

NOTICE OF COMMENT PERIOD

The Practice and Procedure Committee of the Nebraska Supreme Court submitted proposed rule amendments and draft orders governing public review of exhibits in the trial courts, Neb. Ct. R. §§ 6-505 to 6-507. The Nebraska Supreme Court directed that the proposed rule amendments and draft orders be published for a public comment period.

The Nebraska Supreme Court invites interested persons to comment on the proposed rule amendments and draft orders. Anyone desiring to comment should do so in writing to the office of the Clerk of the Supreme Court and Court of Appeals, P.O. Box 98910, Lincoln, Nebraska 68509-8910, or via e-mail to wendy.wussow@nebraska.gov, with “Exhibits Rule” in the subject line, no later than November 12, 2020.

The full text of the proposed amendments and draft orders is available below, or a paper copy may be obtained from the office of the Clerk of the Supreme Court and Court of Appeals upon request.

CHAPTER 6: TRIAL COURTS

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Article 5: Exhibit Disposition and Review.

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§ 6-505. Neb. Rev. Stat. § 27-1301 child pornography exhibits.

Notwithstanding the provisions of §§ 6-501 through ~~6-504~~ 6-507, exhibits constituting visual depiction of sexually explicit conduct involving a child, as defined by Neb. Rev. Stat. § 27-1301 and controlled by Neb. Ct. R. § 6-1801, shall remain constantly and continuously in the care, custody, and control of the court in which the exhibit was introduced, whether or not received into evidence by such court, until it is returned to the introducing attorney or law enforcement or otherwise disposed of as ordered by that court. Exhibits under this section are not public records.

§ 6-506. Sealing of exhibits.

A party to a case, or a person who has an interest in the protection of information contained in an exhibit offered and/or received in a case (interested person), may request an order or the court upon its own motion may enter a written order that seals or limits access to an exhibit subject to the provisions in § 6-507. (Appendix 1). The order shall indicate the reason(s) for sealing the record and who shall have access to the sealed record.

§ 6-507. Public review of exhibits.

(A) Unless nondisclosure or confidentiality is required by law or court rule, the following exhibits are presumed to be public records: (1) exhibits submitted in support of or in opposition to a motion; or (2) exhibits offered into evidence, whether or not admitted, in a court proceeding open to the public.

(B) Procedure. A member of the public may submit to the clerk of the court a written request to inspect an exhibit or request a copy of an exhibit that is presumed to be public under § 6-507(A), even if the exhibit has previously been sealed by the court.

(1) The clerk shall forward a copy of the request to the court; to the court reporting personnel, if custodian of the exhibit; to the parties in the case; and if applicable, to any interested person as described in § 6-506. The court may order that notice be given to any other person(s) who may be affected by the release of the exhibit. Unless the court, a party, an interested person as described in § 6-506, or other person as determined by the court objects to the release or unsealing of the exhibit within 3 business days, the custodian of such exhibit shall permit inspection or provide a copy as soon as practicable, but no more than 4 business days unless the request cannot with reasonable good faith efforts be fulfilled within 4 business days after actual receipt of the request. The requestor shall pay all reasonable costs for copies of such exhibit(s) pursuant to Neb. Rev. Stat. § 84-712.

(2) If the court, a party, an interested person as described in § 6-506, or other person as determined by the court objects to the release or unsealing of the exhibit, the court shall hold a hearing as soon as practicable. The presumption of public status of an exhibit may be overcome if the court finds that there exists a countervailing interest in limiting public access. A countervailing interest may include, but is not

limited to the following: (a) fair and orderly administration of justice; (b) protection of public safety; (c) use of exhibit for improper purposes; and/or (d) confidentiality.

(3) The court shall first consider reasonable alternatives to sealing or restricting access to an exhibit, including delay in release of the exhibit or ordering the parties to provide a redacted version of the exhibit for public review. An agreement of the parties to seal or restrict exhibits shall not alone constitute a countervailing interest in limiting public access.

(4) A written order restricting such public access to an exhibit shall be entered in the case and shall state with specificity the countervailing interest. If the court finds no countervailing interest exists in restricting access, then the court shall direct the release of the exhibit by the custodian for inspection or copying. (Appendix 2).

(C) If the exhibit is nondocumentary in nature, the court, in its discretion, may place limits on access to the viewing, handling, photographing, or copying of such nondocumentary exhibits.

(D) Unless nondisclosure or confidentiality is required by law or court rule, this rule does not prohibit a court in its discretion, with agreement from the parties and interested persons, if any, from making unsealed exhibits available to the public upon request during the course of a trial or other public proceeding.

IN THE _____ COURT OF _____ COUNTY, NEBRASKA

_____)	CASE NO. _____
)	
Plaintiff,)	
)	ORDER SEALING
v.)	EXHIBIT(S)
_____)	PURSUANT TO
)	RULE § 6-506 AND § 6-507
Defendant.)	

On the _____ day of _____, 20____, this matter came before the Court on the motion of:

_____ the Plaintiff / Defendant (circle one, or both if by agreement*) to seal exhibit number(s): _____

(*agreement of the parties to seal or restrict exhibits shall not alone constitute a countervailing interest in limiting public access, see Neb. Ct. R. § 6-507(B)(3))

_____ the Court to seal exhibit number(s): _____

_____ an interested person to seal exhibit number(s): _____

Present for the hearing were:

_____ Plaintiff _____ Plaintiff's attorney

_____ Defendant _____ Defendant's attorney

_____ Other: _____

THE COURT FINDS:

_____ **REQUEST TO SEAL SHOULD BE DENIED** in total or in part as to exhibit number(s) _____ for the reason(s) checked below.

_____ A reasonable alternative to sealing or restricting access to the exhibit(s) exists, namely that confidential information can be redacted from the exhibit(s);

_____ No countervailing interest in limiting public access to the exhibit(s) overcomes the presumption of public status of the exhibit(s);

_____ Other: _____

_____ **REQUEST TO SEAL SHOULD BE GRANTED** as to exhibit number(s) _____ . No reasonable alternative to sealing or restricting access to the exhibit(s) exists, and a countervailing interest in limiting public access to the exhibit(s) overcomes the presumption of public status of the exhibit(s), namely:

_____ sealing the exhibit(s) promotes the fair and orderly administration of justice;

_____ sealing the exhibit(s) protects public safety;

_____ the exhibit(s) is/are in danger of improper use;

_____ the exhibit(s) contain(s) confidential information which cannot be reasonably redacted;

_____ Other: _____.

ACCESS TO SEALED EXHIBIT(S) shall be limited to trial and appellate courts, and (check all that apply):

_____ Attorneys of record

_____ Parties to the action

_____ Other(s), namely: _____

EXHIBIT NUMBER(S) TO BE SEALED: _____

IT IS THEREFORE ORDERED:

_____ that the request to seal exhibit(s) is denied in total or in part as set forth above.

AND/OR

_____ that the exhibit number(s) listed above to be sealed, if any, shall be sealed and shall not be available for public inspection or copying except upon further court order.

DATED this _____ day of _____, 20_____.

BY THE COURT:

Judge

APPENDIX 1

IN THE _____ COURT OF _____, COUNTY, NEBRASKA

_____,) CASE NO. _____
)
Plaintiff,)
)
v.) ORDER
) ON PUBLIC REVIEW
_____,) OF EXHIBIT(S)
) PURSUANT TO
Defendant.) RULE § 6-507

On the _____ day of _____, 20____, this matter came on for hearing before the Court on an objection to a request pursuant to Neb. Ct. R. § 6-507 to inspect or copy the following exhibit(s):

Exhibit number(s): _____

Present for the hearing were:

_____ Plaintiff _____ Plaintiff's attorney

_____ Defendant _____ Defendant's attorney

_____ Other: _____

THE COURT FINDS:

_____ **EXHIBIT(S) TO BE RELEASED FOR PUBLIC INSPECTION OR COPYING.** No countervailing interest in limiting public access to the exhibit(s) identified below overcomes the presumption of public status of the exhibit(s), and therefore, the following exhibit(s) shall be made available by the custodian of the exhibit(s) for inspection or copying at the requesting party's costs as provided in Neb. Ct. R. § 6-507(B)(1). If the following exhibit(s) has/have previously been sealed by order of the court, the exhibit(s) shall be unsealed by this order:

Exhibit number(s): _____

_____ **PUBLIC INSPECTION OR COPYING OF THE FOLLOWING EXHIBIT(S) DENIED UNTIL FURTHER COURT ORDER.**

Exhibit number(s): _____

_____ **PUBLIC INSPECTION OR COPYING OF THE FOLLOWING EXHIBIT(S) TEMPORARILY DENIED UNTIL _____,**
at which time the reason(s) for denial checked below shall have expired.

Exhibit number(s): _____

REASON(S) FOR DENIAL: A countervailing interest in limiting public access to the exhibit(s) overcomes the presumption of public status of the exhibit(s), namely (check all that apply):

_____ sealing or restricting access to the exhibit(s) promotes the fair and orderly administration of justice;

_____ sealing or restricting access to the exhibit(s) protects public safety;

_____ sealing or restricting access to the exhibit(s) is necessary because the exhibit(s) is/are in danger of improper use;

_____ sealing or restricting access to the exhibit(s) is/are necessary because the exhibit(s) contain(s) confidential information which cannot be reasonably redacted;

_____ the requested exhibit(s) has/have been previously sealed by court order and the reason(s) for sealing the exhibit(s) set forth in the order has/have not changed;

_____ Other: _____.

IT IS THEREFORE ORDERED:

_____ Effective immediately, the following exhibit(s) **SHALL** be made available by the custodian of the exhibit(s) for public inspection or copying at the requesting party's costs as provided in Neb. Ct. R. § 6-507(B)(1):

Exhibit number(s): _____

_____ Effective _____, the following exhibit(s) **SHALL** be made available by the custodian of the exhibit(s) for public inspection or copying at the requesting party's costs as provided in Neb. Ct. R. § 6-507(B)(1):

Exhibit number(s): _____

_____ The following exhibit(s) **SHALL NOT** be available for public inspection or copying for the reason(s) set forth above until further court order:

Exhibit number(s): _____

DATED this _____ day of _____, 20_____.

BY THE COURT:

Judge

APPENDIX 2