I.C.A.R. 32. Records of The Judicial Department - Examination and Copying - Exemption From and Limitations on Disclosure.

Idaho Court Administrative Rule 32. Records of The Judicial Department - Examination and Copying - Exemption From and Limitations on Disclosure.

(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 access the judicial department's declarations of law and public policy, and to access 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 filed, docketed, or lodged 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 case management system reports.

(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 the case management system; 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)"Case management system" means the court technology program, and other technologies that assist in the efficient management of the courts or that improve access to the courts and court records.

(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.

(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. The Supreme Court may provide such access to these records through terminals at judicial branch facilities or on-line from any remote location over the Internet.

(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 events;

(4)Calendars or dockets of court proceedings, including case numbers and captions, date and time of hearings, and location of hearings;

(5)Minutes, orders, opinions, findings of fact, conclusions of law, and judgments of a court and notices of the clerk of the court;

(6)Transcripts and recordings of all trials and hearings open to the public;

(7)Pleadings, motions, affidavits, responses, memoranda, briefs and other documents filed or lodged in a case file;

(8)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

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

(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. Case management reports and information shall be exempt from disclosure until final approval by the Supreme Court of the advancing justice time standards. 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 herein after 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, 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 Idaholaw;

(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 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. Other exceptions to this rule are that the register of actions shall be available to the public, and a redacted copy of any order, decree or judgment issued in the case shall be available to the public. However, no redacted copy of any order, decree or judgment must be prepared until there is a specific request for the document, in which case the document should be redacted in the manner specified in Idaho Rule of Civil Procedure 3(c)(1) (a)-(d). Provided further that any person may request that the court make other records in the case available for examination and copying. Any individual may make the request by filing a court-provided form. When the court receives such a request, it shall promptly review the records in the case and shall make the records available except for those records or portions of records that allege abuse, abandonment or neglect of a child, or which the court determines would inflict undue embarrassment to or put at risk a person referenced in the record who was a child at the time of the filing of the record, or which are exempt from disclosure under the other provisions of Supreme Court rules.

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) 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 address; telephone numbers; and any personal identification numbers, including motor vehicle operator's license numbers and financial account numbers.

(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 interested 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 court 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 party designated by the court. The court

may order that the record immediately be redacted or sealed pending the hearing if the court finds that doing so may be necessary to prevent harm to any person or persons. 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.

(6) That the documents contain personal data identifiers that should have been redacted pursuant to Rule 3(c) of the Idaho Rules of Civil Procedure, in which case the court shall order that the documents be redacted in a manner consistent with the provisions of that rule.

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 material about persons. In applying these rules, the court is referred to the traditional legal concepts in the law of invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate 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 case management system 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.

(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 request 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 maker 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 case management system, the case management system data storage, 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, case managment system, or the case management system data storage, 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 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(8). 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.

(Repealed in its ENTIRETY April 27, 2007, NEW Rule 32 adopted April 27, 2007;effective July 1, 2007, amended and effective February 1, 2009; amended March 18, 2011, effective July 1, 2011; amended February 9, 2012, effective July 1, 2012; amended October 5, 2013, effective January 1, 2014; amended November 25, 2013, effective January 1, 2014; amended April 2, 2014; effective July 1, 2014; amended April 2, 2015, effective April 15, 2015; amended May 7, 2015, effective July 1, 2015.)

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