

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

PHILIP S. CARCHMAN, J.A.D.
ACTING ADMINISTRATIVE
DIRECTOR OF THE COURTS



RICHARD J. HUGHES JUSTICE COMPLEX
PO BOX 037
TRENTON, NEW JERSEY 08625-0037

DIRECTIVE # 8-07
(Supplements Directive #15-05)

To: ASSIGNMENT JUDGES
SURROGATES

[Questions or comments may
be directed to 609-292-8470.]

From: PHILIP S. CARCHMAN, J.A.D.

Subj: PUBLIC ACCESS TO SURROGATES' JUDICIARY RECORDS

Date: SEPTEMBER 25, 2007

Directive #15-05, "Judiciary Open Records: Policies and Procedures for Access to Case-Related Court Records," issued on November 4, 2005, set forth the procedures approved by the Supreme Court to be followed in providing access to court records. This document, Directive #8-07, approved by the Supreme Court at its September 24, 2007 Administrative Conference, supplements Directive #15-05 and is intended to make clear the application of the provisions of Directive #15-05 to Surrogates' Judiciary records, *i.e.*, those records made or maintained by the Surrogates in their roles as Judges of the Surrogates' Court and Deputy Clerks of the Superior Court, Chancery Division, Probate Part.

The Opens Public Records Act (OPRA) does not apply to Judiciary records. Consequently, Executive Branch policies relating to the disclosure and copying of Executive Branch records under OPRA do not apply to Judiciary records kept by the Surrogates in their role as judicial officers. By memo of February 5, 2003 (see Attachment A), then Administrative Director of the Courts Richard J. Williams advised the Surrogates that "(1) records kept by the Surrogate in the Surrogate's judicial capacity are outside the scope of OPRA and not subject to its disclosure provisions, but rather are court records that are instead subject to the provisions of Court Rule 1:38 ("Confidentiality of Court Records"); (2) however, any records involving the Surrogate's Office maintained by the County are subject to the provisions of OPRA."

Consistent with that earlier analysis, all documents submitted to or filed with the Surrogates in their role as judicial officers, whether these documents are complete for purposes of court action or are held in "pending" files awaiting additional information, are public records available for inspection and copying. Such documents include decedents' estate indices, death certificates, applications, verified complaints for withdrawals from the Surrogates' Intermingled Trust Fund (SITF), and any other records "required by statute or rule to be made, maintained or kept on file"

(Rule 1:38) by Surrogates as Judges of the Surrogates' Court and Deputy Clerks of the Superior Court, Chancery Division, Probate Part.

Although not now required by Rule 1:38, Surrogates may redact Social Security Numbers and financial account numbers from verified complaints for the withdrawal of funds from the Surrogates Intermingled Trust Fund (SITF). Otherwise, only such records as are sealed by order of a Superior Court judge or that fall into one of the specific exceptions listed as items (a) through (j) of Rule 1:38 may be kept from public access and copying.

The procedures set forth in Directive #15-05 apply to Judiciary records made, maintained or kept by Surrogates, and the provisions of that Directive, incorporated herein by reference, are supplemented and modified as set forth below.

- A statement of "Availability of Surrogates' Judiciary Records" (See Attachment B) is made part of this Directive.
- A form for requesting Surrogates' Judiciary records is provided with this Directive (See Attachment C).
- All requests for access or copies must be evaluated equally according to the provisions of Directive #15-05 and this Directive, regardless of the person making the request or the use to which the information obtained is likely to be put.
- Access to Surrogates' Judiciary records, including dockets and indices of such records, must be made available on request in the same form and medium in which the Surrogates maintain such records, dockets and indices. Surrogates are not required, in response to an access request, to engage in any compilation or automation of their Judiciary records beyond what they would ordinarily do to run their offices efficiently. A Surrogate is not required to grant a request for data in a format or medium that is not already in use in that Surrogate's office.

The fees associated with obtaining copies of Judiciary records detailed in Directive #15-05 do not apply to Surrogates' Judiciary records. The fees associated with obtaining copies of Surrogates' Judiciary records are governed by N.J.S.A. 22A:2-30, "Miscellaneous Charges," and are as follows:

- \$10 search fee, i.e., for Surrogate's office staff to search an index or docket to determine if the office maintains a record as to a particular estate or guardianship.
- \$3 per page copy fee, when Surrogate's office staff make the copy. There should be no charge imposed for copies made by members of the public using

their own equipment. When members of the public make copies at self-service equipment available for such purpose, only the actual cost of using the equipment should be charged. The actual cost of using self-service equipment may vary among the Surrogates' offices depending on the contractual arrangement made by each Surrogate office.

- \$150 electronic duplication fee, for duplication or copying of microfiche, digital tape, high density disk, optically scanned and recorded material or for any other media used to record or preserve records, per medium recorded.

Any questions regarding this Supplemental Directive and its application to Surrogates' Judiciary records should be directed to Kevin M. Wolfe at (609) 292-8470.

P.S.C.

Attachments

- A. February 5, 2003 Memorandum to Surrogates
- B. Availability of Surrogates' Judiciary Records
- C. Records Request Form, Surrogates' Judiciary Records

cc: Chief Justice Stuart Rabner
Civil Presiding Judges
General Equity Presiding Judges
Probate Judges
AOC Directors and Assistant Directors
Trial Court Administrators
Civil Division Managers
Kevin M. Wolfe, Chief
Francis W. Hoeber, Special Assistant
Steven D. Bonville, Special Assistant

Attachment A

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

RICHARD J. WILLIAMS, J.A.D.
ADMINISTRATIVE DIRECTOR OF THE COURTS



P.O. Box 037
TRENTON, NEW JERSEY **08625-0037**

TO: Surrogates

FROM: Richard J. Williams

SUBJ: Applicability of Open Public Records Act to Surrogates

DATE: February 5, 2003

By letter of July 24, 2002, John M. Carbone, Esq., inquired on behalf of the Surrogates as to the applicability of the Open Public Records Act to the Surrogates. This memo is to advise you as to the results of legal research by my staff on that question.

The Surrogate is a constitutional officer whose office is funded and supported by the county government but who serves as judge and clerk of the Surrogate's Court and Clerk of the Chancery Division, Probate Part of the Superior Court. N.J. Const., Art. VII, Section II, paragraph 2 and Art. XI, Section VI; N.J.S.A. 2B:14-1; Clark v. DeFino, 80 N.J. 539 (1979), certif. granted 81 N.J. 260. The Surrogate and staff of the Surrogate are subject to the administrative oversight of the Chief Justice and Supreme Court and are bound by the applicable provisions of the New Jersey Rules of Court, the Code of Judicial Conduct, and the Code of Conduct for Judiciary Employees. In re Conda, 72 N.J. 229 (1977). As such, the Surrogate and Surrogate's Office are part of the Judiciary.

The Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., expressly applies to the Executive and Legislative Branches, not to the Judiciary. Since the Judicial Branch thus is not included in the act's specific coverage, it is not subject to the disclosure or other requirements of the act. As a judicial officer functioning in the Judicial Branch of government, any records made or kept by the Surrogate in performing these functions are judicial records and outside the scope of OPRA. Disclosure of records maintained by the Surrogate would instead be subject to the provisions of Court Rule 1:38 – "Confidentiality of Court Records."

This conclusion, however, does not fully resolve the issue because of the unique nature of the Office of the Surrogate. Though part of the statewide judicial system, the office is funded and supported by the county. Records pertaining to such things as budget and personnel as well as other administrative matters involving the Surrogate's Office are made and maintained by the county. Because the county is a political subdivision of the State, it is subject to the provisions of OPRA. Thus to the extent that the county maintains records relating to the Surrogate, those records would be subject to the provisions of OPRA.

Therefore you are advised that: (1) records kept by the Surrogate in the Surrogate's judicial capacity are outside the scope of OPRA and not subject to its disclosure provisions, but rather are court records that are instead subject to the provisions of Court Rule 1:38 ("Confidentiality of Court Records"); (2) however, any records involving the Surrogate's Office maintained by the County are subject to the provisions of OPRA.

/msg

cc: Chief Justice Deborah T. Poritz
Assignment Judges
Theodore J. Fetter, Deputy Administrative Director
John M. Carbone, Esq. (Carbone and Faasse)
AOC Directors and Assistant Directors
Trial Court Administrators
Elaine D. Dietrich, Counsel to the Administrative Director
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

Attachment B

AVAILABILITY OF SURROGATES' JUDICIARY RECORDS

All case records made, maintained or kept by Surrogates as Judges of the Surrogate's Court and Deputy Clerks of the Superior Court, Chancery Division, Probate Part are generally available for public inspection and copying except a limited number of specific types of documents that are confidential. Such confidential records are not to be made available to the public, and must be removed before the file is made available.

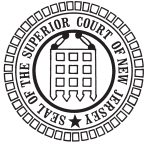
Do not disclose confidential records, which include but are not limited to:

- Records required by statute or rule to be kept confidential or withheld from indiscriminate public inspection. *R. 1:38(d).*
- Records which a court has ordered impounded or kept confidential. *R. 1:38(e).*
- Records relating to child victims of sexual abuse. *N.J.S.A. 2A:82-46.*

See — Record Request Form, Surrogates' Judiciary Records.

NOTE: Social Security numbers and financial account numbers may be redacted from verified complaints for withdrawal of SITF funds.

Attachment C



NEW JERSEY JUDICIARY
Records Request Form
SURROGATES' JUDICIARY RECORDS

See instructions on the reverse side.

PART A: Requestor Information

LAST NAME		MIDDLE INITIAL	FIRST NAME
COMPANY			
ADDRESS			
CITY	STATE	ZIP	EMAIL
DAYTIME TELEPHONE (INCLUDE AREA CODE)		PREFERRED DELIVERY	
EXT.	<input type="checkbox"/> PICK UP	<input type="checkbox"/> US MAIL	<input type="checkbox"/> ON SITE INSPECT
SIGNATURE			DATE

PART B: Payment Information

SELECT PAYMENT METHOD <input type="checkbox"/> CASH <input type="checkbox"/> CHECK <input type="checkbox"/> MONEY ORDER	FEES [as provided in N.J.S.A. 22A:2-30] Search of Index \$ 10 each search Copies \$ 3 per page Copies of tape, disks, microfiche or other non-paper medium \$150 per medium
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PART C: Information Requested

<input type="checkbox"/> INDIVIDUAL CASE INFORMATION	<input type="checkbox"/> DOCKET / INDEX INFORMATION	
DOCKET NUMBER	CASE NAME	
DOCUMENTS REQUESTED		
<input type="checkbox"/> LETTERS TESTAMENTARY	<input type="checkbox"/> LETTERS OF ADMINISTRATION	<input type="checkbox"/> LETTERS OF GUARDIANSHIP OF A MINOR
<input type="checkbox"/> LETTERS AD PROSEQUENDAM	<input type="checkbox"/> APPLICATION	<input type="checkbox"/> RENUNCIATION
<input type="checkbox"/> INDEX FROM _____ TO _____ (PROVIDE DATES)		
<input type="checkbox"/> OTHER (SPECIFY) _____		
Certified or Exemplified Copies (extra charge) <input type="checkbox"/> YES <input type="checkbox"/> NO		

JUDICIARY USE ONLY

FOR RECORD REQUESTS OVER \$50

TOTAL EST. COST	DEPOSIT AMOUNT	ESTIMATED BALANCE	DEPOSIT DATE	RECEIVED BY
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DISPOSITION INFORMATION

DELIVERED DATE	DENIED DATE	UNAVAILABLE DATE
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If request is denied or records are unavailable, explain here:

Identification provided for physical custody of file: _____

INSTRUCTIONS FOR OBTAINING SURROGATES' JUDICIARY RECORDS

NOTE: This form should not be used to request transcripts of court proceedings. Ask court staff for information about obtaining transcripts.

- 1.** Complete Parts A (optional), B, and C of this form, and deliver it during regular business hours to the Surrogate's office. For mail or fax requests, first contact the Surrogate's office. A directory of Surrogates' offices statewide is available at www.njcourtsonline.com.
- 2.** If your request is for physical inspection of a court file or document rather than a photocopy, you will be asked to provide a government issued identification (for example, a driver's license). If you do not provide such identification, your access to the records may be delayed until court staff is available to monitor your inspection of the records.
- 3.** The fees for duplication of Judiciary records in printed/paper form are listed on the front of this form. Payment may be in the form prescribed by and to the payee identified by the Surrogate's office in the county where the records are located. The \$3 per page copy fee will be charged when Surrogate's office staff make the copy. There is no charge imposed for copies made by members of the public using their own equipment. When members of the public make copies at self-service equipment (*e.g.*, photocopier, microfiche) available for such purpose, the actual cost of using the equipment will be charged.
- 4.** You may be charged a 50% deposit when a request for copies is estimated to exceed \$50. The record custodian will advise you of any deposit requirements.
- 5.** The record custodian will notify you that he or she grants or denies a request for access to a Judiciary record. In most cases, access to a record stored on-site can be provided the same day. If the record is not readily available, or is stored off-site, the custodian will advise you within three business days when the record will be made available, and the estimated cost for providing the record to you.
- 6.** You may be denied immediate access to court records if your request will substantially disrupt court operations.
- 7.** If the Surrogate's office is unable to comply with your request for access to a Judiciary record, the custodian will state the reasons on the request form and send you a signed and dated copy.
- 8.** Information provided on this form may be subject to disclosure under Rules Governing the Courts of the State of New Jersey, *Rule 1:38*.