

THE SUPREME COURT REQUESTS PUBLIC COMMENT ON THE FOLLOWING PROPOSAL:

3. Administrative Rule 40(a)—Removing Certain Dismissed Cases from the Public Index to Cases (CourtView)

The following proposal would exclude certain dismissed cases from the public index of cases. (The public index is accessible in person at court locations or remotely on the court system's home page. The public index is searchable by name using CourtView.)

The rule proposal was prompted by a complaint from two probation officers. In retaliation for their filing a petition to revoke probation, a probationer filed a petition for protective order against each of them. The court denied both petitions the day they were filed. But the probation officers' names remain on the public index of cases as respondents in a protective order case. While a review of the online docket shows that the petitions were denied, the probation officers explained that just having their names appear in a CourtView search can have a negative impact on future employment options or their standing in social circles. The current rules provide no ready means of removing their names.

The cases—listed in paragraphs (a)(3) to (9)—that would be excluded from the public index under the proposal are cases that are dismissed because there is no basis for them. This includes the baseless-protective-order scenario described by the probation officers, and also cases that are closed because the prosecutor declines to file charging documents following a party's arrest; cases that the court and prosecutor agree should be dismissed because there was an identity error in the charging document; cases that are dismissed because a minor was wrongly charged in adult court; and cases that the court dismisses under Criminal Rule 5(d) for lack of probable cause.

The supreme court is concerned that parties to the actions listed in proposed paragraphs (a)(3) to (9) suffer consequences from having their names appear on the CourtView-public index of cases, even when the actions are swiftly dismissed. Prospective landlords and employers routinely check names in the CourtView index and are influenced by the mere presence of a case, regardless of its disposition.

By excluding the cases described in paragraphs (a)(3) to (9) from the public index, this proposal would prioritize the legitimate concerns of the directly-impacted parties over the questionable public interest in knowing that certain individuals were once subjected to a baseless action.

Administrative Rule 40. Index to Cases.

(a) The clerk of court shall maintain an alphabetical index by last name of every party named in every case filed, regardless of whether a party's true name is protected in the public index under paragraphs (b) or (c) of this rule. The index must show the party's name, the case number, the case caption or title, the filing date, the case type, and other information required for that case type by court rule. The index may show the party's date of birth. The clerk shall publish a public version of the index, which excludes only

- (1) cases designated as confidential or sealed by statute or court rule, unless the index to those cases is public under court rules;
- (2) foreign domestic violence protective orders filed under AS 18.66.140; and
- (3) criminal cases dismissed because the prosecuting authority declined to file a charging document;
- (4) criminal cases dismissed for lack of probable cause under Criminal Rule 5(d);
- (5) criminal cases dismissed for an identity error under Criminal Rule 43(d);
- (6) criminal cases dismissed because the named defendant is a minor wrongly charged in adult court with an offense within the jurisdiction for delinquency proceedings under AS 47.12.020;
- (7) minor offenses cases dismissed for an identity error under Minor Offense Rule 11(c);
- (8) domestic violence protective order cases dismissed at or before the hearing on an ex parte petition because there is not sufficient evidence that the petitioner is a victim of domestic violence as defined by AS 18.66.990(3) or there is not sufficient evidence that the petitioner is a household member as defined by AS 18.66.990(5);
- (9) stalking or sexual assault protective order cases dismissed at or before the hearing on an ex parte petition because there is not sufficient evidence that the petitioner is a victim of stalking as defined by AS 11.41.270 or sexual assault as defined in AS 18.66.990(9); and
- (10) party names protected under paragraphs (b) or (c) of this rule.

The clerk shall continue to list a case on the public index even though the case file has been sealed or made confidential under Administrative Rule 37.6, unless the party names were protected under paragraphs (b) or (c) of this rule. The public index will be available to the public in electronic form except as limited by Administrative Rule 37.8.

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Note to new paragraphs (a)(3) to (a)(9), added by SCO XXXX: This rule change applies to cases that were dismissed or closed prior to its effective date.