

MAGISTRATE COURT

PROCEDURE FOR PUBLIC INSPECTION AND SEALING OF COURT RECORDS

- 1.0 **AUTHORITY:** Rule 2-112 NMRA of the Magistrate Court Rules of Civil Procedure and Rule 6-114 NMRA of the Magistrate Court Rules of Criminal Procedure.
- 2.0 **PURPOSE:** To establish procedures for the protection of certain personal identifier information in Court Records, the sealing and unsealing of Court Records, and for assuring the Public's continued access to Court Records consistent with Rules 2-112 and 6-113 NMRA and any Orders of the Court regarding the same.
- 3.0 **DEFINITIONS:**
- 3.01 **Citations** – shall mean and include Uniform Traffic Citations, DWI Citations, zoning Citations, Game and Fish Department Citations, and other misdemeanor Citations.
- 3.02 **Counsel of Record** – shall mean and refer to an individual licensed to practice law or authorized pursuant to a *pro hac* vice order to practice law in the State of New Mexico and who is representing a Party in a case before the Court, and shall also mean and include the law firm or state agency (such as the City Attorney's Office, the District Attorney's Office, the Attorney General's Office, the Public Defender's Office, etc.) for whom the individual attorney is employed.
- 3.03 **Court** – shall mean and refer to the Magistrate Court.
- 3.04 **Court Case File or Case File** – shall mean and refer to the file folder that contains the Court Record for each litigation case filed in the Court.
- 3.05 **Court Record** – shall mean and refer to all or any portion of a document, paper, Pleading, exhibit, transcript, or other material filed or Lodged with the Court, and the register of actions and docket entries used by the Court to document the activity in a litigation case filed in the Court.

Note: The Court Record does not include other records in the possession of the Court that are not filed in a lawsuit pending before the Court such as personnel files, administrative files, finance files etc.

- 3.06 **Court Personnel** – shall mean and include all Employees of the Court.



3.07 Criminal Justice Agency – shall mean and include local, state, tribal, and federal agencies authorized by law to collect or use Protected Personal Identifier Information and therefore entitled to Privileged Access to such protected information.

Note: The following are examples of some, but not all, Criminal Justice Agencies: Police Department, County Sherriff's Department, New Mexico Motor Vehicle Department, Taxation and Revenue Department, New Mexico Department of Transportation – Traffic Safety Bureau, District Attorney's Office, Detention Center, Department of Corrections, Administrative Office of the Courts, and any courts.

3.08 Employees – shall mean and refer to any Employee of the Court whether exempt, non-exempt, part-time, full-time, temporary or permanent.

3.09 Judges – shall mean and refer to the Judges of the Court including pro tempore Judges.

3.10 Lodged – shall mean and refer to a Court Record that is temporarily deposited with the Court, but which is not filed or made available for Public Access.

3.11 Movant – shall mean and refer to a Party pro se, Counsel of Record, or any other individual or entity that files a Motion with the Court.

3.12 Party or Parties – shall mean and refer to any individual or entity by or against whom a lawsuit is brought and shall include, but is not limited to, a plaintiff, defendant, petitioner, respondent, counter-claimant, counter-defendant, cross-claimant, cross-defendant, third-party plaintiff, third-party defendant, guardian ad litem or conservator, appellant, or appellee.

3.13 Pleading – shall mean and refer to a document filed with a Court by a Party or Counsel of Record, which pertains to litigation pending before the Court and typically contains written allegations, and which becomes a part of the Court Record and is kept in the Court Case File.

3.14 Privileged Access – shall mean and refer to access to Court Records and Court Case Files that is greater than that afforded to the Public.

3.15 Prosecution – shall mean and refer to Parties and Counsel of Record who file and pursue criminal cases against defendants and their Counsel of Record before the Court.

3.16 Protected Personal Identifier Information – shall mean and refer to:

3.16a All but the last four (4) digits of a:

- (1) Social security number;
- (2) Taxpayer-identification number;
- (3) Financial account number; or
- (4) Driver's license number; and

3.16b All but the year of a person's date of birth.

Note: It is fine for the Public to see personal information as follows:

SS # XXX-XX-4298	DOB: XX/XX/1984
NM DL# XXXXX3264	Bank Account No. XXXXX3002

- 3.17 Public** – shall mean and refer to any person or entity, except the Parties to a proceeding, Counsel of Record and their employees, Court Personnel or Judges.
- 3.18 Public Access** – means the inspection and copying of Court Records contained in Court Case Files by the Public.
- 3.19 Redacted** – shall mean and refer to when information has been removed or blotted out so that it cannot be seen.
- 3.20 Sealed** – shall mean and refer to a Court Record for which Public Access is limited by Order of the Court or as required by Rules 2-112 and 6-114 NMRA or this SOP.
- 3.21 Unredacted** – shall mean and refer to when all information is fully visible in document or Pleading.

4.0 POLICY: It is the policy of the Court to afford the Public Access to Court Records contained in Court Case Files subject to the restrictions on access to Protected Personal Identifier Information and to allow for the Lodging, Sealing, and Unsealing of Court Records Consistent with Rules 2-112 and 6-114 NMRA. The Courts recognize that the restrictions on Public Access to Protected Personal Identifying Information as set forth in the Rules were intended to combat the ever-increasing problem of identity theft.

5.0 PROCEDURES:

5.01 Access to Court Records:

5.01a Public Access: Generally, Court Records are subject to Public Access unless:

- (1) They have been Sealed by Order of the Court;

- (2) They have been Sealed automatically because they contain Protected Personal Identifier Information;
- (3) They have been Lodged; or
- (4) They are Citations.

5.01b Party and Counsel of Record Access:

- (1) **Same Access as Public to Court Records Generally:** Parties and Counsel of Record have the same access and restrictions on access as the Public to all Court Records as set forth in Section 5.01a above;

Note: This means that if James Smith, Esq. wants to view a Court Case File in Case No. DW145910 of which neither he nor his law firm is Counsel of Record, then Mr. Smith cannot view any Sealed Pleadings in the Case unless he files a Motion to Unseal and his Motion is granted.

- (2) **Privileged Access to Court Records in Cases where they are the Party or Counsel of Record:** Parties and Counsel of Record have Privileged Access to Court Records of the cases in which they are a Party or have entered an appearance as Counsel of Record on that case or counsel has been appointed by an Order of Appointment; and such Privileged Access includes access to any Citations, and any Lodged or Sealed records in those Court Case Files, unless:

- i. **Order has Sealed from Viewing by a Party or Counsel of Record:** An Order of the Court has Sealed all or any portion of a Court Record from access by that Party or Counsel of Record; or

Note: This means that if James Smith, Esq. wants to view a Court Record in Court Case File No. DV145910 of which he is Counsel of Record, then unless there is an Order Sealing a Pleading or other Court Record in that case, which restricts his or his client's access to that Record, then Mr. Smith can view the entire Court Record for Case No. DV145910.

- ii. **In Camera Review by Judge:** The Court Record has been Lodged pursuant to a Motion to Seal or other motion requesting an *in camera* review of the Court Record by the Judge and per the terms of the Motion, the other Parties or Counsel of Record are not

to view the Lodged Court Record as it is for the Judge's eyes only.

5.01c Criminal Justice Agency Access:

(1) **Same Access as Public to Court Records Generally:** Criminal Justice Agencies have the same access and restrictions on access as the Public to all Court Records as set forth in Section 5.01a above;

(2) **Privileged Access to Protected Personal Identifier Information:**

Criminal Justice Agencies have Privileged Access to Protected Personal Identifier Information to the extent that they are authorized by law to collect or use such information. Therefore, if Court Records are Sealed because they contain Protected Personal Identifier Information, Criminal Justice Agencies typically may have access to those records, unless there is an Order Sealing the Records, which does not allow access to Criminal Justice Agencies.

Note: This means, for example, that when the Court issues a warrant, full and complete social security numbers, dates of birth and/or other personal identifier information may be included on the warrant and provided to the County Sheriff's Department, as a Criminal Justice Agency.

(3) **Privileged Access to Court Records in Cases where they are the Party:** Criminal Justice Agencies have Privileged Access to Sealed Court Records of the cases in which they are a Party. (See Section 5.01b(2) above.)

5.01d Court Personnel Access: Unless the Court has ordered otherwise, Court Personnel generally may have Privileged Access to all Court Records, including Lodged or Sealed Court Records, and those Court Records containing Protected Personal Identifier Information; however, such Privileged Access is only to the extent that it is necessary for the performance of their duties for Court and not merely to satisfy some personal curiosity.

5.02 Protected Personal Identifier Information:

5.02a General Prohibition on Inclusion of Protected Personal Identifier Information in Court Records; Exceptions: Court Records filed with the Court shall not contain Protected Personal Identifying Information, except as follows:

- (1) **Waiver by Party:** The Protected Personal Identifier Information is the Party's own information;

Note: When a Party or that Party's Counsel of Record includes the Party's own Protected Personal Identifying Information in a Court Record filed with the Court, the Party is considered to have waived the protections from disclosure of such information provided by Rules 2-112 and 6-114 NMRA and this SOP;

- (2) **Citations:** The Pleading is a Citation;

- (3) **Criminal Complaints filed by the Prosecution or Other Pleadings Requiring the Inclusion of Protected Personal Identifier Information:** The Court Record is a document that by its very nature requires the inclusion of Protected Personal Identifier Information and is being filed by the Prosecution;

Note: In a criminal case, the Prosecution may file Redacted and Unredacted copies of criminal complaints and other such Pleadings that charge the violation of a criminal statute or ordinance. In accordance with Rule 6-114(C)(1)(C) NMRA, Unredacted copies of criminal complaints or other such Pleadings filed by the Prosecution are automatically Sealed.

- (4) **Order by the Court:** A Judge has entered an Order requiring Protected Personal Identifier Information be included in a Court Record filed in a Court Case File; or

Note: If the Court orders the Parties to file documents containing Protected Personal Identifier Information, the order would most likely include a requirement that the party filing the information submit Redacted and Unredacted copies of the same, in which case the Unredacted copy would be automatically sealed.

- (5) **Other Reasons:** Party or Counsel of Record has some legal or other basis to file Protected Personal Identifier Information with the Court.

5.02b **Responsibility of Persons Creating the Court Record Containing Protected Personal Identifier Information:** It is the responsibility of the Party, Counsel of Record, or Court Personnel creating/filing the Court Record to ensure that:

- (1) It does not contain Protected Personal Identifier Information; or
- (2) If it does contain Protected Personal Identifier Information, to take reasonable and appropriate steps consistent with this SOP or as may be ordered by a Judge to protect that information from Public disclosure, unless it is the intent of the Party to whom the information applies to waive those protections.

5.02c Restricting Public Access to Protected Personal Identifying Information:

- (1) **Submission of Redacted and Unredacted Pleadings by Parties and Counsel of Record:** Parties and Counsel of Record are required to submit Redacted and Unredacted copies of Court Records to the Court when:
 - i. The Court Record is a document that by its very nature requires the inclusion of Protected Personal Identifier Information and is being filed by the Prosecution as described in Section 5.02a(3);
 - ii. The Court has ordered the Parties or Counsel of Record to file Protected Personal Identifying Information with the Court as described in Section 5.02a(4); or
 - iii. The Parties or Counsel of Record have some legal or other basis for including Protected Personal Identifying Information in a Court Record as described in Section 5.02a(5).
- (2) **Automatic Sealing:** The following Court Records are automatically Sealed:
 - i. Unredacted Pleadings or Court Records containing Protected Personal Identifying Information that are clearly identified as such; and
 - ii. Citations.

5.02d Processing Court Records Containing Protected Personal Identifying Information: When Court Personnel receive a Pleading or other Court Record they must:

- (1) Examine the Court Record to see if on its face it contains PPII or determine if the Court Record is one of the types of documents described in 5.02a(2)-(5) above;
- (2) If both Redacted and Unredacted copies of the Pleading or other Court Record are submitted, docket as one entry in the register of actions with a note of (Sealed and Unsealed);
- (3) Place the Unredacted copy in an envelope;
- (4) Label the envelope as follow: "Sealed File Containing Protected Personal Identifying Information for Privileged Access Only in State v. Jane Doe, Case No. CR-123710" and close the envelope with the prongs;
- (5) If accompanied by a Redacted copy, place the Redacted copy on the right side of the court file; and
- (6) Restrict access to that Sealed file consistent with Section 5.01 above.
- (7) If only the unredacted copy is submitted, docket and note as (Sealed) in the register of actions and file as described above.

5.02e Restrictions on Court Personnel Creating or Placing in Court Case Files Documents Containing Protected Personal Identifier Information:

- (1) **General Prohibition:** Court Personnel shall not knowingly place or file a Pleading or document containing Protected Personal Identifier Information in a Court Case File except:
 - i. As set forth in Section 5.02a of this SOP; and
 - ii. Provided that steps are taken consistent with this SOP to protect the Protected Personal Identifier Information from Public Access.

5.02f Court Personnel Not Required to Read Pleadings or other Court Records filed by Parties or Counsel of Record for Compliance with the Rules: Court Personnel are not required to read Pleadings or other Court Records filed with the Court to determine whether or not they contain any Protected Personal Identifying Information or otherwise are in compliance with Rules 2-112 and 6-114 NMRA or this SOP. Court Personnel are also not required to review or screen Court Records to prevent the disclosure of Protected Personal

Identifying Information before they are made available to the Public.

Note: However, if a Pleading or Court Record is clearly identified as Sealed, Lodged, Unredacted and accompanied by a Redacted copy, Court Personnel must take steps consistent with this SOP to protect such information from Public Access.

5.03 **Procedure for Motions to Seal and Lodging Court Records:**

5.03a **Submission of Motions to Seal and Lodged Court Record by Parties, Counsel of Record, or any Member of the Public:** If a Party, Counsel of Record, or any member of the Public wants to Move to Seal all or any part of a Court Record, then the Movant must:

- (1) **File Motion to Seal:** File a Motion to Seal;
- (2) **Lodge in Sealed Envelope:** Lodge all or any portion of the Court Record, which the Movant wants Sealed (unless good cause exists for not Lodging the Court Record), by placing the Pleading, Document, or Court Record in an envelope labeled with the caption, case name (*e.g. State v. John Doe*), case number of the matter, the title of the document being filed and which states that the document is "*Conditionally Under Seal Subject to Outcome of Pending Motion to Seal;*" and
- (3) **Submit Redacted and Unredacted Copies of the Lodged Court Record:** When possible, submit a Redacted copy of the Court Record being Lodged so that it may be made available for Public Access.

Note: For example, if it is only one paragraph of a Pleading that a Movant wants to Seal, the Movant may submit a Redacted copy of the Pleading so that the Public will have access to the Pleading without having access to the protected information contained in the Unredacted copy being Lodged and secured within a sealed envelope clearly identified as Lodged in accordance with Section 5.03a(2).

5.03b **Receipt and Processing of Motions to Seal and Lodged Court Records by Court Personnel:** If Court Personnel receive a Motion to Seal and a Lodged Court Record, they must:

(1) **File the Motion and any other Pleadings:** File the Motion to Seal and any other Pleadings being submitted with the Motion (e.g. any Redacted Pleadings)

(2) **Docket the Motion and any Other Pleadings:** Docket the Motion and any other Pleadings, including any Redacted Pleadings;

Note: When docketing a Motion to Seal, clerks should not enter any PPII that the motion would seal.

(3) **Update Court Computer with Contact Information of Person Filing Motion to Seal:** Because Motions to Seal can be filed by anyone whether that person or entity is a Party to a case, if the Motion is filed by a Non-Party, then Court Personnel must update the Court's computer case management system on a comment line with the contact information (name, address, and phone number) of the Movant filing the Motion to Seal;

Note: If the Court grants the Motion to Seal, then later if someone files a Motion to Unseal, then the same individuals who received notice of the Motion to Seal also must be served with the Motion to Unseal.

(4) **Review the Lodged Envelope:** Review any Lodged envelope provided by the Movant filing the Motion to Seal and confirm that it is clearly labeled with the following information:

i. The caption of the case ;

ii. The name of the case ;

iii. The Court case number ;

iv. The title of the Pleading or Court Record being filed – unless title is not included as it is proposed to be sealed; and

v. Language to the effect that the Lodged Document is "*Conditionally Under Seal*" and is "*Subject to a Motion to Seal.*"

(5) **Do Not Endorse – Only Date Stamp the Lodged Envelope:** The Lodged envelope is not to be filed into the case as it is only temporarily being Lodged pending the Court's ruling on the Motion to Seal. Therefore, Court Personnel should only

stamp the outside of the Lodge envelope "*Received [insert date].*"

- (6) **Secure the Lodged Envelope in the Court Case File:** The Lodged envelope should be placed in the Court Case File until the Judge has ruled on the Motion to Seal;
- (7) **Secure any Unredacted Court Records from Public Access:** If any Unredacted Court Records are submitted with Redacted Court Records, Court Personnel should secure the Unredacted Court Records in the same manner that a Lodged Pleading is temporarily Sealed pending the outcome of the Motion to Seal;

Note: Unlike a Lodged Pleading where it is date-stamped received, but not filed into a case, typically, both the Redacted and Unredacted copies of a Pleading will be file stamped.

- (8) **Notice of Hearing:** As non-parties may file Motions to Seal (and Unseal), please take care that the Movant, as well as Parties and Counsel of Record, receives any Notices of Hearing (and later, any Orders on the Motions to Seal or Unseal).
- (9) **If the Court Grants the Motion to Seal, then the Court Record Should be Sealed Consistent with the Order to Seal:** If the Judge grants the Motion to Seal, then Court Personnel should carefully review the Order to Seal and should:
 - i. Seal that part of the Court Record that the Court has ordered be Sealed;
 - ii. If individual docket entries are to be Sealed, then as to each docket entry, insert a new replacement entry consistent with the Order in the Court's computer system (*e.g. if the Affidavit of P. Cortez is to be Sealed, then when identifying the Affidavit in the Court's computer, it could just state "Sealed Pleading" or "Sealed Affidavit" or whatever language the Judge has Ordered*);
 - iii. If individual documents in a Court Case File are to be Sealed or if a Lodged Court Record is to be Sealed, secure those documents in an envelope (if not already in an envelope) label it "*Sealed by Order of the Court on [insert date] [insert caption of case, e.g.*

State v. John Doe, CR 10-12345" and restrict access to the Sealed portions of the Court Record accordingly;

- iv. File a Court Record, which was previously Lodged and is now to be Sealed, by stamping an endorsement on both the envelope and the Record inside;
- v. Docket the Court Record that was previously Lodged and now Sealed on the Court's computer system;

Note: Remember, the way a Pleading is identified in the Court's computer system is how it is seen by the Public on the publically accessible Court Case Lookup system on the Internet. Therefore, the reference to the Sealed Court Record in the docketing should not disclose the details of what is in the Sealed Pleading. If too much detail is used in the docketing, such would defeat the purpose of Sealing the document.

- vi. Docket the Order to Seal, the same as any other Order, except that additional care must be taken not to disclose what has been Sealed, and notify the Parties, Counsel of Record, and Movant, if other than a Party or Counsel of Record, that the Motion has been granted and provide them with a copy of the Order;
- vii. Attach the Order to Seal to the outside of the envelope containing the Sealed Court Records (unless all or part of the Order has been Sealed, in which case the Order must be Redacted and the Redacted copy of the Order stapled outside the envelope and the Unredacted copy placed inside);
- viii. If the entire Court Case File is to be Sealed, change the name of the case on the publicly accessible Case Lookup to "*Sealed Case*" or whatever name the Judge has Ordered the case be re-named, but the Court case number should remain the same; and then clearly label the Court Case File as "*Sealed by Order of the Court on [insert date] [insert caption of case, e.g. State v. John Doe, CR 10-12345,*" store all of the Court Records in an envelope(s) clearly labeled Sealed as set forth above, keep the Sealed envelope(s) in the Court Case File, and restrict access accordingly;

- ix. Identify in case notes in the Court's computer case management system and on the Sealed Court Case File who is authorized to have access to the Sealed Court Record(s), such as only the Judge, or also Court Personnel, Parties, Counsel of Record, or others;
- x. Verify that the Court computer system clearly identifies the Parties, Counsel of Record, and any others identified in the Order to Seal and who are entitled to receive notice if a later Motion to Unseal is filed; and

Note: The name, address and phone of the Movant, if other than a Party or Counsel of Record can be included on the comment line in the Court's computer case management system.

- xi. Verify that all portions of the Court Record ordered Sealed have been Sealed, both electronically and in the paper Court Case File consistent with the Order to Seal.

(10) **If the Court Denies the Motion to Seal, then the Lodged Record Should be Returned to the Movant:** If the Court denies the Motion to Seal, Court Personnel should:

- i. Return any Lodged Court Record to the Movant who filed the Motion to Seal; unless the Movant has decided to proceed with filing the Lodged Court Record even though it will not be Sealed; and

Note: If possible and to save on postage, Court Personnel should return the Lodged Record in open court during the hearing on the Motion to Seal after the Judge has denied the Motion. Otherwise, the Lodged Court Record should be mailed to the Movant at the address on the Motion to Seal.

- ii. Docket the Order Denying the Motion to Seal in the same way that any other Order is docketed, and notify the Parties, Counsel of Record, and Movant, if other than a Party or Counsel of Record, that the Motion has been denied and provide them with a copy of the Order.

Note: If the Movant that filed the Motion to Seal was not a Party or Counsel of Record, but was some other

person or entity, that Movant is considered to have entered a limited entry of appearance only for the purpose of the Motion to Seal. Therefore, any other notices that the Court may send out, which do not pertain to Sealing, do not need to be sent to the Movant.

5.04 **Procedure for Motions to Unseal and Unsealing of Court Records:**

5.04a **Submission of Motions to Unseal a Court Record by Parties, Counsel of Record, or any Member of the Public:** If a Party, Counsel of Record, or any member of the Public wants to Move to Unseal all or any part of a Court Record, then Movant must:

(1) **File Motion to Unseal:** File a Motion to Unseal; and

Note: If necessary to prevent disclosure, the Motion, and any Response or Reply Briefs may be filed in duplicate with both Redacted and Unredacted versions being submitted to the Court.

(2) **Provide Proper Notice of the Motion:** The Parties, Counsel of Record and any other individual or entity who was the Movant of the prior Motion to Seal to which the Motion to Unseal Applies are entitled to receive Notice of any Motion to Unseal and notice of any hearing on the Motion.

5.04b **Receipt and Processing of Motions to Unseal by Court Personnel:** If Court Personnel receive a Motion to Unseal a Court Record, they must:

(1) **File the Motion and any other Pleadings:** File the Motion to Unseal and any other Pleadings being submitted with the Motion (e.g. any Redacted Pleadings) into the Court Record;

(2) **Docket the Motion and any Other Pleadings:** Docket the Motion and any other Pleadings, including any Redacted Pleadings;

Note: When docketing a Motion to Unseal, care should be taken by Court Personnel not to use too much detail as such could reveal the nature or contents of the Court Record that has been Sealed and to which the Motion to Unseal applies.

(3) **Update Court Computer with Contact Information of Person Filing Motion to Unseal:** Because Motions to Unseal can be filed by anyone whether that person or entity is a Party to a

case, if the Motion is filed by a Non-Party, then Court Personnel must update the Court's computer case management system on a comment line with the contact information (name, address, and phone number) of the Movant filing the Motion to Unseal;

- (4) **Secure any Unredacted Court Records from Public Access:** If any Unredacted Court Records are submitted with Redacted Court Records, Court Personnel should secure the Unredacted Court Records in the same manner that a Lodged Pleading is temporarily Sealed, pending the outcome of the Motion to Unseal;

Note: Unlike a Lodged Pleading where it is date-stamped received, but not filed into a case, typically, both the Redacted and Unredacted copies of a Pleading will be file stamped.

- (5) **If the Court Grants the Motion to Unseal, then the Court Record Should be Unsealed Consistent with the Order to Unseal:** If the Judge grants the Motion to Unseal, then Court Personnel should carefully review the Order to Unseal and should:

- i. Unseal that part of the Court Record that the Court has ordered be unsealed;
- ii. If individual docket entries are to be unsealed, then as to each docket entry, insert a new replacement entry consistent with the Order to Unseal in the Court's computer system (*e.g. the newly unsealed pleading was previously called Sealed Pleading or Sealed Affidavit, it can now be called the title of the Pleading, such as Affidavit of P. Cortez or whatever language the Judge has Ordered*);
- iii. If individual documents in a Court Case File are to be Unsealed, they may be removed from any Sealed envelope and placed visible in the Court Case File and the Public may have access to such Court Record accordingly;
- iv. Docket the Court Record that was previously Sealed now Unsealed on the Court's computer system;
- v. Docket the Order to Unseal, the same as any other Order, and notify the Parties, Counsel of Record, and Movant, if other than a Party or Counsel of Record,

that the Motion has been granted and provide them with a copy of the Order;

- vi. If the entire Court Case File is to be Unsealed, change the name of the case on the publicly accessible Case Lookup to whatever the case would have been called if it had not been Sealed, e.g. *State v. John Doe, CR 10-12345*; remove the Court Record that is to be unsealed from the Sealed envelope and place visibly in the Court Case File and allow Public Access accordingly;

Note: Court Records containing Protected Personal Identifier Information will remain Sealed under the Rules.

- vii. Update the Court's computer system to reflect that the Public Access is allowed to the recently unsealed Court Case File;

- viii. Verify that the Court computer system clearly identifies the Parties, Counsel of Record, and any others identified in the Order to Unseal and who are entitled to receive notice if a later Motion to Seal is filed with respect to the Court Records now unsealed; and

- ix. Verify that all portions of the Court Record ordered unsealed have been unsealed, both electronically and in the paper Court Case File consistent with the Order to Unseal.

(6) **If the Court Denies the Motion to Unseal:** If the Court denies the Motion to Seal, Court Personnel should:

- i. Continue to restrict Public Access to the Court Record that the Movant unsuccessfully sought to unseal; and
- ii. Docket the Order Denying the Motion to Unseal in the same way that any other Order is docketed, and notify the Parties, Counsel of Record, and Movant, if other than a Party or Counsel of Record, that the Motion has been denied and provide them with a copy of the Order.

Note: If the Movant that filed the Motion to Unseal was not a Party or Counsel of Record, but was some other person or entity, that Movant is considered to

have entered a limited entry of appearance only for the purpose of the Motion to Unseal. Therefore, any other notices that the Court may send out, which do not pertain to Unsealing, do not need to be sent to the Movant.

5.06 Procedure for Viewing Court Records : Before making an entire Court Case File or a Sealed or Lodged Court Record from a Court Case File available for viewing by anyone, Court Personnel should:

5.06a Request to View Court Record Form: Ask the person requesting to view a file to complete a Request to View Court Record ;

5.06b Request Valid Identification: Ask the person requesting to view a file to provide you with a valid government issued photo identification;

5.06c Review Form and Identification: Review the Request to View Court Records Form and Identification and compare to the Court's computer case management system to determine if the person is a Party, Counsel of Record, employee of a Counsel of Record, or employed by a Criminal Justice Agency;

5.06d Review Court Case File; Remove Lodged or Sealed Envelopes, as Appropriate: Before making the Court Case File available for viewing, review the File and remove any Citations or any Sealed or Lodged Court Records or envelopes containing such records, or any Unredacted documents containing Protected Personal Identifier Information that are Sealed in the envelope – unless the person is authorized to view such information as set forth in this SOP or in any Order of the Court contained in the Court Case File the person is asking to view;

Note: Make sure any Sealed or Lodged envelope is clearly labeled with the Court Case number before you remove it from the Court Case File so that it can be easily returned to the correct Court Case File after the person has completed viewing the File.

5.06e Procedure for Citations:

(1) **Citations are Automatically Sealed**: Because Citations are automatically Sealed by Rule 6-114(c)(4) NMRA, it is not necessary for a Party or Counsel of Record to Lodge a Citation, submit a Redacted Citation with the Unredacted Citation for filing with the Court, or file the Citation in a Sealed envelope.

Note: Court Personnel must learn to recognize the different types of Citations and must take steps to ensure that they

are not disclosed to the Public. Citations are Sealed wherever they are located – not just in Traffic cases - so a Citation that has been filed in a CR, DWI, or DV case is automatically Sealed and should not be made available to the Public.

(2) **Receipt of Citations; Non-Disclosure to the Public:** As a Pleading that is automatically Sealed, Court Personnel may not allow the Public to view a Citation.

(3) **Provision of Citation Information to the Public:** Instead of providing the Citation, Court Personnel should provide to the Public, upon request and to the extent that such information is available, a computer print-out of the following information regarding the Citation:

- i. Court case number;
- ii. Citation number;
- iii. Defendant's name;
- iv. Defendant's address;
- iv. Defendant's year of birth;
- v. Charges filed against the Defendant;
- vi. Date of the charges;
- vii. Name of the charging officer or police department;
and
- viii. Whether the Court case is open or closed.

(4) **Remove Citation from Court Case File Before Providing to the Public:** If a member of the Public is requesting to see the other Court Records in a Court Case File, then the Citation must be removed and the Court Case File made available for viewing. The Citation will then have to be returned to the Court Case File after the member of the Public has completed viewing the File.

5.06f Procedure for Specific Documents: If a member of the Public is requesting to see a specific document which is sealed, Court Personnel must give the person the Request for Unredacted Document From Magistrate Court Form.

5.07 Procedure for Sealed or Lodged Court Records if the Case is on Appeal: When a Court case that contains Sealed or Lodged Court Records is appealed, Court Personnel should:

5.07a Follow the Same Steps as for any Other Appeal: Process the appeal and copy the Court Record for transmission to the District Court the same as for any other appeal; and

5.07b Sealed or Lodged Court Records Remain Sealed/Lodged on Appeal: Place the copies of any Sealed or Lodged Court Records in an envelope and label it in the same manner as the Court's original envelope; and then transmit the Sealed or Lodged envelope to the District Court with the rest of the record on Appeal, where they will remain Sealed or Lodged on appeal.

5.08 Procedure for Sealed Court Records when a Case is Closed: All records that are Sealed at the time a Court Case File is closed shall remain Sealed. If the file is later removed from storage, its viewing by the Public or others shall be subject to the terms of any Order to Seal or by operation of Rules 2-112 and 6-114 NMRA or this SOP.

5.09 Procedure for Responding to Phone Inquiries or Inquiries in Person at the Court Regarding Sealed or Lodged Court Records or Sealed Court Cases or Regarding Protected Personal Identifier Information:

5.09a Care and Caution Should be Taken Not to Discuss Sealed Cases or Matters over the Phone or Where Others Can Overhear if Present in the Court: Court Personnel should not discuss Sealed Cases or the contents of any Lodged or Sealed Court Records with anyone outside of the Court over the phone or where the conversation can be overheard by unauthorized persons in the Court. Even if a person claims to be a Party or Counsel of Record, he must come in person to the Court and request to view the Court Case File as Court Personnel cannot verify identities over the phone.

5.09b Response to Phone Inquiries Regarding Sealed Cases or Sealed or Lodged Court Records: Court Personnel should respond to phone inquires about Sealed or Lodged cases or Court Records in a manner like this unless the caller is identified and the phone number verified as someone who has privileged access to the file, such as a Criminal Justice Agency:

"This is a Sealed case [or a Sealed/Lodged Court Record]; and therefore, I cannot discuss with you or provide any information over the phone. If you would like, you may come to the Court and request to view the file, though I must caution you that only

authorized individuals as identified by the Judge on this case may view the Court Case File [or Sealed Court Record]."

5.09c Protected Personal Identifier Information: Unless Court Personnel has initiated a call to a Criminal Justice Agency or has received a call from a Criminal Justice Agency, which phone number has been verified and the identity of the person is known to the Court Personnel, Court Personnel should never give out any Protected Personal Identifier Information about any individual, whether a defendant or otherwise, either over the phone or in person at the Court.

5.10 Sanctions/Disciplinary Action for Violation of Sealing Rules: In accordance with Rules 2-112 and 6-114 NMRA, any person or entity who knowingly discloses any material obtained from a Sealed or Lodged Court Record may be held in contempt of Court or subject to other sanctions as the Court deems appropriate. Failure by Court Personnel to comply with these procedures may result in disciplinary action up to and including termination from employment.

Approved effective as of July 1, 2010.

Administrative Office of the Courts



Arthur W. Pepin, Director