

**FORMAL GUIDANCE OF THE BUSINESS LITIGATION SESSION**  
**REGARDING PROTECTIVE ORDERS**

The undersigned judges of the Superior Court, who are assigned to sit in the Business Litigation Sessions of the Superior Court during calendar year 2025, jointly adopt the following Formal Guidance regarding proposed protective orders. We do so to provide attorneys with practical guidance about some of our preferences and practices.

1. Parties are encouraged to submit proposed protective orders in any case where such an order will facilitate discovery. To the extent practicable, such proposed protective orders should be submitted on or before the initial Rule 16 conference.
2. Parties are encouraged to use the model protective order attached. The model protective order is provided for the parties' convenience to reduce litigation costs and to decrease the likelihood of protracted negotiation. This model should suffice for the majority of cases.
3. We recognize that the model protective order may not meet the unique needs of every matter based on the nature of the case or the parties. Each proposed protective order offered by parties in the complex matters addressed in the Business Litigation Session will continue to be addressed based on the specific facts presented by the parties.
4. If the parties choose not to use the model protective order, they are encouraged to confer in an attempt to reach agreement on any proposed protective order in order to facilitate an efficient discovery process. Where there is a dispute about the terms of a proposed protective order, absent unique circumstances, the terms in the model will be given deference. Any dispute about the terms of a suitable protective order should be brought to the Court on or before the initial Rule 16 conference.
5. The parties should keep the following in mind in drafting any proposed protective order:
  - a. Proposed protective orders should include the least onerous terms possible based on the needs of the case and the types of information and documents involved.
  - b. Proposed protective orders must comply with relevant rules and standing orders, including Rule 26(c) of the Massachusetts Rules of Civil Procedure, Superior Court Rule 18, Trial Court Rule VIII (Uniform Rules on Impoundment Procedure), and Supreme Judicial Court Rule 1:24.
  - c. While each matter is assessed individually, and this guidance does not limit any party's right to seek a protective order in accordance with Mass. R. Civ. P. 26(c), the following terms are generally disfavored in proposed protective orders:

- i. “Umbrella” or “blanket” provisions that entitle all documents produced in a case, no matter how innocuous, to confidential status and treatment.
- ii. “Attorneys eyes only” provisions that limit viewing of confidential documents to only the attorneys or some other unduly limited class of individuals involved in a matter.

Business Litigation Session 1 Judges

/s/ Christopher K. Barry-Smith

Justice of the Superior Court

/s/ Peter B. Krupp

Justice of the Superior Court

Business Litigation Session 2 Judges

/s/ Kenneth W. Salinger

Justice of the Superior Court

/s/ Debra A. Squires-Lee

Justice of the Superior Court

Date: June 3, 2025

(Amending Formal Guidance Regarding Confidentiality Agreements dated January 2, 2008)

**[Insert Case Caption]**

**BUSINESS LITIGATION SESSION  
MODEL PROTECTIVE ORDER**

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, adequately protect material entitled to be kept confidential, and ensure that protection is afforded only to material so entitled, pursuant to Mass. R. Civ. P. 26(c) and with the consent of the parties, it is hereby ORDERED that:

1. This Protective Order shall govern the treatment of all documents, deposition testimony, and information (“Discovery Material”) produced in discovery in this action.

2. A party or non-party may designate any Discovery Material as confidential under the terms of this Protective Order if the designating person has reviewed the Discovery Material and believes in good faith that the designated Discovery Material constitutes: (a) trade secrets, proprietary information, confidential business information, or medical or psychological information that is of such a highly sensitive or proprietary nature that its disclosure should be restricted to only Qualified Persons (as defined below) and that its public disclosure is likely to cause substantial harm to the designating person; or (b) information that is protected from disclosure by applicable law (“Confidential Material”). “Confidential Material” does not include any information that is publicly available at the time of disclosure, becomes publicly available after disclosure through no fault of the recipient, becomes part of the public record through trial or other in-court proceedings, or is lawfully provided to a party at a later date from a non-party without restriction as to disclosure. In case of a dispute, the designating person shall have the

burden to prove that the designated Confidential Material meets the applicable criteria for protection.

3. A party or non-party seeking to designate any Discovery Material as Confidential Material shall do so by stamping it with the legend “CONFIDENTIAL” or by otherwise identifying it as “confidential” on the image of the document, in the file name or metadata, in the load file associated with the Discovery Material, or by any other means that clearly indicates the specific material or portion of the Discovery Material is designated as confidential without obscuring the Discovery Material. The inadvertent failure to designate Confidential Material as “confidential” shall not be a waiver of the protection of Confidential Material provided that counsel for the designating person promptly notifies the recipient upon realizing the failure. However, the recipient shall not be in violation of this Protective Order for any disclosure of information prior to receiving such notice.

4. Any party or non-party may designate portions of deposition testimony as Confidential Material. Such designation shall be made on the record whenever possible; however, a party or non-party may also designate portions of a deposition as Confidential Material after transcription of the proceedings. The participants shall have 30 days after receipt of the deposition transcript to inform all parties that the deposition includes Confidential Material by sending written notice clearly identifying the specific portions of the transcript to be so designated by, for example, identifying the relevant page numbers and lines or identifying the exhibits that are Confidential Material. During this 30-day period, no party shall distribute the transcript or any portion thereof except: (a) to Qualified Persons, as defined in paragraph 6, below; or (b) for the sole purpose of seeking review by the Court to resolve a dispute related to the deposition proceedings, with written notice to all parties and a good faith effort to redact any

Confidential Material. Any deposition transcript designated as containing Confidential Material shall be stamped as “confidential.”

5. At any stage of these proceedings, any party or non-party with an interest in the matter may object to the designation of Confidential Material. If any party or non-party objects to the designation of any Discovery Material as Confidential Material, that party or non-party shall notify the designating person of the objection in writing, specifying the material in dispute (i.e. by Bates Number or other means), and engage in a conference as required by Superior Court Rule 9C. If the issue is not resolved through the Rule 9C conference, within 7 days of receiving notice, the designating person shall provide a written response either agreeing to remove the confidential designation with respect to those materials or stating the basis for the designation. If the dispute is not fully resolved, the designating person shall serve or file an appropriate motion in this proceeding, within 30 days of receiving notice, to determine the propriety of the designation. Pending the resolution of the motion, the disputed “Confidential Material” shall continue to be treated as such unless and until the Court orders otherwise. If the designating person fails to serve or file an appropriate motion within this 30-day period, and absent a written agreement to extend that time period, any disputed Confidential Material shall immediately cease to be Confidential Material and will no longer be entitled to the protections granted to Confidential Material pursuant to this Protective Order.

6. Absent a written agreement by the parties or an order of this Court, Confidential Material may be disclosed by the recipient to the following persons only (“Qualified Persons”):

- a. The Court and those employed by the Court as necessary for the litigation of this action or as necessary for the administration of the Court;

- b. The parties, counsel to the parties, and the staff of such counsel as necessary to assist counsel;
- c. Stenographers, court reporters, and their employees engaged to record and transcribe testimony in this action, and translators engaged for any purpose in this action;
- d. any mediators or arbitrators, including their necessary staff, engaged by the parties or their counsel for settlement purposes in this action;
- e. Authors or recipients of Confidential Material who can reasonably be identified as having sent, drafted, or received the Confidential Material;
- f. Any person referenced or identified in the Confidential Material;
- g. Any other person agreed to by the parties in writing;
- h. Any trial or deposition witness that is not already a Qualified Person pursuant to subsections of (a) to (g), above, who is examined in good faith by counsel with respect to Confidential Material for legitimate discovery or trial purposes, and any counsel for such witness, provided that the witness and their counsel complete the Acknowledgement and Agreement attached hereto as Exhibit A, unless completing the Acknowledgement and Agreement is excused by the court after hearing, prior to the disclosure; and
- i. Consultants or experts, including their necessary staff, retained by the parties or their counsel in connection with this action, provided that such expert or consultant complete the Acknowledgement and Agreement attached hereto as Exhibit A prior to the disclosure.
- j. **[Add in matters involving government parties: Law enforcement agencies.]**

Counsel for the party providing the Confidential Material to any person pursuant to (h) or (i) above shall maintain a copy of each signed Acknowledgement and Agreement.

7. Counsel for each party and all persons who receive Confidential Material shall take reasonable precautions to prevent the unauthorized or inadvertent disclosure of such Confidential Material and the information contained therein. If Confidential Material is disclosed to any person other than in the manner authorized by this Protective Order, the party responsible for the disclosure shall, as soon as possible upon learning of such disclosure, inform the designating person of such disclosure and make reasonable efforts to prevent disclosure by each unauthorized person who received such information, including by promptly endeavoring to procure the return or destruction of all copies of such Confidential Material when possible.

8. If a party or Qualified Person that has received Confidential Material receives a valid subpoena or other request (“subpoena”) for the production of Confidential Material, the subpoena recipient shall promptly give notice of the same by electronic mail transmission, followed by either mail or overnight delivery, to counsel of record for the designating person, and shall furnish such counsel with a copy of the subpoena. However, should such a subpoena by its terms limit disclosure of its existence, then no notice of the subpoena is required, provided that the subpoena recipient inform the subpoenaing person of the existence of this Protective Order. The designating person may, in its sole discretion and at its own cost, move to quash or limit the subpoena or seek to obtain confidential treatment of such materials from the subpoenaing person to the fullest extent available under the law. Absent an order of this Court, the subpoena recipient may not produce Confidential Material pursuant to the subpoena prior to the later of: (a) the date specified for production in the subpoena or (b) if a motion by the designating person regarding the subpoena is pending, resolution thereof.

9. At the conclusion of this action, including any appeals related thereto, upon the written request of any designating person, all Confidential Material provided by that person shall be returned or destroyed within 60 calendar days of such a request to the extent permitted by law; provided, however, that counsel may retain their attorney work product and a copy of all court-filed documents, which shall remain subject to the terms of this Protective Order.

10. When filing documents with the Court, the parties shall seek impoundment only of portions of pleadings, briefs or exhibits that meet the requirements for protection from public filing under Trial Court Rule VIII (Uniform Rules of Impoundment Procedure). Before any party serves a motion to impound, the parties shall confer pursuant to Superior Court Rule 9C to try to minimize the need for impoundment, including discussions about whether redactions could address any confidentiality concern. Designating documents as Confidential Material does not establish that impoundment is proper.

11. After termination of this action, the provisions of this Protective Order shall continue to be binding, except with respect to those documents and information that become public through lawful means and without breach of this Protective Order. The Court retains and shall have continuing jurisdiction over the parties and recipients of Confidential Material for enforcement of the provisions of this Protective Order.

12. Nothing shall prevent disclosure beyond the terms of this Protective Order if all parties consent in writing to such disclosure or if the Court orders such disclosure. The Court may modify this Protective Order in the interests of justice or for public policy reasons on its own initiative.

**[Insert signature block for counsel for each party]**

**EXHIBIT A**

**ACKNOWLEDGEMENT AND AGREEMENT**

I, \_\_\_\_\_, hereby acknowledge that I have been provided with a copy of the Protective Order entered in [identify action]. I have read it, and I agree to be bound by its terms.

I will treat all Confidential Material, as defined in the Protective Order, strictly in accordance with the terms set forth in the Protective Order.

By signing this Acknowledgement and Agreement, I understand that I am submitting myself to the jurisdiction of the Massachusetts Superior Court for the purpose of any issue or dispute related to my compliance with the Protective Order and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name