

**Rule 112. Confidential Or Sealed Information; Sealing of Portions of Record****Rule 112.01 Status of Confidential or Sealed Record Material on Appeal**

**Subdivision 1. Materials Not Available to the Public.** Materials that are filed in the trial court as "confidential" or "sealed" as defined in Rule 14 of the General Rules of Practice or in another manner that makes the materials unavailable to the public pursuant to statute, court rule, or trial court order, as well as any documents containing restricted identifiers as defined in Rule 11 of the General Rules of Practice, will remain under restricted access on appeal unless either the trial court or appellate court orders otherwise.

**Subd. 2. Restriction of Access to Materials on Appeal.** In situations where material in the record is confidential or trade-secret information that was not protected by a confidentiality order in the trial court, a party may move to have it filed under seal or otherwise restrict access to it on appeal. The motion must demonstrate the need for restricting access to the information and must set forth the efforts made to maintain the confidentiality of the information before the motion was brought.

(Added effective January 1, 2010; amended effective July 1, 2014; amended effective September 1, 2019.)

***Advisory Committee Comment - 2009 Amendments***

*Rule 112 is a new rule intended to codify existing practices relating to handling confidential information on appeal. The rule applies to information that is filed under seal pursuant to a court order for sealing, as well as to other information that is not available to the public by operation of law.*

*The general policy of the Minnesota courts is that court records are accessible to any member of the public. See Rule 2, Minnesota Rules of Public Access to Records of the Judicial Branch, reprinted in MINNESOTA RULES OF COURT: STATE 1083 (WEST 2009 ed.). This general policy is carried forward by Rule 4 governing accessibility of case records. Rule 4, subdivision 2, specifies that restricting access to case records is governed by court rules. Many statutes limit access to particular case types. See Rule 4, Minnesota Rules of Public Access to Records of the Judicial Branch, Advisory Committee Comment - 2005, reprinted in MINNESOTA RULES OF COURT: STATE 1085-86 (WEST 2009 ed.) (collecting citations in statutes). In addition, Minn. Gen. R. Prac. 11 requires filing of personal identifying information in a separate document filed under seal.*

*The majority of orders restricting access to court records in civil cases are entered pursuant to Minn. R. Civ. P. 26.03(e) (limiting persons present during discovery), (f) (allowing court to order sealing of depositions), and (h) (allowing court to order parties to file other documents under seal). See generally Minneapolis Star & Tribune v. Schumacher, 392 N.W.2d 197 (Minn. 1986). Criminal case protective orders are governed by Minn. R. Crim. P. 25. See generally Minneapolis Star & Tribune v. Kammeyer, 341 N.W.2d 550 (Minn. 1983); Nw. Publ'ns, Inc. v. Anderson, 259 N.W.2d 254 (Minn. 1977).*

*The most common situation relating to sealed materials on appeal relates to the continued protection of materials filed under seal in the trial court. Subdivision 1 of Rule 112.01 restates the general rule that documents that are sealed in the trial court will remain sealed on appeal.*

**Rule 112.02 Handling of Confidential or Sealed Portions of the Appellate Record**

Any materials that are filed under seal or in another manner that makes the materials unavailable to the public and that need to be included in an addendum shall be segregated and designated as such, with a description of the basis for asserting the sealed or non-public status.

(Added effective January 1, 2010; amended effective July 1, 2014; amended effective September 1, 2019.)

***Advisory Committee Comment - 2009 Amendments***

*Rule 112.02 creates the required process for handling sealed records on appeal. The rule is intended to permit the ready handling of confidential documents by the court and to ensure that sealed information remains inaccessible to the public. Despite the additional expense that may be incurred, the duty to maintain confidentiality may require a more cumbersome process to permit the parties to advance their appellate arguments without compromising confidentiality rights that are recognized under law.*

**Rule 112.03 Duty to Maintain Confidentiality**

Every party to an appeal must take reasonable steps to prevent the disclosure of confidential information, both in oral argument and in written submissions filed with the court, except in the manner prescribed in Rule 112.02. The court, on its own initiative or the motion of any party, may impose sanctions for the failure to comply with this rule, including the imposition of the costs of preparing appropriate documents for filing. Such a motion may be brought by a non-party to the appeal who is adversely affected by the failure to comply.

(Added effective January 1, 2010; amended effective July 1, 2014.)

***Advisory Committee Comment - 2009 Amendments***

*Rule 112.03 imposes an affirmative duty on all parties to maintain the confidentiality of information that is protected by statute, rule, or court order.*

*If the inability to discuss confidential information in motion papers or briefs would cause substantial hardship or prevent the fair presentation of a party's argument, a party may seek leave to file separate "public" and sealed versions of the motion or brief, with confidential information redacted in the public version and stated as necessary in the sealed version. Each separately represented party would have to be served with both the "public" and sealed versions of any documents filed with the court and served on all parties. Other means to minimize the disclosure of confidential information include referring to parties by their initials or description rather than by name, or by describing this information in terms of its specific location in the confidential part of the record without disclosing the information itself.*

***Advisory Committee Comment - 2014 Amendments***

*All participants in the appellate process must take reasonable measures to assure that confidential information is not exposed to public access by filing or discussion in open court. This requirement exists for traditional paper filings, but the consequences of its violation for documents filed electronically can be dramatic, and the filer violating the rules can be subjected to sanctions as well as exposed to liability.*

*Appellate court filers should realize that filings in the appellate courts are presumed to be accessible to the public. See generally Minnesota Rules of Public Access to Records of the Judicial Branch. The access rules also define categories of records that are not accessible to the public. Other rules and statutes define constraints on materials that should not be filed publicly. See, e.g.,*

*Minn. Gen. R. Prac. 11 (district court records); Minn. R. Juv. Del. P. 30; Minn. R. Juv. Prot. P. 8.04. Three compilations that illustrate additional bases for access to the records of the judicial branch and for limiting that access are available on the Judicial Branch website under the "Public Access" link. Those compilations do not provide comprehensive information on all categories or bases for access or confidentiality. Materials in any appeal dealing with records that are not accessible under the rules of an agency or trial court should be protected from public disclosure on appeal.*

*The rule intends that decisions about confidentiality should in most situations be made by the trial court, and that confidential records should be given appropriate protection in the trial court record. The appellate courts will then extend that protection to the materials sealed in the trial court during the pendency of the appeal. Materials not filed under seal in the trial court will rarely be sealed for the first time on appeal, but parties may move the appellate court to restrict access to confidential materials that were inadvertently or improperly filed without restrictions on public access. Filers redacting documents should be careful to ensure that the redaction removes the confidential information in a way that it cannot be retrieved. Masking it electronically may not fully remove it from the document, allowing it to be retrieved. Similarly, it may be contained in a document's metadata if it is not carefully removed.*

*In many situations the issues on appeal do not require submission of any confidential information to the appellate court. For example, there are many cases where a minor's birthdate is in the record, but has no relevance to the appellate issues, and a document containing this information can be simply excluded from the addendum or, at most, a redacted version can be included. For those cases where the information itself is germane to the appellate issues, it can be provided to the court under seal and redacted versions filed for public access.*

*This rule is amended to clarify the importance of these issues, and to provide a clear mandate that the parties attend to their obligation to avoid disclosure of any confidential materials. Rule 112.03 includes an express provision for the imposition of sanctions for the failure to use reasonable steps to prevent the disclosure of confidential materials. Recognizing that the failure to comply with the rule may injure individuals or entities that are not parties to the appeal, the rule expressly allows them to seek relief under the rule. Non-parties to the appeal would include parties to the underlying action who are not made parties to the appeal as well as third parties whose confidential information is for any reason made part of the record.*

#### **Rule 112.04 Oral Argument**

Appellate arguments are public hearings.

(Added effective January 1, 2010.)

#### ***Advisory Committee Comment - 2009 Amendments***

*Even in cases where portions of the record are confidential and filed under seal, the oral argument hearing will be in open court, open to the public, and possibly televised. The rule does not forbid closing a hearing to the public. Neither the Minnesota Supreme Court nor the Minnesota Court of Appeals has closed a hearing in the past.*