"Access and Retention of Electronic Court Records in North Dakota"

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ACCESS AND RETENTION OF ELECTRONIC COURT RECORDS IN NORTH DAKOTA

Susan Hoffer

Abstract

Between 2009 and 2011 the North Dakota courts implemented a statewide electronic case management record system, which included an electronic document component intended to create a paper on demand system for all case types and eliminate reliance on paper files. Since the inception of the paper on demand electronic case management record system, numerous areas of policy and procedure required review and updating. This project focuses on two important areas future access policy to digitalized documents online and future retention policies given a completely electronic record. More specifically, North Dakota courts will have additional options to provide access to digitalized records via the internet from a location away from the courthouse. Additionally, North Dakota courts will no longer have to continuing adding physical storage capacity to maintain paper files but will need to reconsider retention policies with the transition to a completely electronic environment.

Historically, North Dakota provided general public access via remote internet link to the case summary of all public court case records, including the docket of events, judge assignment, hearing and disposition information and payment information. With the implementation of a new electronic case management system which includes digitalized documents, the option to access documents deemed public on the general public access site is available. The first goal of the research project was to examine the issues of greater access to digitalized documents on the general public access site,

seek court user's opinions on the court providing more access to documents, and, as a result of both findings, provide recommendations for further policy development.

In the past, North Dakota court's retention decisions have been guided by rules on retention based on a record's fiscal, legal, administrative and archival value and the physical storage space required to store the paper records. Retention rules control the length of time each record series must be maintained and once met, the paper file was destroyed. The electronic case summary of the record was maintained long term. With the implementation of the new case management system including digitalized documents, the need for additional physical storage space required to house paper records no longer exists. The second focus of the research project was to examine the issues regarding retention of an electronic court record, seek court users' opinions on various options of managing the electronic court record, and, as a result, provide recommendations for future policy development.

Nationwide, courts have been under scrutiny for decisions being made to provide more convenient access to court documents. An online opinion-based survey was chosen to assess North Dakota court users' opinions on these areas, and, to allow this information to be weighed in the policy discussions. An online opinion-based survey was implemented and distributed to several key groups of court users. Groups represented in the survey were *attorneys, party to a case, non-party to a case, media, and search and judgment company* representatives. Direct email requests were sent to a random sample of secure public registered users, all daily and weekly newspapers in North Dakota, as well as radio stations and commercial entities receiving regular court information. In addition, all fifty-three county clerk offices posted notice of the survey

and requested patrons visiting the county clerk's office to complete the survey. Third, a web link was placed on the initial launch page of the North Dakota courts public and secure access points, which made the survey available at the general public, secure public and onsite public access connections. Survey participants were requested to respond to questions about access to documents on the general public website and on access to certain party information. Second, survey participants were requested to respond to questions about retention of electronic court records.

The results indicated that the survey respondents favored the court providing access to public records in a more convenient forum by sixty-two percent. However, upon examining the sub-groups of respondents, there was more caution voiced by certain sub-groups of respondents than others. *Attorney* and *party groups* responded less favorably to providing access to documents at the general public access site. The p*arty to a case* group showed greater support for providing access to final orders, rather than all case information. The second set of questions on access asked survey respondents their opinion on the court handling of confidential information. The survey respondents responded very strongly that the court should not allow access to social security or financial information of any party by ninety-four percent. The response across all sub-groups was consistent with this position. The response regarding the release of address or date of birth information by the survey respondents was less dramatic. Forty-three percent disagreed that date of birth should be available and forty-three percent agreed, while fifty-two percent disagreed that addresses should be available and, thirty-three percent agreed. Sub-groups responding more favorably to

the release of date of birth and address were *media*, *non-party to a case* and *search and judgment group* representatives.

Regarding retention of electronic records, the survey results for the first three options, *maintain the complete electronic record indefinitely*, *maintain the electronic record according to a retention schedule*, and *maintain the electronic record case summary indefinitely and remove the documents upon the retention period being met*, were all agreed with by approximately half of the survey respondents. The option receiving the strongest agreement was to *maintain the electronic record pursuant to the retention rule,* which was supported by fifty-five percent of the respondents. The least supported options were to *remove the electronic record from the general public access site and maintain in a non-accessible database*, with forty-two percent disagreeing, and *remove the electronic record from public access site when retention is met and erase the record from the database*, which was opposed by sixty-four percent of the respondents.

The survey respondents voiced similar concerns that have been noted by the research on a national level. It is recommended that North Dakota create a committee with the special task of reviewing each of these areas, weighing the views of all court users as future policy decisions are made. It will be prudent to review each set of issues and proceed slowly as policy decisions are made in these two areas.

Introduction

In 2009, the North Dakota Court System commenced the roll out of the Tyler Technologies Odyssey electronic case management record system, which included an electronic document component intended to create a paper-on-demand system for all court case types and eliminate the need to maintain paper documents as the basis for court files. The implementation began in two counties, Cass County and Traill County. The two counties were chosen for the volume of cases filed (one high and the other low), expertise of staff, and differences in bandwidth available in the courthouses. Over the next two years, the case management system was implemented across the State of North Dakota, with the last regions being added in April, 2011. An additional component of the case management system implementation was e-filing. Access to the e-filing system was made available to parties in 2010 on a voluntary basis and, as of April 1, 2013, e-filing became mandatory for all civil cases from case initiation forward, and on June 1, 2013, all subsequent filings in criminal cases after the case was commenced by the clerk. Since the inception of the paper-on-demand electronic case management system, there have been numerous areas of policy and procedure that require review and updating. The focus of this research project is two areas, access to the electronic court records, including digitalized documents at the general public access site, and the retention of electronic court records in the new electronic environment, including digitalized documents.

Prior to the implementation of the Odyssey system, the North Dakota courts stored case information on a statewide electronic docketing system along with a paper file. Previously, court users were able to access the case summary which included a

docket of events, judge assignments, hearing and disposition information and payment information on each public case type through an internet website. Court users were required to visit the county courthouse where the record was held when they wanted to view the documents. A public computer was available in each county courthouse to review the same information that was available through a remote connection, but court users were required to request the paper file from the record custodian to review case documents. With the implementation of Odyssey, which included all aspects of the prior case management system and now includes documents being stored in digitalized format, there are more options available for access to the court record.

Currently, there are three types of electronic access to court information that differ by methods of access and content. These are described below.

General Public Access consists of all publicly accessible information. It excludes access to electronic documents, information that has been deemed private by court rule, and any information that is restricted by court order. General Public Access is available to anyone with an internet connection.

Secure Public Access consists of all publicly accessible information plus all electronic documents in a case, except those that have been sealed by statute or court rule or court order. Confidential documents are accessible to the attorney of record, but not others. Rights to Secure Public Access are set by role (such as prosecutor, law enforcement, social worker) and are granular down to the individual document by case type. Secure Public Access can be deemed "fingertip access" because a user with this type of secure public access rights can access the information at their desktop by using a specific web portal.

Onsite Public Access consists of all of the information available to Secure Public Access users except access to confidential documents. Onsite Public Access is only available through public computers located at each county courthouse location and at the North Dakota Law Library in Bismarck. The current model of accessing court documents replicates how access to records were handled in paper format, which required users to visit a county courthouse location to review the pleadings. The only difference today is that in the new case management record system a user can now access all records and documents in a file anywhere in the state from a single courthouse location.

Since the North Dakota Court system implemented the electronic case management system with digitalized documents, discussions have been occurring on the appropriate level of access to electronic court records at the General Public Access level, since storing the court record in a totally electronic format allows for expanded possibilities. The focus of discussions has centered on whether digitalized documents should be available for review at all three access points, rather than just the secure public access and onsite public access at the courthouse. This was the first area reviewed in this research project.

The North Dakota court system manages policy regarding access and retention of court records and administrative records. The management of administrative records was beyond the scope of this research project.

Retention management of the electronic court record has been a related topic under consideration since the implementation of the case management system. Under the prior case management system that docketed the events but still required the

maintenance of a paper file, North Dakota courts defined retention by specific rules and took into consideration the physical space required to store the paper files. With the implementation of an electronic court record that includes digitalized documents, retention came under review. In a paper file system, retention decisions were made considering physical storage space to maintain the record, in addition to the "fiscal, legal, administrative and archival value of the record." (North Dakota Supreme Court, 1995) The retention guidelines established a period of retention for the paper file of each record series. The electronic case summary was maintained, regardless of the destruction of the paper record, with a docketed destruction event in each record when the paper file was destroyed. With implementation of the electronic court record including digitalized documents, physical storage of additional paper files will be eliminated, and, as a result, the issue of retention is being reviewed to determine if the current policy is sufficient or if the court should implement a different policy moving forward. Options being discussed include the court maintaining a record series indefinitely and eliminating a retention policy versus the court continuing to maintain each record series for a specific period of time. Second, if the court maintains each record series based on a retention period how should the court manage the electronic court record upon the retention period being met. This project examined a number of options for retention to include *maintaining the record in the court data base indefinitely and being available to the public, removing access to documents once retention periods were met, but storing the electronic court record within the court data system*, to the other extreme of *permanently removing the electronic court record from the case management system upon* the expiration of the *retention period.*

For North Dakota courts to fully assess the impact and cost of a long term preservation policy of all electronic court records further evaluation may be necessary. The evaluation may include an assessment of the amount of server space required to store future and existing electronic records, factoring in the yearly growth rate of each record series, the necessary technological updates required to keep the electronic court information in a retrievable format over time, and a cost analysis of these factors to determine the cost of long term preservation. This assessment was beyond the scope of this research project.

Authority to govern access to court records and retention of court records were granted to the Supreme Court under Article VI, Section 3 of the North Dakota Constitution (North Dakota Legislative Branch) and are acknowledged in North Dakota Century Code 27-02-05.1 (North Dakota Legislative Branch) and North Dakota Century Code 54-46-06 (North Dakota Legislative Branch). Under this authority, the Supreme Court established rules to guide access to and retention of court records. Administrative Rule 41 addresses public access to court records, (North Dakota Supreme Court Rules, 1996) and Administrative Rule 26 – Court Records Management (North Dakota Supreme Court Rules, 1987) establishes the Supreme Court Administrator's authority and policy for the management of court records. The charge of duty is to establish a "schedule and procedure for the retention and disposition of court records". (North Dakota Supreme Court Rules, 1987, p. (2)(b)(4)) And under North Dakota Supreme Court Rule19, the authority to develop a court retention schedule is outlined along with the specific retention period for each case type. (North Dakota Supreme Court Rules, 1995)

In addition to the authority to govern access and management of court records, additional rules guide users on how to provide confidential information necessary for the court record. In March, 2009, North Dakota Courts adopted North Dakota Supreme Court Rule 3.4 Privacy Protection for Filings Made with the Court (North Dakota Supreme Court Rules, 2009) that defined confidential information and provided a procedure for parties to follow to submit confidential information to the court which the court requires in making and processing its decisions, while protecting personal information.

The adoption of North Dakota Supreme Court Rule 3.4 and changes made since March 1, 2009, are significant to outline as it may influence policy decisions on future access to electronic court records. Prior to March, 2009, the Court did not provide guidelines on the submission of confidential information, such as social security numbers, dates of birth, minor children names, and financial account numbers such as credit cards, bank accounts, loans and other financial records. In March 2009, a Rule was adopted (North Dakota Supreme Court Rules, 2009, pp. (a)(1-5)) making all but the last four numbers of the social security number, date of birth (in certain cases), minor children's names (except in cases where the child is a party to the action), financial account numbers and addresses of parties in civil and criminal cases confidential. Parties were required to submit this information on a confidential information form in specific cases that required it. The responsibility to redact this information on previously submitted court pleadings was placed on the clerk of court prior to allowing the public to review a court record. In March, 2010, the rule was amended (North Dakota Supreme Court Rules, 2009, pp. (a)(1-5) and (b)) with an effective date retroactive to March 1,

2009, to make criminal defendants' addresses publicly accessible. The responsibility to redact previous case records was removed from the Clerk of Court office and placed back on the original submitting party. If a party wanted to redact information in a prior pleading, the amended rule required the party to file the proper motion with the court. Going forward, when a party did not to submit confidential information in the new format, the party was deemed to have waived their right for the information to be confidential. In essence, documents filed with the North Dakota Court's prior to 2009 and potentially after, may include the identified confidential information. This is important to recognize as decisions are made on future access policies.

In summary, this project will review the issues identified regarding courts providing more convenient access to digital documents via an internet link and gather North Dakota court user's opinions on the same and present to State Court administration the findings which will be reviewed as further discussions are held on future access of digitalized documents through the general public access site. Second, this project will review the issues regarding retention of electronic case records, including digitalized documents and gather North Dakota court user's opinions on the same and present the findings to State Court administration which may be reviewed as future discussions regarding policy on retention of the electronic court record are held.

Literature Review

North Dakota courts implemented a new case management system, including digitalized documents, thus creating a completely electronic case record. The new case management system provides more options than the prior case management system that enables the court to provide more convenient access to court documents if desired. As a result, North Dakota courts are reviewing the level of access to court documents being provided to the public via an internet link and attempting to assess the best business decision going forward. As North Dakota courts contemplate this decision, it is apparent based on the literature that there are many perspectives being voiced in this area and the North Dakota courts will need to fully examine the issues as they proceed in this review.

Access to Court Records

Access to electronic court records has been a topic that has received increasing attention for the last twenty years. As courts migrate from paper records to electronic records, many issues have emerged that have been debated during this time. Courts attempt to balance providing more access to court records against the impact on the parties directly and indirectly involved in cases, as well as, the impact on court processes. As a result, courts continue to review, analyze and review again the impact and repercussions of each decision as technology continues to advance. There is a delicate balance between courts being accessible, visible and accountable in the management of legal affairs versus courts offering the parties privacy and protection from further harm, while maintaining the integrity of the judicial process.

In a review of access to electronic court records we find that many take the position that a public record is a public record (Deyling, 2003) and as such, should be accessible to the public in the most convenient and available forum possible regardless of the hurdles to overcome. This perspective does not consider the impact more convenient access to court records may have on the parties, directly and indirectly, the legal process, or any other concerns that have been noted.

In general, courts have followed one of two approaches in providing access to electronic court records, the "complete-access" approach or the "go-slow" approach. (Anderson, 2011, pp. 10-11) The complete access approach follows the public is public philosophy and the go-slow approach takes a much more conservative approach to the availability of electronic court information to the public via the internet, as they attempt to identify the concerns before problems arise. Some courts have started with one approach and then quickly moved to the other, when issues arise.

Others that have considered the issues that have been raised and, some as a result of direct court experience, advocate for a more cautious approach. There have been a number of concerns noted, including individual (parties) rights to privacy and protection, public safety based on the content of court records, and the potential effect on the parties when pleadings are interpreted by outside viewers prior to rulings and findings are made by the court based on the law. Additionally, with current technology, there are concerns regarding the safety in allowing documents with signatures on the internet that could reproduced or copied, thereby creating further issues of harm for all participants in legal matters. Also noted was the impact of court records being viewed at one moment in time, and the reviewer not following up to view the final outcome and

how this may affect parties. Future decisions regarding access to electronic court records will have a direct impact on the public's trust and confidence in the court system.

Governance of access to records has not changed over time. The principles formulated in the beginning of the courts continue to be the same principles guiding the discussion today. The difference comes in the availability of those records in a more convenient forum than in the past. In the days of paper records, the court user had to travel to the courthouse location to view case documents. This provided a "practical obscurity" (Kraski, 2010, p. 17) as a low percentage of individuals would travel to the courthouse location to view a record. With advances in technology, an electronic court record can easily be made available on public websites that could be accessed from the comfort of a person's home. This situation, in and of itself, lends for more people to view the record, sometimes out of curiosity, than was previously the case. With the increased ease of access, the natural protection of practical obscurity ends and as more individuals review court records this diminishes the individual privacy.

As courts discuss providing public website access of all public electronic court records, including documents, Hon. Paul H Anderson questions how various viewers may interpret the documents they review and how this will impact the party. As a judicial officer, Hon. Paul H Anderson believes courts have an obligation to make sure the record being displayed publically has "integrity" when it is disseminated. (Anderson, 2011, p. 10) For example, complaints cite allegations which have not been proven factually at certain stages of the court process. Therefore, Hon. Anderson questions what impact dissemination of all court documents to the public via internet, prior to the

court making findings on the allegations, may have on the parties. (Anderson, 2011, p. 10) The point is that courts must consider how access to documents at all stages of a case will be interpreted and what effect the interpretation may have on a party or parties, prior to the court making a ruling on the pleadings pursuant to the applicable law. Second, if an individual reviews a record at one static moment, prior to case resolution, and fails to return to determine the final outcome, how may that information be used and how may that impact the parties involved.

Historically, courts did not address the handling of sensitive party information, such as social security numbers, date of birth, addresses, financial account numbers and minor children names. Therefore, until courts began managing this information with rules of procedure, this information was readily available to anyone viewing the paper record. For the most part, parties were protected by "practical obscurity" and the process in place. (Anderson, 2011, p. 11) The fact that an individual seeking a record had to travel to the courthouse, request to review the record, sometimes wait a period of time for the physical file to be retrieved and physically appear to conduct a review of the record, parties had some natural protection as few people would take these active and time consuming steps to review a record. (Anderson, 2011, p. 11) Technology has dramatically changed this protection and when considerations have not been given to this detail, dire consequences have been quickly realized. Sudbeck noted several jurisdictions that placed electronic records, including documents, on the internet upon upgrading technology and case management systems, only to remove them due to public pressure after several incidents of public safety and privacy erupted. (Sudbeck, 2006, p. 269) As a result of these experiences, courts have spent the last decade

reviewing their traditional policy on access to public records with the increased use of electronic case management for some or all of record keeping, and enacting rules and regulations to deal with the new options. (Anderson, 2011, p. 11)

As noted by Sudbek public safety can be affected by mismanagement of court records. The court record contains sensitive information that can and has been used by individuals to exploit the parties. Because courts have not actively addressed the handling of sensitive information until recently, confidential information is available in court documents. Therefore, when courts have indiscriminately put electronic court documents on public access sites, individuals (parties) have suffered from acts such as identify theft, credit card fraud and other crimes due to the availability of confidential information. (Sudbeck, 2006, p. 269) As incidences of public safety become known to the general public, due to the access of electronic court records, the public has responded with an outcry against the courts' negligence in the handling of records, leading to a decrease in the public's trust and confidence in the judicial system. When the courts allow sensitive information to be placed on a public website without protections to the individuals affected, the general public quickly places responsibility on the courts for failing to ensure safety and protection for parties. As a response, many courts have quickly removed electronic access to public records as it reviewed electronic access policies to address the issues of protecting users' private information in public records. (Sudbeck, 2006, pp. 269-270)

Another issue for consideration is the integrity of the current jury system. Jurors experience a number of emotions when summoned for jury duty, from concern to curiosity. Jurors report accessing court websites to view the case in which they are

summoned for jury duty. As more consideration is given to internet access of electronic court documents, the risk of juror contamination may rise as prospective jurors become curious about the case in which they have been summoned and review court documents. This natural curiosity, regardless of cautions voiced by the court regarding jurors conducting research of the case or their own investigation, coupled with the ease of access, may result in a greater number of prospective jurors reviewing the case in which they are to report for jury duty.

Technology advances require additional safeguards to protect the integrity of the record. As courts make transitions to completely electronic record keeping practices, including all pleadings kept in an electronic format, courts must also create systems that prevents the release of "metadata". (Anderson, 2011, p. 15) Metadata refers to data embedded in the documents that is not intended for further release. But with the advances in technology, protections must be made in the process that the embedded data cannot be retrieved by outside review.

In 2008, Conley, Datta, Nissenbaum and Sharma examined the delicate balance of sustaining both privacy and open access to court records as courts move from paper records to online access. (Conley, 2011) They stated, "the conclusion of our inquiry is that courts have an obligation to rewrite rules governing the creation of and access to public-facing records in recognition of the potential for substantive changes that online access carries." (Conley, 2011, p. 3) They examined the information flow in a paper system versus an online access when conducting record searches. The results supported the conclusions that the information flow through online access was more efficient and less costly in gathering information, and that the volume of information

accessible in an online format exceeded what could be retrieved with the same cost and time as the paper model. It was acknowledged that personal information in documents needed to be protected, as cited in other literature, but they also noted "signatures on forms may be scanned as well, and if these scans are ultimately placed on the web, further increase the risk of identity theft." (Conley, 2011, p. 6) Conley pointed out the importance of data entry by record custodians. As access to records dramatically increase by making the court records available online, he noted the impact on the party could be much more significant if the underlying record was not complete, and questioned how this may impact the party. (Conley, 2011, p. 7) In weighing privacy versus open access, they concluded with a sanitizing records approach which they viewed as a compromise between privacy and open government. Sanitizing records involved removal of confidential and identifying information before releasing them to the public whether via the Web or local portals. (Conley, 2011, p. 46) They acknowledged technical challenges posed by this suggestion. They also offered two other options, a court system maintaining a full record at the courthouse, but a sanitized record posted online, or the option of using roles to gain access to certain information on the public access site. Again this approach requires active management and review of the court records, which has not been the role of the record custodian, so the recommendation would cause an increase in work load to enact.

Security Breach Laws

In 2006 Larson examined the movement of laws regarding state security breach in reference to the impact on courts and courts access policies. (Jennen Larson, 2006) In general, state security breach laws have been enacted to require private entities to

inform consumers if certain information is compromised from their databases. She acknowledged the security breach laws do not pertain to the courts. She noted that paper court records and emerging electronic court records contain the same data elements that are protected by the security breach laws, but not in the courts. She summarizes by stating "as public awareness increases regarding the security breach laws and inconsistencies in the protection of data elements across the public and private sector, state judiciaries may feel more pressure to conform their record access policies with the provisions of state security breach laws." (Jennen Larson, 2006, p. 39)

North Dakota must consider the issues pointed out in the literature, as it has managed its court records in a similar manner to other courts that have experienced negative responses when they did not address these issues. Specifically, North Dakota courts did not manage the submission of confidential information until 2009. Prior to the new rule, court documents included confidential information. Allowing these court documents to be available through a public website could potentially cause parties harm and affect their safety. The North Dakota courts could experience the same reaction from the public that other courts have. Also, the issues noted above would apply to North Dakota court records, whether the question centers around the effect on parties of viewers reviewing unresolved cases or the impact on the jury process of a potential juror reporting for jury duty. The court has been cognizant of the issues identified and prudent in its desire to thoroughly review the issues.

Specific Court Experiences

Washington State

In 2001, the State of Washington attempted to address the conflict between public access to records and personal rights to privacy with the implementation of General Rules 22, 15, 30 and 31. (Kraski, 2010, pp. 17-18) (Washington Access To Justice Board, 2004, pp. 10-11) As a non-unified state, Washington was experiencing differences in how access policies were being formulated and implemented in the various court jurisdictions which created discrepancies in relation to access to records across the various jurisdictions of courts. The second issue the State of Washington faced was a case management system that outlived its functionality and the need for a case management system with additional abilities than the current system allowed. Washington established a contract with a new case management system provider that allowed greater functionality regarding access to records, therefore requiring Washington to review access policy to increase likelihood of consistent practices across all court jurisdictions. In 2013, the Washington Access to Justice Board issued a Best Practices guide that outlined principles, information and suggestions on what courts in the non-unified jurisdictions in the State of Washington should consider when deciding how to manage access to electronic court records. (Washington Access To Justice Board, 2004, p. 3)

New York Review

Another challenge present as courts transition to electronic record environments is how current rules should be adapted to the electronic record environment. In New York, George Carpinello conducted a rule review to examine how Uniform Rule 216.1

relating to sealing of court records had been implemented and applied in New York, given the pending transition to electronic filing of court records and the potential to provide public access in a more convenient format. (Carpinello, 2003) His concern was how the rule was being applied by judges and if consistent decisions were being made across judges regarding use of the rule. Overall, Carpinello found that the courts were implementing the rule as it was intended, weighing the public interests in having access to court records against the parties' privacy interest. Second, the rule was reviewed to determine if it provided adequate protection to the parties given the potential public access to court records in an electronic filing system. Carpinello noted that electronic filing would increase the need to protect privacy interests of the parties, but felt the courts could provide greater access to court information by actively reviewing and redacting the pleadings prior to providing access as a solution to the protection and privacy issues. Carpinello's position envisioned active oversight by the record keepers, which is not typically a responsibility of the record keeper and may overburden the record custodian.

New Zealand

As of 2009, New Zealand had not crossed the bridge into the digital record environment. However, as noted by Judge David Harvey, movement into a digital record environment would require careful review of existing rules, policies and values of the court. New Zealand was watching closely to see how the United States courts addressed the issues related to open courts and rights to privacy and protection pending future movement into the electronic record environment. (Harvey, 2009)

Federal Court Decisions

In June 1999, the Committee on Court Administration and Case Management, through its Subcommittee on Privacy and Public Access to Electronic Case Files, began a study of privacy and security concerns regarding public electronic access to case file information for the Federal Court system. (Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access To Electronic Case Files, 2006) The purpose of the committee was to examine the issues of privacy and security in light of emerging technology that made accessibility to court records more prevalent. The Committee acknowledged a history of federal records being open to public view, unless ordered otherwise by the court. The Committee clearly delineated what contents of the record were considered the court file and what contents were not. The term "case file" (whether electronic or paper) means a collection of documents officially filed by the litigants or the court in the context of litigation, the docket entries that catalog such filings, and transcripts of judicial proceedings." (Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access To Electronic Case Files, 2006, p. 2) The Committee acknowledged certain types of cases, categories of information, and specific documents may require special protection from unlimited public access. Rules and procedures were developed to protect private information in court records, but relied on the submitting party to comply with the rules to provide the protections. Given the reliance on attorneys and litigants, it was recommended that the courts make an effort to educate attorneys and litigants about the fact that documents filed in the federal court may be available on the internet and care must be taken to comply with rules and

procedure to protect this information. The Committee noted that Federal Courts were transitioning into electronic environments at varying levels of technology and the guidelines did not create entitlement, but recognized as federal courts came online the public should share the benefits of information technology, including more efficient access to court files. (Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access To Electronic Case Files, 2006, p. 2)

The Committee made the following recommendations: Civil Case Files – that documents in civil case files should be made available electronically to the same extent that they are available at the courthouse with one exception: Social Security cases should be excluded from electronic access; and one change in policy: the requirement that certain personal data identifiers be modified or partially redacted by the litigants. These identifiers are social security numbers, dates of birth, financial account numbers and names of minor children. (Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access To Electronic Case Files, 2006, p. 2) The Federal Court system would provide access through a pay for use system known as PACERNet. This system required registration, log in and a password for use. The Committee acknowledged this process provided some protection to the parties, because if privacy or safety issues developed for a party the system created an electronic trail and could be used to identity users. (Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access To Electronic Case Files, 2006, p. 3) The Committee acknowledged that the recommendation supported the philosophy of public is public and would be easily

implemented nationwide. The Committee also acknowledged access to case files on the internet would eliminate geographic barriers by providing more equal access to all. The Committee also suggested that public access to case files on the internet would prevent private entities from purchasing court records at the court level and then placing the information on the internet for sale. The Committee recommended that criminal case files not be accessible on the internet after weighing the benefits of public remote electronic access to the safety and law enforcement risks such access would allow. The Committee recommended a review of this decision in two years. (Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access To Electronic Case Files, 2006, p. 4) The Committee recommended that documents in bankruptcy case files should be made generally available electronically to the same extent that they are available at the courthouse with some exceptions for personal identifiers as in civil cases. (Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access To Electronic Case Files, 2006, p. 4) This recommendation required an amendment to the bankruptcy code to allow required personal information to be submitted in a protected form, and an alternative method to provide the court with information required to complete the process. Lastly, the Committee recommended that Appellate Case Files be treated at the appellate level the same way in which they are treated at the lower court level. (Report of the Judicial Conference Committee on Court Administration and Case Management on Privacy and Public Access To Electronic Case Files, 2006, p. 5)

With the implementation of an electronic court record, North Dakota courts have experienced the need for rules to be reviewed and amended to work more effectively in

the electronic record environment. It has also caused the development of new rules, in light of the concerns acknowledged and addressed by other courts.

National Standards

In light of the struggle courts experienced with technology advances, national organizations began to offer standards and guidelines to courts to assist in a smoother transition as courts moved forward. The Council of Chief Justices and Conference of State Court Administrators have taken steps to provide guidance and assistance to courts across the nation. In an attempt to set national standards, the Council of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA) passed Resolution 33. (Wady Stekette, 2002, p. xi) Resolution 33 provided a guide as state courts made future decisions on access to court records when transitioning into electronic record management systems. The CCJ/COSCA acknowledged that progression to electronic records provided more opportunity to disseminate court information through the internet and enhance the public's ability to monitor the courts. However, it was acknowledged that the technical capabilities of individual courts, even within the same state, varied greatly and, as a result, special attention needed to be given to access to court records.

> "*These new circumstances require new access policies to address the concern that proper balance is maintained between public access, personal privacy, and public safety, while maintaining the integrity of the judicial process.*" (Wady Stekette, 2002, p. xi)

Eleven principles were outlined and adopted as a model for courts to follow as technology advanced. The model introduced principles intended to balance openness

to court records, public safety and the effective use of court resources to assist users in accessing court records. (Wady Stekette, 2002, p. 4) The eleven principles were: 1) maximize the accessibility to court records; 2) supports the role of the judiciary; 3) promotes government accountability; 4) contributes to public safety; 5) minimizes risk of injury to individual; 6) protects individual rights and interests; 7) protect propriety business information; 8) minimizes reluctance to use the court to resolve disputes; 9) makes most effective use of court and clerk of court staff; 10) provides excellent customer service; and 11) does not unduly burden the ongoing business of the judiciary. (Wady Stekette, 2002, p. 4) Principles one to three supported the long term view that court records should be open and available to the public. Access to records allows courts to be scrutinized in the decisions they render and allow the public to keep track of court performance. (Wady Stekette, 2002, p. 4) Access to records enables parties to monitor disputes, review how laws are applied and shows a consistent set of rules to guide people's actions. (Wady Stekette, 2002, p. 5) By providing access to records, courts are accountable to their decisions under the law, across cases and across courts. (Wady Stekette, 2002, p. 5) Truly open access to records allows the people to scrutinize, review, and hold the judiciary accountable to its role, thereby, improving public trust and confidence in the judiciary. (Wady Stekette, 2002, p. 6) The next principle examined how open access to records provided safety and security to the public. Court information can warn individuals of other people, businesses or circumstances that could cause harm, so access to court information allows people to better protect themselves. (Wady Stekette, 2002, p. 6) Principles five and six provided protection to people that could be harmed by unrestricted access to court information.

These principles cautioned courts to protect certain information from being readily accessible to prevent harm to the public. Examples noted were information regarding victims, witnesses and jurors. An additional area that required scrutiny were records that contained information that had a privacy interest, specifically, "legally protected privacy interest, the reasonableness (personally and objectively) of the expectation of privacy, the seriousness of the invasion of privacy, and the legitimate public interest in disclosure". (Wady Stekette, 2002, p. 7) Principle seven is similar in nature in that the propriety interests of a business should be balanced between the protection of business information versus what harm can be done if the information was not protected. (Wady Stekette, 2002, p. 7) The focus of principle eight was to make sure access to court records was established in a manner that minimized a party's reluctance to use the courts to resolve disputes. Access policies needed to be crafted as to not hinder parties from using the courts to resolve disputes for fear of information being generally available to the public. (Wady Stekette, 2002, p. 8) Principles nine through eleven noted that care must be taken when establishing record access policy so as to not overburden staff and ensure that requests could be addressed timely and without substantial harm to other duties, and that policy does not deter the fundamental purpose of the court, which was to resolve disputes. (Wady Stekette, 2002, pp. 8-9) These eleven principles were offered as a guide for courts across the country developing access policy in light of advanced technology. They outlined the importance of attention to many details in determining access policy and the care required when making decisions on access so as to maintain the integrity of the judicial process for parties and

non-parties, protect parties involved from further harm, provide transparency to the courts but not overburden court staff or hinder use of the judicial process.

The CCJ/COSCA issued a follow up report October 15, 2005, as the organization continued to monitor state courts development of access policy and identified additional areas of concern. The report noted the importance of educating litigants about access policies so they truly understood the reality of records access and the importance of complying with rules that identified how certain information should be submitted to the court. (Carlson, 2005, pp. 1-6) The second component of the report made specific recommendations for access of family court records. The report identified "special challenges presented by family court records" when "weighing personal privacy against public access and other interests in public records". (Carlson, 2005, p. 29) Family law was defined as cases involving dependency, juvenile delinquency, and domestic relations cases, including custody and support cases. (Carlson, 2005, p. 30) Specific areas identified were interests of third parties involved in family cases, personal identifiers required in family cases, financial information, sensitive reports that include financial and/or medical areas, concerns of domestic violence allegations, and self-represented parties. (Carlson, 2005, p. 29) The paper outlined that family court records involved key information that met the guidelines for restricted access and should be considered in the formulation of access policy. (Carlson, 2005, p. 31) The third component of the report addressed practices of courts and clerks in implementing laws and policies governing public access to court records. Policies must consider and address data quality and consequences for improper disclosure of information by staff.

Court users need to be confident that the record keepers will protect information to prevent harm, while maintaining access to records. (Carlson, 2005, p. 35)

Trial Court Performance Standards

When examining issues of access to court records and retention of court records, Trial Court Performance Standards (National Center for State Courts, 2003) developed to assist courts in measuring their performance, point out the significance of good policy decisions. Of these performance standards, several stand out when addressing these policy areas: Access to Justice; Equality, Fairness, and Integrity; and Public Trust and Confidence. The Access to Justice standard states "Courts should be open and accessible" and "trial courts have a duty to eliminate unnecessary barriers to its services". Courts have been charged with making access to records in the most "reasonable, fair and affordable manner". (National Center for State Courts, 2003, p. 9) Equality, Fairness and Integrity has several standards of measurement. Standard 3.6 addresses the production and preservation of records which in trial courts depend in substantial measure on the accuracy, availability and accessibility of records. Record keeping practices must be accurate and records must be properly preserved, as "records may affect the rights and duties of individuals for generations, their protection and preservation over time are vital". (National Center for State Courts, 2003, p. 33) The performance standard of Public Trust and Confidence supports that people should have confidence in the courts that they may access the court for an unbiased resolution of their dispute. (National Center for State Courts, 2003, p. 44) Providing access to records, in the most convenient forum allows the public to review court actions, assess the performance and trustworthiness of the courts and have confidence that the Courts

are a trustworthy place to resolve matters. The accurate preservation of court records, overtime, is vital to the history of the courts.

North Dakota courts have numerous areas to consider as it contemplates providing access of electronic court records on the internet. When careful thought was not given to the concerns noted, courts have experienced a negative response from the public. As the national guidelines reveal, making good policy decisions in this area requires managing a delicate balance between courts being accessible, transparent and accountable to the public while protecting rights of parties, the litigation process and the safety of those involved in court cases.

Retention of Electronic Court Records

Policy and research on retention of electronic court records does not have the depth of analysis as is the case with access to electronic court records. This policy area is in an infancy stage of review and only recently is a topic being addressed in the literature. Courts have been migrating to electronic case management systems for the past twenty years, but only recently have courts started examining the issues related to retention of electronic court records.

As courts move to electronic record keeping, a second area, retention of electronic records, requires scrutiny and review. Just as access to records from paper format to digital format created many issues, there are issues that require review regarding retention of electronic records that differ from retention of paper records and must be addressed head on as courts make this transition.

Electronic Records Management Issues Identified

COSCA funded a policy paper in this area that was presented at the Conference of State Court Administrators. (Linhares, 2012-2013 Policy Paper) The paper set out to define what constituted a comprehensive and effective courts record management program. (Linhares, 2012-2013 Policy Paper, p. 3) It suggested that an effective court record management program within a state court system must ensure proper adoption of the principles of governance, compliance, integrity, access, preservation, and disposition. (Linhares, 2012-2013 Policy Paper, p. 3) The public expects accurate and accessible court records that are created through uniform standards applicable to all courts and persons throughout the state. The focus of sound record governance requires uniformity and the enforceability of the records management standards so that regardless of who specifically handles a record, the product emerged consistently the same. (Linhares, 2012-2013 Policy Paper, p. 3) COSCA supported the fundamental principle of record governance through the state judicial system's implementation of uniform records management principles. (Linhares, 2012-2013 Policy Paper, p. 4) With clear record governance noted, the next set of standards laid out the content of good record management. Specifically, good record management ensured proper legal compliance, factual and legal integrity, access for all and proper consideration for timely preservation and disposition of the record. (Linhares, 2012-2013 Policy Paper, p. 6) Compliance requires that management practices be in line with applicable statutes, rules of court, administrative orders and organizational policies. (Linhares, 2012-2013 Policy Paper, p. 6) The standard of compliance included the principles that courts should follow statutes, court rules and administrative directives concerning creation and

maintenance of records, be required to enter specific data and information, be timely in the record creation and entry of data and information, that the organization, labeling and indexing be consistent, and that records be accessible to the public, court staff and other branches' agencies. Second, records should be audited periodically to ensure compliance, and third, that staff responsible for records receive updated training and information regarding changes to laws and regulations. (Linhares, 2012-2013 Policy Paper, p. 7) The second standard of integrity addressed the need for records to be created and preserved in a manner that guarantees their authenticity, reliability and accessibility. (Linhares, 2012-2013 Policy Paper, p. 7) To maintain the integrity of records, courts should maintain procedures and policies to ensure the chain of custody is documented for critical records; establish safeguards to prevent the unauthorized release of records to third parties; adopt technical systems for storage and retrieval of records to meet reliability standards; protect records from physical damage or destruction, and provide for redundant capacity in case of physical damage or destruction; monitor third party compliance routinely with standards and contract conditions; establish controls to identify missing or altered records, and the responsible party; establish and review audit trails to verify record integrity; and maintain systems and equipment in good working order according to industry or vendor standards. (Linhares, 2012-2013 Policy Paper, p. 8) The standard of access addressed the ability of judges, court staff, litigants and the public to obtain information to which they are entitled. (Linhares, 2012-2013 Policy Paper, p. 8) To ensure best practices for proper access to records, courts should: maintain accessible systems for storage of digital and paper records; create and maintain accurate and reliable index and retrieval systems;

provide tools to support search and retrieval of electronic records; establish controls to ensure protection of confidential and restricted information and data; provide access through different media, including physical and electronic formats that are also accessible to persons with disabilities; assess the reliability of system performance periodically for accessing records and ensure fees do not cause unequal access to court information if fees are charged for public access. (Linhares, 2012-2013 Policy Paper, p. 9) The standard of preservation required that the integrity and accessibility of judicial records are maintained throughout their life cycle. Most courts will move forward managing both paper records and digital records. With adequate storage space and environmental controls, long term preservation of paper records can be minimal. However, digital records require much more regular oversight.

> "Long-term storage involves regular monitoring, frequent intervention and the assistance of technically trained individuals. Two challenges present in digital record keeping, the physical media that holds the data must be preserved and protected from damage and degradation and second, the information must be able to be read and understood, including the ability to access the data with the proper hardware and software and to make the information comprehensible." (Linhares, 2012-2013 Policy Paper, p. 9)

To preserve both paper and electronic records, courts should provide duplication and back-up vital for critical records, as well as physical redundancy for the systems that maintain those records; select appropriate storage media, taking into account the needs for access, projected longevity, stability and usability of the media; provide levels of protection appropriate for the type of record; conduct periodic audits of electronic and

paper media to assess conditions; restore or re-create damaged or corrupted records and electronic data promptly; maintain storage system environments according to established standards; develop a strategy for the continued integrity and accessibility of records independent of the formats and media in which they were created; create a disaster preparation and mitigation plan; and review third party records management providers' compliance periodically with terms of service. (Linhares, 2012-2013 Policy Paper, p. 10) The principle of disposition recognizes that all records reach a point in their lifecycles where they are committed to long-term archival storage and preservation, or are scheduled for destruction. (Linhares, 2012-2013 Policy Paper, p. 10) One of the most important tools in managing the disposition of records is a records retention schedule. The primary purpose of a retention schedule is to help the organization meet legal, fiscal and administrative requirements for maintenance of records. (Linhares, 2012-2013 Policy Paper, p. 10) To maintain best practices under the principle of disposition, courts should; maintain records according to established statewide retention schedules; remove non-essential, obsolete or duplicate records routinely; use destruction methods appropriate to record content and media; ensure destruction is conducted in a secure manner; and conduct a records inventory and appraisal periodically to re-assess the value and determine if retention is up-to-date, including all electronic records and data. (Linhares, 2012-2013 Policy Paper, p. 11) The National Center for State Courts has applied the six principles through the development of the Judicial Records Management Maturity Model as a qualitative tool to evaluate a court's record management process (Linhares, 2012-2013 Policy Paper, p. 14) as courts further assess the current system in place.

As North Dakota courts have transitioned to electronic record keeping practices, the issues discussed in the policy paper are an accurate reflection of the areas that North Dakota courts have been actively addressing. It continues to develop a disaster mitigation plan and redundancy plan for the electronic court records. The court offers training to ensure data entry is consistent across offices and areas to ensure ease of access to court records regardless of what area from the state someone is examining records.

As courts move to digitalized record keeping, it is important to be aware of the advantages and disadvantages of such a move. As McMillan points out there are many advantages to a "paper on demand" electronic environment. The benefits include less physical space needed for storage of paper records, easier accessibility to electronic records that can be available across multiple users at one time, less likelihood of record destruction or theft when parties seek to view records, more economically friendly in that less paper is used to create the record and remote access to the electronic records can reduce cost of court users to review records, built in tracking of electronic records expedites case resolution and e-filing that reduces manual work by court staff to create the record. (McMillan, 2010, p. 180) However, McMillan cautions that moving to an electronic environment requires courts to be aware of the "pitfalls" in various electronic applications. There are numerous types of file formats, each with advantages and shortcomings for the purposes of the courts. Courts must be knowledgeable of the various file formats as they move toward electronic systems making sure that the courts' goals of long term storage, accessibility and retrievability of records can be maintained and at a reasonable cost. (McMillan, 2010, pp. 180-184)

National Guidance

Courts have historically established and followed retention schedules for paper records. Storage issues for courts, along with specific policies for retention have guided handling of paper records. As migrating to digital records reduces the physical storage issues, addressed in part by prior retention policies, digital records need review. A resource bulletin adopted by the Joint Technology Committee December 5, 2014, provides courts with a structure to follow to create a plan to address preservation and disposition of court records into the future. (Joint Technology Committee, 2014, pp. 1-34) The bulletin outlines that disposition policy must include retention, destruction and public access. (Joint Technology Committee, 2014, p. 2) The reality that courts have a combination of record types, including paper and digital format, means that policy must address each media type directly. The bulletin points out several questions that should be answered in the development of a comprehensive electronic court records policy and outlines procedures which courts can follow. The questions outlined are: "Should the electronic records destruction be automatic?"; "Should the electronic records destruction include both data and electronic documents?" ; "How best to delete court case data?; "How long should a court system publish court records on-line?"; How long do records need to be maintained for research purposes and are records maintained beyond the standard retention periods subject to public disclosure?"; and "How do courts designate historically significant cases for preservation?". (Joint Technology Committee, 2014, pp. 3-4) Historically, courts have outlined retention periods for each record type. Courts must now review if the underlying retention periods should change in an electronic court record environment. The bulletin suggests that courts should continue to use

underlying policy definitions to determine retention values and not make decisions based on having an electronic environment. It is also noted that digital storage has a high cost and has negative side effects when data bases become excessive in size. It is also noted that prior media of paper and microfilm were less vulnerable to undetected alteration or loss than electronic recordkeeping systems. Further long-term digital preservation requires regular monitoring, frequent intervention and specialized technical capabilities. (Joint Technology Committee, 2014, p. 8) Technological obsolescence is noted as the biggest challenge managing electronic records over the long term. (Joint Technology Committee, 2014, pp. 8-9)

North Dakota court currently supports paper records and electronic records, therefore the standards outlined apply to North Dakota courts. North Dakota has been discussing the questions outlined above in its attempts to define the future of retention of court records.

Eleven recommendations are outlined for courts to review when developing preservation policy to ensure the long term validity of the court record and accessibility into the future. First, courts need to actively do preservation planning, which includes planning and implementing processes and procedures for the conversion and migration of digital records and the systems that support them to new formats, storage media, and technologies. (Joint Technology Committee, 2014, p. 10) Several models of preservation were outlined. Second, courts must address storage management, in that digital records are maintained under physical storage conditions appropriate to the type of media in compliance with manufacturer and industry standards, that the selection of storage methodologies are based on the preservation requirements specific to the

records series and media, along with the need for access by information users. (Joint Technology Committee, 2014, pp. 11-12) Courts must be aware of the conditions that will ensure long term quality of digital records, meet the standards for record retention and continue to have them accessible as outlined in access policies. Next, courts must address security access and control, in that all digital records under the judiciary's control are protected from inadvertent or intentional alteration, destruction, or disposal through the maintenance of security access controls appropriate to the record and corresponding users' rights. (Joint Technology Committee, 2014, pp. 12-13) Courts must also address disaster mitigation and preparedness with a documented disaster plan and recovery protocol outlining specific roles and responsibilities in the occurrence of a natural or man-made disaster. (Joint Technology Committee, 2014, p. 13) In addition, courts should establish auditing and quality control of digital records and storage systems with routine audits for integrity, as well as during any migration, transfer or system change events to test for data corruption and media failure. (Joint Technology Committee, 2014, p. 13) It is recommended that courts adopt open standards and formats to facilitate access, exchange and transferability of digital records over time. (Joint Technology Committee, 2014, p. 14) Courts should adopt a classification, indexing and metadata process where all records are subject to an organizationally-defined indexing and classification scheme to promote efficient access and management and create and maintain appropriate metadata to ensure that digital information can be accessed and authenticated over time. (Joint Technology Committee, 2014, pp. 14-15) Courts must develop archival storage to retain digital information over longer periods of time or for records of "permanent" retention

requirements. (Joint Technology Committee, 2014, p. 15) It is recommended courts adopt appropriate industry standards and performance measures for digital preservation to assess the effectiveness of preservation efforts. (Joint Technology Committee, 2014, p. 15) Courts need to formulate special provisions for the disposition of records containing multi-media content for records being preserved over longer periods of time. Courts must ensure that all portions of a record is retrievable over the full retention of the record. (Joint Technology Committee, 2014, p. 16) Lastly, it is recommended courts periodically assess records for their historical and research value in consultation with interested agencies and institutions. (Joint Technology Committee, 2014, p. 16)

The second component of the bulletin addresses records disposition. The principle of disposition recognizes that all records reach a point in their lifecycle where they are committed to archival storage and preservation, or scheduled for destruction. (Joint Technology Committee, 2014, p. 16) A records life cycle begins with the creation of the record through the final resolution of the case. It is noted that a comprehensive records management program focuses on the records entire life cycle from creation to disposition, regardless of format. (Joint Technology Committee, 2014, p. 17) Courts have developed retention schedules to guide both destruction of court records and long-term preservation. As courts move to electronic records, in addition to paper records, retention policies should be reviewed to determine the best policy moving forward. As courts move forward in developing policy and the method for destruction of electronic records, it should consider the type of media on which the records are retained, the cost and the need to protect confidentiality. (Joint Technology Committee, 2014, p. 19) Courts can consider two additional methods for records that require longer term

preservation, archiving the records internally or accession which involves transferring the record to an outside entity that is responsible for the long-term preservation. (Joint Technology Committee, 2014, p. 21)

Fourteen recommendations were set out for courts to consider when developing policy for the disposition of electronic records. First, it is noted that the criteria for disposition of all records must be clearly specified in the records retention schedule. (Joint Technology Committee, 2014, p. 22) This step is critical in ensuring records are identified for disposition timely and correctly, based on the process outlined. Next, courts must clearly identify the approval process for disposition, including whether disposition occurs automatically or requires human intervention for the disposition event. (Joint Technology Committee, 2014, p. 22) Third, it is important for courts to outline a documentation process that will occur on the disposition of all records, whether through destruction, transfer, or accession. (Joint Technology Committee, 2014, p. 23) Courts are recommended to record metadata on all records subject to disposition to ensure proper identification of those records, including preservation metadata for records which are archived and a metadata "footprint" of records destroyed in accordance with the retention schedule. (Joint Technology Committee, 2014, p. 23) Courts need to address case records that are related or integrated with differing retention requirements and take steps to ensure that disposition of one record does not compromise or cause a related record to be disposed of prematurely. (Joint Technology Committee, 2014, p. 24) Courts should update retention schedules to specify allowable methods of destroying digital records in accordance with record content and type of media. (Joint Technology Committee, 2014, p. 24) Special attention should be given to

retention schedules to identify records preserved on more than one form of media (paper, microfilm, digital) and should clearly specify if there are different disposition timelines and types for each record/media type. (Joint Technology Committee, 2014, p. 24) In disposition policy, courts should include protocols and procedures for deferring the disposition of individual records or groups of records which may be subject to legal discovery or other circumstances that warrant their deferred disposition. (Joint Technology Committee, 2014, p. 25) Courts should implement policies and procedures to identify and eliminate duplicate and non-record material as soon as its usefulness has expired. (Joint Technology Committee, 2014, p. 25) If courts hold any records jointly with other agencies, it is important for courts to identify which agency is the primary record-holder and determine responsibility for disposition. (Joint Technology Committee, 2014, p. 26) The report recommended addressing areas that did not directly relate to case record management, such as unstructured records, email management and social networking records. Courts should make sure retention and disposition of exhibits and other records submitted by litigants and other third parties are addressed in the retention schedule. (Joint Technology Committee, 2014, p. 27) The final recommendation of disposition points out that retention schedules should include any approved policies or procedures for removal of documents from case files or other collections at the time of transfer to other media or record holders. (Joint Technology Committee, 2014, p. 27) As courts move forward with electronic record keeping, these recommendations provide a structure for mapping out a comprehensive disposition plan for records in a very complex environment.

Arizona

Arizona established an advisory committee in March, 2013 by Administrative Order No. 2013-33 (White Berch, 2013) with the special charge of examining and making recommendations on whether the destruction of electronic case documents and data, once the minimum retention period was met, was mandatory or permissive and review the existing retention record periods. The advisory committee was to make recommendations if policies on the length of time case documents and data were made available to the public online were consistent across court levels and from court to court within the same level. Once the destruction period had been met, the committee was to make recommendations on whether court documents and data should be retained for purposes of government research and analysis, and if so, should those records continue to be publicly available or released only pursuant to court order. (Report of the Advisory Committee, 2013) In December, 2013, the Advisory committee issued their recommendations. The committee's recommendations were limited to retention and destruction of electronic court records, not paper records, and they noted several reasons. First, paper records were accepted, processed and stored quite differently than electronic records and the principles for handling paper records were distinct from electronic records. Second, the policy direction for handling the paper records had long been established and remained sound. Third, the local courts' transition from paper to electronic case records was varied and subject to local resources. Fourth, reliance on paper court records in the courts was quickly vanishing with the courts' digitalization of existing paper records, the implementation of statewide e-filing, and the demand for convenient access to electronic records by all court users. The committee also

considered the public availability of certain electronic records, the long-term cost of storing electronic records, and best practices in government records management. (Report of the Advisory Committee, 2013, p. 1) The committee recommended two changes to the retention schedule for paper records 1) extending the retention period for DUI, OUI and domestic violence offense case records, and, 2) establishing a definite retention period of 25 years following the year filed for juvenile delinquency case records. (Report of the Advisory Committee, 2013, pp. 1-2) The committee only addressed court case records and did not make recommendations on court administrative records. In regards to court records, the committee made the following recommendations:

1) The length of time electronic court documents and data are made available online or at a court facility should be consistent within each court level across the state.
2) Limited jurisdiction courts retention periods were deemed too short for electronic records and the committee made recommendations on updates. In addition, for limited jurisdiction courts, the committee recommended the establishment of separate schedules for retention of paper case records, records displayed on public access websites maintained by both the Supreme Court and local courts, and electronic case records maintained in case and document management systems.
3) Destruction of electronic case documents and data should be mandatory and automatic, at a point in time specified in Arizona court policy.

4) Given the extended time periods recommended for electronic records retention for designated case types, the committee concluded that no special provisions were required for research purposes.

5) A process should be developed for court personnel or the public to request that court records in a specific case be permanently retained pursuant to court order, in each level of court, similar to the current historical records provision for general jurisdiction courts.

6) The committee recommended an implementation plan:

   a. A 24-month period should be provided to implement the new policies.

   b. These electronic records policies should be applied to any new case that reaches the retention period subsequent to the adoption of these recommendations.

   c. A process should be established for courts to apply for additional time to implement the policies based upon technology resource constraints or funding.

   d. The custodian of records for each court would institute a plan within 18 months and provide a copy to the Administrative Office of the Courts, of how and by when they will comply with the destruction electronic court records that have met the retention period. Courts that use an AOC-supported CMS can seek the assistance of the AOC.

   e. Upon adoption of the recommendations, the AOC shall begin removing electronic case records from the Supreme Court's existing Public Access website and the planned e-Access website, regardless of when a case is

destroyed by the local court. (Report of the Advisory Committee, 2013, pp. 3-4)

During the committee's discussion of retention of electronic case records they noted:

> "*when all factors are properly considered, the true cost of retaining electronic case records is significant. The media on which data is stored will eventually become obsolete or fail; data can be lost when digital records migrate to new technology; the growing volume of electronic records being generated is far greater that was ever generated on paper, and with added ease of producing electronic elements, such as sound and graphics, the size and number of electronic records is growing exponentially; verification of the chain of custody for electronic records is difficult and costly; hardware purchased for constant, ongoing government use must be of a high quality and have a lower failure rate than hardware purchased for the home, has a greater cost; and access speed, security, and recovery time for electronic data must all be of a high standard, again at a significant cost.*" (Report of the Advisory Committee, 2013, p. 8)

The committee recommended removal of limited jurisdiction electronic court cases from the public website after the period of retention was met, but recommended the local court retain the records for a longer period on the local case and document management system. (Report of the Advisory Committee, 2013, pp. 23-24)

Retention of electronic court records is much more complex than initially contemplated. Contrary to early thoughts, retention of electronic records involves consideration and planning in many areas to ensure the integrity, reliability and

accessible of the electronic court record overtime. Retention requires a process for disposition of records meeting retention standards, a long-term preservation process for records with retention periods for extended or indefinite periods of time and access to records that remain available for public access.

The scope of this project acknowledges North Dakota courts are actively contemplating the existing retention rules developed for paper records, and whether or not a change in values is appropriate based on advances in technology. The future management of the new electronic court record is under discussion and review. As noted in the literature and specific experiences of one state, retention and preservation of electronic court records is very complex and requires a very deliberate approach in addressing each area. This project will explore various levels of managing the electronic court record, but will not delve into many of the other areas needing consideration.

Methodology

As North Dakota courts transition to a completely electronic record keeping case management system, policies and rules have come under review. This review led to discussions regarding the current level of access to court documents being provided in North Dakota and how retention of the electronic record should be managed in the future. The courts wanted to determine the public's view on these issues. A survey was implemented to reach out to court users' so that their opinions and thoughts could be weighed as decisions regarding future access of electronic case records and retention of electronic court records are made.

Preliminary Approval

Contact was made in May, 2014, with Larry Zubke, Information Technology Director for the State of North Dakota and Sally Holewa, North Dakota State Court Administrator for preliminary approval to conduct a survey using the website, http://publicsearch.ndcourts.gov/default.aspx for this project. Upon receipt of preliminary approval, it was agreed that both parties would continue to work with the researcher prior to final approval of the survey link.

A draft of the introduction, literature review and questionnaire was sent to Larry Zubke and Sally Holewa in July 2014 for comment and approval of the project to continue. Upon receipt of approval, Information Technology staff created the link on http://publicsearch.ndcourts.gov/default.aspx. The survey questionnaire was created using an online program. (Appendix A) The survey link was available from September 15 to October 3, 2014. Access to the online survey was left open for an additional two

weeks, to allow all parties that received information in the clerk's county offices during the survey period, an opportunity to complete the survey.

The survey was targeted to several audiences of the court: party to a case, non-party to a case, attorneys, agencies e-filing with the court, media representatives, and background and judgment search companies known to North Dakota. Participation of the target audience was sought by providing information to all visitors to local county courthouse clerk's offices during the survey period, email requests sent to a random sample of registered users of the secure public access, media contacts known to the court, and judgment and search companies known to the court. Users of the North Dakota internet search site, through the general public access and onsite public access sites, using http://publicsearch.ndcourts.gov/default.aspx, were provided the link and requested to complete the survey. Upon commencing the survey, it was determined that the survey link was not accessible in the county clerk's offices at the internet location the survey link was placed. Follow up contact with the Information Technology staff resulted in adjusting the survey link location. This allowed access to the survey link to the secure access users, onsite access users and the general public access users during the survey period.

Identifying the Population

In July, 2014 a request was emailed to all 53 county clerk offices requesting names and email address information of all entities currently requesting reports from the county clerks. From the responses, email distribution lists were created and duplicate entities deleted. The entities comprised of judgment search companies, abstract companies, and media contacts. An email distribution list was created from the

information provided, and is representative of these court users in North Dakota. A direct email request was sent to the search and abstract companies on September 15, 2014, outlining the research project and requesting their participation in the survey.

An email listing of all registered secure public access users was received from the Information Technology Department on August 29, 2014. There were 1,686 registered users on that date. A sample was selected of this population by sending the survey request to 10 percent of the registered users (168), by randomly picking every 10th name of the alphabetized list provided by the Information Technology Director and creating an email distribution list. A direct email request was sent to the random sample of registered users of the secure public access site on September 15, 2014, outlining the research project and requesting their participation in the survey.

A directory of all media contacts in North Dakota was provided by the North Dakota Supreme Court. This directory was compared to the listing of media contacts provided by the clerks' offices to eliminate duplicates. An email distribution list of media contacts in North Dakota was created. This included all daily and weekly newspapers and radio stations in the state. A direct email request was sent to the media distribution list on September 15, 2014 outlining the research project and requesting their participation in the survey.

Individuals visiting the general public access site at www.publicsearch.ndcourts.gov/default.aspx were informed of the research project and requested to participate in the survey by a notification link on this site. This access point was available to individuals accessing the website through the general public access (private computers away from courthouse location) from September 5, 2014 through

October 3, 2014. The onsite public access (courthouse location) was available from September 7, 2014 through October 3, 2014, once it was realized the link did not reach the courthouse computers as initially created. As a result of altering the location of the link, the survey link became available to all registered users of the secure public access (1686).

The link provided in the email request and the public search site directed participants to the survey. Upon navigating to the survey page, the purpose of the research project was explained in further detail and then followed up with participation in the survey. The North Dakota Information Technology Department reported approximately 100,000 hits on the www.publicsearch.ndcourts.gov/default.aspx monthly.

Emails were sent to all 53 county clerk offices in North Dakota to inform them of the research project and request their assistance implementing the survey. Each office was requested to inform all visiting patrons to the clerk's office of the research project during the survey period and request their participation. Each county clerk's office was sent poster announcements to be displayed in the waiting area of the clerk's office, outlining the research project and requesting the court patrons' participation. Note card size announcements were created and sent to all 53 county clerk offices that made a short announcement of the research project and noted the survey link. Paper versions of the survey were provided to all 53 county clerk offices. Every county office was requested to provide three options for the court patron to complete the survey: 1) direct them to the public terminal search site to access the survey link, 2) provide a paper copy of the survey for those willing to participate, but not wanting to use the public

terminal, or 3) provide a postcard with the survey link for patrons willing to complete the survey online at a later time. Clerks held the completed paper surveys and returned them to the researcher at the conclusion of the survey period in an envelope that was provided. All paper survey responses were manually entered on the survey site.

Survey Pretest

A request was sent to all clerks of court in the state and the Ward County Clerk's office staff to conduct a pretest of the survey to identify issues with the survey instrument and provide feedback on the readability of the survey questions. An issue was identified in question two and the last fill in the blank option was removed from the question as it did not allow for data input. Feedback was received on understanding the content of the questions and changes were made to the wording to improve the survey's readability. The survey was sent to the State Court Administrator for review and feedback. The research advisor assigned to this researcher reviewed the survey, offered additional changes and approved the survey for distribution.

Survey Implementation

The survey went live on September 15, 2014. Emails with the survey notification were sent to the media distribution list, a random sample of registered secure public access users and the search company distribution list on September 15, 2014. The survey link was added to the secure public access portal on September 17, 2014 when it became known that the survey link was not accessible on the computers in the county clerks' offices. This change made the survey link available to all registered users of the secure public access and onsite public access points during the survey period. The survey period ended on October 3, 2014.

FINDINGS

The web-based opinion survey was commenced on September 15, 2014 and available through October 3, 2014. A website survey link at www.ndcourts.gov/public search/html was established and available to all users of the onsite public access, secure public access and general public access points during the survey period. Of the direct email distribution list to the secure public access registered users, ten email contacts came back as undeliverable. Therefore, the direct email distribution list of 168 names, reached 158 of the targeted registered secure public access user audience. Of the ninety-two direct emails to daily and weekly newspapers and radio stations, twelve email contacts came back as undeliverable. Therefore, the direct email distribution of ninety-two names, reached eighty individuals of the targeted media audience. However, both these target audiences would have had additional opportunities to access the survey if they used the general public access, secure public access or the onsite public access sites during the survey period. Court patrons visiting the county courthouse clerk's offices were informed of, and requested to, complete the survey. The actual number of court patrons that were requested to participate in the survey is unknown.

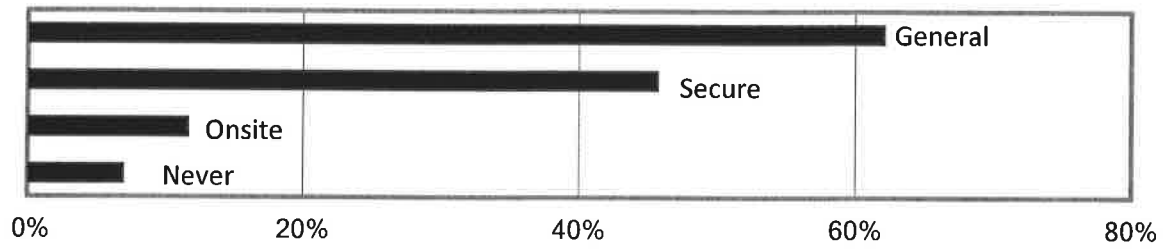
Access to North Dakota District Court Records

The first portion of the survey identified the survey participant by method of accessing court records, frequency of access to court records, representative group of participant and reason for accessing the court records. The results are as follows:

1. ***I have accessed the North Dakota District Court records by the following internet access options in the last twelve months. (Check all that apply)***

Of the 554 responses, 7% had never accessed court records by an internet link, 62% had used the General Public Access from a computer away from the courthouse, 46% had used the Secure Public Access and 12% used the onsite public access at the county courthouse locations. Participants were asked to choose all access methods used to date, and approximately 20% of the responses used more than one access method to view court records.

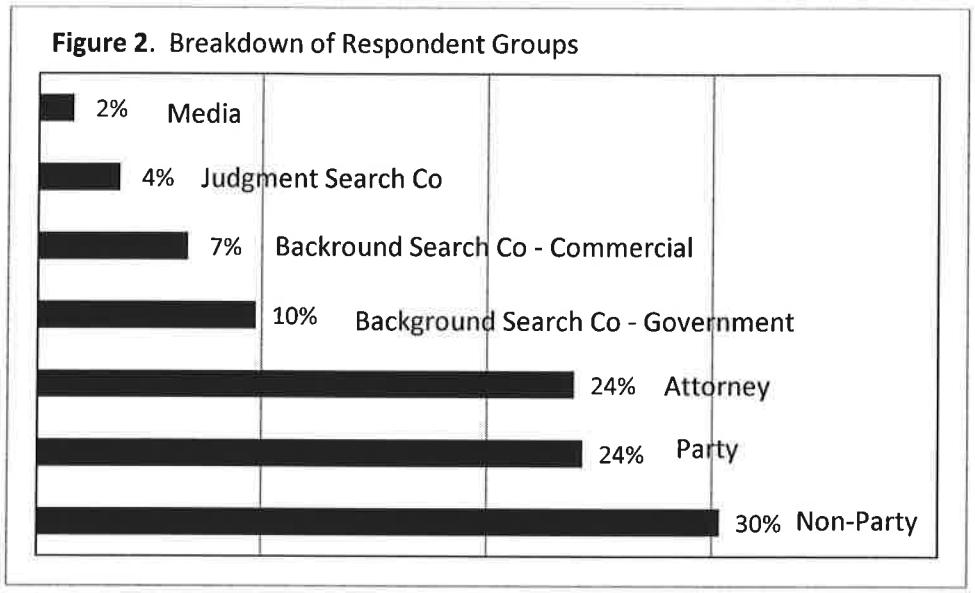
Figure 1. Access Method By Portal



2. ***When I have accessed North Dakota District Court records by an internet access site, I represent: (Check one that best applies)***

Five hundred and fifty-eight surveys were completed from all targeted populations during the survey period. The respondent groups were represented by the following percentages: *non-party in a case* - thirty percent (30%), *parties in a case* – twenty-four percent (24%), *attorney in a case* – twenty-four percent (24%); *background search company co (government)* – ten percent (10%), *background search co (commercial)* – seven percent (7%), *judgment search co* – four percent (4%) and *media* – two percent (2%). The media group was under represented in the survey as only eight

media representatives responded to the survey request, while direct requests were sent to eighty email addresses.



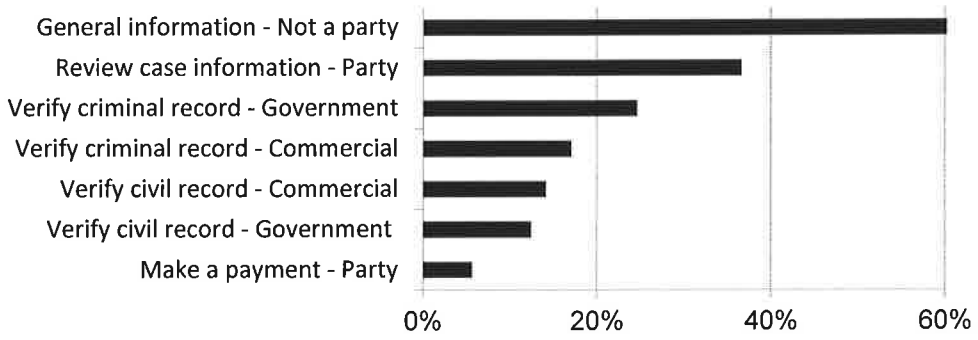
Note: All responses from *judgment search co*, *background search co – government*, and *background search co – commercial* were combined into one group - *search companies* for all further analysis.

3. ***Mark the best statement(s) that represents your reason(s) for accessing the court record via the internet website: (Check all that apply)***

There were 516 responses to the question and each respondent could mark all reasons that were applicable. The reason for accessing court records from an internet website were as follows: 60% accessed court records for *general information purposes*, 37% accessed court records to *review case information* as they were a party in the case; 25% accessed court records to *verify criminal record for government purposes*, 17% accessed court records to *verify criminal record for commercial purposes*; 14% accessed court records to *verify civil record for government background search*

purpose, 12% accessed courts record to *verify civil record for background search for commercial purposes*, and 6% accessed court records to *make payments* on a case.

Figure 3. Reason(s) For Accessing Court Records



To further classify the responders, 60% identified as representing the non-party group accessing court records via a website for general information purposes, 43% identified themselves as a party to the case accessing the court record for case information or to make payment, and 68% classified as non-party to a case accessing court records to verify records for governmental and commercial purposes.

4. ***I access electronic court records by the internet at the following frequency: (Check highest frequency)***

There were 549 responses to the question. Of the responses, 74% accessed court records online *weekly*, 13% accessed court records *monthly,* and 13% accessed court records *quarterly or less* frequently. This shows most individuals accessing court records by a website site are doing so on a regular basis.

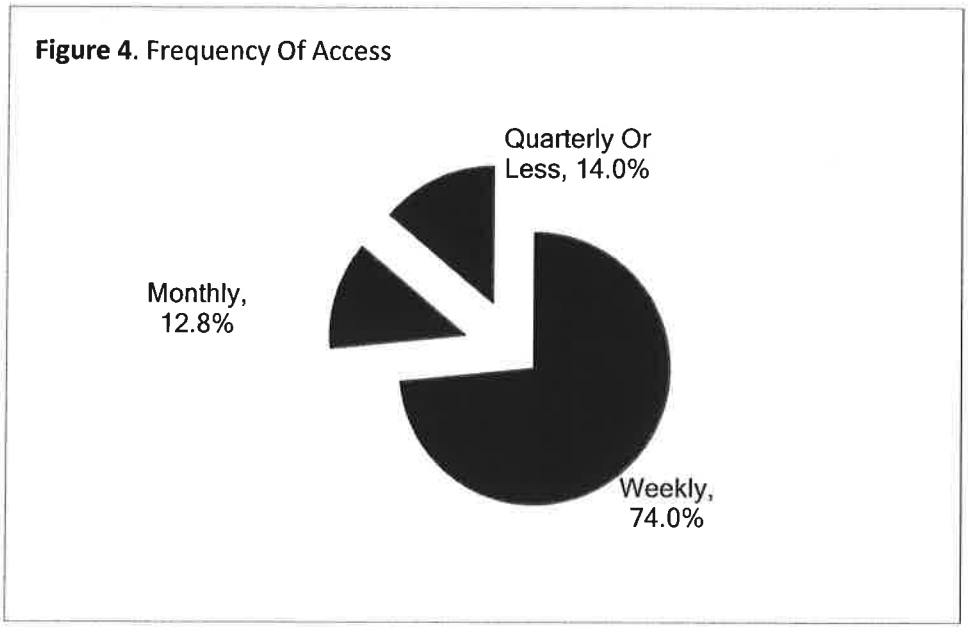


Figure 4. Frequency Of Access

To recap the information gathered from the survey responses, the main reasons for accessing court records online is for general information, parties following their case(s), and search companies reviewing court records to verify information for background checks. The survey results indicate court records are being accessed for multiple purposes and those that access the court records are doing so on a regular basis as three-quarters of all survey participants are doing so on a weekly basis.

Access

Survey participants were asked three questions regarding their opinions on access to digitalized documents at the general public access site. At the time of the survey, the following case information was displayed on the general public access site – party information, judge assignment, listing of documents filed in the case, disposition and hearing information and payment information. There was no access to digital documents at the General Public Access site.

Survey participants responded to each question on a Likert scale with the following options: strongly agree, agree, neutral, disagree and strongly disagree. For the purpose of analysis, responses of strongly agree and agree were grouped and tabulated as in favor of the statement and strongly disagree and disagree were grouped and tabulated as opposed to the statement.

5. ***Please mark each statement that best represents your opinion regarding access to electronic court documents using the general public access website at a location away from the county courthouse:***

"All public documents in the case should be available for viewing"

Of the 546 responses, 62% agreed that *all public documents in the case should be available for viewing,* while 26% disagreed, and 13% did not state a position.

"Only final orders, deemed public by court rule, should be available for viewing"

Of the 523 responses, 46% agreed that *only final orders, deemed public by court rule, should be available for viewing*, 37% disagreed, and 18% did not state a position. Overall, the responses appear to favor access of all public documents over limiting access to final orders.

"Documents should not be available for viewing"

Of the 522 responses, 16% agreed that *documents should not be available for viewing*, 71% disagreed, and 14% did not state a position. Clearly, across the opinions of all responses to the survey, the responses appear to support access to all public documents, over limiting access to final orders or not having access to documents at all.

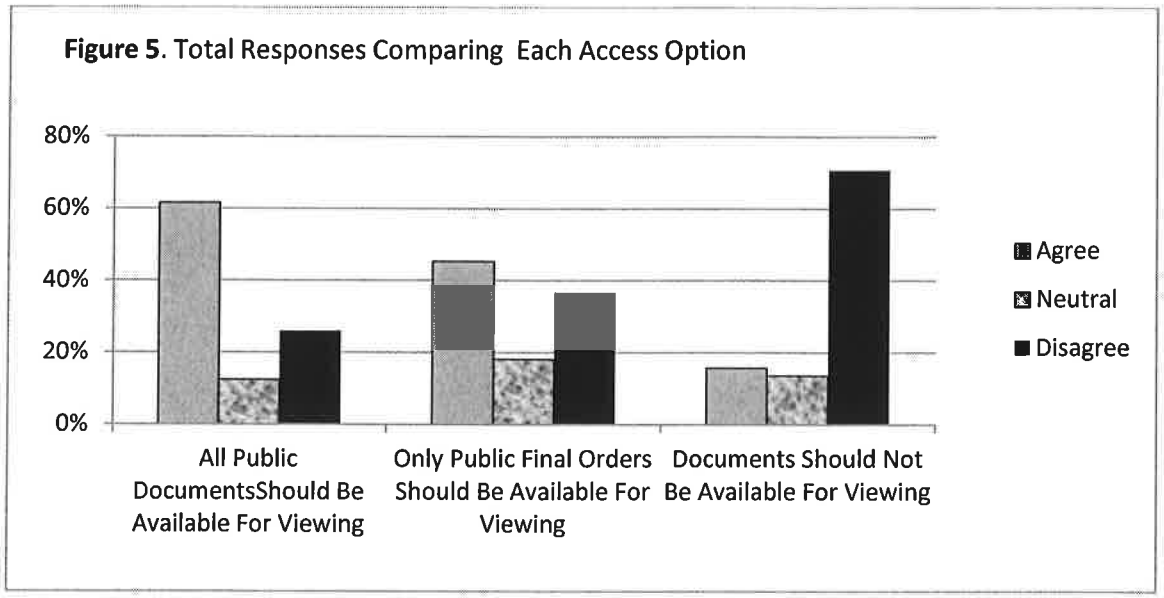
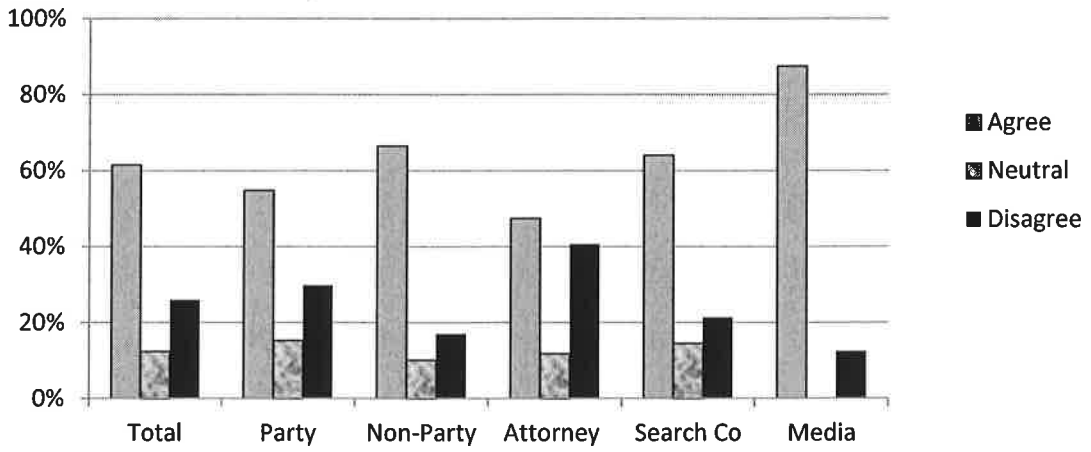


Figure 5. Total Responses Comparing Each Access Option

The responses were further analyzed by categorized group to determine if any one group had an opinion that significantly varied with the overall average. In relation to *all public documents should be available for viewing,* the most discrepant opinions to the average were noted by the attorney and media groups. Of the attorney group, 47% agreed that *all public documents should be accessible on the public website*, 13% below the average. The media group, acknowledging a limited response number, indicated a stronger position at 26% above the average supporting *all public documents should be available for viewing on the general public access site*. The party to a case group was 7% below the overall average, and the non-party group was 4% above the

average. The search company was 2% above the average.

Figure 6. Total Response and Breakdown By Respondent Group - *All public documents in a file should be available for viewing.*



Comments noted by attorneys shed some light on concerns regarding access to all public documents on the general public access site:

> *"The ability of attorneys statewide to access and view court documents is extremely valuable and important. However, some documents filed in court cases, especially family law cases are very sensitive even if they do not contain confidential information. I do not believe that general public access is important or even necessary for these matters."*
>
> *"The system, as an attorney using this website securely, serves the public just fine as it is. It provides general information to people and if they want more, they can access all these documents at the court house. I do not think it's appropriate to make them and all the confidential information available to the public."*
>
> *"The information provided to the public seems acceptable. When personal information is dispersed, we are going to have nothing but headaches especially if the case involves a victim of domestic violence etc."*

"If the general public is allowed to view documents it will only add confusion for attorneys representing clients and being able to access documents maybe sometimes sooner than the attorney can access it for being in a hearing, etc."

"The general public does not need to know specifics of legal matters filed especially when they are not a party to the action."

"Administrators barely trust attorneys to access this information. I think it could create a lot of problems to have this information so readily available to the public."

The attorney group responded the most cautiously to electronic court documents being available at the general public access link and the comments note concern regarding the impact on the litigation process, personal privacy and safety. They question the underlying need for the general public to have this level of access.

One comment noted by a representative of the media reflects the convenience offered when records are available online:

"It's fantastic - but the pacer system for federal courts allows for viewing of individual documents remotely. That's really fantastic especially near the end of the business day when things get filed late and the courthouse may be closing soon".

An analysis of the total response to *only final orders being available for viewing* showed 45% of the total respondents were in agreement with this level of access. (See Figure 7) The respondent groups, party to a case, search companies and media were above the average response rate and attorney and non-party groups were below the average response.

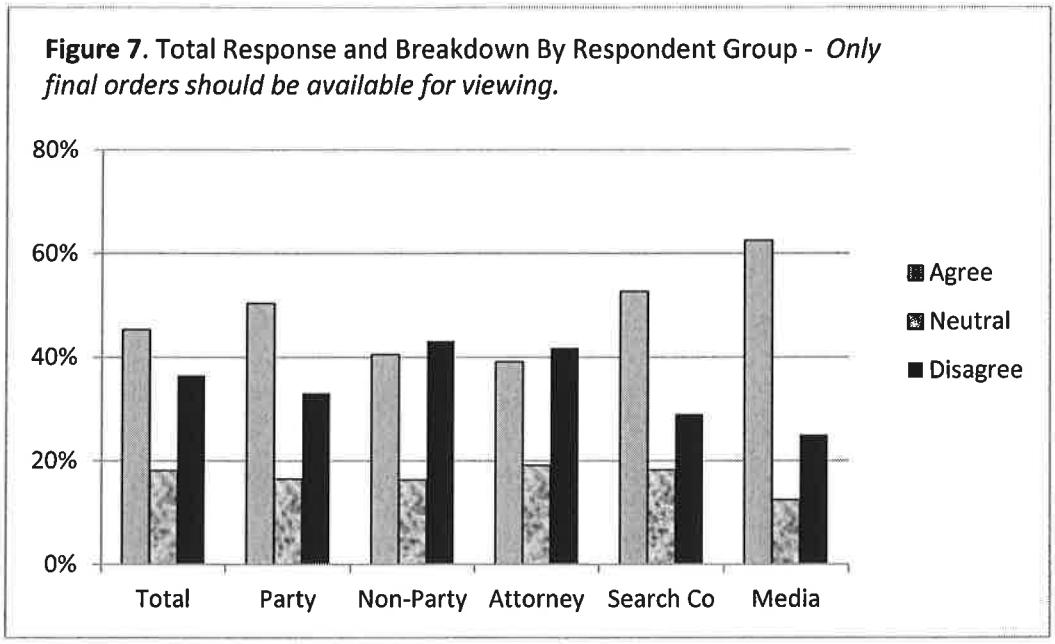


Figure 7. Total Response and Breakdown By Respondent Group - *Only final orders should be available for viewing.*

Based on a comparison of access to all public documents versus only final orders, the respondent group, party to a case, indicated stronger support of this level of access than the average by 5%, while the respondent group, non-party to a case, fell below the average response rate by 4%. The respondent group, attorney in a case, consistently fell below the average by 6% appearing to support this level of access over all public documents being available for viewing. The respondent group, search companies and media were less divergent from the average on this position showing less support for this level of access. The overall support of *only final orders should be available for viewing* was 17% less than the overall support of *all public documents being available for viewing*.

The third option of *no documents being available on the general public access site* was not supported. (See Figure 8) Overall, this level of access was not supported in that 71% of the respondents disagreed with this option and the responses were relatively consistent across all respondent groups. The percentage of responses in

favor of no documents being accessible was 16% and relatively consistent across each group.

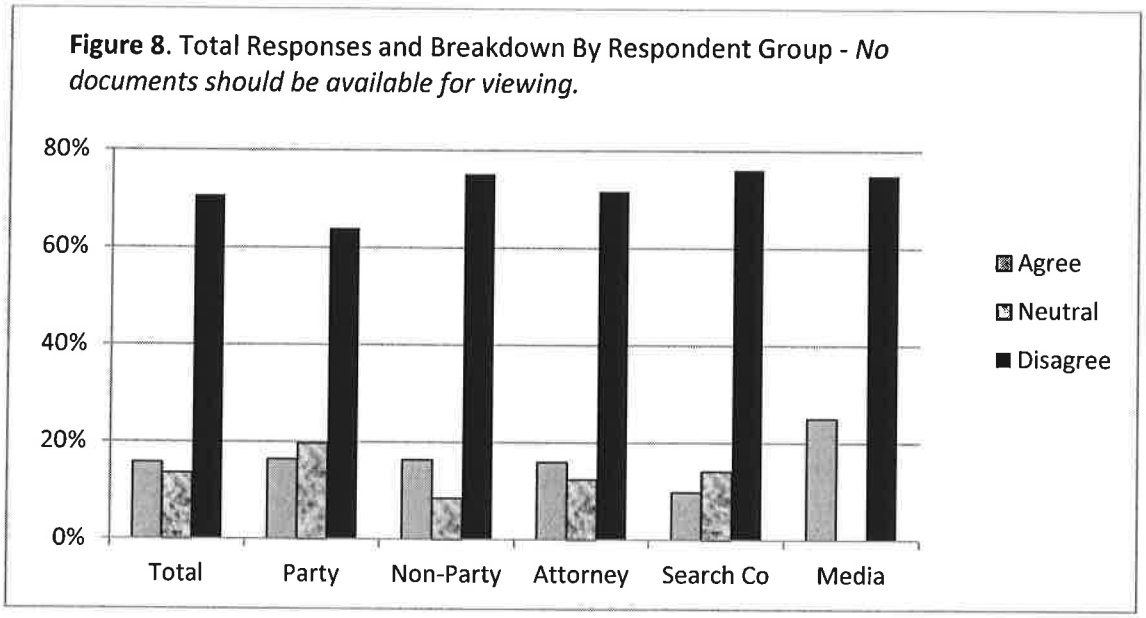


Figure 8. Total Responses and Breakdown By Respondent Group - *No documents should be available for viewing.*

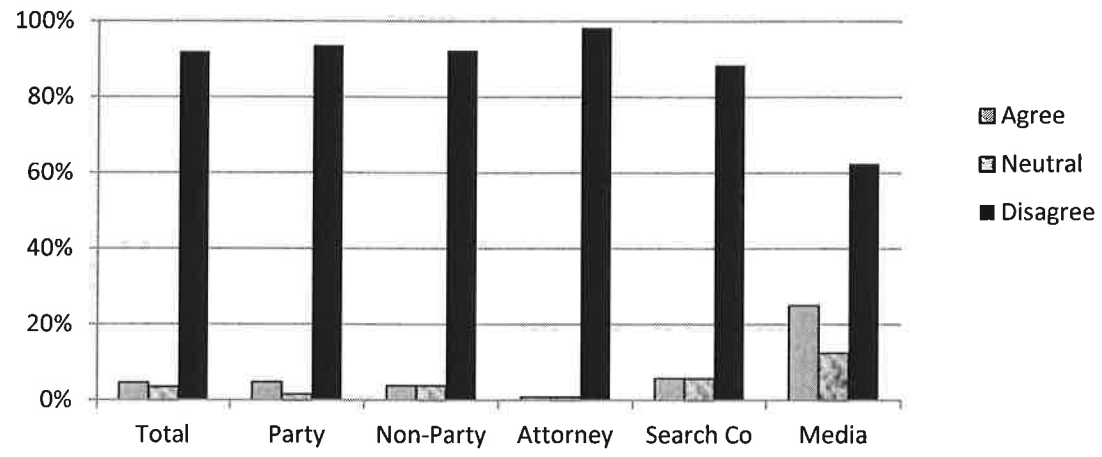
The results to the access to documents questions indicate that 62% of all responding to the survey support *access to public documents on the general public access site.* Although this percentage does not represent a clear and convincing opinion, it indicates that slightly more than half of those responding do favor more convenient access.

6. ***In some documents, personal information is required by the court to perform its function. Please mark each statement as it best reflects your opinion on what personal information should be available on the general public access website at a location away from the county courthouse location:***

   "A party's social security number, deemed public by court rule, should be available for viewing"

Of the 545 responses on *social security number, deemed public by court rule, should be available for viewing on the general public access website*, 94% disagreed, and that response rate was consistent across all groups, as shown in figure 9, with the exception of the media group at 63%. However, the media group was under represented with only eight responses to the survey, which may skew the average. In summary, across the opinions of all responders to the survey there was a very strong indication that a party's social security number should not be available for public view.

Figure 9. Total Response and Breakdown By Respondent Group - *Social Security Numbers, deemed public by court rule, should be available for viewing.*

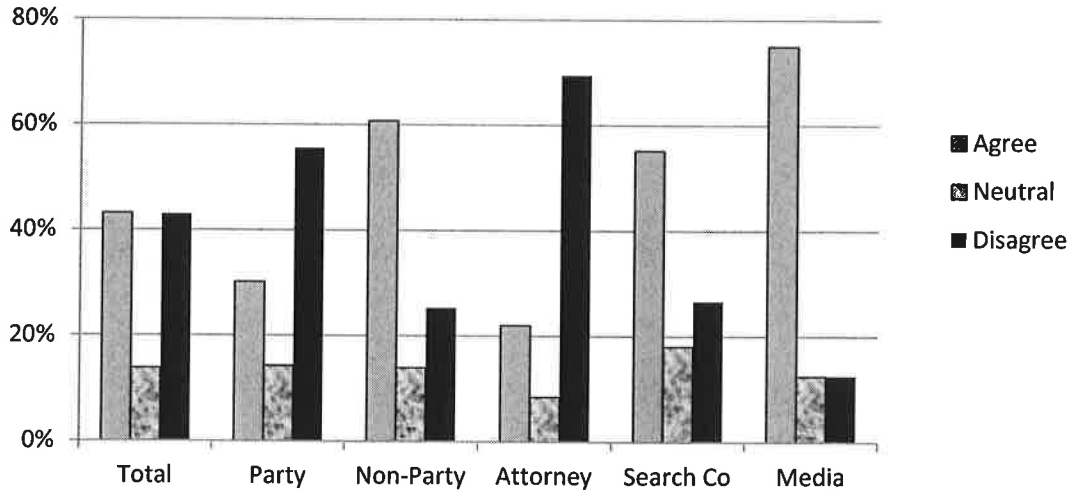


6. *"A party's date of birth, deemed public by court rule, should be available for viewing"*

Of the 549 responses, 43% were in agreement that *date of birth* should be available for viewing and 43% disagreed, while 14% were neutral. On this question, a breakdown of responses by groups identifies some divergent opinions from the overall total. The groups in opposition were party to a case (30% agree) and attorneys (22% agree). The respondent groups above the average were non-party to a case (61%

agree), search companies (55% agree) and media (75% agree) that *date of birth* be available on the general public website. The response to this content may be based on need for information. Search companies and media rely on date of birth information to verify the parties involved in a record which they are investigating. Without this vital information, they would not be able to perform their work. Non-party groups reviewing the record, on the other hand, have no stake in the release of this information. However, a party in a case can experience consequences if this information gets into the wrong hands and is used inappropriately. The attorney group position seems to support caution.

Figure 10. Total Response And Breakdown By Respondent Group - *A party's date of birth, deemed public by court rule, should be available for viewing.*

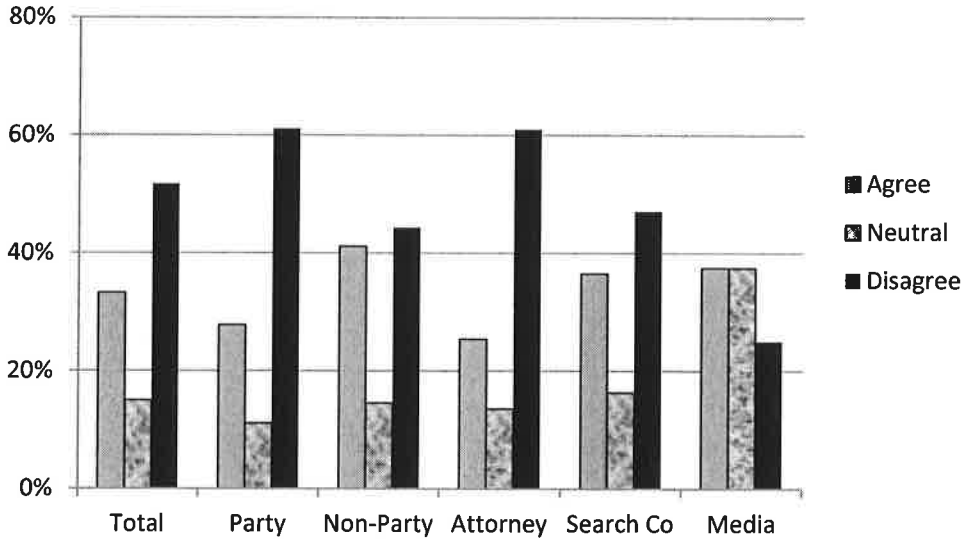


6. *A party's address, deemed public by court rule, should be available for viewing*"

Of the 547 responses, 52% percent disagreed that a *party's address, deemed public by court rule, should be available for viewing*, while 33% agreed and 15% remained neutral. A further review of each group's responses shows similar views as the

responses to date of birth being available for viewing. Two groups, party in a case and attorneys were in disagreement with this information being available for viewing. Non-party responses were split with 41% agreeing that address should be available compared to 44% who disagree it should be available. Search company responses were similar with 37% in support of addresses being available compared to 47% in disagreement. For the media responses, 38% were in agreement and 25% were in disagreement, while 38% remained neutral. The media group was the only group overall in slight favor of this information being available for public viewing on the general public access site.

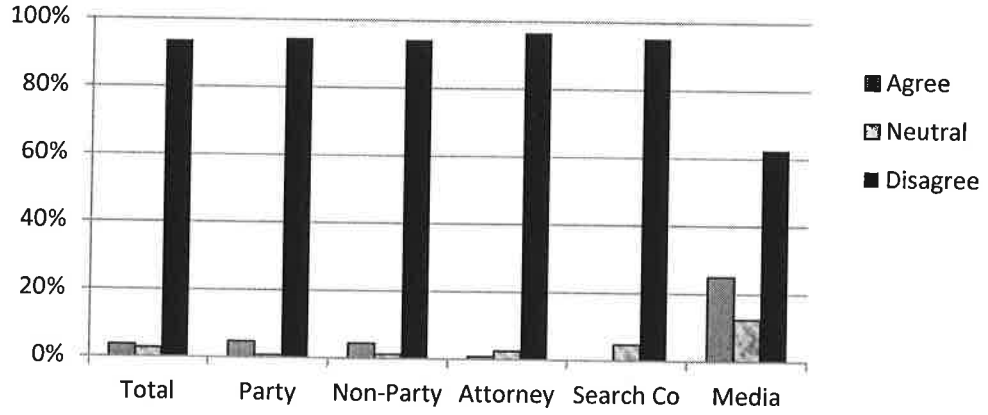
Figure 11. Total Response and Breakdown By Respondent Groups - *A party's address, deemed public by court rule, should be available for viewing.*



6. ***"A party's bank account numbers, investment account numbers and/or identifying financial information, deemed public by court rule, should be available for viewing"***

Of the 548 responses, 94% of the total disagreed that a *party's bank account numbers, investment account numbers and/or identifying financial information, deemed public by court rule, should be available for viewing*, while 4% agreed and 3% remained neutral. A breakdown of the respondent groups, (See figure 12) indicates a consistent opinion across all groups, with exception of the media reporting 63% in disagreement. However, the low response number from the media may have skewed the overall average of the group.

Figure 12. Total Response Reate and Breakdown By Respondent Group - *A party's bank, investement account number and/or identifying financial information, deemed public by court rule, should be available for viewing.*



The response rate indicates a strong disagreement that this information should be available on the general public access site.

7. *Additional comments regarding access of electronic court records on the general public access site.*

The survey participants were given the opportunity to provide comments regarding access of electronic court records on the general public access site. Of the 548 responses, 98 participants made further comment regarding access of electronic court records on the general public access site (See Appendix C for a complete listing of comments to Q.7 and Q.9). The comments note a variety of issues that reflect their opinions and positions on this area. Some noted:

"I don't feel information should be made available to the public until the case is finalized. It makes it extremely difficult to LE (law enforcement) to do an investigation when the media pulls it off of the public search site and turns it all around. The only time it should be made public is when the case is finalized. We in the United States are innocent to proven guilty and by making this stuff accessible to the public is making it impossible for everyone."

"It would be nice to be able to enter a person's address or last 4 of social security number, but more so like the child support website where YOU have to enter the information and it is not given to you in order to determine if it is our client or not."

"Public access to court records is helpful for businesses to perform basic background checks on employees and landlords to determine risks of certain tenants. It is also helpful for concerned parents deciding whether it is safe for a child to stay overnight at friend's home when you don't know their parents. But documents containing personal information, such as SSN, DOB, etc. SHOULD

NOT be available online unless you want to set up a "free-for-all" identity theft opportunity. That's just careless."

"My only comment is that if something is dismissed it should be deleted. For instance, I know of a person that has a disorderly conduct restraining order on their file. It was obtained with blatantly false information was immediately dismissed the following Monday and now shows under his name. It has affect his professional career"

"I work in as a case manager in a county social services office. I check ndcourts regularly to check to see if my clients have warrants, and verify charges."

"I view the electronic court records on this site because I work with an animal shelter that uses it to research background checks on possible animal adopters."

"Information that helps to verify a party's identity should be made available in some way. Dates of birth are very important and useful, and having the ability to search by DOB is helpful, but due to data entry errors, it is sometimes unreliable and having the full DOB visible would help to ensure that close matches to the DOB can be examined. The full SSN should not be available for view, but the last four is helpful. It would also be useful to have the ability to verify the full SSN through the website."

"Records can make a person look very bad in the eyes of others… people change and no ones prefect…people judge harshly it doesn't seem fair if you know nothing about the person but judge them by something you have read…some crimes without a doubt should be public…sex offenders and an mistreatment of children etc… but a speeding ticket…etc. personal issues…

convictions are taking rights away to be productive normal people to be judged by society and that alone doesn't seem right or fair… it's just not right.."

"I believe only parties involved in the cases should have access to those records, as some information is embarrassing, especially for those who are trying to get out of bad relationships through court processes."

"I like that you can click on the details because it might show someone as being had with a felony but once you go to the details you can read you see the case was dismissed, what I don't understand if it does say case dismissed files destroyed then why is it still listed where if someone like myself wouldn't have take the time to go look at the details then they would assume the party was convicted or that charge? Thank you"

"There is a need to balance the confidentiality of involved parties (ie. SSN, date of birth, address) with the public's right to public documents. A party shouldn't feel inhibited from bringing a claim because doing so will allow the general public to have access to their address or phone number, which the party may have unlisted for any number of reasons. Further the possibility of retaliation and retribution relating to civil claims could increase if personal information such as addresses and phone numbers of the parties were available."

The comments noted vary in position, but seems to reiterate concerns that have been noted in courts across the country.

Retention of North Dakota District Court Records

Survey participants were asked five questions regarding their opinion on how the electronic court records should be managed for purposes of retention. The questions

on retention were posed independent of how the court decides to handle access to documents at the general public access site.

8. ***"Retention" of court records is defined as a specified period of time in which the court maintains a record. When the retention period has been met, the court record is destroyed.***

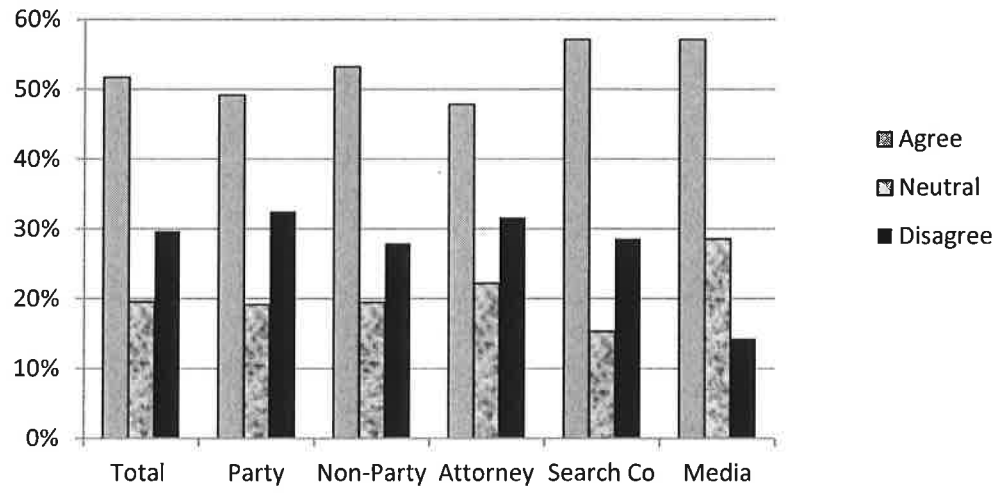
   Please mark the following statements that best reflect your opinion on future retention of electronic court records.

   North Dakota District Court electronic records:

   "Should be maintained on the public access site indefinitely"

Of the 532 survey responses, 52% agreed records *should be maintained on the public access site indefinitely*, 30% disagreed and 20% were neutral position. Analyzing responses by groups, showed a consistent position.

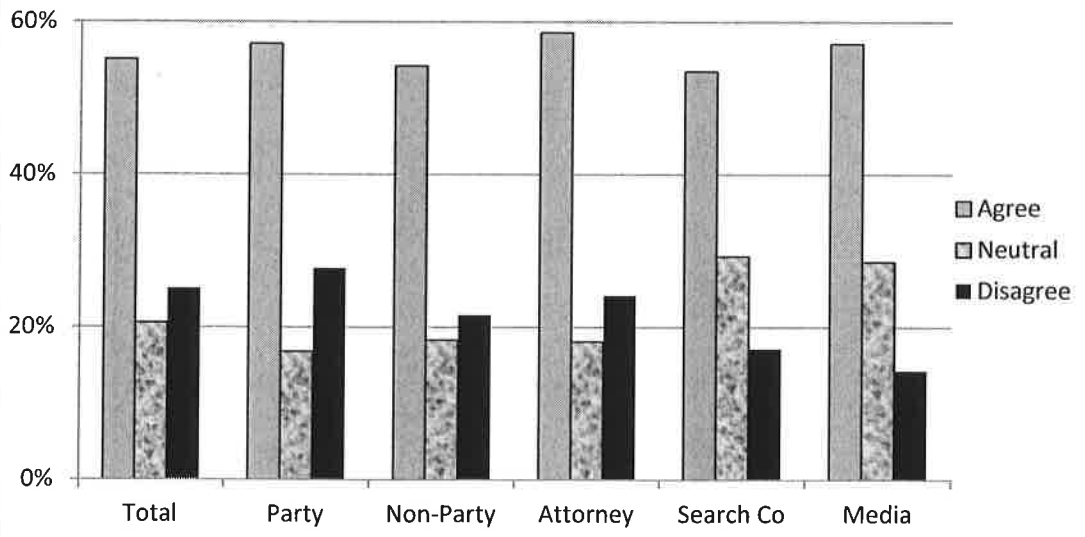
Figure 13. Total Responses and Breakdown By Respondent Group - *ND District Court records should be maintained on the public website indefinitely.*



North Dakota District Court electronic records: "Should have a specified retention period for each case type determined on the records legal, historical, fiscal and administrative value."

Of the 530 responses, 55% agreed that electronic records *should have specified retention period for each case type determined on the records, legal, historical, fiscal and administrative value*, 25% disagreed and 21% remained neutral. A review of each respondent group showed results consistent with the overall average.

Figure 14. Total Responses By Respondent Group - *ND District court records should have a specific retention period based on each case type determined on records legal, histocial, fiscal and administrative value.*



North Dakota District Court electronic records: "Should maintain the judge assignment, hearing information, payment history, disposition history and summary of the pleadings filed in the case indefinitely, but remove access to documents when the established retention period is met"

Of the 534 responses, 50% agreed *the court should maintain judge assignment, hearing information, payment history, disposition history and summary of pleadings filed in the case filed in the case indefinitely, but remove access to documents when the established retention period is met*, 27% disagreed and 24% were neutral. A review of the respondent groups, showed search companies were 9% above the average, the attorney group was 10% below the average, and the media group was7% below the average. The search company respondent group supported case information being available after retention guidelines were met, but attorneys and media were less supportive of the court retaining this information on the general public access site.

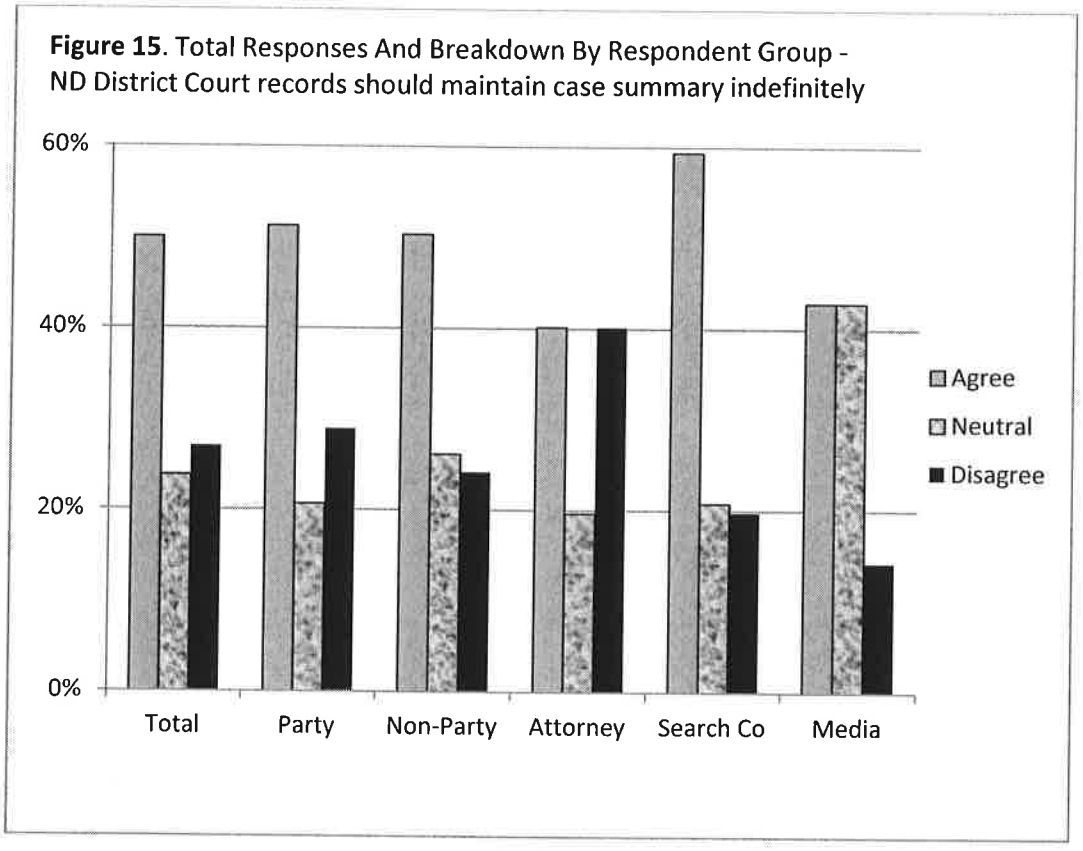
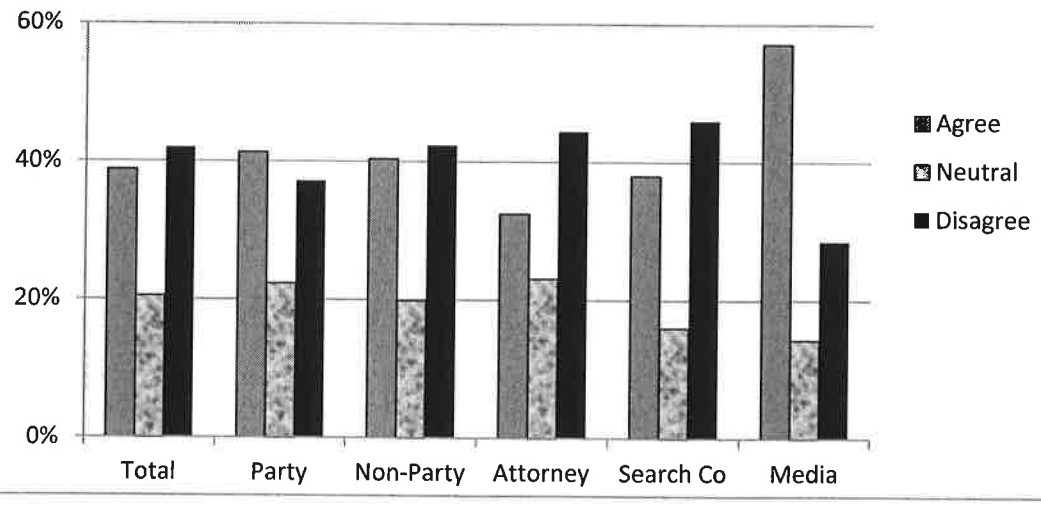


Figure 15. Total Responses And Breakdown By Respondent Group - ND District Court records should maintain case summary indefinitely

North Dakota District Court electronic records: "Should be removed from the public access site once the retention period has been met, but the court should maintain the record in a non-accessible database indefinitely"

Of the 531 responses, 42% disagreed with *removing the electronic record from public access site once the retention period had been met and maintaining the record in a non-accessible database indefinitely*, 39% agreed and 21% remained neutral. Examining a breakdown of each respondent group, the agreement/disagreement percentages were closely matched. The media respondent group (noting limited responses) was more divergent, with 57% agreeing and 29% disagreeing. Twenty percent (20%) or one in five respondents did not voice an opinion on this area.

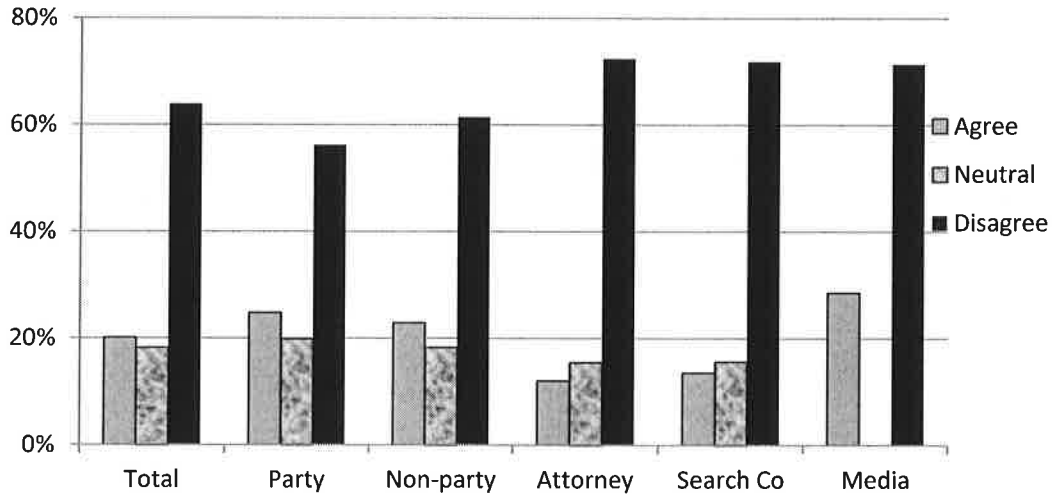
Figure 16. Total Responses And Breakdown By Respondent Group - "ND District Court records should be removed from public access site after retention is met but maintain record in non-accessible database indefinetly.



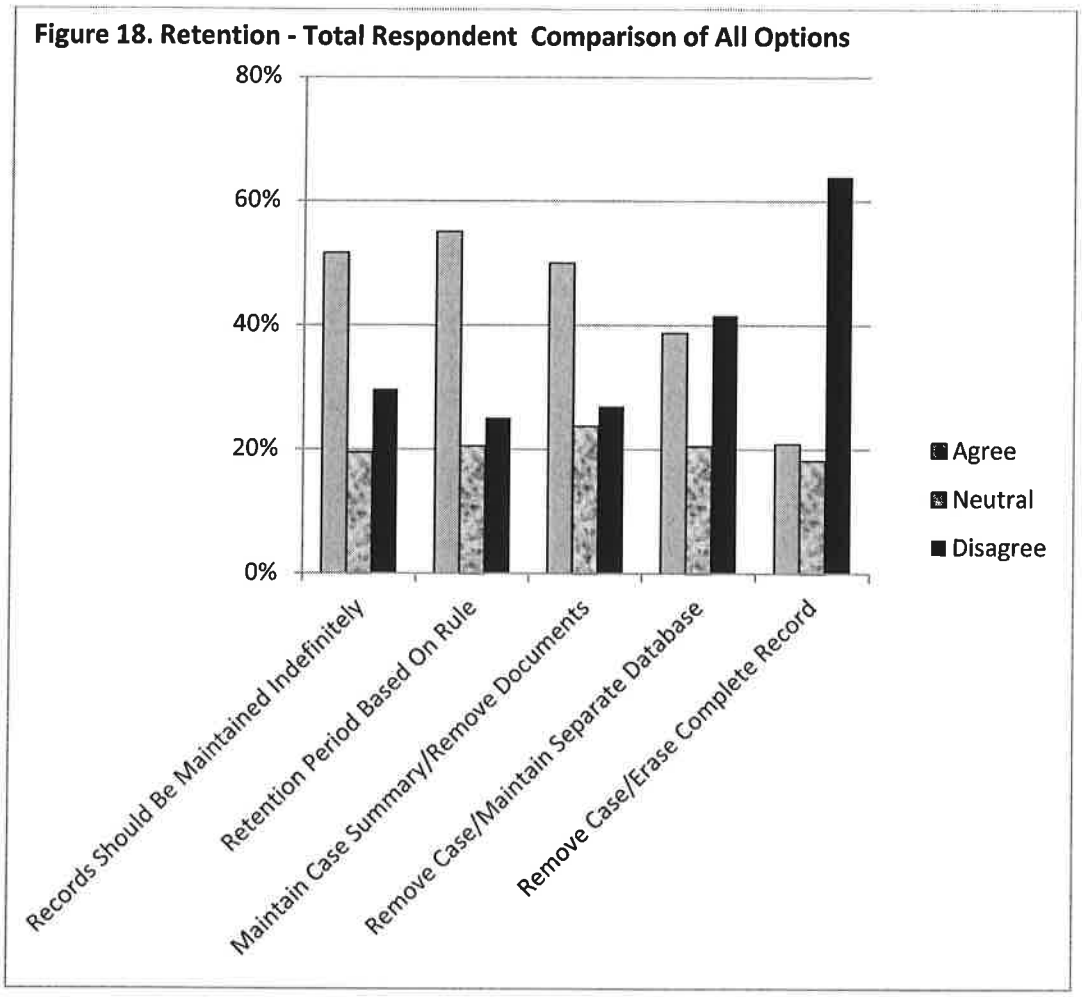
North Dakota District Court electronic records: "Should be removed from the public access site once the established retention period has been met and the record should be erased from the court database in its entirety."

Of the 524 responses, 64% disagreed with the *court record being removed from the public access site once the established retention period had been met and the record should be erased from the courthouse database in its entirety*, 20% agreed and 18% were neutral. Analyzing this further by respondent group, the respondent groups of attorney, search companies and media voiced stronger disagreement by approximately 8% from the overall average, while party and non-party groups were slightly below the average by 8% and 3% respectively.

Figure 17. Total Responses And Breakdown By Respondent Group - *ND Districk Court records should be removed from public access once retention met and erased from database in its entirety.*



The responses to the area of retention were further analyzed by comparing the response rates across all five levels of retention.



Analyzing all retention options indicates a relatively equal response rate to the first three categories, *maintain the record indefinitely, maintain record based on retention period*, and *maintain case summary on general public access site but remove documents. Removing the electronic case records from the general public access once the retention period has been met* was not as strongly supported, compared to the first three options, and as the response shows, a slightly larger percentage disagreed (42%) with this approach than agreed (39%). The fifth option of *removing the electronic case record from the general public access site once the retention period had been met and erase the complete record* was not supported, in that 64% of all responses disagreed,

while only 21% agreed. It is noted that approximately 20% of all survey participants did not state a position on these areas.

9. Additional comments on retention of electronic court records:

The survey respondents were given the opportunity to provide additional comments regarding retention of electronic court records on the general public access site. Of the 558 responses, 40 made further comment regarding this issue. The comments note a variety of concerns that are the basis for their opinions and positions on this area. Some noted:

> *"Paper records are being destroyed, so they should follow that procedure for electronic records."*
>
> *"The majority of my searches are for employment reasons but it's not the only reason to search court records. Sometime I need a criminal history as far back as the court has records for private (non-employment) investigations. Q1. Since disk space should no longer be an issue there is no reason to purge the data from the computer. Q2. For employment we only report cases where the final disposition was within the last 7 years (FCRA). Final disposition being the discharge/expiration of probation, parole or prison. Q3. In 20 years in the business I have never been interested in who was the judge. Q4. I don't see the point of removing data. It costs little to nothing to retain.*
>
> *"We believe it is very important to maintain hard copies and/or digital copies of all court actions. Our research frequently requires review of documents over 100 years old"*

"Once the predetermined retention period is reached (keeping in mind there needs to be different retention periods for on-going custody issues, issues that may involve criminal records, etc) the entire court record should be destroyed as it is no longer relevant. I also believe that, once a record is DISMISSED (such as theft or other criminal matter that was never adjudicated but was dismissed) should be taken off completely as NUMEROUS employers when doing checks will not go into the record to see the disposition but will only look to see that there was a charge and will assume guilt."

"Information being too easily accessible does not allow for people to be given second chances, as employers can see information and make judgments without even asking the person about the situation."

"Cases come back all the time, especially probates and title issues. Please retain. If cost is a factor, perhaps limit the criminal retention but civil can have large impacts on real estate title."

"I often find cases in which there is not access to electronic documents that I would find useful in my representation of clients regarding previous matters. It is much easier and less costly to keep documents online indefinitely than to put them online, take them offline, and then store them in archives somewhere and have to pay someone to go dig them out for review."

"All the effort we put in place to prosecute people beyond a reasonable doubt to prosecution, or to acquittal; all the effort we put into making all these electronic records; the continuing downward cost of maintaining electronic

records; the continuing reliance on data on the net; the increasing length of look back periods, 39-08-01 DUI 4th in forever, 25-03.3 civil commitment of sexually dangerous individuals no limit of look back period, and the responsibility of employers, landlords and vendors to provide a safe product. Stop destroying records we have put so much effort into to create and hold."

"Erased once done"

As noted by the comments, opinions on how records should be maintained vary and may be related to the each respondent group and their specific reasons for examining the record.

Conclusions and Recommendations

Access

North Dakota courts have implemented a new case management system, including digitalized documents, which now gives the state more options in providing additional access to the electronic court record at the general public access site. This research project set out to examine the issues other courts have experienced as they provided more convenient access of electronic court records, including digitalized documents and to make recommendations for North Dakota courts to consider as it moves forward in discussions of this policy area. Specific to this project an opinion based survey was provided to court patrons that access court records to solicit their views on various access options the state may consider as they develop future access to electronic court records policy.

At the time of this project, North Dakota provided access to party information, judge assignment, a listing of documents filed in the case, disposition and hearing information and payment on the general public access website. As a result of implementing a new case management system that includes digitalized documents, the North Dakota courts now have the ability to provide access to digitalized documents at the general public access site that allows individuals to access electronic court documents from a personal or private computer, away from the courthouse.

A review of the literature identified many concerns regarding more convenient access to electronic court records across the country as technology advances and courts are providing more convenient access to electronic court documents. The survey participants echoed similar concerns to the issues noted in the literature, so North

Dakota court patrons carry similar views and positions to those experienced across the country.

Based on the findings of the opinion based survey, slightly more than half of the respondents (62%) supported *access to all public documents at the general public access site.* A second option of *only final orders being accessible at the general public access site* was less supported at 46%. A third option, *documents should not be available for viewing*, was disagreed with by 71% of the respondents. A closer examination of the responses by each respondent group shows divergence from the average, sometimes insignificantly and sometimes significantly, depending on the respondent group and their relation to the court record. Overall, the most conservative respondent group was attorneys. Attorneys voiced concerns regarding more convenient access of court documents at the general public access site that mirrored concerns noted in the literature review. Specifically, attorneys were concerned about the willingness of parties to use the court system with the knowledge that the details of their lawsuit would be so conveniently available. Second, they noted concerns for party privacy and safety based on the content of court records. Third, they voiced concern about the ability to immediately review case pleadings and the potential impact of this information being immediately available to the public, sometimes prior to attorneys being able to review the pleadings. Fourth, attorneys questioned the reasoning for documents to be this conveniently available, versus the historical approach of a person being required to make the extra effort to go to the courthouse to review a record.

The respondent group, party in a case, was closer to the average opinion on providing access to public documents but responded in greater support of access to

only final orders over all public documents being available on the general public access site. The respondent groups that voiced the greatest support of more convenient access to public documents at the general public access site were non-parties to a case, media and search companies, whose purpose for accessing court records was to gather general information and record verification.

The second area examined in relation to access to court documents at the general public access site, was the release of certain personal information, specifically the social security number, date of birth, party address and financial/account information. All respondents groups indicated that party social security information and financial information should not be available by a showing of 94%. This strong position was held by all respondent groups, except the media group which reported 63% in disagreement with the availability of this information. (Note: the media response rate may be skewed as only eight responses were recorded in this group). This response result is significant for North Dakota courts to note as the state did not have policy on the submission of this party information prior to March 2009. Prior to that date, the submission of social security numbers and financial/account information was routinely available in certain court documents. Policy implementation in March, 2009 outlined guidelines for the submission of this specific information in court documents, but parties failing to comply with the new rule requirement were considered to have waived their right to protection.

There was more discrepancy in the views of the various respondent groups regarding response results for access to date of birth and address information in court records. Overall, 43% of survey participants supported the availability of date of birth

information being available for viewing compared to 43% opposed. Upon further review of the respondent groups, party in a case and attorneys were more in disagreement with this information being available for viewing, while search companies, non-parties to a case and the media groups were in greater support of this information being available for viewing. Lastly, 52% of the respondents disagreed that address information should be available for viewing, while 33% agreed. Again, the respondent groups, party in a case and attorneys were more in disagreement from the average, while non-party to a case, search companies and the media groups were closer to the overall average.

The literature review noted many issues that have been experienced by courts that have made court documents available on an internet access point comparable to North Dakota's general public access site. The issues noted include the effect on personal privacy of the parties involved and the personal safety of those named in the court documents. A concern reported was identity theft based on personal information contained in court records that the general public would have access to. The effect on a party's willingness to use the court system to resolve disputes knowing documents would be so readily available for inspection by the general public. The impact of allegations against a party being reviewed prior to a finding of the court on the party and the potential harm to investigations being conducted by law enforcement, were among those noted. On the other side of the debate, the reasons courts consider providing more convenient access of court records follows the historical view that courts should be transparent, in which the public should have access to court records to hold the judiciary accountable and make sure disputes are being resolved in a fair and impartial manner. The public has a right to monitor individual actions and thus prevent parties

from taking advantage of others. Allowing more convenient access to court records would decrease court staff time to retrieve records for public inspection and it would assist in public safety if the public can more conveniently access to court records.

Recommendations for North Dakota - Access

As North Dakota courts move forward in making business decisions on access to court records, it is worthy to note that North Dakota has taken a "go-slow" approach and it is recommended that this continue to be the approach. However, it is also recognized that these issues must be addressed in the near future now that the courts have embraced digital record-keeping.

As North Dakota Courts consider the best course of action for providing access to court records, it is important to pay heed to issues that have been identified through this study and the experiences of other state courts. Three levels of access to digitalized documents at the general public access site were considered in this study. The least favorable noted by the respondents was *no access to public documents*. The most supported position at 62% was *all public documents should be available for viewing*. The third option, *only final orders should be available for viewing*, was supported at 46%. In view of these results and the accompanying research the following recommendations are offered:

1. Providing access to court records in North Dakota at the general public access site is a major decision and the North Dakota courts may consider a committee approach to weigh all issues in determining whether to provide more convenient access at the general public access site. North Dakota courts have existing committees established with the responsibilities to address decision areas of this

nature. It is recommended that this issue be formally assigned to the appropriate committee or establish a working group that comprises all parties affected by this decision to discuss all sides of the issues and make recommendations to the committee for review.

2. As a part of this project, North Dakota courts should review the underlying beliefs and values that have previously guided access to court document policies and determine if those beliefs and values remain the same or if a revision is needed that fits more appropriately with the advances technological improvements allow.
3. North Dakota courts need to weigh the options available regarding public access to court documents versus the impact that can result from implementation of a more convenient access method. In making this business decision, the respondent groups were clear that personal information such as social security numbers and financial/account information be protected from public view. The other two categories of personal information, date of birth and addresses, were not as strongly opposed or supported, indicating the need for a cautious approach.
4. North Dakota courts must decide if the traditional access method requiring a visit to each county courthouse to review court documents is the most prudent approach in terms of satisfying the need for transparency in the courts, while providing protection to the parties involved or if a new more convenient access level at the general public access site is appropriate.
5. North Dakota courts can explore an option of offering court records on the general public access site with built-in protections that limit the ability for

violations of personal safety, by implementing a system requiring registration and login to access documents online with specific rights assigned based on user. North Dakota court currently supports a secure public access site for registered users that allows access to court records based on roles and responsibilities. Is it possible this access point could be developed further to provide access to court records to the general public, building in protections that would address the concerns noted. This recommendation would model the Federal Court PACERNet system. With this model, if a party experiences harm, such as identify theft, personal safety or privacy violations, an investigation can be made of the user accessing that party's record in an attempt to address violations and curb further abuse.

6. It is not recommended that North Dakota courts consider providing access to court records predating the implementation of court rules on admission of confidential information (March 1, 2009). The courts do not have adequate staff to review and redact prior submitted pleadings. In addition, there is a high risk the review process would not be 100% accurate and oversights may occur causing parties harm. Second, the parties and /or attorneys cannot be expected to go back and review closed files that would require motions to redact confidential information that was submitted in the prior pleadings. In some instances, attorneys are not likely to have the record based on age of the case.
7. If North Dakota Courts decide to move forward by providing access to digitalized documents at the general public access site, it is recommended that:

a. A future date certain be established when records will be made accessible at the general public access site.

b. Prior to the commencement of access, an education campaign notifying attorneys of the court's intent to provide access to digitalized documents at the general public access site and the significance of complying with current rules on the submission of confidential information.

c. The court conduct an education campaign focusing on pro se parties regarding current rules on the submission of confidential information and the significance of providing that information in the proper form.

d. That all court forms being provided to parties by the courts be brought into compliance with the current rules to submit confidential information. It is recommended that records submitted to the court prior to this education period, not be made available at the general public access site but remain available to the public through the secure public access site and the onsite access site.

e. That a statewide audit be conducted to verify clerk staff are filing documents with the proper security designation of public, confidential or sealed to ensure that only documents deemed public will be accessible.

f. Depending on the results of the document audit, an education program may be necessary to assist clerk staff in understanding the importance of documents being assigned the correct security type and provide a review of all document categories to ensure clerk staff understands what documents are public, confidential and sealed. This education would

improve the safe-guards to prevent unintended access to confidential and sealed documents through the general public access site.

8. If North Dakota Courts decide to make only final orders in a case available on the general public access site, it is recommended that:
    a. A statewide audit be conducted of clerk's data entry to ensure accurate decisions are being made when documents are entered. The system will be dependent on the correct event type being used as the system would rely on unique event types to pull limited portions of the case record to the general public access site.
    b. That an education session be held to train clerks on making accurate determinations on documents that meet the established criteria. It should also be noted that judges use many different titles for final orders. If case information is limited to final orders, the system will rely on data entry so that the correct documents are available on the general public access site.
9. If North Dakota Courts decide to maintain the current level of access at the general public access site, and have court patrons interested in the documents continue to visit local courthouses to access the documents, no changes should be required.

Given that North Dakota courts are unified, once decisions are made on access to court records, the decision should be easy to implement on a statewide level.

RETENTION

North Dakota courts implemented a new case management system, including digitalized documents, which eliminated some factors that were considered in prior retention of court records policy. This research project set out to examine retention of electronic court records and identify issues courts were experiencing as they begin to manage a completely electronic record keeping system and to make recommendations for North Dakota courts to consider as it moves forward in discussions of this policy area. Specific to this project an opinion based survey was provided to court patrons that access court records and solicit their views on various levels of retention the state may consider as it reviews retention policy in an electronic court record environment.

Five options were explored in the opinion based survey. Three approaches received similar levels of support from the survey participants. The strongest support indicated was *maintenance of a specified retention period for each case type determined on the records, legal, historical, fiscal and administrative value*, with 55% of the respondents supporting this approach. However, 52% of the respondents supported *maintaining the record on the public access site indefinitely*. In noting the comments made in this area, the respondents have the perception that there is little or no cost to storage of electronic records. The third approach, that *courts should maintain the judge assignment, hearing information, payment history, disposition history and summary of the pleadings filed in the case indefinitely, but remove documents when the established retention period was met*, had 50% agree and 27% disagree and 23% that did not state an opinion. The fourth approach presented, that *North Dakota courts records should be removed from public access site after retention is met but maintain in non-accessible*

database indefinitely, resulted in 42% disagreeing and 39% agreeing to this approach. The fifth approach presented, *North Dakota court records should be removed from public access site after retention is met and erased from database in its entirety*, resulted in 64% of the respondents disagreeing with this approach, 20% agreeing and 18% not stating an option.

The literature review reflects that the investigation of retention is still in its infancy. Courts have been discussing access issues for the past twenty years, but documentation on retention of electronic records is only recently being addressed. With that noted, recent policy statements have been issued in the area of retention of electronic court records on a national level and point out several issues that must be addressed when making business decisions regarding retention of electronic court records. First, it is noted that there is a substantial financial cost to maintaining electronic court records indefinitely. The cost is multifold, including storage space to host the data, program obsolescence in which the data is stored, data conversion to ensure continued accessibility, and ongoing upgrades of software and hardware. The literature notes that computer programs and systems have an approximate life span of ten years, so that continual upgrades and migration of data must be anticipated. Therefore, courts must evaluate these issues when making business decisions on retention of electronic court records. There are several models emerging in the literature on how courts can address this area.

North Dakota is at a critical stage regarding decisions on retention of electronic court records. The current electronic court record system was commenced in 2009, and, as North Dakota nears the ten year point of using the system, it is critical that it

have a comprehensive retention plan in place addressing retention, destruction and preservation of court records. North Dakota has records in multiple media formats, such as paper, microfilm, and digital, and as such, requires a thorough review of the retention policy that is in place to ensure the proper management of each record format over time.

Recommendations for North Dakota - Retention

1. North Dakota courts have committees responsible for reviewing the rules on retention and it is recommended that the appropriate committee be assigned this specific task, or a working group consisting of interested parties be convened to explore the retention rules and policy, and provide recommendations to the committee.
2. To start this process, it is recommended the committee or working group review North Dakota courts historical values and beliefs underlying the current policy on retention of court records and determine if the values and beliefs are still consistent, or if technological advances support an updated model of retention of court records.
3. If North Dakota courts determine the current retention values and beliefs that guide record management is outdated and new technology advances support a new approach to record retention, then several issues must be addressed:
    a. North Dakota courts must explore preservation models as the lifespan of computer programs is estimated at ten years. It will need to consider preservation models that ensure the integrity, reliability and accessibility of the digital court records over their entire life cycle.

b. North Dakota courts will need to review the preservation models that are emerging to determine which are possible to replicate in North Dakota and then determine the best approach for North Dakota. This review may include an analysis of cost to support each model over the preservation period in considering each option.

4. If North Dakota courts determine the values and beliefs behind the current retention guidelines remain current, it is recommended that retention periods of each case type be reviewed to determine if the current guidelines meet all interested party needs. Recently, North Dakota courts updated retention periods on misdemeanor and felony charges due to new laws that require courts to take into account prior offenses over a longer period of time for sentence enhancement purposes.

5. Once a review of the retention period of records are completed, the next decision will be how the electronic record, including digitalized documents will be managed. Historically, North Dakota courts have maintained an index of records. In pre-computerization days, paper indexes were maintained indefinitely for each case for historical purposes and, once the paper file met the retention period was destroyed. The transition to an electronic record keeping system where case information was entered into a data base, but paper records were maintained, eliminated the need to keep a paper index on each case. In this model, when cases met retention standards the paper file was destroyed, but the electronic case summary was maintained indefinitely for purposes of historical review. With the current case management system including digitalized records, both the case

summary and the documents are in electronic format. North Dakota courts must determine the future business practice on how to manage digital documents. Options explored were to maintain digital documents with the case summary in view of the public indefinitely, maintain the case summary and remove the documents from the public view and maintain in a separate database in the court system, or delete the digitalized documents, replicating the destruction of paper documents. The cost-benefit of each option should be considered. These decisions will need to be made regardless of how North Dakota courts decide to handle access of documents on the general public access site.

6. If North Dakota determines the future approach will be to remove documents once the retention period is met but maintain the case summary for historical purposes, it is recommended that the clerk staff perform a manual review of each file to verify the record has met the retention policy. It is recommended that a specific event be developed and entered in the case to trigger the removal of the documents by information technology staff.
7. If a committee is engaged to review the retention requirements for electronic court records, it is recommended that this review consider how dismissed records are handled in the North Dakota courts. Specifically, should policy be drafted unique to dismissed records that may include removal of court records from public access but maintain them in the public domain in the event they need to be corrected or updated.

Overall, it is clear that a comprehensive retention policy of electronic court records requires addressing retention of court records, potential destruction of court records

and preservation planning for court records that require long term retention. This project sought court users' opinion on how the court should manage the electronic court record into the future. This project did not delve into all the other considerations that must be addressed in developing a comprehensive retention policy.

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Appendix A – Survey Instrument

North Dakota Court Sponsored Research Seeks Your Opinion.

Ward County Clerk of District Court, Susan Hoffer, is enrolled in the Fellowship program with the National Center for State Courts. As a part of the Fellowship program, Ms Hoffer is conducting a research project sponsored by the North Dakota State Courts. Ms Hoffer has chosen the policy area of access to electronic court records and retention of electronic court records in North Dakota. In 2009, the North Dakota State Courts converted to an electronic case management record system. As a result of this transition, the courts have been reviewing policy regarding access and retention of court records as the electronic court record environment creates additional opportunities in these areas. The goal of the survey is to obtain the opinion of court users as the court further investigate these policy areas. The research project will be submitted to the State Court Administrator to review as future policy decisions on issues of access and retention of electronic court records are being considered.

As you take time to complete this survey, I want to extend my appreciation for your willingness to offer your opinion on these very important policy issues for North Dakota State Courts.

Access To North Dakota District Court Records

1. I have accessed the North Dakota District Court records by the following internet access options in the last twelve months. (Check all that apply)

- ☐ I have not accessed North Dakota District Court records on any internet access site in the last twelve months. (Skip to Question 4)
- ☐ General Public Access website (www.publicsearch.ndcourts.gov/default.aspx) on a personal or public computer away from courthouse location.
- ☐ Secure Public Access (registered user of Odyssey system)
- ☐ Onsite Public Access website (www.publicsearch.ndcourts.gov/default.aspx) using a public computer at a county courthouse location.

2. When I have accessed North Dakota District Court records by an internet access site, I represent: (Check one that best applies)

- ○ Party in the case
- ○ Non-Party (Non-involved person in the case)
- ○ Media
- ○ Attorney in the case
- ○ Attorney not involved in the case
- ○ Judgment search company
- ○ Background search service - Government
- ○ Background search service - Commercial

3. Mark the statement(s) that represent your reason(s) for accessing the court record via the internet website: (Check all that apply)

- ☐ Review case information as I am a party in the case
- ☐ Make a payment on a case as I am a party in the case
- ☐ General informational purpose - Not a party involved in the case
- ☐ Verify criminal record for background search - Government purpose
- ☐ Verify criminal record for background search - Commercial purpose
- ☐ Verify civil record for background search - Government purpose
- ☐ Verify civil record for background search - Commercial purpose

4. I access electronic court records by the internet at the following frequency: (Check highest frequency)

- ◯ Weekly
- ◯ Monthly
- ◯ Quarterly
- ◯ Semi-Annually
- ◯ Annually
- ◯ I have never accessed court records on any access point.

5. North Dakota State Courts currently provide the following electronic case information through the general public access link from a computer away from the county courthouse location: party information, judge assignment, listing of documents filed in the case, disposition, payment and hearing information.

Now that the North Dakota State Courts have an new electronic document case management system including digitalized documents in each case, they are considering providing access to electronic court documents through the general public access link accessible from a computer away from the county courthouse location.

Please mark each statement that best represents your opinion regarding access to electronic court documents using the general public access website at a location away from the county courthouse:

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
All public documents in the case should be available for viewing.	◯	◯	◯	◯	◯
Only final orders, deemed public by court rule, should be available for viewing.	◯	◯	◯	◯	◯
Documents should not be available for viewing.	◯	◯	◯	◯	◯

6. In some documents, personal information is required by the court to perform its function.

Please mark each statement as it best reflects your opinion on what personal information should be available on the general public access website at a location away from the county courthouse location:

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
A party's social security number, deemed public by court rule, should be available for viewing.	○	○	○	○	○
A party's date of birth, deemed public by court rule, should be available for viewing.	○	○	○	○	○
A party's address, deemed public by court rule, should be available for viewing.	○	○	○	○	○
A party's bank account numbers, investment account numbers and/or identifying financial information, deemed public by court rule, should be available for viewing.	○	○	○	○	○

7. Additional Comments regarding access of electronic court records on the general public access site.

8. "Retention" of court records is defined as a specified period of time in which the court maintains a record. When the retention period has been met, the court record is destroyed.

Please mark the following statements that best reflect your opinion on future retention of electronic court records.

North Dakota District Court electronic records:

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
Should be maintained on the public access site indefinitely.	☐	☐	☐	☐	☐
Should have a specified retention period for each case type determined on the records legal, historical, fiscal and administrative value.	☐	☐	☐	☐	☐
Should maintain the judge assignment, hearing information, payment history, disposition history and a summary of the pleadings filed in the case indefinitely, but remove access to documents when the established retention period is met.	☐	☐	☐	☐	☐
Should be removed from public access site once the retention period has been met, but the court should maintain the record in a non-accessible database indefinitely.	☐	☐	☐	☐	☐
Should be removed from the public access site once the established retention period has been met and the record should be erased from the court database in its entirety.	☐	☐	☐	☐	☐

9. Additional comments on Retention of Electronic Court Records?

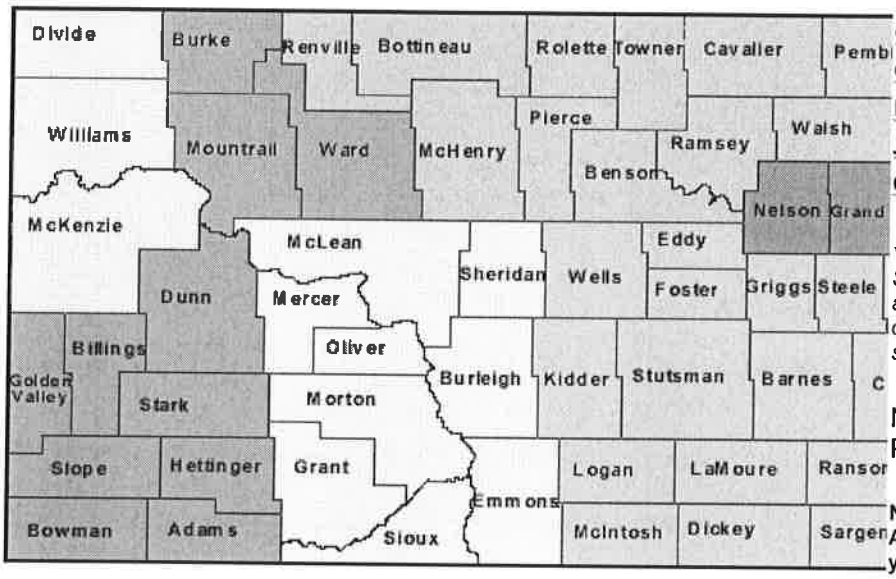
Thank you for your participation in this survey. Your opinions will be reviewed as future decisions are being made on the issues of access and retention of electronic court records in North Dakota.

APPENDIX B – SURVEY LINK ON PUBLIC WEBSITE PORTAL

North Dakota Courts Records Inquiry

Skip to Main Content Logout My Account Help

District County



Click a District

Case Records

Select a location

- Criminal Case Records
- Civil, Family & Probate Case Records
- Judgments Search
- Court Calendar

**Additional Search Options: Select State of North Dakota to search all available courts or scroll to the bottom of the list to search individual Municipal Courts*

Need help making a Payment? Click Here.

North Dakota Supreme Court Administration office is seeking your opinion in reviewing policy regarding access to electronic court records and retention of electronic court records. Please click (here) to complete the survey. (Will take 10 minutes of time)

Data is current through the end of the previous business day.

North Dakota Supreme Court | Tyler Technologies

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APPENDIX C – COMMENTS TO SURVEY QUESTIONS 7 AND 9

Q7 Additional Comments regarding access of electronic court records on the general public access site.

Answered: 98 Skipped: 460

#	Responses	Date
1	I don't feel information should be made available to the public until the case is finalized. It makes it extremely difficult to LE to do an investigation when the media pulls it off of the public search site and turns it all around. The only time it should be made public is when the case is finalized. We in the United State are innocent to proven guilty and by making this stuff accessible to the public is making it impossible for everyone.	10/9/2014 1:55 PM
2	Complaints and exhibits should be available through the public search site. However, personal information should remain confidential.	10/8/2014 12:22 PM
3	It would be nice to be able to enter a persons address or last 4 of social security number to determine if a judgment pertains to our customer or not. Not have it available, but more so like the child support website where YOU have to enter the information and it is not given to you in order to determine if it is our client or not.	10/3/2014 9:29 AM
4	Public access to these records is a great benefit.. Please keep it free.	10/2/2014 11:39 PM
5	We as parents have been thankful for year to access our daughter's record. Thank you.	10/2/2014 9:47 PM
6	I work for the Minnesota Department of Corrections, the public website is very helpful when processing cases.	10/2/2014 1:36 PM
7	Would like to see middle name or initial used.	10/2/2014 11:04 AM
8	I do not feel that the courts should be giving any information out at all. There is enough unsolicited information out on the web now days.	10/2/2014 10:02 AM
9	As a Bail Bondsman, I utilize the electronic public record on a daily basis. It is a great help in researching potential bonds.	10/1/2014 11:52 AM
10	Public access to court records is helpful for businesses to perform basic background checks on employees and landlords to determine risks of certain tenants. It is also helpful for concerned parents deciding whether it is safe for a child to stay overnight at friends homes when you don't know their parents. But documents containing personal information, such as SSN, DOB, etc. SHOULD NOT be available online unless you want to set up a "free-for-all" identity theft opportunity. That's just careless.	10/1/2014 10:57 AM
11	Anything that could lead to Identity theft should be kept private.	10/1/2014 10:09 AM
12	Couldn't find what I was looking for even though I had case numbers.	9/30/2014 2:00 PM
13	Perhaps only the last 4 digits of the ssn are all that is necessary in this day and age. It is enough information to help determine if the subject of the court record(s) is a match to the pre-employment background check subject.	9/30/2014 1:48 PM
14	I believe each Counties' or Courts' cases should be indexed with the case number shown. We frequently wish to obtain a copy of documents primarily probate. It would make ordering copies much simplier if the case number was available	9/30/2014 1:17 PM
15	Please make an app for Android, thanks	9/30/2014 5:27 AM
16	Basic information should continue to be available. Although full birthdays to confirm identity would help.	9/29/2014 2:24 PM
17	Only the last four digits of the SS# should be for viewing. If that is the case, then the full birthday can also be shown.	9/29/2014 1:08 PM
18	With ID fraud being a big issue, I believe all the information listed in #6 should not be available to the public. I was surprised to learn that this information would even be available. In domestic cases, this could be dangerous for the victim.	9/29/2014 12:53 PM
19	My only comment is that if something is dismissed it should be deleted. For instance I know of a person that has a disorderly conduct restraining order on thier file. It was obtained with blatently false information was immediately dismissed the following monday and now shows under his name. It has affect his professional career	9/29/2014 11:48 AM

20	I work in as a case manager in a county social services office. I check ndcourts regularly to check to see if my clients have warrants, and verify charges.	9/29/2014 11:12 AM
21	I view the electronic court records on this site because I work with an animal shelter that uses it to research background checks on possible animal adopters.	9/28/2014 2:29 PM
22	I BELIEVE THAT THE PUBLIC SHOULD NOT BE AWARE OF ANYTHING OTHER THAN THE FINAL JUDGEMENT HANDED OUT.	9/25/2014 2:18 PM
23	Working at a Treatment Facility in which we perform chemical dependency assessments daily, we find this website very help to see if client's are truthful during their interview.	9/25/2014 2:17 PM
24	Information that helps to verify a party's identity should be made available in some way. Dates of Birth are very useful, and having the ability to search by DOB is helpful, but due to data entry errors, it is sometimes unreliable and having the full DOB visible would help to ensure that close matches to the DOB can be examined. The full SSN should not be available for view, but the last four is helpful. It would also be useful to have the ability to verify the full SSN through the web site.	9/25/2014 8:28 AM
25	Records can make a person look very bad in the eyes of others... people change and no ones perfect... people judge harshly it doesnt seem fair if you know nothing about the person but judge them by something you have read... some crimes without a doubt should be public... sex offenders and any mistreatment of children etc... but a speeding ticket... etc. personal issues.. convictions are taking are rights away to be productive normal people to be judged by society and that alone doesnt seem right or fair... its just not right...	9/24/2014 2:50 AM
26	Should get rid of site.	9/23/2014 11:16 PM
27	Download viewing issues--sometimes Tylerhost works--mostly not.	9/23/2014 2:23 PM
28	When hiring employees we want to know if they have DUI, Drug charges or other pending problems.	9/23/2014 1:58 PM
29	The information can be available in hard copy instead of online. With ID theft as popular as it is I think making people take the extra step of going to a court house to get the information would be a deterrent.	9/23/2014 12:47 PM
30	too much information is made available to the public for which it's use wasn't intended - people just being nosey.	9/23/2014 8:09 AM
31	Juvenile documents, pictures of minors, search warrants and bench warrants should not be made public. The bench warrants that are public only warn the person that they have a warrant which allows them to avoid arrest	9/22/2014 4:38 PM
32	i am a firm believer that anything that is part of the public record should be available to "the public" with as little effort as possible.	9/22/2014 3:32 PM
33	Members of the public should not be able to anonymously access court documents.	9/22/2014 3:14 PM
34	More clarification on legal jargon for better understanding	9/22/2014 12:41 PM
35	North Dakota open records law prohibits disclosure of Social Security numbers and other info made private by statute.	9/22/2014 11:17 AM
36	It is a slow website.	9/22/2014 10:21 AM
37	should be only available to government agencies, some people use it to just be nosey	9/22/2014 9:15 AM
38	Acsess all documemts	9/22/2014 6:43 AM
39	Staff utilizes this site in order to verify information given by residents and to determine if prior violent history. Staff also has to monitor fine/restitution payments while residents with this agency. This writer does not believe all documents involved in cases need to be available for all to see. If this does become practice, this writer would think only those cases in which one is found guilty/pleads guilty would have to be published. In addition, this writer believes cases in which one was found not guilty should be shown; not all employers will open cases to see if dismissed or not, potentially harming possible employment or renting opportunities.	9/22/2014 1:31 AM
40	Great to be able to access information!	9/21/2014 3:08 PM
41	I think most people including me are just nosy and checking up on people who have a record.	9/21/2014 12:08 AM
42	I am a Security Officer for Sanford Health in Fargo. We use the system daily for criminal history searches on violent patients to build care plans and complete reports. We also use the system to research open warrants regarding unwanted persons on the property. We also use the system to track the 20-50 individuals, at any given time, who have been involved in crimes on hospital property, assaulted security officers or nursing staff or who are frequent problems within our facility. We love the ND courts service!	9/19/2014 8:54 PM

43	Administrators barely trust attorneys to access this information. I think it could create a lot of problems to have this information so readily available to the public.	9/19/2014 5:40 PM
44	This website is very important, keeping the community informed is the biggest part of safety.	9/19/2014 2:40 PM
45	The results page should provide a quick view of status such as dismissed, pending, closed, etc...	9/19/2014 2:35 PM
46	No additional comments	9/19/2014 11:28 AM
47	I'm in law enforcement and I am constantly looking names up on the site. I really dislike when the main page times out and I have to go to the home page and refresh it. If possible please get rid of that option.	9/19/2014 8:23 AM
48	na	9/18/2014 10:30 PM
49	just the correct name	9/18/2014 7:56 PM
50	The general public does not need to know specifics of legal matters filed especially when they are not a party to the action.	9/18/2014 5:35 PM
51	I believe only parties involved in the cases should have access to those records, as some information is embarrassing, especially for those who are trying to get out of bad relationships through court processes.	9/18/2014 3:53 PM
52	I never use the general access because I have a secure access and I use it all day long to complete my records at the DOCR. I also use public information records from other states and have found some very helpful and other not very helpful.	9/18/2014 2:18 PM
53	What we see at the courthouse should be what we can see online. Social Security numbers should be protected by rule, and dates of birth also can be (or least the day/month not year for criminal purposes). Also year of birth and address are important for identification of party uses.	9/18/2014 11:18 AM
54	If the general public is allowed to view documents it will only add confusion for attorneys representing clients and being able to access documents maybe sometimes sooner than the attorney can access it for being in a hearing, etc.	9/18/2014 11:04 AM
55	It's fantastic - but the pacer system for federal courts allows for viewing of individual documents remotely. That's really fantastic especially near the end of the business day when things get filed late and the courthouse may be closing soon	9/18/2014 10:59 AM
56	In question #2, I am not sure what "I represent" means. I answered as an attorney b/c I represent clients who are parties to the cases. In question #3 I am not sure what you mean by a "commercial purpose" but I conduct background checks on all my potential and current clients, opposing parties, witnesses, etc. For question #5, I think individuals should be able to access their own court documents online for sure and orders should also be available, but I'm not sure it is necessary or desirable for all documents to be available to the public generally. For #6, personal information should not be accessible to the public at all. Attorneys are required to redact information from the pleadings, thus it would be contradictory to allow the public to access that information. In addition, it poses potential risks and threats to parties including identity theft, vulnerability to perpetrators of violence, etc.	9/18/2014 10:16 AM
57	I am very concerned with folks at home, usually people who would want to be an anarchist except for their dependence upon public welfare, sitting at home for hours on end trolling the internet, and now court records, for their own personal enjoyment. People who come to court come to court because they are having problems and one person's problems should not be another person's enjoyment.	9/18/2014 9:35 AM
58	I find this useful for investigating who my neighbors are at times and who I allow around my children. I don't check everyone but occasionally the need arises to know who my children are spending time with and if they have criminal backgrounds.	9/18/2014 9:29 AM
59	As a title company searching names we are finding that when a bankruptcy is entered the Court System is deleting that judgment from the search records. This is opening the title companies up to a huge liability. The Bankruptcy doesn't release the debt there is still obligation to pay. It should be noted in the judgment search that it was released due to bankruptcy. Just like a judgment being satisfied or expired. It should not be purged from the system.	9/18/2014 9:07 AM
60	a party's records should be able to be viewed only if they are involved in the case and can verify they are involved in the case.	9/18/2014 8:58 AM

61	Question # 2. I access 3 ways, but your survey only allows me to select one. Your survey is fatally flawed. Question #6 A party's SSN deemed public by court rule should be available. Your survey is flawed. No court rule allows for this option. Apparently what you are asking is whether they want a rule that allows for disclosure of SSN in some instances, or never want SSNs disclosed. You've asked something different, if there was a rule allowing it, would the reader want the intent of the rule thwarted, by blocking disclosure. In other words is the reader a person who would advocate breaking the rule. Question # 4. I access Odyssey daily. You don't have that option available. So, the potential participants most likely to see the opportunity to answer this question, daily users, will only appear in a miscategorization: weekly users.	9/18/2014 8:53 AM
62	Date of birth could be limited to year of birth.	9/18/2014 8:31 AM
63	The information provided to the public seems acceptable. When personal information is dispersed, we are going to have nothing but headaches especially if the case involves a victim of domestic violence etc...	9/18/2014 8:19 AM
64	It would be nice if we could be notified when an order or judgment is entered.	9/18/2014 8:01 AM
65	Any and all personal information should not be accessible by the public, including birth date, ssn, address, account numbers, etc. A confidential information form allows the court to function and protects personal information and privacy.	9/18/2014 7:32 AM
66	I would like to be able to access more information on court cases will using the public records website from my home.	9/17/2014 9:29 PM
67	The level and degree of access that we have in this state is wonderful.	9/17/2014 6:39 PM
68	In Question 2 even thought it said "I represent" thought the most accurate answer was that I am an attorney. In No. 3 I answered review "because I am a party" but it would be more accurate to say because I am an attorney. I answered No. 4 "Weekly" but it is more accurate to say multiple times every day.	9/17/2014 4:39 PM
69	There are hundreds of mistakes in the system. All of them can be attributed to human error and carelessness. Convictions that should be misdemeanors are erroneously listed at felonies or visa versa. Non-criminal traffic offenses are routinely listed as infractions. The problem with these errors is that the public relies on the information listed in case, i.e., landlords and employers. The landlord or employer is not going to bother reading what the Judgment actually says. Instead, if a case says "Felony", the person is going to rely on the erroneous information. The most egregious error I have found on the system was the Defendant in Grand Forks who shot the Judge in the Grand Forks courtroom. The system erroneously has it listed as a misdemeanor!!!!!!	9/17/2014 4:37 PM
70	Missing options: law enforcement investigation (2 & 3), daily access (4).	9/17/2014 12:52 PM
71	I filled out a survey previously; but forgot to mention that I cannot access the the public search when I update my Adobe program. I have to use an older version of Adobe to open the public search. My computer guy tells me that for some reason the newest version of Adobe appears to be incompatible with your search program. Is there a "fix" for this. Is anyone else having problems using the newest Adobe version?	9/17/2014 11:58 AM
72	I have encountered a serious problem in searching active judgments. It seems when a discharge of bankrupt certificate is filed with the local clerk of court against an active judgment, that this program deletes the active judgment from the "Judgment" screen; and the only place to find it is in the "Civil" screen. But the "Civil" screen indicates the judgment case is "closed." Upon opening the "closed" judgment, there is a notation of bankruptcy at the top of the page. This is very misleading for abstracters, such as myself, who are liable for missing judgments when doing name searches. My attorney has told me that a bankruptcy does NOT wipe out a judgment -- it is still active until it expires or would get paid off. If a "bankruptcy" notation could be placed on the judgment screen, keeping the judgment on the judgment screen with same retention as other judgments, that would be a great help. Please, please correct this problem.	9/17/2014 11:53 AM
73	I like that you can click on the details because it might show someone as being had with a felony but once you go to the details and can read you see the case was dismissed ,what I don't understand if it does say case dismissed files destroy then why is it still listed where if someone unlike myself wouldn't take the time to go look at details then they would assume the party was convicted or that charge ? thank you	9/17/2014 11:39 AM
74	Being able to view the names of the attorneys involved in a case would be extremely helpful.	9/17/2014 11:32 AM
75	I think it's amazing that North Dakota is committed to keeping the public informed about things happening in our community. For the safety of citizens, knowing who your neighbor is, is extremely important. For me, this website has been extremely important in finding out information in regards to a man that has been imprisoned for violence against children. He is the former step father to children very close to me so it has been crucial to keep up to date with what is happening in this case. Thank you so much for considering the publication of these documents.	9/17/2014 10:00 AM
76	For a party's address, only the city, state and zip code should be available for viewing.	9/16/2014 9:18 PM

77	if cases are considered destroyed , they should be removed from the roster	9/16/2014 7:25 PM
78	I do not feel that the general public should have access to any of this information. No matter who you are you are entitled to privacy!	9/16/2014 6:47 PM
79	It would be incredibly helpful to include any municipal court involvement on the public access site!	9/16/2014 11:55 AM
80	I think that paper records are superior to e filing	9/15/2014 10:08 PM
81	We check the District Court records to monitor criminal activities of potential employees. On a personal note, I check the records to monitor the criminal activities of my son's birth mother, making sure he is kept safe from her negative actions.	9/15/2014 9:42 PM
82	Its nice	9/15/2014 9:15 PM
83	I FEEL VERY INSECURE KNOWING THAT THE LAST FOUR OF MY SSN IS PUBLIC KNOWLEDGE.	9/15/2014 8:52 PM
84	DEPENDS ON WHAT IT IS BEING USED FOR TO GET FULL ACCESS	9/15/2014 5:20 PM
85	Whether its the general public link or the secure access, not all cases are listed on the file. Whether it's a child custody, divorce or even a speeding ticket. This is very frustrating.	9/15/2014 4:14 PM
86	For government background check search, I would like some way to identify/verify that the person I'm checking is the same person as is listed in the court records search.	9/15/2014 3:15 PM
87	This resource is an invaluable resource to the public.	9/15/2014 1:55 PM
88	More Identifying information should be made available so that we can assure records found are attributed to the correct person. and 2nd we definitely should be able to view each document in a file without having to come to the courthouse.	9/15/2014 1:41 PM
89	It would be cool to be able to click the doc id and see pdf of doc	9/15/2014 12:03 PM
90	I think information regarding the facts of a criminal case, like affidavits of probable cause should be available for a longer period of time. As a prosecutor, I look at a person's criminal history, and the facts surrounding each crime in order to make sentencing recommendations and bond recommendations. The facts included in the affidavit of probable cause, briefs, and other documents are better than simply looking at the Information and the judgment or final order.	9/15/2014 11:34 AM
91	A party's last 4 of a social security number and year of birth should be available for viewing.	9/15/2014 11:34 AM
92	Many parties in our proceedings have not been able to see their older orders. It would be great if the orders are available and in the older files, that the orders are at least scanned in and available even if the rest of the documents are not. It would be less of a strain on the CLerk's, I think, if orders were available as they can tell parties how to access and print them rather than having to provide copies via party requests, particularly pro se parties.	9/15/2014 11:23 AM
93	I work for Job Service ND. I use this site to establish eligibility for the Work Opportunity Tax Credit. What I need is conviction dates or release dates if time is served. I would like to see the ND general public website include the dates they are released. Once in awhile they are posted, but most often not.	9/15/2014 11:11 AM
94	I work in a State's Attorney's office and feel that the public does not need to access any documents. Just seeing what's filed should be good enough. Doesn't seem right or necessary for random people to be able to read everything that has been filed in a case.	9/15/2014 10:45 AM
95	Generally, public documents should be available online. Personal information like bank accounts, SS #s, etc. Should be redacted. Adoptions should be confidential.	9/15/2014 10:36 AM
96	The ability of attorneys statewide to access and view court documents is extremely valuable and important. However, some documents filed in court cases, especially family law cases are very sensitive even if they do not contain confidential information. I do not believe that general public access is important or even necessary for these matters.	9/15/2014 10:08 AM
97	There is a need to balance the confidentiality of involved parties (ie: SSN, date of birth, address) with the public's right to public documents. A party shouldn't feel inhibited from bringing a claim because doing so will allow the general public to have access to their address or phone number, which the party may have unlisted for any number of reasons. Further, the possibility of retaliation and retribution relating to civil claims could increase if personal information such as addresses and phone numbers of the parties were available.	9/15/2014 10:05 AM

98	The system, as an attorney using this website securely, serves the public just fine as it is. It provides general information to people and if they want more, they can access all these documents at the court house. I do not think its appropriate to make them and all the confidential information available to the public.	9/15/2014 10:04 AM

Q9 Additional comments on Retention of Electronic Court Records?

Answered: 40 Skipped: 518

#	Responses	Date
1	Paper records are currently being destroyed, so they should follow that procedure for electronic records.	10/2/2014 10:09 AM
2	Serious crimes should be maintained online indefinitely. Traffic infractions, minor crimes, etc. should be erased completely once retention period is met.	10/1/2014 11:00 AM
3	The majority of my searches are for employment reasons but it's not the only reason to search for court records. Sometime I need a criminal history as far back as the court has records for private (non-employment) investigations. Q1. since disk space should no longer be an issue there is no reason to purge the data from the computer. Q2. For employment we only report cases where the final disposition is within the last 7 years (FCRA). Final disposition being the discharge/expiration of probation, parole or prison. Q3. In 20 years in the business I have never been interested in who was the judge. Q4. I don't see the point of removing data. It costs little to nothing to retain.	9/30/2014 2:07 PM
4	Needed to find judges ruling on family minerals in 1980....not in database.	9/30/2014 2:02 PM
5	We believe it is very important to maintain hard copies and/or digital copies of all court actions. Our research frequently requires review of documents over 100 years old	9/30/2014 1:21 PM
6	If the cost to maintain access to the records is not prohibitive, I recommend that access to the records be maintained for attorneys and court staff	9/29/2014 3:07 PM
7	Please keep them publicly available! I view the electronic court records on this site because I work with an animal shelter that uses it to research background checks on possible animal adopters.	9/28/2014 2:31 PM
8	should change criteria depending on whether matter was dismissed	9/25/2014 11:44 AM
9	Common sense should be used to prevent identity theft.	9/25/2014 11:06 AM
10	In criminal cases, records on serious offenses such as murder, GSI and other felony cases should never be expunged.	9/22/2014 4:39 PM
11	I feel that the information should be kept on the public access database past the retention period if there is an outstanding balance owed for ease of payment.	9/22/2014 12:42 PM
12	If we are going to be able to properly prosecute Felony DUIs those records (especially finalk judgments) need to be retained.	9/22/2014 11:46 AM
13	Once the pre-determined retention period is reached (keeping in mind there needs to be different retention periods for on-going custody issues, issues that may involve criminal records, etc.) the entire court record should be destroyed as it is no longer relevant. I also believe that, once a record is DISMISSED (such as a theft or other criminal matter that was never adjudicated but was dismissed) should be taken off completely as NUMEROUS employers when doing checks will not go into the record to see the disposition but will only look to see that there was a charge and will assume guilt.	9/22/2014 8:44 AM
14	na	9/18/2014 10:31 PM
15	once time is served thats it. should be erased unless case was for molestation	9/18/2014 8:00 PM
16	Information being too easily accessible also does not allow for people to be given second chances, as employers can see information and make judgments without even asking the person about the situation.	9/18/2014 3:57 PM
17	Again I don't use the general access. For the secured access I like having them for as far back as possible. This is my main resourse when completing criminal background reports. If the information is not of the website I cannot determine of the charge existed or if there was a disposition.	9/18/2014 2:21 PM
18	The documents are public record and the State has run into issues with the courts destroying files when the issue of multiple offenses has come up. Can't prove that the defendant was rightfully convicted if there are no access to the court's records because they have been destroyed.	9/18/2014 12:26 PM

19	Cases come back all the time, especially probates and title issues. Please retain. If cost is a factor, perhaps limit the criminal retention but civil can have large impacts on real estate title.	9/18/2014 11:19 AM
20	I often find cases in which there is not access to electronic documents that I would find useful in my representation of clients regarding previous matters. It is much easier and less costly to keep documents online indefinitely than to put them online, take them offline, and then store them in archives somewhere and have to pay someone to go dig them out for review.	9/18/2014 10:24 AM
21	As a Law Enforcement employee, at times we need immediate access to older records, I feel that registered users should be able to view all documents indefinitely.	9/18/2014 9:43 AM
22	For my own law practice, I sometimes look through aged files looking for a case similar to a present case so that I can model my present case on the previous case. As I here at my office work to reduce my paper storage, I do depend upon the archives of the State Court system for the records I no longer keep. Perhaps there can be an accommodation for attorneys and then also for attorneys involved in the case.	9/18/2014 9:39 AM
23	All the effort we put in place to prosecute people beyond a reasonable doubt to prosecution, or to acquittal; all the effort we put into making all these electronic records; the continuing downward cost of maintaining electronic records; the continuing reliance on data on the net; the increasing length of look back periods, 39-08-01 DUI 4th in forever, 25-03.3 civil commitment of sexually dangerous individuals no limit on look back period, and the responsibility of employers, landlords, and vendors to provide a safe product. Stop destroying records we have put so much effort into to create and hold.	9/18/2014 8:57 AM
24	I think they should be maintained so that government agencies can use them for at least 12 - 15 years after the conclusion of the case	9/18/2014 8:48 AM
25	since electronic system is to, in part, provide access to documents, all should be available indefinitely.	9/18/2014 8:03 AM
26	criminal acquittals, pretrial diversions, deferred impositions and dismissals should not be available to public view. Also there should be a way to expunge records after a certain time period.	9/17/2014 8:27 PM
27	Records should be maintained in electronic format indefinitely.	9/17/2014 6:41 PM
28	All records should be retained forever, assuming the records are accurate and correct. (Big If)	9/17/2014 4:38 PM
29	I believe that final decisions should be maintained on the public access site.	9/17/2014 4:16 PM
30	Dismissed charges should be removed from a persons record or at least not be viewable on the public accessible website.	9/17/2014 12:03 PM
31	Keep them	9/15/2014 10:09 PM
32	None	9/15/2014 9:16 PM
33	DEPENDS ON WHAT IT IS BEING USED FOR TO GET FULL ACCESS	9/15/2014 5:20 PM
34	When do retention periods start? Are they already classified as the date of the judgment or is it from the date of the satisfaction of the judgment?	9/15/2014 3:37 PM
35	Would like to see the record maintained for at least the length of time that the ND State government requires for adequate background check findings.	9/15/2014 3:17 PM
36	now that records are kept electronically they should be preserved indefinately. The federal government (FTC) requires background check providers to report records for 7 years from the END date of a file. If they get a 2 year probation at sentencing, we have to report the case for 9 years. If a record is challenged by the subject, the information has to be verified as correct by the background provider. That can only be done by verifying the information IN THE FILE. They should be kept forever.	9/15/2014 1:48 PM
37	Erased once done	9/15/2014 12:04 PM
38	The documents in a criminal case should be viewable by prosecutors and attorneys of record forever.	9/15/2014 11:35 AM
39	It is often helpful to be able to go back and look at old documents, particularly in criminal actions, to see what circumstances surrounded that past case. Also, in civil matters, we look at those criminal matters in determining where an individual was located/worked/lived in determining jurisdiction over an individual.	9/15/2014 11:25 AM
40	As a secretary in a State's Attorney's office we received requests from NCIC regarding judgments & many times our records and the clerk's records have already been destroyed so we are unable to provide any info for their background check or whatever it is they are looking for.	9/15/2014 10:52 AM

Appendix D – Data Tables

Figure 1. I have accessed the North Dakota District Court records by the following internet access options in the last twelve months. (Check all that apply).

Access Point	Response Percent	Response Count
Never	7%	39
Onsite Public	12%	65
Secure Public	46%	253
General Public	62%	344

Figure 2. When I have accessed ND District court records by an internet access site, I represent: (Check one that best applies).

	Response	Percent Response
Non-Party In A Case	159	30%
Party In A Case	127	24%
Attorney	125	24%
Background Search Co - Government	51	10%
Background Search Co - Commercial	35	7%
Judgment Search Co	19	4%
Media	8	2%

Figure 3. Mark the statement(s) that represent your reason(s) for accessing the court record via the internet website: (Check all that apply).

Access Reason	Response Percent	Response Count
Make a payment on a case as I am a party in the case	6%	29
Verify civil record for background search - Government purpose	12%	64
Verify civil record for background search - Commercial purpose	14%	73
Verify criminal record for background search - Commercial purpose	17%	88
Verify criminal record for background search - Government purpose	25%	127
Review case information as I am a party in the case	37%	189
General informational purpose - Not a party involved in the case	60%	311

Figure 4, I access electronic court records by the internet at the following frequency: (Check highest frequency).		
Answer Options	Response Percent	Response Count
Weekly	74.0%	406
Monthly	12.8%	70
Quarterly Or Less	14.0%	73

Figure 5. Access of documents.							
					Percent		
	Agree	Neutral	Disagree	Total Responses	Agree	Neutral	Disagree
All Public Documents Should Be Available For Viewing	336	68	142	546	62%	12%	26%
Only Public Final Orders Should Be Available For Viewing	237	95	191	523	45%	18%	37%
Documents Should Not Be Available For Viewing	82	71	369	522	16%	14%	71%

Figure 6. Access - All public documents available for viewing.							
	Agree		Neutral		Disagree		Total Responses
Total	336	62%	68	12%	142	26%	546
Party	68	55%	19	15%	37	30%	124
Non-Party	105	66%	16	10%	27	17%	158
Attorney	56	47%	14	12%	48	41%	118
Search Co	66	64%	15	15%	22	21%	103
Media	7	88%	0	0%	1	13%	8

Figure 7. Only final orders should be available for viewing.							
	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	237	45%	95	18%	191	37%	523
Party	61	50%	20	17%	40	33%	121
Non-Party	62	41%	25	16%	66	43%	153
Attorney	45	39%	22	19%	48	42%	115
Search Co	49	53%	17	18%	27	29%	93
Media	5	63%	1	13%	2	25%	8

Figure 8. Documents should not be available for viewing.							
	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	82	16%	71	14%	369	71%	522
Party	20	16%	24	20%	78	64%	122
Non-Party	25	16%	13	8%	115	75%	153
Attorney	18	16%	14	12%	81	72%	113
Search Co	9	10%	13	14%	70	76%	92
Media	2	25%	0	0%	6	75%	8

Figure 9. A party's social security number, deemed public by court rule, should be available for viewing.							
	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	25	5%	19	3%	501	92%	545
Party	6	5%	2	2%	118	94%	126
Non-Party	6	4%	6	4%	144	92%	156
Attorney	1	1%	1	1%	116	98%	118
Search Co	6	6%	6	6%	92	88%	104
Media	2	25%	1	13%	5	63%	8

Figure 10. A party's date of birth, deemed public by court rule, should be available for viewing.							
	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	237	43%	76	14%	236	43%	549
Party	38	30%	18	14%	70	56%	126
Non-Party	96	61%	22	14%	40	25%	158
Attorney	26	22%	10	8%	82	69%	118
Search Co	58	55%	19	18%	28	27%	105
Media	6	75%	1	13%	1	13%	8

Figure 11. A party's address, deemed public by court rule, should be available for viewing.							
	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	182	33%	82	15%	283	52%	547
Party	35	28%	14	11%	77	61%	126
Non-Party	65	41%	23	15%	70	44%	158
Attorney	30	25%	16	14%	72	61%	118
Search Co	38	37%	17	16%	49	47%	104
Media	3	38%	3	38%	2	25%	8

Figure 12. A party's bank account numbers, investment account numbers and/or identifying financial information, deemed public by court rule, should be available for viewing.

	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	20	4%	15	3%	513	94%	548
Party	6	5%	1	1%	119	94%	126
Non-Party	7	4%	2	1%	149	94%	158
Attorney	1	1%	3	3%	114	97%	118
Search Co	0	0%	5	5%	99	95%	104
Media	2	25%	1	13%	5	63%	8

Figure 13. Retention - Records should be maintained on the public website indefinitely.

	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	275	52%	104	20%	158	30%	532
Party	59	49%	23	19%	39	33%	120
Non-Party	82	53%	30	19%	43	28%	154
Attorney	56	48%	26	22%	37	32%	117
Search Co	56	57%	15	15%	28	29%	98
Media	4	57%	2	29%	1	14%	7

Figure 14. Retention - Should have a specified period for each case type determined on the records legal, historical, fiscal and administrative value.

	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	292	55%	109	21%	133	25%	530
Party	68	57%	20	17%	33	28%	119
Non-Party	83	54%	28	18%	33	22%	153
Attorney	68	59%	21	18%	28	24%	116
Search Co	53	54%	29	29%	17	17%	99
Media	4	57%	2	29%	1	14%	7

Figure 15. Retention - Should maintain case summary, but remove documents once retention period met.

	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	267	50%	127	24%	144	27%	534
Party	62	51%	25	21%	35	29%	121
Non-Party	77	50%	40	26%	37	24%	153
Attorney	47	40%	23	20%	47	40%	117
Search Co	60	59%	21	21%	20	20%	101
Media	3	43%	3	43%	1	14%	7

Figure 16. Retention - Should be removed from public access site once the retention period has been met, but the court should maintain the record in a non-accessible database indefinitely.

	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	206	39%	109	21%	223	42%	531
Party	50	41%	27	22%	45	37%	121
Non-Party	61	40%	30	20%	64	42%	151
Attorney	38	32%	27	23%	52	44%	117
Search Co	38	38%	16	16%	46	46%	100
Media	4	57%	1	14%	2	29%	7

Figure 17. Retention- Should be removed from the public access site once the established retention period has been met and the record should be erased from the court database in its entirety.

	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Total	106	20%	96	18%	337	64%	527
Party	30	25%	24	20%	68	56%	121
Non-party	35	23%	28	18%	94	61%	153
Attorney	14	12%	18	16%	84	72%	116
Search Co	13	14%	15	16%	69	72%	96
Media	2	29%	0	0%	5	71%	7

Figure 18. Retention - Comparison of all retention options.

	Agree	Percent Agree	Neutral	Percent Neutral	Disagree	Percent Disagree	Total Responses
Records Should Be Maintained Indefinitely	275	52%	104	20%	158	30%	532
Retention Period Based On Rule	292	55%	109	21%	133	25%	530
Maintain Case Summary/Remove Documents	267	50%	127	24%	144	27%	534
Remove Case/Maintain Separate Database	206	39%	109	21%	221	42%	531
Remove Case/Erase Complete Record	110	21%	96	18%	337	64%	527