STATE OF NEW HAMPSHIRE

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New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. DRM 22-055
Rulemaking re N.H. Code Admin. Rules Puc 200

To the Commission:

Please treat this letter as the Comments of the Office of the Consumer Advocate ("OCA") in connection with the above-referenced rulemaking, in advance of the public hearing scheduled for November 17, 2022.

As the designated representative of residential utility customers pursuant to RSA 363:28, II, the OCA is keenly interested in the process of updating the Commission's procedural rules to account for the changes to the PUC's authority and operations brought about by the creation of the Department of Energy by the General Court effective on July 1, 2021. We also believe it is time to update other aspects of the Puc 200 rules to account for technological change and the evolving needs of those with business before the Commission.

I. General Observations about the Commission's Procedures

Prior to July 1, 2021, the Commission was an adjudicative body, subject to all of the procedural rigors of RSA 541-A (the Administrative Procedure Act, or "APA"), while at the same time employing a team of professionals who participated in adjudicative proceedings as if they were a party. *See* Rule Puc 203.01. This paradigm raised due process issues and posed other challenges, but it had the advantage of allowing the agency and its commissioners to stay abreast of adjudicative proceedings as they progressed toward hearing (at least in circumstances where staff members were not officially designated as advocates). Now, the Commission operates essentially as a court does, with its employees largely precluded from involvement in dockets pre-hearing, and the Commission has therefore clearly strained against these limitations in an understandable desire to stay informed and involved.

As a result, the Commission has misapplied its RSA 365:5 "independent inquiry" authority, its RSA 374:3 "general supervision" authority, and its RSA 374:4 duty "to keep informed as to all public utilities in the state" as the basis for conducting its own discovery in adjudicative proceedings. Similarly, the Commission has recently opened a series of investigative dockets

that are essentially freewheeling discovery exercises, brushing aside APA concerns on the ground that the Commission merely wishes to "engage in the open exchange of ideas" so as to "deepen its understanding" of questions consigned to its discretion. Transcript of October 12, 2022 Prehearing Conference in Docket No. IR 22-042 (tab 42) at 7, lines 3 and 16-17.

To justify its freewheeling approach to gathering information, the Commission has observed that the APA "contemplates may types of procedures other than adjudications and rulemaking" and "encourages information settlement of matters by non-adjudicative processes." *Id*. at 9, lines 5-7 and 12-14. The OCA respectfully disagrees with this interpretation of the Administrative Procedure Act but believes it is possible to amend the Puc 200 rules so as to allow the Commission to do its job knowledgeably and dynamically without compromising the rigorous attention to due process and fundamental fairness required of a quasi-judicial decisionmaking body such as the PUC.

RSA 541-A:31, II(a) makes clear that the Commission need not await a petition prior to commencing an adjudicative proceeding but may do so "at any time with respect to a matter with the agency's jurisdiction." Therefore, the revised Puc 200 rules should make clear that the Commission will open an adjudicative proceeding whenever it concludes that it must educate itself or oversee utility activities that will ultimately require an adjudicative outcome. The matters at issue in Docket No. IR 22-042 are a classic example of such a situation, given that RSA 374-F:3, VI-a(d) explicitly requires the Commission to determine by adjudication whether to approve the triennial energy efficiency plan whose development the Commission is attempting to oversee now.

Once adjudications are commenced, the Commission should make clear it will make more frequent use of the prehearing conferences authorized by RSA 541-A:31, V. Paragraph (c) of this provision recites a familiar list of matters amenable to consideration at a prehearing conference but explicitly specifies this list as non-exhaustive. Therefore, the Commission is free to use such pre-hearing conferences to conduct informal workshops on matters that will ultimately be resolved in the docket, provided that the commissioners take care not to make statements that will raise doubts about their impartiality as discussed in *Appeal of Seacoast Anti-Pollution League*, 125 N.H. 465 (1984). One way in which the commissioners might insulate themselves from inadvertently triggering such concerns would be to authorize the agency's hearings examiners to conduct such workshops on their behalf.

A possibility the Commission should *consider* is amending the rule on discovery to provide that written discovery responses be served on the Commission as well as parties. This, of course, would allow the Commission and its staff to monitor cases as they develop, gaining some insight into what the parties and their experts are thinking as they proceed toward hearing. If the Commission opts for this approach it should do so *very* carefully. Discovery responses should not automatically become of record in any proceeding – admissibility questions must be left for potential adjudication at hearing – and the Commission should immediately discontinue the practice it has adopted of issuing its own discovery, for the reasons given *supra*.[1]

[1] At the very least, the Commission should stop describing these interrogatories as "record requests." This term has historically applied to late-filed exhibits as authorized by Puc 203.30. Prior to hearing, it is misleading to refer to

II. Confidentiality and Protective Orders

The Commission's rules governing confidentiality – i.e., Puc 201.06 (deeming certain "routine" documents to be automatically confidential), Puc 201.07 (requests for public release of such documents), Puc 203.08 (motions for confidential treatment and provisionally confidential treatment for certain documents exchange in discovery) – should be overhauled. Currently these rules are framed as an exercise of the Commission's authority under RSA 91-A, the Right-to-Know Law.

Framed in that fashion, the Commission's procedural rules governing confidentiality are vulnerable to challenge for the simple reason that RSA 91-A is a *disclosure* statute and not a privacy statute. The Right-to-Know Law is *in pari materia* with its federal analog, the Freedom of Information Act ("FOIA"), *see New Hampshire Center for Public Interest Journalism v. New Hampshire Dep't of Justice*, 173 N.H. 648, 653 (2020) (noting that federal court interpretations of FOIA are "interpretatively helpful" to construing RSA 91-A) (citations omitted), and the U.S. Supreme Court long ago held that no one may invoke FOIA to force a government agency to withhold a document from public disclosure, *Chrysler Corp. v. Brown*, 441 U.S. 281, 291 (1979). In other words, there is no such thing as a "reverse FOIA" cause of action. *Id*. at 285.

Unfortunately, the issue remains unresolved as a matter of New Hampshire law. The New Hampshire Supreme Court deliberately sidestepped this very issue in April, suggesting that the General Court "may wish to consider whether clarification" of RSA 91-A is warranted. *Provenza v. Town of Canaan*, 175 N.H. 121, 281 A.3d. 965, 970 (2022) (citing *Brown* and similar holding from Rhode Island as well as countervailing authorities from Georgia and Kentucky). Given that the plaintiff in *Provenza* was a disgraced former police officer who had sued a local newspaper to prevent the public disclosure of the facts adduced in an investigation of his misconduct, and given that the plaintiff lost his RSA 91-A suit on the merits, it may be that the Court preferred not to enrage the law enforcement community further. But the calculus would likely be different if the question on appeal were, for example, whether a utility may force the Commission to withhold from public disclosure information that comprises "confidential, commercial, or financial information" within the meaning of RSA 91-A:5, IV, the typical basis for non-disclosure invoked in Commission proceedings. Given that the purpose of RSA 91-A is to "provide the utmost information to the public about what its government is up to," *Goode v. New Hampshire Office of Legislative Budget Assistant*, 148 N.H. 551, 555 (2002) (citation omitted), it is well past time for the Commission to discontinue its reliance on RSA 91-A as the basis for keeping the secrets of utilities and other parties with business before the agency.

Instead, the Commission should adopt a version of Rule 13B of the Rules of the New Hampshire Superior Court governing the production of confidential documents and paragraphs (a) through (c) of Superior Court Rule 29 governing disclosure of confidential information in the course of discovery.[2] Although, obviously, the Commission is not part of the judicial branch of state

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what is essentially discovery as record requests for the simple reason that there is no record, as such, prior to hearing.

[2] For reference, the full text of Rule 13B, and the relevant portions of Rule 29, both available at https://www.courts.nh.gov/rules-superior-court-state-new-hampshire, are appended to this letter.

government, the authority of the agency is "that which is expressly granted or fairly implied by statute." *Appeal of Public Service Co. of N.H.*, 130 N.H. 285, 291 (1988) (citation omitted). Thus, when the General Court vested in the Commission the authority to conduct adjudicative proceedings, there was an implied grant of authority to adopt rules and procedures that would allow the Commission to manage its cases in a manner similar to the well-established parameters applicable to civil litigation. The need for a protective order or other measures to assure that all necessary discovery can proceed while protecting any cognizable privacy interests is ripe for consideration at an RSA 541-A:31, V(b) prehearing conference.

Deleting references to RSA 91-A from the Commission rules governing confidentiality in the context of adjudication would have the salutary effect of allowing the agency to avoid pre-judging the outcome of requests for disclosure of documents from the public that legitimately invoke RSA 91-A. It is likely that the Commission could use a protective order entered in an adjudicative proceeding as the basis for withholding from such disclosure the unredacted versions of certain documents under RSA 91-A:5 as long as it is understood that no party may invoke RSA 91-A to require the Commission to treat the documents in its files in that fashion.

Finally, the OCA acknowledges its obligation under RSA 363:28,VI to abide by the Commission's docket-related confidentiality determinations as, in effect, the price of OCA access to confidential documents. We will continue to abide by this duty regardless of how the Commission resolves these issues via this rulemaking or otherwise. The OCA does not believe it has standing to challenge confidentiality determinations as long as our office has access to the information in question. It would be helpful if the applicable procedural rules made clear that parties must supply the OCA with unredacted documents in proceedings where the OCA has entered an appearance.

III. Additional Specific Comments

With apologies for adopting an approach that is somewhat scattershot, the OCA offers the following comments and suggestions about various specific provisions of the Puc 200 rules. Please treat this as a non-exhaustive list. The OCA is keenly interested in collaborating with other parties, and with the Commission itself, on optimizing the agency's procedural rules. We expect and assume that other participants will contribute ideas we will eagerly embrace.

A. Electronic Litigation

It is time for the Commission to go paperless, officially. The impromptu experiment in paperless litigation, commenced in light of the pandemic, has been a resounding success and should become permanent. The Puc 200 rules should specify that (a) pleadings and other filings should be submitted to a designated e-mail address at the agency, provided that a party without access to e-mail may still make paper filings by delivering them to the Commission's receptionist at the Walker Building, and (b) service of such pleadings should, likewise, be made electronically except in the case of a party without access to-email, in which case pleadings should be served by "snail" mail or in hand. The Commission should specify the hour by which a pleading must be received in order to be deemed to have been filed on the day in question; we have no opinion

whether that time should be 4:30 or later (presumably midnight) as long as the requirement is clearly stated.

The Commission should specify that its virtual file room, publicly available on the agency's web site, is the official record of its proceedings. The rules should state how the Commission will maintain service lists and where interested persons may access such lists. The Commission should also enshrine in its rules the custom of maintaining a courtesy service list consisting of those persons who wish to receive documents issued by the Commission in a particular docket, without requiring anyone else to serve persons on that list. As to actual service lists, the Commission should continue the custom of maintaining a "docket-related" list and a separate"discovery-related" list, but this should be formalized via a rule explain what these lists are and how one is entitled to be places on one or both.

The Commission should specify that cover letters are no longer required, as long as the e-mail transmitting the pleading makes clear the docket in which the document is being filed and any other information necessary to assure that the nature and significance of the filing is communicated.

B. Submission of Pleadings

The Commission should by rule specify one of its employees, designated as "clerk" or "executive director" or "secretary" or something similar, to whom pleadings should be addressed. The custom of addressing pleadings to the Chairman by name, instituted by fiat during the administration of a previous agency head, should be scrapped forthwith. The OCA currently addresses its pleadings to the Commission generically, but it is not out of any lack of respect for Chairman Goldner. We would no sooner address a pleading to him than we would make a filing with the New Hampshire Supreme Court addressed to Chief Justice MacDonald (as opposed to the clerk of the Court). The nominal submission of pleadings to a ministerial employee of the tribunal, rather than to its presiding officer, telegraphs to the world that the tribunal scrupulously honors the prohibition against *ex parte* communications. That is so even when, as here, no actual *ex parte* communications ever occur.

C. Contact for Persons with Questions

Similarly, the Commission should designate a clerk, executive director, secretary, or similar official who is the designated recipient of questions about commission procedures and similar ministerial matters. Litigants routinely communicate with clerks of court (and their deputies) for these purposes without triggering any *ex parte* concerns. As necessary, this designated Commission employee could advise anyone that their question must be addressed by the Commissioners and should therefore be made in writing with a copy provided to each person on the applicable service list. The lack of such a designated point of contact at the Commission has been the single most challenging aspect of doing business with the Commission since July 1, 2022; too often one is left to guess what the Commission wants, needs, or requires.

D. Treatment of Automatic Parties

As the Commission knows, two state agencies – the Department of Energy and the Office of the Consumer Advocate – are parties to Commission proceedings as of right and are not obliged to request intervention. Because the OCA does not participate in every PUC docket, for purposes of achieving clarity and avoiding confusion the OCA, pursuant to a longstanding memorandum of understanding with the Commission, is not considered a party unless and until the OCA files a letter of participation. The rules should make clear that the Department is always a party and it should specify when the OCA is a party.

E. Technical Sessions

The Commission's rule on discovery, Puc 203.09, specifically contemplates a variety of permissible methods of discovery, one of which is "technical sessions." *See* Puc 203.09(j) (concerning "other forms of discovery beyond the mainstay, data requests). This rule should be amended so as to define what a "technical session" is. A proposed definition: "'Technical session' means 'an informal meeting of parties to a proceeding, convened by the Department of Energy or such other party as the Commission shall designate, for the purpose of exchanging information other than in writing. A technical session is not a meeting of a "public body" pursuant to RSA 91-A:1-a, VI and thus is not open to the public and may be conducted electronically by agreement of the participants. As to any statement made by or on behalf of a party at a technical session, any other party may issue a data request seeking written confirmation of the statement. A technical session is not a settlement conference.'"

F. Discovery Boilerplate

Over the past decade or so, it has become habitual for parties exchanging data requests pursuant to Puc 203.09 to accompany such requests with detailed "boilerplate" instructions of the sort that is common in civil proceedings. The Commission should discourage this practice by making clear in Puc 203.09 that it is the rule, and not any written instructions issued by a party, that governs the process for making and responding to discovery requests.

G. Complaint Procedure

When the General Court created the Department of Energy, it amended RSA 365 – the chapter governing complaints against public utilities – in a manner that has engendered confusion, in part because the Commission's rules have not yet been amended accordingly. RSA 365:1 appears to specify that complaints must go in the first instance to the Department, which the Department must then forward to the utility for response pursuant to RSA 365:2 and which the Department may thereafter investigate pursuant to RSA 365:4. However, RSA 365:5 makes clear that the Commission need not await action by the Department; rather, the Commission may "on its own motion" may "investigate or make inquiry in a manner to be determined by it."

The Commission's Puc 200 rules should specify where members of the public should file RSA 365 complaints. We believe that, other than investigations instituted by the Commission's own motion, the rules should state that complaints must be filed with the Department in the first

instance but that the Commission will take up the complaint if has not been resolved within a specified time. The rules should continue to provide that a complaint not resolved at the Department level or otherwise by agreement will be addressed via an adjudicative proceeding.

H. Docket and Calendar

The Commission faithfully complies with the requirement of Rule Puc 202.02 by maintaining its docket (via the virtual file room on the agency web site) and calendar (available on the agency home page). The Commission should amend this rule to make clear the web site is the "go to" place for this information.

I. Admission of Pre-Filed Testimony as Documentary Evidence

According to the relevant provision of the APA, RSA 541-A:33, "[a]ll testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer" (paragraph I) but "[t]he rules of evidence shall not apply in adjudicative proceedings" and [a]ny oral or documentary evidence may be received" (paragraph II).

On occasion in the past, application of these parameters has been problematic in cases that the parties have agreed to resolve by settlement. Typically, these cases involve many witnesses, each of whom has submitted written pre-filed testimony. Also typically, the settlement provides for the admission of this testimony into the record. In these circumstances, particularly for the OCA and other parties with limited resources, it has been advantageous to avoid incurring the cost of bringing these witnesses to Concord for the mere purpose of adopting their written testimony by oath or affirmation.

Nevertheless, the Commission has on certain occasions in the relatively recent pass refused to admit prefiled testimony into the record unless it is either adopted in person or accompanied by a written affidavit. This is problematic for two reasons.

First, the written affidavit option is facially inconsistent with paragraph I of the statute, which requires any oath or affirmation to be "administered by the presiding officer." Second, and more importantly, the written testimony can and should be admissible "documentary evidence," thus allowing parties to avoid the expense and inconvenience of producing witnesses the parties have already agreed not to cross-examine (either because the factual contentions are not in dispute or the testimony has been superseded by settlement terms).

Therefore, the Commission should clarify its rules to the effect that in cases where the relevant facts are not in dispute, prefiled testimony will be admitted as documentary evidence. Conversely, when there is a legitimate need for the live testimony of a witness – either because there is no settlement or the Commission has questions for the witness – the rules should make clear that the witness will be expected to appear to give sworn testimony.

J. Motion Practice

Although the Puc 200 rules contemplate the submission and resolution of motions in connection with adjudicative proceedings, the rules are silent on what questions are appropriately raised by motion. The Commission should consider adopting a rule to the effect that any motion authorized under the rules of the Superior Court are likewise permissible in Commission proceedings.

K. Public Notice of Proceedings

The work of the Commission, and that of the utilities it regulates, proceeds in the internet era of the Twenty-First Century. Therefore, the Commission should abandon its reliance on Nineteenth Century technology for the purpose of giving the public notice of pending proceedings. Specifically, Puc 203.12 should be reformed so as to eliminate the newspaper publication requirement. Instead, the Commission should commit to posting notices on its own web site, require the utilities to post notices to their web sites, and should require utilities to send written notices of pending proceedings to the public libraries in their service territories for requested posting in a public place.

L. Prefiling of Exhibits

Largely as a result of the pandemic, the Commission has sensibly but informally been requiring parties to pre-file witness lists, exhibit lists, and exhibits themselves prior to hearing – typically five days prior. This is a sensible practice but should be enshrined in the Puc 200 rules. The applicable rule should also specify when late-filed exhibits will be accepted (essentially, when the need to introduce additional material into the record could not reasonably have been anticipated prior to the pre-filing deadline).

M. Record Requests

Rule Puc 203.30 describes circumstances in which it is permissible for a party to file exhibits after the close of a hearing. The practice of extending the hearing record in such fashion has long been known colloquially as "record requests" even though the phrase does not appear in Puc 203.30. Rule Puc 203.30 is reasonable – in particular, it is explicitly protective of parties' right of cross-examination – and it should be continued. To the extent there are circumstances when the Commission may lawfully require the submission of material by parties outside of an evidentiary hearing, it should stop referring to these directives as "record requests" and, more importantly, it should promulgate a rule describing with specificity when such submissions are appropriate.

N. Investigative Dockets and Other Generic Proceedings

As already stated, the OCA believes it is not appropriate for the Commission to make determinations outside of adjudications or rulemakings that concern the "legal rights, duties, or privileges of a party" as referenced in RSA 541-A:1, IV (defining "contested case"). The Commission should promulgate a rule that makes explicitly clear (a) when the Commission must

commence an adjudicative proceeding, including so-called "generic" proceedings that yield rulings affecting all utilities or all utilities in a particular industry, and (b) how and when it will conduct non-adjudicative proceedings whether denominated as "investigative" or otherwise.

O. Briefs and Written Arguments

Rule Puc 203.32 sets forth a reasonable standard for when post-hearing briefs are appropriate in adjudicative proceedings. Of late the Commission has adopted a somewhat similar practice of requesting written post-hearing "arguments" in lieu of oral closing arguments, usually well before what would be a reasonable deadline for briefs. The OCA is concerned about this practice, largely because it requires parties to file what are essentially briefs but without recourse to hearing transcripts. If the Commission intends to continue the practice of requesting written closing arguments, it should specify by rule when such filings, as distinct from full-blown briefs, are appropriate.

P. Scheduling of Hearings

The Commission should amend its rules so as to embrace a collaborative process with respect to the scheduling of evidentiary hearings. Nothing is more frustrating to those who must practice regularly before the Commission than the sense that the Commission, when scheduling hearings, is oblivious to the practical needs of the utility bar, utility regulatory staff and other experts who appear frequently, and other human beings who must order their lives according to the Commission's schedule.

Fortunately, two simple reforms would solve this problem. First, when the Commission opens a docket and summons the parties to an initial pre-hearing conference, the Commission should take up the question of hearing dates on the record at the actual conference – with Commissioners and other agency staff present and, presumably, able to confirm they are available for potential hearing dates. The rule governing prehearing conferences, Puc 203.15, should be amended to make clear that matters related to the scheduling of hearings will not be deferred to the technical session that typically follows the initial prehearing conference as has been the custom for many years. Second, the Commission should adopt the suggestion made above of designating an official who can be contacted by parties to raise ministerial issues like scheduling.

IV. Conclusion

On behalf of the state's residential utility customers, the OCA thanks the Commission for commencing this important proceeding and for the agency's willingness to collaborate with stakeholders. The Puc 200 rules (and any informal procedures not enshrined in the rules) should be optimized so that the Commission becomes even more of an efficient and responsive "order factory" than it is today. By that we mean: The job of the Public Utilities Commission is to decide the matters that are brought to it for resolution as quickly, efficiently, fairly, and thoughtfully as possible so that people and entities with business before the agency receive actionable guidance on matters consigned to the discretion of the agency. On those rare occasions when the Commission errs, and can and generally will be corrected by either the Supreme Court or the General Court, as appropriate. So, the Puc 200 rules should be written as

to help the Commission make its decisions as expeditiously, confidently, persuasively, fairly, and painlessly as possible. We look forward to the opportunity to assist the Commission in achieving that end.

Sincerely,

Donald M. Kreis
Consumer Advocate

Attachment: Superior Court Rules excerpts

ATTACHMENTS: Excerpts from the Rules of the New Hampshire Superior Court

Rule 13B. Confidential Documents and Confidential Information

(a) Access to Documents.
(1) *General Rule*. Except as otherwise provided by statute or court rule, all pleadings, attachment to pleadings, exhibits submitted at hearings or trials, and other docket entries (hereinafter referred to collectively as "documents") shall be available for public inspection. This rule shall not apply to confidential or privileged documents submitted to the court for *in camera* review as required by court rule, statute or case law.
(2) *Burden of Proof*. The burden of proving that a document or a portion of a document should be confidential rests with the party or person seeking confidentiality.
(3) The following provisions govern a party's obligations when filing a "confidential document" or documents containing "confidential information" as defined in this rule.
(b) Filing a Document Which Is Confidential In Its Entirety.
(1) The following provisions govern a party's obligations when filing a "confidential document" as defined in this rule. A "confidential document" means a document that is confidential in its entirety because it contains confidential information and there is no practicable means of filing a redacted version of the document.
(2) A confidential document shall not be included in a pleading if it is neither required for filing nor material to the proceeding. If the confidential document is required or is material to the proceeding, the party must file the confidential document in the manner prescribed by this rule.
(3) A party filing a confidential document must also file a separate motion to seal pursuant to section (d) of this rule.
(4) A party filing a confidential document shall identify the document in the caption of the pleading so as not to jeopardize the confidentiality of the document but in sufficient detail to allow a party seeking access to the confidential document to file a motion to unseal pursuant to section (e) of this rule.
(c) Documents Containing Confidential Information.
(1) The following provisions govern a party's obligations when filing a document containing "confidential information" as defined in this rule. If a document is confidential in its entirety, as defined in section (b) of this rule, the party must follow the procedures for filing a confidential document set forth in section (b).
(2) "Confidential Information" means:
(A) Information that is not public pursuant to state or federal statute, administrative or court rule, a prior court order placing the information under seal, or case law; or
(B) Information which, if publicly disclosed, would substantially impair:
(i) the privacy interests of an individual; or
(ii) the business, financial, or commercial interests of an individual or entity; or
(iii) the right to a fair adjudication of the case; or
(C) Information for which a party can establish a specific and substantial interest in maintaining confidentiality that outweighs the strong presumption in favor of public access to court records.

(3) The following is a non-exhaustive list of the type of information that should ordinarily be treated as "confidential information" under this rule:
(A) information that would compromise the confidentiality of juvenile delinquency, children in need of services, or abuse/neglect, termination of parental rights proceedings, adoption, mental health, grand jury or other court or administrative proceedings that are not open to the public; or
(B) financial information that provides identifying account numbers on specific assets, liabilities, accounts, credit card numbers or Personal Identification Numbers (PINs) of individuals including parties and non-parties; or
(C) personal identifying information of any person, including but not limited to social security number, date of birth, mother's maiden name, a driver's license number, a fingerprint number, the number of other government-issued identification documents or a health insurance identification number.
(4) *Filing Documents Containing Confidential Information*.
(A) When a party files a document the party shall omit or redact confidential information from the filing when the information is not required to be included for filing and is not material to the proceeding. If none of the confidential information is required or material to the proceeding, the party should file only the version of the document from which the omissions or redactions have been made. At the time the document is submitted to the court the party must clearly indicate on the document that the document has been redacted or information has been omitted pursuant to Rule 13B(c)(4)(A).
(B) It is the responsibility of the filing party to ensure that confidential information is omitted or redacted from a document before the document is filed. It is not the responsibility of the clerk or court staff to review documents filed by a party to determine whether appropriate omissions or redactions have been made.
(C) If confidential information is required for filing and/or is material to the proceeding and therefore must be included in the document, the filer shall file:
(i) a motion to seal as provided in section (d) of this rule;
(ii) for inclusion in the public file, the document with the confidential information redacted by blocking out the text or using some other method to clearly delineate the redactions; and
(ii)1an unredacted version of the document clearly marked as confidential.
(d) Motions to Seal.
(1) No confidential document or document containing confidential information shall be filed under seal unless accompanied by a separate motion to seal consistent with this rule. In other words, labeling a document as "confidential" or "under seal" or requesting the court to seal a pleading in the prayers for relief without a separate motion to seal filed pursuant to this rule will result in the document being filed as part of the public record in the case.
(2) A motion to seal a confidential document or a document containing confidential information shall state the authority for the confidentiality, *i.e.*, the statute, case law, administrative order or court rule providing for confidentiality, or the privacy interest or circumstance that requires confidentiality. An agreement of the parties that a document is confidential or contains confidential information is not a sufficient basis alone to seal the record.
(3) The motion to seal shall specifically set forth the duration the party requests that the document remain under seal.

(4) Upon filing of the motion to seal with a confidential document or the unredacted version of a document, the confidential document or unredacted document shall be kept confidential pending a ruling on the motion.
(5) The motion to seal shall itself automatically be placed under seal without separate motion in order to facilitate specific arguments about why the party is seeking to maintain the confidentiality of the document or confidential information.
(6) The court shall review the motion to seal and any objection to the motion to seal that may have been filed and determine whether the unredacted version of the document shall be confidential. An order will be issued setting forth the court's ruling on the motion to seal. The order shall include the duration that the confidential document or document containing confidential information shall remain under seal.
(7) A party or person with standing may move to seal or redact confidential documents or confidential information that is contained or disclosed in the party's own filing or the filing of any other party and may request an immediate order to seal the document pending the court's ruling on the motion.
(8) If the court determines that the document is not confidential, any party or person with standing shall have 10 days from the date of the clerk's notice of the decision to file a motion to reconsider or a motion for interlocutory appeal to the supreme court. The document shall remain under seal pending ruling on a timely motion. The court may issue additional orders as necessary to preserve the confidentiality of a document pending a final ruling or appeal of an order to unseal.

(e) Procedure for Seeking Access to a Document or Information Contained in A Document that has been Determined to be Confidential

(1) Any person who seeks access to a document or portion of a document that has been determined to be confidential shall file a motion with the court requesting access to the document in question. There shall be no filing fee for such a motion.
(2) The person filing a motion to unseal shall have the burden to establish that notice of the motion to unseal was provided to all parties and other persons with standing in the case. If the person filing the motion to unseal cannot provide actual notice of the motion to all interested parties and persons, then the moving person shall demonstrate that he or she exhausted reasonable efforts to provide such notice. Failure to effect actual notice shall not alone be grounds to deny a motion to unseal where the moving party has exhausted reasonable efforts to provide notice.
(3) The Court shall examine the document in question together with the motion to unseal and any objections thereto to determine whether there is a basis for nondisclosure and, if necessary, hold a hearing thereon.
(4) An order shall be issued setting forth the court's ruling on the motion, which shall be made public. In the event that the court determines that the document or information contained in the document is confidential, the order shall include findings of fact and rulings of law that support the decision of nondisclosure.
(5) If the court determines that the document or information contained in the document is not confidential, the court shall not make the record public for 10 days from the date of the clerk's notice of the decision in order to give any party or person with standing aggrieved by the decision time to file a motion to reconsider or appeal to the supreme court.

(f) Sanctions for Disclosure of Confidential Information. If a party knowingly publicly files documents that contain or disclose confidential information in violation of these rules, the court may, upon its own motion or that of any other party or affected person, impose sanctions against the filing party.

RULE 29. DISCOVERY MOTIONS

(a) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court 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: (a) that the discovery not be had; (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (e) that discovery be conducted with no one present except persons designated by the court; (f) that a deposition after being sealed be opened only by order of the court; (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(b) Motions for a protective order relating to trade secrets, confidential research, development or commercial information, or other private or confidential information sought through discovery shall be filed within the time set by these rules to respond to the discovery request or within 30 days of the date of automatic disclosure required by Rule 22, including any extensions agreed to by the parties or ordered by the court, or within ten days of an order of production of records. All protective orders, whether assented to or not, must be approved by the court.

(c) If a motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.