

# CONFIDENTIALITY And Administrative Rule 9



## 2016 Indiana Child Support Enforcement Conference

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# Title IV-D v. Admin. R. 9

- Two sources of confidentiality rules

# Title IV-D

## □ Title IV-D

- Social Security Number
- Dates of Birth all parties and children
- Address of all parties and children
- Complete financial account numbers
- Tax Records

# Title IV-D

- Title IV-D applies to:
  - IV-D agency
  - Anyone the IV-D agency delegates its functions to
  - Signers of the cooperative agreement
  - Anyone IV-D agency has purchased services from

# Title IV-D

- Title IV-D confidentiality provisions apply to:
  - All information in ISETS
  - All files of the IV-D agency

# ISETS

- Safeguarding confidential Title IV-D information in ISETS
  - All information in the ISETS system is confidential and must be safeguarded from public disclosure
  - Clerks may provide ISETS information only to parties in the case and their legal representatives

## Title IV-D v. Admin. R. 9

- ❑ Which provisions should be followed in court proceedings?
- You must follow the provisions of Administrative Rule 9 in court proceedings

## Title IV-D v. Admin. R. 9

- What are the differences between the two?

# Admin. R. 9

- Administrative Rule 9
  - Complete Social Security Number of living persons

# Admin. R. 9

## □ Administrative Rule 9

- Addresses and Dates of Birth **which explicitly identifies natural persons who are witnesses or victims (not defendants) in criminal, domestic violence, stalking, sexual assault, juvenile or civil protection order proceedings.**

# Admin. R. 9

## □ Administrative Rule 9

- Complete account numbers of specific assets, loans, bank accounts, credit cards and PIN numbers.
- I.C. 6-8.1-7-1 makes tax records confidential

# Admin. R. 9

- Responsibility of confidentiality
  - Persons who file documents with the court are responsible for redacting confidential information from the original record and filing the confidential information as required by Administrative Rule 9(G)(5)

# Admin. R. 9

## □ Responsibility of confidentiality

- Clerks are **not** responsible for:
  - Identifying or redacting confidential information in court files
  - Reviewing a court file for confidential information before responding to a request for access to open court records by a member of the public

# Admin. R. 9

## □ Responsibility of confidentiality

- Clerks **are** responsible for:
  - Only providing ISETS information to parties in their case and their legal representatives

## Recent Amendments to Admin. R. 9

- Effective January 1, 2015

## Recent Amendments to Admin. R. 9

- ❑ The list of confidential records in 9(G) was deleted
  - This does not mean these records are now open to the public
  - Now the filer must determine the basis for confidentiality

## Recent Amendments to Admin. R. 9

- ❑ Separate Written Notice required when confidential records are filed
  - The form is available at <http://www.in.gov/judiciary/4235.htm>
  - if entire case is confidential, no written notice is needed

## Recent Amendments to Admin. R. 9

- ❑ Separate Written Notice required when confidential records are filed
  - Merely filing a document on green paper no longer satisfies the notice requirement

## Recent Amendments to Admin. R. 9

- ❑ Separate Written Notice required when confidential records are tendered during hearing or trial
  - The form is available at <http://www.in.gov/judiciary/4235.htm>

## Recent Amendments to Admin. R. 9

- ❑ Separate Written Notice requires the filer to specifically identify the law, statute or rule that makes the information confidential

## Recent Amendments to Admin. R. 9

- ❑ Oral Testimony
  - During hearing/trial
  - If confidential information is disclosed, notice must be given to Court Reporter that the info must be excluded and specific grounds for the exclusion

## Recent Amendments to Admin. R. 9

- ❑ Oral Testimony
  - After hearing/trial
  - If notice not given during hearing/trial, any party/person may provide written notice to the Court Reporter stating the confidential information must be excluded pursuant to Appellate Rules 28(A)(9)(C) or (D)

## Recent Amendments to Admin. R. 9

- ❑ Green Paper Requirements:
  - If only a portion of a document is confidential
    - Supply Court with
      - New Notice Form (white paper)
      - Public Access Version (redacted on white paper)
      - Non-public Access Version (green paper)
    - Unless-----

## Recent Amendments to Admin. R. 9

- ❑ Green Paper Requirements:
  - If only a portion of a document is confidential but the confidential info is **not relevant to any issue** in the case
    - Supply Court with
      - Public Access Version (redacted on white paper) only

## Recent Amendments to Admin. R. 9

- ❑ Green Paper Requirements:
  - If entire document is confidential
    - Supply Court with
      - New Notice Form (white paper)
      - Non-public Access Version (green paper)

## Recent Amendments to Admin. R. 9

- ❑ Waiver of Confidentiality
  - Only the person affected by the release of the confidential info may waive the right
  - Once waived, to reassert the right the person must comply with Admin. R. 9(G)(4)

## Recent Amendments to Admin. R. 9

### □ Forfeiture

- Unless the person affected by the release of the confidential info has waived the right, it is not forfeited even if there is a failure to properly exclude the record from public access
- But -----

## Recent Amendments to Admin. R. 9

### ❑ Forfeiture

- Immediately upon learning that a confidential record was not excluded from public access, the affected person must comply with the requirements of 9(G) to ensure proper exclusion

## Recent Amendments to Admin. R. 9

- ❑ Improper Filing of Documents on Green Paper
  - If a court determines a document has improperly been filed on green paper it must provide notice to all parties
  - The improperly filed record will be made available to the public in seven days
  - Unless -----

## Recent Amendments to Admin. R. 9

- ❑ Improper Filing of Documents on Green Paper
  - The person affected by the release of the record begins the process of properly excluding it pursuant to 9(G)(4)

## Recent Amendments to Admin. R. 9

- ❑ The failure to comply with 9(G) can subject counsel or a party to sanctions. Admin. R. 9(G)(6)(d).

## Recent Amendments to Admin. R. 9

- ❑ How to exclude info when no statute or rule makes it confidential
  - Parties agreements don't work
  - Consider not filing the information
    - If the court will not need the confidential info, don't supply it to the court

## Recent Amendments to Admin. R. 9

- ❑ How to exclude info when no statute or rule makes it confidential
  - Two ways:
    - Admin. R. 9(G)(4) or
    - IC 5-14-3-5.5 (APRA)

## Recent Amendments to Admin. R. 9

- ❑ How to exclude info when no statute or rule makes it confidential
  - Admin. R. 9(G)(4)
    - Verified written request demonstrating 1 of 3 possible claims
    - Clear and convincing evidentiary standard

## Recent Amendments to Admin. R. 9

- ❑ How to exclude info when no statute or rule makes it confidential
  - Admin. R. 9(G)(4)
    - Notice to all parties
    - Public Hearing
    - Written Court Order if granted

## Recent Amendments to Admin. R. 9

- ❑ How to exclude info when no statute or rule makes it confidential
  - Admin. R. 9(G)(4)
    - If request is granted, party must then tender the info as required by 9(G)(5)

## Recent Amendments to Admin. R. 9

- ❑ How to exclude info when no statute or rule makes it confidential
  - IC 5-14-3-5.5 (APRA)
    - Written findings of fact/conclusions of law demonstrating 5 items
    - Preponderance of the evidence standard

## Recent Amendments to Admin. R. 9

- ❑ How to exclude info when no statute or rule makes it confidential
  - IC 5-14-3-5.5 (APRA)
    - Must be protecting a Public Interest, **not** a private interest
    - If granted, must then tender the info as required by 9(G)(5)

## Recent Amendments to Admin. R. 9

- ❑ How to exclude info when no statute or rule makes it confidential
  - IC 5-14-3-5.5 (APRA)
    - Unsealing of the record will be done at the earliest possible time. IC 5-14-3-5.5(d).

## My Contact Information

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