

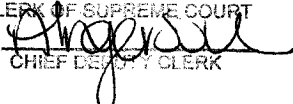
IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADKT 0410

FILED

DEC 30 2014

TRACIE K. LINDENMAN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

**ORDER AMENDING RULE 2 OF THE POLICY FOR HANDLING
FILED, LODGED, AND PRESUMPTIVELY CONFIDENTIAL
DOCUMENTS; AND AMENDING RULE 6 OF THE NEVADA
ELECTRONIC FILING AND CONVERSION RULES**

WHEREAS, the Nevada Supreme Court is concerned about the lack of a standardized policy for the handling of documents presented to the clerks of the municipal, justice, and district courts, which led to the adoption of rules pertaining to the handling of filed, lodged, and presumptively confidential documents, *In the Matter of the Creation of a Committee on Preservation, Access, and Sealing of Court Records* (Order Adopting Policy for Handling Filed, Lodged, and Presumptively Confidential Documents, July 22, 2013); and

WHEREAS, the Court is also concerned about the statewide uniformity of rules regarding electronic filing, which led to the adoption of rules pertaining to electronic filing, *In the Matter of the Adoption of Statewide Electronic Filing Standards and Rules*, ADKT No. 404 (Order Adopting Nevada Electronic Filing Rules, December 29, 2006); and which further led to the subsequent amendment of those rules, *In the Matter of the Creation of a Committee to Review the Preservation, Access, and*

Sealing of Court Records, ADKT No. 410 (Order Amending Nevada Electronic Filing Rules, August 1, 2011); and

WHEREAS, the Commission on Preservation, Access, and Sealing of Court Records has proposed amendments to the Policy for Handling Filed, Lodged, and Presumptively Confidential Documents; and

WHEREAS the Commission has also proposed amendments to the Nevada Electronic Filing and Conversion Rules; and

WHEREAS this court has determined that the proposed amendments are warranted; accordingly,

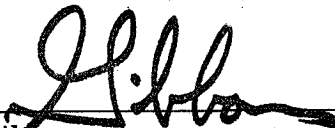
IT IS HEREBY ORDERED that the Policy for Handling Filed, Lodged, and Presumptively Confidential Documents shall be amended and shall read as set forth in Exhibit A.

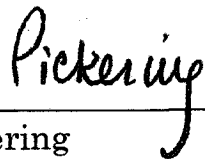
IT IS FURTHER ORDERED that the Nevada Electronic Filing and Conversion Rules shall be amended and shall read as set forth in Exhibit B.


IT IS FURTHER ORDERED that the adoption of these amendments shall be effective 30 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 rule amendments.

DATED this 30th day of December, 2014.

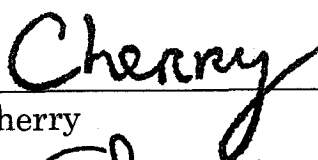
, C.J.
Gibbons


, J.
Pickering

, J.
Hardesty

, J.
Parraguirre

, J.
Douglas

, J.
Cherry

, J.
Saitta

cc: All District Court Judges
All Justices of the Peace
All Municipal Court Judges
All District Court Clerks and County Clerks
Elana T. Graham, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

EXHIBIT A

AMENDMENT TO RULE 2 OF THE POLICY FOR HANDLING FILED, LODGED, AND PRESUMPTIVELY CONFIDENTIAL DOCUMENTS

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.

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

(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);
- (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).

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

(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);~~] (NRS 125.130);

(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 rests 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.

EXHIBIT B

AMENDMENT TO RULE 6 OF THE NEVADA ELECTRONIC FILING AND CONVERSION RULES

Rule 6. Official court record.

(a) *Electronic documents.* For documents that have been electronically filed or converted, the electronic version of the document constitutes the official court record, and electronically filed documents have the same force and effect as documents filed by traditional means.

(b) *Form of record.* The court clerk may maintain the official court record of a case in electronic format or in a combination of electronic and traditional formats consistent with Rules 4(b), (c), and (f) above. Documents submitted by traditional means may be converted to electronic format and made part of the electronic record. Once converted, the electronic form of the documents are the official court record. If exhibits are submitted, the clerk may maintain the exhibits by traditional means or by electronic means where appropriate.

(c) *Retention of original documents after conversion.* When conversion of a court record is undertaken with sufficient quality control measures taken to ensure an accurate and reliable reproduction of the original, the court may, but is not required to, retain the original version of the record for historical reasons or as a preservation copy to protect against harm, injury, decay, or destruction of the converted record.

(d) *Exceptions to document destruction.* The following documents may not be destroyed by the court after conversion to electronic format[?], unless otherwise permitted by statute, court rule, or court order:

- (1) Original wills;

(2) Original deeds;

(3) Original contracts;

(4) Court exhibits[;] (see NRS 3.305, NRS 3.307, and the Protocol for Storage, Retention, and Destruction of Evidence); and

(5) Any document or item designated in writing by a judge to be inappropriate for destruction because the document or item has evidentiary, historic, or other intrinsic value.