

# PUBLIC ACCESS TO COURT RECORDS HANDBOOK

2023 Edition



INDIANA SUPREME COURT  
INDIANA OFFICE OF COURT SERVICES  
Mary Kay Hudson, Executive Director  
251 North Illinois Street, Suite 800  
Indianapolis, IN 46204  
317•232•2542

For more information, please consult the following website: [www.in.gov/courts/rules](http://www.in.gov/courts/rules).

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## Overview of Recent Changes to Court Records Access

### Original Premise Remains

The original premise of the Indiana Supreme Court remains: all Court Records are open to the public unless the records fall into certain exceptions that are deemed confidential.

### Introduction to Public Access and Privacy Issues

Historically, Indiana has presumed Court Records are open for public access unless the records fell into certain exceptions and were deemed confidential. The philosophy of open records is grounded on the concept that government and the public interest are better served when records are open for public inspection.

The Constitution of the State of Indiana has given the Indiana Supreme Court the authority to oversee the operation of trial courts. Ind. Const. Article 7, §4. This authority includes Court Records. The Indiana General Assembly recognized the Court's authority regarding Court Records when it enacted the Indiana Access to Public Records Law, I.C. 5-14-3.

I.C. 5-14-3-4(a)(8) recognizes the authority of the Indiana Supreme Court to declare public records confidential by adopted rules. Administrative Rule 9 was developed in accordance with this authority and expressed the general premise that records are publicly accessible unless they are explicitly excluded from access. The rule sought to assure full public access to Court Records while protecting important privacy interests and assisting court staff and clerks' offices in providing helpful customer service.

Adoption of Admin. R. 9 culminated an intense ten-month effort of a special Task Force on Access to Court Records organized by the Supreme Court Records Management Committee in January 2003. The task force was chaired by Justice Brent Dickson of the Indiana Supreme Court and included a broad representation of many constituencies, including the media, victim advocacy groups, judges, private attorneys, clerks, the Indiana Attorney General's office, and the Indiana Civil Liberties Union. The Indiana Office of Court Services provided staff support to the task force and continues to assist courts and clerks' offices in rule implementation.

The Rule was formally adopted by the Indiana Supreme Court on February 25, 2004, and took effect on January 1, 2005, after which time all new case filings and public access requests were required to comply with the Rule. Court and Clerk offices were not required to redact protected information or restrict access to documents or records created prior to January 1, 2005. Admin. R. 9 and the Access to Court Records Rules now govern confidentiality and access issues for both Administrative and Case Records in all Indiana courts. Although this handbook attempts to answer some practical questions and situations users may encounter with both rules, it is important to read the answers in conjunction with the text of the rule.

On January 1, 2020, the Access to Court Records Rules (A.C.R) became effective and absorbed portions of Admin. R. 9. Admin. R. 9 retained those provisions which were not removed and placed in the Access to Court Records Rules, e.g. definitions of:

- Remote Access, In Electronic Form, Bulk Distribution and Compiled Information
- Remote Access
- Bulk Distribution and Compiled Information and
- When Court Records May Be Accessed.

### Changes to Administrative Rule 9

The prior contents of Admin. R. 9 have largely been removed and placed in the Access to Court Records Rules in accordance with the conversion table below.

<b>Administrative Rule 9 Reference</b>	<b>Access to Court Records Rules</b>
9(A) Scope & Purpose	1
9(B) Who Hass Access Under This Rule	2
9(C)(1-6) Definitions	3
9(D) General Access Rule	4
9(G) Excluding Court Records From Public Access	5
9(G)(4) Excluding Other Court Records from Public Access	6
9(G)(5)(a)(i) Procedures for Excluding Court Records from Public Access	7
9(G)(6) Waiver, Failure to Exclude, Improper Exclusion, and Sanctions	8
9(G)(7) Obtaining Access to Court Records Excluded from Public Access	9
New Provisions	10
New Provisions	11
9(J) Immunity for Disclosure of Protected Information	12

Direct questions about Admin. R. 9, the Access to Court Records Rules, or access or confidentiality to the Indiana Office of Court Services IOCS at (317) 232-2542 and <http://www.in.gov/judiciary/admin/2488.htm>. Quick answers to questions concerning rule procedures,

forms and e-filing are found in the new Quick Reference Benchcard located at <https://www.in.gov/courts/iocs/files/ar9-benchcard.pdf>

## Who has access under this Rule? Access to Court Records Rule 2

The general presumption under this Rule is that all Court Records are open to any person unless the records

- fall into a particular type or category that is excluded from public access by statute or this Rule,
- involves an individual circumstance that excludes the record from public access or
- the record was sealed by the trial court in accordance with A.C.R. 6.

If a record, or a portion of a record, is excluded from public access for reasons other than its confidentiality by law, a publicly accessible indication of its exclusion is required.

A.C.R. 4 requires the identification of all redactions. The phrase “not-public information” or an equivalent designation is acceptable. A court’s access management authority does not extend to denial of access to a public record allowed under A.C.R. 4(A) or denial of the opportunity for playback of recorded hearings when playback is requested by a litigant, member of the public or the news media.

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 prohibitions on broadcast of court proceedings outlined in Ind. Judicial Conduct Rule 2.17. The commentary to Admin. R. 10, Security of Court Records, provides additional guidance regarding access to audio and video recordings of court proceedings.

### *Commentary*

*Subsection (A) provides the general rule that all persons, including members of the general public, the media, and commercial and noncommercial entities, are entitled to the same basic level of access to Court Records. Access to Court Records is not determined by who is seeking access or the purpose for seeking access, although some users, such as court employees or the parties to a particular case, and their lawyers, may have greater access to those particular records than is afforded the general public.*

*Subsection (B) provides the exception to the general rule and specifies the entities and persons for whom courts may provide greater access for effective management of the judicial system and the protection of the right to a fair trial.*

In paternity cases, prospective lawyers and their agents are allowed access when a lawyer files an Assurance of Confidentiality with the court in substantial compliance with the form contained in the Administrative Rules Appendix.

At times, records that are otherwise excluded from public access are shared with other governmental agencies, such as law enforcement, administrative agencies, or schools. More particularly, specific data contained within records, such as Social Security Numbers or addresses, is shared with these other governmental agencies to maximize the effectiveness of the court proceeding. Another instance of information sharing would include account numbers or Social Security Numbers that may be required in court orders submitted to banks or employers for garnishment purposes.

Despite these instances when non-public information is shared with other agencies or entities to give effect to court orders or other official proceedings, A.C.R. 5 still requires that non-public information, such as full Social Security Numbers of living persons and full account numbers, or in the instance of certain causes of action, dates of birth, address, and other identifying information is excluded from public access to the court file. In instances where a court order contains non-public information, the full order is produced on green paper for inclusion in the non-public case file and a redacted copy is made available for general public access.

**Example:**

*An individual petitions a court for an order of protection. The court grants the petition and issues an order. As part of the order process, the court generates a protective order cover sheet that contains the Social Security Number of all protected parties covered by the order. The order also contains the date of birth of the petitioner. Social Security Numbers and dates of birth are excluded from public access but to maximize the effectiveness of the protective order, it is necessary to share this information with law enforcement agencies and other governmental agencies who are involved in the protective order process. While the Social Security Number is not available to the general public, law enforcement and other court agencies who help execute the order of protection fall within the scope of “other governmental agencies or agencies assisting the court. The court must ensure that the Social Security Numbers and other information excluded from public access are not available in the public case file and this may result in the need for a redacted order in the public file and a complete order with all information in the confidential file.*

## Definitions – Access to Court Records Rule 3 and Administrative Rule 9(C)

The Rules provide definitions to help clarify what is meant by sections of the rule. A brief synopsis of these terms is provided in the pages that follow.

### A.C.R. 3

**Court Record.** A Court Record is considered to include both a Case Record and an Administrative Record.

**Case Record.** Any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or Clerk of court in connection with a particular case. This category includes motions, pleadings, orders, evidence accepted by the court, etc.

**Court Administrative Record.** Any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or Clerk of court pertaining to the administration of the judicial branch of government and not associated with any case. This category includes timesheets, phone records, memoranda, etc.

**Court.** When used in Admin. R. 9, this term can refer to any court in Indiana, including the Indiana Supreme Court, the Court of Appeals, the Indiana Tax Court, circuit, superior, probate, county, city, town, and small claims courts.

**Clerk of Court.** When used in Admin. R. 9, this term can refer to any Clerk of court, including the Clerk of the Indiana Supreme Court, Court of Appeals and Tax Court, Clerks of the circuit, superior, probate, county, city, town, and small claims courts. Clerk's office staff are included in this term.

**Public Access.** This term means the process by which a person may inspect and copy the information in a Court Record.

#### Admin. R. 9(C)

**Remote Access.** This refers to the ability of a person to inspect and copy information in a Court Record in electronic form through an electronic means, such as a computer or the Internet.

**In Electronic Form.** This means any information in a Court Record in a form that is readable through the use of an electronic device, regardless of the manner in which it was created.

**Bulk Distribution.** This means the distribution of all, or a subset of the information in Court Records in electronic form, as is, and without modification or compilation.

**Compiled Information.** This means information that is derived from the selection, aggregation or reformulation of some of all, or a subset of all, the information from more than one individual Court Record in electronic form.

#### *Commentary to Access to Court Records Rule 3*

*"Case Record" refers to records connected with a particular case. It does not include other records maintained by the Clerk of Court, including, but not limited to, election records, marriage and other license functions; copies of notary bonds; oaths and certificates of public officials other than oaths of judicial officers and attorneys; lists, including those for distressed sales, licensed child placing agencies; reports of perpetual care of cemetery endowment accounts; and certificates of inspection and compliance of chemicals and chemical tests results and certifications of breath test operators; delinquency personal*



*property taxes; hunting and fishing licenses; conflict of interest statements, passports; and the filing of reports from state agencies, such as the Alcohol Licensing Board.*

*The definition of Case Record is medium neutral and access neutral, and is intended to apply to every Case Record, regardless of the manner in which it was created, the form(s) in which it is stored, or other form(s) in which the information may exist.*

*A “Court Administrative Record” may include, but not be limited to, the roll of attorneys, rosters of medical review panels and group legal services, records relating to elections to the Judicial Nominating Commission, statistical reports, local Court rules, jury pool list records, general court orders, budget and expenditure records, and record of receipts of funds. The term “Court agency” in subsection (C)(3) includes without limitation the Indiana Judicial Center and the Judicial Conference of Indiana.*

## General Access Rule – Access to Court Records Rule 4

All Court Records, regardless of the manner of creation, method of collection, form of storage, or the form the record is maintained are accessible to the public except as provided in A.C.R. 5.

If a Court Record or a portion of it is excluded from public access, a publicly accessible indication of the exclusion is required unless the court proceedings or Court Administrative Records are confidential by law. The rule requires the identification of all redactions. The phrase “not-public information” or an equivalent designation is acceptable to designate records or portions that are excluded from public access.

To avoid substantial interference with resources, normal operations, or comply with Ind. Judicial Conduct Rule 2.17, a court may manage access to audio and video recordings of its proceedings.

### *Commentary*

*Many records are available remotely at no cost as provided in Administrative Rule 9(E). The objective of this section is to make it clear that this rule applies to information in the Court Record regardless of the manner in which the information was created, collected or submitted to the court. Application of this rule is not affected by the means of storage, manner of presentation or the form in which information is maintained. To support the general principle of open access, the application of the rule is independent of the technology or the format of the information.*

*Subsection (C) requires that any and all redactions be identified. The phrase “not public information” or an equivalent designation may be used.*

## Providing Remote Access – Administrative Rule 9(E)

The advances of modern technology provide courts and clerk's offices with the ability to provide public access to records through electronic means. Although Admin. R. 9 does not require courts or clerks to provide electronic access to Court Records, it encourages them to provide remote access.

If remote access is provided, courts and clerks are encouraged to provide the following types of information:

- litigant / party indexes
- listings of new case filings, including party names
- chronological case summaries of cases
- calendars or dockets of court proceedings
- judgments, orders or decrees.

Upon the request and at an amount approved by a majority of judges of courts of record in the county, the County Board of Commissioners may adopt an electronic system fee charged in conjunction with electronic access to Court Records. In the instance of records from multiple courts, the Supreme Court may adopt such a fee. The fee is subject to approval by the Indiana Office of Court Services and the method of its collection, deposit, distribution and accounting are subject to approval by the Indiana State Board of Accounts.

In deciding to provide remote access to Court Records, courts and clerks should be mindful of restrictions on public access and ensure that any remote access does not expose the court's case management system to unnecessary burden or risk of damage through inappropriate access, hacking, or viruses.

Remote access may increase efficiency in court and clerk offices because many routine questions or requests are answered by public access to the information through remote means.

Courts and clerks who wish to provide remote access to court information are required by Ind. Trial Rule 77(K) to submit a request to IOCS for approval of the form of access and the information for inclusion.

Admin. R. 9 contemplates that courts and clerks may wish to post more information than basic indexes and CCS entries to a medium such as the Internet. With that intent in mind, the forms associated with this handbook provide a means for parties and their legal counsel to file information that is otherwise excluded from public access separate from documents, such as pleadings or motions that may otherwise be available for public access. These companion forms would be kept separate from the publicly accessible portions of a case file in the physical file and would not be available to the general public in an electronic version.

Obtaining permission to provide Court Records by remote access is an intricate process. See Appendix B for a checklist with respect to this process.

## Bulk Distribution and Compiled Information – Administrative Rule 9(F)

A request for bulk distribution of records is one that asks for all, or a subset, of the records from a court's case management system. Under the terms of Admin. R. 9, bulk record requests do not require manipulation of the data. A bulk distribution is simply an output that contains all the records and all the data fields contained in those records. These types of requests are frequently made by commercial information providers or by entities conducting research.

Compiled information requests, however, require some manipulation of data, either through filtering so that only particular records are included, or through editing, or redaction of records to provide specific information.

All requests for bulk distribution or compiled information are submitted to OJA for evaluation and approval. The provisions of Admin. R. 9 require that requests are handled centrally so they are dealt with in a similar fashion. However, non-confidential, compiled information normally available to the public via public access from the case management system of courts or clerks within a judicial circuit may be granted without submitting the request for OJA's approval. See Admin. R. 9(F)(2)(b).

IOCS reviews the bulk distribution or compiled information request, and, if it is possible to accommodate the request, will either process the request directly through the Court Technology Division for data from the Odyssey Case Management System. If fulfilling the request could only be done by a local court or clerk's office. IOCS will forward the request to the appropriate jurisdiction for further action.

Standard forms for bulk or compiled information requests are in Appendix A of this Handbook. While it is not necessary for an applicant to use the form, it does elicit all the information required by IOCS to evaluate a request. Up to date forms are also available at <http://www.in.gov/judiciary/admin/2459.htm>.

Requests for information that is otherwise publicly available are granted if technically feasible and the resources to generate the information are available. Requests for information that is not publicly accessible require a higher level of scrutiny. IOCS may still accommodate these types of requests, but information that is excluded from public access will still be excluded.

In all instances the requesting party may be required to pay the reasonable costs of responding to the request for information.

**Example:**

*A national criminal record database submits a request to the Indiana Office of Court Services for bulk transmission of all criminal records available through the Odyssey*

*statewide case management system. The Division reviews the request and notes that the information requested contains the Social Security Numbers of all defendants. Since Social Security Numbers are excluded from public access, the availability of that data will be limited. The Division processes the request, forwards it to Court Technology for preparation of the data, and then ultimately transmits the data to the applicant. The data transmission will contain all of the information requested, with the exception of the Social Security Number field which will contain only the last four digits of the Social Security Number.*

#### *Commentary to Administrative Rule 9(F)*

*Section (F)(3) authorizes Courts, in their discretion, to provide access to Bulk Distribution and Compiled Information that is accessible to the public. It does not require that such information be made available. Permitting Bulk Distribution or Compiled Information should not be authorized if providing the data will interfere with the normal operations of the court.*

*In allowing bulk or compiled data requests, Courts must limit bulk data to Court Records, even if those requesting this information are seeking other information which is governed by other agencies' policies.*

*Generating compiled data may require Court resources and generating the Compiled Information may compete with the normal operations of the Court for resources, which may be a reason for the Court not to compile the information. However, it may be less demanding on Court resources to instead provide Bulk Distribution of the requested information pursuant to section (D)(3), and let the requestor, rather than the Court, compile the information. Courts may charge for the fair market value of bulk or Compiled Information provided under Section (F)(3).*

*Section (F)(4) allows only the Supreme Court to grant requests for bulk or Compiled Information that is excluded from Public Access and only when the request is made by research and/or governmental entities. The general intent of (F)(4)(d) is that the last four digits of social security numbers and years of birth, rather than entire birth dates and social security numbers, are sufficient for matching records and to ensure that someone is correctly identified in bulk or compiled records. Courts should provide more complete social security numbers or other identifying information only in extraordinary circumstances.*

## Records Excluded From Public Access – Access to Court Records Rule 5

### Amendments Effective – 2021 & 2022

Effective January 1, 2021, Access to Court Record Rule 5(B) was amended with the addition of additional subparagraphs:

(11) Photographs, film, video recordings, or other similar mediums showing a live individual's uncovered genitals, pubic area, buttocks, or female post-pubescent nipple;

(12) Photographs, film, video recordings, or other similar mediums showing a live individual engaging in or being subjected to sexual conduct;

(13) Guardian ad litem/court appointed special advocate reports, Parenting Coordinator reports, and custody evaluation reports.

A. C. R. 5(E)(1) was amended to add an additional sentence: "When this request is made, the request and the Court Record will be rendered confidential until the Court rules on the request."; and additional commentary:

In Rule 5(B)(11) the term "uncovered" means visible, that is, unobscured by clothing, censor bars, or other similar coverings. The images excluded from public access in Rule 5(B)(11) and (12) are limited to actual visual representations. Subparts (11) and (12) do not include a painting, drawing, or other similar representation. Indiana Probation Standard 1.4 provides that information in probation files is confidential and may only be released in accordance with the Rules on Access to Court Records, state and federal statutes and rules, and policies adopted by the Judicial Conference of Indiana.

Effective January 1, 2022, the Commentary to A.C.R. 5 which clarified that *reports related to the defendant's treatment while undergoing the process of restoration to competency are treatment records and are excluded from Public Access. If the defendant does not regain competency, regular commitment proceedings are initiated under a mental health case, which is excluded from Public Access in its entirety.*

#### Court Records Excluded Entirely – A.C.R. Rule 5(A)

Court Records Excluded in their entirety include:

- entire cases where all Court Records are declared confidential by statute or other court rule,
- entire cases where all Court Records are sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3-5.5) and
- entire cases where all Court Records are excluded from Public Access by specific Court order entered in accordance with 9(G)(4).
- all Mental Health cases filed pursuant to I. C. 12-26.
- entire cases that exclusively pertain to investigative requests and process unrelated to a pending criminal proceeding, including but not limited to search warrants, subpoenas ad testificandum, subpoenas duces tecum, and other investigative requests.
- all paternity records created after July 1, 1941, and before July 1, 2014.

## Individual Case Records - A.C.R. Rule 5(B)

### Excluded Case Records:

- case records declared confidential or excluded from Public Access pursuant to federal law,
- case records excluded from Public Access or declared confidential by Indiana statute or other court rule,
- case records excluded from Public Access pursuant to 5(A) or by specific Court order entered in accordance with Rule 6
- case records sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3-5.5),
- case records for which a statutory or common law privilege has been asserted and not waived or overruled,
- case records created or maintained by an agency or program for pre-trial release and supervision and problem- solving court supervision.
- complete Social Security Numbers of living persons, except for names, information such as addresses (mail or e-mail), phone numbers, and dates of birth which explicitly identifies:
  - Natural persons who are witnesses or victims (not including defendants) in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings, provided that juveniles who are victims of sex crimes shall be identified by initials only
  - places of residence of judicial officers, Clerks and other employees of courts and Clerks of court, unless the person or persons about whom the information pertains waives confidentiality;
- complete account numbers of specific assets, loans, bank accounts, credit cards, and personal identification numbers (PINs),
- all personal notes, e-mail, and deliberative material of judges, jurors, court staff, and judicial agencies, and information recorded in personal data assistants (PDAs) or organizers and personal calendars,
- Records in a pending matter that pertain to permissible ex parte proceedings, post charging investigatory requests for process, or requests for in camera review, and that have been ordered confidential by the trial judge.
- Medical records compiled or created by a medical service provider and examiner reports pursuant to Trial Rule 35
- Mental health records compiled or created by a mental health services provider for treatment purposes
- Drug or substance abuse records, including test results, when performed at the direction of a substance abuse treatment program provider or a court or court program governed by 42 CFR Part 2
- Photographs, film, video recordings, or other similar mediums showing a live individual's uncovered genitals, pubic area, buttocks, or female post-pubescent nipple
- Photographs, film, video recordings, or other similar mediums showing a live individual engaging in or being subjected to sexual conduct

- Guardian ad litem/court appointed special advocate reports, Parenting Coordinator reports, and custody evaluation reports

#### Personal Information of Litigants, Witnesses and Children

- complete Social Security Numbers of living persons, except for names, information such as addresses (mail or e-mail), phone numbers, and dates of birth which explicitly identifies:
  - Natural persons who are witnesses or victims (not including defendants) in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings, provided that juveniles who are victims of sex crimes shall be identified by initials only
  - places of residence of judicial officers, Clerks and other employees of courts and Clerks of court, unless the person or persons about whom the information pertains waives confidentiality;
- complete account numbers of specific assets, loans, bank accounts, credit cards, and personal identification numbers (PINs),
- all personal notes, e-mail, and deliberative material of judges, jurors, court staff, and judicial agencies, and information recorded in personal data assistants (PDAs) or organizers and personal calendars

#### Court Records Temporarily Excluded from Public Access

- entire criminal cases when a request to exclude Case Records from Public Access is filed contemporaneously with a request for an arrest warrant, search warrant, indictment, or an information ordered confidential by the trial judge, prior to return of duly executed service.
  - When probable cause to justify issuance of an arrest warrant has been established, the Case Records shall be publicly accessible unless the judge determines that the facts presented in the request for exclusion for Public Access support a reasonable belief that public disclosure will increase the risk of flight by the defendant, create an undue risk of harm to the community or a law enforcement officer, or jeopardize an on-going criminal investigation.
  - An order excluding Public Access issued under this section shall expire immediately upon the arrest of the defendant.
- court records related to violations of conditions of post-conviction supervision when a request to exclude the records from Public Access is filed contemporaneously with the notice of violation and the request for arrest warrant.
  - When probable cause to justify issuance of an arrest warrant has been established, the Case Records shall be publicly accessible unless the judge determines that the facts presented in the request for exclusion for Public Access support a reasonable belief that public disclosure will increase the risk of flight by the defendant, create an undue risk of harm to the community or a law enforcement officer, or jeopardize an on-going criminal investigation.

- An order excluding Public Access issued under this subsection shall expire immediately upon the arrest of the defendant.

## A Special Word about Drug Test Results or Psychiatric Evaluation Reports

Many courts order periodic drug tests as a part of probationary sentence or participation in a work release program as well as psychiatric evaluations of criminal defendants, witnesses, or parties to other non-criminal proceedings. Participants in problem solving courts may also undergo substance testing.

Such test results may or may not be confidential. I.C. 5-14-3-4(a)(9) provides that **patient medical records and charts created by a provider** are confidential unless the patient gives written consent under IC 16-39 or as provided under IC 16-41-8. Thus, a basis for confidentiality may exist under Admin. R. 9(G)(2)(b) – Case Records excluded from public access by Indiana statute. Similarly, federal law may declare the records confidential. See 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2.

Often, the key is whether the person tested or evaluated was a “patient”. Persons tested as a part of a sentence or judgment or who are evaluated concerning mental competency for trial or to testify are seldom, if ever, “patients”. Records that are not created as part of a therapeutic setting or treatment plan for the individual, the records are not confidential.

However, tests or evaluations arising from participation in a problem-solving court may very well occur in a “patient” or therapeutic setting with the records being confidential under both Indiana and federal law. As a precaution, courts may choose to require execution of a waiver of confidentiality by a defendant as a condition of probation or their admission into a problem-solving court.

## Court Administrative Records - Access to Court Records Rule 5(D)

Excluded Court Administrative Records:

- Case Records excluded in A.C.R. 5(B) and
- Court Administration Records excluded from Public Access or declared confidential by Indiana statute or other court rule.
- Attorney residence addresses and email addresses provided to the Clerk of the Supreme Court pursuant to Admission & Discipline Rule 2 except for such administrative purposes approved by the Chief Administrative Officer;
- Places of residence of judicial officers, clerks and other employees of courts and clerks of court, unless the person or persons about whom the information pertains waives confidentiality;
- All personal notes, organizers, or calendars; e-mail; and deliberative material of judges, jurors, court staff, and judicial agencies, whether recorded electronically or on paper.



## Commentary to Access to Court Records Rule 5

*As noted previously, these Rules start from the presumption of open Public Access to Court Records. To address those limited circumstances where federal statute, state statute, or court rule has declared Court Records to be confidential, this section provides the mechanism by which these confidential Court Records are to be excluded from Public Access.*

*A court cannot exclude records otherwise accessible to the public because the parties agree to do so or because the parties have entered into a Trial Rule 26(C) protective order. A court has only two ways to exclude otherwise accessible records from Public Access: sealing the records pursuant to Indiana Access to Public Records Act; or entering an Order Excluding Court Records from Public Access pursuant to the specific requirements in Rule 6.*

*Rule 5(A) begins by recognizing that, in some instances, an entire case shall be excluded from Public Access because all Court Records have been declared confidential, but Rules 5 (B), (C), (D) and (E) make clear that in most instances it is only individual Case or Administrative Records that have been declared confidential. A court may take judicial notice of records that are excluded from Public Access, including records in cases where all Court Records have been declared confidential, such as juvenile cases. Ind. Evid. Rule 201(b)(5).*

*Rule 5(B) provides the specific procedures for excluding Court Records from Public Access when the entire Court Record is filed, “locked”, and excluded from Public Access. The party or person submitting the confidential record is required to provide separate, written notice identifying the grounds upon which exclusion is based. See A.C.R. Form. Simply filing the document and “locking” it does not satisfy the notice requirement. A person looking at the case will see that a document is excluded in its entirety from the Court Record, and the person must also see A.C.R. Form stating what document was excluded and why.*

*Filers will use one Form (“Form A.C.R.”) for all purposes. The Form A.C.R. is found in the Appendix to the Indiana Rules on Access to Court Records.*

*The reference to “court rules” in Rule 5(B)(2) does not refer to local court rules. Counties cannot impose local rules that conflict with the Indiana Rules on Access to Court Records.*

*Rule 5(C)(1) allows a party or person to redact Social Security Numbers, account numbers, Personal Identification Numbers, and passwords without filing a separate, written notice of exclusion, as long as the court does not need the information to dispose of the case.*

*When Rule 5(C)(1) requires both a Public Access Version and a Non-Public Access Version, the party must file a Public Access Version and Non-Public Access Version. The Public Access Version is filed with the confidential information redacted (if it is only part of a page) or omitted (if it is a whole page). If a whole page is omitted, some type of notation shall be made at the precise place in the Public Access version indicating where the omission occurred. The Non-Public Access version is to be “locked” and shall*

*contain the confidential material redacted or omitted from the Public Access version. The party or person submitting the confidential record is required to provide separate, written notice identifying the grounds upon which the exclusion is based. See A.C.R. Form.*

*Non-Public Access documents containing Court Records that are excluded from Public Access must be identified with a header, label, or stamp that states, "CONFIDENTIAL PER ACCESS TO COURT RECORDS RULE 5" or "EXCLUDED FROM PUBLIC ACCESS PER ACCESS TO COURT RECORDS RULE 5." As an example, when a subpoena is returned after service, the return will contain the victim's full name and address. This heading notifies individuals who are processing the document to "lock" the document and maintain its exclusion from Public Access.*

*Rule 5(C)(2) allows a party or person to replace the name of child witnesses in cases involving sex offenses with initials or other identifiers without filing a written Notice of Exclusion. In some cases, using initials will identify the child victim, and so the Rule gives flexibility to craft a method to protect the child's identity.*

*In Rule 5(C)(3) the term "juvenile" refers to juvenile delinquency, status, and miscellaneous case types. This subsection does not affect CHINS or TPR case types because those cases are confidential in their entirety under Rule 5(A)(1). Juvenile paternity cases created between July 1, 1941 and July 1, 2014 are confidential under Rule 5(A)(6).*

*Rule 5(B)(8) excludes all medical records from Public Access in their entirety, in every proceeding, unless the person consents to having the records accessible to the public. This exclusion includes reports from examinations done pursuant to Trial Rule 35. If the public has an interest in seeing the records, Rule 9 allows someone to petition the court for access to the records.*

*Rule 5(B)(9) excludes from Public Access mental health records compiled for treatment purposes. Reports for competency to stand trial, or for purposes of the insanity defense, remain accessible to the public. Reports related to the defendant's treatment while undergoing the process of restoration to competency are treatment records and are excluded from Public Access. If the defendant does not regain competency, regular commitment proceedings are initiated under a mental health case, which is excluded from Public Access in its entirety.*

*Rule 5(B)(10) excludes from Public Access all records related to drug or substance abuse treatment, pursuant to federal law. This exclusion includes drug test results of a probationer when performed at the direction of a substance abuse treatment provider as a condition of probation and drug test results of a problem-solving court participant and a court alcohol and drug program client when administered by a problem-solving court or court established alcohol and drug services program. Drug test results from a test performed as part of supervision, by a probationer or community correction, are not excluded from Public Access.*

## Excluding Other Court Records from Public Access – Access to Court Records Rule 6

In extraordinary circumstances, a court having jurisdiction over the record, may exclude an otherwise publicly accessible Court Record. The person affected by the release of information must file a verified, written petition which demonstrates prohibiting access will substantially serve the public interest, access or dissemination of the Court Record will create a substantial risk of harm to the petitioner, others or the general public, and a substantial prejudicial effect to ongoing proceedings cannot be avoided with prohibition of public access. Once the petition is filed, the Court Record becomes confidential for a reasonable period of time while the court rules upon the petition.

Upon filing the petition, the petitioner is required to give notice of the application to the parties or such others as the court may require. The petitioner must provide proof of notice given or the reason why notice could not be given or required. A party receiving notice is allowed twenty days to respond to the request.

Thereafter, the court may either deny the request without a hearing or conduct a hearing after posting advance notice of the hearing in accordance with I.C. 5-14-2-5. Upon completion of the hearing, the court, if it grants the petition, is required to enter a written order stating its reasons, finding the petitioner has proven the requirements of the petition by clear and convincing evidence, balances public access interests with the grounds demonstrated by the petitioner and uses the least restrictive means and duration in prohibiting public access.

**Note – The Indiana Supreme Court has previously determined party agreements cannot circumvent public access to court documents.**

The requirements of the petition process of Admin. R. 9(H) were upheld and enforced by the Indiana Supreme Court in *Travelers Casualty and Surety Company et al v. United States Filter Corporation et al*, 895 N.E.2d 114 (Ind. 2008).

In *Travelers*, all or substantially all, the parties presented the trial court with a Confidentiality Stipulation and Order that the court approved and entered into the record. The stipulation provided that the parties agreed the litigation might involve discovery and disclosure of privileged or confidential and sensitive information, that extrinsic agreements might restrain the use of such material and that it would be desirable to have in place a confidentiality order governing production of all confidential material in the case. The stipulation outlined a framework under which information tendered to the trial court or material shared by the parties, both to each other and to the trial court would be confidential. Material designated as confidential could be retrieved or would be purged from the court's records. The confidentiality stipulations were also made retroactive to the date any confidential document was produced.

The Supreme Court noted that the stipulated order was entered and followed in both the trial court and on appeal without the holding of a public hearing as required by Admin. R. 9(H). The Court directed the parties to show cause why the trial court order should not be vacated and the entire record be made public.

After reviewing the party responses, the Supreme Court vacated the order for confidentiality. It distinguished between confidentiality agreements concerning information exchanged between parties during litigation and materials tendered to a court that are subject to the public policy established by both the Indiana General Assembly and the Supreme Court concerning public accessibility.

The Court also distinguished the situation in *Travelers* from that presented in *Richey v Chappell*, 594 N.E.2d 443 (Ind. 1992), in which it had recognized a statement of an insured to its insurer as being privileged from discovery. The Court ruled that a communication privileged under statute, rule or common law principle that prevented its discovery by others does not exclude it from public access once the information has been submitted to a court.

The Court found that once a party or non-party tenders documents or information that would otherwise be privileged it must follow the procedure of Admin. R. 9(H) and ask the Court to exclude it from public access after a public hearing and a determination that the factual bases required by the rule have been established.

## Sealing Records - Indiana Access to Public Records Law, IC 5-14-3-5.5

A.C.R. 6 does not limit the authority of a Court to seal Court Records under I.C. 5-14-3-5.5. Proceedings to seal Court Records under the statute require a publicly noticed hearing in which parties or members of the general public must be permitted to testify and submit written briefs. The person seeking the sealing of the record has the burden of proof upon the issue by a preponderance of the evidence as opposed to the standard of clear and convincing evidence found in A.C.R. 6.

In ruling upon a request to seal the records, the Court is required to make written findings of fact and conclusions of law showing that the remedial benefits to be gained by effectuating the public policy of the state declared in I.C. 5-14-3-1 are outweighed by proof that:

- a public (not private) interest will be secured by sealing the record,
- dissemination of the information contained in the record will create a serious and imminent danger to that public interest;
- any prejudicial effect created by dissemination of the information cannot be avoided by any reasonable method other than sealing the record;
- there is a substantial probability that sealing the record will be effective in protecting the public interest against the perceived danger; and
- it is reasonably necessary for the record to remain sealed for a period of time.

All sealed records must be unsealed at the earliest possible time after the circumstances that prompted the sealing of the records end.

#### *Commentary to Access to Court Records Rule 6*

*Rule 6 addresses those extraordinary circumstances in which information that is otherwise publicly accessible nonetheless is to be excluded from Public Access. This section generally incorporates a presumption of openness and requires compelling evidence to overcome this presumption, as well as public notice, a public hearing, and a written order containing specific findings. While a request made under Rule 6 treats the Court Record as confidential from the time of filing or tendering until the court rules on the request, parties should be aware that their request is not retroactive. Copies of the Court Record already may have been disseminated prior to any Rule 6 request, and action taken under Rule 6 will not affect those records.*

*Every word spoken in court may be transcribed. Thus, trial courts and attorneys are encouraged to discuss confidentiality concerns before presenting evidence. For example, in a case with a child witness who is protected under Rule 5(C)(2), a record could be made that initials or some other identifying information will be used if a transcript is prepared.*

*When a transcript is prepared in a Rule 5(A) confidential case type, the Court Reporter need not make any redactions or changes because the entire transcript will be confidential.*

## Procedure for Excluding Court Records From Public Access – Access to Court Records Rule 7

### Cases Where Only a Portion of the Court Record Is Excluded from Public Access – Access to Court Records Rule 7

A party or person submits a confidential record must provide notice that the record is to remain excluded from Public Access.

- Offered pleadings or papers. A Court Record filed with the Clerk of Court that is to be excluded from Public Access must be accompanied by separate written notice identifying the specific A.C.R. 5 ground(s) upon which exclusion is based. See Appendix 1 Form.
- Exhibits. A Court Record tendered or admitted into evidence during an in-camera review, hearing, or trial that is to be excluded from Public Access must be accompanied by separate written notice identifying the specific 9(G)(2) or 9(G)(3) ground(s) upon which exclusion is based. See Form 9-G2.
- Oral statements in transcript on appeal. If any oral statement(s) contained in the transcript on appeal is to be excluded from Public Access, then during the hearing or trial, the Court Reporter must be given notice of the exclusion and the specific 9(G)(2) or 9(G)(3) ground(s) upon which that exclusion is based. If notice was not provided during the hearing or trial, any party or person

may provide written notice in accordance with Appellate Rules 28(A)(9)(C) or (D). The Court Reporter is required to comply with Appellate Rules 28(A)(9) and 29(C) when preparing the transcript on appeal.

### Court Records Excluded under A.C.R. 7

In cases where all Court Records are excluded from Public Access in accordance with A.C.R. 5, a notice of exclusion from Public Access is not required.

### Green Paper Requirements –A.C.R. Rule 5 – Formerly the “Light Green Paper” Rule

Where only a Portion of the Court Record has been Excluded from Public Access pursuant to A.C.R. 4.

#### Public Access Version.

The document or exhibit is filed on white paper and any Court Record excluded from Public Access is omitted or redacted from this version. The omission or redaction is indicated at the place it occurs in the Public Access version.

#### Non-Public Access Version.

If the omission or redaction in accordance with A.C.R. 5(C)(1) is not necessary to the disposition of the case, the excluded Court Record is not filed or tendered in any form and only the Public Access version is required.

If the omission or redaction in accordance with A.C.R. 5(C)(1) is necessary to the disposition of the case, the excluded Court Record is separately filed or tendered on green paper and conspicuously marked “Not for Public Access” or “Confidential,” with the caption and number of the case clearly designated and:

- If the Court Record is omitted or redacted from an exhibit, attachment, appendix, transcript, evidentiary designation, or similar document, then the separately filed or tendered Non-Public Access version shall consist only of the omitted or redacted Court Record on green paper, with a reference to the location within the Public Access Version to which the omitted or redacted material pertains. If the Court Record is omitted or redacted from a motion, memorandum, brief, or similar document containing substantive legal argument, then the separately filed Non-Public Access version shall consist of a complete, consecutively-paginated replication including both the Public Access material on white paper and the Non-Public Access material on green paper.
- The green paper requirements set forth in A.C.R. 5 do not apply to cases in which all Court Records are excluded from Public Access under A.C.R. 5(A). With respect to documents filed in electronic format, the Court may, by rule, provide for compliance with this rule in a manner that separates and protects access to Court Records excluded from Public Access.

*Commentary To Access to Court Records Rule 7*

*The Rule 7 notice requirements for excluding oral statements contained in a transcript apply only to transcripts filed with the Clerk by the Court Reporter for use on appeal. The requirements of this provision do not apply to private transcripts that are never filed with the Clerk. If a party or person thereafter files or tenders that private transcript to the Clerk or Court, then the notice requirements in Rule 7 will apply.*

## Waiver, Failure to Exclude, Improper Exclusion – Access to Court Records Rule 8

A.C.R. 8(A) requires written consent when a party is filing a Court Record with the Court but only a verbal consent is required if the otherwise confidential information is presented during a hearing.

### Waiver of Exclusion

A party or person affected by release of a Court Record can waive the right to exclude the record from public access. Admin. R. 9(G)(6)(a)(i). Once waiver has occurred, a party or person who seeks to reassert the right to exclude the record from public access is required to use the procedures specified by Admin. R. 9(G)(4). See Admin. R. 9(G)(6)(a)(ii).

### Failure to Exclude and Duty to Act

Failure to exclude a record that is confidential does not forfeit a right to exclude a Court Record unless waiver has occurred. A party who submits a record that is confidential is required to act immediately to ensure proper exclusion upon learning the record was not excluded from public access. See Admin. R. 9(G)(6)(b).

### Improper Exclusion of a Court Record from Public Access

Exclusion of Court Records from Public Access is limited by A.C.R. 8(C)(1) to those that are confidential under A.C.R. 5(A) – (E).

Once a court determines that a Court Record was erroneously excluded from public access, it is required to make the record available for public access within seventy-two hours of giving notice to the parties or any person affected by the release unless the provisions of A.C.R. 6 are subsequently met. See A.C.R. 8(C)(2).

If an A.C.R. 6 request to exclude a Court Record from Public Access is denied or the record is required to be publicly available under A.C.R. 8(C)(2), the party who originally submitted the record is responsible for immediately resubmitting the record as a document available to the public. See A.C.R. 8(C)(3).

## Commentary To Access to Court Records Rule 8

*Rule 8 permits waiver of confidentiality by the party or person affected by the release of the Court Record, but in all other instances in which a Court Record has been declared confidential pursuant to Rule 5, such confidentiality is not forfeited.*

*Rule 8(A) is a new provision. A party or person affected by the release of otherwise confidential information may consent to its release by an oral statement on the record or in writing. The consent could state: "I consent to the [ name of information], which is otherwise confidential, being part of the public Court Record in this case," or other similar language.*

*If a court determines that a party has improperly excluded Court Records from Public Access without first satisfying these rules, those records shall be made available for Public Access unless, within 72 hours after notice of the improper exclusion has been sent, the party or person affected by the release of such records files a verified request to exclude pursuant to Rule 6.*

## Access to Court Records Excluded from Public Access – Access to Court Records Rule 9

A Court Record excluded from Public Access can become accessible in two ways:

- Each person affected by the release of the Court Record waives confidentiality by intentionally releasing such Court Record for Public Access. See A.C.R. 8(A) or
- A Court with jurisdiction over the case declares:
  - the Court Record should not have been excluded from Public Access;
  - the A.C.R. 6 order was improper or is no longer appropriate;
  - the Court Record is essential to the resolution of litigation; or
  - disclosure is appropriate to further the establishment of precedent or the development of the law.

For a court to enter an order making a record accessible to the public, the person seeking access must file a verified, written request that demonstrates:

- The existence of extraordinary circumstances requiring deviation from the general provisions of Admin. R. 9(G),
- The public interest will be served by allowing access,
- Access or dissemination of the Court Record does not create a significant risk of substantial harm to any party, to third parties, or to the general public,
- The release of the Court Record does not create a prejudicial effect to on-going proceedings or
- The Court Record should not be excluded for Public Access under A.C.R. 5(A -E).

See A.C.R. 9(B)(1).



Once a request is made for access to Court Records excluded from Public Access, the Court Record remains confidential until the Court rules on the request.

The person seeking access has the burden of providing notice to the parties and any other persons the Court may direct and is required provide proof of notice to the court or the reason why notice could not or should not be given consistent with the requirements found in Trial Rule 65(B). See A.C.R. 9(B)(2). A party or person given notice has twenty (20) days from receiving notice to respond to the request.

A Court may deny the request for access without a hearing but, if it does not, the court must post advance public notice of the hearing consistent with the notice requirements found in I.C. 5-14-2-5. After posting notice, the Court must hold a hearing on the request to allow access. If the court grants access, it is required to issue a written order that:

- states the reasons for granting the request,
- finds the requestor has demonstrated by clear and convincing evidence that any one or more of the requirements of A.C.R. 9(B)(1) have been satisfied and
- considers the Public Access and the privacy interests served by A.C.R.s and the grounds demonstrated by the requestor.

In its order, a court may place restrictions on the use or dissemination of the Court Record to preserve confidentiality. See A.C.R. 9(C).

#### *Commentary*

*Rule 9 is intended to address those extraordinary circumstances in which confidential information or information which is otherwise excluded from Public Access is to be included in a release of information. In some circumstances, the nature of the information contained in a record and the restrictions placed on the accessibility of the information contained in that record may be governed by federal or state law. This Rule is not intended to modify or overrule any federal or state law governing such records or the process for releasing information.*

*Every person filing documents with the courts has the primary responsibility to exclude all confidential information that they are filing with the court, whether it belongs to the parties, their children, and witnesses. Attorneys and litigants should be aware that judicial officers, clerks, and court staff are not required to and cannot examine every document filed and determine compliance with Rule 5.*

## When Court Records May Be Accessed – Administrative Rule 9(H)

Court Records which are publicly accessible are available for public access in the courthouse during regular business hours established by the court. Court Records in electronic form to which the court

allows remote access under this policy are available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.

Upon receiving a request pursuant to Admin. R. 9(F) or A.C.R. 5, a court is required to respond within a reasonable period of time. While “reasonable time” is not defined, a best practice would be to follow the time periods contained in the statute.

#### *Commentary to Administrative Rule 9(H)*

*This section does not preclude or require “after hours” access to Court Records in electronic form. Courts are encouraged to provide access to records in electronic form beyond the hours access is available at the courthouse, however, it is not the intent of this rule to compel such additional access.*

## Contracts with Information Technology Vendors – Administrative Rule 9(I)

Courts and clerks who are parties to agreements with information technology vendors, are required to abide by certain provisions in Admin. R. 9 concerning the ownership and handling of Court Records. These restrictions apply regardless of whether the agreements pertain to case management systems, hardware or network support, or other computer services, or whether the agreements are with private contractors or consultants or another branch of state or county government.

First, any arrangement for information technology services that involves an entity outside the court or clerk’s office must explicitly require that entity comply with all the provisions of Admin. R. 9. This requirement essentially requires the vendor to assume responsibility for understanding the Rule and complying with it.

Second, each contract or arrangement with an information technology provider must require that the vendor assist the court in its role of educating litigants and the public about their ability to access information. Employees and sub-contractors of the vendor must also be trained by the vendor to understand this Rule and abide by its requirements.

Third, each contract must require vendors to obtain approval before providing any bulk or compiled records or other information transfers.

Finally, each contract or arrangement must contain a provision that the vendor acknowledges the records remain the property of the court and the use of the information or the records is subject to orders of the court.

The provisions of this rule do not affect contracts that executed prior to the effective date of Admin. R. 9. However, as contracts are renegotiated, or renewed, they must be compliant with this provision. For long-term or on-going contracts that are already in place, a court or Clerk may wish to see if the vendor

will execute a contract addendum reflecting these provisions, or at a minimum, acknowledge these points in a letter to reflect their compliance.

#### *Commentary to Administrative Rule 9(l)*

*This section is intended to apply when information technology services are provided to a court by an agency outside the judicial branch, or by outsourcing of court information technology services to non-governmental entities. Implicit in this rule is the concept that all Court Records are under the authority of the judiciary, and that the judiciary has the responsibility to ensure Public Access to Court Records and to restrict access where appropriate. This applies as well to Court Records maintained in systems operated by a Clerk of Court or other non-judicial governmental department or agency.*

*This section does not supersede or alter the requirements of Trial Rule 77(K) which requires that, before Court Records may be made available through the internet or other electronic method, the information to be posted, its format, pricing structure, method of dissemination, and changes thereto must receive advance approval by the Division of State Court Administration.*

## List of Excluded Records and Documents – Access to Court Records Rule 10

IOCS has created a list of the records and documents excluded from public access by the Access to Court Records Rules. Users should also consult state and federal law, court rules, and case law to determine if A.C.R. 5 excludes other documents.

## Sanctions – Access to Court Records Rule 11

The failure to comply with any provision of the Access to Court Records Rules may subject counsel and/or a party to sanctions.

#### *Commentary*

*When a Judicial Officer is aware of a violation the officer is authorized and expected to enforce this Rule.*

## Immunity for Disclosure of Protected Information – Access to Court Records Rule 12.

A Court, Judicial Officer, Clerk of Court, their employees, and agents who unintentionally and unknowingly disclose confidential or erroneous information are immune from liability for such a disclosure.

#### *Commentary*

*This immunity provision is consistent with the immunity and protections provided by the Indiana Access to Public Records Act.*

## Specific Implementation Rules and Filing Procedures

### Other Rules Implementing Administrative Rule 9 and Access to Court Records Rules

#### Rules of Trial Procedure

##### **Trial Rule 3.1 - Appearance**

(A)(10) In a proceeding involving a petition for guardianship, the initiating party shall provide a completed Guardianship Information Sheet in the form set out in Appendix C. The information sheet is a confidential Court Record excluded from public access under the Rules on Access to Court Records.

(D) Confidentiality of Information Excluded from Public Access. Any appearance form information or record defined as not accessible to the public under the A.C.R. Rules shall be filed in a manner required by Trial Rule 5.

##### **Trial Rule 5(G) - Confidentiality of Court Records.**

Court Records are accessible to the public except as provided in the A.C.R. Rules. Any Court Record excluded from public access under Admin. R. 9(G) is required to be filed in accordance with the A.C.R. Rules.

##### **Trial Rule 58(C) - Court Records Excluded from Public Access and Confidential Pursuant to the A.C.R. Rules.**

Every court that issues a judgment or order containing documents or information excluded from public access pursuant to the A.C.R. Rules shall comply with the provisions of A.C.R. 7.

##### **Rule of Criminal Procedure 1.1 - Documents and Information Excluded from Public Access and Confidential Pursuant to A.C.R. Rules.**

Documents and information excluded from public access pursuant to the A.C.R. Rules shall be filed in accordance with T. R. 5(G).

##### **Small Claims Rule 2(E) - Documents and Information Excluded from Public Access and Confidential Pursuant to the A.C.R. Rules.**

Documents and information excluded from public access pursuant to the A.C.R. Rules shall be filed in accordance with T. R. 5(G).

Post Conviction Rule 1, Section 3(c).

The Clerk shall file documents and information excluded from public access pursuant to Admin. R. 9(G) in accordance with Trial Rule 5(G).

**Tax Court Rule 3(G). - Documents and Information Excluded from Public Access and Confidential Pursuant to the A.C.R. Rules.**

Documents and information excluded from public access pursuant to the A.C.R. Rules shall be filed in accordance with T. R. 5(G)(5).

**Appellate Procedure Rule 2(N). - Case Record, Court Record and Public Access.**

The terms “Case Record”, “Court Record” and “Public Access” shall have the same definitions provided in the A.C.R. Rules.

**Appellate Procedure Rule 9(J). - All Court Records Excluded from Public Access.**

In cases where all Court Records are excluded from Public Access pursuant to A.C.R. 5(A), the Clerk shall make the appellate Chronological Case Summary for the case publicly accessible but shall identify the names of parties and affected persons in a manner reasonably calculated to provide anonymity and privacy.

**Original Action Rule 3(J). - Documents and Information Excluded from Public Access and Confidential Pursuant to the A.C.R. Rules.**

Documents and information excluded from public access pursuant to the A.C.R. Rules shall be filed in accordance with Trial Rule 5(G).

**Trial De Novo Rule 4. - Documents and Information Excluded from Public Access and Confidential Pursuant to the A.C.R. Rules.**

Documents and information excluded from public access pursuant to the A.C.R. Rules shall be filed in accordance with T.R. 5(G).

**Filing Procedures**

Admin. R. 9 does not prescribe a method for courts and clerks to use and left implementation for local determination. Courts and clerks must decide how to implement Admin. R. 9 and the Access to Court Records Rules in their offices in compliance with the requirements of Trial Rule 5(G).

Decisions must be made about how confidential information will be received, entered, stored and made available for review or protected from review by unauthorized persons. Additionally, decisions are

necessary concerning the handling of applications for access to confidential information and to prohibit access to information in a Court Record because both the applications and the information sought remain confidential pending a court ruling.

Each county must adopt a process for receipt of confidential information. Some of this information will be tendered upon the initial filing of a case, but some will be received during the pendency of the case. For ease of immediate identification, A.C.R.s 5 requires the use of a green paper form by which a party may tender confidential or identifying information to the Clerk for entry into the Case Record. Examples of the types of confidential information that will be tendered are full Social Security Numbers, full account numbers, and full credit card numbers. In certain cases, such as protection orders, stalking, domestic violence, and criminal cases, addresses, dates of birth, and telephone numbers of witnesses and victims are also excluded from public access.

In order to secure compliance with the filing requirements of Trial Rule 5(G), courts may want to adopt a Local Rule requiring certification of compliance by all parties and their counsel. A sample rule is contained in Appendix A, Form A-7.

Once received, confidential information is secured within the system so that access is restricted to those entitled to view the information. Both the information and the document containing the information are confidential requiring security against inappropriate disclosure.

The storage of information related to a case is often a combination of electronic as well as physical filing as opposed to all electronic or physical storage. Confidentiality often pertains to multi-page documents, e.g. custody reports or evaluations or pre-sentence reports.

There are a variety of acceptable means to preserve confidentiality:

- Partial account numbers and Social Security Numbers and year of birth, in place of the complete number or date are acceptable. For example, a Social Security Number can be referenced as “xxx-xx-1234” rather than the complete number. To the extent the full Social Security Number is needed by the court, that one piece of data is retained on a separate green sheet and segregated from the rest of the public case file. The same would be true of account numbers (listed as “xxxx-xxxx-xxxx-9876” rather than having the full number) or dates of birth (listed as “1970” rather than month, day, and year).
- If exhibits are filed with a pleading, e.g. a bank check for a proof of claim in a collections matter, the pleading can shield most of the account number, as demonstrated in 1 above, and the copy of the check is placed in an envelope or otherwise segregated from the public case file to prevent disclosure of the account number.
- Encourage attorneys to file as much as possible for public access, and, preferably, have either a redacted duplicate copy of their complete filing so the clerk’s office can have both a copy for the public case file as well as the complete filing. Alternatively, an attorney can file only those elements of non-public data (such as Social Security Number, account numbers, etc.) on a separate green

sheet, and use generic markers in the original pleading. In either of these instances, the clerk's office can decide whether to keep non-public filings segregated completely from the public case file (essentially having two separate files) or whether to keep the non-public filings in an envelope or sub-folder with the public file.

- Documents generated by the court, including orders, may contain confidential information. In these circumstances, take care that the original order is placed in the confidential Record of Judgments and Order and a redacted version is placed in the case file.
- Where electronic storage of records is utilized, the court or clerk's office have a duty to ensure that non-public data is not accessible at public walk-up terminals or any other form of remote access. This requirement applies to any court that maintains traditional paper case files but creates its Chronological Case Summary (CCS), party information and/or Record of Judgments and Orders (RJO) electronically as well as to courts that maintain all such information by electronic means only.

Petitions under A.C.R.s 7 and 9 to exclude information from public access or obtain information previously excluded from public access are confidential from their filing (including the information itself) until the court enters a ruling upon the application. All documents and information related to these applications is handled on a confidential basis and stored accordingly. Once a ruling is made on the application, the information is either returned to public access or remains stored confidentially according to the duration of the order.

The procedures required by A.C.R. 5 do not apply to records sealed by court order under IC-5-14-3-5.5 or otherwise or to records excluded from public access by Admin. R. 9(G)(1).

## Protection Order Proceedings

Protection Order proceedings in all their variety involve the use of confidential forms for the collection and dissemination of information to the courts, clerks, Prosecuting Attorneys and law enforcement officials. Each confidential form is created on green paper for appropriate handling within the court system. All protective orders issued including modifications, extensions and terminations thereof are now entered in the Indiana Protective Order Registry maintained by the Indiana Office of Court Services in the Indiana Court Information Extranet (INCite).

For general information: <http://www.in.gov/judiciary/admin/3245.htm>

To sign into the registry: <https://mycourts.in.gov/>

As noted in the Protection Order Deskbook, many clerks have written instructions given to parties who wish to petition for the issuance of a protective order before they begin to fill out the forms. These written instructions should identify and address information that is confidential under the proceedings and how confidential information must be handled by the courts.

## Unrepresented Litigants

Unrepresented litigants are generally unfamiliar with the rules and procedures of the legal system and present a unique problem regarding handling confidential information under A.C.R. 5. Clerks, as the initial recipients of the pleadings filed by unrepresented individuals, need to carefully examine documents received to determine whether the documents contain information that is confidential.

Many courts provide forms for the use of parties who want to file their own cases and represent themselves. This occurs most frequently in domestic relations cases or in small claims cases. courts that provide forms for unrepresented parties should create Admin. R. 9 compliant forms.

## Handling Non-Compliant Filings

Unrepresented litigants or attorneys may file documents, pleadings, or exhibits that do not comply with the provisions of the A.C.R. Rules. In most cases, it would be helpful to assist and educate litigants and attorneys on the requirements of the Rule.

Since a filed document, pleading, or exhibit could present a serious violation of the Rule, the following is suggested as an acceptable method to deal with the problem:

- note the filing of the pleading on the Chronological Case Summary but impound it as a confidential document,
- refer the impounded document to the Court,
- the court then enters an order (see Appendix A Order to Comply with Access to Court Records Rules) requiring the filing party to submit an amended pleading in compliance with the rule within a limited period of time or suffer the striking of the pleading and
- during the period of time before submission of the compliant pleading, the Court can extend the time for filing a responsive pleading.

Other strategies that meet the spirit and goals of Admin. R. 9 are also acceptable.

## Administrative Rule 9 and Appeals

Provisions regarding the role of Admin. R. 9 and appellate proceedings have been relocated to the Rules of Appellate Procedure and appear in various locations.

### Appellate Rule 23(F) – Confidentiality of Court Records on Appeal

- (1) Court Records are accessible to the public, except as provided in the A.C.R. Rules.
- (2) If a Court Record was excluded from Public Access in the trial court in accordance with the A.C.R. Rules, the Court Record remains excluded from Public Access on appeal unless the Court on Appeal determines the conditions in the A.C.R. Rules are satisfied.



- (3) Procedures for Excluding Court Records from Public Access on Appeal. Any Court Record excluded from Public Access on appeal must be filed in accordance with the following procedures:
- a) Notice to maintain exclusion from Public Access.
    - i. In cases where the Court Record is excluded from Public Access pursuant to Admin. R. 9(G)(2), 9(G)(3), or 9(G)(4), the party or person submitting the confidential record must provide the separate written notice required by A.C.R.s 5 or 6 identifying the specific A.C.R.s 5(A – D) ground(s) upon which exclusion is based. (See Form # App. R. 11-5).
    - ii. In cases where all Court Records are excluded from Public Access in accordance with A.C.R. 5(A), no notice of exclusion from Public Access is required.
  - b) Public Access and Non-Public Access Versions. Where only a portion of the Court Record has been excluded from Public Access pursuant to Admin. R. 9(G)(2) or 9(G)(3), the following requirements apply:
    - i. Public Access Version.
      - a. If an appellate filing contains confidential Court Records to be excluded from Public Access, the confidential Court Record shall be omitted or redacted from this version.
      - b. The omission or redaction shall be indicated at the place it occurs in the Public Access version. If multiple pages are omitted, a separate place keeper insert must be inserted for each omitted page to keep PDF page numbering consistent throughout.
      - c. If the entire document is to be excluded from Public Access, the Access to Court Records A.C.R. Form filed with the document will serve as the Public Access Version.
    - ii. Non-Public Access Version.
      - a. If the omitted or redacted Court Record is not necessary to the disposition of the case on appeal, the excluded Court Record need not be filed or tendered in any form and only the Public Access version is required. The Access to Court Records A.C.R. Form should indicate this fact. (See Form # App. R. 11-6).
      - b. If the omitted or redacted Court Record is necessary to the disposition of the case, the excluded Court Record must be separately filed or tendered as follows.
        - 1. The first page of the Non-Public Access Version should be conspicuously marked “Not for Public Access” or “Confidential,” with the caption and number of the case clearly designated.
        - 2. The separately filed Non-Public Access version shall consist of a complete, consecutively paginated replication including both the Public Access material and the Non-Public Access material.
        - 3. Use of green paper is abolished for E-Filing. Pages in the Non-Public Access version containing Court Records that are excluded

from Public Access shall instead be identified with a header, label, or stamp that states, “CONFIDENTIAL PER RULES ON ACCESS TO COURT RECORDS or “EXCLUDED FROM PUBLIC ACCESS RULES ON ACCESS TO COURT RECORDS.”

iii. The requirements in Rule 23(F)(3)(b) do not apply to cases in which all Court Records are excluded from Public Access pursuant to Admin. R. 9(G)(1).

(4) E-Filing document security codes settings.

- a) Where only a portion of the Court Record has been excluded from Public Access pursuant to A.C.R. 5(B – D), the E-Filing document security codes setting for the Public Access Version shall be “Public Document.”
- b) Where only a portion of the Court Record has been excluded from Public Access pursuant to A.C.R. 5(B – D), the E-Filing document security codes setting for the Non-Public Access Version shall be “Confidential document under Admin. Rule 9.”
- c) In cases in which all Court Records are excluded from Public Access pursuant to A.C.R. 5(A), the E-Filing document security codes setting shall be “Confidential document under the Rules on Access to Court Records.”

Except for cases in which all Court Records are excluded from public access, the green paper requirements of Admin. R. 9(G)(5)(b) apply depending upon the circumstances of the record involved.

## Appellate Rule 29(D) – Exhibits

**D. Access to Court Records Rule 7.** If an exhibit was accompanied by the separate written notice required by A.C.R. 7, the court reporter must comply with the requirements of App. R. 23(F) when the exhibit is thereafter filed with the Trial Court Clerk.

## Appendices

The appendices contain a variety of information to assist trial courts and clerks and their staff with issues that are likely to arise regarding access to public records.

Appendix A contains forms developed by the Indiana Office of Court Services for third party requests for access to bulk court data that will assist courts and those making a data request to handle the matter correctly under Admin. R. 9 and the A.C.R. Rules.

This section also includes

- a sample letter suitable for use by the Clerk if a request for access is denied.
- a sample order for issuance if a party files a document that fails to treat confidential information in compliance with Admin. R. 9 , and
- a sample local rule requiring compliance with the requirements of A.C.R. 5 concerning confidential material in pleadings is also provided.

If a court contemplates providing remote access to court information, the checklist contained in Appendix B serves as a guide to adhering to the requirements of Admin. R. 9(E). Appendices C, D and E contain answers to questions frequently referred to the Office of Court Services by clerks, citizens and courts.

**Notice of Exclusion of Confidential Information from Public Access**

STATE OF INDIANA  
IN THE \_\_\_\_\_ COURT, COUNTY OF \_\_\_\_\_

\_\_\_\_\_, )  
Plaintiff(s), )  
vs. ) Case No: \_\_\_\_\_  
\_\_\_\_\_, )  
Defendant(s) )

**Notice of Exclusion of Confidential Information from Public Access  
(Documents filed with the Clerk or tendered in open court)**

Contemporaneous with the [filing/tender] of this notice, [party name] has [filed/tendered] confidential information under the Indiana Rules on Access to Court Records. [party name], provides this notice that the confidential information is to remain excluded from public access in accordance with the authority listed below:

<u>Name or description of document</u>	<u>A.C.R. grounds for exclusion</u>
[List Here]	[List specific A.C.R. grounds here.]

[NOTE: *If Rule 5(A)(1 or 3), 5(B)(1 or 2), or 5(D)(2) provides the basis for exclusion, you must also list the specific law, statute, or rule declaring the information confidential.*]

Respectfully submitted,

\_\_\_\_\_  
[Insert Name]

**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, the foregoing was served upon the following by [state method of service]: [list names and addresses of counsel of record]

\_\_\_\_\_  
(Signature)

Appendix 2 - Access to Court Records Rule and Administrative Rule 9 Forms

Local Rule Certifying Compliance with Trial Rule 5 (G)

Local Rule [Insert Number per TR 81(E)]

Certification of Compliance of Pleadings  
With Trial Rule 5 (G)

All pleadings filed by a party shall contain a verification certifying that the pleading complies with the filing requirements of Trial Rule 5 (G) applicable to information excluded from the public record under Access to Court Records Rule 5.

A certification in substantially the following language shall be sufficient:

I/We hereby certify that the foregoing document complies with the requirements of Trial Rule 5 (G) with regard to information excluded from the public record Access to Court Records Rule 5.

\_\_\_\_\_  
(Signed by party or counsel of record)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date)

Request for Bulk Data/Compiled Information – Non-Confidential / Confidential - Admin. R. 9(F)(1)

The current forms are located at <https://www.in.gov/courts/iocs/statistics/bulk-data/forms/>.

Sample Clerk/Court Response Letter Regarding Non-Access

Dear (insert name of applicant)

We have received your recent request to obtain Court Records. We regret to advise you that the records you have sought are confidential and not accessible due to the application of Access to Court Records Rules of the Indiana Supreme Court.

If you desire to pursue access to these records, you may seek:

- a. an order under Access to Court Records Rule 9(A)(ii) from the court having jurisdiction of the case, or
- b. a release of the information from each person to whom the sought information pertains under Access to Court Records 9(A)(i)

If you are successful in obtaining an order or release, you will receive the information sought upon production of the order or release.

Yours truly,

---

(Name)

(Title)

Assurance of Confidentiality -

This form can be found at <http://www.in.gov/judiciary/4235.htm>.

Order to Comply with Access to Court Records Rule 5

STATE OF INDIANA  
IN THE \_\_\_\_\_ COURT  
CASE NO. \_\_\_\_\_

Insert                    )  
Case                     )  
Caption                 )

**Order to Comply with Access to Court Records Rule 5 or Suffer Sanctions**

The Court has received a pleading filed by (Insert Name of Party) denominated as (Insert Title of Pleading) that was impounded because it does not comply with the requirements of Access to Court Records Rule 5 of the Indiana Supreme Court.

It is Ordered that (Insert Name of Party) shall file an amended pleading that fully complies with Access to Court Records Rule 5 [within (Insert Number) days] [on or before (Insert Date)]. Failure to comply will result in the striking of the pleading from the record. Pending the filing of the amended pleading, the time for the filing of responsive pleadings shall be extended for an equal period of time.

The Clerk shall serve a copy of the within order and the impounded pleading upon (Insert Name of Party) or their attorney of record and shall serve a copy of this order only upon all other parties of record.

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge, (Insert Court Name)

## Appendix 3 - Remote Access to Court Information Checklist

### 1. Which records?

- a. Minimum Required by T.R. 77(K) and Admin. R. 9(E)
  - i. Chronological Case Summary (CCS)
  - ii. Record of Judgments and Orders (RJO)
  - iii. Index of Litigants/Parties
  - iv. Case Filings List
  - v. Calendars/Dockets with case numbers, captions, date, time and hearing locations
- b. Other designated records.

### 2. Who must propose provision of remote access?

- a. Clerk and
- b. Majority of the judges of the courts of record within the judicial circuit.

### 3. Elements of the proposal

- a. Designation of the records for remote access and the specific information included
- b. Means for remote access provision
- c. Format for remote access
- d. Method for remote access pricing, if any,
  - i. County Commissioner adopted ordinances electronic system service fee ordinance per Admin. R. 9(E) must be submitted for approval.
  - ii. Ordinance method of collection, deposit, distribution, and accounting regarding the service fee must be approved by the State Board of Accounts [Admin. R. 9(E)].
- e. Method of dissemination
- f. Contracts with Case Management System and Internet Services Provider must comply with Admin. R. 9(I)
- g. Contracts with vendor must clearly provide that
  - i. All information and data remain the property of the court.
  - ii. Any use of the data other than as specified by the Division's approval is prohibited.
  - iii. Court data will not be sold, licensed or otherwise made available to any other entity for any other purpose.
- h. Provide a plan for periodic audits of the data provided over the Internet to assure compliance with Admin. R. 9, other laws and the approval received from State Court Administration
- i. Demonstrate the way the Internet display will provide appropriate advice and/or disclaimer to users about the non-official status of the information displayed.

### 4. Who has final approval of proposals for remote access? Indiana Office of Court Services.

### 5. Do changes to previously approved remote access proposals require approval? Yes.



## Appendix 4 – Frequently Asked Questions

### Clerk FAQ's

- Q1. How do we handle a pleading or document that contains confidential information that is not placed on green paper or with a notice of exclusion and a public version?**
- A.** Education and assistance provided to attorneys and litigants will promote the proper drafting of pleadings and documents for filing. If a pleading or document is offered for filing that seriously violates A.C.R. 5, the best practice is to file the pleading and note the filing in the Chronological Case Summary but impound it as a confidential document. Refer the confidential document to the Court which can then enter an Order to Comply with A.C.R. 5 or Suffer Sanctions (see Appendices) directed to the filing party to submit an amended pleading in compliance with the rule within a limited period of time or suffer the striking of the pleading. Pending the expiration of the time given to file the amended pleading, the Court may extend the time for filing a responsive pleading. This same procedure should be followed in the rarer instance of the tendering of a non-conforming document by a person or entity that is not a party to the litigation, e.g. a response by an employer concerning a wage assignment, income withholding order or garnishment order.
- Q2. Must information that was otherwise publicly available before January 1, 2005, be redacted after January 1, 2005.**
- A.** A.C.R. 1 does not require the Clerk's office to redact information in Court Records that was publicly available prior to January 1, 2005. The intent of the rule is that parties filing documents will comply with the basic confidentiality requirements of the rule and place information that the court may need, such as Social Security Numbers and account numbers, on a confidential filing form that remains segregated from other publicly available materials in a case file.
- Care should be given that information that was public when entered into the record but has now become confidential with implementation of the rule should not be given wider dissemination; e.g. posting on a website.
- Q3. How fast must a clerk or a court provide requested information?**
- A.** Courts and clerks should endeavor to provide information as promptly as possible. With very few exceptions, the A.C.R.s do not set time limits for providing information or replying to requests for information. The Indiana Public Record law establishes a timeframe of twenty-four hours if the requesting person is physically present in the office and seven days to respond to written or facsimile requests for public records from governmental agencies or entities. The response period may be observed by

producing the requested records or by advising the applicant that records will or will not be produced.

**Q4. Can we charge a fee for the time involved in responding to a request for information?**

- A.** A court or Clerk may not charge a fee to inspect a public record or for actual time and expended in responding to a request.

Charges by clerks must comply with I.C. 5-14-3-8 regarding copies from public agencies (counties). The statute specifically exempts from its coverage the judicial department of government. Courts should adopt fee structure substantially in conformance with those authorized by existing statutes.

**Q5. Must a clerk or court employee monitor a person examining a record?**

- A.** The Access to Court Records Rules have not changed any requirements relating to procedures that a court or clerk office follows in allowing individuals to examine court documents or files. court and clerk offices are already responsible to ensure that the court files are not damaged or altered in any way. Confidential material included in the file but maintained in a sealed envelope, or included in the file on confidential filing forms should be removed by a clerk or court employee prior to providing a file for examination. Clerk and court offices are encouraged to control the examination of original court files in such a way as to prevent damage or unauthorized modification or changes to the Court Records.

**Q6. Must we provide a place for the public to review records?**

- A.** The Access to Court Records Rules do not require that space be given to the public to review records. However, as more and more court records become digital only, compliance with APRA's requirement that public agencies must provide for individual access and review of records, it will be necessary to provide a public terminal for examination of records. See I.C. 5-14-3. Clerk or court employees may continue to monitor access to records maintained only in paper to ensure that records are neither destroyed nor modified.

**Q7. Are records that were public and in existence prior to the adoption of Admin. R. 9 in 2005 or the Access to Court Records Rules now confidential?**

- A.** No. Records which were filed or created prior to January 1, 2005, that were open to public access when they were filed or created remain public even if they contain information now excluded from public access, such as Social Security Numbers or

account numbers, and no redactions are required. Records that were confidential before January 1, 2005, remain confidential.

**Q8. If requested, do we have to provide a list of cases with case numbers filed each day? Judgments entered – civil, criminal?**

- A.** The index of case filings, except for case types that are confidential, is considered a public record under the Access to Court Records Rules and would be a record that could be requested and should be provided by the court or the clerk's office, or made available on the Internet or for public inspection during normal office hours. Similarly, civil judgments and criminal judgments that are recorded in the Judgment Book are public records and should be provided by the clerk's office or made available for public inspection.

Civil and criminal judgment records exist separately within their respective cases and a court or clerk is not required to create a list of civil or criminal judgments entered per day for production or public view. However, the judgments entered in individual cases are public records available for viewing or production upon request.

**Q9. Which adoption records are confidential?**

- A.** Records of adoptions did not become confidential until July 8, 1941 when Acts 1941, Chapter 146, Section 6 became effective. Legislation concerning adoptions enacted before 1941 focused on the issue of providing legal proof of heirship so that the adopted child became an heir at law of the adoptive parents. The intent of the pre-1941 legislation was to make the adoption a public matter. All adoptions that took place before July 8, 1941 were recorded in the civil or probate order books.

Records of adoptions that took place before July 8, 1941 are not confidential by statute or under Admin. R. 9 and should be open to public access.

All records about adoptions taking place after July 8, 1941 are confidential. Chronological Case Summaries, all orders and judgments, the case file, and index entries concerning an adoption should be kept confidential. Judgments and orders concerning an adoption should be placed in the Confidential Record of Judgments and Orders.

**Q10. In cases involving child abuse, what is considered confidential and what would be open to public access?**

- A.** According to statutory law and to A.C.R. 5, the records concerning child abuse that must be kept confidential are the reports and other information found in the case files submitted to the courts by the Division of Family and Children including its county offices that contain local child protection services. Allegations contained in pleadings

filed in cases that are not confidential by law or rule do not constitute “records” that are confidential under A.C.R. 5(B). Chronological Case Summary entries, as prescribed in T. R. 77(B), and entries in the Record of Judgments and Orders, as prescribed by T. R. 77(C), are open to public access.

**Q11. Do Juvenile CHINS (JC) cases fall under the child abuse category of confidential records?**

- A.** No, but the cases are confidential anyway. Cases that generally fall into the child abuse category are adult criminal cases and some civil matters.

**Q12. What if child abuse allegations become part of a divorce case? How should they be handled in the context of divorce proceedings?**

- A.** The Access to Court Records Rules recognizes that there are situations when a matter deemed confidential by statute will become an issue for public resolution within the context of a judicial proceeding. Although child abuse matters are deemed confidential, such matters also could be the issue in a contested domestic relations case in which a party has the right to a public proceeding. Under A.C.R. 5, the public proceeding prevails and the allegations are considered public unless:

1. a party or a person affected by the release of the information affirmatively requests, prior to or contemporaneously with its introduction into evidence, that the information remain excluded from public access under Access to Court Record Rule 6,
2. the court makes an individual ruling on the matter and excludes the information from public access under subsection Rule 7 or
3. seals the records under to I.C. 5-14-3-5.5.

NOTE: This authorization to seal only applies to protection of a PUBLIC INTEREST as opposed to a private interest.

**Q13. What is open to the public in juvenile delinquency cases and what is confidential?**

- A.** A.C.R. 5 permits the disclosure of those juvenile records specifically deemed open under statute. The statutes involved are found in I.C. 31-39-2, which is entitled “*Persons Entitled to Access to Juvenile Court Records.*” For example, I.C. 31-39-2-8 discusses public access to records of juvenile delinquency proceedings. Under subsection (a) juvenile records are available to the public ...

*whenever a petition has been filed alleging that a child is delinquent as the result of any of the following alleged acts or combination of alleged acts:*

- (1) *An act that would be murder or a felony if committed by an adult.*

- (2) *An aggregate of two (2) unrelated acts that would be misdemeanors if committed by an adult, if the child was at least twelve (12) years of age when the acts were committed.*
- (3) *An aggregate of five (5) unrelated acts that would be misdemeanors if committed by an adult, if the child was less than twelve (12) years of age when the acts were committed.*

However, under subsection (b) only certain information and records may be made available to the public even in the three situations discussed above. *Only* the following information may be released to the public:

- (1) *child's name;*
- (2) *child's age;*
- (3) *nature of the offense;*
- (4) *chronological case summaries;*
- (5) *index entries;*
- (6) *summons;*
- (7) *warrants;*
- (8) *petitions;*
- (9) *orders;*
- (10) *motions ("excluding motions concerning psychological evaluations and motions concerning child abuse and neglect"); and*
- (11) *decrees;*

If the child has been adjudicated a delinquent child for an act or combination of acts as outlined above in IC 31-39-2-8 (a), then the child's photograph also may be released.

It is the duty of the clerk to keep all other records confidential of the child alleged to be or adjudicated a delinquent child. Most of the confidential records are known as the "social" as opposed to the "legal" records of the juvenile court. These "social" records include evaluations from probation officers, case workers, physicians, guardians ad litem, school guidance counselors, and psychologists. **The statutory language includes the following instructions to the clerk: "The Clerk of the juvenile court shall place all other records (excluding the eleven "legal" records listed above) of the child alleged to be or adjudicated as a delinquent child in an envelope marked "confidential" inside the court's file pertaining to the child."** The confidential information in the envelope may only be released to those authorized to receive such information. In addition, *"the identifying information of any child who is a victim or a witness shall remain confidential."*

I.C. 31-39-2-10 allows a permissive disclosure of "legal records" if such release best serves the "interests of the safety and welfare of the community." When exercising this discretion, the court ...

*shall consider that the best interests of the safety and welfare of the community are generally served by the public's ability to obtain information about:*

- (1) *the alleged commission of an act that would be murder or a felony if committed by an adult; or*
- (2) *the alleged commission of an act that would be part of a pattern of less serious offenses.*

Under A.C.R. 5(A) when evidence in Case Records that is excluded from public access pursuant to the Rule is admitted into the record of a hearing that is not open to the public by statute or court order, the information remains excluded from public access. Thus, anyone seeking access to the information must petition the court for access.

The issue of access is subject to I.C. 31-39-2-10 and Access to Court Rule 9 which appear to pose a conflict. The Records Management Committee has examined this issue and adopted the view that the Access to Court Rule controls, thus requiring proof by clear and convincing evidence to authorize disclosure.

**Q14. In cases where civil judgments occur because of a juvenile delinquency case, should the child's name be placed in the Judgment Docket?**

- A.** In situations where civil judgments arise against a juvenile in a juvenile case, the juvenile's name should be placed in the Judgment Docket. Neither the Indiana Code nor the Access to Court Records Rules have provided for the confidentiality of money judgments rendered against juveniles. Under I.C. 34-55-9-2, money judgments become liens against the real property and chattels real of the judgment debtor if it has been entered and indexed as required by law. Failure to index the judgment as required by I.C. 33-32-3-2 deprives the judgment creditor of their lien.

**Q15. Are paternity cases confidential?**

- A.** Paternity records became confidential on July 1, 1941. Before 1941, paternity matters were handled as bastardy proceedings, and the records generated by these proceedings were not, and are not, confidential. All records concerning paternity cases filed on or after July 1, 1941, are confidential until July 1, 2014 when records involving proceedings that pertain to paternity, custody, parenting time and child support issues concerning a child born to parents who are not married to each other become accessible as a public record.

Effective July 1, 2014 the Indiana Supreme Court amended Admin. R. 9(G), now A.C.R. 5(A)(6), so that paternity Case Records created between July 1, 1941 and July 1, 2014 remained confidential. As a result, the public may have access to Chronological Case Summaries, Index entries, summonses, warrants, petitions, orders, motions and decrees entered after July 1, 2014.

**Q16. In situations where civil judgments occur because of a paternity case, should the names of the parties be placed in the Judgment Docket?**

- A.** In situations where civil judgments arise from paternity cases, the names of the parties should be placed in the Judgment Docket. Neither the Indiana Code nor the Access to Court Records Rules have provided for the confidentiality of money judgments rendered against juveniles. Under I.C. 34-55-9-2, money judgments become liens against the real property and chattels real of the judgment debtor if it has been entered and indexed as required by law. Failure to index the judgment as required by I.C. 33-32-3-2 deprives the judgment creditor of their lien.

**Q17. How are pre-sentence reports handled with the general court file?**

- A.** By statute (see I.C. 35-38-1-12 and I.C. 35-38-1-13) and A.C.R. 5(B), pre-sentence reports and memoranda are confidential. The reports should be filed with a Notice of Exclusion under Access to Court Rule 5.

The best practice is to file and maintain these reports separately from the case file. If the pre-sentence reports are placed in the case file, then procedures such as placing the pre-sentence report in a sealed evidence envelope should be used.

**Q18. Are victims of crimes allowed to view pre-sentence reports and provide input to them?**

- A.** In 1999, the General Assembly enacted legislation to give victims of crimes certain rights. One of these rights was to have greater input into the sentencing process including “the right to make a written or oral statement for use in the preparation of the pre-sentence report” [see I.C. 35-40-5-6(a)]. Notwithstanding the confidentiality requirements of I.C. 35-38-1-13, “*the victim has the right to read pre-sentence reports relating to the crime committed against the victim*” with certain exceptions. Victims still may be restricted from seeing the following information included in the pre-sentence report [see I.C. 35-40-5-6(b)]

- *The source of the confidential information*
- *Information about another victim*
- *Other information determined confidential or privileged by the judge in a proceeding.*

Under I.C. 35-40-6-7(5), the prosecuting attorney has the duty of notifying the victim of “*the victim’s right to review the pre-sentence report, except those parts excised or made confidential by*” I.C. 35-40-5-7.

**Q19. What is open to public access and what is confidential in underage marriage petition cases?**

- A. Under I. C. 31-11-1-7, effective July 1, 2020,, underage marriage petitions and the orders resulting from these petitions are issued by the juvenile court. Previously, the proceedings for seeking underage permission to marry were confidential until July 1, 2020. IOCS believes proceedings under the new statute are also confidential.

**Q20. What case type designation under Administrative Rule 8 should be used with underage marriage petition cases?**

- A. The *Juvenile Miscellaneous* (JM) case type designation should be used and regular juvenile fees assessed unless waived.

**Q21. When do arrest warrants, search warrants, and indictments or informations become open to public access?**

- A. A.C.R. 5(E) has attempted to incorporate the practice of many courts concerning arrest warrants, search warrants, and indictments and informations. Warrants and indictments need to be kept confidential if they are going to accomplish their intended purpose. However, once they have been served and the clerk has knowledge of service, then there is no longer a need for confidentiality. Search warrants that are not filed within an existing prosecution, remain confidential unless the court authorizes public access.

Entire cases that exclusively pertain to investigative requests and process **unrelated to a pending criminal proceeding** are confidential under Admin. R. 9(G)(1)(e). These cases include but are not limited to search warrants, subpoenas ad testificandum, subpoenas duces tecum, and other investigative requests. These cases remain excluded from public access even after return of service.

A.C.R. 5(E) makes entire criminal cases confidential until the return of duly executed service **if**

- the prosecuting attorney files a contemporaneous request for exclusion and
- the court determines the facts presented support a reasonable belief that public disclosure will
  - increase the risk of flight by the defendant,
  - create an undue risk of harm to the community or a law enforcement officer,or



- jeopardize an on-going criminal investigation.

To the extent that any of these documents contains complete Social Security Numbers or account numbers, provisions must be made to ensure compliance with the non-public nature of that information, such as filing the warrant, indictment or information on green paper.

**Q22. What is confidential and what is open to public access in mental health cases?**

- A.** Effective January 1, 2017, the Case Records for Mental Health (MH) cases filed under I. C. 12-26 became confidential upon the amendment of Admin. R. 9(G)(1), now A.C.R. 5(A). Previously, the main intention in dealing with mental health cases was to protect the personal medical records of the person facing a mental health hearing. Although the MH cases filed prior to January 1, 2017 remain open to the public, the previously filed medical records remain confidential.

**Q23. What information concerning jury lists is open to the public?**

- A.** I.C. 33-28-5-13 provides that the master list of names of persons selected for jury duty is public but that further information regarding those selected is confidential. Under Ind. Jury Rule 10, personal information relating to a juror or prospective juror is confidential, other than for the use of the parties and counsel, but information that is disclosed in open court during the jury selection process is not confidential. A court is required to maintain confidentiality to an extent consistent with the constitutional and statutory rights of the parties.

**Q24. How should orders of expungement be handled?**

- A.** The proper method depends upon the nature of the offense. Petitions brought under I.C. 39-38-9 related to infractions, misdemeanors and certain lower level felonies result in greater relief than those related to more serious felonies. See the relevant sections of the Indiana Trial Court Administration Manual for Judges and Clerks for more detailed information. It will be necessary for judges to state very clearly in the order whether the records to be expunged are only records dealing with the arrest or whether the Court Records concerning the case are to be expunged as well.

**Q25. What is the purpose of the Attorney General's Address Confidentiality Program?**

- A.** The Address Confidentiality Program through the Office of the Attorney General has been established under I.C. 5-26.5, and a person, or a minor or incapacitated person for whom an application has been made, who has been a victim of domestic violence and

who has a valid protective order may participate in this program. This program makes the Office of Attorney General an agent for the participant for purposes of service of process and receipt of mail.

Under I.C. 5-26.5-2-3(b), for purposes of the Indiana Access to Public Records Law (I.C. 5-14-3), "the name, address, telephone number, and any other identifying information relating to the program participant are declared confidential."

**Q26. What are the Clerk's duties concerning confidential materials in a Protection Order case?**

- A.** The duties of the Clerk of court concerning the maintenance of a confidential file and the handling of the Confidential Form (confidential under I.C. 5-2-9-7) are outlined in I.C. 5-2-9-6(b). Under I.C. 5-2-9-6(b)(1), the Clerk is to "*maintain a confidential file to secure any confidential information about a protected person designated on a uniform statewide form prescribed by the Indiana Office of Court Services.*"

Under I.C. 5-2-9-6(b)(2), the Clerk of court is to provide a copy of the Confidential Form "*that accompanies the Indiana order to the following:*

- (A) The sheriff of the Indiana county in which the order was issued.*
- (B) The law enforcement agency of the municipality, if any, in which the protected person resides.*
- (C) Any other sheriff or law enforcement agency designated in the Indiana order that has jurisdiction over the area in which a protected person may be located or protected."*

The entirety of the Protective Order case file is not confidential. Only the original of the Confidential Form filed by the petitioner or by the prosecuting attorney is to be placed in the confidential file that the Clerk has established.

A second item that will be placed in the confidential file will be the "Confidential Page" (page four) for a change of address of the Notice of Extension or Modification form. If either the petitioner's address or the respondent's address changes, then page four (4) of the form must be completed by the petitioner and filed with the Clerk, and the Clerk should place the original of this page in the confidential file. Please note, however, that the change of address page (page four) will only be completed and filed with the Clerk if there is a change of address. The Confidential Page is confidential because it contains the address and the telephone number of the petitioner and an alternate telephone number and address for notification purposes.

If the Confidential Page is filed along with the rest of the Notice of Extension and Modification form, a copy of the Confidential Page will be sent to the Protection Order

Depositories listed above along with the rest of the form. The original, as noted, is to be placed in the confidential file as required by I.C. 5-2-9-6(b)(1).

**Q27. Should the petitioner's address and telephone number be placed on the CCS in a Protection Order case?**

- A.** Since the Chronological Case Summary in a protective order case is not confidential, the petitioner's address and telephone number should **not** be placed on the CCS. While I.C. 34-26-5-7 specifies that a petitioner may omit providing an address on all nonconfidential documents filed with the Clerk, I.C. 5-2-9-7 provides that all information provided on the confidential form required of all petitioners is confidential. The form requires the furnishment of a petitioner's address as well as telephone number. Rather, it is recommended that the following information be used instead: *"The address and the telephone number of the petitioner are confidential under IC 5-2-9 and Administrative Rule 9 of the Supreme Court of Indiana."*

**Q28. Must subpoenas be issued using green paper?**

- A.** Generally, no. But, if the subpoena contains the address, phone number, dates of birth or other information that tends to explicitly identify a natural person who is a witness or victim in a criminal, domestic violence, stalking, sexual assault, juvenile or civil protection order case, the subpoena must be issued on green paper.

Under I.C. 5-2-9-6(c), sheriffs and law enforcement agencies, after receiving a copy of the Confidential Form from the Clerk, are to establish a confidential file in their Protection Order Depositories in which the Confidential Form is to be kept.

**Q29. How should orders to seal records be treated regarding the RJO and the CCS?**

- A.** Orders to seal records are confidential, and they should be placed in the Confidential Record of Judgments and Orders. The case file, all orders and judgments concerning the case in the Records of Judgments and Orders, and the original Chronological Case Summary should be placed in a sealed evidence envelope. The sealed records are to be treated as confidential records, and access to the sealed records will be restricted until an order to unseal the records is given.

The original Chronological Case Summary is to be placed in the sealed evidence envelope with the other sealed records. To replace the original Chronological Case Summary, a replacement CCS should be created containing only the case number, a statement that

the case had been ordered sealed, and the date that the order to seal the records of the case had been issued.

Except the order to the seal the records, which is to be placed in the Confidential Record of Judgments and Orders, all orders and judgments pertaining to the case are to be placed in the sealed evidence envelope. To replace all orders and judgments pertaining to the sealed case found in the Records of Judgments and Orders, a replacement page should be inserted containing only the case number, a statement that the case had been ordered sealed, and the date that the order to seal the records of the case had been issued.

**Q30. Can a party file a divorce petition using the initials only of the parties?**

- A.** Court Records and questions of their confidentiality are governed by A.C.R. 5. Specifically, the rule focuses on documents that may be disclosed or held confidential. There is nothing in A.C.R. 5 that allows a divorce petition between adults to be filed with initials only. Rule 6 does have a process whereby a person affected by the release of the information may petition the court to prohibit public access to information in a Court Record. There must be notice to the other parties and a hearing is always required. The standards a judge must use to grant this request are very high, however.

## Citizen's FAQ's

**Q1. What is the difference between records “not accessible for public access” and those that have been sealed under statutory authority?**

**A.** Records sealed under statute are more secure because no one is entitled to view the records without court authorization. Records “not accessible for public access” are only secure from public access but may be viewed by court or Clerk staff and the parties to the case and their lawyers.

**Q2. Can I obtain the mailing address and phone number of a party to a case?**

**A.** Yes, the mailing address and phone number of parties to a case is a record accessible to the general public unless a court order has been issued restricting access.

**Q3. Can I obtain the mailing address and phone number of a witness or the judge handling a case?**

**A.** No. These records are not accessible to the public.

**Q4. I was adopted in this county. Can I review the adoption file to learn about my natural parents and the reasons for my adoption?**

**A.** Information contained in court adoption files is generally excluded from public access by anyone including the person who was adopted. I.C. 31-19-24 provides a procedure to seek information related to an adoption and requires the filing of a written petition in a court with probate jurisdiction in the county where the adoption was granted.

**Q5. As a victim of a crime, can I obtain the pre-sentence report related to the offense committed against me?**

**A.** While pre-sentence reports are designated as confidential Court Records and are not accessible to the public, a crime victim is entitled under I.C. 35-40-5-6 to read the report related to the crime committed against them except for portions containing the source of confidential information, information regarding another victim or information determined by the court to be confidential or privileged.

**Q6. Are my Case Records available to the public?**

**A.** All information contained in Case Records is accessible by the public unless declared confidential by A.C.R. 5 unless a person affected by release of the information has sought or obtained an order prohibiting public access under A.C.R. 6 or has made a timely assertion of confidentiality under Rule 7.

**Q7. I want to handle my case without an attorney. What should I know about filing documents with the court?**

**A.** You are subject to the same standards and requirements as an attorney and must comply with the filing requirements of the Access to Court Records Rules related to providing confidential information.

**Q8. Are all Court Records available through the Internet?**

**A.** No. Currently courts can provide certain records, on a cost-free basis, through the internet through the Odyssey case management system directed by the Indiana Supreme Court. Odyssey records are available at <https://mycase.in.gov/default.aspx>.

A smaller number of courts also offer internet case information through other case management systems. Other vendors offer similar services for a fee or provide a limited amount of free records. In many instances information must be obtained directly from the court or the court Clerk offices.

#### Judge and Court Staff FAQ's

**Q1. Is a recording of a court proceeding made by a court reporter a public record? If so, does the public have the right to come and listen to the recording as opposed to acquiring a transcript? Would they be entitled to make their own copy of the recording?**

**A.** Recordings of court proceedings made by court reporters are public records regardless of whether they are produced on magnetic recording tape, compact disk, stenotype, shorthand or digitally recorded upon a computer hard drive unless the specific case type is confidential under A.C.R. 5. See A.C.R. 3 regarding the definition of "Case Record" and Rule 4 regarding access to audio and video recordings of proceedings. Management of access does not justify a denial of access to the public record. The public has the right to obtain the record within a reasonable period of time after making the request.

The Access to Public Records law, I.C. 5-14-3, provides that if the requesting party is not present when the request is made, a response is required within seven days. The response must acknowledge the request and provide a statement of when and how the record will be provided even if production cannot be immediate, e.g. duties related to an ongoing trial.

A specific means of providing this type of record has not been defined but the time or difficulty of compliance is an important consideration. Allowing the requestor to listen to the recording may be too time consuming to be reasonable for the reporter or a court

staff member since the custody and integrity of the original must be continuously maintained.

Providing a copy of the record is probably the most efficient and least time consuming method to provide public access. A reasonable charge to produce the copy may be made and guidance on this issue may be found in I.C.-5-14-3-8. Under Admin. R. 10, 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. Under Jud. Cond. R. 2.17(1), a judge may authorize the use of electronic or photographic means for the presentation of evidence, the perpetuation of a record or other purposes of judicial administration. Under no circumstances should the original be provided to the requestor for them to create their own copy.

Requiring the purchase of a transcript would be so costly in many cases as to constitute a denial of access to the public record unless the requestor desires to obtain the record in that format. Given the time required to produce a transcript and the other duties of reporters, the reasonable time for producing the record may well lead the requestor to ask for a different format. If the case is on appeal, a copy of the transcript could be obtained from the Clerk upon its completion and filing.

In situations where the requested record results in provision of an audio and/or audiovisual copy of a court proceeding, the judge should issue an order specifically limiting its use and barring the recipient from broadcasting the received record in any manner.

**Q2. Are exhibits offered and/or introduced into evidence in a court proceeding public records? If so, must their review of them be supervised or may copies be created at their cost?**

- A.** Once identified and offered or admitted into evidence all exhibits are part of the public record unless the proceeding is confidential under A.C.R. 5 or confidentiality was preserved under Rule 6. If a review of the original is granted, the reporter or staff member should supervise because of their duty to maintain the custody and integrity of the exhibit.

The size, nature and extent of the exhibit will have a significant impact upon the time required by the reporter or staff member to allow their reading or viewing. The constraints of time also impact the reasonable time of and nature of the response. In many instances the production of copies of large documents at a reasonable charge will be the most efficient manner of responding to the request.

- Q3. Are documents that are prepared in the normal course of court administration and that may be used for personnel or administrative purposes public records?**
- A. All administrative records produced by the court are public except for those listed in A.C.R. 5(D). Personnel records of a court are Court Administrative Records as defined by Admin. R. 9(C)(3).
- Q4. Are juror questionnaires and the responses supplied by prospective juror's public records?**
- A. Under A.C.R. 5(B)(2) and J. R. 10 personal information contained in juror questionnaires is confidential except for the use of the parties and counsel unless the information is disclosed in open court. Otherwise juror questionnaires and the responses of prospective jurors are public records.
- Q5. What if the parties waive their rights of confidentiality by filing documents containing information that would be confidential?**
- A. Under A.C.R. 5 a party does not have the right to file a document containing information concerning themselves or third parties deemed confidential under the rule unless they adhere to the requirements of the rule concerning how the information is to be presented.
- Q6. Can the parties waive confidentiality and avoid the filing requirements of Admin. R. 9 or authorize the release of information?**
- A. The Access to Court Rules Rule do not contain a provision for a waiver of confidentiality except as stated in Rules 8 and 9 which allows the release of (previously provided) information if it is released by all parties to whom it pertains. Parties must tender all information excluded from public access in the manner required by the rule.
- Q7. Litigation by unrepresented individuals is increasing with the prospect that confidential information will be included in documents filed with the court. Is the court required to examine these documents for compliance with Admin. R. 9?**
- A. The responsibility for compliance with the Access to Court Records Rules concerning filed documents rests upon the party filing the document. A court is not required to screen documents presented for filing. Rule 12 provides immunity for unintentional or unknowing disclosure of confidential material. Since the Bar and public must be educated about the requirements of the rule and those that implement it, it would be a good idea to require the Clerk to provide information concerning confidentiality requirements to those who want to initiate a case.



If a pleading or document is offered for filing that violates A.C.R. 5, the best practice is to file it, note the filing in the Chronological Case Summary but impound it as a confidential document. Refer the confidential document to the Court which can enter an Order to Comply with Access to Court Records 5 or Suffer Sanctions (see Appendix ) within a limited period of time or suffer the striking of the pleading. Pending expiration of the time given, the Court may extend the time for filing a responsive pleading. This same procedure should be followed if a non-conforming document is tendered by a nonparty to the litigation, e.g. a response by an employer concerning a wage assignment, income withholding order or garnishment order.

**Q8. Is it not futile to make Court Records confidential since parties often must present the information to other offices to transact business and those offices will not or cannot keep the information confidential?**

A. We can only control the information that comes into our systems but it is better that we reduce the access to sensitive information than to add to the number of sources from which the information can be inappropriately obtained.

**Q9. Where do judges go when they have questions about issues arising from Admin. R. 9 or the Access to Court Records Rules?**

A. Contact Jeffrey S. Wiese at the Indiana Office of Court Services (317-232-2542 or Jeffrey.wiese@courts.in.gov) for assistance in dealing with the issue.

**Q10. What is the reasonable cost for providing information requested?**

A. Standards already exist with respect to the reasonable cost of providing copies of documents by public offices but do not specifically apply to the judicial branch of government. See I.C.-5-14-3-8 and I.C. 33-37-5-1(b).

Courts should adopt a fee structure substantially in conformance with those authorized by existing statutes. Admin. R. 9(F) provides that in granting a request for bulk distribution or compiled information, the Supreme Court may charge the recipient the fair market value of the information received. In establishing a fee structure, a trial court should not exceed a fair market charge for the provision of the requested information.

**Q11. How do we handle questions that ask for more research information about the time cases take to finish, etc.?**

A. This really presents a public relations question rather than a question concerning access to public information. Offices are not required to create a special report to respond to

any inquiry or reconfigure things to provide information that is not otherwise created or retained in the ordinary course of the business of the office.

**Q12. What do we do with scandalous materials contained in a pleading even if it is true?**

- A. Unless information contained in a pleading is defined as confidential under the Access to Court Records Rules, it does not have to be treated in a confidential manner.

**Q13. Is information contained in the cover page of a protective order confidential?**

- A. A.C.R. 5 defines the information that is confidential and the information that is not. It is important to remember that the identifying information can still be sent to law enforcement.

**Q14. Are bank account numbers and Social Security Numbers on supplemental proceedings and warrants confidential?**

- A. Generally, information entered into evidence in open court is not confidential and, therefore, accessible to the public. A.C.R.7 provides that when confidential information excluded from public access is presented during court proceedings closed to the public, the information remains excluded from public access. Evidence presented with a Notice of Exclusion also remains confidential.

**Q15. How do we deal with the need to put specific account numbers and dollar amounts in an order?**

- A. T. R. 58(C) requires orders to have confidential information put on separate confidential pages.

**Q16. How do we handle the volume of confidential information that will arise in certain types of cases; e.g. small claims cases, and create a burden on staff and courts?**

- A. The Access to Court Records Rules do not create a “one-size fits all” approach. Each county will have its own opportunity to determine the best and most efficient manner to implement the rule and handle confidential information within the general requirements of the rule.

**Q17. Do the Access to Court Records Rules place a burden on the media or others if they come into possession of materials that should be part of the sealed record?**

- A. No. Issues such as this would likely have to be handled on a case-by-case hearing basis and would be very dependent upon the position taken, if any, by the person or entity whose information was obtained.

**Q18. What can be done if pleadings are filed that violate A.C.R. 5?**

- A. The Clerk, as the recipient of the pleading offered for filing that does not comply, has the first opportunity to address the issue and is justified in declining to accept the document. Alternatively, the Clerk can immediately impound the document as confidential and provide it to the Court for further action.

Upon examination by the Court an order can be entered impounding the document and ordering the offending party to promptly tender a document in compliance with the rule. A failure to comply could result in the striking of the document from the record or another suitable sanction.

**Q19. How do you handle exhibits containing inappropriate materials?**

- A. A.C.R. 5 makes exceptions for some inappropriate material (see A.C.R. 5(B)(11) and (12), but not all. Parties who submit a Court Record that is confidential under Rule 5 are, immediately upon learning of the improper submission, obligated to comply with the requirements of the rule to ensure proper exclusion. See A.C.R. 6.

A Court Record includes both pleadings and their attachments as well as evidentiary exhibits. If an individual or entity wishes to make evidence introduced in a public proceeding non-public, the burden is upon that person or entity whose information will be disclosed to seek entry of an order prohibiting access under A.C.R. 5.

**Q20. What does a probation officer do if an insurance company or a representative of the U. S. military asks for the address of a probationer?**

- A. Probation records are confidential and may not be disclosed.

**Q21. We have received subpoenas for probation officers to testify about adult and juvenile probationers in civil cases. What should we do?**

- A. Since the testimony will probably involve a request to disclose confidential information contained in probation records, you should:
  - a. consult with your judge,
  - b. develop a response form approved by the judge and county attorney that cites I.C. 11-13-1-8(B)(3), Indiana Probation Standard 1.4, and A.C.R. 5's restrictions on disclosure of confidential information.

Remember that the parties are entitled to petition the court to allow disclosure of information that would otherwise be confidential.

**Q22. Can a court play its recordings for the media if it might be broadcast?**

- A.** A.C.R. 4 and Administrative Rule 10 specify that judges must make sure the audio/video is not broadcast.

**Access to Court Records Rule 4 -- General Access Rule.**

- A. A Court Record is accessible to the public except as provided in Rule 5.
- B. This rule applies to all Court Records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.
- C. If a Court Record, or portion thereof, is excluded from public access, there shall be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This subsection (C) does not apply to court proceedings or Court Administrative Records which are confidential pursuant to law.
- D. 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 Jud. Cond. R. 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 A.C.R. 4(A).

**Administrative 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 to Administrative Rule 10*

*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.*

In situations where the requested record results in provision of an audio and/or audiovisual copy of a court proceeding, the judge should issue an order specifically limiting its use and barring the recipient from broadcasting the received record in any manner.