

# The O'Reilly Divorce, And The "Factors" Behind Sealing Case Information

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April 19, 2017 | by Matheu Nunn

On April 15, 2017, "The Hill" published an article titled "*CNN nearly sued to unseal O'Reilly divorce records: report*" (available [here](#)). For those of you who are unaware, former Fox News Network host Bill O'Reilly (of "The O'Reilly Factor") has come under fire after media outlets reported details of multiple settlements stemming from O'Reilly's alleged sexual harassment of five different women.

Although O'Reilly has denied the allegations of sexual harassment – and a settlement generally is not indicative of guilt – CNN apparently contemplated unearthing O'Reilly's divorce file, presumably to determine whether his divorce intersected with some of these claims. The cynic in me leads me to believe that the old adage, "Those who live in glass houses..." (you know the rest). In other words, CNN anchors get divorced as well: "*CNN anchors John King and Dana Bash split after less than four years of marriage*" (available [here](#)).

Nevertheless, the O'Reilly article led me to conclude that the public may benefit from knowing just how much "air" their "dirty laundry" will receive in a New Jersey divorce case. As a starting premise, courts in New Jersey are open to the public – *and so are their records*. Having said that, there are some well-defined exceptions including, but not limited to, juvenile records, adoption records, records related to domestic violence victims, certain records related to victims of sexual assault, grand jury proceedings, expunged records, etc. Fortunately, the aforementioned records are *not typically* involved in a divorce case. But a divorce case may create quite the voluminous set of documents – a contributing factor to deforestation to be sure – including everything from financial records (bank statements, cancelled checks, etc.) to a litigant's medical records (psychiatric records, records related to STDs, etc.). And while it is atypical for an entire divorce case to be "sealed" in New Jersey, the New Jersey judiciary does exclude entire categories of divorce records from public access, including: child custody evaluations, reports and records; medical, psychiatric, psychological and alcohol and drug dependency records, reports and evaluations in matters related to child support, child custody or

parenting time determinations; family case information statements required by Rule 5:5-2 and financial statements in summary support actions required by Rule 5:5-3, including all attachments; and records relating to Division of Child Protection and Permanency proceedings (“DCPP”).

*So, can an entire case file be sealed?* Although it is conceivable, it is unlikely. Pursuant to Rule 5:3-2(b), the court, upon a demonstration of “good cause” and notice to all parties, has the authority to order that a family court file “or any portion thereof be sealed.” The court must have “good cause” to seal any part of a divorce file. In doing so, the court must balance the rights of the public interest against the rights of the parties. Prior court decisions in New Jersey have held that “mere embarrassment of the parties connected to a divorce action” without more, is insufficient to seal a divorce file. That is, the public disclosure of embarrassing facts does not trump the public’s right to information. Moreover, when considering that the judiciary already precludes the public’s access to most (if not all) matters bearing on custody and parenting time of children (e.g., custody evaluations, psychological records, DCPP records, etc.), it is difficult to imagine what records would qualify under Rule 5:3-2(b). Perhaps if a CEO of a publicly traded company – a bank, for example – were involved in divorce litigation that could cause a substantial and deleterious impact on the bank’s shareholders and maybe the public at large, a court could determine that sufficient “good cause” exists to block the public’s right to access. That said, this would be the rare instance.

In summary, be careful what you include in your divorce filings because there is a strong likelihood that the public will be able to access the information. If privacy remains of paramount importance, litigants can always choose to remove their divorce case to binding arbitration and, in connection with that arbitration, enter into non-disclosure agreements that accomplish the same goal as a “sealing” of the record. Of course, arbitration has the added benefit of resolving your divorce in a much more expeditious fashion than litigating through the court system. Many Einhorn Barbarito matrimonial attorneys (including this author) have litigated cases through arbitration – and, for the most part, its benefits far outweigh the negatives.