

INSTRUCTIONS FOR EXPUNGEMENT (SEALING) CIVIL COMMITMENT RECORDS

Use the *Notice of Motion and Motion to Seal Records* to ask the court to:

- Seal the judicial records of your civil commitment case, and to
- Make other orders in your favor, if the court thinks it is appropriate.

You can use these forms:

- If you have been a Respondent in a **Civil Commitment** case,
- **AND** you can prove that the records of the civil commitment case are creating an **undue hardship** for you,
- **AND** you can prove that the benefit to you in sealing the records of the civil commitment case is greater than the need for the public to know about the civil commitment case.

UNDUE HARDSHIP

Under the Minn. Stat. § 253B.23, subd. 9, a court can seal the judicial records of a civil commitment if a person can show that the public being able to see the records creates an **undue hardship** for the person.

NOTE: It is strongly recommended that you talk to an attorney to see if you have a good argument for asking the court to seal the civil commitment records before spending your time and money preparing papers and going to a hearing.

The attorney who represented you in the **civil commitment** case may be able to help you ask the court to seal the civil commitment records.

The law does not say what would be an “undue hardship” for a person; this is one of the reasons why it is a good idea to talk to an attorney about your situation.

BALANCING TEST

When you ask the court to seal your civil commitment records, you have to show that the benefit to you in sealing the civil commitment records outweighs the need for the public to know about the civil commitment.

Some factors the court might consider include:

- The nature of the symptoms of the mental illness (for example, did the behavior that led to the civil commitment involve aggressive or dangerous behavior? Was anyone injured?);
- The length of time since the civil commitment proceeding;

- Whether there have been other episodes since the civil commitment proceeding where the symptoms have returned;
- Whether you are currently receiving treatment for the mental illness;
- Whether you have complied with treatment recommendations, if any;
- Whether you have been able to recognize and identify symptoms of the mental illness; and
- Whether you have been able to manage the mental illness.

INSTRUCTIONS for Filling Out the Forms

Step 1

Fill Out the *Notice of Motion and Motion to Seal Civil Commitment Records*

Start with the *Notice of Motion and Motion to Seal Civil Commitment Records* form. This form gives notice to the county attorney that you are asking the court to seal the records of your civil commitment case.

NOTE: The information you need to fill in the top part of the form is at the top of the “Register of Actions” or one of the court documents from your civil commitment case. If you do not have these documents, you will need to go to the courthouse in the county where your case is located.

FILL IN THE TOP PART OF THE FORM (this is known as “the caption”):

- Write the case number (also known as the court file number) of the case you want to seal.
- On the line marked “Respondent,” write your name as it is listed on the title of the court documents in the case you want to seal. If the “Respondent” name is not your current legal name, add “aka” and then write your current name.

On the “TO” line, fill in the county where your case was held. Then write the address of the County Attorney’s Office. The address of the County Attorney’s Office can be found on the County’s website.

Do not fill in the date and time of hearing. You will do that as part of Step 3. However, you can fill out the courthouse address and phone number. Courthouse information is found online at <https://www.mncourts.gov/Find-Courts.aspx>.

Paragraphs 1 and 2: You do not have to do anything to Paragraphs 1 or 2.

Read the *Acknowledgment* carefully. By signing your name, you are stating you are telling the truth and that you have a good faith reason for your requests. If you are not telling the truth, if

you are misleading the court, or if you are serving or filing this statement for an improper purpose, the court can impose penalties.

Date and Sign the *Notice of Motion and Motion Form*.

Step 2
Fill Out the *Affidavit in Support of Motion Form*

Fill out the *Affidavit in Support of Motion to Seal Records* form. This form should have the facts (that you are saying are true and correct) that you believe support your request to seal the civil commitment records.

FILL IN THE TOP PART OF THE FORM (this is known as “the caption”):

Fill out this caption the same way you filled out the one on the Motion. (See Step 1, above)

FILL IN THE REST OF THE FORM:

1. Explain the undue hardship that you experience by the public having access to your civil commitment records.
2. Explain why you believe that the benefit to you in sealing the civil commitment records is greater than the need for the public to know about this case.
3. Sign and date the *Affidavit* under penalty of perjury. Signing the *Affidavit* under penalty of perjury means you are stating that the information in the *Affidavit* is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

Step 3
Schedule Hearing Date, Time and Location

When your *Notice of Motion and Motion* and *Affidavit in Support of Motion* have been completed, contact court administration in your county and let them know you would like to file a *Notice of Motion and Motion to Seal Civil Commitment Records* and a *Supporting Affidavit*, and that you need a hearing date. Court staff will tell you what you need to do in order to get a hearing date, time, and location.

In some counties, you might have to serve and file your motion papers without a hearing date, and a *Notice of Hearing* is sent out separately. This is why it is very important to contact court administration to find out that county’s procedure for scheduling a hearing date for your motion to seal civil commitment records.

If court administration gives you a hearing

If court administration DOES NOT give you a

date, time and location right away:

Fill in the date, time, location, name of the judicial officer and room number of the hearing on the first page of the *Notice of Motion and Motion* form, and go to Step 4.

Make sure that the hearing date is at least 3 weeks in the future so that you have enough time to complete the rest of the Steps (see below).

hearing date right away:

Write “TBD” in the spaces for hearing date, time, location, name of judicial officer, and room number on the first page of the *Notice of Motion and Motion* form. “TBD” means “to be determined.”

Go to Step 4.

You will also need to follow Step 8

Step 4 Make Copies of Forms

- Make **two** copies of the *Notice of Motion and Motion* form, and **two** copies of your *Affidavit in Support of Motion* form.
- Keep **one** copy of each form for yourself (make sure to bring your copies with you to court on the day of your hearing). The other copy must be delivered in person or mailed to the County Attorney’s Office.
- Step 5 tells you how to serve the County Attorney. Step 7 tells you how to file your forms with the court.

Step 5 Serve Notice on the County Attorney at Least 14 Days before the Hearing Date

You must arrange for the County Attorney’s Office to receive notice of the hearing and copies of all documents you have prepared for the hearing. This is called "service of process." Have someone else who is over the age of 18 and not involved in the case serve the County Attorney. The papers can be served personally (hand-delivered) or by mail.

The County Attorney must receive the papers at least 14 days before the hearing. Papers **CANNOT** be served on a legal holiday. If papers are served by mail, they must be postmarked at least 17 days before the hearing.

To serve the papers personally, follow these instructions:

At least 14 days before the hearing date, the server hands to staff in the County Attorney’s Office **one copy** of the completed *Notice of Motion and Motion*, and **one copy** of your *Affidavit in Support of Motion*. Example: If the hearing date is January 18, the papers must be served on or before January 4 at 5 p.m. If January 4 were a legal holiday, the papers would have to be served by January 3.

To serve the papers by mail, follow these instructions:

The server places **one copy** of the completed *Notice of Motion and Motion* form, and **one copy** of your *Affidavit in Support of Motion* in an envelope addressed to the County Attorney’s Office. Put your address as the return address (upper left hand corner of the envelope), even though you aren’t the person mailing the envelope. The envelope should be mailed using first class mail. The server may want to take the envelope to the post office to be weighed to make sure he/she has the right amount of postage.

The server must mail the envelope containing the forms to the County Attorney’s Office **at least 17 days before the hearing date**. Example: If the hearing is January 18, the papers must be postmarked no later than January 1. Since January 1 is a legal holiday, the papers must be postmarked by December 31.

Warning: If your forms are not personally served on the County Attorney at least 14 days before the hearing OR mailed to the County Attorney at least 17 days before the hearing date, the court might not consider your *Motion*.

Step 6

The Person Who Served the Forms on the County Attorney Must Fill Out the *Affidavit of Service Form (SOP102 or SOP104)*

After the papers are served, the person who served the papers must fill out the *Affidavit of Service* form. This form is proof for the court that the papers were served on the other party.

IF THE PAPERS WERE SERVED PERSONALLY, FOLLOW THESE INSTRUCTIONS:
Use the *Affidavit of Personal Service (SOP102)*.

The server must first serve the papers. In the *Affidavit*, the server must state that he or she served the papers, and how and when he or she did so. The server must not complete the *Affidavit of Service* until actual service is complete.

YOU:	<ol style="list-style-type: none"> 1. Fill in the top part of the <i>Affidavit of Service</i> the same as you did for the <i>Notice of Motion and Motion</i> form. 2. Fill in the names of the documents that were served on the County Attorney: <i>Notice of Motion and Motion to Seal Records</i> and <i>Affidavit in Support of Motion to Seal Records</i>.
THE SERVER (cannot be you):	<ol style="list-style-type: none"> 1. Fill in the server’s name and birth date. 2. Fill in the date the server handed the papers to staff in the County Attorney’s Office. 3. Fill in the name of the county, then the words “Attorney’s Office” (for example: <i>Blue Earth County Attorney’s Office</i>).

	4. Fill in the location (where) the server handed the papers to staff in the County Attorney's Office.
	5. The server must sign the <i>Affidavit of Personal Service</i> under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

After the server signs the *Affidavit of Service*, make one copy of the *Affidavit of Service* for your records. You will file the original with the court as part of Step 7.

IF THE PAPERS WERE SERVED BY MAIL, FOLLOW THESE INSTRUCTIONS:

Use the *Affidavit of Service by Mail* (SOP104).

The server must first serve the papers. In the *Affidavit*, the server must swear or affirm that he or she served the papers, and how and when he or she did so. The server cannot swear to this information until he or she has actually served the papers.

YOU:	1. Fill in the top part of the <i>Affidavit of Service</i> the same as you did for the <i>Notice of Motion and Motion</i> form.
	2. Fill in the names of the documents that were served on the County Attorney: <i>Notice of Motion and Motion to Seal Records</i> and <i>Affidavit in Support of Motion to Seal Records</i> .
THE SERVER (cannot be you):	1. Fill in the server's name and birth date.
	2. Fill in the date the server mailed the papers to the County Attorney's Office.
	3. Fill in the name of the county, then the words "Attorney's Office" to show which county attorney's office the forms were mailed to (for example: <i>Blue Earth County Attorney's Office</i>).
	4. Fill in the address of the County Attorney's Office (where the papers were mailed).
	5. Fill in the name of the city and state where the post office was from which the server mailed the documents to the other party.
	6. The server must sign the <i>Affidavit of Service by Mail</i> under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth, punishable by jail or other sanctions.

After the server signs the *Affidavit of Service*, make one copy of the *Affidavit of Service* for your records. You will file the original with the court as part of Step 7.

Step 7

File the Forms with the Court

The original documents must be RECEIVED by court administration **at least 14 days before the date of the hearing**. You can file the documents listed below in person or by mail, but you must allow three extra days for mailing.

File the following with the court administration:

- The *Notice of Motion and Motion to Seal Records*,
- The *Affidavit in Support of Motion to Seal Records*,
- The *Affidavit of Service*

Step 8

If you filed your motion papers without scheduling a hearing date first,
Schedule a hearing date, Fill out Notice of Hearing Form, Serve the Other Party

If you already have a court hearing scheduled for your Motion to Seal Civil Commitment Record, skip Step 8, and go to Step 9.

After you file your documents with court administration (Step 7), the court will mail to you and to the other party a “Notice of Judicial Officer Assignment.” This notice tells you who the judge or referee is for your case, and how to reach the judge’s clerk.

Schedule a Hearing Date

Call the number on the Notice of Judicial Officer Assignment. Tell the judge’s clerk that you want to schedule a hearing on your *Motion to Seal Civil Commitment Record*. The clerk will give you a hearing date, time, and room number.

Fill out the Notice of Hearing form (CIV604), which is available online at www.mncourts.gov/forms (choose the “Civil” category).

Use this form to let the other party know that you have scheduled a court hearing in this case.

FILL IN THE TOP PART OF THE FORM (this is known as “the caption”):

Fill out this caption the same way you filled out the one on the Motion. (See Step 1, above)

On the “TO” line, write the full name and street address of the County Attorney’s Office.

Fill in the blanks on the *Notice of Hearing*:

- Date and time of court hearing
- Name of Judicial Officer
- Room number where hearing will be held
- Name and address of courthouse

- Date your *Motion to Seal Civil Commitment* and other papers were served on the other party
- Date you filed your *Motion to Seal Civil Commitment* and other papers with court administration

Sign and date the bottom of the *Notice of Hearing* form. Print your name, address, telephone number, and email address.

Make two copies of the *Notice of Hearing*.

Serve the *Notice of Hearing* on the County Attorney at least 14 days before the hearing date
See Steps 5 and 6 above.

Like in Step 5, you need to arrange for someone who is at least 18 years old and not a party in this case to serve the County Attorney with a copy of the *Notice of Hearing*. Service can be by first class U.S. Mail or by personally handing a copy of the document to the County Attorney.

Like in Step 6, the person who served the *Notice of Hearing* form must complete an *Affidavit of Service*.

File the *Notice of Hearing* and *Affidavit of Service* at least 14 days before the hearing date
See Step 7 above.

Step 9

Appear in Court

You must go to court on the date set for the hearing. Be sure to be in the courtroom on time. If you are even a few minutes late, the judge may dismiss your motion. Bring your copies of the papers with you to the hearing as well as multiple copies (at least 3: one for the judge, one for the other party, and one for you) of any documents you think supports your motion. If you have been served with a response, you should write your reply to it and be prepared to give that information to the judge and a copy to the other party at the hearing.