

EXHIBIT 11

West's Idaho Code Annotated
Idaho Court Rules
Idaho Court Administrative Rules
Rules Governing the Administration and Supervision of the Unified and Integrated Idaho Judicial
System
Part IV. Court Records Required; Preservation, Destruction, or Disposition of Court Records

Administrative Rule 32

Rule 32. Records of the judicial department--Examination
and copying--Exemption from and limitations on disclosure

Currentness

(a) Statement of Policy. This rule is adopted pursuant to the Supreme Court's authority to control access to court records, as recognized in the Idaho Public Records Act, I.C. § 9-340A. The public has a right to examine and copy the judicial department's declarations of law and public policy and to examine and copy the records of all proceedings open to the public. This rule provides for access in a manner that:

- (1) Promotes accessibility to court records;
- (2) Supports the role of the judiciary;
- (3) Promotes governmental accountability;
- (4) Contributes to public safety;
- (5) Minimizes the risk of injury to individuals;
- (6) Protects individual privacy rights and interests;
- (7) Protects proprietary business information
- (8) Minimizes reluctance to use the court system;
- (9) Makes the most effective use of court and clerk of court staff;
- (10) Provides excellent customer service; and
- (11) Avoids unduly burdening the ongoing business of the judiciary.

In the event of any conflict this rule shall prevail over any other rule on the issue of access to judicial records.

(b) Definitions: As used in this Rule:

(1) "Custodian" means the person defined in paragraph (j)(2) of this Rule.

(2) "Custodian judge" means the Justice, Judge or Magistrate defined in paragraph (j)(3) of this Rule.

(3) "Personnel" means justices, judges, magistrates, trial court administrators, clerks of the district court and staff of a court.

(4) "Court record" includes:

(A) Any document, information or other thing that is collected, received, or maintained by a court or clerk of court in connection with a judicial proceeding;

(B) Any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in an automated case management system created by or prepared by the court or clerk of court that is related to a judicial proceeding, including existing ISTARs reports.

<Text of subrule (b)(4)(C) effective July 1, 2014.>

(C) Any writing, as defined in I.C. § 9-337, containing information relating to the conduct or administration of the public's business, prepared, owned, used or retained by the judicial branch, including the courts, the Administrative Office of the Courts, and the Judicial Council; by the Idaho State Bar; by the Idaho Bar Commission; or by the District Magistrates Commissions.

(5) "Physical record" means a judicial branch record, including a court record, that exists in physical form, irrespective of whether it also exists in electronic form.

(6) "Electronic form" means a court record that exists as:

(A) Electronic representations of text or graphic documents;

(B) An electronic image, including a video image, of a document, exhibit or other thing;

(C) Data in the fields or files of an electronic database; or

(D) An audio or visual recording, analog or digital, of an event or notes in an electronic file from which a transcript of an event can be prepared; irrespective of whether it also exists in physical form.

(7) "Remote access" means the ability whereby a person may electronically search, examine and copy court information maintained in a court record by means of access via the Internet or other publicly available telecommunication mechanism.

(8) "Bulk Distribution" means the distribution of all, or a significant subset of the information in court records in electronic form, as is, and without modification or compilation.

(9) "ISTARS" means the automated trial court case management system used to support the operations of the trial courts.

(10) "Compiled Data Information" means information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record.

(c) Applications. This Rule shall apply to all court records existing on or after the date of adoption of this Rule. Provided, this Rule shall not prevent access to records, otherwise exempt from disclosure by the following persons in the following situations:

(1) If approved by the custodian judge, or the custodian in the case of any record in the judicial council, federal, state and local officials or their agent examining a judicial record in the exercise of their official duties and powers; however, requests for numerous records or records from more than one county must be approved by the Chief Justice.

(2) Parties to an action and their attorney examining the court file of the action, unless restricted by order of the court, except as limited in paragraphs (g)(11), (12), (15) and (17)(F).

(3) Disclosure by the custodian of statistical information that is not descriptive of identifiable persons.

(4) Employees shall have access to their own personnel files.

(5) Judges, clerks, trial court administrators, or other staff employed by or working under the supervision of the courts who are acting within the scope of their duties.

<Text of subrule (c)(6) effective July 1, 2014.>

(6) Guardians ad litem and court visitors in guardianship and conservatorship cases shall have access to the case information sheet in those cases, unless restricted by order of the court.

(d) Access to Court Records, Examination and Copying. Except as provided in paragraphs (g) and (i), the following are subject to examination, inspection and copying.

- (1) Minutes, orders, opinions, findings of fact, conclusions of law, and judgments of a court and notices of the clerk of the court;
- (2) Transcripts and recordings of all trials and hearings open to the public;
- (3) Pleadings, motions, affidavits, responses, memoranda, briefs and other documents filed or lodged in a case file;
- (4) Administrative or other records of the clerk, justice, judge, magistrate or staff of the court unless exempt from disclosure by statute, case law, or court rule; and
- (5) A court record that has been offered or admitted into evidence in a judicial action or that a court has considered as evidence or relied upon for purposes of deciding a motion; except that, before final disposition by the trial court, access to any exhibit shall be allowed only with the permission of the custodian judge subject to any conditions set by the custodian judge and shall take place under the supervision of the office of the court clerk. The public shall not have access at any time to items of contraband or items that pose a health or safety hazard; for example, drugs, weapons, child pornography, toxic substances, or bodily fluids, without permission of the custodian judge.

(e) Access to Records Maintained in Electronic Form (Electronic Records).

(1) The public shall have access to the following if they exist in electronic form:

- (A) Litigant/party indexes to cases filed with the court;
- (B) Listings of new case filings, including the names of the parties;
- (C) The chronological case summary of events;
- (D) Calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings and;
- (E) Final judgments, orders, or decrees.

Except as provided in paragraphs (g) and (i), the Supreme Court may provide such access from terminals at judicial branch facilities or on-line from any remote location over the Internet.

(2) The public shall not have access to the following data elements in an electronic case record with regard to parties or their family members: the first six characters of social security numbers; street addresses; telephone numbers; and any personal identification numbers, including motor vehicle operator's license numbers and financial account numbers.

(f) Compiled Information. Any member of the public may request copies of existing compiled information that consists solely of information that is not exempt from disclosure. In addition, the Supreme Court may compile and provide the information if it determines, in its discretion, that the resources are available to compile the information and that it is an appropriate use of public resources. The Supreme Court may delegate to its staff the authority to make the initial determination as to whether to provide the compiled information.

Compiled information that includes information to which public access has been restricted may be requested from the Supreme Court by any member of the public. The request shall:

- (1) identify what information is sought,
- (2) describe the purpose for requesting the information and explain how the information will benefit the public interest or public education, and
- (3) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

The response to the request shall be made by the Supreme Court within ten (10) working days following the date of the request.

(g) Court Records Exempt From Disclosure. Except as provided in paragraph (h) of this rule, court records specified below are confidential and are exempt from disclosure. Any willful or intentional disclosure of a confidential court record may be treated as a contempt of court.

- (1) Documents and records to which access is otherwise restricted by state or federal law;
- (2) Pre-sentence investigation reports, except as provided in Idaho Criminal Rule 32;
- (3) Affidavits or sworn testimony and records of proceedings in support of the issuance of search or arrest warrant pending the return of the warrant;
- (4) Unreturned search warrants;
- (5) Unreturned arrest warrants, except bench warrants, or summonses in a criminal case, provided that the arrest warrants or summonses may be disclosed by law enforcement agencies at their discretion;
- (6) Unless otherwise ordered by the custodian judge, applications made and orders granted for the interception of wire, electronic or oral communications pursuant to Idaho Code § 18-6708, recordings of intercepted communications provided to the court, and reports made to the court regarding such interceptions under Idaho Code § 18-6708(7);
- (7) Except as provided by Idaho Criminal Rules or statutes, records of proceedings and the identity of jurors of grand juries;

(8) Except as provided by the Idaho Criminal Rules or Idaho Rules of Civil Procedure, the names of jurors placed in a panel for a trial of an action and the contents of jury qualification forms and jury questionnaires for these jurors, unless ordered to be released by the presiding judge;

(9) Juvenile court records as hereinafter provided:

(A) All court records of Child Protective Act proceedings.

(B) All court records of Juvenile Corrections Act proceedings on a petition filed under I.C. § 20-510 pending an admit/deny hearing held pursuant to Rule 6, I.J.R. to permit the parties to request that the court consider, or permit the court to consider on its own motion, closing the records and files. Thereafter the court records shall be open unless the court enters an order exempting them from disclosure. At the admit/deny hearing the court shall determine whether the court records shall remain exempt from disclosure as provided in 1. and 2. below:

1. Court records of Juvenile Corrections Act proceedings brought against a juvenile under the age of fourteen (14), or brought against a juvenile fourteen (14) years or older who is charged with an act that would not be a felony if committed by an adult, shall be exempt from disclosure if the court determines by a written order in each case that the records should be closed to the public.

2. Court records of Juvenile Corrections Act proceedings brought against a juvenile fourteen (14) years or older who is charged with an act which would be a felony if committed by an adult, shall be exempt from disclosure if the court determines upon a written order made in each case that extraordinary circumstances exist which justify that the records should be confidential.

(C) If a juvenile fourteen (14) years or older who is charged with an act which would be a felony if committed by an adult is not found to have committed an act which would be a felony if committed by an adult or the charge is reduced to allege an act which would not constitute a felony if committed by an adult, all existing and future case records and documents shall be exempt from disclosure if the court determines by written order in each case that the court records should be closed to the public.

(D) Notwithstanding any other provision of paragraph (g)(9) of this rule, reports prepared pursuant to I.C. § 20-520(1), and other records and reports described in paragraph (g)(17) of this rule are exempt from disclosure.

(E) Notwithstanding any other provision of paragraph (g)(9) of this rule, if a juvenile is adjudicated guilty of an act which would be a criminal offense if committed by an adult, the name, offense, and disposition of the court shall be open to the public.

(F) Notwithstanding any other provision of paragraph (g)(9) of this rule, the court shall make available upon the written request of a superintendent or an employee of the school district authorized by the board of trustees of the school district, the facts contained in any records of a juvenile maintained under Chapter 5, Title 20, Idaho Code. If a request is made to examine records in courts of multiple districts, it shall be ruled upon by the Chief Justice.

(10) Mental commitment case records; provided, the court may disclose these records when consented to by the person identified or his or her legal guardian, or the parent if the individual is a minor. The court in its discretion may make such records available to the spouse, or the immediate family of the person who is the subject of the proceedings;

(11) Adoption records, except that an adopted person may obtain non-identifying medical information in all cases; the court may also in its discretion make information from the adoption records available, upon such conditions as the court may impose, to the person requesting the record, if the court finds upon written verification of a medical doctor a compelling medical need for disclosure;

(12) Records of proceedings to terminate the parent and child relationship under Chapter 20 of Title 16, Idaho Code, except that the child may obtain non-identifying medical information in all cases, and the court may also in its discretion make information from the records available, upon such conditions as the court may impose, to the person requesting the record, if the court finds upon written verification of a medical doctor a compelling medical need for disclosure;

(13) All records of proceedings relating to the consent required for abortion for minors brought pursuant to I.C. 18-609A(1) or (3);

(14) All records of proceedings relating to the judicial authorization of sterilization procedures pursuant to I.C. 39-3901;

(15) Documents filed or lodged with the court in camera;

(16) Domestic abuse files maintained pursuant to domestic violence crime prevention acts, except orders of the court;

(17) Records maintained by a court that are gathered at the request or under the auspices of a court (other than records that have been admitted in evidence);

(A) to determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts;

(B) to assist in assigning an appropriate disposition in the case, including the ADR screening report and screening reports prepared by Family Court Service Coordinators or their designees;

(C) to provide the court with a recommendation regarding the custody of minor children;

(D) to provide a court with a psychological evaluation of an individual;

(E) to provide annual or other accountings by conservators and guardians, except to interested parties as defined by Idaho law;

(F) the case information sheet filed pursuant to Idaho Rule of Civil Procedure 3(a).

(18) A reference list of personal data identifiers or an unredacted copy of a document filed pursuant to I.R.C.P. 3(c).

(19) All court filings, including attachments, in guardianship or conservatorship proceedings whether temporary or permanent, and whether for an adult, a minor, or a developmentally disabled person, except to interested persons as defined in section 15-1-201, Idaho Code, guardians ad litem, court visitors, or any monitoring entity as defined by Idaho law, or any attorney representing any of the foregoing; provided, however, the following shall be not be exempt from disclosure:

(A) the register of actions for the case;

(B) letters of guardianship and letters of conservatorship, and any supplemental orders, decrees or judgments describing, limiting, or expanding the rights and duties of the guardian or conservator;

(C) any order by the court regarding bond by a conservator, and the conservator's bond;

(D) any order, decree, or judgment dismissing, concluding, or otherwise disposing of the case.

(20) The records in cases involving child custody, child support, and paternity, except that officers and employees of the Department of Health and Welfare shall be able to examine and copy such records in the exercise of their official duties; and provided further that the following shall not be exempt from disclosure to any person:

(A) the register of actions for the case;

(B) any order, decree or judgment issued in the case, which shall be drafted and issued in compliance with the provisions of Rule 3(c)(4) of the Idaho Rules of Civil Procedure.

This subsection (g)(20) shall apply only to records in cases filed on or after July 1, 2012, and to records in cases in which a motion to modify an order, decree, or judgment was filed on or after July 1, 2012.

(21) Records of judicial work product or drafts, including all notes, e-mail, memoranda or drafts prepared by a judge or a court-employed attorney, law clerk, legal assistant or secretary;

(22) Personnel records, application for employment and records of employment investigations and hearings, including, but not limited to, information regarding sex, race, marital status, birth date, home address, telephone number, applications, testing and scoring materials, grievances or complaints against an employee, correspondence, and performance evaluations; provided the following are not exempt from disclosure: a public official's public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, status, workplace, employing agency, and any adverse official action taken against an employee as a result of a grievance or complaint (except a private letter of reprimand), and after such action is taken (except when the action is a private letter of reprimand), the record of any investigation and hearing leading to the action;

(23) Applications, testing and scoring to be included on a court maintained roster;

(24) Computer programs and related records, including but not limited to technical and user manuals, which the judicial branch has acquired and agreed to maintain on a confidential basis;

(25) Records maintained by the state law library that link a patron's name with materials requested or borrowed in the patron's name with a specific subject about which the patron has requested information or materials;

(26) Allegations of attorney misconduct received by the Idaho State Bar and records of the Idaho State Bar relating to attorney discipline, except where confidentiality is waived under the Idaho Bar Commission Rules;

(27) All records relating to applications for permission to take the Idaho bar examination or for admission to practice as exempted from disclosure in the Idaho Bar Commission Rules;

(28) All records and records of proceedings, except the identity of applicants for appointment to judicial office, of the Idaho Judicial Council or any District Magistrates Commission pertaining to the appointment, performance, removal, disability, retirement or disciplining of judges or justices. Provided, however, that the record of a disciplinary proceeding filed by the Judicial Council in the Supreme Court loses its confidential character upon filing;

(29) Bulk distribution of electronic court data is not allowed. However, at its discretion, the Supreme Court may grant request for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes where the identification of specific individuals is ancillary to the purpose of the inquiry.

(h) Permissive Release of Judicial Decision in Exempted Categories. Records of courts' determinations in proceedings exempt from disclosure under (g) of this rule may, by direction of the court issuing the determination, be subject to inspection, examination and copying in a manner that preserves the anonymity of the participants to the proceeding. In particular, the Supreme Court and the Court of Appeals may provide copies of their rulings in appeals from proceedings exempt from disclosure under paragraph (g) by using "John Doe/Jane Doe" designations or other anonymous designations in documents made available for inspection, examination and copying. Further deletions from the decisions may be made if necessary to preserve anonymity.

(i) Other Prohibitions or Limitations on Disclosure and Motions Regarding the Sealing of Records. Physical and electronic records, may be disclosed, or temporarily or permanently sealed or redacted by order of the court on a case-by-case basis. Any person or the court on its own motion may move to disclose, redact, seal or unseal a part or all of the records in any judicial proceeding. The custodian judge shall hold a hearing on the motion after the moving party gives notice of the hearing to all parties to the judicial proceeding and any other interested person, guardian ad litem, court visitor, ward or protected person, personal representative, guardian, or conservator designated by the custodian judge. In ruling on whether specific records should be disclosed, redacted or sealed by order of the court, the court shall determine and make a finding of fact as to whether the interest in privacy or public disclosure predominates. If the court redacts or seals records to protect predominating privacy interests, it must fashion the least restrictive exception from disclosure consistent with privacy interests. Before a court may enter an order redacting or sealing records, it must also make one or more of the following determinations in writing:

(1) That the documents or materials contain highly intimate facts or statements, the publication of which would be highly objectionable to a reasonable person, or

- (2) That the documents or materials contain facts or statements that the court finds might be libelous, or
- (3) That the documents or materials contain facts or statements, the dissemination or publication of which may compromise the financial security of, or could reasonably result in economic or financial loss or harm to, a person having an interest in the documents or materials, or compromise the security of personnel, records or public property of or used by the judicial department, or
- (4) That the documents or materials contain facts or statements that might threaten or endanger the life or safety of individuals, or
- (5) That it is necessary to temporarily seal or redact the documents or materials to preserve the right to a fair trial.

In applying these rules, the court is referred to the traditional legal concepts in the law of the right to a fair trial, invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate or financially sensitive material about persons. When a record is sealed under this rule, it shall not be subject to examination, inspection or copying by the public. When the court issues an order sealing or redacting records, the court shall also inform the Clerk of the District Court of which specific files, documents and ISTARs records are to be sealed or redacted. Sealed files shall be marked "sealed" on the outside of the file. Sealed or redacted records shall be placed in a manila envelope marked "sealed" with a general description of the records, their filing date and date they were sealed or redacted. When a file has been ordered sealed, or when records within a file have been ordered sealed or redacted, the electronic record shall reflect such action and shall be limited accordingly. When the court issues an order redacting records for purposes of public disclosure, the records in the court file or in the custody of the court shall not be altered in any fashion. The originals shall be placed in a manila envelope marked "sealed" with a general description of the records, and a redacted copy, so marked, shall be substituted for the originals in the court file. An order directing that records be redacted or sealed shall be subject to examination, inspection or copying by the public to the extent that such disclosure does not reveal the information that the court sought to protect in issuing the order. The decision on a motion to redact, seal or unseal records may be reconsidered, altered or amended by the court at any time. When the court issues an order disclosing otherwise exempt records, it shall place appropriate limitations on the dissemination of that information.

(j) Request for Records.

<Text of subrule (j)(1) effective until July 1, 2014.>

(1) Any person desiring to inspect, examine or copy physical records shall make an oral or written request to the custodian. If the request is oral, the custodian may require a written request. The custodian may request contact information as provided in I.C. § 9-338(4). A request for public records and delivery of the public records may be made by electronic mail. The request must clearly identify each record requested so that the custodian can locate the record without doing extensive research and continuing requests for documents not yet in existence will not be considered. The custodian may provide the requester information to help the requester narrow the scope of the request or to help the requester make the request more specific when the response to the request is likely to be voluminous.

<Text of subrule (j)(1) effective July 1, 2014.>

(1) Any person desiring to inspect examine or copy physical records shall make an oral or written request to the custodian. If the request is oral, the custodian may require a written request. The custodian may request contact information as provided in I.C. §

9-338. A request for public records and delivery of the public records may be made by electronic mail. The request must clearly identify each record requested so that the custodian can locate the record without doing extensive research and continuing requests for documents not yet in existence will not be considered. The custodian may provide the requester information to help the requester narrow the scope of the request or to help the requester make the request more specific when the response to the request is likely to be voluminous.

(2) *Custodian Defined.* The custodian of judicial public records is designated as follows:

(A) For any record in a case file in the Supreme Court or Court of Appeals, the custodian is the Clerk of the Supreme Court or a deputy clerk designated in writing.

(B) For any record not in a case file in the Supreme Court or Court of Appeals, the custodian is the Administrative Director of the Courts or other person designated in writing by the Chief Justice.

(C) For any record in a case file in a district court or magistrate court, the custodian is the Clerk of the District Court or a deputy clerk designated in writing.

(D) For any record not in a case file in the district court or magistrate court, the custodian is the Trial Court Administrator of the judicial district, or judge or magistrate designated by the Administrative District Judge.

(E) For any record in the judicial council, the custodian is the Executive Director of the Judicial Council.

(F) For any record in the Idaho State Bar, the custodian is the Executive Director of the Idaho State Bar or other person designated in writing by the Idaho State Bar Commissioners.

(G) For the purposes of the ISTARs system, the ISTARs Datawarehouse, and compiled information, the custodian is the Administrative Director of the Courts or other person designated in writing by the Chief Justice.

(3) *Custodian Judge.* The custodian judge of a judicial public record is designated as follows:

(A) For any record in the Supreme Court, ISTARs or the ISTARs Datawarehouse the custodian judge is the Chief Justice, or the Vice-Chief Justice in the absence of the Chief Justice.

(B) For any record in the Court of Appeals, the custodian judge is the Chief Judge of the Court of Appeals, or a Judge of the Court of Appeals designated in writing.

(C) For any record in a case file in the district court or magistrate court, the custodian judge is the presiding magistrate or judge of that case, or judge or magistrate designated in writing by the Administrative District Judge.

(D) For any record not in a case file in the district court or magistrate court, the custodian judge is the Administrative District Judge of that judicial district, or other district judge or magistrate designated in writing by the Administrative District Judge.

(E) For any record in the judicial council, the custodian judge is the Chief Justice or the Vice-Chief Justice in the absence of the Chief Justice.

(F) For any record in the Idaho State Bar, the custodian judge is the Administrative District Judge of the Fourth Judicial District of the State of Idaho or a district judge designated in writing by the Administrative District Judge.

(4) *Response to Request.* The custodian shall respond to a request for examination of public records. Within three (3) working days from receipt of request, the custodian shall disclose the records requested, refer the request to the custodian judge for determination, or give written notice of denial of the request. Provided, if the custodian determines that it will take more than three (3) working days to determine whether the request should be granted, or that a longer period of time is needed to locate or retrieve the requested records, the custodian shall so notify the person making the request, and the response shall then be made by the custodian within ten (10) working days following the date of the request. If the documents requested are disclosed by the custodian, no other notice need be given by the custodian. The custodian is not under a duty to compile or summarize information contained in records, nor is the custodian obligated to create new records for the requesting party, except as provided herein. The custodian may deny a request for a copy of all or part of a transcript of an administrative or judicial proceeding or other voluminous publication or document when by rule or statute it may be obtained from the preparer of such record after payment of a fee. Efforts should be made to respond promptly to requests for records.

(5) *Response by Custodian Judge.* If a custodian determines that there is a question as to whether records should be disclosed pursuant to a request, or if a request is made for a ruling by a judge after the custodian denies the request, the custodian shall refer the request to the custodian judge for determination. The custodian judge shall make a written determination as to whether the records should be disclosed within ten (10) working days following the request. In the sole discretion of the custodian judge, an informal hearing may be held by the custodian judge on the question of whether the records should be disclosed. The custodian judge shall determine the time and place of the hearing and the notice to be given by the custodian to the person requesting the records and any other interested person. If a hearing is held under this rule, the response to the person requesting the record may be delayed a reasonable time after the conclusion of the hearing.

(6) *Cost of Copying Records.* The cost to make a paper copy of any record filed in a case with the clerk of the district court shall be as specified in I.C. § 31-3201. The cost for any other copying of any record shall be determined by order of the Supreme Court or the Administrative District Judge in accordance with the provisions of I.C. § 9-338. The costs so determined shall be paid, in advance, by the person requesting the records. Any delay in paying the costs of copying the records shall extend the time for response by the custodian. In the event that a person wishes to have a copy of a court record that can be easily copied to digital media by court personnel, the person making that request shall provide the appropriate media to the court for that purpose.

(7) *Proceedings After Denial.* If a custodian denies a request for the examination or copying of records, the aggrieved party may file a request for a ruling by the custodian judge. If the custodian judge denies a request for the examination or copying of records, the sole remedy of any aggrieved person shall be to institute proceedings for disclosure in the district court in accordance with I.C. § 9-343.

Credits

[Adopted effective March 1, 1991. Amended effective November 7, 1991; amended March 26, 1992, effective July 1, 1992; February 10, 1993, effective July 1, 1993; amended effective August 8, 1995; amended June 25, 1997, effective July 1, 1997; March 19, 1998, effective July 1, 1998; March 9, 1999, effective July 1, 1999; amended effective October 25, 1999; amended November 1, 2000, effective January 2, 2001; amended effective November 30, 2001; July 1, 2004; amended August 4, 2005, effective August 15, 2005; April 26, 2007, effective July 1, 2007; December 30, 2008, effective February 1, 2009; March 18, 2011, effective July 1, 2011; March 29, 2012, effective July 1, 2012; April 27, 2012, effective July 1, 2012; October 5, 2013, effective January 1, 2014; November 25, 2013, effective January 1, 2014; April 2, 2014, effective July 1, 2014.]

Administrative Rule 32, ID R ADMIN Rule 32

Current with amendments received through 5/15/14

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EXHIBIT 12

West's Smith-Hurd Illinois Compiled Statutes Annotated
 Chapter 705. Courts (Refs & Annos)
 Circuit Clerks
 Act 105. Clerks of Courts Act (Refs & Annos)
 Books, Stationery, Etc.

705 ILCS 105/16
 Formerly cited as IL ST CH 25 16

105/16. Records; circuit court clerks

Currentness

§ 16. Records kept by the clerks of the circuit courts are subject to the provisions of "The Local Records Act", approved August 18, 1961, as amended. ¹

Unless otherwise provided by rule or administrative order of the Supreme Court, the respective clerks of the circuit courts shall keep in their offices the following books:

1. A general docket, upon which shall be entered all suits, in the order in which they are commenced.
2. Two well-bound books, to be denominated "Plaintiff's Index to Court Records," and "Defendant's Index to Court Records" to be ruled and printed substantially in the following manner:

Plaintiffs	Defendants	Kind of Action	Date Commenced	Record Book	Pages
	Date of judgment	Judgment docket			
		Book	Page		
	Certificate of levy	Certificate of sale	Certificate of redemption	Satisfied or not satisfied	Number of case
Fee Book	Book	Page	Book	Page	

All cases shall be entered in such books, in alphabetical order, by the name of each plaintiff and defendant. The books shall set forth the names of the parties, kind of action, date commenced, the record books and pages on which the cases are recorded, the date of judgment, books and pages of the judgment dockets, fee book, certificates of levy, sale and redemption records on which they are entered satisfied or not satisfied, and number of case. The defendant's index shall be ruled and printed in the same manner as the plaintiff's except the parties shall be reversed.

3. Proper books of record, with indices, showing the names of all parties to any action or judgment therein recorded, with a reference to the page where it is recorded.

4. A judgment docket, in which all final judgments (except child support orders as hereinafter provided) shall be minuted at the time they are entered, or within 60 days thereafter in alphabetical order, by the name of every person against whom the judgment is entered, showing, in the proper columns ruled for that purpose, the names of the parties, the date, nature of the judgment, amount of the judgment and costs in separate items, for which it is issued, to whom issued, when returned, and the manner of its enforcement; a blank column shall be kept in which may be entered a note of the satisfaction or other disposition of the judgment or order and when satisfied by enforcement or otherwise, or set aside or enjoined; the clerk shall enter a minute thereof in such column, showing how disposed of, the date and the book and page, where the evidence thereof is to be found. In the case of child support orders or modifications of such orders entered on or after May 1, 1987, the clerk shall minute such orders or modifications in the manner and form provided herein but shall not minute every child support installment when due or every child support payment when made. Such dockets may be searched by persons, at all reasonable times without fee.

5. A fee book, in which shall be distinctly set down, in items, the proper title of the cause and heads, the cost of each action, including clerk's, sheriff's and witness' fees, stating the name of each witness having claimed attendance in respect of the trial or hearing of such action with the number of days attended. It shall not be necessary to insert the cost in the judgment; but whenever an action is determined and final judgment entered, the costs of each party litigant shall be made up and entered in such fee book, which shall be considered a part of the record and judgment, subject, however, at all times to be corrected by the court; and the prevailing party shall be considered as having recovered judgment for the amount of the costs so taxed in his or her favor, and the same shall be included in the certified copy of such judgment, and a bill thereof accompanying certified copy of the judgment. If any clerk shall issue a fee bill or a bill of costs, with the certified copy of the judgment without first entering the same in the fee book, or if any such bill of costs or fee bill shall be issued which shall not be in substance a copy of the recorded bill, the same shall be void. Any person having paid such bill of costs or fee bill, may recover from the clerk the amount thereof, with costs of the action, in any circuit court.

6. Such other books of record and entry as are provided by law, or may be required in the proper performance of their duties. All records, dockets and books required by law to be kept by such clerks shall be deemed public records, and shall at all times be open to inspection without fee or reward, and all persons shall have free access for inspection and examination to such records, docket and books, and also to all papers on file in the different clerks' offices and shall have the right to take memoranda and abstracts thereto.

Credits

R.S.1874, p. 260, § 16. Amended by Laws 1887, p. 128, § 1; Laws 1933, p. 293, § 1, eff. Jan. 1, 1934; Laws 1961, p. 3475, § 1; Laws 1963, p. 3241, § 1; Laws 1965, p. 2434, § 1; Laws 1965, p. 3391, § 1; Laws 1967, p. 3771, § 1; P.A. 79-1365, § 9, eff. Oct. 1, 1976; P.A. 83-346, § 7, eff. Sept. 14, 1983; P.A. 85-1156, Art. I, § 2, eff. Jan. 1, 1989.

Formerly Ill.Rev.Stat.1991, ch. 25, ¶ 16.

SUPREME COURT OF ILLINOIS

GENERAL ADMINISTRATIVE ORDER ON RECORDKEEPING IN THE CIRCUIT COURTS

This order is adopted by the Supreme Court of Illinois pursuant to its general administrative authority, Section 2 of Article VI of the Constitution of Illinois, An Act to revise the law in relation to clerks of courts, approved March 25, 1874, as amended (Ill. Rev. Stat. 1969, Chapter 25, Sec. 16 and 25) and Section 4 of "The Local Records Act" approved August 18, 1961, as amended (Ill. Rev. Stat. 1969, ch. 116, sec. 43.104).

The recordkeeping system provided by this order shall become effective in such counties of the first and second class and at such times as the Director of the Administrative Office shall from time to time specify.

The clerk of the circuit court in each county of the third class shall submit to the Director of the Administrative Office a plan for the maintenance and destruction of records consistent with the minimum standards provided by this order and such system shall go into effect upon approval by the Director.

The Director of the Administrative Office shall prescribe the forms to be used for all records and shall provide the necessary instructions to implement this order.

The Director of the Administrative Office shall establish a program of supervision to assure that the minimum standards provided by this order are correctly and uniformly employed in each county and shall notify the chief judge of the circuit of any unauthorized deviations. The chief judge shall make and enforce such corrective orders as may be necessary.

The Director may authorize changes and exceptions to this Order, as he deems necessary or appropriate. Applications for exceptions may be initiated by a circuit clerk and they shall be in writing. A copy of each application for exception shall be sent to the chief judge of the circuit.

Dated May 20, 1968, as amended.

ADMINISTRATIVE ORDER

Pursuant to the authority vested in me by the General Administrative Order on Recordkeeping in the Circuit Courts adopted by the Supreme Court of Illinois on May 20, 1968, as amended, the provisions contained in this manual incorporate changes hereby authorized, effective January 1, 1971.

/s/ Roy O. Gulley, Director

.....
Roy O. Gulley, Director
Administrative Office of
the Illinois Courts

PART I. RECORD OF THE CASE

The records of the case to be prepared and maintained by the clerk shall be as follows:

A. CASE NUMBER LISTS

1. Law Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of case--first named plaintiff and first named defendant only;

d. Reference to permanent record.

2. Chancery Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of case--first named plaintiff and first named defendant only;

d. Reference to permanent record.

3. Miscellaneous Remedy Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of case--first named plaintiff and first named defendant only;

d. Reference to permanent record.

4. Tax Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of case--first named plaintiff and first named defendant only;

d. Reference to permanent record.

5. Municipal Corporation Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of municipality;

d. Reference to permanent record.

6. Mental Health Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of respondent;

d. Reference to permanent record.

7. Divorce Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of case;

d. Reference to permanent record.

8. Family Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of case--first named plaintiff and first named defendant only (omit names in impounded cases);

d. Reference to permanent record.

9. Juvenile Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Reference to permanent record.

10. Eminent Domain Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Plaintiff and first named defendant only;

d. Reference to permanent record.

11. Estate Case Number List--containing for each estate:

a. Case number, consecutively;

b. Date of filing;

c. Name of decedent or ward;

d. Nature of estate;

e. Reference to permanent record.

12. Felony Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of defendant;

d. Offense charged;

e. Reference to permanent record.

13. Misdemeanor Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of defendant;

d. Offense charged;

e. Reference to permanent record.

14. Small Claim Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of case--first named plaintiff and first named defendant only.

15. Traffic Case Number List--containing for each case filed:

a. Case number, consecutively;

b. Date of filing;

c. Name of defendant;

d. Offense charged.

16. Ordinance and Conservation Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of defendant;
- d. Offense charged.

B. CASE NUMBERS AND CODES

- 1. All case numbers shall consist of three units:
 - a. The last two digits of the year of filing;
 - b. The code letter or letters indicating the category of the case;
 - c. The number of the case within its particular category.
- 2. The letters indicating the category of the case shall be as follows:

<u>Category of Case</u>	<u>Code Letters</u>
Law (claim over \$15,000)	L
Law (claim \$15,000 or less)	LM
Chancery	CH
Miscellaneous Remedy	MR
Eminent Domain	ED
Estate	P
Tax	TX
Municipal Corporation	MC
Mental Health	MH
Divorce	D
Family	F
Juvenile	J
Small Claim	SC
Felony	CF
Misdemeanor	CM
Traffic	TR

Ordinance Violation	OV
Conservation Violation	CV

PART I. RECORD OF THE CASE

The records of the case to be prepared and maintained by the clerk shall be as follows:

A. CASE NUMBER LISTS

1. Law Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of case--first named plaintiff and first named defendant only;
- d. Reference to permanent record.

2. Chancery Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of case--first named plaintiff and first named defendant only;
- d. Reference to permanent record.

3. Miscellaneous Remedy Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of case--first named plaintiff and first named defendant only;
- d. Reference to permanent record.

4. Tax Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of case--first named plaintiff and first named defendant only;
- d. Reference to permanent record.

5. Municipal Corporation Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of municipality;
- d. Reference to permanent record.

6. Mental Health Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of respondent;
- d. Reference to permanent record.

7. Divorce Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of case;
- d. Reference to permanent record.

8. Family Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of case--first named plaintiff and first named defendant only (omit names in impounded cases);
- d. Reference to permanent record.

9. Juvenile Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Reference to permanent record.

10. Eminent Domain Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Plaintiff and first named defendant only;
- d. Reference to permanent record.

11. Estate Case Number List--containing for each estate:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of decedent or ward;
- d. Nature of estate;
- e. Reference to permanent record.

12. Felony Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of defendant;
- d. Offense charged;
- e. Reference to permanent record.

13. Misdemeanor Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of defendant;
- d. Offense charged;
- e. Reference to permanent record.

14. Small Claim Case Number List--containing for each case filed:

- a. Case number, consecutively;

- b. Date of filing;
- c. Name of case--first named plaintiff and first named defendant only.

15. Traffic Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of defendant;
- d. Offense charged.

16. Ordinance and Conservation Case Number List--containing for each case filed:

- a. Case number, consecutively;
- b. Date of filing;
- c. Name of defendant;
- d. Offense charged.

B. CASE NUMBERS AND CODES

- 1. All case numbers shall consist of three units:
 - a. The last two digits of the year of filing;
 - b. The code letter or letters indicating the category of the case;
 - c. The number of the case within its particular category.
- 2. The letters indicating the category of the case shall be as follows:

<u>Category of Case</u>	<u>Code Letters</u>
Law (claim over \$15,000)	L
Law (claim \$15,000 or less)	LM
Chancery	CH
Miscellaneous Remedy	MR
Eminent Domain	ED
Estate	P

Tax	TX
Municipal Corporation	MC
Mental Health	MH
Divorce	D
Family	F
Juvenile	J
Small Claim	SC
Felony	CF
Misdemeanor	CM
Traffic	TR
Ordinance Violation	OV
Conservation Violation	CV

C. INDEXES (Alphabetical except as indicated)

1. Civil Index--for all civil cases for which no separate index is provided.

a. Names of all parties whether plaintiffs or defendants, excluding:

- (1) Garnishee defendants;
- (2) Employer defendants in wage deduction proceedings;
- (3) Respondents in supplementary proceedings under Section 73 of the Civil Practice Act;
- (4) Defendants in annual tax sale cases;
- (5) Other parties as instructed by the Administrative Office;

b. Identification as plaintiff or defendant;

c. Case number.

2. Estate Index

a. Name of decedent or ward;

b. Identification as decedent's estate, guardianship, conservatorship or inheritance tax proceeding;

c. Case number.

3. Criminal Index

a. Name of defendant;

b. Case number;

c. Alleged offense.

4. Juvenile Index--to be impounded

a. Name of juvenile;

b. Case number.

5. Mental Health Index

a. Name of respondent;

b. Case number.

6. Adoption Index--to be impounded

The adoption index shall be divided into two sections:

a. Adopted children

(1) Name;

(2) Case number.

b. Adopting parents

(1) Names;

(2) Case number.

7. Marriage License Petition Index--to be impounded

a. Name of petitioner;

b. Case number.

8. Municipal Corporation Index

a. Name of municipality;

b. Case number.

9. Small Claim Defendant Index

- a. Name of defendant or counter-defendant;
- b. Identification as defendant or counter-defendant;
- c. Name of each plaintiff or counterclaimant;
- d. Case number;
- e. Date of disposition;
- f. Disposition--finding or verdict, amount of judgment, if any, transfer or dismissal;
- g. Date judgment released.

10. Traffic, Ordinance and Conservation Index

- a. Name of defendant;
- b. Case number;
- c. Date of filing;
- d. Offense charged;
- e. Plea;
- f. Finding of guilty or not guilty;
- g. Judgment;
- h. Date of disposition.

11. Wills Deposited Index

- a. Name of testator;
- b. Date will deposited;
- c. By whom deposited;
- d. Person withdrawing will;
- e. Date withdrawn;
- f. Case number if probated in county.

12. Money Judgment Index

(Omit small claims, judgments only for costs, judgments on claims in estates, criminal judgments, and tax sale judgments)

- a. Name of judgment debtor;
- b. First named judgment creditor;
- c. Amount of judgment;
- d. Date judgment entered;
- e. Case number;
- f. Release, assignment, satisfaction, opening, or vacation of judgment.

13. Court Administration Index (Not alphabetical)

- a. Item number;
- b. Description of item (References to rules of court, administrative orders, appointments of court attaches, grand jury reports, calendar calls and notices, etc.);
- c. Date filed;
- d. Reference to permanent record.

All items filed will be numbered and filed consecutively using the last two digits of the year followed by a dash and the number of the item.

14. Additional Permanent Record Index

- a. Consecutive index number;
- b. Case number;
- c. Reel numbers of permanent records made following post-termination proceedings.
- d. References to further consecutive index numbers.

D. BASIC RECORD

- 1. Definition:** The basic record is the original trial court record of a case.
- 2. Content--**Except as otherwise provided in this Paragraph D, the basic record shall consist of:
 - a. Everything filed--including pleadings, documents, orders and other papers;
 - b. The record sheet--which shall contain:

- (1) Case number;
- (2) First named plaintiff and first named defendant;
- (3) Names and addresses of all attorneys and parties appearing pro se;
- (4) The nature of the case;
- (5) The name of the judge presiding at each hearing;
- (6) The date an event occurs, a paper is filed, or an order is signed or pronounced--

The action of the judge shall be reflected in a signed order or a minute order. A minute order is an orally pronounced order shown on the record sheet in brief form sufficient to record the action of the judge. When a signed order is filed, that fact shall be noted on the record sheet, briefly indicating its nature. An order otherwise appealable shall not be considered nonappealable because it is in minute form.

- (7) Objections by any party to the regularity of the proceedings and rulings thereon, unless otherwise recorded;
- (8) A notation of the proceedings in each trial or hearing or a reference to a memorandum of such proceedings contained in the file;
- (9) Notation of taxable costs:
 - (a) Clerk's
 - (b) Sheriff's
 - (c) Other
- (10) In estates, on an Additional Record Sheet: each claim filed, notation of date of filing, name of claimant, amount of claim, whether allowed or denied, date heard, and the amount allowed;
- (11) In estates, a copy of the will, if any.

3. Content--Small Claim, Traffic, Ordinance and Conservation Cases--The basic record of each small claim case, traffic, ordinance and conservation violation shall be the file folder or jacket and its content, including all findings, verdicts, orders and judgments.

4. Content--Criminal Cases--No Bills--The basic record of each criminal case shall be the same as provided for civil cases, except as follows:

- a. If a complaint or information has been filed charging a defendant with an offense mentioned in a No Bill, the No Bill shall be filed and become a part of the basic record of the case in which the complaint or information was filed.
- b. If no complaint or information has been filed charging a person with an offense mentioned in a No Bill which has been received by the clerk, the clerk shall deliver it to the State's Attorney.

5. Content--Wills--Wills shall be securely kept and separated from other files. they shall be kept in two groups:

- a. Those for which a petition to admit to probate has been filed;
- b. Those for which no petition to admit to probate has been filed.

6. Impounding--The Basic Record of adoption cases, juvenile cases and petitions for marriage license orders shall be impounded.

7. Removal of Basic Records--Except for use in court or by a judge basic records shall be removed from the office of the clerk of the court only:

- a. When transferred on a change of venue;
- b. When used in the record on appeal; or
- c. Upon receiving permission of the clerk and leaving with him a signed receipt for the record. Unless specific permission is granted by the clerk any basic record removed shall be returned on the day it is withdrawn. The clerk shall not permit the removal of impounded records.

Before allowing a file to be removed from the clerk's office, except for use in court or by a judge, the clerk shall prepare a security record of any portion of the basic record of which the permanent record has not been made. No fee shall be charged for preparing the security record.

E. SECURITY RECORD

1. Definition: The security record is a copy of specified portions of the basic record.

2. Preparation: A security record shall be prepared only when required by paragraph D7 above.

3. Content: The security record shall contain the following items:

- a. A photocopy of the record sheet and, in estates, the additional record sheet;
- b. Photocopies of the following items from the basic record:

(1) In Civil Cases:

- (a) Bonds
- (b) Judgments
- (c) Release or assignment of judgments

(2) In Estates:

- (a) Bonds
- (b) Wills

- (c) Inventories
- (d) Receipts for distribution or deposit of assets
- (e) Appearances and consents to: (1) the admission of a will to probate, (2) issuance of letters and (3) any accounting or distribution of the estate
- (f) Assignments
- (g) Renunciation of will by spouse
- (h) Judgments, other than on claims
- (i) Orders declaring heirship
- (3) In Criminal Cases:
 - (a) Informations
 - (b) Indictments
 - (c) Complaints
 - (d) Judgments
 - (e) Commitments
 - (f) Orders
 - (g) Bonds
- (4) In Traffic, Ordinance, Conservation and Small Claim cases, the entire file.
- (5) Such other items as may be required by court order in individual cases or by instructions of the Administrative Office.

F. PERMANENT RECORD

1. Definition: The permanent record is a microfilm reproduction of the record of the case and shall be deemed to be an original court record except as hereinafter provided.

2. Content: The permanent record shall include:

- a. All case number lists, except small claims, traffic, and ordinance and conservation;
- b. All indexes;
- c. The basic records of cases except the following items which may be omitted;

- (1) Civil and Criminal cases:
 - (a) Affidavit of witness for witness fee;
 - (b) Affidavits attached to or a part of any document designated in this list;
 - (c) Correspondence;
 - (d) Transcript of evidence and report of proceedings;
 - (e) Briefs and memoranda of law;
 - (f) Opinion of Appellate or Supreme Court;
 - (g) Praecipe or request to the clerk to issue citation, subpoena, summons, etc.;
 - (h) Subpoena;
 - (i) Duplicate of record on appeal;
 - (j) Covenant not to sue;
 - (k) Attorney's notice of hearing, or deposition or filing of deposition;
 - (l) Fee bill;
 - (m) Juror's certificate;
 - (n) Jury instructions;
 - (o) Jury verdict and findings (except criminal);
 - (p) Bonds on probation;
 - (q) Discovery and evidence depositions;
 - (r) Recognizance;
 - (s) Record on appeal (certified);
 - (t) Exhibits;
 - (u) Affidavit for wage deduction order, non-wage garnishment and interrogatories and answers;
 - (v) Jury demand;
 - (w) Oaths or acceptance of office;
 - (x) Report of commissioners in partition and in probate;

- (2) Estates (in addition to the items listed under Civil and Criminal above):
 - (a) Absolute discharge from a mental hospital;
 - (b) Citation for removal;
 - (c) Clerk's certificate that all vouchers or receipts are on file;
 - (d) List of personal property set off to the spouse or child;
 - (e) Monthly reports of receipts and disbursements from decedent's business;
 - (f) Receipts and vouchers for claims paid;
 - (g) Report of sale of personalty;
 - (h) Selection of chattels by widow or child;
 - (i) Affidavits and evidence in proof of heirship;
 - (j) Appraisals;
 - (k) Affidavit of attesting witness;
 - (l) Inheritance tax returns;
- (3) Adoptions--no exceptions; microfilm entire file;
- (4) Mental Health--no exceptions; microfilm entire file;
- (5) Juvenile cases--no exceptions; microfilm entire file;
- (6) Petition for marriage license order--no exceptions; microfilm entire file;
- (7) Small Claims, Traffic, Ordinance and Conservation Cases--make no microfilm record; the index shall become the permanent record when the file is destroyed;
- (8) Wills deposited for the probate of which no petition has been filed--no permanent record;
- (9) No Bills which are not preceded by complaints or informations--no permanent record.

3. Preparation:

- a. The permanent record of cases shall be made as soon as possible, but not more than one year, after the case is terminated, except that in proceedings of a continuing nature (for example, trust administration, municipal corporations, guardianships, etc.) it shall be made annually, or more frequently if directed by a judge;

- b. Items in the basic record which cannot be microfilmed and are not within the above exceptions shall be kept in their original form;
- c. When a basic record which has been removed from the clerk's office has not been returned as required, or when a basic record has been transferred on change of venue, the security record shall be microfilmed in place of the missing basic record;
- d. The permanent record of case number lists and indexes shall be made when directed by instructions of the Administrative Office;
- e. Two copies of the permanent record shall be made. One copy, either negative or positive microfilm, together with all items which cannot be microfilmed, shall be kept in the office of the clerk for public use, and a negative microfilm shall be deposited with the State Archivist.

G. EXHIBITS

Unless otherwise ordered, exhibits received in evidence shall be:

- 1. Retained by the clerk while the right of appeal exists. In criminal, traffic, ordinance and conservation cases in which the defendant has been found guilty, exhibits shall also be retained until the defendant has paid the fine, served his sentence, or has been released from probation or parole.
- 2. Released by the clerk:
 - a. When the time for appeal has passed, provided that, in criminal, traffic, ordinance and conservation cases in which the defendant has been found guilty, exhibits shall not be released until the defendant has paid the fine, served his sentence or has been released from probation or parole.
 - b. At any time by order of the judge who presided at the trial of the case, or by order of the chief judge.

H. DESTRUCTION OF THE RECORD OF THE CASE

1. Case number lists--

Pages from the small claims, traffic, and ordinance and conservation case number lists may be destroyed one year after the most recent filing dates on such pages. All other case number lists are to be retained permanently.

2. Indexes--

All indexes are to be retained permanently.

3. Basic Record--

- a. The basic records of terminated traffic, ordinance and conservation cases may be destroyed three years after filing, except the basic records of convictions of driving while intoxicated or under influence of drugs (violations of Chapter 95 1/2, ¶ 11-501 of the Illinois Revised Statutes) which may be destroyed five years after filing;
- b. The basic record of each small claim case may be destroyed three years after the case is terminated;

c. The basic record of all other cases, except those items which cannot be microfilmed, may be destroyed as follows, provided that the permanent record has been made:

- (1) Divorce cases--five years after the entry of the latest order.
- (2) Criminal cases--at any time after the permanent record is made, provided that no record may be destroyed while the defendant is serving a sentence or is on probation or parole.
- (3) Trust administration cases and estates in which deposits have been made under Section 323a of the Probate Act--only on order of the court.
- (4) All other cases--five years after termination.

d. Items which cannot be microfilmed may be destroyed or withdrawn on order of the chief judge.

e. No will shall ever be destroyed.

On motion and for good cause a judge may order a longer period of preservation of any basic record.

4. Security record--

The security record may be destroyed when the basic record which has been withdrawn from the clerk's office has been returned or, in the event of a missing basic record or a change of venue, when the permanent record has been made.

5. Permanent record--

The permanent record shall never be destroyed.

6. Exhibits--

Exhibits, the release of which is permitted by paragraph G2 of this order, which for any reason cannot be returned to the party entitled thereto, may be destroyed only by order of the chief judge.

PART II. FINANCIAL RECORDS

A. The clerk of the circuit court in each county of the first and second class shall maintain records and accounting procedures which will separate all accounting transactions into two categories:

1. Revenue earned by him and expenditures incurred in the performance of his function;
2. Amounts received for others, held by him in a trust or agency capacity, and distributed as required by statute, rule or order.

B. One checking account shall be established for all receipts and disbursements.

C. One form of receipt voucher shall be used to record all receipts. One form of check voucher shall be used for all disbursements.

D. Two journals shall be used to record all accounting transactions, one for cash receipts and one for cash disbursements. Double entry journals shall be maintained.

E. A General Ledger shall be maintained.

PART III. STATISTICAL RECORDS

The clerks of the circuit courts shall file reports containing information and statistical data with the Administrative Office of the Illinois Courts on forms and according to instructions of the Director of the Administrative Office.

PART IV. RECORDS DISPOSAL

A. The provisions of this Part IV refer to court records created in each county before the record system provided by Part I becomes effective in such county.

B. The Director of the Administrative Office shall establish policies with respect to the disposal of court records and the retention of copies of such records, which policies shall be designed to permit the destruction of the maximum possible quantity of records consistent with the preservation of enforceable rights and duties of parties.

C. The Director shall provide instructions for compiling and submitting schedules of court records proposed for disposal, for the physical destruction or other disposition of such records, and for the reproduction of records, where required.

D. Upon receipt by the Director of a notice from a clerk of a circuit court of the clerk's intention to destroy court records, the Director shall review the schedule of items proposed to be destroyed, shall notify the appropriate Local Records Commission as required by Ill.Rev.Stat. Ch. 116, ¶ 43.104 and, if the Local Records Commission does not within 90 days undertake to photograph or microphotograph such records or to remove the same to the State Archives or other storage, the Director may authorize the clerk to dispose of any of the scheduled items.

E. Whenever photographic or microphotographic copies are made one copy shall be retained by the clerk and one copy shall be delivered to the State Archives.

F. The Director may provide instructions requiring notice of proposed destruction of court records and for the transfer of such records to the State Historical Museum, historical societies, museums or libraries or other appropriate institutions or organizations.

ADMINISTRATIVE ORDER

Pursuant to the authority vested in me by the General Administrative Order on Recordkeeping in the Circuit Courts adopted by the Supreme Court of Illinois on May 20, 1968, as amended, the provisions contained in this manual incorporate changes hereby authorized, effective January 1, 1996.

/s/ Daniel R. Pascale, Director

Daniel R. Pascale, Director

Administrative Office of

the Illinois Courts

**AMENDMENTS TO THE GENERAL ADMINISTRATIVE
ORDER ON RECORDKEEPING IN THE CIRCUIT COURTS**

Effective January 1, 1996, the General Administrative Order on Recordkeeping in the Circuit Courts is amended as follows:

Part I

A. The Case Number List is abolished in counties using automated recordkeeping systems. (See also F.2.a; F.3.d; and H.1.)

B. 2. The following case categories and code letters are added:

<u>Category of Case</u>	<u>Code Letters</u>
Adoption	AD
Arbitration (Mandatory Arbitration)	AR
Juvenile Abuse and Neglect	JA
Juvenile Delinquent	JD
Order of Protection	OP
Contempt of Court	CC
Driving Under the Influence	DT

The claim amount distinguishing L and LM cases is raised to \$50,000.

D. 2. b. (10) The Additional Record Sheet is optional.

D. 6. Mental Health is added to the group of case categories for which the Basic Record and Index shall be impounded. (See also C.6.)

D. 7. The Basic Record may be removed from the office of the clerk for use in court-annexed Mandatory Arbitration.

F. 2. c. (2) (i) Affidavits and evidence in proof of heirship shall no longer be omitted from the Permanent Record.

F. 3. a. The Permanent Record shall be prepared at whatever time the clerk considers appropriate.

systems before their implementation to ensure that they meet all criteria set out in these Standards and all other standards applicable to the clerk's duties.

2 Print on Demand

Clerks must maintain the ability to copy and print court papers for use by judges, court personnel, lawyers, litigants and the public.

3 Supplementary Scanning Capability

When the electronic document is the official record, the clerk must ensure that all documents maintained or received conventionally on paper will be scanned and incorporated as part of the official court file.

4 Access to the Electronic Documents

The clerk's on premises public access terminal shall allow for electronic records and electronic documents to be displayed to the public. When the electronic document is the official record, the clerk must make electronic access to the court file available to judges, court personnel, lawyers, and litigants.

5 Judicial Resources

Before the electronic record becomes the official record, judges must be provided the equipment, software and infrastructure to enable efficient and reliable access to relevant data to conduct and monitor the docket, giving consideration to the needs for speed, ease of navigation, access and training. Further, judges should be able to submit their decisions into the electronic record directly, and have their decisions and orders securely maintained and communicated to the litigants and other requisite entities.

6 Restrictions on Access

Any document management system or case management system used by a clerk must be capable of restricting access to a court file or electronic documents when required by statute, rule or court order.

7 Electronic Record on Appeal

In counties where the electronic record is the official court record, the court must be capable of creating an electronic record on appeal and making that record available to the reviewing court, court personnel, the lawyers and litigants in the case.

8 Disaster Plan

The document management or case management system used by the court and the clerk shall be governed by the *Emergency Preparedness Standards for the Illinois Circuit Courts*.

9 Document Retention and Archiving

Document retention and archiving shall be pursuant to the Manual on Recordkeeping established by the Court's *General Administrative Order on Recordkeeping in the Circuit Courts*, including production of microfilm, when appropriate. Safeguards shall be implemented to provide current and future access to electronic records by rule or local order.

PRINCIPLES--Best Practices for Electronic Records

1. The clerk and chief judge or presiding judge of the court, or designee, upon application and approval by the Supreme Court, may designate the "electronic record" the official record of court proceedings for any type of civil case and dispense with storage of paper in connection with those cases.
2. The judiciary and court staff should be provided with a separate electronic space to maintain notations or other work product not maintained as part of the official court record.

Notes of Decisions (57)

Footnotes

1 50 ILCS 205/1 et seq.

705 I.L.C.S. 105/16, IL ST CH 705 § 105/16

Current through P.A. 98-690, with the exception of P.A. 98-674, of the 2014 Reg. Sess.

End of Document

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EXHIBIT 13

West's Annotated Indiana Code
Title 34 Court Rules (Civil)
State Court Rules (Civil)
Administrative Rules (Refs & Annos)

Administrative Rule 9

Rule 9. Access to Court Records

Currentness

(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. Except as otherwise provided by this rule, access to 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;
- (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 of 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 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; however clerks and courts need not redact or restrict information that was otherwise public in case records and administrative records created before January 1, 2005.

Commentary

The objective of this rule is to provide maximum public accessibility to court records, taking into account public policy interests that are not always fully compatible with unrestricted access. 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 could result in an unwarranted invasion of personal privacy or unduly increase the risk of injury to individuals and businesses. This rule recognizes there are strong societal reasons for allowing public access to court records and denial of access could compromise the judiciary's role in society, inhibit accountability, and endanger public safety.

This rule starts from the presumption of open public access to court records. In some circumstances; however, there 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, 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. 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 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 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:

(a) court, court agency or clerk of court employees, including courts of the United States of America and their related court agencies and clerk of court employees;

(b) private or governmental persons or entities who assist a court in providing court services;

(c) public agencies whose access to court records is defined by other statutes, rules, orders or policies;

(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. Access to court records is not determined by who is seeking access or the purpose for seeking access, although some users, such as court employees or the parties to a particular case, 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 exists. Certain circumstances relating to compilation or bulk distribution of information gleaned from court records may affect access to court records.

(C) Definitions. For purpose of this rule:

(1) "Court Record" means both case records and administrative records.

(2) "Case Record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency or clerk of court in connection with a particular case.

(3) "Administrative Record" means any document, information, data, or other item created, collected, received, or maintained by a court, court agency, or clerk of court pertaining to the administration of the judicial branch of government and not associated with any particular case.

Rule 9. Access to Court Records, IN ST ADMIN Rule 9

- (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, Probate, or County Court, the Clerk of a City or Town court, and the Clerk of a Marion County Small Claims Court, including staff.
- (6) "Public access" means the process whereby a person may inspect and copy the information in a court record.
- (7) "Remote access" means the ability of a person to inspect and copy information in a court record in electronic form through an electronic means.
- (8) "In electronic form" means any information in a 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 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 in electronic form.

Commentary

"Case record" refers to records connected with a particular case. It does not include other records maintained by the clerk of court, including, but not limited to, election records, marriage and other license functions; copies of notary bonds; oaths and certificates of public officials other than oaths of judicial officers and attorneys; lists, including those for distressed sales, licensed child placing agencies; reports of perpetual care of cemetery endowment accounts; and certificates of inspection and compliance of chemicals and chemical tests results and certifications of breath test operators; delinquency personal property taxes; hunting and fishing licenses; conflict of interest statements, passports; and the filing of reports from state agencies, such as the Alcohol Licensing Board.

The definition of case record is medium neutral and access neutral, and is intended to apply to every case record, regardless of the manner in which it was created, the form(s) in which it is stored, or other form(s) in which the information may exist.

An "administrative record" may include, but not be limited to, the roll of attorneys, rosters of medical review panels and group legal services, records relating to elections to the Judicial Nominating Commission, statistical reports, local court rules, jury pool list records, general court orders, budget and expenditure records, and record of receipts of funds. The term "court agency" in subsection (C)(3) includes without limitation the Indiana Judicial Center and the Judicial Conference of Indiana.

(D) General Access Rule.

Rule 9. Access to Court Records, IN ST ADMIN Rule 9

- (1) A court record is accessible to the public except as provided in sections (G) and (H) of this rule, or as otherwise ordered sealed by the trial court.
- (2) This rule applies to all court records, regardless of the manner of creation, method of collection, form of storage, or the form in which the record is maintained.
- (3) If a court record, or portion thereof, is excluded from public access, there shall be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This sub-section (3) does not apply to court proceedings or administrative records which are confidential pursuant to law.
- (4) A court may manage access to audio and video recordings of its proceedings to the extent appropriate to avoid substantial interference with the resources or normal operation of the court and to comply with Indiana Judicial Conduct Rule 2.17 [former Canon 3(B)(13)]. This provision does not operate to deny to any person the right to access a court record under Rule 9(D)(1).

Commentary

The objective of this section is to make it clear that this rule applies to information in the court record regardless of the manner in which the information was created, collected or submitted to the court. Application of this rule is not affected by the means of storage, manner of presentation or the form in which information is maintained. To support the general principle of open access, the application of the rule is independent of the technology or the format of the information.

Subsection (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 (G) or (H):

- (1) Litigant/party indexes to cases filed with the court;
- (2) Listings of new case filings, including the names of the parties;
- (3) The chronological case summary of cases;
- (4) Calendars or dockets of 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. 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. 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 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 or compiled information that is not excluded by Section (G) or (H) of this rule may be provided.

(2) Requests for bulk distribution or 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 exercising jurisdiction over the records, and in the instance of records from multiple courts, to the Indiana Supreme Court, for further action. Requests will be acted upon or responded to within a reasonable period of time.

(3) With respect to requests for case record information not excluded from public access by Sections (G) or (H) of this rule, the request for bulk distribution or compiled information may be granted upon determination 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. The grant of said request may be made contingent upon the requestor paying an amount which the court determines is the fair market value of the information.

(4) With respect to requests for bulk distribution or compiled information that include information excluded from public access pursuant to Sections (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 subsection (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 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.

(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, in their discretion, to provide access to bulk distribution and compiled information that is accessible to the public. It does not require that such information be made available. Permitting 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 must limit bulk data to 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 resources and generating the compiled information may compete with the normal operations of the court for resources, which may be a reason for the court not to compile the information. However, it may be less demanding on court resources to instead provide bulk distribution of the requested information pursuant to section (D)(3), and let the requestor, rather than the court, compile the information. Courts may charge for the fair market value of bulk or compiled information provided under Section (F)(3).

Section (F)(4) allows only the Supreme Court to grant requests for bulk or compiled information that is excluded from 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;
- (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.*

- (c) 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 § 34-28-5-15 or Ind. Code § 34-28-5-16;
 - (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);

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(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.

(c) *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.

Rule 9. Access to Court Records, IN ST ADMIN Rule 9

(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.

Rule 9. Access to Court Records, IN ST ADMIN Rule 9

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(c).

Credits

Adopted Nov. 10, 1988, effective Jan. 1, 1989. Amended Nov. 1, 1991, effective Jan. 1, 1992; Dec. 21, 2001, effective Jan. 1, 2003; amended effective July 19, 2002; amended Feb. 25, 2004, effective Jan. 1, 2005; Sept. 30, 2004, effective Jan. 1, 2005; July 1, 2005, effective Jan. 1, 2006; Aug. 15, 2006, effective Jan. 1, 2007; Sept. 9, 2008, effective Jan. 1, 2009; Oct. 6, 2008, effective Jan. 1, 2009; Sept. 15, 2009, effective Jan. 1, 2010; Sept. 21, 2010, effective Jan. 1, 2011; Sept. 13, 2011, effective Oct. 1, 2011; Sept. 20, 2011, effective Jan. 1, 2012; Oct. 11, 2012, effective Jan. 1, 2013; Sept. 13, 2013, effective Jan. 1, 2014; June 10, 2014, effective July 1, 2014.

<Including Amendments Received Through February 1, 2014>

Notes of Decisions (1)

Administrative Rule 9, IN ST ADMIN Rule 9

Current with amendments received through June 1, 2014

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EXHIBIT 14

West's Louisiana Statutes Annotated
Constitution of the State of Louisiana of 1974 (Refs & Annos)
Article XII. General Provisions

LSA-Const. Art. 12, § 3

§ 3. Right to Direct Participation

Currentness

Section 3. No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.

Notes of Decisions (133)

LSA-Const. Art. 12, § 3, LA CONST Art. 12, § 3
Current with amendments through January 1, 2014

End of Document

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EXHIBIT 15

West's Louisiana Statutes Annotated
Louisiana Code of Civil Procedure (Refs & Annos)
Book I. Courts, Actions, and Parties
Title I. Courts (Refs & Annos)
Chapter 5. Clerks
Section 1. General Dispositions

LSA-C.C.P. Art. 251

Art. 251. Custodian of court records; certified copies; records public

Currentness

A. The clerk of court is the legal custodian of all of its records and is responsible for their safekeeping and preservation. He may issue a copy of any of these records, certified by him under the seal of the court to be a correct copy of the original. Except as otherwise provided by law, he shall permit any person to examine, copy, photograph, or make a memorandum of any of these records at any time during which the clerk's office is required by law to be open. However, notwithstanding the provisions of this Paragraph or R.S. 44:31 et seq., the use, placement, or installation of privately owned copying, reproducing, scanning, or any other such imaging equipment, whether hand-held, portable, fixed, or otherwise, within the offices of the clerk of court is prohibited unless ordered by a court of competent jurisdiction.

B. Notwithstanding the provisions of Paragraph A of this Article, a judge issuing a court order may certify a copy of that order for service of process, if the order is issued in an emergency situation and at a time when the clerk of court's office is not open. A determination of when an emergency situation exists shall be made by the judge issuing the order.

Credits

Amended by Acts 1986, No. 218, § 1; Acts 1995, No. 372, § 1, eff. July 1, 1995; Acts 2005, No. 193, § 1.

Editors' Notes

OFFICIAL REVISION COMMENTS—1960

(a) The first and third sentences of this article restate the basic principles of the indirect source provisions, and make no change in the law. The second sentence states expressly the recognized power of the clerk to issue certified copies of the records of the court. The third sentence, based to some extent on the provisions of Art. 778, Code of Practice of 1870, has been expanded to accord with the principles of the Public Records Act, R.S. 44:1-44:7, 44:31-44:38.

(b) The exception at the beginning of the third sentence avoids conflict with statutes requiring certain records to be kept confidential, particularly those relating to juveniles. See, for instance, R.S. 9:427.

(c) For the requirements of proof in a Louisiana court of a record of another Louisiana court, see Art. 1394, *infra*.

Notes of Decisions (26)

LSA-C.C.P. Art. 251, LA C.C.P. Art. 251

Current through the 2013 Regular Session.

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EXHIBIT 16

Michigan Compiled Laws Annotated
Michigan Court Rules of 1985
Chapter 8. Administrative Rules of Court
Subchapter 8.100. General Administrative Orders

MI Rules MCR 8.119

RULE 8.119 COURT RECORDS AND REPORTS; DUTIES OF CLERKS

Currentness

(A) Applicability. This rule applies to all records in every trial court. For purposes of this rule, records are as defined in MCR 1.109, MCR 3.218, MCR 3.903, and MCR 8.119(D)-(G).

(B) Records Standards. The clerk of the court shall comply with the records standards in this rule, MCR 1.109, and as otherwise prescribed by the Michigan Supreme Court.

(C) Filing of Documents and Other Materials. The clerk of the court shall endorse on the first page of every document the date on which it is filed. Documents and other materials filed with the court as defined in MCR 2.107(G) must comply with Michigan Court Rules and Michigan Supreme Court records standards. The clerk of the court may only reject documents that do not meet the following minimum filing requirements:

- (1) standards prescribed by MCR 1.109,
- (2) legibility and language as prescribed by MCR 2.113(B) and MCR 5.113,
- (3) captioning prescribed by MCR 2.113(C)(1) and MCR 5.113,
- (4) signature prescribed by MCR 2.114(C) and MCR 5.114, and
- (5) the filing fee is not paid at the time of filing, unless waived or suspended by court order.

(D) Records Kept by the Clerk of the Court. The clerk of the court shall keep the following case records in accordance with the court rules, Michigan Supreme Court records standards and local court plans. Documents and other materials made confidential by court rule, statute, or order of the court pursuant to subrule (I) must be designated as confidential and maintained to allow only authorized access. In the event of transfer or appeal of a case, every rule, statute, or order of the court pursuant to subrule (I) that makes a document or other materials in that case confidential applies uniformly to every court in Michigan, irrespective of the court in which the document or other materials were originally filed.

(1) Indexes and Case Files. Except for civil infractions, the clerk shall keep and maintain records of each case consisting of a numerical index, an alphabetical index, a register of actions, and a case file in such form and style as may be prescribed by the

Supreme Court. Each case shall be assigned a case number on receipt of a complaint, petition, or other initiating document. The case number shall comply with MCR 2.113(C)(1)(c) or MCR 5.113(A)(1)(b)(ii) as applicable. In addition to the case number, a separate petition number shall be assigned to each petition filed under the Juvenile Code as required under MCR 5.113(A)(1)(b)(ii). The case number (and petition number if applicable) shall be recorded on the register of actions, file, numerical index, and alphabetical index. The records shall include the following characteristics:

(a) Numerical Index. The clerk shall maintain a numerical index as a list of consecutive case numbers on which the date of filing and the names of the parties are recorded. The index may be maintained either as a central index for all cases filed in the court or as separate lists for particular types of cases or particular divisions of the court.

(b) Alphabetical Index. The clerk shall maintain a central alphabetical index or separate alphabetical indexes for particular types of cases or particular divisions of the court on which the date of filing, names of all parties, and the case number are recorded.

(c) Register of Actions. The clerk shall keep a case history of each case, known as a register of actions. The register of actions shall contain both pre- and post-judgment information. When a case is commenced, a register of actions form shall be created. The case identification information in the alphabetical index shall be entered on the register of actions. In addition, the following shall be noted chronologically on the register of actions as it pertains to the case:

(i) the offense (if one);

(ii) the judge assigned to the case;

(iii) the fees paid;

(iv) the date and title of each filed item;

(v) the date process was issued and returned, as well as the date of service;

(vi) the date of each event and type and result of action;

(vii) the date of scheduled trials, hearings, and all other appearances or reviews, including a notation indicating whether the proceedings were heard on the record and the name and certification number of the court reporter or recorder present;

(viii) the orders, judgments, and verdicts;

(ix) the judge at adjudication and disposition;

(x) the date of adjudication and disposition; and

(xi) the manner of adjudication and disposition.

Each notation shall be brief, but shall show the nature of each item filed, each order or judgment of the court, and the returns showing execution. Each notation shall be dated with not only the date of filing, but with the date of entry and shall indicate the person recording the action.

(d) **Case File.** The clerk of the court shall maintain a paper and/or electronic file for each action, bearing the case number assigned to it, in which the clerk shall keep all pleadings, process, written opinions and findings, orders, and judgments filed in the action. Additionally, the clerk shall keep in the file all other materials prescribed by court rule, statute, or as ordered by the court to be filed with the clerk of the court. If other records of a case file are maintained separately from the file, the clerk shall keep them as prescribed by trial court case file management standards.

(2) **Calendars.** The clerk may maintain calendars of actions. A calendar is a schedule of cases ready for court action that identifies times and places of activity.

(3) **Abolished Records.**

(a) **Journals.** Except for recording marriages, journals shall not be maintained.

(b) **Dockets.** A register of actions replaces a docket. Wherever these rules or applicable statutes require entries on a docket, those entries shall be entered on the register of actions.

(E) **Other Case Records.** The clerk or other persons designated by the chief judge of the court shall keep in the manner prescribed by these rules, other materials filed with or handled by the court for purposes of case processing, including but not limited to wills for safekeeping, case evaluations, exhibit logs, probation files, and friend of the court records.

(F) **Court Recordings, Log Notes, Jury Seating Charts, and Media.** Court recordings, log notes, jury seating charts, and all other records such as tapes, backup tapes, discs, and any other medium used or created in the making of a record of proceedings and kept pursuant to MCR 8.108 are court records and are subject to access in accordance with subrule (H)(2)(b).

(G) **Other Court Records.** All court records not included in subrules (D), (E), and (F) are considered administrative and fiscal records or nonrecord materials and are not subject to public access under subrule (H). These records are defined in the approved records retention and disposal schedule for trial courts.

(H) **Access to Records.** Except as otherwise provided in subrule (F), only case records as defined in subrule (D) are public records, subject to access in accordance with these rules. The clerk may not permit any case record to be taken from the court without the order of the court. A court may provide access to the public information in a register of actions through a publicly accessible website and business court opinions may be made available as part of an indexed list as required under MCL 600.8039; however, all other public information in its case records may be provided through electronic means only upon request. The court may provide access to any case record that is not a document, as defined by MCR 1.109(B), if it can reasonably accommodate the request. Any materials filed with the court pursuant to MCR 1.109(C)(2), in a medium in which the court does not have the means to readily access and reproduce those materials, may be made available for public inspection using

court equipment only. The court is not required to provide the means to access or reproduce the contents of those materials if the means is not already available.

(1) Unless access to a case record or information contained in a record as defined in subrule (D) is restricted by statute, court rule, or an order entered pursuant to subrule (I), any person may inspect that record and may obtain copies as provided in subrule (J).

In accordance with subrule (J), the court may collect a fee for the cost of this service, including the cost of providing the new record in a particular medium.

(2) Every court, shall adopt an administrative order pursuant to MCR 8.112(B) to

(a) make reasonable regulations necessary to protect its public records and prevent excessive and unreasonable interference with the discharge of its functions;

(b) establish a policy for whether to provide access for records defined in subrule (F) and if access is to be provided, outline the procedure for accessing those records;

(c) specify the reasonable cost of reproduction of records provided under subrule (J); and

(d) specify the process for determining costs under subrule (J).

(I) Sealed Records.

(1) Except as otherwise provided by statute or court rule, a court may not enter an order that seals courts records, in whole or in part, in any action or proceeding, unless

(a) a party has filed a written motion that identifies the specific interest to be protected,

(b) the court has made a finding of good cause, in writing or on the record, which specifies the grounds for the order, and

(c) there is no less restrictive means to adequately and effectively protect the specific interest asserted.

(2) In determining whether good cause has been shown, the court must consider,

(a) the interests of the parties, including, where there is an allegation of domestic violence, the safety of the alleged or potential victim of the domestic violence, and

(b) the interest of the public.

(3) The court must provide any interested person the opportunity to be heard concerning the sealing of the records.

(4) For purposes of this rule, "court records" includes all documents and records of any nature that are filed with the clerk in connection with the action. Nothing in this rule is intended to limit the court's authority to issue protective orders pursuant to MCR 2.302(C). Materials that are subject to a motion to seal a record in whole or in part shall be held under seal pending the court's disposition of the motion.

(5) A court may not seal a court order or opinion, including an order or opinion that disposes of a motion to seal the record.

(6) Any person may file a motion to set aside an order that disposes of a motion to seal the record, or an objection to entry of a proposed order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies a motion to set aside the order or enters the order after objection is filed, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action. See MCR 8.116(D).

(7) Whenever the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to the Clerk of the Supreme Court and to the State Court Administrative Office.

(J) Access and Reproduction Fees.

(1) A court may not charge an access or reproduction fee for a case record that the court is required by law or court rule to provide without charge to a person or other entity, irrespective of the medium in which the case record is retained, the manner in which access to the case record is provided, and the technology used to create, store, retrieve, reproduce, and maintain the case record.

(2) The court may provide access to its public case records in any medium authorized by the records reproduction act, 1992 PA 116; MCL 24.401 to 24.403. If a court maintains its public records in electronic format only,

(a) the court may not charge a fee to access those case records when access is made on-site through a public terminal or when a verbal request for public information is made on-site to the clerk.

(b) the court or a contracted entity may charge a fee, in accordance with Supreme Court order, to access those case records when the access is made off-site through a document management, imaging, or other electronic records management system.

(3) Reproduction of a case record means the act of producing a copy of that record through any medium authorized by the records reproduction act, 1992 PA 116; MCL 24.401 to 24.403.

(a) A court may charge only for the actual cost of labor and supplies and the actual use of the system, including printing from a public terminal, to reproduce a case record and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce a case record.

(b) If a person wishes to obtain copies of documents in a file, the clerk shall provide copies upon receipt of the actual cost of reproduction.

(c) Except as otherwise directed by statute or court rule, a standard fee may be established, pursuant to (H)(2), for providing copies of documents on file.

(4) A court is not required to create a new record out of its existing records. A new record means the compilation of information into a format that does not currently exist or that cannot be generated electronically using predefined formats available through a court's case management system. Providing access to documents or furnishing copies of documents in an existing file does not constitute creation of a new record, even when the output appears in a format different than the format of the original record or document because the output is the result of predefined formats.

(a) A court may create a new record or compilation of records pertaining to case files or case-related information on request, provided that the record created or compiled does not disclose information that would otherwise be confidential or restricted by statute, court rule, or an order entered pursuant to subrule (I).

(b) A court may charge only for the actual cost of labor and supplies and the actual use of the system to develop, generate, and validate the accuracy of a new record and not the cost associated with the purchase and maintenance of any system or technology used to store, retrieve, and reproduce the information or documents for creating a new record.

(c) If a court creates a new record, the clerk shall provide access to the new record upon receipt of the actual cost of creating the record.

(K) Retention Periods. For purposes of retention, the records of the trial courts include: (1) administrative and fiscal records, (2) case records, (3) and nonrecord material. The records of the trial courts shall be retained in the medium prescribed by MCR 1.109. The records of a trial court may not be destroyed except upon order by the chief judge of that court. Before destroying records subject to the order, the court shall first transfer to the Archives of Michigan any records specified as such by State Archives in the Michigan trial courts approved records retention and disposal schedule. An order of destruction shall comply with the retention periods established by the State Court Administrative Office and approved by the state court administrator, Attorney General, State Administrative Board, and Archives and Records Management Services of the Department of Management and Budget, in accordance with MCL 399.5.

(L) Reporting Duties.

(1) The clerk of every court shall submit reports and records as required by statute and court rule.

(2) The clerk of every court shall submit reports or provide records as required by the State Court Administrative Office, without costs.

Credits

[Adopted November 30, 1999, 461 Mich; amended September 11, 2002, 467 Mich; February 1, 2005, effective May 1, 2005, 472 Mich; May 18, 2010, effective September 1, 2010, 486 Mich; amended effective September 28, 2011, 490 Mich; October 31, 2012, effective January 1, 2013, 493 Mich; June 5, 2013, effective September 1, 2013, 494 Mich.]

Editors' Notes

COMMENTS

1999 Staff Comment

The adoption of MCR 8.119 is to accommodate statewide records standards applicable to all courts and all clerks of the courts as developed and recommended by the Michigan Trial Court Case File Management Standards Committee.

Staff Comment to 2002 Amendment

The September 11, 2002, amendments of MCR 3.206, 3.214, 3.705, 3.706, 3.708, 5.982, and 8.119, which were given immediate effect, are related to the group of domestic violence statutes enacted in December 2001 that took effect April 1, 2002.

The changes in MCR 3.206 and 3.214 are related to 2001 PA 195, which adopted the Uniform Child-Custody Jurisdiction and Enforcement Act, MCL 722.1101 *et seq.* There is also some nonsubstantive reorganization of MCR 3.214.

The amendment of MCR 3.705 implements the statutory provisions regarding the statement of reasons for granting or denying personal protection orders. See 2001 PA 196.

The amendment of MCR 3.706 incorporates the statutory provisions regarding enforceability of Michigan personal protection orders in other jurisdictions. See 2001 PA 200 and 201.

MCR 3.708 and 5.982 are amended to include foreign protection orders, which are made enforceable in Michigan by 2001 PA 197.

MCR 8.119(F) is amended to conform to 2001 PA 205, which directs that when a motion to seal court records involves allegations of domestic violence, the court is to consider the safety of the potential victim in ruling on the motion.

Staff Comment to 2005 Amendment

The February 1, 2005, effective May 1, 2005, amendments were recommended by the Court of Appeals Record Production Work Group.

The amendment of MCR 6.425(F) expedites the ordering of additional transcripts in criminal appeals that have been requested by appointed counsel by requiring trial courts to order additional transcripts within 14 days after receiving a timely request.

Although the rules contain no specific deadline within which counsel is required to order additional transcripts, the Court of Appeals has always applied a 28-day guideline to ensure that appellate attorneys are quickly reviewing their orders of appointment to determine whether additional transcripts are necessary. Court of Appeals Internal Operating Procedure 7.204(C) (2) states that appointed counsel should review the order shortly after appointment to confirm that all necessary transcripts were ordered. The same concept is stated in IOP 7.210(B)(1)-1. The 28-day guideline is stated in IOP 7.210(B)(1)-2.

RULE 8.119 COURT RECORDS AND REPORTS; DUTIES..., MI R ADMIN MCR 8.119

The amendment of MCR 7.210(B)(3)(a) enhances an attorney's ability to discover and order missing transcripts in all appeals by requiring the court reporter or recorder to specifically articulate on the certificate for each proceeding requested: the estimated length of the transcript ordered and the identity of the court reporter or recorder responsible for the transcript if it is not the individual filing the certificate.

The amendment of MCR 8.119(D)(1)(c) expedites the ordering of transcripts in all appeals by requiring the circuit court's register of actions to include a notation as to whether a hearing was held on the record, and the name and certification number of the court reporter or recorder responsible for transcribing the hearing. The subrule is also divided for the ease of the reader.

Staff Comment to 2010 Amendment

These amendments of MCR 7.211, 7.313, and 8.119 clarify that materials filed with a trial court, with the Court of Appeals, or with the Supreme Court that relate to a motion to seal a record are nonpublic until the court disposes of the motion.

Staff Comment to 2011 Amendment

The above noted changes are minor revisions of the rules that have been recommended to the Court to correct cross references and to reflect other technical changes.

Staff Comment to January 2013 Amendment

The amendments of these rules update the rules making them less "paper" focused and reflecting the use of electronic technology in the way courts process court records. The amendments also clarify and delineate the types of records and other materials maintained by a court, and clarify how access is provided.

Staff Comment to September 2013 Amendment

The amendments of MCR 2.112 provide a means to identify business court cases and the placement of those matters on the business court docket. The amendment of MCR 8.119 allows business court opinions to be published.

MI Rules MCR 8.119, MI R ADMIN MCR 8.119
Current with amendments received through 1/1/2014

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EXHIBIT 17

**Minnesota Rules Of Public Access
To Records Of The Judicial Branch**

Effective July 1, 1988

With amendments effective September 1, 2012

Rule 1. Scope of Rules.

These rules govern access to the records of all courts and court administrators of the judicial branch of the state of Minnesota. They do not govern access to records of the Tax Court or the Workers' Compensation Court of Appeals, which are part of the executive branch of the state. In addition, these rules do not govern access to records of the various Boards or Commissions of the Supreme Court as they are governed by independent rules promulgated or approved by the Supreme Court. A partial list of Boards and Commissions is set forth in Appendix A.

Finally, except as provided in Rule 4, subdivision 1(b) with respect to case records, these rules do not govern access to records of judicial branch court services departments or probation authorities. Access to these records is governed by MINN. STAT. § 13.84 and any successor, and other applicable court rules and statutes.

Nothing in these rules shall affect the disposition of records as authorized by MINN. STAT. § 138.17 or any successor or prevent the return of documents or physical objects to any person or party in accordance with a court rule or order.

Rule 2. General Policy.

Records of all courts and court administrators in the state of Minnesota are presumed to be open to any member of the public for inspection or copying at all times during the regular office hours of the custodian of the records. Some records, however, are not accessible to the public, at least in the absence of a court order, and these exceptions to the general policy are set out in Rules 4, 5, 6, and 8.

Rule 3. Definitions.

Subd. 1. Custodian. The custodian is the person responsible for the safekeeping of any records held by any court, court administrator, or clerk of court. In the absence of the person usually responsible, the person who is temporarily responsible for the records is the custodian. For purposes of remote and bulk electronic access under Rule 8, the state court administrator shall be the custodian for case records that are maintained in computer systems administered by the state court administrator.

Subd. 2. Judge. "Judge" means any justice, judge, judicial officer, referee, magistrate, court-appointed arbitrator or other person exercising adjudicatory powers.

Subd. 3. Court. "Court" means the Supreme Court, the Court of Appeals, District Court, and any other court established as part of the judicial branch of the state.

Subd. 4. Court Administrator. "Court administrator" means a person employed or appointed for the purpose of administering the operations of any court or court system, including the clerk of the appellate courts, state court administrator, judicial district administrator, and court administrator of district court.

Subd. 5. Records. "Records" means any recorded information that is collected, created, received, maintained, or disseminated by a court or court administrator, regardless of physical form or method of storage. A "record" does not necessarily constitute an entire file, as a file may contain several "records." Court reporters' notes shall be available to the court for the preparation of a transcript.

- (a) **Case Records.** "Case records" means all records of a particular case or controversy.
- (b) **Administrative Records.** "Administrative records" means all records pertaining to the administration of the courts or court systems.
- (c) **Vital Statistics Records.** "Vital statistics records" means all certificates or reports of birth, death, fetal death, induced abortion, marriage, dissolution and annulment, and related records.

Rule 4. Accessibility to Case Records.

Subd. 1. Accessibility. All case records are accessible to the public except the following:

- (a) **Domestic Abuse Records.** Records maintained by a court administrator in accordance with the domestic abuse act, MINN. STAT. § 518B.01, until a court order as authorized by subdivision 5 or 7 of section 518B.01 is executed or served upon the record subject who is the respondent to the action;
- (b) **Court Services Records.** Records on individuals maintained by a court, other than records that have been admitted into evidence, that are gathered at the request of a court to:
 - (1) determine an individual's need for counseling, rehabilitation, treatment or assistance with personal conflicts,
 - (2) assist in assigning an appropriate sentence or other disposition in a case,

- (3) provide the court with a recommendation regarding the custody of minor children, or
- (4) provide the court with a psychological evaluation of an individual.

Provided, however, that the following information on adult individuals is accessible to the public: name, age, sex, occupation, and the fact that an individual is a parolee, probationer, or participant in a diversion program, and if so, at what location; the offense for which the individual was placed under supervision; the dates supervision began and ended and the duration of supervision; information which was public in a court or other agency which originated the data; arrest and detention orders; orders for parole, probation or participation in a diversion program and the extent to which those conditions have been or are being met; identities of agencies, units within agencies and individuals providing supervision; and the legal basis for any change in supervision and the date, time and locations associated with the change.

- (c) *Judicial Work Product and Drafts.* All notes and memoranda or drafts thereof prepared by a judge or by a court employed attorney, law clerk, legal assistant or secretary and used in the process of preparing a final decision or order, except the official minutes prepared in accordance with MINN. STAT. §§ 546.24-.25.
- (d) *Juvenile Appeal Cases.* Case records arising from an appeal from juvenile court proceedings that are not open to the public, except the appellate court's written opinion or unless otherwise provided by rule or order of the appellate court.
- (e) *Race Records.* The contents of completed race census forms obtained from participants in criminal, traffic, juvenile and other matters, and the contents of race data fields in any judicial branch computerized information system, except that:
 - (1) the records may be disclosed in bulk format if the recipient of the records:
 - (A) executes a nondisclosure agreement in a form approved by the state court administrator in which the recipient of the records agrees not to disclose to any third party any information in the records from which either the identity of any participant or other characteristic that could uniquely identify any participant is ascertainable; and

- (B) obtains an order from the supreme court authorizing the disclosure;
- (2) A juror's race may be disclosed to the parties or their attorneys as part of the juror profile information unless otherwise provided by law or court rule.

Nothing in this section (e) shall prevent public access to source documents such as complaints or petitions that are otherwise accessible to the public.

- (f) *Genetic Information.* Records on genetic information, other than records that have been admitted into evidence in a hearing or trial, that are from medical or scientific professionals, including but not limited to reports and affidavits. For purposes of this rule, "genetic information" means information about a specific human being that is derived from the presence, absence, alteration, or mutation of a gene or genes, or the presence or absence of a specific deoxyribonucleic acid or ribonucleic acid marker or markers, and which has been obtained from an analysis of an individual's biological information or specimen or the biological information or specimen of a person to whom an individual is genetically related.
- (g) *Other.* Case records that are made inaccessible to the public under:
 - (1) state statutes, other than Minnesota Statutes, chapter 13;
 - (2) court rules or orders; or
 - (3) other applicable law.

The state court administrator shall maintain, publish and periodically update a partial list of case records that are not accessible to the public.

Subd. 2. Restricting Access; Procedure. Procedures for restricting access to case records shall be as provided in the applicable court rules.

Subd. 3. Access to Recordings. This subdivision governs access to recordings of proceedings in the district court:

- (a) **General.** Recordings of proceedings in the district court, including without limitation those used as a back-up to a stenographically recorded proceeding or as the electronic recording, are intended to assist in the preparation of a transcript. The transcript, and not the recording, is the

official record of the proceedings. Recordings of proceedings in the district court may only be used as authorized in this or other applicable rules or orders promulgated by the Supreme Court.

- (b) **Off the Record Remarks.** Any spoken words in the courtroom that are not a part of a proceeding, hearing or trial of a specific case are not intended to be recorded. Recordings of such words may not be listened to or used in any way other than by authorized operators of the recording equipment to orient themselves on recording content.
- (c) **Playback.** Playback of any part of the recording of a proceeding, hearing, or trial of a specific case is authorized in only the following situations:
 - (1) during the proceeding, hearing or trial at the direction of the court;
 - (2) by authorized operators of the recording equipment or an official court reporter or other authorized reporting service employee for the purpose of creating a transcript as the official record; and
 - (3) at the direction of the court for the use of the court.
- (d) **Disseminate by Transcript Only.** Except as provided in part (c) of this rule, the contents of the recording shall be disseminated by transcript only, which transcript, and not the recording, shall be the official record.
- (e) **No Transcripts in Conciliation Court.** Nothing in this rule shall permit the transcription of conciliation court proceedings, hearings or trials. Playback of any part of the recordings of conciliation court proceeding, hearing or trial is authorized only at the direction of the court for the use of the court.

Advisory Committee Comment-2005

The 2005 deletion of the word "temporary" in Rule 4, subd. 1(a), reflects statutory changes that allow the initial, ex parte order to be the permanent order of the court if no hearing is requested. See 1995 MINN. LAWS ch. 142, §§ 4, 5 (amending MINN. STAT. § 518B.01, subds. 5, 7).

The 2005 reorganization of Rule 4, subd. 1, parts (d) and (f) is not substantive in nature. Trial level juvenile court proceedings that are not accessible to the public include adoption (MINN. STAT. § 259.61 (2004); MINN. R. ADOPT. PROC. 8.01 (effective 1-1-2005), delinquency and extended jurisdiction juveniles (except where there are felony level charges and the juvenile was at least 16 years old at the time of the offense)

(MINN. STAT. § 260B.163, subd. 1(c)(2004); MINN. R. JUV. DEL. PROC. 2.01), and other proceedings closed to the public by order of the court on a case-by-case basis (*see, e.g.,* MINN. R. JUV. PROT. PROC. 27.01 (permitting closure of child protection proceeding only in exceptional circumstances, and requiring public access to closure order)). If a trial level juvenile court proceeding is not accessible to the public, then Rule 4, subd. 1(d) precludes public access to the appellate records related to that proceeding except the written opinion of the appellate court or unless otherwise ordered by the court.

The 2005 addition of race records in Rule 4, subd. 1(e) is based on the understanding that race and ethnicity information is not solicited from participants for the purpose of reselling race status of individuals to commercial enterprises. The goal is to ensure fair resolution of cases, and the rule attempts to provide a limited right of public access consistent with that goal. Access to race records, *e.g.,* for research purposes, can be obtained under a nondisclosure agreement that limits ultimate public disclosure to aggregate statistics that do not identify individual participants. The Supreme Court has a longstanding tradition of authorizing disclosure of juvenile court records for scholarly research using nondisclosure agreements. *See, e.g., Order Authorizing Disclosure of Juvenile Court Database for Research Purposes*, No. C4-85-1848 (Minn. S. Ct. filed May 14, 2001).

The substitution of a periodically updated list of inaccessible case records for the former Appendix B in Rule 4, subd. 1(f) recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify case records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix B quickly became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

The 2005 changes to Rule 4, subd. 2, recognize that a number of rules address restrictive orders. The factors to consider in seeking a protective order in regard to criminal case records are discussed in Rule 25, Rules of Criminal Procedure, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For civil cases, see Rule 26.03, Rules of Civil Procedure and *Minneapolis Star & Tribune Co. v. Schumacher*, 392 N.W.2d 197 (Minn. 1986). For child in need of protective services cases, see Rule 8.07, Rules of Juvenile Protection Procedure. For juvenile delinquency cases, see Rule 10.06, subd. 5, Rules of Juvenile Delinquency Procedure.

Advisory Committee Comment-2007

The 2007 addition of Rule 4, subd. 1(f), is designed to provide some privacy protection for genetic information about individuals. The definition of "genetic information" is based in part on the privacy law governing executive branch genetic information. Act of June 1, 2006, ch. 253 § 4, 2006 MINN. LAWS 424, 426 (codified at MINN. STAT. § 13.386 (2006)). Genetic information can affect not only a party, witness or victim, but also his or her genetic relatives. Courts and parties need to consider the scope of this information when admitting and offering to admit such information into evidence. Rule 4, subd. 2, recognizes that, when necessary, protective orders can be issued under applicable procedural rules. The factors to consider in seeking a protective order in regard to criminal case records are discussed in Rule 25, Rules of Criminal Procedure, *Minneapolis Star & Tribune v. Kammeyer*, 341 N.W.2d 550 (Minn. 1983), and *Northwest Publications, Inc. v. Anderson*, 259 N.W.2d 254 (Minn. 1977). For civil cases, see Rule 26.03, Rules of Civil Procedure, and *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197 (Minn. 1986).

Advisory Committee Comment-2008

The 2008 addition of Rule 4, subd. 1(e)(2), is designed to recognize that race data is routinely disclosed to parties as part of juror profile information for purposes of voir dire.

The 2008 addition of Rule 4, subd. 3, is based in part on IL. 18th CIR. R. 1.03. Rule 4, subd. 3, attempts to clarify the application of the Rules to recordings of testimony in light of Supreme Court policy limiting audio and video coverage of trial court proceedings, and to clarify the proper scope and role of recordings in preparing and preserving the official record.

The broad definition of "records" in Rule 3, subd. 1, appears to include recordings of court proceedings, but arguably may not include court reporter's notes. Assuming that recordings are included, it is not clear whether recordings would then be subject to the work product exception to public access (Rule 4, subd. 1(c)) or the presumption of public access (Rule 2). Assuming the presumption applies, public access creates significant administrative burdens, unresolved issues regarding what constitutes the official record, and conflicts with the Supreme Court's policy limiting audio and video coverage of trial court proceedings. MINN. GEN. R. PRAC. 4; MN. CODE JUD. CONDUCT CANON 3A(11); MINN. S. CT. ORDER, IN RE MODIFICATION OF SECTION 3A(10) OF THE MINNESOTA CODE OF JUDICIAL CONDUCT, # C7-81-300 (filed Jan. 11, 1996) (reinstating experimental program for audio and video coverage

of trial court proceedings). Although the conflict might be partially reduced by permitting public access but no public dissemination of copies of the recordings, this conflicts with the policy in Rule 2 permitting both inspection and copying. Rule 4, subd. 3, provides a straightforward resolution of all conflicts and it includes controlled playback access in appropriate circumstances.

Rule 4, subd. 3(a), recognizes that the transcript is the official record and that recordings are intended to support the creation of that record. Use of recordings is limited as provided in the rule or in other rules or orders promulgated by the Supreme Court.

Rule 4, subd. 3(b), recognizes that courtroom microphones may inadvertently pick up conversation that is intended to be protected by the attorney client privilege or is simply intended to be private conversation. The rule does not permit public access to portions of recordings that contain this material.

The controlled playback access in Rule 4, subd. 3(c), reflects what typically occurs in practice. To the extent that any abuses occur, actions of the court in controlling playback are subject to appellate review. *See, e.g., Blanchard v. Golden*, No. C8-95-2390 (Minn. App. filed Feb. 29, 1996) (unpublished interim order) (denying appellant's motion for correction of transcript where trial court provided opportunity to listen to backup tape).

Rule 4, subd. 3(e), reflects the requirement of MINN. GEN. R. PRAC. 504(c) which provides that conciliation court proceedings and trials shall not be reported. Judges presiding in conciliation court often use recordings to supplement their notes. Access to the recordings of conciliation court proceedings, hearings or trials is treated in the same manner as judge's notes under Rule 4, subd. 1(c), and their playback is subject to the control of the court.

Rule 4, subd. 3, does not address the procedures for requesting and obtaining transcripts, or for correcting or modifying the same. These matters are addressed in other appropriate rules and statutes. *See, e.g., MINN. R. CIV. APP. P. 110; MINN. R. CRIM. P. 28.02, subds. 8, 9; MINN. STAT. §§ 486.02-.03 (2006).*

Rule 5. Accessibility to Administrative Records.

All administrative records are accessible to the public except the following:

Subd. 1. Personnel Records. Records on individuals collected because the individual is or was an employee of, performs services on a voluntary basis for, or acts as an independent contractor with the judicial branch, provided, however, that the following information is accessible to the public: name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer-paid fringe benefits; the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary; job title and bargaining unit; job description; education and training background; previous work experience; date of first and last employment; the status of any complaints or charges against the employee, whether or not the complaint or charge resulted in a disciplinary action; the final disposition of any disciplinary action and supporting documentation, excluding information that would identify confidential sources who are employees of the judicial branch; the terms of any agreement settling any dispute arising out of an employment relationship; work location; a work telephone number; honors and awards received; payroll time sheets or other comparable data, that are only used to account for employee's work time for payroll purposes, to the extent that they do not reveal the employee's reasons for the use of sick or other medical leave or other information that is not public; and county of residence.

- (a) For purposes of this subdivision, a final disposition occurs when the person or group that is authorized to take the disciplinary action makes its final decision about the disciplinary action, regardless of the possibility of any later court proceedings or other proceedings. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the person, group, or arbitrator that is authorized to take disciplinary action.
- (b) Notwithstanding contrary provisions in these rules, a photograph of a current or former employee may be displayed to a prospective witness as part of an investigation of any complaint or charge against the employee.
- (c) Notwithstanding contrary provisions in these rules, if an appointed officer resigns or is terminated from employment while the complaint or charge is pending, all information relating to the complaint or charge is public, unless access to the information would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "appointed officer" means the clerk of the appellate courts, the state court administrator, a judicial district administrator, and a court administrator of district court.

- (d) Records under subdivision 1 may be disseminated to a law enforcement agency for the purpose of reporting a crime or alleged crime committed by an employee, volunteer or independent contractor, or for the purpose of assisting law enforcement in the investigation of a crime committed or allegedly committed by an employee, volunteer, or independent contractor.
- (e) Records under subdivision 1 must be disclosed to the Department of Employment and Economic Development for the purpose of administration of an unemployment benefits program under state law including without limitation the investigation, prosecution, settlement or defense of a claim related thereto.
- (f) Records under subdivision 1 must be disclosed to the Department of Employee Relations and the Department of Labor and Industry for the purpose of administering workers compensation programs including without limitation the investigation, prosecution, settlement or defense of a claim related thereto.
- (g) Records under subdivision 1 may be disseminated to labor organizations to the extent that the custodian determines that the dissemination is necessary to conduct elections, notify employees of fair share fee assessments, and implement the provisions of MINN. STAT. §§ 179 and 179A. Records under subdivision 1 shall be disseminated to labor organizations and to the Bureau of Mediation Services to the extent the dissemination is ordered or authorized by the Commissioner of the Bureau of Mediation Services.
- (h) If the custodian determines that the release of records under subdivision 1 is necessary to protect an employee, volunteer or independent contractor from harm to self or to protect another person who may be harmed by the employee, volunteer, or independent contractor, records that are relevant to the concerns for safety may be released to: the person who may be harmed and to that person's attorney when the records are relevant to obtaining a restraining order; to a prepetition screening team conducting an investigation under section 253B.07, subdivision 1; or to a court, law enforcement agency, or prosecuting authority. If the person who may be harmed or that person's attorney receives records under this subdivision, the records may be used or released further only to the extent necessary to protect that person from harm.

Subd. 2. Personnel Related Records

- (a) *Collective Bargaining Planning Records.* Management positions on economic and noneconomic labor relations items that have not been presented during the collective bargaining process or interest arbitration, including information specifically collected or created to prepare the management position.
- (b) *Applicant Records.* Records on individuals collected because the individual is or was an applicant for employment with the judicial branch, provided, however, that the following information is accessible to the public: veteran status; relevant test scores; rank on eligible lists; job history; education and training; work availability; and, after the applicant has been certified by the appointing authority to be a finalist for a position in public employment, the name of the applicant.

Subd. 3. Correspondence. Correspondence between individuals and judges; but such correspondence may be made accessible to the public by the sender or the recipient.

Subd. 4. Schedules and Assignments. The identity of appellate judges or justices assigned to or participating in the preparation of a written decision or opinion, until the decision or opinion is released.

Subd. 5. Security Records. Records that would be likely to substantially jeopardize the security of information, possessions, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal disclosure, trespass, or physical injury, such as security plans or codes.

Subd. 6. State Owned or Licensed Trade Secrets. Records revealing a common law trade secret or a trade secret as defined in MINN. STAT. § 325C.01 that is owned or licensed by the state and is maintained by a court or court administrator; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

Subd. 7. Copyrighted Material. Computer programs and related records, including but not limited to technical and user manuals, for which the judicial branch has acquired or is in the process of acquiring, a patent or copyright, or a license to use the same; provided, that the following are accessible to the public: the existence of any contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work.

Subd. 8. Competitive Bidding Records.

- (a) *Sealed Bids.* Sealed bids and responses to judicial branch bid or procurement requests or solicitations, including the number of bids

or responses received, before the opening of the bids or responses at the time specified in the judicial branch request or solicitation.

- (b) *Submission of Trade Secret.* Except as provided in subparagraph (c) of this subdivision, a common law trade secret or a trade secret as defined in MINN. STAT. § 325C.01 that is required to be submitted in accordance with a judicial branch bid or procurement request provided that:
- (1) the submitting party marks the document(s) containing the trade secret "CONFIDENTIAL;"
 - (2) the submitting party submits as part of the bid or response a written request to maintain confidentiality; and
 - (3) the trade secret information is not publicly available, already in the possession of the judicial branch, or known to or ascertainable by the judicial branch from third parties.
- (c) *Contract.* The existence of any resulting contract, the parties to the contract, and the material terms of the contract, including price, projected term, and scope of work, shall be accessible to the public.

Subd. 9. Compliance Records. Records and reports and drafts thereof maintained by the judicial branch information systems for purposes of compliance with MINN. STAT. § 546.27.

Subd. 10. Library Records. Records maintained by the State Law Library which: (a) link a patron's name with materials requested or borrowed by the patron or which links a patron's name with a specific subject about which the patron has requested information or materials; or (b) are submitted by a person applying for a borrower's card, other than the name of the person to whom a borrower's card has been issued.

Subd. 11. Passport Records. Passport applications and accompanying documents received by court administrators, and lists of applications that have been transmitted to the United States Passport Services Office.

Subd. 12. Attorney Work Product. The work product of any attorney or law clerk employed by or representing the judicial branch that is produced in the regular course of business or representation of the judicial branch.

Subd. 13. Judicial Branch Internal Audit Records. Information, notes, and preliminary drafts of reports relating to an audit or investigation, created, collected, and maintained by the internal auditor or audit committee of the judicial branch, or persons performing audits for the judicial branch; provided that upon the release of a final audit report by the judicial branch auditor or if the audit or investigation is no longer being

pursued actively, such audit records shall be accessible to the public except as otherwise provided by applicable law or rule.

- (a) *Auditor access; personnel records.* This subdivision does not limit in any way disclosures required under MINN. STAT. §§ 609.456 or 3.978, or public access to records classified as accessible to the public by Rule 5, subd. 1.
- (b) *Confidential sources.* Records on an individual who supplies information for an audit or investigation, that could reasonably be used to determine the individual's identity, are not accessible to the public if the information supplied was needed for an audit or investigation and would not have been provided to the internal auditor or person performing audits without an assurance to the individual that the individual's identity would remain not accessible to the public.
- (c) *Access to records by audit committee members.* Members of an audit committee have access to records that are collected or used by the judicial branch auditor and that have been classified as not accessible to the public only as authorized by resolution of the committee.
- (d) *Unreleased records.* Records related to an audit but not released in a final audit report and that the judicial branch auditor reasonably believes will be used in litigation are not accessible to the public until the litigation has been completed or is no longer being actively pursued.
- (e) *Review of Records.* If, before releasing a final audit report, the judicial branch auditor provides a person with records relating to the audit for the purpose of review and verification of the records, that person shall not disclose the records to anyone else unless and until the information becomes accessible to the public under these rules.
- (f) *Duties Concerning Misuse of Public Money or Other Resources.* If the judicial branch auditor's examination discloses misuse of public money or other public resources, the judicial branch auditor may disclose records relating to the examination to the attorney general to assist in the recovery of money and other resources and to the appropriate prosecuting authority to assist in the prosecution of criminal proceedings as the evidence may warrant.

Subd. 14. Other. Matters that are made inaccessible to the public under:

- (a) state statute, other than MINN. STAT. ch. 13, or
- (b) federal law; or
- (c) rule or order of the Supreme Court.

The state court administrator shall maintain, publish and periodically update a partial list of administrative records that are not accessible to the public.

Advisory Committee Comment-2007

The 2005 changes to Rule 5, subd. 1, are based on policy applicable to employee records held by the executive branch. MINN. STAT. § 13.43 (2004). There are, however, some subtle differences from executive branch policy, including the fact that judicial employee discipline is governed by a separate set of procedures and access provisions. *See* RULES OF THE BOARD ON JUDICIAL STANDARDS. In addition, judicial branch e-mail addresses are not accessible to the public unless individual employees authorize disclosure. Limiting access helps minimize the potential for ex parte contact prohibited by law. *See* MINN. CODE JUD. CONDUCT, CANON § 3A(7).

The 2007 addition of Rule 5, subd. 2(a), is based on policy applicable to collective bargaining records held by the executive branch. MINN. STAT. § 13.37, subd. 1(c) (2006).

The 2005 changes to Rule 5, subs. 6, 7 and 8, reflect the existing practice. Trade secrets and copyrights are subject to state and federal law, and the specifics are generally clarified in procurement documents, from requests for bids to contracts, in the manner set forth in the rule. Once a vendor enters into a contract, the basic parameters of the contract relationship become accessible under Rule 5, subd. 1. These revisions provide notice to potential vendors of what to expect and are intended to ensure consistent results.

The 2005 changes to Rule 5, subd. 10, regarding State Law Library records provides consistent protection to information held by the library.

The 2005 addition of Rule 5, subd. 13, is based on policy applicable to executive branch audit records. *See* MINN. STAT. §§ 3.979, 13.392 (2004). An internal audit function is being implemented by the judicial branch as part of the transition to state funding of district court administrative costs. The scope of the audit function is currently limited to financial audits but program audits could be added later. Subdivision 13 encompasses both types of audits.

Subdivision 13 is not intended to provide a safe harbor to deny public access to records that would otherwise be accessible to the public. If an audit involves personnel records, for example, to the extent that those personnel records are accessible to the public in the hands of a supervisor or human resources office, they will continue to be accessible only from that source and would not be accessible from the auditor until a final audit report is released. Conversely, to the extent that any personnel records are not accessible to the public from the supervisor or human resources office, the records would remain off limits to the public even after the auditor releases a final report. Subdivision 13, clause (a) includes an express reference to personnel records under Rule 5, subd. 1, as audits often involve personnel records.

Implementation of the audit function includes establishment of an audit committee to provide oversight and advice to the auditor. Although the structure of that committee has not yet been finalized, subdivision 13(c) assumes that such a committee would exist and would have some access to the auditor's records via formal resolutions adopted by the committee. The requirement of a resolution prevents individual audit committee members from independently obtaining access to the auditor's records and places consistent limitations on re-disclosure to the extent that audit committee members obtain such records.

A confidential source clause is included under subd. 13(b) to protect individuals who want to cooperate with an audit or investigation. Subdivision 13(d) addresses unreleased records when litigation is a concern. Subdivision 13(e) allows the auditor to control the distribution of draft reports or record summaries to a specified "person." This process allows for verification of facts before the release of the final audit report.

The 2005 substitution of a periodically updated list for the former Appendix C in Rule 5, subd. 14 recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify administrative records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix C became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

Advisory Committee Comment-2008

The 2008 addition of subd. 13(f) is based on policy applicable to records of the legislative auditor. *See* MINN. STAT. § 3.975 (2006) (legislative auditor). To the extent that misuse is uncovered as part of a personnel investigation, Rule 5, subd. 1(d), authorizes disclosure of the pertinent personnel records to law enforcement. Subd. 13(f) extends the same authority to the judicial branch auditor, who may be in a better position to report and assist law enforcement, particularly when misuse occurs in a court office that does not have the staff or technical ability to thoroughly investigate and report on the matter.

Rule 6. Vital Statistics Records.

Vital statistics records held by any court or court administrator shall be accessible to the public except as provided by statute. The state court administrator shall maintain, publish and periodically update a partial list of vital statistics records that are not accessible to the public.

Advisory Committee Comment –2005

The 2005 substitution of a periodically updated list for the former Appendix D in Rule 6 recognizes that the state court administrator maintains an updated list of statutes (and court rules and other legal authority) that identify vital statistics records that are not accessible to the public. The list is updated as necessary, whereas the former Appendix D became obsolete soon after it was first published. It is contemplated that the list will be posted on the main state court website (www.courts.state.mn.us) for access by the general public.

Rule 7. Procedure for Requesting Record Access or Case Record Correction.

Subd. 1. To Whom Request is Made. A request to inspect or obtain copies of records that are accessible to the public shall be made to the custodian and may be made orally or in writing. The custodian may insist on a written request only if the complexity of the request or the volume of records requested would jeopardize the efficiency and accuracy of the response to an oral request. All requests must include sufficient information to reasonably identify the data being sought, but the requesting person shall not be required to have detailed knowledge of the agency's filing system or procedures, nor shall the requesting person be required to disclose the purpose of the request.

Subd. 2. Response. The custodian shall respond to the request as promptly as practical.

Subd. 3. Delay or Denial; Explanation. If a request cannot be granted promptly, or at all, an explanation shall be given to the requesting person as soon as possible. The requesting person has the right to at least the following information: the nature of any problem preventing access, and the specific statute, federal law, or court or administrative rule that is the basis of the denial. The explanation shall be in writing if desired by the requesting person. Appeals are governed by Rule 9 of these rules.

Subd. 4. Referral in Certain Cases. If the custodian is uncertain of the status of a record, the custodian may ask for a status determination from the state court administrator. The state court administrator shall promptly make a determination and forward it either orally or in writing to the custodian.

Subd. 5. Correction of Case Records. An individual who believes that a case record contains clerical errors may submit a written request for correction to the court administrator of the court that maintains the record, with a copy served on all parties to the case. Such request shall be no longer than two pages in length. The court administrator shall promptly do one of the following: (a) correct a clerical error for which no court order is required; (b) forward the request to the court to be considered informally; or (c) forward the request to the party or participant who submitted the record containing the alleged clerical error who in turn may seek appropriate relief from the court. Upon forwarding under clause (b), the court may either correct the error on its own initiative or direct that the request will only be considered pursuant to a motion requesting correction. The court's directive may also establish appropriate notice requirements for a motion. The request for correction authorized in this subdivision need not be exhausted before other relief is requested.

Advisory Committee Comment-2005

The 2005 addition in Rule 7, subd. 3, of a cross reference to appeals under Rule 9 is added as a convenience to counterbalance the growing complexity of these rules. The 2005 deletion of the phrase "by phone or by mail" in Rule 7, subd. 4, recognizes that a determination is often issued in electronic format, such as e-mail or facsimile transmission.

The 2005 addition of subdivision 5 regarding correction of case records is based in part on MINN. GEN. R. PRAC. 115.11 (motions to reconsider). In the context of Internet publication of court records, a streamlined process is particularly appropriate for clerical-type errors, and should allow for prompt resolution of oversights and omissions. For example, to the extent that the register of actions, court calendar, or index in a court's case management system incorrectly incorporates provisions of a court order, judgment, or pleading, such data entry inaccuracies are typically corrected without a court order by court administration staff promptly upon learning of the inaccuracy.

A party is not required to utilize the procedure set forth in subdivision 5 before making a formal motion for correction of a case record in the first instance. Alleged inaccuracies in orders and judgments themselves must be brought to the attention of the court in accordance with procedures established for that purpose. Clerical errors in judgments and orders typically can be addressed by motion. *See, e.g.*, MINN. GEN. R. PRAC. 375 (expedited child support process: clerical mistakes, typographical errors, and errors in mathematical calculations in orders ...arising from oversight or omission may be corrected by the child support magistrate at any time upon the magistrate's own initiative or upon motion of any party after notice to all parties); MINN. R. CIV. P. 60.01 (civil cases: clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party after such notice, if any, the court orders); MINN. R. CRIM. P. 27.03, subds. 8, 9 (criminal cases: clerical mistakes in judgments, orders, or other parts of the record or errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders; the court may at any time correct a sentence not authorized by law); MINN. R. JUV. PROT. P. 46.01 (juvenile protection cases: clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time upon its own initiative or upon motion of any party and after such notice, if any, as the court orders; during the pendency of an appeal, such mistakes can be corrected with leave of the appellate court); MINN. R. CIV. APP. P. 110.05 (differences as to whether the transcript or other parts of the record on appeal truly disclose what occurred in the trial court are to be submitted to and determined by the trial court; material omissions or misstatements may be resolved by the trial court, stipulation of the parties, or by the appellate court on motion by a party or on its own initiative).

Alleged inaccuracies in the records submitted by the parties and other participants in the litigation must also be brought to the attention of the court through existing procedures for introducing and challenging evidence. These procedures typically have deadlines associated with the progress of the case and failure to act in a timely fashion may preclude relief.

Rule 8. Inspection, Copying, Bulk Distribution and Remote Access.

Subd. 1. Access to Original Records. Upon request to a custodian, a person shall be allowed to inspect or to obtain copies of original versions of records that are accessible to the public in the place where such records are normally kept, during regular working hours. However, copies, edited copies, reasonable facsimiles or other appropriate formats may be produced for inspection if access to the original records would result in disclosure of

information to which access is not permitted; provide remote or bulk access that is not permitted under this rule; jeopardize the security of the records; or prove otherwise impractical. Unless expressly allowed by the custodian, records shall not be removed from the area where they are normally kept.

Subd. 2. Remote Access to Electronic Records.

- (a) *Remotely Accessible Electronic Records.* Except as otherwise provided in Rule 4 and parts (b) and (c) of this subdivision 2, a custodian that maintains the following electronic case records must provide remote electronic access to those records to the extent that the custodian has the resources and technical capacity to do so.
- (1) register of actions (a register or list of the title, origination, activities, proceedings and filings in each case [MINN. STAT. § 485.07(1)]);
 - (2) calendars (lists or searchable compilations of the cases to be heard or tried at a particular court house or court division [MINN. STAT. § 485.11]);
 - (3) indexes (alphabetical lists or searchable compilations for plaintiffs and for defendants for all cases including the names of the parties, date commenced, case file number, and such other data as the court directs [MINN. STAT. § 485.08]);
 - (4) judgment docket (alphabetical list or searchable compilation including name of each judgment debtor, amount of the judgment, and precise time of its entry [MINN. STAT. § 485.07(3)]);
 - (5) judgments, orders, appellate opinions, and notices prepared by the court.

All other electronic case records that are accessible to the public under Rule 4, and that have been in existence for not more than ninety (90) years, shall not be made remotely accessible but shall be made accessible in either electronic or in paper form at the court facility.

- (b) *Certain Data Not To Be Disclosed.* Notwithstanding Rule 8, subd. 2 (a), the public shall not have remote access to the following data fields in the register of actions, calendars, index, and judgment docket, with regard to parties or their family members, jurors,

witnesses (other than expert witnesses), or victims of a criminal or delinquent act:

- (1) social security numbers and employer identification numbers;
- (2) street addresses except that street addresses of parties may be made available by access agreement in a form prepared by the state court administrator and approved by the Judicial Council;
- (3) telephone numbers;
- (4) financial account numbers; and
- (5) in the case of a juror, witness, or victim of a criminal or delinquent act, information that either specifically identifies the individual or from which the identity of the individual could be ascertained.

Without limiting any other applicable laws or court rules, and in order to address privacy concerns created by remote access, it is recommended that court personnel preparing judgments, orders, appellate opinions and notices limit the disclosure of items (2), (3) and (5) above to what is necessary and relevant for the purposes of the document. Under MINN. GEN. R. PRAC. 11, inclusion of items (1) and (4) in judgments, orders, appellate opinions and notices is to be made using the confidential information form 11.1. Disclosure of juror information is also subject to MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd. 2, and MINN. R. CIV. P. 47.01.

- (c) *Preconviction Criminal Records.* The Information Technology Division of the Supreme Court shall make reasonable efforts and expend reasonable and proportionate resources to prevent preconviction criminal records and preconviction or preadjudication juvenile records from being electronically searched by defendant name by the majority of known, mainstream automated tools, including but not limited to the court's own tools. A "preconviction criminal record" is a record, other than an appellate court record, for which there is no conviction as defined in MINN. STAT. § 609.02, subd. 5 (2004), on any of the charges. A "preconviction or preadjudication juvenile record" is a record, other than an appellate court record, for which there is no adjudication of delinquency, adjudication of traffic offender, or extended jurisdiction juvenile conviction as provided in the applicable Rules of Juvenile Delinquency Procedure and related Minnesota Statutes, on any of the charges. For purposes of this rule, an "appellate court record" means

the appellate court's opinions, orders, judgments, notices and case management system records, but not the trial court record related to an appeal.

- (d) *"Remotely Accessible" Defined.* "Remotely accessible" means that information in a court record can be electronically searched, inspected, or copied without the need to physically visit a court facility. The state court administrator may designate publicly-accessible facilities other than court facilities as official locations for public access to court records where records can be electronically searched, inspected or copied without the need to physically visit a court. This shall not be remote access for purposes of these rules.
- (e) *Exceptions.*
- (1) *Particular Case.* After notice to the parties and an opportunity to be heard, the presiding judge may by order direct the court administrator to provide remote electronic access to records of a particular case that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.
 - (2) *Appellate Briefs.* The State Law Library may, to the extent that it has the resources and technical capacity to do so, provide remote access to appellate court briefs provided that the following are redacted: appendices to briefs, data listed in Rule 8, subd. 2(b) of these rules, and other records that are not accessible to the public.
 - (3) *E-mail and Facsimile Transmission.* Any record custodian may, in the custodian's discretion and subject to applicable fees, provide public access by e-mail or facsimile transmission to publicly accessible records that would not otherwise be remotely accessible under parts (a), (b) or (c) of this rule.
 - (4) *E-filed Records.* Documents electronically filed or served using the E-Filing System designated by the state court administrator shall be remotely accessible to the person filing or serving them and the recipient of them, on the E-Filing System for the period designated by the court, and on the court's case management system to the extent technically feasible.

- (f) *Delayed Application.* To reduce the burden and costs of modifying existing case management systems scheduled to be replaced by MNCIS, the remote access provisions of Rule 8, subd. 2, shall only apply to the individual district courts to the extent that they have transferred case management to MNCIS, provided that: (1) such courts shall not modify the remote access to case records that they are providing as of the issuance of this order other than to comply with any other rules or laws limiting access to records or in preparation of compliance with Rule 8, subd. 2; and (2) such courts shall comply with Rule 8, subd. 3, as if Rule 8, subd. 2, were in effect.

Subd. 3. Bulk Distribution of Court Records. A custodian shall, to the extent that the custodian has the resources and technical capacity to do so, provide bulk distribution of its electronic case records as follows:

- (a) Preconviction criminal records and preconviction or preadjudication juvenile records shall be provided only to an individual or entity which enters into an agreement in the form approved by the state court administrator providing that the individual or entity will not disclose or disseminate the data in a manner that identifies specific individuals who are the subject of such data. If the state court administrator determines that a bulk data recipient has utilized data in a manner inconsistent with such agreement, the state court administrator shall not allow further release of bulk data to that individual or entity except upon order of a court.
- (b) All other electronic case records that are remotely accessible to the public under Rule 8, subd. 2 shall be provided to any individual or entity.

Subd. 4. Criminal Justice and Other Government Agencies.

- (a) *Authorized by Law.* Criminal justice agencies, including public defense agencies, and other state or local government agencies may obtain remote and bulk case record access where access to the records in any format by such agency is authorized by law.
- (b) *Discretionary Authorization for Statewide Access to Certain Case Records.* Except with respect to race data under Rule 4, subd. 1(e), Minnesota County attorneys, Minnesota state public defenders, Minnesota state and local corrections agencies, and Minnesota state and local social services agencies may obtain remote and bulk access to statewide case records in MNCIS that are not accessible to the

public and are classified as Civil Domestic Violence, Juvenile, and Parent/Child Relationship case records, if the recipient of the records:

- (1) executes a nondisclosure agreement in form and content approved by the state court administrator; and
- (2) the custodian of the records reasonably determines that the recipient has a legitimate business need for the records and disclosure to the recipient will not compromise the confidentiality of any of the records.

Subd. 5. Access to Certain Evidence. Except where access is restricted by court order or the evidence is no longer retained by the court under a court rule, order or retention schedule, documents and physical objects admitted into evidence in a proceeding that is open to the public shall be available for public inspection under such conditions as the court administrator may deem appropriate to protect the security of the evidence.

Subd. 6. Fees. When copies are requested, the custodian may charge the copy fee established by statute but, unless permitted by statute, the custodian shall not require a person to pay a fee to inspect a record. When a request involves any person's receipt of copies of publicly accessible information that has commercial value and is an entire formula, pattern, compilation, program, device, method, technique, process, data base, or system developed with a significant expenditure of public funds by the judicial branch, the custodian may charge a reasonable fee for the information in addition to costs of making, certifying, and compiling the copies. The custodian may grant a person's request to permit the person to make copies, and may specify the condition under which this copying will be permitted.

Advisory Committee Comment-2005

The 2005 addition of a new Rule 8, subd. 2, on remote access establishes a distinction between public access at a court facility and remote access over the Internet. Subdivision 2 attempts to take a measured step into Internet access that provides the best chance of successful implementation given current technology and competing interests at stake. The rule limits Internet access to records that are created by the courts as this is the only practical method of ensuring that necessary redaction will occur. Redaction is necessary to prevent Internet access to clear identity theft risks such as social security numbers and financial account numbers. The rule recognizes a privacy concern with respect to remote access to telephone and street addresses, or the identities of witnesses or jurors or crime victims. The identity of victims of a criminal or delinquent act are already accorded confidentiality in certain contexts [MINN. STAT. § 609.3471 (2004) (victims of criminal sexual conduct)], and the difficulty of distinguishing such contexts from all others even in a data

warehouse environment may establish practical barriers to Internet access.

Internet access to preconviction criminal records may have significant social and racial implications, and the requirements of Rule 8, subd. 2(c) are intended to minimize the potential impact on persons of color who may be disproportionately represented in criminal cases, including dismissals. The rule contemplates the use of log-ins and other technology that require human interaction to prevent automated information harvesting by software programs. One such technology is referred to as a "Turing test" named after British mathematician Alan Turing. The "test" consists of a small distorted picture of a word and if the viewer can correctly type in the word, access or log in to the system is granted. Presently, software programs do not read clearly enough to identify such pictures. The rule contemplates that the courts will commit resources to staying ahead of technology developments and implementing necessary new barriers to data harvesting off the courts' web site, where feasible.

Some district courts currently allow public access to records of other courts within their district through any public access terminal located at a court facility in that district. The definition of "remote access" has been drafted to accommodate this practice. The scope of the definition allows statewide access to the records in Rule 8, subd. 2, from any single courthouse terminal in the state, which is the current design of the new district court computer system referred to as MNCIS.

The exception in Rule 8, subd. 2(e), for allowing remote access to additional documents, is intended for individual cases when Internet access to documents will significantly reduce the administrative burdens associated with responding to multiple or voluminous access requests. Examples include high-volume or high-profile cases. The exception is intended to apply to a specific case and does not authorize a standing order that would otherwise swallow the rule.

The 2005 addition of a new Rule 8, subd. 3, on bulk distribution, complements the remote access established under the preceding subdivision. Courts have been providing this type of bulk data to the public for the past ten years, although distribution has mainly been limited to noncommercial entities and the media. The bulk data would not include the data set forth in Rule 8, subd. 2(b), or any case records that are not accessible to the public. The bulk data accessible to the public would, however, include preconviction criminal records as long as the individual or entity requesting the data enters into an agreement in the form approved by the state court administrator that provides that the individual or entity will not disclose or

disseminate the data in a manner that identifies specific individuals who are the subject of such data.

The 2005 addition of new Rule 8, subd. 4(a), regarding criminal justice and other governmental agencies, recognizes that the courts are required to report certain information to other agencies and that the courts are participating in integration efforts (e.g., CrIMNet) with other agencies. The access is provided remotely or via regular (e.g., nightly or even annually) bulk data exchanges. The provisions on remote and bulk record access are not intended to affect these interagency disclosures. Additional discretionary disclosures are authorized under subd. 4(b).

The 2005 changes to Rule 8, subd. 5, regarding access to certain evidence, are intended to address the situation in which the provisions appear to completely cut off public access to a particular document or parts of it even when the item is formally admitted into evidence (*i.e.*, marked as an exhibit and the record indicates that its admission was approved by the court) in a publicly accessible court proceeding. *See, e.g.*, MINN. STAT. § 518.146 (2004) (prohibiting public access to, among other things, tax returns submitted in dissolution cases). The process for formally admitting evidence provides an opportunity to address privacy interests affected by an evidentiary item. Formal admission into evidence has been the standard for determining when most court services records become accessible to the public under Rule 4, subd. 1(b), and this should apply across the board to documents that are admitted into evidence.

The changes also recognize that evidentiary items may be subject to protective orders or retention schedules or other orders. As indicated in Rule 4, subd. 2, and its accompanying advisory committee comment, the procedures for obtaining a protective order are addressed in other rules. Similarly, as indicated in Rule 1, the disposition, retention and return of records and objects is addressed elsewhere.

Advisory Committee Comment-2007

The 2007 modifications to Rule 8, subd. 2(b), recognize the feasibility of controlling remote access to identifiers in data fields and the impracticability of controlling them in text fields such as documents. Data fields in court computer systems are designed to isolate specific data elements such as social security numbers, addresses, and names of victims. Access to these isolated elements can be systematically controlled by proper computer programming. Identifiers that appear in text fields in documents are more difficult to isolate. In addition, certain documents completed by court personnel occasionally require the insertion of names, addresses and/or telephone numbers of parties, victims,

witnesses or jurors. Examples include but are not limited to appellate opinions where victim or witness names may be necessary for purposes of clarity or comprehensibility, “no-contact” orders that require identification of victims or locations for purposes of enforceability, orders directing seizure of property, and various notices issued by the court.

The use of the term “recommends” intentionally makes the last sentence of the rule hortatory in nature, and is designed to avoid creating a basis for appeals. The reference to other applicable laws and rules recognizes that there are particular provisions that may control the disclosure of certain information in certain documents. For example, the disclosure of restricted identifiers (which includes social security numbers, employer identification numbers, and financial account numbers) on judgments, orders, decisions and notices is governed by MINN. GEN. R. PRAC. 11. Rules governing juror-related records include MINN. GEN. R. PRAC. 814, MINN. R. CRIM. P. 26.02, subd. 2, and MINN. R. CIV. P. 47.01.

The 2007 modifications to Rule 8, subd. 2(c), recognize that criminal cases often involve a conviction on less than all counts charged, and that appellate records that have long been remotely accessible have included pretrial and preconviction appeals. The clarification regarding automated tools recognizes that the participant index on the court’s case management system is included in the scope of the limits on remote searching of preconviction records.

The 2007 modification to Rule 8, subd. 2(d), authorizes the state court administrator to designate additional locations as court facilities for purposes of remote access. For example, a government service center, registrar of titles office or similar location that is not in the same building as the court’s offices could be designated as a location where the public could have access to court records without the limitations on remote access. In some counties, these types of offices are located in the courthouse and in other counties they are in a separate building. This change allows such offices to provide the same level of access to court records regardless of where they are located.

The 2007 addition of Rule 8, subd. 2(e)(3), is intended to reinstate the routine disclosure, by facsimile transmission or e-mail, of criminal complaints, pleadings, orders, disposition bulletins, and other documents to the general public. These disclosures were unintentionally cut off by the definition of remote access under Rule 8, subd. 2(d), which technically includes facsimile and e-mail transmissions. Limiting disclosures to the discretion of the court administrator relies on the common sense of court staff to ensure that this exception does not swallow the limits on remote and bulk data access. The

rule also recognizes that copy fees may apply. Some but not all courts are able to process electronic (i.e., credit card) fee payments.

ACCESS RULE 8, subd. 4(b), authorizes disclosure of certain records to executive branch entities pursuant to a nondisclosure agreement. Minnesota Statutes § 13.03, subd. 4(a) (2006), provides a basis for an executive branch entity to comply with the nondisclosure requirements. It is recommended that this basis be expressly recognized in the nondisclosure agreement and that the agreement limit the executive branch agency's use of the nonpublicly-accessible court records to that necessary to carry out its duties as required by law in connection with any civil, criminal, administrative, or arbitral proceeding in any federal or state court, or local court or agency or before any self-regulated body.

Advisory Committee Comment-2008

The 2008 modifications to Rule 8, subd. 2(a), recognize that privacy concerns in regard to remote access, such as identity theft, subside over time while the historical value of certain records may increase. The rule permits remote access to otherwise publicly accessible records as long as the records have been in existence for 90 years or more. This provision is based in part on the executive branch data practices policy of allowing broader access to records that are approximately a lifetime in age. See Minn. Stat. § 13.10, subd. 2 (2006) (private and confidential data on decedents becomes public when ten years have elapsed from the actual or presumed death of the individual and 30 years have elapsed from the creation of the data; "an individual is presumed to be dead if either 90 years elapsed since the creation of the data or 90 years have elapsed since the individual's birth, whichever is earlier, except that an individual is not presumed to be dead if readily available data indicate that the individual is still living").

The 2008 modifications to Rule 8, subds. 2(c) and 3, recognize that certain juvenile court records are accessible to the public and that the remote access policy for preconviction criminal records needs to be consistently applied in the juvenile context. There are both adjudications and convictions in the juvenile process. Delinquency adjudications are governed by MINN. R. JUV. DEL. P. 15.05, subd. 1(A), and MINN. STAT. § 260B.198, subd. 1 (Supp. 2007); traffic offender adjudications are governed by MINN. R. JUV. DEL. P. 17.09, subd. 2(B) and MINN. STAT. § 260B.225, subd. 9 (2006); and extended jurisdiction juvenile convictions are governed by MINN. R. JUV. DEL. P. 19.10, subd. 1(A) and MINN. STAT. § 260B.130, subd. 4 (2006). Juvenile records that are otherwise publicly accessible but have not reached the appropriate adjudication or conviction are not remotely accessible under Rule 8, subds. 2(c) and 3.

Advisory Committee Comment—2012 Amendment

The 2012 addition of Rule 8, subd. 2(e)(4), is intended to recognize that documents electronically filed with the courts or electronically served using the court's internet-accessible electronic filing and electronic service system can be made remotely accessible to the parties filing or serving the same and to the recipients of such service. This continues remote access that was established through the Judicial District E-Filing Pilot Project Provisions, adopted by the court on October 21, 2010, and amended on March 10, 2011. Those provisions are being replaced by permanent rules.

Rule 9. Appeal from Denial of Access.

If the custodian, other than a judge, denies a request to inspect records, the denial may be appealed in writing to the state court administrator. The state court administrator shall promptly make a determination and forward it in writing to the interested parties as soon as possible. This remedy need not be exhausted before other relief is sought.

Advisory Committee Comment-2005

The 2005 deletion of the phrase "by mail" in Rule 9 recognizes that a determination is often issued in electronic format, such as e-mail or facsimile transmission.

Rule 10. Contracting With Vendors for Information Technology Services.

If a court or court administrator contracts with a vendor to perform information technology related services for the judicial branch: (a) "court records" shall include all recorded information collected, created, received, maintained or disseminated by the vendor in the performance of such services, regardless of physical form or method of storage, excluding any vendor-owned or third-party-licensed intellectual property (trade secrets or copyrighted or patented materials) expressly identified as such in the contract; (b) the vendor shall not, unless expressly authorized in the contract, disclose to any third party court records that are inaccessible to the public under these rules; (c) unless assigned in the contract to the vendor in whole or in part, the court shall remain the custodian of all court records for the purpose of providing public access to publicly accessible court records in accordance with these rules, and the vendor shall provide the court with access to such records for the purpose of complying with the public access requirements of these rules.

Advisory Committee Comment-2005

The 2005 addition of Rule 10 is necessary to ensure the proper protection and use of court records when independent

contractors are used to perform information technology related services for the courts. Where the service involves coding, designing, or developing software or managing a software development project for a court or court administrator, the court or court administrator would typically retain all record custodian responsibilities under these rules and the contract would, among other things: (a) require the vendor to immediately notify the court or court administrator if the vendor receives a request for release of, or access to, court records; (b) prohibit the disclosure of court records that are inaccessible to the public under these rules; (c) specify the uses the vendor may make of the court records; (d) require the vendor to take all reasonable steps to ensure the confidentiality of the court records that are not accessible to the public, including advising all vendor employees who are permitted access to the records of the limitations on use and disclosure; (e) require the vendor, other than a state agency, to indemnify and hold the court or court administrator and its agents harmless from all violations of the contract; (f) provide the court or court administrator with an explicit right to injunctive relief without the necessity of showing actual harm for any violation or threatened violation of the contract; (g) be governed by Minnesota law, without giving effect to Minnesota's choice of law provisions; (h) include the consent of the vendor to the personal jurisdiction of the state and federal courts within Minnesota; and (i) require all disputes to be venued in a state or federal court situated within the state of Minnesota.

Rule 11. Immunity.

Absent willful or malicious conduct, the custodian of a record shall be immune from civil liability for conduct relating to the custodian's duties of providing access under these rules.

Advisory Committee Comment-2005

The 2005 addition of Rule 11 is intended to allow record custodians to promptly and effectively discharge their obligations under these rules without undue concern over liability for inadvertent errors. The burden of redacting each and every reference to specific pieces of information from voluminous records is a daunting task, and the threat of liability could turn even the more routine, daily access requests into lengthy processes involving nondisclosure/indemnity agreements. The court has established immunity for records custodians in other contexts. *See, e.g.,* R. BD. JUD. STDS. 3 (members of the Board on Judicial Standards are absolutely immune from suit for all conduct in the course of their official duties); R. LAWYERS PROF. RESP. 21(b) (Lawyers Professional Responsibility Board members, other panel members, District Committee members, the Director, and the

Director's staff, and those entering agreements with the Director's office to supervise probation are immune from suit for any conduct in the course of their official duties); MINN R. ADMISSION TO THE BAR 12.A. (the Board of Law Examiners and its members, employees and agents are immune from civil liability for conduct and communications relating to their duties under the Rules of Admission to the Bar or the Board's policies and procedures); MINN. R. BD. LEGAL CERT. 120 (the Board of Legal Certification and its members, employees, and agents are immune from civil liability for any acts conducted in the course of their official duties); MINN. R. CLIENT SEC. BD. 1.05 (the Client Security Board and its staff are absolutely immune from civil liability for all acts in the course of their official capacity). Rule 11 does not, however, avoid an administrative appeal of a denial of access under Rule 9, declaratory judgment, writ of mandamus, or other similar relief that may otherwise be available for a violation of these rules.

APPENDIX A

Boards and Commissions that are governed by independent rules promulgated by the Supreme Court include, but are not limited to, the following:

Lawyers Professional Responsibility Board
Lawyer Trust Account Board
Client Security Fund Board
State Board of Legal Certification
Board of Continuing Education
State Board of Law Examiners
State Bar Advisory Council
Board on Judicial Standards
Standing Committee on No Fault Arbitration
Legal Services Advisory Committee

EXHIBIT 18

Vernon's Annotated Missouri Rules
Supreme Court Rules
Supreme Court Operating Rules
Rule 2. Public Access to Records of the Judicial Department

Supreme Court Operating Rules Rule 2.02

2.02. General Policy

Currentness

Records of all courts are presumed to be open to any member of the public for purposes of inspection or copying during the regular business hours of the court having custody of the records. This policy does not apply to records that are confidential pursuant to statute, court rules, or court order; judicial or judicial staff work product; internal electronic mail; memoranda or drafts; or appellate judicial case assignments.

Records, information and services shall be provided at a time and in a manner that does not interfere with the regular business of the courts.

The clerk or court is not required to review the case document to confirm that the party has omitted personal information and shall not refuse to accept or file the document on that basis.

The responsibility for redacting personal information rests solely with counsel, the parties, or any other person preparing or filing the document. The clerk will not review each document for compliance with this policy.

Access to any Missouri judicial website, including but not limited to Case.net, by a site data scraper or any similar software intended to discover and extract data from a website through automated, repetitive querying for the purpose of collecting such data is expressly prohibited.

COR 2 imposes no obligation upon the judiciary to create a data element, make a data element available electronically, or produce non-standard reports.

Credits

(Adopted Aug. 24, 1998, eff. Oct. 1, 1998. Amended Feb. 22, 2000; Nov. 17, 2004, eff. Jan. 1, 2005; April 13, 2011, eff. Jan. 1, 2012.)

MO. S.Ct. Op. Rules Rule 2.02, MO R S.CT. OP. RULES Rule 2.02
Current with amendments received through 3/15/14

Vernon's Annotated Missouri Rules Supreme Court Rules Supreme Court Operating Rules Rule 2. Public Access to Records of the Judicial Department
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Supreme Court Operating Rules Rule 2.03

2.03. Definitions

Currentness

As used in this COR 2, the following terms mean:

- (a) "Administrative records," all records, including reports and correspondence, pertaining to the administration of the courts;
- (b) "Bulk distribution," the distribution of all, or a significant subset, of the information in court records, as is and without modification or compilation;
- (c) "Case records," all records relating to a specific case or controversy;
- (d) "Custodian of records," the person designated by the appointing authority as responsible for the safekeeping of any records held in the clerk's office;
- (e) "Compiled information," information that is derived from the selection, aggregation or reformulation by the court of some of the information from more than one individual court record, including statistical reports and information that is not already available in an existing record or report;
- (f) "Data element," information contained in a field in the computer database;
- (g) "Electronic records," digital records, whether created by data entry, electronic filing, or digital imaging;
- (h) "Person," any individual, nonprofit or profit corporation, partnership, sole proprietorship, or other type of business organization;
- (i) "Personnel records," all records relating to the employment of persons within the judiciary with the exception of name, position, and salary;
- (j) "Public" includes:
 - (1) Any person and any business or non-profit entity, organization, or association;

2.03. Definitions, MO R S.CT. OP. RULES Rule 2.03

- (2) Any governmental agency for which there is no existing policy defining the agency's access to court records;
- (3) Media organizations; and
- (4) Entities that gather and disseminate information for whatever reason, regardless of whether it is done with the intent of making a profit, and without distinction as to nature or extent of access.
- (k) "Public access" means that the public may inspect and obtain a copy of the information in a court record either by direct access in the court house or remote access over the Internet if and when it becomes available.
- (l) "Record," information produced or available to the court regardless of physical form or storage medium used.

Credits

(Adopted Aug. 24, 1998, eff. Oct. 1, 1998. Amended Feb. 22, 2000; Nov. 17, 2004, eff. Jan. 1, 2005; April 13, 2011, eff. Jan. 1, 2012.)

MO. S.Ct. Op. Rules Rule 2.03, MO R S.CT. OP. RULES Rule 2.03
Current with amendments received through 3/15/14

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EXHIBIT 19

West's Montana Code Annotated
The Constitution of the State of Montana (Refs & Annos)
Article II. Declaration of Rights

MT CONST Art. 2, § 9

Section 9. Right to know

Currentness

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Notes of Decisions (191)

MT CONST Art. 2, § 9, MT CONST Art. 2, § 9
Current through the 2012 general election.

End of Document

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EXHIBIT 20

West's Montana Code Annotated
Title 2. Government Structure and Administration
Chapter 6. Public Records
Part 1. Public Records Generally

MCA 2-6-101

2-6-101. Definitions

Currentness

(1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure;

(b) public records, kept in this state, of private writings, including electronic mail, except as provided in 22-1-1103 and 22-3-807 and except for records that are constitutionally protected from disclosure.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings, including electronic mail.

(4) All other writings are private.

Credits

Enacted Code of Civil Procedure 1895, §§ 3170, 3171, 3172, 3182; reenacted Revised Code 1907, §§ 7895, 7896, 7897, 7900; reenacted Revised Code of Montana 1921, §§ 10539, 10540, 10541, 10544; California Code of Civil Procedure §§ 1887, 1888, 1889, 1894; reenacted Revised Code of Montana 1935, §§ 10539, 10540, 10541, 10544; Revised Code of Montana 1947, 93-1001-1, 93-1001-2, 93-1001-3, 93-1001-6. Amended by Laws 1985, ch. 476, § 4; amended by Laws 1991, ch. 748, § 11; amended by Laws 1999, ch. 485, § 1; amended by Laws 2001, ch. 77, § 2.

Notes of Decisions (10)

MCA 2-6-101, MT ST 2-6-101

Statutes are current through the 2013 Session, and the 2012 general election.

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West's Montana Code Annotated
Title 2. Government Structure and Administration
Chapter 6. Public Records
Part 1. Public Records Generally

MCA 2-6-102

2-6-102. Citizens entitled to inspect and copy public writings

Currentness

(1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, students in a public school, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.

Credits

Enacted Code of Civil Procedure 1895, §§ 3180, 3181; reenacted Revised Code 1907, §§ 7898, 7899; reenacted Revised Code of Montana 1921, §§ 10542, 10543; California Code of Civil Procedure §§ 1892, 1893; reenacted Revised Code of Montana 1935, §§ 10542, 10543; Revised Code of Montana 1947, 93-1001-4, 93-1001-5. Amended by Laws 1985, ch. 476, § 5; amended by Laws 1991, ch. 748, § 12; amended by Laws 1999, ch. 485, § 2; amended by Laws 2001, ch. 77, § 3; amended by Laws 2013, ch. 364, § 1, eff. July 1, 2013.

Notes of Decisions (165)

MCA 2-6-102, MT ST 2-6-102

Statutes are current through the 2013 Session, and the 2012 general election.

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