

**ORIGINAL**

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

**ORDER OF ADOPTION**  
Supreme Court No. 20090049

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**Proposed Amendments to North Dakota Supreme Court  
Administrative Rule 41 - Access to Court Records**

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On February 3, 2009, the Joint Procedure Committee filed a petition requesting further amendments to North Dakota Supreme Court Administrative Rule 41, which this Court had previously amended to become effective March 1, 2009. See, Supreme Court No. 20080201. On February 25, 2009, this Court stayed the amendments to Administrative Rule 41 that were to become effective March 1, 2009, pending reconsideration and until further Order.

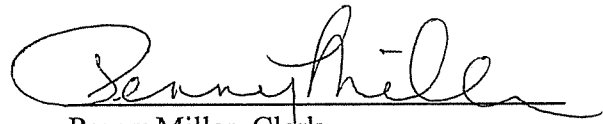
On its own Motion, the Court also reviewed Rule 3.4, North Dakota Rules of Court, Privacy Protection for Filings Made With The Court, which became effective March 1, 2009. See, Supreme Court No. 20080201.

The Court considered the matter, and

**ORDERED**, that the amendments to North Dakota Supreme Court Administrative Rule 41 adopted to become effective March 1, 2009, as further amended by this Court, are ADOPTED effective March 15, 2009.

**IT IS FURTHER ORDERED**, that amendments to Rule 3.4, North Dakota Rules of Court are ADOPTED effective March 15, 2009.

The Supreme Court of the State of North Dakota convened March 6, 2009, with the Honorable Gerald W. VandeWalle, Chief Justice, and the Honorable Dale V. Sandstrom, the Honorable Mary Muehlen Maring, the Honorable Carol Ronning Kapsner, and the Honorable Daniel J. Crothers, Justices, directing the Clerk of the Supreme Court to enter the above order.

  
Penny Miller, Clerk  
North Dakota Supreme Court

RULE 41. ACCESS TO COURT RECORDS

Section 1. Purpose.

The purpose of this rule is to provide a comprehensive framework for public access to court records. Every member of the public will have access to court records as provided in this rule.

Section 2. Definitions.

(a) "Court record," regardless of the form, includes:

(1) any document, information, or other thing that is collected, received, or maintained by court personnel in connection with a judicial proceeding;

(2) any index, calendar, docket, register of actions, official record of the proceedings, order, decree, judgment, minute, and any information in a case management system created by or prepared by court personnel that is related to a judicial proceeding; and

(3) information maintained by court personnel pertaining to the administration of the court or clerk of court office and not associated with any particular case.

(b) "Court record" does not include:

(1) other records maintained by the public official who also serves as clerk of court;

(2) information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in this rule;

(3) a record that has been disposed of under court records management rules.

22 (c) "Public access" means that the public may inspect and obtain a copy of the  
23 information in a court record.

24 (d) "Remote access" means the ability to electronically search, inspect, or copy  
25 information in a court record without the need to physically visit the court facility where the  
26 court record is maintained.

27 (e) "Bulk distribution" means the distribution of all, or a significant subset, of the  
28 information in court records, as is and without modification or compilation.

29 (f) "Compiled information" means information that is derived from the selection,  
30 aggregation or reformulation by the court of some of the information from more than one  
31 individual court record.

32 (g) "Electronic form" means information in a court record that exists as:

33 (1) electronic representations of text or graphic documents;

34 (2) an electronic image, including a video image, of a document, exhibit or other  
35 thing;

36 (3) data in the fields or files of an electronic database; or

37 (4) an audio or video recording, analog or digital, of an event or notes in an electronic  
38 file from which a transcript of an event can be prepared.

39 Section 3. General Access Rule.

40 (a) Public Access to Court Records.

41 (1) Information in the court record is accessible to the public except as prohibited by  
42 this rule.

43 (2) There must be a publicly accessible indication of the existence of information in  
44 a court record to which access has been prohibited, which indication may not disclose the  
45 nature of the information protected.

46 (3) A court may not adopt a more restrictive access policy or otherwise restrict access  
47 beyond that provided for in this rule, nor provide greater access than that provided for in this  
48 rule.

49 (b) When Court Records May Be Accessed.

50 (1) Court records in a court facility must be available for public access during normal  
51 business hours. Court records in electronic form to which the court allows remote access will  
52 be available for access subject to technical systems availability.

53 (2) Upon receiving a request for access to information, the clerk of court shall respond  
54 as promptly as practical. If a request cannot be granted promptly, or at all, an explanation  
55 must be given to the requestor as soon as possible. The requesting person has a right to at  
56 least the following information: the nature of any problem preventing access and the specific  
57 statute, federal law, or court or administrative rule that is the basis of the denial. The  
58 explanation must be in writing if desired by the requestor.

59 (c) Fees for Access. The court may charge a fee for access to court records in  
60 electronic form, for remote access, for bulk distribution or for compiled information. To the  
61 extent that public access to information is provided exclusively through a vendor, the court  
62 will ensure that any fee imposed by the vendor for the cost of providing access is reasonable.

63 Section 4. Methods of Access to Court Records.

64 (a) Access to Court Records at Court Facility

65 (1) Request for Access. Any person desiring to inspect, examine, or copy a court  
66 record shall make an oral or written request to the clerk of court. If the request is oral, the  
67 clerk may require a written request if the clerk determines that the disclosure of the record  
68 is questionable or the request is so involved or lengthy as to need further definition. The  
69 request must clearly identify the record requested so that the clerk can locate the record  
70 without doing extensive research. Continuing requests for a document not yet in existence  
71 may not be considered.

72 (2) Response to Request. The clerk of court is not required to allow access to more  
73 than ten files per day per requestor but may do so in the exercise of the clerk's discretion if  
74 the access will not disrupt the clerk's primary function. If the request for access and  
75 inspection is granted, the clerk may set reasonable time and manner of inspection  
76 requirements that ensure timely access while protecting the integrity of the records and  
77 preserving the affected office from undue disruption. The inspection area must be within full  
78 view of court personnel whenever possible. The person inspecting the records may not leave  
79 the court facility until the records are returned and examined for completeness.

80 (3) Response by Court. If a clerk of court determines there is a question about whether  
81 a record may be disclosed, or if a written request is made under Section 6(b) for a ruling by  
82 the court after the clerk denies or grants an access request, the clerk shall refer the request  
83 to the court for determination. The court must use the standards listed in Section 6 to  
84 determine whether to grant or deny the access request.

(b) Remote Access to Court Records. The following information in court records must be made remotely accessible to the public if it exists in electronic form, unless public access is restricted under this rule:

- (1) litigant/party indexes to cases filed with the court;
- (2) listings of new case filings, including the names of the parties;
- (3) register of actions showing what documents have been filed in a case;
- (4) calendars or dockets of court proceedings, including the case number and caption, date and time of hearing, and location of hearing;
- (5) judgments, orders, or decrees in a case and liens affecting title to real property;
- (6) reports specifically developed for electronic transfer approved by the state court administrator and reports generated in the normal course of business, if the report does not contain information that is excluded from public access under Section 5 or 6.

(c) Requests for Bulk Distribution of Court Records.

(1) Bulk distribution of information in the court record is permitted for court records that are publicly accessible under Section 3(a).

(2) A request for bulk distribution of information not publicly accessible can be made to the court for scholarly, journalistic, political, governmental, research, evaluation or statistical purposes where the identification of specific individuals is ancillary to the purpose of the inquiry. Prior to the release of information under this subsection the requestor must comply with the provisions of Section 6.

(3) A court may allow a party to a bulk distribution agreement access to birth date.

106 street address, and social security number information if the party certifies that it will use the  
107 data for legitimate purposes as permitted by law.

108 (d) Access to Compiled Information From Court Records.

109 (1) Any member of the public may request compiled information that consists solely  
110 of information that is publicly accessible and that is not already in an existing report. The  
111 court may compile and provide the information if it determines, in its discretion, that  
112 providing the information meets criteria established by the court, that the resources are  
113 available to compile the information and that it is an appropriate use of public resources. The  
114 court may delegate to its staff or the clerk of court the authority to make the initial  
115 determination to provide compiled information.

116 (2) Requesting compiled restricted information.

117 (A) Compiled information that includes information to which public access has been  
118 restricted may be requested by any member of the public only for scholarly, journalistic,  
119 political, governmental, research, evaluation, or statistical purposes.

120 (B) The request must:

121 (i) identify what information is sought ,

122 (ii) describe the purpose for requesting the information and explain how the  
123 information will benefit the public interest or public education, and

124 (iii) explain provisions for the secure protection of any information requested to which  
125 public access is restricted or prohibited.

126 (C) The court may grant the request and compile the information if it determines that

doing so meets criteria established by the court and is consistent with the purposes of this rule, the resources are available to compile the information, and that it is an appropriate use of public resources.

(D) If the request is granted, the court may require the requestor to sign a declaration that:

(i) the data will not be sold or otherwise distributed, directly or indirectly, to third parties, except for journalistic purposes,

(ii) the information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes, and

(iii) there will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.

The court may make such additional orders as may be needed to protect information to which access has been restricted or prohibited.

#### Section 5. Court Records Excluded From Public Access.

The following information in a court record is not accessible to the public:

(a) Information that is not accessible to the public under federal law.

(b) Information that is not accessible to the public under state law, court rule, case law or court order, including:

(1) affidavits or sworn testimony and records of proceedings in support of the issuance of a search or arrest warrant pending the return of the warrant;



(2) information in a complaint and associated arrest or search warrant to the extent confidentiality is ordered by the court under *Section 29-05-32* or *29-29-22, NDCC*;

(3) documents filed with the court for in-camera examination pending disclosure;

(4) domestic violence protection order files and disorderly conduct restraining order files when the restraining order is sought due to domestic violence, except for orders of the court;

(5) names of qualified or summoned jurors and contents of jury qualification forms if disclosure is prohibited or restricted by order of the court;

(6) sexually explicit material or property that is evidence in a case;

(7) records of deferred impositions of sentences resulting in dismissal;

(8) personal information:

– except for the last four digits, social security numbers, taxpayer identification numbers, and financial account numbers.

– except for the year, birth dates,

– except for the initials, the name of an individual known to be a minor, ~~any financial account numbers~~; and,

– in criminal cases, the home street address of an individual;

(9) judge and court personnel work material, including personal calendars, communications from law clerks, bench memoranda, notes, work in progress, draft documents and non-finalized documents.

(c) This rule does not preclude access to court records by the following persons in the

169 following situations:

170 (1) federal, state, and local officials, or their agents, examining a court record in the  
171 exercise of their official duties and powers.

172 (2) parties to an action and their attorneys examining the court file of the action,  
173 unless restricted by order of the court, but parties and attorneys may not access judge and  
174 court personnel work material in the court file.

175 (d) A member of the public may request the court to allow access to information  
176 excluded under Section 5 as provided in Section 6.

177 Section 6. Requests to Prohibit Public Access to Information in Court Records or to  
178 Obtain Access to Restricted Information.

179 (a) Request to Prohibit Access.

180 (1) A request to prohibit public access to information in a court record may be made  
181 by any party to a case, by the individual about whom information is present in the court  
182 record, or on the court's own motion on notice as provided in Section 6(c).

183 (2) The court must decide whether there are sufficient grounds to overcome the  
184 presumption of openness of court records and prohibit access according to applicable  
185 constitutional, statutory and case law.

186 (3) In deciding whether to prohibit access the court must consider that the presumption  
187 of openness may only be overcome by an overriding interest. The court must articulate this  
188 interest along with specific findings sufficient to allow a reviewing court to determine  
189 whether the closure order was properly entered.

190 (4) The closure of the records must be no broader than necessary to protect the  
191 articulated interest. The court must consider reasonable alternatives to closure, such as  
192 redaction or partial closure, and the court must make findings adequate to support the  
193 closure. The court may not deny access only on the ground that the record contains  
194 confidential or closed information.

195 (5) In restricting access the court must use the least restrictive means that will achieve  
196 the purposes of this rule and the needs of the requestor.

197 (b) Request to Obtain Access.

198 (1) A request to obtain access to information in a court record to which access is  
199 prohibited under Section 4(a), 5 or 6(a) may be made by any member of the public or on the  
200 court's own motion on notice as provided in Section 6(b).

201 (2) In deciding whether to allow access, the court must consider whether there are  
202 sufficient grounds to overcome the presumption of openness of court records and continue  
203 to prohibit access under applicable constitutional, statutory and case law. In deciding this the  
204 court must consider the standards outlined in Section 6(a).

205 (c) Form of Request.

206 (1) The request must be made by a written motion to the court.

207 (2) The requestor shall give notice to all parties in the case.

208 (3) The court may require notice to be given by the requestor or another party to any  
209 individuals or entities identified in the information that is the subject of the request. When  
210 the request is for access to information to which access was previously prohibited under

211 Section 6(a), the court must provide notice to the individual or entity that requested that  
212 access be prohibited.

213 Section 7. Obligations Of Vendors Providing Information Technology Support To  
214 A Court To Maintain Court Records.

215 (a) If the court contracts with a vendor to provide information technology support to  
216 gather, store, or make accessible court records, the contract will require the vendor to comply  
217 with the intent and provisions of this rule. For purposes of this section, "vendor" includes a  
218 state, county or local governmental agency that provides information technology services to  
219 a court.

220 (b) By contract the vendor will be required to notify the court of any requests for  
221 compiled information or bulk distribution of information, including the vendor's requests for  
222 such information for its own use.

223 EXPLANATORY NOTE

224 Adopted on an emergency basis effective October 1, 1996; Amended and adopted  
225 effective November 12, 1997; March 1, 2001; July 1, 2006; March 1, 2009; March 15, 2009;  
226 Appendix amended effective August 1, 2001, to reflect the name change of State Bar Board  
227 to State Board of Law Examiners.

228 Section 4(c) was amended, effective March 15, 2009, to allow parties who enter into  
229 bulk distribution agreements with the courts to have access to birth date, street address, and  
230 social security number information upon certifying compliance with laws governing the  
231 security of personal information. Such laws include the Federal Fair Credit Reporting Act,

232 the Gramm Leach Bliley Act, the USA Patriot Act and the Driver's Privacy Protection Act.

233 Section 5(b)(8) was amended, effective March 15, 2009, to list types of personal  
234 information open to the public.

235 HISTORY: Joint Procedure Committee Minutes of January 24, 2008, pages 9-12;  
236 October 11-12, 2007, pages 28-30; April 26-27, 2007, page 31; September 22-23, 2005,  
237 pages 6-16; April 28-29, 2005, pages 22-25; April 29-30, 2004, pages 6-13, January 29-30,  
238 2004, pages 3-8; September 16-17, 2003, pages 2-11; April 24-25, 2003, pages 6-12. Court  
239 Technology Committee Minutes of June 18, 2004; March 19, 2004; September 12, 2003;  
240 Conference of Chief Justices/Conference of State Court Administrators: Guidelines for  
241 Public Access to Court Records.

RULE 3.4. PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

(a) Redacted Filings. Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or, in a criminal case, the home address of an individual, a party or nonparty making the filing must include only:

- (1) the last four digits of the social-security number and taxpayer-identification number;
- (2) the year of the individual's birth;
- (3) the minor's initials;
- (4) the last four digits of the financial-account number; and
- (5) in a criminal case, the city and state of the home address.

(b) Exemptions from the Redaction Requirement.

The redaction requirement does not apply to the following:

- (1) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (2) the record of an administrative or agency proceeding;
- (3) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (4) a filing covered by Rule 3.4 (c);

(5) a court filing that is related to a criminal matter and that is prepared before the filing of a criminal charge or is not filed as part of any docketed criminal case;

(6) an arrest or search warrant; and

(7) a charging document and an affidavit filed in support of a charging document.

(c) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) Protective Orders. For good cause, the court may by order in a case:

(1) require redaction of additional information; or

(2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

(e) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

(f) Option for Filing a Reference List.

(1) In General. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(2) Defendant Information. In a criminal case, the prosecutor must file a reference

43 list that includes the defendant's social security number, birth date and street address.

44 (g) Non-conforming Documents.

45 (1) Waiver. A person waives the protection of Rule 3.4 (a) as to the person's own  
46 information by filing it without redaction and not under seal.

47 (2) Sanctions. If a party fails to comply with this rule, the court on motion of another  
48 party or its own motion, may order the pleading or other document to be reformed. If the  
49 order is not obeyed, the court may order the document stricken.

50 EXPLANATORY NOTE

51 Rule 3.4 was adopted effective March 1, 2009. Rule 3.4 was amended, effective  
52 March 15, 2009.

53 Sources: Joint Procedure Committee Minutes of January 24, 2008, pages 9-12;  
54 October 11-12, 2007, pages 28-30; April 26-27-, 2007, page 31.

55 Cross Reference: N.D.R.Ct. 3.1 (Pleadings); N.D.Sup.Ct.Admin.R. 41 (Access to  
56 Judicial Records).