

State Of North Dakota

In District Court

County Of _____

_____ Judicial District

The State Of North Dakota,)
)
 Plaintiff,)
)
 vs.)
)
 _____)
 Defendant.)

Criminal Case No. _____
**Brief In Support Of Motion To
Prohibit Public Access**

1. The Defendant brings this Motion to ask the court to enter an Order prohibiting remote public access to the electronic record in this case under Rule 41, Section 4(a)(7) of the North Dakota Supreme Court Administrative Rules because there are sufficient grounds to overcome the presumption of openness of court records and allow access to be prohibited.

2. The Defendant further brings this Motion to ask the court to enter an Order prohibiting remote public access to the Defendant’s electronic case record in the above-captioned case under Administrative Rule 41, Section 4(a)(7) to serve the interest of justice because the charges against the Defendant were dismissed, or the Defendant was acquitted.

Facts

3. The Defendant in the above-captioned case was charged on _____
_____ with _____

(choose one) the charge(s) against the Defendant was/were dismissed / the Defendant was acquitted of the charge(s).

4. All other facts are stated in the Declaration in Support of Motion to Prohibit Public Access, which is filed with the Motion to Prohibit Public Access and incorporated by reference.

Law and Argument

5. Rule 41, Section 4(a) of the North Dakota Supreme Court Administrative Rules requires the court to decide whether there are sufficient grounds to overcome the presumption of openness of court records and prohibit access according to applicable law. The court must consider that the presumption of openness may only be overcome by an overriding interest. The court must articulate this interest along with specific findings sufficient to allow a reviewing court to determine whether the closure order was properly entered.

6. When criminal charges against a Defendant are dismissed or the Defendant is acquitted, Rule 41, Section 4(a)(7) of the North Dakota Supreme Court Administrative Rules, allows the court to prohibit remote access to the individual Defendant's electronic case record if, after conducting a balancing analysis and making findings under Rule 41, Section 4(a)(3) of the North Dakota Supreme Court Administrative Rules, the court concludes that the interest of justice will be served.

7. In the above-captioned case(s), the reason for (choose one) dismissal of charges / acquittal was _____

Consequently, the public interest in maintaining remote public access to the electronic record in the above-captioned case(s) is minimal.

8. Because the electronic case record has remained available for remote public access, the Defendant has sustained or is likely to sustain the following harms (select all that apply;

Paragraph 8 continues on next page):

- The risk of injury to individuals;
 - Individual privacy rights and interests;
 - Proprietary business information;
 - Public safety;
 - Other (*list the harm or harms*): _____
-
-
-

9. For all harms selected in Paragraph 8, an explanation of how the Defendant has sustained or is likely to sustain each harm is stated in Paragraph 5 of the Declaration in Support of Motion to Prohibit Public Access.

10. Because these harms are substantial, there is an overriding interest in protecting the Defendant from further harm by prohibiting remote public access to the electronic case record in the above-captioned case.

11. An explanation of how prohibiting remote public access to the electronic case record in the above-captioned case will protect the Defendant from further harm is stated in Paragraph 6 of the Declaration in Support of Motion to Prohibit Public Access.

12. Prohibiting remote public access to the electronic case record in the above-captioned case is no broader than necessary to protect the Defendant from further harm because (*explain; Paragraph 12 continued on next page*): _____
