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| <p>COURT & CLERK RECORDS: ACCESS & MAINTENANCE</p> <p>ACCESS TO COURT RECORDS RULE 5 AND CONFIDENTIALITY</p> <p>The “Green Paper Rule”</p> | <p>CONTACT:</p> <p>Richard T. Payne richard.payne@courts.IN.gov</p> |
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Several court rules protect confidential information contained in court files subject to public access. Ind. Access to Court Records Rule 5 defines the confidential information and access rules for the public information in records. All confidential information paper filings must be filed on green paper and kept separately from the file to which it pertains or in a confidential envelope that is removed from the file before provided to the public. Confidential information submitted for e-filing must utilize a Notice of Exclusion.

The relevant rules are:

- Ind. Trial Rule 5(G)
- Ind. Crim. Rule 1.1—incorporates T.R 5(G) for criminal courts
- Ind. Small Claims Rule 2(E)—incorporates T. R. 5(G) for small claims courts and divisions
- Ind. Post-Conviction Relief Rule 1 §3(c)—incorporates T. R. 5(G) for PCR filings
- Ind. Alternative Dispute Resolution Rule 1.9—incorporates all of T. R. 5 for ADR service
- Ind. Appellate Rule 23(F)
- Ind. Original Actions Rule 3(J)—incorporates T. R. 5(G) for filings in Original Action cases
- Ind. Tax Court Rule 3(I) – incorporates T.R. 5(G) for Tax Court filings
- Ind. Trial De Novo Rule 4—incorporates T. R. 5(G) for appeals from City or Town Courts.

Confidential Files:

- Juvenile Files: JC, JD, JM, JS, JT, & JQ
- Paternity Files: JP – Case records created between July 1, 1941 and July 1, 2014 (records created after July 1, 2014 are not confidential)
- Adoption Files: AD after July 8, 1941 and AH
- MH
- Appeals from above case types

Confidential Records – A.C.R. Rule 5:

- Complete Social Security Numbers of **living persons**
- Victim or Witness in criminal domestic violence, stalking, sexual assault, juvenile or civil protection order proceedings identifying information beyond name: initials only for juveniles who are sex crimes victims
- 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.
- Entire criminal cases when a request to exclude Case Records from Public Access is filed contemporaneously with a request for an 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 section shall expire immediately upon the arrest of the defendant.
- 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.
- 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 are 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 provision expires immediately upon the arrest of the defendant.
- 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.
- 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.
- Case Records created or maintained by an agency or program for pre-trial release and supervision and problem-solving court supervision.
- Juror, judicial officer, clerk or other court or clerk employee information beyond name
- Portions of Protection Orders
- Probation records per Judicial Conference Probation Standards
- Drug Court confidential records as defined by the Program guidelines
- Case Records created or maintained by an agency or program for pre-trial release and supervision and problem-solving court supervision
- Medical and Tax Records

- Most Child Abuse records
- Pre-sentence reports
- Some arrest and search warrants prior to execution (discretionary with Judge)
- Mediation records
- Alcohol and Drug Program confidential records as defined by the Program guidelines
- Expungement records
- Personal notes, emails, diary, calendars of judges, jurors, court staff and judicial agencies
- Indiana Department of Workforce Development records

Remember that CCS entries should not contain confidential information.

Filing Procedure

- Attorney or filing person is responsible for following T. R. 5(G). If the document contains confidential information, the filer should
 - file a Notice of Exclusion that specifies the basis for exclusion under A. C. R. Rule 5 and
 - may need to file two versions of document depending upon whether the excluded information is necessary for disposition of the case:
 - white should represent what is filed without confidential information and
 - green should include confidential information

See A. C. R. Rule 5 for details.

- Keep confidential green papers separate from public file or remove before allowing the public to view
- If filing violates Ind. T. R. 5(G), clerk or court staff may impound document and require attorney or filing party to resubmit on correct paper.

Who May See File Contents?

- All court records are open to the public **unless excluded**.
- A. C. R. Rule 2 provides that certain individuals *may* have enhanced access to court records:
 - Parties and their attorneys,
 - Court staff,
 - Governmental personnel assisting in court services (i.e. law enforcement), and
 - Public agencies with access in accord with statutes or rules (i.e. guardians ad litem)
- If an attorney wants to see confidential records, they must file an appearance except for prospective lawyers in juvenile paternity cases and their agents who may see the confidential records upon the lawyer filing with the court an Assurance of Confidentiality in substantial compliance with the form appended to the rule. See A. C. R. Rule 2(B)(5).
- The Judge may restrict access to confidential records even to the parties/attorneys (i.e. adoption file records)

Who May Have Access to Audio/Visual Recordings?

- Audio and visual recordings of court proceedings are considered court records and are generally accessible by the public.
- A. C. R. Rule 4 and Admin. R. 10 provide the courts with discretion when the public seeks to listen and/or make a copy of the recording without ordering a transcript. The court may schedule the listening and/or copying of the recording in a manner that doesn't substantially interfere with the resources or normal business operations of the courts or comply with Jud. Conduct Rule 2.17. However, these provisions may not operate to deny a right of access under the A. C. R. Rules. Any charge made must be reasonable in comparison to the cost of the media used and cannot include a charge for employee time to create the copy

Court Record on Appeal

- When the Clerk copies a court file for record on appeal, copy the contents in the same manner as it is filed—green paper documents are copied on green paper for appeal
- Segregate the confidential records from the public record on appeal.
- Analyze the CCS to ensure all confidential information is protected.
- A. C. R. Rule 7 and the Appellate Rules establish a protocol for filing confidential and sealed records with Indiana's appellate courts.

Public Access to Court Records Handbook

The Office of Court Services has published a handbook that provides more information and frequently asked questions. See <https://www.courts.in.gov/judiciary/iocs/3223.htm>.