

NOTICE TO THE BAR

PROPOSED AMENDMENTS TO RULE 1:38 (“PUBLIC ACCESS TO COURT RECORDS AND ADMINISTRATIVE RECORDS”) TO EXCLUDE FROM PUBLIC ACCESS MEDICAL AND RELATED RECORDS – PUBLICATION FOR COMMENT

The Supreme Court invites written comments on proposed amendments to Rule 1:38-3 that would exclude from public access medical, psychiatric, psychological, and alcohol and drug dependency records, reports, and evaluations. The proposed amendments are attached.

Please send any comments on the proposed amendments in writing by November 16, 2019 to:

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Proposed Amendments to Rule 1:38 – Exclusion
of Medical and Related Records from Public Access
Hughes Justice Complex, P.O. Box 037
Trenton, New Jersey 08625-0037

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

In its Administrative Determinations on the 2007 Report of the Supreme Court Special Committee on Public Access to Court Records (“Albin Report”), the Court determined that medical documents and reports admitted into evidence or attached to a motion or pleading submitted to the court generally should be publicly accessible, except for certain Family Division records.

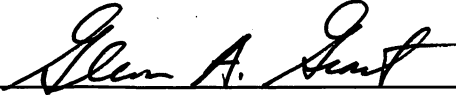
The Supreme Court Advisory Committee on Public Access to Court Records recently considered whether the presumption of public access (and lack of any specific exception to that presumption) in Rule 1:38 should be reconsidered in light of technological advances, including the widespread implementation of eCourts. The Advisory Committee focused on the potential (as anticipated in the Albin Report) for hyper-dissemination of court records through the Internet. The ongoing implementation of eCourts has brought about the realization of the possibility foreseen in the Albin Report, which possibility likely will increase as electronic filing is made available to self-represented litigants.

The Advisory Committee also noted that Rule 1:38-3(d)(3) excludes from public access medical reports filed in connection with certain Family matters, specifically “[m]edical, psychiatric, psychological, and alcohol and drug dependency records, reports, and evaluations in matters related to child support, child custody, or parenting time determinations.” To the extent that those records are sensitive in nature – and noting that in practice they may be filed in all case types, including in support of requests for adjournments or extensions of time due to medical issues – the Advisory

Committee has proposed extending to all divisions the presumptive exclusion of such reports from public access.

The Judiciary thus is considering amendments to Rule 1:38-3(a) to exclude from public access medical and related records in all case types.

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.



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

Dated: October 15, 2019

PROPOSED AMENDMENTS

Rule 1:38-3. Court Records Excluded from Public Access

The following court records are excluded from public access:

(a) General. [Records required to be kept confidential by statute, rule, or prior case law consistent with this rule, unless otherwise ordered by a court upon a finding of good cause.] These records remain confidential even when attached to a non-confidential document, unless otherwise ordered by a court:

(1) Records required to be kept confidential by statute, rule, or prior case law consistent with this rule.

(2) Medical, psychiatric, psychological, and alcohol and drug dependency records, reports, and evaluations.

(b) – (f) no change

Note: New Rule 1:38-3 adopted July 16, 2009 to be effective September 1, 2009; subparagraph (b)(1) amended December 9, 2009 to be effective immediately; paragraphs (e) and (f) amended January 5, 2010 to be effective immediately; subparagraph (c)(11) amended, subparagraph (c)(12) adopted, and subparagraph (d)(10) amended February 16, 2010 to be effective immediately; subparagraph (d)(1) amended June 23, 2010 to be effective July 1, 2010; paragraph (e) amended October 26, 2010 to be effective immediately; paragraph (e) amended February 28, 2013 to be effective immediately; subparagraph (d)(12) amended July 9, 2013 to be effective September 1, 2013; subparagraphs (f)(2) and (f)(5) amended, and new subparagraph (f)(9) added December 9, 2014 to be effective immediately; subparagraph (d)(2) amended July 27, 2015 to be effective September 1, 2015; subparagraph (b)(1) amended May 30, 2017 to be effective immediately; paragraph (a) and subparagraphs (d)(1) and (d)(13) amended July 28, 2017 to be effective September 1, 2017, subparagraphs (c)(1), (d)(1), (d)(2), (d)(5), (d)(6), (d)(9), and (f)(6) amended May 15, 2018 to be effective immediately; new subparagraph (c)(13) adopted July 27, 2018 to be effective September 1, 2018; new subparagraph (c)(14) adopted and subparagraph (f)(5) amended September 12, 2018 to be effective immediately; new subparagraph (d)(18) adopted July 29, 2019 to be effective September 1, 2019; paragraph (a) amended XXX to be effective immediately.