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On The Cover

Scenic streets are one of the magnificent features of Magnolia Springs, a community near Point Clear, which was the site of the 2023 Alabama State Bar Annual Meeting.

—Photo by Greg Ward, Lanett

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Proposed New Rules Concerning Privacy and Confidentiality of Court Records

INVITATION FOR PUBLIC COMMENT:

By David G. Wirtes, Jr. and Scott Donaldson

Alabama law provides a statutory presumption that court records are public and accessible to all.

See Ala. Code § 36-12-40 (“Every citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute. ...”). Alabama also recognizes a common-law right of public access to judicial records. *See Holland v. Eads*, 615 So. 2d 1012, 1014 (Ala. 1993) (“it is clear that the courts

of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.”). Alabama’s recognition of these rights of public access date back almost 150 years. *See Brewer v. Watson*, 61 Ala. 310, 311 (1878) (“[a]n inspection of the records of judicial proceedings kept in the courts of the country, is held to be the right of any citizen.”). *Holland v. Eads* reiterates “[t]he public’s right to inspect court records derives from the ‘universal policy

underlying the judicial systems of this country [that] secrecy in the exercise of judicial power ... is not tolerable or justifiable.” *Id.* at 1014 quoting *Jackson v. Mobley*, 157 Ala. 408, 411-12, 47 So. 590, 592 (1908).

However, there are many recognized exceptions to the general rights of access. Some are statutory,¹ others are by judicial decision² and still others are by rules of procedure.³

Some court records involve factual scenarios such as personal identification information in medical records and photos showing abuses of minors in domestic disputes which at present have no protections against public access even though they obviously should not be available for public use or misuse.

The Alabama Supreme Court's Joint Task Force on Privacy and Confidentiality of Court Records

In recognition of the confusion and inconsistency created by Alabama's hodgepodge of statutes, appellate decisions and rules of procedure, the Chairs of the Supreme Court's Standing Committees on the Rules of Appellate Procedure (Ed Haden of Balch & Bingham in Birmingham) and the Rules of Civil Procedure (Maibeth Porter of Maynard Cooper Gale in Birmingham) created a Joint Task Force⁴ to study the issue and determine whether Alabama might benefit from a comprehensive set of rules which could bring clarity and consistency to these troubling issues.

Under the leadership of Judge Scott Donaldson,⁵ the Joint Task Force for the past two and one-half years has examined Alabama's 102 (or so) pertinent statutes spread over 84 sections in 27 titles of our Code, our 35 (or so) reported Alabama appellate opinions and the 20 (or so) rules found within the present Rules of Civil Procedure, Rules of Juvenile Procedure, Rules of Judicial Proceedings and Rules of Appellate Procedure. Members of the Joint Task Force also have studied how each of the other 49 states have addressed privacy and confidentiality. We have also reviewed and considered voluminous materials from secondary sources such as Sedona Conferences and materials compiled by the National Civil Justice Institute, among others. Collectively, after review of literally thousands of pages of rules, opinions and secondary sources, we have created a proposed set of rules of court record privacy and confidentiality which we intend to submit to the Justices of the Alabama Supreme Court for review and consideration with the hope the Court will under the powers vested to it through the judicial article adopt this compilation of rules as Alabama law so that all judges, all lawyers and indeed all citizens will know what the rules are, where to find them, and how to go about determining what is and is not publicly accessible.

Request for Comment

The members of the Joint Task Force hope to present the Supreme Court with as comprehensive, thoughtful and correct a proposed list of rules as possible. Accordingly, we invite each reader to give us suggestions, additions, deletions, edits and comments which we on the Task Force collectively will study and determine what to do with. Please email any such input within the next 21 days to dgw@cunninghambounds.com.

Draft Rules of Court Record Privacy and Confidentiality

ALABAMA RULES OF COURT RECORD PRIVACY AND CONFIDENTIALITY

ARTICLE I. GENERAL PROVISIONS

Rule

- 101. Scope.
- 102. Purpose.
- 103. Definitions.
- 104. General access rule.

ARTICLE II. EXCLUSIONS AND CONFIDENTIAL INFORMATION

Rule

- 201. Court records excluded from public access.
- 202. Confidential information.

ARTICLE III. PROCEDURES

Rule

- 301. Procedure to seal or otherwise restrict public access to records.
- 302. Procedure to petition for access to sealed or otherwise restricted records.
- 303. Procedure to redact information.

ARTICLE IV. FEES

Rule

- 401. Court fees.

ARTICLE I. GENERAL PROVISIONS

Rule 101. Purpose.

This rule applies to all court records in all Alabama Appellate, Circuit, District, Juvenile, Small Claims, Municipal and Probate Courts, regardless of the physical form of the court record, the method of recording the information in the court record or the method of storage of the information in the court record

Rule 102. Purpose.

The purpose of this rule is to provide a comprehensive policy on access to court records. The rule provides for access in a manner that:

- (1) Maximizes accessibility to court records,
- (2) Supports the role of the judiciary,
- (3) Promotes governmental accountability,
- (4) Contributes to public safety,
- (5) Minimizes risk of injury to individuals,
- (6) Protects individual privacy rights and interests,
- (7) Protects proprietary business information,
- (8) Minimizes reluctance to use the court to resolve disputes,
- (9) Makes most effective use of court and clerk of court staff, and
- (10) Does not unduly burden judicial officials or court personnel.

The rule is intended to provide guidance to 1) litigants, 2) those seeking access to court records, and 3) judges, court and clerk of court personnel responding to requests for access.

Task Force's Notes

The Alabama Rules of Court Record Privacy and Confidentiality honor and reflect settled Alabama law that every citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute. See Ala. Code § 36-12-40. These Rules also honor and reflect the Alabama Supreme Court's unanimous holding in *Holland v. Eads*, 614 So.2d 1012 (Ala. 1993), that there also is a common-law right of public access to judicial records, except in limited and specifically enumerated exceptions. Holland's observations, which are precedential and binding, require a careful treading when considering the scope of what is or is not accessible as a public record in Alabama's Courts.

Holland v. Eads states:

"The United States Supreme Court has recognized a common law right of public access to judicial records. *Nixon v. Warner Communications, Inc.*, 435

U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). “ ‘It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.’ ” *United States v. Criden*, 648 F.2d 814, 819 (3d Cir.1981), quoting *Nixon, supra*, 435 U.S. at 597, 98 S.Ct. at 1312. In fact, this right of the public to inspect and copy judicial records antedates the United States Constitution. *Criden, supra*.

It has long been the rule of this State to allow public inspection of judicial records. *Brewer v. Watson*, 61 Ala. 310, 311 (1878). More than a century ago, this Court held that “[a]n inspection of the records of judicial proceedings kept in the courts of the country, is held to be the right of any *1015 citizen.” *Id.* at 311; see also *Ex parte Balogun*, 516 So.2d 606, 612 (Ala.1987) (holding that “the public generally has a right of reasonable inspection of public records required by law to be kept, except where inspection is merely out of curiosity or speculation or where it unduly interferes with the public official’s ability to perform his duties”); *Excise Comm’n of Citronelle v. State ex rel. Skinner*, 179 Ala. 654, 657, 60 So. 812, 813 (1912). The public’s right to inspect court records derives from the “universal policy underlying the judicial systems of this country [that] secrecy in the exercise of judicial power ... is not tolerable or justifiable.” *Jackson v. Mobley*, 157 Ala. 408, 411–12, 47 So. 590, 592 (1908).

In addition to a common law presumption of permitting public inspection of judicial records, which has been recognized by the United States Supreme Court and by this Court, public access to court records is permitted by statute. Ala. Code 1975, § 36–12–40, grants the public the right to inspect and copy “public writings,” which term has been interpreted to include judicial records. *Ex parte Balogun, supra*; *Stone v. Consolidated Publishing Co.*, 404 So.2d 678, 681 (Ala.1981) (interpreting a “public writing” to be “a record as is reasonably necessary to record the business and activities required to be done or carried on by a public officer so that the status and condition of such business and activities can be known by our citizens”); *State ex rel. Kernells v. Ezell*, 291 Ala. 440, 442–43, 282 So.2d 266, 268 (1973) (holding that records of the office of the probate judge are “public writings” within the meaning of the predecessor to § 36–12–40

and are “free for examination [by] all persons, whether interested in the same or not”); *Excise Comm’n of Citronelle, supra*; *Brewer, supra*.

Limitations of the public’s right to inspect “must be strictly construed and must be applied only in those cases where it is readily apparent that disclosure will result in undue harm or embarrassment to an individual, or where the public interest will clearly be adversely affected, when weighed against the public policy considerations suggesting disclosure.” *Chambers v. Birmingham News Co.*, 552 So.2d 854, 856 (Ala.1989). The party refusing disclosure bears the burden of “proving that the writings or records sought are within an exception and warrant nondisclosure of them.” *Chambers*, at 856–57; *Ex parte CUNA Mutual Ins. Society*, 507 So.2d 1328, 1329 (Ala.1987); *Ex parte McMahan*, 507 So.2d 492, 493 (Ala.1987). This Court has held that the following types of records do not warrant disclosure: “[r]ecorded information received by a public

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officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public.” *Stone*, 404 So.2d at 681.”

Id. at 1014-15.

Holland’s ultimate holding is:

“We have examined the different approaches used in other jurisdictions. In light of the public policy in favor of public access and the prevailing analysis of this presumption in most American courts, we hold that if a motion to seal is filed, then the trial court shall conduct a hearing. The trial court shall not seal court records except upon a written finding that the moving party has proved by clear and convincing evidence that the information contained in the document sought to be sealed:

- (1) constitutes a trade secret or other confidential commercial research or information; see *Brown & Williamson Tobacco Corp.*, *supra*, at 1179; or
- (2) is a matter of national security; see *Barron*, *supra*, at 118; or
- (3) promotes scandal or defamation; or
- (4) pertains to wholly private family matters, such as divorce, child custody, or adoption; see *Warner*, *supra*; *Balogun*, *supra*; *Holcombe v. State ex rel. Chandler*, 240 Ala. 590, 200 So. 739 (1941); or
- (5) poses a serious threat of harassment, exploitation, physical intrusion, or other particularized harm to the parties to the action; or
- (6) poses the potential for harm to third persons not parties to the litigation.

If any one of the above criteria is satisfied, then the trial court may seal the record, or any part of the record, before trial, during trial, or even after a verdict has been reached.”

Id. at 1016 (underlined emphasis added).

Rule 103. Definitions.

- (A) A court record includes any record authorized to be made by any law of this state belonging or pertaining to any court or any other public record authorized by law or any paper, pleading,

exhibit or other writing filed with, in or by any such court, office or officer.

- (B) Information in a court record in electronic form includes information that exists as:
- (1) electronically stored data, which is the whole or the partial informational content of court records or documents, which content has been electronically recorded separately from the images of these records or documents and stored in an electronic database maintained by the Administrative Office of Courts (“the AOC”);
 - (2) electronic-document images, which are graphic reproductions or likenesses of documents electronically encoded and stored on an AOC database that have the capability to be reconstituted from the electronic datastreams in which they are encoded and displayed electronically or printed on paper;
 - (3) electronic datastreams, which are a series of on-and-off electrical switches or impulses that are used to encode, transmit, and store electronic data and electronic-document images on AOC databases; and
 - (4) electronic databases, which are repositories of the datastreams that comprise the electronic data or images that are stored in computer hard drives or other similar electronic-storage devices maintained by the AOC.
- (C) Public access means that the public may inspect and obtain a copy of the information in a court record unless otherwise prohibited by statute, court rule or a decision by a court of competent jurisdiction. The public may have access to inspect information in a court record upon payment of applicable fees.
- (D) Remote access means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.
- (E) Confidential information is information that is exempt from the public right of access and

may be released only to the persons or organizations designated by law, statute, or court order. As applied to information contained within a court record, the term “exempt” means that such information is confidential. Confidential information includes information that is confidential under this rule or under a court order entered pursuant to this rule. To the extent reasonably practicable, restriction of access to confidential information shall be implemented in a manner that does not restrict access to any portion of the record that is not confidential.

Rule 104. General access rule.

- (A) Every citizen has a right to inspect and obtain a copy of any court record of this state, except as otherwise expressly provided by law, this rule or court order.
- (B) Records sealed, exempted, or otherwise restricted by law, rule, or court order may not be released to the general public except by court order.

law. Note also that additional documents are listed below that may not be within court records but are related to the court system; the public and court staff should be aware of access rules relating to these documents:

- (1) Records furnished to a committee on a utilization and quality control committee, peer review committee, or professional standards committee pursuant to Ala. Code § 6-5-333 as construed by decisions of the Alabama Supreme Court and Court of Civil Appeals;
- (2) Trade secrets pursuant to Ala. Code §§ 8-27-2, 22-30-18, and 27-22-25 as construed by decisions of the Alabama Supreme Court and Court of Civil Appeals;
- (3) Communications between provider and recipient of professional services of a professional corporation pursuant to Ala. Code § 10A-4-3.04;
- (4) Audio recordings of 911 calls subject to the provisions of Ala. Code § 11-98-12;
- (5) The reports of a probation officer to the court pursuant to Ala. Code § 12-14-13;
- (6) Court notice of child delinquency and any information received by a teacher, counselor, administrator, or other school employee in confidence for the limited purpose of rehabilitating the child and protecting students and staff pursuant to Ala. Code § 12-15-217;
- (7) Law enforcement files concerning a child pursuant to Ala. Code § 12-15-134;
- (8) The names or any list of prospective jurors drawn from the master jury box pursuant to Ala. Code § 12-16-59;
- (9) The names or any list of grand or petit jurors drawn from the trial court jury box pursuant to Ala. Code § 12-16-70;
- (10) Any information pertaining to the grand jury’s deliberations pursuant to Ala. Code §§ 12-16-215 and 12-16-216;
- (11) Hospital records produced in response to *subpoena duces tecum* pursuant to Ala. Code § 12-21-6;

Task Force’s Notes

As to Rule 104(a), see Ala. Code § 36-12-40 (“Every citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute”).

ARTICLE II. EXCLUSIONS AND CONFIDENTIAL INFORMATION

Rule 201. Court records excluded from public access.

The following information in a court record is not accessible to the public:

- (A) Information that is not to be accessible to the public pursuant to federal law;
- (B) Information that is not to be accessible to the public pursuant to state law, this rule, or court order as follows;
- (C) Examples of such state laws, court rules, or case law follow. Note this may not be a complete listing and the public and court staff are directed to consult state law, this rule, and case

- (12) Information that is confidential or privileged pursuant to Ala. Code §§ 12-21-131(i), 15-23-42, 34-8A-21, and Rule 503 of the Alabama Rules of Evidence;
- (13) Confessions to, and spiritual or marital advice from, clergy pursuant to Ala. Code § 12-21-166;
- (14) Marital communications pursuant to Ala. Code § 12-21-227;
- (15) Treatment records of drug offenders pursuant to Ala. Code § 12-23A-10;
- (16) Parole or probation records subject to privilege pursuant to Ala. Code § 12-26-7;
- (17) Presentence investigation reports pursuant to Ala. Code § 13A-5-47;
- (18) Abuse and neglect files and records pursuant to Ala. Code §§ 15-1-2 and 26-14-8;
- (19) Communications between a non-English-speaking defendant and an appointed interpreter pursuant to Ala. Code § 15-1-3;
- (20) Privileged communications between an indigent defendant and court-appointed counsel pursuant to Ala. Code §§ 15-12-28 and 15-12-44;
- (21) Court notice to the principle of a juvenile sex offender's school and any information contained in such notice pursuant to Ala. Code § 15-20A-27;
- (22) All reports, records, and data assembled by any probation officer and referred to the court pursuant to Ala. Code § 15-22-53;
- (23) All reports, records, and data assembled by any parole officer pursuant to Ala. Code § 15-22-73;
- (24) All records of persons convicted but pardoned for acts in protest of racial segregation or discrimination pursuant to Ala. Code § 15-22-92;
- (25) Investigative reports of law enforcement agencies pursuant to Ala. Code § 15-23-5;
- (26) Any information received by a crime victim from the prosecutor relating to the substance of the case pursuant to Ala. Code § 15-23-65;
- (27) Pre-sentence investigative reports pursuant to Ala. Code § 15-23-73;
- (28) The results of testing of a defendant for sexually transmitted disease pursuant to Ala. Code § 15-23-103;
- (29) Records regarding prescriptions and drug stocks pursuant to Ala. Code § 20-2-91;
- (30) Information in the controlled substance database pursuant to Ala. Code § 20-2-215;
- (31) Information concerning any aspect of a complaint resolution proceeding pursuant to Ala. Code § 22-5A-6;
- (32) Living wills filed in a county probate court pursuant to Ala. Code § 22-8A-14;
- (33) Vital records pursuant to Ala. Code § 22-9A-21;
- (34) Reports concerning sexually transmitted disease from a physician or administrator of certain institutions pursuant to Ala. Code § 22-11A-14;
- (35) Records related to investigation of an infected health care worker pursuant to Ala. Code § 22-11A-69;
- (36) Records concerning the accreditation, quality assurance, and similar materials pursuant to Ala. Code § 22-21-8 as construed by decisions of the Alabama Supreme Court and Court of Civil Appeals;
- (37) Information obtained by the Director of Industrial Relations concerning employment, wages, hours, unemployment, and related matters pursuant to Ala. Code § 25-4-116;
- (38) All documents and information obtained by the State Department of Industrial Relations concerning communications between and among employers, employees, and the department regarding the workers' compensation ombudsman program pursuant to Ala. Code § 25-5-294;

- (39) All papers, pleadings, and other documents pertaining to an adoption pursuant to Ala. Code § 26-10A-31;
- (40) Where the court has entered a final adoption decree, the original birth certificate and evidence of adoption pursuant to Ala. Code § 26-10A-32;
- (41) Information from the putative father registry pursuant to Ala. Code § 26-10C-1;
- (42) Information and records acquired by child death review teams pursuant to Ala. Code § 26-16-98;
- (43) Abortion records and other information involving court proceedings conducted pursuant to Ala. Code § 26-21-4;
- (44) The woman's identity in a Woman's Right to Know Act proceeding pursuant to Ala. Code § 26-23A-11;
- (45) Communications, documents, and other information proffered at a hearing to consider a complaint against a seller of insurance products pursuant to Ala. Code § 27-7-38;
- (46) Criminal history pursuant to Ala. Code §§ 27-9A-17, 27-25-4.4, 27-25-4.6, and 41-9-642;
- (47) Certain filings of captive insurers pursuant to Ala. Code § 27-31B-3;
- (48) The address of the child or the victim of family or domestic violence pursuant to Ala. Code § 30-3-135;
- (49) Identifying information of persons at risk from the effects of domestic violence or abuse pursuant to Ala. Code § 30-3-167;
- (50) The location of an at-risk party or child in a child custody proceeding pursuant to Ala. Code § 30-3B-209;
- (51) The address of an at-risk child or victim in a parentage proceeding pursuant to Ala. Code § 30-3D-312;
- (52) Domestic abuse victim's home address, business address (if applicable), home telephone number, business telephone

number (if applicable), the home or business address or telephone number of any member of the victim's household, and any address that may reveal the confidential location of a shelter for victims of domestic violence pursuant to Ala. Code § 30-5-5;

- (53) Records of domestic violence fatality review pursuant to Ala. Code § 30-9-2;
- (54) Records relating to a conviction or adjudication in a DUI case for an under-21 individual pursuant to Ala. Code § 32-5A-191(b);
- (55) Reports or records received or made by the State Department of Public Safety or State Driver License Medical Advisory Board regarding whether a person meets the medical, physical, or mental standards to be licensed as a driver pursuant to Ala. Code § 32-6-43;



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- (56) Information regarding motor vehicle registration suspension or reinstatement status pursuant to Ala. Code § 32-7A-24;
- (57) Marine police records relating to confidential reports and accident reports pursuant to Ala. Code § 33-5-7;
- (58) Information submitted during mediation in a dispute between Alabama and Georgia pursuant to Ala. Code § 33-18-1;
- (59) Information submitted during mediation in a dispute between any two or more of the three states (Alabama, Florida, and Georgia) pursuant to Ala. Code § 33-19-1;
- (60) Any records, information, or writings obtained or kept by the State Board of Public Accountancy in connection with a peer review program or a disciplinary investigation pursuant to Ala. Code § 34-1-3;
- (61) Attorney-client confidences pursuant to Ala. Code § 34-3-20;
- (62) Records of hearings involving the suspension or revocation of medical licenses pursuant to Ala. Code § 34-24-361.1;
- (63) Registration, circulation records and information concerning the use of the public, public school or college and university libraries, per Ala. Code § 36-12-40;
- (64) DNA records collected to identify criminal suspects or offenders pursuant to Ala. Code § 36-18-27;
- (65) Testimony taken in a fire investigation pursuant to Ala. Code § 36-19-25;
- (66) Confidential information received from an insurer in a fire investigation pursuant to Ala. Code § 36-19-43;
- (67) Complaints to the State Ethics Commission pursuant to Ala. Code § 36-25-4;
- (68) Information obtained by any Public Service Commission employee through official business pursuant to Ala. Code § 37-1-13;
- (69) Information obtained by any Public Service Commission employee in a motor carrier examination pursuant to Ala. Code § 37-3-25;
- (70) Records of the county department of human resources pertaining to adoptions or children placed in foster homes pursuant to Ala. Code § 38-1-4;
- (71) Reports of criminal history background received by the Department of Human Resources pursuant to Ala. Code § 38-13-8;
- (72) Identifying information of taxpayers in revenue rulings pursuant to Ala. Code § 40-2A-5;
- (73) Information in a drug and controlled substance excise tax return pursuant to Ala. Code § 40-17A-13;
- (74) Working papers used in the preparation of reports of audit findings pursuant to Ala. Code § 41-5A-19;
- (75) Record of private hearings or sealed proceedings pursuant to Ala. Code § 41-22-12;
- (76) Appellate mediation records pursuant to Rule 8 of Alabama Rules of Appellate Mediation;
- (77) Privileged material prepared in anticipation of litigation by a party's attorney or representative pursuant to Rule 26 of the Alabama Rules of Civil Procedure;
- (78) Depositions which have been sealed by an officer and filed with the court pursuant to Rule 30 of the Alabama Rules of Civil Procedure;
- (79) Custody or visitation dispute mediation proceedings pursuant to Alabama Civil Court Mediation Rule 11;
- (80) Unexecuted search warrants, which have been sealed for confidentiality, pursuant to Rule 3.14 of the Alabama Rules of Criminal Procedure;
- (81) Attorney discipline records pursuant to Rule 30 of the Alabama Rules of Disciplinary Procedure;
- (82) Privileged confidential communications between attorney and client pursuant to Rule 502 of the Alabama Rules of Evidence;
- (83) Judicial disciplinary proceedings pursuant to Alabama Constitution Article VI §

156(b) and Alabama Rules of Procedure of the Judicial Inquiry Commission Rule 5;

- (84) Disciplinary records of city employees until there is a conclusion of the disciplinary proceeding(s);
- (85) Grand jury proceedings;
- (86) Information filed with any court pending in camera review; and
- (87) Any other record declared to be confidential or privileged by statute, rule, or court order.

Task Force's Notes

Rule 201(C)(1) through (87) provide examples of court records which are private or confidential and exempt or privileged from public access. Note this may not be a complete listing and the public and court staff are directed to consult state law, this rule, and case law. Note also that additional documents are listed that may not be within court records but are related to the court system; the public and court staff should be aware of access rules relating to these documents:

Subdivision (C)(12). Client/Patient Privilege. This subdivision references multiple statutes and rules, including Ala. Code § 12-21-131, which discusses confidentiality and privileged information that an interpreter gathers from a deaf person pertaining to any pending proceeding in which that deaf person is a party. Ala. Code § 15-23-42 pertains to the confidentiality of communications between a victim and a victim counselor. Ala. Code § 34-8A-21 concerns privileged communications and confidential relations between licensed professional counselors or certified counselor associates and their clients.

As it relates to Rule 503 of the Alabama Rules of Evidence, Alabama statutory law has long recognized a psychologist-client privilege. Ala. Code 1975, § 34-26-2. This particular statutory privilege was amended in 1979 to include psychiatrists within its coverage. The legislative act creating the privilege stipulates that it is to be placed upon the same basis as the privilege that arises by law between an attorney and a client; consequently, Rule 503 is modeled after the rule providing for the corresponding attorney-client privilege. See *C. Gamble, McElroy's Alabama Evidence* § 414.01 (4th ed. 1991). The language of Rule

503 is taken largely from the Uniform Rules of Evidence. See Unif. R. Evid. 503.

It should be noted that the Alabama Rules of Evidence contain no general physician-patient privilege. Such a privilege has never been recognized in Alabama, either by the legislature or by the courts. See *Duncan v. State*, 473 So.2d 1203 (Ala.Crim.App.1985). See also *C. Gamble, McElroy's Alabama Evidence* § 413.01 (4th ed. 1991); J. Colquitt, *Alabama Law of Evidence* § 5.10 (1990). Communications with a physician may fall within the Rule 503 psychotherapist privilege if the physician is a licensed psychologist or is a practicing psychiatrist. See *Ex Parte Rudder*, 507 So.2d 411 (Ala.1987).

Subdivision (C)(18). Abuse and neglect files. This subdivision references Ala. Code § 26-14-8(c), which states that “reports and records of child abuse and neglect and related information or testimony shall be confidential, and shall not be used or disclosed for any purposes other than . . . (4) For use by a court where it finds that such information is necessary for the determination of an issue before the court; or . . . (8) For use by an attorney or guardian ad litem in representing or defending a child or its parents or guardians in a court proceeding related to abuse or neglect of that child.” Ala. Code § 15-1-2 provides that “court records of a child under the age of 18 years who is a victim of sexual abuse or exploitation shall not be open to the public, but shall be kept in the same manner as juvenile offender records are kept.” For more on abuse and neglect records, see *Ex Parte Esteban*, 2021 WL 3700086 (Ala. 2021).

Subdivision (C)(43). Minor abortion records. This subdivision mirrors the language in Ala. Code § 26-21-8, which declares that “[r]ecords and information involving court proceedings conducted pursuant to Ala. Code § 26-21-4 shall be confidential.”

Subdivision (C)(46). Criminal history. This subdivision references Ala. Code § 41-9-642, which prohibits any person, agency, corporation, or other legal entity that the Alabama Justice Information Commission determines to lack the “need to know” or the “right to know” from disclosing criminal histories or other information that may lead to the identification of an individual to whom such information pertains. The Supreme Court of Alabama confirmed this interpretation of the statute in *Mobile Press Register, Inc. v. Lackey*, 938 So.2d 398 (Ala. 2006). Ala. Code §§

27-9A-17, 27-25-4.4, and 27-25-4.6 apply to applications for insurance licenses, and these sections require that the Commissioner of the Alabama Department of Insurance treat fingerprints and criminal histories gathered during this application process as confidential.

Subdivision (C)(77). Attorney Work-Product. In *Hickman v. Taylor*, 329 U.S. 495, 67 S.Ct. 385, 91 L.Ed. 451 (1947), a landmark decision, the Court was confronted with the applicability of the venerated attorney-client privilege to all of the information assembled by the attorney while preparing his case. While refusing to apply the attorney-client privilege to a lawyer's entire files and mental impressions, the court, on the other hand, was unwilling to make discovery proper in all instances. Defining the delicate balance between the equally undesirable extremes of full disclosure and no disclosure has provoked great uncertainty. Rule 26 of the Alabama Rules of Civil Procedure seeks to lay the ground rules for striking the balance.

Rule 26(b)(3) of the Federal Rules of Civil Procedure has been described as an accurate codification of *Hickman*, supra, and later cases in the lower courts. Wright & Miller, *Federal Practice & Procedure, Civil*, § 2023 (1970). Rule 26(b)(3) of the Alabama Rules of Civil Procedure: (1) defines the class of materials that are given protection as work product, (2) sets out the showing (substantial need and undue hardship) required to obtain discovery of work product material, (3) gives absolute protection to an attorney's mental impressions, legal theories, and the like, (4) allows a party to obtain a copy of his own statement without a special showing, and (5) creates machinery by which a person not a party to the litigation who has given a statement concerning the action, may obtain a copy of his own statement. The rule of *Hickman*, supra, is no stranger to Alabama, having been recognized and applied in *Ex Parte Alabama Power Co.*, 280 Ala. 586, 196 So.2d 702 (1967).

Subdivision (C)(82). Attorney-Client Privilege. Alabama's preexisting attorney-client privilege is a creature of the common law. See *Ex Parte Enzor*, 270 Ala. 254, 117 So.2d 361 (1960). That common law privilege, however, has been embodied in a statute. Ala. Code 1975, § 12-21-161. See C. Gamble, *McElroy's Alabama Evidence* § 388.02 (4th ed. 1991). Except as otherwise may be specifically indicated, Rule

502 is intended to embody the same privilege as set out in this former case law and statutory law. This rule, consequently, supersedes the preexisting statute. While generally carrying forward the former Alabama law concerning the attorney-client privilege, the language of Rule 502 is based largely upon the corresponding principle as expressed under the Uniform Rules of Evidence. See Unif. R. Evid. 502.

Rule 502 is not intended to describe or in any way limit the attorney work-product doctrine. See Ala. R. Civ. P. 26(b)(3); *Hickman v. Taylor*, 329 U.S. 495 (1947); *Ex Parte May*, 393 So.2d 1006 (Ala.1981).

Subdivision (C)(84). City Employee Disciplinary Records. In *Water Works and Sewer Bd. Of City of Talladega v. Consolidated Pub., Inc.*, 892 So.2d 859 (Ala. 2004), the Supreme Court of Alabama found that the disciplinary records of city water works and sewer board employees were exempt from disclosure in the Open Records Act until the conclusion of those employees' appeals of their disciplinary actions.

Subdivision (C)(85). Grand jury proceedings. For more on the confidentiality of grand jury proceedings, see *Ex Parte Birmingham News Co., Inc.*, 624 So.2d 1117 (Ala. Crim. App. 1993); *State v. Matthews*, 724 So.2d 1140 (Ala. Crim. App. 1998).

Subdivision (C)(86). In-Camera Review. For more on in-camera examinations of documents, see *Ex Parte Knox Kershaw, Inc.*, 562 So.2d 250 (Ala. 1990).

Rule 202. Confidential information.

The following information in a court record is not accessible to the public:

- (A) Social Security Numbers, employer or taxpayer identification numbers, and financial or medical account numbers of an individual;
- (B) Financial documents, such as income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other financial information pursuant to Ala. Code § 40-2A-10;
- (C) The name of any minor child alleged to be the victim of a crime in any adult criminal proceeding;
- (D) The address, phone number, place of employment, and other related information about a criminal victim in a court file pursuant to Ala. Code § 15-23-69;

Task Force's Notes

For discussion on the redaction of identifying information, including personal data identifiers of minors, in appellate proceedings, see AL ST RAP Rule 52; AL ST RAP Rule 56.

Subsection (A). Social Security Numbers. Rule 5.1 of the Alabama Rules of Civil Procedure requires that, “[u]nless the court orders otherwise, in an electronic or paper filing with the court that contains a Social Security number, a taxpayer-identification number, or a financial-account number, a party or nonparty making the filing may include only the last four digits of any such Social Security Number, taxpayer-identification number, or financial-account number.” Rule 5.1 also provides circumstances in which this redaction requirement does not apply.

ARTICLE III. PROCEDURES

Rule 301. Procedure to seal or otherwise restrict public access to records.

- (A) A party to an action may file a motion to seal a filing. Once this motion has been filed, the trial court shall not seal court records except upon a written finding that the moving party has proven, by clear and convincing evidence, that the information contained in the documents sought to be sealed falls within one of six categories:
- (1) Trade secrets or confidential commercial research or information;
 - (2) Information related to national security;
 - (3) Information whose release may promote scandal or defamation;
 - (4) Wholly private family matters, such as divorce, child custody, or adoption;
 - (5) Information that poses a serious threat of harassment, exploitation, or other particularized harm to the parties to the action; or
 - (6) Information that poses potential harm to third parties not in litigation.
- (B) If the information does in fact satisfy one of these categories, the court may seal the record, or any part of the record, at any time before, during, or after trial.

- (C) The court has an obligation to decide motions to seal on a case-by-case basis.
- (D) Where no party has filed a motion to seal, a trial court may still consider sealing a document, but the court must nevertheless hold a hearing as described in subsections (B) and (C).
- (1) The decision as to when court records should be sealed is left to the sound discretion of the court, subject to appellate review for abuse.

Task Force's Notes

The procedure to seal records, as laid out in Subsections (A) and (B), mirrors the procedure described in *Holland v. Eads*, 614 So.2d 102 (Ala. 1993). The appellate standard of review dictated in Subdivision (D)(1) is based on *Thompson v. State*, 153 So.2d 84, 107 (Ala. Crim. App. 2012) (quoting *In re Knoxville News-Sentinel Co.*, 723 F.2d 470, 474 (6th Cir. 1983)).

This Section does not encroach upon or otherwise restrict a party's ability to file a motion for a protective order regarding discovery as articulated in Alabama Rules of Civil Procedure Rule 26(c). This Section also does not encroach upon or otherwise restrict a person's privilege to refuse to disclose and to prevent other persons from disclosing a trade secret owned by the person as described in Alabama Rules of Evidence Rule 507.

Rule 302. Procedure to petition for access to sealed or otherwise restricted records.

A party to a civil action may file a request to the court to access a filing made under seal. Upon such a request, the party that made the filing under seal shall either provide the requesting party with the requested filing under seal or an unredacted copy or shall file a timely motion to be excused from providing such documents.

Rule 303. Procedure to redact information.

- (A) Unless the court orders otherwise, in an electronic or paper filing with the court that contains a Social Security number, a taxpayer-identification number, or a financial-account number, a party or nonparty making the filing may include

only the last four digits of any such Social Security number, taxpayer-identification number, or financial-account number.

(1) This redaction requirement does not apply to the following:

- (a) A financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (b) Information contained in the record of any administrative, agency, or court proceeding, if that record was not subject to the redaction requirement when originally created;
- (c) A filing governed by or subject to a statute, rule, regulation, or other provision of law that requires the inclusion of the information that would otherwise be subject to redaction by this rule; and
- (d) A filing covered by Alabama Code § 12-1A-10(B).

(2) Where a party shows good cause, the court may order the redaction of additional information.

(B) A court may order that a filing be made under seal. The court may later unseal the filing or order the party that made the filing to produce a redacted version for public record.

(C) The judge of probate, pursuant to Alabama Code § 12-13-22, may redact, remove, or otherwise make illegible a Social Security number or birthdate appearing in connection with a person's name that appears in any document, with the exception of federal and state tax liens, that conveys any interest in real or personal property or purports to encumber an interest in real or personal property and is recorded in the probate court, or any other document, including military discharge forms, that is filed as a public record in the probate court.

(1) Notwithstanding the foregoing, dates of birth shall not be redacted, removed, or otherwise made illegible on marriage certificates.

(2) The judge of probate may make such records available to the public in electronic format and publish such records on the Internet.

Task Force's Notes

For discussion on the determination of confidentiality of medical records as it relates to in-camera inspection, see *Schaefer v. State*, 676 So.2d 947 (Ala. Crim. App. 1995); *Ex Parte Alabama Dept. Mental Health and Mental Retardation*, 819 So.2d 591 (Ala. 2001).

ARTICLE IV. FEES

Rule 401. Court fees.

(A) Electronic access to the electronic docket and documents filed in the system is available for viewing to the public at no charge at the clerk's office during regular business hours.

(1) Except where parties to an action or their attorneys, along with governmental agencies, request a copy of the court record or document, the clerk shall charge a fee for a copy of the court record or document.

(a) The Administrative Director of Courts shall set the cost of the fee.

(b) If the requesting individual requests that the clerk forwards copies by mail, the clerk shall not pay for postage.

(B) General remote access to the public records of the court is available via a subscribers' service.

Suggestions Page

Suggestion #1: Alabama should consider having a system in place for handling bulk requests and compiled information requests, similar to that of South Dakota Codified Laws § 15-15A-12. The South Dakota statute reads as follows:

“(1) *Compiled information is defined as information that is derived from the selection, aggregation or reformulation by the Supreme Court*

of some of the information from more than one individual court record.

(2) *Any member of the public may request compiled information that consists solely of information that is publicly accessible and that is not already available in an existing report. The Supreme Court may compile and provide the information if it determines, in its discretion, that providing the information meets criteria established by the Court, that the resources are available to compile the information and that it is an appropriate use of public resources. The State Court Administrator's Office will make the initial determination as to whether to provide the compiled information.*

(a) *Compiled information that includes information to which public access has been restricted may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes.*

(b) *The request shall a) identify what information is sought; b) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and c) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.*

(c) *The Supreme Court may grant the request and compile the information if it determines that doing so meets criteria established by the Court, is consistent with the purposes of the access rules, that the resources are available to compile the information, and that it is an appropriate use of public resources.*

(d) *If the request is granted, the Supreme Court may require the requestor to sign a declaration that:*

(i) *The data will not be sold or otherwise distributed directly or indirectly, to third parties, except for journalistic purposes;*

(ii) *The information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes; and*

(iii) *There will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.*

The Supreme Court may make such additional orders as may be needed to protect information to which access has been restricted or prohibited."

Alabama should also consider having a statement that prohibits the dissemination of bulk information for resale as well as any other bulk dissemination request or any bulk sealing request except as authorized by the court, like that of South Dakota Codified Laws § 15-15A-11. That South Dakota statute reads as follows:

"Dissemination of bulk information for resale is prohibited pursuant to § 1-27-1. Any other bulk dissemination is prohibited except as authorized by the State Court Administrator or the Chief Justice of the Supreme Court."

These two suggestions, if approved, would become a new Rule 303.

Suggestion #2: Alabama should consider having a redaction rule/procedure, like that of South Dakota Codified Laws § 15-15A-9 or Florida Statutes Annotated § 119.0714. The South Dakota statute reads as follows:

(1) *Social security numbers, employer or taxpayer identification numbers, and financial or medical account numbers of an individual where required to be filed with the court shall be submitted on a separate Confidential Information Form, appended to these rules, and filed with the pleading or other document required to be filed. The Confidential Information Form is not accessible to the public.*

(2) *Financial documents named in subdivision 15-15A-8(2) that are required to be filed with the court shall be submitted as a confidential document and designated as such to the clerk upon filing. The Confidential Financial Documents*

Information Form appended to these rules shall be attached to financial documents being filed with the court. The Confidential Financial Documents Information Form is not accessible to the public. The confidential financial documents will not be publicly accessible, even if admitted as a trial or hearing exhibit, unless the court permits access pursuant to § 15-15A-10. The court may, on its own motion, protect financial documents that have been submitted without the Confidential Financial Documents Information Form.

- (3) Names of any child under eighteen years of age alleged to be the victim of a crime in any adult criminal proceeding shall appear as initials only. The names shall be provided on a separate Confidential Information Form.
- (4) Court records in which a child under eighteen years of age is identified as the petitioner or respondent in a protection order proceeding shall be treated as confidential and excluded from public access.
- (5) Parties with cases filed prior to the effective date of this rule, or the court on its own, may, by motion, protect the privacy of confidential information as defined in § 15-15A-8. Parties filing this motion will submit a completed Confidential Information Form or Confidential Financial Documents Information Form as appropriate.”

The Florida statute reads as follows:

“(1) Court files.—Nothing in this chapter shall be construed to exempt from s. 119.07(1) a public record that was made a part of a court file and that is not specifically closed by order of court, except:

- (a) A public record that was prepared by an agency attorney or prepared at the attorney’s express direction as provided in s. 119.071(1)(d).
- (b) Data processing software as provided in s. 119.071(1)(f).
- (c) Any information revealing surveillance techniques or procedures or personnel as provided in s. 119.071(2)(d).
- (d) Any comprehensive inventory of state and local law enforcement resources, and any

comprehensive policies or plans compiled by a criminal justice agency, as provided in s. 119.071(2)(d).

- (e) Any information revealing the substance of a confession of a person arrested as provided in s. 119.071(2)(e).
- (f) Any information revealing the identity of a confidential informant or confidential source as provided in s. 119.071(2)(f).
- (g) Any information revealing undercover personnel of any criminal justice agency as provided in s. 119.071(4)(c).
- (h) Criminal intelligence information or criminal investigative information that is confidential and exempt as provided in s. 119.071(2)(h) or (m).
- (i) Social security numbers as provided in s. 119.071(5)(a).
- (j) Bank account numbers and debit, charge, and credit card numbers as provided in s. 119.071(5)(b).
- (k)
 1. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason having to do with the sufficiency of the petition itself without an injunction being issued on or after July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
 2. A petition, and the contents thereof, for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking that is dismissed without a hearing, dismissed at an ex parte hearing due to failure to state a claim or lack of jurisdiction, or dismissed for any reason

having to do with the sufficiency of the petition itself without an injunction being issued before July 1, 2017, is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution only upon request by an individual named in the petition as a respondent. The request must be in the form of a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, or electronic transmission or in person to the clerk of the court. A fee may not be charged for such request.

3. Any information that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking, and any affidavits, notice of hearing, and temporary injunction, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the respondent has been personally served with a copy of the petition for injunction, affidavits, notice of hearing, and temporary injunction.
 - (l) Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2) and the names of family members, dependents, and beneficiaries of such payee contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights under s. 626.99296. Such information shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution during the pendency of the transfer proceeding and for 6 months after the final court order approving, or not approving, the transferee's application. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.
- (2) Court records.--
 - (a) Until January 1, 2012, if a social security number or a bank account, debit, charge, or credit card number is included in a court file, such number may be included as part of the court record available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.
 - (b) A request for redaction must be a signed, legibly written request specifying the case name, case number, document heading, and page number. The request must be delivered by mail, facsimile, electronic transmission, or in person to the clerk of the court. The clerk of the court does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.
 - (c) A fee may not be charged for the redaction of a social security number or a bank account, debit, charge, or credit card number pursuant to such request.
 - (d) The clerk of the court has no liability for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, unknown to the clerk of the court in court records filed on or before January 1, 2012.
 - (e)
 1. The clerk of the court must keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.
 2. Section 119.071(5)(a) 7. and 8. does not apply to the clerks of the court with respect to court records.
 - (f) A request for maintenance of a public records exemption in s. 119.071(4)(d) 2.

made pursuant to s. 119.071(4)(d) 3. must specify the document type, name, identification number, and page number of the court record that contains the exempt information.

(g) *The clerk of the court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk of the court.*

(3) *Official records.—A person who prepares or files a record for recording in the official records as provided in chapter 28 may not include in that record a social security number or a bank account, debit, charge, or credit card number unless otherwise expressly required by law.*

(a) *If a social security number or a bank account, debit, charge, or credit card number is included in an official record, such number may be made available as part of the official records available for public inspection and copying unless redaction is requested by the holder of such number or by the holder's attorney or legal guardian.*

1. *If such record is in electronic format, on January 1, 2011, and thereafter, the county recorder must use his or her best effort, as provided in paragraph (d), to keep social security numbers confidential and exempt as provided for in s. 119.071(5)(a), and to keep complete bank account, debit, charge, and credit card numbers exempt as provided for in s. 119.071(5)(b), without any person having to request redaction.*

2. *Section 119.071(5)(a) 7. and 8. does not apply to the county recorder with respect to official records.*

(b) *The holder of a social security number or a bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, may request that a county recorder redact from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet*

website used by a county recorder to display public records, or otherwise made electronically available to the public, his or her social security number or bank account, debit, charge, or credit card number contained in that official record.

1. *A request for redaction must be a signed, legibly written request and must be delivered by mail, facsimile, electronic transmission, or in person to the county recorder. The request must specify the identification page number of the record that contains the number to be redacted.*

2. *The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.*

3. *A fee may not be charged for redacting a social security number or a bank account, debit, charge, or credit card number.*

(c) *A county recorder shall immediately and conspicuously post signs throughout his or her offices for public viewing, and shall immediately and conspicuously post on any Internet website or remote electronic site made available by the county recorder and used for the ordering or display of official records or images or copies of official records, a notice stating, in substantially similar form, the following:*

1. *On or after October 1, 2002, any person preparing or filing a record for recordation in the official records may not include a social security number or a bank account, debit, charge, or credit card number in such document unless required by law.*

2. *Any person has a right to request a county recorder to remove from an image or copy of an official record placed on a county recorder's publicly available Internet website or on a publicly available Internet website used by a county recorder to display public records, or otherwise made electronically available to the general*

public, any social security number contained in an official record. Such request must be made in writing and delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder. The request must specify the identification page number that contains the social security number to be redacted. A fee may not be charged for the redaction of a social security number pursuant to such a request.

(d) If the county recorder accepts or stores official records in an electronic format, the county recorder must use his or her best efforts to redact all social security numbers and bank account, debit, charge, or credit card numbers from electronic copies of the official record. The use of an automated program for redaction is deemed to be the best effort in performing the redaction and is deemed in compliance with the requirements of this subsection.

(e) The county recorder is not liable for the inadvertent release of social security numbers, or bank account, debit, charge, or credit card numbers, filed with the county recorder.

(f) A request for maintenance of a public records exemption in s. 119.071(4)(d) 2. made pursuant to s. 119.071(4)(d) 3. must specify the document type, name, identification number, and page number of the official record that contains the exempt information.”

Additionally, Alabama should consider implementing a limited immunity provision for clerks, such as that of Alabama Code § 12-17-5 or Rule 31(I) of the Rules of Judicial Administration. The Alabama statute reads as follows:

“In the performance of any duties provided for by Sections 12-17-94(a) and 12-17-251(c), every magistrate and clerk of the circuit and district courts of this state shall have absolute judicial immunity

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from any liability arising from the execution of the duties provided for by Sections 12-17-94(a) and 12-17-251(c).”

Rule 31(I) reads as follows:

“(I) **Protection of Identifying Information and Confidential Records.** Unless otherwise provided by law, any data, report, or compilation of information produced by the clerk or other official custodian of court records for public disclosure shall exclude the personal identifying information of any individual. Identifying information may include all nine (9) digits of an individual’s Social Security number, an individual’s date of birth, credit card numbers, bank account numbers, other personal financial information, or any other information declared to be identifying information by the ADC. The ADC may promulgate policies and procedures for the clerk or other official custodians of court records to follow in order to safeguard identifying information or other personal information that the ADC determines should be protected from public disclosure. The clerk or other official custodian of court records shall not be responsible for identifying information included on any document filed in the clerk’s office. Any individual filing a document that requires or contains an individual’s personal identifying information may make proper request under these Rules or other applicable rules to protect the contents of such documents from public disclosure.”

These two suggestions, if approved, would comprise a new subsection (D) of current Rule 303 (Procedure to redact information).

Suggestion #3: Alabama should consider adapting a penalties rule from Rule 37 of the Alabama Rules of Civil Procedure for noncompliance. The relevant portion of Rule 37 reads as follows:

“(b) *Failure to comply with order.*

(1) **SANCTIONS BY A CIRCUIT JUDGE OR COURT IN PLACE WHERE DEPOSITION IS TAKEN OR PRODUCTION SOUGHT.** If a deponent fails to be sworn or to answer a question after being directed to do so by a circuit judge or, when the deposition is being taken outside the

state, by the court in the place in which the deposition is being taken; or, if a person, not a party, fails to permit production of documents or entry upon land under Rule 45(a)(3) after being directed to do so by a circuit judge or, when production or entry is sought outside the state, by the court in the place where the documents, things, or land are located, the failure may be considered a contempt of court.

- (2) **SANCTIONS BY COURT IN WHICH ACTION IS PENDING.** If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
- (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
 - (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
 - (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;
 - (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;
 - (E) Where a party has failed to comply with an order under Rule 35(a) requiring that party to produce another

for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.”

This suggestion, if approved, would create a new Article V and Rule 501.

Suggestion #4: Alabama should consider creating and using forms or providing standard form templates as it relates to court record confidentiality.

This suggestion, if approved, would create an Appendix of forms and templates. ▲

Endnotes

1. For example, abortion records and other information involving court proceedings conducted pursuant to Ala. Code § 26-21-4; abuse and neglect files and records pursuant to Ala. Code §§ 26-14-8(c) and 15-1-2; adoption files and adoption court records pursuant to Ala. Code § 26-10A-31; audio recordings of 911 calls subject to the provisions of Ala. Code § 11-98-12; criminal history pursuant to Ala. Code §§ 27-9A-17, 27-25-4.4, 27-25-4.6, and 41-9-642; domestic abuse victim's home address, business address, home telephone number, business telephone number, the home or business address or telephone number of any member of the victim's household, and any address that may reveal the confidential location of a shelter for victims of domestic violence pursuant to Ala. Code § 30-5-5; parole or probation records subject to privilege pursuant to Ala. Code § 12-26-7(f); information and records acquired by child death review teams pursuant to Ala. Code § 26-16-98; information regarding motor vehicle registration suspension or reinstatement status pursuant to Ala. Code § 32-7A-24; information that is confidential or privileged pursuant to Ala. Code §§ 12-21-131(i), 15-23-42, 34-8A-21, and Rule 503 of the Alabama Rules of Evidence; law enforcement files concerning a child pursuant to Ala. Code § 12-15-134; presentence investigation reports pursuant to Ala. Code § 13A-5-47; records concerning the accreditation, quality assurance, and similar materials pursuant to Ala. Code § 22-21-8; records furnished to quality control committee, peer review committee, or professional standards committee pursuant to Ala. Code § 6-5-333; reports of criminal history background received by the Department of Human Resources pursuant to Ala. Code § 38-13-8; records of domestic violence fatality review pursuant to Ala. Code § 30-9-2; records of hearings involving the suspension or revocation of medical licenses pursuant to Ala. Code § 34-24-361.1; records relating to a conviction or adjudication in a DUI case for an under-21 individual pursuant to Ala. Code § 32-5A-191(b); records related to investigation of an infected health care worker pursuant to Ala. Code § 22-11A-69; trade secrets pursuant to Ala. Code §§ 8-27-2, 22-30-18, and 27-22-25; treatment records of drug offenders pursuant to Ala. Code § 12-23A-10(c); vital records pursuant to Ala. Code § 22-9A-21; and registration, circulation records and information concerning the use of the public, public school or college and university libraries, per Ala. Code § 36-12-40.
2. See, e.g., *Holland v. Eads*, *supra*, at 1014 which states:

“Limitations of the public's right to inspect” must be strictly construed and must be applied only in those cases where it is readily apparent that disclosure will result in undue harm or embarrassment to an individual, or where the public interest will clearly be adversely affected, when weighed against the public policy considerations suggesting dis-

closure.” *Chambers v. Birmingham News Co.*, 552 So.2d 854, 856 (Ala. 1989). The party refusing disclosure bears the burden of “proving that the writings or records sought are within an exception and warrant nondisclosure of them.” *Chambers*, at 856–57; *Ex parte CUNA Mutual Ins. Society*, 507 So.2d 1328, 1329 (Ala. 1987); *Ex parte McMahan*, 507 So.2d 492, 493 (Ala. 1987). This Court has held that the following types of records do not warrant disclosure: “[r]ecorded information received by a public officer in confidence, sensitive personnel records, pending criminal investigations, and records the disclosure of which would be detrimental to the best interests of the public.” *Stone*, 404 So.2d at 681.”

3. See, e.g., appellate mediation records pursuant to Rule 8 of Alabama Rules of Appellate Mediation; attorney discipline records pursuant to Rule 30 of the Alabama Rules of Disciplinary Procedure; custody or visitation dispute mediation proceedings pursuant to Alabama Civil Court Mediation Rule 11; depositions which have been sealed by an officer and filed with the court pursuant to Rule 30 of the Alabama Rules of Civil Procedure; judicial disciplinary proceedings pursuant to Alabama Constitution Article VI § 156(b) and Alabama Rules of Procedure of the Judicial Inquiry Commission Rule 5; unexecuted search warrants, which have been sealed for confidentiality, pursuant to Rule 3.14 of the Alabama Rules of Criminal Procedure; privileged confidential communications between attorney and client pursuant to Rule 502 of the Alabama Rules of Evidence; privileged material prepared in anticipation of litigation by a party's attorney or representative pursuant to Rule 26 of the Alabama Rules of Civil Procedure.
4. Members of the Joint Task Force have included - **Judge Scott Donaldson** (formerly a judge of the Court of Civil Appeals and now practicing in Tuscaloosa with Rosen Harwood); **David G. Wirtes, Jr.**, Cunningham Bounds, Mobile; **Chris Weller**, Capell & Howard, Montgomery; **Richard Raleigh**, Womble, Bond, Dickinson, Huntsville; **Rebekah McKinney**, Watson McKinney, Huntsville; **Evans Bailey**, Rushton Stakely; **David Kimberly**, Deputy Director of the Alabama Law Institute; **Carla Woodall**, Houston County Circuit Clerk; **Othni Lathram**, Alabama Legislative Services Agency; **Scott Mitchell**, Clerk of Alabama Court of Criminal Appeals; **Nathan Wilson**, Clerk of Alabama Court of Civil Appeals; **Michael Hill**, Alabama Legislative Services Agency; **Brad Maderis**, Staff Attorney with the Alabama Supreme Court; **Wendy Crew** of Birmingham; **Randy Nichols**, Massey Stotser & Nichols, Birmingham; **Jackson Colburn**, Attorney with the Alabama Law Institute; **Mary Margaret Bailey**, Frazer Green & Upchurch, Mobile; **Julia Weller**, former Clerk of the Alabama Supreme Court.
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