

FILED

June 29, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8050

**ORDER PROMULGATING AMENDMENTS TO THE
RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH**

The Supreme Court Advisory Committee on the Rules of Public Access to Records of the Judicial Branch met in 2019 to consider amendments to address issues presented by the improper submission of confidential data in publicly accessible court records, proposed substantive amendments to expand or refine the current public access to judicial branch case records, and several proposed housekeeping amendments. The committee recommends amendments to Rule 4, subdivision 1(a), to ensure a consistent access status for orders for protection and harassment restraining orders when allegations of domestic abuse are at issue, *see* Minn. Stat. § 518B.01 (2018), Minn. Stat. § 609.748 (2018); and to Rule 4, subdivision 1(n), to make paternity cases public from the outset for consistency with the public-access status of family-law cases generally. The committee also recommended amendments to preclude public access to certain records when an application to proceed in forma pauperis is denied, and other amendments to clarify cross-references in the rules.

Comments were filed by the State Court Administrator, supporting the committee's recommended amendments and proposing additional clarifying amendments to address access issues with respect to specific document types or matter included in documents. The court has carefully considered the committee's recommendations and the input of the State Court Administrator, as well as the related amendments recommended by the advisory

committees for the Rules of Civil Procedure and the General Rules of Practice for the District Courts.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Public Access to Records of the Judicial Branch be, and the same are, prescribed and promulgated to be effective as of January 1, 2021. The rules as amended shall apply to all documents filed on or after the effective date.

2. The Advisory Committee comments are included for convenience and do not reflect court approval of those comments.

Dated: June 29, 2020

BY THE COURT:



Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH

[Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.]

RULE 1. SCOPE OF RULES.

* * *

Subd. 4. Filer's Obligations and Enforcement Sanctions Addressed Elsewhere. Various other court rules place obligations on parties and participants filing documents with the court to correctly designate non-public documents when filing (e.g., MINN. GEN. R. PRAC. 14 (electronic filing)), to redact certain data elements from documents before filing (e.g., MINN. GEN. R. PRAC. 11.02 (restricted identifiers such as social security numbers and certain financial account numbers); MINN. R. JUV. PROT. P. 8 (various elements in juvenile protection matters)), and to face sanctions for failure to comply (e.g., MINN. R. CIV. P. 5.04 (rejection of filings for inclusion of non-public information); MINN. GEN. R. PRAC. 11.054 (appropriate sanctions including costs of redaction and potential striking of pleadings)). Following these rules correctly is critical to ensuring appropriate public access to court records as court staff are not required to review every word of every document submitted to the court for filing to determine if it is appropriately accessible to the public. To the extent that noncompliance is brought to the attention of the court, various rules may require, among other possible relief or action, that a document be temporarily segregated from public view until the redaction rule can be enforced.

RULE 2. GENERAL POLICY.

Records of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying at all times during the regular office hours of the custodian of the records. Some records, however, are not accessible to the public, at least in the absence of a court order or disclosure by a judge, and these exceptions to the general policy are set out in Rules 4, 5, 6, and 8. Without limiting Rule 11, a disclosure made or directed by a judge acting in the judge's official capacity, including but not limited to disclosure directions in a written or oral order, shall not create liability, whether civil or criminal in nature, for the judge or for court staff implementing the judge's order.

* * *

RULE 4. ACCESSIBILITY TO CASE RECORDS.

Subd. 1. Accessibility. Subject to subdivision 4 of this rule (Records Referring to Information in Non-Public Documents) and Rule 8, subd. 5 (Access to Certain Evidence), the following case records are not accessible to the public:

- (a) *Domestic Abuse and Harassment Records.*

- (1) Records maintained by a court administrator in accordance with the domestic abuse act, MINN. STAT. § 518B.01, until a court order as authorized by MINN. STAT. § 518B.01, subs. 5 or 7, is ~~executed or~~ served upon the record subject who is the respondent to the action.
- (2) Records of harassment restraining order proceedings maintained by a court administrator in accordance with MINN. STAT. § 609.748 until a court order as authorized by MINN. STAT. § 609.748, ~~subd. 4, is executed or~~ served upon the record subject who is the respondent to the action. Upon the petitioner's request, information maintained by the court regarding the petitioner's location or residence is not accessible to the public but may be disclosed to law enforcement for purposes of service of process, conducting an investigation, or enforcing an order.

* * *

- (b) *Court Services Records.* Records on individuals maintained by a court that are gathered at the request of a court to:
 - (1) determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts (including, without limitation, support or attendance letters, e.g., regarding Alcoholics Anonymous, submitted by or for a party),
 - (2) assist in assigning an appropriate sentence or other disposition in a case (including, without limitation, disposition advisor memoranda or reports in criminal matters),
 - (3) provide the court with a recommendation regarding the custody of minor children, or
 - (4) provide the court with a psychological evaluation of an individual.

Provided, however, that this paragraph (b) does not apply to social services reports and guardian ad litem reports to the court in juvenile protection matters governed by the Rules of Juvenile Protection Procedure, which must be filed with the court in accordance with MINN. R. JUV. PROT. P. 8.04, subd. 5(b). In addition, the following information on adult individuals is accessible to the public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location; the offense for which the individual was placed under supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation in a diversion program and the extent to which those conditions have been or are being met; identities of agencies, units within agencies and individuals providing supervision; and the legal basis for any change in supervision and the date, time and locations associated with the change.

- (f) *Medical Records.* Records in civil commitment cases, or in other cases if they are submitted under a non-public cover sheet or using an electronic filing code designated

for non-public documents as provided in Rules 11.03(a) and 14.06 of the General Rules of Practice for the District Courts, that are from medical, health care, or scientific professionals (including but not limited to reports and affidavits) that are of the following types:

* * *

- (n) Pre-Adjudication Paternity Proceedings In Cases Filed Before January 1, 2021. Records of proceedings in cases filed before January 1, 2021, to determine the existence of parent-child relationship under MINN. STAT. §§ 257.51 to 257.74, provided that the following are public: the final judgment under section 257.70(a) (minus findings of fact and restricted identifiers under MINN. GEN. R. PRAC. 11), affidavits filed pursuant to MINN. STAT. §§ 548.09-.091 to enforce the judgment, and all subsequent proceedings seeking to modify or enforce the judgment except an appeal of the initial, final judgment. The subsequent proceedings shall be brought in the same case file provided that the register of actions in the case shall then be made public but identifying information on persons who were alleged to be the parent of the child but were not adjudicated as such parent will remain nonpublic, and documents that were not previously public will also remain nonpublic except that the register of actions may publicly reflect the existence of the document and its title.

* * *

- (q) Voluntary Foster Care for Treatment. Records of judicial reviews of voluntary foster care for treatment under MINN. STAT. § 260D.06 (Records of voluntary foster care proceedings under MINN. STAT. § 260D.07 are accessible to the public as authorized by these rules and by MINN. R. JUV. PROT. P., see clause ~~(s)~~(v)(2)(D), below.).
- (r) Juvenile Protection Case Records Child Name Search Results. In juvenile protection case records, searching by a child's name shall not provide results through any public name search functionality provided by the court. For purposes of this rule "child" is defined as set forth in MINN. R. JUV. PROT. P. 2.01(54).
- (s) Images Containing Sexual Content or Nudity. Any of the following images, or internet addresses described in a court filing as linking to any of the following images:
- (1) Images that are "obscene" as defined in Minn. Stat. § 617.241;
 - (2) Images that constitute "pornographic works" involving minors as defined in Minn. Stat. § 617.246, subd. 1(f);
 - (3) Images containing depictions of actual or simulated "sexual conduct" as defined in Minn. Stat. § 617.246, subd. 1(e), regardless of the age of the individuals depicted in the image;
 - (4) Images that are "private sexual images" covered by Minn. Stat. § 604.31;
or
 - (5) Images that depict nudity.

- (t) Driver's Licenses and Passports. An image of a state government driver's license or identification card, or a United States passport or passport card.
- (u) In Forma Pauperis Denials. An order denying permission to commence or defend any civil action or appeal therein, without prepayment of fees, under Minn. Stat. §§ 563.01–.02, shall be accessible to the public but the petition or application seeking such permission, including the financial disclosure, affidavit, and the proposed initial pleadings shall not be accessible to the public except by court order for good cause shown.
- (v) *Other.* Case records that are made inaccessible to the public under:
- (1) state statutes, other than MINN. STAT. ch. 13 and MINN. STAT. § 257.70(a), which are superseded to the extent inconsistent with these rules;
 - (2) court rules not inconsistent with these rules, including but not limited to:
 - (A) MINN. R. ADOPT. P. 7 (all adoption case records);
 - (B) MINN. SPEC. R. CT. APP. FAMILY L. MEDIATION 7, 9 (appellate family mediation confidential information form and selection of mediator form);
 - (C) MINN. GEN. R. PRAC. 114.08, 114.09 (notes, records and recollections of the neutral);
 - (D) MINN. R. JUV. PROT. P. 8, ~~16.01, subd. 1; 33.02, subd. 6~~ (various records and data elements in juvenile protection proceedings);

Advisory Committee Comment – 2020

Rule 4, subd. 1(a), is amended in 2020 to ensure a consistent level of privacy to orders for protection involving domestic abuse under Minn. Stat. § 518B.01 and harassment restraining orders under Minn. Stat. § 609.748 as proceedings under either statute can involve domestic abuse. The phrase “executed or served upon ... the respondent” has been shortened to “served upon ... the respondent” to obviate arguments that “executed” means signed by a judge as opposed to being carried out by those seeking to serve the order on the respondent. These provisions have been consistently interpreted and applied with service on the respondent as the triggering mechanism for public access to occur. The reference to a particular subdivision in Minn. Stat. § 609.748 has been removed as orders are addressed in multiple locations in the statute.

Rule 4, subd. 1(n), (s), and (t) are amended in 2020 to make paternity cases public upon initial filing like other family-law cases, confirm that images containing sexual content or nudity are non-public, and confirm that access to driver's licenses and state/federal ID cards is restricted. A new section (u) is added precluding public access to certain records of in forma pauperis denials.