

NOTICE OF PUBLIC HEARING AND PUBLICATION FOR COMMENT

NEW MEXICO JUDICIARY PROPOSED POLICY FOR ONLINE ACCESS TO COURT RECORDS

Attorneys and their staff, the press, and justice partners, including law enforcement and child welfare agencies, could be granted online access to electronic records in court case files under a proposal before the New Mexico Judiciary.

If adopted by the New Mexico Supreme Court, the proposal would permit approved users to view public records from their computer terminals 24 hours a day, seven days a week through a restricted access system operated by the Judicial Information Division.

Interested parties are invited to comment on the proposal at a public hearing from 9 a.m. to noon on December 8, 2016, in Santa Fe conducted by the Online Access Subcommittee of the Judicial Information Systems Council.

The hearing and meeting will be held at the Judicial Information Division, 2905 Rodeo Park Drive East, Building 5, Santa Fe, NM 87505.

Members of the public who cannot participate in the hearing at the Judicial Information Division office can comment through video conferencing available at the following courthouses across the state: the Third Judicial Court in Las Cruces, the Fifth Judicial Court in Roswell, the Eighth Judicial District Court in Taos, the Eleventh Judicial District Court in Farmington, and the Bernalillo County Metropolitan Court in Albuquerque.

The proposed policy is intended to expand access to electronic records in civil and criminal cases, assisting licensed attorneys who practice in New Mexico, law enforcement and governmental agencies involved in judicial proceedings, and members of the press in reporting on public affairs.

Those requesting online access to the Secured Odyssey Public Access (SOPA) system would be required to apply to the Judicial Information Division for login credentials.

Under the proposed policy, those who could qualify for online access are:

- Attorneys licensed by the New Mexico Supreme Court and staff working for attorneys with online access credentials.
- Out-of-state attorneys admitted by the New Mexico Supreme Court on a specific case. Access would be restricted to public records only in the cases of the out-of-state attorney, also known as a pro hac vice attorney.
- Justice partners, defined as state, municipal or federal law enforcement agencies, corrections agencies, compliance programs (per NMSA 1978, Section 31-20-5.1), municipal judges and court staff, and any state or federal agency involved in adult, family or child welfare.
- Press, defined as “any person who regularly gathers, prepares, photographs, records, writes, edits, reports or publishes news or information about matters of public interest in any medium and who successfully applies to participate in online access and agrees to comply with all court rules.”
- Self-represented parties in litigation. Online access would be restricted to public records in cases in which they are a party.

Under the Inspection of Public Records Act, § 14-2-1(B), unredacted records with protected personal identifier information cannot be made available on a governmental website that is generally accessible to the public. The proposed policy provides for extending online access to members of the public in the future when the Judiciary obtains adequate funding to electronically redact records to remove protected personal identifier information.

Persons who qualify for online access to unredacted court records must agree not to publish confidential information or protected personal identifier information as set forth in proposed amendments to the Judiciary’s rules of procedure governing the public inspection and sealing of court records.

The proposed online access policy, related application documents, and proposed rule amendments that are the subject of the public hearing are set forth below. In addition to, or in lieu of, attending the public hearing, interested parties are also encouraged to submit a written comment. If you would like to submit a written comment on the proposal under consideration by the Online Access Subcommittee, you may do so by either submitting a comment electronically through the Supreme Court’s website at supremecourt.nmcourts.gov or by sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
nmsupremecourtclerk@nmcourts.gov
505-827-4837 (fax)

Your written comments must be received by the Clerk on or before December 6, 2016, to be considered by the subcommittee before the public hearing. Written comments also may be submitted at the public hearing on December 8, 2016. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

Anyone planning to attend the public hearing is encouraged to arrive early as space is limited. And anyone who wants to provide an oral comment at the public hearing must register upon arrival at the site of the public hearing. The amount of time allotted for individual comments may be limited as necessary to accommodate all those present at the public hearing wishing to provide an oral comment. Anyone who needs a reasonable accommodation to attend or participate at the public hearing should contact the Judicial Information Division at (505) 476-6900 as soon as possible.

Draft Online Case Access Policy - For Discussion Purposes Only

Version: 11/17/16
JIFFY Approved

Access Group	Definition	View/Print Access **	Access Point
Attorneys	Attorney licensed by the NM Supreme Court and in good standing	All public records in magistrate, metropolitan, district and appellate court case files.	Secured Odyssey Public Access (SOPA)
Attorney Staff	Staff working for attorneys with online access credentials	All public records in magistrate, metropolitan, district and appellate court case files.	SOPA
Pro Hac Vice	Out of state licensed attorney admitted to practice by the New Mexico Supreme Court on a specific case	Public records in cases of the Pro Hac Vice Attorney	SOPA
Justice Partners	State, municipal (per NMSA 1978, Section 3-1-2(G)) or federal law enforcement, corrections agencies, compliance programs (per NMSA 1978, Section 31-20-5.1), municipal judges and court staff, and any state or federal agency involved in adult, family or child welfare.	All public records in magistrate, metropolitan, district and appellate court case files.	SOPA
Press	Includes any person who regularly gathers, prepares, photographs, records, writes, edits, reports, or publishes news or information about matters of public interest in any medium and who successfully applies to participate in online access and agrees to comply with all court rules	All public records in magistrate, metropolitan, district and appellate court case files.	SOPA
Self-Represented Litigants	Self-represented parties in litigation	Public records in cases in which they are a party	SOPA
Public	Any person not defined above	Redacted public records *	Case Lookup
<p>* View/print document access requires redaction to remove protected personal identifier information, that is NOT currently available and is contingent upon the Judiciary obtaining an appropriation to implement necessary redaction technology. View/print access is case-by-case. Bulk record download is prohibited by New Mexico Supreme Court Order No. 10-8500 dated September 15, 2010 and No. 13-8500 dated August 28, 2013.</p>			
<p>** Public Records do not include cases or records that are sealed or otherwise confidential under statute, court rule, or court order. Content varies by court depending on court case files currently digitized. Appellate court cases are unavailable under current technology and funding.</p>			

THE FOLLOWING PROPOSED AMENDMENT WOULD APPEAR IN THE CORRESPONDING PARAGRAPHS IN RULES 1-079(D)(1); 2-112(C)(1), 3-112(C)(1), 5-123(D)(1), 6-114(C)(1), 7-113(C)(1), 8-112(C)(1), 10-166(D)(1), AND 12-314(D)(1) NMRA. TO CONSIDER THE PROPOSED AMENDMENT WITHIN THE CONTEXT OF THE ENTIRE TEXT OF THE RULE, A DRAFT OF RULE 1-079 FOLLOWS ON THE NEXT PAGE.

D. Protection of personal identifier information.

(1) The court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court's judicial function. If the court or a party deems it necessary to include protected personal identifier information in a court record, that is a non-sanctionable decision. Protected personal identifier information shall not be made available on publicly accessible court web sites. The court shall not publicly display protected personal identifier information in the courthouse. Any attorney or other person granted electronic access to court records containing protected personal identifier information shall be responsible for taking all reasonable precautions to ensure that the protected personal identifier information is not unlawfully disclosed by the attorney or other person or by anyone under the supervision of that attorney or other person. Failure to comply with the provisions of this subparagraph may subject the attorney or other person to sanctions or the initiation of disciplinary proceedings.

1 **1-079. Public inspection and sealing of court records.**

2 A. **Presumption of public access; scope of rule.** Court records are subject to
3 public access unless sealed by order of the court or otherwise protected from disclosure
4 under the provisions of this rule. This rule does not prescribe the manner in which the court
5 shall provide public access to court records, electronically or otherwise. No person or entity
6 shall knowingly file a court record that discloses material obtained from another court record
7 that is sealed, conditionally under seal, or subject to a pending motion to seal under the
8 provisions of this rule.

9 B. **Definitions.** For purposes of this rule the following definitions apply:

10 (1) “court record” means all or any portion of a document, paper, exhibit,
11 transcript, or other material filed or lodged with the court, and the register of actions and
12 docket entries used by the court to document the activity in a case;

13 (2) “lodged” means a court record that is temporarily deposited with the
14 court but not filed or made available for public access;

15 (3) “protected personal identifier information” means all but the last four
16 (4) digits of a social security number, taxpayer-identification number, financial account
17 number, or driver’s license number, and all but the year of a person’s date of birth;

18 (4) “public” means any person or entity, except the parties to the
19 proceeding, counsel of record and their employees, and court personnel;

20 (5) “public access” means the inspection and copying of court records by
21 the public; and

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1 (6) “sealed” means a court record for which public access is limited by
2 order of the court or as required by Paragraphs C or D of this rule.

3 C. **Limitations on public access.** In addition to court records protected pursuant
4 to Paragraphs D and E of this rule, all court records in the following proceedings are
5 confidential and shall be automatically sealed without motion or order of the court:

6 (1) proceedings commenced under the Adoption Act, Chapter 32A,
7 Article 5 NMSA 1978. The automatic sealing provisions of this subparagraph shall not
8 apply to persons and entities listed in Subsection A of Section 32A-5-8 NMSA 1978;

9 (2) proceedings to detain a person commenced under Section 24-1-15
10 NMSA 1978;

11 (3) proceedings for testing commenced under Section 24-2B-5.1 NMSA
12 1978;

13 (4) proceedings commenced under the Adult Protective Services Act,
14 Sections 27-7-14 to 27-7-31 NMSA 1978, subject to the firearm-related reporting
15 requirements in Section 34-9-19 NMSA 1978;

16 (5) proceedings commenced under the Mental Health and Developmental
17 Disabilities Code, Chapter 43, Article 1 NMSA 1978, subject to the disclosure requirements
18 in Section 43-1-19 NMSA 1978 and the firearm-related reporting requirements in Section
19 34-9-19 NMSA 1978;

20 (6) wills deposited with the court pursuant to Section 45-2-515 NMSA
21 1978 that have not been submitted to informal or formal probate proceedings. The automatic

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1 sealing provisions of this subparagraph shall not apply to persons and entities listed in
2 Section 45-2-515 NMSA 1978;

3 (7) proceedings commenced for the appointment of a person to serve as
4 guardian for an alleged incapacitated person subject to the disclosure requirements of
5 Subsection I of Section 45-5-303 NMSA 1978 1978 and the firearm-related reporting
6 requirements in Section 34-9-19 NMSA 1978;

7 (8) proceedings commenced for the appointment of a conservator subject
8 to the disclosure requirements of Subsection M of Section 45-5-407 NMSA 1978 and the
9 firearm-related reporting requirements in Section 34-9-19 NMSA 1978; and

10 (9) proceedings commenced to remove a firearm-related disability under
11 Section 34-9-19(D) NMSA 1978.

12 The provisions of this paragraph notwithstanding, the docket number and case type
13 for the categories of cases listed in this paragraph shall not be sealed without a court order.

14 **D. Protection of personal identifier information.**

15 (1) The court and the parties shall avoid including protected personal
16 identifier information in court records unless deemed necessary for the effective operation
17 of the court's judicial function. If the court or a party deems it necessary to include
18 protected personal identifier information in a court record, that is a non-sanctionable
19 decision. Protected personal identifier information shall not be made available on publicly
20 accessible court web sites. The court shall not publicly display protected personal identifier
21 information in the courthouse. Any attorney or other person granted electronic access to

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1 court records containing protected personal identifier information shall be responsible for
2 taking all reasonable precautions to ensure that the protected personal identifier information
3 is not unlawfully disclosed by the attorney or other person or by anyone under the
4 supervision of that attorney or other person. Failure to comply with the provisions of this
5 subparagraph may subject the attorney or other person to sanctions or the initiation of
6 disciplinary proceedings.

7 (2) The court clerk is not required to review documents for compliance
8 with this paragraph and shall not refuse for filing any document that does not comply with
9 this paragraph. The court clerk is not required to screen court records released to the public
10 to prevent disclosure of protected personal identifier information.

11 (3) Any person requesting public access to court records shall provide the
12 court with the person's name, address, and telephone number along with a
13 government-issued form of identification or other acceptable form of identification.

14 E. **Motion to seal court records required.** Except as provided in Paragraphs
15 C and D of this rule, no portion of a court record shall be sealed except by court order. Any
16 party or member of the public may file a motion for an order sealing the court record. Any
17 party or member of the public may file a response to the motion to seal. The movant shall
18 lodge the court record with the court pursuant to Paragraph F when the motion is made,
19 unless the court record was previously filed with the court or good cause exists for not
20 lodging the court record pursuant to Paragraph F. Pending the court's ruling on the motion,
21 the lodged court record will be conditionally sealed. If necessary to prevent disclosure, any

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1 motion, response or reply, and any supporting documents, shall be filed in a redacted version
2 that will be subject to public access and lodged in a complete, unredacted version that will
3 remain conditionally sealed pending the court’s ruling on the motion. If the court denies the
4 motion, the clerk shall return any lodged court records and shall not file them in the court
5 file.

6 F. **Procedure for lodging court records.** A court record that is the subject of
7 a motion filed under Paragraph E of this rule shall be secured in an envelope or other
8 appropriate container by the movant and lodged with the court unless the court record was
9 previously filed with the court or unless good cause exists for not lodging the court record.
10 The movant shall label the envelope or container lodged with the court “CONDITIONALLY
11 UNDER SEAL” and affix to the envelope or container a cover sheet that contains the
12 information required under Rules 1-008.1 and 1-010 NMRA and which states that the
13 enclosed court record is subject to a motion to seal. On receipt of a lodged court record, the
14 clerk shall endorse the cover sheet with the date of its receipt and shall retain but not file the
15 court record unless the court orders it filed. If the court grants an order sealing a court
16 record, the clerk shall substitute the label provided by the movant on the envelope or
17 container with a label prominently stating “SEALED BY ORDER OF THE COURT ON
18 (DATE)” and shall attach a file-stamped copy of the court's order. Unless otherwise ordered
19 by the court, the date of the court order granting the motion shall be deemed the file date of
20 the lodged court record.

21 G. **Requirements for order to seal court records.**

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1 (1) The court shall not permit a court record to be filed under seal based
2 solely on the agreement or stipulation of the parties. The court may order that a court record
3 be filed under seal only if the court by written order finds and states facts that establish the
4 following:

5 (a) the existence of an overriding interest that overcomes the right
6 of public access to the court record;

7 (b) the overriding interest supports sealing the court record;

8 (c) a substantial probability exists that the overriding interest will
9 be prejudiced if the court record is not sealed;

10 (d) the proposed sealing is narrowly tailored; and

11 (e) no less restrictive means exist to achieve the overriding
12 interest.

13 (2) The order shall require the sealing of only those documents, pages,
14 or portions of a court record that contain the material that needs to be sealed. All other
15 portions of each document or page shall be filed without limitation on public access. If
16 necessary, the order may direct the movant to prepare a redacted version of the sealed court
17 record that will be made available for public access.

18 (3) The order shall state whether the order itself, the register of actions,
19 or individual docket entries are to be sealed.

20 (4) The order shall specify who is authorized to have access to the sealed
21 court record.

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1 (5) The order shall specify a date or event upon which it expires or shall
2 explicitly state that the order remains in effect until further order of the court.

3 (6) The order shall specify any person or entity entitled to notice of any
4 future motion to unseal the court record or modify the sealing order.

5 H. **Sealed court records as part of record on appeal.**

6 (1) Court records sealed in the magistrate, metropolitan, or municipal
7 court, or records sealed in an agency proceeding in accordance with the law, that are filed
8 in an appeal to the district court shall remain sealed in the district court. The district court
9 judges and staff may have access to the sealed court records unless otherwise ordered by the
10 district court. Requests to unseal such records or modify a sealing order entered in the
11 magistrate, metropolitan, or municipal court shall be filed in the district court pursuant to
12 Paragraph I of this rule if the case is pending on appeal.

13 (2) Court records sealed under the provisions of this rule that are filed in
14 the appellate courts shall remain sealed in the appellate courts. The appellate court judges
15 and staff may have access to the sealed court records unless otherwise ordered by the
16 appellate court.

17 I. **Motion to unseal court records.**

18 (1) A sealed court record shall not be unsealed except by court order or
19 pursuant to the terms of the sealing order itself. A party or member of the public may move
20 to unseal a sealed court record. A copy of the motion to unseal shall be served on all persons
21 and entities who were identified in the sealing order pursuant to Subparagraph (6) of

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1 Paragraph G for receipt of notice. If necessary to prevent disclosure, the motion, any
2 response or reply, and supporting documents shall be filed in a redacted version and lodged
3 in a complete and unredacted version.

4 (2) In determining whether to unseal a court record, the court shall
5 consider the matters addressed in Subparagraph (1) of Paragraph G. If the court grants the
6 motion to unseal a court record, the order shall state whether the court record is unsealed
7 entirely or in part. If the court's order unseals only part of the court record or unseals the
8 court record only as to certain persons or entities, the order shall specify the particular court
9 records that are unsealed, the particular persons or entities who may have access to the court
10 record, or both. If, in addition to the court records in the envelope or container, the court has
11 previously ordered the sealing order, the register of actions, or individual docket entries to
12 be sealed, the unsealing order shall state whether those additional court records are unsealed.

13 **J. Failure to comply with sealing order.** Any person or entity who knowingly
14 discloses any material obtained from a court record sealed or lodged pursuant to this rule
15 may be held in contempt of court or subject to other sanctions as the court deems
16 appropriate.

17 [Adopted by Supreme Court Order No. 10-8300-004, for all court records filed on or after
18 July 1, 2010; as amended by Supreme Court Order No. 10-8300-023 temporarily suspending
19 Paragraph D for 90 days effective August 11, 2010; by Supreme Court Order No.
20 10-8300-037, extending the temporary suspension of Paragraph D for an additional 90 days,
21 effective November 10, 2010; by Supreme Court Order No. 11-8300-006, effective for all

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1 court records filed, lodged, publicly displayed in the courthouse, or posted on publicly
2 accessible court web sites on or after February 7, 2011; as amended by Supreme Court Order
3 No. 13-8300-017, effective for all cases pending or filed on or after December 31, 2013; as
4 provisionally amended by Supreme Court Order No. 16-8300-003, effective for all cases
5 pending or filed on or after May 18, 2016; as amended by Supreme Court Order No. _____
6 , effective _____.]

7 **Committee commentary.** — This rule recognizes the presumption that all
8 documents filed in court are subject to public access. This rule does not address public
9 access to other records in possession of the court that are not filed within the context of
10 litigation pending before the court, such as personnel or administrative files. Nor does this
11 rule address the manner in which a court must provide public access to court records.

12 Although most court records are subject to public access, this rule recognizes that in
13 some instances public access to court records should be limited. However, this rule makes
14 clear that no court record may be sealed simply by agreement of the parties to the litigation.
15 And except as otherwise provided in this rule, public access to a court record may not be
16 limited without a written court order entered in accordance with the provisions of this rule.
17 Unless otherwise ordered by the court, any limitations on the public’s right to access court
18 records do not apply to the parties to the proceeding, counsel of record and their employees,
19 and court personnel. While employees of a lawyer or law firm who is counsel of record may
20 have access to sealed court records, the lawyer or law firm remains responsible for the
21 conduct of their employees in this regard.

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1 Paragraph C of this rule recognizes that all court records within certain classes of
2 cases should be automatically sealed without the need for a motion by the parties or court
3 order. Most of the classes of cases identified in Paragraph C have been identified by statute
4 as warranting confidentiality. However, this rule does not purport to cede to the legislature
5 the final decision on whether a particular type of case or court record must be sealed.
6 Paragraph C simply lists those classes of cases in which all court records shall be
7 automatically sealed from the commencement of the proceedings without the need for a
8 court order. Nonetheless, a motion to unseal some or all of the automatically sealed court
9 records in a particular case still may be filed under Paragraph I of the rule.

10 For some of the classes of cases identified in Paragraph C, automatic sealing is
11 subject to other statutory disclosure or reporting requirements. For example, under NMSA
12 1978, Section 34-9-19, the administrative office of the courts (AOC) is required to transmit
13 to the federal bureau of investigation's national instant criminal background check system
14 (NICS) information about a court order, judgment, or verdict regarding each person who has
15 been "adjudicated as a mental defective" or "committed to a mental institution" under federal
16 law. Automatic sealing under Paragraph C therefore does not prevent the AOC from
17 transmitting such information to the NICS in the proceedings described in Subparagraphs
18 C(4), (5), (7) and (8). A person who is the subject of the information compiled and reported
19 by the AOC to NICS has a right to obtain and inspect that information. *See* NMSA 1978,
20 § 34-9-19(K).

21 Aside from entire categories of cases that may warrant limitations on public access,

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1 numerous statutes also identify particular types of documents and information as confidential
2 or otherwise subject to limitations on disclosure. *See, e.g.*, Section 7-1-4.2(H) NMSA 1978
3 (providing for confidentiality of taxpayer information); Section 14-6-1(A) NMSA 1978
4 (providing for confidentiality of patient health information); Section 24-1-9.5 NMSA 1978
5 (limiting disclosure of test results for sexually transmitted diseases); Section 29-10-4 NMSA
6 1978 (providing for confidentiality of certain arrest record information); Section 29-12A-4
7 NMSA 1978 (limiting disclosure of local crime stoppers program information); Section
8 29-16-8 NMSA 1978 (providing for confidentiality of DNA information); Section 31-25-3
9 NMSA 1978 (providing for confidentiality of certain communications between victim and
10 victim counselor); Section 40-8-2 NMSA 1978 (providing for sealing of certain name
11 change records); Section 40-6A-312 NMSA 1978 (providing for limitations on disclosure
12 of certain information during proceedings under the Uniform Interstate Family Support Act);
13 Section 40-10A-209 NMSA 1978 (providing for limitations on disclosure of certain
14 information during proceedings under the Uniform Child-Custody Jurisdiction and
15 Enforcement Act); Section 40-13-7.1 NMSA 1978 (providing for confidentiality of certain
16 information obtained by medical personnel during treatment for domestic abuse); Section
17 40-13-12 NMSA 1978 (providing for limits on internet disclosure of certain information in
18 domestic violence cases) Section 44-7A-18 NMSA 1978 (providing for limitations on
19 disclosure of certain information under the Uniform Arbitration Act). However, Paragraph
20 C does not contemplate the automatic sealing of such items. Instead, if a party believes a
21 particular statutory provision warrants sealing a particular court record, the party may file

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1 a motion to seal under Paragraph E of this rule. And any statutory confidentiality provision
2 notwithstanding, the court must still engage in the balancing test set forth in Subparagraph
3 (1) of Paragraph G of this rule before deciding whether to seal any particular court record.

4 Paragraph D of this rule recognizes that certain personal identifier information often
5 included within court records may pose the risk of identity theft and other misuse.
6 Accordingly, Paragraph D discourages the inclusion of protected personal identifier
7 information in a court record unless the court or a party deems its inclusion necessary for the
8 effective operation of the court's judicial function. Although the decision to include
9 protected personal identifier information in the court record is a non-sanctionable decision,
10 the rule nonetheless prohibits public access to protected personal identifier information on
11 court web sites and also prohibits the court from publicly displaying protected personal
12 identifier information in the courthouse, which would include docket call sheets, court
13 calendars, or similar material intended for public viewing.

14 The court need not review individual documents filed with the court to ensure
15 compliance with this requirement, and the clerk may not refuse to accept for filing any
16 document that does not comply with the requirements of Paragraph D. Moreover, the clerk
17 is not required to screen court records released to the public to prevent the disclosure of
18 protected personal identifier information. However, anyone requesting public access to court
19 records shall provide the court with his or her name, address, and telephone number along
20 with a government-issued form of identification or other acceptable form of identification.
21 The court may also consider maintaining a log of this information.

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1 Paragraphs E and F set forth the procedure for requesting the sealing of a court
2 record. Any person or entity may file a motion to seal a court record, and all parties to the
3 action in which the court record was filed, or is to be filed, must be served with a copy of the
4 motion. Any person or entity may file a response to the motion to seal the court record, but,
5 if the person or entity filing the response is not a party to the underlying litigation, that
6 person or entity does not become a party to the proceedings for any other purpose.

7 Ordinarily, the party seeking to seal a court record must lodge it with the court at the
8 time that the motion is filed. A lodged court record is only temporarily deposited with the
9 court pending the court's ruling on the motion. Accordingly, a lodged court record is not
10 filed by the clerk and remains conditionally sealed until the court rules on the motion. To
11 protect the lodged court record from disclosure pending the court's ruling on the motion, the
12 movant is required to enclose the lodged court record in an envelope or other appropriate
13 container and attach a cover sheet to the envelope or container that includes the case caption,
14 notes that the enclosed court record is the subject of a pending motion to seal, and is clearly
15 labeled "conditionally under seal." If necessary to prevent disclosure pending the court's
16 ruling, the motion, any response or reply, and other supporting documents should either be
17 lodged with the court as well or filed in redacted and unredacted versions so that the court
18 may permit public access to the redacted pleadings until the court rules on the motion.

19 Although a lodged court record is not officially filed with the court unless and until
20 the motion to seal is granted, the clerk need not keep lodged court records in a physically
21 separate location from the rest of the court file. In this regard, the rule does not purport to

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1 require the clerk to maintain lodged court records in any particular manner or location. As
2 long as the lodged record is protected from public disclosure, each court retains the
3 discretion to decide for itself how it will store lodged court records, and this rule anticipates
4 that most courts will choose to store and protect lodged and sealed court records in the same
5 way that those courts have traditionally stored and protected sealed and conditionally sealed
6 court records filed with the court before the adoption of this rule.

7 When docketing a motion to seal, the clerk's docket entry should be part of the
8 publicly available register of actions and should reflect that a motion to seal was filed, the
9 date of filing, and the name of the person or entity filing the motion. However, any docket
10 entries related to the motion to seal should avoid including detail that would disclose the
11 substance of the conditionally sealed material before the court has ruled. If necessary to
12 prevent disclosure, in rare cases, a court order granting a motion to seal may provide for the
13 sealing of previous or future docket entries related to the sealed court records provided that
14 the court's register of actions contains, at a minimum, a docket entry containing the docket
15 number, an alias docket entry or case name such as Sealed Pleading or In the Matter of a
16 Sealed Case, and an entry indicating that the pleading or case has been sealed so that anyone
17 inspecting the court's docket will know of its existence.

18 If the court denies the motion to seal, the clerk will return the lodged court record to
19 the party, it will not become part of the case file, and will therefore not be subject to public
20 access. However, even if the court denies the motion, the movant still may decide to file the
21 previously lodged court record but it then will be subject to public access. If the court grants

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1 the motion to seal, it must enter an order in accordance with the requirements of Paragraph
2 G. The order must state the facts supporting the court’s decision to seal the court record and
3 must identify an overriding interest that overcomes the public’s right to public access to the
4 court record and that supports the need for sealing. The rule itself does not identify what
5 would constitute an overriding interest but anticipates that what constitutes an overriding
6 interest will depend on the facts of the case and will be developed through case law on a case
7 by case basis. The rule further provides that the sealing of the court record must be narrowly
8 tailored and that there must not be a less restrictive alternative for achieving the overriding
9 interest. To that end, the rule encourages the court to consider partial redactions whenever
10 possible rather than the wholesale sealing of pages, documents, or court files. Paragraph G
11 also requires the court to specify whether any other matter beyond the court record (such as
12 the order itself, the register of actions, or docket entries) will be sealed to prevent disclosure.
13 The sealing order also must specify who may and may not have access to a sealed court
14 record, which may include prohibiting access to certain parties or court personnel. In
15 addition, the sealing order must specify a date or event upon which the order expires or
16 provide that the sealing remains in effect until further order of the court. Finally, the order
17 must list those persons or entities who must be given notice of any subsequently filed motion
18 to unseal the court record or modify the sealing order.

19 Any court records sealed under the provisions of this rule remain sealed even if
20 subsequently forwarded to the appellate court as part of the record on appeal. However,
21 sealed court records forwarded to the appellate court as part of the record on appeal may be

**DISTRICT COURT CIVIL
RULE 1-079**

**Discussion Draft
November 16, 2016**

1 reviewed by the appellate court judges and staff unless otherwise ordered by the appellate
2 court. Any other motions requesting modification to a sealing order in a case on appeal must
3 be filed with the appellate court.

4 Motions to unseal previously sealed court records are governed by Paragraph I of this
5 rule. A party or any member of the public may move to unseal a court record, and the rule
6 does not provide a time limit for filing a motion to unseal a court record. Motions to unseal
7 follow the same general procedures and standards used for motions to seal. A copy of a
8 motion to unseal must be served on all persons and entities identified in the sealing order as
9 entitled to receive notice of a future motion to unseal.

10 Although most court records should remain available for public access, when a court
11 record is sealed under this rule, all persons and entities who do have access to the sealed
12 material must act in good faith to avoid the disclosure of information the court has ordered
13 sealed. That said, the protections provided by this rule should not be used to effect an
14 unconstitutional prior restraint of free speech. But in the absence of a conflict with a
15 countervailing First Amendment principle that would permit disclosure, any knowing
16 disclosure of information obtained from a court record sealed by the court may subject the
17 offending person or entity to being held in contempt of court or other sanctions as deemed
18 appropriate by the court.

19 [Adopted by Supreme Court Order No. 10-8300-004, for all court records filed on or after
20 July 1, 2010; as amended by Supreme Court Order No. 11-8300-006, effective for all court
21 records filed, lodged, publicly displayed in the courthouse, or posted on publicly accessible

- 1 court web sites on or after February 7, 2011; as provisionally amended by Supreme Court
- 2 Order No. 16-8300-003, effective for all cases pending or filed on or after May 18, 2016.]

Application for Online Access to New Mexico Judiciary Secure Court Cases for Attorneys

*New Mexico Administrative Office of the Courts
Judicial Information Division
2905 Rodeo Park Drive East, Building 5
Santa Fe, NM 87505
505-476-6900
Fax: 505-476-6952
Email: helpdesk@nmcourts.gov*

Introduction

Pursuant to New Mexico Supreme Court Order No. 16-8300-XXX, attorneys licensed by the New Mexico Supreme Court and in good standing, practicing law in the State of New Mexico may apply to receive login credentials to access the New Mexico Judiciary's secure website to view court cases currently digitized in the Odyssey Case Management System "Secured Odyssey Public Access" (SOPA). The Administrative Office of the Courts reserves the right to redact information from SOPA court case files as required by law.

Use of this site for any purpose other than viewing individual electronic court records, or attempts to download multiple records, are strictly prohibited. Data use is subject to NMSA 1978, Section 14-3-15.1.

Application Process

If you would like to apply for login credentials to access SOPA court files, a completed Application for Online Access to New Mexico Secure Court Cases must be emailed to the New Mexico Administrative Office of the Courts Judicial Information Division ("JID") at helpdesk@nmcourts.gov. Please allow up to thirty (30) business days for your application to be processed. You will be emailed your login credentials along with an initial password after your application has been approved. All information provided to JID will be held confidential and will only be used to open and manage your account. Requests for Juvenile case access may go before the Online Access Subcommittee for approval and may take up to sixty (60) business days to process.

Attorney License Information

Pro Hac Vice - Yes/No

Case Number(s) : _____

Please attach your Pro Hac Vice registration certificate with this application, as required by rule 24-106.

Prefix: Mr./Ms. Other (specify): _____

First Name: _____ **Last Name:** _____

Title: _____

E-mail: _____

Phone: _____

State Bar of New Mexico number: _____ **Supreme Court CAID number:** _____

*(To locate your CAID contact the NM Supreme Court Clerk's Office at 505-827-4860 or
nmsupremecourtclerk@nmcourts.gov)*

Business Contact Information

Business Name: _____

Business Physical Address: _____

Business Mailing Address: _____

Business City, State and Zip: _____

Business Phone: _____

Attorney Contact Telephone Numbers : _____ (Office)

_____ (Fax)

Attorney Business Email: _____

Personal Contact Information

Home Address: _____

City, State and Zip: _____

Home Phone: _____

Mobile Phone: _____ Personal Email: _____

Juvenile Case Access: Requests for Juvenile case access may go before the Online Access Subcommittee for approval and may take up to sixty (60) business days to process.

Request access to Juvenile cases? Yes/No

Business need for Juvenile case access: _____

New Mexico Administrative Office of the Courts

Terms of Use and Non-Disclosure Agreement

The New Mexico Administrative Office of the Courts Application for Online Access to New Mexico Judiciary Secure Court Cases is used to grant access to SOPA court case files to authorized users. The SOPA court case files contain protected personal identifiers that must be protected by law and other sensitive case information. The Administrative Office of the Courts reserves the right to redact protected personal identifiers and other sensitive case information from SOPA court case files. This agreement between the New Mexico Administrative Office of the Courts and you, the authorized user of the SOPA court case files, governs the conditions of use for this access.

As an authorized user of the New Mexico Judiciary's SOPA court case files, I agree to the following:

- To not share my login credentials with any individual;
- To not disclose any information protected by law from public disclosure that I gain through accessing SOPA court case files unless such disclosure is through the discharge of my official duties as an officer of the court;
- To take all reasonable precautions to protect personal identifiers gained through the SOPA court case file access as required by Rules 1-079, 2-112, 3-112, 5-123, 6-114, 7-113, 8-112, 10-166, and 12-314 NMRA.

None of the provisions of this Agreement can be waived or modified by the AOC or its employees. The laws of the State of New Mexico, Supreme Court rules, including disciplinary rules, and any and all applicable legal remedies shall govern this agreement. This agreement may be terminated by AOC for any violation of its terms.

Applicant Signature: _____ **Date:** _____

Applicant Full Name: _____

Pro Hac Vice registration certificate attached

Application for Online Access to New Mexico Judiciary Secure Court Cases for Justice Partners

*New Mexico Administrative Office of the Courts
Judicial Information Division
2905 Rodeo Park Drive East, Building 5
Santa Fe, NM 87505
505-476-6900
Fax: 505-476-6952
Email: helpdesk@nmcourts.gov*

Introduction

Pursuant to New Mexico Supreme Court Order No.16-8300-XXX, Justice Partners (as defined and approved in the Supreme Court Online Case Access Policy) in the State of New Mexico may apply to receive login credentials to access the New Mexico Judiciary's secure website to view court cases currently digitized in the Odyssey Case Management System "Secured Odyssey Public Access" (SOPA). The Administrative Office of the Courts reserves the right to redact information from SOPA court case files as required by law.

Use of this site for any purpose other than viewing individual electronic court records, or attempts to download multiple records, are strictly prohibited. Data use is subject to NMSA 1978, Section 14-3-15.1.

Application Process

If you would like to apply for login credentials to access SOPA court files, a completed Application for Online Access to New Mexico Secure Court Cases must be emailed to the New Mexico Administrative Office of the Courts Judicial Information Division ("JID") at helpdesk@nmcourts.gov. Please allow up to thirty (30) business days for your application to be processed. You will be emailed your login credentials along with an initial password after your application has been approved. All information provided to JID will be held confidential and will only be used to open and manage your account. Requests for Juvenile case access may go before the Online Access Subcommittee for approval and may take up to 60 days to process.

Justice Partner Applicant Information

First Name: _____ Last Name: _____

Title: _____

E-mail: _____

Phone: _____

Mobile Phone: _____

Organization Information (Government Agency, Judicial or Private Entity)

Agency/Department Name: _____

Agency/Department Physical Address: _____

Agency/Department Mailing Address: _____

Agency/Department City, State and Zip: _____

Agency/Department Phone: _____

Juvenile Case Access: Requests for Juvenile case access may go before the Online Access Subcommittee for approval and may take up to sixty (60) business days to process.

Request access to Juvenile cases? Yes/No

Business need for Juvenile case access: _____

New Mexico Administrative Office of the Courts

Terms of Use and Non-Disclosure Agreement

The New Mexico Administrative Office of the Courts (AOC) Application for Online Access to New Mexico Judiciary Secure Court Cases is used to grant access to SOPA court case files to authorized users. The SOPA court case files contain protected personal identifiers that must be protected by law and other sensitive case information. The Administrative Office of the Courts reserves the right to redact protected personal identifiers and other sensitive case information from SOPA court case files. This agreement between the AOC and you, the authorized user of the SOPA court case files, governs the conditions of use for this access.

As an authorized user of the New Mexico Judiciary's SOPA court case files, I agree to the following:

- To not share my login credentials with any individual;
- To not disclose any information protected by law from public disclosure that I gain through accessing the SOPA court case files unless such disclosure is through the discharge of my official duties as an officer of the court;
- To take all reasonable precautions to protect personal identifiers gained through the online SOPA court case file access as required by Rules 1-079, 2-112, 3-112, 5-123, 6-114, 7-113, 8-112, 10-166, and 12-314 NMRA.

None of the provisions of this Agreement can be waived or modified by the AOC or its employees. The laws of the State of New Mexico, Supreme Court rules, including disciplinary rules, and any and all applicable legal remedies shall govern this agreement. This agreement may be terminated by AOC for any violation of its terms.

Applicant Signature: _____ **Date:** _____

Applicant Full Name: _____

Application for Online Access to New Mexico Judiciary Secure Court Cases for Attorney or Justice Partner Staff

*New Mexico Administrative Office of the Courts
Judicial Information Division
2905 Rodeo Park Drive East, Building 5
Santa Fe, NM 87505
505-476-6900
Fax: 505-476-6952
Email: helpdesk@nmcourts.gov*

Introduction

Pursuant to New Mexico Supreme Court Order No. 16-8300-XXX Attorney or Justice Partner Staff (as defined and approved in the Supreme Court Online Case Access Policy) in the State of New Mexico may apply to receive login credentials to access the New Mexico Judiciary's secure website to view court cases currently digitized in the Odyssey Case Management System "Secured Odyssey Public Access" (SOPA). The Administrative Office of the Courts reserves the right to redact information from SOPA court case files as required by law.

Use of this site for any purpose other than viewing individual electronic court records, or attempts to download multiple records, are strictly prohibited. Data use is subject to NMSA 1978, Section 14-3-15.1.

Application Process

If you would like to apply for login credentials to access SOPA court case files, a completed Application for Online Access to New Mexico Secure Court Cases must be emailed to the New Mexico Administrative Office of the Courts Judicial Information Division ("JID") at helpdesk@nmcourts.gov. Please allow up to thirty (30) business days for your application to be processed. You will be emailed your login credentials along with an initial password after your application has been approved. All information provided to JID will be held confidential and will only be used to open and manage your account. Requests for Juvenile case access may go before the Online Access Subcommittee for approval and may take up to sixty (60) business days to process.

Staff Contact Information

Prefix: Mr./Ms. Other (specify): _____

First Name: _____ Last Name: _____

Title: _____

E-mail: _____

Phone: _____

Business need for Attorney or Justice Partner Staff case access: _____

Juvenile Case Access: Requests for Juvenile case access may go before the Online Access Subcommittee for approval and may take up to sixty (60) business days to process.

Request access to Juvenile cases? Yes/No

Business need for Juvenile case access: _____

Supervising Attorney or Justice Partner Staff's Information

Pro Hac Vice - Yes/No

Prefix: Mr./Ms. Other (specify): _____

First Name: _____ Last Name: _____

Title: _____

E-mail: _____

Phone: _____

State Bar of New Mexico Number: _____ Supreme Court CAID Number: _____

(To locate your CAID contact the NM Supreme Court Clerk's Office at 505-827-4860 or nmsupremecourtclerk@nmcourts.gov)

Business or Agency Contact Information

Business/Agency Name: _____

Business/Agency Physical Address: _____

Business/Agency Mailing Address: _____

Business/Agency City, State and Zip: _____

Business/Agency Phone: _____

Attorney/Agency Contact Telephone Numbers: _____ (Office)

_____ (Fax)

Attorney/Agency Business Email: _____

New Mexico Administrative Office of the Courts

Terms of Use and Non-Disclosure Agreement

The New Mexico Administrative Office of the Courts Application for Online Access to New Mexico Judiciary Secure Court Cases is used to grant access to SOPA court case files to authorized users. The SOPA court case files contain protected personal identifiers that must be protected by law and other sensitive case information. The Administrative Office of the Courts reserves the right to redact protected personal identifiers and other sensitive case information from SOPA court case files. This agreement between the New Mexico Administrative Office of the Courts and you, the authorized user of the SOPA court case files, governs the conditions of use for this access.

As an authorized user of the New Mexico Judiciary's SOPA court case files, I agree to the following:

- To not share my login credentials with any individual;
- To not disclose any information protected by law from public disclosure that I gain through accessing the SOPA court case files unless such disclosure is through the discharge of my official duties as an officer of the court;
- To take all reasonable precautions to protect personal identifiers gained through the online SOPA court case file access as required by Rules 1-079, 2-112, 3-112, 5-123, 6-114, 7-113, 8-112, 10-166, and 12-314 NMRA.

None of the provisions of this Agreement can be waived or modified by the AOC or its employees. The laws of the State of New Mexico, Supreme Court rules, including disciplinary rules, and any and all applicable legal remedies shall govern this agreement. This agreement may be terminated by AOC for any violation of its terms or upon termination of the applicant's association by the supervising attorney or justice partner

Staff Applicant Signature: _____ **Date:** _____

Staff Applicant Full Name: _____

As the responsible attorney or justice partner supervisor for this staff user of the New Mexico judiciary's SOPA court case files, I agree to the following:

- I remain responsible for authorized staff's treatment and protection of SOPA court case file information;

- I shall immediately notify JID of the departure of authorized staff under my direct supervision so that new log in credentials can be applied for;
- I take all reasonable precautions to protect personal identifiers gained through the online court case file access as required by Rules 1-079, 2-112, 3-112, 5-123, 6-114, 7-113, 8-112, 10-166, and 12-314 NMRA;
- Authorized staff shall not share their login credentials with any individual; and,
- Authorized staff shall not disclose any information protected by law from public disclosure that I, or authorized staff, gain through accessing SOPA court case files unless such disclosure is through the discharge of my official duties as an officer of the court.

Supervising Attorney or Justice Partner Signature: _____ **Date:** _____

Supervising Attorney or Justice Partner Supervisor Full Name: _____

If Applicable:

State Bar of New Mexico Number: _____ Supreme Court CAID Number: _____

Application for Online Access to New Mexico Judiciary

Secure Court Cases for the Press

*New Mexico Administrative Office of the Courts
Judicial Information Division
2905 Rodeo Park Drive East, Building 5
Santa Fe, NM 87505
505-476-6900
Fax: 505-476-6952
Email: helpdesk@nmcourts.gov*

Introduction

Pursuant to New Mexico Supreme Court Order No. 16-8300-XXX, the Press includes any person who regularly gathers, prepares, photographs, records, writes, edits, reports, or publishes news or information about matters of public interest in any medium (as defined and approved in the Supreme Court Online Case Access Policy) in the State of New Mexico may apply to receive login credentials to access the New Mexico Judiciary's secure website to view court cases currently digitized in the Odyssey Case Management System "Secured Odyssey Public Access" (SOPA). The Administrative Office of the Courts reserves the right to redact information from SOPA court case files as required by law.

Use of this site for any purpose other than viewing individual electronic court records, is strictly prohibited. Data use is subject to NMSA 1978, Section 14-3-15.1.

Application Process

If you would like to apply for login credentials to access the SOPA court case files, a completed Application for Online Access to New Mexico Secure Court Cases must be emailed to the New Mexico Administrative Office of the Courts Judicial Information Division ("JID") at helpdesk@nmcourts.gov. You must also submit documentation confirming your press affiliation. Please allow up to thirty (30) business days for your application to be processed. You will be emailed your login credentials along with an initial password after your application has been approved. All information provided to JID will be held confidential and will only be used to open and manage your account.

Request for case access may go before the Online Access Subcommittee for approval and may take up to sixty (60) business days to process.

Press Applicant Information

First Name: _____ Last Name: _____

Title: _____

E-mail: _____

Phone: _____

Mobile Phone: _____

Press Organization Information

Organization Name: _____

Organization Physical Address: _____

Organization Mailing Address: _____

Organization City, State and Zip: _____

Organization Phone: _____

Organization Website URL: _____

New Mexico Administrative Office of the Courts Terms of Use and Non-Disclosure Agreement

The New Mexico Administrative Office of the Courts Application for Online Access to New Mexico Judiciary Secure Court Cases is used to grant access to SOPA court case files to authorized users. The SOPA court case files contain protected personal identifiers that must be protected by law and other sensitive case information. The Administrative Office of the Courts reserves the right to redact protected personal identifiers and other sensitive case information from SOPA court case files. This agreement between the New Mexico Administrative Office of the Courts and you, the authorized user of the SOPA court case files, governs the conditions of use for this access.

As an authorized user of the New Mexico Judiciary's SOPA court case files, I agree to the following:

- To not share my login credentials with any individual;
- To not disclose any information protected by law from public disclosure that I gain through accessing SOPA court case files;
- To comply with all applicable court rules;
- To take all reasonable precautions to protect personal identifiers gained through the SOPA court case file access as required by Rules 1-079, 2-112, 3-112, 5-123, 6-114, 7-113, 8-112, 10-166, and 12-314 NMRA.

None of the provisions of this Agreement can be waived or modified by the AOC or its employees. The laws of the State of New Mexico, Supreme Court rules, including disciplinary rules, and any and all applicable legal remedies shall govern this agreement. This agreement may be terminated by AOC for any violation of its terms or upon termination of the applicant's press affiliation.

Applicant Signature: _____ **Date:** _____

Applicant Full Name: _____

Please include the following with your application:

Press affiliation documentation attached

Application for Online Access to New Mexico Judiciary Secure Court Cases for Self-Represented Litigants

*New Mexico Administrative Office of the Courts
Judicial Information Division
2905 Rodeo Park Drive East, Building 5
Santa Fe, NM 87505
505-476-6900
Fax: 505-476-6952
Email: helpdesk@nmcourts.gov*

Introduction

Pursuant to New Mexico Supreme Court Order No. 16-8300-005, Self-Represented Litigants (as defined and approved in the Supreme Court Online Case Access Policy) in the State of New Mexico may apply to receive login credentials to access the New Mexico Judiciary's secure website to view court cases currently digitized in the Odyssey Case Management System "Secured Odyssey Public Access" (SOPA) for which they are the attorney of record. The Administrative Office of the courts reserves the right to redact this information from court case files.

Use of this site for any purpose other than viewing individual electronic court records, or attempts to download multiple records, are strictly prohibited. Data use is subject to NMSA 1978, Sec. 14-3-15.1.

Application Process

If you would like to apply for login credentials to access the Secured Odyssey Public Access (SOPA) court files, a completed Application for Online Access to New Mexico Secure Court Cases must be emailed to the New Mexico Administrative Office of the Courts Judicial Information Division ("JID") at helpdesk@nmcourts.gov. Please allow up to thirty (30) business days for your application to be processed. You will be emailed your login credentials along with an initial password after your application has been approved. All information provided to JID will be held confidential and will only be used to open and manage your account.

Self-Represented Litigant Information

Prefix: Mr./Ms. Other (specify): _____

First Name: _____ Last Name: _____

Case Number(s): _____

E-mail: _____

Home Address: _____

City, State and Zip: _____

Home Phone: _____

Mobile Phone: _____

New Mexico Administrative Office of the Courts Terms of Use and Non-Disclosure Agreement

The New Mexico Administrative Office of the Courts (AOC) Application for Online Access to New Mexico Judiciary Secure Court Cases is to grant access to Secured Odyssey Public Access (SOPA) court case files to authorized users. The SOPA court case files contain protected personal identifiers that must be protected by law and sensitive case information. The Administrative Office of the courts reserves the right to redact this information from court case files. This agreement between the New Mexico Administrative Office of the Courts and you, the authorized user of the SOPA court case files, governs the conditions of use for this access.

As an authorized user of the New Mexico judiciary's SOPA court case files, I agree to the following:

- To not share my login credentials with any individual;
- To not disclose any information protected by law from public disclosure; and,
- To take all reasonable precautions to protect personal identifiers gained through the online court case file access as required by Rules 1-079, 2-112, 3-112, 5-123, 6-114, 7-113, 8-112, 10-166, and 12-314 NMRA.

None of the provisions of this Agreement can be waived or modified by the AOC or its employees. The laws of the State of New Mexico, Supreme Court rules, including disciplinary rules and any and all applicable legal remedies shall govern this agreement.

Applicant Signature: _____ **Date:** _____

Applicant Full Name: _____



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sk.com <mailservices4@sk.com>
To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Mon, Nov 21, 2016 at 4:16 PM

Your Name
Terence Cady

SUPREME COURT OF NEW MEXICO
FILED

Phone Number
5052316163

NOV 21 2016

Email
terencecady@comcast.net

Proposal Number
2016-065

Comment

Am I correct in assuming that the proposed access does not apply to sequestered children's court cases, neglect and abuse, etc.

Will it be possible for court appointed contract attorneys representing parties in neglect and abuse cases under the children's code to access SOPA information with a special credential?

Upload



New Mexico
Courts

Fwd: NM Judiciary Seeks Comment on Proposed Policy for Online Access to Court Records

1 message

----- Forwarded message -----

From: Peter St. Cyr <peter.stcyr@gmail.com>

Date: Mon, Nov 21, 2016 at 4:31 PM

Subject: Re: NM Judiciary Seeks Comment on Proposed Policy for Online Access to Court Records

To: Joey Moya <supjdm@nmcourts.gov>

This is great. I hope it is approved.

SUPREME COURT OF NEW MEXICO
FILED

NOV 21 2016

A handwritten signature in black ink, appearing to be "Joey Moya".



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

COMMENTS on Proposed Policy for Online Access to Court Records

1 message

Garrison, Jocelyn <jocelyn.garrison@lopdm.us>

Mon, Nov 21, 2016 at 5:03 PM

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

To Whom It May Concern:

Use of Odyssey has made all attorneys and staff much more efficient. Prior to Odyssey, we had to request every pleading from the Court Clerk and wait days for it to return to us. I would request, as well as many other defense attorneys I have heard, that the we be given access to juvenile,civil, and competency records. We are at a disadvantage in not being able to view this files.

SUPREME COURT OF NEW MEXICO
FILED

Sincerely,

NOV 21 2016



Law Offices of the Public Defender

Jocelyn A. Garrison

Managing Attorney

800 Pile, Suite A
Clovis, NM 88101

(575) 219-6323

(575) 763-9808 fax

jocelyn.garrison@lopdm.us

THIS MESSAGE MAY BE SUBJECT TO ATTORNEY-CLIENT PRIVILEGE OR CONTAIN CONFIDENTIAL INFORMATION OR ATTORNEY WORK PRODUCT. UNLESS YOU ARE THE ADDRESSEE (OR AUTHORIZED TO RECEIVE FOR THE ADDRESSEE), YOU MAY NOT USE, COPY, OR DISCLOSE TO ANYONE THE MESSAGE OR ANY INFORMATION CONTAINED IN THE MESSAGE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT OR AGENT OF THE RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE ADVISE THE SENDER BY REPLY E-MAIL TO JOCELYN.GARRISON@LOPDNM.US, AND DELETE THE MESSAGE. THANK YOU.



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Online access to court records

1 message

Lori L. Millet <lori@abqelderlaw.com>

Tue, Nov 22, 2016 at 7:29 AM

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

Mr. Moya,

I am not in favor of allowing the press more access to court records. The press cannot be relied upon to accurately report on legal proceedings, and the risk of misinterpretation of the contents in the online court records if allowed more access to court records is very high. That does not help anyone.

SUPREME COURT OF NEW MEXICO
FILED

Have a good day,

NOV 22 2016

Lori Millet, J.D., LL.M.

Master of Laws in Elder Law

ABQ Elder Law, PC

4004 Carlisle NE, Suite L

Albuquerque NM 87107

Mailing Address:

3167 San Mateo NE #289

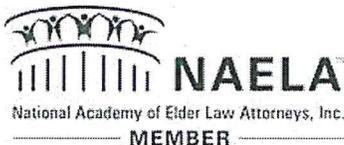
Albuquerque, NM 87110

Phone (505) 830-0202

Fax (505) 872-0229

Email: lori@abqelderlaw.com

www.abqelderlaw.com



This message (including any of its attachments) is intended only for the individual or entity to whom it is addressed and is confidential and exempt from disclosure pursuant to the attorney-client privilege and other provisions of state and federal law. If you have received this message and you are not the designated recipient, please notify me immediately and delete the message; you are prohibited from reading or circulating it. Do not open any attachments. **IRS CIRCULAR 230 NOTICE:** Any U.S. tax advice contained in this message (including any of its attachments) is not intended or written to be used and cannot be used for the purpose of avoiding penalties under the Internal Revenue Code

11/22/2016

New Mexico State Judiciary Mail - Online access to court records

or promoting, marketing or recommending to another party any transaction or other matter addressed in this message (including attachments).



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

NEW MEXICO JUDICIARY PROPOSED POLICY FOR ONLINE ACCESS TO COURT RECORDS

1 message

James Madison <markfcoble@gmail.com>
To: nmsupremecourtclerk@nmcourts.gov

Wed, Nov 23, 2016 at 11:28 AM

Dear Joey D. Moya,

I am only addressing the part of the proposal that would restrict the public's access to the full pleadings and records of our public court house.

Hello. I have some questions regarding this proposed policy;

Whom are we addressing in this meeting?

Anyone other than a room full of attorneys who fear pro se litigants?

Who fears pro se litigants so much that they have come up with this policy to restrict access?

Who is the author of this proposal? Specifically?

Who is harmed under the current system where the public can read the actual records from home just like attorneys can?

Under what conditions would this proposal not be implemented? In other words, have the attorneys already made this a done deal and the hearing is just for show?

How does this possibly help the public who need access to these records?

Are attorneys so special that they get access while we, the public, are denied the same access?

How does this qualify as equal access under the laws of NM? Guessing you will say there is no law for equal access?

So to paraphrase this proposal.....we can still use "case look up" but we can not read the pages, only the headers. We would have to go to downtown Santa Fe, during court hours ONLY, to look up the actual pages we need and must read to know what is happening.

As a worker there you can't comment on how this is totally unfair, I understand.

Please pass these questions on to the unnamed parties (attorneys, no doubt) who will answer these questions. I look forward to your reply and answers.

Regards,

Mark Coble

Private Correspondence to intended party from Mark Coble Secured Party Creditor Confidentiality

Notice: This private email message, including any attachment(s) is limited to the sole use of the intended recipient and may contain Privileged and/or Confidential Information. ALL Intellectual Property Rights or Reserved Rights U.C.C.1-308. NOTICE TO AGENTS IS NOTICE TO PRINCIPALS. NOTICE TO PRINCIPALS IS NOTICE TO AGENTS.

SUPREME COURT OF NEW MEXICO
FILED

NOV 23 2016



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Limiting access

1 message

Jack Sweeney <jnswe1@gmail.com>
To: nmsupremecourtclerk@nmcourts.gov

Sat, Nov 26, 2016 at 9:47 AM

We know what you are trying to do. Stop it

Sent from my iPhone

SUPREME COURT OF NEW MEXICO
FILED

NOV 28 2016

A handwritten signature in black ink, appearing to be "J. P. Saxon".



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Access to court records

1 message

Tom Miles <tmiles21@comcast.net>

Sat, Nov 26, 2016 at 12:47 PM

To: phaywood@sfnewmexican.com, editor@sfreporter.com, nmsupremecourtclerk@nmcourts.gov

Dear Sir or Madam,

A recent SF New Mexican article on access to publicly paid for and maintained court records was incomplete and possibly gratuitously distorting.

As of now pro se defendants have full online access to these public court cases just like attorneys.

While pro se defendants will have full document access to look up their own cases, they would only have access to headers for all other cases.

To research any other public case information under the proposed arrangement, individuals would have to travel downtown to the court house - during court hours - and pay for parking and copies of any documents of interest.

Meanwhile, bank attorneys will still have full anytime, anywhere access to look at this public-paid-for case information using an internet-based system, also paid for by the public.

This arbitrary restriction of access to public records is highly unfair and burdensome to taxpaying citizens in our internet society.

It is interesting this most important part was unmentioned.

What parties feel this threatened by public internet access? What parties are behind this totally one-sided idea?

It would certainly appear that for purposes no greater than personal professional job security, attorneys want to restrict free public internet access to these public records.

How equal access under the law NOT a continuing and protected necessity for any civilized society?

Tom Miles
1009 Matia Ct NE
Albuquerque, NM 87123
505-350-8447

SUPREME COURT OF NEW MEXICO
FILED

NOV 28 2016

A handwritten signature in black ink, appearing to be "Terri Saxon".



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sks.com <mailservices4@sks.com>

Sat, Nov 26, 2016 at 10:10 PM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Your Name
Patricia Wolff

Phone Number
5056999337

Email
paw952@gmail.com

Proposal Number
2016-065

Comment
November 26, 2016

I am writing to comment on the proposed policy for public access to court records.

"Justice partners" should include private investigators, process servers, public interest researchers, public record retrievers, and investigators employed by regulatory, licensing, and compliance agencies.

"Press" should be broadly interpreted to include online news media and Internet-based advocacy journalism.

Thank you for considering my input.

Patricia Wolff
Santa Fe, NM

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NOV 28 2016



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sks.com <mailservices4@sks.com>

Mon, Nov 28, 2016 at 8:26 AM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Your Name

David Tomlin

Phone Number

5752574001

Email

dtomlin@ruidosonews.com

Proposal Number

2016-065

Comment

My name is David Tomlin. I am a reporter for the Ruidoso News. The proposal for online access to court documents would have great practical benefit for the News and its readers. As matters stand, we have modest ability to monitor progress of cases online through nmcourts. But if we see that a pleading, motion or other document has been submitted in a newsworthy case, we must drive 35 miles to the courthouse in Carrizozo during business hours to obtain a paper copy from the court clerk. Significant news is often delayed, and of course we spend time on the road that could otherwise be used more efficiently. Sometimes it's hard to judge the newsworthiness of a document from the brief description on nmcourts, so we have to weigh the risks of wasting the drive time or missing a significant development. We therefore welcome the proposed 24-7 online access and look forward to the time when technology makes it feasible to offer it to the general public.

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New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Comment for December 8 public meeting

1 message

Tom Miles <tmiles21@comcast.net>

Mon, Nov 28, 2016 at 2:11 PM

To: nmsupremecourtclerk@nmcourts.gov

I cannot attend your working session December 8, hence these comments:

We do not teach our children/students anything about the law, yet we say, "Ignorance of the law is no excuse".

Then when it behooves an individual tax-paying citizen to begin learning about the law in order to represent themselves "Pro-Se", we make it extremely difficult to access "public" records paid for by those same tax-paying citizens.

Why Pro Se?

- I'm retired and have the time to do the exploration and work - if I have access
- I don't have a half-a-million earning 6% I can use to pay for expensive lawyers over the extended time our judicial processes demand
- others also have time but not money to pay for lawyers
- after interviewing a dozen lawyers in ABQ and Santa Fe, all but one or two are only interested in working on getting new loans; none have interest in defending against bank deceit, fraud or gamesmanship
- stories abound about games banks play in the "loan modification" delay and obfuscate game/process

And, it is in the best interest only of the banks and their lawyers to deny access to publicly paid for court records which information taxpaying individuals should be able to study and use to defend themselves in accordance with the Constitutions of the United States and New Mexico.

How about we cut our citizen taxpayers a bit of slack here and allow more unfettered access to publicly-paid-for court activities and records ... without requiring that they get in a car, drive to the courthouse, find parking, wait for record retrieval, sort through, request, and pay for all document copies, pay for parking, then drive back home to become more NOT IGNORANT of the particular laws and procedures they should be entitled to easily access on-line just by being taxpaying citizens.

Thank you in advance for considering my request for MUCH MORE transparency and accessibility as opposed to the increasing restrictions on easy-to-get-to public information under current consideration.

Tom Miles
Albuquerque
505-350-8447

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NOV 28 2016



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sk.com <mailservices4@sk.com>
To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Fri, Dec 2, 2016 at 8:38 AM

Your Name
Michael Corwin

Phone Number
5052500244

Email
corwinri@mac.com

Proposal Number
2016-065

Comment

I am a licensed investigator who does case preparation work for attorneys and has to routinely access court pleadings as part of the services provided to attorneys. I have been able to get online access to federal court pleadings through PACER for approximately 18 years. Yet, under current rules I am unable to gain access to state court pleadings online since I am not an attorney. Therefore, while attorneys and their staff can access the pleadings online, I must bill attorneys to travel to the courthouse in order to view the same pleadings they can view from their office. I am writing in support of expanding online access to licensed professionals beyond just attorneys, and to make those pleadings available 24-hours a day. Thank you.

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New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sks.com <mailservices4@sks.com>
To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Fri, Dec 2, 2016 at 10:12 AM

Your Name
Michael D. Hoeferkamp

Phone Number
5055036657

Email
mike@hoeferkamp.com

Proposal Number
2016-065- Proposed Online Access to Court Records

Comment

The change to Rule 1-079 and related rules appears to be different than the "policy" governing the SOPA access. There appear to be two different levels of access (or is it the same?):

1. SOPA access to public records;
2. SOPA access to secured, confidential court cases & personal identifiers.

If SOPA online access necessarily includes the secured, confidential case information, then I agree the public (nor the press) should not have access or all protection is lost. BUT if SOPA access can be limited to public case records only, then it seems the public should have access.

The press should NOT have any greater access than the public. The "press" has become very subjective, combative and deceitful. When CNN is shown to have given primary debate questions to Clinton in advance, we know the press cannot be trusted with confidential records. Also, forms of media have increased, and media cannot be effectively sanctioned for misuse. Broader access increases virus risks.

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A handwritten signature in black ink, appearing to be "J. P. Saxon".

State of New Mexico
Legislative Council Service

411 State Capitol, Santa Fe, New Mexico 87501
(505) 986-4600
Raúl E. Burciaga, Director



December 2, 2016

SUPREME COURT OF NEW MEXICO
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DEC - 2 2016

A handwritten signature in black ink, appearing to be "J. D. Moya".

Joey D. Moya, Clerk
New Mexico Supreme Court

VIA EMAIL: nmsupremecourtclerk@nmcourts.gov

Dear Mr. Moya:

Please accept these comments on behalf of the Legislative Council Service, Legislative Education Study Committee, Legislative Finance Committee, House Chief Clerk's Office and Senate Chief Clerk's Office ("legislative agencies") regarding the New Mexico Judiciary Proposed Policy for Online Access to Court Records ("proposed policy").

The legislative agencies respectfully request the same online, 24 hours a day, seven days a week access the proposed policy would provide to others. In the alternative, the Legislative Council Service requests that it be provided with such access on behalf of the legislative agencies.

The legislative agencies request court documents on behalf of legislators and legislative staff approximately 12 to 24 times a year. While not a large number, we often receive documents through other means that are not accounted for here. Such documents are often needed on very short notice and during non-business hours, such as during legislative sessions when meetings often occur in the evenings or on weekends. Online, 24/7 access under the proposed policy would benefit the legislative agencies and allow for much more efficient use of staff time.

The legislative agencies suggest that the Application for Online Access to New Mexico Judiciary Secure Court Cases for Justice Partners could be modified relatively easily to include legislative agencies and accommodate this request. Specifically, simply adding "and Government" after "Justice" on the application would suffice.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "Raúl E. Burciaga".

RAÚL E. BURCIAGA

REB:clm



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Proposed Policy for Online Access to Court Records

1 message

Yosef Abraham <yabraham@rinconlawgroup.com>

Mon, Dec 5, 2016 at 3:16 PM

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

Dear Mr. Moya:

I send you this email to voice my support for the proposed policy to permit online access to state court records. It appears consistent with the values of transparent government, with the policies generally embodied in the freedom of information laws, and with the speedy and inexpensive resolution of legal disputes. That is to say, the proposal appears on its face to advance the general interests of justice.

Yosef W. Abraham
Associate Attorney (licensed only in New Mexico)
Yabraham@rinconlawgroup.com

Rincon Law Group
Office: (915) 532-6800

Fax: (915) 532-6808
1014 N. Mesa, Ste. 200
El Paso, TX 79902
<http://www.rinconlawgroup.com>



RINCON
LAW GROUP, P.C.

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New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

online record access comment

1 message

Publisher Robert Trapp <rgsunedit@cybermesa.com>

Mon, Dec 5, 2016 at 2:32 PM

To: nmsupremecourtclerk@nmcourts.gov

Mr. Moya;

I strongly support allowing access to the five categories listed in the new proposed policy. New Mexico is a rural state, with limited public resources. For a newspaper to gain access to court records requires a long, drawn-out process that eats up reporters' and editors' time, creates mileage expenses for already cash-strapped newspapers and slows story completion.

To have access online would save a reporter's travel time, time in clerks' offices waiting to view documents, photographing documents, then combing through pdfs for information.

I believe all news organizations that go through the process of begin eligible to view public documents with private information, will respect the exceptions in the state's Inspection of Public Records Act. We routinely get social security numbers, dates of birth and medical conditions that we ignore. This information is never part of a story and we're not in the business of compromising someone's identity.

We hope the state supreme court will find us trustworthy with such information and allow us online access to the records we already view in person.

Robert Trapp
Editor/Publisher
Rio Grande Sun
P.O. Box 790
Española, N.M. 87532
505-753-2126
mnged@riograndesun.com

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A handwritten signature in black ink, appearing to be "Robert Trapp".

PEIFER, HANSON & MULLINS, P.A.

ATTORNEYS AND COUNSELORS AT LAW

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MATTHEW E. JACKSON
CARTER B. HARRISON IV

CHRISTIANNE L. MULLINS
GREGORY P. WILLIAMS
OF COUNSEL

December 5, 2016

SUPREME COURT OF NEW MEXICO
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VIA EMAIL ONLY (nmsupremecourtclerk@nmcourts.gov)

DEC - 5 2016

Joey D. Moya, Clerk
New Mexico Supreme Court
Post Office Box 848
Santa Fe, NM 87504-0848



Re: Court Records Policy

Dear Mr. Moya:

I am writing on behalf of the *Albuquerque Journal* and KOAT-TV in regard to the New Mexico judiciary's proposed policy for online access to court records, as set forth in the Notice of Public Hearing and Publication for Comment issued on November 21, 2016. We appreciate the work of the Judicial Information Systems Council and its Online Access Subcommittee in this matter, as well as the opportunity to submit our comments.

The *Albuquerque Journal* and KOAT-TV support the extension of online access to court files to the media. The media acts as a surrogate for the public in reporting on matters of public interest, including the operation of our courts. Allowing the media to have online access to court records will greatly enhance its ability to carry out this function. Of particular importance is that the new policy would allow the media to access court records at any time, and not just when the courts are open to the public. This significantly expands the ability of the media to report on matters in our courts, which benefits the public. The more access that the media has to public court records, the better it can inform the public.

In addition, increased media access to court records benefits our court system. Our Supreme Court has repeatedly demonstrated its commitment to public access to the judiciary, as shown by its enactment of Rule 23-107 (permitting broadcasting, photography and recording of court proceedings), Rule 1-079 and corresponding rules (restricting sealing of court records), and the newly-enacted Rule 1-104 and corresponding rules (limiting closure of courtrooms). These rules recognize the principle that access to information increases public confidence in the court

Joey D. Moya, Clerk
December 5, 2016
Page 2

system and makes the actions of attorneys, litigants, and judges more transparent. Increased online access to court records serves the same function.

It is our clients' hope that this increased access to online records is only the first step toward allowing online access to all members of the public. As you know, New Mexico has a long-standing policy of public access to court proceedings and records, as reflected in Rule 1-079(D) (and corresponding rules), as well as decisions from our appellate courts. As we move further into the electronic age, it only makes sense to take advantage of improving technology to increase public access to court records. To the extent that extending online access to the general public requires additional financial resources from either the Legislature or our judiciary, we urge both branches to make such funding available, to serve this important public need.

We understand that the Court is also considering a revision to Rule 1-079 (and corresponding rules), as set forth in the November 21 notice. As we read this proposed revision, it appears to be for the purpose of protecting personal identifier information in court records. We recognize the need for such protection, and also understand that the courts are still in the process of determining how best to use technology to protect this information. Our hope is that as the technology develops, and protected personal identifier information is more easily redacted or otherwise protected, the need for this type of rule will be reduced accordingly.

Again, we appreciate the opportunity to be heard on these issues.

Very truly yours,

PEIFER, HANSON & MULLINS, P.A.



Gregory P. Williams

GPW/ncd



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

COMMENT ON PUBLIC ACCESS

1 message

Judith Finfrock <albdjef@nmcourts.gov>
To: nmsupremecourtclerk@nmcourts.gov

Mon, Dec 5, 2016 at 4:13 PM

Hi Joey,

Many of the Hearing Officers at SJDC write hearing notes in the "Notes" section of Odyssey - I would request that public access to this section be denied. We have been marking them as private but we don't catch every one. Thanks much.

Judith

--
Judith E. Finfrock
Hearing Officer
Second Judicial District Court
400 Lomas NW
Albuquerque, New Mexico 87102
(505) 841-6701

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Please respect the environment by not printing this email. Thank you.

A handwritten signature in black ink, appearing to be "Judith E. Finfrock".

DEC - 5 2016



VIA EMAIL ONLY TO: nmsupremecourtclerk@nmcourts.gov

December 5, 2016

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

RE: Public Comment
Proposal 2016-065 – Policy for Online Access To Court Records

Dear Mr. Moya:

Please accept this correspondence as my written comment regarding Proposal 2016-065 (Proposed Policy for Online Access to Court Records). As an attorney licensed to practice in the State of New Mexico, I am an interested party to this proposed change.

I oppose the proposed change insofar as same allows access to personal identifier information, essentially to anyone. The importance of safeguarding personal identifier information recently became quite personal to me. My identity was stolen early this year, and several fraudulent accounts were opened in my name. Luckily, I am a patron of an identity theft monitoring company, which caught the fraudulent accounts and promptly notified me. Had I not subscribed to such a service (as many New Mexicans don't and/or cannot due to cost) I would have only learned of the theft of my identity when fraudulent bills started coming to my door. Despite this early notification, it still took several months to close all of the accounts, and notify credit reporting agencies of the fraudulent activity. To this day, I am required to maintain a vigilant eye as to the theft of my identity because my information has previously been compromised.

If the proposed rule change is approved, as written, personal identifier information will be available to anyone granted access to the Secured Odyssey Public Access ("SOPA") system. The mass availability of such information is fraught with risk. While the convenience of the SOPA system is important, the protection of New Mexico's citizens should take precedent, above all else. Particularly, allowing access to personal identifier information to the "Press" as defined in the proposed rule causes me great concern for the privacy and protection of New Mexico's citizens.

While a non-disclosure agreement provides some assurance that information will not be disclosed or otherwise used for nefarious purposes, the very fact that such information is available invites problems. Further, without a definitive mechanism to determine whether protected information is used outside the scope of allowed by law, and by whom, identity theft is inevitable.

It is common practice in civil discovery to object to, and refuse to disclose, personal identifier information. For example, unless absolutely necessary and/or required by Court order, the disclosure of a party's social security number in discovery almost never occurs. Why should the protections granted to parties in civil discovery be thwarted by the SOPA system? This is of particular concern because, while in civil discovery disclosure of information is only made to specific parties, under the proposed rule, personal identifier information will be available to all persons granted SOPA access. Such access is too broad, and fails to take into account the privacy and protection afforded to New Mexico's citizens by law.

Additionally, while I do not practice in the area of criminal law, I am suspicious of allowing law enforcement and other "justice partners" access to personal identifier information not already in their possession. Such access may result in violations of the Fourth Amendment to the United States Constitution and/or Article II, Section 10 of the New Mexico Constitution. For example, law enforcement officials may obtain access to the personal identifier and other information of a party to a civil case without probable cause or a warrant, in preparation for amassing information to file charges. The State's tacit approval of such conduct, through this rule change, and its complicity in such unauthorized disclosure certainly raises serious questions, and may potentially result in violations of the U.S. and New Mexico Constitutions.

For the foregoing reasons, I oppose the adoption of Proposal 2016-065 as written. I suggest any language permitting the inclusion, disclosure, access or other retrieval of un-redacted personal identifier information be completely removed from the proposal.

Very respectfully,

Robert Johnston



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sks.com <mailservices4@sks.com>

Mon, Dec 5, 2016 at 10:49 PM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Your Name

Duane Barbati

Phone Number

5754377120

Email

dbarbati@alamogordonews.com

Proposal Number

2016-065

Comment

Comment attached

Upload

OnlineRecordsComment.docx

SUPREME COURT OF NEW MEXICO
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OnlineRecordsComment.docx

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It is burdensome for journalists to travel to the court clerk's office to obtain or to peruse criminal or civil records. Even if the court clerk's office is a few miles away. To be able to peruse official certified court records 24 hours/7 days a week would benefit journalist, attorneys and the general public. NMCourts.gov is a great website for looking up records but only if you're needing a case number or wanting to know when a case is being heard.

Journalists and other interested parties still need to travel to the court clerk's office for accurate information about a case, especially to verify when a case is going to trial or a motion hearing is presented to the court, and to obtain accurate information about the case.

If journalists have access to certified court records then they will have the most up to date information about a case especially the correct alleged charges against a defendant. NMCourts.gov often lacks in providing the most up to date information or the correct charges and the degree of felony for the charges. Ethical journalists want the most accurate and up to date information on court cases especially if the case has been postponed. NMCourts.gov doesn't provide that information on a continuing basis.

Journalist just want the facts and nothing but the facts when it comes to proceedings and court cases before the courts. Being able to have 24/7 access to records would increase the percentage of getting the facts correct. Being correct about the facts of a criminal or civil court case better informs the public about their community.

It would also allow me to take my time in reading court case information, looking up the charges in the "New Mexico Criminal and Law Manual" to better understand the charges and sentencing guidelines, and lookup terms in "Black's Law Dictionary" to be able to report accurately about criminal and civil cases.



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sk.com <mailservices4@sk.com>

Tue, Dec 6, 2016 at 8:45 AM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Your Name
Mark C. Walker

Phone Number
9155419322

Email
mwalker@dykema.com

Proposal Number
2016-065

Comment
I support the online access, if doing so makes it as functional as the federal system through Pacer.

Upload

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New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sk.com <mailservices4@sk.com>
To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Tue, Dec 6, 2016 at 8:52 AM

Your Name
Deborah Lee Thuman

Phone Number
5756448892

Email
debthuman@zianet.com

Proposal Number
2016-065

Comment
I agree with the provisions of the proposed change and ask that they be adopted.

Upload

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A handwritten signature in black ink, appearing to be "J. P. ...".



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Online records access

1 message

The Independent <independent@lobo.net>
To: nmsupremecourtclerk@nmcourts.gov

Tue, Dec 6, 2016 at 9:20 AM

December 6, 2016

To Whom It May Concern,

I am editor and publisher of The Independent, a small community newspaper covering about 4,000 square miles in central New Mexico, east of Albuquerque and south of Santa Fe. The Independent covers three counties, three judicial districts, several school districts, and several towns in a mostly rural area.

It is often half a day (or even a full day) to make the trek to Albuquerque or Santa Fe for court documents. Even Estancia, our closest district courthouse, is more than half an hour away from our Edgewood office. Getting court documents is a difficult process. Because of these factors, the ability to access court documents online would be a huge help to our efforts in covering the East Mountains and Estancia Valley.

I urge you to make these records available online as is currently being considered.

Thank you for your attention.

Leota Harriman
Editor & Publisher

The Independent

P.O. Box 1056, Edgewood, NM 87015

editor@edgewood.news
505-286-1212 office
505-702-1033 cell

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A handwritten signature in black ink, appearing to be "J. P. Saxon".



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sks.com <mailservices4@sks.com>

Tue, Dec 6, 2016 at 9:46 AM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Your Name
Rachel Winston

Phone Number
5059829559

Email
rachel@walcottlaw.com

Proposal Number
2016-065

Comment

I am an attorney and a member of the NMBar since 2005. I am writing in support of Proposal 2016-065. The proposed rule change is a well-considered amendment which will increase access to justice for New Mexicans. It also sensibly leverages technology to fill an existing need. I encourage you to approve the proposed rule change.

Thank you.

Upload

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New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

NEW MEXICO JUDICIARY PROPOSED POLICY FOR ONLINE ACCESS TO COURT RECORDS

1 message

Lori Comallie <lcomallie@gmail.com>
To: nmsupremecourtclerk@nmcourts.gov

Tue, Dec 6, 2016 at 10:16 AM

Please consider adding Parenting Coordinators to the list of those who would be able to access these documents. Parenting Coordinators are appointed as an arm of the court, basically as a special master. However, they are not all attorneys. PCs may be mental health professionals or certified mediators. It is difficult at best to gain this information via third party and hinders the efficiency and productivity of the Parenting Coordinator to not have direct access to these documents.

Lori Comallie-Caplan
Parenting Coordinator

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DEC - 6 2016

From: supjdm [mailto:supjdm@nmcourts.gov]
Sent: Tuesday, December 6, 2016 8:31 AM
To: NM Supreme Court Email Notification List <attorney_list-grp@nmcourts.gov>
Subject: [attorney_list-grp] REMINDER: Comment Deadline Today and Public Hearing on Thursday for Proposed Online Access to Court Records Policy

A handwritten signature in black ink, appearing to be "John J. ...".

NOTICE OF PUBLIC HEARING AND PUBLICATION FOR COMMENT

NEW MEXICO JUDICIARY PROPOSED POLICY FOR ONLINE ACCESS TO COURT RECORDS

Attorneys and their staff, the press, and justice partners, including law enforcement and child welfare agencies, could be granted online access to electronic records in court case files under a proposal before the New Mexico Judiciary.

If adopted by the New Mexico Supreme Court, the proposal would permit approved users to view public records from their computer terminals 24 hours a day, seven days a week through a restricted access system operated by the Judicial Information Division.

Interested parties are invited to comment on the proposal at a public hearing from 9 a.m. to noon on December 8, 2016, in Santa Fe conducted by the Online Access Subcommittee of the Judicial Information Systems Council.

The hearing and meeting will be held at the Judicial Information Division, 2905 Rodeo Park Drive East, Building 5, Santa Fe, NM 87505.

Members of the public who cannot participate in the hearing at the Judicial Information Division office can comment through video conferencing available at the following courthouses across the state: the Third Judicial Court in Las Cruces, the Fifth Judicial Court in Roswell, the Eighth Judicial District Court in Taos, the Eleventh Judicial District Court in Farmington, and the Bernalillo County Metropolitan Court in Albuquerque.

The proposed policy is intended to expand access to electronic records in civil and criminal cases, assisting licensed attorneys who practice in New Mexico, law enforcement and governmental agencies involved in judicial proceedings, and members of the press in reporting on public affairs.

Those requesting online access to the Secured Odyssey Public Access (SOPA) system would be required to apply to the Judicial Information Division for login credentials.

Under the proposed policy, those who could qualify for online access are:

- Attorneys licensed by the New Mexico Supreme Court and staff working for attorneys with online access credentials.
- Out-of-state attorneys admitted by the New Mexico Supreme Court on a specific case. Access would be restricted to public records only in the cases of the out-of-state attorney,

also known as a pro hac vice attorney.

- Justice partners, defined as state, municipal or federal law enforcement agencies, corrections agencies, compliance programs (per NMSA 1978, Section, 31-20-5.1), municipal judges and court staff, and any state or federal agency involved in adult, family or child welfare.
- Press, defined as “any person who regularly gathers, prepares, photographs, records, writes, edits, reports or publishes news or information about matters of public interest in any medium and who successfully applies to participate in online access and agrees to comply with all court rules.”
- Self-represented parties in litigation. Online access would be restricted to public records in cases in which they are a party.

Under the Inspection of Public Records Act, § 14-2-1(B), unredacted records with protected personal identifier information cannot be made available on a governmental website that is generally accessible to the public. The proposed policy provides for extending online access to members of the public in the future when the Judiciary obtains adequate funding to electronically redact records to remove protected personal identifier information.

Persons who qualify for online access to unredacted court records must agree not to publish confidential information or protected personal identifier information as set forth in proposed amendments to the Judiciary’s rules of procedure governing the public inspection and sealing of court records.

The proposed online access policy, related application documents, and proposed rule amendments that are the subject of the public hearing are available for viewing on the New Mexico Supreme Court’s website at www.supremecourt.nmcourts.gov.

In addition to, or in lieu of, attending the public hearing, interested parties are also encouraged to submit a written comment. If you would like to submit a written comment on the proposal under consideration by the Online Access Subcommittee, you may do so by either submitting a comment electronically through the Supreme Court’s website

at supremecourt.nmcourts.gov or by sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk

New Mexico Supreme Court

P.O. Box 848

Santa Fe, New Mexico 87504-0848

nmsupremecourtclerk@nmcourts.gov

505-827-4837 (fax)

Your written comments must be received by the Clerk on or before December 6, 2016, to be considered by the subcommittee before the public hearing. Written comments also may be submitted at the public hearing on December 8, 2016. Please note that any submitted comments may be posted on the Supreme Court's website for public viewing.

Anyone planning to attend the public hearing is encouraged to arrive early as space is limited. And anyone who wants to provide an oral comment at the public hearing must register upon arrival at the site of the public hearing. The amount of time allotted for individual comments may be limited as necessary to accommodate all those present at the public hearing wishing to provide an oral comment. Anyone who needs a reasonable accommodation to attend or participate at the public hearing should contact the Judicial Information Division at (505) 476-6900 as soon as possible.

--

Lori Comallie-Caplan, MA, LMSW, LED
Counselor, Coach and Consultant for the Gifted
Parenting Coordinator and Family Law Mediator
637 N. Alameda Blvd
Las Cruces, NM 88005
Office 575-526-4222 FAX 575-526-4228
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lcomallie@gmail.com

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New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sks.com <mailservices4@sks.com>

Tue, Dec 6, 2016 at 10:26 AM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov

SUPREME COURT OF NEW MEXICO
FILED

Your Name
Robyn Rehbein

DEC - 6 2016

Phone Number
5754968532

Email
robynrehbein@gmail.com

Proposal Number
2016-065

Comment

I strongly encourage Parenting Coordinators be added to the list of those who would be able to access on-line Court documents. As a Parenting Coordinator, I am appointed as an arm of the court, basically as a special master; however, I am not an attorney and therefore cannot access these records. PCs may be mental health professionals or certified mediators. It is difficult at best to gain this information via third party and hinders the efficiency and productivity of the Parenting Coordinator to not have direct access to these documents. Please allow access to Parenting Coordinators. Thank you for your consideration.

Upload



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sks.com <mailservices4@sks.com>

Tue, Dec 6, 2016 at 10:29 AM

To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Your Name
Michelle Rigual

Phone Number
5052770678

Email
rigual@law.unm.edu

Proposal Number
2016-065

Comment
Please see the attached file for comment on Proposal Number 2016-065.

Upload
SOPA Comment Letter.pdf

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DEC - 6 2016

SOPA Comment Letter.pdf
59K



Office of the Dean

December 5, 2016

SUPREME COURT OF NEW MEXICO
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DEC - 6 2016

Judge Karen P. Mitchell
Chair Judicial Information Systems Council
Online Access Subcommittee
c/o Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

A handwritten signature in black ink, appearing to be "Joey D. Moya".

RE: Proposal Number is 2016-065

Dear Judge Mitchell:

Though the stated purpose of proposal 2016-065 is to expand access to electronic records in civil and criminal cases via the Secured Odyssey Public Access (SOPA) system, the current language would have the unintended effect of limiting access to these documents for most of the law library faculty and students in our Legal Research classes.

The SOPA system is an essential tool of practice in the State of New Mexico and continued access to court documents will facilitate the process of ensuring that graduates are practice-ready. Please consider broadening the categories of persons permitted access to include our faculty and students who are engaged in teaching and scholarship.

Sincerely,

A handwritten signature in black ink, appearing to be "Sergio Pareja".

Sergio Pareja
Dean & Professor of Law

A handwritten signature in black ink, appearing to be "Michelle Rigual".

Michelle Rigual
Law Library Director & Professor of Law Librarianship



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Attn: NM Supreme Court Clerk Moya-comment on prop online access rule

1 message

Charles Warren <warrenlnd1@gmail.com>
To: nmsupremecourtclerk@nmcourts.gov

SUPREME COURT OF NEW MEXICO
FILED

Tue, Dec 6, 2016 at 10:34 AM

December 6, 2016

DEC - 6 2016

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

RE: Personal Comment (from an attorney) regarding Proposed Rule Revision/Access to Online Court Records

Dear Clerk Moya,

I apologize for the informal e-mail style input; this proposed rule change caught my eye and I decided for a change to not procrastinate sending in some feedback. It is feedback in my personal capacity, as I am a government lawyer and am not sending this in my capacity as a governmental employee nor does it reflect the position of the entity I work for.

I'm sure that some may oppose broadening the access to filings, esp to those in which they are not parties (that seems to be intent, esp for media access), but it seems that it will 1. Increase needed transparency and interest in our judicial system, 2. Reduce administrative work the courts are now having to do to provide documents to folks, including redaction; make the access that is already available to this group through the public venue more convenient and fast. The enforcement of the agreements made by the third parties (media etc) to not publish or otherwise distribute or USE the PPII information that may be included does seem to be an issue that may prove to be problematic--even if the Rule were to establish consequences for a violation, how would anyone ever prove who it was that breached the agreement to maintain confidentiality?

I trust that the juvenile and other sensitive (sequestered) proceedings, including those where mental competency is at issue would continue to receive heightened privacy and not be available except possibly to counsel and the parties in those cases (?)

I'm sure that some entities may oppose additional "sunshine" shining into the legal crevices, but I personally think this proposal is in the interest of those who the courts serve.

Thank you and Sincerely,
Lisa L. Warren #4516



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Comment on Online Access to Court Records Policy

1 message

Jill Vigil <jill@jvjlw.com>

Tue, Dec 6, 2016 at 10:38 AM

To: nmsupremecourtclerk@nmcourts.gov

Please consider allowing Parenting Coordinators, appointed through a valid and current Court order, to apply for permission to view court records. Having a firm and verifiable understanding of the case history is a critical component for a Parenting Coordinator and access would be a fantastic tool to increase a Parenting Coordinator's effectiveness in high conflict cases were frequently misinformation, missing information and mischaracterized information is a source of on-going conflict and a weapon employed by one or both parents.

Jill V. Johnson Vigil, Esq.

Law Office of Jill V. Johnson Vigil

1475 N. Main Street, Suite E

Las Cruces, NM 88001

www.jvjlw.com

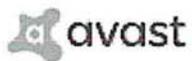
575-527-5405 Phone

575-527-1899 Fax

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A handwritten signature in black ink, appearing to read "Jill V. Johnson Vigil".



This email has been checked for viruses by Avast antivirus software.
www.avast.com

HAL SIMMONS
ATTORNEY AT LAW

LAW OFFICES
HAL SIMMONS PROFESSIONAL ASSOCIATION
8010 MENAUL BOULEVARD, N.E.
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TELEPHONE
AREA CODE 505
299-8999
FAX
299-9152

December 6, 2016

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DEC - 6 2016

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico, 87504-0848



Re: Access to electronic court records, New Mexico judiciary proposal

Dear Mr. Moya:

This office represents the New Mexico Broadcasters Association (NMBA), a state organization composed of most of the radio and television stations in New Mexico.

We wished to add the NMBA's comments to the current discussion of the proposal before the New Mexico Judiciary involving online access to electronic records in court case files.

In general, the proposal which would provide a two-step plan to making judicial court records available on line at all times, is favored by the NMBA

NMBA understands the first step would be to make the records available via computer online access to: 1) New Mexico licensed attorneys and their staffs; 2) Out-of-state attorneys admitted for a certain case by the New Mexico Supreme Court; 3) Justice Partners; 4) Press; and 5) Self-represented parties in litigation (and only for the case to which they are a party).

The second step would come later and would provide the same access to the public generally, when sufficient safeguards are in place to electronically redact records to remove protected personal identifier information in the files accessed.

NMBA is familiar with the position taken by the Albuquerque Journal, KOAT-TV, and the Foundation for Open Government (FOG), represented by attorney Gregory P. Williams in this same matter, and supports that position

Very truly yours,



Hal Simmons

New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

ONLINE RECORDS - COMMENTS ON PROPOSAL # 2016-065

1 message

Henry Dickson <dicksonlawpc@gmail.com>

Tue, Dec 6, 2016 at 12:39 PM

To: nmsupremecourtclerk@nmcourts.gov

First, I agree with those who suggest broadening the definition of "Justice partners" to include private investigators, public interest workers, and others. (See list from Patricia Wolff, 11/26/16 -- all good, common sense suggestions.)

I am skeptical (to say the least) of Michael D. Hoeferkamp's (12/2/16) bald assertion that "Broader access increases virus risk." What increases virus risk is poor or non-existent security architecture -- e.g., lack of encryption, weak password policies, poor or non-existent patch management programs, Keep me logged in checkboxes, etc., etc. Mr. Hoeferkamp goes on to assert that "The press cannot be trusted with confidential records," citing the fact that CNN gave H.R.C. a debate question in advance. (It didn't.) Even if true, that's not a justification for limiting press access to these kinds of databases. I understand how, in some circles, it is now de rigeur to slam the press as "crooked" and "unfair" and all the rest, but our judicial system should shudder at the thought of jumping on this particular anti-press bandwagon simply because some people don't like CNN....

All in all, however, this is a terrific proposal, and -- whatever the inevitable techno-bumps in the road along the way -- is one that seems calculated to make life easier for us all, while making our judiciary and its often arcane processes just that little bit more transparent. What's not to like?

Henry Dickson
Dickson Law, P.C.
Post Office Box 1333
400 E. College Blvd., Suite A
Roswell, New Mexico 88202-1333
(575) 623-0375
(575) 623-0377 - Fax

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A handwritten signature in black ink, appearing to be "J. P. ...".



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New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Rule Proposal Comment Form

1 message

mailservices4@sk.com <mailservices4@sk.com>
To: supjdm@nmcourts.gov, suptls@nmcourts.gov

Tue, Dec 6, 2016 at 12:49 PM

Your Name
Steve Long

Phone Number
5053384021

Email
steve@nmlawoffices.com

Proposal Number
2016-065

Comment
Every criminal case in NM includes the defendant's DOB and SSN. This is wrong, against the court's own rules, and has been the source of many wrongs.

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NEW MEXICO
INNOCENCE & JUSTICE PROJECT

INNOCENCE AND JUSTICE PROJECT

University of New Mexico School of Law

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FILED

December 6, 2016

DEC - 6 2016

Mr. Joey D. Moya
Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848

via online submission

RE: Proposed Policy for Online Access to Court Records

Dear Mr. Moya:

I am writing to express my support of the above proposed policy for online access to court records. I also request that the Online Access Subcommittee consider granting the New Mexico Innocence and Justice Project access so that staff and law students participating in the program, under the direct supervision of project attorneys and staff, can access court records online.

The Project assigns second- and third-year law students at the University of New Mexico School of Law cases involving post-conviction claims of actual innocence to review and investigate. The reviews and investigations of these cases are all performed *pro bono* and the cost for copies of records alone is thousands of dollars each year. Fortunately, the Project has been able to pay for the copies through a National Institute of Justice grant award but that grant will soon end.

Access to the online records will allow the Project to continue to provide a needed service to the men and women incarcerated in New Mexico who have meritorious claims of actual innocence.

Thank you for your consideration of this request.

Sincerely,

Gordon Rahn
Research Professor/Project Director

C A R E N I. F R I E D M A N

Attorney at Law

Board Certified Appellate Specialist

December 6, 2016

SUPREME COURT OF NEW MEXICO
FILED

Joey D. Moya, Clerk
New Mexico Supreme Court
Post Office Box 848
Santa Fe, New Mexico 87504-0848

DEC - 6 2016



Re: Proposal 2016-065

Dear Mr. Moya,

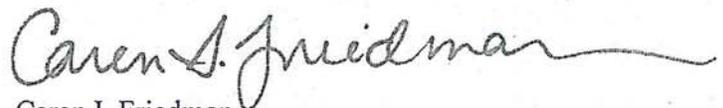
I write to comment on the Proposed Policy for Online Access to Court Records. I applaud the proposal to grant New Mexico licensed attorneys online access to electronic records in case files. (This comment in support of granting access to attorneys should not be viewed as a negative comment on access for other groups included in the proposal.)

I am an appellate attorney who handles appeals from cases originating in all judicial districts throughout the state. At the docketing phase of an appeal, i.e. before the record proper is compiled and sent up to the Court of Appeals, I need access to record documents. My understanding is that via Odyssey, I currently have access to court records in civil and domestic cases. However, I have been informed by the Judicial Information Division that there is a moratorium on access to record documents in criminal cases.

As I handle both civil and criminal appeals, I need access to record documents in criminal cases, as well. With the current moratorium, I have to resort to relying on my client's trial counsel or on court staff to supply me with sizeable portions of the record. This is an inefficient use of everyone's time. I am greatly in favor of giving attorneys the same online access to state court case files that we currently have in federal cases via PACER.

I appreciate the exacting work of the Online Access Subcommittee of the Judicial Information Systems Council. Thank you for the opportunity to comment.

Sincerely yours,



Caren I. Friedman
Attorney at Law

NEW MEXICO JUDICIARY PROPOSED POLICY
FOR
ONLINE ACCESS TO COURT RECORDS

Comments submitted on behalf of the New Mexico Coalition Against Domestic Violence

If we understand this correctly, NM lawyers, law enforcement, federal agents, child welfare anywhere in the country, and anyone from the press can get on-line access to any case in the system which includes access to identifying information like address, date of birth, if any of it appears in the materials associated with any case.

We're a little confused on what pro hac vice lawyers and pro se litigants get access to when it says "only public records".

Our concerns are as follows:

- 1) Does this proposal comply with 18 USC 2265 (d) (3), the federal prohibition that prevents any court system from making protective orders accessible on the internet? We have concerns about whether the currently identified group (particularly "justice partners and self represented parties") is too broad to be safe.
- 2) For relocated or in hiding domestic violence survivors, will they be entitled to use New Mexico's address confidentiality program so they won't have to use the address in court pleadings? Even if so, that's always a risk, but this system would increase that risk. All a domestic violence offender has to do is hire a lawyer or convince a law enforcement professional (or be one of those two things) and search this statewide system for the person's name to locate them.
- 3) The issue raised above in #2 is also an issue in terms of just figuring out what county someone is in, which can often then tell you where they are if you know they have family or contacts in that county.
- 4) Is there a process (and how will be people know about it) to have your file NOT included in this if it is not safe? How will people know about that and what will be the state's process for removing files/identifying info from this system once if such a motion is granted.

SUPREME COURT OF NEW MEXICO
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DEC - 6 2016





New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

RE: Comment on proposed SOPA system

1 message

Wheeler Cowperthwaite <cowperthwaite@gmail.com>

Tue, Dec 6, 2016 at 5:15 PM

To: nmsupremecourtclerk@nmcourts.gov

To whom it may concern,

My name is Wheeler Cowperthwaite and I work as the cops and courts reporter for the Rio Grande SUN in Espanola, a weekly newspaper.

When I first heard about the proposal to give journalists, attorneys and other interested parties online access to the current system, I was flabbergasted by pure joy at the thought.

Such a move toward transparency can be nothing but good for the state.

I speak from experience when I say that court records are often times nearly impossible for me to get, especially on the Magistrate level, if they are filed in a court that is too physically far away from me, if I'm working on deadline, creating a burden because I live and work in a rural area.

District court records carry the same burden, with the closest court to me being Santa Fe, and the next being Tierra Amarilla. an hour and 15 minutes away.

This access would allow me to better serve the public in a more timely information.

For those reasons, among others, I strongly support this proposal.

Furthermore, I want to throw my experience behind the idea what we sign, stating we will not use the private identifier information for nefarious purposes.

Since I started at the Rio Grande SUN over three years ago, I have been privy to more personal identifiers than I can even count, including driver's license numbers, social security numbers, dates of birth and places of residence, from a variety of sources including indictments from the District Attorney's office, court documents and from listening to the scanner.

Not once have I ever done anything nefarious, illegal, immoral or unethical with that information. In fact, with the exception of dates of birth, I've almost never used it at all for any reason and I've always made sure to safeguard it when it comes across my desk.

I sincerely hope you accept the proposal in its current form.

Sincerely,

Wheeler Cowperthwaite

--

Wheeler Cowperthwaite
Rio Grande SUN Staff Writer
Work: (505) 753-2126
Cell: (775) 453-4162

SUPREME COURT OF NEW MEXICO
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DEC - 6 2016

Via Electronic SubmissionSUPREME COURT OF NEW MEXICO
FILED

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, NM 87504-0848
nmsupremecourtclerk@nmcourts.gov

DEC - 6 2016



RE: Proposal Number 2016-065

Dear Mr. Moya:

This letter is offered as written public comment concerning the New Mexico Judiciary Proposed Policy for Online Access to Court Records. Thank you for the opportunity to address this important topic.

The New Mexico Department of Health manages a great deal of confidential information. Much of that information consists of protected health information (PHI) that is rendered confidential by federal and/or state statutes and common law privilege. The Department encounters confidentiality issues concerning confidential information in various contexts, including but not limited to court proceedings, and in responding to requests made pursuant to the Inspection of Public Records Act (IPRA). In litigation, the Department enters into qualified protective orders pursuant to HIPAA regulations at 42 C.F.R. § 164.512(e)(1) before providing PHI to others. In litigation to which the Department is a party, the Department will seek an order sealing a record in its entirety if the confidential information cannot otherwise be redacted. Depending on the extent to which a case concerns confidential information, the number of records that require sealing can vary from a few pages to virtually all of the submissions to the court. In order to seal a record, Rule 1-079 requires (at Paragraph G) that certain criteria be met, including the criteria that "the proposed sealing is narrowly tailored" and that "no less restrictive means exist to achieve the overriding interest" that overcomes the right of public access to the record.

In some circumstances, a record can be redacted of confidential information before it is submitted to the court, obviating the need for a court order to seal the record. In those situations, courts may deem redaction to be a "less restrictive means" of achieving the overriding interest in keeping such information confidential. With respect to "protected personal identifier information", such redactions are made consistent with Rule 1-079 at Paragraph D, which requires that "[t]he court and the parties shall avoid including protected personal identifier information in court records unless deemed necessary for the effective operation of the court's judicial function." The definition of "protected personal identifier information" is duplicated from IPRA at NMSA 1978, § 14-2-6(E), and it covers all but the last four digits of a taxpayer identification number, financial account number, and driver's license number; all but the year of a person's date of birth; and a social security number.

OFFICE OF GENERAL COUNSEL

1190 St. Francis Dr., Room N4095 • P.O. Box 26110 • Santa Fe, New Mexico • 87502-6110
(505) 827-2997 • Fax: (505) 827-2930 • www.nmhealth.org



The rule is clear about the need of parties to avoid including such “protected personal identifier information” in the record. Parties can avoid including that information by either not submitting anything that contains the confidential information, or by redacting confidential information prior to filing a document with the court. However, the rule does not address the issue of redacting other forms of information made confidential by applicable law. The rule states at the outset that “[c]ourt records are subject to public access unless sealed by order of the court or otherwise protected from disclosure under the provisions of this rule.” Thus, it can be argued that, unless the rule expressly permits a party to redact confidential information prior to filing, the document is subject to public access. The rule at Paragraph I permits “a party or a member of the public” to petition the court to “unseal” a sealed court record. The word “unseal” is not defined. However, “sealed” is defined to mean “a court record for which public access is limited by order of the court *or as required by Paragraphs C or D of this rule*”. Thus, redaction made pursuant to Paragraph D could be interpreted as a form of “sealing”; and conceivably, any form of redaction might be considered “sealing” for purposes of the rule. It is unclear whether “unsealing” a record could require a party to submit a non-redacted version of a redacted document.

In any event, the rule’s emphasis on “protected personal identifier information” does not go far enough to ensure that parties are able to redact that information that is required to be kept confidential pursuant to applicable law. As a point of comparison: IPRA makes “protected personal identifier information” confidential and not subject to public disclosure. However, it also excludes various other types of information from public inspection that are not addressed in Rule 1-079, including “records pertaining to physical or mental examinations and medical treatment of persons confined to an institution”, “law enforcement records that reveal confidential sources”, records made confidential by the Confidential Materials Act, and “as otherwise provided by law”. NMSA 1978, §14-2-1. As Rule 1-079 is written, the only way to withhold such confidential information (apart from “protected personal identifier information”) would be to pursue a court order sealing the affected record; but if the record is capable of being redacted of confidential information, then presumably the court would deny the motion to seal based on the “less restrictive means” criterion. The rule should be amended at Paragraph D to state that the court and parties should not only avoid including “protected personal identifier information” in the court record, but should avoid including information made confidential by applicable law. Alternatively, the rule should expressly permit redaction of information made confidential by applicable law, and not merely those numbers and dates included within the definition of “protected personal identifier information”.

With respect to the Judiciary’s plan to enable greater electronic access to court records: it is not entirely clear whether the Press and Justice Partners (such as law enforcement) will be granted access to non-redacted confidential materials. On the one hand, the chart (entitled “Draft Online Case Access Policy”) states at the bottom that the “public records” to be provided to those individuals “do not include cases or records that are sealed or otherwise confidential under statute, court rule, or court order.” On the other hand, if that was the case, then presumably the description of “View/Print Access” would be identical for the Press and Justice Partners, and members of the public. For the public, access will be specifically limited to “[r]edacted public records”, suggesting that records for the Press and Justice Partners will not be redacted. Also, if those persons are intended to sign non-disclosure agreements, then presumably the Judiciary intends to disclose confidential information to them. To the extent that the Judiciary discloses confidential

information to members of the press and other persons who are not parties to the litigation at issue, such a practice would appear to conflict with confidentiality laws that render the information “confidential”.

There are also practical concerns to providing access to confidential information to members of the press and other persons who are not parties to the litigation. While those individuals would be made to sign non-disclosure agreements, it is unclear how the courts would go about enforcing breaches of those agreements, of which there could be many. Members of the press and law enforcement officials who are provided access to confidential information are not attorneys, and may not be well positioned to understand whether the information they have accessed is confidential. In summary: if the Judiciary intends to provide greater electronic access to court records to members of the press and justice partners such as law enforcement, it should first ensure that the records to be disclosed do not contain confidential information.

Sincerely,

/s/ Chris D. Woodward

Chris D. Woodward

Assistant General Counsel

DEC - 6 2016

December 6, 2016



Mr. Joey Moya,

I am the editor and publisher of the Las Vegas Optic, a small newspaper in northern New Mexico, and I am writing in support of the judiciary's proposed policy to provide online access to court records to the news media and other groups. I am also the past president of the New Mexico Press Association and the incoming president of the New Mexico Foundation for Open Government, organizations that support the proposal.

The proposal would boost transparency, but it would also make the process for accessing court records more efficient for both the courts and news media.

I have covered courts for nearly two decades. I have good working relationships with the staff at the clerks' offices at both San Miguel and Mora magistrate courts and the district court in Las Vegas. But with each passing year, I see lines getting longer and wait times to access court files increase, all as hours for the courts decrease. I mention this not as a complaint, but to point out that court staffs throughout the state are dealing with dwindling resources. Unfortunately, newspapers are in the same boat.

That's why the proposal being considered makes so much sense to me and other journalists in New Mexico. As I understand it, if this proposal is approved, journalists will have access to the same documents that we currently have access to. The only difference is that it will eliminate the need for trips to the courthouse for credentialed journalists. Having online access will be a huge benefit for news media organizations and their readers and viewers. It will help us do a better job of covering newsworthy court cases. And in a rural state like ours, it eliminates the need to drive to remote courthouses to look at court filings that may or may not be worthy of a story. The benefit for clerks' offices throughout New Mexico is that it will free up much of the time that they are currently spending assisting journalists. It's worth noting that the federal courts have been providing online access to court filings for years, as have some states. In 2003 and 2004 I worked as a court reporter in Washington State, and during that time I had online access to state court filings.

This is a reasonable proposal, and I hope that the judiciary will move forward with adopting it.

Respectfully submitted,

Martin Salazar
Editor and Publisher, Las Vegas Optic
Past President, New Mexico Press Association
Incoming President, New Mexico Foundation for Open Government

KOB 4 News writes in support of the proposal to give attorneys, journalists, judges and law enforcement officers online access to court records. We support a plan that would provide such access 24 hours a day, 7 days a week. As a news provider, we already hold ourselves to a high journalistic standard when it comes to protecting personal information. Accountability for this is necessary to avoid liability. It is already a part of our internal systems and processes.

The lack of access to such documents after hours or on weekends limits the flow of information that the public should know, many times information that would enhance awareness or public safety. Such access is important to our function to report on matters of public affairs. The essence of "news" is that by definition, there is a sense of urgency about the information. This is why access after-hours and on weekends is so important to our overall mission.

We are a well-established media company, having been a part of the information landscape in New Mexico for 68 years. We broadcast news programming 7 days a week, and we publish news content 24 hours a day online. Our audience and content is statewide. Even with offices in Albuquerque, Farmington and Roswell, it is frequently impractical or impossible to physically obtain court records in person during business hours only.

KOB urges the New Mexico Supreme Court to approve this proposal, eliminating barriers and burdens to the flow of information important to all New Mexicans.

SUPREME COURT OF NEW MEXICO
FILED

DEC - 6 2016

A handwritten signature in black ink, appearing to be "John P. ...", is written over the date stamp.



New Mexico
Courts

Terri Saxon <suptls@nmcourts.gov>

Online Access to Court Documents

1 message

Denise Briggs <shift88007@gmail.com>

Tue, Dec 6, 2016 at 9:03 PM

To: nmsupremecourtclerk@nmcourts.gov

Please consider adding Parenting Coordinators to the list of those who would be able to access court documents online. Parent Coordinators are court appointed and granted certain powers and responsibilities by the Court. Often Parent Coordinators are not attorneys rather they are mental health professionals or certified mediators. As such, it is difficult to attain this information via a third party and it hinders the efficiency and productivity of the Parenting Coordinator not to be able to have direct access to these documents.

Thank you for your consideration of this request.

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Denise M. Briggs, M.A. (575) 915- 7993 Family Mediator & Parent Coordinator shift88007@gmail.com

SUPREME COURT OF NEW MEXICO
FILED

DEC - 6 2016

A handwritten signature in black ink, appearing to be "J. P. Saxon".

SUPREME COURT OF NEW MEXICO
FILED

DEC - 6 2016



December 6, 2016

Re: Proposal 2016-065-Proposed Policy for Online Access to Court Records.

To the New Mexico Supreme Court,

In response to proposal 2016-065 relating to online access to court records, I have the following comments to make:

It is my opinion as a member of the New Mexico community that there are several flaws in this proposal as I understand it.

I think it is a mistake to allow online access to any juvenile criminal or civil records. It is my belief that juvenile information should be handled in a different way, as has been the legal protocol in this state for some time. While specific law enforcement members may have a need for access to such records, I strongly disagree that the media and the general public should have access to juvenile records. I am also uneasy with lawyers having such access. If lawyers do have such access they should be held to strict rules barring them from sharing such information with the media or the general public. The juvenile justice system has long been moving toward rehabilitation. Making such information public will, in many cases, destroy the possibility of a juvenile offender becoming a productive part of society. This proposal will make impossible for many to find employment, gain further education and find housing. There is strong medical and social evidence that the juvenile brain and emotional maturity are simply not the same as an adult subject. Juvenile cases should remain under much greater restricted access than those in adult cases for these very reasons.

I also strongly disagree with the proposal allowing the media and the general public to have such specific and immediate access to any criminal or civil records, other than the records as they already exist on current judicial websites. Descriptions of criminal and civil records as they currently exist are a reasonable amount of information for the media and the general public to have. Giving broad access to criminal and civil records by the media and the general public can taint current investigations and, even with the best of intentions and safeguards in place, release very sensitive information that will impact not only an accused or convicted criminal, but also victims. The media and the general public have shown again and again that they are not capable of properly handling such information in a broad way. Discrimination, vigilantism and the generally overzealous and careless handling of information often follow.

I also strongly disagree with the retroactive aspects of this proposal. Does this proposal make all records available to this broad number of individuals? Does the proposal make all records from the beginning of New Mexico statehood available? The proposal should, at the very least, respect the process that has been in place to this point in time. If you are going to make the proposal the new rule for handling criminal and civil records then you should start only from this point on. While the Court and records management officials seem to have arrived at the opinion that everything should be open to everyone, this is a very simplistic way of looking at the issue. The ways that records have been held and information dispensed have affected how cases have gone through the court system. The methods of keeping such records have probably even had an impact on how defendants have pled to cases. To retroactively make such information available is, in my opinion, legally incorrect, at the very least. If the Court does make a retroactive change to the broad sharing of information, it is my hope that there will be many legal challenges on the basis that information has had a long history of being held in a specific way. If this proposal passes I believe it would be beneficial to the taxpayers of this state for the proposal to encompass only cases from this point on.

In closing, several aspect of this proposal are troubling to me on a legal and social basis. The three aspect that disturb me most are: allowing online or broad access to criminal and civil cases where juveniles are the defendant, allowing the media and general public to have broad access and lawyers to have unrestrained access to all cases and the retroactive aspect of making this information available. I am strongly opposed to this proposal due to these issues and others. Just because we can do something does not mean that we should. Restraint is called for here. I realize that public safety and openness is the noble idea here, but I question this simplistic view of these issues and the actual benefit of handling criminal and civil records this way.

Respectfully Submitted,

William Wendell

Comment regarding Proposal 2016-065:

I am writing to you in regards to the proposed online access to court records rule. I did not see any mention of how the proposed rule would handle Orders of Protections under the Family Violence Protection Act. I am attaching NMSA 40-13-12 which clearly states that courts "shall not make available publicly on the internet any information that would likely reveal the identity or location of the party protected under an order of protection". The statute does allow a court to "share court-generated and law enforcement-generated information contained in secure, government registries for protection order enforcement purposes".

It may be necessary to add language to the proposed rule to exclude Orders of Protection from the Secured Odyssey Public Access (SOPA) since this information should only be made available for enforcement purposes under NMSA 40-13-12. These cases are a unique hybrid in that they are not sealed or sequestered by the judge, but should also not be made available to the public on the internet.

Please feel free to contact me if you would like to discuss this further.

Patricia M. Galindo, Esq.
Staff Attorney – Domestic Violence, Sexual Assault & Guardianship
Administrative Office of the Courts
237 Don Gaspar
Santa Fe, New Mexico 87501

SUPREME COURT OF NEW MEXICO
FILED

DEC - 6 2016

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40-13-12 . Limits on internet publication.

A state agency, court or political subdivision of the state, including a magistrate or municipal court, judicial district, law enforcement agency, county, municipality or home-rule municipality, shall not make available publicly on the internet any information that would likely reveal the identity or location of the party protected under an order of protection. A state agency, court or political subdivision may share court-generated and law enforcement-generated information contained in secure, government registries for protection order enforcement purposes.

History: Laws 2008, ch. 40, § 10.



UNITED STATES DISTRICT COURT

District of New Mexico
333 Lomas Blvd. N.W. • Suite 770
Albuquerque, New Mexico 87102

M. CHRISTINA ARMIJO
Chief Judge

Telephone (505) 348-2310
Fax: (505) 348-2315

SUPREME COURT OF NEW MEXICO
RECEIVED

December 5, 2016

DEC - 9 2016

Joey D. Moya, Clerk
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848

Re: Request for Modification of Policy: New Mexico Judiciary Proposed Policy for Online Access to Court Records

Dear Mr. Moya,

This letter is submitted for consideration by the Online Access Subcommittee regarding the proposed New Mexico Judiciary Policy for online access to electronic records in New Mexico state court case files. Under 28 U.S.C. §§ 2241 and 2254, the United States District Courts are charged with the responsibility for adjudicating petitions for writs of habeas corpus by persons in custody pursuant to the judgment of a state court. Performance of its responsibilities under §§ 2241 and 2254 requires a detailed review of the state court record in each habeas corpus case. Online access to the state court records through the Secured Odyssey Public Access (SOPA) system, as proposed in the Policy, would materially facilitate and benefit this Court's performance of its duty to timely and justly determine state-custody habeas corpus proceedings in federal court. As currently defined in the Policy, "Justice Partners" includes federal law enforcement, corrections, and welfare agencies, but does not include the United States Courts. On behalf of the Court, I would request that the Policy be modified to include the United States District Court in the definition of "Justice Partners" and to allow the Court online access to the New Mexico state court records through the SOPA system.

I thank the New Mexico Supreme Court and the Online Access Subcommittee for their consideration.

Very truly yours,

M. Christina Armijo, Chief Judge

cc: Mathew Dykman, Clerk of Court