

## Rules on Access to Court Records

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### Rule 5: Records Excluded From Public Access.

- (A) *Court Records That Shall Be Excluded From Public Access In Entirety.* The following shall be excluded from Public Access and no notice of exclusion from Public Access is required:
- (1) Entire cases where all Court Records are declared confidential by statute or other court rule;
  - (2) Entire cases where all Court Records are sealed in accordance with the Access to Public Records Act;
  - (3) Entire cases where all Court Records are excluded from Public Access by specific Court order entered in accordance with Rule 6;
  - (4) All Mental health cases filed pursuant to I.C. § 12- 26;
  - (5) 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;
  - (6) 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.
- (B) *Individual Case Records That Shall Be Excluded From Public Access.* The following shall be excluded from Public Access by filing the document on green paper (if paper filing) or by filing the document as a confidential document (if e-filing), along with an ACR Form identifying the specific Rule 5 ground(s) upon which exclusion is based:
- (1) Case Records declared confidential or excluded from Public Access pursuant to federal law;
  - (2) Case Records excluded from Public Access or declared confidential by Indiana statute or other court rule;
  - (3) Case Records excluded from Public Access pursuant to 5(A) or by specific Court order entered in accordance with Rule 6;
  - (4) Case Records sealed in accordance with the Access to Public Records Act;
  - (5) Case Records for which a statutory or common law privilege has been asserted and not waived or overruled;
  - (6) Case Records created or maintained by an agency or program for pre-trial release and supervision and problem-solving court supervision;

- (7) 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;
- (8) Medical records compiled or created by a medical service provider and examiner reports pursuant to Trial Rule 35;
- (9) Mental health records compiled or created by a mental health services provider for treatment purposes;
- (10) 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.

(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.

(C) 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.

If the information is necessary to the disposition of the case, the document containing the confidential information shall be filed on green paper (if paper filing) or filed as a confidential document (if e-filed). A separate document with the confidential information redacted shall be filed on white paper (if paper filing) or filed as a public document (if e-filing). A separate ACR Form identifying the information excluded from public access and the Rule 5 grounds for exclusion shall also be filed.

- (2) The names of child witnesses in cases involving sex offenses shall be excluded from public access, and any references shall be replaced with initials or similar designation that ensures their anonymity, with no notice of exclusion from Public Access required. Names shall not be redacted in protection order cases or on no contact orders.
- (3) Addresses (mail or email), dates of birth, and phone numbers of natural persons who are witnesses or victims in criminal, juvenile, or civil protection order proceedings shall be excluded from public access. The document containing the confidential information shall be filed on green paper (if paper filing) or filed as a confidential document (if e-filed). A separate document with the confidential information redacted shall be filed on white paper (if paper filing) or filed as a public document (if e-filing). A separate ACR Form identifying the information excluded from public access and the Rule 5 grounds for exclusion shall also be filed.

(D) *Court Administrative Records That Must Be Excluded From Public Access.* The following Court Administrative Records are confidential and must be excluded from Public Access:

- (1) Case Records excluded in 5(C);

- (2) Court Administrative Records excluded from Public Access or declared confidential by Indiana statute or other court rule;
  - (3) 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;
  - (4) 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;
  - (5) 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.
- (E) Court Records That Shall Be Temporarily Excluded From Public Access.
- (1) The following shall be excluded from Public Access and no notice of exclusion from Public Access is required: Entire criminal cases when a request to exclude Case Records from Public Access is filed contemporaneously with a request for an arrest warrant. When this request is made, the request and the Court Record will be rendered confidential until the Court rules on the request.
    - (a) 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 from 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.
    - (b) An order excluding Public Access issued under this subsection shall expire immediately upon the arrest of the defendant.
  - (2) The following shall be excluded from Public Access by filing the document on green paper (if paper filing) or by filing the document as a confidential document (if e-filing), along with an ACR Form identifying this subsection, Rule 5(E)(2) as the ground(s) upon which exclusion is based: 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.
    - (a) 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 from 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.
    - (b) An order excluding Public Access issued under this subsection shall expire immediately upon the arrest of the defendant.

## Commentary

*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 ACR 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 ACR Form stating what document was excluded and why.*

*Filers will use one Form (“Form ACR”) for all purposes. The Form ACR 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 ACR 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.

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.

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.