

By Michael K. Jeanes, Clerk of the Superior Court

### **Sealed documents and sensitive information**

#### **Motion to seal with documents to be sealed**

Millions of documents are filed with the Clerk's office each year, but less than one-half percent are ordered sealed by the court. When petitioning the court to seal, the motion and relevant documents should be delivered on paper directly to the assigned judicial officer's division. If documents are delivered to the Clerk's office prior to being ordered sealed, they may end up in the electronic court record and viewed by the public while the court is reviewing the request. The eFiling Guidelines and AZTurboCourt require that documents filed under seal must be on paper and cannot be filed electronically.

When a sealing determination is made, the judicial officer's division delivers the Order and the original documents to the Clerk's office at the same time for filing. If the motion is denied, the documents will be filed-in to the case as public records. If the motion is granted, the clerk will file-in and maintain the documents under seal per the specific direction in the court's order.

#### **Motion to seal before filing**

Sometimes the court's order to seal individual documents applies to items that will be filed in the future. Those documents must be filed on paper only. In that situation, the original documents for filing should be placed in an envelope before delivering them to the Clerk's file counter. A copy of the order to file under seal should be placed on the outside of the envelope.

To docket sealed items, the Clerk's office needs a cover sheet generally describing the document in the envelope. For example, "Report dated April 2, 2015" or "Medical records ordered filed under seal." When the information allows, parties may include a copy of the first page of the document outside the envelope instead of a cover sheet and the clerk can type the docket entry based on the document's title. If conformed copies are desired, they should be handed to the clerk to stamp and hand back. The filing party can also place their copies in envelopes and the clerk will conform-stamp the envelopes.

These precautions alert Clerk staff that special handling applies and reduces the chance of the documents being processed with public-record filings. A document for filing under seal that is one of many documents within a stack of daily filings given to a runner service increases the risk that a file counter clerk will not recognize the special handling required. A notation alone on the face of the document is insufficient, as the Clerk's office can only seal records when the court-ordered authority is identified.

**Entire case sealed**

Sometimes the court seals an entire case. In that situation, all parties in the case must file all documents on paper and the Clerk's office flags the case in its case management system. When an entire case is ordered sealed, all paper filings can be presented to the Clerk's office without envelopes, as the case management system will recognize the case number as a sealed matter and its programming will prevent public access to the records.

**Sensitive information**

Be aware of differences between the courts and other government agencies regarding sensitive information and public records. Most state agencies are subject to the public access requirements in Title 39 of the Arizona Revised Statutes and have affirmative duties to redact information from records before making them available to the public.

Arizona Supreme Court Rule 123 controls access to court records and is similar in many ways to the statutes, but with key differences. Filing parties are responsible for keeping sensitive or protected information out of documents before filing with the Clerk's office. Once filed-in, the Clerk's office requires a court order to modify, redact or replace a public case record.

For example, one filer included each petitioner and respondent's social security number next to their name in the case caption of their pleading. Family court filers have disclosed personal and medical information in public documents. The Clerk's office does not have the authority to reject a document on this basis and no independent authority to alter the content of a document presented for filing that contains this information.

With tens of thousands of pages of paper filed each day, review clerks do a quick scan of documents, looking for obvious formatting, signature, appearance and payment issues. Clerks are unlikely to know that information contained in a document is either sensitive or restricted and do not second-guess what the filing party includes in a filing.

A document containing social security numbers, financial account information, victim information, details ordered by the court to be left out of the public record or other sensitive information will be available in the public record unless and until the court or a party takes specific action to correct the filing party's oversight. Several court rules and case types, such as Mental Health, Probate and Juvenile, have special procedures for filing documents with sensitive information in a way that the judicial officer and parties can access the records, but not the general public.

By following the suggestions here and the case-specific rules and statutes that apply, you can be confident your documents will be filed and maintained as required.