



**COURT OF APPEALS FOR THE  
FIRST DISTRICT OF TEXAS AT HOUSTON**

ABATEMENT ORDER

Appellate case name: In re Baylor University  
Appellate case number: 01-20-00439-CV  
Trial court case number: 2019-17683  
Trial court: 234 Judicial District of Harris County

On June 12, 2020, relator filed its petition for writ of mandamus in this Court. Relator also filed two volumes of the mandamus record. Volume One is unsealed while Volume Two is purportedly “under seal.” Upon inspection of the record, there is no sealing order from the trial court that complies with Rule 76(a) of the Texas Rules of Civil Procedure regarding Volume Two. Instead, the mandamus record contains an “Agreed Confidentiality and Protective Order,” signed by the trial court on November 27, 2019. This “Agreed Confidentiality and Protective Order” does not show compliance with, or an exception to, Rule 76(a). No “court records” or “documents filed in connection with any matter before any civil court,” may be sealed absent compliance with Rule 76(a) except: (1) documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents, (2) documents in court files to which access is otherwise restricted by law, or (3) documents filed in an action originally arising under the Family Code. TEX. R. CIV. P. 76a. There is no showing in the record that any of these exceptions are applicable here.

Requests to seal records are governed by Texas Rule of Civil Procedure 76a. *See* TEX. R. CIV. P. 76a. Rule 76a provides no authority for an appellate court to make the findings necessary to decide motions to seal the record. *See Envtl. Procedures, Inc. v. Guidry*, 282 S.W.3d 602, 636 (Tex. App.—Houston [14th Dist.] 2009, pet. denied) (“On its face, Texas Rule of Civil Procedure 76a, entitled ‘Sealing Court Records,’ does not give appellate courts the authority to find the necessary facts and to determine motions to seal on appeal, and the parties have not cited any statute, rule, or case stating that appellate courts have this authority.”).

Accordingly, we abate the case and direct the trial court to hold a hearing that complies with the requirements of Rule 76(a). The Rule 76a hearing shall be conducted within 60 days of this Order. The trial court shall have a court reporter, or court recorder, record the hearing and file the reporter’s record with this Court no later than 75 days from the date of this Abatement Order. The trial court clerk shall file a supplemental clerk’s record containing the trial court’s Rule 76a order and any findings within 75 days of the date of this Order. While this case is abated, Volume

Two of the mandamus record will remain temporarily sealed, pending an order from the trial court and a motion to reinstate in this Court.

After the Rule 76a hearing, if the trial court orders documents to be sealed in accordance with Rule 76a, then this Court may grant a motion to seal only those documents specified by the trial court. See *R.V.K. v. L.L.K.*, 103 S.W.3d 612, 614 (Tex. App.—San Antonio 2003, no pet.) (noting appellate court ordered clerk to seal parties’ briefs that were replete with references to and copies of portions of record ordered sealed by trial court); see also *Navasota Resources, L.P. v. First Source Tex., Inc.*, 206 S.W.3d 791, 794 (Tex. App.—Waco 2006, no pet.) (Gray, C.J. dissenting) (citing *Tindall v. Nationsbank of Tex., N.A.*, No. 05-97-01843-CV, 1998 WL 324731, at \*1 (“The trial court signed an unopposed protective order limiting discovery of documents[] and made no express findings on whether those documents constituted court records. Therefore, I cannot rely upon compliance with Rule 76a in the trial court to seal the brief or the information that it contains on appeal as well.”)).

Further, on June 12, 2020, relator filed a motion for temporary relief, requesting a stay of the May 19, 2020 order compelling Dr. Linda A. Livingstone’s deposition and any other orders or rulings regarding the deposition of Dr. Livingstone.

We **grant** relator’s motion for temporary relief and stay Dr. Livingstone’s deposition and any other orders or rulings regarding the deposition of Dr. Livingstone. See TEX. R. APP. P. 52.10(b). This stay is effective until the case in this Court is finally decided or the Court otherwise orders the stay lifted. Any party may file a motion for reconsideration of the stay. See *id.* 52.10(c).

Further, the Court requests that the real parties in interest respond to the petition for writ of mandamus. It is **ordered** that the response of any interested party, if any, shall be due no later than 20 days from the date of this order.

It is so ORDERED.

Judge’s signature:                   /s/ Sherry Radack                    
 Acting individually     Acting for the Court

Date:   June 23, 2020