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IN THE SUPREME COURT OF THE STATE OF NEVADA

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IN THE MATTER OF:  
PROPOSED DISTRICT COURT RULE  
AMENDING THE NEVADA RULES  
OF CIVIL PROCEDURE

JANETTE W. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK  
ADKT NO. 410

PETITION FOR ADOPTION OF PROPOSED DISTRICT COURT RULE  
AMENDING THE NEVADA RULES OF CIVIL PROCEDURE

The HONORABLE BRENT ADAMS, District Court Judge and Chairman of the Supreme Court's Commission on Access, Preservation and Sealing of Court Records, petitions this Court to adopt the attached proposed rule amending the Nevada Rules of Civil Procedure. The facts in support of the petition are as follows:

1. On April 4, 2007, the Nevada Supreme Court created the Commission on Access, Preservation and Sealing of Court Records. The Commission is composed of the following individuals appointed by Chief Justice William Maupin, as follows:

- Judge Brent Adams, Chair
- Justice James Hardesty, Liaison
- Senator Mark Amodei
- Assemblyman Bernie Anderson
- Judge Kathy Hardcastle
- Judge David Gamble
- Ms. Nancyann Leeder
- Ms. Kathy England
- Ms. Kim Mandelbaum

1 Mr. Dan Bowen  
2 Mr. Joe Bradley  
3 Mr. Donald Campbell  
4 Mr. Gary Hengstler  
5 Mr. A.D. Hopkins  
6 Mr. Edward Lemons  
7 Mr. Richard Meyers  
8 Ms. Barry Smith

9 2. The Commission was charged with developing a District Court  
10 rule for the sealing of court records in civil cases. During the months of May  
11 through August, 2007, the Commission met on several occasions in Carson City  
12 and Las Vegas.

13 3. During the month of August, 2007, a draft rule was prepared  
14 by the Commission and circulated statewide to all District Court Judges, Justices  
15 of the Peace and Municipal Court Judges for review and comment.

16 4. During the months of August through October, 2007, the  
17 Commission met on several occasions to discuss the draft rule, and to consider  
18 comments received from members of the judiciary and other interested parties.  
19 The Commission made revisions to the original draft rule and approved the final  
20 version during a regularly scheduled Commission meeting on October 8, 2007.

21 5. The final draft of the proposed rule is attached as Exhibit A to  
22 this petition. The Commission has unanimously approved this draft.

23 **BASED ON THE FOREGOING**, it is respectfully requested as  
24 follows:

25 1. That the Nevada Supreme Court approve the proposed District  
26 Court rule amending the Nevada Rules of Civil Procedure.  
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Respectfully submitted by the undersigned on behalf of the Supreme  
Court Commission on Access, Preservation and Sealing of Court Records this  
19<sup>th</sup> day of October, 2007.

  
\_\_\_\_\_  
**THE HONORABLE BRENT ADAMS**  
Chair

**COURT RULE No. \_\_\_\_\_**  
**(Draft Exhibit A to ADKT 10/18/07)**

**Sealing and Redacting of Court Records in Civil Cases<sup>1</sup>**

**1. Purpose and Scope of Rule**

(a) This rule provides a uniform procedure for the sealing and redacting of court records in civil cases. This rule applies to all court records in civil cases, regardless of the physical form of the court record, the method of the record, the method of recording the court record, or the method of storage of the court record.

*Source: WA GR 15(a): modified to apply to civil cases only; excludes reference to destruction of records*

(b) All court records in civil actions are available to the public, except as otherwise provided in this rule or by statute.

*Source: Nevada Draft Model Policy for Public Access to Court Records, Section 4.00: modified language*

**2. Definitions**

(a) "Court file" means all the pleadings, orders, exhibits, discovery filed with the court, and all other papers filed with the clerk of the court under a single or consolidated case number(s).

*Source: WA GR 15(b)(1): modified language*

(b) "Court record" includes, but is not limited to: (i) Any document, information, exhibit, or other thing that is maintained by a court in connection with a judicial proceeding, and (ii) Any index, calendar, docket, register of actions, official record of the proceedings, order, degree, judgment, minute, and any

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<sup>1</sup> This rule does not apply to the sealing or redacting of court records under specific statutes, such as NRS 179, juvenile cases pursuant to NRS 62 and NRS 63, or domestic relations matters pursuant to NRS 122 (Marriage), NRS 123 (Rights of Husband and Wife), NRS 125 (Dissolution), NRS 126 (Parentage), NRS 127 (Adoption), NRS 128 (Termination of Parental Rights), NRS 129 (Minors Disabilities), NRS 130 (Child Support), NRS 453 (Treatment and Rehabilitation of Addicts), NRS 433, 433A (Admission to Mental Health Facilities/Sealing of Records) 433B (Provisions Relating to Children), NRS 435 (Retarded Persons), NRS 436 (Community Programs for Mental Health), and Title 13 (Guardianships; Conservatorships; Trusts). This rule does not provide for the retention and/or destruction of court records and/or files.

information in a case management system created or prepared by the court that is related to a judicial proceeding. Court record does not include data maintained by or for a judge pertaining to a particular case or party, such as personal notes and communications, memoranda, drafts, or other working papers; or information gathered, maintained, or stored by a government agency or other entity to which the court has access but which is not entered in connection with a judicial proceeding.

Source: WA GR 31(c)(4): *modified language re records created in a judicial proceeding.*

(c) Seal. To seal means to protect from examination by the public and unauthorized court personnel. A request and/or motion or order to delete, purge, remove, excise, or erase, or redact shall be treated as a motion or order to seal.

Source: WA GR 15(b)(4): *modified language to allow both request and motion*

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

Source: WA GR 15(b)(5): *exact language*

(e) "Restricted personal identifiers" includes a person's social security number, driver's license number or identification card number, telephone numbers, financial account numbers, personal identification numbers (PINs), and credit card or debit card account numbers, in combination with any required security code, or access code or password that would permit access to a person's financial account(s).

Source: WA GR 22(b)(6): *modified to include language in Indiana Rule 9(G)(1)(f). See also NRS 603A.040, "Personal information" defined.*

### **3. Process and Grounds for Sealing or Redacting Court Records**

(a) Request To Seal or Redact Court Records. Any named party, or a third person, may file a written motion that the court seal or redact the court records pursuant to this rule. The requesting pleading must disclose, in its title and document code, that sealing or redaction is being sought. The court may, *sua sponte*, initiate sealing or redaction of the court record.

In any case, reasonable notice of a motion to seal or redact must be given to all parties and filed in the case.

Source: WA GR 15(c)(1): modified to allow a third party to make a request; excludes references to sealing of criminal cases; invests the court with discretion to conduct a hearing

The court may also require that the requesting party provide notice to the general public, if a hearing is ordered, by posting information which provides the time, date and location of the hearing at a place within the confines of the court accessible to the general public.

Source: Indiana Rule 9 (H) commentary: modified language

(b) Basis: Written Findings Required. After the request is made, the court may conduct a hearing. Following the request and/or a hearing, the court may order the court files and records in a civil proceeding, or any part thereof, to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record.<sup>2</sup> Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety interests that may be weighed against the public interest include findings that:

Source: WA GR 15(c)(2): modified to apply to civil cases only; providing that a hearing is optional and within the discretion of the judge; formatting changes

(1) The sealing or redaction is permitted or required by federal or state law; or

Source: WA GR 15(c)(2)(A): modified language

(2) The sealing or redaction furthers an order entered under NRCP 12(f) or a protective order entered under NRCP 26(c); or

Source: WA GR 15(c)(2)(B): modified to reflect Nevada's civil rules (NRCP) re motion to strike and protective orders sought during discovery

(3) The sealing or redaction furthers an order entered pursuant to federal and/or state laws which serve to protect the public health and safety; or

Source: WA GR 15(c)(2)(D): modified to reflect Nevada law(s) re public health and safety (ex: Title 40, Public Health and Safety)

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<sup>2</sup> See **Press-Enterprise Co. v. Superior Court of California**, 464 U.S. 501, 104 S.Ct. 819 (1984), where the Court held, "Where . . . the State attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling government interest, and is narrowly tailored to serve that interest." (Citing **Globe Newspaper Co. v. Superior Court**, 457 U.S. 596, at 606-107, 102 S.Ct. 2613, at 2620 (1982).

(4) The redaction includes only restricted personal identifiers contained in the court record; or

Source: WA GR 15(c)(2)(E): exact language

(5) The sealing or redaction is of the confidential terms of a settlement agreement of the parties; or

Source: Commission discussions

(6) The sealing or redaction includes medical, mental health, or tax records; or

Source: Indiana Rule 9 Section G(1)(b)(II)(i): modified to reflect Nevada law; formatting changes; Commission discussions

(7) The sealing or redaction is necessary to protect intellectual property interests, and/or trade secrets pursuant to relevant provisions of NRS Chapter 600A; or

Source: Florida Rule 2.420(c)(9)(A)(ii): modified language, formatting changes; See NRS 600A.070, Preservation of secrecy.

(8) Another identified compelling circumstance exists that justifies, requires or compels the sealing or redaction.

Source: WA GR 15(c)(2)(F): exact language

(c) In no event may the sealing or redaction have the purpose or effect of concealing a public hazard.

(d) Limitation. A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (b) above.

Source: WA GR 15(c)(3): exact language with formatting changes

(e) Standard; Procedures. If the court enters an order sealing or redacting a case, the court shall use the least restrictive means and duration. When a request is made to prohibit public access to information in a court record, the information to be sealed or redacted remains confidential for a reasonable period of time until the court rules on the request.

Source: Excerpt from Indiana Rule 9 Section H(3): modified and added to this section; new language added to address timing; formatting changes

(f) Sealing of Entire Court File Prohibited. Under no circumstances shall an entire court file in a civil action be sealed.

*Source: Commission discussions*

(g) Sealing of Specified Court Records. Any order entered pursuant to this rule must require that the following information be included on the public court indices: (i) case number, docket code or number, (ii) date of initial filing, (iii) names of parties, counsel of record and assigned judge; (iv) the notation "case sealed," (v) case type and cause of action(s) which may be obtained from the Civil Cover Sheet, (vi) the order to seal and written findings supporting the order to seal, and (vii) the identification of the party making the request.

*Source: WA GR 15(c)(4): modified to exclude references to sealing of criminal cases; modified to include additional information on the court indices; new section; Commission discussions 8/27/07*

(1) When the clerk receives a court order to seal specified court records, the clerk shall:

(a) On the docket, preserve the docket code, document title, document and subdocument number and date of the original court records;

(b) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(c) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the public.

(d) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

*Source: WA GR 15(c)(5): exact language; formatting changes*

(h) Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in paragraph 3 herein.



Source: GR 15(c)(6):exact language with formatting/numbering changes

#### **4. Grounds and Procedure for Requesting the Unsealing of Sealed Records in Civil Cases**

Source: WA GR 15(e): modified to apply to civil cases only; excludes references to criminal cases and juvenile proceedings

(a) Court records which are sealed, whether or not pursuant to this rule, may be examined by the public only after entry of a court order allowing access to the record pursuant to this section.

Source: WA GR 15(e)(1): modified to apply to civil cases only; formatting changes; Commission discussions

(b) A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon the request and/or motion of the court, by a named party, or any third person.

The responding party shall appear and show cause why the request or motion should not be granted. The responding party must show that compelling circumstances continue to exist, or that other grounds provide a sufficient legal or factual basis for continuation of the court's order to seal.

(c) Reasonable notice of the request and/or motion must be given to all parties in the case. If the person seeking access cannot locate a party to provide the notice required in this rule, after making a good faith reasonable effort to provide such notice as required by the applicable court rule(s), an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provisions of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

Source: WA GR 15(e)(3): modified to allow a third party to bring motion, and includes reference to applicable state law or court rule as a basis to unseal. WA GR 15 (e)(3) allows unsealing pursuant to RCW 4.24 (Special Rights of Action and Special Immunities) and CR 26(j)(Access to Discovery Materials). Further modified to shift burden to responding party.

#### **5. Jurisdiction**

The court shall retain jurisdiction to entertain any request, motion or action brought pursuant to this rule.

## **6. Sanctions**

If the court determines that a motion made under this rule was not made in good faith and/or is found to be in violation of NRCP 11, the court may impose sanctions upon a named party, third party and/or the attorney for any party in accordance with subsection (c) of said rule.

*Source: Florida Rule 2.420 (d)(6): modified and added to this section; reference to NRCP 11 for sanctions and attorneys fees.*

## **7. Maintenance of Sealed Court Records**

Sealed court records may be maintained in a medium other than paper.

*Source: WA GR 15(f): modified to exclude references to RCW 36.23.065 (Destruction and reproduction of court records).*

## **8. Use of Sealed Records on Appeal**

A civil court record or any portion of it, sealed in the trial court shall be made available to the Nevada Supreme Court in the event of an appeal. Court records sealed in the trial court shall be sealed from public access in the Nevada Supreme Court subject to further order of that court.

*Source: WA GR 15(g): modified to apply to civil cases only*

## **9. Effect on Other Statutes**

Nothing in this rule is intended to restrict or to expand the authority of court clerks or county clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor in the exercise of duties conferred by state law.

*Source: GR 15(j): modified language*