



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

ORDER

IT IS ORDERED that the Alabama Rules of Court-Record Privacy and Confidentiality and the Task Force's Notes thereto be adopted to read in accordance with the appendix to this order;

IT IS FURTHER ORDERED that the adoption of the Alabama Rules of Court-Record Privacy and Confidentiality and the adoption of the Task Force's Notes thereto are effective January 1, 2025; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow the Alabama Rules of Court-Record Privacy and Confidentiality:

"Note from the reporter of decisions: The order adopting the Alabama Rules of Court-Record Privacy and Confidentiality and adopting the Task Force's Notes thereto, effective January 1, 2025, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d."

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Witness my hand and seal this 20th day of December, 2024.

Megan B. Rhodeseck

**Clerk of Court,
Supreme Court of Alabama**

**FILED
December 20, 2024**

**Clerk of Court
Supreme Court of Alabama**

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ALABAMA RULES OF COURT-RECORD PRIVACY AND CONFIDENTIALITY

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ARTICLE I. GENERAL PROVISIONS

RULE 101. SCOPE

These Rules apply to every court record in all Alabama Appellate, Circuit, District, Juvenile, Small Claims, Municipal, and Probate Courts -- regardless of the physical form of the court record, the method of recording the information in the court record, or the method of storage of the information in the court record -- except as otherwise provided by state law or other court rule.

RULE 102. PURPOSE

The purpose of these Rules is to provide a comprehensive policy regarding access to court records. These Rules are intended to:

- (1) Maximize the accessibility of court records;
- (2) Support the role of the judiciary;
- (3) Promote governmental accountability;
- (4) Contribute to public safety;
- (5) Minimize the risk of injury to individuals;
- (6) Protect individual privacy rights and interests;
- (7) Protect proprietary business information;
- (8) Minimize reluctance to use the courts to resolve disputes;
- (9) Make the most effective use of court and clerk-of-court personnel; and
- (10) Not unduly burden judicial officials or court and clerk-of-court personnel.

These Rules are also intended to provide guidance to 1) litigants, 2) those seeking access to court records, and 3) judges and court and clerk-of-court personnel responding to requests for access to court records. These Rules are premised on existing Alabama law and are not intended to create, expand, or restrict rights of access to court records.

Task Force's Notes

The Alabama Rules of Court-Record Privacy and Confidentiality honor and reflect settled Alabama law that "[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." Ala. Code 1975, § 36-12-40. These Rules also honor and reflect the Alabama Supreme Court's holding in *Holland v. Eads*, 614 So. 2d 1012 (Ala. 1993), that there also is a common-law right of public access to judicial records, which is subject to limited and specifically enumerated exceptions. The Court's observations in *Holland*, which are precedential and binding, require careful consideration when assessing the scope of what is or is not accessible as a public record in Alabama's courts.

Holland v. Eads states:

"The United States Supreme Court has recognized a common law right of public access to judicial records. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). "It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *United States v. Criden*, 648 F.2d 814, 819 (3d Cir. 1981), quoting *Nixon, supra*, 435 U.S. at 597, 98 S.Ct. at 1312. In fact, this right of the public to inspect and copy judicial records antedates the United States Constitution. *Criden, supra*.

"It has long been the rule of this State to allow public inspection of judicial records. *Brewer v. Watson*, 61 Ala. 310, 311 (1878). More than a century ago, this Court held that '[a]n inspection of the records of judicial proceedings kept in the

courts of the country, is held to be the right of any citizen.' *Id.* at 311; *see also Ex parte Balogun*, 516 So. 2d 606, 612 (Ala. 1987) (holding that 'the public generally has a right of reasonable inspection of *public records required by law to be kept*, except where inspection is merely out of curiosity or speculation or where it unduly interferes with the public official's ability to perform his duties'); *Excise Comm'n of Citronelle v. State ex rel. Skinner*, 179 Ala. 654, 657, 60 So. 812, 813 (1912). The public's right to inspect court records derives from the 'universal policy underlying the judicial systems of this country [that] secrecy in the exercise of judicial power ... is not tolerable or justifiable.' *Jackson v. Mobley*, 157 Ala. 408, 411-12, 47 So. 590, 592 (1908).

"In addition to a common law presumption of permitting public inspection of judicial records, which has been recognized by the United States Supreme Court and by this Court, public access to court records is permitted by statute. Ala. Code 1975, § 36-12-40, grants the public the right to inspect and copy 'public writings,' which term has been interpreted to include judicial records. *Ex parte Balogun, supra*; *Stone v. Consolidated Publishing Co.*, 404 So. 2d 678, 681 (Ala. 1981) (interpreting a 'public writing' to be 'a record as is *reasonably necessary* to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens'); *State ex rel. Kernells v. Ezell*, 291 Ala. 440, 442-43, 282 So. 2d 266, 268 (1973) (holding that records of the office of the probate judge are 'public writings' within the meaning of the predecessor to § 36-12-40 and are 'free for examination [by] all persons, whether interested in the same or not'); *Excise Comm'n of Citronelle, supra*; *Brewer, supra*.

"Limitations of the public's right to inspect 'must be strictly construed and must be applied only in those cases where it is readily apparent that disclosure will result in undue harm or embarrassment to an individual, or where the public interest will clearly be adversely affected, when

weighed against the public policy considerations suggesting disclosure.' *Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856 (Ala. 1989). The party refusing disclosure bears the burden of 'proving that the writings or records sought are within an exception and warrant nondisclosure of them.' *Chambers*, [552 So. 2d] at 856-57; *Ex parte CUNA Mutual Ins. Society*, 507 So. 2d 1328, 1329 (Ala. 1987); *Ex parte McMahan*, 507 So. 2d 492, 493 (Ala. 1987). This Court has held that the following types of records do not warrant disclosure: '[r]ecorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public.' *Stone*, 404 So. 2d at 681."

614 So. 2d at 1014-15.

The ultimate holding in *Holland v. Eads* is as follows:

"We have examined the different approaches used in other jurisdictions. In light of the public policy in favor of public access and the prevailing analysis of this presumption in most American courts, we hold that if a motion to seal is filed, then the trial court shall conduct a hearing. *The trial court shall not seal court records except upon a written finding that the moving party has proved by clear and convincing evidence that the information contained in the document sought to be sealed:*

"(1) *constitutes a trade secret or other confidential commercial research or information; see Brown & Williamson Tobacco Corp. [v. F.T.C., 710 F.2d 1165,] 1179 [(6th Cir. 1983)]; or*

"(2) *is a matter of national security; see Barron [v. Florida Freedom Newspapers, Inc., 531 So. 2d 113,] 118 [(Fla. 1988)]; or*

*"(3) promotes scandal or defamation; or
"(4) pertains to wholly private family matters, such as divorce, child custody, or adoption; see [Nixon v.] Warner [Comm'ns, Inc., 435 U.S. 589 (1978)]; [Ex parte] Balogun, [516 So. 2d 606 (Ala. 1987)]; Holcombe v. State ex rel. Chandler, 240 Ala. 590, 200 So. 739 (1941); or*

"(5) poses a serious threat of harassment, exploitation, physical intrusion, or other particularized harm to the parties to the action; or

"(6) poses the potential for harm to third persons not parties to the litigation.

"If any one of the above criteria is satisfied, then the trial court may seal the record, or any part of the record, before trial, during trial, or even after a verdict has been reached."

Id. at 1016 (emphasis added).

RULE 103. DEFINITIONS

(A) "Court record" includes any record belonging or pertaining to any Alabama Appellate, Circuit, District, Juvenile, Small Claims, Municipal, or Probate Court that is authorized to be made by any law of this state; any other public record authorized by law; or any paper, pleading, exhibit, or other document filed with, in, or by any such court.

(B) "Electronic information," with respect to court records, includes information that exists as:

(1) Electronically stored data, which is the whole or the partial informational content of court records, which content has been electronically recorded separately from the images of those records and stored in an electronic database maintained by the Administrative Office of Courts ("the AOC");

(2) Electronic-document images, which are graphic reproductions or likenesses of documents electronically encoded and stored on an AOC electronic database that have the capability to be reconstituted from the electronic data streams in which they are encoded and displayed electronically or printed on paper;

(3) Electronic data streams, which are a series of on-and-off electrical switches or impulses that are used to encode, transmit, and store electronically stored data and electronic-document images on AOC electronic databases; and

(4) Electronic databases, which are repositories of the electronic data streams that comprise the electronically stored data or electronic-document images that are stored in computer hard drives or other similar electronic-storage devices maintained by the AOC.

(C) "Public access" means the public's ability to inspect and obtain a copy of a court record, and the information therein, unless otherwise prohibited by state law, court rule, or an order entered by a court of competent jurisdiction. Public access to court records, and the information therein, may be subject to the payment of applicable court fees.

(D) "Remote access" means the ability to search, inspect, or copy electronic information related to a court record without the need to physically visit the court facility where the court record is stored or located.

(E) "Confidential information" is information that is exempt from public access and may be provided to only persons or organizations designated by federal or state law, these Rules, other court rule, or court order, including an attorney of record. Confidential information includes information that is identified as being confidential under these Rules or under a court order entered pursuant to these Rules. To the extent reasonably practicable, restrictions on access to confidential information in a court record shall be implemented in a manner that does not restrict access to any portion of the court record that is not confidential.

Task Force's Notes

The definitions provided are intended to be guides for interpreting and implementing these Rules. It should be noted that, pursuant to Rule 33, Ala. R. Jud. Admin., the Administrative Office of Courts ("the AOC") has authority over the access to, and the dissemination of, all electronically stored data, electronic-document images, and electronic data streams and the electronic databases on which these data, images, and data streams are stored. The AOC oversees electronic-filing procedures and processes, including maintaining an electronic-filing system, for court records.

RULE 104. GENERAL-ACCESS RULE

(A) The public has a right to inspect and obtain a copy of any court record of this state, except as otherwise expressly provided by state law, these Rules, other court rule, or court order.

(B) Court records that are sealed, exempted from public access on the basis that they are confidential, or otherwise restricted from public access by state law, these Rules, other court rule, or court order may not be provided to the public except by court order.

Task Force's Notes

Rule 104(A) acknowledges the public's general right to access court records, which is premised on every citizen's right to access "public writings" under Ala. Code 1975, § 36-12-40 ("Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.").

RULE 105. RESPONSIBILITY OF CLERK

The clerk or other official custodian of court records shall neither be responsible for identifying information included on or with any document filed in the clerk's office as being confidential or otherwise restricted from public access nor be responsible for redacting or removing

such information. The person or entity filing or submitting the information is solely responsible for complying with all requirements regarding confidentiality provided by state law, these Rules, other court rule, or court order.

ARTICLE II. EXCLUSIONS AND CONFIDENTIAL INFORMATION

RULE 201. COURT RECORDS EXEMPT FROM PUBLIC ACCESS

(A) A court record is exempt from public access if that record consists of a document or contains information that has been designated as being privileged or confidential by:

- (1) Federal law; or
- (2) State law, these Rules, other court rule, or court order.

(B) The following documents and information have been designated as privileged or confidential by the cited state law, court rule, or other legal authority. Pursuant to subdivision (A)(2), to the extent that a court record consists of one of these documents or contains such information, it is also privileged and confidential and, thus, exempt from public access.

(1) Records furnished to a utilization-review committee, a quality-control committee, a peer-review committee, or a professional-standards committee, pursuant to Ala. Code 1975, § 6-5-333, as that statute has been construed by decisions of the Alabama Supreme Court and the Alabama Court of Civil Appeals;

(2) Trade secrets, as defined in Ala. Code 1975, §§ 8-27-2, 22-30-18, and 27-22-25, as those statutes have been construed by decisions of the Alabama Supreme Court and the Alabama Court of Civil Appeals;

(3) Communications between a provider and a recipient of the

professional services of a professional corporation, pursuant to Ala. Code 1975, § 10A-4-3.04;

(4) Audio recordings of 911 telephone calls, pursuant to Ala. Code 1975, § 11-98-12;

(5) The reports of an adult probation officer to a municipal court, pursuant to Ala. Code 1975, § 12-14-13;

(6) Court notices of child-delinquency adjudications and dispositions and any information received in confidence by a teacher, a counselor, an administrator, or another school employee for the limited purpose of rehabilitating a child and protecting students and staff, pursuant to Ala. Code 1975, § 12-15-217;

(7) Law-enforcement records and files concerning a child, pursuant to Ala. Code 1975, § 12-15-134; legal files, social records, reports, and information concerning children acquired by or generated in juvenile courts, pursuant to Ala. Code 1975, § 12-15-133, including such legal files, social records, reports, and information acquired by or generated in circuit courts in appeals from juvenile courts for a trial de novo, pursuant to Rule 28(B), Ala. R. Juv. P.; fingerprints, photographs, and blood or other samples from DNA testing of children, pursuant to Ala. Code 1975, § 12-15-135; and fingerprints, photographs, and other records of persons adjudged to be youthful offenders, pursuant to Ala. Code 1975, § 15-19-7.

(8) The names or any list of prospective jurors drawn from the master jury box, pursuant to Ala. Code 1975, § 12-16-59;

(9) The names or any list of grand or petit jurors drawn from the master jury list, pursuant to Ala. Code 1975, § 12-16-70;

(10) Any information pertaining to a grand jury's deliberations, pursuant to Ala. Code 1975, §§ 12-16-215 and 12-16-216;

(11) Hospital records produced in response to a subpoena duces tecum, pursuant to Ala. Code 1975, § 12-21-6;

(12) Information that is confidential or privileged, pursuant to Ala. Code 1975, §§ 12-21-131(i), 15-23-42, and 34-8A-21 and Rule 503, Ala. R. Evid.;

(13) Confessions to, and spiritual or marital advice from, clergy, pursuant to Ala. Code 1975, § 12-21-166;

(14) Marital communications, pursuant to Ala. Code 1975, § 12-21-227;

(15) Treatment records of drug offenders, pursuant to Ala. Code 1975, § 12-23A-10;

(16) Parole or probation records subject to privilege, pursuant to Ala. Code 1975, § 12-26-7;

(17) Presentence, diagnostic, and physical- and mental-health reports in criminal proceedings and reports of mental-health experts, pursuant to Rules 11.5, 25.5, and 26.5(c), Ala. R. Crim. P.;

(18) Abuse and neglect files and records, pursuant to Ala. Code 1975, §§ 15-1-2 and 26-14-8;

(19) Communications between a non-English-speaking defendant and an appointed interpreter, pursuant to Ala. Code 1975, § 15-1-3;

(20) Privileged communications between an indigent defendant and court-appointed counsel, pursuant to Ala. Code 1975, §§ 15-12-28 and 15-12-44;

(21) Court notice to the principal of a juvenile sex offender's school and any information contained in such a notice, pursuant to Ala. Code 1975, § 15-20A-27;

(22) All reports, records, and data assembled by any adult probation officer and referred to a court, pursuant to Ala. Code 1975, § 15-22-53;

(23) All reports, records, and data assembled by any adult municipal parole officer, pursuant to Ala. Code 1975, § 15-22-73;

(24) All records of persons convicted, but later pardoned, for acts in protest of racial segregation or discrimination, pursuant to Ala. Code 1975, § 15-22-92;

(25) Law-enforcement investigative reports and related investigative materials, pursuant to Ala. Code 1975, § 12-21-3.1, except where otherwise discoverable, and investigative reports of law-enforcement agencies provided to the Alabama Crime Victims' Compensation Commission, pursuant to Ala. Code 1975, § 15-23-5;

(26) Any information received by a crime victim from the prosecutor relating to the substance of the case, pursuant to Ala. Code 1975, § 15-23-65;

(27) Presentence investigative reports, pursuant to Ala. Code 1975, § 15-23-73;

(28) The results of testing of a defendant for sexually transmitted diseases, pursuant to Ala. Code 1975, § 15-23-103;

(29) Records regarding prescriptions and drug stocks, pursuant to Ala. Code 1975, § 20-2-91;

(30) Information in the controlled-substance database, pursuant to Ala. Code 1975, § 20-2-215;

(31) Information concerning any aspect of a complaint-resolution proceeding, pursuant to Ala. Code 1975, § 22-5A-6;

(32) Living wills filed in a county probate court, pursuant to Ala. Code 1975, § 22-8A-14;

(33) Vital records, pursuant to Ala. Code 1975, § 22-9A-21;

(34) Reports concerning sexually transmitted diseases from a physician or administrator of certain institutions, pursuant to Ala. Code 1975, § 22-11A-14;

(35) Records related to investigation of an infected health-care worker, pursuant to Ala. Code 1975, § 22-11A-69;

(36) Records concerning accreditation and quality assurance, and similar materials, pursuant to Ala. Code 1975, § 22-21-8, as that statute has been construed by decisions of the Alabama Supreme Court and the Alabama Court of Civil Appeals;

(37) Information obtained by the Director of the Department of Labor concerning employment, wages, hours, unemployment, and related matters, pursuant to Ala. Code 1975, § 25-4-116;

(38) All documents and information obtained by the Department of Labor concerning communications between and among employers, employees, and the department regarding the workers' compensation ombudsman program, pursuant to Ala. Code 1975, § 25-5-294;

(39) All papers, pleadings, and other documents pertaining to an adoption, pursuant to Ala. Code 1975, §§ 26-10E-30 and 26-10F-15;

(40) When the court has entered a final adoption decree, the original birth certificate and evidence of adoption, pursuant to Ala. Code 1975, §§ 26-10E-31 and 26-10F-17;

(41) Information from the putative-father registry, pursuant to Ala. Code 1975, § 26-10C-1;

(42) Information and records acquired by child-death-review teams, pursuant to Ala. Code 1975, § 26-16-98;

(43) Abortion records and other information involving court proceedings conducted pursuant to Ala. Code 1975, § 26-21-4;

(44) The woman's identity in a proceeding under the Woman's Right to Know Act, pursuant to Ala. Code 1975, § 26-23A-11;

(45) Communications, documents, and other information proffered at a hearing to consider a complaint against a seller of insurance products, pursuant to Ala. Code 1975, § 27-7-38;

(46) An individual's criminal history, pursuant to Ala. Code 1975, §§ 27-9A-17, 27-25-4.6, and 41-9-642;

(47) Certain filings of captive insurers, pursuant to Ala. Code 1975, § 27-31B-3;

(48) The address of the child of a parent who has committed family or domestic violence or of the victim of family or domestic violence, pursuant to Ala. Code 1975, § 30-3-135;

(49) Identifying information of persons at risk from the effects of domestic violence or abuse, pursuant to Ala. Code 1975, § 30-3-167, and information identifying domestic-violence centers and facilities, including their locations, or identifying individuals served by such centers and facilities, pursuant to Ala. Code 1975, § 30-6-8;

(50) The location of an at-risk party or child in an interstate child-custody proceeding, pursuant to Ala. Code 1975, § 30-3B-209;

(51) The identifying information of an at-risk party or child in an interstate support or parentage proceeding, pursuant to Ala. Code 1975, § 30-3D-312.

(52) A domestic-abuse victim's home address, business address (if applicable), home telephone number, and business telephone number (if applicable), the home or business address or telephone number of any member of the victim's family or household, and any address that may reveal the confidential

location of a shelter for victims of domestic violence, pursuant to Ala. Code 1975, § 30-5-5;

(53) Records of domestic-violence-fatality review teams, pursuant to Ala. Code 1975, § 30-9-2;

(54) Records relating to a conviction or an adjudication in a DUI case for an individual under age 21, pursuant to Ala. Code 1975, § 32-5A-191(b);

(55) Reports or records received or made by the Alabama Law Enforcement Agency, the Alabama Department of Public Safety, or the Alabama State Driver License Medical Advisory Board regarding whether a person meets the medical, physical, or mental standards to be licensed as a driver, pursuant to Ala. Code 1975, § 32-6-43;

(56) Information regarding motor-vehicle registration, suspension, or reinstatement status, pursuant to Ala. Code 1975, § 32-7A-24;

(57) Marine police records relating to confidential reports and accident reports, pursuant to Ala. Code 1975, § 33-5-7;

(58) Information submitted during mediation in a dispute between Alabama and Georgia, pursuant to Ala. Code 1975, § 33-18-1;

(59) Information submitted during mediation in a dispute between any two or more of three states (Alabama, Florida, and Georgia), pursuant to Ala. Code 1975, § 33-19-1;

(60) Any records, information, or writings obtained or kept by the Alabama Board of Public Accountancy in connection with a peer-review program or a disciplinary investigation, pursuant to Ala. Code 1975, § 34-1-3;

(61) Attorney-client confidences, pursuant to Ala. Code 1975,

§ 34-3-20;

(62) Records of hearings involving the suspension or revocation of medical licenses, pursuant to Ala. Code 1975, § 34-24-361.1;

(63) Registration and circulation records and information concerning the use of public, public-school, or college and university libraries, pursuant to Ala. Code 1975, § 36-12-40;

(64) DNA records collected to identify criminal suspects or offenders, pursuant to Ala. Code 1975, § 36-18-27;

(65) Testimony taken in a fire investigation, pursuant to Ala. Code 1975, § 36-19-25;

(66) Confidential information received from an insurer in a fire investigation, pursuant to Ala. Code 1975, § 36-19-43;

(67) Complaints to the Alabama Ethics Commission, as well as any statement, evidence, or information received from the complainant, a witness, or other persons, pursuant to Ala. Code 1975, § 36-25-4;

(68) Information obtained by any Alabama Public Service Commission employee through official business, pursuant to Ala. Code 1975, § 37-1-13;

(69) Information obtained by any Alabama Public Service Commission employee in a motor-carrier examination, pursuant to Ala. Code 1975, § 37-3-25;

(70) Records of a county department of human resources pertaining to adoptions or children placed in foster homes, pursuant to Ala. Code 1975, § 38-1-4;

(71) Reports of criminal-history background received by the Alabama Department of Human Resources, pursuant to Ala. Code

1975, § 38-13-8;

(72) Identifying information of taxpayers in revenue rulings, pursuant to Ala. Code 1975, § 40-2A-5;

(73) Information in a drug and controlled-substance excise-tax return, pursuant to Ala. Code 1975, § 40-17A-13;

(74) Working papers used in the preparation of sworn reports of audit findings, pursuant to Ala. Code 1975, § 41-5A-19;

(75) Records of private hearings, as authorized by law, in administrative proceedings, pursuant to Ala. Code 1975, § 41-22-12;

(76) Appellate-mediation records, pursuant to Rule 8, Ala. R. App. Mediation;

(77) Privileged material prepared in anticipation of litigation by a party's attorney or representative, pursuant to Rule 26, Ala. R. Civ. P.;

(78) Depositions that have been excluded from access pursuant to state law, court rule (including Rule 26(c), Ala. R. Civ. P.), or court order;

(79) Information disclosed in the course of a mediation, pursuant to Rule 11, Ala. Civ. Ct. Mediation R.;

(80) Unexecuted search warrants that have been sealed as confidential;

(81) Attorney-discipline records, pursuant to Rule 30, Ala. R. Disc. P.;

(82) Privileged, confidential communications between an attorney and a client, pursuant to Rule 502, Ala. R. Evid.;

(83) Judicial disciplinary proceedings before the Alabama Judicial Inquiry Commission, pursuant to Article VI, § 156(b), Ala. Const. 2022, and Rule 5, Ala. R. P. Jud. Inq. Comm'n;

(84) Disciplinary records of city employees until there is a conclusion to the disciplinary proceedings;

(85) Grand-jury proceedings, books, and reports, pursuant to Rule 12.3(c)(4)(iii), Ala. R. Crim. P., and Ala. Code 1975, § 12-16-221;

(86) Portions of incident/offense reports, pursuant to Attorney General Opinions;

(87) Juror questionnaires in criminal proceedings, pursuant to Rule 18.2(b), Ala. R. Crim. P.;

(88) Affidavits and acknowledgements of paternity, pursuant to Ala. Code 1975, § 26-17-313;

(89) Pretrial-diversion-program records and communications between pretrial-diversion counselors and offenders, pursuant to Ala. Code 1975, § 12-17-226.6(g);

(90) Information filed with any court for in camera review; and

(91) Any other court record or information in a court record that is declared to be confidential or privileged by state law, these Rules, other court rule, or court order.

Task Force's Notes

Rule 201(A) exempts from public access a court record that consists of a document or contains information that has been designated as being privileged or confidential by either federal law or state law, these Rules, other court rule, or court order. Rule 201(B) contains a list of documents and information that have been designated as privileged and confidential

by state law, court rules, and other legal authority. That list may not be exhaustive, thus necessitating the catchall provision in subdivision (B)(91), and may identify documents or information that are not necessarily relevant to court records but relate to the court system in general.

Subdivisions (B)(5), (22), (23). Adult probation or parole records. These subdivisions specifically address probation or parole records involving adults. Probation records involving juveniles and youthful offenders are addressed elsewhere (*see, e.g.*, subdivision (B)(7)).

Subdivision (B)(12). Client/patient privilege. This subdivision references multiple statutes and court rules, including Ala. Code 1975, § 12-21-131(i), which discusses privileged and confidential information that an interpreter gathers from a deaf person pertaining to any pending proceeding in which that deaf person is a party; Ala. Code 1975, § 15-23-42, which pertains to the confidentiality of communications between a victim and a victim counselor; and Ala. Code 1975, § 34-8A-21, which concerns privileged communications and confidential relations between licensed professional counselors or certified counselor associates and their clients.

Regarding the reference to Rule 503, Ala. R. Evid., in this subdivision, Alabama statutory law has long recognized a psychologist-client privilege, *see* Ala. Code 1975, § 34-26-2, on which the psychotherapist-patient privilege of Rule 503 is based. That particular statutory privilege was amended in 1979 to include psychiatrists within its coverage. Section 34-26-2 provides that the confidential communications protected by the privilege recognized in that statute are to be "placed upon the same basis" as the confidential communications that are protected by the privilege that arises by law between an attorney and a client; consequently, Rule 503 is modeled after Rule 502, Ala. R. Evid., the rule providing for the corresponding attorney-client privilege, *see* 3 Charles W. Gamble et al., *McElroy's Alabama Evidence* § 414.01 (7th ed. 2020), and the language of Rule 503 is taken largely from Rule 503 of the Uniform Rules of Evidence.

The Alabama Rules of Evidence contain no general physician-

patient privilege. Such a privilege has never been recognized in Alabama, either by the legislature or by the courts. *See Duncan v. State*, 473 So. 2d 1203 (Ala. Crim. App. 1985). *See also* 3 Gamble et al., *supra*, § 413.01; Joseph A. Colquitt, *Alabama Law of Evidence* § 5.10 (1990). Communications with a physician may fall within the Rule 503 psychotherapist-patient privilege, however, if the physician is a licensed psychologist or a practicing psychiatrist. *See Ex parte Rudder*, 507 So. 2d 411 (Ala. 1987).

Subdivision (B)(18). Abuse and neglect files. This subdivision references Ala. Code 1975, § 26-14-8, which provides, in pertinent part:

"The reports and records of child abuse and neglect and related information or testimony shall be confidential, and shall not be used or disclosed for any purposes other than:

"....

"(4) For use by a court where it finds that such information is necessary for the determination of an issue before the court; or

"....

"(8) For use by an attorney or guardian ad litem in representing or defending a child or its parents or guardians in a court proceeding related to abuse or neglect of that child."

§ 26-14-8(c). The other statute referenced in the subdivision, Ala. Code 1975, § 15-1-2, provides, in pertinent part, that "court records of a child under the age of 18 years who is a victim of sexual abuse or exploitation shall not be open to the public, but shall be kept in the same manner as juvenile offender records are kept." § 15-1-2(b). For more on abuse and neglect records, *see Ex parte Esteban*, 361 So. 3d 202 (Ala. 2021).

Subdivision (B)(43). Minor abortion records. This subdivision mirrors the language in Ala. Code 1975, § 26-21-8, which declares that "[r]ecords and information involving court proceedings conducted

pursuant to [Ala. Code 1975, §] 26-21-4[,] shall be confidential." § 26-21-8(a).

Subdivision (B)(46). Criminal history. This subdivision references Ala. Code 1975, § 41-9-642, which prohibits any person, agency, corporation, or other legal entity that the Alabama Justice Information Commission determines lacks the "need to know" or the "right to know" from obtaining from the commission "criminal histories or other information that may directly or otherwise lead to the identification of the individual to whom such information pertains." The Supreme Court of Alabama confirmed this interpretation of the statute in *Mobile Press Register, Inc. v. Lackey*, 938 So. 2d 398 (Ala. 2006). The other statutes referenced in the subdivision, Ala. Code 1975, §§ 27-9A-17 and 27-25-4.6, apply to applications for insurance licenses, and those sections require that the Commissioner of the Alabama Department of Insurance treat fingerprints and criminal histories gathered during the application process as confidential.

Subdivision (B)(77). Attorney work product. In *Hickman v. Taylor*, 329 U.S. 495 (1947), the United States Supreme Court was confronted with the question whether the attorney-client privilege applied to all the information assembled by an attorney while preparing his case. Although the Court refused to apply the attorney-client privilege to all of a lawyer's files and mental impressions, the Court also refused to make discovery of those files and impressions proper in all instances. Attempting to strike a balance between the equally undesirable extremes of full disclosure and no disclosure provoked great uncertainty; however, Rule 26, Ala. R. Civ. P., sets forth the ground rules for striking that balance.

Rule 26(b)(3), Fed. R. Civ. P., has been described as an accurate codification of the Supreme Court's holding in *Hickman, supra*, and other federal-court decisions applying that holding. 8 Charles Alan Wright et al., *Federal Practice & Procedure* § 2023 (2010). Rule 26(b)(3), Ala. R. Civ. P., which is modeled on its federal counterpart: (1) defines the class of materials that are given protection as work product, (2) sets out the showings (substantial need and undue hardship) required to obtain discovery of work-product material, (3) gives absolute protection to an

attorney's mental impressions, legal theories, and the like, (4) allows a party to obtain a copy of his or her own statement without a special showing, and (5) creates machinery by which a person not a party to the litigation who has given a statement concerning the action may obtain a copy of his or her own statement. The holding of *Hickman, supra*, is no stranger to Alabama, having been recognized and applied in *Ex parte Alabama Power Co.*, 280 Ala. 586, 196 So. 2d 702 (1967).

Subdivision (B)(80). Unexecuted search warrants. This subdivision is based on Alabama Attorney General Opinion No. 90-67.

Subdivision (B)(82). Attorney-client privilege. Alabama's attorney-client privilege was originally a creature of the common law. See *Ex parte Enzor*, 270 Ala. 254, 117 So. 2d 361 (1960). That common-law privilege, however, has been embodied in a statute. Ala. Code 1975, § 12-21-161. See 3 Charles W. Gamble et al., *McElroy's Alabama Evidence* § 388.01 (7th ed. 2020). Except as otherwise specifically indicated, Rule 502, Ala. R. Evid., is intended to embody the same privilege expressed in the common law and in § 12-21-161. This rule, consequently, supersedes the preexisting statute. While generally carrying forward former Alabama law concerning the attorney-client privilege, Rule 502 is based largely upon the corresponding privilege expressed in Rule 502 of the Uniform Rules of Evidence.

Rule 502 is not intended to describe or in any way limit the attorney work-product doctrine. See Rule 26(b)(3), Ala. R. Civ. P.; *Hickman v. Taylor*, 329 U.S. 495 (1947); and *Ex parte May*, 393 So. 2d 1006 (Ala. 1981).

Subdivision (B)(84). City-employee disciplinary records. In *Water Works & Sewer Board of City of Talladega v. Consolidated Publishing, Inc.*, 892 So. 2d 859 (Ala. 2004), the Supreme Court of Alabama found that the disciplinary records of employees of a city water works and sewer board were exempt from disclosure under the Open Records Act, Ala. Code 1975, § 36-12-40 et seq., until the conclusion of those employees' appeals of the disciplinary actions taken against them.

Subdivision (B)(85). Grand-jury proceedings. For more on the confidentiality of grand-jury proceedings, see *Ex parte Birmingham News Co.*, 624 So. 2d 1117 (Ala. Crim. App. 1993), and *State v. Matthews*, 724 So. 2d 1140 (Ala. Crim. App. 1998).

Subdivision (B)(90). In camera review. For more on in camera review of documents, see *Ex parte Knox Kershaw, Inc.*, 562 So. 2d 250 (Ala. 1990). For discussion on the determination of the confidentiality of medical records as it relates to in camera inspection, see *Schaefer v. State*, 676 So. 2d 947 (Ala. Crim. App. 1995), and *Ex parte Alabama Dep't of Mental Health & Mental Retardation*, 819 So. 2d 591 (Ala. 2001).

RULE 202. CONFIDENTIAL INFORMATION

The following information contained in a court record is confidential information, as defined in Rule 103(E), and is, thus, exempt from public access:

(A) Complete Social Security numbers, employer- or taxpayer-identification numbers, and financial- or medical-account numbers of individuals;

(B) Financial documents, such as income-tax returns, W-2 forms, tax schedules, wage stubs, credit-card statements, financial-institution statements, check registers, and other financial information, pursuant to Ala. Code 1975, § 40-2A-10;

(C) The name of any minor child alleged to be the victim of a crime in any criminal proceeding against an adult;

(D) The address, telephone number, place of employment, and other related information about a criminal victim in a court file, pursuant to Ala. Code 1975, § 15-23-69; and

(E) In proceedings under the Protection from Abuse Act, Ala. Code 1975, § 30-5-1 et seq., the plaintiff's home address and, if applicable, business address; the plaintiff's home telephone number and, if

applicable, business telephone number; the home or business address or telephone number of any member of the plaintiff's family or household; or an address that would reveal the confidential location of a shelter for victims of domestic violence, pursuant to Ala. Code 1975, § 30-5-5.

Task Force's Notes

For the requirements regarding the redaction of identifying information, including the personal-data identifiers of minors, in appellate proceedings, *see* Rules 52 and 56, Ala. R. App. P.

Subdivision (A). Rule 5.1(a), Ala. R. Civ. P., requires that,

"[u]nless the court orders otherwise, in an electronic or paper filing with the court that contains a Social Security number, a taxpayer-identification number, or a financial-account number, a party or nonparty making the filing may include only the last four digits of any such Social Security number, taxpayer-identification number, or financial-account number."

Rule 5.1(b), however, provides specific exceptions to this redaction requirement.

ARTICLE III. PROCEDURES

RULE 301. PROCEDURE TO SEAL COURT RECORDS

(A) A party to an action may file a motion to seal a court record. Once such a motion has been filed, the trial court shall not seal the court record except upon a written finding, made after a hearing, that the moving party has proven, by clear and convincing evidence, that the information contained in the court record sought to be sealed falls within one of six categories:

(1) Trade secrets or confidential commercial research or information;

(2) Information related to national security;

(3) Information that, if released, may promote scandal or defamation;

(4) Information relating to wholly private family matters, such as divorce, child custody, or adoption;

(5) Information that poses a serious threat of harassment, exploitation, or other particularized harm to the parties to the action; or

(6) Information that poses potential harm to third parties not involved in litigation.

(B) If the information satisfies one of the six categories listed in subdivision (A), the trial court may seal the court record, or any part of the record, at any time. Once a court record has been sealed, it is exempt from public access, including access by an attorney of record, unless access is granted by court order.

(C) The trial court has an obligation to decide motions to seal on a case-by-case basis.

(D) If no party has filed a motion to seal, a trial court may still consider sealing a court record, but the court must still hold a hearing, as required in subdivision (A), and make a written finding that clear and convincing evidence exists to warrant the court record being sealed.

(E) The decision as to when a court record should be sealed is left to the sound discretion of the trial court, subject to appellate review.

Task Force's Notes

The procedure to seal court records, as set forth in subdivisions (A) and (B), mirrors the procedure described in *Holland v. Eads*, 614 So. 2d 1012 (Ala. 1993). The appellate standard of review dictated by subdivision (E) is based on the standard of review applied in *Thompson v. State*, 153 So. 3d 84, 107 (Ala. Crim. App. 2012) (quoting *In re Knoxville*

News-Sentinel Co., 723 F.2d 470, 474 (6th Cir. 1983)).

Rule 301 should not be construed as encroaching upon or otherwise restricting a party's ability to file a motion for a protective order regarding discovery, as permitted by Rule 26(c), Ala. R. Civ. P. The rule also should not be construed as encroaching upon or otherwise restricting a person's privilege to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person, as set forth in Rule 507, Ala. R. Evid.

If another process or procedure for sealing documents or otherwise restricting access to information in documents has been provided by state law or court rule, that process or procedure should be followed. *See, e.g.*, Ala. Code 1975, §§ 12-15-136 and 12-15-137 (pertaining to sealing or destroying certain juvenile-court records and files).

RULE 302. PROCEDURE TO PETITION FOR ACCESS TO SEALED COURT RECORDS IN CIVIL ACTIONS

(A) A party to a civil action may file a motion seeking access to a court record that has been ordered sealed by the court. Upon such a motion, the party that filed the sealed court record shall either provide the requesting party with the requested court record, or an unredacted copy thereof, or shall file a timely objection to the motion.

(B) A nonparty to a civil action may seek to intervene in the action for the purpose of seeking access to a court record that has been ordered sealed by the court.

Task Force's Notes

If another process or procedure for seeking access to sealed documents or information has been provided by state law or court rule, that process or procedure should be followed. Requests by members of the public for access to bulk or compiled data is governed by Rule 33, Ala. R. Jud. Admin.

RULE 303. PROCEDURE TO REDACT INFORMATION

(A) Unless the court orders otherwise, a party or nonparty filing a court record that contains a complete Social Security number, a taxpayer-identification number, or a financial-account number shall redact the information so that only the last four digits of any such Social Security number, taxpayer-identification number, or financial-account number appear.

(1) This redaction requirement does not apply to the following:

(a) A financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;

(b) Information contained in the record of any administrative, agency, or court proceeding, if that record was not subject to the redaction requirement when originally created; and

(c) A filing governed by or subject to a statute, rule, regulation, or other provision of law that requires the inclusion of the information that would otherwise be subject to redaction by this rule.

(2) Upon a showing of good cause, the court may order the redaction of additional information.

(B) A court may order that a court record be made under seal. The court may later unseal the court record or order the party that filed the court record to produce a redacted version for public access.

(C) A judge of probate, pursuant to Ala. Code 1975, § 12-13-22, may redact, remove, or otherwise make illegible a Social Security number or a date of birth appearing in connection with a person's name that appears in any court record, with the exception of federal and state tax liens, that conveys any interest in real or personal property or purports to encumber an interest in real or personal property and is recorded in the probate

court or any other court record, including military-discharge forms, that is filed in the probate court and is subject to public access.

(1) Notwithstanding the foregoing, dates of birth shall not be redacted, removed, or otherwise made illegible on marriage certificates.

(2) A judge of probate may make such court records available to the public in electronic format and publish them on the Internet.

ARTICLE IV. FEES

RULE 401. COURT FEES

(A) The electronic docket and court records filed in each action in the district and circuit courts are available for viewing by the public, at no charge, at the court clerk's office during regular business hours.

(B) Except when a party to an action, his or her attorneys, or a governmental agency requests a copy of a court record, a court clerk may charge a fee for a copy of the court record.

(1) The Administrative Director of Courts shall set the fees for copies of court records from the district and circuit courts.

(2) If the requester asks that the court clerk forward copies by mail, the clerk shall not pay for postage. Any postage fees are the responsibility of the requester.

(C) Remote access to the court records of district and circuit courts is available via a subscribers' service.

(D) Any fees for access to court records filed in the Supreme Court of Alabama, the Alabama Court of Criminal Appeals, or the Alabama Court of Civil Appeals shall be governed by rule or order of the Supreme Court of Alabama.