

NOTICE TO THE BAR

AMENDMENTS TO RULE 1:38-3 (“COURT RECORDS EXCLUDED FROM PUBLIC ACCESS”) TO EXCLUDE FROM PUBLIC ACCESS MEDICAL, PSYCHIATRIC, PSYCHOLOGICAL, AND ALCOHOL AND DRUG DEPENDENCY RECORDS, REPORTS, AND EVALUATIONS

The Supreme Court, by Order dated August 4, 2022 (attached), adopted amendments to Rule 1:38-3, to be effective January 1, 2023, to exclude from public access medical, psychiatric, psychological, and alcohol/drug dependency records, reports, evaluations, and other documents that contain codes or descriptions of medical diagnoses, conditions, or services. The Court’s order and the rule amendments are attached.

The amendments flow from a recommendation by the Supreme Court Advisory Committee on Public Access to Court Records to create uniformity in the exclusion of medical records in all matters given the significant advancements in the use of technology by the Judiciary and to prevent the hyper-dissemination of sensitive medical information. The Court acknowledged that medical reports and documents that contain diagnoses, conditions, or services filed with the court should be restricted from public access. The Court further acknowledged that medical bills that do not reference diagnoses, conditions, or services (including service codes) are presumptively public.

The ability to upload medical records as confidential documents in eCourts Law Division, Civil Part is currently available. Attorneys are encouraged to use this functionality even prior to the January 1, 2023 effective date of the rule amendments.

After January 1, 2023, a party including a medical record in a filing will be required to classify that document as confidential in eCourts. In addition, where a party seeks to restrict from public access a medical record that has been previously filed with the courts, including records filed either prior to January 1, 2023 or filed after that date, that party must file a motion requesting that the court classify the record as confidential and remove it from public access. Upon the granting of such a motion and entry of an order, court staff in the vicinage will forward the order to the Superior Court Clerk's Office for processing. For guidance on such motions, see the packet entitled "How to File a Motion to Classify a Record as Confidential or to Delete a Document from eCourts Case Jackets," available on the Judiciary's website [here](#).

The Superior Court Clerk's Office will be scheduling free CLE trainings on the above-referenced eCourts functionality. Those training dates will be published in a separate notice to the bar.

Questions regarding this notice may be directed to Superior Court Clerk Michelle M. Smith at michelle.smith@njcourts.gov or (609) 815-2900 ext. 54200.

A handwritten signature in black ink, reading "Glenn A. Grant", is positioned above a horizontal line.

Glenn A. Grant
Administrative Director of the Courts

Dated: September 13, 2022

Supreme Court of New Jersey

It is ORDERED that the attached amendments to Rule 1:38-3 of the Rules Governing the Courts of the State of New Jersey are adopted to be effective January 1, 2023.

For the Court,



Chief Justice

Dated: August 4, 2022

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. Statements required for medical billing that do not include descriptions of medical diagnoses, conditions, or services are not excluded from public access.

(b) ... no change

(c) ... no change

(d) ... no change

(e) ... no change

(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; new subparagraphs (c)(1) and (d)(19) adopted February 5, 2021 to be effective February 15, 2021; subparagraph (c)(4) amended, subparagraph (d)(19) amended, new subparagraph (d)(20) adopted, and subparagraph (f)(10) amended July 30, 2021 to be effective September 1, 2021; paragraph (a) amended August 4, 2022 to be effective January 1, 2023.