

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

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Supplement to Directive #05-10

M E M O R A N D U M

TO: Superior Court & Tax Court Judges

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

SUBJECT: Directive #05-10 "Closed Proceedings and Sealed Records—Requirement to Submit Reports"—
Supplemental Instructions

DATE: September 7, 2010

This memorandum clarifies the requirement that judges report those cases in which they close proceedings or seal records that would otherwise be open to the public. It also promulgates a slightly revised reporting form.

Directive #05-10, "Closed Proceedings and Sealed Records—Requirement to Submit Reports," dated March 29, 2010 reissued the policy requiring trial judges to provide their Assignment Judge (Superior Court) or the Presiding Judge (Tax Court) with reports on closed proceedings and sealed records which are then submitted quarterly to the Administrative Director by the Assignment Judges or the Tax Court Presiding Judge. The reporting form issued by that Directive captioned "Judge's Report of Proceedings Ordered Closed or Record Sealed" superseded prior versions. This memorandum provides further guidance for completing the revised reporting form and clarifies the actions that should be reported.

Rule 1:38, "Public Access to Court Records and Administrative Records," is based on a presumption of openness. Court records and administrative

records of the Judiciary are open to the public except as otherwise provided in the rule. If not sealed pursuant to a specific Rule, records may be sealed by a judge only upon a showing of good cause, which exists only 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. Records should not be sealed merely because the parties agree or so stipulate.

Records that Need Not Be Sealed by Action of a Judge

Certain records are automatically sealed by operation of statute and/or court rule and need not be sealed by the action of a judge nor reported pursuant to Directive #05-10. For instance, the following documents are specifically excluded from public access pursuant to Rule 1:38 and need not be sealed by a judge's order and subsequently reported:

- 1) Unfiled discovery materials in any action because such materials are not court records (R. 1:38-2(b)(2))
- 2) Records relating to grand jury proceedings (R. 1:38-3(c)(4))
- 3) Records relating to Division of Youth and Family Services proceedings (R. 1:38-3(d)(10))
- 4) Discovery materials provided to the Criminal Division Manager's office by the prosecutor (R. 1:38-3(c)(1))
- 5) Court security plans (R. 1:38-5(d))
- 6) Records that are subject to a protective order pursuant to R. 4:10-3 (R. 1:38-3(f)(4))

Judges have frequently cited R. 4:10-3 "Protective Orders" on the sealed records reporting form. R. 4:10-3, however, relates to discovery, and provides that:

On motion by a party or by the person from whom discovery is sought, the court, for good cause shown or by stipulation of the parties, may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense....

Since protective orders are applicable to discovery, and since unfiled discovery is excluded from public access by operation of R. 1:38-3(f)(4), it is not necessary to submit sealed records reports on such records.

Proper Use of Records Sealed/Proceedings Closed Reporting Form

When records other than those noted above are sealed or proceedings are closed, they must be reported on the form. Those instances where a judge

orders a record sealed or a proceeding closed based on the judge's determination that the good cause standard set forth in R. 1:2-1 and in R. 1:38-11 has been met should be reported. R. 1:38-11 places the burden on the moving party to overcome the presumption of openness. A judge's explanation for sealing a record or closing a proceeding should provide sufficient detail to show that good cause existed.

Specific Matters that Should be Reported

- Pursuant to R. 3:19-2, Krol hearings of defendants acquitted of murder by reason of insanity must be in held in open court unless good cause is shown for the hearing to be closed. A closed Krol hearing should be reported on the form with an explanation as to why good cause for closing the proceeding was found.
- Indictments sealed for good cause pursuant to R. 3:6-8(a)
- Complaints required to be sealed pursuant to the New Jersey False Claims Act, N.J.S.A. 2A:32C-5(f), when a request is granted to seal the complaint beyond the 60 days provided automatically in N.J.S.A. 2A:32C-5(c)
- Sealing needed to protect a cooperating witness

Any questions concerning this memorandum may be directed to Meryl G. Nadler, Counsel to the Administrative Director, at 609-633-6540.

G.A.G.

Attachment

c: Chief Justice Stuart Rabner
AOC Directors and Assistant Directors
Clerks of Court
Meryl G. Nadler, Counsel to the Administrative Director
Trial Court Administrators
Division Managers (Civil, Criminal, Family)
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant
Pearl Ann E. Hendrix, Administrative Specialist



Judge's Name	Location
Court Address	☐ Closed Hearing ☐ Sealing of Records

Title of Action	Priority	Status	Comments

Docket #

Type of Action: (e.g., medical malpractice)	
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Date of Closed Hearing /Sealing of Records	
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Period of Sealing	- - - -
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1:38-11. Sealing of Court Records

- (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*.

Date _____

Please forward to Assignment Judge who will then forward to the Administrative Director, Richard Hughes Justice Complex, P.O. Box 037, Trenton N.J. 08625, or send via e-mail to SealedReports.Mailbox@judiciary.state.nj.us. Tax Court judges submit to Presiding Judge, Tax Courts.