

Rule 9. Documents Generally. (Suggested Revisions Amalgamating Drafts)
(6/7/2016)

9.1 Signing

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9.2 Filing

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(d) Filing documents Under Seal.

(1) Eligible Documents. Documents may be filed under seal in an appellate court ~~if the documents:~~

(A) The documents have been ~~were~~ sealed by a temporary or a final order of a ~~the~~ trial court;

(B) ~~Are subject to~~ A motion to seal or to unseal ~~court records~~ the documents has been filed in a trial court; or

(C) ~~Are subject to~~ A motion to seal the documents has been filed in the appellate court ~~to seal the documents submitted for filing in the appellate court.~~

(2) Submission of Documents. The documents must be submitted for filing in paper form in a sealed envelope labeled ~~by~~ 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. A copy of the sealing order or the motion to seal the documents must be attached to the sealed envelope.

(3) Contents of Motion to Seal Documents. A motion filed in an appellate court ~~for a sealing order for~~ to seal documents that have been submitted for filing in the appellate court must:

(A) identify the documents without disclosing their contents;

~~(B)~~—contain specific facts [supported by affidavit] showing a compelling need for sealing the documents to prevent harm to a specific interest of the movant before a hearing can be held;

(B) state whether any of the documents are court records under Texas Rule of Civil Procedure 76a.2;

~~(B)~~(C) if a temporary sealing order is sought of any court records as defined in Texas Rule of Civil Procedure 76a.2, state specific facts [supported by affidavit] showing why the court records should be temporarily sealed under Texas Rule of Civil Procedure 76a.5; [to prevent harm to a specific interest of the movant before a hearing can be held to determine whether a sealing order should be granted under Texas Rule of Civil Procedure 76a.1 and 2;]

(D) if a temporary sealing order is sought of any documents that are not court records under Texas Rule of Civil Procedure 76a.2, state specific facts [supported by affidavit] showing a need for sealing the documents to prevent harm to a specific interest of the movant before a hearing can be held;

(E) state specific facts [supported by affidavit] showing why any of the documents that are court records should be sealed under Texas Rule of Civil Procedure 76a.1 and 2; [to protect a specific, serious and substantial interest of the movant which clearly outweighs the presumption of openness that applies to court records, any probable adverse public health and safety; and that no less restrictive means than adequately and effectively protect the specific interests asserted];

~~(C)~~ (F) state explain why the documents were not have not been sealed by an order of the trial court;

~~(D)~~ (G) identify the persons who may be given access to the documents filed under seal in the appellate court; and

(H) specify the terms and conditions of access to the documents, if any.

(4) Response to Motion. Any party to the proceeding in the appellate court may file a response to the motion [supported by affidavit] within ____ days after the motion is filed.

(5) Appellate Court Rulings. The appellate court's ~~order~~ may take any of the following actions:

(A) deny the motion to seal after considering the motion to seal and any response if the court determines that the movant is not entitled to file the documents under seal in the appellate court.

(B) temporarily seal documents that are not court records under Texas Rule of Civil Procedure Rule 76a.2, pending a decision on the merits or further consideration of the appeal or original proceeding in the appellate court.

(C) abate the appeal or original proceeding until the trial court rules on a pending motion to seal or unseal documents filed in the trial court.

(D) temporarily seal documents submitted for filing under seal in the appellate court, decide whether documents not filed in the trial court or that were not filed under seal in the trial court are court records, whether they may be sealed in the proceeding in accordance with the standards and the procedures for sealing court records in Texas Rule of Civil Procedure 76a or refer the motion to the trial court with instructions to hear facts addressed to these issues and transmit the trial court's findings of fact and conclusions of law to the appellate court.

(E) order the trial court to comply with Texas Rule of Civil Procedure 76a.3 and 4 and to make findings of fact and conclusions

of law as to whether any of the documents should be sealed under Texas Rule of Civil Procedure 76a.1 and 2;

(F) rule on any complaint made in the appellate court about the trial court's order (or portion of any order or judgment) sealing, refusing to seal, or unsealing of documents as court records by the trial court's order, direct the trial court to take other action to determine the issues presented in the appellate court, and decide merits of the motion.

(6) Contents of Sealing Order. A sealing order must identify the documents submitted for filing under seal without disclosing their contents, 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 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.