

IN THE SUPREME COURT, STATE OF WYOMING

October Term, A.D. 2009

IN THE MATTER OF THE ADOPTION OF RULES)
GOVERNING ACCESS TO COURT RECORDS)

ORDER ADOPTING RULES GOVERNING ACCESS TO COURT RECORDS

Upon the recommendation of the Wyoming Supreme Court, made in furtherance of the Court's obligations as recognized in Wyo. Const. art. 5, § 2, Wyo. Stat. Ann. § 5-2-114 (LexisNexis 2009), and Wyo. Stat. Ann. § 16-4-203(a)(iii) (LexisNexis 2009), the Board of Judicial Policy and Administration created a committee for the purpose of developing rules to govern public access to court records. The members of the committee were Honorable Michael Davis, Ms. Liz Gagen, Ms. Holly Hansen, Mr. Karl Linde, Ms. Ronda Munger, Honorable Denise Nau, Ms. Debora Person, Ms. Corky Ring, Ms. Janice Sexton, Ms. Carol Thompson, Mr. Stephen E. Weichman, Mr. James Bothamley, Ms. Diana Wilsey-Geer, and Honorable Barton R. Voigt. After meeting, conducting research, and conferring among themselves, the committee members recommended to the Board of Judicial Policy and Administration that the rules appended hereto be adopted by the Wyoming Supreme Court. The Board of Judicial Policy and Administration studied the proposed rules, and having recommended their adoption; it is

ORDERED that the Rules Governing Access to Court Records appended hereto, be and they hereby are adopted; and that said rules shall become effective January 1, 2010; and that the rules shall be published in the advance sheets of the Pacific Reporter, the Wyoming Reporter, and in the Wyoming Court Rules volume; and that the Rules Governing Access to Court Records shall be spread at length upon the journal of the Court; and it is further

ORDERED that the committee be commended for the excellence of its work and that sincere thanks be extended to each member.

DATED this 7th day of October, 2009.

BY THE COURT:

Barton R. Voigt
Chief Justice

RULES GOVERNING ACCESS TO COURT RECORDS

Rule 1. Scope and purpose of rules.

These rules shall govern public access to court records as defined herein. The rules are designed and should be interpreted to (1) promote access to court records; (2) protect individual privacy rights and public interests; (3) prevent public access to information that is confidential as a matter of law, public policy, court rule, or court order; and (4) make effective use of court staff.

Rule 2. Definitions.

(a) “Administrative record” means any document or information pertaining to the administration of the courts.

(b) “Bulk distribution” means the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation.

(c) “Case record” means any document or information collected, received, or maintained by a custodian in connection with a specific case or judicial proceeding.

(d) “Compiled information” means information that is derived from the selection, aggregation, or reformulation by the court of some of the information from more than one case record, including statistical reports and information that are not available in an existing record or report.

(e) “Confidential” means unavailable to public access as a matter of state or federal statute, administrative rule, court rule, or court order.

(f) “Court” means the court in which the court record resides at the time of an access request.

(g) “Court record” means case records and administrative records, in whatever format, except personnel records, judicial or judicial staff work product, internal electronic or physical mail, memoranda or drafts, appellate case assignments, and records made confidential by statute, administrative rule, court rule, or court order.

(h) “Custodian” means the clerk of court, or his or her designee, unless otherwise designated by court order.

(i) “Data element” means information contained in a field in a computer database.

(j) “Electronic record” means any court record that is recorded in a form that only a computer can process, irrespective of whether it also exists in physical form.

(k) “Interested person” means any non-party identified in a case record.

(l) “Person” means any individual, business entity, media organization, or government agency for which there is no policy, statute, or rule defining the agency’s access to court records.

(m) “Personnel record” means any documents or information relating to the employment of persons within the judiciary, except name, position, and salary.

(n) “Public” means any person except court employees, persons who provide court services, government agencies whose access to court records is defined by law, and the parties and attorneys involved in a particular case.

(o) “Public access” means that the public may inspect and obtain a copy of the information in a court record unless prohibited by statute, administrative rule, court rule, or court order.

(p) “Remote access” means the ability electronically to search, inspect, or copy information in a court record without the need physically to visit the court facility where the record is maintained.

(q) “Vendor” means any governmental or non-governmental provider of a court information technology system.

Rule 3. General policy.

Court records are presumed to be open to public access during the regular business hours of the court, except as provided herein or otherwise provided by law. These rules are not intended to limit the access of parties and attorneys to case records of cases in which they are involved, but such access may be limited by court order. Each clerk of court shall provide staff training in the application of these rules, including the presumption in favor of public access to court records and the necessity of preventing disclosure of confidential records. No custodian may restrict access or allow greater access to court records than as provided herein or otherwise provided by law.

Rule 4. When court records may be accessed.

Court records shall be available for public access in the court facilities where the records are kept, during regular business hours. Upon receiving a request for access to court records, the custodian shall respond within a reasonable time regarding the availability of the records, and shall provide or deny access thereto within a reasonable time. Court records shall be provided at a time and in a manner that does not unreasonably interfere with other business of the courts. Electronic records to which the court allows remote access shall be available for public access at any time, subject to normal system maintenance and unexpected technical failures.

Rule 5. Application procedures.

Requests for public access to court records shall be directed to the custodian, and may be oral or written, except that requests for public access to administrative records shall be written. The person requesting access to court records shall not be required to disclose the purpose for the request, unless such purpose is commercial gain. Record requests shall clearly identify each record requested so the custodian can locate the record without extensive research. Continuing requests for documents not yet in existence shall not be considered. The custodian shall respond to the request within a reasonable time. Denials of public access may be oral, unless requested to be written. Request and denial forms shall be developed by the Wyoming Supreme Court.

Rule 6. Court records not available for public access.

The custodian shall deny public access to court records if public access is prohibited by statute, administrative rule, court rule, or court order, including but not limited to the following, unless otherwise ordered by a court:

- (a) Records listed in Wyo. Stat. Ann. § 16-4-203(b) and (d).
- (b) Adoption and confidential intermediary records pursuant to Wyo. Stat. Ann. §§ 1-22-104(d), (e), and 1-22-203(c).
- (c) Attorney discipline records pursuant to Disciplinary Code §§ 5 and 12(h) and Lawyers' Assistance Committee Rule 4C.
- (d) Mediation proceeding records pursuant to Wyo. Stat. Ann. § 1-43-102 and agricultural mediation services records pursuant to Wyo. Stat. Ann. § 11-41-106.
- (e) Domestic violence protection order petitioners' and their children's identifying information pursuant to Wyo. Stat. Ann. § 35-21-105(e).
- (f) Grand jury records pursuant to Wyo. Stat. Ann. §§ 7-5-207, 7-5-208, and 7-5-308.
- (g) Guardianships and conservatorships records pursuant to Wyo. Stat. Ann. § 3-1-110(a) and § 16-4-203(b) and (d).
- (h) Involuntary commitment records pursuant to Wyo. Stat. Ann. § 25-10-122.
- (i) Records from child abuse and neglect proceedings, including but not limited to records of the multidisciplinary team, pursuant to Wyo. Stat. Ann. §§ 14-3-424, 14-3-427(g), 14-3-437, and 14-3-439, except any order for payment of support and treatment that is not confidential pursuant to Wyo. Stat. Ann. § 14-3-435.

(j) Records related to juvenile justice proceedings in the district court, including but not limited to records of the multidisciplinary team, pursuant to Wyo. Stat. Ann. §§ 14-6-203(g) and (j), 14-6-227(g), 14-6-239, and 14-6-240, except any order for payment of support and treatment that is not confidential pursuant to Wyo. Stat. Ann. § 14-6-236.

(k) Records related to children in need of supervision proceedings, including but not limited to records of the multidisciplinary team pursuant to Wyo. Stat. Ann. §§ 14-6-437 and 14-6-427, except any order for payment of support and treatment that is not confidential pursuant to Wyo. Stat. Ann. § 14-6-435.

(l) Presentence investigation reports pursuant to Wyo. Stat. Ann. § 7-13-409.

(m) Search warrant applications and affidavits until served and returned, pursuant to W.R.Cr.P. 41(i).

(n) Discovery material or other items submitted to a court for *in camera* review.

(o) Financial information, including, but not limited to, social security numbers, employer or taxpayer identification numbers, financial account numbers, income tax returns, W-2 Forms, tax schedules, wage stubs, credit card statements, bank statements, and check registers, unless public access thereto is granted by the court pursuant to Rule 9.

(p) Trial juror addresses, qualification forms, and questionnaires, except to the parties in the case, if disclosure is restricted or prohibited by the court.

(q) Mental health and counseling records pursuant to Wyo. Stat. Ann. §§ 33-27-123, 33-38-113, 9-2-125, and 9-2-126.

(r) Substance abuse evaluation reports pursuant to Wyo. Stat. Ann. §§ 9-2-125 and 16-4-203(d)(i).

(s) Records sealed by a court.

(t) Sexual assault victim's identifying information prior to filing of the information or indictment in district court, and minor sexual assault victim's name pursuant to Wyo. Stat. Ann. § 6-2-319(a) and (b).

(u) Medical records pursuant to Wyo. Stat. Ann. § 16-4-203(d)(i).

(v) Crime victim's compensation application pursuant to Wyo. Stat. Ann. § 1-40-107(d).

(w) Probation counselor case records pursuant to Wyo. Stat. Ann. § 5-3-504(b).

(x) Court supervised treatment program information pursuant to Wyo. Stat. Ann. § 7-13-1610.

(y) Criminal history record information pursuant to Wyo. Stat. Ann. § 7-19-106.

(z) Sex offender registration information pursuant to Wyo. Stat. Ann. § 7-19-303(b).

(aa) Administrative subpoena information regarding child exploitation investigations pursuant to Wyo. Stat. Ann. § 9-1-640(j), unless in connection with a criminal case related to the subpoenaed materials.

(bb) Genetic testing information pursuant to Wyo. Stat. Ann. § 14-2-710(c).

(cc) Parentage adjudication information pursuant to Wyo. Stat. Ann. § 14-2-819, other than the final judgment.

(dd) Child abuse and neglect information pursuant to Wyo. Stat. Ann. § 14-3-214.

(ee) Domestic relations financial affidavits and records pursuant to Wyo. Stat. Ann. § 20-2-308(d).

(ff) Motor vehicle accident reports pursuant to Wyo. Stat. Ann. §§ 31-5-1110 and 1111.

(gg) Adult protective services information pursuant to Wyo. Stat. Ann. § 35-20-112(a) and (b).

(hh) Confidential fair market value information in eminent domain proceedings pursuant to Wyo. Stat. Ann. § 1-26-704(d).

(ii) Sexual assault victim medical examination information and reports pursuant to Wyo. Stat. Ann. § 6-2-309(m).

(jj) Sexually transmitted disease examination information and reports pursuant to Wyo. Stat. Ann. § 7-1-109(f).

(kk) Patient records from the Wyoming Life Resources Center pursuant to Wyo. Stat. Ann. § 25-5-131.

Rule 7. Filing confidential information.

Confidential information that is required to be filed as part of a case record shall be submitted on a separate Confidential Information Form, as appended to these rules, and filed with the pleading or other document to which the information relates. The

Confidential Information Form and any attached confidential information are not subject to public access. If confidential information is admitted as evidence in a hearing or trial, any party or interested person may file a motion seeking to limit public access thereto for good cause as set forth in Rule 8 of the Rules Governing Access to Court Records.

Rule 8. Motions to limit public access to information in case record.

A motion to limit public access to information in a case record, supported by affidavit showing good cause, may be filed by any party to the case, by any interested person, by an entity charged with maintaining the confidentiality of records, or by the court, which shall be accompanied by a certificate showing service of the motion and affidavit upon the parties and any interested persons, or a request for waiver of the notice requirements due to inability to locate any interested person after due diligence. The motion of an interested person shall include a request for an order granting limited intervention. Any party or interested person may file a response within twenty days of receipt of notice of the motion. Upon a finding that the information is confidential as a matter of law, or that disclosure of the information would do substantial injury to the public interest or to the privacy interest of an interested person, and the interest in non-disclosure resulting from such substantial injury outweighs the public right of access, notwithstanding the fact that the information might otherwise be available for public access, the court shall limit public access or the manner of public access, using the least restrictive means that achieves the purposes of the limitation. A record of the finding shall be kept, and the factual basis for the finding upon which closure is predicated shall be made apparent therein. There shall be a publicly accessible indication of the existence of information within a case record to which access has been restricted, which indication shall not disclose the nature of the information protected, i.e., “sealed document.”

Rule 9. Motions requesting access to sealed documents in case record.

Any person may file a motion, supported by affidavit showing good cause, for access to sealed documents in a case record, which shall be accompanied by a certificate showing service of the motion and affidavit upon the parties and any interested persons, or a request for waiver of the notice requirement due to inability to locate any interested person after due diligence. The motion shall include a request for an order granting limited intervention. The court may waive the notice requirement if the court finds that good faith efforts to locate an interested person have been made, that further efforts are not likely to be successful, and that the need for access to the sealed documents outweighs any prejudice to any interested person, and is in the interest of justice. Any party or interested person may file a response within twenty days of receipt of notice of the motion. In determining the motion, the court shall consider applicable law and the content and purpose of these rules, and shall, in particular, balance the presumption in favor of public access to court records against the need to protect individual privacy rights and the public interest. This rule applies to case records that have been sealed, but does not apply to court records that are confidential as a matter of law.

Rule 10. Judicial review.

(a) Any person denied public access to any court record by the record's custodian may petition the court for an order directing the custodian to grant access. Such petition shall be heard upon appropriate notice given to all parties, interested persons, or entities charged with maintaining the confidentiality of records. Unless the court finds that the record is confidential as a matter of law, or that the record should remain sealed as otherwise provided herein, the court shall order the custodian to grant public access.

(b) Any court order granting or denying public access to a court record shall be written, and, except for orders of the Supreme Court, shall be subject to appellate review pursuant to Rule 13 of the Wyoming Rules of Appellate Procedure.

Rule 11. Electronic records.

Requests for compiled information and bulk data in electronic format shall be subject to the following additional restrictions:

(a) The courts shall not be required, in response to a request for public access to court records, to create a non-standard data element, to make a data element available electronically that is not presently available electronically, or to produce a non-standard or alternative format report.

(b) The courts shall not be required to allow inspection or copying of a record in its electronic format if doing so would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(c) The courts shall not be required to compile data, extract data or create a non-standard document to comply with an electronic record request if doing so would impair the agency's ability to discharge its duties.

(d) The courts shall not be required to provide public access to the following data elements in an electronic record: social security numbers, street addresses, telephone numbers, personal identification numbers, motor vehicle driver's licenses and license plate numbers, and financial account information.

Rule 12. Compiled information.

Any person may request compiled information that consists solely of information that is publicly accessible and that is not already available in an existing report. Requests for compiled information shall identify what information is sought, describe the purpose for requesting the information, explain how the information will benefit the public interest, and explain provisions for the secure protection of any information requested. An applicant requesting compiled information shall be required to certify that the data will not be sold or otherwise distributed directly or indirectly to third parties, that the information will not be used directly or indirectly to sell a product or services to an individual or the general public, and that the information will not be copied or duplicated,

except in the public interest. The Supreme Court may compile and provide the information if it determines, in the exercise of its discretion, that providing the information meets the criteria established herein, that the resources are available to compile the information, and that it is an appropriate use of public resources. The courts have no duty to provide compiled information. The State Court Administrator shall make the initial determination and recommendation to the Supreme Court as to whether to provide the compiled information.

Rule 13. Bulk distribution.

No bulk distribution of court records shall be made without prior approval of the Supreme Court.

Rule 14. Copies.

In all cases in which a person has the right of public access to court records, he or she may request copies, printouts, or photographs. If the custodian does not have facilities for making copies, printouts or photographs, the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession of the custodian and are subject to the supervision of the custodian. When practical, the copy, printout, or photography work shall be done in the place where the records are kept, but if it is impractical to do so, the custodian may make other arrangements, at the applicant's expense.

Rule 15. Fees.

The Rules for Fees and Costs for District Courts, Rules for Fees and Costs for Circuit Courts, and any rules governing fees and costs in the Wyoming Rules of Appellate Procedure, as amended from time-to-time, are incorporated herein. Fees shall be paid in advance.

Rule 16. Vendors.

If a court contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the vendor shall be required to comply with these rules and any statutes or administrative agency regulations governing access to court records, and shall be required to notify the court of any requests for compiled information or bulk distribution of court records.

Rule 17. Local rules.

Local rules governing access to court records are prohibited.

STATE OF WYOMING CONFIDENTIAL INFORMATION FORM

Name of Court

Case No. _____

Plaintiff/Petitioner

Defendant/Respondent

This form and the attached documents are confidential pursuant to the Wyoming Rules Governing Access to Court Records and are to be sealed when filed:

Filed by:

Name

Address

