

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1983

Amending Administrative Rules
37.5, 37.6 and 40 concerning
public access to court records
and the public index.

IT IS ORDERED:

1. Administrative Rule 37.5 is amended to read as follows:

Rule 37.5. Access to Court Records.

(a) **Scope and Purposes.**

(1) Public access to court records is governed by Administrative Rules 37.5 through 37.8 and 40. These rules are adopted pursuant to the inherent authority of the Alaska Supreme Court and provide for access in a manner that:

- (A) maximizes accessibility to court records;
- (B) supports the role of the judiciary;
- (C) promotes government accountability;
- (D) contributes to public safety;
- (E) minimizes risk of injury to individuals;
- (F) protects individual privacy rights and interests;
- (G) protects proprietary business information;
- (H) minimizes reluctance to use the courts to resolve disputes;
- (I) makes most effective use of court personnel;
- (J) provides excellent customer service; and
- (K) does not unduly burden the ongoing business of the judiciary.

(2) These rules apply to all court records; however, court personnel need not redact or restrict information that otherwise was

public in case records and administrative records created before October 15, 2006.

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(d) **General Access Rule.**

(1) Court records are accessible to the public, except as provided in paragraph (e) below.

(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 must be a publicly accessible indication of the fact of exclusion but not the content of the exclusion. This subparagraph does not apply to case records or administrative records that are confidential pursuant to law.~~

(e) **Court Records Excluded from Public Access.**

(1) **Case Records.** * * * *

(2) **Administrative Records.** The following administrative records are not accessible to the public:

(A) personal information, performance evaluations, and disciplinary matters relating to any past or present employee of the Alaska Court System or any other person who has applied for employment with the Alaska Court System, and personnel records that are confidential under Alaska Court System Personnel Rules C1.07 and PX1.08;

(B) the work product of any attorney or law clerk employed by or representing the Alaska Court System if the work product is produced in the regular course of business or representation of the Alaska Court System;

(C) individual direct work access telephone numbers and email addresses of judges and law clerks;

(D) documents or information that could compromise the safety of judges, court staff, jurors, or the public, or jeopardize the integrity of the court's facilities or property; ~~or the court's information technology or recordkeeping systems~~;

(E) documents or information that could compromise the security or integrity of any of the court's information technology systems or electronic recordkeeping systems, including any information relating to any cybersecurity events or prevention of cyber-attacks;

~~(F)(E)~~ records or information collected and notes, drafts, and work product generated during the process of developing policy relating to the court's administration of justice and its operations;

~~(G)(F)~~ email messages that are created primarily for the informal communication of information and that do not set policy, establish guidelines or procedures, memorialize transactions, or establish receipts; and

~~(H)(G)~~ records that are confidential, privileged, or otherwise protected by law, rule, or order from disclosure.

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2. Administrative Rule 37.6 is amended to read as follows:

Rule 37.6. Prohibiting Access to Public Case Records.

(a) **Limiting Access.** Notwithstanding any other rule to the contrary, the court may, by order, limit access to public information in an open case file or a case file that has been closed for less than 90 days, or an individual case-record in one of those case files, only by (1) by sealing or making confidential the entire case file, or (2) sealing or making confidential individual documents in or parts of the case file, which may include individual filings, log notes, the audio recording of proceedings in the case, the transcript of proceedings, or portions thereof. A request to limit access may be

made by any person affected by the release of the information or on the court's own motion. The court may consider limiting access to information in a public case file only if the case is open or if the case file has been closed for less than 90 days; the court shall not limit access to all or portions of a case file that has been closed for 90 days or longer. For a case reopened 90 days or more after closing, the court may, by order, limit access only to public information that is filed or occurs after the date the case reopened. A case is not considered open under this subsection if the case was previously closed and later reopened solely because a motion or request under this subsection was filed.

(b) **Standard.** The court may limit public access as described above if the court finds that the public interest in disclosure is outweighed by a legitimate interest in confidentiality, including but not limited to

- (1) risk of injury to individuals;
- (2) individual privacy rights and interests;
- (3) proprietary business information;
- (4) the deliberative process; or
- (5) public safety.

To make a finding that a legitimate interest in confidentiality outweighs the public interest in disclosure under the standard in this subsection, the court must identify a basis for limiting access that is particular to the case being considered and that distinguishes the confidentiality interests of the persons affected by that case from the interests of persons affected by disclosure in similar case types, being mindful of the general public access provision in Administrative Rule 37.5(d).

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(e) **Public Index to Cases.** This rule does not authorize a court to order a change to any entry in the index to cases or the public

- index of cases on the court system's website, unless the change is purely ministerial and is intended to correct a data entry error to ensure the index to cases accurately reflects the true filings and events as they actually occurred in the case.
3. The following Note to Administrative Rule 37.6 is rescinded:
~~**Note:** Administrative Rule 40 requires the clerk of court to list a case on the public case index even though the case file has been sealed or made confidential under this rule. Only the presiding judge of the judicial district has the power to remove a party's name from the public case index, and this action may be taken only in very limited circumstances. See Administrative Rule 40(b) and (c).~~
4. Administrative Rule 40 is amended to read as follows:
Rule 40. Index to Cases.
(a) The court system shall maintain an index by last name of every party named in every case filed, regardless of whether a party's true name is protected in the public index under paragraphs (b) or (c) of this rule. The index must show the party's name, the case number, the case caption or title, the filing date, the case type, and other information required for that case type by court rule. The index may show the party's date of birth. The index shall be an accurate chronological record of the case's filings and events as they actually occurred in the case. If subsequent case filings amend or purport to correct a prior filing or event, the existence of the initial filing or event having occurred shall be maintained along with the amended filing, so that the index is at all times a record of actual filings and events in the case. The court system shall publish a

public version of the index on the court system's website, which excludes only

- (1) cases designated as confidential or sealed by statute, or court rule, or court order under Administrative Rule 37.6, unless the index to those cases is public under court rules;
- (2) foreign domestic violence protective orders filed under AS 18.66.140;
- (3) criminal cases dismissed because the prosecuting authority declined to file a charging document;
- (4) criminal cases dismissed for lack of probable cause under Criminal Rule 4(a)(1) or Criminal Rule 5(d);
- (5) criminal cases dismissed for an identity error under Criminal Rule 43(d);
- (6) criminal cases dismissed because the named defendant is a minor wrongly charged in adult court with an offense within the jurisdiction for delinquency proceedings under AS 47.12.020;
- (7) minor offense cases dismissed because the prosecuting authority declined to file a charging document;
- (8) minor offense cases dismissed for an identity error under Minor Offense Rule 11(c);
- (9) domestic violence protective order cases that are closed and in which no protective order was issued;

~~(A) dismissed without an ex parte order when a petition is filed under AS 18.66.110, or~~

~~(B) dismissed at or before the initial hearing when a petition is filed under AS 18.66.100, the petitioner did not request an ex parte order under AS 18.66.110, and the court did not hold an ex parte hearing,~~

~~if the case is dismissed because there is not sufficient evidence that the petitioner is a victim of domestic violence as defined by AS~~

~~18.66.990(3) or there is not sufficient evidence that the petitioner is a household member as defined by AS 18.66.990(5);~~

(10) stalking or sexual assault protective order cases that are closed and in which no protective order was issued;

~~(A) dismissed without an ex parte order when a petition is filed under AS 18.65.855, or~~

~~(B) dismissed at or before the initial hearing when a petition is filed under AS 18.65.850, the petitioner did not request an ex parte order under AS 18.65.855, and the court did not hold an ex parte hearing;~~

~~if the case is dismissed because there is not sufficient evidence that the petitioner is a victim of stalking as defined by AS 11.41.270 or sexual assault as defined in AS 18.66.990(9);~~

(11) party names protected under paragraphs (b) or (c) of this rule;

(12) ~~cases, party names, or other case information that are~~ required to be excluded or removed from the public index by statute;

(13) criminal cases in which the defendant received a suspended imposition of sentence (SIS) for a conviction in accordance with AS 12.55.085, and the conviction was subsequently set aside by the court after the defendant successfully completed the terms of the sentence; this provision applies only if, singularly or combined, the defendant was acquitted of all other charges in the same case or all other charges in the same case were dismissed or set aside after an SIS was imposed and the defendant successfully completed the terms of the sentence; and

(14) cases in which the defendant was charged with an offense under AS 04.16.049, 04.16.050, 28.35.280, 28.35.285, 28.35.290, or a similar municipal ordinance (whether the case was classified as a criminal case, minor offense case, or underage alcohol case

and regardless of the disposition of the case), if the offense was charged in a separate action and not joined with any other minor offense or criminal charge at the time of filing.

~~The court system shall continue to list a case on the public index even though the case file has been sealed or made confidential under Administrative Rule 37.6, unless the party names were protected under paragraphs (b) or (c) of this rule.~~ The public index will be available to the public in electronic form on the court system's website except as limited by Administrative Rule 37.8.

(b) The presiding judge of a judicial district may direct the clerk of the court to substitute "Not Published" for a party's true name on the public index if the presiding judge finds that the issues in the case involve matters of a sensitive and highly personal nature, that publication of the name could expose a person to harassment, injury, ridicule, or personal embarrassment, and that protection of the party's name outweighs the public's interest in disclosure and any prejudice to the opposing party. If the presiding judge determines that the true name of more than one party in a case should be protected under this subsection, the parties shall be distinguished by number ("Not Published 1, Not Published 2"). While a request to protect the name is pending before the presiding judge, subsection (d) applies. To make a finding that protection of a party's name outweighs the public's interest in disclosure under this subsection, the presiding judge must identify a basis for protecting the party name that is particular to the case being considered and distinguishes that party's individual interest in protecting disclosure from the interests of persons affected by disclosure in similar case types, being mindful of the general public access provision in Administrative Rule 37.5(d).

(c) The presiding judge of a judicial district may direct the clerk of court to remove a party's name from the public index for a period

of five years if the presiding judge finds that publication of the name is likely to result in substantial physical harm to the party or members of the party's household and protection of the party's name outweighs the public's interest in disclosure. After five years, the party's name will appear on the public index unless the presiding judge orders the name protected for an additional period of time, upon another showing that publication of the name is likely to result in substantial physical harm to the party or members of the party's household. While a request to protect the name is pending before the presiding judge, subsection (d) applies. To make a finding that protection of a party's name outweighs the public's interest in disclosure under this subsection, the presiding judge must identify a basis for protecting the party name that is particular to the case being considered and distinguishes that party's individual interest in protecting disclosure from the interests of persons affected by disclosure in similar case types, being mindful of the general public access provision in Administrative Rule 37.5(d).

(d) Unless otherwise ordered, while a request under subsection (b) or (c) is pending,

(1) the party's name will not be added to the public index if the request is made with or in the filing that initiates the case; and

(2) the party's name will remain on the public index if the request is made in an existing case.

~~(e) In addition to the cases that are excluded from the public index under subsection (a) of this rule, a judicial officer may order that specific cases be removed from the public index for a temporary time period if the judicial officer finds that maintaining the cases on the public index would detrimentally affect a criminal defendant's right to a fair and impartial jury. The temporary time period runs from one week prior to scheduled jury selection until the~~

~~jury is discharged, the declaration of a mistrial, the dismissal of the case, or the entry of a guilty or nolo contendere plea.~~

DATED: July 14, 2022

EFFECTIVE DATE: October 17, 2022

/s/
Chief Justice Winfree

/s/
Justice Maassen

/s/
Justice Carney

/s/
Justice Borghesan

/s/
Justice Henderson