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Administrative Rule 9 Overview

TASK FORCE ON REMOTE ACCESS TO AND PRIVACY OF ELECTRONIC COURT RECORDS

BY LILIA JUDSON | INTERIM CHIEF ADMINISTRATIVE OFFICER | INDIANA SUPREME COURT

Authority

Supreme Court adopted AR 9 pursuant to Court's inherent constitutional authority and Public Access Law, which provides that Supreme Court may by rule govern access to court records. IC 5-14-3-4(a)(8).

Rule applies only to Court Records, not to court hearings, trials or court and court agency meetings

Court Record

CASE RECORD

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

COURT ADMINISTRATIVE RECORD

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

Presumption

all persons have **Public Access** to all court records, except to those specifically excluded

PUBLIC ACCESS

process whereby a person may inspect and copy the information in a court record

Greater access by some

(to confidential records)

- Court, court agency, clerks of court and their employees (includes all courts in the state and federal system)
- Private or governmental persons or entities who assist the court in providing court services
- Public agencies whose access to court records is defined by other statues, rules orders or policies'
- Parties to a case or their lawyers with respect to their owns case
- Prospective lawyers in juvenile paternity cases and the lawyers' agents, upon lawyer filing and assurance of confidentiality

No right to remote access

Availability of remote access is aspirational

Courts should endeavor to make remotely accessible to the public:
Litigant Index; CCS; Calendars; List of new cases filed.

No right to have non-confidential Court Records excluded from public access

Parties cannot agree to exclude

Only a court can decide to exclude or seal a Court Record

To "seal" under IC 5-14-3-5.5

Petitioner must demonstrate the factors listed in the statute by preponderance of evidence

This process requires notice, hearing; Court must make specific findings of fact and must use least restrictive means and least duration

To exclude under AR 9

Petitioner must demonstrates by Clear and Convincing Evidence the factors listed in the Rule

This process requires verified petition, notice, hearing, proof of specific factors, and written findings of fact

AR 9 has similar process for obtaining access to confidential court records **(verified petition, notice, hearing and findings of fact)**

Responsibility for compliance with Rule

Each separate rule set **(trial, appellate, criminal, small claims, etc.)** places responsibility for compliance on filer by requiring that all confidential information be filed in accordance with AR 9

The failure to comply with any provision of AR 9(G) can subject counsel or a party to sanctions A.R. 9(G)(6)(d)

Rule applies to all court records (regardless of when they were created); however, courts and clerks need not redact or restrict information that was otherwise public in court records created before January 1, 2005

Filing Requirements

GREEN FILING (until E-Filing)

Calls for Green Paper so clerks can quickly see case file documents that should not be made public

In some cases (adoption, juvenile) all court records are excluded, and nothing is filed on green paper because entire case is confidential.

In all other cases, if only a portion of the court record is excluded from public access, filer must file two versions

Filing Requirements

(Continued)

Public access version

White paper with the confidential information redacted (if it is only part of a page) or omitted (if it is a whole page) with notation about the omitted information

Non-public access version

Separate document on green paper, conspicuously marked "Not for Public Access" or "Confidential," with the reference to the case and place

Exception – if the omitted information is not necessary to the disposition of the case, it need not be filed

Filer must also file a **Notice of Exclusion from Public Access** identifying the specific round on which the exclusion is based

Waiver of Confidentiality

The party or person affected by the release of the Court Record may waive the right to exclude the Court Record from Public Access (not the filer)

Once waiver has occurred, that person cannot reassert confidentiality; then must go through petition and hearing.

Forfeiture

If legislature or court has declared a Court Record not accessible, and the person who would be affected by release has not waived that confidentiality, failure to properly exclude will not forfeit the right to exclude at any time

Immediately upon learning that a confidential Court Record was not filed as such, the party submitting it must comply with the rule

Improper filing of records on green paper

If a court determines that a party has **improperly filed Court Records** on green paper, the court must provide notice to all parties

The Record becomes public in 7 days after the notice, unless within the 7 days, the person affected by the release begins the process to make it confidential

Filing a **"Verified Request"** to begin the process will allow the Court Record to remain excluded until the court rules

If the court ultimately denies the request, the Court Records will become public

If the court grants the request, the Court Records will remain confidential

Improper filing of records on green paper (Continued)

Court with jurisdiction of the case can decide that Court Record should no longer be excluded from Public Access when:

- The Court Record should not have been excluded from Public Access in the first place
- The Court Record has been sealed or removed from access improperly or should no longer be sealed or removed
- The Court Record is essential to the resolution of the litigation or
- Disclosure is appropriate to further the establishment of precedent or development of the law

Bulk and Compiled Court Records

Rule treats Bulk and Compiled records differently from individual records
(and differently from how ARPA handles)

Bulk Distribution means distribution of all, or a significant subset of, the information in Court Records in Electronic Form, as is, and without modification or compilation

Compiled Information means information that is derived from the selection, aggregation or reformulation of some or all, or a subset of all, the information from more than one individual court record in Electronic Form

Electronic Form means any information in a Court Record in a form that is readable through the use of an electronic devise, regardless of the manner in which it was created

Bulk and Compiled Court Records

(Continued)

Requests for non-confidential Bulk or Compiled Information are made to State Court Administration; if request is for records from multiple courts, request is decided by Supreme Court

Courts and clerks may within their judicial circuit provide non confidential complied information from their system in response to news media requests for information that is normally amiable to the public

Request for Bulk or Compiled Information may be approved and made contingent upon payment of fair market value

Bulk and Compiled Court Records
(Continued)

Requests for Bulk or Compiled Information may be denied upon determination

- That the information sought is not consistent with the purposes of the Rule
- That resources are not available to prepare it
- That fulfilling the request is an inappropriate use of public resources

Bulk and Compiled Court Records
(Continued)

Much more stringent process exists for **confidential Bulk or Compiled information**

Request only for **bona fide research activity** for scholarly journalistic, political, governmental research or for evaluation or statistical purposes

Requester must provide **individual notice** to all persons affected unless, upon prior notice and opportunity for the Attorney General to respond, the Supreme Court waives individual notice

Even then, party must **demonstrate the public interest,** full identifying information is not provided, and the requester is required to adhere to strict security protocols.

Duty of third parties working for courts

AR. 9 (I) requires that contracts with third parties, including state, county or local governmental agencies, that provide information technology services to courts and clerks, contain provisions that

- Specifically require the third party to comply with the Rule,
- Will educate their employees
- Will assist the court in its role of educating litigants and public about the rule
- Acknowledge that the Court Records remain property of the Court and are subject to direction and orders of the court

What is confidential under AR 9?

1. AR 9(G)(1) – Certain case types are considered completely confidential by statute or Supreme Court Rule. The entire case file must be excluded from public access. (These include some juvenile proceedings and all adoption proceedings).

2. AR 9(G)(2)(a,b) – References all records excluded due to federal or Indiana statute, common law, court rule or an Order.

3. AR 9 (G)(2)(e) Case Records for which a statutory or common law privilege has been asserted and not waived or overruled;

4. AR 9(G)(2)(f) through (k) – Other information Supreme Court has declared confidential by rule.

What is confidential under AR 9?
(Continued)

(f) Complete social security numbers of living persons

(g) With the exception of names, information such as addresses (mail or email), phone numbers, and dates of birth which explicitly identifies:

(i) natural persons who are witnesses or victims (not including defendants) in criminal, domestic violence, stalking, sexual assault, juvenile, or civil protection order proceedings, provided that juveniles who are victims of sex crimes shall be identified by initials only;

(ii) 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;

What is confidential under AR 9?
(Continued)

(h) Complete account numbers of specific assets, loans, bank accounts, credit cards, and personal identification numbers (PINs);

(i) All personal notes, email, and deliberative material of judges, jurors, court staff, and judicial agencies, and information recorded in personal data assistants, (PDAs) or organizers and personal calendars;

(j) Arrest warrants, search warrants, indictments, and informations ordered confidential by the trial judge, prior to return of duly executed service;

(k) All paternity records created after July 1, 1941, and before July 1, 2014, as declared confidential by statutes in force between those dates, which statutes were amended by P.L. 1-2014, effective July 1, 2014.