

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CREATION
OF A COMMITTEE ON
PRESERVATION, ACCESS, AND
SEALING OF COURT RECORDS

ADKT 0410

FILED

JUL 22 2013

TRACEY LINDENMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER ADOPTING POLICY FOR HANDLING FILED, LODGED, AND
PRESUMPTIVELY CONFIDENTIAL DOCUMENTS

WHEREAS, the Nevada Supreme Court is concerned about the lack of a standardized policy for handling of documents presented to the clerks of the municipal, justice and district courts; and

WHEREAS, the Commission on Preservation, Access, and Sealing of Court Records presented a proposed policy to this court and a public hearing was held on the policy on September 18, 2012; and

WHEREAS, this court solicited and considered public comment on the draft policy; accordingly,

IT IS HEREBY ORDERED that the Policy for Handling Filed, Lodged, and Presumptively Confidential Documents shall be adopted and shall read as set forth in Exhibit A.

IT IS FURTHER ORDERED that the adoption of this policy shall be effective thirty days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the

accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rules.

DATED this 22nd day of July, 2013.

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

cc: All District Court Judges
All Justices of the Peace
All Municipal Court Judges
All District Court Clerks and County Clerks
Administrative Office of the Courts

POLICY FOR HANDLING FILED, LODGED, AND PRESUMPTIVELY CONFIDENTIAL DOCUMENTS

I. Policy

This policy will address the handling of documents presented to the clerks of the municipal, justice, and district courts.

II. Procedures for the Clerk's Office

A. Filed Documents

1. Unless otherwise specifically authorized by statute, court rule, or this policy, the duty of the clerk of the court to file documents presented to the clerk is purely ministerial, and the clerk may not refuse to perform such a duty.
 - a. The clerk of the court shall file documents pursuant to the Nevada Rules of Civil Procedure (NRCP), Justice Court Rules of Civil Procedure (JCRCP), Nevada Rules of Appellate Procedure (NRAP), statute, other court rule, or court policy.
 - b. The clerk of the court shall e-file documents pursuant to the Nevada Electronic Filing and Conversion Rules (NEFCR), statute, and other court rule.
2. As used in this section, "*e-filing*" means the electronic transmission to or from a court or clerk of a document in electronic form as defined by the accepting court; it does not include submissions via e-mail, fax, or other electronic means.

B. Lodged Documents

A document is considered to be "lodged" with the Court for the temporary period of time between:

1. Submission of the document to the Court; and
2. Classification of the document by the Court as either:
 - a. "Filed," such that the public has access to the redacted or unredacted version of the document; or
 - b. "Presumptively confidential," such that the public does not have access to the document unless otherwise provided by law or this policy.

C. Subpoenaed Documents

Any document subpoenaed and delivered to the court must be presented to the applicable Judicial Executive Assistant (JEA) or Judicial Assistant (JA) for processing, unless otherwise ordered by the judge of the applicable department.

D. Correspondence¹

1. As used in this section, "*ex parte communication*" means a generally prohibited communication between counsel or a party and the court, and not directed to opposing counsel, concerning a pending or impending matter, unless permitted by law.
2. Any "*ex parte communication*" or any correspondence that does not conform to standard filing procedures, must be directed to the applicable Judicial Executive Assistant (JEA) or Judicial Assistant (JA) for screening, unless otherwise ordered by the judge of the applicable department or by court policy.
3. For purposes of this rule:
 - a. A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, provided that the judge makes reasonable efforts to avoid receiving factual information that is not part of the record.
 - b. Correspondence that constitutes a mere notice may be filed and is not required to be forwarded to a JEA or JA for screening.
 - c. If correspondence is considered "*ex parte communication*," the applicable judicial department shall:
 - i. Return the "*ex parte communication*" to the sender; or
 - ii. Schedule a hearing and present copies of the "*ex-parte communication*" to all parties.
 - d. If correspondence is not considered "*ex parte communication*," the applicable judicial department must temporarily "lodge" the document, as confidential, until classification of the document is determined by the Court as outlined in section II (B).
 - e. A judicial department may also direct correspondence to be formally filed with the court's filing office.

E. Documents to be considered presumptively confidential and non-public²:

1. The following documents are to be considered "*presumptively confidential*" until a sufficient threshold showing for disclosure has been reached by way of motion:
 - a. Adoption Documents (NRS Chapter 127) (NRS 432.035);
 - b. Adverse party and victim information sheets in protection order cases;
 - c. Affidavit of Financial Condition;
 - d. Any document sealed by statute or court rule;

¹ See Appendix A for examples of forms used to return correspondence that may be deemed *ex parte communication*.

² See Appendix B for an example of a Motion for Disclosure of Non-Public Information.

- e. Any document that has been ordered sealed by a judge pursuant to the Nevada Rules for Sealing and Redacting Court Records (SRCR).
- f. Any reports from National Crime Information Center (NCIC), National Consortium for Justice Information and Statistics (NCJIS), or any confidential law informant database (NRS 179.245, if applicable);
- g. Bench warrant paperwork, except for cover sheet signed by judge;
- h. Child-abuse or child neglect investigation reports (NRS Chapter 432B);
- i. Civil-commitment case documents (NRS Chapter 433 A);
- j. Confidential letters from a Family Mediation Center (NRS Chapter 127) (NRS 432.035);
- k. Court-ordered counseling reports (NRS Chapter 433) (HIPAA);
- l. Department of Child and Family Services (DCFS) reports filed under seal (NRS 432.035);
- m. Documents designated by the submitting party as "proprietary" or "trade secrets" (NRS Chapter 600A, et seq.);
- n. Documents relating to homeland security as defined by (NRS 239C.210);
- o. Drug screening test results; drug screening referrals (NRS Chapter 433) (HIPAA);
- p. Financial Declarations;
- q. Genetic testing information/paternity testing information (NRS Chapter 126);
- r. In Forma Pauperis Documents (including application);
- s. Information gathered for child custody records (NRS Chapter 125);
- t. Judges' notes that are included in a case file as distinct documents;
- u. Mark-up sheets or memos generated by court clerks or other court staff (including memoranda prepared by law clerks or staff attorneys);
- v. Medical records; mental health records; HIV/AIDS testing information; or treatment records for a party or witness (NRS Chapter 433) (HIPAA);
- w. Property division orders or separation agreements in divorce cases (NRS Chapter 125);
- x. Reports of abuse, neglect, exploitation, or isolation of older person (NRS 200.5095);
- y. Reports from Court Appointed Special Advocates (CASA); Special Advocates for Elders (SAFE); and Pre-Sentence Investigation (PSI) Reports (NRS 176.156);
- z. Search warrants sealed by the court (NRS 179.045) (otherwise presumptively public record).

F. Redaction

1. "Redact" means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.
2. As defined by NRS 603A.040, "Personal information" means a natural person's first name or first initial and last name in combination with any one or more of the following data elements, when the name and data elements are not encrypted:
 - a. Social Security Number;
 - b. Driver's license number or identification card number;
 - c. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

➤ The term does not include the last four digits of a social security number, the last four digits of a driver's license number or the last four digits of an identification card number or publicly available information that is lawfully made available to the general public.
3. The primary duty for redaction rest with the filing party. If a court employee discovers, in a document, presented for filing, "personal information" as defined by NRS 603A.040, the clerk may, in consultation with his or her supervisor:
 - a. Take the following action:
 - i. Reject a proposed filing and require the filing party to submit a redacted and unredacted version of the document;
 - ii. Return an already filed document as "filed in error" and require the filing party to submit a redacted and unredacted version of the document; or
 - iii. Prepare a redacted copy of the document in addition to the unredacted copy; and
 - b. Maintain the redacted copy in a manner accessible to the public and the unredacted version as a presumptively confidential document.

EXHIBIT A

POLICY FOR HANDLING FILED, LODGED, AND PRESUMPTIVELY CONFIDENTIAL DOCUMENTS

Rule 1. Policy. This policy will address the handling of documents presented to the clerks of the municipal, justice, and district courts.

Rule 2. Procedures for the clerk's office.

1. Filed documents.

(a) Unless otherwise specifically authorized by statute, court rule, or this policy, the duty of the clerk of the court to file documents presented to the clerk is purely ministerial, and the clerk may not refuse to perform such a duty.

(1) The clerk of the court shall file documents pursuant to the Nevada Rules of Civil Procedure (NRCP), Justice Court Rules of Civil Procedure (JCRCP), Nevada Rules of Appellate Procedure (NRAP), statute, other court rule, or court policy.

(2) The clerk of the court shall e-file documents pursuant to the Nevada Electronic Filing and Conversion Rules (NEFCR), statute, and other court rule.

(b) As used in this section, "e-filing" means the electronic transmission to or from a court or clerk of a document in electronic form as defined by the accepting court; it does not include submissions via e-mail, fax, or other electronic means.

2. Lodged documents. A document is considered to be "lodged" with the Court for the temporary period of time between:

(a) Submission of the document to the Court; and

(b) Classification of the document by the Court as either:

(1) "Filed," such that the public has access to the redacted or unredacted version of the document; or

(2) "Presumptively confidential," such that the public does not have access to the document unless otherwise provided by law or this policy.

3. Subpoenaed documents. Any document subpoenaed and delivered to the court must be presented to the applicable Judicial Executive Assistant (JEA) or Judicial Assistant (JA) for processing, unless otherwise ordered by the judge of the applicable department.

4. Correspondence.¹

(a) As used in this section, “ex parte communication” means a generally prohibited communication between counsel or a party and the court, and not directed to opposing counsel, concerning a pending or impending matter, unless permitted by law.

(b) Any “ex parte communication” or any correspondence that does not conform to standard filing procedures, must be directed to the applicable Judicial Executive Assistant (JEA) or Judicial Assistant (JA) for screening, unless otherwise ordered by the judge of the applicable department or by court policy.

(c) For purposes of this rule:

(1) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge’s adjudicative responsibilities, provided that the judge makes reasonable efforts to avoid receiving factual information that is not part of the record.

(2) Correspondence that constitutes a mere notice may be filed and is not required to be forwarded to a JEA or JA for screening.

(3) If correspondence is considered “ex parte communication,” the applicable judicial department shall:

(i) Return the “ex parte communication” to the sender; or

(ii) Schedule a hearing and present copies of the “ex-parte communication” to all parties.

(4) If correspondence is not considered “ex parte communication,” the applicable judicial department must temporarily “lodge” the document, as confidential, until classification of the document is determined by the Court as outlined in Rule 2(2).

(5) A judicial department may also direct correspondence to be formally filed with the court’s filing office.

5. Documents to be considered presumptively confidential and non-public.²

(a) The following documents are to be considered “presumptively confidential” until a sufficient threshold showing for disclosure has been reached by way of motion:

(1) Adoption Documents (NRS Chapter 127) (NRS 432.035);

¹See Forms 1-3 for examples of forms used to return correspondence that may be deemed ex parte communication.

²See Form 4 for an example of a Motion for Disclosure of Non-Public Information.

- (2) Adverse party and victim information sheets in protection order cases;
- (3) Affidavit of Financial Condition;
- (4) Any document sealed by statute or court rule;
- (5) Any document that has been ordered sealed by a judge pursuant to the Nevada Rules for Sealing and Redacting Court Records (SRCR).
- (6) Any reports from National Crime Information Center (NCIC), National Consortium for Justice Information and Statistics (NCJIS), or any confidential law informant database (NRS 179.245, if applicable);
- (7) Bench warrant paperwork, except for cover sheet signed by judge;
- (8) Child abuse or child neglect investigation reports (NRS Chapter 432B);
- (9) Civil-commitment case documents (NRS Chapter 433A);
- (10) Confidential letters from a Family Mediation Center (NRS Chapter 127) (NRS 432.035);
- (11) Court-ordered counseling reports (NRS Chapter 433) (HIPAA);
- (12) Department of Child and Family Services (DCFS) reports filed under seal (NRS 432.035);
- (13) Documents designated by the submitting party as “proprietary” or “trade secrets” (NRS Chapter 600A et seq.);
- (14) Documents relating to homeland security as defined by (NRS 239C.210);
- (15) Drug screening test results, drug screening referrals (NRS Chapter 433) (HIPAA);
- (16) Financial Declarations;
- (17) Genetic testing information/paternity testing information (NRS Chapter 126);
- (18) In Forma Pauperis Documents (including application);
- (19) Information gathered for child custody records (NRS Chapter 125);
- (20) Judges’ notes that are included in a case file as distinct documents;
- (21) Markup sheets or memos generated by court clerks or other court staff (including memoranda prepared by law clerks or staff attorneys);
- (22) Medical records, mental health records, HIV/AIDS testing information, or treatment records for a party or witness (NRS Chapter 433) (HIPAA);
- (23) Property division orders or separation agreements in divorce cases (NRS Chapter 125);

(24) Reports of abuse, neglect, exploitation, or isolation of older person (NRS 200.5095);

(25) Reports from Court Appointed Special Advocates (CASA), Special Advocates for Elders (SAFE), and Pre-Sentence Investigation (PSI) Reports (NRS 176.156); and

(26) Search warrants sealed by the court (NRS 179.045) (otherwise presumptively public record).

6. Redaction.

(a) “Redact” means to protect from examination by the public and unauthorized court personnel a portion or portions of a specified court record.

(b) As defined by NRS 603A.040, “Personal information” means a natural person’s first name or first initial and last name in combination with any one or more of the following data elements, when the name and data elements are not encrypted:

(1) Social security number;

(2) Driver’s license number or identification card number; or

(3) Account number, credit card number, or debit card number, in combination with any required security code, access code, or password that would permit access to the person’s financial account.

The term does not include the last four digits of a social security number, the last four digits of a driver’s license number or the last four digits of an identification card number or publicly available information that is lawfully made available to the general public.

(c) The primary duty for redaction rest with the filing party. If a court employee discovers, in a document presented for filing, “personal information” as defined by NRS 603A.040, the clerk may, in consultation with his or her supervisor:

(1) Take the following action:

(i) Reject a proposed filing and require the filing party to submit a redacted and unredacted version of the document;

(ii) Return an already filed document as “filed in error” and require the filing party to submit a redacted and unredacted version of the document; or

(iii) Prepare a redacted copy of the document in addition to the unredacted copy; and

(2) Maintain the redacted copy in a manner accessible to the public and the unredacted version as a presumptively confidential document.

APPENDIX OF FORMS

Form 1. Notice of document received but not considered by the court

Code 2528

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

THE STATE OF NEVADA,

Plaintiff,

Case No.

Dept. No.

vs.

DEFENDANT'S NAME,

Defendant.

_____ /

NOTICE OF DOCUMENT RECEIVED BUT NOT CONSIDERED BY THE COURT

Take notice that the attached document has been received unsolicited by the Court. The Court has not reviewed the document. Further, the Court will not review the document absent an affirmative request to do so from a party.

Form 2. Letter from defendant or other

Code 1930

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

THE STATE OF NEVADA,

Plaintiff,

Case No.

Dept. No.

vs.

DEFENDANT'S NAME,

Defendant.

_____ /

LETTER FROM (DEFENDANT OR OTHER)

See attached.

Form 3. Ex-parte communications notice



To: _____

Date: _____

Subject Case No.: _____

Hearing Date: _____

This office has received the attached correspondence concerning subject case. Please prepare the document(s) for presentation to the court.

The attached is being turned over to you because the Nevada Supreme Court Rules, Part 6 Revised Nevada Code of Judicial Conduct Rule 2.9(A), provides that "... [A] judge shall not initiate, permit, or consider ex-parte communications or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding ...". Additionally, under Rule 2.0(B), "if a judge inadvertently receives an unauthorized ex-parte communication bearing on the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond."

Thank you.

Attached

Form 4. Motion for disclosure of non-public information

**JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA**

_____	)	
_____	)	
_____	)	
	)	Case No. _____
Plaintiff,	)	
	)	Dept. No. _____
vs.	)	
_____	)	
_____	)	
	)	<u>MOTION FOR DISCLOSURE OF</u>
	)	<u>NON-PUBLIC INFORMATION</u>
Defendant(s).	)	
_____	)	

DECLARATION

(1) PLEASE CHECK ONE OF THE FOLLOWING OPTIONS:

This Motion is being brought by:

- ☐ A member of the following media organization: _____
- ☐ The following criminal Defendant: _____
- ☐ An attorney for the following client: _____
- ☐ *OTHER:* _____

(2) PLEASE COMPLETE THE LINE BELOW:

Court staff has indicated that the following document(s) currently in the file are deemed to be presumptively non-public and confidential:

(3) PLEASE EXPLAIN WHY THE COURT SHOULD ALLOW ACCESS TO THE DOCUMENT(S) LISTED ABOVE:

(NOTE: If you need more space, please attach additional pages.)

(4) PLEASE SIGN BELOW:

Under the penalty of perjury under the law of the State of Nevada, I swear or affirm that the above information is true and correct, and that the Court should allow access to the requested document(s).

Signature: _____ Date: _____

Phone Number: _____

ORDER

☐ This matter will be set for hearing, and all parties will be notified. The hearing date will be at _____ M on the _____ day of _____, 20_____.

☐ The motion is denied as to the following documents _____

for the following reason(s):

☐ The motion is granted as to the following documents _____

You may bring a copy of this order to the front counter to obtain the requested information.

☐ OTHER: _____

DATED THIS _____ DAY OF _____, 20_____.

JUSTICE OF THE PEACE