

CLERK OF CIVIL DISTRICT COURT COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judges of Civil District Court en banc is authorized for use by the Clerk of Court for the purpose of initiating the civil docket sheet. The plaintiff filing the suit must fill out this form.

PLAINTIFFS Name of first plaintiff listed)

The Independent Weekly, LLC

PARISH OF RESIDENCE OF FIRST LISTED PLAINTIFF

Lafayette Parish

DEFENDANTS (Name of first defendant listed)

Dale N. Atkins, Clerk of Court,

PARISH OF RESIDENCE OF FIRST LISTED DEFENDANT

Orleans Parish

PROBATE	CONTRACT	SPECIAL PROCEEDINGS	TORTS - PERSONAL INJURY	STATUS & DOMESTIC
___110 Simple Possession (no will) ___115 Petition to Probate Will (with administration) ___120 Petition to Probate Will (without administration) ___125 Petition to Search for Will ___130 Other	___210 Open Account ___215 Breach of Contract ___220 Suit on Note ___225 Suit on Note with Foreclosure of Chattel Mortgage ___230 Suit for Earned Wages ___235 Suit for Accounting ___240 Other	<input checked="" type="checkbox"/> 310 Injunction ___315 Declaratory Judgment ___320 Judicial Review Zoning <input checked="" type="checkbox"/> 325 Mandamus (non-real estate) ___330 Election Suit ___335 Minor's Settlement ___340 Concurus ___345 Petition for Discovery ___350 Petition for Writ of Sequestration ___355 Petition to Make Judgment Executory ___360 Tax Suit ___365 Petition to Become Notary ___370 Other	___410 Motor Vehicle ___415 Motor Vehicle - Product Liability ___420 Product Liability - Other ___425 Medical Malpractice ___430 Premises (liability for conditions) ___435 Marine ___440 Intentional Tort ___445 Defamation ___ Other	___510 Separation ___515 Divorce ___520 Annulment ___525 Custody (not filed with separation or divorce) ___530 Disavowment of Paternity ___535 Suit to Establish Paternity ___540 Name Change ___545 Emancipation ___550 Interdiction ___555 Commitment ___560 Petition to Appoint Curator ___565 Partition of Community (separate action) ___570 Marital Agreement ___575 Pet. to make Judgment Executory (domestic) ___580 Other
LABOR		IMMOVABLE PROPERTY		
___610 Joint Petition for Workman's Compensation ___615 Judicial Review ___620 Workmen's Compensation ___625 Other	___710 Suit on Note with Foreclosure of Mortgage ___720 Suit to Rescind Sale or for Refund of Purchase Price ___725 Suit for Specific Performance ___730 Declaratory Judgment ___735 Rent and/or Eviction ___740 Expropriation ___745 Mandamus to Cancel Mortgage ___750 Other	Check/Fill in if demanded in complaint:		
		Check if this is a CLASS ACTION under _____		Demand \$
		RELATED CASE (S) IF ANY		Other
		JUDGE <u>Clare Jupiter/Ethel Julien/Piper Griffin</u>		
		CASE NO. <u>2004-14710/2005-8958/2006-1241</u>		
		CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVES:		
		1. Property included in an earlier numbered pending suit 2. Same issue of fact or grows out of the same transaction 3. Validity or infringement of the same patent copyright or trademark		

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

DOCKET NO. _____

DIVISION: _____

THE INDEPENDENT WEEKLY, LLC

V

DALE N. ATKINS, CLERK OF COURT

PETITION AND RULE TO SHOW CAUSE WHY MANDAMAS AND INJUNCTION
SHOULD NOT ISSUE TO UNSEAL PUBLIC COURT RECORDS
PURSUANT TO LOUISIANA PUBLIC RECORDS LAW – LRS 44:1, et seq

Now into court comes Petitioner, **The Independent Weekly, LLC** (“The Independent”),
through undersigned counsel, for the following:

1.

Made defendant herein is the **Honorable Dale N. Atkins, Clerk of Court** (“Clerk”) for
the Orleans Parish Civil District Court.

2.

The Clerk is the “custodian” of all trial court records for Orleans Parish Civil District
Court as that term is defined by La. R.S. 44:1(A)(3).

3.

Furthermore, under La. C.C.P. Art. 251,

The clerk of court is the legal custodian of all of its records and is responsible for
their safekeeping and preservation. He may issue a copy of any of these records,
certified by him under the seal of the court to be a correct copy of the original.
Except as otherwise provided by law, he shall permit any person to examine,
copy, photograph, or make a memorandum of any of these records at any time
during which the clerk's office is required by law to be open.

4.

Providing access to public records is a responsibility and duty of the ...elective office of
a custodian and his employees. La. R.S. 44:31(A). The custodian shall present any public record
to any person of the age of majority who so requests. La. R.S. 44:32(A).

5.

The burden of proving that a public record is not subject to inspection, copying, or
reproduction shall rest with the custodian. La. R.S. 44:31(B)(3).

6.

Under the Louisiana Constitution, Art. 1, § 22, “All courts shall be open...” Moreover, Louisiana Constitution Art. 12, § 3 states, “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.”

7.

The Louisiana Supreme Court has consistently held that the public has a constitutional right of access to court records. *Copeland v. Copeland*, 07-0177 (La. 10/16/07); 966 So.2d 1040; *Title Research Corp. v. Rausch*, 450 So.2d 933 (La. 1984); *In re John Doe*, 96-2222 (La. 9/13/96); 679 So.2d 900.

8.

On March 17, 2017, request was made on behalf of The Independent to the Clerk’s office for the suit records in those actions bearing docket numbers: 2004-14710, 2005-8958, and 2006-1241. Access to each of those records was denied with the explanation that the entirety of each of the records had been sealed pursuant to the orders of the district judges assigned to each of those dockets. This petition and rule follows.

9.

Any person who has been denied the right to inspect or copy a record under the provisions of this Chapter...may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief...in the district court for the parish in which the office of the custodian is located. La. R.S. 44:35(A).

10.

Any suit brought in any court of original jurisdiction to enforce the provisions of this Chapter shall be tried by preference and in a summary manner. La. R.S. 44:35(C).

11.

The absence of any Louisiana statutory provision authorizing a court to “seal” its record of a civil case from public inspection establishes that there is no power in the trial court to order an entire civil case record sealed from public inspection under La. C.C.P. art. 251 and La. R.S. 44:31, and therefore establishes that the Clerk of Court has a ministerial duty to permit

inspection and copying of the court's records of civil cases. *Keko v. Lobrano*, 497 So.2d 353 (La. App. 4 Cir., 1986), *writ denied*, 497 So.2d 1003 (La. 1986).

12.

The litigants in the requested proceedings do not constitute parties in interest (with respect to the Clerk of Court's ministerial duty or any action to enforce it) when the inspection or copying of whose public court record is demanded of the Clerk of Court. *See Keko, supra*.

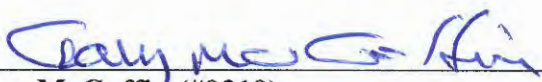
13.

The hearing for this matter should be set with preference pursuant to the Louisiana Public Records Law so that the Clerk may show cause why mandamus should not issue compelling the unsealing of the requested records for viewing and copying by The Independent along with an injunction to prohibit sealing the entirety of the requested records.

Considering the foregoing, Petitioner, **The Independent Weekly, LLC**, moves for an order setting this matter for a *preferential hearing* so that the Clerk may show cause why:

- 1) An order of mandamus should not issue compelling the Honorable Dale N. Atkins, Clerk of Court, to unseal the entirety of the court records for docket numbers 2004-14710, 2005-8958, and 2006-1241 for viewing and copying by The Independent;
- 2) An injunction should not issue prohibiting the Honorable Dale N. Atkins, Clerk of Court, from sealing the entirety of the court records for docket numbers 2004-14710, 2005-8958, and 2006-1241 for viewing and copying by any qualified person;
- 3) All costs of this proceeding.

Respectfully submitted:



Gary McGoffin (#9319)
Jonathan R. Villien (#34136)
DURIO, MCGOFFIN, STAGG & ACKERMANN, P.C.
220 Heymann Boulevard (70503)
P. O. Box 51308
Lafayette, Louisiana 70505
Telephone 337/233-0300
Facsimile 337/233-0694
Counsel for The Independent Weekly, LLC

PLEASE SERVE:

The Honorable Dale N. Atkins
Clerk of Court
Orleans Parish Civil District Court
421 Loyola Avenue
Room 402
New Orleans, LA 70112

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

DOCKET NO. _____

DIVISION: _____

THE INDEPENDENT WEEKLY, LLC

V

DALE N. ATKINS, CLERK OF COURT

**ORDER SETTING HEARING ON PETITION FOR MANDAMAS AND INJUNCTION
TO UNSEAL PUBLIC COURT RECORDS PURSUANT
TO LOUISIANA PUBLIC RECORDS LAW – LRS 44:1, et seq**

Considering the petition of The Independent Weekly, LLC and the statutory mandate for a **preferential hearing** on this Public Records Law action for mandamus and injunction,

IT IS ORDERED that the Honorable Dale N. Atkins, Clerk of Court, show cause on the ____ day of April, 2017, at ____ o'clock AM/PM why:

- a) An order of mandamus should not issue compelling the Honorable Dale N. Atkins, Clerk of Court, to unseal the entirety of the court records for docket numbers 2004-14710, 2005-8958, and 2006-1241 for viewing and copying by The Independent Weekly, LLC;
- b) An injunction should not issue prohibiting the Honorable Dale N. Atkins, Clerk of Court, from sealing the entirety of the court records for docket numbers 2004-14710, 2005-8958, and 2006-1241 for viewing and copying by any qualified person; and
- c) The Honorable Dale N. Atkins, Clerk of Court, should not be cast with all costs of this proceeding.

Signed this ____ day of _____, 2017, at New Orleans, Louisiana.

District Judge

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

DOCKET NO. _____

DIVISION: _____

THE INDEPENDENT WEEKLY, LLC

V

DALE N. ATKINS, CLERK OF COURT

THE INDEPENDENT'S MEMORANDUM IN SUPPORT OF
PETITION FOR MANDAMUS AND INJUNCTION

May it Please the Court:

Petitioner, **The Independent Weekly, LLC** ("The Independent"), files this memorandum to support its action for mandamus and injunctive relief pursuant to the Louisiana Public Records Law, La. R.S. 44:1, et seq. Made Defendant herein is the Honorable Dale N. Atkins, Clerk of Court for the Orleans Parish Civil District Court ("the Clerk").

Factual Background

On March 17, 2017, a request was made on behalf of The Independent to the Clerk's office for the suit records in those actions bearing the following docket numbers: 2004-14710, 2005-8958, and 2006-1241. Access to each of those records was denied by Deputy Clerk Arthur Field with the explanation that the entirety of each of the records had been sealed pursuant to the orders of the district judges assigned to each of those dockets. This petition for mandamus and injunctive relief seeking production of those records follows.

Louisiana Public Records and Open Courts

La. C.C.P. Art. 251 provides:

The clerk of court is the legal custodian of all of its records and is responsible for their safekeeping and preservation. He may issue a copy of any of these records, certified by him under the seal of the court to be a correct copy of the original. Except as otherwise provided by law, he shall permit any person to examine, copy, photograph, or make a memorandum of any of these records at any time during which the clerk's office is required by law to be open.

Thus the Honorable Dale N. Atkins, Clerk of Court, is the "custodian" of all trial court records for Orleans Parish Civil District Court as that term is defined by La. R.S. 44:1(A)(3).

Providing access to public records is a responsibility and duty of the...elective office of a custodian and his employees. La. R.S. 44:31(A). Any person of the age of majority may inspect,

copy, or reproduce any public record, and any person may obtain a copy or reproduction of any public record. La. R.S. 44:31(B). The custodian shall present any public record to any person of the age of majority who so requests. La. R.S. 44:32(A).

The burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian. La.R.S. 44:31(B)(3).

Any person who has been denied the right to inspect or copy a record under the provisions of this Chapter...may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief...in the district court for the parish in which the office of the custodian is located. The custodian shall make no inquiry of any person who applies for a public record, except an inquiry as to the age and identification of the person and may require the person to sign a register. La. R.S. 44:35(A).

Any suit brought in any court of original jurisdiction to enforce the provisions of this Chapter shall be tried by preference and in a summary manner. La. R.S. 44:35(C).

Under the Louisiana Constitution, Art. 1, § 22, “All courts shall be open...” Moreover, Louisiana Constitution Art. 12, § 3 states, “No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.” The Louisiana Supreme Court has held that the public has a constitutional right of access to court records. *Copeland v. Copeland*, 07-0177 (La. 10/16/07); 966 So.2d 1040; *Title Research Corp. v. Rausch*, 450 So.2d 933 (La. 1984); *see also In re John Doe*, 96-2222 (La. 9/13/96); 679 So.2d 900, 901 (holding that “[a]s a general rule, pleadings filed in this Court are public records and are not subject to being sealed.”).

The absence of any Louisiana statutory provision authorizing a court to “seal” its record of a civil case from public inspection establishes that there is no power in the trial court to order an entire civil case record sealed from public inspection under La. C.C.P. Art. 251 and La. R.S. 44:31, and therefore establishes that the Clerk of Court has a ministerial duty to permit inspection and copying of the court's records of civil cases. *See Keko v. Lobrano*, 497 So.2d 353 (La. App. 4 Cir. 1986), *writ denied*, 497 So.2d 1003 (La. 1986); *In re John Doe*, 96-2222 (La. 9/13/96); 679 So.2d 900.

Furthermore, the litigants in the requested proceedings do not constitute parties in interest (with respect to the Clerk of Court's ministerial duty or any action to enforce it) when the inspection or copying of whose public court record is demanded of the Clerk of Court. *See Keko, supra.*

Right to Privacy

The Louisiana Supreme Court addressed the right to privacy in sealing court records in connection with the Copeland domestic proceedings.

In *Copeland v. Copeland*, 06-1023 (La.6/2/06); 930 So.2d 940 (*Copeland I*), the Supreme Court, acknowledging that the public's access to judicial records is not necessarily absolute, remanded the case to the trial court to conduct a new hearing on the parties' motion to seal consistent with the following reasoning:

Considering the strong constitutional bias in favor of open access by the public to court proceedings, we find the trial court's blanket order sealing the entire record in this case to be overbroad. Although there may be some justification for sealing certain sensitive evidence in a proceeding, the parties have the burden of making a specific showing that their privacy interests outweigh the public's constitutional right of access to the record. The trial court, should it grant such relief, must ensure that its order is narrowly tailored to cause the least interference possible with the right of public access.

Notwithstanding that instruction, the trial court subsequently issued a Judgment and Written Reasons for Judgment that left all of the Copelands' substantive pleadings in the case, except Mrs. Copeland's initial petition for divorce, under seal. This prompted the Supreme Court's review in *Copeland v. Copeland*, 07-0177 (La. 10/16/07); 966 So.2d 1041(*Copeland II*), which confirms the right of The Independent and any other person to obtain the records sought by this petition:

Louisiana has a constitutional open courts provision and a constitutional public records provision.

The provision of the constitution must be construed liberally in favor of free and unrestricted access to the records, and that access can be denied only when a law, specifically and unequivocally, provides otherwise. Whenever there is doubt as to whether the public has the right of access to certain records, the doubt must be resolved in favor of the public's right to see. To allow otherwise would be an improper and arbitrary restriction on the public's constitutional rights.

We have also "defined the limits on the right to privacy [as follows]: `the right to privacy is not absolute; it is qualified by the rights of others ... The right of

privacy is also limited by society's right to be informed about legitimate subjects of public interest."

As we ordered in *Copeland I*, if relief was to be granted because a privacy interest was shown that outweighed the public's constitutional right of access to the record, it must be "narrowly tailored to cause the least interference possible with the right of public access." The court's order sealing six of the seven substantive pleadings filed in the case was not "narrowly tailored" and is once again too broad. Redaction of the record, rather than sealing, is the appropriate method of protecting the children in this case.

In Camera Review

The *Keko*¹ decision referenced in the petition confirms that the litigants in the requested proceedings² do not constitute parties in interest (with respect to the Clerk of Court's ministerial duty or any action to enforce it) when the inspection or copying of whose public court record is demanded of the Clerk of Court.

However, the litigants' right to privacy in the subject proceedings may be protected by an *in camera* review of the documents to determine if key word redactions are appropriate before these public records are unsealed for the public to view and copy.

Conclusion

There is no statutory or constitutional basis to deny access to the three court records sought in this public record action. This summary proceeding should be set for preferential hearing at the earliest date available to the assigned court. An *in camera* inspection by the assigned court will protect the privacy interests, if any, of the litigants in the sealed proceeding. It was their decision to air their differences in a public forum and in doing so rendered the documentation of that conflict to be public records. All costs of this proceeding should be borne by the office of the "custodian" charged with the responsibility for producing the requested records pursuant to the statutory duty imposed by the Louisiana Constitution, the Louisiana Public Records Law, and the Louisiana Code of Civil Procedure.

¹ *Keko v. Lobrano*, 497 So.2d 353 (La. App. 4 Cir. 1986), writ denied, 497 So.2d 1003 (La. 1986).

² Docket numbers: 2004-14710, 2005-8958, and 2006-1241.

Respectfully submitted:



Gary McGoffin (#9319)

Jonathan R. Villien (#34136)

DURIO, MCGOFFIN, STAGG & ACKERMANN, F.C.

220 Heymann Boulevard (70503)

P. O. Box 51308

Lafayette, Louisiana 70505

Telephone 337/233-0300

Facsimile 337/233-0694

Counselor for The Independent Weekly, LLC

PLEASE SERVE:

The Honorable Dale N. Atkins
Clerk of Court
Orleans Parish Civil District Court
421 Loyola Avenue
Room 402
New Orleans, LA 70112