

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
COMMITTEE TO REVIEW THE
PRESERVATION, ACCESS, AND
SEALING OF COURT RECORDS.

ADKT No. 410

FILED

APR 01 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER SCHEDULING PUBLIC HEARING AND
ALLOWING PUBLIC COMMENT

On July 8, 2008, this court reconstituted the Commission on Access, Preservation and Sealing of Court Records for the purpose of examining issues involving the sealing, access, retention, and destruction of court records. Because the commission is concerned about issues involving the access to and retention of court files and records in cases involving temporary protective orders (TPO's) and domestic violence cases, the Commission is seeking public comment in order to prepare recommendations for the creation of or amendment to rules relating to the access, confidentiality, sealing, and retention of such court files. In addition to any other comments the public may have concerning access, confidentiality, sealing, and retention of court files and records in TPO and domestic violence cases, the Commission is seeking input on the following specific issues.

(1) The current Record Retention Manual only addresses domestic violence TPO's, and states that restraining orders issued in domestic relations cases under NRS 33.020 are to be retained up to two years after expiration of order. There is no general standard for

the five other types of TPO's. Should the Supreme Court adopt rules governing the retention of records in all types of TPO's?

(2) Confidential information sheets are used in some courts in Nevada; however, there does not appear to be explicit authority to use a "confidential" information sheet or prevent access to information contained in these forms.

(3) There is no procedure for a TPO applicant to submit exhibits under seal. Although the rules adopted by the Supreme Court regarding the sealing and redacting of court records apply to civil cases, it is not clear whether, and to what extent, those rules will apply to TPO cases.

(4) There appears to be no authority to maintain the entire TPO file "presumptively confidential," with access to the media and general public only available upon order of the judge. Should the Supreme Court adopt rules governing public access to TPO files?

(5) Some courts are questioning whether TPO records can be made "quasi-public," by, for example, restricting electronic access entirely via the Internet, but allowing physical TPO files to be inspected. Should the Supreme Court adopt rules concerning electronic access to TPO files?

(6) TPO files sometimes contain police reports and other exhibits that include social security numbers and other personal information. Frequently, litigants fail to redact this information. How should access to these types of records be handled by the courts?

(7) TPO files sometimes contain graphic photographs depicting serious physical abuse or nudity. Should the Supreme Court adopt a procedure to limit access to these types of exhibits?

(8) There appears to be no provision in the law to allow a TPO case to be sealed or expunged. Although such authority exists for criminal cases, Senate Bill 398 (SB 398), providing similar authority for TPO's, was rejected in 2003. SB 398 would have authorized the adverse party to a temporary or extended protection order to request the order be sealed five years after the date of expiration or rescission of the order. Since protection orders are civil orders, the provisions of NRS 179.245 governing sealing of criminal records do not necessarily apply.

(9) In 2009, Assembly Bill 120 (AB 120) was passed allowing victims of sexual assault to apply for a protection order. NRS 200.377 and 200.3773 require confidentiality of the protection order application and the process therein. However, section 3(1)(a) and (b) of AB 120 may make the enforcement of a sexual assault protection order problematic. Because this section of AB 120 appears to conflict with the confidentiality provisions of NRS 200.377 and 200.3773, the Standardized Protection Order Committee recommends that the applicant be:

a) allowed to waive confidentiality when applying for a sexual protection order, or;

b) allowed to use a pseudonym with disclosure to a person other than those persons delineated in NRS 200.3773(a)-(d) subject to court order following a hearing.

The Commission on Access, Preservation and Sealing of Court Records will conduct a public hearing on these issues on Thursday, June 3, 2010, at 9:00 a.m. in the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom in the Regional Justice Center in Las Vegas, Nevada.

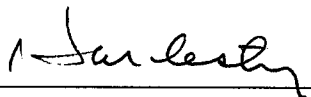
The bench, bar and the public are invited to submit written comments on the issues listed above. An original and eight copies of written comments are to be submitted to: Tracie K. Lindeman, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., May 31, 2010. Persons interested in participating in the hearing must notify the Clerk no later than May 31, 2010.

Hearing date: June 3, 2010, at 9:00 a.m.

Nevada Supreme Court Courtroom
201 South Carson Street
Carson City, Nevada

Comment deadline: May 31, 2010, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

It is so ORDERED.

 _____, A.C.J.

cc: Kathleen England, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Judges
All Limited Jurisdiction Judges
Administrative Office of the Courts
Sheila MacDonald, AOC