

INSTRUCTIONS FOR REQUESTS TO PROHIBIT PUBLIC INTERNET ACCESS TO A DEFENDANT'S COURT RECORD IN A CRIMINAL CASE

IMPORTANT! READ BEFORE USING THIS PACKET

ND Legal Self Help Center staff and court employees cannot help you fill out the forms in this packet. If you are unsure how to proceed, you should consult a lawyer.

To protect your rights, carefully read this information and any instructions to which you are referred.

You may go to court without a lawyer, but you will have to abide by the state or federal laws that apply to your case, the appropriate court rules, including North Dakota Rules of Civil Procedure, North Dakota Rules of Court, North Dakota Administrative Rules and Orders, and any local court rules. Links to the rules and state laws can be found at www.ndcourts.gov.

These instructions and forms are not a complete statement of the law. They cover basic procedure for motioning a North Dakota District Court to prohibit public internet access to a defendant's court record in a criminal case. If the forms do not fit your circumstances, consult a lawyer. There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center. Use at your own risk.

[North Dakota Supreme Court Administrative Rule 41, Section 6\(a\)\(6\)](#) governs requests to prohibit public internet access to a defendant's court record in a criminal case in North Dakota. (This is **not** the same as expunging, or deleting, the record(s).)

Who Should Use this Packet?

An individual who has been charged with a criminal offense and the charges were either dismissed or the individual was acquitted; **and** the individual wants to ask a North Dakota District Court to prohibit public internet access to the court records.

NOTE: Even if public internet access to an individual's court record is prohibited by the Court, the Court's order **does not** delete (expunge) the information from the individual's criminal history record. Criminal history records are maintained by the Bureau of Criminal Investigation (BCI), a division of the Office of Attorney General. For additional information about BCI, go to www.ag.nd.gov.

This packet **cannot be used** to request expungement (deletion) of criminal records. The ND Legal Self Help Center **does not** have forms or instructions for expunging criminal records. You may wish to research expungement more yourself or consult a lawyer for options.

Definitions:

Defendant – An individual who was charged with a criminal offense.

Plaintiff – In criminal cases, the Plaintiff is the government, in the form of the prosecutor.

Forms in the Packet:

1. Notice of Motion and Motion to Prohibit Public Internet Access to Records
2. Brief in Support of Motion to Prohibit Public Internet Access
3. Affidavit in Support of Motion to Prohibit Public Internet Access
4. Findings of Fact and Conclusions of Law on Motion to Prohibit Public Internet Access
5. Order on Motion to Prohibit Public Internet Access
6. Affidavit of Service by Mail
7. Affidavit of Personal Service

Before Completing and Signing the Forms:

Review the forms carefully and determine if the forms apply to your situation. If you do not know if you should use these forms, you should consult a lawyer who is licensed to practice in North Dakota.

When you sign the forms, your signature tells the court that you:

- Made reasonable inquiries about the motion requirements; **and**
- Based on your inquiries, to the best of your knowledge, information, and belief:
 - You are not presenting the motion for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
 - The claims, defenses, and other legal contentions in the motion are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;
 - The facts you present in the motion are supported by evidence or will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
 - Denials of any facts in the motion are warranted on the evidence or are reasonably based on belief or a lack of information.

See [North Dakota Rules of Civil Procedure Rule 11](#) for signature requirements, representations to the Court, and sanctions for motions and other documents presented to a Court.

Request copies of the court records in the case(s) in which you want to limit public internet access. If your request is granted by the District Court, you may not be able to get copies of the

records in the case(s) without making a new, written request for access. Contact the Clerk of Court’s office in the North Dakota county that heard your case(s) to request copies of the records.

Consider requesting at least one certified copy of the records, as well.

If Your Request to Prohibit Public Internet Access is Granted:

If the District Court grants your request to prohibit public internet access to your court records in your criminal case(s), people can still search publically available court records by your name or case number. The search results will look similar to this:

Criminal Case Records Search Results					
Skip to Main Content Logout My Account Search Menu New Criminal Search Refine Search					Location : State of North Dakota Help
Record Count: 1					
Search By: Defendant Exact Name: on Party Search Mode: Name Last Name: Doe First Name: Jon Middle Name: Alan All All Sort By: Filed Date					
Case Number	Citation Number	Defendant Info	Filed/Location/Judicial Officer	Type/Status	Charge(s)
09-2013-CR-0000					Internet Access is Prohibited under N.D. Supreme Court Admin. Rule 41 - For more information see www.ndcourts.gov/ar41.htm

After clicking on the Case Number, the Register of Actions for your case(s) will look similar to this:

Skip to Main Content Logout My Account Search Menu New Criminal Search Refine Search Back					Location : State of North Dakota Help
REGISTER OF ACTIONS					
PARTY INFORMATION					
Defendant	Doe, Jon Alan		New London, MN 56273		
			DOB: 1980		
Plaintiff	State of North Dakota				
Internet Access is Prohibited under N.D. Supreme Court Admin. Rule 41 - For more information see www.ndcourts.gov/ar41.htm					

Your name, city, state, zip code and year of birth remain publically available.

However, the listing of records and events in your case(s) is replaced with “Internet Access is Prohibited under N.D. Supreme Court Admin. Rule 41 – For more information see www.ndcourts.gov/ar41.htm.”

See Pages 4 through 8 for the Steps to Prepare, Serve and File the Forms.

STEP 1: PREPARE THE FORMS

1. Notice of Motion and Motion to Prohibit Public Internet Access to Records

This is the required written notice to the party that prosecuted the criminal case(s), and the required written request to the Court to prohibit public internet access to the court records in the criminal case(s).

- Fill out the top of the form with the county and judicial district where the case was filed. (The county is within the judicial district.) County and judicial district information and maps are available at www.ndcourts.gov.
- Fill in the criminal case number(s).
- Sign and date the Notice of Motion and Motion to Prohibit Public Internet Access. Complete the signature block.
- If your mailing address is different than your street (physical) address, write your mailing address in the blank space next to the signature block.

2. Brief in Support of Motion to Prohibit Public Internet Access

This is the required written document that explains why the party filing the motion should have the motion granted. A brief takes the relevant laws or rules and applies them to the facts of a particular situation.

- Fill out the top of the form exactly as you filled out the top of the Notice of Motion and Motion to Prohibit Public Internet Access.
- Paragraph 1 – fill in the date of the charges, the charges filed, and the date of the dismissal of the charges or acquittal. Put a checkmark (✓) in the box to indicate whether the charges were dismissed or you were acquitted of the charges.
- Paragraph 4 – put a checkmark (✓) in the box for dismissal of the charges or acquittal. Fill in the reason for the dismissal of the charges or the acquittal. Do not write on the back of the form.
- Paragraph 5 – explain in detail why public internet access to the records should be prohibited. Do not write on the back of the form.
 - If you need to attach additional sheets to your explanation, put a checkmark (✓) in the box next to “Additional sheets are attached as Exhibit A.” Write “Exhibit A” on all pages of the additional sheets of your explanation.
- Sign and date the motion and supporting brief. Complete the signature block.
- If your mailing address is different than your street (physical) address, write your mailing address in the blank space below the signature block.

3. **Affidavit in Support of Motion to Prohibit Public Access**

This is your required written statement of fact made under oath in front of an authorized officer. The affidavit must be signed in the presence of a notary public by the individual making the statement.

- Fill out the top of the form exactly as you filled out the top of the Notice of Motion and Motion to Prohibit Public Internet Access.
- First sentence – fill your full, legal name.
- Paragraph 2 – fill in the date of the charge(s) and list the charge(s) that were filed.
- Paragraph 3 – fill in the date the charges were dismissed or the date of the acquittal. Put a checkmark (✓) in the box to indicate whether the charges were dismissed or you were acquitted of the charges.
- Paragraph 4 – put a checkmark (✓) in the box for dismissal of the charges or acquittal. Fill in the reason for the dismissal of charges or for the acquittal. Do not write on the back of the form.
- Paragraph 5 – explain in detail why public internet access to the records should be prohibited. Do not write on the back of the form.
 - If you need to attach additional sheets to your explanation, put a checkmark (✓) in the box next to “Additional sheets are attached as Exhibit B.” Write “Exhibit B” on all pages of the additional sheets of your explanation.
- **DO NOT SIGN** the affidavit until you are in front of a Notary Public or Clerk of Court. The Notary or Clerk will witness your signature. You will need to show a driver’s license or photo identification so the Notary or Clerk can verify your identity. If you are unsure of what type of identification to bring, contact the Notary Public or Clerk of Court.

4. **Findings of Fact and Conclusions of Law on Motion to Prohibit Public Internet Access**

This is your proposed Findings of Fact and Conclusions of Law on Motion to Prohibit Public Internet Access. The Judge or Referee assigned to your request will ultimately decide whether or not to grant your request. The Judge or Referee will also decide whether or not to use this document.

Findings of Fact are the Court’s written determination of the facts made from the evidence presented in the motion. This explains what facts the court found to be true.

Conclusions of Law are the rulings of law made by the Court based on, or in connection with, the Findings of Fact. These are the legal consequences of the facts the court found to be true.

- Fill out the top of the form exactly as you filled out the top of the Notice of Motion and Motion to Prohibit Public Internet Access.
- Do not fill in any other information.

5. **Order on Motion to Prohibit Public Internet Access**

This is your proposed Order on Motion to Prohibit Public Internet Access. The Judge or Referee assigned to your request will ultimately decide whether or not to grant your request. The Judge or Referee will also decide whether or not to use this document.

- Fill out the top of the form exactly as you filled out the top of the Notice of Motion and Motion to Prohibit Public Internet Access.
- Do not fill in any other information.

STEP 2: SERVICE

You must serve a copy of the completed Notice of Motion and Motion to Prohibit Public Internet Access, Brief in Support of Motion to Prohibit Public Internet Access, Affidavit in Support of Motion to Prohibit Public Internet Access, and any exhibits on all parties in the case(s).

You can use the Affidavit of Service by Mail or Affidavit of Personal Service, depending on how you choose to complete service.

1. **Affidavit of Service by Mail**

In order to complete service by mail, the person serving the documents must mail copies of the documents to all parties in the case. The person serving the documents must be at least 18 years of age.

If serving the State’s Attorney by mail, the person mailing the documents must mail them to the State’s Attorneys office. Contact information for State’s Attorneys in North Dakota can be found on the ND Courts website: www.ndcourts.gov. Select the “Courts” link, then the “Counties” link. Click the name of the County for the State’s Attorney contact information.

Postage must be pre-paid. The person mailing the documents must complete the Affidavit of Service by Mail. Service is complete upon mailing.

To complete the Affidavit of Service by Mail, the person who mailed the documents must:

- Fill out the top of the form exactly as the top of the Notice of Motion and Motion to Prohibit Public Internet Access was filled out.
- Fill in the time and date the documents were mailed.
- Fill in the name and address of the State’s Attorney.
 - The complete address of the State’s Attorney must be included on the Affidavit of Service by Mail and on the mailing envelope.
- **DO NOT SIGN** the affidavit until the person mailing the documents is in front of a Notary Public or Clerk of Court. The Notary or Clerk will witness the signature. The person mailing the documents will need to show a driver’s license or photo identification so the Notary or Clerk can verify their identity. If unsure of what type of identification to bring, contact the Notary Public or Clerk of Court.

The completed Affidavit of Service by Mail is filed with the Clerk of Court in Step 3.

2. **Affidavit of Personal Service**

In order to complete service by personal service, the person serving the documents must leave copies of the documents with all parties in the case. The person serving the documents must be at least 18 years of age and not a party or interested in the case(s).

If serving the State’s Attorney’s office, the person serving the documents must leave the documents in the Office of the State’s Attorney for the county the original case was filed in. Contact information for State’s Attorneys in North Dakota can be found above.

To complete the Affidavit of Personal Service, the person who served the documents must:

- Fill out the top of the form exactly as the top of the Notice of Motion and Motion to Prohibit Public Internet Access was filled out.
- Fill in the time and date the documents were served.
- Fill in the name of State’s Attorney office where the documents were served.
- Fill in the address of the State’s Attorney office where the documents were served.
- **DO NOT SIGN** the affidavit until the person serving the documents is in front of a Notary Public or Clerk of Court. The Notary or Clerk will witness the signature. The person signing will need to show a driver’s license or photo identification so the Notary or Clerk can verify their identity. If unsure of what type of identification to bring, contact the Notary Public or Clerk of Court.

The completed Affidavit of Personal Service is filed with the Clerk of Court in Step 3.

STEP 3: FILE THE FOLLOWING ORIGINAL, COMPLETED DOCUMENTS WITH THE CLERK OF COURT:

1. Notice of Motion and Motion to Prohibit Public Internet Access
2. Brief in Support of Motion to Prohibit Public Internet Access
3. Affidavit in Support of Motion to Prohibit Public Internet Access
4. Findings of Fact and Conclusions of Law on Motion to Prohibit Public Internet Access
5. Order on Motion to Prohibit Public Internet Access
6. Proof of Service Document – file the document based on which method of service you chose to complete service:
 - a. Affidavit of Service by Mail
 - b. Affidavit of Personal Service

You may be asked to pay a filing fee. Verify with the Clerk of Court if you are required to pay a filing fee. If you feel you cannot afford the filing fee, complete the Fee Waiver Forms available on the ND Legal Self Help Center – www.ndcourts.gov/ndlshc.

After your Motion is filed with the Clerk of Court, the Clerk of Court will forward your motion to the Judge or Referee for review.

STEP 4: REVIEW OF THE COURT

If the Motion is Granted

If the Court determines that there are reasonable grounds to prohibit public internet access, the Judge will sign a Findings of Fact and Conclusions of Law and an Order. The Clerk of Court will be instructed by the order to restrict internet access to the records in the matter and ensure that search results for the records displays the words “Internet Access Prohibited under N.D.Sup.Ct.Admin.R 41.”

If the Motion is not Granted

If the Court determines that there are not reasonable grounds to prohibit public internet access, the Court will issue an Order denying the motion and the records will remain open to public internet access.