

## ACCESS TO COURT RECORDS IN CRIMINAL CASES

Unless a court record or any party of a court record is otherwise inaccessible to the public pursuant to statute, rule, regulation, chief justice directive, or court order, court records in criminal cases are presumed to be open to the public. The court may deny the public access to a court record or to any part of a court record only when it does so in compliance with this rule.

(This paragraph was changed based on the recommendations of staff as well as the discussion held at the last full committee meeting.)

**(a) Motion Requesting to Limit Public Access.** Either party may file a motion requesting that the court limit public access to a court record or to any part of a court record by making it inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public. A motion requesting to limit public access must be served on the court and the opposing party. The opposing party shall file a response within 7 days unless otherwise directed by the court. The motion itself and the response shall automatically be restricted from public access. The court may sua sponte make a court record inaccessible to the public or order that only a redacted copy of it be accessible to the public. If the court does so, it must notify the parties and comply with paragraphs (d), (e), and (g), of this rule. In its discretion, the court may hold a hearing before sua sponte ordering a court record or any part of a court record inaccessible to the public.

(We added the 7 day response time as suggested at the full committee meeting. We also moved the section regarding sua sponte orders up from old paragraph (h) and now into (a). )

**(b) Contents of the Motion.** A motion to limit public access shall identify the court record(s) or any part of the court record(s) which public access the moving party wishes to limit, state the reason(s) for the request, and specify how long the information identified should remain inaccessible to the public.

**(c) Temporary Relief.** Either Party may file a request for immediate, temporary relief to limit public access to a filed court record. The request itself shall automatically be limited from public access. The Court may grant the requested temporary relief immediately and order the parties to file support for and responses to the request to limit public access while the request is under consideration. Following the completion of the briefing and hearing, if one is held, on whether the court record should be limited from public access, the Court shall issue an order granting or denying limited public access pursuant to subsection (e) of this rule.

(As suggested by committee)

**(d) Hearing.** When a motion to limit public access is filed, the court may conduct a hearing if it determines that more information is required or that a hearing is otherwise appropriate. Notice of the hearing shall be provided to the parties. **The hearing shall be closed to the public.**

(as suggested by committee)

**(e) When Request Granted.** The court shall not make a court record or any part of a court record inaccessible to the public pursuant to this rule, without a written order. The court's order shall:

- (1) specifically identify one or more **(compelling interest(s) (significant interest(s)) (substantial interest(s)) (over-riding interest(s))** that would be served by making the court record inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public;
- (2) explain how taking such action would serve the compelling interest(s) identified;
- (3) explain why there would be a substantial probability of harm to the **compelling interest(s) (match (1) above re: kind of interest)** identified if such action is not taken;
- (4) find that no less restrictive means than making the record inaccessible to the public or allowing only a redacted copy of it to be accessible to the public exists to achieve or protect the identified **compelling interest(s)**; and
- (5) conclude that the identified **compelling interest(s)** outweigh(s) the right of public access to the court record or to an unredacted copy of it.

(Committee and sub-committee not in agreement as to what the interest should be identified as.)

**(f) Duration.** Any order limiting public access to a court record or any part of a court record shall indicate how long the order will remain in effect.

**(g) Access:** If a court restricts access to a record, or part of a record pursuant to this rule, only the Court, the court's staff, parties to the case and the attorneys of record shall have access to the original document.

(as suggested by committee)

**(h) Review.** The court shall review any order issued pursuant to this rule at the time of the expiration of the order or earlier upon motion of one of the parties.