

**CONNECTICUT BAR**  
**ASSOCIATION**

**Report Of The  
Task Force On  
Confidentiality  
And The Courts**

**December 14, 2004**

**TABLE OF CONTENTS**

MISSION OF THE TASK FORCE ..... 1

INTRODUCTION..... 2

SUMMARY OF INVESTIGATION ..... 4

HISTORY OF THE ISSUE NATION-WIDE ..... 7

HISTORY OF THE ISSUE IN CONNECTICUT ..... 12

FEDERAL RULES AND DISTRICT OF CONNECTICUT LOCAL RULES ..... 16

    A. Existing Rule ..... 16

    B. Studies Regarding Sealed Settlements ..... 17

        1. Connecticut..... 17

        2. Nationally ..... 18

SETTLEMENT AGREEMENTS NOT FILED WITH THE COURT ..... 20

PROTECTIVE ORDERS FOR DISCOVERY MATERIALS ..... 22

RECOMMENDATIONS ..... 24

    I. SEALING OF FILES UNDER RULE 11-20A ..... 25

    II. SEALING OF DIVORCE FINANCIAL AFFIDAVITS  
        UNDER RULE 29-59A ..... 25

    III. FEDERAL PRACTICE IN SEALING COURT-FILED DOCUMENTS ..... 26

    IV. SEALED COURT-FILED SETTLEMENTS ..... 26

    V. THE JUDICIAL ROLE IN SETTLEMENT NEGOTIATIONS ..... 27

    VI. CONFIDENTIAL PRIVATE SETTLEMENTS ..... 27

    VII. PROTECTIVE ORDERS AND CONFIDENTIALITY  
        OF DISCOVERY MATERIALS ..... 28

CONCLUSION ..... 29

APPENDIX A: MODEL PROTECTIVE ORDER ..... 1

## **MISSION OF THE TASK FORCE**

There has been controversy concerning the level to which our courts can and should provide for confidentiality in the conduct and disposition of cases that come before them. The issue raises the need to balance important interests. On the one hand, the courts seek to protect the reasonable privacy concerns of parties and non-litigants, and also seek to facilitate settlement of disputes. On the other hand, there is a public interest in seeing justice done and in avoiding the appearance of privilege, of unequal treatment under the law, or lack of confidence in the judiciary where that may follow from secret resolution of disputes.

The issue of confidentiality has arisen in the family context, in relationship to sealing of files, or portions of files. The issue has arisen in civil cases in connection with protective orders as well as in the disposition of cases, whether settled by stipulated judgment or by other settlement agreements, as well as the enforcement of judgments or settlements under a confidentiality order.

The Task Force is charged with working with the Rules Committee of the Superior Court to review the operation of the current rules of the courts in these regards, to suggest changes where appropriate, and to make recommendations as to matters not currently addressed by court rules.

The Task Force shall endeavor to submit its report to the President of the Connecticut Bar Association and the House of Delegates on or before the January 2005 meeting, or later, with the consent of the House.

## **INTRODUCTION**

Confidentiality clauses in settlement agreements and protective orders in civil litigation have become hotly debated issues. On one side of the debate are those who support public access to documents. This group strongly believes that there is a public interest in seeing justice done and in avoiding the appearance of privilege, unequal treatment under the law, or promoting a lack of confidence in the judiciary where that may follow from secret resolution of disputes. On the other side of the debate are those who support the privacy interests of parties involved in litigation. This group believes that the overriding concern should be that courts seek to protect the reasonable privacy interests of parties and non-litigants, and facilitate settlement of disputes.

Connecticut has been no exception when it comes to addressing the issue of confidentiality in the courts. In the last two years, four bills addressing confidential settlement agreements have come before the Connecticut legislature and last year's amendments to the Connecticut Practice Book Rules have significantly altered the way in which requests to seal documents are handled. Despite a new set of Connecticut Practice Book Rules addressing public access to judicial proceedings, the debate continues.

This Task Force was charged with working with the Rules Committee of the Superior Court to review the operation of the current rules of the courts in these regards, to suggest changes where appropriate, and to make recommendations as to matters not currently addressed by court rules. The Task Force conducted a thorough investigation of the issue of confidentiality in the courts by gathering information from attorneys, judges and other legal experts on both sides of the debate and developed recommendations which address these competing interests.

The Task Force narrowed its focus of the issue of confidentiality in the courts principally to the area of civil litigation. The Task Force conducted only limited investigation of the issue of confidentiality in the context of family or criminal matters due to the unique concerns and interests involved in those areas. The Task Force found that the issue of confidentiality has arisen in civil cases in connection with protective orders as well as in the disposition of cases, whether settled by stipulated judgment or by other settlement agreements, as well as the enforcement of judgments or settlements under a confidentiality order. In developing recommendations, the Task Force focused on settlement agreements not filed with the court and protective orders sought during the course of discovery in civil litigation. The debate over confidential settlement agreements and protective orders raised a number of significant issues which included protecting the public from safety hazards while also respecting the privacy interests of litigants and protecting trade secrets. The recommendations developed by the Task Force attempt to strike a balance between access rights and privacy interests.

## SUMMARY OF INVESTIGATION

The Task Force met on September 23, October 28, November 18 and December 16, 2003, and on February 26, March 16 (by conference call), April 14, June 9, July 20, and August 26, 2004. At the April 14, 2004 meeting, committees to consider the drafting of model protective orders, to evaluate the 2003 Practice Book amendments, and to draft the Task Force's final report were created. In addition to the meetings of the full Task Force, each committee met several times.

Our investigation included the following steps:

1. We reviewed papers and articles on the issue of confidentiality by Professors Laurie Kratky Doré<sup>1</sup> and Arthur R. Miller.<sup>2</sup>
2. We reviewed statutes and court rules regarding confidentiality orders, both in general and with respect to settlement agreements, from a number of other jurisdictions, including Arkansas, Florida, Louisiana, North Carolina, Oregon, South Carolina, Texas, and Washington.
3. We reviewed all Connecticut rules and statutes regarding the sealing of court filings and hearings.
4. We met with a number of members of the bench and bar with expertise relevant to our inquiry, including United States Magistrate Judge (Retired) F. Owen Eagan,<sup>3</sup>

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<sup>1</sup> *Settlement, Secrecy and Judicial Discretion: South Carolina's New Rules Governing the Sealing of Settlements*, 55 So. Car. L. Rev. 791 (2004)]; *The Confidentiality Debate and the Push to Regulate Secrecy in Civil Litigation*, 2000 Forum for State Court Judges, "Open Courts with Sealed Files: Secrecy's Impact on American Justice" (The Roscoe Pound Institute); *Secrecy in the Courts: Recent Developments*, 2003 Workshop for U.S. Magistrate Judges II (Federal Judicial Center).

<sup>2</sup> *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427 (1991).

<sup>3</sup> Judge Eagan served as a United States Magistrate Judge for the District of Connecticut for twenty years. After his retirement from the bench in 1996, he became affiliated with the late United States District Judge Robert C. Zampano in Mediation Consultants LLC, where he serves as a neutral in mediations and arbitrations. He is also a judge of the Mohegan Gaming Disputes Court.

Ralph Elliot,<sup>4</sup> James Rotondo<sup>5</sup> and Christopher Bernard,<sup>6</sup> all of whom graciously agreed to share their particular perspectives and insights in wide-ranging discussions.

5. We reviewed developments in the federal courts on the issue of sealing settlement agreements filed with the court, including a 2003 report of the Federal Practice Section of the Connecticut Bar Association and the ongoing work of the Federal Judicial Center on that topic.

6. We solicited input from a number of CBA constituencies, including the Federal Practice, Litigation, Criminal Defense, Insurance Law, Family Law, Health Law, Young Lawyers, Dispute Resolution and Commercial Law and Bankruptcy Sections and the Media and the Law Committee. We also solicited input from the Connecticut Trial Lawyers Association, the Connecticut Defense Lawyers Association, the George W. Crawford Black Law Association, the Connecticut Hispanic Bar Association, the American Academy of Matrimonial Lawyers and the Hartford County Bar Association. In addition to the aforementioned bar organizations and CBA constituencies, we also sought input from the Connecticut Business and Industries Association the Insurance Association of Connecticut, the Common Cause, the Society of Professional Journalists, the Connecticut Civil Liberties Union, the Legal Assistance Resource Center and the Radio-Television News Directors Association.

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<sup>4</sup> Mr. Elliot, a partner in Tyler Cooper & Alcorn LLP, is a past president of the Connecticut Bar Association whose career has been devoted principally to the subjects of the law of lawyering and constitutional law, with a particular emphasis on the First Amendment and what has come to be called "media law," representing a wide array of media organizations.

<sup>5</sup> Mr. Rotondo, a partner in Day, Berry & Howard LLP, chairs that firm's litigation section and its insurance and torts litigation department. He represents clients in product liability, negligence, insurance coverage and commercial litigation, and is a member of the Defense Research Institute.

<sup>6</sup> Mr. Bernard, a member of Koskoff Koskoff & Bieder PC, is a former president of the Connecticut Trial Lawyers Association. His practice is primarily devoted to the representation of plaintiffs in medical malpractice cases.

7. We organized a presentation on the issue of confidentiality in the courts at the CBA Annual Meeting on June 7, 2004. Professor Arthur Miller moderated a panel discussion in which United States District Judge Mark R. Kravitz, Superior Court Judge Michael Sheldon, Professor Laurie Kratky Doré and Thomas Scheffey, of the Connecticut Law Tribune, participated. The panel discussion was transcribed and was also broadcast on The Connecticut Network (CTN).

## HISTORY OF THE ISSUE NATION-WIDE

A vigorous and heated debate over the issue of confidentiality and the courts has made its way to the forefront of the national legal scene over the past two decades.<sup>7</sup> Fueled by the increase in class action and large-scale toxic tort litigation – and the concomitant sharp rise in the use of stipulated protective orders, sealing orders and confidential settlement agreements – this debate has raised important questions about the proper balance between the public’s right of access to court pleadings and discovery on the one hand, and the value of confidentiality to the litigation process on the other.

The seminal case in this area, at least with respect to the constitutional aspect of public access, is *Seattle Times Co. v. Rhinehart*, 467 U.S. 1230, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984). In the *Seattle Times* case, the respondent, a religious leader in Washington state, sued the plaintiff newspaper and several of its reporters for defamation.<sup>8</sup> During the discovery phase of the suit, the trial court granted certain discovery requests made by the plaintiffs, but issued a protective order barring the plaintiffs from disseminating the information received pursuant to those requests except as necessary for the litigation.<sup>9</sup> The United States Supreme Court upheld the protective order as not violative of the First Amendment. In so doing, the Court put its imprimatur on the constitutional validity of such orders, noting that “[t]he unique character of the discovery process requires that the trial court have substantial latitude to fashion protective orders.”<sup>10</sup>

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<sup>7</sup> Arthur R. Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427 (1991). Laurie K. Dore, *Settlement, Secrecy and Judicial Discretion: South Carolina’s New Rules Governing the Sealing of Settlements*, 55 So. Car. L. Rev. 791 (2004).

<sup>8</sup> *Seattle Times Co.*, 104 S. Ct. at 2202-03.

<sup>9</sup> *Id.* at 2204.

<sup>10</sup> *Id.* at 2209.

In the two decades since *Seattle Times*, there has been a great increase in complex products liability, toxic tort and other complex litigation; e.g., litigation over asbestos, silicone breast implants, Prozac, the Dalkon Shield and Firestone tires, to name just a few.<sup>11</sup> In the wake of this flood of cases has come a wave of sealing orders and confidential settlement agreements – useful, but controversial, tools in the management of complex civil cases.

As a response, a number of states have enacted so-called “Sunshine in Litigation” statutes or court rules designed to limit judicial discretion to issue sealing orders or approve confidential settlement agreements. The broadest such provision is Texas Rule of Civil Procedure 76a. The Texas rule adopts a presumption that a court record, which specifically includes discovery and settlement agreements, are open to the general public.<sup>12</sup> In order for such records to be sealed, the language of the Rule requires a showing that: (1) there is a “specific, serious and substantial interest which clearly outweighs” the presumption of openness and “any probable adverse effect that sealing will have upon the general public health and safety”; and (2) that “no less restrictive means than sealing” exist that will protect the privacy interest asserted.<sup>13</sup> However, in *Eli Lilly & Co. v. Biffle*, 868 S.W.2d 806, 808 (Tx. App. 1993), the Texas Court of Civil Appeals construed Rule 76(a) as not containing a presumption that discovery documents

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<sup>11</sup> Dore, *supra* note 1; Laurie K. Dore, *Secrecy by Consent: The Use and Limits of Confidentiality in the Pursuit of Settlement*, 74 N. Dame L. Rev. 283, 300-301 (1999).

<sup>12</sup> Texas Rule 76a defines “court records” as any document “of any nature filed in connection with any matter before any civil court.” §76a(2)(a). In addition, §76a(2)(c) provides that “court records” also encompasses “discovery, not filed of record, concerning matters that have a probable adverse effect upon the general public health or safety, or the administration of public office, or the operation of government, except discovery in cases originally initiated to preserve bona fide trade secrets or other intangible property rights.”

<sup>13</sup> §76a(1).

not filed with the court are "court records". The *Eli Lilly* case also places the burden of proof on the party seeking to obtain such documents to establish that they are, in fact, "court records," as defined by the Rule, and requires the trial court to make a specific finding justifying the discovery on the basis of a probable adverse effect on public health and safety. Although several other states place a similar emphasis on the public's right of access to materials that affect public health or safety, Texas is the only state that includes *unfiled* discovery within the scope of records to which the right of public access applies.

While Florida's statute, Fla. Stat. Ann. §69.081 (2003), does not apply to unfiled discovery, it is nearly as wide-ranging in its other aspects. The statute essentially prohibits a court from entering any order, or enforcing any agreement, "which has the purpose or effect of concealing a public hazard, or any information which may be useful to members of the public in protecting themselves from injury which may result from the public hazard . . . ." <sup>14</sup> Section 69.081 defines public hazard as "an instrumentality, including but not limited to any device, instrument, person, procedure, product, or a condition of a device, instrument, person, procedure, product, that has caused and is likely to cause injury." <sup>15</sup> Finally, Florida's statute gives "[a]ny substantially affected person, including but not limited to representatives of the news media," standing to contest any order or agreement that might violate the statute. <sup>16</sup>

Two other states, South Carolina and Louisiana, have adopted provisions that are similar in scope to those in Florida and Texas. <sup>17</sup> In addition, a number of other states

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<sup>14</sup> Fla. Stat. Ann. §69.081(3) & (4).

<sup>15</sup> Fla. Stat. Ann. §69.081(x).

<sup>16</sup> Fla. Stat. Ann. §69.081(6).

<sup>17</sup> S.C. R. Civ. P. §41.1 (2003); Louis. Civ. Pro. Art. 1426 (2003).

have adopted at least some statutory or rule-based limits on the authority of judges in this area.<sup>18</sup>

It is known that often litigants and their counsel will require confidentiality of the terms of a settlement as a condition of settlement. Likewise, the nondisclosure of facts and/or documents discovered during litigation is also a frequent precondition to resolution via settlement. Aware of the Firestone/Bridgestone case and others cases where harm to members of the public occurred after private, confidential settlements, the Task Force members debated the costs and benefits likely to result from a blanket rule requiring complete openness of all settlements. As noted elsewhere, the Task Force concludes that the numerous adverse consequences of such blanket rule militate against its recommendation. Nevertheless, the Task Force recognized that there are detriments to the public in continuing to permit confidential settlements [particularly in the arena of defective products or professional misconduct where a potential for recurring harm to the public exists]. Fortunately, any decision to refrain from enacting such a blanket rule does not leave the public without resources to deter or prevent the effects of a confidential settlement.

The Task Force notes that the advent of the internet age has done much to publicize the areas of greatest concern. The ability to “research” products, professionals and other topics on the net grows by leaps and bounds each year. Trial Lawyer Association publications and “list serves” permit networking at an unprecedented level and have permitted the coordination of tort claims and enhanced the identification of potential plaintiffs. Internet services are available to perform nationwide searches for an individual or company’s involvement in litigation. More and more courts are permitting

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<sup>18</sup> See generally, Dore, *supra* note 1 at xx.

“e-filings” which the public at large can easily access. The media, through use of these and other modern information technologies, are an ever alert watchdog for the public.

Beyond these innovations, many areas of existing law have created exceptions, prohibitions and tools to either prevent or inhibit confidentiality. For example, copies of any unfair trade practice claims must, by statute, be served on the state’s Attorney General. Presumably, that office is equipped to recognize multiple claims against a single defendant or other trends. The state’s Freedom of Information Act inhibits confidential settlements any time governmental bodies are involved. All medical malpractice verdicts and settlements are reported to the state department of public health and the fact of such a verdict/settlement can be accessed by the public in a cursory form on that department’s web site [the amount of the verdict/settlement is rated “below average”, “average” or “above average”]. The Consumer Product Safety Commission, Food and Drug Administration and other state and federal agencies and laws also provide a bulk work against unlimited confidentiality. Indeed, the Firestone case itself prompted the enactment at the federal level of the Transportation Recall Enhancement, Accountability and Documentation Act (TREAD) which imposes penalties on motor vehicle manufacturers that mislead federal agencies about product defects.

## HISTORY OF THE ISSUE IN CONNECTICUT

Secrecy in Connecticut civil proceedings had for years been left within the sole power and discretion of the trial court judge. There were few guidelines for judges other than the general guidance offered by the Practice Book that proceedings and pleadings could be sealed when a party's interest outweighed the presumed right of the public to open trials, and that the judge had to issue a public decision as to why sealing some or all of a proceeding was required.<sup>19</sup> There were few procedures and guidance, however, as to what practical effect a sealing order had. These matters were apparently dealt with by the Judicial Branch through internal procedures that were little known outside of court staff and some savvy attorneys.

It was only in late 2002, due to reporting in the Hartford Courant and the Connecticut Law Tribune that the public, many attorneys, and even members of the judiciary discovered for the first time that an internal practice had evolved where judges sealing a case from public view, in their sole discretion, assigned cases to one of three "levels." For cases designated Level 2, none of the court file was available to the public. The only information the court clerks were allowed to disclose about a Level 2 case was the caption and the fact that the case existed. Even more severe were the Level 1, or "super-secret" cases. Cases receiving this designation were not only completely unavailable to the public, but the court staff were specifically instructed to not even confirm the existence of the case upon inquiry.<sup>20</sup> Due to the extreme secrecy of the Level 1 and Level 2 cases, not even the judge's decision explaining why the cases had been sealed were available for review. Connecticut was apparently unique in adopting such a method of completely sealing case material from public view.

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<sup>19</sup> Connecticut Practice Book, Section 11-20 (2002).

<sup>20</sup> Editorial, *123 vs. 321: What Gives*, HARTFORD COURANT, Feb. 9, 2003

Initially, the stories in the media focused on the family courts, as these courts had been exceptionally active in assigning cases to Levels 1 and 2, apparently due to concerns about the privacy interests of the individuals involved (and especially in custody matters). It was then reported that even several non-family civil actions were sealed as Level 1 and 2 matters. Among these cases were several which, according to their captions, potentially concerned matters of public interest (e.g., *Conn. Dept. of Health v. Silver Hill Hospital*, and *Conn. Attorney General v. Kimber Manufacturing*).<sup>21</sup> While some of these cases had been sealed at the behest of one of the parties, in some instances apparent clerical error had resulted in the sealing of cases. For example, in the *Kimber* action, a request by the defendant to keep one piece of evidence sealed resulted in the entire case being sealed.<sup>22</sup> This “secret” system engendered harsh criticism; State Representative Michael Lawlor stated, “It seems like a system that is made for insiders or people who can afford attorneys who know how to get files sealed.”<sup>23</sup>

The exact number of cases which had Level 1 and 2 status was also an issue, particularly as to the former. Initially, when the stories first appeared in December of 2002, the Judicial Branch reported 185 cases as Level 1. In January, 2003 the number was changed to 104. In May, the number was revised again to 54, and in September changed to 44. Much of the uncertainty in the number of cases was blamed by the Judicial Branch again on clerical coding errors. The number of Level 2 cases also varied, initially being reported at around 10,000, then later at about 7,000.

After the initial reporting disclosing the Judicial Branch’s “Level” system, Chief Justice William Sullivan took prompt action (he was reportedly one of the judges

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<sup>21</sup> Editorial, *Unanswered Questions*, CONNECTICUT LAW TRIBUNE, Sept. 1, 2003

<sup>22</sup> Editorial, *Wrapped in Court Secrecy*, HARTFORD COURANT, March 12, 2003

<sup>23</sup> Editorial, *Changes Overdue With Court Secrecy*, STAMFORD ADVOCATE, Feb. 13, 2003

surprised at how the system had operated).<sup>24</sup> He convened a group of judges to review the practices, and that group quickly concluded that the system had to be changed. The Chief Justice then set about initiating a change to the Connecticut Practice Book rules for secrecy, changes that were ultimately implemented. The quick action by the Supreme Court preempted legislation in the state legislature; the Chief Justice testified before committee that the court was handling the problem, and that changes should be left within the judicial branch.<sup>25</sup>

Although the new rules changed the system going forward, the media remained unsatisfied with the fact that the original Level 1 and 2 cases remained sealed. Justice Sullivan and the Judicial Branch took the position that they could not unseal the cases because only the original sealing judge had the authority to overturn his decision. The media pursued the issue in the Connecticut District Court, asking for equitable relief to unseal the cases. United States District Court Judge Gerard L. Goettel denied this request, agreeing with the argument that only the original judge had the authority to order the unsealing of a case. The media plaintiffs appealed the case, and the Second Circuit subsequently reversed the district court, remanding for further specific factual development and discovery as to the sealed cases (for example, whether the cases had been sealed due to specific statutory or judicial order).

While the media pursued the unsealing of the Level 1 and 2 cases, for the rest of the Connecticut legal community, the controversy had raised the issue of confidentiality and secrecy in the courts to a new visibility. Due to the events of early 2003, the resulting rules change, and new national visibility of the confidentiality issue, the

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<sup>24</sup> Editorial, *No Secrets*, HARTFORD COURANT, Feb. 10, 2003

<sup>25</sup> Editorial, *State Courts: Public Be Damned*, HARTFORD COURANT, March. 16, 2003

Connecticut Bar Association deemed it necessary to create a task force to examine the issue.

## **FEDERAL RULES AND DISTRICT OF CONNECTICUT LOCAL RULES**

### **A. Existing Rules**

The Federal Rules of Civil Procedure recognize that information generated during litigation may be confidential, and give district judges wide discretion to “make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Rule 26(c), Fed. R. Civ. P. The Rules, however, neither provide standards that should inform a court’s discretion to allow parties to file documents under seal nor describe the mechanics for doing so.

In the District of Connecticut, the mechanics of filing sealed documents are addressed by local rule, while the nature of a trial court’s discretion to seal documents is fleshed out by case law. The procedure for filing documents under seal is spelled out in D. Conn. L. Civ. R. 5(d). No document may be filed under seal without a court order, either specifically addressed to the document in question or previously entered as a protective or impounding order. Documents that a party files simultaneously with a motion to seal are treated as public unless and until the motion to seal is granted.

Governing case law establishes that, while there is a presumption of public access to court documents, *United States v. Amodeo*, 71 F.3d 1044, 1047-48 (2d Cir. 1995), “[u]nlimited access to every item turned up in the course of litigation would be unthinkable.” *Id.* at 1048. Rather, “the weight to be given to the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power ....” *Id.* at 1049. The presumption is greatest with respect to materials that play a role in a court’s “determining litigants’ substantive rights – conduct at the heart of Article III.” *Id.*

The issue of sealed settlements was addressed in *City of Hartford v. Chase*, 942 F.2d 130 (2d Cir. 1991). The district court approved an agreement of the parties requiring not only that the court file be sealed, but that the parties themselves – including a municipality subject to Connecticut’s Freedom of Information laws – not disclose the file, the Settlement Agreement, or “any document, information or discussion relating to the Settlement Agreement.” *Id.* at 132 n. 1. While noting that “sealing official documents should not be done without a compelling reason,” the court held that the sealing order was appropriate because “a federal judge has the power to prevent access to settlement negotiations when necessary to encourage the amicable resolution of disputes” and in the case at issue “a judicial assurance of confidentiality was a prerequisite to the parties’ decision to settle their dispute.” *Id.* at 135-36.

## **B. Studies Regarding Sealed Settlement Agreements**

*I. Connecticut.* In 2002, the CBA’s Federal Practice Section was asked to address the question of whether the local rules for the District of Connecticut should be amended to include a prohibition against the filing of settlement agreements under seal. The request was prompted by the adoption, in November 2002, of Local Rule 5.03(C) of the United States District Court for the District of South Carolina, which prohibits the sealing of settlement agreements filed with the court. In a report dated September 19, 2003, the Section recommended against such a rule. The report noted that a prohibition against sealed settlements would run afoul of Second Circuit case law described above, and would improperly divest the district judges of necessary discretion.<sup>26</sup>

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<sup>26</sup> The Task Force submitted a draft of its report to the Federal Practice Section for comment. Based on input from that Section’s Executive Committee, the Task Force modified paragraph III.2 of its Recommendations by deleting a recommendation that the federal judges consider adopting a local rule with respect to handling filings under seal. That paragraph now recommends that the federal judges coordinate their chambers practices and/or standing orders with respect to handling filings under seal.

2. *Nationally.* In 2002, Senator Herb Kohl of Wisconsin proposed to the Judicial Conference of the United States that the Federal Rules of Civil Procedure be amended to impose conditions on protective orders restricting the disclosure of information obtained through discovery and on orders approving confidential settlement agreements. The Judicial Conference's Advisory Committee on Civil Rules opposed restricting the courts' authority to issue protective orders, but in view of the public interest issues potentially raised by confidential settlement agreements it "asked the Federal Judicial Center to collect and analyze data on the practice and frequency of sealing orders limiting disclosure of settlement agreements in federal courts." Letter from Leonidas Ralph Mecham, Secretary of the Judicial Conference of the United States, to Honorable Herb Kohl, December 16, 2003.

The Federal Judicial Center's study has been completed and was reviewed by the Judicial Conference's Advisory Committee on Civil Rules, which has decided that no amendment of the Federal Rules of Civil Procedure is appropriate.<sup>27</sup> While the study takes no position on whether any restrictions should be imposed on filing settlement agreements under seal, it concludes:

Sealed settlement agreements are rare in federal court. They occur in less than one-half of one percent of civil cases. In 97% of these cases, the complaint is not sealed, so the public has access to information about the alleged wrongdoers and wrongdoings. Although the public record seldom contains specific findings justifying the sealing of settlement agreements, generally the only thing kept secret by the sealing is the amount of settlement.

Robert Timothy Reagan, et al., *Sealed Settlement Agreements in Federal District Court* 8 (Federal Judicial Center 2004).

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<sup>27</sup> Letter from Leonidas Ralph Mecham to Honorable Herb Kohl, November 17, 2004. Regarding review by the Advisory Committee, see Molly McDonough, "Not Keeping a Secret," <http://www.abanet.org/journal/ereport/a9secret.html>, ABA Journal Report (April 9, 2004).

According to Mr. Mecham's letter of December 16, 2003, the study's results "confirm that most settlement agreements are neither filed with the court nor require court approval. Most settlement agreements are private contractual obligations that would not be affected by prohibitions against a court entering an order 'approving a settlement agreement that would restrict disclosure' of its contents." Mr. Mecham's letter goes on to report that the complaint was sealed in only one out of 109 cases with sealed settlement agreements that the FJC had identified as of December 2003 as being "public interest cases."

## **SETTLEMENT AGREEMENTS NOT FILED WITH THE COURT**

Many civil cases, of course, involve confidential settlement agreements that are not filed with the court and therefore do not undergo any form of judicial scrutiny.

Although many of the public policy reasons discussed *supra* regarding filed settlement agreements apply in equal measure to non-filed settlements, the potential drawbacks of any rule limiting the right of private parties to make non-filed settlement agreements confidential far outweigh its benefits.

First, it would be extremely difficult to enforce such a rule because such agreements – by their very nature – avoid judicial scrutiny. Given that neither party is likely to challenge a confidentiality clause in a non-filed settlement (after all, the parties presumably both wanted a quiet way out of the case), the only possible challenger would be an interested third party. However, even if a third party learned of the confidential settlement, there would be few open avenues of attack; and any legal challenge to a private contract between consenting parties possibly would raise the specter of a constitutional infirmity in the rule.

Second, such a rule would further discourage parties from coming to court in the first place. Private dispute resolution forums such as ADR and mandatory arbitration already are garnering a larger and larger share of the caseload each year. If private litigants know that any settlement agreement that they reach – even one for which they are not seeking a judicial blessing – must be in the public domain, they will avoid the court system in even greater numbers.

The Task Force recognizes, after considerable study of the litigation system in Connecticut and in other jurisdictions, that it is inherently incongruous and impracticable to require private litigants resolving their dispute to act in the interests of an undefined

class of others with potential interest in certain of the matters resolved. The private litigants, as well as the tribunal whose task has been limited to ensuring fairness among the litigants, are simply not designed, much less capable of advocating for or defending against matters implicating those undefined interests. On the contrary, the system is specifically designed to resolve actual and defined disputes among identified and represented litigants, not to resolve more generalized interests or concerns of nonparties. Similarly, a judge's specific task is to ensure fairness in a specific context of the resolution of the identified litigants' disputes, not to consider more generalized interests or concerns of nonparties. Not surprisingly therefore, the Task Force has learned that the few efforts in other jurisdictions to prevent confidential settlements and/or sealed discovery have not resulted in substantial changes in practice. In South Carolina, for example, exceptions for "good cause" have become the rule.

## **PROTECTIVE ORDERS FOR DISCOVERY MATERIAL**

The Task Force approves the use of stipulated protective orders as a means of facilitating broad discovery between the parties without the need for extensive judicial intervention. The Task Force has formulated a proposed Protective Order Regarding Discovery for consideration by the Bar Association and judicial authorities for promulgation as a suggested form. A copy of the proposed order is attached. The order allows the parties to voluntarily designate certain documents, information or material as “Confidential Material” so that the information can be produced for purposes of discovery without concern that the information will thereby become public. The order also incorporates a mechanism pursuant to which any party can challenge the confidential designation assigned by the opposing party. Pursuant to the order, any material challenged by any party shall be lodged with the Court but shall not become a part of the court file available for public inspection. The order also provides that following a ruling by the court regarding confidentiality, the information at issue shall be returned to the parties without incorporating the information into the court file. This provision applies even if the court determines that the information at issue does not constitute “Confidential Material.”

The Task Force has proposed this model order out of a belief that it would be beneficial to practitioners and to the courts to have access to a model or suggested form protective order. As some counsel may be unfamiliar with protective orders, our hope is that by offering a suggested basic form we can assist lawyers in identifying the usual terms that would apply in a case where confidential information will be shared in discovery. The form as we have drafted it may be proposed by stipulation or alternatively by court order if the parties are not in agreement. By proposing this form

we do not suggest that protective orders should be used any more or less than they are at present, and there is no intent to change the criteria or considerations currently applicable to protective orders under the Practice Book and other law.

Because discovery material does not generally become part of the official court file, the Task Force believes that the public policy concerns that militate in favor of making information presented to the court available for public inspection do not apply to non-filed discovery material, and therefore that the provisions of Practice Book § 11-20A are not implicated. Accordingly there is no need for a public hearing to determine whether the information at issue is in fact confidential.

The Task Force believes that the proposed order recognizes the “unique character of the discovery process” noted by the United States Supreme Court in Seattle Times and strikes an appropriate balance between the public’s right to obtain information relevant to public health and safety and the ability of the parties to share relevant information with the knowledge that by doing so they have not waived their right to keep the information private. Although the Task Force believes that the proposed order addresses the majority of procedural issues likely to arise in a dispute regarding confidentiality, the Task Force also recognizes that it is impossible to anticipate every situation that may arise during the course of litigation. The Task Force therefore anticipates that parties may decide to alter the form in order to address issues peculiar to the litigation between them and that courts will be receptive to such alterations.

The Task Force considered how to enforce the order when a party attempts to use confidential information gleaned through discovery after the litigation has concluded. The Task Force believes that the proposed order addresses this concern by specifically providing that any violation of the order may subject any person bound by its terms to

penalties for contempt of court. When filing such a motion, care should be taken to follow the procedures outlined in Practice Book Section 7-4B to avoid the inadvertent publication of confidential information.

## **RECOMMENDATIONS**

The Task Force on Confidentiality and the Courts has arrived at a series of recommendations that it proposes be adopted by the House of Delegates of the Connecticut Bar Association. The Task Force believes that these recommendations will assist the bar and the courts in several ways. First, we state conclusions that we hope will guide the bar in the continuing debate over confidentiality, privacy, and secrecy in civil litigation. We have reached these conclusions based on an exhaustive study of the field, with the benefit of highly authoritative input from respected thinkers in the field, having taken great care to hear from all sides of the debate that has highlighted this field.

Second, the Task Force's recommendations will assist the judiciary and the practicing bar in the implementation of rules in this field. Connecticut's Practice Book Rules amendments of 2003 made major changes, which the Task Force endorses. Our recommendations go on to offer proposals for the refinement, implementation, and education of the bar in the proper compliance with the new rules. We have also offered suggestions regarding practice in the federal courts with respect to motions to seal portions of files.

Third, the Task Force has addressed the use of protective orders regarding confidentiality of discovery material. We concluded that protective orders serve a valuable role in reducing the need for judicial controls over the discovery process while facilitating the exchange of information in a way that protects valid privacy interests. The Task Force concluded that it would assist the practicing bar and the courts if there were a standard form protective order available for Connecticut Superior Court civil lawsuits. Such a standard form would assist lawyers who do not frequently handle cases involving protective orders by providing a readily available model. It also, we believe,

would assist the courts by establishing a model that is believed to fairly balance the needs of both sides of a discovery process, thereby assisting judges in setting terms for protective orders in disputed cases.

**I. SEALING OF FILES UNDER RULE 11-20A**

1. The Task Force endorses the principles embodied in Connecticut Practice Book Rule 11-20A. In particular, the Task Force supports:
  - a. the preservation of judicial discretion in making decisions regarding sealing of information in individual cases;
  - b. the statement of a public policy in favor of public access to information and documents filed with the courts which are the record on which judicial action is sought or taken;
  - c. an opportunity for non-parties to be heard in connection with motions to seal records;
  - d. the provision of Rule 11-20A(i) which provides that judicial approval is required before a settlement may be filed with the court under seal. (This issue is discussed in greater length below.)
2. The Task Force believes that the practicing bar is not sufficiently familiar with rules regarding sealing of files, and that practitioners could benefit from further guidance on how to use and comply with the rule.
3. The Task Force has sought to monitor the operation of Rule 11-20A to date, and finds that there is an insufficient experience base to call for any technical changes at this point.

**II. SEALING OF DIVORCE FINANCIAL AFFIDAVITS UNDER RULE 25-59A(h)**

1. The Task Force acknowledges that there was considerable debate over this provision of the rules, which provides procedures and burdens of proof for unsealing financial affidavits filed in divorce actions. In particular the Task Force recognizes the debate relating to the burden of establishing good cause to unseal a financial affidavit or to keep it sealed.
2. While the rule as adopted puts that burden on the party seeking to keep a financial affidavit sealed, the Task Force believes that there are also fair arguments to view divorce proceedings as sufficiently personal that the burden should be on the party seeking to unseal an affidavit.
3. The Task Force does not have a recommendation on this issue. We believe that it requires further consideration, especially among those members of the bar most involved in its operation. While the Task Force recognizes that consideration of Rule 29-59A(h) is within the mission of the Task Force, we also believe that the make-up of the Task Force did not include persons with sufficient familiarity with family law practice for us to reach a sound recommendation at this stage. Further consideration by the Task Force may be appropriate after those members of the

bench and bar most involved in family litigation are able to weigh in on the best approach for such matters.

### **III. FEDERAL PRACTICE IN SEALING COURT-FILED DOCUMENTS**

1. At present the Federal Rules of Civil Procedure and Local Rules of the District of Connecticut do not address the issue of sealed filings with the level of specificity found in Connecticut Rules of Practice Rule 11-20A.
2. The Task Force believes that there is not a uniformity of practice among the different federal judges and magistrate judges in the District of Connecticut with respect to their handling of motions to seal components of civil files. The Task Force believes that greater uniformity would be beneficial to the bar and litigants, and toward that end recommends that the federal judges consider coordinating their chambers practices and/or standing orders with respect to handling filings under seal.
3. To the extent that the federal judges seek greater uniformity in this practice, the Task Force recommends that several principles be addressed:
  - a. a presumption of public access to documents that are part of the record relied upon by the court in making a ruling;
  - b. use of the least restrictive application of sealing or other confidentiality order that achieves the purposes of such an order;
  - c. an opportunity for non-parties to be heard in connection with motions to seal records.

### **IV. SEALED COURT-FILED SETTLEMENTS**

1. The Task Force is aware of considerable debate regarding efforts to limit the sealing of settlements filed with the court. The Task Force considers this to be a relatively rare issue, since only a minority of settlements are filed with the court, and only a small portion of those are sealed.
2. With respect to any such settlements that the parties do seek to seal, the Task Force believes that Connecticut Rule 11-20A(i) appropriately calls for the court to follow the same procedures and apply the same presumptions as those applicable to sealing of other records.
3. In particular, the Task Force believes that it is correct not to apply a blanket prohibition on sealed court-filed settlements. In this respect, the Task Force endorses the conclusion of the report of the Connecticut Bar Association Federal Practice Section to the United States District Court Judges, dated September 19, 2003.
4. The Task Force considered the question of what might constitute “good cause” for the court to grant a motion to seal a court-filed settlement. In particular, the Task Force considered whether the goal of facilitating settlement alone constitutes good cause.
  - a. The Task Force recognizes that Connecticut Rule 11-20A(c) provides that agreement of the parties alone shall not constitute a sufficient basis for issuance of an order to seal documents. Yet parties may present a settlement to the court to be sealed on the grounds that the expectation of confidentiality was a material factor in facilitating the settlement, and that

the courts' public policy of promoting settlement is sufficient cause to justify the sealing order.

- b. The Task Force has concluded that, as a practical matter, it would frustrate the purpose of 11-20A(c)'s statement that agreement of the parties alone is not sufficient good cause, if parties were able to argue that facilitation of settlement alone constitutes good cause.
- c. The Task Force believes that "good cause" to seal a court-filed settlement should consist of an additional showing related to the nature of the sensitivity of the information being sealed. For example, the Task Force believes that there would be good cause to seal a court-filed settlement (or the relevant portion thereof) that included private personal information, trade secrets, or other information of the type that a court might seal under other provisions of Rule 11-20A.

## **V. THE JUDICIAL ROLE IN SETTLEMENT NEGOTIATIONS**

1. The Task Force evaluated the question whether a judge involved in settlement negotiations owes any duty when he or she believes that the settlement may affect public awareness of a product which, or a person who, may cause future harm.
2. The Task Force does not believe that it is feasible to impose a duty on judicial officers to take special steps in such situations such as refusing to participate further in the negotiations, reporting information learned in the negotiations to governmental authorities or other third parties, or otherwise.
3. The Task Force believes that judicial officers already are sensitive to the obligations of parties and their counsel when negotiating over settlement in a context where there is a possibility of further harm, and the Task Force believes that the most effective role for the judicial officer in such circumstances is to advise counsel and the parties of the risks (including the potentially limited efficacy) of a settlement that seeks to impose confidentiality over a matter that presents the possibility of future harm.

## **VI. CONFIDENTIAL PRIVATE SETTLEMENTS**

1. The Task Force also considered the debate over whether there should be, as a matter of public policy, limitations on confidentiality provisions in settlements that are not filed with the court.
2. The Task Force believes that there are legitimate reasons for parties to include confidentiality provisions in settlements of lawsuits.
3. The Task Force further believes that there are significant difficulties in enforcing a prohibition on confidential private settlements, since they are generally reached and performed without judicial participation, leaving little opportunity for judicial control over their terms.
4. The Task Force notes that confidentiality provisions in settlement agreements may not be enforceable under certain circumstances for example where disclosure of information is required by statute or regulation such as the rules governing mandated reporting by certain individuals, where disclosure is protected by statutes such as the protections afforded to whistle-blowers, where a lawfully issued subpoena requires such disclosures, or where ethical rules require

disclosure. Counsel should consider these limits and advise their clients accordingly.

**VII. PROTECTIVE ORDERS AND CONFIDENTIALITY OF DISCOVERY MATERIAL**

1. The Task Force approves the use of stipulated protective orders as a means of facilitating broad discovery between the parties without the need for extensive judicial intervention
2. The Task Force proposes that the standard form protective order appended to this report be approved by the Connecticut Bar Association and submitted to the Judicial Branch for consideration as a standard form by the Rules Committee of the Superior Court.
3. When moving to enforce a perceived violation of a protective order, the procedures outlined in Practice Book Section 7-4B should be followed to avoid the inadvertent disclosure of confidential information.

## CONCLUSION

We place competing demands on our legal system to protect personal privacy and commercially sensitive information, while at the same time assuring public access to the functioning of our courts and mandating the disclosure of information about certain types of potentially serious harm. There are valid interests on all sides of this issue. Our laws and the courts in governing their own operations must find a way to balance the goals of privacy and public access without unduly burdening any legitimate interests.

The Task Force on Confidentiality and the Courts has examined the many issues posed by the debate over confidentiality in civil litigation. Through extensive research, consultations with authorities, and discussion within our group, we have reached consensus on several fundamental points. First, the debate over confidentiality and the courts is not one in which one side is right and the other is wrong. To the contrary, there are important interests to be served on both sides of the debate. Second, this is not a field that is susceptible to simple sweeping solutions. Rather, any measures must be carefully crafted to serve their goal without impairing other valid goals. Third, both the Connecticut courts and the federal courts of the District of Connecticut have undertaken steps that the Task Force applauds, while we also recommend certain additional steps.

We have focused on the areas where the issue is most frequently presented: confidentiality in settlement agreements, sealing of court filings, and protective orders for discovery materials. In each area, we make recommendations to build on the amended practice book rules adopted by the Connecticut Judiciary in 2003, and to achieve consistency and clarity in the practices of the federal judges in this district. We also recommend further education of the practicing bar as to the operation of these rules and

practices so that clients and counsel alike will obtain the intended benefit of the rules governing this field.

Finally, we make recommendations on how to strike a fair balance between the goals of privacy and public access. Our Task Force reached these recommendations after thorough deliberation, and we believe that they represent the best approach to this continuing debate. We urge their adoption by the Connecticut Bar Association House of Delegates as a statement of policy of the Association. Our hope is that these recommendations will serve to guide the bar and the courts when this issue is addressed in the future.

**TASK FORCE ON  
CONFIDENTIALITY AND THE  
COURTS**

Timothy S. Fisher, Chair  
Steven M. Basche  
James W. Bergenn  
Mario R. Borelli  
Suzanne E. Caron  
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Daniel J. Krisch  
John R. Logan  
Thomas F. Maxwell, Jr.  
Regina Murphy  
Frank J. Silvestri  
Evelyn V. Williams

Matthew P. Hallisey, CBA staff

**[STIPULATED] PROTECTIVE ORDER  
REGARDING DISCOVERY**

DOCKET NO. CV \_\_\_\_\_ : SUPERIOR COURT  
[PLAINTIFF] : JUDICIAL DISTRICT OF \_\_\_\_\_  
VS. : AT \_\_\_\_\_  
[DEFENDANT] : [DATE]

[Upon the consent of the parties / The parties having been heard] and good cause having been shown, it is ORDERED that:

1. The plaintiff, \_\_\_\_\_ and the defendant, \_\_\_\_\_, may designate as “Confidential” only such documents and information produced by them that they respectively believe in good faith constitute, contain or reflect confidential information, and shall so mark such documents. (Such materials are hereinafter referred to as “Confidential Materials”). Designation of material as Confidential Materials shall be accomplished by placing on the first page of each document to be so designated a stamp or notice “Confidential-page \_\_\_\_ of \_\_\_\_” in such a manner as will not interfere with the legibility thereof.
2. Access to Confidential Materials and the information they contain or reflect shall be strictly limited to:
  - (a) [Insert here the identity of the parties or their representatives who will be allowed access to the information and who will be subject to the terms of this order.]
  - (b) Counsel for the plaintiff and the defendant and counsel for any other parties to this action who agree to be bound by the terms of this Order (“Stipulating Counsel”);
  - (c) Bona fide employees of Stipulating Counsel who are required to assist in the conduct of this action;
  - (d) The Court and court employees, court reporters and stenographic reporters;
  - (e) Any other person whom the plaintiff or defendant, as the case may be, agree in writing or whom the Court may direct; and

- (f) Outside witnesses, consultants and/or experts, subject to the provisions of paragraph 7 hereof.

3. Any person identified in subparagraphs [insert applicable subparagraphs from among 2(a) through 2(f)] to whom the documents, copies thereof, or the contents of information contained therein are to be disclosed subject to this Protective Order shall be informed of the contents of this Protective Order prior to said disclosure and shall agree in writing to be bound by its terms. Proposed agreements for execution by third parties and/or employees are attached as Appendices A and B, respectively.

4. Deposition testimony concerning any Confidential Materials which reveals the contents of such materials, may be designated as confidential in accordance with paragraph 1 of this Order. The designation of any deposition testimony as confidential may be made either on the deposition record or by letter served on all counsel of record within \_\_\_ days after receipt of the transcript.

5. To the extent a party wishes to make use of Confidential Materials in a court proceeding, that party (the "Filing Party") shall follow the provisions of Practice Book Sections 7-4B, 7-4C and 11-20A. The following procedures shall also apply:

- (a) If the Filing Party is not the party who designated the materials in question as confidential, the Filing Party may file a "Conditional Motion to File Materials Designated as Confidential Under Seal." In that motion, the Filing Party may recite that the materials in question were designated as confidential by another party and seek a ruling from the Court as to whether the materials should be filed under seal.
- (b) In such event, the party who designated the materials in question as confidential (the "Designating Party") shall, in responding to the Filing Party's Conditional Motion, have the burden of establishing that the materials in question should be filed under seal.
- (c) Nothing in this Order shall preclude the Filing Party from opposing the Designating Party's position.
- (d) In the determination of whether the documents may be filed under seal no inference may be drawn from the fact that the materials previously were designated as confidential pursuant to this Order.

6. Every person, firm or organization receiving Confidential Materials pursuant to this Order shall use the same solely for purposes of this action, and shall not sell, offer to sell, make available, communicate or give the same or its substance in whole or in part to any other person, firm or organization, except in accordance with this Order.

7. Receipt of documents, information or other materials designated as Confidential Materials pursuant to this Order shall not constitute an acknowledgment that the same are in fact

confidential or otherwise legally protected, and Stipulating Counsel shall not be obligated to challenge the propriety of any confidentiality designation. Until and unless the Court may finally determine that such documents, information or materials are not properly designated as Confidential Materials pursuant hereto, the same shall continue to be treated as Confidential Materials in accordance with the terms of this Order.

8. Any party shall have the right to challenge any other party's designation of confidentiality by seeking an order of the Court with respect to any Confidential Material. In any such motion, the burden of establishing the need for confidentiality of a document shall be upon the proponent of confidentiality, and no inference shall be drawn from the fact that the document previously was designated as confidential pursuant to this Order. Before any party seeks relief from the Court under this Paragraph, the parties shall make a good faith effort to resolve any dispute concerning the confidential treatment of any document, subject to the Court's approval under applicable provisions of the Practice Book with respect to materials sought to be filed under seal.

Upon motion of any party challenging any other party's designation of confidentiality, the moving party shall lodge the contested documents, information or materials with the Court in the manner prescribed by applicable provisions of the Practice Book. The Court will then perform an *in camera* inspection of the documents, information or materials and, if necessary, conduct a hearing to determine whether the documents, information or materials are properly designated as Confidential Materials. Following the Court's ruling, the Court shall order the return of the documents, information or materials to Stipulating Counsel without incorporating the documents, information or materials into the Court file.

9. No party who makes information and documents designated as Confidential Materials available for use in this action shall be deemed to have waived or compromised, and no other party, person, firm or organization shall contend that such party has waived or compromised, the confidentiality or protectability of the same, or of the activities of which they are a part, or of any processes, methods, techniques, operations, equipment, conclusions, insights or results.

10. Use at trial of documents, information and materials designated as Confidential Materials shall not be governed by this Order.

11. Upon termination of this action, all documents, information and material designated or treated as Confidential Materials pursuant to this Order shall promptly be delivered to opposing counsel, or their designee, within 90 days or disposed of pursuant to further order of the Court.

12. The inadvertent, unintentional, or *in camera* disclosure of a confidential document and/or information shall not generally be deemed a waiver, in whole or in part, of any party's claims of confidentiality.

13. Any violation of this Protective Order may subject any person bound by its terms to penalties for contempt of court.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Judge]

[CONSENTED TO:

Attorneys for Plaintiff

By \_\_\_\_\_

*A Member of the Firm*

*Firm Name*

*Address*

Attorneys for Defendant

By \_\_\_\_\_

*A Member of the Firm*

*Firm Name*

*Address ]*

**APPENDIX A – (Third Parties)**

I hereby acknowledge that I am to receive information and/or documents designated as confidential pursuant to the terms of the Protective Order dated \_\_\_\_\_, \_\_\_\_\_ in Civil Action No. \_\_\_\_\_, entitled \_\_\_\_\_ v. \_\_\_\_\_, pending in the Superior Court for the \_\_\_\_\_ District of \_\_\_\_\_. I acknowledge receiving a copy of that Protective Order and certify that I have read it and that I agree to be bound by the terms and restrictions set forth therein.

I further agree that any information designated confidential pursuant thereto which is delivered to me will be segregated and kept by me in a safe place and will not be made known to others except in accordance with the terms of said Protective Order. I further understand and agree that any summaries or other documents containing knowledge or information obtained from confidential documents or information furnished to me shall also be treated by me as confidential. I further agree to notify any stenographic or clerical personnel who are required to assist me of the terms of said Protective Order. I also agree to dispose of all such confidential documents and all summaries or other documents containing knowledge or information obtained therefrom in such manner as I may be instructed after completing my services.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Title]

**APPENDIX B – (Employees)**

I hereby acknowledge that I am to receive information and/or documents designated as confidential pursuant to the terms of the Protective Order dated \_\_\_\_\_, \_\_\_\_\_ in Civil Action No. \_\_\_\_\_, entitled \_\_\_\_\_ v. \_\_\_\_\_ pending in the Superior Court for the \_\_\_\_\_ District of \_\_\_\_\_. I acknowledge receiving a copy of that Protective Order and certify that I have read it and that I agree to be bound by the terms and restrictions set forth herein.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Title]