

Subject: RE: DECEMBER 20 - Revised documents: Rule 9.2(d), Rule 193.4 and Rule 76a attached
Date: Monday, January 16, 2017 at 5:27:43 PM Central Standard Time
From: Brett Busby
To: Dorsaneo, William

Bill, thanks for all of your work on this topic. I think these rules generally work well. I find the terminology "document filed under seal" slightly confusing because it has a different meaning than "sealed document." I think a reader who didn't pay careful attention to the definitions would assume that those two things were the same, so we could consider adopting a different term for "document filed under seal," such as "restricted-access document." I don't feel strongly about this, though, because the definitions make the distinction clear (except that documents submitted for in camera inspection appear to fall under both definitions and probably should just be defined as sealed documents so a motion to seal them doesn't have to be filed in the appellate court).

Under 9.2(d)(4)(A), I think we should remove the brackets around the phrase "that has not already been sealed by a court order" and definitely include that language, which helps make the distinction I mentioned above more clear. Also, I think the words "under seal" after the bracketed phrase should be deleted and the word order changed slightly for clarity so that it says: "In an appeal or original proceeding, a party may file a motion to seal a document or portion of a document that has not already been sealed by a court order. . . ."

Hope this helps.

Thanks,
Brett

From: Tabbert, Sharon [mailto:smagill@mail.smu.edu]
Sent: Tuesday, December 20, 2016 1:52 PM
To: psbaron@baroncounsel.com; Brett Busby; Bill Boyce; ecarlson@stcl.edu; fgilstrap@hillgilstrap.com; Watson, Charles "Skip" <cwatson@lockelord.com> (cwatson@lockelord.com); sstolley@cplalaw.com; evan.young@bakerbotts.com; richard@ondafamilylaw.com
Cc: Nathan Hecht; cbabcock@jw.com; Martha Newton; Blake Hawthorne; Stephen.yelenosky@co.travis.tx.us; Dorsaneo, William; evansdavidl@msn.com; rhwallace@tarrantcounty.com; esteveza@pottercsd.org; rhughes@adamsgraham.com
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To: SCAC Subcommittee
From: Bill Dorsaneo
Subject: Revised Rule 9.2(d), Rule 193.4 and Rule 76a
Date: December 20, 2016

For your consideration, attached to this email are the most recently revised versions of the proposed rules concerning sealing of court documents, which include

coverage of the matters discussed in our last telephone conference call

I plan to present each of the proposed rule amendments to the Advisory Committee in January 2017, if possible. The main objectives that have been dealt with in the proposed amendments are:

1. Sequencing and coordination of procedures for handling documents by Civil Procedure Rule 193.4 (b)-(d) and proposed Appellate Rule 9.2(d)(1)(c), (2), (6) to facilitate confidentiality and avoid inadvertent disclosure.
2. Specification of the form of documents filed under seal in appellate courts in both paper and electronic form in Proposed Appellate rule 9.2(d)(6) based on definitions contained in other current rules; and
3. Miscellaneous proposed amendments to Civil Procedure Rule 76a and proposed Appellate Rule 9.2(d) designed to coordinate the procedures for handling documents produced for in camera review under Rule 76a.

I would appreciate any specific comments you can provide about these proposed amendments. Please pay particular attention to item 3.

Happy Holidays,
Bill