

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1746

Amending Appellate Rule 512.5
concerning public, sealed, and
confidential documents

IT IS ORDERED:

Appellate Rule 512.5 is amended to read as follows:

Appellate Rule 512.5. Public Documents; Sealed and Confidential Documents.

(a) **Records on Appeal.** A record on appeal is open to public inspection except that (1) papers filed under seal in the trial court, recordings or transcripts of closed hearings held in the trial court, and exhibits submitted or introduced at closed hearings in the trial court, will be maintained under seal while they constitute part of a record on appeal; and (2) papers, recordings, transcripts, exhibits, and other items designated as confidential in the trial court will be maintained as confidential while they constitute part of a record on appeal.

(b) **Other Papers.**

(1) Papers, including excerpts of record filed under Rule 210(c), filed in the appellate courts, other than records on appeal, shall be open to public inspection unless the appellate court in which the case is pending otherwise orders, or except as hereafter provided in this subparagraph. If the trial court has restricted disclosure of information, and it is necessary to refer to that information in an interlocutory petition or application to an

~~appellate court, the petitioner or applicant must attach to the petition or application the trial court order that restricted the information. The information will be maintained as sealed or confidential during the pendency of the petition or application, unless the trial court or appellate court orders otherwise. trial court may order that In addition, the petition or application must be written in a manner that does not disclose non-public information. be filed under seal. Pursuant to such an order, the petition or application shall remain under seal until the close of business on the fifth business day after it is filed, unless the appellate court otherwise orders. If during the 5-day period a motion to maintain the document under seal is filed in the appellate court, paragraph (b)(4) of this rule will apply.~~

(2) Counsel in appellate matters arising out of closed proceedings in the trial courts shall, wherever possible, avoid the use of full names of parties or other detailed identifying information in briefs, motions, and other papers filed with the appellate courts. Descriptive terms (“the oldest daughter,” “the prospective adoptive father”), pseudonyms (“Jane Doe”), first names, or initials should be used instead.

(3) A motion to file a paper under seal or to treat a paper as a confidential document in the appellate court, the response to such a motion, and the order ruling on such a motion, are open to public inspection and shall not themselves be filed under seal. ~~The motion must explain why the procedure described in subparagraph (b)(2) of this rule could not be used and will only be granted for good cause shown.~~ A motion to file a paper under seal or to treat a paper as a confidential document, whether or

not opposed, is not a “routine” motion within the meaning of Rule 503(e).

(4) A paper may be lodged with the court along with a motion to file it under seal or to treat it as a confidential document. Unless the court otherwise orders, it is not open to public inspection while the motion to file it under seal or confidentially is pending. If the motion is denied, and the paper has been lodged along with the motion, the movant has the option of withdrawing the paper or leaving it on file open to public inspection.

(c) General Provisions.

(1) Papers ~~filed under seal~~ that are confidential in the appellate courts may be examined or copied only by the parties to the case, counsel of record in the case, their agents or employees designated by them, those with a written court order authorizing access, and those personnel of the Alaska Court System having need to examine the papers in the performance of their duties, as provided by Administrative Rule 37.5(c)(4). Access to papers filed under seal in the appellate courts is restricted to the justices or judges of the court in which the papers were filed, the law clerks and staff attorneys assisting them in deciding the case, and persons authorized by written court order, as provided by Administrative Rule 37.5(c)(5).

(2) If further restrictions are ordered for good cause (for example, privileged material to which counsel for one party but not the other are entitled to access), the clerk of the appellate courts shall enforce those restrictions, including restrictions placed by the trial court upon materials filed with the trial court and included in the record on appeal.

(3) A paper shall not be withheld from public inspection because other papers included in the same case file or the same record on appeal have been filed under seal or are confidential and are not open to public inspection.

DATED: November 10, 2010

EFFECTIVE DATE: April 15, 2011

/s/
Chief Justice Carpeneti

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Christen

/s/
Justice Stowers