STATE OF VERMONT
CALEDONIA COUNTY, SS.

KATHERINE LAWSON & BRADLEY LAWSON, individually, and as parents and guardians of their daughter, JORDAN LAWSON	:	Caledonia Superior Court Docket No. 195-9-97 Cacv
v.	:	
BROWN'S HOME DAY CARE CENTER, INC., and LUCILLE M. NELSON & ROBERT NELSON, JR.	:	

DECISION AND ORDER

PLAINTIFFS' REQUEST TO SEAL

The cause of action in this case has now been dismissed pursuant to a stipulation for dismissal following a confidential settlement between the parties. Plaintiffs' Request to Seal certain documents filed in the case remains outstanding. The court sealed specific pages on a temporary basis pending final decision on the issue. See Entry Orders filed July 9, 13, and 21, 1998. The Caledonian-Record Publishing Company, Inc. filed a Motion to Intervene on the issue of sealing documents, which was granted.

A hearing on the issue of sealing was commenced on July 20, 1998. It was at that time that the parties informed the court that a settlement had been reached, although documents were not yet prepared. The fact of settlement affected the court's decision on the issue of sealing documents, since considerations could be different depending on whether the case was ongoing or resolved. Accordingly, a decision was deferred, and the court gave the parties an additional ten days to file memoranda of law. Attorney Caldbeck for the Plaintiffs and Defendants' Attorney Valsangiacomo filed memos within the time prescribed. Defendants' Attorney Kilmartin filed a memo out of time, which has not been reviewed by the court. Although the court granted the Motion to Intervene of The Caledonian-Record Publishing Company, Inc., its memo was not reviewed as it was filed out of time.

This has been an exceedingly emotional and contentious case. Attorneys Caldbeck and Kilmartin have reflected a high degree of distrust and hostility to each other in the motions and documents they have filed with the court. The court was obliged to issue an order that "in filings with the court, the attorneys shall refrain from the use of rhetoric containing personal criticism." Order of April 30, 1998. Unfortunately, the filings of such documents did not stop.

The parties and attorneys and insurance carrier representative were ordered to attend an Early Neutral Evaluation/Alternative Dispute Resolution session conducted by Attorney Peter Joslin in order to explore settlement of the case. This took place on June 22, 1998, and is referred to consistently in documents as the mediation session. Approximately 10 people were in attendance. At the beginning of the session, Attorney Joslin determined that all parties were in agreement that anything that transpired at the session would be confidential. This is in keeping with a tradition of confidentiality at such sessions in order to facilitate free and open discussion potentially leading to settlement without parties having to worry that comments made during such a session could be used against them in the event settlement efforts are not successful. The principle underlying this tradition is the same as the evidentiary rule that prohibits the admission into evidence of statements made during settlement discussions. V.R.E. § 408. The agreement for a confidential mediation in this case was also in keeping with the fact that the parties had voluntarily entered into a Confidentiality Agreement with respect to discovery material, filed February 6, 1998.

All parties, attorneys, and other participants were bound by the confidentiality agreement with respect to the mediation session. The session lasted from 9:00 a.m. to 7:30 p.m. Although an agreement to settle was not reached that day, substantial progress was made, and Attorney Joslin agreed to remain involved with the parties to attempt to reach a resolution. This was ultimately successful in bringing about a resolution of the claims, leading to dismissal of the complaint on August 10, 1998.

In the meantime, on July 2, 1998, Attorney Kilmartin filed a Motion in which he included disclosures of discussions that took place during the mediation session, and attached as an Exhibit a proposed settlement agreement between the parties. In his Motion, Attorney Kilmartin accused Attorney Caldbeck of wrongdoing during the mediation session. On July 6, 1998, Attorney Caldbeck faxed to the court an Initial Reply, in which he also described statements made at the mediation session. He also requested that the court seal Attorney Kilmartin's Motion. On July 8, 1998, Attorney Caldbeck filed a Supplemental Reply. On July 9, 1998, the court issued its Entry Order on Attorney Kilmartin's Motion and Attorney Caldbeck's response. The court stated that certain pages were to be sealed temporarily pending a hearing on the Request to Seal, which was scheduled. The court made clear that sealing of documents filed with the court is disfavored and would have to be justified. It also made clear that the reason for sealing particular pages on a temporary basis was that they contained references to the parties' settlement discussions and proposed terms, and premature disclosure would prejudice the possibility of settlement. The court expected that the attorneys would understand that it was improper to file any additional such material. Unfortunately, the attorneys did not achieve this understanding.

The court's order was faxed to the attorneys at 8:39 a.m. on July 9, 1998. That same day, the court received documents dated July 8, 1998 from Attorney Kilmartin, including an Opposition to Attorney Caldbeck's Initial Reply in which several pages contained descriptions about what happened at the mediation session, and an Affidavit of Defendant Lucille Nelson

concerning the substance of the discussions at the mediation session. Attorney Kilmartin made no effort to withdraw or prevent the filing of these documents after receipt of the Order of the court. Attorney Kilmartin signed on that day, July 9, 1998, an Amended Opposition to Attorney Caldbeck's Initial Reply, and filed it on July 10, 1998. The Amended Opposition also contained several pages with descriptions about what happened at the mediation session. The court issued an Order on July 13, 1998 temporarily sealing a second group of pages with material concerning the mediation session for the same reasons stated in its original Order of July 9, 1998. Unfortunately, the attorneys still did not refrain from filing such material. Neither attorney made any attempt to withdraw pleadings containing confidential material.

On July 14, 1998, Attorney Caldbeck filed an Initial Response to Attorney Kilmartin's Amended Opposition. At this time, the underlying Motion that precipitated the exchange had already been ruled upon on July 9, 1998. In his July 14, 1998 Initial Response, Attorney Caldbeck again described the content of discussions at the mediation session. Also on July 14, 1998, another person who had attended the mediation session executed an affidavit about what had been said at the mediation session. Attorney Caldbeck filed this Affidavit on July 16, 1998. On July 20, 1998, Attorney Caldbeck filed an Affidavit of Plaintiff Katherine Lawson about what happened at the mediation session. On July 21, 1998, the court issued another Order temporarily sealing the newly filed additional pages with material concerning statements made at the mediation session.

Now that the substance of the case has been settled, it is incumbent on the court to make a final decision with respect to sealing of any documents filed in the case. Attorney Caldbeck seeks permanent sealing or striking from the record of more pages than the court has already sealed on a temporary basis. Attorney Valsangiacomo seeks confidentiality of all matters involving the mediation session on the grounds that such confidentiality is required by the confidentiality agreement reached prior to the start of the mediation session. He also seeks, on behalf of the Defendants, to withdraw the Affidavit of Lucille Nelson that was filed on July 9, 1998 by Attorney Kilmartin. Intervenor The Caledonian-Record Publishing Company, Inc. seeks public access to all documents filed in the case.

The reason that the court sealed certain pages on a temporary basis was to preserve the opportunity of the parties to settle the case without public disclosure of negotiation positions and proposed terms. The principle employed by the court in determining which pages to seal on a temporary basis was that all pages were sealed that contained references to what happened at the mediation session and follow up negotiations, including proposed terms of settlement. Thus, the court temporarily sealed pages that had been filed by both Attorney Kilmartin and Attorney Caldbeck.

The reason for sealing documents on a temporary basis no longer has any significance, since the parties successfully reached a final resolution. Therefore, the issue of sealing has to be approached at this time from the point of view of whether there is a basis for permanent sealing or striking of any material that was previously filed with the court. To this end, it is important to

keep in mind the reason for the longstanding basic principle that the public has a right of access to court documents. In part this principle is based on history and tradition, with a purpose of providing for public scrutiny of the work of the courts in order to assure the neutral and unbiased administration of justice.[1] In part it is based on court interpretations of the First Amendment of the United States Constitution, which have defined a public right of access to judicial proceedings and documents when the place and process have traditionally been open to the press and public, and when public access plays a significant, positive role in the functioning of the process in question.[2] In addition, the principle of openness in government is a current that runs deep throughout the Vermont Constitution,[3] and is specifically included in the first reference to the Judiciary Department: "The Courts of Justice shall be open for the trial of all causes proper for their cognizance; and justice shall be therein impartially administered, without corruption or unnecessary delay." Vt. Const. Ch. II, §28 [Courts of Justice]. The processes of the courts are expected to be conducted openly and to be subject to accountability through the public's right to observe and criticize.[4] Attorneys are officers of the courts, and their participation in court proceedings is part of the work of the courts. Vt. Const. Ch. II, §30. Thus the principle of

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[1]Herald Association, Inc. v. Ellison, 138 Vt. 529, 534 (1980). A good description of this derivation is contained in Atlanta Journal v. Long, 369 S.E. 2d 755 (Ga.1988), corrected 377 S.E. 2d 150 (1989), and appeal after remand, 376 S.E. 2d 865 (1989):

> In the State of Georgia, the public and the press have traditionally enjoyed a right of access to court records. Public access protects litigants both present and future, because justice faces its gravest threat when courts dispense it secretly. Our system abhors star chamber proceedings with good reason. Like a candle, court records hidden under a bushel make scant contribution to their purpose.

Id. At 757. See also 76 C.J.S., Records §67, at 139-43.

[2]*See* State v. Densmore, 160 Vt. 131 (1993) (access to documents submitted by parties in criminal case); Greenwood v. Wolchik, 149 Vt. 441 (1988) (access to affidavits of probable cause); State v. Tallman, 148 Vt. 465 (1987) (access to pretrial suppression hearings); Sunday v. Stratton Corp., 136 Vt. 293 (1978) (access to pretrial motion proceedings in civil case).

[3]"That all power being originally inherent in and co[n]sequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them." Vt. Const. Ch. I, art. 6.

"That the people have a right to freedom of speech, and of writing and publishing their sentiments, concerning the transactions of government, and therefore the freedom of the press ought not to be restrained." Vt. Const. Ch. I, art.13.

"The doors of the House in which the General Assembly of this Commonwealth shall sit, shall be open for the admission of all persons who behave decently, except only when the welfare of the State may require them to be shut." Vt. Const. Ch. II, §8.

[4] The state constitution has been held to be the basis for the right of access to civil proceedings in New Hampshire. Petition of Keene Sentinel, 612 A. 2d 911, 915 (N.H. 1992).

public access should be implemented fully except in those narrowly circumscribed situations in which it has to give way to some other important policy consideration. For this reason, courts have held that any party seeking to prevent public access to any documents filed with the court bears the burden of showing both a sufficiently compelling reason for doing so, and the least restrictive means of limiting public access to court documents. Petition of Keene Sentinel, 612 A. 2d 911, 915 (N.H. 1992); Sonderling v. Sonderling, 600 So. 2d 1285 (Fla. App. 3 Dist. 1992).

In this case, the Plaintiffs seek to prevent public access. Actually, the Plaintiffs' position is a little confusing. On the one hand, Plaintiffs request that Attorney Kilmartin's Motion should be returned, struck, or sealed because it violates the confidentiality condition of mediation, yet Plaintiffs' attorney filed on their behalf two affidavits setting forth information about statements made at the mediation session, and Plaintiffs do not seek to have any documents filed on their behalf sealed on the grounds that mediation was confidential. Plaintiffs' specific request is thus at odds with the argument advanced in their memo that the court should protect the parties' trust at the time of the mediation session that nothing they said during the session would become public. It should be noted that the pleadings that Plaintiffs' attorney seeks to have sealed or struck are those in which Attorney Kilmartin has made accusations against Plaintiffs' attorney,[5] and one of the arguments for sealing or striking advanced by Attorney Caldbeck is that the material is scandalous. It is questionable whether the court should be preventing public access to court documents solely for the reason that the content casts a person, including an attorney, in a negative light.[6]

Attorney Valsangiacomo also seeks to prevent public access on the grounds that the confidentiality agreement at the time of mediation should be upheld. This is a strong argument, since it is extremely important for litigants to have confidence that things they say in settlement discussions in reliance on confidentiality will not later become public just because a party or

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[5]Attorney Kilmartin filed motions in this case based on his claim that Attorney Caldbeck participated in perjury in his preparation of affidavits that were filed with the court, and this claim is included in the Motion filed July 2, 1998. This court did not seal pages containing this claim, as there was not a sufficiently compelling basis to prevent public access to this material. The claim did not arise out of the mediation session. Motions based on this claim were ruled upon by the court. Also included in the Motion filed July 2, 1998 was the additional claim that Attorney Caldbeck acted improperly in the context of settlement discussions in the mediation session. In conjunction with this claim, Attorney Kilmartin described events and conversations from the mediation session. It was the material related to the mediation session that the court sealed on a temporary basis.

[6]The court does not, by this statement, approve introducing into court documents professional conduct complaints that should be addressed to the Professional Conduct Board, where they are confidential until after the filing of formal charges following an initial investigation and screening. A.O. 9 Rule 11.A. *See* State v. Zele, 9 Vt. L. W. 179 at ftn. 2 (1998).

attorney later determines that it is in their strategic interest to break the confidentiality agreement. The challenge in this case is to balance this important consideration against the overarching policy of public access to the work of the courts.

Although there is no case law in Vermont addressing circumstances such as these, the Vermont Supreme Court has upheld the principle of the public's access to observe the administration of justice in the courts. Sunday v. Stratton Corp., 136 Vt. 293 (1978).[7] After reviewing case law from other jurisdictions, the court finds useful the approach set forth in E.E.O.C. v. National Children's Center, Inc., 98 F.3d 1406, 1409 (D.C.Cir.1996), in which the court developed a number of factors to be considered when confronted with a request to permanently seal documents that had been part of a case that had been resolved through settlement. In that case the material under consideration for sealing was the entire case file, including a consent decree, in a case involving an allegation of sexual harassment. Here the material contains cross accusations of attorneys, supported by affidavits of participants, about the conduct and terms of settlement negotiations during a mediation session. Nonetheless, the analysis provides a useful approach to considering the issues in this case. The court set forth the following factors to be considered:

> (1) the need for public access to the documents at issue; (2) the extent of previous public access to the documents; (3) the fact that someone has objected to disclosure and the identity of that person; (4) the strength of any property and privacy interests asserted; (5) the possibility of prejudice to those opposing disclosure; and (6) the purposes for which the documents were introduced during the judicial proceedings.

E.E.O.C. v. National Children's Center, Inc., 98 F. 3d 1406, 1409 (D.C. Cir. 1996), citing United States v. Hubbard, 650 F. 2d 293 (D.C. Cir. 1980).

In this case, the need for public access is high. In part this is based on the general principle that the public should have full access to observation of the work of the courts. It is also high in this case for additional reasons. For one thing, the tragic subject matter of the case made it a matter of public interest, and the case was therefore followed closely by the press. Thus, it is one of the few cases in which the public at large is actually paying attention to the work of the courts. It is important for the public to trust in the implementation of the policy of open access to court processes in order to have confidence in the administration of justice in the courts. Furthermore, this is a case in which it is an embarrassment to the legal system and public confidence in lawyers that the attorneys broke the confidentiality agreement and filed material about the mediation session. It places the court in the awkward position of determining whether or not to prevent disclosure of the details about the embarrassing violation. For the court to do so would put the court in some sense into collusion with the attorneys who misused the system. The court is not inclined to do so unless other factors make denial of public access compelling. It is not a proper role of the court to conceal the improper use of its processes by attorneys.

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[7] *See also* cases cited in footnote 2.

The second factor is the extent to which there has previously been public access to the material. The court is not aware that any party has provided public access to the specific pages that the court sealed on a temporary basis. There are pages that Attorney Caldbeck has requested to have sealed, struck, or returned that were not temporarily sealed by the court. As to these pages, there has already been public access, and the court does not find a sufficiently compelling reason to prevent public access. Therefore, such pages will remain public.

The third factor is the identity of the persons objecting to disclosure. Plaintiffs and Plaintiffs' attorney strongly object to disclosure. Plaintiffs have an interest in the confidentiality of the proposed terms since the case was settled by confidential agreement and dismissal with prejudice. Yet Plaintiffs' position is undermined by the fact that they chose to participate in disclosing information about the mediation session. They could not have done so in reliance on an expectation that documents filed with the court would be confidential, since that is not the norm, and the court indicated its position against such action in its Order of July 9, 1998. Furthermore, they cannot reasonably expect that the court would seal only documents filed by Attorney Kilmartin and not those filed on their behalf. Thus, Plaintiffs have compromised to a significant degree their request for the court to implement the mediation confidentiality agreement because of their own violations of it. Plaintiff's attorney has an individual interest in having documents sealed permanently since they contain accusations against himself. Thus, he has his own interest to protect as well as his clients' interest.

The two attorneys for the Defendants take different positions. Attorney Kilmartin represented the Defendants insofar as insurance coverage was concerned, and Attorney Valsangiacomo represented the Defendants as to any excess liability over and above insurance. Attorney Kilmartin's actions show his attempt to make the documents public. After the events described above, the court received notification from Attorney Valsangiacomo that Attorney Kilmartin was no longer authorized by the clients to file any documents with the court unless they were also signed by Attorney Valsangiacomo as co-counsel. Letter filed August 3, 1998 by Attorney Valsangiacomo by facsimile. Attorney Valsangiacomo never filed anything with the court containing references to the mediation session or related settlement terms or negotiations. He seeks denial of public access on the grounds that it is necessary to implement the confidentiality agreement which should not have been broken, and in furtherance of this position, he seeks withdrawal of the Affidavit of Lucille Nelson. His position is consistent with his actions, in that he did not participate in the improper filings and disavows the position taken by Attorney Kilmartin. His argument is strong, in that he seeks to have the court put in place what the attorneys should have brought about in the first place, but failed to do, i.e. confidentiality of discussion at the mediation session and follow up negotiation.

The fourth factor suggested by the court's analysis in E.E.O.C. v. National Children's Center, Inc. is the strength of the property and privacy interests involved. There are various interests of parties and nonparties to be considered. It is in the interests of the parties to protect the privacy of the mediation session and related settlement discussions and proposals because they agreed to do so in the first place, and because they finally resolved the case in a settlement

agreement that they have agreed will remain confidential.[8] It is definitely in the interest of other present and future litigants to trust that their participation in a confidential mediation session will not later become exposed to public scrutiny. It is in the interest of attorneys such as Attorney Joslin, who was willing to accept appointment by the court to conduct a mediation session in this difficult case, to have confidence that confidentiality agreements will be upheld, so that he can provide such assurance to participants at the time of mediation. It is in the interest of the courts to be able to have the continued cooperation and good will of attorneys such as Attorney Joslin who perform this valuable service on behalf of the courts and the public, resulting in efficient and effective use of court resources. It is in the interest of Attorney Caldbeck to have any charges of professional wrongdoing at a mediation session raised against him in the confidential setting of the processes of the Professional Conduct Board, rather than raised first in public court records. It is not in the interest of the public for attorneys to be able to conduct themselves improperly and then have their actions covered up by the court. It is in the interest of the public to have full and open access to court processes and how the court handles its work, even when that includes cases in which the court processes have been used improperly and there is a resulting embarrassment to attorneys, parties, and the integrity of court processes. It is in the interest of the court for litigants and the public to have confidence in its work by being able to observe it, and it also in the interest of the court for litigants and attorneys to have confidence that the confidentiality of mediation sessions will be upheld.

The court has already identified the considerations of the fifth factor, which is the prejudice to those opposing disclosure. It is an undermining of confidence in the confidentiality of mediation sessions. This is extremely important, both to protect the privacy interests of the parties, and to promote the voluntary settlement of claims. The trial courts in Vermont have been successful in recent years in having excellent cooperation from the bar in implementing pretrial mediation for nearly all contested civil cases, so as to maximize the expeditious and cooperative settlement of cases and reserve court resources for those cases unable to be otherwise resolved. The continued success of this program depends on the trust of parties and their attorneys that mediation sessions are confidential.

In any case, the point in time when the need for protection of the confidentiality of a mediation session and follow up negotiations is at its strongest is during the period when settlement remains a possibility but is uncertain. At such time, confidentiality of negotiation information is vital, as any public disclosure could jeopardize settlement. That time is over in this case, as settlement documents have been executed, and the cause of action has been dismissed.

The final factor identified by the court in E.E.O.C. is the purpose for which the material under consideration was introduced. In this case, the court cannot identify a valid purpose for introduction of information about the mediation session and related settlement discussions and

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[8]The settlement agreement itself has not been filed with the court. The parties reached an agreement that was signed out of court, and stipulated to a dismissal of the case.

proposed terms. If there is a claim against Attorney Caldbeck for violation of professional responsibilities arising out of conduct at the mediation session, then there is an appropriate forum in which to raise such a complaint, i.e., the Professional Conduct Board. State v. Zele, 9 Vt. L. W. 179 at ftn. 2 (1998). To introduce it within the context of the case itself not only violated the confidentiality agreement but resulted in a complication of the issues in the case and a considerable additional burden on all parties and attorneys and court resources. Court staff and the judge were obliged to screen every page filed with the court for a temporary period to determine whether it contained material that should be temporarily sealed until this difficult issue could be sorted out.

There is an additional factor not considered by the court in E.E.O.C. that is pertinent to the facts of this case, and that is whether there are alternative means of implementing the competing policies of public access and trust in confidentiality conditions of mediation sessions. In other words, is there another way to support litigant and attorney trust in the confidentiality of mediation sessions and assure their confidentiality in the future while at the same time maintaining the public's open access to the work of the court. The question is whether there is a means of holding accountable the attorneys who improperly filed confidential material in this case so that attorneys will be strongly dissuaded from doing so in the future. If so, the court can utilize such alternative to provide reassurance to future litigants that despite what happened in this case, they can have confidence that in their own case, the chances are slim that confidential settlement sessions will be exposed to public view. At the same time, the principle of openness of court documents and public observation of the work of the courts can be maintained.

There is a process for addressing the filing by attorneys of documents containing material subject to a confidentiality agreement. The court has its own authority to sanction attorneys for improper use of court processes. Van Eps v. Johnston, 150 Vt. 324 (1988). Notice and a hearing is required. Id. at 328-29. Therefore, the court will schedule a hearing at which Attorneys Caldbeck and Kilmartin are required to appear and show cause why they should not be sanctioned for having filed with the court material that was protected by the confidentiality agreement pertaining to the mediation session. The parties and Attorney Valsangiacomo are not required to attend. Attorneys Caldbeck and Kilmartin may wish to be represented by separate counsel. If, after hearing, the court concludes that there is a substantial likelihood that one or both attorneys have violated professional responsibilities, then the judge should "take appropriate action" as required by the Code of Judicial Conduct, A.O. 10 Canon 3 D, which may include filing notice of possible professional conduct violations. The court will not address this issue until the hearing on sanctions has been completed and each attorney has had an opportunity for a hearing.

The prospect of these consequences should be a powerful deterrent to attorneys working with other litigants, present and future. Addressing in this manner the issue of enforcement of the confidentiality of mediation sessions should serve to promote confidence that the court will hold persons who commit violations accountable. With the use of this alternative, the case for sealing or striking the documents is less compelling when weighed against the underlying

principle of the openness of court records and processes. Although unsealing documents presently under seal would mean that there would be some public disclosure about discussions and conduct that took place at the mediation session, the persons prejudiced by this disclosure would be the parties themselves and the attorneys. Since these are the exact individuals who participated in the preparation and filing of confidential material, it is not unreasonable that it is their interests that should give way to the significantly larger interests of the public and other users of the courts.

Based upon the foregoing analysis, it is the conclusion of the court that because the case has now settled, and because the court is proceeding with a hearing to determine whether sanctions should be imposed against the attorneys responsible for filing documents containing confidential material, and because the persons who would be harmed by public disclosure in this instance are the persons responsible for filing confidential material, the proponents of sealing or striking documents containing information about the mediation session have not met the burden of showing a sufficiently compelling reason to prevent public access to the documents filed in this case.

There is one exception to this conclusion. Exhibit A.1 attached to Defendant's Motion filed on July 2, 1998 is a copy of the first page of a proposed settlement agreement to settle the case. The date of this proposal is June 24, 1998, which is shortly after the mediation session, in which substantial progress toward settlement was made, and not long before the final settlement. The attorneys have represented that it is not the same as the document representing the parties' final settlement. Nonetheless, paragraphs 1 and 2 contain detailed terms that are particular to the case, and could give rise to informed speculation about the terms of the final confidential settlement, if made known to the public. The remaining paragraphs contain terms that are generic and predictable in settlement agreements. Therefore, the court will prepare a redacted version of Exhibit A.1 eliminating the content of paragraphs 1 and 2, and it is the redacted version that will be included in the public record and labeled as such. The original Exhibit A.1 will remain under seal in the court records. This action will protect the confidentiality of the final settlement terms of the case, and yet allow the public to observe the documents that were filed and observe the use of the document in the case. Redaction is the least restrictive means of limiting public access to the document.

Release at this time of the documents presently sealed would significantly hamper the work of the Vermont Supreme Court in reviewing this decision in the event of an appeal, since by the time of review the documents would already have been exposed to the public. Therefore, the documents presently under seal will remain sealed pending expiration of the time for filing an appeal. Greenwood v. Wolchik, 149 Vt. 441 at 442 (1988).

ORDER

1. Attorneys Kilmartin and Caldbeck are hereby given notice of a hearing at which they are required to appear and show cause why the court should not impose sanctions for violating the confidentiality of the mediation session by filing documents with the court containing descriptions of discussions at the mediation session and related negotiations and proposed terms of settlement. The hearing shall take place on September 2, 1998 at 11:00 o'clock. No parties and no other attorneys are required to attend. Attorneys Kilmartin and Caldbeck are permitted to be represented by their own counsel.

2. The court will prepare a redacted version of Exhibit A.1 attached to the Defendant's Motion filed July 2, 1998 by eliminating the contents of numbered paragraphs 1 and 2 and adding a notation "Redacted by Order of August 21, 1998." The original of Exhibit A.1 shall remain sealed in the court records. The redacted version of Exhibit A.1 and all other documents presently under seal pursuant to the Orders of July 9, 13, and 21, 1998 shall no longer be sealed and shall be included in court records in the documents with which they were originally filed, except as ordered in paragraph 3 below.

3. The terms of paragraph 2 above are stayed pending expiration of the time for filing an appeal.

Dated at St. Johnsbury, Vermont this 21st day of August, 1998.

Mary Miles Teachout
Superior Judge