

Frequently Asked Questions – Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts

Section 7.0:

1. How do I know whether I should file a Confidential Information Form or a redacted and unredacted version of the documents with the court?

Answer: You can locate a list of rules on how confidential information should be filed with each court at <http://www.pacourts.us/public-records/public-records-policies>.

2. If a Confidential Information Form is used, the confidential information (e.g. social security and financial account numbers) is listed on the Form and not in the body of the motion, pleading, or other document being filed with the court. What is accessible to the public?

Answer: The Confidential Information Form is not accessible to the public. However, the motion, etc. (which has no confidential information) is available to the public.

3. How do the requirements in Section 7.0 affect self-represented parties?

Answer: Self-represented parties must comply with the Policy or face possible sanctions. The Policy and related forms can be found at <http://www.pacourts.us/public-records/public-records-policies>.

4. Section 7 (D): How do I comply with the required certification when e-filing my documents with a court? When filing my documents in paper form?

Answer: With regard to e-filing, in PACFile (the statewide e-filing system for the appellate courts), there is a “checkbox” that contains the certification that filers have to check in order to e-file their documents. Some judicial districts may also have implemented a similar e-filing procedure; if you have questions, it is advised that you check with the pertinent filing office.

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When filing your documents in paper form, if using a Confidential Information Form or Confidential Document Form with your filing, then those forms contain the required certification. The AOPC has also created a sample Certification Form that parties and attorneys may use as a stand-alone document or incorporate in their filed documents. All Policy forms may be viewed at <http://www.pacourts.us/public-records/public-records-forms>.

The certification is required for every filing.

5. Section 7.0(G) applies to all documents for any case filed with a court or custodian on or after the effective date of this policy, which is January 6, 2018. Does this mean that all documents filed before January 6, 2018 are not governed by the Policy but might be protected by policies or rules in place before 1/6/18?

Answer: Sections 7.0 (Confidential Information) and 8.0 (Confidential Documents) are not applicable to documents filed with a court prior to January 6, 2018. To the extent that there were policies and rules in place that protected information or documents prior to that date, then they would govern documents filed before January 6, 2018.

However, some local rules that previously kept certain documents under seal or otherwise unavailable to the public may no longer apply. See for example local rules of Delaware and Montgomery Counties concerning divorce records.

6. What happens when a case that was previously sealed pursuant to a court order, is unsealed?

Answer: A court on its own motion or upon a party's motion may direct that confidential information/documents contained in the previous filings be protected in accordance with the Policy. It is advised that parties and attorneys take all necessary actions during the pendency of a case to protect confidential information and documents, in order to avoid having to take action retroactively should a case be unsealed.

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7. What if a court order or opinion contains confidential information? Who has the burden of redacting confidential information on routine scheduling orders or opinions issued by the courts?

Answer: Court-generated documents, such as hearing notices, orders and opinions, are not governed by Section 7.0, or by the Policy in general. The Policy governs documents filed with the court by a party or attorney. For more information, you may wish to read the Commentary to Sections 7.0 and 8.0 of the Policy.

The courts are not required to redact their opinions or other court-generated documents. It is important that the public has access to and an understanding of the courts' decisions, in order to assure that justice is being done fairly and impartially as well as to promote confidence in the judicial system.

8. When a court order is attached to a party filing and the order contains information which must be safeguarded pursuant to Section 7.0, should the order be redacted?

Answer: The Policy does not impact court-generated documents, such as court orders and notices. Thus, if the order is available to the public in the file, the party attaching the order to the filing does not need to comply with the Section 7.0 protocols.

9. Under section 7.0(A)(5), will the court include children's names and dates of birth in custody orders? Related to this specific question is the more general question about how the court intends to issue orders, opinions, judgments, or decrees so that confidential information is protected.

Answer: Section 7.0(A)(5) does not apply to court-generated documents (orders, opinions, etc.).

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10. Currently our county does not place custody records online, does the Policy obligate a county to now put them online?

Answer: There is no requirement to place records online.

11. A custody case is filed and the plaintiff alleges that the defendant has a specific mental health issue (e.g., bipolar disorder) and should not be awarded custody of the children. Can the pleading reference the mental health issue or must any reference to the issue be redacted?

Answer: Medical records are documents safeguarded by Section 8.0(A)(3). However, Section 7.0 does not list medical information as a piece of information that requires protection. There is no requirement under the Policy to redact or safeguard the mental health issue mentioned in the pleading.

However parties should be mindful of the rules of professional responsibility that require care in protecting the confidential information of clients (rule 1.6) and rules requiring truthfulness, candor to the tribunal, and the exercise of good faith in bringing claims that require a lawyer to exercise care in making assertions about another party.

12. Is it a policy violation for an attorney to file a proposed order or stipulated custody order with a child's name and date of birth since they will eventually be a court order signed by the judge?

Answer: It may be advisable to submit two copies of the order, a redacted and unredacted copy even in a jurisdiction which has chosen to

use the Confidential Information Form. However, any specific questions about local practice should be raised directly with the court/filing office.

13. When is an individual considered an "abuse victim" for purposes of redacting their address?

Answer: An abuse victim is defined in the Policy as "a person for whom a protection order **has been granted** by a court pursuant to Pa.R.C.P. No. 1901 et seq. and 23 Pa.C.S. § 6101 et seq. or Pa.R.C.P. No. 1951 et seq. and 42 Pa.C.S. § 62A01 et seq." See Section 1.0 (Definitions) of the Policy (emphasis added).

14. If a PFA order is granted for a defendant in custody matter two years after the custody matter was originally filed, is there any duty on the parties to safeguard information in the prior filings on the case?

Answer: No. The Policy impacts only those documents filed after a court determined that the person is a victim. The certification is filed contemporaneously with the filing of the documents; thus, it refers to the present moment, not documents filed in the past.

15. When an abuse victim (as defined in the Policy) files a custody complaint, he/she will enter contact information on the Confidential Information Form (if a county made this Section 7.0 selection). When the custody complaint is served upon the defendant and the defendant is the "abuser", should the Confidential Information Form - Abuse Victim Addendum be provided to the defendant as well?

Answer: The Abuse Victim Addendum, and any additional pages, shall only be provided to the court and shall remain confidential.

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16. Will the petitions created in the State Police's Protection from Abuse Database (PFAD) be altered to comply with the Policy?

Answer: Section 7.0 of the Policy provides that “[u]nless required by applicable authority”, parties and attorneys must not include confidential information on any document filed with the court. The temporary and final Protection from Abuse petition and order are set forth in the Rules of Civil Procedure (Pa.R.C.P. No. 1905). Similarly, the temporary and final Protection of Victims of Sexual Violence or Intimidation petition and order are embedded in Pa.R.C.P. No. 1959. These statewide procedural rules are “applicable authorities” and exceptions to Section 7.0. The rules require certain confidential information shall be provided and must be followed. No changes to the PFAD forms are anticipated, unless a change occurs in the rules.

17. How do I handle Confidential Information, such as a victim's address, included in Protection from Abuse petitions and Protection from Abuse orders?

Answer: Section 7.0 of the Policy provides that “[u]nless required by applicable authority”, you follow the provision of that Section. The temporary and final PFA petitions and Orders are embedded in the Rules of Civil Procedure (Pa.R.C.P. No. 1905). Given there is a statewide procedural rule, this would be “applicable authority” and an exception to Section 7.0. Specifically, one must follow the Rule which appears to require the plaintiff’s address information; furthermore, until such time as the court grants the petition, the plaintiff is not considered an "abuse victim" whose address and other information must not be included in family court actions in accordance with Section 7.0(A)(6). However, the Rule does permit (as well as the petition form) for the individual to mark his/her address as “confidential”. Thus, the Rule, not the policy, protects the address information, in this instance. With regard to the orders, the Policy does not govern court-generated documents.

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18. Do all Protection From Abuse Orders need to be filed with a confidential information form or redacted?

Answer: Court-generated documents (Protection From Abuse Orders) are exempt from Section 7.0.

19. Section 7 (A)(6): What about witnesses and abuse victims in family law cases which are listed in hearing notices?

Answer: Hearing notices are court-generated documents which are not governed by Section 7.0.

20. Regarding section 7.0(A)(6) relating to abuse victims—how would the Domestic Relations Office know that someone is an abuse victim and not include address info in notices/filings?

Answer: Court generated documents are not affected by Section 7.0.

21. I had a PFA granted against Mr. Smith five years ago. The PFA order expired two years ago and is no longer in effect, am I an abuse victim under the above definition, such that my address information is protected under Section 7.0(A)(6)?

Answer: No. One is only an abuse victim for purposes of the Policy if there is a current order in effect when the document in a family court action is filed with the court.

22. Orders in child support entered by the Domestic Relations Office contain a child's name & DOB—under Section 7(A)(6) of the Policy, is there a requirement to change what is displayed in the order?

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Answer: No.

23. When filing a petition for expungement pursuant to Pa.R.Crim.P. 490 or 790, should the social security number (SSN) be protected in accordance with Section 7.0.

Answer: The SSN remains on the petition and order. It remains on the Order because orders are not covered by the policy. It remains on the petition because Section 7.0(a) provides “[u]nless required by applicable authority ...” The Commentary provides that “[t]here is authority requiring information listed in Section A to appear on certain documents. For example, Pa.R.C.P. No. 1910.27 provides for inclusion of the plaintiff’s and defendant’s social security number on a complaint for support.” Similarly, Pa.Rs.Crim.P. 490 and 790 require the inclusion of the defendant’s SSN on a petition for expungement.

24. How does Section 7.0 reconcile with the requirements of what is to be included on the Complaint for Child Support, per Pa.R.C.P. No. 1920.27?

Answer: Pleadings in child support matters maintained by the Domestic Relations Office are not accessible by the public, except for PACSES dockets, court orders and opinions as provided by legal authority; for more information visit: <http://www.pacourts.us/assets/files/resource-122967/file-5858.pdf?hash=682d5024eda42348265ea1c23d5d0ce0>.

25. How should parties, attorneys or judges differentiate between the children, if parties and attorneys refer to them as child 1, child 2, etc.? Or when all children share the same initials?

Answer: Section 7.0(a)(5) does prohibit the use of minor’s name and date of birth except when a minor is charged as a defendant in a criminal

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matter OR unless required by applicable authority (rule, statute, etc.). The court could require that parties and attorneys use a combination of initials and perhaps partial date of birth (e.g. year of birth). Courts may wish to set local protocols for purposes of consistency and ease of administration.

26. Can a party to the case view the confidential information of the other party?

Answer: Yes. A party to the case does not fall under the definition of “public” in the Policy.

27. What happens when an attorney does not comply with the Policy's provisions?

Answer: A party's or attorney's failure to comply with the policy will not affect access to case records that are otherwise accessible. A court may order a noncompliant filing sealed or redacted and impose sanctions.

28. Does the new policy apply to transcripts?

Answer: Rule of Judicial Administration 4014 (Redaction of Personal Data Identifiers) is the authority for safeguarding confidential information in a transcript, which is a court-generated document.

29. Why is a State Identification Number confidential under Section 7.0?

Answer: State Identification Numbers (“SID”) have been defined as “[a] unique number assigned to each individual whose fingerprints are placed into the Central Repository of the State Police. The SID is used to

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track individuals for crimes which they commit, no matter how many subsequent fingerprint cards are submitted." 37 Pa. Code § 58.1.

The UJS' *Electronic Case Record Public Access Policy* also restricts public access to SIDs. See also, *Warrington Crew v. Pa. Dept. of Corrections*, (Pa. Cmwlth., No. 1006 C.D. 2010, filed Nov. 19, 2010), pertaining to a ruling by the Office of Open Records that a SID number is exempt from disclosure through a right-to-know request because such numbers qualify as a confidential personal identification number.

30. Imagine that it is the year 2020, and an attorney realizes that she has been filing documents that are not compliant with the Policy with the court for the last two years in a case. What should the attorney do - comply with the Policy going forward or correct the documents filed for the last two years?

Answer: The attorney should take corrective action, or risk sanctions and possible ethical violations.

Section 8.0:

1. What should an individual do when they have a "Confidential Document" that must be submitted to the court but the document is not listed on the form? Which box should they check?

Answer: The Confidential Document Form should only be used for the "Confidential Documents" specifically listed in Section 8.0 of the Policy. If the document is not listed in Section 8.0, it is not a confidential document under the Policy. If a party is concerned about the public accessing a document, the party could make a sealing request to the court.

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2. What about Petitions for Wrongful Death Actions that have medical records attached to them and other related confidential information?

Answer: Section 8.0 requires that medical records be filed under a Confidential Document Form, unless there is applicable legal authority requiring otherwise.

3. Should a Mental Health Petition be filed under a Confidential Document Form?

Answer: In matters involving an individual who is in treatment under the Mental Health Procedure Act, access to those matters is limited pursuant to 50 P.S. § 7111. In fact, this statutory restriction is referenced in a list created by the AOPC entitled “Limits on Public Access to Unified Judicial System Case Records of the Appellate and Trial Courts”, located at <http://www.pacourts.us/public-records/public-records-policies>.

4. Are Qualified Domestic Relations Orders considered confidential documents under the Policy?

Answer: These are court orders and not governed by the Policy.

5. How should a proposed Qualified Domestic Relations Orders (QDRO) be filed?

Answer: If confidential information is contained in the proposed order, it may be advisable to submit two copies of the order, a redacted and unredacted copy even in a jurisdiction which has chosen to use the Confidential Information Form. However, it may be possible and preferable to omit any confidential information and supply a social

security number and any other confidential information only in a separate confidential addendum. Any specific questions about local practice should be raised directly with the court/filing office.

6. What is considered an agreement between parties under 23 Pa.C.S. § 3105 in Section 8.0(A)(7)?

Answer: This section provides “[a] party to an agreement regarding matters *within the jurisdiction of the court* under this part, whether or not the agreement has been merged or incorporated into the decree, may utilize a remedy or sanction set forth in this part to enforce the agreement to the same extent as though the agreement had been an order of the court except as provided to the contrary in the agreement”. The jurisdiction of the court can be found under 23 Pa.C.S. § 3104 and provides the court with jurisdiction over cases of divorce, including decrees and orders. This can include property settlement agreements (PSA), separation agreements, custody stipulations, marriage settlement agreements, and under 23 Pa.C.S. § 3104(a)(5) “[a]ny other matters pertaining to the marriage and divorce or annulment authorized by law . . .”

Section 9.0:

1. Will guardianships be public unless the court directs otherwise?

Answer: Access to guardianship cases is limited in Section 9.0 to only orders finding a person incapacitated and the docket.

2. Is the decree for an emergency petition for guardianship available to the public?

Answer: Section 9.0(c) provides with regard to guardianship/incapacity proceedings that only the “docket and any final decree adjudicating a

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person as incapacitated” are available to the public. With the public having access to the docket, the public would be able to see that an emergency petition has been filed and that a Decree has been entered granting the petition. The public could always petition the court to see more information.

3. Under Section 9.0(B), the public is only permitted to see the docket and final decree adjudicating a person as incapacitated. If a distant friend or family member wishes to review the file would they have to petition the court?

Answer: Under the policy, only the guardian, party to the case, and the attorney of record may review the file. The person would need to petition the court. The policy does not intend to stop friends or family from taking care of their loved ones in guardianship matters. The policy is in place to protect the confidential information found in guardian matters from members of the public who have no reason to need that confidential information or access to it.

4. How does the Policy impact the public’s access to child support records maintained by the Domestic Relations Office?

Answer: Access to the child support records would still be the same. No public access except for PACSES dockets, court orders and opinions as provided by legal authority; for more information visit:
<http://www.pacourts.us/assets/files/resource-122967/file-5858.pdf?hash=682d5024eda42348265ea1c23d5d0ce0>.

Section 10.0:

1. Section 10.0 limits remote access to family court records. Family court dockets, court orders and opinions are the only items that may be accessible via remote access. If someone comes to the filing office or Domestic Relations Office, are they prohibited from reviewing other original documents in the file, such as the pleadings and mailing notices?

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Answer: Family court records are available at the courthouse facilities under Section 9.0. With regard to a Domestic Relations Office, no public access to child support records except for PACSES dockets, court orders and opinions as provided by legal authority. For more information visit: <http://www.pacourts.us/assets/files/resource-122967/file-5858.pdf?hash=682d5024eda42348265ea1c23d5d0ce0>.

Section 11.0:

1. Section 11(A) provides that a party who wishes to request the correction of a clerical error “may submit a written request for correction.” The use of the term “may” could suggest that it is the option of the filing party whether or not to make a written request – thus leaving open the possibility of oral requests (perhaps for simple matters such as spelling errors, etc.) However, the subparagraphs of Section 11 that follow – specifically 11(B) and (C) which require submission of information on a form and service upon other parties (respectively) -- would suggest that all such requests must be in written form.

Answer: The Commentary Following Section 11.0 provides in part that “[a] party or party’s attorney is not required to utilize the procedures set forth in this section before making a formal motion for correction of a case record in the first instance.” Thus, the protocols in Section 11.0 should not be viewed as the exclusive means for correcting clerical errors.

Miscellaneous:

1. Is the Policy applicable to Register of Wills and Recorder of Deeds?

Answer: No.

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2. Do documents prepared and filed by the court that include confidential information need to comply with the public access policy?

Answer: The policy governs documents filed with the court by parties and attorneys. It does not govern court-generated documents.

3. Must each filing contain a certification of compliance, as specified in Sections 7.0 and 8.0? Even an entry of appearance, for example?

Answer: The certification is required with every document that is filed with the court.


4. Is the Certificate of Compliance required with the Praecipe to Transmit the Record in divorces?

Answer: Yes.

5. Whether certification is needed on every document filed with the court or only those documents which have confidential information?

Answer: The certification is required on every document filed with a court or custodian regardless of whether the filing contains “confidential information” requiring safeguarding under the Policy. It serves the purposes of ensuring that the filing party has considered the Policy for every document before filing the same with the court.

6. When completing the forms online, how do I save them?

Answer: Download and save the form to your computer. You can download the form by clicking the  button in the top right corner or

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by right-clicking on the form and selecting 'Save As.' Use the saved version to complete the form and 'Save'.

7. Does the Policy require that a first and final accounting be filed in compliance with Sections 7.0 and 8.0?

Answer: These documents are filed in guardianship matters and also in other matters, such as trusts and decedent's estates. With respect to guardianship matters only, these matters are not publicly accessible under law. Therefore, the filer would not need to follow the requirements of Sections 7.0 and 8.0 with respect to accounts filed in guardianship matters.

8. What about Petitions to Settle Small Estates that consist of social security numbers and other confidential information?

Answer: A filer must comply with the requirements in Sections 7.0 and 8.0 to safeguard confidential information and documents, unless there is applicable legal authority requiring otherwise. Unless a local rule expressly requires it, no social security number should be required on a petition to settle a small estate or any other petition related to a decedent.

9. Are Guardians Ad Litem, masters, mediators, conciliators, etc. required to comply with the Policy? (Including filing certificates of compliance with everything)?

Answer: With regard to masters, mediators, and conciliators, documents generated by these quasi-judicial officials when performing their duties should be considered court-generated documents for purposes of this Policy. However, they should omit confidential information not necessary to their evaluation/recommendation when drafting documents which are accessible to the public.

With regard to Guardians Ad Litem (GAL), a GAL should be considered a party, and not counsel, a member of the public, or court personnel. In Orphans' Court, a fiduciary (guardian, trustee, GAL, Trustee ad litem, executor, agent, etc.) is a party. In other matters, a GAL may not be a

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party in the narrowest sense of a “plaintiff” or “defendant,” and perhaps a GAL is analogous to *amicus curiae*. It is recommended that they are treated as a "party" that is subject to the Policy.

10. Should only initials be used when advertising a child's name change pursuant to statute?

Answer: The statute requires notice of a proposed name change to be published, 54 Pa. C.S. § 701(a.1)(3)(ii)(A), while providing that “[i]f the court finds that the notice . . . would jeopardize the safety of the person seeking the name change or his or her child or ward, the notice required shall be waived by order of the court.” 54 Pa. C.S. § 701(a.1)(3)(iii). Proof of publication is required (unless waived). See Section 701(a.1)(4)(ii)(A). Because publication would seem to be meaningless if only initials are used and there is an exception which requires court approval under certain circumstances, the use of the minor’s name is otherwise required by law.

11. Does the court have to comply with the Policy when filing custody orders?

Answer: Court-generated documents, such as orders and opinions, are not governed by the Policy. However, if it is possible to draft an order without using sensitive information, it is recommended that the court do so.

12. Are Qualified Domestic Relations Orders considered confidential documents under the Policy?

Answer: These are court orders and not governed by the Policy.

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