

In the Indiana Supreme Court

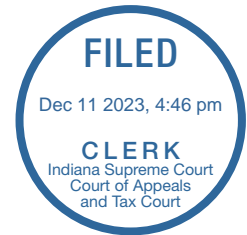
State of Indiana ex rel. Richard Allen,
Relator,

v.

Carroll Circuit Court, et al.,
Respondents.

Supreme Court Case No.
23S-OR-302

Trial Court Case No.
08C01-2210-MR-000001



Published Order Denying Writ of Mandamus and Prohibition

Richard Allen has petitioned this Court under the Rules of Procedure for Original Actions for a writ of mandamus and prohibition. He requests that we (1) order the trial court to reinstate several court records as publicly accessible documents on the Chronological Case Summary (“CCS”) and the electronic case file, (2) prohibit the trial court from ordering the removal of any court records filed in this case from the CCS and the electronic case file, and (3) prohibit the trial court from excluding from public access any court records without complying with the requirements of our Rules on Access to Court Records (“A.C.R. Rules”). Allen argues our intervention is necessary because the trial court has failed to perform the clear, absolute duty imposed by our rules to ensure public access to court records. We first explain why Allen has failed to show that our intervention is warranted. And we then provide guidance about the requirements in our A.C.R. Rules.

Original actions are viewed with disfavor and may not be used as substitutes for appeals. Ind. Original Action Rule 1(C). Because a writ is an extraordinary remedy, we will not issue a writ unless the party seeking relief “can show a clear and obvious emergency where the failure of this Court to act will result in substantial injustice.” *State ex rel. City of New Haven v. Allen Super. Ct.*, 699 N.E.2d 1134, 1136 (Ind. 1998).

Allen has not made the requisite showing here. The requests that prompted this petition have largely been resolved, and thus mooted, by the trial court’s order entered on November 14, 2023. This order directed the trial clerk to take specific actions: (1) placing on the CCS 118 individual documents that were previously made remotely accessible by court order in June 2023; (2) unsealing two filings from June and July 2023 and placing them on the CCS; and (3) placing pleadings that Allen’s former counsel filed in October 2023 on the CCS and making them accessible to the public. Along with reinstating these excluded documents to the CCS, the November 14 order reflects the court’s intention to comply with the A.C.R. Rules going

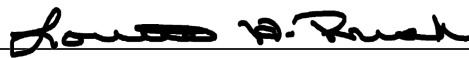
forward. If there are any remaining concerns about access to court records here, interested parties should first seek relief in the trial court and then pursue an appeal if necessary.

We now take this opportunity to clarify the requirements in our A.C.R. Rules, which recognize the “strong societal reasons for allowing public access to court records.” Ind. Access to Court Records Rule 1, Commentary. The A.C.R. Rules presume the public will have open access to court records with limited exceptions. Those exceptions are found in Rule 5, which identifies two types of records that are excluded from public access. First, Rule 5(A) sets out several categories of **entire cases** excluded from public access, including when either statute or court rule requires the records to be treated as confidential. For these records, exclusion from public access is automatic, and no other notice is required. Second, Rule 5(B) sets out thirteen types of **individual case records** excluded from public access. For records falling under this rule, documents must be filed as confidential **and** include an “ACR Form” identifying the specific basis for exclusion.

Aside from these two exceptions, Rule 6 permits a trial court to exclude otherwise public court records from public access only in extraordinary circumstances and by following the rule’s process. That process requires any person affected by the release of the court record to make a written request to prohibit public access, which must give notice to the parties and allow them twenty days to respond. And before a trial court excludes the requested record, it must hold a public hearing and issue a written order explaining why it is granting the request. A.C.R. Rules 6(C)–(D). We expect all Indiana courts to comply with these rules.

The Justices of this Court have reviewed the briefs and other filed materials and conferred with each other. Because Allen bore the burden to persuade this Court to issue a writ and he has not done so, the petition is DENIED. This disposition is final. No petitions for rehearing or motions to reconsider shall be filed in this original action. *See* Orig. Act. R. 5(C).

Done at Indianapolis, Indiana, on 12/11/2023.



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.