

Administrative Rule 9

Rule 9. ~~Access to Court Records and Fees~~

(A) ~~[Repealed and replaced by Access to Court Records Rule 1] Scope and Purposes.~~

- ~~(1) Pursuant to the inherent authority of the Indiana Supreme Court and pursuant to Indiana Code § 5-14-3-4(a)(8), this rule governs public access to, and confidentiality of, Court Records. Except as otherwise provided by this rule, access to Court Records shall be governed by the Indiana Access to Public Records Act (Indiana Code § 5-14-3-1, et. seq.).~~
- ~~(2) The purposes of this rule are to:
 - ~~(a) Contribute to public safety;~~
 - ~~(b) Protect individual Due Process rights and privacy interests;~~
 - ~~(c) Minimize the risk of injury to individuals;~~
 - ~~(d) Promote accessibility to Court Records;~~
 - ~~(e) Promote governmental accountability and transparency;~~
 - ~~(f) Protect proprietary business information; and~~
 - ~~(g) Make the most effective use of Court and Clerk of Court staff.~~~~
- ~~(3) This rule applies only to Court Records as defined in this rule and does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial governmental agency or other entity.~~
- ~~(4) Disputes arising under this rule shall be determined in accordance with this and, to the extent not inconsistent with this rule, by all other rules of procedure, evidence, and appeal.~~
- ~~(5) This rule applies to all Court Records; however, Clerks or Court and courts need not redact or restrict information that was otherwise public in Case Records and Court Administrative Records created before January 1, 2005.~~

Commentary

~~The objective of this rule is to provide maximum public accessibility to Court Records, taking into account public policy interests that are not always fully compatible with unrestricted access. This rule attempts to balance competing interests and recognizes that unrestricted access to certain information in Court Records could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. This rule recognizes there are strong societal reasons for allowing Public Access to Court Records and denial of access could compromise the judiciary's role in society, inhibit accountability, and endanger public safety.~~

~~This rule starts from the presumption of open Public Access to Court Records. In some circumstances; however, there are public safety and privacy reasons for restricting access to these records. This rule recognizes that there are times when access to information may lead to, or increase the risk of, harm to individuals. However, given the societal interests in access to Court Records, this rule also reflects the view that any restriction to access shall be implemented in a manner tailored to serve the~~

~~interests in open access. It is also important to remember that, generally, at least some of the parties in a court case are not in court voluntarily, but rather have been brought into court by plaintiffs or by the government. A person who is not a party to the action may also be mentioned in the Court Record. Care shall be taken that the privacy rights and interests of such involuntary parties or 'third' persons are not unduly compromised.~~

~~Subsection (A)(3) is intended to assure that Public Access provided under this Rule does not apply to information gathered, maintained, or stored by other agencies or entities that is not necessary to, or is not part of the basis of, a court's decision or the judicial process. Access to this information is governed by the law and the access policy of the agency collecting and maintaining such information. The ability of a computer in a court or clerk's office to access the information because the computer uses shared software or shared databases does not, by itself, make the information in Court Records subject to this rule.~~

~~The Indiana Office of Judicial Administration may provide advisory information to individuals or entities about the provisions, restrictions, and limitations of this rule.~~

(B) [Repealed and replaced by Access to Court Records Rule 2] ~~Who Has Access Under This Rule.~~

- ~~(1) All persons have access to Court Records as provided in this rule, except as provided in section (B)(2) of this rule.~~
- ~~(2) The following persons, in accordance with their functions within the judicial system, may have greater access to Court Records:~~
 - ~~(a) Court, Court agency or Clerk of Court employees, including courts of the United States of America and their related court agencies and clerk of court employees;~~
 - ~~(b) private or governmental persons or entities who assist a court in providing court services;~~
 - ~~(c) public agencies whose access to Court Records is defined by other statutes, rules, orders or policies;~~
 - ~~(d) the parties to a case or their lawyers with respect to their own case; and~~
 - ~~(e) prospective lawyers in juvenile paternity cases and the lawyers' agents, upon the lawyer's filing with the court an Assurance of Confidentiality in substantial compliance with the form appended to this Rule.~~

Commentary

~~Subsection (B)(1) 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, may have greater access to those particular records than is afforded the general public.~~

Subsection (B)(2) provides the exception to the general rule and specifies the entities and persons for whom courts may provide greater access. This greater level of access is a result of the need for effective management of the judicial system and the protection of the right to a fair trial.

The means of access may depend upon the form in which the Court Record exists. Certain circumstances relating to compilation or Bulk Distribution of information gleaned from Court Records may affect access to Court Records.

(C) Definitions. For purpose of this rule:

- (1) “Court Record” means both Case Records and Court Administrative Records.
- (2) “Case Record” means 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.
- (3) “Court Administrative Record” means 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 particular case.
- (4) “Court” means the Indiana Supreme Court, Court of Appeals, Tax Court, and all Circuit, Superior, Probate, City, Town, or Small Claims Courts.
- (5) “Clerk of Court” means the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court, the Clerk of a Circuit, Superior, or Probate Court, the Clerk of a City or Town Court, and the Clerk of a Marion County Small Claims Court, including staff.
- (6) “Public Access” means the process whereby a person may inspect and copy a Court Record.
- (7) “Remote Access” means the ability of a person to inspect and copy information in a Court Record in electronic form through an electronic means.
- (8) “In Electronic Form” 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.
- (9) “Bulk Distribution” means the distribution of all, or a subset of, the information in Court Records in electronic form, as is, and without modification or compilation.
- (10) “Compiled Information” means information that is derived from the selection, aggregation or reformulation of all, or a subset of all, the information from more than one individual Court Record in electronic form.

Commentary

“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 Office of Judicial Administration and the Judicial Conference of Indiana.

(D) [Repealed and replaced by Access to Court Records Rule 4] ~~General Access Rule.~~

- ~~(1) A Court Record is accessible to the public except as provided in section 9(G). Consistent with I.C. 5-14-3, the Chief Administrative Officer shall establish fees for copies of Court Records accessible by the public.~~
- ~~(2) 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.~~
- ~~(3) 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 sub-section (3) does not apply to court proceedings or Court Administrative Records which are confidential pursuant to law.~~
- ~~(4) A Court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)]. This provision does not operate to deny to any person the right to access a Court Record under Rule 9(D)(1).~~

Commentary

~~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 (D)(3) requires that any and all redactions be identified. The phrase "not public information" or an equivalent designation may be used.~~

(E) ~~Remote Access and Fees.~~ Courts should endeavor to make at least the following information, when available in electronic form, remotely accessible to the public unless public access is restricted pursuant to section 9(G):

- ~~(1) Litigant/party indexes to cases filed with the Court;~~
- ~~(2) Listings of new case filings, including the names of the parties;~~
- ~~(3) The Chronological Case Summary of cases;~~

~~(4) Calendars or dockets of Court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;~~

~~(5) Judgments, orders, or decrees.~~

~~Upon the request and at an amount approved by the majority of judges of courts of record in the county, the County Board of Commissioners may adopt an electronic system fee to be charged in conjunction with electronic access to Court Records. The fee must be approved by the Indiana Office of Judicial Administration. The Chief Administrative Officer may establish fees to be charged in conjunction with electronic access to Court Records maintained by the Office of Judicial Administration. The method of the fee's collection, deposit, distribution and accounting must be approved by the Indiana State Board of Accounts.~~

Remote Access to Court Records.

(1) The Indiana Supreme Court shall decide which court records will be remotely accessible to the public. The Office of Court Services shall create and maintain a list available to judges, attorneys, litigants, and the public.

(2) Trial courts may not provide remote access to additional records unless specifically authorized by the Indiana Supreme Court. However, trial courts shall make available, in an electronic or other format, daily calendars or dockets of court proceedings, including case numbers and captions, date, time, and location of hearings.

(3) Unless expressly provided by these Rules or state law, no fee shall be charged for access to electronic court records.

Commentary

In addition to any fees charged under this rule, Sections (C)(9) and (10) provide that courts may charge for the fair market value of Bulk Distribution and Compiled Information. This rule does not impose an affirmative obligation to preserve information or data or to transform information or data received into a format or medium that is not otherwise routinely maintained by the court. While this section encourages courts to make the designated information available to the public through remote access, this is not required, even if the information already exists in an electronic format.

(F) Bulk Distribution and Compiled Information.

(1) Upon written request as provided in this section, Bulk Distribution or Compiled Information that is not excluded by Access to Court Records Rule 5 Section 9(G) of this rule may be provided. Bulk Distribution or Compiled Information that is excluded by Access to Court Records Rule 5 Section 9(G), copies of documents and financial information may also be allowed by written contract with the Office of Judicial Administration.

(2) Except as provided in 2(b):

(a) Requests for Bulk Distribution or Compiled Information shall be made to the Indiana Office of Judicial Administration.

- (b) Courts and clerks within a judicial circuit may provide nonconfidential, Compiled Information from their case management system in response to a request for information that is normally available to the public via public access.
- (3) The Chief Administrative Officer may establish fees for Bulk Distribution or Compiled Information.

Commentary

Section (F)(2)(b) 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 Distribution or Compiled Information requests, Courts shall limit bulk data to Court Records, even if those requesting this information are seeking other information which is governed by other agencies' policies.

(G) [Repealed and replaced by Access to Court Records Rule 5] ~~Excluding Court Records From Public Access.~~

- ~~(1) *Court Records That Shall Be Excluded From Public Access In Entirety.* The following shall be excluded from Public Access:
 - ~~(a) Entire cases where all Court Records are declared confidential by statute or other court rule;~~
 - ~~(b) Entire cases where all Court Records are sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3-5.5);~~
 - ~~(c) Entire cases where all Court Records are excluded from Public Access by specific Court order entered in accordance with 9(G)(4).~~
 - ~~(d) All Mental health cases filed pursuant to I.C. § 12-26.~~
 - ~~(e) 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.~~~~
- ~~(2) *Individual Case Records That Shall Be Excluded From Public Access.* The following shall be excluded from Public Access:
 - ~~(a) Case Records declared confidential or excluded from Public Access pursuant to federal law;~~
 - ~~(b) Case Records excluded from Public Access or declared confidential by Indiana statute or other court rule;~~
 - ~~(c) Case Records excluded from Public Access pursuant to 9(G)(1) or by specific Court order entered in accordance with 9(G)(4);~~
 - ~~(d) Case Records sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3-5.5);~~
 - ~~(e) Case Records for which a statutory or common law privilege has been asserted and not waived or overruled;~~~~

- ~~(f) Complete Social Security Numbers of living persons;~~
- ~~(g) With the exception of names, information such as addresses (mail or e-mail), phone numbers, and dates of birth which explicitly identifies:
 - ~~(i) 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;~~
 - ~~(ii) 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;~~~~
- ~~(h) Complete account numbers of specific assets, loans, bank accounts, credit cards, and personal identification numbers (PINs);~~
- ~~(i) 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.~~
- ~~(j) Entire criminal cases when a request to exclude Case Records from Public Access is filed contemporaneously with a request for an arrest warrant.
 - ~~(i) 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.~~
 - ~~(ii) An order excluding Public Access issued under this section shall expire immediately upon the arrest of the defendant.~~~~
- ~~(k) All paternity records created after July 1, 1941, and before July 1, 2014, as declared confidential by statutes in force between those date, which statutes were amended by P.L. 1-2014, effective July 1, 2014.~~
- ~~(l) Case Records created or maintained by an agency or program for pre-trial release and supervision and problem-solving court supervision.~~
- ~~(m) 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.
 - ~~(i) 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.~~

~~(ii) An order excluding Public Access issued under this subsection shall expire immediately upon the arrest of the defendant.~~

~~(n) 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.~~

~~(3) *Court Administration Records That Shall Be Excluded From Public Access.* The following Court Administration Records are confidential and shall be excluded from Public Access:~~

~~(a) Case Records excluded in 9(G)(2);~~

~~(b) Court Administration Records excluded from Public Access or declared confidential by Indiana statute or other court rule.~~

~~(c) Attorney residence addresses and electronic mail 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.~~

~~(4) *Excluding Other Court Records From Public Access.* In extraordinary circumstances, a Court Record that otherwise would be publicly accessible may be excluded from Public Access by a Court having jurisdiction over the record, provided that each of the following four requirements is met:~~

~~(a) Verified written request. A verified written request to prohibit Public Access to a Court Record may be made by any person affected by the release of the Court Record. The request shall demonstrate that:~~

~~(i) The public interest will be substantially served by prohibiting access; or~~

~~(ii) Access or dissemination of the Court Record will create a significant risk of substantial harm to the requestor, other persons or the general public; or~~

~~(iii) A substantial prejudicial effect to on-going proceedings cannot be avoided without prohibiting Public Access.~~

~~When this request is made, the request and the Court Record will be rendered confidential for a reasonable period of time until the Court rules on the request.~~

~~(b) Notice and Right to Respond.~~

~~(i) The person seeking to prohibit access has the burden of providing notice to the parties and such other persons as the Court may direct.~~

~~(ii) The person seeking to prohibit access shall 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).~~

~~(iii) — A party or person to whom notice is given shall have twenty (20) days from receiving notice to respond to the request.~~

~~(c) — Public Hearing.~~

~~(i) — A Court may deny a request to prohibit Public Access without a hearing.~~

~~(ii) — If the Court does not initially deny the request, it shall post advance public notice of the hearing consistent with the notice requirements found in I.C. § 5-14-2-5.~~

~~(iii) — Following public notice, the Court shall hold a hearing on the request to prohibit Public Access to a Court Record.~~

~~(d) — Written Order. Following a hearing, a Court may grant a request to prohibit Public Access by a written order that:~~

~~(i) — States the reasons for granting the request;~~

~~(ii) — Finds the requestor has demonstrated by clear and convincing evidence that any one or more of the requirements of 9(G)(4)(a) have been satisfied;~~

~~(iii) — Balances the Public Access interests served by this rule and the grounds demonstrated by the requestor; and~~

~~(iv) — Uses the least restrictive means and duration when prohibiting access.~~

~~(5) — Procedures for Excluding Court Records From Public Access.~~

~~(a) — Notice to maintain exclusion from Public Access.~~

~~(i) — In cases where the Court Record is excluded from Public Access pursuant to 9(G)(2), 9(G)(3), or 9(G)(4), the party or person submitting the confidential record shall provide the following notice that the record is to remain excluded from Public Access:~~

~~a. — Pleadings or Papers. A Court Record filed with the Clerk of Court that is to be excluded from Public Access shall 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-G1.~~

~~b. — 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 shall 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.~~

~~c. — 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 shall 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(F)(3)(c) or (4). The Court Reporter shall comply with Appellate Rules 28(F) and 29(D) when~~

preparing the transcript on appeal.

~~(ii) In cases where all Court Records are excluded from Public Access in accordance with Administrative Rule 9(G)(1), no notice of exclusion from Public Access is required.~~

~~(b) Green paper requirements. Where only a portion of the Court Record has been excluded from Public Access pursuant to 9(G)(2) or 9(G)(3), the following requirements apply:~~

~~(i) *Public Access Version.* If a portion of a document filed or exhibit tendered contains confidential Court Records to be excluded from Public Access, the document or exhibit shall be filed on white paper and any Court Record to be excluded from Public Access shall be omitted or redacted from this version. The omission or redaction shall be indicated at the place it occurs in the Public Access version. If the entire document is to be excluded from Public Access, the 9(G)(5)(a) Notice filed with the document will serve as the Public Access Version.~~

~~(ii) *Non Public Access Version.*~~

~~a. If the omission or redaction in accordance with 9(G)(5)(b)(i) is not necessary to the disposition of the case, the excluded Court Record need not be filed or tendered in any form and only the Public Access version is required. The Administrative Rule 9(G)(5)(a) Notice should indicate this fact. See Form 9-G3.~~

~~b. If the omission or redaction in accordance with 9(G)(5)(b)(i) is necessary to the disposition of the case, the excluded Court Record shall be 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:~~

~~i. 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.~~

~~ii. 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.~~

~~(iii) The green paper requirements set forth in 9(G)(5)(b) do not apply to cases in which all Court Records are excluded from Public Access pursuant to 9(G)(1).~~

~~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.~~

~~(6) *Waiver, Failure To Exclude, Improper Exclusion, and Sanctions.*~~

~~(a) *Waiver of right to exclude Court Record from Public Access.*~~

- ~~(i) The party or person affected by the release of the Court Record may waive the right to exclude the Court Record from Public Access.~~
- ~~(ii) After waiver, a party or person seeking to reassert the right to exclude the Court Record from Public Access may do so only by complying with 9(G)(4).~~

~~(b) *Failure to exclude Court Record from Public Access.*~~

- ~~(i) Unless waived, the right to exclude a Court Record that is expressly declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3) is never forfeited by the failure to comply with any provision of 9(G).~~
- ~~(ii) Immediately upon learning that a Court Record declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3) was not excluded from Public Access, the party submitting such Court Record shall comply with the requirements of 9(G) to ensure proper exclusion.~~

~~(c) *Improper exclusion of Court Record from Public Access.*~~

- ~~(i) Only Court Records declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3) may be excluded from Public Access.~~
- ~~(ii) If a court determines that Court Records are excluded from Public Access without first satisfying 9(G)(1), 9(G)(2), or 9(G)(3), the Court Records shall be made available for Public Access seventy-two hours after notice to the parties and any person affected by the release, unless the requirements of 9(G)(4) are thereafter satisfied.~~
- ~~(iii.) If a court denies a 9(G)(4) request to exclude a Court Record from Public Access or if a Court Record is required to be made available for Public Access pursuant to 9(G)(6)(c)(ii), the party that originally submitted the Court Record as a Non-Public Access document is responsible for immediately resubmitting the Court Record as a Public Access Document.~~

~~(d) *Sanctions.* The failure to comply with any provision of 9(G) can subject counsel or a party to sanctions.~~

~~(7) *Obtaining Access to Court Records Excluded from Public Access.*~~

~~(a) A Court Record that is excluded from Public Access under this rule may be made accessible if:~~

- ~~(i) Each person affected by the release of the Court Record waives confidentiality by intentionally releasing such Court Record for Public Access pursuant to 9(G)(6)(a); or~~
- ~~(ii) A Court with jurisdiction over the case declares:
 - ~~a. the Court Record should not have been excluded from Public~~~~

Access;

- b. ~~the 9(G)(4) order was improper or is no longer appropriate;~~
- e. ~~the Court Record is essential to the resolution of litigation; or~~
- d. ~~disclosure is appropriate to further the establishment of precedent or the development of the law.~~

~~(b) A Court Record that is excluded from Public Access under this rule also may be made accessible provided the following four conditions are met:~~

- ~~(i) Verified written request. The person seeking access to the Court Record shall file with the Court having jurisdiction over the record a verified written request demonstrating that:~~
 - a. ~~Extraordinary circumstances exist requiring deviation from the general provisions of this rule;~~
 - b. ~~The public interest will be served by allowing access;~~
 - c. ~~Access or dissemination of the Court Record creates no significant risk of substantial harm to any party, to third parties, or to the general public;~~
 - d. ~~The release of the Court Record creates no prejudicial effect to on-going proceedings; or~~
 - e. ~~The Court Record should not be excluded for Public Access under 9(G)(1), 9(G)(2) or 9(G)(3).~~

~~When a request is made for access to Court Records excluded from Public Access, the Court Record will remain confidential until the Court rules on the request.~~

~~(ii) Notice and Right to Respond.~~

- a. ~~The person seeking access has the burden of providing notice to the parties and such other persons as the Court may direct.~~
- b. ~~The person seeking access shall 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).~~
- e. ~~A party or person to whom notice is given shall have twenty (20) days from receiving notice to respond to the request.~~

~~(iii) Public Hearing.~~

- a. ~~A Court may deny a request to provide access without a hearing.~~
- b. ~~If the Court does not initially deny the request, it shall post advance public notice of the hearing consistent with the notice requirements found in I.C. §5-14-2-5.~~
- e. ~~Following public notice, the Court shall hold a hearing on the request to allow access to the Court Record.~~

~~(iv) Written Order. Following a hearing, a request to allow access to Court Records may be granted upon the issuance of a written order that:~~

- a. ~~States the reasons for granting the request;~~
- b. ~~Finds the requestor has demonstrated by clear and convincing evidence that any one or more of the requirements of 9(G)(7)(b)(i) have been satisfied; and~~

e.— Considers the Public Access and the privacy interests served by this rule and the grounds demonstrated by the requestor.

(c)— A Court may place restrictions on the use or dissemination of the Court Record to preserve confidentiality.

Commentary

~~— As noted previously, Rule 9 starts 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. —~~

~~— Section G(1) 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 Sections G(2) and (3) make clear that in most instances it is only individual Case or Administrative Records that have been declared confidential. As provided in Ind. R. Evid. 201(b)(5), a court can take judicial notice of the records of any court of this state, which includes the juvenile records of another court of this state.~~

~~— This section does not limit the authority of a judge in a particular case to order the sealing of particular records pursuant to the specific requirements of I.C. §5-14-3-5.5 or to enter an order excluding Court Records from Public Access in accordance with the specific requirements of G(4). No other type of court order is sufficient to seal or exclude Court Records from Public Access.~~

~~— The Judicial Conference of Indiana is directed by statute to prescribe standards concerning the protection of probation records and disclosure of information contained in those records. The Judicial Conference is authorized by statute to prescribe certification rules for problem solving courts. The Conference has determined information contained in probation files and problem solving court case management files are confidential and may only be released in accordance with state and federal statutes and rules, and policies adopted by the Judicial Conference of Indiana. Court Alcohol and Drug Program records may only be released in accordance with state and federal law and rules.~~

~~— Section G(4) 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 Section G(4) 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 G(4) request, and action taken under G(4) will not affect those records.~~

~~— Section G(5) provides the specific procedures for excluding Court Records from Public Access. The party or person submitting the confidential record has the burden of providing separate, written notice identifying the grounds upon which exclusion is based. See Forms 9 G1 and 9 G2. The act of filing a Court Record on green paper does not constitute the required notice.~~

~~— The 9(G)(5)(a)(i)(c) notice requirements for excluding oral statements contained in a transcript apply only to transcripts that are 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 9(G)(5)(a)(i)(a) or (b) will apply.~~

~~— In addition to the separate written notice, in most instances, Section G(5)(b) requires filing or tendering of both a Public Access version and a Non Public Access version. The Public Access version is to be on white paper, 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 on green paper and shall contain the confidential material redacted or omitted from the Public Access version, unless the omitted or redacted confidential material is not necessary to the disposition of the case (such as a social security number, a bank number, etc.), in which instance the redacted or omitted material need not ever be separately tendered or filed on green paper and only a Public Access version is required.~~

~~— Section G(6) 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 9(G)(1), 9(G)(2), or 9(G)(3), such confidentiality is not forfeited.~~

~~— If a court determines that a party has improperly excluded Court Records from Public Access without first satisfying G(1), G(2), or G(3), those records shall be made available for Public Access unless, within seven days 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 G(4).~~

~~— Section G(7) 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 section is not intended to modify or overrule any federal or state law governing such records or the process for releasing information.~~

(H) When Court Records May Be Accessed.

- (1) Court Records which are publicly accessible will be 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 will be available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.
- (2) Upon receiving a request pursuant to section 9(F)(4) or [Access to Court Records Rule 59\(G\) of this rule](#), a court will respond within a reasonable period of time.

Commentary

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.

(I) Contracts With Vendors Providing Information Technology Services Regarding Court Records.

- (1) If a court or other private or governmental entity contracts with a vendor to provide information technology support to gather, store, or make accessible Court Records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, the term “vendor” also includes a state, county, or local governmental agency that provides information technology services to a court.
- (2) Each contract shall require the vendor to assist the court in its role of educating litigants and the public about this rule. The vendor shall also be responsible for training its employees and subcontractors about the provisions of this rule.
- (3) Each contract shall prohibit vendors from disseminating Bulk Distribution or Compiled Information, without first obtaining approval as required by this Rule.
- (4) Each contract shall require the vendor to acknowledge that Court Records remain the property of the court and are subject to the directions and orders of the court with respect to the handling and access to the Court Records, as well as the provisions of this rule.
- (5) These requirements are in addition to those otherwise imposed by law.

Commentary

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 IOJA.

(J) ~~[Repealed and replaced by Access to Court Records Rule 12] Immunity for Disclosure of Protected Information.~~

~~A Court, court agency, or Clerk of Court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or Clerk of Court who unintentionally and unknowingly discloses confidential or erroneous information is immune from liability for such a disclosure.~~

Commentary

This immunity provision is consistent with the immunity and protections provided by Indiana statute as found at IC 5-14-3-10(e).