

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RALPH D. GANTS
Chief Justice

-
1. Court submitting Rules for Approval:
Chief Justice of the Trial Court
 2. Date Rules Submitted for Approval:
August 13, 2014
 3. Date Approved & Promulgated by the Supreme Judicial Court:
April 24, 2015
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Amendments to Trial Court Rule VIII, Uniform Rules of Impoundment Procedure, as attached.
 5. Effective Date:
October 1, 2015
-

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF THE TRIAL COURT
John Adams Courthouse
One Pemberton Square, Floor 1M
Boston, Massachusetts 02108
617-878-0203

Paula M. Carey
Chief Justice of the Trial Court

August 13, 2014

Honorable Robert J. Cordy
Chair, SJC Rules Committee
Supreme Judicial Court
John Adams Courthouse
Boston, Massachusetts 02108

Re: Amendments to Trial Court Rule VIII, Uniform Rules on Impoundment Procedure

Dear Justice Cordy:

Enclosed please find proposed amendments to Trial Court Rule VIII, the Uniform Rules on Impoundment Procedure (URIP). These proposals are the product of the Trial Court Advisory Committee on Impoundment Law and Procedure, which was convened in April 2013. The committee's mandate was to review the URIP, which have not been amended since their adoption in 1986, and to recommend any technical or substantive amendments necessary to improve the rules and to facilitate their use by the public, bar, clerk's offices, and judges. The committee met monthly and, as you will see, has recommended major amendments to the URIP. The most significant proposed amendment is to Rule 1, and makes the URIP applicable to criminal proceedings. This recommendation is consistent with recent decisions of the Supreme Judicial Court and current practices. The committee also made substantive changes to many other rules, added a new rule, Rule 13, to govern "Maintaining Confidentiality of Impounded Material," and included subheadings and subsections to improve the URIP's structure and utility. The changes are extensive, as demonstrated by the enclosed red-lined document that compares the current URIP to the proposed amended URIP.

The committee published the proposed amendments for public comment on January 31, 2014, and accepted comments through the end of March 2014. Several comments were received from various sources. The committee analyzed these comments and created a small working group to focus on the application of the amendments in criminal proceedings. The working

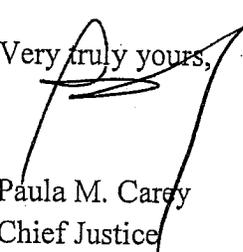
group made several recommendations to the committee, which then finalized the proposed amendments as contained in these materials.

In addition to proposing these amendments, the committee has prepared a handbook that contains explanatory notes to each amended rule. The notes contain citations to relevant law, a section of recommended uniform practices for the clerk's handling of impounded material, suggested forms, and a list of the statutes and court rules that govern impoundment. The committee plans to make the handbook available as an educational resource for the public, court staff, and judges. I am including a copy of the handbook for your information.

I respectfully request that the Supreme Judicial Court approve the proposed amendments to Trial Court Rule VIII, the Uniform Rules on Impoundment Procedure. Due to the extensive changes and their application to criminal proceedings, the committee recommends that there be a few months between the approval of the amendments and their effective date. This interval will allow the committee to publicize the amendments and to conduct educational seminars. Accordingly, I request the effective date be January 1, 2015.

Please let me know if you have any questions.

Very truly yours,



Paula M. Carey
Chief Justice

Enclosures

TRIAL COURT RULE VIII
UNIFORM RULES ON IMPOUNDMENT PROCEDURE
AS AMENDED (Effective October 1, 2015)

Rule 1: Applicability and Definitions

(a). **Applicability.** The Uniform Rules on Impoundment Procedure (URIP) govern impoundment of otherwise public case records that are filed in civil and criminal proceedings in each Department of the Trial Court. Case records are presumed to be open to the public, unless they are impounded or sealed as a matter of law, or impounded by a court order. These rules are inapplicable to case records that are required to be impounded by statute, court rule, standing order, or case law, except as otherwise provided in Rules 9, 11, and 13. These rules shall not be construed to deprive a person of any rights or remedies regarding impoundment that are otherwise available under law.

(b). **Definitions.** As used herein:

(1). “Case” shall include any matter that has been entered in any Department of the Trial Court. Each case shall always have a case caption and an assigned case number visible on the court’s docket and index, even if a pseudonym must be used for a party whose identity is impounded.

(2). “Case Caption” shall mean the official title of the case. For example, Commonwealth v. Smith, Jones v. Jones, or Impounded Plaintiff v. Jones.

(3). “Case record” shall mean all or any portion of court papers, documents, exhibits, orders, and other records, including an audio recording or official transcript of a proceeding, that are made, entered, or filed and maintained by the clerk in connection with a transaction of court business.

(4). “Case law” shall mean appellate decisions that are binding precedent for a Massachusetts court.

(5). “Clerk” shall mean Clerk, Clerk-Magistrate, Register of Probate, Recorder of the Land Court, their assistants, and designated court personnel.

(6). “Court” shall mean a judge or justice.

(7). “Docket” shall mean the paper or electronic list of case information maintained by the clerk that contains the case caption, case number, and a chronological entry identifying the date and title of each paper, document, exhibit, order, or judgment filed in a case, and the scheduling and occurrence of events in the case.

(8). “Final Disposition” shall mean, in a civil or criminal proceeding, when (i) a final judgment, sentence, decree, or order of dismissal has entered as to all claims, counts, and parties, (ii) any

timely post-judgment motions have been disposed, and (iii) any appeal has been concluded and the rescript entered.

(9). "Impoundment" shall mean the act of keeping some or all of the case record separate and unavailable for public inspection. Impounded records are not accessible to anyone other than the court, clerk, authorized court personnel, attorneys of record, and the parties to the case, unless otherwise ordered. Any order of impoundment shall not restrict the clerk, as keeper of the records, from accessing information sufficient to file the impounded documents and carry out the clerk's duties required under URIP Rule 9. "Impounded" information includes material that a statute, court rule, standing order, case law, or court order designates must be withheld as "impounded," "withheld from public inspection," "not available for public inspection," "segregated," or "confidential," though these terms are not exhaustive. "Sealed" records are distinct from "impounded" records, in that sealed records are available to the court only, unless otherwise ordered.

(10). "Index" or "indices" shall mean the clerk's list of cases, whether maintained alphabetically or chronologically.

(11). "Interested nonparty" shall mean a person who is not or was not a party to the underlying matter in which an impoundment issue has arisen, but who nevertheless expresses to the court (through a motion, an appearance limited to impoundment, filing, or otherwise) an interest in the impoundment proceeding, or who has been named by the court as a person who shall receive notice.

(12). "Party" shall mean a person who is a litigant in the civil or criminal matter in which the impoundment proceeding has arisen.

(13). "Person" shall mean any natural person or any business, legal, or government entity.

(14). "Public record" or "public case record" shall mean a record that is accessible to any and all persons.

(c). Impoundment and Discovery.

(1) Where impoundment is sought in connection with discovery, these rules shall be applied in a manner consistent with the provisions of Rule 26(c) of the Massachusetts Rules of Civil Procedure, Rule 26(c) of the Massachusetts Rules of Domestic Relations Procedure, or Rule 14(a)(6) of the Massachusetts Rules of Criminal Procedure.

(2) In civil and criminal proceedings, material received by the clerk directly from a third person or nonparty in response to a subpoena, summons, or court order for discovery purposes is not available for public inspection until either a party files the material as an attachment to a pleading or motion, introduces the material as evidence, or the court so orders. The clerk shall

make a notation on the docket indicating that impounded materials were filed in response to court order or discovery request.

Rule 2: Motion for Impoundment

(a). Content of Motion.

(1). Motion. Any party or interested nonparty may file a written motion for impoundment of a portion or all of the case record in any judicial proceeding. The motion shall describe with particularity (i) the material sought to be impounded, (ii) the duration for which impoundment is sought, (iii) the reasons impoundment is necessary, and (iv) the reasons other alternatives to impoundment will not afford adequate protection. The movant shall include proposed findings and a proposed order, conforming to URIP Rule 8, with the motion.

(2). Affidavit. A motion for impoundment shall be accompanied by affidavit in support thereof. Unless otherwise provided herein, the rules governing motions and affidavits in civil or criminal proceedings generally shall apply to requests for impoundment.

(3). Public Nature of Motion and Affidavit. The clerk shall enter the motion and affidavit on the case docket. Unless the court impounds the motion and affidavit by separate order, they remain publicly available documents.

(b). Submission of the Material Sought to Be Impounded.

(1). Material Outside of the Case Record. A motion for impoundment must be filed and ruled upon prior to submission of the actual material sought to be impounded. The clerk shall not accept any document that the movant seeks to be impounded until the court has ruled on the motion or ordered otherwise.

(2). Materials for *in camera* Review. If the court orders the movant to file the materials sought to be impounded for the court's *in camera* review, the movant shall first place them in an envelope bearing the case caption and a prominent notation that the documents within are "PROVISIONALLY IMPOUNDED PENDING COURT ORDERED *IN CAMERA* REVIEW." The clerk shall withhold the submission from public inspection until there is a ruling on the motion. If the court allows the motion, the allowance shall be noted on the envelope and the materials shall be impounded for the duration of the order. If the court denies the motion, within fourteen days, the movant must retrieve the materials from the clerk or notify the clerk that the materials should be filed in their entirety. Should the same materials be filed, they will be placed in the public case record. The clerk will destroy any materials that have not been retrieved or filed by the fifteenth day.

(3). Materials Previously Filed in the Case Record. A motion may be made for impoundment of information that is currently contained in the case record. Upon receipt of such a motion, the clerk shall remove the subject material from the case record and withhold it from public

dissemination pending the court's ruling on the motion. A hearing on the motion shall be held within three days unless otherwise agreed by the parties or ordered by the court.

Rule 3: *Ex Parte* Impoundment

(a). Motion and How Allowed. An *ex parte* order of impoundment may be issued by the court without prior notice only upon either the filing of a written motion supported by affidavit in the manner provided in URIP Rule 2, or by the court *sua sponte*, and only upon a showing that immediate and irreparable injury may result before a party or interested third person can be heard in opposition. The court may conduct an *ex parte* hearing prior to issuing an order.

(b). Limited Duration of *Ex Parte* Impoundment Order. An *ex parte* order of impoundment shall include the date of issuance and the clerk shall record the filing of the order on the docket, if one is maintained for that case type, and store the order with the underlying materials. An *ex parte* order of impoundment shall expire ten days from the date of issuance unless otherwise ordered by the court for good cause shown.

(c). Notice. After the court has ruled on the *ex parte* motion for impoundment, the movant, unless the ruling was *sua sponte* by the court, shall serve a copy of the motion, supporting affidavit, and any other related documents, on the parties and any interested nonparty. The clerk shall provide notice of the *ex parte* order or the *sua sponte* order and the scheduling of any subsequent hearing. The court has discretion to order that certain notice requirements be withheld for good cause shown.

(d). Motion to Modify or Terminate *Ex Parte* Impoundment Order. Any party or interested nonparty aggrieved by an *ex parte* order may file a written motion to vacate or modify the *ex parte* order. The motion may request a hearing not fewer than two days from the date of filing. Any motion to modify or terminate an *ex parte* order shall be accompanied by a certificate of service that notice has been provided to all parties, any interested nonparty, and any other person named by the court.

(e). Search Warrants.

(1). *Ex Parte* Motion for Impoundment, Order, and Notice. An *ex parte* motion to impound materials related to the issuance and/or execution of a search warrant may be filed and allowed in conformance with Rule 3(a). The court may enter, contemporaneously with or subsequent to the issuance of a search warrant, an *ex parte* order that the search warrant application and any related materials be impounded upon their return to the court. An *ex parte* order of impoundment shall expire ten days from the date of issuance unless otherwise ordered by the court for good cause shown. The clerk shall record the filing of any order on the docket or, if a docket for search warrants is not maintained, on the clerk's application folder. The court has discretion to order that the notice requirements of Rule 3(c) be withheld for good cause shown.

(2). Motion to Modify or Terminate an *Ex Parte* Order Related to a Search Warrant. After an order to impound a search warrant or related materials has issued, any motion for relief from the impoundment order shall be filed in the court or division where the search warrant was returned. A judge in the court or division where the search warrant was returned may request the transfer of a hearing on a motion to impound a search warrant or motion for relief of an impoundment to a different court department or division (i) if the impoundment order was ordered by a judge of a different court department or division or (ii) if a criminal case relating to the search warrant is pending in a different court department or division.

Rule 4: Service

(a). Service. Except as otherwise provided by these rules, a movant shall serve any motion or opposition related to impoundment, or motion to modify or terminate impoundment, and any supporting materials on all parties, interested nonparties, and any other person named by the court, by mailing or delivering a copy to counsel for any represented person and to any self-represented person. Service on a represented person shall be made on the person's attorney unless service on the represented person is ordered by the court. Service shall be made in the manner provided by Rule 5 of the Massachusetts Rules of Civil Procedure or by any alternative means ordered by the court. In the event an order of impoundment is sought at the time of, or prior to, service of the original complaint, service shall be made in accordance with Rule 4 of the Massachusetts Rules of Civil Procedure. The time periods for hearing shall be as set forth in Rule 6 of the Massachusetts Rules of Civil Procedure.

(b). Service on Parties Prior to, or Simultaneously with, Service of Complaint in Civil Proceedings. When an order of impoundment is sought at the time of, or prior to, service of the original complaint in a civil proceeding, service shall be made in the manner provided by Rule 4 of the Massachusetts Rules of Civil Procedure.

(c). Service on Interested Nonparty. The court may, prior to hearing, order notice to be given to any interested nonparty. Notice to such interested nonparty shall be given in such manner as the court may direct. If a person who receives notice under this subsection seeks to participate in the impoundment proceedings, the person must comply with URIP Rule 6.

(d). Service on the Office of the Attorney General by Interested Nonparty in Criminal Cases. The movant shall serve notice on the Office of the Attorney General, in addition to the parties to the case, of any motion filed in any court by an interested nonparty to obtain access to impounded documents in a criminal case. The Office of the Attorney General shall have an opportunity to be heard on the motion. The movant shall also notify the court of that office's right to be heard on the motion.

(e). Affidavit of Service. Service shall be proved by an affidavit containing a particular statement thereof, including the names and addresses of all parties, their counsel, and all

interested nonparties who have been given notice, and the method and date of service. The affidavit shall be served and filed with the motion.

(f). Timing. The motion for impoundment and supporting materials shall be served before or at the same time as such documents are mailed or delivered to the court.

Rule 5: Opposition

Any party or interested nonparty may serve and file an opposing affidavit not later than one day before any hearing, if scheduled, unless otherwise ordered. Service of any opposing affidavit shall be made in accordance with the procedures provided in URIP Rule 4 unless otherwise ordered.

Rule 6: Involvement of Interested Nonparties

(a). Motion and Appearance in Pending Civil or Criminal Cases. An interested nonparty who seeks, pursuant to URIP Rules 2, 3, 5, or 10, to request, oppose, modify, or terminate an order of impoundment pertaining to the case record of a pending civil or criminal case shall file a motion for such relief with the court and shall serve the motion in accordance with URIP Rule 4 and subsection (c) of this rule. Such a motion shall (i) specify the relief requested, (ii) specify the grounds therefor, (iii) be accompanied by an affidavit setting forth the nature of the movant's interest in the matter of impoundment and any facts on which the motion relies, and (iv) be accompanied by a notice of appearance for the limited purpose of participating in the impoundment proceeding, but without making the person a party to the case for other purposes. Proceedings on the motion shall be in accordance with the procedures described in URIP Rules 2, 3, 5, or 10, as applicable.

(b). Cases in Which a Final Disposition Has Entered. An interested nonparty who seeks, pursuant to URIP Rules 2, 3, 5, or 10, to request, oppose, modify, or terminate an order of impoundment pertaining to the case record of a prior civil or criminal case in which a final disposition has been entered shall file a separate civil action in the court where the prior action commenced, specifying the relief sought. The civil action shall name, as defendants, the clerk of court in his or her official capacity and (1) if the prior case was a civil case, all parties to the prior case, or (2) if the prior case was a criminal case, the defendant(s) in the prior case, the Office of the Attorney General, and the Office of the District Attorney of the county where the case commenced.

(c). Service on the Office of the Attorney General by Interested Nonparty in Criminal Cases. The interested nonparty movant shall serve notice on the Office of the Attorney General, in addition to the parties to the case, of any motion filed in any court to obtain access to

impounded documents in a criminal case in accordance with the provisions of URIP Rule 4(d).

Rule 7: Hearing

(a). Hearing Required. The court may enter an order of impoundment for good cause shown and in accordance with applicable law only after a hearing, except as provided in URIP Rule 2(b)(3), URIP Rule 3(a), or URIP Rule 7(e). During the hearing, those present shall preserve the confidentiality of the material that is at issue. A record of the proceedings, including the record of any *in camera* hearing, shall be preserved stenographically or by a recording device.

(b). Good Cause. In determining good cause, the court shall consider all relevant factors, including, but not limited to, (i) the nature of the parties and the controversy, (ii) the type of information and the privacy interests involved, (iii) the extent of community interest, (iv) constitutional rights, and (v) the reason(s) for the request. Agreement of all parties, interested nonparties, or other persons in favor of impoundment shall not, in itself, be sufficient to constitute good cause.

(c). Interested Nonparties. The court may, in its discretion, permit an interested nonparty who files a notice of appearance limited to participation in the impoundment proceeding to be heard at any impoundment hearing.

(d). In Camera Hearing. Where a public hearing may risk disclosure of the information sought to be impounded, the court may, upon a written finding of good cause, conduct *in camera* only that portion of the hearing that would risk disclosure. The record of any *in camera* hearing shall be impounded until a court orders otherwise.

(e). Trade Secret Exception. The court may, upon a written finding of good cause under URIP Rule 7(b), allow a motion for impoundment without a hearing when (1) the reason for the impoundment is to protect trade secrets or other confidential research, development, or business information, (2) the motion is by agreement or the motion is unopposed, (3) no party or other person has requested a hearing, and (4) the information does not involve an alleged or potential public hazard or risk to public safety.

Rule 8: Order of Impoundment

(a). **Good Cause.** An order of impoundment, whether *ex parte* or after notice, may be entered only upon a written finding of good cause.

(b). **Specificity.** An order of impoundment shall specifically state what material is to be impounded, and, where appropriate, may specify how impoundment is to be implemented. An order of impoundment shall include the date of issuance and shall specify the duration of the order with a date certain for expiration of the order.

(c). **Narrow Tailoring.** The court shall tailor the scope of the impoundment order so that it does not exceed the need for impoundment. The court may order that the movant or the filer of any material submit a redacted copy of the impounded document to the clerk for public inspection.

(d). **Public Inspection.** The order shall be entered on the docket, kept in the public file, and made available for public inspection. The order shall provide sufficient information for the public to identify the case caption, the case number, and to ascertain the grounds, duration, and scope of the impoundment. All information stating or disclosing the impounded material shall be omitted or redacted from the order prior to public inspection. A copy of the order shall be affixed to the envelope or other receptacle containing the court's copy of the impounded materials.

Rule 9: Clerk's Duties

Upon entry of an order of impoundment, or pursuant to an impoundment designation set forth in a statute, court rule, standing order, or case law, the clerk shall make a notation in the docket indicating what material has been impounded and the duration of its impoundment status. All impounded material shall be clearly marked, and kept separate and unavailable for public inspection. The impounded material shall be available to the court, the clerk and designated court personnel, the attorneys of record, the parties to the case, and other persons designated by the court, unless otherwise ordered by the court. Upon expiration or other termination of the order of impoundment, the material shall be returned to the public case record, unless other arrangements have been made, and the docket marked accordingly.

Rule 10: Modification or Termination of Order of Impoundment

A party or interested nonparty may, by motion supported by affidavit, seek to modify or terminate an order of impoundment. The motion shall be served in accordance with URIP Rule 4 and 6(c).

No order of impoundment may be modified or terminated, except upon an order of the court and upon written findings in support thereof.

Rule 11: Material Impounded by Statute, Court Rule, Standing Order, or Case Law

Any party or interested nonparty may file a motion supported by affidavit for relief from impoundment or for release of material required to be impounded pursuant to a statute, court rule, standing order, or case law, except where a different procedure is otherwise provided. The procedures set forth in these rules shall govern requests for relief from impoundment to the extent practicable.

Relief from impoundment shall be granted by the court only upon written findings.

Rule 12: Review

(a). Review of Orders Entered in Ongoing Proceedings. A party or interested nonparty aggrieved by an order impounding or refusing to impound material, or vacating, modifying, or refusing to modify a prior order of impoundment in an ongoing proceeding, may enter in the Appeals Court, within thirty days of the entry of such order, a petition for review by the single justice. The single justice's review shall proceed in accordance with the law and procedures governing petitions to the single justice.

(b). Review of Orders Entered in Proceedings Which Have Concluded. Upon the entry of judgment, including in an action commenced pursuant to URIP Rule 6(b), or other final disposition of the proceeding, any appeal of an impoundment order proceeds pursuant to the Massachusetts Rules of Appellate Procedure.

(c). Notice to the Clerk. In any matter entered or pending in an appellate court, the filer of any document shall provide written notice to the clerk of the appellate court of any document that contains impounded information. Such notification shall accompany the document and specify those papers, documents, or exhibits, or portions thereof, that are impounded and shall include a copy of the order of impoundment, if any, or a reference to other authority for the impoundment. Unless otherwise ordered, material impounded in the Trial Court shall remain impounded in the appellate court.

Rule 13. Maintaining Confidentiality of Impounded Material

(a). Duty to Identify Impounded Material. The filer of any document in a case or court proceeding shall first ascertain whether any information contained within the document is subject to a court order of impoundment, or contains information designated as “impounded” by statute, court rule, standing order, or case law. Unless it is necessary to do so, a filer shall not include impounded information in documents filed with the court.

(b). Notice to the Clerk. The filer of a document containing impounded information shall simultaneously file a notice that shall (i) notify the clerk that impounded information is included within the document being filed; (ii) identify the specific legal authority requiring impoundment of the identified information; and (iii) identify the precise location of the impounded information within the document being filed. The clerk shall docket the notice and designate the referenced document as impounded. The cover page of the document containing the impounded information shall identify that it is impounded.

(c). Duty to Protect Confidentiality. All persons shall protect the confidentiality of the impounded material. During any hearing or trial in public sessions, a filer shall not disclose impounded material, provided that in cases where such disclosure is necessary, a filer shall notify the clerk in advance and shall, in appropriate cases, make such disclosures in a manner which protects the confidentiality of the impounded material.

(d). Inadvertent Filing. Any inadvertent filing of a document that contains impounded information, without the required accompanying notice, does not waive the confidentiality of the information. In such instances, any party may file a motion to strike such material from the record, or the court may act *sua sponte*. The court may order the material struck and to be refiled, with the appropriate notice and any necessary redaction.

COMPARISON OF CURRENT UNIFORM RULES ON IMPOUNDMENT PROCEDURE TO THE 2015 PROPOSED AMENDMENTS

Rule 1: ~~Scope and Applicability of Rules~~ Applicability and Definitions

(a). Applicability. The Uniform Rules on Impoundment Procedure (URIP) govern impoundment of otherwise public case records that are filed in civil and criminal proceedings in each Department of the Trial Court. Case records are presumed to be open to the public, unless they are impounded or sealed as a matter of law, or impounded by a court order. These rules are inapplicable to case records that are required to be impounded by statute, court rule, standing order, or case law, except as otherwise provided in Rules 9, 11, and 13. These rules shall not be construed to deprive a person of any rights or remedies regarding impoundment that are otherwise available under law.

(b). Definitions. As used herein:

(1). “Case” shall include any matter that has been entered in any Department of the Trial Court. Each case shall always have a case caption and an assigned case number visible on the court’s docket and index, even if a pseudonym must be used for a party whose identity is impounded.

(2). “Case Caption” shall mean the official title of the case. For example, Commonwealth v. Smith, Jones v. Jones, or Impounded Plaintiff v. Jones.

(3). “Case record” shall mean all or any portion of court papers, documents, exhibits, orders, and other records, including an audio recording or official transcript of a proceeding, that are made, entered, or filed and maintained by the clerk in connection with a transaction of court business.

(4). “Case law” shall mean appellate decisions that are binding precedent for a Massachusetts court.

(5). “Clerk” shall mean Clerk, Clerk-Magistrate, Register of Probate, Recorder of the Land Court, their assistants, and designated court personnel.

(6). “Court” shall mean a judge or justice.

(7). “Docket” shall mean the paper or electronic list of case information maintained by the clerk that contains the case caption, case number, and a chronological entry identifying the date and title of each paper, document, exhibit, order, or judgment filed in a case, and the scheduling and occurrence of events in the case.

(8). “Final Disposition” shall mean, in a civil or criminal proceeding, when (i) a final judgment, sentence, decree, or order of dismissal has entered as to all claims, counts, and parties, (ii) any timely post-judgment motions have been disposed, and (iii) any appeal has been concluded and the rescript entered.

(9). "Impoundment" shall mean the act of keeping some or all of the case record separate and unavailable for public inspection. Impounded records are not accessible to anyone other than the court, clerk, authorized court personnel, attorneys of record, and the parties to the case, unless otherwise ordered. Any order of impoundment shall not restrict the clerk, as keeper of the records, from accessing information sufficient to file the impounded documents and carry out the clerk's duties required under URIP Rule 9. "Impounded" information includes material that a statute, court rule, standing order, case law, or court order designates must be withheld as "impounded," "withheld from public inspection," "not available for public inspection," "segregated," or "confidential," though these terms are not exhaustive. "Sealed" records are distinct from "impounded" records, in that sealed records are available to the court only, unless otherwise ordered.

(10). "Index" or "indices" shall mean the clerk's list of cases, whether maintained alphabetically or chronologically.

(11). "Interested nonparty" shall mean a person who is not or was not a party to the underlying matter in which an impoundment issue has arisen, but who nevertheless expresses to the court (through a motion, an appearance limited to impoundment, filing, or otherwise) an interest in the impoundment proceeding, or who has been named by the court as a person who shall receive notice.

(12). "Party" shall mean a person who is a litigant in the civil or criminal matter in which the impoundment proceeding has arisen.

(13). "Person" shall mean any natural person or any business, legal, or government entity.

(14). "Public record" or "public case record" shall mean a record that is accessible to any and all persons.

~~These rules govern impoundment in civil proceedings in every Department of the Trial Court.~~

~~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. It shall also be deemed to include the act of keeping dockets, indices, and other records unavailable for public inspection. The term "clerk" shall mean Clerk Magistrate, Register of Probate, Recorder of the Land Court, and their assistants.~~

~~Except as otherwise provided in Rule 11, these rules shall be inapplicable to court papers, documents, exhibits, dockets, indices, and other records which are required to be impounded by statute, court rule, or standing order.~~

(c). Impoundment and Discovery.

(1) Where impoundment is sought in connection with discovery, these rules shall be applied in a manner consistent with the provisions of Rule 26(c) of the Massachusetts Rules of Civil Procedure, Rule 26(c) of the District/Municipal Courts Rules of Civil Procedure, and Rule 26(c)

of the Massachusetts Rules of Domestic Relations Procedure, or Rule 14(a)(6) of the Massachusetts Rules of Criminal Procedure.

(2) In civil and criminal proceedings, material received by the clerk directly from a third person or nonparty in response to a subpoena, summons, or court order for discovery purposes is not available for public inspection until either a party files the material as an attachment to a pleading or motion, introduces the material as evidence, or the court so orders. The clerk shall make a notation on the docket indicating that impounded materials were filed in response to court order or discovery request.

~~These rules shall not be construed to deprive a person of any rights or remedies regarding impoundment which are otherwise available under law.~~

Rule 2: Motion for Impoundment

(a). Content of Motion.

(1). **Motion.** Any party or interested nonparty may file a written motion for impoundment of a portion or all of the case record in any judicial proceeding. A request for impoundment shall be made by written motion which shall state the grounds therefor and shall include a written statement of reasons in support thereof. The motion shall describe with particularity (i) the material sought to be impounded, (ii) the duration for which impoundment is sought, (iii) the reasons impoundment is necessary, and (iv) the reasons other alternatives to impoundment will not afford adequate protection. The movant shall include proposed findings and a proposed order, conforming to URIP Rule 8, with the motion. and the period of time for which impoundment is sought.

(2). **Affidavit.** A motion for impoundment shall be accompanied by affidavit in support thereof. Unless otherwise provided herein, the rules governing motions and affidavits in civil or criminal proceedings generally shall apply to requests for impoundment.

(3). **Public Nature of Motion and Affidavit.** The clerk shall enter the motion and affidavit on the case docket. Unless the court impounds the motion and affidavit by separate order, they remain publicly available documents.

(b). Submission of the Material Sought to Be Impounded.

(1). **Material Outside of the Case Record.** A motion for impoundment must be filed and ruled upon prior to submission of the actual material sought to be impounded. The clerk shall not accept any document that the movant seeks to be impounded until the court has ruled on the motion or ordered otherwise.

(2). **Materials for *in camera* Review.** If the court orders the movant to file the materials sought to be impounded for the court's *in camera* review, the movant shall first place them in an envelope bearing the case caption and a prominent notation that the documents within are

“PROVISIONALLY IMPOUNDED PENDING COURT ORDERED *IN CAMERA* REVIEW.”

The clerk shall withhold the submission from public inspection until there is a ruling on the motion. If the court allows the motion, the allowance shall be noted on the envelope and the materials shall be impounded for the duration of the order. If the court denies the motion, within fourteen days, the movant must retrieve the materials from the clerk or notify the clerk that the materials should be filed in their entirety. Should the same materials be filed, they will be placed in the public case record. The clerk will destroy any materials that have not been retrieved or filed by the fifteenth day.

(3). Materials Previously Filed in the Case Record. A motion may be made for impoundment of information that is currently contained in the case record. Upon receipt of such a motion, the clerk shall remove the subject material from the case record and withhold it from public dissemination pending the court's ruling on the motion. A hearing on the motion shall be held within three days unless otherwise agreed by the parties or ordered by the court.

An order of impoundment may be requested prior to the filing of the material sought to be impounded.

Rule 3: *Ex Parte* Impoundment

An *ex parte* order of impoundment shall be endorsed with the date of issuance; shall be filed forthwith in the clerk's office and entered of record; and shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed, the court extends the order.

If an order of impoundment is granted without notice, the matter shall be set down for hearing at the earliest possible time, and in any event within ten days. On two days' notice to the party who obtained the order of impoundment without notice or on such shorter notice as the court may prescribe, a party or interested third person may move for modification or termination.

An *ex parte* order of impoundment may be requested prior to the filing of the material sought to be impounded.

(a). Motion and How Allowed. An *ex parte* order of impoundment may be ~~granted~~ issued by the court without prior notice only upon either the filing of a written motion supported by affidavit in the manner provided in URIP Rule 2, or by the court *sua sponte*, and only upon a showing that immediate and irreparable injury may result before a party or interested third person can be heard in opposition. The court may conduct an *ex parte* hearing prior to issuing an order.

(b). Limited Duration of *Ex Parte* Impoundment Order. An *ex parte* order of impoundment shall include the date of issuance and the clerk shall record the filing of the order on the docket, if one is maintained for that case type, and store the order with the underlying materials. An *ex*

parte order of impoundment shall expire ten days from the date of issuance unless otherwise ordered by the court for good cause shown.

(c). Notice. After the court has ruled on the *ex parte* motion for impoundment, the movant, unless the ruling was *sua sponte* by the court, shall serve a copy of the motion, supporting affidavit, and any other related documents, on the parties and any interested nonparty. The clerk shall provide notice of the *ex parte* order or the *sua sponte* order and the scheduling of any subsequent hearing. The court has discretion to order that certain notice requirements be withheld for good cause shown.

(d). Motion to Modify or Terminate Ex Parte Impoundment Order. Any party or interested nonparty aggrieved by an *ex parte* order may file a written motion to vacate or modify the *ex parte* order. The motion may request a hearing not fewer than two days from the date of filing. Any motion to modify or terminate an *ex parte* order shall be accompanied by a certificate of service that notice has been provided to all parties, any interested nonparty, and any other person named by the court.

(e). Search Warrants.

(1). Ex Parte Motion for Impoundment, Order, and Notice. An *ex parte* motion to impound materials related to the issuance and/or execution of a search warrant may be filed and allowed in conformance with Rule 3(a). The court may enter, contemporaneously with or subsequent to the issuance of a search warrant, an *ex parte* order that the search warrant application and any related materials be impounded upon their return to the court. An *ex parte* order of impoundment shall expire ten days from the date of issuance unless otherwise ordered by the court for good cause shown. The clerk shall record the filing of any order on the docket or, if a docket for search warrants is not maintained, on the clerk's application folder. The court has discretion to order that the notice requirements of Rule 3(c) be withheld for good cause shown.

(2). Motion to Modify or Terminate an Ex Parte Order Related to a Search Warrant. After an order to impound a search warrant or related materials has issued, any motion for relief from the impoundment order shall be filed in the court or division where the search warrant was returned. A judge in the court or division where the search warrant was returned may request the transfer of a hearing on a motion to impound a search warrant or motion for relief of an impoundment to a different court department or division (i) if the impoundment order was ordered by a judge of a different court department or division or (ii) if a criminal case relating to the search warrant is pending in a different court department or division.

Rule 4: Notice Service

(a). Service. Except as otherwise provided by these rules, a movant shall serve any motion or opposition related to impoundment, or motion to modify or terminate impoundment, and any supporting materials on all parties, interested nonparties, and any other person named by the court, by mailing or delivering a copy to counsel for any represented person and to any self-represented person. Service on a represented person shall be made on the person's attorney unless service on the represented person is ordered by the court. ~~Service of the motion for impoundment and affidavit shall be made on all parties in accordance within the manner provided by Rule 5 of the Massachusetts Rules of Civil Procedure or by any alternative means ordered by the court.~~ In the event an order of impoundment is sought at the time of, or prior to, service of the original complaint, service shall be made in accordance with Rule 4 of the Massachusetts Rules of Civil Procedure. The time periods for hearing shall be as set forth in Rule 6 of the Massachusetts Rules of Civil Procedure.

(b). Service on Parties Prior to, or Simultaneously with, Service of Complaint in Civil Proceedings. When an order of impoundment is sought at the time of, or prior to, service of the original complaint in a civil proceeding, service shall be made in the manner provided by Rule 4 of the Massachusetts Rules of Civil Procedure.

(c). Service on Interested Nonparty. The court may, prior to hearing, order notice to be given to interested third persons who may not be parties to the action, including persons named in the material sought to be impounded ~~any interested nonparty.~~ Notice to such interested third persons ~~nonparty~~ shall be given in such manner as the court may direct.

If a person who receives notice under this subsection seeks to participate in the impoundment proceedings, the person must comply with URIP Rule 6.

(d). Service on the Office of the Attorney General by Interested Nonparty in Criminal Cases. The movant shall serve notice on the Office of the Attorney General, in addition to the parties to the case, of any motion filed in any court by an interested nonparty to obtain access to impounded documents in a criminal case. The Office of the Attorney General shall have an opportunity to be heard on the motion. The movant shall also notify the court of that office's right to be heard on the motion.

(e). Affidavit of Service. Service shall be proved by an affidavit containing a particular statement thereof, including the names and addresses of all parties, their counsel, and all interested nonparties who have been given notice, and the method and date of service. The affidavit shall be served and filed with the motion.

(f). Timing. The motion for impoundment and supporting materials shall be served before or at the same time as such documents are mailed or delivered to the court.

~~Service shall be proved by affidavit containing a particular statement thereof, including the names and addresses of all parties and interested third persons who have been given notice.~~

Rule 5: Opposition to Request for Impoundment

~~Any party or interested third person who has been notified in accordance with Rule 4 of these rules~~ nonparty may serve and file an opposing affidavits not later than one day before the any hearing, unless the court permits them to be served at some other time if scheduled, unless otherwise ordered. Service of any opposing affidavits shall be made in accordance with the procedures provided in URIP Rule 4 unless otherwise ordered. ~~Rule 5 of the Massachusetts Rules of Civil Procedure.~~

Rule 6: ~~Motion by Third Party to be Heard~~ Involvement of Interested Nonparties

(a). Motion and Appearance in Pending Civil or Criminal Cases. An interested nonparty who seeks, pursuant to URIP Rules 2, 3, 5, or 10, to request, oppose, modify, or terminate an order of impoundment pertaining to the case record of a pending civil or criminal case shall file a motion for such relief with the court and shall serve the motion in accordance with URIP Rule 4 and subsection (c) of this rule. Such a motion shall (i) specify the relief requested, (ii) specify the grounds therefor, (iii) be accompanied by an affidavit setting forth the nature of the movant's interest in the matter of impoundment and any facts on which the motion relies, and (iv) be accompanied by a notice of appearance for the limited purpose of participating in the impoundment proceeding, but without making the person a party to the case for other purposes. Proceedings on the motion shall be in accordance with the procedures described in URIP Rules 2, 3, 5, or 10, as applicable.

(b). Cases in Which a Final Disposition Has Entered. An interested nonparty who seeks, pursuant to URIP Rules 2, 3, 5, or 10, to request, oppose, modify, or terminate an order of impoundment pertaining to the case record of a prior civil or criminal case in which a final disposition has been entered shall file a separate civil action in the court where the prior action commenced, specifying the relief sought. The civil action shall name, as defendants, the clerk of court in his or her official capacity and (1) if the prior case was a civil case, all parties to the prior case, or (2) if the prior case was a criminal case, the defendant(s) in the prior case, the Office of the Attorney General, and the Office of the District Attorney of the county where the case commenced.

(c). Service on the Office of the Attorney General by Interested Nonparty in Criminal Cases. The interested nonparty movant shall serve notice on the Office of the Attorney General, in addition to the parties to the case, of any motion filed in any court to obtain access to impounded documents in a criminal case in accordance with the provisions of URIP Rule 4(d).

~~A person who has not been notified in accordance with Rule 4 of these rules and who desires to be heard in order to request or oppose impoundment may serve on all parties a written motion~~

supported by affidavit. If impoundment is desired, the provisions of Rule 2 of these rules concerning motions and affidavits and Rule 4 of these rules concerning notice shall be applicable. The time periods for service of the motion to be heard and for setting of a hearing date shall be as set forth in Rule 6 of the Massachusetts Rules of Civil Procedure.

Rule 7: Hearing

(a). Hearing Required. The court may enter an order of impoundment for good cause shown and in accordance with applicable law only after a hearing, except as provided in URIP Rule 2(b)(3), URIP Rule 3(a), or URIP Rule 7(e). During the hearing, those present shall preserve the confidentiality of the material that is at issue. A record of the proceedings, including the record of any *in camera* hearing, shall be preserved stenographically or by a recording device.

(b). Good Cause. In determining good cause, the court shall consider all relevant factors, including, but not limited to, (i) the nature of the parties and the controversy, (ii) the type of information and the privacy interests involved, (iii) the extent of community interest, (iv) constitutional rights, and (v) the reason(s) for the request. Agreement of all parties, interested nonparties, or other persons in favor of impoundment shall not, in itself, be sufficient to constitute good cause.

(c). Interested Nonparties. The court may, in its discretion, permit an interested nonparty who files a notice of appearance limited to participation in the impoundment proceeding to be heard at any impoundment hearing.

(d). In Camera Hearing. An order of impoundment may be entered by the court, after hearing, for good cause shown and in accordance with applicable law. In determining good cause, the court shall consider all relevant factors, including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason(s) for the request. Agreement of all parties or interested third persons in favor of impoundment shall not, in itself, be sufficient to constitute good cause.

Interested third persons who are notified in accordance with Rule 4 of these rules and those third persons who have filed motions to be heard in accordance with Rule 6 of these rules may, in the court's discretion, be given an opportunity to be heard.

Where a public hearing may risk disclosure of the information sought to be impounded, the court may, upon a written finding of good cause, conduct *in camera* only that portion of the hearing that would risk disclosure. The record of any *in camera* hearing shall be impounded until a court orders otherwise. Close the hearing to the public. If a hearing is closed to the public, a record of the proceedings shall be preserved stenographically or by a recording device. Appropriate steps shall be taken to preserve the confidentiality of the record.

(e). Trade Secret Exception. The court may, upon a written finding of good cause under URIP Rule 7(b), allow a motion for impoundment without a hearing when (1) the reason for the

impoundment is to protect trade secrets or other confidential research, development, or business information, (2) the motion is by agreement or the motion is unopposed, (3) no party or other person has requested a hearing, and (4) the information does not involve an alleged or potential public hazard or risk to public safety.

Rule 8: Order of Impoundment

(a). Good Cause. An order of impoundment, whether *ex parte* or after notice, may be entered only upon a written finding of good cause. ~~may be made only upon written findings~~

(b). Specificity. An order of impoundment shall specifically state what material is to be impounded, and, where appropriate, may specify how impoundment is to be implemented. An order of impoundment shall ~~be endorsed with~~ include the date of issuance and shall specify the duration of the order ~~with a date certain for expiration of the order.~~

(c). Narrow Tailoring. The court shall tailor the scope of the impoundment order so that it does not exceed the need for impoundment. The court may order that the movant or the filer of any material submit a redacted copy of the impounded document to the clerk for public inspection.

(d). Public Inspection. The order shall be entered on the docket, kept in the public file, and made available for public inspection. The order shall provide sufficient information for the public to identify the case caption, the case number, and to ascertain the grounds, duration, and scope of the impoundment. All information stating or disclosing the impounded material shall be omitted or redacted from the order prior to public inspection. A copy of the order shall be affixed to the envelope or other receptacle containing the court's copy of the impounded materials.

~~In its order, the court may allow persons other than those described in Rule 9 of these rules to have access to impounded material, and may order that appropriate deletions or notations be made in the civil docket and indices kept by the clerk.~~

Rule 9: Clerk's Duties

Upon entry of an order of impoundment, or pursuant to an impoundment designation set forth in a statute, court rule, standing order, or case law, the clerk shall make a notation in the civil docket indicating what material has been impounded and the duration of its impoundment status. All impounded material shall be clearly marked, and kept separate from other papers in the case and shall not be available and unavailable for public inspection. ~~Such~~ The impounded material shall be available to the court, the clerk and designated court personnel, the attorneys of record, the parties to the case, and other persons designated by the court, ~~and the clerk,~~ unless otherwise ordered by the court.

Upon expiration or other termination of the order of impoundment, the material shall be returned to the filepublic case record, unless other arrangements have been made, and the docket marked accordingly.

Rule 10: Modification or Termination of Order of Impoundment

A party or any interested nonparty may, by motion supported by affidavit, seek to modify or terminate an order of impoundment. The motion shall be served in accordance with URIP Rule 4 and 6(c). third person, whether or not notified under Rule 4 of these rules, may, by motion supported by affidavit, seek to modify or terminate an order of impoundment. Such motion shall be served in accordance with the provisions of Rule 5 of the Massachusetts Rules of Civil Procedure upon all parties, all interested third persons who were notified pursuant to Rule 4 of these rules, and any other person as ordered by the court.

No order of impoundment may be modified or terminated, except upon an order of the court and upon written findings in support thereof.

Rule 11: Material Impounded by Statute, Court Rule, Standing Order, or Case Law or Rule

Any party or interested nonparty may file a motion supported by affidavit for relief from impoundment or for release of material required to be impounded pursuant to a statute, court rule, standing order, or case law, except where a different procedure is otherwise provided. The procedures set forth in these rules shall govern requests for relief from impoundment to the extent practicable.

This rule applies to requests for relief from impoundment in cases where material is required to be impounded by statute, court rule, or standing order, except where a different procedure is otherwise provided.

Relief from impoundment may be sought by motion supported by affidavit, and shall be granted by the court only upon written findings. The procedure otherwise set forth in these rules shall govern requests for relief from impoundment to the extent practicable.

Rule 12: Review

(a). Review of Orders Entered in Ongoing Proceedings. A party or interested nonparty aggrieved by an order impounding or refusing to impound material, or vacating, modifying, or refusing to modify a prior order of impoundment in an ongoing proceeding, may enter in the Appeals Court, within thirty days of the entry of such order, a petition for review by the single justice. The single justice's review shall proceed in accordance with the law and procedures governing petitions to the single justice.

(b). Review of Orders Entered in Proceedings Which Have Concluded. Upon the entry of judgment, including in an action commenced pursuant to URIP Rule 6(b), or other final disposition of the proceeding, any appeal of an impoundment order proceeds pursuant to the Massachusetts Rules of Appellate Procedure.

~~An order impounding or refusing to impound material shall be subject to review by a single justice of an appellate court in accordance with provisions of law and consistent with the procedures established in Rule 1:15 of the Rules of the Supreme Judicial Court.~~

(c). Notice to the Clerk. In any matter entered or pending in an appellate court, the filer of any document shall provide written notice to the clerk of the appellate court of any document that contains impounded information. Such notification shall accompany the document and specify those papers, documents, or exhibits, or portions thereof, that are impounded and shall include a copy of the order of impoundment, if any, or a reference to other authority for the impoundment. Unless otherwise ordered, material impounded in the Trial Court shall remain impounded in the appellate court.

Rule 13. Maintaining Confidentiality of Impounded Material

(a). Duty to Identify Impounded Material. The filer of any document in a case or court proceeding shall first ascertain whether any information contained within the document is subject to a court order of impoundment , or contains information designated as “impounded” by statute, court rule, standing order, or case law. Unless it is necessary to do so, a filer shall not include impounded information in documents filed with the court

(b). Notice to the Clerk. The filer of a document containing impounded information shall simultaneously file a notice that shall (i) notify the clerk that impounded information is included within the document being filed; (ii) identify the specific legal authority requiring impoundment of the identified information; and (iii) identify the precise location of the impounded information within the document being filed. The clerk shall docket the notice and designate the referenced document as impounded. The cover page of the document containing the impounded information shall identify that it is impounded.

(c). Duty to Protect Confidentiality. All persons shall protect the confidentiality of the impounded material. During any hearing or trial in public sessions, a filer shall not disclose impounded material, provided that in cases where such disclosure is necessary, a filer shall notify the clerk in advance and shall, in appropriate cases, make such disclosures in a manner which protects the confidentiality of the impounded material.

(d). Inadvertent Filing. Any inadvertent filing of a document that contains impounded information, without the required accompanying notice, does not waive the confidentiality of the information. In such instances, any party may file a motion to strike such material from the record, or the court may act *sua sponte*. The court may order the material struck and to be refiled, with the appropriate notice and any necessary redaction.

**HANDBOOK ON
TRIAL COURT RULE VIII,
THE UNIFORM RULES ON
IMPOUNDMENT PROCEDURE**

**FOR USE WITH THE 2015 AMENDMENTS TO THE
UNIFORM RULES ON IMPOUNDMENT PROCEDURE**

**Prepared by the
Trial Court Advisory Committee on
Impoundment Law and Procedure**

INTRODUCTION

The Trial Court Advisory Committee on Impoundment Law and Procedure has prepared this handbook as a reference to assist the courts and the public with the substantive and procedural requirements of Trial Court Rule VIII, Uniform Rules on Impoundment Procedure, as amended in 2015. This handbook is for education and information purposes only and is not intended to constitute or provide legal advice. All persons must perform their own research prior to filing any papers to ensure full compliance with the law governing impoundment.

We hope that you find this handbook helpful. If you have any suggestions for the handbook, please share them with Joseph Stanton, Clerk of the Appeals Court, at joseph.stanton@appct.state.ma.us

Hon. Paula M. Carey
Chief Justice of the Trial Court

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Section 1 – Uniform Rules on Impoundment Procedure and Notes

Rule 1. Applicability and Definitions

(a). **Applicability.** The Uniform Rules on Impoundment Procedure (URIP) govern impoundment of otherwise public case records that are filed in civil and criminal proceedings in each Department of the Trial Court. Case records are presumed to be open to the public, unless they are impounded or sealed as a matter of law, or impounded by a court order. These rules are inapplicable to case records that are required to be impounded by statute, court rule, standing order, or case law, except as otherwise provided in Rules 9, 11, and 13. These rules shall not be construed to deprive a person of any rights or remedies regarding impoundment that are otherwise available under law.

(b). **Definitions.** As used herein:

(1). “Case” shall include any matter that has been entered in any Department of the Trial Court. Each case shall always have a case caption and an assigned case number visible on the court’s docket and index, even if a pseudonym must be used for a party whose identity is impounded.

(2). “Case Caption” shall mean the official title of the case. For example, Commonwealth v. Smith, Jones v. Jones, or Impounded Plaintiff v. Jones.

(3). “Case record” shall mean all or any portion of court papers, documents, exhibits, orders, and other records, including an audio recording or official transcript of a proceeding, that are made, entered, or filed and maintained by the clerk in connection with a transaction of court business.

(4). “Case law” shall mean appellate decisions that are binding precedent for a Massachusetts court.

(5). “Clerk” shall mean Clerk, Clerk-Magistrate, Register of Probate, Recorder of the Land Court, their assistants, and designated court personnel.

(6). “Court” shall mean a judge or justice.

(7). “Docket” shall mean the paper or electronic list of case information maintained by the clerk that contains the case caption, case number, and a chronological entry identifying the date and title of each paper, document, exhibit, order, or judgment filed in a case, and the scheduling and occurrence of events in the case.

(8). “Final Disposition” shall mean, in a civil or criminal proceeding, when (i) a final judgment, sentence, decree, or order of dismissal has entered as to all claims, counts, and parties, (ii) any timely post-judgment motions have been disposed, and (iii) any appeal has been concluded and the rescript entered.

(9). “Impoundment” shall mean the act of keeping some or all of the case record separate and unavailable for public inspection. Impounded records are not accessible to anyone other than the court, clerk, authorized court personnel, attorneys of record, and the parties to the case, unless otherwise ordered. Any order of impoundment shall not restrict the clerk, as keeper of the records, from accessing

information sufficient to file the impounded documents and carry out the clerk's duties required under URIP Rule 9. "Impounded" information includes material that a statute, court rule, standing order, case law, or court order designates must be withheld as "impounded," "withheld from public inspection," "not available for public inspection," "segregated," or "confidential," though these terms are not exhaustive. "Sealed" records are distinct from "impounded" records, in that sealed records are available to the court only, unless otherwise ordered.

(10). "Index" or "indices" shall mean the clerk's list of cases, whether maintained alphabetically or chronologically.

(11). "Interested nonparty" shall mean a person who is not or was not a party to the underlying matter in which an impoundment issue has arisen, but who nevertheless expresses to the court (through a motion, an appearance limited to impoundment, filing, or otherwise) an interest in the impoundment proceeding, or who has been named by the court as a person who shall receive notice.

(12). "Party" shall mean a person who is a litigant in the civil or criminal matter in which the impoundment proceeding has arisen.

(13). "Person" shall mean any natural person or any business, legal, or government entity.

(14). "Public record" or "public case record" shall mean a record that is accessible to any and all persons.

(c). Impoundment and Discovery.

(1) Where impoundment is sought in connection with discovery, these rules shall be applied in a manner consistent with any applicable provisions of Rule 26(c) of the Massachusetts Rules of Civil Procedure, Rule 26(c) of the Massachusetts Rules of Domestic Relations Procedure, or Rule 14(a)(6) of the Massachusetts Rules of Criminal Procedure.

(2) In civil and criminal proceedings, material received by the clerk directly from a third person or nonparty in response to a subpoena, summons, or court order for discovery purposes is not available for public inspection until either a party files the material as an attachment to a pleading or motion, introduces the material as evidence, or the court so orders. The clerk shall make a notation on the docket indicating that impounded materials were filed in response to court order or discovery request.

Committee Notes

Scope and the Presumption of Public Access to Case Records

Massachusetts has long recognized a common-law right of access to case records. New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 82-83 (2012), citing Republican Co. v. Appeals Court, 442 Mass. 218, 222 (2004). Case records are presumptively public documents, unless required by statute, court rule, standing order, or case law to be withheld from public inspection. Id. at 83, citing Republican Co., 442 Mass. at 222-223. See also Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 604 (2000); Newspapers of New England, Inc. v. Clerk-

Magistrate of the Ware Div. of the Dist. Court Dep't, 403 Mass. 628, 631-632, 637 (1988). The URIP prescribe the procedures by which the court may impound or refuse to impound material, or may modify or terminate an existing impoundment order. The URIP are applicable in all civil and criminal proceedings to requests regarding the impoundment of information or documents that otherwise constitute a public case record. URIP Rule 1 permits the court to impound some or all of the papers filed in a case, including documents, exhibits, a party's name in a docket or index, or portions thereof. The URIP do not apply to information that a statute, court rule, standing order, or case law designates as impounded, except where relief is sought pursuant to Rule 11, or where a filer is required to file a notice of the filing of impounded information pursuant to Rule 13.

“[I]mpoundment is always the exception to the rule, and the power to deny public access to judicial records is to be 'strictly construed in favor of the general principle of publicity.’” Republican Co. v. Appeals Court, 442 Mass. 218, 223 (2004), quoting Commonwealth v. Blondin, 324 Mass. 564, 571 (1949). “Impounded” information is open for inspection by the court, attorneys of record, and the parties, but not the public. By contrast, “a document is normally ordered 'sealed' when it is intended that only the court have access to the document, unless the court specifically orders limited disclosure.” See Pixley v. Commonwealth, 453 Mass. 827, 836 n.12 (2009).

The 2015 amendments to the URIP deleted the language in URIP Rule 1 that permitted a court to impound the existence of a case from the court's docket or index. Under the amended URIP, while the identity of a party's name may be impounded, the existence of a case may not be impounded. At a minimum, each case shall appear in the court's docket and index, using the parties' names if not impounded, or, if impounded, some pseudonym or a generic case title to protect the parties' identities. For example, in a case where both parties' identities are impounded, the case may appear in the docket or index using an anonymous case caption, such as Impounded Plaintiff v. Impounded Defendant.

Discovery and Other Materials From a Non-Party.

In civil and criminal proceedings, some materials are submitted to the clerk directly from a third person or non-party in response to a subpoena, summons, or court order. These materials can include discovery materials and potential exhibits that are not filed as an attachment to a pleading or motion, or are not yet introduced in evidence. These records are not available for public inspection until a party introduces them into the record. For instance, in criminal cases, parties seeking discovery from nonparties must first satisfy Mass. R. Crim. P. 17(a)(2). Once Rule 17(a)(2) is satisfied and the nonparty produces records, “[t]he clerk shall maintain the records in a location separate from the court file . . . [the records] shall not be made available for public inspection unless and until any record is filed in connection with a proceeding in the case or introduced as evidence at that time.” Commonwealth v. Dwyer, 448 Mass. 122, 148-149 (2006). See Commonwealth v. Mitchell, 444 Mass. 786, 800 (2005) (“no inspection of summonsed documents, by either side, shall be allowed until after a full consideration of any privileges, privacy concerns, or other legitimate interests brought to the judge's attention in a timely fashion”). See also Mass. Guide Evid. Article V, Introductory Note paragraph (g), Production of Presumptively Privileged Records from Nonparties Prior to Trial in Criminal Cases, and Section 1108, Access to Third-Party Records Prior to Trial in Criminal Cases (Lampron-Dwyer Protocol) (2015).

Likewise, courts have generally treated pre-trial discovery documents in civil cases as being unavailable to the public. See H.S. Gere & Sons, Inc. v. Frey, 400 Mass. 326, 330 (1987) ("The judge noted that the materials at issue consisted primarily of discovery information, which is not a traditionally public source of information"). In Anderson v. Cryovac, Inc., 805 F.2d 1, 11-12 (1st Cir. 1986), the First Circuit Court of Appeals explained "there is no right of public access to documents considered in civil discovery motions . . . [because] discovery proceedings are fundamentally different from proceedings to which the courts have recognized a public right of access." Moreover, "the courts of appeals have uniformly held that the public has no common law or constitutional right of access to materials that are gained through civil discovery but neither introduced as evidence at trial nor submitted to the court as documentation in support of motions or trial papers." United States v. Kravetz, 706 F.3d 47, 55 (1st Cir. 2013).

These practices are acknowledged in the District Court Department's "A Guide to Public Access, Sealing & Expungement of District Court Records," (revised September 2013), which provides that "[r]ecords deposited with the clerk-magistrate as potential exhibits but not yet introduced in evidence or filed as an attachment to a pleading or motion" are not publicly available. See "A Guide to Public Access, Sealing & Expungement of District Court Records," 16 & 22 (District Court Dept. rev. Sept. 2013). Such records "include business records produced pursuant to G. L. c. 233, § 79J, hospital records produced pursuant to G. L. c. 233, § 79, and records produced pursuant to the protocol of Commonwealth v. Dwyer, 448 Mass. 122, 148-149 (2006)." Id. at 16 n.50.

Case Records in Criminal Proceedings

"In criminal cases [the Supreme Judicial Court has] used a two-part test to determine whether there is a constitutional right of access to judicial records: the proceedings must have 'an historic tradition of openness,' and the public's access must play a significant positive role in the functioning of the particular process in question." Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 606 (2000) (quoting Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Div. of the Dist. Court Dep't, 403 Mass. 628, 635 (1998), which was quoting Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 8 (1968)). In such cases "the public's right to access is balanced not simply against an interest in privacy, but against a defendant's right to a fair trial, which potentially may be at risk from prejudicial pretrial publicity." In re Globe Newspaper Co., Inc., 461 Mass. 113, 121 (2011) (citations omitted). Pretrial publicity in criminal trials is common, but the existence of such publicity does not, by itself, require impoundment of a case or proceeding. See, e.g., Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 609, 611-612 (2000); In re Globe Newspaper Co., Inc., 461 Mass. 113, 121 (2011). See also New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 91 (2012) (noting that a prospective defendant's right to a fair trial may be in conflict with the public interest in an ongoing criminal investigation). The likelihood of pretrial publicity arising from the release of court documents "does not . . . necessarily trump" the presumption of public access. Newspapers of New England, Inc., 403 Mass. at 632-633, quoting Gannett Co. v. DePasquale, 443 U.S. 368, 378 (1979)). Investigative secrecy and safety of a person or the public are also concerns. See, e.g., New England Internet Café, LLC v. Clerk of Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 86, 92, 93 (2012); Commonwealth v. Silva, 448 Mass. 701, 708 (2007).

When an application for a warrant is filed in a court pursuant to G. L. c. 276, § 1, et seq., the court does not usually assign a case docket number or case caption to the application or warrant that issues. This information is assigned only after the search warrant is returned to a designated court or division. Thus, if an impoundment order issues prior to the return of the search warrant, it does not have a designated case docket number or case caption. In addition, current court practice does not require maintenance of a formal docket report on warrants that have been returned to a designated court.

Availability of Other Rights or Remedies, Including Discovery

The final sentence of Rule 1(a) states, “[t]hese rules shall not be construed to deprive a person of any rights or remedies regarding impoundment that are otherwise available under law.” This provision makes clear that a person may utilize other legal remedies concerning impoundment that may be available under the law. For example, a person has a right to bring an independent civil action seeking relief from impoundment in the court that issued the impoundment order, and Rule 6(b) embodies this right. See In re Globe Newspaper Co., Inc., 461 Mass. 113, 125 n.5 (2011); Republican Co. v. Appeals Court, 442 Mass. 218, 227 n.14 (2004); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 551 (1977). Similarly, the URIP do not supersede the more specific rules of procedure that concern the issuance of protective orders to ensure confidentiality of discovery. Nonetheless, the URIP are to be construed in a manner consistent with the discovery rules whenever a request for impoundment of discovery materials is made. Thus, for example, where a protective order has entered under Rule 26(c) of either the Massachusetts Rules of Civil Procedure Rule or Rules of Domestic Relations Procedure, or Rule 14(a)(6) of the Massachusetts Rules of Criminal Procedure, application of the impoundment rules would permit a nonparty (e.g., a media representative) to seek access to the materials by filing a motion for relief from impoundment as an “interested nonparty.” Similarly, in criminal proceedings the court may enter a protective order addressing the dissemination of a search warrant application and return. See Mass. R. Crim. P. 14(a)(6). Further, after a protective order has entered, any future filings containing that information would need to comply with URIP Rule 13.

Appellate Courts

Pursuant to S.J.C. Rule 1:15, § 1, the URIP govern requests for impoundment in the Supreme Judicial Court and the Appeals Court.

History of the Enactment and Amendments

Rules 1 through 11 of the URIP became effective on September 1, 1986. URIP Rule 12 was added on October 27, 1987, and became effective on January 1, 1988. In 2015, the URIP were substantially amended to conform to case law and to improve the administration of filing procedures. Subsections and subheadings were added to the rules to improve comprehension. A handbook was also developed to provide legal and administrative guidance.

Most significantly, URIP Rule 1 was amended from being restricted to civil proceedings to now include criminal proceedings. This amendment conformed the URIP to existing practice and to instruction from the Supreme Judicial Court that requests for impoundment in criminal proceedings should follow the same procedures as requests in civil proceedings. See In re Globe Newspaper Co., Inc., 461 Mass. 113, 121 (2011) (noting that good cause standard applies and a “comparable balancing” must take place in criminal cases as well as in civil cases); Commonwealth v. Silva, 448 Mass 701, 705 (2007) (“In future

cases, appellate review of an impoundment order in an ongoing criminal proceeding should conform to the Uniform Rules on Impoundment Procedure, and should be sought in the first instance before a single justice of the Appeals Court”); Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 606-609 (2000) (discussing importance of balancing the public's right to inspect documents against a criminal defendant's right to a fair trial); Republican Co. v. Appeals Court, 442 Mass. 218, 223, 223 n.8 (2004) (recognizing that a “good cause” standard similar to motions for impoundment in civil cases also applies in criminal cases).

The 2015 amendments also included some technical amendments. The reference to Rule 26(c) of the District/Municipal Court Rules of Civil Procedure was deleted because the rules were repealed in 1996. In addition, the reference to Rule 14(a)(6) of the Massachusetts Rules of Criminal Proceedings was added because the URIP now explicitly apply to criminal proceedings.

Rule 2. Motion for Impoundment

(a). Content of Motion.

(1). *Motion.* Any party or interested nonparty may file a written motion for impoundment of a portion or all of the case record in any judicial proceeding. The motion shall describe with particularity (i) the material sought to be impounded, (ii) the duration for which impoundment is sought, (iii) the reasons impoundment is necessary, and (iv) the reasons other alternatives to impoundment will not afford adequate protection. The movant shall include proposed findings and a proposed order, conforming to URIP Rule 8, with the motion.

(2). *Affidavit.* A motion for impoundment shall be accompanied by an affidavit in support thereof. Unless otherwise provided herein, the rules governing motions and affidavits in civil or criminal proceedings generally shall apply to requests for impoundment.

(3). *Public Nature of Motion and Affidavit.* The clerk shall enter the motion and affidavit on the case docket. Unless the court impounds the motion and affidavit by separate order, they remain publicly available documents.

(b). Submission of the Material Sought to Be Impounded.

(1). *Material Outside of the Case Record.* A motion for impoundment must be filed and ruled upon prior to submission of the actual material sought to be impounded. The clerk shall not accept any document that the movant seeks to be impounded until the court has ruled on the motion or ordered otherwise.

(2). *Materials for in camera Review.* If the court orders the movant to file the materials sought to be impounded for the court's *in camera* review, the movant shall first place them in an envelope bearing the case caption and a prominent notation that the documents within are "PROVISIONALLY IMPOUNDED PENDING COURT ORDERED *IN CAMERA* REVIEW." The clerk shall withhold the submission from public inspection until there is a ruling on the motion. If the court allows the motion, the allowance shall be noted on the envelope and the materials shall be impounded for the duration of the order. If the court denies the motion, within fourteen days, the movant must retrieve the materials from the clerk or notify the clerk that the materials should be filed in their entirety. Should the same materials be filed, they will be placed in the public case record. The clerk will destroy any materials that have not been retrieved or filed by the fifteenth day.

(3). *Materials Previously Filed in the Case Record.* A motion may be made for impoundment of information that is currently contained in the case record. Upon receipt of such a motion, the clerk shall remove the subject material from the case record and withhold it from public dissemination pending the court's ruling on the motion. A hearing on the motion shall be held within three days unless otherwise agreed by the parties or ordered by the court.

Committee Notes

URIP Rule 2 provides that a request for impoundment shall be made by written motion, stating the grounds and reasons therefor. A motion for impoundment may be sought at any time during the pendency of the case, including impoundment of the complaint when the case is commenced or after a final disposition of the case has entered. The motion should specifically describe the material to be impounded and the duration of the impoundment requested. The motion shall be supported by an affidavit that is based upon the affiant's personal knowledge or information and belief, and sets forth facts demonstrating good cause to warrant the requested relief. The moving party is required to submit proposed findings and a proposed order.

The motion and affidavit in support thereof are public documents and will not be impounded, even if the motion is granted and the requested information is impounded, unless the court orders otherwise. Consequently, the movant shall be cautious in drafting such documents so as not to include the specific information requested to be impounded. The rule provides that the movant shall not file the actual material sought to be impounded until the court has either allowed the motion for impoundment or ordered an *in camera* submission.

The court may order the movant to submit the specific impounded information for an *in camera* review prior to ruling on the motion, and the court has discretion to order the movant to file a redacted copy for public inspection. If the court denies the motion, the movant will be afforded fourteen days to retrieve the material from the court clerk or to file them in their entirety. Should the same materials be filed, they will be placed in the public case record. The clerk will destroy any materials that have not been retrieved or filed by the fifteenth day.

In general, most motions for impoundment will be filed pursuant to Rule 2(b)(1), prior to submission of the actual material sought to be impounded. Rule 2(b)(3) governs only situations when the case record contains a previously filed document or information that is otherwise public but subsequently becomes the subject of a motion for impoundment. Rule 2(b)(3) requires the clerk to remove the subject material from the case record and withhold it from public dissemination pending the court's ruling on the motion. The clerk should bring the motion to the court for consideration as soon as reasonably practicable, and a hearing is required within three days unless otherwise agreed by the parties or ordered by the court. Importantly, Rule 2(b)(3) is not a substitute or alternative to a Rule 2(b)(1) motion. If a movant seeks *ex parte* relief, then Rule 3 must be followed.

Rule 3. *Ex Parte* Impoundment

(a). **Motion and How Allowed.** An *ex parte* order of impoundment may be issued by the court without prior notice only upon either the filing of a written motion supported by affidavit in the manner provided in URIP Rule 2, or by the court *sua sponte*, and only upon a showing that immediate and irreparable injury may result before a party or interested nonparty can be heard in opposition. The court may conduct an *ex parte* hearing prior to issuing an order.

(b). **Limited Duration of *Ex Parte* Impoundment Order.** An *ex parte* order of impoundment shall include the date of issuance and the clerk shall record the filing of the order on the docket and store the order with the underlying materials. An *ex parte* order of impoundment shall expire ten days from the date of issuance unless otherwise ordered by the court for good cause shown.

(c). **Notice.** After the court has ruled on the *ex parte* motion for impoundment, the movant, unless the ruling was *sua sponte* by the court, shall serve a copy of the motion, supporting affidavit, and any other related documents, on the parties and any interested nonparty. The court shall provide notice of the *ex parte* order or the *sua sponte* order and the scheduling of any subsequent hearing. The court has discretion to order that certain notice requirements be withheld for good cause shown.

(d). **Motion to Modify or Terminate *Ex Parte* Impoundment Order.** Any party or interested nonparty aggrieved by an *ex parte* order may file a written motion to vacate or modify the *ex parte* order. The motion may request a hearing not fewer than two days from the date of filing. Any motion to modify or terminate an *ex parte* order shall be accompanied by a certificate of service that notice has been provided to all parties, any interested nonparty, and any other person named by the court.

(e). **Search Warrants.**

(1). ***Ex Parte Motion for Impoundment, Order, and Notice.*** An *ex parte* motion to impound materials related to the issuance and/or execution of a search warrant may be filed and allowed in conformance with Rule 3(a). The court may enter, contemporaneously with or subsequent to the issuance of a search warrant, an *ex parte* order that the search warrant application and any related materials be impounded upon their return to the court. An *ex parte* order of impoundment shall expire ten days from the date of issuance unless otherwise ordered by the court for good cause shown. The clerk shall record the filing of any order on the docket or, if a docket for search warrants is not maintained, on the clerk's application folder. The court has discretion to order that the notice requirements of Rule 3(c) be withheld for good cause shown.

(2). ***Motion to Modify or Terminate an Ex Parte Order Related to a Search Warrant.*** After an order to impound a search warrant or related materials has issued, any motion for relief from the impoundment order shall be filed in the court or division where the search warrant was returned. A judge in the court or division where the search warrant was returned may request the transfer of a hearing on a motion to impound a search warrant or motion for relief of an impoundment to a different court department or division (i) if the impoundment order was ordered by a judge of a different court department or division or (ii) if a criminal case relating to the search warrant is pending in a different court department or division.

Committee Notes

Procedure for Ordering *Ex Parte* Impoundment

Motion. URIP Rule 3 provides that the court may grant an *ex parte* order of impoundment, “only upon written motion supported by affidavit . . . showing that immediate and irreparable injury may result before a party or interested nonparty can be heard in opposition.” This standard is similar to that set forth in Rule 65(a) of the Massachusetts Rules of Civil Procedure, governing the issuance of a temporary restraining order. See Mass.R.Civ.P. 65(a).

***Sua Sponte* Impoundment Order.** A court may enter *sua sponte* an *ex parte* order of impoundment, that must otherwise comply with the provisions of Rule 3. A court has the inherent power “to impound its files in a case and to deny public inspection of them, and that is often done when justice so requires.” H.S. Gere & Sons, Inc. v. Frey, 400 Mass. 326, 329 (1987) (quoting from Sanford v. Boston Herald-Traveler Corp., 318 Mass. 156, 158 (1945)). See Newspapers of New England, Inc. v. Clerk-Magistrate of Ware Div. of Dist. Court Dep’t., 403 Mass. 628, 631-632 (1988); Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 604 (2000) (“Courts possess supervisory power of their records and files, and have properly denied public access where those records and files ‘might have become a vehicle for improper purposes.’”) (citation omitted). A *sua sponte* order of impoundment is appropriate “where ‘good cause’ is shown.” Commonwealth v. George W. Prescott Publishing Co., LLC, 463 Mass. 258, 263 (2012). A *sua sponte* impoundment order is an interim order which must comply with the Trial Court’s Uniform Rules on Impoundment Procedure. If the court *sua sponte* enters an impoundment order *ex parte*, the court must provide notice to the parties and interested persons and may schedule a subsequent hearing. When, however, during an ongoing proceeding the court *sua sponte* raises an issue of impoundment with the parties present and provides them an opportunity to be heard, no subsequent hearing may be necessary, and any order of impoundment may include a duration longer than the ten-day limit imposed by Rule 3(b). A *sua sponte* order will be subject to any subsequent motions to modify or vacate.

Hearing

The court may, but is not required to, hold a hearing before issuing an *ex parte* order of impoundment.

Ex Parte Motions in Criminal Proceedings

In practice, *ex parte* motions for impoundment are regularly filed to impound materials related to the issuance and/or execution of a search warrant. See, e.g., New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 79 (2012). Although a motion for impoundment is unnecessary because G. L. c. 276, § 2B requires that an affidavit filed in support of an application for a search warrant shall be impounded until the search warrant is returned, it is nonetheless permissible to file, prior to the return, a motion to impound the materials after return of the warrant. In such circumstances, therefore, prior to the return, only a notice of the filing of impounded information, as required by URIP Rule 13, needs to be filed for the clerk to designate the search warrant application materials as impounded. See URIP Rule 13. Neither a motion, service, nor hearing is required for the application materials to be impounded.

The Commonwealth must execute the search warrant “within a reasonable time.” G. L. c. 276, § 2A; Commonwealth v. Cromer, 365 Mass. 519, 522 (1974). After its issuance, the warrant must then be returned to court within seven days. G. L. c. 276, § 3A. See Commonwealth v. Cromer, 365 Mass. at

524; Commonwealth v. Kaupp, 453 Mass. 102, 114-115 (2009). Once the warrant has been returned to the court, the warrant and affidavit lose their impoundment status and are public documents. In re Globe Newspaper Co., Inc., 461 Mass. 113, 118 (2011); Commonwealth v. Rutkowski, 406 Mass. 673, 674 n.3 (1990); Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Div. of the Dist. Court Dep't, 403 Mass. 628, 631 (1988). A judge, however, possesses inherent authority to impound the affidavit, warrant, and related documents pursuant to the Uniform Rules on Impoundment Procedure. See Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Div. of the Dist. Court Dep't, 403 Mass. 628, 632-633 (1988). An *ex parte* request to impound a search warrant may be filed and ordered anytime subsequent to the issuance of the search warrant.

The court may enter an order to extend any *ex parte* order allowing impoundment beyond ten days for good cause shown. Examples of situations that constitute "good cause" as defined in URIP Rule 7(b) include, but are not limited to: search warrants containing sensitive investigative information; documents containing information pertaining to an ongoing grand jury investigation; or information that, the public dissemination of which, could compromise a defendant's constitutional right to a fair trial or the Commonwealth's vital interest in the fair administration of justice. Such an order would continue to be subject to modification or termination under URIP Rule 10.

It is common practice for a Superior Court judge to issue an *ex parte* impoundment order of the search warrant application and affidavit when issuing a search warrant under G. L. c. 276, § 3A. Although the warrant and affidavit are not public documents until the warrant is returned, see G. L. c. 276, § 2B, the impoundment order acts to continue the impoundment status of the warrant and affidavit immediately after the search warrant is returned to the District Court or Boston Municipal Court.

When a motion to impound a search warrant has issued, any motion for relief of an impoundment order shall be filed in the court or division where the search warrant was returned. A judge in the court or division where the search warrant was returned may request the transfer of a hearing on a motion to impound a search warrant or motion for relief of an impoundment to another court department or division (1) if the impoundment order was ordered by a judge of another court department or division or (2) if a criminal case relating to the search warrant is pending in another court department or division. See Trial Court Rule XII, Requests for Interdepartmental Judicial Assignments.

Ex parte motions for impoundment also arise in criminal proceedings on discovery matters. See Republican Co. v. Appeals Court, 442 Mass. 218, 220 & 220 n.2 (2004); Commonwealth v. Mitchell, 444 Mass. 786, 788 (2005); Commonwealth v. Carney, 458 Mass. 418, 431 (2010). *Ex parte* motions and *in camera* review have been found to be appropriate in connection with other aspects of criminal cases, as well. See, e.g., Commonwealth v. Martin, 423 Mass. 496, 505 (1996) (validity of a grand jury witness's claim of immunity); WBZ-TV v. District Attorney for the Suffolk Dist., 408 Mass. 595, 598 (1990) (disclosure of relevant witness statement would compromise ongoing grand jury investigation); Globe Newspaper Co. v. Commonwealth, 407 Mass. 879, 885 n. 8 (1990) (evidence and argument bearing on reason for closure); Commonwealth v. Amral, 407 Mass. 511, 525 (1990) (whether to hold a Franks hearing exploring validity of averments in a search warrant affidavit based on confidential informant information); Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Div. of the Dist. Court Dept., 403 Mass. 628, 638 (1988) (judge's statements regarding need for impoundment).

Rule 4. Service

(a). **Service.** Except as otherwise provided by these rules, a movant shall serve any motion or opposition related to impoundment, or motion to modify or terminate impoundment, and any supporting materials on all parties, interested nonparties, and any other person named by the court, by mailing or delivering a copy to counsel for any represented person and to any self-represented person. Service on a represented person shall be made on the person's attorney unless service on the represented person is ordered by the court. Service shall be made in the manner provided by Rule 5 of the Massachusetts Rules of Civil Procedure or by any alternative means ordered by the court. In the event an order of impoundment is sought at the time of, or prior to, service of the original complaint, service shall be made in accordance with Rule 4 of the Massachusetts Rules of Civil Procedure. The time periods for hearing shall be as set forth in Rule 6 of the Massachusetts Rules of Civil Procedure.

(b). **Service on Parties Prior to, or Simultaneously with, Service of Complaint in Civil Proceedings.** When an order of impoundment is sought at the time of, or prior to, service of the original complaint in a civil proceeding, service shall be made in the manner provided by Rule 4 of the Massachusetts Rules of Civil Procedure.

(c). **Service on Interested Nonparty.** The court may, prior to hearing, order notice to be given to any interested nonparty. Notice to such interested nonparty shall be given in such manner as the court may direct. If a person who receives notice under this subsection seeks to participate in the impoundment proceedings, the person must comply with URIP Rule 6.

(d). **Service on the Office of the Attorney General by Interested Nonparty in Criminal Cases.** The movant shall serve notice on the Office of the Attorney General, in addition to the parties to the case, of any motion filed in any court by an interested nonparty to obtain access to impounded documents in a criminal case. The Office of the Attorney General shall have an opportunity to be heard on the motion. The movant shall also notify the court of that office's right to be heard on the motion.

(e). **Affidavit of Service.** Service shall be proved by an affidavit containing a particular statement thereof, including the names and addresses of all parties, their counsel, and all interested nonparties who have been given notice, and the method and date of service. The affidavit shall be served and filed with the motion.

(f). **Timing.** The motion for impoundment and supporting materials shall be served before or at the same time as such documents are mailed or delivered to the court.

Committee Notes

URIP Rule 4 provides the notice procedure for service of motions filed under the URIP in both civil and criminal cases. The procedure is based primarily on the requirements of Rules 4 and 5 of the Massachusetts Rules of Civil Procedure, and Rule 32 of the Massachusetts Rules of Criminal Procedure, which incorporates Rule 5 of the Massachusetts Rules of Civil Procedure.

In limited circumstances, the movant can request the court to provide service on a person whose address is impounded. In such instances, the clerk shall make a separate entry on the docket that service was made in such manner.

Impoundment in Criminal Cases or After Service of Complaint in Civil Cases

Under URIP Rule 4(a), motions for impoundment and supporting affidavits served in criminal cases or after service of the complaint in civil cases are served in the same manner as written motions generally. A copy of the motion and supporting affidavit must either be mailed or delivered to each party, interested nonparty, and any other person named by the court. Service must be on the attorney for any represented person unless otherwise ordered by the court. In Superior Court civil cases, service shall be made in accordance with Superior Court Rule 9A.

Impoundment Prior to Filing of Civil Complaint

Under URIP Rule 4(b), if impoundment is sought prior to service of the complaint, service shall be made by an officer or specifically appointed person. See Mass. R. Civ. P. 4(c). Service on an individual within Massachusetts may be made by hand or at the party's "last and usual place of abode." See Mass. R. Civ. P. 4(d)(1). Service on a domestic corporation should be made by delivery to an officer or to a person in charge at its principal place of business within Massachusetts. See Mass. R. Civ. P. 4(d)(2).

Service on Interested Nonparties

The movant shall serve notice upon interested nonparties at the same time the motion is sent or delivered to the court. The court may, upon motion or *sua sponte*, order notice of the motion for impoundment to be served on interested nonparties. This will allow interested nonparties the opportunity to be heard when the motion is first considered, and limit any situations where a "party gets the order on Monday and is back in court on Tuesday." Republican Co. v. Appeals Court, 442 Mass. 218, 225 (2004).

Rule 5. Opposition

Any party or interested nonparty may serve and file an opposing affidavit not later than one day before any hearing, if scheduled, unless otherwise ordered. Service of any opposing affidavit shall be made in accordance with the procedures provided in URIP Rule 4 unless otherwise ordered.

Committee Notes

URIP Rule 5 grants a party and any interested nonparty the right to file and serve an affidavit in opposition to impoundment. The affidavit should set forth why there is no good cause to issue an order. Interested nonparties need to file a notice of limited appearance, pursuant to URIP Rule 6(a), in pending cases.

Rule 6. Involvement of Interested Nonparties

(a). **Motion and Appearance in Pending Civil or Criminal Cases.** An interested nonparty who seeks, pursuant to URIP Rules 2, 3, 5, or 10, to request, oppose, modify, or terminate an order of impoundment pertaining to the case record of a pending civil or criminal case shall file a motion for such relief with the court and shall serve the motion in accordance with URIP Rule 4 and subsection (c) of this rule. Such a motion shall (i) specify the relief requested, (ii) specify the grounds therefor, (iii) be accompanied by an affidavit setting forth the nature of the movant's interest in the matter of impoundment and any facts on which the motion relies, and (iv) be accompanied by a notice of appearance for the limited purpose of participating in the impoundment proceeding, but without making the person a party to the case for other purposes. Proceedings on the motion shall be in accordance with the procedures described in URIP Rules 2, 3, 5, or 10, as applicable.

(b). **Cases in Which a Final Disposition Has Entered.** An interested nonparty who seeks, pursuant to URIP Rules 2, 3, 5, or 10, to request, oppose, modify, or terminate an order of impoundment pertaining to the case record of a prior civil or criminal case in which a final disposition has been entered shall file a separate civil action in the court where the prior action commenced, specifying the relief sought. The civil action shall name, as defendants, the clerk of court in his or her official capacity and (1) if the prior case was a civil case, all parties to the prior case, or (2) if the prior case was a criminal case, the defendant(s) in the prior case, the Office of the Attorney General, and the Office of the District Attorney of the county where the case commenced.

(c). **Service on the Office of the Attorney General by Interested Nonparty in Criminal Cases.** The interested nonparty movant shall serve notice on the Office of the Attorney General, in addition to the parties to the case, of any motion filed in any court to obtain access to impounded documents in a criminal case in accordance with the provisions of URIP Rule 4(d).

Committee Notes

This rule sets forth the procedure by which an interested nonparty may file a motion to request, oppose, modify, or terminate an order of impoundment. Pursuant to URIP Rule 1, an "interested nonparty" is defined as:

[A] person who is not or was not a party to the underlying matter in which an impoundment issue has arisen, but who nevertheless expresses to the court (through a motion, an appearance limited to impoundment, pleading, or otherwise) an interest in the impoundment proceeding, or who has been named by the court as a person who shall receive notice.

Motion for Relief in Pending Civil or Criminal Cases

Under URIP Rule 6(a), an interested nonparty who seeks to request, oppose, modify, or terminate an order of impoundment, pursuant to URIP Rules 2, 3, 5, or 10, in an ongoing case may file a motion for such relief, accompanied by a notice of appearance for the limited purpose of participating in the impoundment proceeding.

Motion for Relief in Cases in Which a Final Disposition Has Been Entered

Under URIP Rule 6(b), an interested nonparty who seeks to request, oppose, modify, or terminate an order of impoundment, pursuant to URIP Rules 2, 3, 5, or 10, in a criminal or civil case that is closed following the entry of a final disposition must file a separate civil action in the court where the impoundment order entered. A motion to intervene in the closed case may not be filed. See In re Globe Newspaper Co., Inc., 461 Mass. 113, 125 n.5 (2011); Republican Co. v. Appeals Court, 442 Mass. 218, 227 n.14 (2004); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 551 (1977). For cases that are civil in nature, the separate civil action shall name the clerk of court in his or her official capacity, as well as the parties. For cases that are criminal in nature, the separate civil action shall name the clerk of court in his or her official capacity, the Attorney General, the district attorney, and the defendant. See In re Globe Newspaper Co., Inc., 461 Mass. 113, 125 n.5 (2011); Commonwealth v. Silva, 448 Mass. 701, 705-706 (2007); Republican Co. v. Appeals Court, 442 Mass. 218, 227 n.14 (2004); Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 551 (1977). See also New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 91 (2012) (café owners brought civil action against the court clerk and Attorney General, with an emergency motion to modify or terminate impoundment order).

Definition of “Final Disposition”

Under URIP Rule 6(b), a civil or criminal proceeding shall be deemed to have reached its final disposition when (i) a final judgment, sentence, decree, or order of dismissal has entered as to all claims, counts, and parties, (ii) any timely post-judgment motions have been disposed, and (iii) any appeal has been concluded and the rescript entered. For purposes of this rule, a criminal case has reached its final disposition when the preceding criteria are met, even if the defendant remains sentenced on the offense and where the defendant has a right to file a motion for new trial at any time.

Motion to Modify or Terminate

If an impoundment order enters prior to an interested nonparty receiving notice or filing a motion to be heard under URIP Rule 6(a), the interested nonparty may move to modify or terminate the order of impoundment under URIP Rule 10.

Notice to Attorney General

In criminal cases, “the Attorney General must receive notice of, and an opportunity to be heard on, any motion filed in any court by a nonparty to obtain access to impounded documents.” Commonwealth v. Silva, 448 Mass. 701, 705-706 (2007). See URIP Rule 4(d). “Such notice should clearly specify that notice is being given as required by law and that the Attorney General has the right to be heard.” Id. at 706 n.7. See URIP Rule 4(d).

Rule 7. Hearing

(a). **Hearing Required.** The court may enter an order of impoundment for good cause shown and in accordance with applicable law only after a hearing, except as provided in URIP Rule 2(b)(3), URIP Rule 3(a), or URIP Rule 7(e). During the hearing, those present shall preserve the confidentiality of the material that is at issue. A record of the proceedings, including the record of any *in camera* hearing, shall be preserved stenographically or by a recording device.

(b). **Good Cause.** In determining good cause, the court shall consider all relevant factors, including, but not limited to, (i) the nature of the parties and the controversy, (ii) the type of information and the privacy interests involved, (iii) the extent of community interest, (iv) constitutional rights, and (v) the reason(s) for the request. Agreement of all parties, interested nonparties, or other persons in favor of impoundment shall not, in itself, be sufficient to constitute good cause.

(c). **Interested Nonparties.** The court may, in its discretion, permit an interested nonparty who files a notice of appearance limited to participation in the impoundment proceeding to be heard at any impoundment hearing.

(d). **In Camera Hearing.** Where a public hearing may risk disclosure of the information sought to be impounded, the court may, upon a written finding of good cause, conduct *in camera* only that portion of the hearing that would risk disclosure. The record of any *in camera* hearing shall be impounded until a court orders otherwise.

(e). **Trade Secret Exception.** The court may, upon a written finding of good cause under URIP Rule 7(b), allow a motion for impoundment without a hearing when (1) the reason for the impoundment is to protect trade secrets or other confidential research, development, or business information, (2) the motion is by agreement or the motion is unopposed, (3) no party or other person has requested a hearing, and (4) the information does not involve an alleged or potential public hazard or risk to public safety.

Committee Notes

URIP Rule 7 requires the court to hold a hearing before entering an order of impoundment, except as provided in URIP Rules 2(b)(3), 3(a), and 7(e). The parties to the case have a right to be heard at the hearing. The court has discretion whether to hear from interested nonparties. See URIP Rule 7(c).

The hearing on a motion for impoundment shall be public, unless the hearing is closed pursuant to a statute, court rule, standing order, court order, or case law. Whether an evidentiary hearing is required depends on the facts already known to the judge presiding over the ongoing proceedings.

Commonwealth v. Silva, 448 Mass. 701, 709 (2007). In instances when the public hearing may risk disclosure of the information sought to be impounded, the court may conduct *in camera* only that portion of the hearing that would risk disclosure, and only upon subsequent entry of written findings of good cause for the *in camera* proceeding. Pursuant to URIP Rule 7(d), an *in camera* hearing is impounded until a court orders otherwise. The Supreme Judicial Court has ordered certain proceedings to be conducted *ex parte*, permitting limited disclosure to a party only by order of the court. See, e.g., Pixley v. Commonwealth, 453 Mass. 827, 836 n.12 (2009) (affirming an order sealing the transcript of a

Martin hearing conducted *in camera* to verify the witness's invocation of privilege); Commonwealth v. Martin, 423 Mass. 496, 497, 505 (1996) (judge may conduct an *in camera* hearing of a witness to determine whether the witness's claim of the privilege against self-incrimination was properly invoked; only the witness, the witness's counsel, and the judge may be present at the hearing, the transcript of which “should be kept, under seal . . . [and] only be opened on appellate review”); Commonwealth v. Dwyer, 448 Mass. 122, 146 (2006) (privileged psychological or counseling records of an alleged victim of sexual assault were ordered to be “retained in court under seal,” but defense counsel may be permitted to access the records pursuant to a strict protective order).

Balancing Test

Massachusetts has long recognized a common-law right of access to case records. New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 82-83 (2012), citing Republican Co. v. Appeals Court, 442 Mass. 218, 222 (2004). Such case records are presumptively public documents. *Id.* at 83, citing Republican Co., 442 Mass. at 222-223. See also Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 604 (2000); Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Div. of the Dist. Court Dep't, 403 Mass. 628, 631-632, 637 (1988). Impoundment is an exception to the general rule in favor of public access. Republican Co., 442 Mass. at 223, citing Commonwealth v. Blondin, 324 Mass. 564, 571 (1949).

The court may restrict public access to case records where “good cause” is shown. Commonwealth v. George W. Prescott Pub. Co., LLC, 463 Mass. 258, 263 (2012). To determine whether good cause is shown, the court must balance the rights of the parties by considering all relevant factors, including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason for the request. New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 83 (2012); see also Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 604 (2000); Republican Co. v. Appeals Court, 442 Mass. 218, 223 (2004). The decision to grant access to court documents is “best left to the sound discretion of the trial court,” to be exercised in light of the relevant facts and circumstances of the particular case. See Nixon v. Warner Communications, Inc., 435 U.S. 589, 599 (1978).

Criminal Proceedings

In the context of criminal proceedings, the public's right of access must be balanced against the defendant's constitutional right to a fair trial. Commonwealth v. George W. Prescott Pub. Co., LLC, 463 Mass. 258, 269 (2012), citing Newspapers of New England, Inc. v. Clerk-Magistrate of the Ware Div. of the Dist. Court Dep't, 403 Mass. 628, 632 (1988). While the interests balanced in criminal cases differ to some degree from those in civil cases, the factors considered by the court are similar and include whether the information has already been disclosed, the nature of the documents under impoundment, and whether there are alternatives to withholding public access, such as change of venue. In re Globe Newspaper Co., Inc., 461 Mass. 113, 121 (2011). See also Commonwealth v. George W. Prescott Pub. Co., LLC, 463 Mass. 258, 269 (2012), citing Boston Herald, 432 Mass. at 608, and Newspapers of New England, Inc., 403 Mass. at 632-633. The court may also consider investigative secrecy and the safety of a person or the public. See, e.g., New England Internet Café, LLC v. Clerk of Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 86, 92, 93 (2012); Commonwealth v. Silva, 448

Mass. 701, 708 (2007). The bases above are not necessarily the only bases that might justify impounding criminal case records. See, e.g., New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 85 (2012) (impoundment proceedings “must take shape around the facts at hand and respond to the unique needs of the parties”).

Trade Secret Exception

Trade secrets and other confidential research, development, and business information are protected under Massachusetts law if certain conditions exist. See, e.g., G.L. c. 93, §§ 42, 42A; G. L. c. 266, § 30; Warner-Lambert Co. v. Execuquest Corp., 427 Mass. 46, 48-49 & n.5 (1998); Jet Spray Cooler, Inc. v. Crampton, 361 Mass. 835, 840 (1972), S.C., 377 Mass. 159 (1979); J.T. Healy & Son, Inc. v. James A. Murphy & Son, Inc., 357 Mass. 728, 736 (1970). Where the nature of the litigation requires disclosure of such information to the court, there is generally a motion for impoundment. Such motions are rarely contested by the other parties to the litigation or by other persons, they do not generally involve information or issues of substantial interest to the general public, and hearings on them are seldom attended by nonparties or the media. Subsection (e) therefore dispenses with the hearing requirement for such a motion provided it is unopposed, no party or other person has requested a hearing, and the information does not involve an alleged or potential public hazard or risk to public safety.

Preservation of Confidentiality of Impounded Information

During any hearing and in all filings, impounded material or the material that is the subject of a pending motion for impoundment shall not be disclosed. Confidentiality in filings and at hearings shall be preserved by using pseudonyms, redactions, or general references to the impounded information. Cf. Mass.R.A.P. 16(d). Pursuant to URIP Rule 13, upon the filing of any document containing references to matters that are impounded by court order or have been deemed impounded by statute, court rule, standing order, or case law, the movant shall contemporaneously file a written notice with the clerk, so indicating, with a copy to all parties, and clearly state on the cover of the document itself that it contains impounded information.

Motion to be Heard

URIP Rule 7(c) permits an interested nonparties to request to be heard in support of or in opposition to a motion filed under the URIP. For example, a media representative might seek to contest the entry of an impoundment order. This rule grants standing to such an interested nonparty to request a hearing on the issue. The court has discretion whether to schedule such a hearing or to allow the person to participate at any hearing.

Use of Pseudonym. A party requesting leave to use a pseudonym must assert a "substantial privacy right which outweighs the 'customary and constitutionally-embedded presumption of openness in judicial proceedings.'" Singer v. Rosenkranz, 453 Mass. 1012, 1013 (2009) (quoting from Doe v. Bell Atl. Business Sys. Servs., Inc., 162 F.R.D. 418, 420 (D. Mass. 1995)). Permission to proceed pseudonymously should not be "lightly granted." Id. at 1014. A person seeking to use a pseudonym must separately request permission for such use in each case, including petitions under G. L. c. 211, § 3, where the party is challenging a ruling of the trial court, because permission to use a pseudonym in one case does not give a party "blanket permission to proceed pseudonymously in every case thereafter." Id. at 1014.

Rule 8. Order of Impoundment

(a). **Good Cause.** An order of impoundment, whether *ex parte* or after notice, may be entered only upon a written finding of good cause.

(b). **Specificity.** An order of impoundment shall state specifically what material is to be impounded, and, where appropriate, may specify how impoundment is to be implemented. An order of impoundment shall include the date of issuance and shall specify the duration of the order with a date certain for expiration of the order. In its order, the court may allow persons other than those described in Rule 9 of these rules to have access to impounded material, and may order that appropriate redactions or notations be made in the docket and indices kept by the clerk.

(c). **Narrow Tailoring.** The court shall tailor the scope of the impoundment order so that it does not exceed the need for impoundment. The court may order that the movant or the filer of any material submit a redacted copy of the impounded document to the clerk for public inspection.

(d). **Public Inspection.** The order shall be entered on the docket, kept in the public file, and made available for public inspection. The order shall provide sufficient information for the public to identify the case caption, the case number, and to ascertain the grounds, duration, and scope of the impoundment. All information stating or disclosing the impounded material shall be omitted or redacted from the order prior to public inspection. A copy of the order shall be affixed to the envelope or other receptacle containing the court's copy of the impounded materials.

Committee Notes

URIP Rule 8 provides the procedures governing the issuance of an order of impoundment.

Definition of "Good Cause"

It is "[t]hrough the balancing process that a judge makes the determination of 'good cause.'" H.S. Gere & Sons, Inc. v. Frey, 400 Mass. 326, 329 (1987). To determine whether good cause is shown, a judge must balance the rights of the parties based on the particular facts of each case, and take into account all relevant factors, including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, and the reason for the request. New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 83 (2012); Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 604-605 & 604 n.22 (2000); In re Globe Newspaper Co., Inc., 461 Mass. 113, 120-121 (2011); Commonwealth v. George W. Prescott Pub. Co., LLC, 463 Mass. 258, 268 (2012). A party's constitutional rights, investigative secrecy, and the safety of a person or the public are also concerns. See, e.g., New Eng. Internet Café, LLC v. Clerk of Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 86, 92, 93 (2012); Commonwealth v. Silva, 448 Mass. 701, 708 (2007). A legitimate expectation of privacy ordinarily is sufficient to constitute good cause. H.S. Gere & Sons, Inc. v. Frey, 400 Mass. 326, 330 (1987). But see George W. Prescott Pub. Co. v. Register of Probate for Norfolk County, 395 Mass. 274, 281 (1985) (expectation of privacy was insufficient to continue impoundment of financial statements of public figure who was alleged to have misused public funds). Allegations of potential

embarrassment, or the fear of unjustified adverse publicity, are not sufficient to constitute good cause. George W. Prescott Pub. Co. v. Register of Probate for Norfolk County, 395 Mass. at 279.

Written Finding of Good Cause

In determining “good cause,” the court shall consider the factors and perform the balancing test set forth in URIP Rule 7(b). See also Republican Co. v. Appeals Court, 442 Mass. 218, 223 (2004) (“Impoundment is always the exception to the rule”); H.S. Gere & Sons, Inc. v. Frey, 400 Mass. 326, 332 (1987) (impoundment “will not be routinely granted”). URIP Rule 8 requires that a judge allowing impoundment shall enter written findings. Findings stated “on the record” in open court are insufficient. The order shall provide sufficient information for the public to identify the case caption, the case number, and to ascertain the grounds, duration, and scope of the impoundment. As such, the order shall include the date of issuance of the order, its duration, the particular information that is impounded, and the identity of any third persons who are permitted to view the impounded information.

Narrow Tailoring

If the court determines that good cause is shown, the court must tailor the scope of the impoundment order and limit it to the requirements of the case's particular facts and circumstances. New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 85, 91 (2012); Boston Herald, Inc., 432 Mass. at 604 – 605 & n.22. See also Adams v. Adams, 459 Mass. 361, 361 n.1 (2011) (impoundment order was not narrowly tailored so as not to exceed the need for impoundment, especially since a full trial on the merits had been concluded, documents had been introduced into evidence, and important legal issues had been raised and litigated on appeal with respect to that evidence); Republican Co. v. Appeals Court, 442 Mass. 218, 223 n.8 (2004) (burden falls on party seeking impoundment to demonstrate that the impoundment order is narrowly tailored).

The Supreme Judicial Court has observed that:

Judges enjoy . . . flexibility in crafting remedies appropriate to the parties' particular interests and needs. Among other options, a judge may release the materials to the public, or only to the moving party with or without a confidentiality order, or release the materials to either with redactions appropriate to protect the legitimate interests of the parties in investigative secrecy, privacy, property, or fair trial.

New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 85-86 (2012) (citations and footnote omitted).

Impoundment should be no more extensive than necessary. Although it is often easier to impound more than is necessary, the court should be careful to impound only the portions of the record that require impoundment. An entire case record should not be impounded to protect the confidentiality of some documents. An entire filing should not be impounded to protect the confidentiality of an exhibit. When possible, redacted versions of impounded documents should be filed. The court should be skeptical of arguments that following proper procedures is too cumbersome.

Contents of Order

All court orders entered under these rules shall be open to the public. The court shall enter a written order either granting or denying the motion on a form substantially similar to the form provided in Section 4 of this Handbook. Any order granting in whole or in part a motion for impoundment shall state the following with as much specificity as possible, without revealing the specific information subject to the impoundment order:

- (A) the case caption and case number;
- (B) the nature of the case in which the order is being entered;
- (C) that, after a hearing, the court finds that: (i) good cause exists based on factors, including, but not limited to, the nature of the parties and the controversy, the type of information and the privacy interests involved, the extent of community interest, constitutional rights, and the reason for the impoundment; (ii) the degree, duration, and manner of impoundment ordered by the court are no broader than necessary to protect the interests set forth in subdivision (C)(i); and (iii) no less restrictive measures are available to protect the interests;
- (D) the particular grounds for determining the information impounded;
- (E) the particular information that is determined to be impounded (without disclosing it);
- (F) the duration of the impoundment with a date certain for expiration of the order and, if the court has ordered that the *ex parte* order shall be extended under URIP Rule 3(b), the grounds therefor;
- (G) whether any party's name is to be impounded, and, if so, the particular pseudonym or other term to be substituted for the party's name in the court's docket and index;
- (H) identification of any third persons who are permitted to view the impounded information; and
- (I) that the clerk is directed to make the order available for public inspection, with appropriate redactions if necessary to preserve the impounded information.

Interlocutory Order is Subject to Continuing Existence of Good Cause

Once the order of impoundment is entered, it remains an interlocutory order subject to the existence of "good cause." The order carries no continuing presumption of validity and it may be subject to subsequent challenges. New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76, 84-85 (2012); Republican Co. v. Appeals Court, 442 Mass. 218, 223-224 (2004). "However . . . [judges should] separate frivolous, repetitive, or harassing motions from those that are not, and [ensure] that parties who have secured impoundment for a certain time will not during that term be required repeatedly to make their case absent a real possibility that the good cause that once supported impoundment has in some manner become less pressing. Such screening is a consummate function of trial judges." Republican Co., 442 Mass. at 225-226

Rule 9. Clerk's Duties

Upon entry of an order of impoundment, or pursuant to an impoundment designation set forth in a statute, court rule, standing order, or case law, the clerk shall make a notation in the docket indicating what material has been impounded and the duration of its impoundment status. All impounded material shall be clearly marked, and kept separate and unavailable for public inspection. The impounded material shall be available to the court, the clerk and designated court personnel, the attorneys of record, the parties to the case, and other persons designated by the court, unless otherwise ordered by the court. Upon expiration or other termination of the order of impoundment, the material shall be returned to the public case record, unless other arrangements have been ordered, and the docket marked accordingly.

Committee Notes

URIP Rule 9 prescribes the clerk's duties to maintain impounded material and to make such material unavailable for public inspection. See e.g., S.J.C. Rule 3:12, Canon 3(A)(6) ("Clerk-Magistrate shall facilitate public access to court records that, by law or court rule, are available to the public and shall take appropriate steps to safeguard the security and confidentiality of court records that are not open to the public"). The duties imposed by this rule encompass information or material impounded by court order, as well as information or material designated as impounded by statute, court rule, standing order, or case law. Unless the court orders otherwise, access to impounded material is limited to the court, the clerk and authorized court personnel, the attorneys of record, the parties to the case, and persons named by the court. URIP Rule 9 also provides for the return of impounded material to the case record upon expiration of the impoundment order. Thus, a person who desires continuation of the impoundment order after the time set for its expiration shall seek an extension of the order by a motion pursuant to URIP Rule 10.

It is important that the existence of the case itself is not impounded. Certain statutes require specific proceedings or records to be impounded. When such a statute applies, or in the rare instance when a court orders the impoundment of a case in its entirety, the case shall retain its public docket number and its existence in the court's docket and indices, with pseudonyms used for each party. In contrast, when a case record is "sealed," the public, the parties, and counsel of record are prevented from gaining access to the material; only appropriate court personnel can access sealed information, unless limited disclosure is otherwise ordered. See Pixley v. Commonwealth, 453 Mass. 827, 836 n.12 (2009).

When, as in most instances, only certain information in a case is required to be impounded, all other aspects of the case will remain public. Unless otherwise ordered, the case caption, docket number, names of parties, counsel of record, entries on the docket, and filings not otherwise designated as impounded, shall be public. A motion for impoundment, supporting affidavit, any opposition or other paper filed pursuant to these rules, and the court's order of impoundment, shall be public documents, unless otherwise ordered by the court. As such, the docket, the case number, and the reason for the order of impoundment, as well as any non-impounded materials, remain public while the impounded case records are kept separate and unavailable for public inspection.

Impounded materials shall be kept separate from other papers in the case. See Notes for URIP Rules 11 and 13. If the court facility has storage space available, the impounded materials should be stored in a location separate from any portion of the case record that remains available for public inspection. If a separate storage location is not available in a particular court facility, the impounded materials shall be conspicuously marked as impounded and handled in a manner that avoids their inadvertent dissemination to the public. For example, the impounded material can be stored in an envelope that is sealed, clearly marked "Impounded," and placed conspicuously in the case record. The docket shall contain a notation as to the location of any impounded materials that the clerk's office is storing in a separate location from the public case record.

Rule 10. Modification or Termination of Order of Impoundment

A party or interested nonparty may, by motion supported by affidavit, seek to modify or terminate an order of impoundment. The motion shall be served in accordance with URIP Rule 4 and 6(c).

No order of impoundment may be modified or terminated, except upon an order of the court and upon written findings in support thereof.

Committee Notes

URIP Rule 10 permits a party or an interested nonparty to file a motion to modify or terminate an order of impoundment. See Republican Co. v. Appeals Court, 442 Mass. 218, 225 (2004). This rule does not pertain to an impoundment order's expiration by its own terms. Once an order of impoundment is entered, it remains an interlocutory order subject to the existence of "good cause." Id. at 223-224. The order carries no continuing presumption of validity and it may be subject to subsequent challenges. Id. A proper challenge to the continued validity of an impoundment order is raised whenever the party seeking to modify the order comes forward with a nonfrivolous reason to do so. Id. The burden of demonstrating the existence of good cause always remains with the party urging the continued impoundment. Id. A party seeking the release of impounded court records does not bear the burden of demonstrating either that there has been a material change in circumstances or that whatever good cause may once have justified their impoundment no longer exists. Id. See also Adams v. Adams, 459 Mass. 361, 361 n.1 (2011) (husband's employer, which had sought impoundment in the first instance, did not demonstrate good cause to justify continued impoundment of the case). The motion judge is to apply the same balancing test used in determining whether to grant an impoundment order in the first instance. Republican Co., 442 Mass. at 224-225. The modification or termination of an order of impoundment may be granted only upon the court's entry of new written findings and the issuance of a new order. Cf. Care Protection of Sharlene, 445 Mass. 756, 772 n.18 (2006) (judge's modification of original impoundment order was accompanied by written findings).

Definition of "Nonfrivolous"

What constitutes a nonfrivolous reason to modify or terminate an impoundment order has not been clearly defined. Several cases have discussed, in broad terms, what constituted nonfrivolous attempts at modification or termination. For example, in New England Internet Café, LLC, 462 Mass. 76, 85 (2012), two different judges recognized that the plaintiffs' claims were nonfrivolous: "the first by describing them as 'persuasive' and suggesting that they posed 'important litigation of constitutional dimension,' and the second by granting their emergency motion to modify the impoundment order." Similarly, in Republican Co., 442 Mass. at 225, the Supreme Judicial Court expressed confidence that judges would be able to "separate frivolous, repetitive, or harassing motions from those that are not," and ensure "that parties who have secured impoundment for a certain term will not during that term be required repeatedly to make their case absent a real possibility that the good cause that once supported

impoundment has in some manner become less pressing. See also Pansy v. Borough of Stroudsburg, 23 F.3d 772, 790 (3d Cir. 1994) (cited as an example in Republican Co., 442 Mass. at 225).

Procedure

Relief from an impoundment order shall be sought in the first instance in the Trial Court Department where the matter originated. See URIP Rule 6.

Relief from an impoundment order of a search warrant shall be filed in the court department or division where the search warrant was returned, even if the search warrant was issued by a judge of the Superior Court pursuant to G. L. c. 276, § 3A, or if a related criminal action is pending in another court department or division. A judge of the court where the warrant was returned may request that the motion be transferred for hearing to the court department or division where the criminal case is pending. See Trial Court Rule XII, Requests for Interdepartmental Judicial Assignments.

Rule 11. Material Impounded by Statute, Court Rule, Standing Order, or Case Law

Any party or interested nonparty may file a motion supported by affidavit for relief from impoundment or for release of material required to be impounded pursuant to a statute, court rule, standing order, or case law, except where a different procedure is otherwise provided. The procedures set forth in these rules shall govern requests for relief from impoundment to the extent practicable.

Relief from impoundment shall be granted by the court only upon written findings.

Committee Notes

URIP Rule 11 provides a mechanism for requests for relief from impoundment where a statute, court rule, standing order, or case law requires impoundment. Numerous statutes, court rules, standing orders, and decisions of the Supreme Judicial Court require the courts to impound or withhold specified information from public view. These authorities use different terms and phrases to designate the material that shall be withheld, including “impounded,” “withheld from public inspection,” “not available for public inspection,” “segregated,” and “confidential.” See Section 5 of this Handbook. All information designated under these categories falls within the meaning of “impoundment” for purposes of this rule, with the exception of “sealed” records.

The Supreme Judicial Court has observed that:

The terms “impounded” and “sealed” are closely related and often used interchangeably, but are meaningfully different. . . . “[I]mpoundment” means “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.” Consequently, an order of impoundment prevents the public, but not the parties, from gaining access to impounded material, unless otherwise ordered by the court. A document is normally ordered “sealed” when it is intended that only the court have access to the document, unless the court specifically orders limited disclosure.

Pixley v. Commonwealth, 453 Mass. 827, 836 n.12 (2009) (citations omitted).

Where a party seeks relief from a statute, court rule, standing order, or case law that requires impoundment, the movant shall file and serve a motion supported by affidavit. The URIP procedures shall govern such requests to the extent practicable. See Care and Protection of Sharlene, 445 Mass. 756, 772 n.18 (2006). In addition, URIP Rule 11 permits a clerk to comply with a court order to release or produce impounded information.

Clerk's Duties

The clerk has an independent responsibility to ensure that information designated as impounded by statute, court rule, standing order, or case law is maintained as impounded whenever a movant notifies the clerk that impounded information is contained within a filing, or when the case or filing is

automatically impounded pursuant to a statute, court rule, standing order, or case law. See Section 5 of this Handbook. It is the responsibility of the movant or filer, and not the clerk, to ensure the proper designation of filings as impounded. The clerk does not have any responsibility to screen each filing for impounded information.

Rule 12. Appellate Review

(a). **Review of Orders Entered in Ongoing Proceedings.** A party or interested nonparty aggrieved by an order impounding or refusing to impound material, or vacating, modifying, or refusing to modify a prior order of impoundment in an ongoing proceeding, may enter in the Appeals Court, within thirty days of the entry of such order, a petition for review by the single justice. The single justice's review shall proceed in accordance with the law and procedures governing petitions to the single justice.

(b). **Review of Orders Entered in Proceedings Which Have Concluded.** Upon the entry of judgment, including in an action commenced pursuant to URIP Rule 6(b), or other final disposition of the proceeding, any appeal of an impoundment order proceeds pursuant to the Massachusetts Rules of Appellate Procedure.

(c). **Notice to the Clerk.** In any matter entered or pending in an appellate court, the filer of any document shall provide written notice to the clerk of the appellate court of any document that contains impounded information. Such notification shall accompany the document and specify those papers, documents, or exhibits, or portions thereof, that are impounded and shall include a copy of the order of impoundment, if any, or a reference to other authority for the impoundment. Unless otherwise ordered, material impounded in the Trial Court shall remain impounded in the appellate court.

Committee Notes

Under URIP Rule 12(a), a party or interested nonparty aggrieved by a Trial Court order entered under the URIP in an ongoing civil or criminal case may seek review of the order by filing, within thirty days of the order's entry date, a petition in the Appeals Court for review by the single justice. See In re Globe Newspaper Co., Inc., 461 Mass. 113, 124-125 (2011); Commonwealth v. Silva, 448 Mass 701, 705 (2007); Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 601 (2000).

Under URIP Rule 12(b), a party or interested nonparty aggrieved by a Trial Court order entered under the URIP in a case in which judgment has entered, including a judgment in a proceeding pursuant to URIP Rule 6(b), or where the proceedings have otherwise finally concluded, shall pursue any appeal from the impoundment order in accordance with the Massachusetts Rules of Appellate Procedure. See Ottaway Newspapers, Inc. v. Appeals Court, 372 Mass. 539, 551 (1977) (a separate civil action brought against the court issuing the impoundment order will “end in a judgment capable of appeal under ordinary rules”). Such an appeal is commenced by filing a notice of appeal in the Trial Court within thirty days of the judgment. See generally Mass.R.A.P. 3 and 4. The notice of appeal shall specify that it is, or that it includes, an appeal from the impoundment order. The appeal will be determined by a full panel of the appropriate court.

Procedure for Single Justice Review

A petition for review filed pursuant to URIP Rule 12(a) shall proceed to a single justice of the Appeals Court. See In re Globe Newspaper Co., Inc., 461 Mass. 113, 124-125 (2011); Commonwealth v. Silva,

448 Mass 701, 705 (2007); Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 601 (2000). The single justice determines whether the Trial Court judge abused his or her discretion or committed an error of law. See Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 601 (2000). The single justice may deny the petition, modify or vacate the order, or report the matter to a panel of the Appeals Court.

The Appeals Court's procedures for a petition to the single justice for review under URIP Rule 12(a) mirror the procedures for review of certain civil interlocutory orders under G. L. c. 231, § 118 (first par.). To seek review under URIP Rule 12(a), the aggrieved party or interested nonparty is required, within thirty days of the entry of the order, to enter in the Appeals Court a petition for review, a supporting memorandum of law, a certificate of service, and copies of the relevant documents filed in the Trial Court. Cf. Appeals Court Standing Order Governing Petitions to the Single Justice Pursuant to G. L. c. 231, sec. 118 (first paragraph). Importantly, single justice review under URIP Rule 12(a) is commenced when a petition is filed in the Appeals Court; a notice of appeal filed in the Trial Court is ineffective and does not perfect review by the single justice.

A Trial Court order impounding, vacating, modifying, or refusing to impound material remains in effect until and unless otherwise ordered by the single justice or an appellate court. There is no automatic stay of an order releasing previously impounded information. When an order permits or requires the release of previously impounded information, it is prudent for the aggrieved person to request that the Trial Court stay the order to permit the filing of a petition for single justice review or a stay pending appeal to a panel. An aggrieved person may also request a stay from the single justice when the petition is filed, but the motion shall show that application to the lower court for the relief sought is not practicable, or that the lower court has previously denied an application for a stay or has failed to afford the relief which the applicant requested with the reasons given by the lower court for its action. Cf. Mass.R.A.P. 6(a)(1) and 6(b)(1). Any hearing on the petition is scheduled at the discretion of the single justice.

A person aggrieved by an order of the single justice of the Appeals Court reviewing a Trial Court judge's impoundment order has no right of appeal to a panel. If the single justice does not report the petition to a panel for review, the only recourse for the litigant is to file a petition in the Supreme Judicial Court for Suffolk County seeking to invoke the court's general superintendence power under G. L. c. 211, § 3. See Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 601-602 (2000). A person aggrieved by an order of a single justice of the Supreme Judicial Court pursuant to G. L. c. 211, § 3 may appeal to the full Supreme Judicial Court; but where the single justice has denied relief from an interlocutory order concerning impoundment in the trial court, the appeal will be subject to the requirements of S.J.C. Rule 2:21. Boston Herald, Inc. v. Sharpe, 432 Mass. 593, 602 n.19 (2000).

Procedure for Appeals Governed by the Massachusetts Rules of Appellate Procedure

After the entry of a final judgment, including in an action commenced under URIP Rule 6(b), or other final disposition, the appeal proceeds in accordance with the Massachusetts Rules of Appellate Procedure and is commenced by the filing of a timely a notice of appeal pursuant to Mass.R.A.P. 3(a) and 4(a) or 4(b). In all cases in which material has been impounded in the Trial Court, the clerk of the Trial Court shall notify the clerk of the appellate court at the time of the assembly and transmission of the record that the record contains impounded information. See S.J.C. Rule 1:15, § 2(a); Mass.R.A.P. 9(d). Such notification shall specify those papers, documents, or exhibits, or portions thereof, that were

impounded below and shall include a copy of the order of impoundment, if any, or a reference to other authority for the impoundment. S.J.C. Rule 1:15, § 2(a). Pursuant to S.J.C. Rule 1:15, § 2(b), unless otherwise ordered, material impounded in the Trial Court shall remain impounded in the appellate court, and no new motion to impound in the appellate court is required. After the case is docketed in an appellate court, a party should confirm that the appellate docket properly reflects that the matter or materials remain impounded.

Upon entry of the appeal in the Supreme Judicial Court or the Appeals Court, original requests for impoundment are governed by S.J.C. Rule 1:15, which, in turn, require that the appellate courts follow the Uniform Rules on Impoundment Procedure in both civil and criminal appeals. The scheduling of any hearing on a request for impoundment is set by the appellate court.

If Trial Court record material that was not impounded at the Trial Court level is sought to be impounded in an appellate court, a motion for impoundment should be addressed in the first instance to the Trial Court since, presumably, the same record material remains public in the Trial Court. As noted, once materials are impounded by the Trial Court, they retain their impounded status in the appellate court. As to materials sought to be impounded that were not part of the Trial Court record and are being filed for the first time in an appellate court, a motion for impoundment should be filed in the appellate court where the appeal is pending. In all instances, the filer of any impounded documents in an appellate court is required to notify the appellate clerk that impounded information is being filed. See S.J.C. Rule 1:15, § 2(c). The filer is required to prepare filings containing impounded information or material in a specific manner. See Mass.R.A.P. 16(d), 16(m), 18(a), and 18(g).

When a single justice of the Appeals Court rules on an impoundment matter in the first instance (i.e., when not reviewing a trial court's order of impoundment under URIP Rule 12), the order is reviewable by a panel of the Appeals Court. See Jaynes v. Commonwealth, 436 Mass. 1010, 1011 (2002); Kordis v. Appeals Court, 434 Mass. 662, 669 (2001); Commonwealth v. O'Brien, 27 Mass. App. Ct. 184, 190 (1989). Review of an order entered in the first instance by a single justice of the Supreme Judicial Court may be appealed to the full Court. After the appeal is entered in an appellate court, the appellate court may vacate or modify a prior order of impoundment. Adams v. Adams, 459 Mass. 361, 361 n.1 (2011). On its own initiative, the appellate court may terminate an impoundment order of the lower court, even where the impoundment was not at issue on appeal. See id. at 361 n.1 (vacating impoundment order where lower court's order did not address the order's continued efficacy); Vranos v. Franklin Medical Center, 448 Mass. 425, 425 n.1 (2007) (vacating impoundment order after finding the order was designed for limited purposes and no continuing need for impoundment existed).

In Skyhook Wireless, Inc. v. Google, Inc., 86 Mass. App. Ct. 611, 612 n.4 (2014), the Appeals Court considered materials and facts governed by impoundment orders issued by the Superior Court, which originated pursuant to a "stipulated protective order for litigation involving patents, highly sensitive confidential information and/or trade secrets." Where some of the facts recited in the Appeals Court's forthcoming opinion would be drawn from a volume of the joint record appendix labeled by the parties as including impounded material, before publication of the opinion the court solicited letters from the parties as to whether and why they contended any of those specific facts should be subject to continuing impoundment. Id. The responses of the parties, and an interested nonparty, disavowed any need for

impoundment of the identified facts. Id. The Appeals Court vacated the Superior Court impoundment orders to the limited extent necessary to allow public dissemination of those facts in the Appeals Court's opinion. Id.

Duty of Filer to Provide Written Notice to the Clerk of Impounded Information. Rule 12(c) is consistent with Supreme Judicial Court Rule 1:15, § 2,(c) and Rule 13 of the Uniform Rules on Impoundment Procedure (2015).

Appellate documents are commonly made available to the public over the internet by the appellate court, commercial entities, and law libraries. To protect the confidentiality of impounded information, the filer of any document in the appellate court must provide written notice to the court of each filing that contains impounded material. The clerk will designate these materials as impounded and not available for public inspection. In addition, the filer is required to prepare filings containing impounded information or material in a specific manner. See Mass.R.A.P. 16(d), 16(m), 18(a), and 18(g).

Rule 13. Maintaining Confidentiality of Impounded Material

(a). **Duty to Identify Impounded Material.** The filer of any document in a case or court proceeding shall first ascertain whether any information contained within the document is subject to a court order of impoundment, or contains information designated as “impounded” by statute, court rule, standing order, or case law. Unless it is necessary to do so, a filer shall not include impounded information in documents filed with the court.

(b). **Notice to the Clerk.** The filer of a document containing impounded information shall simultaneously file a notice that shall (i) notify the clerk that impounded information is included within the document being filed; (ii) identify the specific legal authority requiring impoundment of the identified information; and (iii) identify the precise location of the impounded information within the document being filed. The clerk shall docket the notice and designate the referenced document as impounded. The cover page of the document containing the impounded information shall identify that it is impounded.

(c). **Duty to Protect Confidentiality.** All persons shall protect the confidentiality of the impounded material. During any hearing or trial in public sessions, a filer shall not disclose impounded material, provided that in cases where such disclosure is necessary, a filer shall notify the clerk in advance and shall, in appropriate cases, make such disclosures in a manner which protects the confidentiality of the impounded material.

(d). **Inadvertent Filing.** Any inadvertent filing of a document that contains impounded information, without the required accompanying notice, does not waive the confidentiality of the information. In such instances, any party may file a motion to strike such material from the record, or the court may act *sua sponte*. The court may order the material struck and to be refiled, with the appropriate notice and any necessary redaction.

Committee Notes

URIP Rule 13 applies to both the initial filing of impounded material and the filing of impounded material after subsequent proceedings have taken place in the underlying court matter. As such, the filer of any document must identify whether any material contained therein is impounded pursuant to either an order of impoundment entered, or automatically by statute, court rule, standing order, or case law. The filer shall notify the court that impounded information is included within the document, and identify both the specific legal authority requiring impoundment of the identified information, and the precise location of the impounded information within the document being filed.

The notice must always be filed along with the impounded material, no matter the stage of the underlying litigation. Notably, when a case or specific materials are impounded by a statute, court rule, standing order, or case law, the filer need not file a “motion for impoundment” because the information is already required to be impounded. In such instances, a notice that the filing “contains impounded information” enables the clerk and court staff to properly identify and set aside protected material.

Form of Filing of Impounded Materials

If the entire case has not been impounded, or only a portion of a filing is impounded, then the impounded material shall be submitted in a manner that keeps such material physically separate from other public materials. For example, an attorney may submit impounded material in a separate envelope that is prominently marked "IMPOUNDED." In addition, the top page of the document must clearly indicate that the document contains impounded material or contains references to impounded material. The clerk shall keep separate the impounded material from the remainder of the case record in accordance with the Uniform Practices for the Clerk's Handling of Impounded Material. See Section 2 of this Handbook.

References to Person Whose Name is Impounded

If the name of a party or person has been impounded pursuant to either a court order issued or by a statute, court rule, standing order, or case law, counsel shall preserve confidentiality at all times, including all future filings and at any hearing, by using a pseudonym, initials, or otherwise obscuring the identity of the party or person whose name has been impounded.

Section 2 – Uniform Practice I – Clerk’s Handling of Impounded Material

UNIFORM PRACTICE I

CLERK'S HANDLING OF IMPOUNDED MATERIAL

To promote uniformity and consistency, the following practices are recommended for all clerks to follow when handling impounded information or materials.

(A). Presumption of Openness

- (1). Case records are public unless access is restricted by statute, court rule, standing order, case law, or a court order.
- (2). Every person has the right to inspect a public record free of charge during normal working hours.
- (3). The clerk should not inquire of a person's motive in requesting to view a public record. The court may require that a request for a copy be made in writing.
- (4). The clerk may not permit any original case record to be taken from the court without an order of the court. If so ordered, the original case folder and a copy of the docket shall be maintained until the records are returned. Note: Transfer of the file for the purposes of a judge's rotation, interdepartmental transfer, consolidation, or for an appeal, does not constitute the taking or removal of the case record. An order of the court is not required for the case record, including confidential information, to be transferred or sent to another court.
- (5). When an entire case record is impounded, its docket number and a case caption shall remain public. The case caption shall be revised to omit the parties' names.

(B). Filing of Motions for Impoundment or Documents Containing Impounded Material

- (1). Motions for impoundment and related papers shall be publicly docketed, unless the case itself is required by statute to be impounded. The fact that a motion for impoundment has been filed is not kept confidential, and the public is entitled to access the motion and supporting affidavit.
- (2). Filers seeking to submit documents or other materials containing impounded information shall notify the clerk that the filing includes impounded information. See URIP Rule 13.
- (3). The clerk shall docket any notice of the filing of impounded material and impound the designated information or filing. The clerk has inherent authority to verify the notice's designation to the referenced record and, where appropriate, may notify the filer that the notice is incorrect.
- (4). Filers seeking to submit documents or other material containing impounded information should provide such documents or materials in a separate, clearly marked envelope or file.
- (5). Filers seeking to obtain an order of impoundment should not submit the proposed impounded documents or materials along with the motion to impound. However, when the court orders a filer to submit proposed impounded material for *in camera* review, the clerk shall either stamp the materials as

“impounded” or attach a copy of any resulting order to the envelope or other container holding the impounded material.

(6). Entries in a public docket shall not reveal impounded or confidential information. For instance, the docket entry of a motion for discovery of the medical records of a sexual assault crime victim should use a pseudonym and not reveal the victim's name. See G. L. c. 265, § 24C. See also New England Internet Café, LLC v. Clerk of the Superior Court for Criminal Business in Suffolk County, 462 Mass. 76 (2012) (discussing impoundment of search warrant application materials).

(C). Entry on the Docket and Index

(1). The clerk should always include a case caption and case number in the docket and index, even if the case or a party's name is impounded.

(2). The case caption on the clerk's case docket and index may be amended to prevent disclosure of the names of impounded parties, including in conformance with any specific instruction entered in the court's impoundment order.

(3). Where the case is public and contains no impounded information or material, the case shall be entered in the normal course (i.e., with the docket and index recording the parties' names in the case caption).

(4). If the case contains some impounded information or material but is otherwise public, the docket should contain a reference or status that permits court staff to identify the specific information or material that is impounded. For example:

a. Partially Impounded. A case is partially impounded when it is otherwise public but contains some impounded information (e.g., sexual assault victim's name) or an impounded document (e.g., divorce financial statement). In a partially impounded case, only the specified impounded information is withheld from public inspection and should be designated as "impounded," "restricted," or otherwise identified as inaccessible. The remainder of the case record is public, and the clerk's office staff must be vigilant in protecting the impounded information.; or

b. Impounded. An impounded case includes a case that is fully impounded and is deemed impounded pursuant to a statute, court rule, standing order, case law, or court order. A case that is impounded by law includes a proceeding involving care and protection matters, juvenile delinquency, the Sex Offender Registry Board, and CHINS/CRA cases. For these matters, only the case caption, case number, and reason for impoundment are public, provided the case caption is redacted to ensure that the parties' names or any impounded information is not revealed.

(5). The docket for a partially impounded or fully impounded case should reference the authority for the impoundment by noting the court's order, the governing statute, court rule, standing order, or case law.

(6). When a party's name is impounded, the case name should be changed to protect the litigant's identity (e.g., “Impounded Plaintiff” or “Impounded Defendant”).

(7). On the rare occasion when the court orders the docket impounded in a case that otherwise would be public, the docket shall nonetheless publicly provide the legal basis for the impoundment designation, such as the case nature or the court's order, as well as make publicly available any motion for impoundment and supporting affidavit.

(D). Storage of Impoundment Matters

- (1). If the court facility has the necessary physical space to do so, impounded documents and materials should be stored in a separate location in a secured room, apart from public case records.
- (2). If separate storage space is not available, the impounded documents and materials may be stored with the case record in a sealed envelope that is conspicuously marked "impounded."
- (3). The clerk may limit only certain court staff to have access to impounded documents.
- (4). Once the impoundment order is terminated or expires, the clerk shall return impounded information to the public file.

(E). Response by Court Staff to Requests or Inquiries for Impounded Information

- (1). To ensure that procedures are carried out uniformly and correctly, only authorized personnel should be assigned the responsibility of processing requests for impounded case records. Inquiries regarding these records should be referred to authorized personnel.
- (2). A clerk may respond to an inquiry from nonparties for impounded information by stating the following: "There is no public record"; "The record is impounded pursuant to a court order"; "I cannot provide further information because those records are not public pursuant to a statute, etc."
- (3). Under URIP Rule 9, the impounded material shall be available to the court, the clerk and designated court personnel, the attorneys of record, the parties to the case, and other persons designated by the court, unless otherwise ordered by the court.
- (4). The clerk has no authority to impound or allow a motion for impoundment. The clerk is empowered only to (i) provisionally withhold from public inspection material that is the subject of a pending motion for impoundment pursuant to URIP Rule 2(b)(2) or Rule 2(b)(3), or (ii) impound information as required by a statute, court rule, standing order, court order, or case law.

Section 3 – Filing of Impounded Information Form

This form may be used to:

- (1) notify a court that impounded information is included with the document being filed;
- (2) identify the specific legal authority requiring impoundment of the identified information; and
- (3) identify the precise location of the impounded information within the document being filed.

The form is available as a fillable PDF that may be completed and saved.

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court <input type="checkbox"/>	Housing Court <input type="checkbox"/>	Superior Court <input type="checkbox"/>
Appeals Court <input type="checkbox"/>	Juvenile Court <input type="checkbox"/>	District Court <input type="checkbox"/>
Land Court <input type="checkbox"/>	Probate and Family Court <input type="checkbox"/>	Boston Municipal Court <input type="checkbox"/>

No. [Redacted]

Plaintiff / Petitioner

v.

Defendant / Respondent

Name of Filer: [Redacted]

FILING OF IMPOUNDED INFORMATION

The following is a list of material that a statute, court rule, case law, court order, or standing order designates must be withheld as "impounded," "withheld from public inspection," "not available for public inspection," or "confidential." All filers are required to review this list and to mark on this form any and all applicable confidentiality provisions, and identify the precise location of the confidential information within the document being filed. Submitting this form does not, by itself, guarantee compliance with any additional court rules for the handling of impounded information. Attorneys and self-represented parties are to conduct their own research prior to filing any papers to ensure full compliance with the law governing impoundment, including any redaction requirements.

Title of Document Filed: [Redacted]

Location(s) of Impounded Information in the Document (e.g., entire document, specific page(s) or exhibit(s)):

[Redacted]

Source(s) of Authority for Impoundment (check all applicable boxes or write in "other"):

- Abortion consent forms and materials. G. L. c. 112, § 12S.
- Abuse Prevention Orders. G. L. c. 209A, § 8.
- Address Confidentiality Program Affidavits. S.J.C. Rule 1:20; G. L. c. 9A; 950 Code Mass. Regs. § 130.
- Adoptions. G. L. c. 210, § 5C.
- Affidavits of Indigency. By Order of the S.J.C. on the Affidavit of Indigency form.
- Alcohol and drug abuse program and treatment records. 42 U.S.C. § 1175, 290 dd-3.
- Appeals from the Sex Offender Registry Board. G. L. c. 6, § 178M.
- Board of Bar Overseer proceedings. S.J.C. Rule 4:01, § 20(1).
- Child in Need of Services/Child Requiring Assistance. G. L. c. 119, § 39E-39I.
- Child Protection Orders. G. L. c. 119, § 38.
- Commission on Judicial Conduct Proceedings. G. L. c. 211C, § 6.
- Court Order of Impoundment. Provide date of order, case name, docket number, and issuing judge:

[Redacted]

- Delinquency Proceedings. G. L. c. 119, § 60A.
- Department of Workforce Development Hearings (unemployment hearings). G. L. c. 151A, § 46.
- Domestic Violence Records. G. L. c. 41, § 97D.
- Financial statements. Supplemental Probate and Family Court Rule 401(d).

Continued on next page

FILING OF IMPOUNDED INFORMATION (continued)

- Grand Jury minutes or documents. G. L. c. 268, § 13D(e).
- Guardian ad Litem Reports. Probate and Family Court Standing Order 2-08.
- Harassment Prevention Orders. G. L. c. 258E, § 10.
- Inquest Report and Transcript. G. L. c. 38, § 10; In re Globe Newspaper Co., Inc., 461 Mass. 113 (2011).
- Juror Questionnaires. G.L. c. 234A, §§ 23, 33.
- Juvenile Trials. G. L. c. 119, § 65.
- Mediator Records. G. L. c. 233, § 23C.
- Medical Certificates and Clinical Team Reports. Probate and Family Court Standing Order 5-08.
- Medical, Health and Hospital Records. G. L. c. 111, § 70, § 70E(b).
- Mental Health Reports. G. L. c. 123, §§ 1-18, 35.
- Medical Peer Review Committee. G. L. c. 111, § 204.
- Paternity actions. G. L. c. 209C, § 13.
- Pending or Denied Criminal Complaint Applications. District Court Standards of Judicial Practice, The Complaint Procedure §§ 3:15 and 5:02 (rev. 2008).
- Personal Medical Information. Probate and Family Court Standing Order 1-09, Article V of G.L. c. 190B.
- Photographs of unsuspecting nude person. G. L. c. 272, § 105(g).
- Presentence Probation Reports. Mass. R. Crim. P. 28(d)(3); Commonwealth v. Martin, 355 Mass. 296 (1969)
- Probation Records. G. L. c. 276, § 100.
- Psychotherapist Treatment Records. G.L. c. 112, § 129A, except as provided by G.L. c. 233, § 20(b).
- Qualified Domestic Relation Orders. Probate and Family Court Standing Order 3-08.
- Records deposited with the clerk-magistrate as potential exhibits. See generally G. L. c. 233, § 79J; G.L. c. 233, § 79; Commonwealth v. Dwyer, 448 Mass. 122, 148-149 (2006).
- Rights afforded victims, witnesses, or family members. G. L. c. 258B, § 3(h).
- School records. G. L. c. 71, § 34H; G. L. c. 208, § 31.
- Search Warrant, application, or affidavit, before return. G. L. c. 276, § 2B.
- Social Worker records. G. L. c. 112, § 135A.
- Trade secrets and other confidential matters in connection with discovery. Mass. R. Civ. P. 26(c)(7).
- Victim's name in Sexual Assault Record. G. L. c. 265, § 24C; G. L. c. 264, §§ 13B, 13B ½, 13B ¾; G. L. c. 265, §§ 22, 23, 23A, 23B; G. L. c. 265, §§ 22A, 22B, 22C; G. L. c. 265, § 24; G. L. c. 265, § 24B.
- Victim program locations. G. L. c. 233, §§ 20J and 20K.
- Other (Specify): _____

Signed by _____

Name (Print) _____

Address _____

City _____ State _____ Zip Code _____

B.B.O. # (if any) _____

Section 4 –Order of Impoundment Forms

The following order forms may be used by the Trial Court, Appeals Court, and Supreme Judicial Court when entering an order on a motion for impoundment.

Each form is available as a fillable PDF that may be completed and saved.

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court <input type="checkbox"/>	Housing Court <input type="checkbox"/>	Superior Court <input type="checkbox"/>
Appeals Court <input type="checkbox"/>	Juvenile Court <input type="checkbox"/>	District Court <input type="checkbox"/>
Land Court <input type="checkbox"/>	Probate and Family Court <input type="checkbox"/>	Boston Municipal Court <input type="checkbox"/>

[Redacted]

Case No. [Redacted]

v.

[Redacted]

ORDER PURSUANT TO UNIFORM RULES ON IMPOUNDMENT PROCEDURE, RULE 8

This matter is before the Court on [Redacted]'s Motion for Impoundment, pursuant to Rule [Redacted] of the Uniform Rules on Impoundment Procedure. The underlying case is of the following nature:

[Redacted]

The motion requests the court to issue an order to impound the following information:

- the name of a party in the case or of an interested nonparty, [Redacted]
- particular document(s) within the court file, specifically, [Redacted]
- the following information, [Redacted]
- the entire court file, but not the case caption or case number. [Redacted]

Motion Denied. This motion was/was not opposed and a hearing was/was not conducted. Having considered the arguments of the parties, legal authority, and relevant factors including, but not limited to, the nature of the parties and the controversy, constitutional rights, the type of information and the privacy interests involved, the extent of community interest, and the reason for the requested impoundment, and otherwise being fully advised, the Court DENIES the motion because:

[Redacted]

So ORDERED, this [Redacted]

By the Court, [Redacted], Judge

COMMONWEALTH OF MASSACHUSETTS

Table with 3 columns and 3 rows of court names and checkboxes: Supreme Judicial Court, Appeals Court, Land Court, Housing Court, Juvenile Court, Probate and Family Court, Superior Court, District Court, Boston Municipal Court.

[Redacted]

Case No. [Redacted]

v.

[Redacted]

ORDER PURSUANT TO UNIFORM RULES ON IMPOUNDMENT PROCEDURE, RULE 8

This matter is before the Court on [Redacted]'s Motion for Impoundment, pursuant to Rule [Redacted] of the Uniform Rules on Impoundment Procedure. The underlying case is of the following nature:

[Redacted]

The motion requests the court to issue an order to impound the following information:

- the name of a party in the case or of an interested nonparty,
particular document(s) within the court file, specifically
the following information
the entire court file, but not the case caption or case number.

Motion Allowed. This motion was /was not opposed and a hearing was/ was not conducted. Having considered the arguments of the parties, legal authority, and relevant factors including, but not limited to, the nature of the parties and the controversy, constitutional rights, the type of information and the privacy interests involved, the extent of community interest, and the reason for the requested impoundment, and otherwise being fully advised, the Court ALLOWS the motion for the following reasons:

1. The Court finds that good cause for impoundment of [Redacted] has been demonstrated by the movant to protect the following interests:

[Redacted]

2. The Court further finds that no less restrictive measure is available to protect this/these interest(s), and that the degree, duration and manner of impoundment ordered herein are no broader than necessary to protect the interest(s).

It is ORDERED that the Clerk/Register of this Court immediately impound the following materials related to this matter. Such materials shall be kept separate and apart from those materials to which the public has access. [Select all that apply].

The party's name in the case. The Clerk shall substitute the following for the party's name:
[Redacted]

Continued on next page

Further, the filer of any document shall ensure that the party's name is redacted from all public materials in the file. The Clerk shall redact any individual docket entries referencing the name as needed and shall enter any final judgment in a manner that does not reveal the identity of the party. The docket and case file shall otherwise remain available to the public.

The following document(s) contained in the court file: [REDACTED]

However, the case file and docket shall otherwise remain available to the public subject to any substitution of a party's name set forth above.

The entire court file. However, the docket shall remain open to the public subject to any substitution of a party's name set forth above.

It is further ORDERED that the materials impounded pursuant to this Order may be:

- copied by,
- inspected by,
- the parties and their attorneys of record, except [REDACTED] or;
- the following specified person or entity [REDACTED]
- by further order of the Court.

This ORDER shall expire on [REDACTED]

So ORDERED, this [REDACTED]

By the Court, [REDACTED], Judge

Section 5 – List of Authorities Designating Material As Impounded, Confidential, or Not Available for Public Inspection

The Massachusetts Appeals Court maintains a list of materials that are not available for viewing by the general public. The list includes the sources for the designation of the material that is impounded, confidential or not available for public inspection. The current version of this form can be found at <http://www.mass.gov/courts/docs/appeals-court/impoundment-sources.pdf>

**LIST OF AUTHORITIES DESIGNATING
MATERIAL AS IMPOUNDED, CONFIDENTIAL,
OR NOT AVAILABLE FOR PUBLIC INSPECTION (April 2015)**

The following list is an overview of the material that a statute, court rule, or standing order designates must be withheld as “impounded,” “withheld from public inspection,” “not available for public inspection,” “confidential,” “segregated,” or “sealed.” The list is not an exhaustive compilation of such matters under Massachusetts law. Attorneys and self-represented litigants must conduct their own research prior to filing any papers to ensure full compliance with the law governing impoundment.

Abortion consent forms and materials. “The said consent form and any other forms, transcript of evidence, or written findings and conclusions of a court, shall be confidential and may not be released to any person except by the pregnant woman's written informed consent or by a proper judicial order, other than to the pregnant woman herself, to whom such documents relate, the operating physician, or any person whose consent is required pursuant to this section, or under the law.” (G. L. c. 112, § 12S).

Abuse Prevention Orders. If the plaintiff or defendant is a minor in an action arising under G. L. c. 209A, the records “shall be withheld from public inspection except by order of the court; provided, that such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney, and to the plaintiff and the plaintiff's attorney, or any of them.” (G. L. c. 209A, § 8) The plaintiff's residential address, residential telephone number and workplace name, address and telephone number “shall be confidential and withheld from public inspection” when pursuing an action under 209A. (G. L. c. 209A, § 8).

Address Confidentiality Program Affidavits. Affidavits giving the actual address of litigants who wish to employ in civil litigation the post office box address that has been assigned to them by the Secretary of State's Address Confidentiality Program (S.J.C. Rule 1:20). The actual address of the program participant may be used by court personnel in the furtherance of their official duties, but such address shall not be used for purposes of mailing any documents, notices or orders. The affidavit shall be impounded by operation of this rule without any further judicial action. The Clerk shall segregate the impounded affidavit from the other papers and shall not make the information contained therein available to other parties. (G. L. c. 9A; 950 Code Mass. Regs. § 130).

Adoptions. “All petitions for adoption, all reports submitted there under and all pleadings, papers or documents filed in connection therewith, docket entries in the permanent docket and record books shall not be available for inspection, unless a judge of probate of the county where such records are kept, for good cause shown, shall otherwise order.” (G. L. c. 210, § 5C).

Affidavits of Indigency. “[B]y order of the Supreme Judicial Court, as required by G. L. c. 261, § 27B, the financial information contained in an affidavit of indigency, pursuant to both G. L. c. 261, § 29 (inmate), and G. L. c. 261, § 27B (non-inmate), may not, except by order of the recipient court, be disclosed to anyone other than authorized court personnel, the applicant, the applicant's counsel or anyone authorized in writing by the applicant.” Kordis v. Superintendent, Souza Baronowski Correctional Ctr., 58 Mass. App. Ct. 902, 904 (2003). The affidavit of indigency form states that, “[b]y

order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant."

Alcohol and drug abuse program and treatment records. A party's release form and/or court order may be needed to access records. (42 U.S.C. § 1175, 290 dd-3).

Appeals from the Sex Offender Registry Board. "The court shall keep proceedings conducted pursuant to this paragraph and records from such proceedings confidential and such proceedings and records shall be impounded." (G. L. c. 6, § 178M).

Board of Bar Overseers proceedings. "Except as the Court shall otherwise order or as otherwise provided in this rule, the Board and the Bar Counsel shall keep confidential all information involving allegations of misconduct by a lawyer and all information that a lawyer's physical or mental condition may adversely affect his or her ability to practice law until the occurrence" of an enumerated event. (S.J.C. Rule 4:01, § 20(1)).

Child Protection Orders. Any protection of children proceeding conducted pursuant to G. L. c. 119, § 1 to § 37 cannot be open to the general public and the name of the individual involved cannot be published. (G. L. c. 119, § 38).

Child in Need of Services/Child Requiring Assistance. Petitions seeking a determination that a child is in need of services shall be confidential and not open to the public. (G.L. c. 119, § 39E - 39I).

Commission on Judicial Conduct proceedings. "Except as provided in this section, all proceedings of the commission shall be confidential until there has been a determination of sufficient cause and formal charges have been filed with the supreme judicial court." (G.L. c. 211C, § 6).

Delinquency Proceedings. "The record of a **youthful offender** proceeding conducted pursuant to an indictment **shall be open to public inspection** in the same manner and to the same extent as adult criminal records. All other record of the court in **cases of delinquency** arising under sections fifty-two to fifty-nine, inclusive, **shall be withheld from public inspection** except with the consent of a justice of such court; provided however, that such records shall be open, at all reasonable times, to inspection by the child proceeded against" (G. L. c. 119 § 60A) (emphasis added).

Department of Workforce Development Hearings (unemployment hearings). All information "secured pursuant to this chapter is confidential and for the exclusive use and information of the department in the discharge of its duties. Such information is not a public record nor admissible in any action or proceeding, except as provided in this section. This information is absolutely privileged and shall not be made the subject matter or basis in any action of slander, libel or emotional distress." (G. L. c. 151A, § 46).

Domestic Violence Records. Confidential reports that include reports of rape and sexual assaults or attempts to commit such offenses, reports of abuse perpetrated by family or household members, and all communications between police officers and victims of such offenses or abuse shall not be public reports. (G.L. c. 41, § 97D).

Expunged Records. See Commonwealth v. S.M.F., 40 Mass. App. Ct. 42, 43-45 (1996) (Where the sealing statutes are not applicable, a trial court may use its inherent judicial power to order expungement).

Financial statements. Statements submitted by parties in the Probate and Family Court shall be impounded or kept separate from other papers in the case and shall not be available for public inspection, but shall be available to the courts, the attorneys (whose appearances are entered in the case), the parties to the case, the registers, assistant registers, members of the Probation Department of the Probate Courts and to employees of the Mass. Dept. of Revenue, where necessary. (Supplemental Probate and Family Court Rule 401(d)).

Grand Jury minutes or documents. “Any grand jury transcript or document citing or describing grand jury testimony filed with any court shall be filed and maintained under seal, unless the paper is filed in a criminal prosecution for perjury before a grand jury.” (G. L. c. 268, § 13D(e)).

Guardian ad Litem Reports. “Unless otherwise ordered by the court, all guardian ad litem reports except those filed in cases involving accounts, licenses to sell and estate plans are impounded.” (Probate and Family Court Standing Order 2-08).

Harassment Prevention Orders. The records of cases arising out of actions in which the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court; provided, however, that such records shall be open, at all reasonable times, to the inspection of the minor, such minor's parent, guardian and attorney and to the plaintiff and the plaintiff's attorney. The plaintiff's residential address, residential telephone number and workplace name, address and telephone number, contained within the court records shall also be withheld with the same exception. All confidential portions of the records shall be accessible at all reasonable times to the plaintiff and plaintiff's attorney, to others specifically authorized by the plaintiff to obtain such information and to prosecutors, victim-witness advocates as defined in section 1 of chapter 258B, sexual assault counselors as defined in section 20J of chapter 233 and law officers, if such access is necessary in the performance of their duties. (G. L. c. 258E, § 10).

Inquest Report and Transcript. See G. L. c. 38, § 10; In re Globe Newspaper Co., Inc., 461 Mass. 113 (2011).

Juror Questionnaires. Jurors' confidential questionnaires or criminal records are not public records. (G.L. c. 234A, §§ 23, 33).

Juvenile Trials. Juvenile trials must exclude the public. Courts shall designate a juvenile session with a separate docket and record for the hearing of cases of children under seventeen years of age. The session shall be separate from that for the trial of criminal cases. The court shall exclude the general public from juvenile sessions admitting only such persons as may have a direct interest in the case, except in cases where the Commonwealth has proceeded by indictment. (G. L. c. 119, §§ 52, 60A, 65; G.L. c. 276, § 100B). However, records of adults prosecuted for criminal offenses in the Juvenile Court shall be open to the public.

Mediator Records. “All memoranda, and other work product prepared by a mediator and a mediator's case files shall be confidential and not subject to disclosure in any judicial or administrative proceeding involving any of the parties to any mediation to which such materials apply. Any communication made in the course of and relating to the subject matter of any mediation and which is made in the presence of such mediator by any participant, mediator or other person shall be a confidential communication and not subject to disclosure in any judicial or administrative proceeding; provided, however, that the provisions of this section shall not apply to the mediation of labor disputes.” (G. L. c. 233, § 23C).

Medical Certificates and Clinical Team Reports. These reports must be filed when seeking temporary guardianship on the grounds of mental illness or physical incapacity or for conservatorship on the grounds of mental weakness. These reports are impounded, held separate from the file, and not available for public inspection. Access to inspect the reports is limited to the court, attorneys of record, parties, guardians ad litem, and any probation officer assigned to the case. The order specifically prohibits use for any purpose other than consideration of the petition. The certificate, by the terms of this standing order, is substituted for records that are protected by the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191 (“HIPAA”) and would require a release form from the person over whom guardianship is sought by the petition. (Probate and Family Court Standing Order 5-08).

Medical, Health and Hospital Records. A party's release form or court order is needed to access records. G. L. c. 111, § 70, § 70E(b). HIPAA Health providers may only release personal health information if the release signed by a party complies with the provisions of the federal law. Even if no statutory privilege applies to the information sought, the provider or keeper of other records (e.g., unlicensed support group leaders, batterer intervention programs) may also request a written release from their client.

Mental Health Reports. Mental health examination and commitment records (G. L. c. 123, §§ 1-18, 35), other than ordinary entries on the criminal docket, except on a judge's order.

Medical Peer Review Committee. “Except as otherwise provided in this section, the proceedings, reports and records of a medical peer review committee shall be confidential and shall be exempt from the disclosure of public records under G. L. c. 66 § 10 but shall not be subject to subpoena or discovery, or introduced into evidence, in any judicial or administrative proceeding.” (G. L. c. 111, § 204).

Paternity actions. “In an action to establish paternity or in which paternity of a child is an issue, all complaints, pleadings, papers, documents or reports filed in connection therewith, docket entries in the permanent docket and record books shall be segregated and unavailable for inspection only if the judge of the court where such records are kept, for good cause shown, so orders or the person alleged to be the father is adjudicated not to be the father of the child; provided, however, that the child, the child's mother, the person adjudicated to be the father and the department of transitional assistance, the department of children and families, the division of medical assistance or any other public assistance program and the IV-D agency as set forth in chapter 119A, when the child who is or was the subject of the complaint is a recipient of public assistance of the attorney for any of them, and the department of children and families, when the child who is or was the subject of the complaint is within the care and

protection of the department of children and families, is the subject of a petition for such care of protection pursuant to chapter 119 or is the subject of a petition to dispense with consent for adoption pursuant to subsection (b) of section 3 of chapter 210, shall have access to and the right to obtain copies of the papers, docket books and judgments in actions pursuant to this chapter.” (G. L. c. 209C, § 13).

Pending or Denied Criminal Complaint Applications. Alphabetical indices, dockets, contents of case files, exhibits put in evidence, and tape recordings (if any) of proceedings should presumptively be closed to the public unless the clerk-magistrate or a judge concludes that the legitimate interest of the public outweighs the privacy interests of the accused. District Court Standards of Judicial Practice, The Complaint Procedure §§ 3:15 and 5:02 (rev. 2008).

Personal Medical Information. See Probate and Family Court Standing Order 1-09, Article V of G. L. c. 190B.

Photographs of unsuspecting nude person. “A photograph, videotape or other recorded visual image, depicting a person who is nude or partially nude that is part of any court record arising from a prosecution under this section, shall not be open to public inspection and shall only be made available by court personnel to a law enforcement officer, prosecuting attorney, defendant's attorney, defendant, or victim connected to such prosecution for inspection, unless otherwise ordered by the court.” (G. L. c. 272, § 105(g)).

Presentence Probation Reports. “In extraordinary cases, the judge may except from disclosure parts of the report which are not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, sources of information obtained upon a promise of confidentiality, or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons.” See Mass. R. Crim. P. 28(d)(3); Commonwealth v. Martin, 355 Mass 296 (1969).

Probation Records. The information obtained and recorded shall not be regarded as public records and shall not be open for public inspection but shall be accessible to the justices and probation officers of the courts, to the police commissioner for the city of Boston, to all chiefs of police and city marshals, and to such departments of the state and local governments as the commissioner may determine. (G. L. c. 276, § 100).

Psychotherapist Treatment Records. See G. L. c. 112 § 129A, except as provided by G. L. c. 233, § 20(b).

Qualified Domestic Relation Orders. These reports are impounded, held separate from the file, and not available for public inspection. Access to inspect the reports is limited to the court, attorneys of record, and parties. (Probate and Family Court Standing Order 3-08).

Records deposited with the clerk-magistrate as potential exhibits. Materials that are not yet introduced in evidence or filed as an attachment to a pleading or motion, including business records produced pursuant to G. L. c. 233, § 79J, hospital records produced pursuant to G. L. c. 233, § 79, and records produced pursuant to the protocol of Commonwealth v. Dwyer, 448 Mass. 122, 148-149 (2006).

Rights afforded victims, witnesses, or family members. “To provide victims a meaningful role in the criminal justice system, victims and witnesses of crime, or in the event the victim is deceased, the family members of the victim, shall be afforded the following basic and fundamental rights, to the greatest extent possible and subject to appropriation and to available resources, with priority for services to be provided to victims of crimes against the person and crimes where physical injury to a person results:

* * * *

(h) for victims and witnesses, to be informed of the right to request confidentiality in the criminal justice system. Upon the court's approval of such request, no law enforcement agency, prosecutor, defense counsel, or parole, probation or corrections official may disclose or state in open court, except among themselves, the residential address, telephone number, or place of employment or school of the victim, a victim's family member, or a witness, except as otherwise ordered by the court. The court may enter such other orders or conditions to maintain limited disclosure of the information as it deems appropriate to protect the privacy and safety of victims, victims' family members and witnesses;” (G. L. c. 258B, § 3(h)).

Sealed Records. Records that have been properly sealed by a justice or by statute or the commissioner of probation, or in conjunction with a pardon granted by the Governor of the Commonwealth. See G. L. c. 276, §§ 100A, 100B and 100C.

School records. A party who has shared or sole legal custody may authorize release of records, except for a parent or party whose access is restricted by a Chapter 209A or other court order. (G. L. c. 71, § 34H; G. L. c. 208, § 31).

Search Warrants. Between issuance and return, a search warrant, the application for search warrant, and any supporting affidavits are not publically available. (G. L. c. 276, § 2B).

Social Worker records. “All communications between a social worker licensed pursuant to the provisions of § 132 or a social worker employed in a state, county or municipal governmental agency, and a client are confidential.” (G. L. c. 112, § 135A).

Trade secrets and other matters in connection with discovery. “Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the county or judicial district, as the case may be, where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: . . . (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way” (Mass. R. Civ. P. 26(c)(7)).

Victim's Name in Sexual Assault Record. The portion of the records of a court or any police department which contains the name of the victim in an arrest, investigation, or complaint for rape or assault with intent to rape in certain specified offenses, shall be withheld from public inspection, except with the consent of a justice of such court where the complaint is or would be prosecuted. Except as otherwise provided it shall be unlawful to publish, disseminate or otherwise disclose the name of any

individual identified as an alleged victim of the specified offenses. (G. L. c. 265, § 24C). The sexual assault offenses referenced in § 24C include:

- Indecent assault and battery on a child under age 14 (G. L. c. 265, § 13B)
- Indecent assault and battery on a child under 14 during commission of certain offenses or by mandated reporters (G.L. c. 265, § 13B ½)
- Indecent assault and battery on a child under 14 by certain previously convicted offenders (G.L. c. 265, § 13B ¾)
- Rape or aggravated rape (G. L. c. 265, § 22)
- Forcible rape of a child (G. L. c. 265, § 22A)
- Rape of a child during commission of certain offenses or by force (G.L. c. 265, § 22B)
- Rape of a child through use of force by certain previously convicted offenders (G.L. c. 265, § 22C)
- Statutory rape (G. L. c. 265, § 23)
- Rape and abuse of a child aggravated by age difference between defendant and victim or by mandated reporters (G.L. c. 265 § 23A)
- Rape and abuse by certain previously convicted offenders (G.L. c. 265 § 23B)
- Assault with intent to rape (G. L. c. 265, § 24)
- Assault on a child under 16 with intent to commit rape (G. L. c. 265, § 24B)
- Trafficking of persons (G.L. c. 265, § 50)
- Victim program locations. Locations of battered women's shelters, domestic violence, and rape crisis programs may not be disclosed by court order, or otherwise. (G. L. c. 233, § 20J, 20K).

ADDITIONAL MATERIAL THAT CAN BE PROTECTED:

Confidentiality Agreements in the Superior Court's Business Litigation Sessions. See Superior Court's "Formal Guidance of the Business Litigation Sessions Regarding Confidentiality Agreements."

Criminal Offender Record Information (CORI). The Massachusetts Criminal Offender Record Information Act (CORI), G. L. c. 6, §§ 167-168, regulates the collection and dissemination of criminal records. CORI includes records and data in any communicable form compiled by a Massachusetts Criminal Justice Agency which concern an identifiable individual and relate to the nature or disposition of a criminal charge, an arrest, a pretrial proceeding, other judicial proceedings, sentencing, incarceration, rehabilitation, or release. Such information shall be restricted to that recorded

as a result of the initiation of criminal proceedings or any consequent proceedings related thereto. See G.L. c. 6, § 167. For additional information, see Department of Criminal Justice Information Services (DCJIS) at <http://www.mass.gov/eopss/agencies/dcjis/>; the District Court Department's "A Guide to Public Access, Sealing & Expungement of District Court Records" appendix A (revised September 2013), at <http://www.mass.gov/courts/docs/courts-and-judges/courts/district-court/pubaccesscourtrecords.pdf> and the Massachusetts Trial Court Law Libraries, Massachusetts Law About Criminal Records at <http://www.mass.gov/courts/case-legal-res/law-lib/laws-by-subj/about/cori.html>

Court Activity Record Information (CARI) and Warrant Management System Information (WMS). "CARI" means the Court Activity Record maintained by the Commissioner of Probation. "Court activity record information (CARI) records are compiled by the Department of Probation and include an individual's criminal offender record information (CORI) and all court appearances related to juvenile delinquency and civil protective order proceedings." *Commonwealth v. Humberto H.*, 466 Mass. 562, n.7 (2013), citing *Commonwealth v. Boe*, 456 Mass. 337, 341 n. 8, 924 N.E.2d 239 (2010); Standing Order 1-11 of the Probate and Family Court ("Probate and Family Court's Use of Information Contained in the Court Activity Record Information (CARI) Report," effective June 1, 2011).

Judicial Deliberations. There exists an absolute privilege covering "a judge's mental impressions and thought processes in reaching a judicial decision, whether harbored internally or memorialized in other nonpublic materials . The privilege also protects confidential communications among judges and between judges and court staff made in the course of and related to their deliberative processes in particular cases." See *In re Enforcement of a Subpoena*, 463 Mass.162, 174 (2012).

Sexually Dangerous Person Proceeding. The case file in a sexually dangerous person proceeding is not automatically impounded. (G. L. c. 123A).

WHAT MATERIAL IS SEALED?

The terms “sealed” and “impounded” are closely related, sometimes used interchangeably, but are meaningfully different. Sealing “refers to those steps taken to segregate certain records from the generality of records and to ensure that their confidentiality to the extent specified in the controlling statute.” See Police Comm'r of Boston v. Municipal Court of the Dorchester Dist., 374 Mass. 640, 648 (1978). Sealing differs from impoundment in that it normally excludes the parties and their attorneys as well as the general public from access. See Pixley v. Commonwealth, 452 Mass. 827, 836 n.12 (2009).

"When records are sealed under G.L. c. 276, § 100C, they do not disappear; they continue to exist but become unavailable to the public." Commonwealth v. Roberts, 39 Mass. App. Ct. 355 (1995) (citations omitted). “Sealing” prevents the public from gaining access to the material; only appropriate court personnel, law enforcement and certain entities permitted by statute, can access sealed information, unless limited disclosure is otherwise ordered. See G.L. c. 6, § 172-178B; "Sealed records are available to a number of entities and licensing commissions that, in the Legislature's determination, may have a particular need to know about such information." Commonwealth v. Pon, 469 Mass. 296 (2014), citing G. L. c. 6, §§ 172–178B. For a detailed discussion regarding the substantive standard for reviewing petitions to seal records under G. L. c. 276, § 100C, ¶ 2, or G.L. c. 94C, § 34 or § 44, see Commonwealth v. Pon, 469 Mass. 296 (2014).

Adult Criminal Dispositions.

G. L. c. 276, § 100A (except for violations of: c. 140, §§ 121-131H (firearms), c. 268 (perjury, escape, etc.) c. 268A (State Ethics Act)).

Juvenile Delinquency Dispositions.

G. L. c. 276, § 100B

“No Bill” from Grand Jury.

G. L. c. 276, § 100C, ¶ 1

“Not Guilty” or “No Probable Cause” Dispositions.

G. L. c. 276, § 100C, ¶ 2

Pardoned Offenses.

G. L. c. 127, § 152, ¶ 5

Erroneous Convictions.

G. L. c. 258D, § 7

Records after Dismissal of First-Offense Possession of Controlled Substance other than Marijuana. (or a Class E controlled substance)

G. L. c. 94C, §34, ¶ 2

Records after Dismissal of First-Offense Possession of Marihuana.

(or a Class E controlled substance since 7/1/72)

G. L. c. 94C, § 34, ¶ 3

“Not guilty” or “Dismissed” or “Nol Prossed” Disposition of a § 34 Possession Charge.

G. L. c. 94C, § 44

EXPUNGEMENT

"If a record of involvement with criminal process is expunged, the traces (e.g., complaints, arraignments, fingerprints, photographs, police reports, arrest registers) literally vanish and no indication is left behind that information has been removed." *Commonwealth v. Roberts*, 39 Mass. App. Ct. 355, 356 (1995), citing *Police Commr. of Boston v. Municipal Court of the Dorchester Dist.*, 374 Mass. 640, 648 (1978).