

**[CONFERENCE CALL REDRAFT (Revised)]**

**Rule 9.2 Documents Generally.**

**(d) Sealing Documents in Appellate Courts.**

**(1) Definitions. For the purposes of this rule:**

(A) “Appellate proceeding” means any proceeding in a court of appeals or the Supreme Court, including appeals from trial court orders or judgments and original proceedings.

(B) “Document” means any compilation of information in written electronic, photographic or other form, including the Clerk’s Record, the Reporter’s Record or [materials] filed ~~[in the court of appeals]~~ [an appellate court] in the first instance in an appellate proceeding.

(C) “Document filed under seal” means any document that is filed [in court by a party] subject to a [pending or anticipated] motion to seal the document by a court order [or submitted to a trial court for an in camera inspection under Civil Procedure Rules 76a(4) or 193.4(b)].

(D) “Sealed document” means any document to which access is [already] prohibited or restricted [by law or] by court order, including documents:

(i) sealed under Civil Procedure Rule 76a;

(ii) privileged from disclosure or discovery by court order;

(iii) made subject to a protective order under Civil Procedure Rule 192.6;

[or]

(iv) submitted for an *in camera* inspection under Civil Procedure Rule 193.4(b).]

(2) Completion of Appellate Record. If the official court reporter or the trial court clerk have retained custody of a document or documents filed under seal or a sealed document under Civil Procedure Rules 76a(4) or 193.4 (c) and the clerk [and] OR [or] the reporter are ordered to file the documents by the trial court or by the appellate court having jurisdiction of an appeal or original proceeding, the clerk [and] OR [or] the reporter are responsible for promptly filing the document or documents in the appellate court.

(3) Effect of Trial Court Orders. Any document or portion of a document that was sealed [~~or protected from disclosure or discovery~~] in the court below and is transmitted to an appellate court in connection with an appeal or an original proceeding is [~~presumed to be~~] sealed for all appellate proceedings until the trial court's order expires [~~by its own terms~~], or is vacated or modified by the appellate court.

(4) Motions to Seal Documents in Appellate Courts

(A) 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,] under seal in an appeal or original proceeding [. A motion to seal a document in an appellate court may be filed whether or not the document was filed under seal or filed at all in the court below. The motion must be in writing and must contain the following information:]

- (i) a general description of each document or group of documents without disclosing their contents, sufficient to enable the appellate court [and other parties] to understand the motion;
- (ii) whether a motion to seal [or to unseal] any of the documents is pending in the trial court;

- (iii) [specific] facts [supported by affidavit or other evidence] showing prima facie why the documents should be sealed or otherwise protected from discovery or disclosure pending the determination of the proceedings in the appellate court under the standards prescribed by Civil Procedure Rule 76a, or under Civil Procedure Rule 192.6 (b) (to prevent harm to the movant from undue burden, unnecessary expense, harassment, annoyance or invasion of personal, constitutional or property rights) or because the documents are privileged from discovery or public disclosure under applicable law.

- (B) The documents filed under seal [in the appellate court] will be [provisionally] sealed pending a ruling on the motion.

(5) Response and Reply. Any party to the proceeding in the appellate Court may file a response to the motion [supported by affidavit or other evidence] within \_\_\_\_ days after the date the motion is filed or on or before the date specified in writing by the appellate court. A reply to a response may be filed within \_\_\_\_ days after the date the response was due or on or before the date specified in writing by the appellate court.

(6) Form of Documents Submitted to Appellate Court.

[(A) Any sealed document or document filed under seal in an appellate court by [a party,] the official court reporter or the trial court clerk under paragraph (d)(2) is filed with the clerk of the appellate court in the following forms:

- (i) [unless the reporter or the clerk receives permission from the appellate court to file the record in paper form,] the record must be filed in electronic form in a manner that preserves confidentiality.



- [(ii) if the clerk's record is filed in paper form, the trial court clerk must place each sealed document in a securely sealed envelope that is labeled SEALED and that is not bound with other documents in the clerk's record.]
- [(iii) [if the clerk's record is filed in electronic form,] each sealed document must be filed separately from the remainder of the clerk's record and include the word SEALED in the computer file name.]
- [(iv) [If the reporter's record is filed in paper form it must be contained in a sealed envelope labeled SEALED with the style of the case, the case numbers in the trial court and the appellate court, and a brief description of the contents of the envelope.]
- [(v) [If the reporter's record is filed electronically,] any sealed documents in the reporter's record must be in a separate computer file. If the sealed part of the transcription is part of a larger volume, an indicator page must be placed where the file logically belongs. The computer file name for the sealed document must contain the elements listed in Section 8.4 of the Uniform Format Record for Texas Reporters' Record, a hyphen, the number of the sealed document, and the term "Sealed" after the phrase "RR" (e.g. Jim Hogg-DC-09-29-RR) (Sealed.pdf, Jim Hogg-DC-090290RR02Sealed.pdf).]
- [(vi) If a document or portion of a document that has not already been sealed by a court order is filed in an appellate court by a party [as provided in paragraph 9.2(d)(1)(C) and paragraph 9.2(d)(4)(A)], the document may be filed under seal in paper form in the appellate court whether or not the

document was filed under seal or filed at all in the court below.

- (B) A copy of any sealing order signed by the trial court or any motion to [seal] documents filed in the trial court must be [filed with] [submitted with] the documents.
- (C) The documents submitted to the [appellate] court are subject to in camera inspection by the [appellate] court but are not subject to inspection by the other parties or the public [unless the [appellate] court's order makes them available].

(7) Appellate Court Rulings.

- (A) Abatement of Appellate Proceedings. The appellate court may abate the appeal or original proceeding for a reasonable time, to allow the trial court to rule on a pending motion to seal [or unseal] documents filed in the trial court, or to take further action as directed by the appellate court.
- (B) Temporary Orders. The appellate court may grant temporary relief with respect to some or all of the documents pending a decision on the merits of the appeal or original proceeding if the appellate court determines:
  - (i) the documents are court records that should be temporarily sealed under the standards and procedures for sealing records in Texas Rule of Civil Procedure Rule 76a.5; or
  - (ii) the documents are not court records under Texas Rule of Civil Procedure Rule 76a.2, but the movant needs a sealing order to preserve privileged documents from disclosure or a protective order for relief from undue burden, unnecessary expense, harassment, annoyance, or invasion of personal,

constitutional, or property rights in the interest of justice, as provided in Texas Rule of Civil Procedure Rule 192.6.

[(C) An appellate court may grant a motion to unseal a sealed document if the court below erred in ordering the document to be sealed. [Relief from the order may be sought by motion filed in the appellate court during the pendency of the appeal or original proceeding.]

(D) Decision on Motion.

- (i) Relief Denied. If the court determines [from the motion and any response or any reply to a response] that the movant or relator is not entitled to the relief sought in the motion, the court must deny the motion;
- (ii) Relief Granted. If the court finally determines that the movant or the relator is entitled to relief, the court may make an appropriate order or orders.

[(E) Referral to Trial Court. The appellate court may refer a motion to seal filed in the appellate court [to the trial court] and direct the trial court to hold further hearings, to make and transmit findings of fact and conclusions of law to the [appellate court] as to whether any documents that were not filed under seal in the trial court are:

- (i) ~~[court records]~~ [documents] that may be sealed in accordance with [Civil Procedure] Rule 76a;
- (ii) protected from disclosure or discovery under Civil Procedure Rule 192.6;
- (iii) privileged from discovery or public disclosure under applicable law.

(8) Contents of Sealing Order. A sealing order must identify the documents submitted for filing under seal and protected from public disclosure without disclosing their contents, state the time period during which the order will remain in effect, identify the persons, if any, who may be given access to the documents filed under seal in the appellate court, specify the terms and conditions of access to the documents, if any, and decide whether the documents should be temporarily sealed under Civil Procedure Rule 76a.5 or state why the documents should be permanently sealed under the standards and procedures for sealing court records contained in Civil Procedure Rule 76a.1 and 2.