

NOTICE TO THE BAR

PROPOSED AMENDMENTS TO RULE 1:38-5 TO CLARIFY THE EXCLUSION FROM PUBLIC ACCESS OF OATHS OF JUDICIAL OFFICIALS AND TO SPECIFY THE INFORMATION TO BE PROVIDED IN RESPONSE TO REQUESTS – PUBLICATION FOR COMMENT

New Jersey recognizes a general right of public access to information regarding the appointment and status of public officials. However, there are statutory limits that prohibit access to the original or copies of a public official's oath documentation. The legislature in adopting the statutory prohibition was addressing certain unintended and improper purposes for which copies of oaths have been used.

N.J.S.A. 47:1A-1.1 governs public access to oaths of allegiance, oaths of office, and affirmations taken upon assuming the duties of any public office and extends to members of the Legislative Branch, Executive Branch, Judicial Branch, and all law enforcement entities. The statute precludes the custodian of government records from providing a certified copy of the oath of office to a person making a request and provides that in lieu of the oath itself the custodian shall provide "the full name, title, and oath date" of the public official.

The New Jersey Secretary of State possesses and manages access to the oaths of office of most government officials, including justices, judges, and clerks of court. The Clerk of the Superior Court, however, serves as record custodian for the oaths of office of Municipal Court judges and certain judicial officials and Judiciary personnel.

The Judiciary proposes to amend R. 1:38-5 to conform to N.J.S.A. 47:1A-1.1 by adding to the types of administrative records excluded from public access copies of oaths and oaths of office of judicial officials except for "the full name, title, and oath date of the person". A person seeking information about a judicial official's appointment thus would be informed by the record custodian of the full name, title, and oath date of the official but would not be provided a copy of the oath itself. The attached proposed amendments would harmonize R. 1:38-5 with the statute but would not substantively change practice because the Superior Court Clerk (like all government records custodians) already is subject to N.J.S.A. 47:1A-1.1.

Comments on the proposed rule amendments should be submitted in writing by February 15, 2019 to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attn: Comments – Amendments to Rule 1:38-5
Hughes Justice Complex, P.O. Box 037

Trenton, New Jersey 08625-0037

Comments may also be submitted by email to: Comments.Mailbox@njcourts.gov.

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by email should include their name and email address. Comments submitted in response to this notice are subject to public disclosure.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: January 11, 2019

PROPOSED AMENDMENTS

Rule 1:38-5. Administrative Records Excluded from Public Access

The following administrative records are excluded from public access:

(a) – (q) no change

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

(s) Any original or copy of an oath, oath of allegiance, or oath of office of a judge, judicial official, or Judiciary personnel except that the full name, title, and oath date of that person shall not be excluded from public access (see N.J.S.A. 47:1A-1.1).

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; paragraph (b) amended May 30, 2017 to be effective immediately; new subparagraph (s) adopted XXX to be effective immediately.