

In the  
Indiana Supreme Court



CAUSE NUMBER: 94S00-1401-MS-57

ORDER AMENDING INDIANA ADMINISTRATIVE RULES

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Indiana Administrative Rules 2, 8, 8.1, 9, 15, the Appendix to Rule 16, Form 9-G1 and Form 9-G2 are amended as follows (deletions shown by ~~striking~~ and new text shown by underlining):

**Indiana Administrative Rules**

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**Rule 2. Reporting Fiscal Matters**

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**(C) Budget and Expenditure Report.** Within ten (10) days after the close of the calendar year, the judge of the court, or chief judge of a unified court system, or a judge's designee shall gather all information necessary for the completion of the budget and expenditure report including all county budget and expenditure information for indigent defense not included in a court budget.

**(D) Report of Judge.** The judge of the trial court or the chief judge of a unified court system shall cause the fiscal reports to be filed with the Division no later than twenty (20) days after the end of the calendar year for the reporting period in electronic format as established by the Division.

**(DE) Judge's Confirmation of Reporting.** The judge of the court or the chief judge of a unified court system shall review all reports and confirm, through a process established by the Division, the completion and filing of all reports.

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**Rule 8. Uniform Case Numbering System**

**(A) Application.** All trial courts in the State of Indiana shall use the uniform case numbering system as set forth under this rule.

**(B) Numbering System.** The uniform case numbering system shall consist of four groups of characters arranged in a manner to identify the court, the year/month of filing, the case type and the filing sequence. The following is an example of the case number to be employed:

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The last two characters of the first group shall distinguish between courts in counties having more than one court of a specific type. The following code sets forth the county and court identifier for all courts:

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- 06C01 Boone Circuit Court
- 06D01 Boone Superior Court 1
- 06D02 Boone Superior Court 2
- 06H01 Boone/Lebanon City Court (abolished)
- 06I01 Boone/Thorntown Town Court
- 06I02 Boone/Zionsville Town Court
- 06I03 Boone/Jamestown Court
- 06I04 Boone/Whitestown Town Court

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- 29C01 Hamilton Circuit Court
- 29D01 Hamilton Superior Court 1
- 29D02 Hamilton Superior Court 2
- 29D03 Hamilton Superior Court 3
- 29D04 Hamilton Superior Court 4
- 29D05 Hamilton Superior Court 5
- 29D06 Hamilton Superior Court 6
- 29E01 Hamilton County Court (abolished)
- 29H01 Hamilton/Carmel City Court
- 29H02 Hamilton/Noblesville City Court
- 29H03 Hamilton/Fishers City Court (effective January 1, 2015)
- 29I01 Hamilton/Fishers Town Court (effective January 1, 2012)(abolished January 1, 2015)

...

- 71C01 St. Joseph Circuit Court
- 71D01 St. Joseph Superior Court
- 71D02 St. Joseph Superior Court
- 71D03 St. Joseph Superior Court
- 71D04 St. Joseph Superior Court

- 71D05 St. Joseph Superior Court
- 71D06 St. Joseph Superior Court
- 71D07 St. Joseph Superior Court
- 71D08 St. Joseph Superior Court
- 71I01 St. Joseph/Walkerton Town Court
- ~~71I02 St. Joseph/Lakeville Town Court~~
- 71J01 St. Joseph Probate Court

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**Rule 8.1. Uniform Appellate Case Numbering System**

- (A) **Application.** The Clerk of the Supreme Court shall use the uniform case numbering system set forth below for cases filed in the Supreme Court, Court of Appeals and Tax Court.
- (B) **Numbering System.** The uniform appellate case numbering system shall consist of four groups of characters arranged in a manner to identify the court, the year/month of filing, the case type and the filing sequence. The following is an example of the case number to be employed:

...

- (3) Case Type. The third group of two characters shall designate the type of proceeding.
  - i. The following codes shall be used for matters originating in the Supreme Court:
    - BL Board of Law Examiners
    - CO Contempt Proceedings
    - CQ Certified Questions
    - DI Attorney Discipline
    - JD Judicial Discipline
    - MS Miscellaneous Matters
    - OR Original Actions
    - SJ Special Judges

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**Rule 9. Access to Court Records**

**(A) Scope and Purposes.**

- (1) Pursuant to the inherent authority of the Indiana Supreme Court and pursuant to Indiana Code § 5-14-3-4(a)(8), this rule governs public access to, and confidentiality of, ~~court records~~ Court Records. Except as otherwise provided by this rule, access to ~~court records~~ Court Records shall be governed by the Indiana Access to Public Records Act (Indiana Code § 5-14-3-1, et. seq.).
- (2) The purposes of this rule are to:
  - (a) Promote accessibility to ~~court records~~ Court Records;

- (b) Support the role of the judiciary;
  - (c) Promote governmental accountability;
  - (d) Contribute to public safety;
  - (e) Minimize the risk of injury to individuals;
  - (f) Protect individual privacy rights and interests;
  - (g) Protect proprietary business information;
  - (h) Minimize reluctance to use the court system;
  - (i) Make the most effective use of court and ~~clerk~~Clerk of ~~court~~Court staff;
  - (j) Provide excellent customer service; and
  - (k) Avoid unduly burdening the ongoing business of the judiciary.
- (3) This rule applies only to ~~court records~~Court Records as defined in this rule and does not authorize or prohibit access to information gathered, maintained, or stored by a non-judicial governmental agency or other entity.
  - (4) 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.
  - (5) This rule applies to all ~~court records~~Court Records; however ~~clerks~~Clerks of Court and courts need not redact or restrict information that was otherwise public in ~~case records~~Case Records and ~~administrative records~~Court Administrative Records created before January 1, 2005.

#### Commentary

*The objective of this rule is to provide maximum public accessibility to ~~court records~~Court Records, taking into account public policy interests that are not always fully compatible with unrestricted access. The public policy interests listed above are in no particular order. This rule attempts to balance competing interests and recognizes that unrestricted access to certain information in ~~court records~~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~~Public Access to ~~court records~~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~~Public Access to ~~court records~~Court Records. In some circumstances; however, there may be sound 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~~Court Records, this rule also reflects the view that any restriction to access must 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 parties in a court case are not in court voluntarily, but rather have been brought into court by plaintiffs or by the government. A person who is not a party to the action may also be mentioned in the ~~court record~~Court Record. Care should be taken that the privacy rights and interests of such involuntary parties or 'third' persons are not unduly compromised.*

*Subsection (A)(3) is intended to assure that ~~public~~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 and databases does not, by itself, make the information subject to this rule.

The Division of State Court Administration may provide advisory information to individuals or entities about the provisions, restrictions, and limitations of this rule.

**(B) Who Has Access Under This Rule.**

- (1) All persons have access to ~~court records~~Court Records as provided in this rule, except as provided in section (B)(2) of this rule.
- (2) The following persons, in accordance with their functions within the judicial system, may have greater access to ~~court records~~Court Records:
  - (a) ~~court, court~~Court, Court agency or ~~clerk~~Clerk of ~~court~~Court employees; including courts of the United States of America and their related court agencies and clerk of court employees;
  - (b) private or governmental persons or entities who assist a court in providing court services;
  - (c) public agencies whose access to ~~court records~~Court Records is defined by other statutes, rules, orders or policies; ~~and~~
  - (d) the parties to a case or their lawyers with respect to their own case; ~~and~~
  - (e) 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 (B)(1) 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~~Court Records. Access to ~~court records~~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, may have greater access to those particular records than is afforded the general public.

Subsection (B)(2) provides the exception to the general rule and specifies the entities and persons for whom courts may provide greater access. This greater level of access is a result of the need for effective management of the judicial system and the protection of the right to a fair trial.

The means of access may depend upon the form in which the ~~court record~~Court Record exists. Certain circumstances relating to compilation or ~~bulk distribution~~Bulk Distribution of information gleaned from ~~court records~~Court Records may affect access to ~~court records~~Court Records.

**(C) Definitions. For purpose of this rule:**

- (1) "Court Record" means both ~~case records~~Case Records and ~~administrative records~~Court Administrative Records.
- (2) "Case Record" means any document, information, data, or other item created, collected, received, or maintained by a ~~court, court~~Court, Court agency or ~~clerk~~Clerk of ~~court~~Court in connection with a particular case.
- (3) "Court Administrative Record" means any document, information, data, or other item created, collected, received, or maintained by a ~~court, court~~Court, Court agency, or ~~clerk~~Clerk of ~~court~~Court pertaining to the administration of the judicial branch of government and not associated with any particular case.

- (4) “Court” means the Indiana Supreme Court, Court of Appeals, Tax Court, and all Circuit, Superior, Probate, ~~County~~, City, Town, or Small Claims Courts.
- (5) “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, ~~or County~~ Court, the Clerk of a City or Town ~~court~~Court, and the Clerk of a Marion County Small Claims Court, including staff.
- (6) “Public ~~access~~Access” means the process whereby a person may inspect and copy ~~the information in a court record~~a Court Record.
- (7) “Remote ~~access~~Access” means the ability of a person to inspect and copy information in a ~~court record~~Court Record in electronic form through an electronic means.
- (8) “In ~~electronic form~~Electronic Form” means any information in a ~~court record~~Court Record in a form that is readable through the use of an electronic device, regardless of the manner in which it was created.
- (9) “Bulk Distribution” means the distribution of all, or a significant subset of, the information in ~~court records~~Court Records in electronic form, as is, and without modification or compilation.
- (10) “Compiled Information” means information that is derived from the selection, aggregation or reformulation of some of all, or a subset of all, the information from more than one individual ~~court record~~Court Record in electronic form.

*Commentary*

*“Case ~~record~~Record” refers to records connected with a particular case. It does not include other records maintained by the ~~clerk~~Clerk of ~~court~~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~~Case Record is medium neutral and access neutral, and is intended to apply to every ~~case record~~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.*

*An ~~“administrative record”~~“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~~Court rules, jury pool list records, general court orders, budget and expenditure records, and record of receipts of funds. The term ~~“court”~~Court agency” in subsection (C)(3) includes without limitation the Indiana Judicial Center and the Judicial Conference of Indiana.*

**(D) General Access Rule.**

- (1) A ~~court record~~Court Record is accessible to the public except as provided in ~~sections~~section 9(G) and (H) of this rule, or as otherwise ordered sealed by the trial court.
- (2) This rule applies to all ~~court records~~Court Records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.

- (3) If a ~~court record~~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 sub-section (3) does not apply to court proceedings or ~~administrative records~~Court Administrative Records which are confidential pursuant to law.
- (4) A ~~court~~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~~Court Record under Rule 9(D)(1).

*Commentary*

*The objective of this section is to make it clear that this rule applies to information in the ~~court record~~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 (D)(3) requires that any and all redactions be identified. The phrase “not-public information” or an equivalent designation may be used.*

**(E) Remote Access and Fees.** Courts should endeavor to make at least the following information, when available in electronic form, remotely accessible to the public unless public access is restricted pursuant to ~~sections section 9(G) or (H)~~:

- (1) Litigant/party indexes to cases filed with the ~~court~~Court;
- (2) Listings of new case filings, including the names of the parties;
- (3) The ~~chronological case summary~~Chronological Case Summary of cases;
- (4) Calendars or dockets of ~~court~~Court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;
- (5) Judgments, orders, or decrees.

Upon the request and at an amount approved by the majority of judges of courts of record in the county, the County Board of Commissioners may adopt an electronic system fee to be charged in conjunction with electronic access to ~~court records~~Court Records. The fee must be approved by the Division of State Court Administration. In the instance of records from multiple courts, the Supreme Court may adopt such a fee. The method of the fee's collection, deposit, distribution and accounting must be approved by the Indiana State Board of Accounts.

### Commentary

*In addition to any fees charged under this rule, Sections (C)(9) and (10) provide that courts may charge for the fair market value of bulk and ~~compiled information~~Compiled Information. This rule does not impose an affirmative obligation to preserve information or data or to transform information or data received into a format or medium that is not otherwise routinely maintained by the court. While this section encourages courts to make the designated information available to the public through ~~remote~~Remote access, this is not required, even if the information already exists in an electronic format.*

#### **(F) Bulk Distribution and Compiled Information.**

- (1) Upon written request as provided in this section (F), ~~bulk distribution~~Bulk Distribution or ~~compiled information~~Compiled Information that is not excluded by Section ~~9(G) or (H)~~ of this rule may be provided.
- (2) Except as provided in (c):
  - (a) Requests for ~~bulk distribution~~Bulk Distribution or ~~compiled information~~Compiled Information shall be made to the Executive Director of the Division of State Court Administration or other designee of the Indiana Supreme Court. The Executive Director or other designee may forward such request to a ~~court~~Court exercising jurisdiction over the records, and in the instance of records from multiple ~~courts~~Courts, to the Indiana Supreme Court, for further action. Requests will be acted upon or responded to within a reasonable period of time.
  - (b) The Executive Director of the Division of State Court Administration or other designee of the Indiana Supreme Court may, summarily and without execution of a User Agreement, approve a request for compiled information made by individuals or entities having a substantial interest or a bona fide research activity for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes, provided the requested data:
    - will not be resold;
    - will not be used for a commercial purpose;
    - does not contain confidential data;
    - is not bulk (raw) data and
    - does not contain financial data.
  - (c) Courts and clerks within a judicial circuit may provide nonconfidential, compiled information from their case management system in response to a news media request for information that is normally available to the public via public access.
- (3) With respect to requests for ~~case record~~Case Record information not excluded from ~~public access~~Public Access by ~~Sections~~Section 9(G) or (H) of this rule, the request for ~~bulk distribution or compiled information~~Bulk Distribution or Compiled Information may be denied by the Executive Director, designee or a court of a judicial circuit using a case management system other than Odyssey upon determination that the information sought is not consistent with the purposes of this rule, that resources are not available to prepare the information, and that fulfilling the request is an inappropriate use of public resources. The

grant of said request may be made contingent upon the requestor paying an amount which the ~~court~~Court determines is the fair market value of the information.

- (4) With respect to requests for ~~bulk-distribution~~Bulk Distribution or ~~compiled information~~Compiled Information that include information excluded from ~~public access~~Public Access pursuant to ~~Sections~~Section 9(G) or (H) of this rule:
- (a) such requests must be verified and can only be made by individuals or entities having a substantial interest or a bona fide research activity for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes, and wherein the identification of specific individuals is ancillary to the purpose of the inquiry. Each request under this sub-section (4) must:
    - (i) fully identify the requestor and describe the requestor's interest and purpose of the inquiry;
    - (ii) identify what information is sought;
    - (iii) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education;
    - (iv) explain provisions for the secure protection of any information requested to which ~~public access~~Public Access is restricted or prohibited;
    - (v) provide for individual notice to all persons affected by the release of information, unless, upon prior notice to the Indiana Attorney General and a reasonable opportunity to respond, such individual notice requirement is waived by the Supreme Court;
    - (vi) demonstrate by clear and convincing evidence that the public interest will be served by allowing access, that denying access will create a serious and imminent danger to the public interest, or that denying access will cause a substantial harm to a person or third parties.
  - (b) Upon receiving a request pursuant to this sub-section (F)(4), the Supreme Court may permit objections by persons affected by the release of information, unless individual notice required under (F)(4)(a)(v) is waived by the Supreme Court.
  - (c) The request may be granted only upon determination by the Supreme Court that the information sought is consistent with the purposes of this rule, that resources are available to prepare the information, and that fulfilling the request is an appropriate use of public resources, and further upon finding by clear and convincing evidence that the requestor satisfies the requirements of subsection (F)(4)(a), and that the purposes for which the information is sought substantially outweighs the privacy interests protected by this rule. An order granting a request under this subsection may specify particular conditions or requirements for use of the information, including without limitation:
    - (i) The confidential information will not be sold or otherwise distributed, directly or indirectly, to third parties;
    - (ii) The confidential information will not be used directly or indirectly to sell a product or service to an individual or the general public;

- (iii) The confidential information will not be copied or duplicated other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose; and
  - (iv) The requestor must pay reasonable costs of responding to the request, as determined by the ~~court~~Court.
- (d) When the request includes release of social security numbers, dates of birth, or addresses, the information provided may include only the last four digits of social security numbers, only the year of birth, and only the zip code of addresses. The restrictions on release of social security numbers, dates of birth, and addresses may be waived only upon a petition to the Executive Director of the Division of State Court Administration and a finding of exceptional circumstances by the Indiana Supreme Court.

#### Commentary

Section (F)(3) authorizes ~~courts~~Courts, in their discretion, to provide access to ~~bulk distribution~~Bulk Distribution and ~~compiled information~~Compiled Information that is accessible to the public. It does not require that such information be made available. Permitting ~~bulk distribution or compiled information~~Bulk Distribution or Compiled Information should not be authorized if providing the data will interfere with the normal operations of the court.

In allowing bulk or compiled data requests, ~~courts~~Courts must limit bulk data to ~~court records~~Court Records, even if those requesting this information are seeking other information which is governed by other agencies' policies.

Generating compiled data may require ~~court~~Court resources and generating the ~~compiled information~~Compiled Information may compete with the normal operations of the ~~court~~Court for resources, which may be a reason for the ~~court~~Court not to compile the information. However, it may be less demanding on ~~court~~Court resources to instead provide ~~bulk distribution~~Bulk Distribution of the requested information pursuant to section (D)(3), and let the requestor, rather than the ~~court~~Court, compile the information. Courts may charge for the fair market value of bulk or ~~compiled information~~Compiled Information provided under Section (F)(3).

Section (F)(4) allows only the Supreme Court to grant requests for bulk or ~~compiled information~~Compiled Information that is excluded from ~~public access~~Public Access and only when the request is made by research and/or governmental entities. The general intent of (F)(4)(d) is that the last four digits of social security numbers and years of birth, rather than entire birth dates and social security numbers, are sufficient for matching records and to ensure that someone is correctly identified in bulk or compiled records. Courts should provide more complete social security numbers or other identifying information only in extraordinary circumstances.

#### **~~(G) Court Records Excluded From Public Access.~~**

- ~~(1) Case records. The following information in case records is excluded from public access and is confidential:~~
  - ~~(a) Information that is excluded from public access pursuant to federal law;~~
  - ~~(b) Information that is excluded from public access as declared confidential by Indiana statute or other court rule, including without limitation:~~

- ~~(i) — All adoption records created after July 8, 1941, as declared confidential by Ind. Code § 31-19-19-1 *et. seq.*, except those specifically declared open by Ind. Code § 31-19-13-2(2);~~
- ~~(ii) — All records relating to chancroid, chlamydia, gonorrhea, hepatitis, human immunodeficiency virus (HIV), Lymphogranuloma venereum, syphilis, tuberculosis, as declared confidential by Ind. Code § 16-41-8-1 *et. seq.*;~~
- ~~(iii) — All records relating to child abuse as declared confidential by Ind. Code § 31-33-18 *et. seq.*;~~
- ~~(iv) — All records relating to drug tests as declared confidential by Ind. Code § 5-14-3-4(a)(9);~~
- ~~(v) — Records of grand jury proceedings as declared confidential by Ind. Code § 35-34-2-4;~~
- ~~(vi) — Records of juvenile proceedings as declared confidential by Ind. Code § 31-39-1-2, except those specifically open under statute;~~
- ~~(vii) — 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; as declared confidential by Ind. Code §§ 31-14-11-15, 31-19-5-23, 31-39-1-1 and 31-39-1-2;~~
- ~~(viii) — All pre-sentence reports as declared confidential by Ind. Code § 35-38-1-13;~~
- ~~(ix) — Written petitions to permit marriages without consent and orders directing the Clerk of Court to issue a marriage license to underage persons, as declared confidential by Ind. Code § 31-11-1-6;~~
- ~~(x) — Only those arrest warrants, search warrants, indictments and informations ordered confidential by the trial judge, prior to return of duly executed service as declared confidential by Ind. Code § 5-14-3-4(b)(1);~~
- ~~(xi) — All medical, mental health, or tax records unless determined by law or regulation of any governmental custodian not to be confidential, released by the subject of such records, or declared by a court of competent jurisdiction to be essential to the resolution of litigation as declared confidential by Ind. Code §§ 16-39-3-10, 6-4.1-5-10, 6-4.1-12-12, and 6-8.1-7-1;~~
- ~~(xii) — Personal information relating to jurors or prospective jurors, other than for the use of the parties and counsel, pursuant to Jury Rule 10;~~
- ~~(xiii) — Information relating to protection from abuse orders, no-contact orders and workplace violence restraining orders as declared confidential by Ind. Code § 5-2-9-6 *et. seq.*;~~
- ~~(xiv) — Mediation proceedings pursuant to Alternative Dispute Resolution Rule 2.11, Mini-Trial proceedings pursuant to Alternative Dispute Resolution Rule 4.4(C), and Summary Jury Trials pursuant to Alternative Dispute Resolution Rule 5.6;~~
- ~~(xv) — Information in probation files pursuant to the Probation Standards promulgated by the Judicial Conference of Indiana pursuant to Ind. Code § 11-13-1-8(b);~~

- ~~(xvi) Information deemed confidential pursuant to the Rules for Court Administered Alcohol and Drug Programs promulgated by the Judicial Conference of Indiana pursuant to Ind. Code § 12-23-14-13;~~
- ~~(xvii) Information deemed confidential pursuant to the Problem-Solving Court Rules promulgated by the Judicial Conference of Indiana pursuant to Ind. Code § 33-23-16-16.~~
- ~~(xviii) All records of the Department of workforce Development as declared confidential by Ind. Code § 22-4-19-6.~~
- ~~(xix) Information regarding interception of electronic communications that is sealed or deemed confidential as set forth in Ind. Code § 35-33.5 et seq.~~
- ~~(e) Information excluded from public access by specific court order;~~
- ~~(d) Complete Social Security Numbers of living persons;~~
- ~~(e) With the exception of names, information such as addresses, 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;~~
- ~~(f) Complete account numbers of specific assets, loans, bank accounts, credit cards, and personal identification numbers (PINs);~~
- ~~(g) All orders of expungement entered in criminal or juvenile proceedings orders to restrict access to criminal history information pursuant to Ind. Code § 35-38-5-5.5 or Ind. Code § 35-38-8-5 and records excluded from public access by such orders, and information related to infractions that is excluded from public access pursuant to Ind. Code § 34-38-5-15 or Ind. Code § 34-38-5-16;~~
- ~~(h) All personal notes and e-mail, and deliberative material, of judges, jurors, court staff and judicial agencies, and information recorded in personal data assistants (PDA's) or organizers and personal calendars.~~
- ~~(1.1) *Court Proceedings Closed to the Public.* During court proceedings that are closed to the public by statute or court order, when information in case records that is excluded from public access pursuant to this rule is admitted into evidence, the information shall remain excluded from public access.~~
- ~~(1.2) *Court Proceedings Open to the Public.* During court proceedings that are open to the public, when information in case records that is excluded from public access pursuant to this rule is admitted into evidence, the information shall remain excluded from public access only if a party or a person affected by the release of the information, prior to or contemporaneously with its introduction into evidence, affirmatively requests that the information remain excluded from public access.~~

- ~~(1.3) *Access to Excluded Information.* Access to information excluded from public access under subsections 1.1 and 1.2 may be granted after a hearing pursuant to Administrative Rule 9(I).~~
- ~~(2) *Administrative records.* The following information in administrative records is excluded from public access and is confidential:~~
- ~~(a) All information excluded in sub-sections (a) through (h) of section (G)(1);~~
  - ~~(b) Information that is excluded from public access to the extent provided by Indiana statute or other court rule, including without limitation:
    - ~~(i) the work product of an attorney representing, pursuant to state employment or appointment, a public agency, the state, or an individual, pursuant to Ind. Code § 5-14-3-4(b)(2);~~
    - ~~(ii) test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment before the examination is given or if it is to be given again, pursuant to Ind. Code § 5-14-3-4(b)(3);~~
    - ~~(iii) test scores of a person if a person is identified by name and has not consented to the release of the person's scores, pursuant to Ind. Code § 5-14-3-4(b)(4);~~
    - ~~(iv) records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making, pursuant to Ind. Code § 5-14-3-4(b)(6);~~
    - ~~(v) diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal, pursuant to Ind. Code § 5-14-3-4(b)(7);~~
    - ~~(vi) personnel files of employees and files of applicants for employment, except for the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, and dates of first and last employment of present or former officers or employees of the agency; information relating to the status of any formal charges against the employee; and information concerning disciplinary actions in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged, pursuant to Ind. Code § 5-14-3-4(b)(8);~~
    - ~~(vii) administrative or technical information that would jeopardize a record keeping, security system or court security plan described in Indiana Administrative Rule 19, pursuant to Ind. Code § 5-14-3-4(b)(10);~~
    - ~~(viii) computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it, pursuant to Ind. Code § 5-14-3-4(b)(11);~~
    - ~~(ix) lists of employees of court, court agency, or clerk offices, which may not be disclosed to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes, pursuant to Ind. Code § 5-14-3-4(c)(1);~~
    - ~~(x) all information and all records obtained and maintained by the Board of Law Examiners in the performance of its duty pursuant to Admission and Discipline~~~~

~~Rule 19, except as otherwise required by court rule or order of the Indiana Supreme Court;~~

- ~~(xi) proceedings and papers in attorney disciplinary matters that relate to matters that have not resulted in the filing of a verified complaint, investigative reports and other work product of the Executive Secretary, employees or agents of the Disciplinary Commission, statements of circumstances conditionally agreeing to discipline, and affidavits of resignation or consenting to discipline pursuant to Admission and Discipline Rules 23;~~
  - ~~(xii) files, records and proceedings of the Continuing Legal Education Commission, as they may relate to or arise out of an attorney, judge, mediator, or sponsor attempting to satisfy continuing legal educational requirements pursuant to Admission and Discipline Rule 29;~~
  - ~~(xiii) all information, including records obtained by the Judges and Lawyers Assistance Program Committee in the performance of its duty and as delegated by the Indiana Supreme Court, with the exception of statistical data, pursuant to Admission and Discipline Rule 31;~~
  - ~~(xiv) before the filing and service of formal charges, Judicial Qualifications Commission complaints, inquiries, investigations, or Commission deliberations, settlement conferences and proposed settlement agreements pursuant to Admission and Discipline Rule 25.~~
- ~~(3) Information in a case record that is otherwise excluded from public access may be made accessible if the information is declared by a court with jurisdiction over the case to be essential to the resolution of litigation, or, if the information is released by each person to whom such information pertains.~~
- ~~(4) *Appellate Proceedings.* In appellate proceedings pending as of or commencing after January 1, 2009, parties, counsel, the courts on appeal, and the Clerk of the Supreme Court, Court of Appeals, and Tax Court (“Clerk”) shall have the following obligations:~~
- ~~(a) *Cases in which the entire record is excluded from public access by statute or by rule.* In any case in which all case records are excluded from public access by statute or by rule of the Supreme Court,
    - ~~(i) the Clerk shall make the appellate chronological case summary for the case publicly accessible but shall identify the names of the parties and affected persons in a manner reasonably calculated to provide anonymity and privacy; and~~
    - ~~(ii) the parties and counsel, at any oral argument and in any public hearing conducted in the appeal, shall refer to the case and parties only as identified in the appellate chronological case summary and shall not disclose any matter excluded from public access.~~~~
  - ~~(b) *Cases in which a portion of the record is excluded from public access by statute or by rule.* In any case in which a portion (but less than all) of the record in the case has been excluded from public access by statute or by rule of the Supreme Court,
    - ~~(i) the parties and counsel shall not disclose any matter excluded from public access in any document not itself excluded from public access; to the extent it is~~~~

- necessary to refer to excluded information in briefs or other documents that are not excluded from public access, the reference shall be made in a separate document filed in compliance with Trial Rule 5(G); and
- (ii) — the parties, counsel, and the Clerk shall have the respective obligations set forth in (a)(i) and (a)(ii) to the extent necessary to comply with the statute or rule.
- ~~(e) — Cases in which any public access is excluded by trial court order. In any case in which all or any portion of the record in the case has been excluded from public access by trial court order (“TCO”);~~
- ~~(i)(A) the appellant shall provide notice in the appropriate place on the Notice of Appeal (see Ind. Appellate Rule 9) that all or a portion of the record in the case has been excluded from public access by TCO, and attach to the appellant's case summary all TCOs concerning each exclusion; and~~
  - ~~(B) — the parties, counsel, and the Clerk shall have the respective obligations set forth in (a)(i), (a)(ii), and (b)(i) to the extent necessary to comply with the TCO.~~
  - ~~(ii) — if the notice and supporting orders referred to in (i)(A) are supplied, then the Clerk shall exclude the information from public access to the extent necessary to comply with the TCO unless the court on appeal determines that~~
    - ~~(A) the TCO was improper or is no longer appropriate,~~
    - ~~(B) public disclosure of the information is essential to the resolution of litigation,~~
    - ~~or~~
    - ~~(C) disclosure is appropriate to further the establishment of precedent or the development of the law;~~
  - ~~(iii) — any party may supplement or challenge the appellant's notice or attachments supplied under (i)(A) or request a determination from the court on appeal under (ii); and~~
  - ~~(iv) — if the appellant does not notify the court on appeal that all or a portion of the record in the case has been excluded from public access by TCO, and attach to the Notice of Appeal all TCOs concerning each exclusion, as required by (i)(A),~~
    - ~~(A) the Clerk shall be under no obligation to exclude the information from public access; and~~
    - ~~(B) the appellant and appellant's counsel shall be subject to sanctions.~~
- ~~(d) — Orders, decisions, and opinions issued by the court on appeal shall be publicly accessible, but each court on appeal should endeavor to exclude the names of the parties and affected persons, and any other matters excluded from public access, except as essential to the resolution of litigation or appropriate to further the establishment of precedent or the development of the law.~~

*Commentary*

*Subsection (1)(a) Federal Law: There are several types of information that are commonly but possibly incorrectly, considered to be protected from public disclosure by federal law. Although there may be restrictions on federal agencies disclosing Social Security Numbers, they may not apply to state or local agencies such as courts. While federal law prohibits disclosure of tax returns by federal agencies or employees, but this prohibition may not extend to disclosure by others. The Health*

~~Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations adopted pursuant to it limits disclosure of certain health related information. Whether the limitation extends to state court records is not clear. There are also federal restrictions regarding information in alcohol and drug abuse patient records and requiring confidentiality of information acquired by drug court programs. This rule does not supersede any federal law or regulation requiring privacy or non disclosure of information.~~

~~This section does not limit the authority of a judge in a particular case to order the sealing of particular records or to exclude from public access during the pendency of a case motions to suppress or motions otherwise seeking to limit or exclude matters from presentation at a jury trial, and all proceedings and rulings thereon. Such exclusion of public access to pre-trial proceedings should be invoked sparingly and only when the court is convinced that admonitions to prospective jurors and the jury selection process will likely be inadequate to assure a fair trial.~~

~~The prohibition of access to addresses under this section includes, without limitation, mail and e-mail addresses.~~

~~With respect to expungement orders excluded from public access under section (G)(1)(g) of this rule, an interested person may seek a copy or other verification of an expungement order by filing a request under section (I) of this rule.~~

~~In addition to deliberative material excluded under this rule, a court may exclude from public access materials generated or created by a court reporter with the exception of the official transcript.~~

~~Several state statutes address access to certain confidential court records, including but not limited to Ind. Code § 31-39-2-10 (involving access to juvenile records) and Ind. Code § 16-41-8-1 et seq., (involving procedures for handling medical records of persons accused of a “potentially disease causing offense”). Indiana Administrative Rule 9 and its requirements concerning access to confidential records should guide the actions of judicial officers when considering granting access to records made confidential by statute.~~

#### ~~(H) Prohibiting Public Access to Information in Court Records.~~

~~(1) A verified written request to prohibit public access to information in a court record, may be made by any person affected by the release of the information. The request shall demonstrate that:~~

~~(a) The public interest will be substantially served by prohibiting access;~~

~~(b) Access or dissemination of the information will create a significant risk of substantial harm to the requestor, other persons or the general public;~~

~~(c) A substantial prejudicial effect to on going proceedings cannot be avoided without prohibiting public access, or;~~

~~(d) The information should have been excluded from public access under section (G) of this rule.~~

~~The person seeking to prohibit access has the burden of providing notice to the parties and such other persons as the court may direct, providing proof of notice to the court or the reason why notice could not or should not be given, demonstrating to the court the requestor's reasons for prohibiting access to the information. A party or person to whom notice is given shall have twenty (20) days from receiving notice to respond to the request.~~

- ~~(2) A court may deny a request to prohibit public access without a hearing. If the court does not initially deny the request, it shall post advance public notice of the hearing. A court may grant a request to prohibit public access following a hearing if the requestor demonstrates by clear and convincing evidence that any one or more of the requirements of (H)(1)(a) through (H)(1)(d) have been satisfied. An order prohibiting public access to information in a court record may be issued by the court having jurisdiction over the record. An order prohibiting public access to information in bulk or compiled records, or in records under the jurisdiction of multiple courts may be issued only by the Supreme Court.~~
- ~~(3) The court shall balance the public access interests served by this rule and the grounds demonstrated by the requestor. In its order, the court shall state its reasons for granting or denying the request. If the court prohibits access, it will use the least restrictive means and duration. When a request is made to prohibit public access to information in a court record at the time of case initiation, the request and the case information will remain confidential for a reasonable period of time until the court rules on the request. When a request is made to prohibit public access to information in court records that are already publicly accessible, the information may be rendered confidential for a reasonable period of time until the court rules on the request.~~
- ~~(4) This section does not limit the authority of a court to seal court records pursuant to Ind. Code § 5-14-3-5.5.~~

#### *Commentary*

*This section is intended to address those extraordinary circumstances in which information that is otherwise publicly accessible is to be excluded from public access. This section generally incorporates a presumption of openness, and the need for demonstrating compelling grounds to overcome the presumption.*

*Parties should be aware that their request is not retroactive. Copies of the public record may have been disseminated prior to any request, and corrective action taken under the provisions of this rule will not affect those records.*

*Notice requirements for this section correspond to those requirements found in Trial Rule 65(b) and are intended to be consistent with T.R. 65(b). Posted notice requirements correspond and are intended to be consistent with those found in Ind. Code § 5-14-2-5 which requires that: “[t]he court shall notify the parties of the hearing date and shall notify the general public by posting a copy of the hearing notice at a place within the confines of the court accessible to the general public”.*

#### **~~(I) Obtaining Access to Information Excluded from Public Access.~~**

- ~~(1) A verified written request to obtain access to information in a case or administrative record to which public access is prohibited under this Rule may be made by any person to the court having jurisdiction over the record. The request shall demonstrate that:~~
- ~~(a) Extraordinary circumstances exist which requires deviation from the general provisions of this rule;~~
  - ~~(b) The public interest will be served by allowing access;~~
  - ~~(c) Access or dissemination of the information creates no significant risk of substantial harm to any party, to third parties, or to the general public, and;~~
  - ~~(d) The release of information creates no prejudicial effect to on-going proceedings, or;~~

- ~~(e) The information should not be excluded for public access under Section (G) of this Rule. The person seeking access has the burden of providing notice to the parties and such other persons as the court may direct, providing proof of notice to the court or the reason why notice could not or should not be given, demonstrating to the court the requestor's reasons for prohibiting access to the information. A party or person to whom notice is given shall have twenty (20) days from receiving notice to respond to the request.~~
- ~~(2) A court may deny a request to provide access without a hearing. If the court does not initially deny the request, it shall post advance public notice of the hearing. A court may grant a request to allow access following a hearing if the requestor demonstrates by clear and convincing evidence that the requirements of (I)(1) have been satisfied. An order allowing public access to information excluded from public access may be issued by the court having jurisdiction over the record. An order permitting access to information excluded from public access in bulk or compiled records, or in records under the jurisdiction of multiple courts may be issued only by the Supreme Court.~~
- ~~(3) A court shall consider the public access and the privacy interests served by this rule and the grounds demonstrated by the requestor. In its order, the court shall state its reasons for granting or denying the request. When a request is made for access to information excluded from public access, the information will remain confidential while the court rules on the request.~~
- ~~(4) A court may place restrictions on the use or dissemination of the information to preserve confidentiality.~~

*Commentary*

*This section 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 section is not intended to modify or overrule any federal or state law governing such records or the process for releasing information.*

*Information excluded from public access that is sought in a request for bulk or compiled records request is governed by section (F) of this rule.*

**~~(J) When Court Records May Be Accessed.~~**

- ~~(1) Court records which are publicly accessible will be available for public access in the courthouse during regular business hours established by the court. Court records in electronic form to which the court allows remote access under this policy will be available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.~~
- ~~(2) Upon receiving a request pursuant to section (F)(4), (H), or (I) of this rule, a court will respond within a reasonable period of time.~~

*Commentary*

*This section does not preclude or require “after hours” access to court records in electronic form. Courts are encouraged to provide access to records in electronic form beyond the hours access is available at the courthouse, however, it is not the intent of this rule to compel such additional access.*

**~~(K) Contracts With Vendors Providing Information Technology Services Regarding Court Records.~~**

- ~~(1) If a court or other private or governmental entity contracts with a vendor to provide information technology support to gather, store, or make accessible court records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, the term “vendor” also includes a state, county or local governmental agency that provides information technology services to a court.~~
- ~~(2) Each contract shall require the vendor to assist the court in its role of educating litigants and the public about this rule. The vendor shall also be responsible for training its employees and subcontractors about the provisions of this rule.~~
- ~~(3) Each contract shall prohibit vendors from disseminating bulk or compiled information, without first obtaining approval as required by this Rule.~~
- ~~(4) Each contract shall require the vendor to acknowledge that court records remain the property of the court and are subject to the directions and orders of the court with respect to the handling and access to the court records, as well as the provisions of this rule.~~
- ~~(5) These requirements are in addition to those otherwise imposed by law.~~

*Commentary*

*This section is intended to apply when information technology services are provided to a court by an agency outside the judicial branch, or by outsourcing of court information technology services to non-governmental entities. Implicit in this rule is the concept that all court records are under the authority of the judiciary, and that the judiciary has the responsibility to ensure public access to court records and to restrict access where appropriate. This applies as well to court records maintained in systems operated by a clerk of court or other non-judicial governmental department or agency.*

*This section does not supercede or alter the requirements of Trial Rule 77(K) which requires that, before court records may be made available through the internet or other electronic method, the information to be posted, its format, pricing structure, method of dissemination, and changes thereto must receive advance approval by the Division of State Court Administration.*

**~~(L) Immunity for Disclosure of Protected Information.~~**

~~A court, court agency, or clerk of court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or clerk of court who unintentionally and unknowingly discloses confidential or erroneous information is immune from liability for such a disclosure.~~

*Commentary*

*This immunity provision is consistent with the immunity and protections provided by Indiana statute as found at IC 5-14-3-10(e).*

**(G) Excluding Court Records From Public Access.**

- (1) Court Records That Must Be Excluded From Public Access In Entirety. The following must be excluded from Public Access:

  - (a) Entire cases where all Court Records are declared confidential by statute or other court rule;
  - (b) Entire cases where all Court Records are sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3-5.5);
  - (c) Entire cases where all Court Records are excluded from Public Access by specific Court order entered in accordance with 9(G)(4).
- (2) Individual Case Records That Must Be Excluded From Public Access. The following must be excluded from Public Access:

  - (a) Case Records declared confidential or excluded from Public Access pursuant to federal law;
  - (b) Case Records excluded from Public Access or declared confidential by Indiana statute or other court rule;
  - (c) Case Records excluded from Public Access by specific Court order entered in accordance with 9(G)(4);
  - (d) Case Records sealed in accordance with the Access to Public Records Act (I.C. § 5-14-3-5.5);
  - (e) Case Records for which a statutory or common law privilege has been asserted and not waived or overruled;
  - (f) Complete Social Security Numbers of living persons;
  - (g) With the exception of names, information such as addresses (mail or e-mail), 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;
  - (h) Complete account numbers of specific assets, loans, bank accounts, credit cards, and personal identification numbers (PINs);
  - (i) 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.
  - (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 date, which statutes were amended by P.L. 1-2014, effective July 1, 2014.

- (3) Court Administration Records That Must Be Excluded From Public Access. The following Court Administration Records are confidential and must be excluded from Public Access:
- (a) Case Records excluded in 9(G)(2);
  - (b) Court Administration Records excluded from Public Access or declared confidential by Indiana statute or other court rule.
- (4) Excluding Other Court Records From Public Access. 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, provided that each of the following four requirements is met:
- (a) Verified written request. 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 must demonstrate that:
    - (i) The public interest will be substantially served by prohibiting access; or
    - (ii) 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
    - (iii) 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.
    - (i) The person seeking to prohibit access has the burden of providing notice to the parties and such other persons as the Court may direct.
    - (ii) The person seeking to prohibit access must 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).
    - (iii) 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.
    - (i) A Court may deny a request to prohibit Public Access without a hearing.
    - (ii) 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 I.C. § 5-14-2-5.
    - (iii) Following public notice, the Court must 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:
    - (i) States the reasons for granting the request;
    - (ii) Finds the requestor has demonstrated by clear and convincing evidence that any one or more of the requirements of 9(G)(4)(a) have been satisfied;
    - (iii) Balances the Public Access interests served by this rule and the grounds demonstrated by the requestor; and
    - (iv) Uses the least restrictive means and duration when prohibiting access.
- (5) Procedures for Excluding Court Records From Public Access.

- (a) Notice to maintain exclusion from Public Access.
- (i) In cases where only a portion of the Court Record is excluded from Public Access, the party or person submitting the confidential record must provide the following notice that the record is to remain excluded from Public Access:
- a. *Pleadings or Papers.* A Court Record filed with the Clerk of Court that is to be excluded from Public Access must be accompanied by separate written notice identifying the specific 9(G)(2) or 9(G)(3) ground(s) upon which exclusion is based. See Form 9-G1.
- b. *Exhibits.* A Court Record tendered or admitted into evidence during an *in camera* review, hearing, or trial that is to be excluded from Public Access must be accompanied by separate written notice identifying the specific 9(G)(2) or 9(G)(3) ground(s) upon which exclusion is based. See Form 9-G2.
- c. *Oral statements in transcript on appeal.* 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 must be given notice of the exclusion and the specific 9(G)(2) or 9(G)(3) 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(A)(9)(C) or (D). The Court Reporter must comply with Appellate Rules 28(A)(9) and 29(C) when preparing the transcript on appeal.
- (ii) In cases where all Court Records are excluded from Public Access in accordance with Administrative Rule 9(G)(1), no notice of exclusion from Public Access is required.
- (b) Green paper requirements. Where only a portion of the Court Record has been excluded from Public Access pursuant to 9(G)(2) or 9(G)(3), the following requirements apply:
- (i) *Public Access Version.* If a portion of a document filed or exhibit tendered contains confidential Court Records to be excluded from Public Access, the document or exhibit must be filed on white paper and any Court Record to be excluded from Public Access shall be omitted or redacted from this version. The omission or redaction shall be indicated at the place it occurs in the Public Access version.
- (ii) *Non-Public Access Version.*
- a. If the omission or redaction in accordance with 9(G)(5)(b)(i) is not necessary to the disposition of the case, the excluded Court Record need not be filed or tendered in any form and only the Public Access version is required.
- b. If the omission or redaction in accordance with 9(G)(5)(b)(i) is necessary to the disposition of the case, the excluded Court Record must be separately filed or tendered on green paper and conspicuously marked “Not for Public Access” or “Confidential,” with the caption and number of the case clearly designated and:
- i. If the Court Record is omitted or redacted from an exhibit, attachment, appendix, transcript, evidentiary designation, or similar document, then

the separately filed or tendered Non-Public Access version shall consist only of the omitted or redacted Court Record on green paper, with a reference to the location within the Public Access Version to which the omitted or redacted material pertains.

ii. If the Court Record is omitted or redacted from a motion, memorandum, brief, or similar document containing substantive legal argument, then the separately filed Non-Public Access version shall consist of a complete, consecutively-paginated replication including both the Public Access material on white paper and the Non-Public Access material on green paper.

(iii) The green paper requirements set forth in 9(G)(5)(b) do not apply to cases in which all Court Records are excluded from Public Access pursuant to 9(G)(1).

With respect to documents filed in electronic format, the Court may, by rule, provide for compliance with this rule in a manner that separates and protects access to Court Records excluded from Public Access.

(6) Waiver, Failure To Exclude, Improper Exclusion, and Sanctions.

(a) Waiver of right to exclude Court Record from Public Access.

(i) The party or person affected by the release of the Court Record may waive the right to exclude the Court Record from Public Access.

(ii) After waiver, a party or person seeking to reassert the right to exclude the Court Record from Public Access may do so only by complying with 9(G)(4).

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

(i) Unless waived, the right to exclude a Court Record that is expressly declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3) is never forfeited by the failure to comply with any provision of 9(G).

(ii) Immediately upon learning that a Court Record declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3) was not excluded from Public Access, the party submitting such Court Record must comply with the requirements of 9(G) to ensure proper exclusion.

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

(i) Only Court Records declared confidential pursuant to 9(G)(1), 9(G)(2), or 9(G)(3) may be excluded from Public Access.

(ii) If a court determines that Court Records are excluded from Public Access without first satisfying 9(G)(1), 9(G)(2), or 9(G)(3), the Court Records shall be made available for Public Access seven (7) days after notice to the parties and any person affected by the release, unless the requirements of 9(G)(4) are thereafter satisfied.

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

(7) Obtaining Access to Court Records Excluded from Public Access.

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

(i) Each person affected by the release of the Court Record waives confidentiality by intentionally releasing such Court Record for Public Access pursuant to 9(G)(6)(a); or

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

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

b. the 9(G)(4) 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:

(i) Verified written request. The person seeking access to the Court Record must 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 9(G)(1), 9(G)(2) or 9(G)(3).

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.

(ii) 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 must 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.

(iii) 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 I.C. §5-14-2-5.

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

- (iv) 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(G)(7)(b)(i) 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

As noted previously, Rule 9 starts 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.

Section G(1) begins by recognizing that, in some instances, an entire case must be excluded from Public Access because all Court Records have been declared confidential, but Sections G(2) and (3) make clear that in most instances it is only individual Case or Administrative Records that have been declared confidential. As provided in Ind. R. Evid. 201(b)(5), a court can take judicial notice of the records of any court of this state, which includes the juvenile records of another court of this state.

This section does not limit the authority of a judge in a particular case to order the sealing of particular records pursuant to the specific requirements of I.C. §5-14-3-5.5 or to enter an order excluding Court Records from Public Access in accordance with the specific requirements of G(4). No other type of court order is sufficient to seal or exclude Court Records from Public Access.

Section G(4) 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 Section G(4) 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 G(4) request, and action taken under G(4) will not affect those records.

Section G(5) provides the specific procedures for excluding Court Records from Public Access. The party or person submitting the confidential record has the burden of providing separate, written notice identifying the grounds upon which exclusion is based. See Forms 9-G1 and 9-G2. The act of filing a Court Record on green paper does not constitute the required notice.

The 9(G)(5)(a)(i)(c) notice requirements for excluding oral statements contained in a transcript apply only to transcripts that are 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 9(G)(5)(a)(i)(a) or (b) will apply.

In addition to the separate written notice, in most instances, Section G(5)(b) requires filing or tendering of both a Public Access version and a Non-Public Access version. The Public Access version is to be on white paper, 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 must be made at the precise place in the Public Access version indicating where the omission occurred. The Non-Public-Access version is to be on green paper and must contain the confidential material redacted or omitted from the Public Access version, unless the omitted or redacted confidential material is not necessary to the disposition of the case (such as a social security number, a bank number, etc.), in which instance the redacted or omitted material need not ever be separately tendered or filed on green paper and only a Public Access version is required.

Section G(6) 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 9(G)(1), 9(G)(2), or 9(G)(3), such confidentiality is not forfeited.

If a court determines that a party has improperly excluded Court Records from Public Access without first satisfying G(1), G(2), or G(3), those records shall be made available for Public Access unless, within seven days 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 G(4).

Section G(7) 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 section is not intended to modify or overrule any federal or state law governing such records or the process for releasing information.

#### **(H) When Court Records May Be Accessed.**

- (1) Court Records which are publicly accessible will be available for Public Access in the courthouse during regular business hours established by the court. Court Records in electronic form to which the court allows Remote Access under this policy will be available for access during hours established by the court, subject to unexpected technical failures or normal system maintenance announced in advance.
- (2) Upon receiving a request pursuant to section 9(F)(4) or 9(G) of this rule, a court will respond within a reasonable period of time.

Commentary

This section does not preclude or require “after hours” access to Court Records in electronic form. Courts are encouraged to provide access to records in electronic form beyond the hours access is available at the courthouse, however, it is not the intent of this rule to compel such additional access.

**(I) Contracts With Vendors Providing Information Technology Services Regarding Court Records.**

- (1) If a court or other private or governmental entity contracts with a vendor to provide information technology support to gather, store, or make accessible Court Records, the contract will require the vendor to comply with the intent and provisions of this access policy. For purposes of this section, the term “vendor” also includes a state, county, or local governmental agency that provides information technology services to a court.
- (2) Each contract shall require the vendor to assist the court in its role of educating litigants and the public about this rule. The vendor shall also be responsible for training its employees and subcontractors about the provisions of this rule.
- (3) Each contract shall prohibit vendors from disseminating bulk or Compiled Information, without first obtaining approval as required by this Rule.
- (4) Each contract shall require the vendor to acknowledge that Court Records remain the property of the court and are subject to the directions and orders of the court with respect to the handling and access to the Court Records, as well as the provisions of this rule.
- (5) These requirements are in addition to those otherwise imposed by law.

Commentary

This section is intended to apply when information technology services are provided to a court by an agency outside the judicial branch, or by outsourcing of court information technology services to non-governmental entities. Implicit in this rule is the concept that all Court Records are under the authority of the judiciary, and that the judiciary has the responsibility to ensure Public Access to Court Records and to restrict access where appropriate. This applies as well to Court Records maintained in systems operated by a Clerk of Court or other non-judicial governmental department or agency.

This section does not supersede or alter the requirements of Trial Rule 77(K) which requires that, before Court Records may be made available through the internet or other electronic method, the information to be posted, its format, pricing structure, method of dissemination, and changes thereto must receive advance approval by the Division of State Court Administration.

**(J) Immunity for Disclosure of Protected Information.**

A Court, court agency, or Clerk of Court employee, official, or an employee or officer of a contractor or subcontractor of a court, court agency, or clerk of court who unintentionally and unknowingly discloses confidential or erroneous information is immune from liability for such a disclosure.

Commentary

*This immunity provision is consistent with the immunity and protections provided by Indiana statute as found at IC 5-14-3-10(c).*

...

**Rule 15 Court Reporters**

...

**B. Definitions.** The following definitions shall apply under this administrative rule:

...

- (4) **Page** means the page unit of transcript which results when a recording is transcribed in the form required by Indiana Rule of Appellate Procedure ~~7.2~~ 28(A).

...

**Appendix. The Necessary Elements of a Proposed Plan to Implement Electronic Filing or An Electronic Service Pilot Project Pursuant to Administrative Rule 16**

...

**G. Format of Attachments and Exhibits**

...

- c. Documents filed under seal or information not for public access as defined in Administrative Rule 9(G)~~(4)~~.

...

**Form Administrative Rule 9-G1**

STATE OF INDIANA

IN THE \_\_\_\_\_ COURT, COUNTY OF \_\_\_\_\_

\_\_\_\_\_, )

Plaintiff(s), )

) Case No: \_\_\_\_\_

vs. \_\_\_\_\_ )

)

\_\_\_\_\_, )

Defendant(s) )

**Administrative Rule 9(G)(5) Notice of Exclusion  
of Confidential Information from Public Access  
(FILED WITH TRIAL COURT CLERK)**

Contemporaneous with the filing of this notice, [party name] has filed confidential information on green paper in accordance with Administrative Rule 9(G)(6). Pursuant to Administrative Rule 9(G)(5), [party name], provides this notice that the confidential information contained on that green paper is to remain excluded from public access in accordance with the authority listed below:

Name or description of document filed on green paper.

Administrative Rule 9(G) grounds upon which exclusion is authorized.

[List here]

[List 9(G) grounds here.]

[NOTE: If 9(G)(2)(a), 9(G)(2)(b) or 9(G)(3)(b) provides the basis for exclusion, you must also list the specific law, statute, or rule declaring the information confidential.]

Respectfully submitted,

\_\_\_\_\_  
[Insert Name]

**CERTIFICATE OF SERVICE**

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the foregoing was served upon the following by [state method of service]:

[list names and addresses of counsel of record]  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
[Signature]

STATE OF INDIANA

IN THE COURT, COUNTY OF

\_\_\_\_\_, )  
Plaintiff(s), )

Case No: \_\_\_\_\_

vs. \_\_\_\_\_ )

\_\_\_\_\_, )  
Defendant(s) )

**Administrative Rule 9(G)(5) Notice of Exclusion  
of Confidential Information from Public Access  
(TENDERED IN OPEN COURT)**

Contemporaneous with the tender of this notice, [party name] has tendered confidential information on green paper in accordance with Administrative Rule 9(G)(6). Pursuant to Administrative Rule 9(G)(5), [party name], provides this notice that the confidential information contained on that green paper is to remain excluded from public access in accordance with the authority listed below:

Name or description of document  
tendered on green paper.

Administrative Rule 9(G) grounds upon which  
exclusion is authorized.

[List here]

[List 9(G) grounds here.]

[NOTE: If 9(G)(2)(a), 9(G)(2)(b) or 9(G)(3)(b)  
provides the basis for exclusion, you must also  
list the specific law, statute, or rule declaring the  
information confidential.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .

Respectfully submitted,

\_\_\_\_\_  
\_\_\_\_\_  
[Signature]

These amendments shall take effect January 1, 2015.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Public Defender's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and Thomson Reuters. The Clerk is also directed to post this Order to the Court's website.

Thomson Reuters is directed to publish this Order in the advance sheets and bound volumes of this Court's decisions. Thomson Reuters is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit and Superior Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, on September 8, 2014.

/s/Loretta H. Rush  
Loretta H. Rush  
Chief Justice of Indiana

All Justices concur.

