

STATE OF MINNESOTA
IN SUPREME COURT
C4-85-1848, CX-89-1863

PROMULGATION OF AMENDMENTS
TO THE MINNESOTA RULES OF PUBLIC
ACCESS TO RECORDS OF THE JUDICIAL
BRANCH AND RELATED RULES

ORDER

In its report filed November 13, 2006, the Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch recommended certain amendments to the Rules of Public Access to Records of the Judicial Branch and related rules. This court held a hearing on the recommendations on January 24, 2007, reviewed the materials, and is fully advised in the premises.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached amendments to the Rules of Public Access to Records of the Judicial Branch and the General Rules of Practice for the District Courts be, and the same hereby are, prescribed and promulgated to be effective July 1, 2007, and apply to all cases pending on or after that date, except that the attached amendments to Rule 11 of the General Rules of Practice for the District Courts regarding restricted identifiers and financial source documents shall apply to pleadings and other documents submitted to, or judgments, orders, decisions, and notices issued by, the court on or after July 1, 2007.
2. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.

Dated: April , 2007

BY THE COURT:

Russell A. Anderson
Chief Justice

Amendments to the Rules of Public Access to Records of the Judicial Branch

Key: Additions to the rules are indicated by underlined text and deletions are indicated by strikeout text.

Rule 4. Accessibility to Case Records

Subd. 1. Accessibility. All case records are accessible to the public except the following:

* * *

(f) *Genetic Information.* Records on genetic information, other than records that have been admitted into evidence in a hearing or trial, that are from medical or scientific professionals, including but not limited to reports and affidavits. For purposes of this rule, “genetic information” means information about a specific human being that is derived from the presence, absence, alteration, or mutation of a gene or genes, or the presence or absence of a specific deoxyribonucleic acid or ribonucleic acid marker or markers, and which has been obtained from an analysis of an individual’s biological information or specimen or the biological information or specimen of a person to whom an individual is genetically related.

(g) *Other.* Case records that are made inaccessible to the public under:

- (1) state statutes, other than Minnesota Statutes, chapter 13;
- (2) court rules or orders; or
- (3) other applicable law.

Subd. 2. Restricting Access; Procedure. Procedures for restricting access to case records shall be as provided in the applicable court rules.

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Advisory Committee ~~Note-Comment-2007~~

The 2007 addition of Rule 4, subd. 1(f), is designed to provide some privacy protection for genetic information about individuals. The definition of “genetic information” is based in part on the privacy law governing executive branch genetic information. Act of June 1, 2006, ch. 253 § 4, 2006 MINN. LAWS 424, 426 (codified at MINN. STAT. § 13.386 (2006)). Genetic information can affect not only a party, witness or victim, but also his or her genetic relatives. Courts and parties need to consider the scope of this information when admitting and offering to admit such information into evidence. Rule 4, subd. 2, recognizes that, when necessary, protective orders can be issued under applicable procedural rules. The

factors to consider in seeking a protective order in regard to criminal case records are discussed in Rule 25, Rules of Criminal Procedure, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For civil cases, see Rule 26.03, Rules of Civil Procedure, and *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986).

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Rule 5. Accessibility to Administrative Records

All administrative records are accessible to the public except the following:

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Subd. 2. Personnel Related Records

(a) *Collective Bargaining Planning Records.* Management positions on economic and noneconomic labor relations items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.

(b) *Applicant Records.* Records on individuals collected because the individual is or was an applicant for employment with the judicial branch, provided, however, that the following information is accessible to the public: veteran status; relevant test scores; rank on eligible lists; job history; education and training; work availability; and, after the applicant has been certified by the appointing authority to be a finalist for a position in public employment, the name of the applicant.

Advisory Committee Comment-2005~~7~~

The 2005 changes to Rule 5, subd. 1, are based on policy applicable to employee records held by the executive branch. MINN. STAT. § 13.43 (2004). There are, however, some subtle differences from executive branch policy, including the fact that judicial employee discipline is governed by a separate set of procedures and access provisions. *See* RULES OF THE BOARD ON JUDICIAL STANDARDS. In addition, judicial branch e-mail addresses are not accessible to the public unless individual employees authorize disclosure. Limiting access helps minimize the potential for ex parte contact prohibited by law. *See* MINN. CODE JUD. CONDUCT, CANON § 3A(7).

The 2007 addition of Rule 5, subd. 2(a), is based on policy applicable to collective bargaining records held by the executive branch. MINN. STAT. § 13.37, subd. 1(c) (2006).

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Rule 8. Inspection, Copying, Bulk Distribution and Remote Access

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Subd. 2. Remote Access to Electronic Records.

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(b) **Certain Data Not To Be Disclosed.** Notwithstanding Rule 8, subd. 2 (a), the public shall not have remote access to the following data fields in ~~an electronic case record~~ the register of actions, calendars, index, and judgment docket, with regard to parties or their family members, jurors, witnesses (other than expert witnesses), or victims of a criminal or delinquent act:

- (1) social security numbers and employer identification numbers;
- (2) street addresses except that street addresses of parties may be made available by access agreement in a form prepared by the state court administrator and approved by the Judicial Council;
- (3) telephone numbers;
- (4) financial account numbers; and
- (5) in the case of a juror, witness, or victim of a criminal or delinquent act, information that either specifically identifies the individual or from which the identity of the individual could be ascertained.

Without limiting any other applicable laws or court rules, and in order to address privacy concerns created by remote access, it is recommended that court personnel preparing judgments, orders, appellate opinions and notices limit the disclosure of items (2), (3) and (5) above to what is necessary and relevant for the purposes of the document. Under GEN. R. PRAC. 11, inclusion of items (1) and (4) in judgments, orders, appellate opinions and notices is to be made using the confidential information form 11.1. Disclosure of juror information is also subject to GEN. R. PRAC. 814, R. CRIM.P. 26.02, subd. 2, and Minn. R. CIV. P. 47.01.

(c) **Preconviction Criminal Records.** The Information Technology Division of the Supreme Court shall make reasonable efforts and expend reasonable and proportionate resources to prevent preconviction criminal records from being electronically searched by defendant name by the majority of known, mainstream automated tools, including but not limited to the court's own tools. A "preconviction criminal record" is a record, other than an appellate court record, for which there is no conviction as defined in MINN. STAT. § 609.02, subd. 5 (2004), on any of the charges. For purposes of this rule, an "appellate court record" means the appellate court's opinions, orders, judgments, notices and case management system records, but not the trial court record related to an appeal.

(d) **“Remotely Accessible” Defined.** “Remotely accessible” means that information in a court record can be electronically searched, inspected, or copied without the need to physically visit a court facility. The state court administrator may designate publicly-accessible facilities other than court facilities as official locations for public access to court records where records can be electronically searched, inspected or copied without the need to physically visit a court. This shall not be remote access for purposes of these rules.

(e) **Exceptions.**

(1) *Particular Case.* After notice to the parties and an opportunity to be heard, the presiding judge may by order direct the court administrator to provide remote electronic access to records of a particular case that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.

(2) *Appellate Briefs.* The State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs provided that the following are redacted: appendices to briefs, data listed in Rule 8, subd. 2(b), of these rules, and other records that are not accessible to the public.

(3) *E-mail and Facsimile Transmission.* Any record custodian may, in the custodian’s discretion and subject to applicable fees, provide public access by e-mail or facsimile transmission to publicly accessible records that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.

Advisory Committee Comment-2007

The 2007 modifications to Rule 8, subd. 2(b), recognize the feasibility of controlling remote access to identifiers in data fields and the impracticability of controlling them in text fields such as documents. Data fields in court computer systems are designed to isolate specific data elements such as social security numbers, addresses, and names of victims. Access to these isolated elements can be systematically controlled by proper computer programming. Identifiers that appear in text fields in documents are more difficult to isolate. In addition, certain documents completed by court personnel occasionally require the insertion of names, addresses and/or telephone numbers of parties, victims, witnesses or jurors. Examples include but are not limited to appellate opinions where victim or witness names may be necessary for purposes of clarity or comprehensibility, “no-contact” orders that require identification of victims or locations for purposes of enforceability, orders directing seizure of property, and various notices issued by the court.

The use of the term “recommends” intentionally makes the last sentence of the rule hortatory in nature, and is designed to avoid creating a basis for appeals. The reference to other applicable laws and rules recognizes that there are particular provisions that may control the disclosure of certain information in certain documents. For example, the disclosure of restricted identifiers (which includes social security numbers, employer identification numbers, and financial account numbers) on judgments, orders, decisions and notices is governed by MINN. GEN. R. PRAC. 11. Rules governing juror-related records include MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd. 2, and MINN. R. CIV. P. 47.01.

The 2007 modifications to Rule 8, subd. 2(c), recognize that criminal cases often involve a conviction on less than all counts charged, and that appellate records that have long been remotely accessible have included pretrial and preconviction appeals. The clarification regarding automated tools recognizes that the participant index on the court’s case management system is included in the scope of the limits on remote searching of preconviction records.

The 2007 modification to Rule 8, subd. 2(d), authorizes the state court administrator to designate additional locations as court facilities for purposes of remote access. For example, a government service center, registrar of titles office or similar location that is not in the same building as the court’s offices could be designated as a location where the public could have access to court records without the limitations on remote access. In some counties, these types of offices are located in the courthouse and in other counties they are in a separate building. This change allows such offices to provide the same level of access to court records regardless of where they are located.

The 2007 addition of Rule 8, subd. 2(e)(3), is intended to reinstate the routine disclosure, by facsimile transmission or e-mail, of criminal complaints, pleadings, orders, disposition bulletins, and other documents to the general public. These disclosures were unintentionally cut off by the definition of remote access under Rule 8, subd. 2(d), which technically includes facsimile and e-mail transmissions. Limiting disclosures to the discretion of the court administrator relies on the common sense of court staff to ensure that this exception does not swallow the limits on remote and bulk data access. The rule also recognizes that copy fees may apply. Some but not all courts are able to process electronic (i.e., credit card) fee payments.

ACCESS RULE 8, subd. 4(b), authorizes disclosure of certain records to executive branch entities pursuant to a nondisclosure agreement. Minnesota Statutes § 13.03, subd. 4(a) (2006), provides a basis for an executive branch entity to comply with the nondisclosure requirements. It is recommended that this basis be expressly recognized in the nondisclosure agreement and that the agreement limit the executive branch agency’s use of the nonpublicly-accessible court records to that necessary to carry out its duties as required by law in connection with any civil, criminal, administrative, or arbitral proceeding

in any federal or state court, or local court or agency or before any self-regulated body.

Amendments to the General Rules of Practice for the District Courts

RULE 11. Submission of Confidential Information

Rule 11.01. Definitions

The following definitions apply for the purposes of this rule:

(a) “Restricted identifiers” shall mean the social security number, employer identification number, and financial account numbers of a party or other person party’s child.

(b) “Financial source documents” means income tax returns, W-2 forms and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other financial information deemed financial source documents by court order.

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Rule 11.03. Sealing Financial Source Documents

Financial source documents shall be submitted to the court under a cover sheet designated “Sealed Financial Source Documents” and substantially in the form set forth as Form 11.2 appended to these rules. Financial source documents submitted with the required cover sheet are not accessible to the public except to the extent that they are admitted into evidence in a testimonial hearing or trial or as provided in Rule 11.05 of these rules. The cover sheet or copy of it shall be accessible to the public. Financial source documents that are not submitted with the required cover sheet and that contain restricted identifiers are accessible to the public, but the court may, upon motion or on its own initiative, order that any such financial source document be sealed.

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Advisory Committee Comment—2007 Adoption

The 2007 amendment to Rule 11.01(a) expands the rule to protect the restricted identifiers of all persons, not just a party and a party’s child. Records submitted to the court may include restricted identifiers of persons other than a party or the party’s child, such as clients or other fiduciaries.

The 2007 amendment to Rule 11.03 recognizes that if a sealed financial source document is formally offered and admitted into evidence in a testimonial hearing or trial the document will be accessible to the public to the extent that it has been admitted. This is the result under WASH. GR 22 (2006) upon which this rule is based. In such situations, it is strongly recommended that restricted identifiers be redacted from the document before its admission into evidence.

RULE 114—APPENDIX. CODE OF ETHICS ENFORCEMENT PROCEDURE

Rule IV. Confidentiality

A. Unless and until final sanctions are imposed, all files, records, and proceedings of the Board that relate to or arise out of any complaint shall be confidential, except:

- (1) As between Board members and staff;
- (2) Upon request of the neutral, the file maintained by the Board, excluding its work product, shall be provided to the neutral;
- (3) As otherwise required or permitted by rule or statute; and
- (4) To the extent that the neutral waives confidentiality.

B. If final sanctions are imposed against any neutral pursuant to Section III A (2)-(5), the sanction and the grounds for the sanction shall be of public record, and the Board file shall remain confidential.

C. Nothing in this rule shall be construed to require the disclosure of the mental processes or communications of the Board or staff.

D. Accessibility to records maintained by district court administrators relating to complaints or sanctions about parenting time expeditors shall be consistent with this rule.

Advisory Committee Comment-2007

The 2007 addition of Rule IV.D. is designed to make the treatment of complaint and sanction information consistent in the hands of both the statewide ADR Review Board, which has jurisdiction over any expeditor appointed by the court regardless of whether that expeditor is listed on the statewide ADR neutral rosters (MINN. GEN. R. PRAC. 114.05(b)), and the local court administrator who is required by law to maintain a local roster of parenting time expeditors. MINN. STAT. § 518.1751, subds. 2b, 2c (2006). Although statutes address public access to records of the expeditors and their process, they do not address public access to complaints or sanctions about rostered expeditors.