiring confidentiality of information acquired by drug court programs. This order does not supersede any federal law or regulation requiring privacy or non-disclosure of information.

In addition to deliberative material excluded under this order, a court may exclude from public access materials generated or created by a court reporter with the exception of the official transcript.

*This Court recognizes that "[a] trial court has the inherent authority to protect the integrity of the court in actions pending before it and may issue appropriate protective orders that would provide FOIA exemption under Section 25-19-105(b)(8)." See *City of Fayetteville v. Edmark*, 304 Ark. 179, 191 (1990). Rule 26(e) of the Arkansas Rules of Civil Procedure further recognizes that "the court in which the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense."*

Subsection (A)(2) clarifies that this order does not supersede any Arkansas law requiring privacy or non-disclosure of information in court records. The following is a non-exhaustive list of Arkansas Code Annotated sections regarding confidentiality of records whose confidentiality may extend to the records even if they become court records:

- (a) adoption records as provided in the Revised Uniform Adoption Act, as amended, Ark. Code Ann. §§ 9-9-201, et seq.;*
- (b) records relating to Human Immunodeficiency Virus or Acquired Immune Deficiency Syndrome, pursuant to Ark. Code Ann. §§ 16-82-101 et. seq.;*
- (c) records relating to child abuse not admitted into evidence as part of a public proceeding, pursuant to Ark. Code Ann. §§ 12-12-601, et seq.;*
- (d) records relating to drug tests conducted pursuant to Ark. Code Ann. § 11-14-101, et seq. except as provided by Ark. Code Ann. § 11-14-109;*
- (e) records of grand jury minutes, pursuant to Ark. Code Ann. § 25-19-105(b)(4);*
- (f) records of juvenile proceedings, pursuant to Ark. Code § 9-27-309;*
- (g) the master list of jurors' names and addresses, pursuant to Ark. Code Ann. § 16-32-103;*
- (h) addresses and phone numbers of prospective jurors, pursuant to Ark. Code Ann. § 16-33-101;*
- (i) indictment against any person not in actual confinement, pursuant to Ark. Code Ann. § 16-85-408;*
- (j) home or business address of petitioner for domestic order of protection if omitted by petitioner, pursuant to Ark. Code Ann. § 9-15-203;*
- (k) records or writings made at dispute resolution proceedings, pursuant to Ark. Code Ann. § 16-7-206;*
- (l) information related to defendant's attendance, attitude, participation, and results of drug screens when participating in a pre- or post-trial treatment program for drug abuse pursuant to Ark. Code Ann. § 16-98-201, even though defendant may have executed a consent for a limited release of confidential information regarding treatment permitting the judge, the prosecutor, and the defense attorney access to the information.*

Subsection (B) presumes that administrative records will be governed by the Arkansas Freedom of information Act, but recognizes that some public record exclusions are codified outside of the Act and that courts have inherent authority to restrict access to court records.

Freedom of Information Act exemptions are only exemptions to the enclosing act. The reference to the Arkansas Code Annotated should not be construed as applying FOIA exemptions to the courts. They may provide guidance upon a motion for a protective order, but should not be construed to be general exemptions beyond their context.

Section VIII. Commentary

This section is intended to address those extraordinary circumstances in which confidential information or information which is otherwise excluded from public access is to be included in a release of information. In some circumstances, the nature of the information contained in a record and the restrictions placed on the accessibility of the information contained in that record may be governed by federal or state law. This section is not intended to modify or overrule any federal or state law governing such records or the process for releasing information.

Information excluded from public access that is sought in a request for bulk or compiled records is governed by section VI of this order.

Section IX. Commentary

Subsection (A) is intended to retain the common-law framework with respect to public access to court records at the courthouse. The section recognizes that access to trial exhibits and trial transcript source materials not filed with the court clerk is subject to the discretion of the court. This section is not intended to enhance, extend, or diminish the discretion of the court with respect to access to exhibits and transcript source materials.

This section does not preclude or require "after hours" access to court records in electronic form. Courts are encouraged to provide access to records in electronic form beyond the hours access is available at the courthouse, however, it is not the intent of this order to compel such additional access.

Section X. Commentary

This section is intended to apply when information technology services are provided to a court by an agency outside the judicial branch, or by outsourcing of court information technology services to non-governmental entities. Implicit in this order is the concept that all court records are under the authority of the judiciary, and that the judiciary has the responsibility to ensure public access to court records and to restrict access where appropriate. This applies as well to court records maintained in systems operated by any non-judicial governmental department or agency.

Section XI. Commentary

The Supreme Court recognizes that it is not within its constitutional authority to either establish or provide immunity for civil or criminal liability based on violations of this order. The intent of this section is to make clear that absent a statutory or common-law basis for civil or criminal liability, violation of this order alone is insufficient to establish or deny liability for violating the order. Neither does this section preclude the possibility that violation of this order may be used as evidence of negligence or misconduct that resulted in a statutory or common law claim for civil or criminal liability.

Sup. Ct. Admin. Order 19, AR R S CT ADMIN Order 19
Current with amendments received through 3/1/14

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 5

West's Annotated California Codes
California Rules of Court (Refs & Annos)
Title 2. Trial Court Rules (Refs & Annos)
Division 4. Court Records (Refs & Annos)
Chapter 3. Sealed Records (Refs & Annos)

Cal. Rules of Court, Rule 2.550
Formerly cited as CA ST PRETRIAL AND TRIAL Rule 243.1

Rule 2.550. Sealed records

Currentness

(a) Application

- (1) Rules 2.550-2.551 apply to records sealed or proposed to be sealed by court order.
- (2) These rules do not apply to records that are required to be kept confidential by law.
- (3) These rules do not apply to discovery motions and records filed or lodged in connection with discovery motions or proceedings. However, the rules do apply to discovery materials that are used at trial or submitted as a basis for adjudication of matters other than discovery motions or proceedings.

(b) Definitions

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.
- (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.

(c) Court records presumed to be open

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

(d) Express factual findings required to seal records

The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(e) Content and scope of the order

- (1) An order sealing the record must:

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

(B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

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

Credits

(Formerly Rule 243.1, adopted, eff. Jan. 1, 2001. As amended, eff. Jan. 1, 2004. Renumbered Rule 2.550 and amended, eff. Jan. 1, 2007.)

Editors' Notes

ADVISORY COMMITTEE COMMENT

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. Sealed records, CA ST TR COURT Rule 2.550

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.

Notes of Decisions (62)

Cal. Rules of Court, Rule 2.550, CA ST TR COURT Rule 2.550

Current with amendments received through 7/1/14

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 6



COLORADO JUDICIAL DEPARTMENT

Policy Adopted December 8, 2006

By the Public Access Committee

Attachment to CJD 05-01

**COLORADO JUDICIAL DEPARTMENT
PUBLIC ACCESS TO COURT RECORDS
Table of Contents**

PURPOSE

Section 1.00 Purpose of the Policy _____ 1

ACCESS BY WHOM

Section 2.00 Who has Access Under this Policy _____ 1

GENERAL PROVISIONS AND DEFINITIONS

Section 3.00 General Provisions _____ 2
Section 3.10 Definition of Court Record _____ 3
Section 3.20 Definition of Public Access _____ 3
Section 3.30 Definition of Remote Access _____ 4
Section 3.40 Definition of In Electronic Form _____ 4

ACCESS TO WHAT

Section 4.00 Applicability of Rule _____ 4
Section 4.10 General Access Rule _____ 4
Section 4.20 Court Records Subject to Remote Access _____ 5
Section 4.30 Requests for Bulk Distribution of Court Records _____ 5
Section 4.40 Access to Aggregate and Compiled Data from Court Records _____ 5
Section 4.50 Court Records only Publicly Accessible at a Court Facility _____ 10
Section 4.60 Court Records Excluded from Public Access _____ 10

WHEN ACCESSIBLE

Section 5.00 When Court Records May be Accessed _____ 12

FEEES

Section 6.00 Fees for Access _____ 12

OBLIGATION OF VENDORS

Section 7.00 Obligations of Vendors Providing Information Technology
Support to Maintain Court Records _____ 13

OBLIGATION OF THE COURT TO INFORM AND EDUCATE

Section 8.00 Dissemination of Information to Litigants about Access to
Court Records _____ 13

Section 8.10 Dissemination of Information to the Public about Accessing
Court Records _____ 14

Section 8.20 Education of Judges and Court Personnel about an Access Policy — 14

Section 8.30 Education about Process to Change Inaccurate Information in
a Court Record _____ 14

PROCEDURES TO CORRECT INACCURATE INFORMATION

Section 9.00 Procedures to Correct Inaccurate Court Records _____ 14

WEB STANDARDS

Section 10.00 Web Standards _____ 16

ADDENDUM A: COMPILED OR AGGREGATE DATA REQUEST FORM _____ 19

ADDENDUM B: DATA MATCHING REQUEST FORM _____ 20

ADDENDUM C: COST RECOVERY FORMULA _____ 21

ADDENDUM D: REQUEST TO ACCESS RESTRICTED FILES _____ 22

COLORADO JUDICIAL DEPARTMENT PUBLIC ACCESS TO COURT RECORDS

PURPOSE

Section 1.00 – PURPOSE OF THE POLICY

- (a) The purpose of this policy is to provide a comprehensive framework for public access to court records. The policy provides for access in a manner that:
 - (1) maximizes accessibility to court records;
 - (2) supports the role of the judiciary;
 - (3) promotes governmental accountability;
 - (4) contributes to public safety;
 - (5) minimizes risk of injury to individuals;
 - (6) protects individual privacy rights and interests;
 - (7) protects proprietary business information;
 - (8) minimizes reluctance to use the court to resolve disputes;
 - (9) makes effective use of court and clerk of court staff;
 - (10) provides excellent customer service;
 - (11) does not unduly burden the ongoing business of the judiciary; and
 - (12) protects individuals from the use of outdated or inaccurate information.

- (b) This policy is intended to provide guidance to:
 - (1) litigants
 - (2) those seeking access to court records, and
 - (3) judges and other judicial branch personnel responding to requests for access.

- (c) This policy is also intended to provide guidance to Judicial Districts and the State Court Administrator regarding the content of Judicial Branch web sites.

ACCESS BY WHOM

Section 2.00 – WHO HAS ACCESS UNDER THIS POLICY

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

- (a) "Public" includes:
 - (1) any person and any business or non-profit entity, organization or association;
 - (2) any governmental agency for which there is no existing policy defining the agency's access to court records;
 - (3) media organizations; and
 - (4) entities that gather and disseminate information for whatever reason, regardless of whether it is done with the intent of making a profit, and without distinction as to nature or extent of access.

- (b) "Public" does not include:
 - (1) Judicial Branch staff, including: court or clerk of court employees, state court administrator's office employees, probation employees and judicial officers;
 - (2) people or entities, private or governmental, who assist the court in providing court services;
 - (3) public agencies whose access to court records is defined by another statute, rule, order or policy set by the State Court Administrator; and
 - (4) the parties to a case, their lawyers or other authorized representative regarding access to the court record in their specific case.

GENERAL PROVISIONS AND DEFINITIONS

Section 3.00 – GENERAL PROVISIONS

- (a) A Public Access Committee was established by Chief Justice Directive 05-01 to develop policy regarding the information to be released to the public from court records, including court records maintained in statewide electronic databases maintained by the State Court Administrator's Office. These databases may be referred to as "Statewide Databases" in this policy.

- (b) The State Court Administrator is the official custodian of the Statewide Databases. The State Court Administrator, as the official custodian of the Statewide Databases, is charged with completing requests for data from the Statewide Databases consistent with the policies and procedures developed by the Public Access Committee. Such policies shall govern the completion of all requests for data from the Statewide Databases.

- (c) No Judicial Branch personnel shall permit a member of the public to use a computer or other machine associated with the Statewide Database for access to court records unless authorized by the State Court Administrator or his/her delegate.

- (d) Court personnel will make reasonable efforts to use the standardized coding and input procedures for the Statewide Databases established by the State Court Administrator's Office. Any court record released in error to the public shall not be authenticated as an official court or probation record.
- (e) If a Judicial Branch employee believes that the program in a Statewide Database is producing incorrect or erroneous results, the State Court Administrator's Office shall immediately be informed.

Section 3.10 - DEFINITION OF COURT RECORD

For purposes of this policy

(a) "Court record" includes:

- (1) any document, information, or other item that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;
- (2) any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, or minute order, that is related to a judicial proceeding; and
- (3) the electronic record (ICON/Eclipse or jPOD) is an official court record, including the probation ICON/Eclipse and jPOD files.

(b) "Court record" does not include:

- (1) other records maintained by the court or clerk of court pertaining to the administration of the court or clerk of court's office not associated with any particular case (i.e., personnel information, travel vouchers, e-mail, etc.);
- (2) non ICON/Eclipse or jPOD probation records;
- (3) administrative and management notes and reports;
- (4) judges notes and judicial work product related to the deliberative process; and
- (5) information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in section 3.10(a).
- (6) other records maintained by the Judicial Branch not expressly defined as court records in 3.10(a).

Section 3.20 - DEFINITION OF PUBLIC ACCESS

"Public access" means that the public may inspect and obtain a copy of information in a court record.

Section 3.30 - DEFINITION OF REMOTE ACCESS

“Remote access” means the ability to electronically search, inspect, or copy information in a court record without need to physically visit a Judicial Branch facility or location where the court record is maintained.

Section 3.40 - DEFINITION OF IN ELECTRONIC FORM

Information in a court record “in electronic form” includes information that exists as:

- (a) electronic representations of text or graphic documents;
- (b) an electronic image, including a video image of a document, exhibit or other item;
- (c) data in the fields or files of an electronic database; or
- (d) an audio or video recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared.

ACCESS TO WHAT

Section 4.00 - APPLICABILITY OF RULE

This policy applies to all court records, regardless of the physical form of the court record, the method of recording or the method of storage. This policy also applies to Judicial Branch data that is transferred electronically to other agencies (i.e., CICJIS, Department of Human Services, DMV, or other agencies). Court records, data and/or data fields that are protected by The Constitution, statute, court rule or this policy in the Judicial Branch’s system are not to be released by any agency sharing the court records, database or database information. Additionally, this policy applies to e-filed (electronically filed) documents maintained by the vendor (C.R.C.P. Rule 121 Section 1 – 26); and to e-filed documents maintained at the respective courts.

Section 4.10 – GENERAL ACCESS RULE

- (a) Information in the court record is accessible to the public except as prohibited by section 4.60.
- (b) Information in court records sealed pursuant to §24-72-308 C.R.S, Sealing of arrest and criminal records other than convictions, and §24-72-308.5 C.R.S., Sealing of criminal conviction records information for offenses involving controlled substances, is not accessible to the public. Further the response to any request for such record will be that no record exists.

Section 4.20 – COURT RECORDS SUBJECT TO REMOTE ACCESS

- (a) The following information in court records is available by remote access, unless public access is restricted pursuant to section 4.60:
 - (1) litigant/party indexes to cases filed with the court;
 - (2) listings of case filings, including the names of the primary parties;
 - (3) register of actions showing case number, judge assigned to the case, county in which the case is assigned, scheduled date, time and location of court proceedings, judgments, orders or decrees, charges, pleas, findings and sentences in criminal types of cases, and a listing of documents filed in a case.

- (b) The following information in electronic court records is not accessible to the public due to the inability to protect confidential information. It may be available in paper form at local courthouses.
 - (1) Financial Files (everything except the financial summary screen)
 - (2) Free text fields
 - (3) Probate cases (except in compiled requests in aggregate form)
 - (4) Addresses, phone numbers and other contact information for parties in cases
 - (5) Information related to victims of crime
 - (6) Information related to witnesses in cases
 - (7) Information related to impartial parties in cases
 - (8) Files/fields/codes related to running a computer program

Section 4.30 – REQUESTS FOR BULK DISTRIBUTION OF COURT RECORDS

Bulk data, for purposes of this statement of policy, is defined as the entire ICON/Eclipse or jPOD database. It is defined also to include that subset of the entire database that remains after the extraction of all data that is confidential under law. It is the policy of the Judicial Branch that bulk data not be released to individuals, government agencies or private entities.

Section 4.40 – ACCESS TO AGGREGATE AND COMPILED DATA FROM COURT RECORDS

- (a) Definitions
 - (1) “Compiled Data” means data that is derived from the selection or reformulation of specific data elements within the ICON/Eclipse or jPOD database. It is a listing of individual court records that may contain the following data elements: case number (which may include court type, court location, case year, case class, case sequence); case filing

date, judge and division assigned to the case; events, scheduled events and scheduled event status; case status; date of birth; sex; race; attorney assigned to a case; judgment amount ordered; summary financial information; arrest or offense date and arresting agency; charge, plea, and conviction information; and sentences. Compiled Data may not use more than five files for the data extraction and requests shall not contain any names of parties associated with a case.

- (2) "Aggregate Data" means summary information extracted from Compiled Data that eliminates any case or party identifying information such as case numbers, case sequence fields, names, or EID numbers.
- (b) The Judicial Branch will supply Compiled Data and Aggregate Data to the public from the ICON/Eclipse or jPOD database as provided in this section.
- (1) Compiled Data and Aggregate Data shall only be released by the State Court Administrator's Office or its designated agent. See Addendum A for application. This type of request is distinguishable from the Data Match requests mentioned in section 4.40(2) below.
 - (2) Compiled Data and Aggregate Data may be released as follows:
 - (i) In case classes: CR & F (Felony); M (Misdemeanor); T & R (Traffic); C, CV, CW, & S (Civil & Small Claims); and DR (Domestic Relations), data may be released as Compiled Data or Aggregate Data.
 - (ii) In case classes JD (Juvenile Delinquency), JV (Juvenile – Non-Delinquency) and PR (Probate) data shall only be released as Aggregate Data.
 - (iii) Probation data may only be released as Aggregate Data.
- (c) Any member of the public may request compiled or aggregate data that consists solely of records that are publicly accessible and that are not already available pursuant to section 4.20 or in an existing report. The State Court Administrator's Office, may compile and provide the data if it determines, in its discretion, that providing the compiled or aggregate data meets criteria established by the Public Access Committee, that the resources are available to compile the data, and that it is an appropriate use of public resources. The State Court Administrator may delegate to his/her staff the authority to make the initial determination as to whether to provide compiled or aggregate data.
- (d) The State Court Administrator's Office will prioritize compiled and aggregate data requests in the following manner: requests from within the Judicial Branch; requests from other agencies that are essential to complying with their statutory mandates; and, other requests including those from the media, businesses and private entities.

- (e) (1) Compiled or aggregate data may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes. Requests for on going reports via compiled data requests will be provided no more frequently than on a quarterly basis.
- (2) The request shall:
- (i) identify what compiled or aggregate data is sought;
 - (ii) describe the purpose for requesting the compiled or aggregate data and explain how the compiled or aggregate data will benefit the public interest or public education; and
 - (iii) explain provisions for the secure protection of any compiled or aggregate data requested to which public access is restricted or prohibited.
- (3) The State Court Administrator or his/her designee may grant the request and compile the data if he/she determines that doing so meets criteria established by the Public Access Committee and is consistent with the purposes of the access policy, the resources are available to compile the data, and that it is an appropriate use of public resources.
- (4) If the request is granted, the State Court Administrator or his/her designee may require the requestor to sign a declaration that:
- (i) the compiled or aggregate data will not be sold or otherwise distributed, directly or indirectly, to third parties;
 - (ii) the compiled or aggregate data will not be used directly or indirectly to sell a product or service to an individual or the general public;
 - (iii) there will be no copying or duplication of compiled or aggregate data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose;
 - (iv) the compiled or aggregate data will not be made available on the Internet;
 - (v) compiled or aggregate data may be used for research purposes only; and
 - (vi) recipients of compiled or aggregate data are required to sign an agreement that includes an acknowledgement of the recipient's responsibility for checking the accuracy of the compiled or aggregate data and complying with the requirements of §24-72-305.5 C.R.S., of the Criminal Justice Records Act. This provision prohibits the use of criminal justice records for the solicitation of business.
- (f) A civil judgment report will be created on a monthly basis no later than the 5th of every calendar month. It will be available for release from the State Court Administrator's Office on request (See Addendum A) and with the payment of

any applicable fees. The report will be compiled listing all civil judgments entered in the previous calendar month and all civil judgments satisfied within the previous calendar month. The report will display the following information related to each judgment: case number, name of creditor(s), address of creditor if entered in ICON/Eclipse or jPOD), name of debtor(s), address of debtor (if entered in ICON/Eclipse or jPOD), date of judgment, total amount of judgment and date satisfied (if applicable).

- (g) A government agency or commission or a private or non-profit entity may request compiled data or data matches that contain specific identifying information for adults and/or juveniles. The State Court Administrator may delegate to his/her staff the authority to make the initial determination as to whether to provide compiled or aggregate data.
 - (1) Before approving the release of this additional information one or more of the following conditions must be met:
 - (i) The agency, commission or entity requesting the data has an agreement with the Department to complete an internal review of a project or program.
 - (ii) The agency, commission or entity requesting the data has identified the statutory authority that exists requiring a program evaluation and that specific identifying information is necessary to complete the evaluation.
 - (iii) The agency or entity requesting the data is evaluating programs that are relevant to services provided by the agency or entity to criminal justice clients.
 - (2) If at least one of the above conditions is met, the request may also be subject to one or more of the following:
 - (i) If the project is Human Subject Research the SCAO will determine whether the project should have the approval or waiver of an IRB (Institutional Review Board). The request will not be granted until such time as an IRB has provided the approval or waiver of the research project.
 - (ii) Non-public data, including data with personal identifying information will not be provided to satisfy academic requirements for students.
 - (iii) The State Court Administrator's Office may compile and provide the data if it determines that providing the compiled or aggregate data meets criteria established by the Public Access Committee in Section 1.00(a)(1-12).
 - (iv) The resources are available to compile the data and it is an appropriate use of public resources.

- (3) Agencies, commissions or entities approved to receive the data will be required to execute a Memo of Understanding regarding the protection and use of the data.
- (h) Data Matches: The media or other organizations may submit an electronic list of data that can be matched with the public criminal (felony, misdemeanor and traffic) data contained in ICON/Eclipse or jPOD. (See Addendum B for application.)
- (1) Pursuant to §24-33.5-412(6) C.R.S., the Colorado Bureau of Investigation is designated as the official repository for criminal history information. Therefore, data match requests will not be processed for specific individual background checks. Any attempt to compile a separate database (i.e., requesting a match of all criminal records) will be denied.
 - (2) All requests are subject to approval by the State Court Administrator or his/her designee. The State Court Administrator or his/her designee may grant the request and compile the data if he/she determines that doing so meets criteria established by the Public Access Committee and is consistent with the purposes of the access policy, the resources are available to compile the data, and that it is an appropriate use of public resources.
 - (3) Match requests will be submitted to the Public Access Manager at the Office of the State Court Administrator. Upon receipt, the request will be logged and forwarded to appropriate personnel for processing. The following information will be chronicled in a register: person and/or organization submitting the request, contact person including name and telephone number, what data was provided for matching, and for what purpose the data was requested. The log should also be updated when the request is completed with the name of the programmer that ran the data, how long it took, and how much the requestor was charged.
 - (4) Requests will be processed matching the submitted data to data contained in the libraries in ICON/Eclipse or jPOD. Only records with positive matches (name and DOB) will be returned and an electronic list of matches will be provided to the requesting person or organization. Only data available in the criminal (felony, misdemeanor and traffic) libraries will be provided in the matched data.
 - (5) The requestor will sign an agreement regarding the limits for the use of the matched data similar to the agreement referenced in 4.40(e)(4) above.

Section 4.50 – COURT RECORDS THAT ARE ONLY PUBLICLY ACCESSIBLE AT A COURT FACILITY

- (a) Unless access is prohibited pursuant to section 4.60 court records as defined in section 3.10(a)(1) and 3.10(a)(2) may be accessible at court facilities or may be stored at a remote location. Files stored at remote locations will be retrieved in order to provide accessibility, but retrieving these files will delay the retrieval in some courts.
- (b) Access to sealed criminal records is governed by §24-72-308 C.R.S, Sealing of arrest and criminal records other than convictions and §24-72-308.5 C.R.S., Sealing of criminal conviction records information for offenses involving controlled substances.
- (c) A request to limit public access to information in a court record to a court facility in the jurisdiction may be made by any party to a case, an individual identified in the court record, or on the court's own motion. For good cause the court will limit the manner of public access. In limiting the manner of access the court will use the least restrictive means that achieves the purposes of the access policy and the needs of the requestor.

Section 4.60 – COURT RECORDS EXCLUDED FROM PUBLIC ACCESS

- (a) Information in court records is not accessible to the public if protected by federal law, state law, court rule, court order, case law or this policy.
- (b) Court records in the following case types are not accessible to the public, unless the court orders otherwise
 - (1) Relinquishment cases
 - (2) Juvenile Delinquency cases
 - (3) Mental Health cases
 - (4) Judicial Bypass cases
 - (5) Dependency & Neglect cases
 - (6) Adoption cases
 - (7) Paternity cases
 - (8) Truancy cases
- (c) Court records in the following cases are not accessible to the public, unless the court orders otherwise:
 - (1) Expunged cases
 - (2) Sealed cases
 - (3) Individual cases or documents within a case that have been sealed by court order.

- (d) The following items are examples of commonly filed court records that are not accessible to the public, unless the court orders otherwise except that references in the body of the pleadings or filings to the below listed items shall be accessible to the public unless the court orders otherwise:
- (1) Deposited wills
 - (2) Genetic testing information
 - (3) Drug/Alcohol treatment documents, evaluations and reports
 - (4) Paternity tests
 - (5) HIV/AIDS testing information
 - (6) Driver history reports
 - (7) Juror questionnaires
 - (8) Criminal history record checks
 - (9) Credit reports
 - (10) Medical and mental health documents prepared by a medical or mental health provider
 - (11) Psychological and intelligence test documents
 - (12) Scholastic achievement data on individuals
 - (13) Probation ICON/Eclipse or jPOD files
 - (14) Draft opinions, notes or internal memos
 - (15) Files/fields/codes concerning the deliberative process
 - (16) Materials or exhibits that are dangerous or contraband
 - (17) Drugs
 - (18) Items whose possession is illegal
 - (19) Presentence reports including attachments
 - (20) Separation Agreements
 - (21) Parenting Plans
 - (22) Sworn Financial Statements/Financial Affidavits
 - (23) Evaluations and reports filed by Child and Family Investigator (§14-10-116.5 C.R.S.); Child's Legal Representative (§14-10-116 C.R.S.); Allocation of Parental Responsibilities (§14-10-127 C.R.S.)
 - (24) Child abuse investigation reports that the court finds are personal and confidential to the parties and do not fulfill any requirement of necessity of public knowledge
 - (25) Death Certificates
 - (26) Birth Certificates
- (e) Requests for access to pleadings or documents that contain the following information will be provided after the information is redacted. Such a request will be handled administratively and shall not require a court order unless otherwise required in Section 4.60(b), (c), or (d). Refer to the forms in Addendum D.
- (1) Pleadings or documents that contain victim identifying information in sexual assault cases
 - (2) Data or information restricted by court order in specific cases
 - (3) Social Security numbers

- (4) Driver license numbers
- (5) Personal identification numbers (e.g., passport, student ID, state ID, etc.)
- (6) Financial account numbers (This provision does not require redaction when only the last few digits of an account number have been provided to identify an account if it does not reveal the entire account number.)

WHEN ACCESSIBLE

Section 5.00 – WHEN COURT RECORDS MAY BE ACCESSED

- (a) Court records in electronic form to which remote access is allowed shall be available, subject to unexpected technical failures or normal system maintenance announced in advance. Electronic court records may be available during extended hours.
- (b) Court records will be available for public access in the courthouse during hours established by the court. Requests to access or copy publicly accessible materials at the courthouse shall be made at the clerk's office.
- (c) Upon receiving a request for access to court records, the court will provide the court records. If access to court records is delayed due to file availability or resource limitations, the clerk should indicate the nature of the delay and approximate the time necessary to provide the records. The clerk may require the requesting person complete a written request for the court record (see Addendum D). Such a request shall be handled administratively and shall not require a court order, except as required by Section 4.60.
- (d) The administrative authority shall make the necessary arrangements to provide access to the court records. If the requested information cannot be provided within three business days, the clerk will set a date for providing the information within 30 days. A record shall be kept of delayed access to court records that are provided in response to written requests (Addendum D).

FEEES

Section 6.00 – FEES FOR ACCESS

Clerks of Court and the State Court Administrator's Office may charge a fee for access to court records pursuant to §24-72-205(2) and (3) C.R.S and Chief Justice Directive 06-01. The costs shall include: administrative personnel costs associated with providing the court records; direct personnel costs associated with programming or writing queries to supply data; the personnel costs associated with testing the data for validity and accuracy; maintenance costs associated

with hardware and software that are necessary to provide data as expressed in Computer Processing Units (CPU), network costs, and operating costs of any reproduction mediums (i.e., photocopies, zip disks, CD, etc.) To the extent that public access to electronic court records is provided exclusively through a vendor, the State Court Administrator's Office will ensure that any fee imposed by the vendor for the cost of providing access is reasonable. The authorization to charge fees does not imply the service is currently available. (See Addendum C for details on hourly fees.)

OBLIGATION OF VENDORS

Section 7.00 – OBLIGATIONS OF VENDORS PROVIDING INFORMATION TECHNOLOGY SUPPORT TO A COURT TO MAINTAIN COURT RECORDS

- (a) If the State Court Administrator's Office contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, "vendor" includes a state, county or local governmental agency that provides information technology services to a court or the State Court Administrator's Office.
- (b) By contract, the vendor and any successive contractors with the vendor will be required to comply with the requirement of sections 8.00, 8.10, 8.20, and 8.30 to educate litigants, the public, and its employees and subcontractors about the provisions of this access policy.
- (c) By contract, the vendor will be required to notify the court of any requests for compiled or aggregate data, or bulk distribution of data, including the vendor's requests for such data for its own use. Release of data in this manner is prohibited unless each request is individually approved by the State Court Administrator or his/her designee.

OBLIGATION OF THE COURT TO INFORM AND EDUCATE

Section 8.00 – DISSEMINATION OF INFORMATION TO LITIGANTS ABOUT ACCESS TO COURT RECORDS

The Judicial Branch will inform litigants and the public that information in the court record about them is accessible to the public, including remotely, and how to request to restrict the manner of access or to prohibit public access.

Section 8.10 – DISSEMINATION OF INFORMATION TO THE PUBLIC ABOUT ACCESSING COURT RECORDS

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

Section 8.20 – EDUCATION OF JUDGES AND COURT PERSONNEL ABOUT AN ACCESS POLICY

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

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

Section 8.30 – EDUCATION ABOUT PROCESS TO CHANGE INACCURATE INFORMATION IN A COURT RECORD

The State Court Administrator will have policies and will inform the public of the policies by which the court will correct inaccurate information in a court record.

PROCESS TO CHANGE INACCURATE INFORMATION

Section 9.00 – PROCESS TO CHANGE INACCURATE INFORMATION IN A COURT RECORD

- (a) To request court records to be corrected in ICON/Eclipse or jPOD programs, the following steps must be taken:
 - (1) An individual with a complaint or concern about the accuracy of a court record shall lodge the complaint in writing with the Public Access Manager at the State Court Administrator's Office or the Clerk of Court in the appropriate county.
 - (2) The Public Access Manager or the Clerk of Court will investigate the issue, and ask the State Court Administrator for permission to change the ICON/Eclipse or jPOD database when appropriate.
 - (3) The State Court Administrator will determine if the change should be made to ICON/Eclipse or jPOD program.

- (4) The Public Access Manager will make the change and note it in a log of changes kept at the State Court Administrator's Office.
 - (5) The Public Access Manager will notify the individual of any actions that are either taken to correct the situation or that the request was denied.
 - (6) There are no other administrative appeals in these situations.
- (b) The procedures outlined in the False Name Data Entry Correction Policy are as follows:
- (1) If an individual's name is misspelled in documentation provided to the court, or if there is another known name of this individual, add the corrected or additional information into ICON/Eclipse or jPOD as an AKA (Also Known As). If a person informs the court that their name has changed, and provides documentation to the court indicating such, enter the new name as an NKA (Now Known As).
 - (2) Under §16-5-103, C.R.S., a Petition/Motion may be filed with the Court to determine factual innocence for a person whose identifying information has been mistakenly associated with an arrest, summons, summons and complaint, felony complaint, information, indictment, or conviction. A Petition/Motion (JDF223) has been developed to assist with the implementation of this procedure. The Court will provide the District Attorney (DA) or the alleged victim a Civil (blue) fingerprint card, unless the Court makes other arrangements with the local law enforcement agency. The fingerprint card must be marked as follows: "Record Challenge-Identity Theft." The alleged victim must report to the Colorado Bureau of Investigation or a local law enforcement agency for fingerprint verification. A copy of the Petition/Motion must be provided to the agency completing the fingerprint verification. The alleged victim will receive a document regarding the results of the fingerprint verification. This letter must be filed with the Court.
 - (3) If the misidentified person is not in jail and not in the metro area, CBI can coordinate obtaining their fingerprints through a local agency. Rather than directing the individual to CBI to be fingerprinted, the individual would be directed to a local law enforcement agency. The agency will forward the prints to the Identification Section at CBI for comparison.
 - (4) If the misidentified person is incarcerated, CBI can run the prints against their database and rapidly confirm that someone else is using his/her name. A phone call to the CBI Identification Section (303-239-4208) will get this process started. Once the misidentification is confirmed, CBI will issue a letter to the person outlining the issue.
 - (5) After the court enters an order indicating the petitioner is the victim of identity theft, the following procedure is to be used to correct the ICON/Eclipse or jPOD record.

- (6) The clerk then changes the record in ICON/Eclipse or jPOD to the correct name and identifying information (i.e. Social Security number, date of birth, etc.) To update ICON/Eclipse or jPOD, type the correct name over the incorrect name, if known. Add the victim's name as a VIC/VID in ICON/Eclipse or jPOD. Do not delete or completely remove the victim from the ROA. If it is completely removed from ICON/Eclipse or jPOD, it will be difficult, if not impossible, to access the record for a misidentified person to confirm their lack of involvement in a matter. CBI follows this same procedure. It is also recommended that a notation be entered in ICON/Eclipse or jPOD in the comments of the order event indicating that the Register of Actions (ROA) was updated with the new information.
 - (7) If the correct defendant's name is not known, the clerk must label the victim's name with the VID party role, do not change the party type of DEF. Then do any other necessary updating to the ICON/Eclipse or jPOD record (i.e., enter a minute order, dismiss charges, etc.) and seal ("RSLD") the ICON/Eclipse or jPOD case.
- (c) If, in the course of managing a case, the court identifies a clerical or data entry error in the court record, the court may make appropriate corrections to the court record. It is recommended that a minute order be entered in ICON/Eclipse or jPOD identifying the change to the court record.

WEB SITE STANDARDS

Section 10.00--WEB SITE STANDARDS

The State Court Administrator shall administer and enforce the following:

- (a) Information on Judicial Branch public web sites shall be related to the business of the Judicial Branch. Information placed on web sites should facilitate use and understanding of the court system and/or should be a reference point for approved service agencies referred by judicial officers, court staff or probation staff.
- (b) Information placed on district Judicial Branch web sites is subject to administrative review by the Chief Judge of the district or their designee. Information on the State Court Administrator's Office web site is subject to administrative review by the State Court Administrator or his/her designee.
- (c) Requests for review of information on local web sites shall be submitted in writing to the Chief Judge who shall respond within ten working days of notification. Should any review not be fully resolved by the Chief Judge, a further request for review shall be submitted in writing to the State Court

Administrator who shall respond within ten working days of notification. Should controversy arise regarding information placed on Judicial Branch web sites, it shall be removed until reviewed by the State Court Administrator to assess the applicability and suitability of the information.

- (d) The following criteria must be met before a link is to be placed on a Judicial Branch web site. If the link does not meet these criteria it is not to be placed on Judicial Branch web sites. All links are to be related to the business of the Judicial Branch. Links should facilitate use and understanding of the court system and/or links should be a reference point for approved service agencies referred by judicial officers, court staff or probation staff.
- (e) If a linked site becomes controversial, it shall be removed until reviewed by the State Court Administrator. The State Court Administrator shall resolve issues regarding controversial sites and determine the suitability of linking the site. This review shall be accomplished in writing.
- (f) Individuals who possess the special skills needed to adequately and efficiently maintain state court web sites shall be designated. The State Court Administrator shall designate applicable individuals for the Branch web site and the Chief Judge in districts with web sites shall designate individuals for local web sites.
- (g) Web site material shall be updated and maintained based upon an established schedule for posting web site data. Time-sensitive material shall not be placed on web sites if it cannot be properly maintained.
- (h) Security procedures shall be established to prevent unauthorized individuals from tampering with data or copyrighted material, and/or accessing restricted web site areas.
- (i) The intra-web site, developed for use by court and probation employees, shall be accessible to Judicial Branch employees only.
- (j) Unlicensed software shall not be used in the maintenance of web site material.

This policy replaces previous Public Access Policies and is effective July 1, 2007.

Pursuant to the authority granted by Chief Justice Directive 05-01, the Public Access Policy approved and adopted by the Public Access Committee on December 8, 2006, is an order of the Colorado Supreme Court on the 14th day of February, 2007.

This policy, amended by the Public Access Committee on July 26, 2011, is an order of the Colorado Supreme Court on the 1st Day of August, 2011.

This policy amended by the Public Access Committee on August 16, 2012, October 24, 2012, and February 8, 2013, is an order of the Colorado Supreme Court on the 20th day of May, 2013

BY THE COURT:

/s/

Monica M. Marquez
Justice
Colorado Supreme Court
Chair, Public Access Committee

Comments regarding this policy can be submitted in writing to the Public Access Committee, State Court Administrator's Office, 1300 Broadway, #1100, Denver, CO 80203 or by e-mail to public.access@judicial.state.co.us

Addendum A

**COMPILED or AGGREGATE DATA REQUEST
CONCERNING THE RELEASE OF ELECTRONIC DATA
*Pursuant to CJD 05-01 and Colorado Judicial Branch Public Access Policy***

Requested By: _____ Date: _____

Agency/Organization: _____

Mailing Address: _____

Telephone Number: _____ e-mail: _____

Data Requested: _____

Intended use of data: _____

I have read the Colorado Judicial Branch's Public Access Policy and understand the limitations of this data and the uses of the data.

I understand and agree to the following. The data will not be republished in any format. The data will not be re-sold. I will use the data for research purposes only. I will not solicit business using this data. I will confirm the accuracy of the information in the record at the county of origin; verifying the record with paper records maintained at the courts. I understand the limitations of this data as it relates to data entry. Though every effort is made to enter data in an accurate and standard form, records may not appear on this release due to clerical coding issues. I understand and agree it is my responsibility to verify the data, especially as it relates to sealed records. I understand there is a cost recovery fee that will be assessed for the compilation of data.

I hereby disclaim any liability to the Judicial Department and its employees and agents for any claimed loss of privilege or other claimed injury due to disclosure of allegedly confidential or privileged information.

Date:

Signed by:

Print Name

Title

for Agency/Organization (if any)

Addendum B
DATA MATCH REQUEST
CONCERNING THE RELEASE OF ELECTRONIC DATA
Pursuant to CJD 05-01 and Colorado Judicial Branch Public Access Policy

Requested By: _____ Date: _____

Agency/Organization: _____

Mailing Address: _____

Telephone Number: _____ e-mail: _____

Data Requested: _____

Intended use of data: _____

I have read the Colorado Judicial Branch's Public Access Policy and understand the limitations of this data and the uses of the data.

I understand and agree to the following. The data will not be republished in any format. The data will not be re-sold. I will use the data for research purposes only. I will not solicit business using this data. I will confirm the accuracy of the information in the record at the county of origin; verifying the record with paper records maintained at the courts. I understand the limitations of this data as it relates to data entry. Though every effort is made to enter data in an accurate and standard form, records may not appear on this release due to clerical coding issues. I understand and agree it is my responsibility to verify the data, especially as it relates to sealed records. I understand there is a cost recovery fee that will be assessed for the compilation of data.

I hereby disclaim any liability to the Judicial Department and its employees and agents for any claimed loss of privilege or other claimed injury due to disclosure of allegedly confidential or privileged information.

Date:

Signed by:

Print Name

Title

for Agency/Organization (if any)

Addendum C

COST RECOVERY FORMULA CONCERNING THE RELEASE OF ELECTRONIC DATA *Pursuant to CJD 05-01 and Colorado Judicial Branch Public Access Policy*

This recovery formula is created and adopted pursuant to the authority granted to the Public Access Committee by Chief Justice Directive 05-01 to establish policy concerning the recovery of costs associated with the release of electronic data and is consistent with that Directive unless otherwise specifically indicated. It is effective immediately and is intended to provide guidance to the Judicial Branch as it responds to requests for information.

Costs shall be consistent with those allowed in §24-72-205(2) and (3) C.R.S. The following costs associated with the release of electronic data will be recovered.

- Programmer hours will be charged at \$40.00 per hour. Hours will be rounded to the nearest half hour. (Writing and/or running queries)
- Analyst hours will be charged at \$30.00 per hour. Hours will be rounded to the nearest half hour. (Formatting, reviewing query for accuracy and validity.)
- Disks, CDs or other medium used for providing the data to the requestor
- Postage
- Envelopes
- Administrative time, which includes: court clerk time, secretarial time, billing time (calculating the billing, creating and mailing, and tracking payments received), request tracking, etc.
- Processing fee which would recover the maintenance costs associated with the hardware and software that are necessary to provide the data as expressed in Computer Processing Units (CPU) – calculated by the quantity of time the system is in use to run the query and compile the requested data.

Addendum D

REQUEST TO ACCESS PLEADINGS OR DOCUMENTS
Pursuant to CJD 05-01 and Colorado Judicial Branch Public Access Policy

Date: _____

Court Location (County): _____

Case Number: _____

Plaintiff(s)/Petitioner(s): _____

DOB: _____

Defendant(s)/Respondent(s): _____

DOB: _____

List the name of the pleading or document that you would like to access:

Do you need to review the pleadings or documents or do you want a copy to take with you?

Dated: _____

Requestor

Address

City, State and Zip Code

Telephone Number (Day)

Telephone Number (Alternate)

Date request completed and provided to requestor: _____

EXHIBIT 7

Connecticut General Statutes Annotated
Rules for the Superior Court (Refs & Annos)
Procedure in Civil Matters
Chapter 11. Motions, Requests, Orders of Notice, and Short Calendar

Practice Book 1998, § 11-20A

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

Currentness

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

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

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

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

(e) Except as otherwise ordered by the judicial authority, a motion to seal or limit the disclosure of affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding shall be calendared so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with a motion to file affidavits, documents or other materials under seal or to limit their disclosure.

(f)(1) A motion to seal the contents of an entire court file shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. The procedures set forth in Sections 7-4B and 7-4C shall be followed in connection with such motion.

(2) The judicial authority may issue an order sealing the contents of an entire court file only upon a finding that there is not available a more narrowly tailored method of protecting the overriding interest, such as redaction, sealing a portion of the file or authorizing the use of pseudonyms. The judicial authority shall state in its decision or order each of the more narrowly tailored methods that was considered and the reason each such method was unavailable or inadequate.

(g) With the exception of any provision of the General Statutes under which the court is authorized to seal or limit the disclosure of files, affidavits, documents, or other materials, whether at a pretrial or trial stage, any person affected by a court order that seals or limits the disclosure of any files, documents or other materials on file with the court or filed in connection with a court proceeding, shall have the right to the review of such order by the filing of a petition for review with the appellate court within seventy-two hours from the issuance of such order. Nothing under this subsection shall operate as a stay of such sealing order.

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

(2) The judicial authority may grant prior to the commencement of the action a temporary ex parte application for permission to use pseudonyms pending a hearing on continuing the use of such pseudonyms to be held not less than fifteen days after the return date of the complaint.

(3) After commencement of the action, a motion for permission to use pseudonyms shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion, unless the judicial authority otherwise directs, so that notice to the public is given of the time and place of the hearing on the motion and to afford the public an opportunity to be heard on the motion under consideration. Leave of the court may be sought to file the motion under seal pending a disposition of the motion by the judicial authority.

(4) Any order allowing the use of a pseudonym in place of the name of a party shall also require the parties to use such pseudonym in all documents filed with the court.

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

(j) When placed on a short calendar, motions filed under this rule shall be listed in a separate section titled "Motions to Seal or Close" and shall also be listed with the time, date and place of the hearing on the judicial branch website. A notice of such

§ 11-20A. Sealing Files or Limiting Disclosure of..., CT R SUPER CT CIV...

motion being placed on the short calendar shall, upon issuance of the short calendar, be posted on a bulletin board adjacent to the clerk's office and accessible to the public.

Credits

[Adopted May 14, 2003, effective July 1, 2003. Amended June 21, 2004, effective January 1, 2005; June 20, 2011, effective January 1, 2012.]

Notes of Decisions (23)

Practice Book 1998, § 11-20A, CT R SUPER CT CIV § 11-20A
Current with amendments received through 2/1/2014

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 8

West's Florida Statutes Annotated
Florida Constitution--1968 Revision (Refs & Annos)
Article I. Declaration of Rights (Refs & Annos)

West's F.S.A. Const. Art. 1 § 24

§ 24. Access to public records and meetings

Currentness

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

(b) All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b), provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. The legislature shall enact laws governing the enforcement of this section, including the maintenance, control, destruction, disposal, and disposition of records made public by this section, except that each house of the legislature may adopt rules governing the enforcement of this section in relation to records of the legislative branch. Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) or (b) and provisions governing the enforcement of this section, and shall relate to one subject.

(d) All laws that are in effect on July 1, 1993 that limit public access to records or meetings shall remain in force, and such laws apply to records of the legislative and judicial branches, until they are repealed. Rules of court that are in effect on the date of adoption of this section that limit access to records shall remain in effect until they are repealed.

Credits

Added, general election, Nov. 3, 1992. Amended, general election, Nov. 5, 2002.

Editors' Notes

COMMENTARY TO 1992 ADDITION

<By William A. Buzzett and Deborah K. Kearney>

<(1992 Committee Substitute for Committee Substitute for House Joint Resolutions 1727, 863, and 2035)>

Florida's public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

The amendment makes clear that all branches of state government and all local governments, and all officers, agencies, boards, and employees, are made subject to the open meetings and public records requirements of Article I, Section 24.

Subsection (a) ensures the right of public access to any public record not exempted in the manner set out in the amendment, made or received in connection with the official business of any public body, officer or employee of the state, or persons acting on their behalf.

Subsection (b) requires that all meetings of any collegial public body of the executive branch or collegial bodies of local governments, at which official acts are to be taken or at which business of the entity is to be transacted or discussed, must be open and noticed to the public. On the contrary, legislative meetings are open and noticed as provided in Article III, Section 4(e), which operates quite differently. As to the executive branch and local government collegial bodies, any gathering of two or more members to discuss a matter that may foreseeably come before that body, is considered a public meeting and must be noticed and open. *Hough v. Stembriage*, 278 So. 2d 288 (Fla. 3d DCA 1973). On the other hand, Article III, Section 4(e) requires that only legislative committees, subcommittees, and conference committees must be open and noticed. *Prearranged* meetings between *more than two* members of the Legislature (or between the governor, the president of the senate or the speaker of the house), "the purpose of which is to agree upon formal legislative action" must be *reasonably* open to the public. Notice is not required.

Subsection (c) grants the Legislature the power to enact general laws governing the enforcement of this section and to enact exemptions to the requirements for public access. Any law creating an exemption: (1) must state with specificity the public necessity justifying the exemption; (2) may be no broader than necessary to accomplish the stated purpose of the exemption; and (3) may contain no other subject except exemptions and provisions governing the enforcement of this section and must relate to a single subject. Laws governing the enforcement of this section include those relating to maintenance, control, destruction, disposal and disposition of public records. The Legislature is authorized to enforce the section as it applies to the Legislature, through adoption of its own rules. This is an important distinction, as the courts will not become involved in interpreting and enforcing the internal activities of the Legislature. See e.g., *Moffit v. Willis*, 459 So. 2d 1018 (Fla. 1984).

Subsection (d) represents a savings clause so that all exemptions to the public records and open meetings laws in force on July 1, 1993, the effective date of the amendment, remain in effect until they are repealed. Likewise, court rules in effect on that date remain in effect until repealed.

§ 24. Access to public records and meetings, FL CONST Art. 1 § 24

Notes of Decisions (113)

West's F. S. A. Const. Art. 1 § 24, FL CONST Art. 1 § 24
Current through Nov. 6, 2012, General Election

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 9

West's Florida Statutes Annotated
Florida Rules of Judicial Administration (Refs & Annos)
Part IV. Judicial Proceedings and Records

Fla. R. Jud. Admin., Rule 2.420

Rule 2.420. Public Access to Judicial Branch Records

Currentness

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

(4) "Confidential," as applied to information contained within a record of the judicial branch, means that such information is exempt from the public right of access under article I, section 24(a) of the Florida Constitution and may be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term "exempt" means that such information is confidential. Confidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule. To the extent reasonably practicable, restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.

(5) "Affected non-party" means any non-party identified by name in a court record that contains confidential information pertaining to that non-party.

(6) "Filer" means any person who files a document in court records, except "filer" does not include the clerk of court or designee of the clerk, a judge, magistrate, hearing officer, or designee of a judge, magistrate, or hearing officer.

(c) Confidential and Exempt Records. 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 Judicial Ethics Advisory Committee.

(d) Procedures for Determining Confidentiality of Court Records.

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

(A) information described by any of subdivisions (c)(1) through (c)(6) of this rule; and

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

(i) Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. §§ 39.0132(3), 39.0132(4)(a), Fla. Stat.

(ii) Adoption records. § 63.162, Fla. Stat.

(iii) Social Security, bank account, charge, debit, and credit card numbers. § 119.0714(1)(i)-(j), (2)(a)-(e), Fla. Stat. (Unless redaction is requested pursuant to § 119.0714(2), Fla. Stat., this information is exempt only as of January 1, 2012.)

(iv) HIV test results and the identity of any person upon whom an HIV test has been performed. § 381.004(3)(e), Fla. Stat.

(v) Records, including test results, held by the Department of Health or its authorized representatives relating to sexually transmissible diseases. § 384.29, Fla. Stat.

(vi) Birth records and portions of death and fetal death records. §§ 382.008(6), 382.025(1), Fla. Stat.

(vii) Information that can be used to identify a minor petitioning for a waiver of parental notice when seeking to terminate pregnancy. § 390.01116, Fla. Stat.

(viii) Clinical records under the Baker Act. § 394.4615(7), Fla. Stat.

(ix) Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals. § 397.501(7), Fla. Stat.

(x) Clinical records of criminal defendants found incompetent to proceed or acquitted by reason of insanity. § 916.107(8), Fla. Stat.

(xi) Estate inventories and accountings. § 733.604(1), Fla. Stat.

(xii) The victim's address in a domestic violence action on petitioner's request. § 741.30(3)(b), Fla. Stat.

(xiii) Protected information regarding victims of child abuse or sexual offenses. §§ 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

(xiv) Gestational surrogacy records. § 742.16(9), Fla. Stat.

(xv) Guardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases. §§ 744.1076, 744.3701, Fla. Stat.

(xvi) Grand jury records. §§ 905.17, 905.28(1), Fla. Stat.

(xvii) Records acquired by courts and law enforcement regarding family services for children. § 984.06(3)-(4), Fla. Stat.

(xviii) Juvenile delinquency records. §§ 985.04(1), 985.045(2), Fla. Stat.

(xix) Records disclosing the identity of persons subject to tuberculosis proceedings and records held by the Department of Health or its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis. §§ 392.545, 392.65, Fla. Stat.

(xx) Complete presentence investigation reports. Fla. R. Crim. P. 3.712.

(2) The filer of any document containing confidential information described in subdivision (d)(1)(B) shall, at the time of filing, file with the clerk a "Notice of Confidential Information within Court Filing" in order to indicate that confidential information described in subdivision (d)(1)(B) of this rule is included within the document being filed and also indicate that either the entire document is confidential or identify the precise location of the confidential information within the document being filed. If an entire court file is maintained as confidential, the filer of a document in such a file is not required to file the notice form. A form Notice of Confidential Information within Court Filing accompanies this rule.

(A) If any document in a court file contains confidential information as described in subdivision (d)(1)(B), the filer, a party, or any affected non-party may file the Notice of Confidential Information within Court Filing if the document was not initially filed with a Notice of Confidential Information within Court Filing and the confidential information is not maintained as confidential by the clerk. The Notice of Confidential Information within Court Filing filed pursuant to this subdivision must also state the title and type of document, date of filing (if known), date of document, docket entry number, indicate that either the entire document is confidential or identify the precise location of the confidential information within the document, and provide any other information the clerk may require to locate the confidential information.

(B) The clerk of court shall review filings identified as containing confidential information to determine whether the purported confidential information is facially subject to confidentiality under subdivision (d)(1)(B). If the clerk determines that filed information is not subject to confidentiality under subdivision (d)(1)(B), the clerk shall notify the filer of the Notice of Confidential Information within Court Filing in writing within 5 days of filing the notice and thereafter shall maintain the information as confidential for 10 days from the date such notification by the clerk is served. The information shall not be held as confidential for more than that 10 day period, unless a motion has been filed pursuant to subdivision (d)(3).

(3) The filer of a document with the court shall ascertain whether any information contained within the document may be confidential under subdivision (c) of this rule notwithstanding that such information is not itemized at subdivision (d)(1) of this rule. If the filer believes in good faith that information is confidential but is not described in subdivision (d)(1) of this rule, the filer shall request that the information be maintained as confidential by filing a "Motion to Determine Confidentiality of Court Records" under the procedures set forth in subdivision (e), (f), or (g), unless

(A) the filer is the only individual whose confidential information is included in the document to be filed or is the attorney representing all such individuals; and

(B) a knowing waiver of the confidential status of that information is intended by the filer. Any interested person may request that information within a court file be maintained as confidential by filing a motion as provided in subdivision (e), (f), or (g).

(4) If a notice of confidential information is filed pursuant to subdivision (d)(2), or a motion is filed pursuant to subdivision (e)(1) or (g)(1) seeking to determine that information contained in court records is confidential, or pursuant to subdivision (e)(5) or (g)(5) seeking to vacate an order that has determined that information in a court record is confidential or seeking to unseal information designated as confidential by the clerk of court, then the person filing the notice or motion shall give notice of such filing to any affected non-party. Notice pursuant to this provision must:

(A) be filed with the court;

(B) identify the case by docket number;

(C) describe the confidential information with as much specificity as possible without revealing the confidential information, including specifying the precise location of the information within the court record; and

(D) include:

(i) in the case of a motion to determine confidentiality of court records, a statement that if the motion is denied then the subject material will not be treated as confidential by the clerk; and

(ii) in the case of a motion to unseal confidential records or a motion to vacate an order deeming records confidential, a statement that if the motion is granted, the subject material will no longer be treated as confidential by the clerk.

Any notice described herein must be served pursuant to subdivision (k), if applicable, together with the motion that gave rise to the notice in accordance with subdivision (e)(5) or (g)(5).

(5) Except when the entire court file is maintained as confidential, if a judge, magistrate, or hearing officer files any document containing confidential information, the confidential information within the document must be identified as "confidential" and the title of the document must include the word "confidential." The clerk must maintain the confidentiality of the identified confidential information. A copy of the document edited to omit the confidential information shall be provided to the clerk for filing and recording purposes.

(e) Request to Determine Confidentiality of Trial Court Records in Noncriminal Cases.

(1) A request to determine the confidentiality of trial court records in noncriminal cases under subdivision (c) must be made in the form of a written motion captioned "Motion to Determine Confidentiality of Court Records." A motion made under this subdivision must:

(A) identify the particular court records or a portion of a record that the movant seeks to have determined as confidential with as much specificity as possible without revealing the information subject to the confidentiality determination;

(B) specify the bases for determining that such court records are confidential without revealing confidential information; and

(C) set forth the specific legal authority and any applicable legal standards for determining such court records to be confidential without revealing confidential information.

Any written motion made under this subdivision must include a signed certification by the party or the attorney for the party making the request that the motion is made in good faith and is supported by a sound factual and legal basis. Information that is subject to such a motion must be treated as confidential by the clerk pending the court's ruling on the motion. A response to a written motion filed under this subdivision may be served within 10 days of service of the motion. Notwithstanding any of the foregoing, the court may not determine that the case number, docket number, or other number used by the clerk's office to identify the case file is confidential.

(2) Except when a motion filed under subdivision (e)(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 (e)(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 person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c). Any person may request expedited consideration of and ruling on the motion. The movant shall be responsible for ensuring that a complete record of any hearing held pursuant to this subdivision is 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 (e)(4) or by providing such other public notice as the court deems appropriate. The court must issue a ruling on the motion within 30 days of the hearing.

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

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

(B) The particular grounds under subdivision (c) for determining the information is confidential;

(C) Whether any party's name is determined to be 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 determined to be confidential;

(E) The particular information that is determined to be confidential;

(F) Identification of persons who are permitted to view the confidential information;

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

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

(4) Except as provided by law or court rule, notice must be given of any written order granting in whole or in part a motion made under subdivision (e)(1) as follows:

(A) 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; and

(B) the order must remain posted in both locations for no less than 30 days. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (e) or requests that the court order the unsealing of records designated as confidential under subdivision (d), the request must be made by a written motion, filed in that court, that states with as much specificity as possible the bases for the motion. The motion must set forth the specific legal authority and any applicable legal standards supporting the motion. The movant must serve all parties and all affected non-parties with a copy of the motion. Except when a motion filed under this subdivision represents that all parties and affected non-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 on the motion. Regardless of whether any motion filed under this subdivision is agreed to by the parties and affected non-parties, the court may in its discretion hold a hearing on such motion. Any person may request expedited consideration of and ruling on the motion. Any hearing held under this subdivision must be an open proceeding, except that any person may request that the court conduct all or part of the hearing in camera to protect the interests set forth in subdivision (c). The court must issue a ruling on the motion within 30 days of the hearing. 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. This subdivision shall not apply to orders determining that court records are confidential under subdivision (c)(7) or (c)(8).

(f) Request to Determine Confidentiality of Court Records in Criminal Cases.

(1) Subdivisions (e) and (h) shall apply to any motion by the state, a defendant, or an affected non-party to determine the confidentiality of trial court records in criminal cases under subdivision (c), except as provided in subdivision (f)(3). As to any motion filed in the trial court under subdivision (f)(3), the following procedure shall apply:

(A) Unless the motion represents that the State, defendant(s), and all affected non-parties subject to the motion agree to all of the relief requested, the court must hold a hearing on the motion filed under this subdivision within 15 days of the filing of the motion. Any hearing held under this subdivision must be an open proceeding, except that any person 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).

(B) The court shall issue a written ruling on a motion filed under this subdivision within 10 days of the hearing on a contested motion or within 10 days of the filing of an agreed motion.

(2) Subdivision (g) shall apply to any motion to determine the confidentiality of appellate court records under subdivision (c), except as provided in subdivision (f)(3). As to any motion filed in the appellate court under subdivision (f)(3), the following procedure shall apply:

(A) The motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(B) A response to a motion filed under this subdivision may be served within 10 days of service of the motion.

(C) The court shall issue a written ruling on a motion filed under this subdivision within 10 days of the filing of a response on a contested motion or within 10 days of the filing of an uncontested motion.

(3) Any motion to determine whether a court record that pertains to a plea agreement, substantial assistance agreement, or other court record that reveals the identity of a confidential informant or active criminal investigative information is confidential under subdivision (c)(9)(A)(i), (c)(9)(A)(iii), (c)(9)(A)(v), or (c)(9)(A)(vii) of this rule may be made in the form of a written motion captioned "Motion to Determine Confidentiality of Court Records." Any motion made pursuant to this subdivision must be treated as confidential and indicated on the docket by generic title only, pending a ruling on the motion or further order of the court. As to any motion made under this subdivision, the following procedure shall apply:

(A) Information that is the subject of such motion must be treated as confidential by the clerk pending the court's ruling on the motion. Filings containing the information must be indicated on the docket in a manner that does not reveal the confidential nature of the information.

(B) The provisions of subdivisions (e)(3)(A)-(G), (g)(7), (h), and (j), shall apply to motions made under this subdivision. The provisions of subdivisions (e)(1), (e)(2), (e)(3)(H), (e)(4), and (e)(5) shall not apply to motions made under this subdivision.

(C) No order entered under this subdivision may authorize or approve the sealing of court records for any period longer than is necessary to achieve the objective of the motion, and in no event longer than 120 days. Extensions of an order issued

hereunder may be granted for 60-day periods, but each such extension may be ordered only upon the filing of another motion in accordance with the procedures set forth under this subdivision. In the event of an appeal or review of a matter in which an order is entered under this subdivision, the lower tribunal shall retain jurisdiction to consider motions to extend orders issued hereunder during the course of the appeal or review proceeding.

(D) The clerk of the court shall not publish any order of the court issued hereunder in accordance with subdivision (e)(4) or (g)(4) unless directed by the court. The docket shall indicate only the entry of the order.

(4) This subdivision does not authorize the falsification of court records or progress dockets.

(g) Request to Determine Confidentiality of Appellate Court Records in Noncriminal Cases.

(1) Subdivision (e)(1) shall apply to any motion filed in the appellate court to determine the confidentiality of appellate court records in noncriminal cases under subdivision (c). Such a motion may be made with respect to a record that was presented or presentable to a lower tribunal, but no determination concerning confidentiality was made by the lower tribunal, or a record presented to an appellate court in an original proceeding.

(2) A response to a motion filed under subdivision (g)(1) may be served within 10 days of service of the motion. The court shall issue a written ruling on a written motion filed under this subdivision within 30 days of the filing of a response on a contested motion or within 30 days of the filing of an uncontested written motion.

(3) Any order granting in whole or in part a motion filed under subdivision (g)(1) must be in compliance with the guidelines set forth in subdivisions (e)(3)(A)-(H). Any order requiring the sealing of an appellate court record operates to also make those same records confidential in the lower tribunal during the pendency of the appellate proceeding.

(4) Except as provided by law, within 10 days following the entry of an order granting a motion under subdivision (g)(1), the clerk of the appellate court must post a copy of the order on the clerk's website and must provide a copy of the order to the clerk of the lower tribunal, with directions that the clerk of the lower tribunal shall seal the records identified in the order. The order must remain posted by the clerk of the appellate court for no less than 30 days.

(5) If a nonparty requests that the court vacate all or part of an order issued under subdivision (g)(3), or requests that the court order the unsealing of records designated as confidential under subdivision (d), the request must be made by a written motion, filed in that court, that states with as much specificity as possible the bases for the request. The motion must set forth the specific legal authority and any applicable legal standards supporting the motion. The movant must serve all parties and all affected non-parties with a copy of the motion. A response to a motion may be served within 10 days of service of the motion.

(6) The party seeking to have an appellate record sealed under this subdivision has the responsibility to ensure that the clerk of the lower tribunal is alerted to the issuance of the order sealing the records and to ensure that the clerk takes appropriate steps to seal the records in the lower tribunal.

(7) Upon conclusion of the appellate proceeding, the lower tribunal may, upon appropriate motion showing changed circumstances, revisit the appellate court's order directing that the records be sealed.

(8) Records of a lower tribunal determined to be confidential by that tribunal must be treated as confidential during any review proceedings. In any case where information has been determined to be confidential under this rule, the clerk of the lower tribunal shall so indicate in the index transmitted to the appellate court. If the information was determined to be confidential in an order, the clerk's index must identify such order by date or docket number. This subdivision does not preclude review by an appellate court, under Florida Rule of Appellate Procedure 9.100(d), or affect the standard of review by an appellate court, of an order by a lower tribunal determining that a court record is confidential.

(h) Oral Motions to Determine Confidentiality of Trial Court Records.

(1) Notwithstanding the written notice requirements of subdivision (d)(2) and written motion requirements of subdivisions (d)(3), (e)(1), and (f), the movant may make an oral motion to determine the confidentiality of trial court records under subdivision (c), provided:

(A) except for oral motions under subdivision (f)(3), the oral motion otherwise complies with subdivision (e)(1);

(B) all parties and affected non-parties are present or properly noticed or the movant otherwise demonstrates reasonable efforts made to obtain the attendance of any absent party or affected non-party;

(C) the movant shows good cause why the movant was unable to timely comply with the written notice requirements as set forth in subdivision (d)(2) or the written motion requirement as set forth in subdivision (d)(3), (e)(1), or (f), as applicable;

(D) the oral motion is reduced to written form in compliance with subdivision (d), (e)(1), or (f), as applicable, and is filed within 5 days following the date of making the oral motion;

(E) except for oral motions under subdivision (f)(3), the provisions of subdivision (e)(2) shall apply to the oral motion, procedure and hearing;

(F) the provisions of subdivisions (f)(1)(A) and (B) and (f)(3) shall apply to any oral motion under subdivision (f)(3); and

(G) oral motions are not applicable to subdivision (f)(2) or (g) or extensions of orders under subdivision (f)(3)(C).

(2) The court may deny any oral motion made pursuant to subdivision (h)(1) if the court finds that the movant had the ability to timely comply with the written notice requirements in subdivision (d) or the written motion requirements of subdivision (d)(3), (e)(1), or (f), as applicable, or the movant failed to provide adequate notice to the parties and affected non-parties of the confidentiality issues to be presented to the court.

(3) Until the court renders a decision regarding the confidentiality issues raised in any oral motion, all references to purported confidential information as set forth in the oral motion shall occur in a manner that does not allow public access to such information.

(4) If the court grants in whole or in part any oral motion to determine confidentiality, the court shall issue a written order that does not reveal the confidential information and complies with the applicable subdivision of this rule as follows:

(A) For any oral motion under subdivision (e) or (f)(1), except subdivisions (f)(1)(A) and (B), the written order must be issued within 30 days of the hearing and must comply with subdivision (e)(3).

(B) For any oral motion under subdivision (f)(3), the written order must be issued within 10 days of the hearing on a contested motion or filing of an agreed motion and must comply with subdivision (f)(3).

(i) Sanctions. After notice and an opportunity to respond, and upon determining that a motion, filing, or other activity described below was not made in good faith and was not supported by a sound legal or factual basis, the court may impose sanctions against any party or non-party and/or their attorney, if that party or non-party and/or their attorney, in violation of the applicable provisions of this rule:

(1) seeks confidential status for non-confidential information by filing a notice under subdivision (d)(2);

(2) seeks confidential status for non-confidential information by making any oral or written motion under subdivision (d)(3), (e), (f), (g), or (h);

(3) seeks access to confidential information under subdivision (j) or otherwise;

(4) fails to file a Notice of Confidential Information within Court Filing in compliance with subdivision (d)(2);

(5) makes public or attempts to make public by motion or otherwise information that should be maintained as confidential under subdivision (c), (d), (e), (f), (g) or (h); or

(6) otherwise makes or attempts to make confidential information part of a non-confidential court record.

Nothing in this subdivision is intended to limit the authority of a court to enforce any court order entered pursuant to this rule.

(j) Procedure for Obtaining Access to Confidential Court Records.

(1) The clerk of the court must allow access to confidential court records to persons authorized by law, or any person authorized by court order.

(2) A court order allowing access to confidential court records may be obtained by filing a written motion which must:

(A) identify the particular court record(s) or a portion of the court record(s) to which the movant seeks to obtain access with as much specificity as possible without revealing the confidential information;

- (B) specify the bases for obtaining access to such court records;
 - (C) set forth the specific legal authority for obtaining access to such court records; and
 - (D) contain a certification that the motion is made in good faith and is supported by a sound factual and legal basis.
- (3) The movant must serve a copy of the written motion to obtain access to confidential court records on all parties and reasonably ascertainable affected non-parties and the court must hold a hearing on the written motion within a reasonable period of time.
- (4) Any order granting access to confidential court records must:
- (A) describe the confidential information with as much specificity as possible without revealing the confidential information, including specifying the precise location of the information within the court records;
 - (B) identify the persons who are permitted to view the confidential information in the court records;
 - (C) identify any person who is permitted to obtain copies of the confidential court records; and
 - (D) state the time limits imposed on such access, if any, and any other applicable terms or limitations to such access.
- (5) The filer of confidential court records, that filer's attorney of record, or that filer's agent as authorized by that filer in writing may obtain access to such confidential records pursuant to this subdivision.
- (6) Unless otherwise provided, an order granting access to confidential court records under this subdivision shall not alter the confidential status of the record.
- (k) Procedure for Service on Victims and Affected Non-parties and When Addresses Are Confidential.**
- (1) In criminal cases, when the defendant is required to serve any notice or motion described in this rule on an alleged victim of a crime, service shall be on the state attorney, who shall send or forward the notice or motion to the alleged victim.
 - (2) Except as set forth in subdivision (k)(1), when serving any notice or motion described in this rule on any affected non-party whose name or address is not confidential, the filer or movant shall use reasonable efforts to locate the affected non-party and may serve such affected non-party by any method set forth in Florida Rule of Judicial Administration 2.516.
 - (3) Except as set forth in subdivision (k)(1), when serving any notice or motion described in this rule and the name or address of any party or affected non-party is confidential, the filer or movant must state prominently in the caption of the notice or motion

“Confidential Party or Confidential Affected Non-Party--Court Service Requested.” When a notice or motion so designated is filed, the court shall be responsible for providing a copy of the notice or motion to the party or affected non-party, by any method permitted in Florida Rule of Judicial Administration 2.516, in such a way as to not reveal the confidential information.

(l) Denial of Access Request for Administrative Records. Expedited review of denials of access to administrative records of the judicial branch shall be provided through an action for mandamus or other appropriate relief, in the following manner:

(1) When 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.

(m) Procedure for Public Access to Judicial Branch Records. Requests and responses to requests for access to records under this rule shall be made in a reasonable manner.

(1) Requests for access to judicial branch 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 the 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.

Credits

Former Rule 2.051 added effective Oct. 29, 1992 (608 So.2d 472). Amended March 23, 1995 (651 So.2d 1185); Jan. 28, 1999, effective Feb. 1, 1999 (746 So.2d 1073); March 7, 2002 (825 So.2d 889); Nov. 3, 2005, effective Jan. 1, 2006 (915 So.2d 157). Renumbered from Rule 2.051 Sept. 21, 2006 (939 So.2d 966). Amended April 5, 2007 (954 So.2d 16); March 18, 2010 (31 So.3d 756); Rule 2.420(d) added March 18, 2010, effective Oct. 1, 2010 (31 So.3d 756). Amended July 7, 2011 (68 So.3d 228); March 28, 2013, effective May 1, 2013 (124 So.3d 819).

Editors' Notes

COMMITTEE NOTE

1995 Amendment. This rule was adopted to conform to the 1992 addition of article I, section 24, to the Florida Constitution. Amendments to this rule were adopted in response to the 1994 recommendations of the Study Committee on Confidentiality of Records of the Judicial Branch.

Subdivision (b) has been added by amendment and provides a definition of “judicial records” that is consistent with the definition of “court records” contained in rule 2.075(a)(1) and the definition of “public records” contained in chapter 119, Florida Statutes. The word “exhibits” used in this definition of judicial records is intended to refer only to documentary evidence and does not refer to tangible items of evidence such as firearms, narcotics, etc. Judicial records within this definition include all judicial records and data regardless of the form in which they are kept. Reformatting of information may be necessary to protect copyrighted material. *Seigle v. Barry*, 422 So. 2d 63 (Fla. 4th DCA 1982), *review denied*, 431 So. 2d 988 (Fla. 1983).

The definition of “judicial records” also includes official business information transmitted via an electronic mail (e-mail) system. The judicial branch is presently experimenting with this new technology. For example, e-mail is currently being used by the judicial branch to transmit between judges and staff multiple matters in the courts including direct communications between judges and staff and other judges, proposed drafts of opinions and orders, memoranda concerning pending cases, proposed jury instructions, and even votes on proposed opinions. All of this type of information is exempt from public disclosure under rules 2.051(c)(1) and (c)(2). With few exceptions, these examples of e-mail transmissions are sent and received between judicial officials and employees within a particular court's jurisdiction. This type of e-mail is by its very nature almost always exempt from public record disclosure pursuant to rule 2.051(c). In addition, official business e-mail transmissions sent to or received by judicial officials or employees using dial-in equipment, as well as the use of on-line outside research facilities such as Westlaw, would also be exempt e-mail under rule 2.051(c). On the other hand, we recognize that not all e-mail sent and received within a particular court's jurisdiction will fall into an exception under rule 2.051(c). The fact that a non-exempt e-mail message made or received in connection with official court business is transmitted intra-court does not relieve judicial officials or employees from the obligation of properly having a record made of such messages so they will be available to the public similar to any other written communications. It appears that official business e-mail that is sent or received by persons outside a particular court's jurisdiction is largely non-exempt and is subject to recording in some form as a public record. Each court should develop a means to properly make a record of non-exempt official business e-mail by either electronically storing the mail or by making a hard copy. It is important to note that, although official business communicated by e-mail transmissions is a matter of public record under the rule, the exemptions provided in rule 2.051(c) exempt many of these judge/staff transmissions from the public record. E-mail may also include transmissions that are clearly not official business and are, consequently, not required to be recorded as a public record. Each court should also publish an e-mail address for public access. The individual e-mail addresses of judicial officials and staff are exempt under rule 2.051(c)(2) to protect the compelling interests of maintaining the uninterrupted use of the computer for research, word-processing, preparation of opinions, and communication during trials, and to ensure computer security.

Subdivision (c)(3) was amended by creating subparts (a) and (b) to distinguish between the provisions governing the confidentiality of complaints against judges and complaints against other individuals or entities licensed or regulated by the Supreme Court.

Subdivision (c)(5) was amended to make public the qualifications of persons applying to serve or serving the court as unpaid volunteers such as guardians ad litem, mediators, and arbitrators and to make public the applications and evaluations of such persons upon a showing of materiality in a pending court proceeding or upon a showing of good cause.

Subdivision (c)(9) has also been amended. Subdivision (c)(9) was adopted to incorporate the holdings of judicial decisions establishing that confidentiality may be required to protect the rights of defendants, litigants, or third parties; to further the administration of justice; or to otherwise promote a compelling governmental interest. *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113 (Fla.1988); *Miami Herald Publishing Co. v. Lewis*, 426 So.2d 1 (Fla.1982). Such confidentiality may be implemented by court rule, as well as by judicial decision, where necessary for the

effective administration of justice. *See, e.g.*, Fla.R.Crim.P. 3.470, (Sealed Verdict); Fla.R.Crim.P. 3.712, (Presentence Investigation Reports); Fla.R.Civ.P. 1.280(c), (Protective Orders).

Subdivision (c)(9)(D) requires that, except where otherwise provided by law or rule of court, reasonable notice shall be given to the public of any order closing a court record. This subdivision is not applicable to court proceedings. Unlike the closure of court proceedings, which has been held to require notice and hearing prior to closure, *see Miami Herald Publishing Co. v. Lewis*, 426 So. 2d 1 (Fla.1982), the closure of court records has not required prior notice. Requiring prior notice of closure of a court record may be impractical and burdensome in emergency circumstances or when closure of a court record requiring confidentiality is requested during a judicial proceeding. Providing reasonable notice to the public of the entry of a closure order and an opportunity to be heard on the closure issue adequately protects the competing interests of confidentiality and public access to judicial records. *See Florida Freedom Newspapers, Inc. v. Sirmons*, 508 So.2d 462 (Fla. 1st DCA 1987), *approved, Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113 (Fla.1988); *State ex rel. Tallahassee Democrat v. Cooksey*, 371 So.2d 207 (Fla. 1st DCA 1979). Subdivision (c)(9)(D), however, does not preclude the giving of prior notice of closure of a court record, and the court may elect to give prior notice in appropriate cases.

2002 COURT COMMENTARY

The custodian is required to provide access to or copies of records but is not required either to provide information from records or to create new records in response to a request. *Op. Atty. Gen. Fla. 80-57* (1980); *Wootton v. Cook*, 590 So.2d 1039 (Fla. 1st DCA 1991); *Seigle v. Barry*, 422 So.2d 63 (Fla. 4th DCA 1982).

The writing requirement is not intended to disadvantage any person who may have difficulty writing a request; if any difficulty exists, the custodian should aid the requestor in reducing the request to writing.

It is anticipated that each judicial branch entity will have policies and procedures for responding to public records requests.

The 1995 commentary notes that the definition of "judicial records" added at that time is consistent with the definition of "court records" contained in rule 2.075(a)(1) and the definition of "public records" contained in chapter 119, Florida Statutes. Despite the commentary, these definitions are not the same. The definitions added in 2002 are intended to clarify that records of the judicial branch include court records as defined in rule 2.075(a)(1) and administrative records. The definition of records of the judicial branch is consistent with the definition of "public records" in chapter 119, Florida Statutes.

2005 COURT COMMENTARY

Under courts' inherent authority, appellate courts may appoint a special magistrate to serve as commissioner for the court to make findings of fact and oversee discovery in review proceedings under subdivision (d) of this rule. *Cf. State ex rel. Davis v. City of Avon Park*, 158 So. 159 (Fla. 1934) (recognizing appellate courts' inherent authority to do all things reasonably necessary for administration of justice within the scope of courts' jurisdiction, including the appointment of a commissioner to make findings of fact); *Wessells v. State*, 737 So. 2d 1103 (Fla. 1st DCA 1998) (relinquishing jurisdiction to circuit court for appointment of a special master to serve as commissioner for court to make findings of fact).

2007 COURT COMMENTARY

New subdivision (d) applies only to motions that seek to make court records in noncriminal cases confidential in accordance with subdivision (c)(9).

2007 COMMITTEE COMMENTARY

Subdivision (d)(2) is intended to permit a party to make use of any court-provided recording device or system that is available generally for litigants' use, but is not intended to require the court system to make such devices available where they are not already in use and is not intended to eliminate any cost for use of such system that is generally borne by a party requesting use of such system.

APPENDIX TO RULE 2.420

IN THE ... (NAME OF COURT) ..., FLORIDA
CASE NO.: _____

Plaintiff/Petitioner,

v.

Defendant/Respondent.

NOTICE OF CONFIDENTIAL INFORMATION WITHIN COURT FILING

Pursuant to Florida Rule of Judicial Administration 2.420(d)(2), I hereby certify:

() (1) I am filing herewith a document containing confidential information as described in Rule 2.420(d)(1)(B) and that:

(a) The title/type of document is: _____, and:

(b) () the entire document is confidential, or

() the confidential information within the document is precisely located at: _____.

OR

() (2) A document was previously filed in this case that contains confidential information as described in Rule 2.420(d)(1)(B), but a Notice of Confidential Information within Court Filing was not filed with the document and the confidential information was not maintained as confidential by the clerk of the court. I hereby [sic] notify the clerk that this confidential information is located as follows:

(a) Title/type of document: _____;

(b) Date of filing (if known): _____;

(c) Date of document: _____;

(d) Docket entry number: _____;

(e) () Entire document is confidential, or

() Precise location of confidential information in document: _____.

.....
Filer's Signature

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by (e-mail) (delivery) (mail) (fax) on: (All Parties and Affected Non-Parties. Note: If the name or address of a Party or Affected Non-Party is confidential DO NOT include such information in this Certificate of Service. Instead, serve the State Attorney or request Court Service. See Rule 2.420(k)) _____, on _____, 20 ____.

.....
Name

Address

Phone

Florida Bar No. (if applicable)

E-mail address ...

Note: The clerk of court shall review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality under subdivision (d)(1)(B). The clerk shall notify the filer in writing within 5 days if the clerk determines that the information is NOT subject to confidentiality, and the records shall not be held as confidential for more than 10 days, unless a motion is filed pursuant to subdivision (d)(3) of the Rule. Fla. R. Jud. Admin. 2.420(d)(2).

Notes of Decisions (41)

West's F.S.A. R.Jud.Admin. Rule 2.420, FL ST J ADMIN Rule 2.420

Current with amendments received through 3/15/14

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 10

West's Code of Georgia Annotated
State Court Rules
Uniform Superior Court Rules (Refs & Annos)

Uniform Superior Court Rule 21

RULE 21. LIMITATION OF ACCESS TO COURT FILES

Currentness

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

Notes of Decisions (19)

Uniform Superior Court Rule 21, GA R UNIF SUPER CT Rule 21
Current with amendments received through 6/1/2014

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

West's Code of Georgia Annotated
State Court Rules
Uniform Superior Court Rules (Refs & Annos)

Uniform Superior Court Rule 21.1

Rule 21.1. Motions and Orders.

Currentness

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

Credits

Amended effective October 7, 2010.

Notes of Decisions (1)

Uniform Superior Court Rule 21.1, GA R UNIF SUPER CT Rule 21.1

Current with amendments received through 6/1/2014

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

West's Code of Georgia Annotated
State Court Rules
Uniform Superior Court Rules (Refs & Annos)

Uniform Superior Court Rule 21.2

Rule 21.2. Finding of Harm

Currentness

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

Notes of Decisions (5)

Uniform Superior Court Rule 21.2, GA R UNIF SUPER CT Rule 21.2

Current with amendments received through 6/1/2014

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

West's Code of Georgia Annotated
State Court Rules
Uniform Superior Court Rules (Refs & Annos)

Uniform Superior Court Rule 21.3

Rule 21.3. Ex Parte Orders

Currentness

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

Uniform Superior Court Rule 21.3, GA R UNIF SUPER CT Rule 21.3
Current with amendments received through 6/1/2014

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

West's Code of Georgia Annotated
State Court Rules
Uniform Superior Court Rules (Refs & Annos)

Uniform Superior Court Rule 21.4

Rule 21.4. Review

Currentness

An order limiting access may be reviewed by interlocutory application to the Supreme Court.

Credits

Amended effective May 15, 1997.

Notes of Decisions (3)

Uniform Superior Court Rule 21.4, GA R UNIF SUPER CT Rule 21.4

Current with amendments received through 6/1/2014

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

West's Code of Georgia Annotated
State Court Rules
Uniform Superior Court Rules (Refs & Annos)

Uniform Superior Court Rule 21.5

Rule 21.5. Amendments

Currentness

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

Notes of Decisions (5)

Uniform Superior Court Rule 21.5, GA R UNIF SUPER CT Rule 21.5
Current with amendments received through 6/1/2014

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.