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North Dakota

PRIVATE INVESTIGATION & SECURITY BOARD

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STATE OF NORTH DAKOTA

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STATE OF
NORTH DAKOTA

November 29, 2009

Chief Justice Gerald VanderWall
North Dakota Supreme Court
Judicial Wing - 1st Floor
600 East Boulevard Avenue
Bismarck ND 58505-0530

Dear Chief Justice VanderWall:

I write to you and the other justices as chair and on behalf of the North Dakota Private Investigation & Security Board to express our great concern about and objection to certain proposed amendments to the North Dakota Rules of Court, Rules of Appellate Procedure, and Administrative Rules and Orders as submitted by the Joint Procedure Committee in its report in October 2009.

Specifically, we object to personal identity information, such as dates of birth, residence and social security numbers, being redacted from state criminal and civil records so that it cannot be viewed for legitimate and perfectly legal reasons by the public.

We believe that there is a movement afoot, both in North Dakota and nationally, that would deny citizens information that they need to conduct business and to protect themselves from those who might do them harm. We would argue that the following language be incorporated into your rules to allow public access to information held by the courts so as to:

...prevent, detect, or investigate fraud or unauthorized transactions, to verify identity, to locate missing or abducted persons or witnesses to an ongoing or potential civil or criminal lawsuit, criminals, criminal suspects, parties to lawsuits, parents delinquent in child support payment, organ and bone marrow donors, pension funds beneficiaries, missing heirs, and for similar legal, medical or family related purposes.

Let me set out specific examples of the error in thinking to the contrary. Recently my agency did a background investigation in the State of California on an applicant for certification by a North Dakota state agency. We were unable to report whether or not the applicant was or had been a party to civil suits because of California's redaction rules. We are routinely asked, on behalf of petroleum landmen and attorneys dealing with estates, to identify mineral property owners or heirs of record, but often we cannot because of redaction. Frankly, we have experienced North Dakota court clerks who consider themselves to be experts on privacy issues and so refuse to make court files

available for review even though those files are clearly public record. This trend must be reversed.

Our Board met on November 24, 2009 and we, on behalf of our industry, voted unanimously and emphatically to urge you, the Court, to consider our recommendation. We are unsure about the constitutionality of the redaction rules proposed by the Joint Procedure Committee but we believe they are inherently wrong. The public has a right to know specifically who has been a party to criminal and civil proceedings.

I would welcome the opportunity to testify, on behalf of our Board, at any hearing that might occur in regards to this matter.

We thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Bill Butcher". The signature is stylized with a large, sweeping initial "B" and a long, horizontal stroke extending to the right.

Bill Butcher
Chair