

**ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY**

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**[QUESTIONS MAY BE DIRECTED TO
609-984-4557]**

Directive # 05-10

TO: Superior Court and Tax Court Judges

FROM: Glenn A. Grant, J.A.D.

SUBJECT: Closed Proceedings and Sealed Records – Requirement to Submit Reports

DATE: March 29, 2010

This Directive constitutes a reissuance of a longstanding requirement that judges submit reports on closed proceedings and sealed records.

Amended Rule 1:38, "Public Access to Court Records and Administrative Records," effective September 1, 2009 is based on a presumption of openness of records, that is, court records and administrative records within the custody and control of the Judiciary are open to the public except as otherwise provided in the rule. This principle of openness is also reflected in Rule 1:2-1, which provides that when a proceeding is conducted in open court, no record of any portion of the proceeding shall be sealed by order of the court except for good cause shown, as defined by Rule 1:38-11(b) and set forth on the record.

Rule 1:38-11, "Sealing of Court Records," specifically addresses "good cause" as follows:

- (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.

In so defining "good cause," the Rule places the burden on the moving party to overcome the presumption of openness.

Since 1982, Assignment Judges have been required to submit to the Administrative Director reports of proceedings closed by judicial order (as distinguished from proceedings closed by rule or statute). In addition, since 1985 Assignment Judges have been required to include orders sealing records in those periodic reports.

Attached is an updated reporting form captioned "Judge's Report of Proceeding Ordered Closed or Record Sealed." This supersedes prior versions of the form effective immediately. Reports should be submitted to the Administrative Director quarterly, that is, on the first day of January, April, July and October. Reports may be submitted by mail to the above address or via Lotus Notes to SealedRecords Mailbox. While the reporting forms should be completed by the trial judge contemporaneously with each instance of closed proceedings or sealed records, the reports need be submitted only quarterly by the Assignment Judge or Tax Court Presiding Judge.

Questions concerning this memorandum may be directed to Special Assistant Francis W. Hoeber at 609-984-4557.

G.A.G.

Attachment

- c: Chief Justice Stuart Rabner
AOC Directors and Assistant Directors
Clerks of Court
Trial Court Administrators
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant