

**FORMAL GUIDANCE OF THE BUSINESS LITIGATION SESSIONS REGARDING  
CONFIDENTIALITY AGREEMENTS**

The undersigned judges of the Superior Court, who are assigned to sit in the Business Litigation Sessions of the Superior Court during calendar year 2008, jointly adopt the following Formal Guidance regarding Confidentiality Agreements:

1. Under Rule 7 of the Uniform Rules on Impoundment Procedure, an order of impoundment may be issued only “for good cause shown,” and the finding of good cause must be made by the Court, not by the parties or their attorneys. Therefore, no Confidentiality Agreement will be approved by the BLS judges that asserts that documents identified as “confidential” by the parties or their attorneys shall be impounded without the specific order of the Court, for good cause shown. A Confidentiality Agreement may set forth a procedure whereby the parties may seek an Impoundment Order from the Court but the Agreement must recognize that impoundment may only be ordered by the Court on a particularized showing.
  
2. The BLS judges will scrutinize with special care any Confidentiality Agreement that provides that certain documents will be limited to “attorneys’ eyes only.” While such a limitation is sometimes appropriate for certain documents, the BLS judges recognize that this limitation considerably interferes with the ability of counsel to confer and seek guidance from their clients, and may affect the ability of the parties to settle the case because the parties may not be fully informed of the content of key evidence. Consequently, “attorneys’ eyes only” provisions will be approved only when the need for such a provision is carefully explained, when there is no reasonable alternative to limiting the documents to “attorneys’ eyes only,” and when the number of documents so limited is minimized to the extent reasonable.

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Ralph D. Gants  
Justice of the Superior Court  
Business Litigation Session I

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Judith Fabricant  
Justice of the Superior Court  
Business Litigation Session II

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Stephen E. Neel  
Justice of the Superior Court  
Business Litigation Session II

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