

RULES GOVERNING THE COURTS OF THE STATE OF NEW JERSEY
RULE 1:38. PUBLIC ACCESS TO COURT RECORDS AND ADMINISTRATIVE
RECORDS

Note: Former Rule 1:38 ("Confidentiality of Court Records") was deleted, and new Rules 1:38-1 through 1:38-12 adopted July 16, 2009 to be effective September 1, 2009. Former Rule 1:38 History: Source-R.R. 1:29-2 (second and third sentences), 1:35. Paragraph (f) adopted April 1, 1974 effective immediately; paragraph (g) adopted November 1, 1985 to be effective January 2, 1986; paragraphs (e), (f) and (g) amended and paragraphs (h) and (i) adopted November 7, 1988 to be effective January 2, 1989; paragraph (j) adopted July 13, 1994 and new text amended December 9, 1994, to be effective January 1, 1995; paragraph (g) amended January 5, 1998 to be effective February 1, 1998; paragraph (b) amended July 28, 2004 to be effective September 1, 2004; closing paragraph adopted July 27, 2006 to be effective September 1, 2006; R. 1:38 ("Confidentiality of Court Records") deleted and replaced with new R. 1:38 ("Public Access to Court Records and Administrative Records") July 16, 2009 to be effective September 1, 2009.

Rule 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.

Rule 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.

Rule 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(e), 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;

(12) Names and addresses of victims or alleged victims of domestic violence or sexual offenses.

(d) Records of Family Part Proceedings.

(1) Family Case Information Statements required by R. 5:5-2 and Financial Statements in Summary Support Actions required by R. 5:5-3, including all attachments;

(2) Confidential Litigant Information Sheets pursuant to R. 5:4-2(g) and Affidavits or Certifications of Insurance Coverage pursuant to R. 5:4-2(f);

(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-62 f. 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 or sexual offenses;

(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 Child Protection and Permanency 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 Guardianship Proceedings.

Guardianship records and reports maintained by the Surrogate and by the Chancery Division, Probate Part, except the guardianship index, of which only the following information shall be available to an attorney-at-law of this state or to a title examiner seeking access to such records in connection with transactions affecting property of the ward: (1) minor's or incapacitated person's name, (2) name of the municipality where the minor or incapacitated person resided when the guardianship was created, (3) name of the guardian, (4) docket number, (5) date of the judgment appointing the guardian, and (6) date of the guardian's qualification.

Further, an attorney-at-law or a title examiner requiring access to the guardianship index in connection with a transaction affecting the property of the ward may inspect and copy the following guardianship file documents: the guardianship judgment, the Letters of Guardianship, and any subsequent order dealing with the powers or limitations of the guardian, provided any financial information contained in these documents, including information on the amount of the bond, is redacted prior to the documents being made available for review or copying.

All guardianship records and reports, however, are available to the incapacitated person and the minor upon reaching majority; the incapacitated person's spouse, civil union partner, or domestic partner; the minor's or incapacitated person's parents and siblings; any adult children of the incapacitated person; the guardian appointed in the action; and any attorneys appearing in the guardianship action on behalf of these persons. Appointed New Jersey Judiciary Guardianship Monitoring Program volunteers

shall have access to guardianship records and reports in those guardianship matters to which they are assigned. Any other individual or entity seeking records must make a showing of a special interest in the matter to the Assignment Judge or the Assignment Judge's designee.

(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, civil commitment expungement petitions and proceedings, and expunged civil commitment records, pursuant to N.J.S.A. 30:4-24.3, N.J.S.A. 30:4-27.27(c), N.J.S.A. 30:4-80.8 - 80.11, N.J.S.A. 30:4-82.4 h., 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, Municipal 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;

(7) Records maintained by the Judiciary that contain identifying information about a person who has or is suspected of having AIDS or HIV infection, pursuant to N.J.S.A. 26:5C-7, except as provided in N.J.S.A. 26:5C-8 and -9;

(8) Records of appeals from the Division of Developmental Disabilities in accordance with N.J.S.A. 30:4-24.3;

(9) Written requests by a crime victim, or if such a person is deceased or incapacitated, a member of that person's immediate family, for a record to which the victim is entitled pursuant to N.J.S.A. 47:1A-5(b)(2).

Note: New Rule 1:38-3 adopted July 16, 2009 to be effective September 1, 2009; subparagraph (b)(1) amended December 9, 2009 to be effective immediately; paragraphs (e) and (f) amended January 5, 2010 to be effective immediately; subparagraph (c)(11) amended, subparagraph (c)(12) adopted, and subparagraph (d)(10) amended February 16, 2010 to be effective immediately; subparagraph (d)(1)

amended June 23, 2010 to be effective July 1, 2010; paragraph (e) amended October 26, 2010 to be effective immediately; paragraph (e) amended February 28, 2013 to be effective immediately; subparagraph (d)(12) amended July 9, 2013 to be effective September 1, 2013; subparagraphs (f)(2) and (f)(5) amended, and new subparagraph (f)(9) added December 9, 2014 to be effective immediately; subparagraph (d)(2) amended July 27, 2015 to be effective September 1, 2015.

Rule 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.

Rule 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) Juror source lists prepared pursuant to N.J.S.A. 2B:20-2, jury questionnaires completed pursuant to N.J.S.A. 2B:20-3, and preliminary lists prepared pursuant to N.J.S.A. 2B:20-4 of persons to be summoned for possible service as grand or petit jurors, which shall remain confidential, except as provided in Rule 1:8-5, 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 and/or R. 1:38-11;

(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;

(q) Records of the Office of the Ombudsman, except for court user satisfaction survey reports, statewide daily contact reports, and information related to community outreach events.

(r) Records relating to Special Civil Part Officers to the extent provided under Administrative Directive.

Note: New Rule 1:38-5 adopted July 16, 2009 to be effective September 1, 2009; paragraph (g) amended January 5, 2010 to be effective immediately; paragraph (p) amended and new paragraph (q) added October 18, 2011 to be effective immediately; new paragraph (r) adopted November 12, 2014 to be effective immediately; paragraph (h) amended December 9, 2014 to be effective immediately.

Rule 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.

Rule 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 Part, Probate Part, 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(b).

(d) Judgment Debtors. Any writ, order, or judgment issued by the court involving a judgment debtor or any application therefor may include the judgment debtor's name(s), address, date of birth, the last four digits of active financial account numbers, and the last three 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. This redaction requirement, however, does not apply to driver's license numbers that the New Jersey Motor Vehicle Commission requires in documents pertaining to the suspension and reinstatement of licenses.

(f) Redaction of Social Security Numbers from Records in Bulk. Any request for the mass release, in bulk, of records, no matter how maintained or stored, containing

Social Security numbers must be submitted to the Administrative Director of the Courts. A bulk release request is a request for the release of a substantial number of records that would involve an extraordinary expenditure of time and effort to accommodate, resulting in a disruption of court operations. A fee may be charged for the cost of redacting Social Security numbers from such records.

(g) Requesting Replacement of Submitted Documents for Failure to Redact Confidential Personal Identifiers.

(1) A party or other interested person may request that the court replace a document that contains confidential personal identifiers contrary to R. 1:38-7(b) with a redacted version on application to the court and notice to all parties. Such application should be made in the trial courts by order to show cause or motion and in the Appellate Division or Supreme Court either by motion or by emergent request for temporary relief, and may include a request for immediate temporary removal pending the return date.

(2) If the court thereafter determines that the confidential personal identifiers should not be in the document, it may by order direct the clerk to replace the original unredacted document with a redacted document for filing, with the redacted document to be submitted to the clerk by the party or attorney representing the party that submitted the document containing the confidential personal identifiers.

(3) The court shall not order the clerk to alter or undertake redaction of the document as that obligation rests with the party or the attorney for the party that submitted the document containing the confidential personal identifiers.

Note: New Rule 1:38-7 adopted July 16, 2009 to be effective September 1, 2009; paragraph (e) amended September 22, 2009 to be effective immediately; subparagraph (c)(2) amended June 23, 2010 to be effective July 1, 2010; paragraphs (d) and (f) amended October 18, 2011 to be effective immediately; new paragraph (g) added October 8, 2013 to be effective immediately; paragraph (d) amended April 21, 2015 to be effective May 1, 2015; paragraph (c)(3) amended August 1, 2016 to be effective September 1, 2016.

Rule 1:38-8. Removing from the Court File Documents Improperly Submitted to Court

(a) 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.

(b) If the court thereafter determines that a document was improperly submitted, it may by order direct the clerk to destroy the document, to return it to the party that

submitted it, or to remove the document from the file and retain it in a manner specified by the court pending further direction.

Note: New Rule 1:38-8 adopted July 16, 2009 to be effective September 1, 2009; caption revised, prior text designated as subparagraph (a), and new subparagraph (b) adopted October 8, 2013 to be effective immediately.

Rule 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.

Rule 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.

Rule 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.

(c) The provisions of this rule do not apply to actions required to be sealed pursuant to the New Jersey False Claims Act (N.J.S.A. 2A:32C-5(c) and 2A:32C-5(f)).

(d) Documents or other materials not exempt from public access under Rule 1:38 may not be filed under seal absent a prior court order mandating the sealing of such documents, and should not be submitted to the court with the motion, which may be filed on short notice, requesting an order to seal.

Note: New Rule 1:38-11 adopted July 16, 2009 to be effective September 1, 2009; new paragraph (c) adopted January 5, 2010 to be effective immediately; new paragraph (d) adopted June 23, 2010 to be effective July 1, 2010; paragraph (c) amended December 8, 2010 to be effective immediately.

Rule 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.

Rule 1:38-13. Records Available Only in the Form Maintained by the Judiciary

Court records and administrative records are available only in the form in which they are maintained or indexed by the Judiciary. Requests by private individuals or entities for programming, searching, or compilation of records in a form other than as used for the Judiciary's purposes will not be granted.

Note: New Rule 1:38-13 adopted June 23, 2010 to be effective July 1, 2010.