

## **Rule 1:15 Impoundment Procedure in the Supreme Judicial Court and Appeals Court**

### **Section 1. Requests for Impoundment in the First Instance.**

#### **(a) Supreme Judicial Court.**

(i) As used herein, "impoundment" shall mean the act of keeping some or all of the papers, documents, or exhibits, or portions thereof, in a case separate and unavailable for public inspection.

(ii) Requests for impoundment in proceedings in the Supreme Judicial Court shall be made by written motion describing with particularity the information sought to be impounded and the period of time for which impoundment is sought, and demonstrating good cause grounds for the impoundment. The motion shall be accompanied by affidavit in support thereof. Court orders from other jurisdictions impounding or sealing the same information may be submitted in support of the motion.

(iii) An order of impoundment may be entered by the court for good cause shown and in accordance with applicable law. In determining good cause, the court shall consider the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, the reason(s) for the request, and any other relevant factors.

(iv) Upon filing of the motion to impound and accompanying affidavit, the motion, affidavit, and the information sought to be impounded shall be treated by the court as temporarily impounded pending a ruling on the motion. Subsequent to the ruling on the motion, the motion, affidavit, and any impoundment order shall be part of the public docket and not impounded unless otherwise ordered by the court. If the motion is denied, the information sought to be impounded shall be part of the public docket.

(v) Hearings, if any, on requests under this rule shall be scheduled at the discretion of the court. (vi) Upon entry of an order of impoundment, the Clerk of the Supreme Judicial Court and his or her assistants shall make a notation in the docket indicating what material has been impounded. All impounded material shall be kept separate from other papers in the case and shall not be available for public inspection. Such impounded material shall be available to the court, the attorneys of record, the parties to the case, and the clerk, unless otherwise ordered by the court.

**(b) Appeals Court.** Requests for impoundment in proceedings in the Appeals Court shall be governed by the provisions of Trial Court Rule VIII with the following exceptions: (i) the term "clerk" shall mean the Clerk of the Appeals Court and his or her assistants; and (ii) the Appeals Court or a single justice thereof has discretion to enter, either *sua sponte* or upon motion, any order relating to impoundment without holding a hearing.

## **Section 2. Maintaining Confidentiality of Previously Impounded Material in Cases on Appeal.**

**(a) Duties of Trial Court Clerks.** When an appeal has been taken in a case in which material has been impounded, the clerk of the trial court shall notify the clerk of the appellate court, in writing, at the time of the transmission of the record that material was impounded by the trial court. Such notification shall specify those papers, documents or exhibits, or portions thereof, which were impounded below and shall include a copy of the order of impoundment, if any, or a reference to other authority for the impoundment.

**(b) Duties of Appellate Court Clerk.** Unless otherwise ordered by the appellate court, or otherwise provided in the trial court order of impoundment, material impounded in the trial court shall remain impounded in the appellate court. The clerk shall keep all impounded material separate from other papers in the case and unavailable for public inspection. Such impounded material shall be available to the court, the attorneys of record, the parties to the case and the clerk, unless otherwise ordered by the court.

**(c) Duties of the Parties.** When an appeal has been taken in a case in which material has been impounded, the parties shall protect the confidentiality of the impounded material. Unless it is necessary to do so, the parties shall not include impounded information in briefs and appendices filed with the court. During oral argument in public sessions the parties shall not disclose impounded material, provided that in cases where such disclosure is necessary the parties shall notify the clerk in advance and shall, in appropriate cases, make such disclosures in a manner which protects the confidentiality of the parties.

If material filed with the court contains impounded information, the parties shall so notify the clerk and shall identify the impounded material, which shall be unavailable for public inspection. The appellate court or a single justice thereof may require any party filing a document containing impounded information to file a redacted copy of the document that the appellate court may make available for public inspection.