

## TRAP 9 REVISIONS

### Rule 9.2

- (c)(3) Exceptions. ~~Documents filed under seal, subject to a pending motion to seal, or to which access is otherwise restricted by law or court order must not be electronically filed.~~ For good cause, an appellate court may permit a party to file ~~other~~ documents in paper form in a particular case.

Rule 9.8 Protection of Minor's Identity in Parental-rights Termination Cases and Juvenile Court Cases.

Rule 9.9 Privacy Protection for Documents Filed in Civil Cases [dealing with sensitive data].

Rule 9.10 Privacy Protection for Documents Filed in Criminal Cases [dealing with sensitive data].

### Rule 9.11 Protection for Sealed Documents.

- (a) Filing. Documents sealed by court order or by operation of law must be filed by the trial court clerk with the appellate court in electronic form and identified as sealed documents, unless the appellate court orders otherwise. A copy of any sealing order must be filed with the sealed documents. Such documents shall not be disclosed to the public.

**Comment:** This is a condensed rewrite of draft Rule 9.2(d)(6). It omits all the detailed provisions for handling and naming documents. The courts of appeals are already handling sealed documents, and they can promulgate their own procedures. Also, this draft rule is broad enough to cover any trial court sealing order that is subject to appellate court review, including orders under Rule 76a and the Texas Uniform Trade Secrets Act (TUTSA).

- (b) Expiration. Sealed documents in the possession of an appellate court shall remain sealed until the order sealing them expires or is vacated or modified by the appellate court.

**Comment:** This is a rewrite of draft Rule 9.2(d)(3).

Rule 9.12 Protection for Documents Submitted for In-camera Review.

- (a) Documents submitted to a trial court for in-camera inspection must be filed by the court reporter with the appellate court in electronic form and identified as in-camera documents, unless the appellate court orders otherwise. A party may file in-camera documents pursuant to Rule 52.7 pending the appellate court's receipt of documents from the court reporter. Such documents shall not be disclosed to the public or to any party other than the party submitting them for in-camera review.

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- (b) Expiration. Access to documents submitted for in-camera review in the possession of an appellate court shall be restricted in accordance with Rule 9.12(a) until the order governing them expires or is vacated or modified by the appellate court.

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**Comment:** See comment for Rule 9.11(a) above. Note the last sentence of draft Rule 9.12(a) as compared with the last sentence of draft Rule 9.11(a) above.

TRAP 10 REVISIONS

Rule 10.5 Motions Relating to Informalities in the Record [former Rule 10.5(a)]

Rule 10.6 Motions to Extend Time [former Rule 10.5(b)]

Rule 10.7 Motions to Postpone Argument [former Rule 10.5(c)]

Rule 10.8 Motions Regarding Access to Materials in Appellate Courts

(a) Motion and Response. In accordance with Rule 10.1, [a party] [a party or interested person] may move to restrict [or permit] access to [the entirety or portions of] documents, briefs, or other materials filed in an appellate court. Access will be governed in accordance with Rules 9.8, 9.9, 9.10, 9.11, and 9.12. Materials subject to restricted access under any statute must be treated in accordance with the pertinent statute. A motion to restrict access not otherwise governed by Rules 9.8, 9.9, 9.10, 9.11, or 9.12, or by statute, must be supported by sufficient cause demonstrating a specific, serious, and substantial interest which clearly outweighs the presumption of openness and cannot be addressed adequately by less restrictive means.

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**Comment:** This is a rewrite of draft Rule 9.2(d)(4) & (5). The catch-all statutory language is intended to address the Texas Uniform Trade Secrets Act and any other statutes establishing specific procedures or standards in particular contexts.

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(b) Temporary Orders. The appellate court may grant temporary relief as to some or all of the documents.

**Comment:** This is a rewrite of draft Rule 9.2(d)(7)(B).

(c) Referral to Trial Court. The appellate court may refer the motion to the trial court [and direct that court to hear evidence and make findings of fact] [and direct that court to hear evidence and make findings of fact and recommendations as to whether access to the documents should be restricted] [in accordance with Civil Procedure Rule 76a].

**Comment:** This is a rewrite of draft Rule 9.2(d)(7)(E).

(d) Decision. The appellate court shall decide the motion in accordance with Rules 10.2 and 10.3. An order granting the motion must identify the materials to which access is restricted without disclosing their contents, state the time period during which the order will remain in effect, identify the persons, if any, who have access to the documents, and specify the terms and conditions of such access.

**Comment:** This is a rewrite of draft Rule 9.2(d)(7)(D) & (A).