

1 **1-079.1. Public inspection and sealing of court records; guardianship and**
2 **conservatorship proceedings.**

3 A. **Scope of rule; Rule 1-079 NMRA.** This rule governs access to court
4 records in proceedings to appoint a guardian or conservator under Chapter 45, Article 5,
5 Parts 3 and 4 NMSA 1978. This rule incorporates the provisions of Rule 1-079 NMRA in
6 their entirety and is intended to supplement only the automatic sealing provisions set forth
7 in Subparagraphs (C)(7) and (C)(8) of that rule. All other matters related to access to court
8 records in guardianship and conservatorship proceedings, including motions to seal and
9 unseal court records, remain subject to the provisions of Rule 1-079 NMRA.

10 B. **Guardianship proceedings.** All court records in proceedings commenced
11 for the appointment of a person to serve as guardian for an alleged incapacitated person
12 under Chapter 45, Article 5, Part 3 NMSA 1978, are confidential and shall be automatically
13 sealed without motion or order of the court, subject to the firearm-related reporting
14 requirements in Section 34-9-19 NMSA 1978 and the following:

15 (1) the register of actions and docket entries used by the court to
16 document the activity in a case shall not be sealed and shall be subject to public access,
17 provided that the court shall not disclose diagnostic, treatment, or other medical or
18 psychological information;

19 (2) except as provided in Subparagraph (4) of this paragraph, persons
20 identified in the petition under Section 45-5-303(B) NMSA 1978 shall be permitted to
21 access the order appointing a guardian under Section 45-5-304 NMSA 1978 and all court
22 records filed in the proceeding with a filing date that precedes the filing date of the order
23 appointing a guardian;

1 (3) ~~except as provided in Subparagraph (4) of this paragraph,~~ access to
2 court records filed after the order appointing a guardian under Section 45-5-304 NMSA
3 1978~~[, including any guardian report filed under Section 45-5-314 NMSA 1978,]~~ shall be
4 limited to the protected person, the guardian, and any other person the court determines
5 under Section 45-5-307(G)(2) or (H) NMSA 1978, Section 45-5-309(D) NMSA 1978,
6 Rule 1-140 NMRA, or Rule 1-141 NMRA; and

7 (4) access to a report filed by a qualified health care professional under
8 Section 45-5-303(E) NMSA 1978, a visitor under Section 45-5-303(F) NMSA 1978, ~~[or]~~
9 a guardian *ad litem* under Section 45-5-303.1 NMSA 1978, or a guardian under Section
10 45-5-314 NMSA 1978 shall be limited to the protected person, the petitioner, the visitor,
11 the guardian *ad litem*, an attorney of record, an agent under a power of attorney unless the
12 court orders otherwise, and any other person as determined by the court under Section 45-
13 5-303(L) NMSA 1978~~;~~.

14 C. **Conservatorship proceedings.** All court records in proceedings
15 commenced for the appointment of a conservator under Chapter 45, Article 5, Part 4
16 NMSA 1978, are confidential and shall be automatically sealed without motion or order of
17 the court, subject to the firearm-related reporting requirements in Section 34-9-19 NMSA
18 1978 and the following:

19 (1) the register of actions and docket entries used by the court to
20 document the activity in a case shall not be sealed and shall be subject to public access,
21 provided that the court shall not disclose diagnostic, treatment, or other medical or
22 psychological information;

1 (2) except as provided in Subparagraph (4) of this paragraph, persons
2 identified in the petition under Section 45-5-404(B) NMSA 1978 shall be permitted to
3 access the order appointing a conservator under Section 45-5-407 NMSA 1978 and all
4 court records filed in the proceeding with a filing date that precedes the filing date of the
5 order appointing a conservator;

6 (3) except as provided in Subparagraph (4) of this paragraph, access to
7 court records filed after the order appointing a conservator under Section 45-5-407 NMSA
8 1978[~~including a conservator report filed under Section 45-5-409 NMSA 1978,~~] shall be
9 limited to the protected person, the conservator, and any other person the court determines
10 under Section 45-5-405(D) NMSA 1978, Section 45-5-415(G)(2) or (H) NMSA 1978,
11 Rule 1-140 NMRA, or Rule 1-141 NMRA; and

12 (4) access to a report filed by a qualified health care professional under
13 Section 45-5-407(C) NMSA 1978, a visitor under Section 45-5-407(D) NMSA 1978, [∅]
14 a guardian *ad litem* under Section 45-5-404.1 NMSA 1978, or a conservator under Section
15 45-5-409 NMSA 1978 shall be limited to the protected person, the petitioner, the visitor,
16 the guardian *ad litem*, an attorney of record, an agent under a power of attorney unless the
17 court orders otherwise, and any other person as determined by the court under Section 45-
18 5-407(O) NMSA 1978.

19 [Approved by Supreme Court Order No. 18-8300-005, effective for all cases filed, or
20 pending but not adjudicated, on or after July 1, 2018 and for motions to seal or unseal filed
21 in all cases on or after July 1, 2018; as amended by Supreme Court Order No. 19-8300-
22 019, effective December 1, 2019.]

1 **Committee commentary.** — This rule is intended to supplement Rule 1-079(C)
2 NMRA as it applies to the automatic sealing of court records in guardianship and
3 conservatorship proceedings. These proceedings are treated separately because of the 2018
4 and 2019 amendments to the Uniform Probate Code, which established a complicated
5 framework for who may access court records that are otherwise sealed in guardianship and
6 conservatorship proceedings. *See* N.M. Laws 2019, Ch. 228; N.M. Laws 2018, Ch. 10.
7 Other issues related to access to court records in guardianship and conservatorship
8 proceedings, including motions to seal or unseal court records, remain subject to the
9 provisions of Rule 1-079 NMRA.

10 ~~[Paragraphs B and C of this rule are consistent with the framework established by~~
11 ~~the legislature for access to court records in guardianship and conservatorship proceedings~~
12 ~~except, as explained more fully below, with regard to access to certain reports that must be~~
13 ~~filed with the courts. To the extent that the amended statutes and rule are inconsistent, the~~
14 ~~rule governs how the courts shall provide access to court records. *See Albuquerque Rape*~~
15 ~~*Crisis Ctr. vs. Blackmer*, 2005-NMSC-032, ¶ 5, 138 N.M. 398, 120 P.3d 820 (recognizing~~
16 ~~that the Supreme Court has “ultimate rule-making authority” over rules of evidence and~~
17 ~~procedure).~~

18 ~~— In reviewing the 2018 statutory amendments, the Ad hoc Guardianship and~~
19 ~~Conservatorship Rules and Forms Committee noted an inconsistency between the resulting~~
20 ~~provisions of Chapter 45, Article 5, Parts 3 and 4, that limit access to certain reports that~~
21 ~~must be filed in guardianship and conservatorship proceedings, respectively. *Compare*~~
22 ~~NMSA 1978, § 45-5-303(L) (limiting access to a report filed under NMSA 1978, Section~~
23 ~~45-5-303 by a court-appointed qualified health care professional or visitor and under~~

1 ~~Section 45-5-303.1 by a guardian *ad litem*), with NMSA 1978, § 45-5-407(O) (limiting~~
2 ~~access to a report filed under NMSA 1978, Section 45-5-409 by a conservator). The~~
3 ~~committee concluded that the reference in Section 45-5-407(O) to the post-appointment~~
4 ~~reports filed by a conservator was a scrivener's error because (1) Section 45-5-407~~
5 ~~generally addresses procedures prior to the appointment of a conservator, and (2) the~~
6 ~~individuals who are entitled to access a report under Section 45-5-407(O), including a~~
7 ~~guardian ad litem and visitor, have often been released from the proceeding by the time a~~
8 ~~conservator report is filed. See NMSA 1978, § 45-5-409 (requiring a report and account to~~
9 ~~be filed annually within thirty (30) days of the anniversary of the conservator's~~
10 ~~appointment, upon the conservator's resignation or removal, and upon the termination of~~
11 ~~the conservatorship). The committee further concluded that the omission from Section 45-~~
12 ~~5-407(O) of the pre-appointment reports identified in Section 45-5-303(L) was an oversight~~
13 ~~because, whether such reports are filed in a guardianship or conservatorship proceeding,~~
14 ~~they necessarily include the same types of sensitive information. Subparagraphs (B)(4) and~~
15 ~~(C)(4) of the rule therefore permit equal access in guardianship and conservatorship~~
16 ~~proceedings to the pre-appointment reports filed by a qualified health care professional,~~
17 ~~visitor, and guardian ad litem. Subparagraphs (B)(3) and (C)(3) similarly permit equal~~
18 ~~access to the post-appointment reports filed by a guardian or conservator.]~~

19 [Approved by Supreme Court Order No. 18-8300-005, effective for all cases filed or
20 pending but not adjudicated on or after July 1, 2018 and for motions to seal or unseal filed
21 in all cases on or after July 1, 2018; as amended by Supreme Court Order No. 19-8300-
22 019, effective December 1, 2019.]