

In the  
Indiana Supreme Court



CAUSE NUMBER: 94S00-0801-MS-15

ORDER AMENDING INDIANA ADMINISTRATIVE RULES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Administrative Rules 9 and 10 are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

**INDIANA ADMINISTRATIVE RULES**

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**Rule 9. Access to Court Records**

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**(D) General Access Rule.**

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(4) A court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)]. This provision does not operate to deny to any person the right to access a court record under Rule 9(D)(1).

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**(G) Court Records Excluded From Public Access.**

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(4) Appellate Proceedings. In appellate proceedings, parties, counsel, the courts on appeal, and the Clerk of the Supreme Court, Court of Appeals, and Tax Court (“Clerk”) shall have the following obligations.

(a) Cases in which the entire record is excluded from public access by statute or by rule. In any case in which all case records are excluded from public access by statute or by rule of the Supreme Court,

(i) the Clerk shall make the appellate chronological case summary for the case publicly accessible but shall identify the names of the parties and affected persons in a manner reasonably calculated to provide anonymity and privacy; and

(ii) the parties and counsel, at any oral argument and in any public hearing conducted in the appeal, shall refer to the case and parties only as identified in the appellate chronological case summary and shall not disclose any matter excluded from public access.

(b) Cases in which a portion of the record is excluded from public access by statute or by rule. In any case in which a portion (but less than all) of the record in the case has been excluded from public access by statute or by rule of the Supreme Court,

(i) the parties and counsel shall not disclose any matter excluded from public access in any document not itself excluded from public access; to the extent it is necessary to refer to excluded information in briefs or other documents that are not excluded from public access, the reference shall be made in a separate document filed in compliance with Trial Rule 5(G); and

(ii) the parties, counsel, and the Clerk shall have the respective obligations set forth in (a)(i) and (a)(ii) to the extent necessary to comply with the statute or rule.

(c) Cases in which any public access is excluded by trial court order. In any case in which all or any portion of the record in the case has been excluded from public access by trial court order ("TCO"),

(i) (A) the appellant shall provide notice in the appropriate place on the appellant's case summary (see Ind. Appellate Rule 15) that all or a portion of the record in the case has been excluded from public access by TCO, and attach to the appellant's case summary all TCOs concerning each exclusion; and

(B) the parties, counsel, and the Clerk shall have the respective

obligations set forth in (a)(i), (a)(ii), and (b)(i) to the extent necessary to comply with the TCO.

(ii) if the notice and supporting orders referred to in (i)(A) are supplied, then the Clerk shall exclude the information from public access to the extent necessary to comply with the TCO unless the court on appeal determines that

(A) the TCO was improper or is no longer appropriate.

(B) public disclosure of the information is essential to the resolution of litigation, or

(C) disclosure is appropriate to further the establishment of precedent or the development of the law;

(iii) any party may supplement or challenge the appellant's notice or attachments supplied under (i)(A) or request a determination from the court on appeal under (ii); and

(iv) if the appellant does not notify the court on appeal that all or a portion of the record in the case has been excluded from public access by TCO, and attach to the appellant's case summary all TCOs concerning each exclusion, as required by (i)(A).

(A) the Clerk shall be under no obligation to exclude the information from public access; and

(B) the appellant and appellant's counsel shall be subject to sanctions.

(d) Orders, decisions, and opinions issued by the court on appeal shall be publicly accessible, but each court on appeal should endeavor to exclude the names of the parties and affected persons, and any other matters excluded from public access, except as essential to the resolution of litigation or appropriate to further the establishment of precedent or the development of the law.

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#### **Rule 10. Security of Court Records**

**(A) Court Responsibilities.** Each judge is administratively responsible for the integrity of the judicial records of the court and must ensure that measures and procedures are employed to protect such records from mutilation, false entry, theft, alienation, and any unauthorized alteration, addition, deletion, or replacement of items or data elements.

#### Commentary

The court is required to preserve the integrity of audio and video recordings of court

proceedings. The judge may employ various methods for ensuring the recording is not altered, including but not limited to supervised playback for listening or copying, creating a copy of the recording for use during said playback, serving notice to the parties that the recording is being accessed, and providing a copy, clearly identified as such. As prescribed by Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)], because the court is further required to prohibit broadcasting or televising court proceedings, the court may employ methods to restrict publication of copies of court proceedings made during the pendency of the case.

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These amendments shall take effect January 1, 2009.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

Thomson/West is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 6<sup>th</sup> day of October, 2008.

Randall T. Shepard  
Randall T. Shepard  
Chief Justice of Indiana

All Justices concur.