

LETTERS TO THE EDITOR

Alabama's new rules for court record privacy and confidentiality

BY GREG COOK

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To the editor:

In the holiday rush, you may have missed a new set of rules issued just before Christmas. Almost five years ago, two committees appointed by the Alabama Supreme Court began working on the important issue of public access to court records (the Standing Committees on the Rules of Civil Procedure and the Rules of Appellate Procedure). Former Judge Scott Donaldson and respected appellate counsel David Wirtes were appointed chairs of a special joint task force to tackle this important but complicated issue. The chairs served with over 15 other experienced and dedicated public servants including the Clerks of Court for all three appellate courts, a Circuit Clerk, a

representative from the Alabama Law Institute and lawyers from many different areas of the law. Their finished product reflected their meticulous and lengthy process. Alabama should be proud.

The new rules reflect the competing needs of the public for access to court records. On the one hand, Alabama law promotes transparency for court records and provides that “[e]very citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute. ...” Our case law has long recognized this important right of transparency. See, e.g., *Holland v. Eads*, 615 So. 2d 1012, 1014 (Ala. 1993) (“it is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents”); *Brewer v. Watson*, 61 Ala. 310, 311 (1878) (“[a]n inspection of the records of judicial proceedings kept in the courts of the country, is held to be the right of any citizen”).

On the other hand, Alabama law also protects the vital privacy interests of our citizens – including some of our most vulnerable. Thus, there are many recognized exceptions to this general right of access. Some are statutory and some have been established by caselaw or by court rule. Just a few examples of many such exceptions include abuse and neglect records (Ala. Code §§ 26-14-8[c] and 15-1-2); adoption files and adoption court records (Ala. Code § 26-10A-31); treatment records of drug offenders (Ala. Code § 12-23A-10[c]); domestic abuse victims’ contact information (Ala. Code § 30-5-5); and trade secret information (Ala. Code §§ 8-27-2, 22-30-18, and 27-22-25). In fact, there are over 100 different Alabama statutes distributed across 27 different titles of our Alabama Code concerning such confidentiality.

Balancing these two critical concerns is a daunting task, made the more difficult by the widely scattered laws. What practitioners and court staff needed was a set of clear rules in one place. The Joint Task Force spent their first two years reviewing these existing laws, the case law and rules – as well as the law from each of the other 49 states and secondary sources (such as the Sedona Conference). They produced 28 pages of detailed rules and comments. And, after their initial work, they requested public comment and

revised their rules based upon the comment. After they finalized the proposed rules, they submitted to our Court. Our Court then worked with the Task Force on many rounds of changes. Eventually, we involved our Reporter of Decisions for finalizing all edits. The resulting rules are a true team effort, reflecting the investment of thousands of hours of time by these dedicated task force members. The rules will be in one place so that practitioners and court staff can locate and comply with them far easier than previously. I am certain that, like all rules of court, our Court will be called upon to update these rules over time; however, they will serve the public well and promote the transparency of our courts while protecting those most vulnerable. I am grateful for all of those who invested in these rules and I urge the bench and the bar to familiarize themselves with these very useful rules going forward.

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