

Indiana Rules for Access to Court Records

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Rule 1: Scope and Purposes.

Effective January 1, 2020

(A) Pursuant to the inherent authority of the Indiana Supreme Court and pursuant to the Indiana Access to Public Records Act, this rule governs public access to, and confidentiality of, Court Records. This rule applies to everyone who creates a Court Record as defined in Rule 3

(A) Except as otherwise provided by this rule, access to Court Records shall be governed by the Indiana Access to Public Records Act.

(B) The purposes of this rule are to:

- (1) Contribute to public safety;
- (2) Protect individual Due Process rights and privacy interests;
- (3) Minimize the risk of injury to individuals;
- (4) Promote accessibility to Court Records;
- (5) Promote governmental accountability and transparency;
- (6) Protect proprietary business information; and
- (7) Make the most effective use of Court and Clerk of Court staff.

(C) This rule applies to Court Records and everyone who creates a Court Record as defined in Rule 3. This rule does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial governmental agency or other entity.

(D) 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.

(E) Clerks of 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 persons in a court case are not in court voluntarily, or a party to the action. Care shall be taken that the privacy rights and interests of such involuntary parties or 'third' persons are not unduly compromised.

Subsection (C) 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.

Rule 2: Who Has Access Under This Rule.

Effective January 1, 2020

(A) All persons have access to Court Records as provided in this rule, except as provided in subsection (B) of this rule.

(B) The following persons, in accordance with their functions within the judicial system, may have greater access to Court Records:

- (1) 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;
- (2) private or governmental persons or entities who assist a court in providing court services;
- (3) public agencies whose access to Court Records is defined by other statutes, rules, orders or policies;
- (4) the parties to a case or their lawyers with respect to their own case; and

(5) 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 (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.

Rule 3: Definitions.

Effective January 1, 2020

For purpose of this rule:

(A) "Court Record" means both Case Records and Court Administrative Records.

(B) "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.

(C) "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.

(D) "Court" means the Indiana Supreme Court, Court of Appeals, Tax Court, and all Circuit, Superior, Probate, City, Town, or Small Claims Courts.

(E) "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.

(F) "Public Access" means the process whereby a person may inspect and copy a Court Record.

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, computer programming and algorithms, general court orders, budget and expenditure records, and record of receipts of funds. The term "Court agency" in subsection (C) includes without limitation the Indiana Office of Judicial Administration and the Judicial Conference of Indiana.

Rule 4: General Access Rule.

Effective January 1, 2020

(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 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 4 (A).

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.

Rule 5: Records Excluded From Public Access.

Effective January 1, 2024

(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.
- (7) If court ordered, an entire case the Clerk of Court has opened under the wrong case type.

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

(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; electronic communications, including without limitation e-mail, text messages, photographs, and all related electronic data; 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(A)(7) is available only to the Clerk of Court to exclude from public access an entire case erroneously opened with a wrong case type immediately upon discovering the mistake. The Clerk shall then consult with a judge for final approval and shall make an appropriate entry. Parties cannot use Rule 5(A)(7) to bypass the specific requirements in Rule 6 for excluding an entire case or excluding Court Records from public access.

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.

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 defend-

ant 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.

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.

Rule 6: Excluding Other Court Records From Public Access.

Effective January 1, 2020

(A) 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. 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:

- (1) The public interest will be substantially served by prohibiting access;
- (2) 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
- (3) 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.

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

(2) 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).

(3) 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.

(1) A Court may deny a request to prohibit Public Access without a hearing.

(2) 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 the Access to Public Records Act.

(3) 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:

(1) States the reasons for granting the request;

(2) Finds the requestor has demonstrated by clear and convincing evidence that any one or more of the requirements of Rule 6(A) have been satisfied;

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

(4) Uses the least restrictive means and duration when prohibiting access.

Commentary

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.

Rule 7: Procedures for Excluding Exhibits and Testimony From Public Access.

Effective January 1, 2020

(A) Exhibits. A Court Record tendered or admitted into evidence during a hearing, trial, or an in camera review that is to be excluded from Public Access shall be accompanied by separate written notice identifying the specific Rule 5 ground(s) upon which exclusion is based. See ACR Form.

(B) Transcript on appeal.

(1) 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 Rule 5 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) or (4).

(2) Any *in camera* discussions during a hearing or trial, pursuant to Jury Rule 10 shall be excluded from Public Access.

(3) The Court Reporter shall comply with Appellate Rules 28(F) and 29(D) when preparing the transcript on appeal.

Commentary

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.

Rule 8: Consent to Release, Failure To Exclude, Improper Exclusion, and Sanctions.

Effective January 1, 2020

(A) Consent to Release Otherwise Confidential Court Record to Public Access. A party or person affected by the release of the Court Record may affirmatively consent to make otherwise confidential records accessible to the public. The consent must be in writing, if the party or person is filing a Court Record with the Court. The party or person must give verbal consent if the otherwise confidential information is presented during a hearing.

(B) Failure to exclude Court Record from Public Access.

(1) The right to exclude a Court Record that is expressly declared confidential pursuant to 5(A), (B), (C), (D), or (E) is never forfeited by the failure to comply with any provision of Rule 5.

(2) Immediately upon learning that a Court Record declared confidential pursuant to 5(A), (B), (C), (D), or (E) was not excluded from Public Access, the party submitting such Court Record shall comply with the requirements of Rule 5 to ensure proper exclusion.

(C) Improper exclusion of Court Record from Public Access.

(1) Only Court Records declared confidential pursuant to 5(A), (B), (C), (D), and (E) may be excluded from Public Access.

(2) If a court determines that Court Records are excluded from Public Access without first satisfying 5(A), (B), (C), (D), or (E), 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 Rule 6 are thereafter satisfied.

(3) If a court denies a Rule 6 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 8(C)(2), 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.

Commentary

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.

Rule 9: Obtaining Access to Court Records Excluded from Public Access.

Effective January 1, 2020

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

(1) Each person affected by the release of the Court Record waives confidentiality by intentionally releasing such Court Record for Public Access pursuant to 8(A); or

(2) A Court with jurisdiction over the case declares:

(a) the Court Record should not have been excluded from Public Access;

(b) the Rule 6 order was improper or is no longer appropriate;

(c) 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:

(1) 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 5(A), (B), (C), (D), or (E).

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.

(2) 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).

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

(3) 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 the Access to Public Records Act.

(c) Following public notice, the Court shall hold a hearing on the request to allow access to the Court Record.

(4) 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(B)(1) have been satisfied; and

(c) 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

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.

Rule 10: List of Excluded Records and Documents.

Effective January 1, 2020

The Office of Court Services shall create and maintain a list available to judges, attorneys, and litigants containing the [Court Records, Case Records, and Other Documents Excluded from Public Access under this Rule](#). This list may not be a complete listing, and it shall advise the public and attorneys to consult state and federal law, court rules, and case law to determine if other documents are excluded under Access to Court Records Rule 5.

Rule 11: Sanctions.

Effective January 1, 2020

The failure to comply with any provision of these 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.

Rule 12: Immunity for Disclosure of Protected Information.

Effective January 1, 2020

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.

Appendix

Effective January 1, 2020

Conversion Table

Rules on Access to Court Records	Formerly
1	Administrative Rule 9(A)
2	Administrative Rule 9(B)
3	Administrative Rule 9(C)
4	Administrative Rule 9(D)
5	Administrative Rule 9(G)
6	Administrative Rule 9(G)(4)
7	Administrative Rule 9(G)(5) (a)(i)
8	Administrative Rule 9(G)(6)
9	Administrative Rule 9(G)(7)

10	New
11	New
12	Administrative Rule 9(j)