

17A A.R.S. Sup.Ct.Rules, Rule 123

IFFE905C0EE-E211D7B4AD9-9A20D90991A

Arizona Revised Statutes Annotated Currentness

RULES OF THE SUPREME COURT OF ARIZONA

Rules of the Supreme Court of Arizona (Refs & Annos)

XII. MISCELLANEOUS PROVISIONS

XII. Miscellaneous Provisions

Rule 123. Public Access to the Judicial Records of the State of Arizona

Rule 123. Public Access to the Judicial Records of the State of Arizona

(a) Authority and Scope of Rule. Pursuant to the administrative powers vested in the supreme court by Article VI, Section 3, of the Arizona Constitution, and the court's inherent power to administer and supervise court operations, this rule adopted to govern public access to the records of all courts and administrative offices of the judicial department of the State of Arizona.

(b) Definitions.

(1) *Closed or Confidential (Records).* "Closed" or "Confidential", when used in this rule in reference to records, means that members of the public may not inspect, obtain copies of, or otherwise have access to such records unless authorized by law.

(2) *Commercial Purpose.* As used in this rule "Commercial Purpose" means the use of a public record for the purpose of sale or resale or for the purpose of producing a document containing all or part of the copy, printout or photograph for sale or the obtaining of names and addresses from such public records for the purpose of solicitation or the sale of such names and addresses to another for the purpose of solicitation or for any purpose in which the purchaser can reasonably anticipate the receipt of monetary gain from direct or indirect use of such public records. "Commercial Purpose" does not mean the use of a public record as evidence or as research for evidence in an action in a judicial or quasi-judicial body of this state or a political subdivision of this state.

(3) *Court.* "Court" means the Supreme Court, the Court of Appeals, Superior Court,

Justice Courts, Municipal Courts and all judges of those courts.

(4) *Court Administrator or Clerk of the Court.* "Court Administrator" or "Clerk of the Court" means a person employed, appointed or elected for the purpose of administering the operations of any court or court system.

(5) *Criminal History Record Information (CHRI).* "Criminal History Record Information" means only those records of arrests, convictions, sentences, dismissals and other dispositions of charges against individuals that have been provided to the court by the National Crime Information Center (NCIC), Arizona Crime Information Center (ACIC), or any other criminal justice agency for use in juvenile and adult criminal justice cases, employment, licensing or other authorized investigations.

(6) *Custodian.* "Custodian" is the person responsible for the safekeeping of any records held by any court, administrative office, clerk of court's office or that person's designee who also shall be responsible for processing public requests for access to records.

(7) *Information.* "Information" is any recognizable alpha/numerical data which constitute a record or any part thereof.

(8) *Judge.* "Judge" means any justice, judge, judicial officer, referee, commissioner, court-appointed arbitrator or other person exercising adjudicatory powers in the judicial branch.

(9) *Law.* "Law" means statute, rule, administrative order, court order or case law.

(10) *Presiding Judge.* "Presiding Judge" means the presiding judge of the superior court for each county, or the chief judge for each division of the court of appeals or the chief justice of the supreme court. For municipal and justice courts "Presiding Judge" means

the presiding judge of the superior court.

(11) *Public*. "Public" means those persons who are not judges, clerks, administrators, professionals or other staff employed by or working under the supervision of the court, or employees of other public agencies who are authorized by state or federal rule or law to inspect and copy closed court records.

(12) *Record*. "Record" means all existing documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials, regardless of physical form or characteristics, made or received pursuant to law or in connection with the transaction of any official business by the court, and preserved or appropriate for preservation by the court as evidence of the organization, functions, policies, decision, procedures, operations or other governmental activities.

(A) Administrative Record. "Administrative record" means any record pertaining to the administration of the courts, court systems or any non-adjudicatory records.

(B) Case Record. "Case record" means any record pertaining to a particular case or controversy.

(c) General Provisions.

(1) *Open Records Policy*. Historically, this state has always favored open government and an informed citizenry. In the tradition, the records in all courts and administrative offices of the Judicial Department of the State of Arizona are presumed to be open to any member of the public for inspection or to obtain copies at all times during regular office hours at the office having custody of the records. However, in view of the possible countervailing interests of confidentiality, privacy or the best interests of the state public access to some court records may be restricted or expanded in accordance with the provision of this rule, or other provisions of law.

(2) *Creation, Production and Management of Records*.

(A) Court personnel, who generate or receive paper or electronic records known or marked as containing confidential information, shall identify and segregate the confidential information from the public record whenever practicable.

(B) The custodian shall utilize reasonable records management practices and procedures to assure that all closed records are properly identified as "confidential" and maintained segregated or apart from records open to the public. Whenever possible, records containing both public and confidential information shall be identified as "containing both public and confidential information."

(C) Upon request, the custodian shall reproduce any record containing public information that would otherwise be closed, by redacting all confidential information from the record unless release of the entire record is prohibited by law. Records that are reproduced after redaction shall contain a disclosure that they were redacted, unless such disclosure would defeat the purpose of the redaction. Identification of redacted records shall include a description of the nature and length of the matters contained therein, unless the description, if given, constitutes a disclosure of confidential information. Upon request, the custodian shall identify the legal authority for the redaction.

(3) *Confidential and Personal Financial Records.* Documents containing social security, credit card, debit card, or financial account numbers or credit reports of an individual, when collected by the court for administrative purposes, are closed unless made public in a court proceeding or upon court order.

(4) *New Records.* The court is not required to index, compile, re-compile, re-format, program or otherwise reorganize existing information to create new records not maintained in the ordinary course of business. Removing, deleting or redacting confidential information from a record, or reproducing a record in non-original format, is not deemed to be creating a new record as defined herein.

(d) Access to Case Records.

All case records are open to the public except as may be closed by law, or as provided in this rule. Upon closing any record the court shall state the reason for the action, including a reference to any statute, case, rule or administrative order relied upon.

(1) *Juvenile Delinquency Proceedings Records.*

(A) Records of all juvenile delinquency and incorrigibility proceedings are open to the public to the extent provided for in the Rules of Procedure for the Juvenile Court or by law.

(B) Records of all juvenile adoption, dependency, severance and other related proceedings are closed to the public as provided by law unless opened by court order.

(C) All information and records obtained in the course of evaluation, examination or treatment of juveniles who have been referred to a treatment program funded by the juvenile probation fund (pursuant to ARS § 8-230.01, or renumbered as ARS § 8-321, effective June 30, 1998) or the family counseling fund (ARS § 8-261 et seq.) are confidential and shall not be released unless authorized by rule or court order. These records include, but are not limited to, clinical records, medical reports, laboratory statements and reports, or any report relating to diagnostic findings and treatment of juveniles, or any information by which the juvenile or his family may be identified, wherever such records are maintained by the court.

(2) *Adult Criminal Records.*

(A) Criminal History Records, diagnostic evaluations, psychiatric and psychological reports, medical reports, alcohol screening and treatment reports, social studies, probation supervision histories and any other records maintained as the work product of pretrial services staff, probation officers and other staff for use by the court are closed and shall be withheld from public inspection, including such records associated with the interstate compact pursuant to ARS § 31-461. However, the bail determination report, any related pretrial service records, the presentence report, and any related probation office records are open to the public when: (i) ordered by the court, (ii) filed with the clerk of court or attached to any filed document and not segregated and identified as being closed or confidential, or (iii) considered or used for any purpose in open court proceedings unless restricted by law or sealed by the court.

(B) In adult criminal cases the pretrial services unit, probation department, limited jurisdiction court, or other primary user shall separate and identify as "confidential" all records defined herein as "criminal history record information," and those records identified in paragraph (d)(2)(A). Such records shall be closed and placed in an envelope marked "confidential", or otherwise stored as a confidential record, and shall only be disclosed as authorized by ARS § 41-1750 et seq. or by court order.

(C) All other information in the adult criminal case files maintained by the clerk of the court is open to the public, unless prohibited by law or sealed by court order.

(3) *Judicial Work Product and Drafts.* Notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the process of preparing a final decision or order are closed.

(e) Access to Administrative Records.

All administrative records are open to the public except as provided herein:

(1) *Employee Records.* Records maintained concerning individuals who are employees or who perform volunteer services are closed except for the following information:

(A) Full name of individual;

(B) Date of employment;

(C) Current and previous job titles and descriptions, and effective dates of employment;

(D) Name, location and phone number of court and/or office to which the individual has been assigned;

(E) Current and previous salaries and dates of each change;

(F) Name of current or last known supervisor; and

(G) Information authorized to be released by the individual to the public unless prohibited by law.

(2) *Applicant Records.* Unless otherwise provided by law, records concerning applicants for employment or volunteer services are open to the public, after the names, home addresses, telephone numbers, social security numbers, and all other personally identifying information have been redacted, except that the names of applicants who are final candidates shall be disclosed.

(3) *Judicial Case Assignments.* Records regarding the identity of any appellate judge or justice assigned to prepare a written decision or opinion until the same is filed are closed.

(4) *Security Records.* All security plans, codes and other records that provide for the security of information, individuals, or property in the possession or custody of the courts against theft, tampering, improper use, illegal releases, trespass, or physical abuse or violence, are closed.

(5) *Procurement Records.* Procurement and bid records are open to the public except as provided herein:

(A) *Sealed Bids.* Sealed bid records are closed to the public prior to opening the bids at the time specified in the bid request.

(B) *Invitation for Bid.* Bid records submitted under Rule 18 of the Judicial Branch Procurement Code or equivalent rules shall remain closed to the public after opening until a contract is signed, except that the amount of each bid and the name of each bidder shall be recorded and available for public inspection.

(C) *Competitive Sealed Proposals and Requests for Qualifications.* Records containing competitive sealed proposals and requests for qualification submissions under Rules 26 or 35 of the Judicial Branch Procurement Code or equivalent rules, shall remain closed to the public after opening until a contract is signed, except that the name of each bidder shall be publicly read and recorded.

(D) *Trade Secrets.* Bid records designated by the bidder as containing trade secrets or other proprietary data shall remain closed to the public only when the judicial branch unit concurs in the designation.

(6) *Preliminary and Draft Reports Concerning Court Operations; Pre-decisional Documents.* Final administrative documents and reports concerning the operation of the court system are open for public inspection and copying by the custodian on court premises. Preliminary drafts of such reports, and pre-decisional documents relating to court operations, shall be open once such draft reports and such pre-decisional documents are circulated to any court policy advisory committee or the public for comment.

(7) *Library Records.* Records maintained in any court law library which link a patron's name with materials requested or borrowed by the patron, or which link a patron's name with a specific subject about which the patron has requested information or materials are closed.

(8) *Attorney and Judicial Work Product.*

(A) The legal work product and other records of any attorney or law clerk employed by or representing the judicial branch, that are produced in the regular course of business or representation of the judicial branch are closed unless disclosed by the court.

(B) All notes, memoranda or drafts thereof prepared by a judge or other court personnel at the direction of a judge and used in the course of deliberations on rule or administrative matters are closed.

(9) *Juror Records.* The home and work telephone numbers and addresses of jurors, and all other information obtained by special screening questionnaires or in voir dire proceedings that personally identifies jurors summoned for service, except the names of jurors on the master jury list, are confidential, unless disclosed in open court or otherwise opened by order of the court.

(10) *Proprietary and Licensed Material.* Computer programs or other records that are subject to proprietary rights or licensing agreements shall only be disclosed in accordance with the terms and conditions of the applicable agreements and licenses, or by court order. No records shall be closed to the public solely because access is provided by programs or applications subject to licensing agreements, or because they are subject to

proprietary rights.

(11) *Copyrighted Documents and Materials.* Documents produced and copyrighted by the court are public records that may not be re-published without proper authorization from the court.

(f) Access to Records in Paper Medium.

(1) *Filing a Request.* A request to inspect or obtain copies of records that are open to the public shall be made orally or in a written format acceptable to the custodian. The request shall specify any commercial use intended for the records. All requests for copies must include sufficient information to reasonably identify what is being sought. The applicant shall not be required to have detailed knowledge of the court's filing system or procedures.

(2) *Timely Response.* Upon receiving a request to inspect or obtain copies of records, the custodian shall promptly respond orally or in writing concerning the availability of the records, and provide the records in a reasonable time based upon the following factors:

(A) Immediate availability of the requested records;

(B) Specificity of the request and need for clarification;

(C) Amount of equipment, materials, staff time and other resources required to satisfy the request; or

(D) Whether the requested records are located at the court or in off site storage.

(3) *Cost; Non-Commercial and Commercial Purposes.*

(A) Applicants who request records for non-commercial purposes shall not be charged any fee for the cost of searching for a record or redacting confidential information from a record, except as provided by statute, nor shall they be required to disclose the intended purpose or use of the records. If no fee is prescribed by statute, the custodian shall collect a per page fee based upon the reasonable cost of reproduction.

(B) An applicant requesting copies, printouts or photographs of records for a commercial purpose shall provide a verified or acknowledged statement to the custodian setting forth the commercial purpose and specific use intended for the records. If the custodian has reason to believe an applicant has failed to adequately disclose the commercial purpose or use of the requested records, the custodian may require additional information regarding the intended use of the records. The custodian shall collect a fee for the cost of:

(i) obtaining the original or copies of the records and all redaction costs; and

(ii) the time, equipment and staff used in producing such reproduction.

Notwithstanding the above provision, the Clerks of the Supreme Court and the Court of Appeals shall distribute copies of opinions to authorized publishers free of charge for publication pursuant to law and Ariz.Const. Art. 6, § 8.

(C) The custodian may make billing or payment arrangements with the applicant before satisfying the request, and is authorized to receive and hold deposits for estimated costs until costs are finally determined.

(4) *Delay or Denial; Explanation.*

(A) The custodian is required to comply with any request for records, except requests that are determined:

(i) to create an undue financial burden on court operations because of the amount of equipment, materials, staff time and other resources required to satisfy the request;

(ii) to substantially interfere with the constitutionally or statutorily mandated functions of the court or the office of the custodian;

(iii) to be filed for the purpose of harassing or substantially interfering with the routine operations of the court; or

(iv) to be submitted within one month following the date of a prior request, that is substantially identical to one received from the same source or applicant and previously denied, unless applicable rules, law or circumstances restricting access have changed.

(B)(i) If a request cannot be granted within a reasonable time or at all, the custodian shall inform the applicant in writing of the nature of any problem delaying or preventing access, and if applicable, the specific federal or state statute, law, court or administrative rule or order that is the basis of the delay or denial. If access to any record is denied for any reason, the custodian shall explore in good faith with the applicant alternatives to allow access to the requested records, including redaction of confidential information.

(ii) If unsuccessful, the custodian shall meet with the judge having immediate, supervisory responsibility for the daily operations of the respective court, to determine if an alternative means of access to the records may be provided for the applicant. Thereafter, as soon as practicable, the judge shall inform the applicant if the denial is affirmed. Reviews of the foregoing denial and all other denials shall be conducted in accordance with the provisions of paragraph (f)(5) below.

(5) Review of Denials to Access Records.

(A) Any applicant who is denied the right to inspect, receive copies or access any record pursuant to the authority of this rule, shall be entitled to an administrative review of that decision by the presiding judge. The request for review must be filed in writing with the custodian who denied the request within 10 business days of a denial made under Paragraph (f)(4) above. The custodian shall forward the request for review, a statement of the reason for denial and all relevant documentation to the presiding judge or a designee within 3 business days of the request for review. The presiding judge shall issue a decision as soon as practicable considering the nature of the request and the needs of the applicant, but not more than 10 business days from the date the written request for review was received.

(B) Any party aggrieved by the decision of the presiding judge may seek review by filing a special action in the Court of Appeals pursuant to the Rules of Procedure for Special Actions.

(g) Access to Audiotape, Videotape, Microfilm, Computer or Electronic Based Records.

(1) *Scope.* This section applies to all requests to access or obtain copies of any audiotape, videotape, microfilm, computer or electronic based records maintained by the court, except for requests initiated by judges, court administrators, or clerks of the court for use in the administration or internal business of the court.

(2) *Authority; Procedures.*

(A) Except by court order, only the custodian or designee is authorized by this rule to provide access to or copies of computer or electronic based records.

(B) All the requirements set forth in paragraph (f), except subparagraph (3) thereof, are incorporated herein by reference and shall apply to requests for records submitted pursuant to this section.

(3) *Cost to Obtain Copies.*

(A) The custodian shall first meet with the applicant to understand the scope of the request so it can be defined as precisely as possible. The cost to obtain copies of information held electronically, which requires no programming or translation, shall be limited to the cost of materials. If a request requires programming or translation, the applicant shall bear the actual cost incurred by the court to comply with the request for copies of records. If no fee is prescribed by law, the custodian shall collect a fee covering the cost of producing the requested records, including staff time, computer time, programming costs, equipment, materials and supplies.

(B) Unless otherwise prescribed by law relating to the collection and deposit of fees by the custodian, the custodian may retain the fees collected pursuant to paragraph (g)(3)(A) to compensate for the expenses related to reproduction of electronic records.

(4) *Databases, Operating Systems and Network Programs.*

(A) Databases and electronic records containing case and administrative records are open to the public. However, databases and electronic records containing confidential

information that may not be entirely redacted, may be closed in accordance with the provisions of paragraph (f)(4).

(B) Documentation and other records that describe the technical location, design, function, operation, or access control features of any court computer network, automated data processing or telecommunications systems, are closed to the public.

(C) Consistent with the court's obligation to provide public access to its records, and subject to resource limitations, the design and operation of all future automated record management systems shall incorporate processing features and procedures that maximize the availability of court records maintained in electronic medium. Automated systems development policy shall require the identification and segregation of confidential data elements from data base sections that are accessible to the public. Whenever feasible, any major enhancement or upgrade to existing systems shall include modifications that segregate confidential information from publicly accessed data bases.

(5) Remote Electronic Access to Records and Cost.

(A) Pursuant to the provisions of this paragraph, every presiding judge may authorize on-line, remote electronic access to both case and administrative records in their respective courts. Fees may be charged for the value-added and custom remote electronic access service as authorized by ARS §§ 12- 119.02, 12-120.31, 22-281.01, 22-404.01 and 12-284.02. The fees shall be based on the recovery of costs incurred in the provision of remote electronic access, including the cost of providing a general public access information system, but shall not exceed the applicable statutory limits. For the supreme court, court of appeals and superior court records, the fees shall be paid to the clerk of each respective court. For justice and municipal court records, the fees shall be paid to an appropriate official designated by the court. The presiding judge of the superior court will consult with the local funding authority before any municipal court fee is imposed.

(B) Prior to establishing value-added remote electronic access for which fees are charged, each court shall establish a remote electronic access information system that, subject to available funding, will be available to the general public without additional court fees. At a minimum, both the public remote electronic access system and the value-added remote electronic access shall permit access to information by case number, party name and counsel name, if maintained electronically. Both systems shall contain the same case data elements. Any difference between the two systems shall be limited to providing enhanced services in the value-added remote electronic access, such as guaranteed response times and service levels, search and reporting tools, help desk services, etc. Courts are encouraged to make data elements available to both systems at the same time. If a court chooses to make additional data elements available in the value-added remote electronic access system first, the same data elements must be made available in the public remote electronic access system within six months.

(C) Additional policies and procedures for remote electronic access to court records shall be adopted when necessary by the supreme court through subsequent rules or separate administrative orders after considering applicable comments and recommendations, including those of the court's Commission on Technology and the Arizona Judicial Council.

(D) Any on-line electronic access shall be conditioned upon the user's agreement to access the information only as instructed by the court, to not attempt any unauthorized access, and to consent to monitoring by the court of all use of the system. The court will also notify users that it will not be liable for inaccurate or untimely information, or for misinterpretation or misuse of the data. Such agreement and notices shall be provided to the users in any manner the court deems appropriate. The court may deny access to users for failure to comply with such requirements.

(E) For value-added or custom remote electronic access, each court will utilize a published standard fee schedule or written contracts with each subscriber. The fee schedule or contract shall set forth the services and service levels to be provided, the fee structure, manner of billing, payment requirements, and grounds for termination of the service. The state of Arizona, its county and municipal governments and agencies shall be exempt from such fees.

(F) The presiding judge of each court may establish limitations on remote electronic access based on the needs of the court, limitations on technology and equipment, staff resources and funding.

(G) All courts and clerks of court shall employ appropriate security measures, procedures, devices and software to protect assets and records and to prevent unauthorized access.

(H) Communication protocols shall be adopted that are consistent with standards adopted for the Arizona Judicial Information Network (AJIN) as reflected in Supreme Court Administrative Order 95-37. Free public remote electronic access shall, at a minimum, be available by means of standard telenet or an industry-standard hypertext mark-up language (HTML) browser. By December 31, 1999, a single non-proprietary, open systems communications protocol for value-added and custom remote electronic access shall be determined by the Commission on Technology. By January 30, 2004, all courts shall comply with and use the communication protocols and standards adopted for remote electronic access by the Commission on Technology.

(h) Inspection and Photocopying.

(1) *Access to Original Records.* During regular business hours a person shall be allowed to inspect or obtain copies of original versions of records that are open to the public in the office where such records are normally kept. If access to original records would result

in disclosure of information which is not permitted, redacted copies of the closed records may be produced. If access to the original records would jeopardize the integrity of the records, or is otherwise impracticable, a copy of the complete records in other appropriate formats may be produced for inspection. Unless expressly authorized by the custodian or court order, records shall not be removed from the office where they are normally kept.

(2) *Access to Certain Evidence.* Documents and physical objects admitted into evidence shall be available for public inspection under such condition as the responsible custodian may deem appropriate to protect the security of the evidence.

CREDIT(S)

Added Oct. 9, 1997, effective Dec. 1, 1997. Amended Sept. 24, 1999, effective Dec. 1, 1999.

<<XII. MISCELLANEOUS PROVISIONS>>

<Formerly Part XI. Redesignated as Part XII January 15, 2003, effective July 1, 2003.>

Current with amendments received through February 3, 2005.

© 2005 Thomson/West
AZ ST S CT Rule 123
END OF DOCUMENT

(C) 2005 Thomson/West. No Claim to Orig. U.S. Govt. Works.