

RULE CHANGE 2023(04)
PUBLIC ACCESS TO INFORMATION AND RECORDS

Rule 2. Public Access to Administrative Records of the Judicial Branch

[NO CHANGE]

SECTION 1. DEFINITIONS

For purposes of Chapter 38, Rule 2, the following definitions apply:

(a) – (d) [NO CHANGE]

(e) The “Judicial Branch” includes Colorado State Courts and Probation, the Office of the State Court Administrator, the Office of the Presiding Disciplinary Judge, the Office of Judicial Performance Evaluation, the Office of Attorney Regulation Counsel, the Office of Attorney Registration, the Colorado Lawyer Assistance Program, the Colorado Attorney Mentor Program, the Office of Alternate Defense Counsel, the Office of the Child’s Representative, the Office of the State Public Defender, and the Office of the Respondent Parents’ Counsel. The Judicial Branch does not include the Commission on Judicial Discipline, Independent Ethics Commission, ~~or~~ the Independent Office of the Child Protection Ombudsman, or the Office of Public Guardianship.

COMMENT: The Independent Ethics Commission was created by article 29, section 5 of the Colorado Constitution, and is an independent and autonomous constitutional entity. The Supreme Court does not believe it is appropriate to promulgate a rule governing access to records of a separate constitutional entity. The Commission on Judicial Discipline is also a separate constitutional entity, created by article 6, section 23 of the Colorado Constitution. Section 24-72-401, C.R.S. (2015) governs the confidentiality of information and records of the Commission on Judicial Discipline. The Supreme Court presumes that the legislature intended section 24-72-401, C.R.S. (2015), and not CORA to control the confidentiality of Commission on Judicial Discipline records. The legislation creating the Independent Office of the Child Protection Ombudsman specifies that it is subject to CORA. § 19-3.3-102(5), C.R.S. (2015). The Office of Public Guardianship was created within the judicial department in 2019. § 13-94-104, C.R.S. (2019). The statute is silent on whether the Office of Public Guardianship is subject to CORA or this Rule.

(f) – (h) [NO CHANGE]

SECTION 2 [NO CHANGE]

SECTION 3. EXCEPTIONS AND LIMITATIONS ON ACCESS TO RECORDS

(a) [NO CHANGE]

(b)(1) – (3) [NO CHANGE]

~~(4) Individual signatures that constitute confidential personal information.~~

~~COMMENT: This provision is not in CORA. The Judicial Branch protects individual signatures because they can be misappropriated and subject to improper and illegal use.~~

~~(5)~~ (4) Contracts and assignment letters related to the Senior Judge Program unless confidential personal information has been redacted.

COMMENT: The Senior Judge Program is unique to the Judicial Branch, and the Judicial Branch has an interest in protecting the confidential personal information of judges in the Senior Judge Program.

(65) Financial records of judges and justices, Judicial Branch employees, or payees, unless confidential personal information has been redacted.

COMMENT: The rule is intended to protect the confidential personal information of judges and justices, Judicial Branch employees, and payees. Judges and justices are required to provide periodic financial disclosures to the Secretary of State. §§ 24-6-202, 203, C.R.S. (2015).

(76) Written communication from the public implying that the author intended the communication to be confidential and written communication from the public for the purpose of requesting assistance with personal matters affecting the author that are not publicly known, as well as any communication from the Judicial Branch in response.

COMMENT: The Judicial Branch regularly receives unsolicited correspondence from the public with highly personal information. This provision recognizes that disclosure of these personal communications may be contrary to the public interest. CORA contains a similar provision regarding correspondence between a constituent and an elected official on a personal and private matter. § 24-72-202(6)(a)(II)(C), C.R.S. (2015).

or (87) Records related to legislation, including documents related to fiscal notes, proposed introduced legislation, and the drafting of bills or amendments.

COMMENT: CORA addresses drafts of legislation and documents relating to drafting as part of its “work product” exception to disclosure. § 24-72-202(6.5)(b), C.R.S. (2015). The Judicial Branch takes a similar approach here.

scoring (98) All data and records pertaining to administration of a licensing or certification examination, including application materials, test questions, applicant answers, keys, all grading information and materials, and graded answers.

COMMENT: This provision is not in CORA. The Judicial Branch administers certain licensing and certification examinations, including the bar examination for attorneys. This provision recognizes that disclosure of exam materials or individual application materials may be contrary to the public interest.

(109) Security records, including records regarding security plans developed or maintained by the Judicial Branch, such as:

(A) Details of security plans and arrangements, investigation reports, audit reports, assessments reports, specific incident reports, warnings, investigations, emergency plans, building floor plans and blueprints, building access details, equipment, visitor and vendor logs, surveillance, network and systems topology, and network and systems security design;

(B) Reports of loss that relate to security measures;

(C) Any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or other law enforcement agency, or investigatory files compiled for any law enforcement purpose related to security measures;

(D) Portions of records of the expenditure of public moneys containing details of security plans and arrangements or investigations. Records of the expenditure of public moneys on security arrangements or investigations, including contracts for security plans and arrangements and records related to the procurement of, budgeting for, or expenditures on security systems, are otherwise available for inspection; and

(E) Any record provided by another public entity that contains details of security arrangements or investigations. The Judicial Branch custodian must refer a request to inspect the record to the public entity that provided the record and shall disclose to the requestor the name of the public entity.

This paragraph (109) does not prohibit the custodian from transferring records containing details of security arrangements or investigations to the Division of Homeland Security and Emergency Management in the Department of Public Safety, the governing body of any city, county, or other political subdivision of the state, or any federal, state, or local law enforcement agency. The custodian shall not transfer any record received from a nongovernmental entity without the prior written consent of the entity unless such information is already publicly available.

COMMENT: CORA contains a similar provision. § 24-72-204(2)(a)(VIII), C.R.S. (2015). This rule provides more specific detail on the types of security records maintained by the Judicial Branch.

Notwithstanding any provision to the contrary in this subsection (b), the custodian shall deny inspection of any record that is confidential by federal statute or regulation, state statute, court rule, or court order.

(c) Must Deny Inspection. Unless otherwise provided by federal statute or regulation, state statute, court rule, or court order, the custodian must deny inspection of the following records:

(1) – (25) [NO CHANGE]

(26) Judicial Branch professional development materials, records, and information, including, but not limited to

(A) Evaluation materials and records generated by participants in Judicial Branch orientation, education, mentoring or coaching programs, such as program applications, test scores, assessments, practical exercise worksheets, and similar materials, and

(B) Identities of individualized development program applicants and participants.

COMMENT: This provision is not in CORA. The Judicial Branch has a strong interest in promoting candor with participants of professional development programs.

SECTION 4 – SECTION 5 [NO CHANGE]

Rule 2. Public Access to Administrative Records of the Judicial Branch

[NO CHANGE]

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(a) – (d) [NO CHANGE]

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COMMENT: The Independent Ethics Commission was created by article 29, section 5 of the Colorado Constitution, and is an independent and autonomous constitutional entity. The Supreme Court does not believe it is appropriate to promulgate a rule governing access to records of a separate constitutional entity. The Commission on Judicial Discipline is also a separate constitutional entity, created by article 6, section 23 of the Colorado Constitution. Section 24-72-401, C.R.S. (2015) governs the confidentiality of information and records of the Commission on Judicial Discipline. The Supreme Court presumes that the legislature intended section 24-72-401, C.R.S. (2015), and not CORA to control the confidentiality of Commission on Judicial Discipline records. The legislation creating the Independent Office of the Child Protection Ombudsman specifies that it is subject to CORA. § 19-3.3-102(5), C.R.S. (2015). The Office of Public Guardianship was created within the judicial department in 2019. § 13-94-104, C.R.S. (2019). The statute is silent on whether the Office of Public Guardianship is subject to CORA or this Rule.

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SECTION 2. [NO CHANGE]

SECTION 3. EXCEPTIONS AND LIMITATIONS ON ACCESS TO RECORDS

(a) [NO CHANGE]

(b)(1) – (3) [NO CHANGE]

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COMMENT: The Senior Judge Program is unique to the Judicial Branch, and the Judicial Branch has an interest in protecting the confidential personal information of judges in the Senior Judge Program.

(5) Financial records of judges and justices, Judicial Branch employees, or payees, unless confidential personal information has been redacted.

COMMENT: The rule is intended to protect the confidential personal information of judges and justices, Judicial Branch employees, and payees. Judges and justices are required to provide periodic financial disclosures to the Secretary of State. §§ 24-6-202, 203, C.R.S. (2015).

(6) Written communication from the public implying that the author intended the communication to be confidential and written communication from the public for the purpose of requesting assistance with personal matters affecting the author that are not publicly known, as well as any communication from the Judicial Branch in response.

COMMENT: The Judicial Branch regularly receives unsolicited correspondence from the public with highly personal information. This provision recognizes that disclosure of these personal communications may be contrary to the public interest. CORA contains a similar provision regarding correspondence between a constituent and an elected official on a personal and private matter. § 24-72-202(6)(a)(II)(C), C.R.S. (2015).

(7) Records related to legislation, including documents related to fiscal notes, proposed or introduced legislation, and the drafting of bills or amendments.

COMMENT: CORA addresses drafts of legislation and documents relating to drafting as part of its “work product” exception to disclosure. § 24-72-202(6.5)(b), C.R.S. (2015). The Judicial Branch takes a similar approach here.

(8) All data and records pertaining to administration of a licensing or certification examination, including application materials, test questions, applicant answers, scoring keys, all grading information and materials, and graded answers.

COMMENT: This provision is not in CORA. The Judicial Branch administers certain licensing and certification examinations, including the bar examination for attorneys. This provision recognizes that disclosure of exam materials or individual application materials may be contrary to the public interest.

(9) Security records, including records regarding security plans developed or maintained by the Judicial Branch, such as:

(A) Details of security plans and arrangements, investigation reports, audit reports, assessments reports, specific incident reports, warnings, investigations, emergency plans, building floor plans and blueprints, building access details, equipment, visitor and vendor logs, surveillance, network and systems topology, and network and systems security design;

(B) Reports of loss that relate to security measures;

(C) Any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or other law enforcement agency, or investigatory files compiled for any law enforcement purpose related to security measures;

(D) Portions of records of the expenditure of public moneys containing details of security plans and arrangements or investigations. Records of the expenditure of

public moneys on security arrangements or investigations, including contracts for security plans and arrangements and records related to the procurement of, budgeting for, or expenditures on security systems, are otherwise available for inspection; and

(E) Any record provided by another public entity that contains details of security arrangements or investigations. The Judicial Branch custodian must refer a request to inspect the record to the public entity that provided the record and shall disclose to the requestor the name of the public entity.

This paragraph (9) does not prohibit the custodian from transferring records containing details of security arrangements or investigations to the Division of Homeland Security and Emergency Management in the Department of Public Safety, the governing body of any city, county, or other political subdivision of the state, or any federal, state, or local law enforcement agency. The custodian shall not transfer any record received from a nongovernmental entity without the prior written consent of the entity unless such information is already publicly available.

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(A) Evaluation materials and records generated by participants in judicial branch orientation, education, mentoring or coaching programs, such as program applications, test scores, assessments, practical exercise worksheets, and similar materials, and

(B) Identities of individualized development program applicants and participants

COMMENT: This provision is not in CORA. The Judicial Branch has a strong interest in promoting candor with participants of professional development programs.

SECTION 4 – SECTION 5 [NO CHANGE]

Amended and Adopted by the Court, En Banc, March 2, 2023, effective immediately.

By the Court:

**William W. Hood, III
Justice, Colorado Supreme Court**