

Access to Court Records

Access and Maintenance: Procedures Quick Reference Bench Card

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A.C.R Rule 6—Excluding other court records from public access*

In extraordinary circumstances, a court may exclude court records from public access when:

- A. Verified written request filed by affected person demonstrates one of the following:
 - 1. public interest substantially served by prohibiting access,
 - 2. access will create significant risk of harm to requester, other persons, or general public,OR
- B. substantial prejudice to ongoing proceedings cannot be avoided.
- C. Notice and right to respond.
- D. Requestor provides notice to parties/persons and provides proof of notice to the Court.
- E. Party/person receiving notice has 20 days to respond.
- F. Public hearing
 - 1. May deny request without hearing.
 - 2. If request not initially denied, post public notice of hearing consistent with I.C. 5-14-3-5.5
- G. Following public notice, hold hearing on request.
- H. Written order to grant request.
 - I. States reasons for granting request.
 - 1. Finds clear and convincing evidence that one or more requirements of Rule 6(A) satisfied.
 - 2. Balances public interest and grounds for exclusion
 - 3. Uses least restrictive means and duration to prohibit access.

***Request and court records are confidential until court rules on request**

A.C.R Rule 8—Consent to release, failure to exclude, improper exclusion.

- A. Consent
 - J. A person affected by release may affirmatively consent to public access to confidential records.
 - K. Consent in writing if filing record and stated if information presented during a hearing.
- L. Failure to exclude from public access.

1. The right to exclude a document declared confidential by Rule 5 is never forfeited by failure to comply.
- M. If a confidential document is not excluded from public access, the party shall comply with exclusion requirements immediately upon learning that a document was not excluded.
- B. Improper exclusion from public access
 - N. Improperly excluded records available will be made available for public access 72 hours after notice to parties unless the provisions of Rule 6 met.
 1. The submitting party must resubmit the document as a public access document.

***Trial Rule 88(B)—court can strike non-conforming document or issue order allowing 3 days to cure e-file defect**

ACR Rule 9—Obtaining access to court records excluded from public access.

- A. Court records excluded from access may be made accessible if:
 1. Each affected person waives confidentiality by intentionally releasing a record for access under Rule 8; or
 2. A court with jurisdiction declares:
 - a. The record should not have been excluded.
 - b. The Rule 6 order was improper/no longer appropriate.
 - c. The court record is essential to resolution of litigation, or
 - O. Disclosure is appropriate for further establishment of precedent or development of law.
- B. Four conditions met (the record remains confidential until the court ruling)
 1. Verified written request for access.
 - a. Extraordinary circumstances exist, public interest served, no significant risk of harm, no prejudice to proceedings, Court Record not excluded under Rule 5
 2. Notice and right to respond.
 3. Public hearing
 - P. The court may deny the request without hearing.
 - a. If the request is not initially denied, post public notice, and hold a hearing.
 4. Written order
 - Q. Reasons for granting request.
 - R. Requestor has demonstrated by clear and convincing evidence.
 - a. Considers public access and privacy interests and grounds demonstrated.
- C. Courts may restrict the use or dissemination of records to preserve confidentiality.

Form ACR for Notice of Exclusion of Confidential Information

No ACR form needed for cases excluded from public access under Rule 5(A):

- Entire cases where all court records are declared confidential by statute or other court rule.
 - AD, JT, JC, JD (certain specific JD records are publicly accessible under I.C. 31-39-2-8), JM.
 - All mental health cases filed under I.C. 12-26
- Entire cases sealed under Access to Public Records Act (I.C.5-14-3-5.5)
- Entire cases excluded from access under Rule 6
- Entire cases exclusively pertaining to investigative requests and process unrelated to a pending criminal proceeding.
- All paternity records created after July 1, 1941, and before July 1, 2014

ACR form NOT needed to exclude from public access certain personal info about litigants, witnesses, and children under Rule 5(C)(1) and 5(C)(2)

- Complete SSN of living persons and complete account numbers, personal identification numbers, and passwords **if NOT necessary** to disposition of the case.
- Names of child witnesses in cases involving sex offenses (replace name with designation that ensures anonymity)
- **Note – names are NOT redacted in protection order cases or on no contact orders.**

No ACR form needed for certain records temporarily excluded from public access under Rule 5(E)(1)

- Entire criminal cases when a request to exclude is filed at the same time as a request for arrest warrant.
- Records become publicly accessible after finding probable cause unless judge determines facts present in request to exclude support reasonable belief that public disclosure will increase risk of flight by defendant, create an undue risk of harm to community or law enforcement officer, or jeopardize on-going criminal investigation.
- Order excluding access expires immediately upon arrest of defendant.

The ACR Form is required for records excluded under Rules 5(B), 5(C)(3), 5(D) and 5(E)(2)

- Records declared confidential or excluded by federal law.
- Records excluded or declared confidential by IN statute or court rule.
 - Presentence investigations (I.C. 35-38-1-13)
 - Child custody interview, report, investigation, if ordered confidential to protect child's welfare (I.C. 31-17-2-20)
 - Medical records (unless patient gives written consent under I.C. 16-39 or I.C. 16-41-8 applies)
 - Alcohol and drug abuse records described in 42 USC 290dd-2 (I.C. 16-39-1-9)
 - Tax records (I.C. 6-4.1-5-10; I.C.6-4.1-12-12; and I.C. 6-8.1-7-1)
 - Probation and Court Alcohol and Drug Program records (I.C. 11-13-1-8; I.C. 12-23-14-13)

- Case records excluded by Rule 5(A) or by specific Court Order entered pursuant to Rule 6
 - Case records sealed in accordance with Access to Public Records Act (I.C. 5-14-3-5.5)
 - Case records with asserted common law privilege (and not waived or overruled)
 - Case records created or maintained by an agency/program for pre-trial release and supervision and problem-solving court supervision.
- S. 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/created by a medical service provider and examiner reports under Trial Rule 35.
 - Mental health records compiled/created by mental health services provider for treatment purposes (unless patient consents or essential to resolution of case – see I.C. 16-39-2, I.C. 16-39-3-10)
- T. Reports for competency to stand trial, or for purposes of the insanity defense, remain accessible to the public.
- 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 mediums showing a live individual's uncovered genitals, pubic area, buttocks, or female post-pubescent nipple.
 - Photographs, film, video recordings, or other 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.
 - Complete SSN of living persons and complete account numbers, personal identification numbers, and **passwords if necessary to the disposition of the case** (see Rule 5(C)(1))
 - Names of child witnesses involving sex offenses (references replaced with initials or similar designation)
 - Names not redacted in protection order cases or no contact orders.
 - Addresses (mail or email), DOB, and phone #, of natural persons who are witnesses or victims in criminal, juvenile, or civil protection order proceedings.
 - Attorney addresses (residence and email) provided to the Clerk of the Supreme Court under Ind. Admission & Discipline Rule 2 except for such administrative purposes approved by the Chief Administrative Officer
 - Residence of judicial officers, clerks, and other employees of courts and clerks of court (unless waived)
 - Personal notes, organizers, or calendars, email, and deliberative material of judges, jurors, court staff, and judicial agencies
 - Court records on violation of post-conviction supervision (if request to exclude filed with request for warrant)

- These records become publicly accessible after probable cause established to issue arrest warrant unless judge determines facts present in request to exclude support reasonable belief that public disclosure will increase risk of flight by defendant, create an undue risk of harm to community or law enforcement officer, or jeopardize on-going criminal investigation.
- U. Order excluding public access expires immediately upon arrest of defendant.

ACR Form procedure for records excluded under Rule 5:

- The ACR form is filed with the trial court clerk or tendered in open court under Rule 7 for exhibits and testimony.
- V. The confidential information is filed on green paper (if paper is filed) or filed as a confidential document (if e-filed).
- W. A separate document with the confidential information redacted is filed on white paper (if paper filed) or filed as a public document (if e-filed).
- The ACR form is filed on white paper (if paper filed) or filed as a public document (if e-filed) and must identify the information excluded from public access and the Rule 5 grounds for exclusion.

Guide to E-Filing Confidential Information in the Trial Courts

| | Confidential Cases | Public Case | Public Case | Public Case | Public Case |
|---|--|--|--|---|---|
| If the... | Entire case is confidential by statute or rule | Entire contents of document are NOT confidential | Entire contents of document ARE confidential | Documents contain BOTH public information & confidential information necessary for disposition of case | Document contains BOTH public & confidential information NOT necessary for disposition of case |
| File redacted public access version? | ⊘ No | ✓ Yes | ⊘ No | ✓ Yes | ✓ Yes |
| document security | Not applicable | Public document | Not applicable | Public document | Public document |
| details | Not applicable | File as the lead document. | Not applicable | File as lead document. Confidential text should be redacted or omitted. Omitted pages should be replaced with placeholders. | File as lead document. Confidential text should be redacted or omitted. Omitted pages should be replaced with placeholders. |
| File non-public access version? | ✓ Yes | ⊘ No | ✓ Yes | ✓ Yes | ⊘ No |
| document security | Confidential document under ACR | Not applicable | Confidential document under ACR | Confidential document under ACR | Not applicable |
| details | All documents in the case are confidential | Not applicable | File as the lead document. Do not redact. | File as an attachment to the public access version. Do not redact. | Not applicable |
| File Notice of Exclusion? | ⊘ No | ⊘ No | ✓ Yes File ACR Form | ✓ Yes File ACR Form | ✓ Yes* File ACR Form (exception below) |

| | | | | | |
|-------------------|----------------|----------------|--|--|--|
| document security | Not applicable | Not applicable | Public document | Public document | Public document |
| details | Not applicable | Not applicable | File separately as a lead document with the "Notice of Exclusion" filing code. | File separately as a lead document with the "Notice of Exclusion" filing code. | File separately as a lead document with the "Notice of Exclusion" filing code. |

*ACR Rule 5(C)(1) Personal Information of Litigants, Witnesses, and Children:

(1) Unless necessary to the disposition of the case, the following information shall be redacted, and no notice of exclusion from Public Access is required:

- (a) Complete Social Security Numbers of living persons.
- (b) Complete account numbers, personal identification numbers, and passwords.