

**PLEASE NOTE: Rule 1:38 has been revised.**

The version of Rule 1:38 attached to this pdf document has been superseded by the Supreme Court. The current version of Rule 1:38 is available at:

<http://www.judiciary.state.nj.us/rules/r1-38.htm>

Rule 1:38. PUBLIC ACCESS TO COURT RECORDS  
AND ADMINISTRATIVE RECORDS

1:38-1. Policy

Court records and administrative records as defined by R. 1:38-2 and R. 1:38-4 respectively and within the custody and control of the judiciary are open for public inspection and copying except as otherwise provided in this rule. Exceptions enumerated in this rule shall be narrowly construed in order to implement the policy of open access to records of the judiciary.

Note: New caption for Rule 1:38 adopted July 16, 2009 to be effective September 1, 2009. New Rule 1:38-1 adopted July 16, 2009 to be effective September 1, 2009.

1:38-2. Definition of Court Records

(a) "Court record" includes:

(1) any information maintained by a court in any form in connection with a case or judicial proceeding, including but not limited to pleadings, motions, briefs and their respective attachments, evidentiary exhibits, indices, calendars, and dockets;

(2) any order, judgment, opinion, or decree related to a judicial proceeding;

(3) any official transcript or recording of a public judicial proceeding, in any form;

(4) any information in a computerized case management system created or prepared by the court in connection with a case or judicial proceeding;

(5) any record made or maintained by a Surrogate as a judicial officer.

(b) "Court record" does not include:

(1) information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined by this rule;

(2) unfiled discovery materials in any action.

Note: New Rule 1:38-2 adopted July 16, 2009 to be effective September 1, 2009.

### 1:38-3. Court Records Excluded from Public Access

The following court records are excluded from public access:

(a) General.

Records required to be kept confidential by statute, rule, or prior case law consistent with this rule, unless otherwise ordered by a court.

These records remain confidential even when attached to a non-

confidential document.

(b) Internal Records.

(1) Notes, memoranda, draft opinions, or other working papers maintained in any form by or for the use of a justice, judge, or judiciary staff member in the course of performing official duties, except those notes, not otherwise excluded from public access under this rule, that are required by rule or law, e.g., R. 7:2-1(d), to be taken as part of the record of the proceeding;

(2) Records of consultative, advisory, or deliberative discussions pertaining to the rendering of decisions or the management of cases.

(c) Records of Criminal and Municipal Court Proceedings.

(1) Discovery materials provided to the Criminal Division Manager's office by the prosecutor pursuant to R. 3:9-1 and R. 3:13-3;

(2) Writs to produce prisoners pending execution of the writ;

(3) Indictments sealed pursuant to R. 3:6-8(a);

(4) Records relating to grand jury proceedings pursuant to R. 3:6-7 except as provided by R. 3:6-6(b) and R. 3:6-9(d);

(5) Records relating to participants in drug court programs and programs approved for operation under R. 3:28 (Pre-trial Intervention), and reports made for a court or prosecuting attorney pertaining to persons enrolled in or applications for enrollment in such programs, but not the fact of enrollment and the enrollment conditions imposed by the court;

(6) Victim statements unless placed on the record at a public proceeding;

(7) Expunged records pursuant to N.J.S.A. 2C:52-15;

(8) Reports of the Diagnostic Center to the extent provided under R. 3:21-3;

(9) Records relating to child victims of sexual assault or abuse pursuant to N.J.S.A. 2A:82-46;

(10) Search warrants pursuant to Rule 3:5-4 and the affidavit or testimony upon which a warrant is based, except as provided in Rules 3:5-6(c) and 3:13-3;

(11) Documents, records and transcripts related to proceedings and hearings required by the Supreme Court pursuant to Doe v. Poritz, 142 N.J. 1, 39 (1995), or subsequent orders of the Court.

(d) Records of Family Part Proceedings.

(1) Family Case Information Statements required by R. 5:5-2 including all attachments;

(2) Confidential Litigant Information Sheets pursuant to R. 5:4-2(g);

(3) Medical, psychiatric, psychological, and alcohol and drug dependency records, reports, and evaluations in matters related to child support, child custody, or parenting time determinations;

(4) Documents, records and transcripts related to proceedings and hearings required by the Supreme Court pursuant to Doe v. Poritz, 142 N.J. 1, 39 (1995), or subsequent orders of the Court;

(5) Juvenile delinquency records and reports pursuant to R. 5:19-2 and N.J.S.A. 2A:4A-60;

(6) Records of Juvenile Conference Committees to the extent provided under R. 5:25-1(e);

(7) Expunged juvenile records pursuant to N.J.S.A. 2A:4A-62f and 2C:52-15;

(8) Sealed juvenile records pursuant to N.J.S.A. 2A:4A-62;

(9) Domestic violence records and reports pursuant to N.J.S.A. 2C:25-33;

(10) Names and addresses of victims or alleged victims of domestic violence pursuant to N.J.S.A. 2C:25-26c, or sexual offenses pursuant to N.J.S.A. 2C:14-12c;

(11) Records relating to child victims of sexual assault or abuse pursuant to N.J.S.A. 2A:82-46;

(12) Records relating to Division of Youth and Family Services proceedings held pursuant to R. 5:12;

(13) Child custody evaluations, reports, and records pursuant to R. 5:8-4, R. 5:8B, N.J.S.A. 9:2-1, or N.J.S.A. 9:2-3;

(14) Paternity records and reports, except for the final judgments or birth certificates pursuant to N.J.S.A. 9:17-42;

(15) Records and reports relating to child placement matters pursuant to R. 5:13-8(a);

(16) Adoption records and reports pursuant to N.J.S.A. 9:3-52;

(17) Records of hearings on the welfare or status of a child, to the extent provided under R. 5:3-2.

(e) Records of Surrogate Proceedings.

Guardianship records and reports maintained by the Surrogate, except that such records will be made available to the spouse or family members to the third degree of consanguinity of the ward. Any other individual or entity seeking such records must demonstrate before a Superior Court judge a special interest in the matter.

(f) Records of Other Proceedings.

(1) Records pertaining to mediation sessions and complementary dispute resolution proceedings pursuant to R. 1:40-4(d) and R. 7:8-1, but not the fact that mediation has occurred;

(2) Records and transcripts of civil commitment proceedings, pursuant to N.J.S.A. 30:4-24.3, N.J.S.A. 30:4-27.27(c), N.J.S.A. 30:4-82.4h, R. 4:74-7, and R.4:74-7A;

(3) Police investigative reports, unless admitted into evidence or submitted to the court in support of a motion, brief, or other pleading;

(4) Records that are impounded, sealed pursuant to R. 1:38-11, or subject to a protective order pursuant to R. 4:10-3;

(5) Criminal, Family, and Probation Division records pertaining to any investigations and reports made by court staff or pursuant to court order for a court or pertaining to persons on probation;

(6) Family, Finance and Probation Division records containing information pertaining to persons receiving or ordered to pay child support, including the child(ren); custodial parents; non-custodial parents; legal guardians; putative fathers; family members and any other individuals for whom information may be collected and retained by the court in connection with child support cases subject to Title IV-D of the Social Security Act, 42 U.S.C. §651 et seq. and applicable state and federal statutes, but not the complaint or orders in such cases.

Note: New Rule 1:38-3 adopted July 16, 2009 to be effective September 1, 2009.

#### 1:38-4. Definition of Administrative Records

An “administrative record” is any information maintained in any form by the judiciary that is not associated with any particular case or judicial proceeding.

Note: New Rule 1:38-4 adopted July 16, 2009 to be effective September 1, 2009.

#### 1:38-5. Administrative Records Excluded from Public Access

The following administrative records are excluded from public access:

(a) Records required to be kept confidential by statute, rule, or prior case law consistent with this rule, unless otherwise ordered by a court;

(b) Notes, memoranda, or other working papers maintained in any form by or for the use of a justice, judge or judiciary staff member in the course of his or her official duties, including administrative duties;

(c) Minutes, reports, memoranda, notes, and correspondence in any form pertaining to the development and implementation of judiciary rules and policies, including draft versions of rules, policies and procedures, self-critical analysis reports, and peer review reports;

(d) Reports, memoranda, and other records pertaining to policies and procedures for court security and data security;

(e) Personnel records, except for an employee's name, title, position, salary, compensation, dates of service, and date and type of separation;

(f) Records concerning volunteers, except for a volunteer's name, title, if any, program to which assigned, and dates of service;

(g) Completed jury questionnaires and the preliminary lists of jurors prepared pursuant to N.J.S.A. 2B:20-2 and -4, which shall be confidential unless otherwise ordered by the Assignment Judge;

(h) Reports required to be prepared by trial court judges on a weekly, monthly, or other basis and submitted to the Administrative Director of the Courts pursuant to R. 1:32-1;

(i) Records and information obtained and maintained by the Judicial Performance Committee pursuant to R. 1:35A, except as otherwise provided in that rule;

(j) Records of the Ethics Telephone Research Service to the extent provided under R. 1:19-9;

(k) Records of proceedings concerning advisory opinions of the Committee on Attorney Advertising to the extent provided under R. 1:19A-5;

(l) Records relating to attorney discipline to the extent provided under R. 1:20-9;

(m) Records of District Fee Arbitration Committees to the extent provided under R. 1:20A-5;

(n) Records of the Attorney Disciplinary Oversight Committee to the extent provided under R. 1:20B-4;

(o) Records of the Lawyers Fund for Client Protection to the extent provided under R. 1:28-9;

(p) Records of the Advisory Committee on Judicial Conduct to the extent provided under R. 2:15-20.

Note: New Rule 1:38-5 adopted July 16, 2009 to be effective September 1, 2009.

#### 1:38-6. Intergovernmental Exchanges

The Supreme Court may authorize the exchange of information, otherwise excluded from public access, with other branches of state government, with other

state governments, and with the federal government when the public benefit of such disclosure outweighs the need for confidentiality. Child support information may be exchanged only to the extent allowed by federal law and regulations.

Note: New Rule 1:38-6 adopted July 16, 2009 to be effective September 1, 2009.

#### 1:38-7. Confidential Personal Identifiers

(a) Definition of Confidential Personal Identifiers. A confidential personal identifier is a Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, or active credit card number.

(b) Prohibition on Submission of Confidential Personal Identifiers to the Court. A party shall not set forth confidential personal identifiers as defined in R. 1:38-7(a) in any document or pleading submitted to the court unless otherwise required by statute, rule, administrative directive, or court order; provided, however, that an active financial account number may be identified by the last four digits when the financial account is the subject of the litigation and cannot otherwise be identified.

#### (c) Compliance.

(1) In every trial Division of the Superior Court where a Case Information Statement is required, parties shall certify in the Case Information Statement that all confidential personal identifiers have been redacted and that subsequent

papers submitted to the court will not contain confidential personal identifiers in accordance with the provisions of this rule.

(2) In General Equity and Special Civil Part matters, where no Case Information Statement is required, parties shall include the following language in the first filed pleading as provided in R. 4:5-1(b)(3), "I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b)."

(3) In all criminal matters, the judge shall inform both parties at the time of the defendant's arraignment status conference that confidential personal identifiers must be redacted from any documents submitted to the court as provided in R. 1:38-7(b) and R. 3:9-1(c).

(d) Judgment Debtors. Applications for any writ, order, or judgment issued by the court involving a judgment debtor may include the judgment debtor's name(s), address, date of birth, the last four digits of active financial account numbers, and the last four digits of the individual's Social Security number. No other personal identifiers shall be included.

(e) Redaction of Required Personal Identifiers. When confidential personal identifiers as defined in R. 1:38-7(a) are required by statute, rule, or court order to be included in documents or pleadings, such identifiers shall be redacted before public inspection is permitted.

(f) Redaction of Social Security Numbers from Records in Bulk. Any request for the mass release, in bulk, of electronically stored or microfilmed records containing Social Security numbers must be submitted to the Administrative Director of the Courts. A fee may be charged for the cost of redacting Social Security numbers from such records.

Note: New Rule 1:38-7 adopted July 16, 2009 to be effective September 1, 2009.

#### 1:38-8. Documents Improperly Submitted to Court

A party or other interested person may request that the court remove from its file an improperly submitted document upon application to the court and notice to all parties. A document is deemed improperly submitted to the court if the person who submitted the document had no legitimate basis in rule or law for doing so and if the document is not an evidentiary exhibit or part of a motion, brief, or other pleading. The party or interested person seeking to have a document removed from a court file bears the burden of proving by a preponderance of the evidence that it was improperly submitted.

Note: New Rule 1:38-8 adopted July 16, 2009 to be effective September 1, 2009.

#### 1:38-9. Fees

The Supreme Court shall establish a schedule of fees for copies of records.

Note: New Rule 1:38-9 adopted July 16, 2009 to be effective September 1, 2009.

1:38-10. Determinations: Appeal Process

(a) Requests for court records or administrative records to be inspected or copied under this rule shall be directed to the following officers or their designees:

(1) Supreme Court records (including committees and offices reporting to the Supreme Court): Clerk of the Supreme Court

(2) Superior Court records, Clerk's office, including Foreclosure Unit: Clerk of the Superior Court

(3) Superior Court records, Appellate Division: Clerk of the Appellate Division

(4) Superior Court records, Law and Chancery Divisions (other than Clerk's office and Probate Part): Trial Court Administrator of appropriate vicinage

(5) Superior Court records, Chancery Division, Probate Part, and Surrogate's Court records: Surrogate of appropriate county

(6) Tax Court records: Clerk of the Tax Court

(7) Municipal Court records: Municipal Court Director or Administrator of appropriate municipal court

(8) Administrative Office of the Courts records and all other judiciary records: Deputy Administrative Director of the Courts

(b) Any person denied access to a court record or administrative record by one of the above officers or their designees may seek review by the Administrative Director of the Courts under procedures established by the Supreme Court, except that an appeal regarding a municipal court record shall first be filed with the Trial Court Administrator of the appropriate vicinage. An appeal from the decision of the Administrative Director shall be filed in the Appellate Division in accordance with R. 2:2-3(a)(2).

Note: New Rule 1:38-10 adopted July 16, 2009 to be effective September 1, 2009.

#### 1:38-11. Sealing of Court Records

(a) Information in a court record may be sealed by court order for good cause as defined in this section. The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.

(b) Good cause to seal a record shall exist when:

(1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and

(2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.

Note: New Rule 1:38-11 adopted July 16, 2009 to be effective September 1, 2009.

1:38-12. Unsealing of Court Records

A record that has been sealed by order of the court may be unsealed upon motion by any person or entity. The proponent for continued sealing shall bear the burden of proving by a preponderance of the evidence that good cause continues to exist for sealing the record.

Note: New Rule 1:38-12 adopted July 16, 2009 to be effective September 1, 2009.