

Proposed Amendment to Indiana Rules on Access to Court Records (July 2023)

* The proposed amendment to Access to Court Records Rule 4(D) clarifies that the public may request a copy of a recording of a hearing or trial. The amendment also adds commentary on a court's obligation to respond to a request for a copy of a recording and comply with Code of Judicial Conduct Rule 2.17 on broadcast of the recording.

...

Rule 4: General Access Rule.

- (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) The public may obtain a copy of a recording of a hearing or trial by written request. 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.

Recordings of court proceedings are public records under Indiana's Access to Public Records Act (APRA), (I.C. 5-14-3), and the public has the right to "view or obtain a copy". A specific means of providing an audio or video recording record has not been defined but the time or difficulty of compliance is an important consideration.

Proposed Amendment to Indiana Rules on Access to Court Records (July 2023)

Allowing the requester to listen to the recording at the courthouse may be too time-consuming to be reasonable for court staff who must monitor the requester's actions as the custody and integrity of the original recording must be continuously maintained. Likewise, payment for the creation of a written transcript may also be too expensive to be reasonable. Providing a copy of the recording is the most efficient, economical, and least time-consuming method to provide public access.

Note that APRA sets time deadlines for compliance with a public record request (see I.C. 5-14-3-4.4(c)) and prohibits any fee for locating or copying the record (see I.C. 5-14-3-8(b)). However, a fee, limited to the actual expense incurred, may be assessed for postage and payment for the cost of the medium used to provide the copy (thumb drive/flash drive/CD etc.) (see I.C. 5-14-3-8(g)(1)). If the copy is provided electronically and delivered by electronic mail, no fees may be assessed (see I.C. 5-14-3-8(b)(4)).

To comply with Indiana Judicial Conduct Rule 2.17 the court must issue an order regarding the broadcasting of the recording and provide a copy of the order to the requester. See form XXX for a model order.