

Rule 11. Submission of Confidential Information**Rule 11.01 Definitions**

The following definitions apply for the purposes of this rule:

(a) "Restricted identifiers" means any of the following numbers of any person or legal entity: a complete or partial social security number, employer identification number, or other taxpayer identification numbers; and any financial account numbers other than the last four numbers of a financial account number that is not also a social security, employer identification, or other taxpayer identification number.

(b) "Financial account number" means a string of numeric or alphanumeric characters assigned to a credit, deposit, trust, insurance, or other account that can be used by someone other than those authorized to access the account to obtain access to the account for unauthorized transactions, provided that a billing number issued by a government entity which number is publicly accessible from such government entity is not a financial account number under this rule. For the convenience of filers, the state court administrator may establish a non-exclusive list of examples of financial account numbers, and the list shall be posted on the judicial branch website (www.mncourts.gov).

(c) "Financial source documents" means income tax returns, W-2 forms and schedules, wage stubs, credit card statements, financial institution statements, check registers, and other financial information deemed financial source documents by court order.

(Amended effective July 1, 2007; amended effective July 1, 2014; amended effective January 1, 2021.)

Rule 11.02 Restricted Identifiers; Submission; Certification

(a) Records Generated by External Filers. Restricted identifiers are prohibited in all documents or other records filed with the court except when the restricted identifiers are germane and necessary for the court's consideration of the issues then before the court. If it is necessary to provide restricted identifiers to the court, they must be submitted in one of the following two ways:

(1) on a separate Confidential Information Form 11.1 as published by the state court administrator; or

(2) on a non-public document submitted in accordance with Rule 11.03.

The Confidential Information Form 11.1 shall not be accessible to the public.

Every person who files any other document or other record with the court is solely responsible for ensuring that it contains no restricted identifiers, except as permitted in section (a) of this rule. The court administrator will not review each record for compliance with this rule. Notwithstanding this provision, the court administrator may take any action consistent with Rule 11.05.

(b) Records Generated by the Court. Restricted identifiers maintained by the court in its register of actions (i.e., activity summary or similar information that lists the title, origination, activities, proceedings and filings in each case), calendars, indexes, and judgment docket shall not be accessible to the public. Courts shall not include restricted identifiers on judgments, orders, decisions, and notices except on a Confidential Information Form 11.1, which shall not be accessible to the public.

(c) Certification. Every filing shall constitute a certification by the filer that the documents filed contain no restricted identifiers, except as permitted in section (a) of this rule. For documents

filed using the E-Filing System, this certification may additionally be provided by electronically acknowledging the certification statement in the manner designated by the E-Filing System.

(Added effective July 1, 2005; amended effective January 1, 2010; amended effective July 1, 2014; amended effective July 1, 2015; amended effective January 1, 2021.)

Rule 11.03 Filer's Duty to Identify Non-Public Document Using Cover Sheet Plus E-Filing Designation, or Using E-Filing Code Plus E-Filing Designation

(a) **Cover Sheet or E-Filing Code Required.** Every person filing non-public documents with the court in public case types is solely responsible for identifying and designating them as non-public. When e-filing, non-public documents shall also be designated as Confidential or Sealed in the E-Filing System as required by Rule 14.06 of these rules. In all case types, restricted identifiers shall only be filed as authorized in Rule 11.02 of these rules. In juvenile protection cases, other confidential information and confidential documents must be filed as provided in Rule 8.04 of the Rules of Juvenile Protection Procedure. All other individual non-public documents filed in public cases, including but not limited to financial source documents, shall be:

(i) filed with the court with a separate, publicly accessible Form 11.2 Cover Sheet for Non-Public Documents as published by the state court administrator; or

(ii) e-filed with a specific filing code in the E-Filing System or via Court Integration Services, which defaults the document to Confidential or Sealed, as published in the E-Filing Code Guides by the state court administrator for that specific type of non-public document and case type.

Financial source documents and other non-public documents submitted as required in part (i) or (ii) above are not accessible to the public except to the extent that they are admitted into evidence in a testimonial hearing or trial or as provided in Rule 11.06 of these rules. The filer must file the Form 11.2 Cover Sheet for Non-Public Documents as a separate document from the non-public documents. The Form 11.2 Cover Sheet for Non-Public Documents shall be accessible to the public.

(b) **Closed Account Statements.** Statements from a permanently closed (also known as "charged off") credit card or financial institution account that has been identified as a closed account in a related filed document need not be submitted with a Form 11.2 Cover Sheet for Non-Public Documents unless desired by the filing party or as directed by the court.

(c) **Absence of Cover Sheet or E-Filing Code.** Non-public documents that are not submitted as required in part (a)(i) or (a)(ii) above are accessible to the public, but the court may, upon motion or on its own initiative, order that any such document be non-public.

(d) **Not Applicable to Non-Public Case Types.** This Rule 11.03 is not applicable to non-public case types. The state court administrator shall maintain and publish on the judicial branch website a list of non-public case types.

(Added effective July 1, 2005; amended effective July 1, 2007; amended effective January 1, 2010; amended effective July 1, 2014; amended effective July 1, 2015; amended effective January 1, 2021.)

Rule 11.04 When Documents May Be Filed as Non-Public

Non-public documents may be filed as "confidential documents" or as "sealed documents." A person may submit a document for filing as a "confidential document" or "sealed document" only if one of these circumstances exists:

(a) The court has issued an order permitting the filing of the particular document or class of documents under seal or as confidential.

(b) This rule or any applicable court rule, court order, or statute expressly authorizes or requires filing under seal or as confidential.

(c) The filer files a motion for leave to file as confidential or under seal not later than at the time of submission of the document.

The court may require a filing party to specify the authority for asserting that a filing is a "confidential document" or "sealed document." For purposes of this rule, the terms "confidential document" and "sealed document" shall have the meanings set forth in Rule 14.01. Additional requirements for electronically submitting a document as confidential or sealed in the E-Filing System are set forth in Rule 14.06.

Upon review, the court may modify the designation of any document incorrectly designated as confidential or sealed and shall provide prompt notice of any such change to the person who filed the document.

(Added effective January 1, 2021.)

Rule 11.05 Failure to Comply

If a filer fails to comply with the requirements of this rule in regard to any restricted identifiers or other non-public information, the court may upon motion or its own initiative impose appropriate sanctions, including costs necessary to prepare an appropriate document for filing.

Any person may notify the court administrator at any time that a restricted identifier or other non-public information appears in a publicly accessible court record. Upon discovery that a document containing a restricted identifier or other non-public information has not been submitted in a confidential manner as required by this rule, the court administrator shall restrict public access to the document pending redaction or court order and direct the filer to, within 3 days, either:

(1) serve and file a properly redacted filing, including any necessary cover sheet, and pay any prescribed monetary fee to the court, and, if the party desires that the filing date of the resubmitted document(s) relates back to the filing date of the original document(s), serve and file a motion requesting the relation-back to the original filing date; or

(2) file a motion for relief from the court.

Any other party may oppose the motion seeking relation-back to the original filing date within the same time limits as are provided by law for the type of document(s) being filed. If a filer timely pays the monetary fee, and timely requests relation-back of the filing date, the court may, in the interests of justice, order that the filing date of the properly submitted document(s) relate back to the filing date of the original document(s). The court may additionally impose any sanctions it finds appropriate for the filer's non-compliance.

Except in criminal, civil commitment, and juvenile delinquency cases, or for medical records filed in any case type, if no action is taken within 3 days after direction from the court administrator, the court administrator shall strike the document so it is not accessible to the public, the parties, or the court. The parties and the court shall not consider the stricken document to be part of the court record unless the court, in the interests of justice under the circumstances of the individual case, orders the court administrator to restore the document to the official court record.

(Amended effective July 1, 2015; renumbered and amended effective January 1, 2021.)

Rule 11.06 Procedure for Requesting Access to Confidential Financial Source Documents

(a) Motion. Any person may file a motion, supported by affidavit showing good cause, for access to Confidential Financial Source Documents or portions of the documents. Written notice of the motion to all parties is required.

(b) Waiver of Notice. If the person seeking access cannot locate a party to provide the notice required under this rule, after making a good faith reasonable effort to provide such notice as required by applicable court rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provisions of this rule. The court may waive the notice requirements of this rule if the court finds that further good faith efforts to locate the party are unlikely to be successful.

(c) Balancing Test. The court shall allow access to Confidential Financial Source Documents, or relevant portions of the documents, if the court finds that the public interest in granting access or the personal interest of the person seeking access outweighs the privacy interests of the parties or dependent children. In granting access the court may impose conditions necessary to balance the interests consistent with this rule.

(Amended effective July 1, 2014; amended effective July 1, 2015; renumbered effective January 1, 2021.)

Rule 11.07 Procedure for Requesting Access to Other Non-Public Records

Any person may request access to records not governed by Rule 11.06 of these rules by following the procedures set forth in Rule 7 of the Rules of Public Access to Records of the Judicial Branch and any other applicable court rules.

(Added effective January 1, 2021.)

Rule 11.08 Exceptions

Rule 11 does not apply to search warrants or related documents filed administratively by law enforcement pursuant to Minnesota Statutes, section 626.17, and Rule 33.04(a)-(b) of the Rules of Criminal Procedure, except that if such a document contains a restricted identifier it shall be filed with a Form 11.2 Cover Sheet for Non-Public Documents in the manner described in Rule 11.03(a)(1) of these rules. Rule 11 does apply to search warrants and related documents filed by parties in a case.

If any person filing a medical record in a civil commitment case fails to designate the medical record as non-public upon filing, the court administrator shall not reject the filing due to the failure to do so.

(Added effective January 1, 2021.)

Advisory Committee Comment - 2005 Amendment

Rule 11 is a new rule, but is derived in part from former Rule 313. It is also based on WASH. GR 22 (2003). Under this rule, applicable in all court proceedings, parties are now responsible for protecting the privacy of restricted identifiers (social security numbers or employer identification numbers and financial account numbers) and financial source documents by submitting them with the proper forms. Failure to comply would result in the public having access to the restricted identifiers and financial source documents from the case file unless the party files a motion to seal them or the court acts on its own initiative under Rule 11.03. The Confidential Information Form from Rule 313 is retained, modified, and renumbered, and a new Sealed Financial Source Documents

cover sheet has been added. The court retains authority to impose sanctions against parties who violate the rule in regard to another individual's restricted identifiers or financial source documents.

New in 2005 is the procedure for obtaining access to restricted identifiers and sealed financial source documents. This process requires the court to balance the competing interest involved. See, e.g., Minneapolis Star & Tribune Co. v. Schumacher, 392 N.W.2d 197 (Minn. 1986) (when party seeks to restrict access to settlement documents and transcripts of settlement hearings made part of civil court file by statute, court must balance interests favoring access, along with presumption in favor of access, against those asserted for restricting access).

Advisory Committee Comment - 2007 Amendment

The 2007 amendment to Rule 11.01(a) expands the rule to protect the restricted identifiers of all persons, not just a party and a party's child. Records submitted to the court may include restricted identifiers of persons other than a party or the party's child, such as clients or other fiduciaries.

The 2007 amendment to Rule 11.03 recognizes that if a sealed financial source document is formally offered and admitted into evidence in a testimonial hearing or trial the document will be accessible to the public to the extent that it has been admitted. This is the result under WASH. GR 22 (2006) upon which this rule is based. In such situations, it is strongly recommended that restricted identifiers be redacted from the document before its admission into evidence.

Advisory Committee Comment - 2009 Amendment

Rule 11 is amended to remove Forms 11.1 and 11.2 from the rules and to correct the reference to the forms in the rule. This amendment will allow for the maintenance and publication of the form by the state court administrator. The form, together with other court forms, can be found at <http://www.mncourts.gov/>.

Forms 11.1 and 11.2 should be deleted from the rules and maintained in the future on the court's Web site.

Advisory Committee Comment - 2012 Amendment

Rule 11.06 is a new rule intended to define the procedural prerequisites for filing of documents under seal. This rule is not intended to expand or limit the confidentiality concerns that might justify special treatment of any document. The rule is intended to make it clear that filing parties do not have a unilateral right to designate any filing as confidential, and that permission from the court is required. This permission may flow from a statute or rule explicitly requiring that a particular document or portion of a document be filed confidentially or from a court order that documents be filed under seal. Rule 112 of the Minnesota Rules of Civil Appellate Procedure contains useful guidance on how confidential information can be handled. Where documents contain both confidential and non-confidential information, it may be appropriate to file redacted "public" versions of documents filed under seal.

Advisory Committee Comment - 2015 Amendments

The amendments to Rule 11 are intended to advance the important interests in preventing the filing of confidential and sensitive information in publicly accessible court files. The amendment to Rule 11.02(a) reminds filers that the best way to prevent public access to sensitive personal information is not to file it with the court unless needed. If a Social Security number, financial institution record, home address, and any other information defined to be a restricted identifier under the rule is not required for the adjudication of a matter before the court, simply omitting it from the filing prevents any further risk of disclosure. If the information is necessary, then using the other procedures of Rule 11.02 is necessary. The consequences of failing to comply with the

rule include sanctions against the filer, and if failure to follow the rule causes injury to any person, an action for damages may lie.

There are very few statutes that require the filing of restricted identifiers. They may be required in certain family child support cases, see Minnesota Statutes, sections 256.87, subdivision 1a; 257.66, subdivision 3; 518.10; 518A.56; and United States Code, title 42, section 666(a)(13), which currently require the court to identify the parties by Social Security number. Minnesota Statutes, section 548.101, requires the disclosure of the last four digits of a debtor's Social Security number, if known, in cases involving assigned consumer debt. Social Security numbers were required for filings to commence informal probate or appointment proceedings until 2006. See Minnesota Laws 2006, chapter 221, section 20, amending Minnesota Statutes, section 524.3-301.

Rule 11.02(c) is new and provides that filing constitutes certification that the document does not contain unauthorized restricted identifiers. For documents filed electronically, this certification may additionally be made explicitly by checking the appropriate box on a screen that will be incorporated into the e-filing process. See also Rule 14.06. As is true for other rules, failure to follow the rule, or the making of a false certification, may warrant the imposition of sanctions as may be authorized by other rules or under the court's inherent power.

Rule 11.06 is intended to provide important guidance on when documents may be filed as confidential or under seal. The rule permits these filings in only three circumstances. As part of the implementation of this rule, filers should expect that the E-Filing System of the court will ask the filer to specify which basis for filing as confidential or under seal is being relied upon for that filing. If an order in the case, statute, or court rule does not expressly permit or require filing of the document under seal or as confidential, a motion must be brought to request approval of filing that document under seal or as confidential not later than the time of filing.

Rule 11.06 specifies the procedure used by a filer for filing under seal or as confidential. Additionally, the court can at any time treat a document containing restricted identifiers as confidential until the parties or court can ensure the document properly conforms to the requirements of Rule 11.

Advisory Committee Comment - 2020 Amendments

*Rule 11.01 is modified in 2020 to clarify the definition of financial account number, which has caused much confusion. Several important limitations are added. One is that only numbers that can be used by someone other than those authorized to access the account to obtain access to the account for unauthorized transactions are considered financial account numbers. The other limitation excludes any billing number issued by a government entity that is publicly accessible and these numbers are not a financial account number under this rule. For the convenience of filers, the state court administrator maintains a non-exclusive list of examples of financial account numbers on the judicial branch website (www.mncourts.gov). These changes will avoid an overbroad reading of the rule that some courts have adopted in regard to similar rules. See, e.g., *In re Chubb*, 426 B.R. 695, 699-700 (Bankr. E.D. Mich. 2010) (finding the twelve digit account number on statement of account that clearly and obviously relates to debtor's finances by identifying a debt is enough to bring it within the rule, without any showing that the information in question could be used to steal one's identity or be misused for some other purpose).*

Rule 11.03 is amended in 2020 to expand the use of a required cover sheet that previously applied only to Financial Source Documents and now applies to all non-public documents being filed. The requirement applies to those filing electronically or on paper. The cover sheet itself serves as a guide to trigger filers' attention to certain non-public documents and information and sources of the same including the Rules of Public Access to Records of the Judicial Branch. By requiring

a cover sheet for each individual document that is non-public, the cover sheet also serves to avoid the electronic filing of so-called "monster" documents. A monster document might contain, for example, a motion, notice of motion, affidavit, and any of a number of attachments all submitted as a single PDF document. The problem with monster documents is that if just one of the attachments is non-public, such as a medical record, then court staff must either keep the entire monster document non-public, which means the public is denied access to documents that it should be able to access, or court staff must separate out the attachments, which places an impossible burden on court staff. Filers are directed in the Registered User Guide, applicable to e-filers under Gen. R. Prac. 14.03(g), to separate documents, in particular the nonpublic documents, when e-filing them. The separate documents can be submitted in the same electronic envelope, just like a handful of separate paper documents can be placed in the same paper envelope, for filing.

Use of the new Cover Sheet for Non-Public Documents can be avoided only if the document is being e-filed and a filing code already exists in the E-Filing System that is specifically assigned by state court administration as the filing code for a particular type of non-public document. The filing code appears in the E-Filing System with the words "Select Filing Code" followed by a drop down box when a filer selects the most appropriate code for each individual document being filed. The filing code for a nonpublic document, such as a pre-sentence investigation report in a criminal case, serves the same purpose as, and becomes the electronic equivalent of, the Non-Public Document Cover Sheet. Just like a cover sheet, the filing code transfers from the E-Filing System to the case management system (known as MNCIS). The state court administrator's office publishes commonly used filing codes on the main branch website (go to www.mncourts.gov and look for "Civil Case type Index (also includes Civil Case Filing Codes)", "Expedited Process Child Support Filing Codes Index," and "Criminal and Juvenile Delinquency Filing Codes Index").

In addition to filing the separate Form 11.2 Cover Sheet for Non-Public Documents or selecting a nonpublic document filing code, under Rule 14.06 a filer must also designate in the E-filing System whether the document is Confidential or Sealed. This designation is made in the E-Filing System in a field marked "Filing Comments" with a box beneath it asking "Is Document Public, Confidential, or Sealed?" Although this designation may seem redundant, filers need to remember that the cover sheet is intended to work in both the paper and electronic filing context. When an electronic filer selects a filing code for a non-public document as an alternative to the cover sheet, the filer will not see anything in the filing process marking the document as confidential or sealed. Accordingly, there must be a separate step to make this clear for each document being electronically filed. For a walk-through of the e-filing process illustrating the Select Filing Code location and the Filing Comments entry box, go to the main branch website at www.mncourts.gov/efile and search for the Quick Reference Guide (QRG) titled "eFiling and eService into an Existing Case."

Rule 11 is also amended in 2020 to carve out certain exceptions in scope and enforcement impacting child protection, criminal, and juvenile delinquency case records. Rule 11.03(a) provides that juvenile protection filings that contain confidential information and confidential documents must be filed as provided in Rule 8.04 of the Rules of Juvenile Protection Procedure. This language is intended to preserve the current practice for juvenile protection cases: restricted identifiers are subject to the same rules as in other cases, while other types of confidential information and documents are governed by Juvenile Protection Rule 8.04. Juvenile Protection Rule 8.04, subdivision 5(d), provides that if it is brought to the attention of court administration staff that confidential information or confidential documents have not been filed with the proper form, court administration staff shall designate the document as confidential, and direct the filer to file in compliance with Rule 8.04.

Rule 11.08 makes Rule 11 inapplicable to search warrants and related documents filed by law enforcement but requires the same records filed by parties to comply with Rule 11. Regarding

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enforcement, criminal, civil commitment, and juvenile delinquency matters are exempted from striking of documents under Rule 11.05, and exempted from rejection of documents in Rule 14.03(b), for violations of Rule 11.